Vates partners general conditions

Last update: 10/20/2023

XCP-ng

XEN ORCHESTRA

XO LITE

XOSTOR

XO PROXY

Article 1 - Preamble

VATES, a simplified joint-stock company, with a share capital of €19,347, having its registered office at 17 rue Aime Berey, 38000 GRENOBLE, registered with the Commercial and Companies Registry of GRENOBLE under the number 752 155 259, represented by Mr. Olivier LAMBERT, in his capacity as President;

Hereinafter referred to as "VATES",

On the one hand,

_____, a _____ company, with a share capital of _____ €uros, having its registered office at _____, registered with the Commercial and Companies Registry of _____ under the number _____, represented by _____, in his/her capacity as _____.

Hereinafter referred to as "the Distributor",

On the other hand,

Hereinafter collectively referred to as "the Parties".

WHEREAS:

VATES is a company specialized in the development, maintenance of software, and provision of IT services.

VATES offers its clients subscriptions for the usage of various Open Source software solutions.

In conjunction with the utilization of Open Source software licenses by its clients, VATES also provides a specific maintenance service offering.

The list of Software made available by VATES, for which support is offered, is available on VATES' website at www.vates.tech.

In order to expand its offering and make its services available to a larger number of users of the Software XCP-ng/XEN ORCHESTRA or any other Software, VATES wishes to entrust distributors with the commercialization of its offering.

The Distributor specializes in _____ and wishes to offer its clients an associated maintenance service offering for software developed by VATES.

The Distributor declares that they possess the experience, professional and technical skills, as well as the human and material resources and the organization necessary to distribute the services forming part of the comprehensive offering developed by VATES.

The Distributor acknowledges having received all necessary information from VATES and having been able to acquaint themselves with the content of VATES' service offering, its functional and technical limitations, and its specific features.

In this context, the Parties have come together and agreed to enter into this agreement, which outlines the general principles of their contractual relationship and the operational terms of the supplier/distributor relationship being established.

The Parties declare that the stipulations of this contract have been negotiated in good faith, in accordance with the mandatory provisions of Article 1104 of the Civil Code. Pursuant to Article 1112-1 of the same Code, all information of material importance for obtaining the consent of the other party has been disclosed. The Distributor acknowledges having received, during the pre-contractual negotiation phase, all necessary and useful information to enable them to enter into this agreement with full knowledge of the facts. The Client has communicated all information likely to determine their consent and which they could not legitimately ignore.

The Parties wish for their collaboration to proceed in a spirit of good intelligence, loyalty, and transparency, with a focus on maintaining the economic balance of their agreement over time.

In this manner, the Parties have come together and agreed as follows.

Article 2 – Definitions

Whenever they are used in the body of this contract, the terms below will have the following definitions:

- **Customer:** refers to any individual or legal entity, end-user of the Software, who places an order for VATES' Service offerings through the Distributor.
- **Order:** refers to any Service order placed by the Distributor directly on the dedicated interface on the VATES website available at the following address: https://partners.vates.tech.
- **Contract:** refers to this contract in its entirety, including the appendices.
- **Documentation:** refers to all documents related to the Software, available on the VATES website.
- **Incident:** refers to any malfunction of XCP-ng (especially in the creation of virtual machines or VM management - migration, disk management), or any other Software offered on the VATES Site, which results in an error message returned by the Software to the client. The severity of the Incident is determined by the Distributor and/or VATES according to the criteria defined in Appendix 3.
- **Software:** refers to the software offered by VATES on the Site (including XCP-ng) and for which the client subscribes to a Service/Bundles offer through the Distributor.
- **Virtual Machine or "VM":** refers to a fully virtualized environment running on a physical machine. Multiple VMs can coexist on the same host and run different operating systems.
- **Brand:** refers to the brand(s) listed in Appendix 2, registered and filed by VATES, under which Services are exclusively sold.
- **Partner offer:** refers to the services offered by the Distributor in addition to the Services, especially the installation/integration of the Software in the client's environment, software updates, infrastructure audits, or migration from another hypervisor.
- **Services:** refers to all training, expertise and/or any other services subscribed to by the Client at the time of their Order.
- **Services or VATES Services:** refers to the Services offered by VATES as part of the overall support and maintenance offer for the Software. The description of the Services is indicated in Appendix 1.
- **Support:** refers to XCP-ng support services and support services for all Software designed to assist in maintaining the client's System.
- **Remote support:** refers to the provision of support services within the client's infrastructure using the secure SSH tunnel provided in Xen Orchestra; Level 1 is performed by the Distributor and Level 2 by VATES. This support will mainly be provided from the offices of VATES and/or the Distributor.
- **Level 1 support:** refers to telephone or remote assistance support aimed at resolving and assisting users who have a problem with their virtualization infrastructure on which XCP-ng is installed without consequences on the use of the Software.
- **Level 2 support:** refers to telephone or remote assistance support aimed at resolving and assisting users who have a problem with their virtualization infrastructure on which XCP-ng is installed that prevents them from using the Software.
- **System:** refers to the network, hypervisor, interface, or any other element for which the Client has subscribed to a usage right via the Site.

Article 3 – Purpose

The purpose of this Contract is to define the terms under which VATES grants the Distributor the non-exclusive right to market VATES Services as described in Appendix 1 to any Client, which the Distributor expressly accepts.

The Distributor shall have no right to use the Services for its own needs.

VATES declares that the Services it markets and develops are subject to change and reserves the right to make necessary modifications to adapt them to the needs of its clientele during the term of the Contract, provided that this range remains coherent and suitable for the needs of the Clients. This is expressly accepted by the Distributor.

Article 4 - Duration

4.1 - Contract Term

The following documents, which take precedence in the event of a contradiction in the order in which they are listed, form the contract binding the parties and express the entirety of their obligations.

These GC and any annexes express the entirety of the agreement between the parties. They cancel and replace all previous provisions, whether written or oral.

The Contract and any annexes may only be modified by an amendment, written and signed by an authorized representative of each party.

This Contract is entered into for an initial term of one (1) year from its date of signature. Following this initial term, the Contract will be automatically renewed for periods of 12 (twelve) months, unless terminated by either Party by sending a registered letter with acknowledgment of receipt, observing a notice period of three (3) months prior to the end of each annual period.

Additionally, termination of this Contract will be possible at any time in the event of a breach by either Party of its essential obligations as set forth herein, following a formal notice sent by registered letter with acknowledgment of receipt that has remained ineffective after a period of thirty (30) days.

4.2 - Termination for Breach

Either Party may terminate the Contract as of right in the event of a failure by either Party to fulfill its essential obligations, within 15 days from a formal notice served to the defaulting Party by registered letter with acknowledgment of receipt that has remained without effect. This termination will not entitle the defaulting Party to compensation and will be without prejudice to any damages and interest for the injured Party.

4.3 - Consequences of Contract Termination

All Orders placed by the Distributor with VATES during the notice period or prior to it will be reviewed and adjusted by the Parties considering:
- The orders placed by the Distributor's Clients
- The sales prospects of the Services by the Distributor up to the date of Contract cessation

The Distributor will have a reasonable time, mutually agreed upon by the Parties, from the date of Contract cessation to settle its ongoing affairs. Termination will result in the immediate return by the Distributor of all elements provided by VATES and the immediate cessation of any use whatsoever of the Brand.

Invoices due must be paid on the date of termination and will be subject to late fees in accordance with the provisions herein. In the event of Contract termination, the Service offers

already sold to Clients will remain in effect for the duration for which these offers were subscribed to by the Client through the Distributor until their termination for any reason.

Article 5 - Rights and Obligations of the Parties

A business and technical exchange meeting between the Parties is planned at least once a year or at any time upon request from one or both of the Parties. The objective of this meeting is to ensure ongoing partnership follow-up between the Parties, establish a detailed market status, and agree on any measures to take based on these findings.

4.1. Rights and Obligations of the Distributor

By this Contract, VATES grants the Distributor, who accepts it, the non-exclusive and non-transferable right to distribute the Services under the conditions set forth in this Contract.

For each sale of VATES Services, the Distributor undertakes to provide the Client with the Conditions for Service Delivery as practiced by VATES. These conditions may vary depending on the Software to which the Services relate and are detailed in Appendix 3. The Contract between the Distributor and its Client must include the provisions related to the limits of the Services as indicated in Appendix 3.

The Distributor commits not to make commitments to the Client that exceed those made by VATES under this Contract, nor to grant the Client more rights than those granted by VATES. The Parties agree that compliance with this provision constitutes an essential obligation of this Contract.

VATES further authorizes the Distributor to provide Level 1 Software Support only under the conditions set forth in this Contract.

The Distributor acknowledges having been informed of all the terms of Service Delivery and all the technical prerequisites for their realization. The Distributor is solely responsible for how it presents VATES Services to Clients. It commits as a Distributor acting in its own name and on its own account to verify, under its sole responsibility, that the Services meet the needs of the Client.

VATES shall not be held responsible for any non-compliance of the Services with the needs and/or expectations of the Client.

Distributor's Commitments:

- **Transparency with Clients:**
  Clearly indicate to all Clients that they are the Distributor of the Services only as outlined in this contract and are not agents of VATES.

- **Market Feedback and Regular Updates:**
  Keep VATES informed about the market state, customer wishes, or complaints. Regularly discuss action plans, ongoing deals, monthly forecasts, contracts signed with Clients, and payments made or pending. Participate in at least semi-annual meetings with VATES for this purpose.

- **Client Details:**
  Provide VATES with complete Client details, including address, phone number, email, and the name and contact information of the company's decision-maker. Also provide the address for each site where the Services are being utilized by the Client.

- **Service Contract:**
  Ensure that the Client signs a contract containing at least the clauses related to the service provisions as outlined in Annex 3 before service implementation.

- **Technical Requirements:**
  Educate the Client on the need to meet the technical prerequisites required for the optimal performance of the Services.

- **Quality Service:**
  Offer quality service that aligns with VATES's brand image.

- **Qualified Personnel:**
  Maintain a team of qualified and trained personnel for providing the Services.

- **Regular Check-ins with VATES:**
  Consistently update VATES on how Clients are using the Services and attend any reasonable meetings organized by VATES.

- **Issue Reporting:**
  Inform VATES of any issues arising from the Services, including complaints, legal issues, or requests for post-sales services, and comply with any reasonable instructions from VATES on handling these issues.

- **Level 1 Support:**
  Provide Level 1 support for the Software. Forward maintenance issues to VATES if the Distributor cannot resolve the problem.

- **Level 2 Support:**
  Provide Level 2 support only if the personnel have undergone the necessary training from VATES and have received the corresponding certification.

- **Marketing Materials:**
  Use only the marketing, promotional, and advertising materials expressly authorized by VATES. Also, adhere to any guidelines provided by VATES concerning these materials and interactions with Clients and potential Clients.

- **Costs and Expenses:**
  Bear all costs related to advertising, marketing, promotion, and sales of the Services.

The Distributor must keep VATES informed of any requests, comments, or suggestions from clients concerning the Services. Furthermore, the Distributor must immediately inform VATES of any event that comes to their attention and could potentially affect the marketing of the

Services. Generally, the Distributor alone handles the marketing of the Services to clients and bears all the associated risks and responsibilities.

4.2 - Rights and Obligations of VATES

VATES commits to granting the Distributor the right to market VATES Services to its Clients.

VATES commits to delivering the Services ordered by the Clients through the Distributor under the best conditions, respecting the terms provided in Annex 3.

VATES commits to:
- Provide the Distributor with technical and commercial information related to the delivery of Services.
- Inform the Distributor about the launch of any new VATES Service offerings.
- Coordinate with the Distributor as necessary to optimize the marketing of VATES Services.

VATES also commits to offering training to the Distributor's employees and agents to allow them to achieve certification. This certification will enable individuals who have benefited from it to provide more advanced support services without having to resort to Level 2 Support provided by VATES. Only individuals who have attended the training will be eligible for certification.

Article 6 - Financial conditions

The selling price of VATES Services at the time of the Contract's signing, as well as the terms of discounts granted by VATES to the Distributor, are detailed in Annex 4.

These rates and discounts applicable to the Distributor are fixed until the first of January following the signing of this contract. VATES will communicate the new rates and discounts applicable to the Distributor for the upcoming year on January 1st of each year.

The new prices will be applicable to any firm Orders placed by the Distributor after the effective date of the new rates.

On its part, the Distributor is free to set the price at which it will market VATES Services to its Clients.

VATES Services ordered by the Distributor from VATES will be invoiced upon acceptance of the Order by VATES.

Invoices will be paid within thirty (30) days from the date of issuance of the invoice by VATES, in accordance with the provisions of Article L 441-6 of the Commercial Code.

Any non-payment by the due date will result in the automatic application, without the need for prior notice, of a late interest rate equal to three (3) times the legal interest rate. Additionally, in case of late payment, the Distributor will be liable for a fixed recovery fee set by decree, as of the current date, at forty (40) euros.

Article 7 - Order Methods by the Distributor

The Distributor expressly commits to placing its Orders for Services by accessing its dedicated interface on the VATES website.

VATES has a period of 3 business days to proceed with the validation of the Order placed by the Distributor.

Any Order placed by the Distributor is final upon its receipt by VATES.

Article 8 - Trademarks

8.1 - Use of trademarks

The Trademark, signage, and other distinctive signs attached to it, identifying the VATES Services as listed in Annex 2, are duly protected.

This Contract grants the Distributor the right to use the Trademark solely for the purpose of marketing VATES Services for the duration of the Contract.

The Distributor is in no way authorized to mention the Trademark in the company's registration certificate, nor to reserve the Trademark as a domain name, nor to register any sign similar to the Trademark.

This license is granted on a non-exclusive basis. VATES reserves the right to grant any other license(s), usage rights, or exploitation rights to one or more other licensees, whether they be individuals or legal entities, or to directly and personally use the Trademark in any context and for the duration of this Contract.

The Distributor commits to sell and promote VATES Services under the Trademark exclusively and not to remove or alter it.

In this regard, the Distributor commits to respect the brand image and quality of the Services.

8.2 - Ownership of the trademarks

In the territory where the Trademark is protected, VATES commits to ensuring that the registration with the Trademark Office is renewed throughout the duration of the Contract.

Nothing in this Contract shall grant the Distributor any ownership rights over the Trademark, or the right to register the Trademark under their name with any French or foreign Trademark Office.

The Distributor commits to taking no action that could harm the image or reputation of the Trademark, particularly in any promotional materials they may use.

8.3 - Protection of the Trademarks

Both Parties will keep each other informed of any trademark infringement by a third party that they become aware of.

Furthermore, in the event that the Trademark is subject to an action or a claim that could affect its use by the Distributor, or challenge its protection by a Trademark Office, it is expressly agreed between the parties that VATES will decide the course of action to be taken for this claim or action. The Distributor commits to providing all necessary and possible assistance in defending said Trademark, at the reasonable request of VATES, and at VATES's expense.

In the event that VATES loses, for any reason, the right to use or license the Trademark, VATES will

immediately inform the Distributor and will also inform them of any practical measures it has decided to take to ensure the smooth continuation of the promotion of the Services.

Article 9 - Confidentiality

Article 8 - Confidentiality

Both parties agree, for the duration of the contract and for five (5) years after its expiration, regardless of the cause, to keep strictly confidential all information, in whatever form, related to the Distributor or to VATES, their internal organizations, the Services, the commercial terms, the clients and their markets (hereafter referred to as "the INFORMATION"), which the Parties may exchange, by any means, in the context of the execution of the Contract or any subsequent or accessory agreement.

As a result, the Parties commit to not disclose to third parties, in any form, the content of this INFORMATION, and to take all necessary measures to prevent these third parties from accessing the INFORMATION, as if it were confidential information related to their own company.

Each Party agrees to only share the INFORMATION with individuals whose involvement is strictly necessary for the execution of the Contract or any subsequent operation.

The Parties will ensure that their staff and representatives respect all of the confidentiality obligations set out in this article.

The Parties further agree to not exploit and not allow the exploitation of the INFORMATION for any purpose other than the execution of the Contract.

The provisions of this article will not apply to the INFORMATION for which the disclosing Party can provide proof:
- That they already had it in their possession, legitimately and independently of this collaboration, without a confidentiality obligation;
- That, before unauthorized disclosure, it had become public domain without being attributable to that Party, one of its employees, or representatives;
- That, before the disclosure, the other Party had expressly indicated that the INFORMATION was not confidential;
- That, before disclosing it to a third party, the other Party had expressly authorized its communication to that third party, provided that all necessary measures had been taken to ensure that this third party maintains the confidentiality of the INFORMATION;
- That the INFORMATION had to be disclosed to a third party in compliance with legal or regulatory provisions, provided that this party had expressly informed the third party of the confidential nature of the INFORMATION.

Within a month following the end of this Contract, for whatever reason, each Party agrees to return to the other all documents containing INFORMATION that they had received from the other.

Due to the essential nature of the INFORMATION provided by VATES under this Agreement, any breach of confidentiality by the Distributor and/or one of its Clients would cause serious harm to VATES.

The Distributor will be automatically liable to VATES for violations of this confidentiality

commitment and must compensate it for all consequences of such a breach.

Article 10 - Intellectual Property

All Software offered by VATES is published under Open Source terms. In this context, the Distributor commits to respect and pass on to its Clients the license conditions of each distributed Software, as they are reproduced in Annex 5.

In this regard, the Distributor specifically commits to apply the same license conditions to any addition, modification, improvement, etc., of the Software that it may carry out in the context of executing the Services covered by the Contract.

The use of Software published by VATES does not incur any royalty fees since it is free and open license software (the principle of copyleft) whose source code is available to users.

Article 11 - Liability

Each Party is responsible for fulfilling the obligations incumbent upon them under this Contract.

The liability of VATES under this contract is expressly limited, by mutual agreement between the Parties and regardless of the causes of this liability, to the amount collected by VATES under this Contract for the year subject to the dispute.

Indirect damages suffered by a Client or the Distributor are excluded from any compensation claim. Indirect damages are defined, without limitation, as loss of revenue, loss of operation, loss of opportunity, loss of profits, or any claims made by any third party against a Client or the Distributor.

Similarly, VATES' liability cannot be engaged in case of legal action due to a poor recommendation for the use of the Services by the Distributor.

The Parties acknowledge that the provisions of this clause are decisive in their willingness to conclude this Contract and that the agreed price reflects the distribution of risks between the Parties and the resulting limitation of liability.

The services provided directly by the Distributor for the benefit of the Client, whatever their nature, fall under the exclusive professional liability of the Distributor, who will solely and entirely assume the consequences of any faults he may commit.

The Distributor commits to informing Clients of the existence of this clause in its contractual relations with VATES and of the impossibility of claiming any compensation for indirect damages.

Article 12 - Intuitu Personae

This Contract is entered into intuitu personae, due to the identity of the Distributor. As such, the Distributor may not, under any circumstances, assign or transfer this Contract in any manner, under any title, and in any form, including in the event of a change of control, without the prior written consent of VATES.

Failure to comply with this obligation may result in the automatic termination of this Contract, solely at the fault of the Distributor.

VATES reserves the right to freely assign all or part of the Contract, or any rights or obligations arising therefrom, in favor of its group companies, or any other company of its choice or that may succeed it, regardless of the legal terms.

Article 13 - Force Majeure / External Causes

Neither Party shall be held responsible for damages caused by delays or failures in fulfilling the commitments they undertake under this Contract in the event of force majeure as defined by Article 1218 of the Civil Code.

In the event of the occurrence of a force majeure, the Parties will agree on the terms and duration of the temporary suspension of all or part of the obligations under this Contract.

Either Party may terminate the Contract if either of them is unable to fulfill the obligations to which they are bound by the Contract for a period exceeding the suspension period that has been agreed upon as provided above.

The Party wishing to invoke this termination clause will notify its decision to the other Party by registered letter with acknowledgment of receipt. The termination will take effect on the day of receipt of the termination notification by registered letter with acknowledgment of receipt.

Article 14 - Notifications

All notifications, communications, and formal notices provided for in the Contract shall be deemed to have been validly delivered if they are sent to the registered office of the receiving Party.

Any notification, communication, or formal notice shall be hand-delivered against a receipt signed and dated by the recipient, or sent by registered mail with acknowledgment of receipt accompanied by a fax. It will be deemed to have been received on the date mentioned on the receipt by the recipient for hand delivery, or three days after the postmark date on the postal shipping receipt for registered mail.

Article 15 - Personal Data

14.1.

The Parties commit to respecting applicable legal regulations concerning the collection, processing, and communication of Personal Data, particularly the European Regulation (EU) 2016/679 of April 27, 2016, related to the protection of personal data ("GDPR").

- The Distributor is solely responsible for the data it processes for its own needs outside of any purpose related to this Agreement. It is and remains solely responsible for its clients and staff concerning the protection of Personal Data.
- VATES may act as a processor under the GDPR insofar as it accesses certain personal data of the Clients (especially their email address) for the purposes of associating the license used by the Client to the Services subscribed to by the Client. The terms for VATES acting as a processor, including the rights and obligations of each Party on said data, are outlined in the "Personal Data Management" appendix attached to this Contract.
- The Personal Data processed by VATES on behalf of the Distributor are processed in accordance with the Client's instructions and aim to provide the Services, namely the use of the Software(s) that manage, administer, backup, and/or replicate a virtualization infrastructure.

14.2.

The Distributor is also informed that in managing its client/supplier/distributor data, VATES acts as a data controller under the GDPR. In this regard, VATES informs the Distributor that the collected data such as name, first name, email address, and phone number of its contact staff may be kept for the duration of the Contract, which the Distributor acknowledges and accepts upon signing this Agreement.

By signing this Agreement, the Distributor declares being informed of the personal data processing policy implemented by VATES and accepts it. If applicable, the Distributor also acknowledges that it has informed and obtained the consent of the concerned individuals (contacts) about the use made of said personal data.

14.3.

The Distributor is responsible for carrying out administrative procedures, authorization requests, and impact assessments required by current laws and regulations concerning the processing it performs and the data processed, including those concerning Clients.

The Distributor indemnifies VATES against any recourse, complaint, or claim from an individual whose personal data would be reproduced and hosted under this Agreement.

14.4.

Furthermore, the Distributor is informed that each contact has the right to request to update, object, delete, or rectify data concerning them for legitimate reasons. It commits to informing each of the contacts that they can exercise their rights, subject to providing identification, by contacting: contact@vates.tech

14.5.

VATES commits to ensuring the confidentiality and security of data processing and informs the Distributor and the contacts that no data is transferred to a third party or abroad (outside the European Union) in the context of this processing.

Article 16 - General Provisions

15.1. Entire Agreement

This document (including its preamble and its appendices, which are inseparable from it) represents the entire agreement existing between the parties. In case of contradiction between the text of the contract and any of its appendices, the Contract shall prevail.

Any modification can only result from an agreement recorded in a document signed by both parties.

15.2. Severability

If any provision of the Contract is nullified in whole or in part, the validity of the remaining provisions of the Contract shall not be affected.

In such case, the Parties shall, if possible, replace the nullified provision with a valid provision that corresponds to the spirit and purpose of the contract.

15.3. Headings

The headings of the articles in the contract are for the sole purpose of facilitating references and shall not themselves be deemed to have contractual value or any particular meaning.

15.4. Costs

VATES and the Distributor will each be responsible for the payment of all costs and expenses incurred by them, respectively, in relation to the Contract and the transactions it provides for, including the fees and disbursements of their respective financial advisors, accountants, and lawyers.

Article 17 - Applicable law and jurisdiction

THIS CONTRACT IS SUBJECT TO FRENCH LAW.

ANY DISPUTES, CLAIMS OR PROCEEDINGS RELATING TO THE EXISTENCE, VALIDITY OR EXECUTION OF THE CONTRACT OR ANY OF ITS PROVISIONS THAT THE PARTIES CANNOT RESOLVE AMICABLY, SHALL FALL UNDER THE EXCLUSIVE JURISDICTION OF THE COMMERCIAL COURT OF GRENOBLE.

ANNEXE 1 - Vates Virtualization Management Stack Description

Vates VMS

Vates VMS is a comprehensive solution designed to allow organizations to build their virtual infrastructure. Vates VMS consists of the following software components:

In the event of an anomaly in the customer's infrastructure, the customer must follow these steps:

Components:

- **XCP-ng:** The central engine of the solution, a type 1 virtualization hypervisor based on Xen.

- **Xen Orchestra:** The management and backup interface for XCP-ng, offering a user-friendly, web-based, and agentless interface.

- **XOSTOR (Optional):** A hyperconverged storage solution for XCP-ng that utilizes DRBD technology.

- **XO Proxy (Optional):** An architectural component designed for large infrastructures or remote sites, facilitating backup and restore tasks.

ANNEXE 2 - Conditions for Service Delivery by

Vates to Clients

For the purposes of this Annex, the following terms are defined as follows:

Term	Description
Service Level Agreement	Refers to the target response times for Vates and/or the Distributor, if applicable, to respond to Incidents and/or create a plan to resolve the Incidents. The Service Level Agreement is provided to the Client upon their order of the Distributor Offer.
Bundles	Refers to the combination of essential software for setting up, managing, administering, backing up, and/or replicating a virtual infrastructure with VATES tools.
XCP-ng Environment	Refers to Hosts controlled by the XCP-ng virtualization platform. Any host controlled by a different XCP-ng installation constitutes a distinct virtualization environment.
Host	Refers to a computing server that is under the control of XCP-ng.
Pool	Refers to a set of servers working together to create a virtual infrastructure.
Ticket	Refers to a support request or the reporting of an Incident, submitted by the Client via a ticket on the Client portal.

2.1 - Purpose of corrective maintenance

The objective of corrective maintenance is:
- To provide corrections for all Incidents reported by the Client and acknowledged by VATES, either in the form of corrections or Corrective Patches made available to Client users of XCP-ng and other Software for which the Client has subscribed to a maintenance and support package;
- To provide the necessary updates to ensure that XCP-ng and other Software continue to perform all functions described in their documentation, as well as updates reflecting improvements made to XCP-ng and other Software by VATES.

If the reported Incident is related to an issue arising from third-party elements (such as firmware/drivers related to physical hardware present in the server), VATES will make its best efforts to assist the Client but cannot commit to rectifying the Incident.

The Client agrees to document observed Incidents with the mention of the date and time and all technical elements facilitating a diagnosis of the fault's cause. This document will be made available to VATES.

The Client agrees to communicate to VATES as promptly as possible, spontaneously or upon request by VATES, any information that may be useful for VATES' proper execution of maintenance services.

In practice, the Client promptly reports any Incident to VATES by opening a Ticket on the Client Portal, indicating all elements, documents, and information necessary for understanding the problem as precisely as possible. The Client agrees to describe the Incident as accurately as possible. Only persons included in the list of Primary Contacts whose details have been provided by the Client on the Client Portal are authorized to log Incidents via a Ticket on the Client Portal.

If the information provided by the Client does not enable VATES to perform a complete diagnosis

of the Incident, VATES will contact the Client to obtain the necessary information for an Incident analysis. VATES cannot be held responsible for non-compliance with Service Level Agreements due to a lack of information communicated by the Client. Furthermore, the Client will perform all operations requested by VATES to better identify the cause of the Incident and will provide VATES with all access to data, systems, or information that it may require.

If it is indeed an Incident related to Software, once the Incident is reproduced, VATES will categorize the Incident as critical, major, or minor, according to the severity criteria set forth in the following table, and will then begin working on its correction. Upon notification of the Incident's existence by the Client, VATES verifies the existence of such an Incident to correct it, or provide a workaround, subject to the Client's installation of all updates made by VATES to XCP-ng and/or any other Software.

Corrective maintenance is provided solely on the latest version of XCP-ng and the latest version of the Software, accessible online via the Site, and on the previous version (N-1).

The Client acknowledges having ensured that remote use of Software can be conducted from the computer equipment they possess, particularly through their browser software and their connection means. To use any of the Software and access updates, maintenance, and Support on the Software, the Client acknowledges having at a minimum:
- An Internet connection;
- A recent Microsoft; Internet Explorer web browser (versions IE8 and higher), FireFox, Safari, Edge, Chrome, or others, up to date and accepting cookies.

All costs required for the Client's equipment and Internet connection to use the Software are solely the Client's responsibility.

2.2 - Evolutionary maintenance

Under the terms of evolutionary maintenance, the following technical and functional improvements may be periodically provided by VATES to the Client, in order to enhance the usability conditions of XCP-ng and/or the Software:
- (i) Corrections for Incidents previously resolved by workaround solutions: VATES will provide releases that include Corrective Patches;
- (ii) New versions of XCP-ng and additional Software, including those related to the evolution of databases, operating systems, and hardware.

The Client is solely responsible for installing the new versions or corrective patches provided by VATES.

2.2 - Correction Timeframe / SLA

Commitments in terms of intervention and/or correction, as well as associated levels of criticality, and the availability hours for Support for each Software are outlined in the Service Level Agreements (SLAs), as detailed in the corresponding Specific Conditions.

VATES shall not be responsible for, and cannot guarantee correction under this maintenance agreement for any errors, data corruption, or failures caused by improper use of XCP-ng and/or the Software, or by the potential incompleteness in the description of an Incident, malicious conduct by the Client, or misunderstanding on their part. In the case of such Incidents, VATES will

nonetheless make all reasonable efforts to assist the Client in resolving the Incidents, at the Client's expense.

2.3 – Exceptions

Furthermore, VATES can only satisfactorily intervene in resolving Software Incidents if the server infrastructure is in optimal production status, with no malfunctions or impacts on production, before the initiation of these maintenance General Conditions.

In addition, the Software must have been updated, and VATES must have the ability to access the Client's equipment/infrastructure via secure access or a VPN tunnel, in order to qualify and resolve the Incident reported by the Client.

To enable VATES to intervene under the best conditions and thus carry out Software maintenance, each Host in the same Pool must be governed by the same level of Support.

The Client is informed that in the case of misuse of the Software(s) or non-compliance with the rules to which the use of the Software(s) is subject, VATES reserves the right to cease providing maintenance and Support for said Software(s).

Furthermore, the correction of Incidents reported by the Client arising from any of the following causes is not covered under these maintenance General Conditions and will result in additional billing at VATES' current rates at the time of the Client's request:
- (i) Use of XCP-ng or another Software in a manner not conforming to its documentation;
- (ii) Non-compliance by the Client with prerequisites indicated by VATES on the Site, particularly the non-use of the latest or penultimate version of the Software;
- (iii) Malfunctions affecting the operating system, hardware, database, or generally the environment in which XCP-ng is used;
- (iv) Malfunction arising from third-party elements, notably third-party Software;
- (v) Modification of the source codes and/or object codes of any Software.

Finally, it is specified that the backup environment set up by the Client is not a production environment, which the Client acknowledges and accepts, it being understood that any incident related to the backup will be addressed during business hours, as specified in these General Conditions.

2.4 – Additional Services

In the event that the Client requests supplementary assistance not covered under corrective and/or evolutionary maintenance as previously defined, VATES will provide the Client with an estimate in accordance with the rates in effect at the time of the request, within the scope of its expertise and availability for providing any technical assistance and training related to XCP-ng or any other Software. Training and certification services are also offered by VATES to the Client, who may subscribe to them directly on the Site, in addition to receiving support and maintenance.

These services will be billed on a fixed-fee basis, calculated based on an estimated hourly rate and number of intervention hours.

If the Client has subscribed to any of the additional services offered by VATES, the following terms

will apply.

2.5 - Place of Performance of Services

When the Services are performed at the Client's location, they are conducted at the Client's address as indicated on the Site, in the quote, or in the Purchase Order. Any change to this address must be the subject of a written agreement between the Parties and may impact, particularly financially, the terms initially agreed upon.

As the employer, VATES assumes exclusive oversight, control, and administrative and social management of its staff. Specifically, VATES schedules the absences of its staff for holidays, training, or any other reason mandated by social legislation. Except in cases of force majeure, these absences are planned in advance, subject to constraints related to the execution of this Contract. The staff assigned to perform the Services do so under the hierarchical and disciplinary authority of VATES, pursuant to the employment relationship that binds them.

2.6 - Timeline/Planning

The schedule for the performance of the Services is mutually agreed upon by the Parties. Any cancellation or postponement of the scheduled Services requested by the Client, relative to the mutually agreed-upon schedule, must be communicated to VATES. To enable VATES to allocate the necessary skills and resources, the Client commits to requesting this extension in writing. The Client is advised that they will bear all costs associated with rescheduling and any resulting consequences.