

# End users conditions XCP-ng Hypervisor

Last update: 06/22/2023

**XCP-ng**

**XEN ORCHESTRA**

**XO LITE**

**XOSTOR**

**XO PROXY**

# Article 1 – Preamble

The Customer has obtained the right to use XCP-ng, an Open Source virtualization platform developed by VATES and made available under the aGPLv2 license through the VATES website [www.vates.tech](http://www.vates.tech) (hereinafter referred to as the "Site"). This license does not require any royalty payments, as XCP-ng is a free, open-source software subject to the copyleft principle, which allows users to access and redistribute its source code. However, the use of XCP-ng is subject to the conditions of the GPL license. The Customer has subscribed to a maintenance package offered by VATES to ensure the reliable operation of XCP-ng. These terms and conditions apply to all contracts, quotations, technical and commercial proposals or orders for VATES Virtualization Management Stack maintenance services between VATES and a professional Customer (as defined by the French Consumer Code). These conditions take precedence over any terms and conditions that are not expressly accepted by VATES, including the Customer's general purchasing conditions. To subscribe to a maintenance contract for XCP-ng, the Customer may either complete the online form on the Site or accept a quote provided by VATES. Formal acceptance of a VATES quote constitutes an order.



## Article 2 – Definitions

In this agreement, the following terms are defined as follows:

- **Vates** means the company Vates Ltd. whose head office is in Grenoble, 17 rue Aimé Béréy, Grenoble, 38000 (France).
- **Customer** means the company who has a right to use Vates Virtualization Management Stack (XCP-ng, Xen Orchestra, XOSTOR and/or XO Proxy or any other Vates products in the contract) and who subscribes to this maintenance.
- **XCP-ng or "Software"** means the open source virtualization platform software developed by Vates and provided for use under the [aGPLv2 license](#).
- **Anomaly** means any malfunction of XCP-ng (or any other Vates product covered), especially in the creation of virtual machines or the management of VMs (migration, disk management) that is the subject of an error message returned by the Software to the Customer.
- **Host** means a compute server that is under the control of XCP-ng.
- **Pool** refers to a set of servers that work together to create a virtual infrastructure.
- **XCP-ng Environment** refers to Hosts controlled by the XCP-ng virtualization platform. Any host controlled by a different XCP-ng installation is a separate virtualization environment.
- **Software Patch** means development or modifications to the XCP-ng Software that may be required to resolve Anomalies.
- **Product Patching** means a service provided by Vates including the creation of Software Patches.
- **Incident** means a support request made by the Customer via a ticket on the Customer Portal.
- **Remote Support** means the provision of support services by Vates in the Customer's infrastructure using the secure SSH tunnel provided in Xen Orchestra. This support will primarily be provided from Vates offices.
- **Xen Orchestra** is a Vates product whose free version must be deployed in Customer's infrastructure to enable remote support.
- **Primary Contact** means the person designated by Customer to act as its primary representative. The Primary Contact is named in the Agreement and will receive from Vates official notifications and important information and formal notices regarding XCP-ng pro support services.
- **Direct Dev Access** means a service that allows Customers to ask quick questions related to their XCP-ng infrastructure. Direct Dev Access is provided via email or web chat technology. Direct Dev Access is not intended to correct Incidents.
- **Service Level Agreement** means the target timeframes (as set forth in the Appendix hereto and on the Vates website) for Vates to respond to Incidents, create a plan to resolve Incidents. The Service Level Agreement is attached as Appendix 1.
- **Support** means XCP-ng pro support services designed to assist in the maintenance of Customer's System.
- **Customer Portal** means a web service provided by Vates to allow Customers to interact with various elements of the Service, including the creation of a support ticket.

## Article 3 – Purpose

These terms and conditions outline the terms governing the provision of corrective and evolutionary maintenance of XCP-ng by VATES.



## Article 4 - Duration

The maintenance service for the Software starts on the date of subscription to the maintenance via the website [store.vates.fr](https://store.vates.fr) when the Customer validates the order form or accepts a quotation issued by VATES at the Customer's request via the form made available on the Website. The contract is taken out for an initial period of one year.

At the end of this initial period of one year, the maintenance contract is tacitly renewed from year to year. It may be terminated at the end of each contractual year by the Customer sending an e-mail or directly from his Customer interface available on the website [account.vates.fr](https://account.vates.fr) at any moment before the renewal occurs.

If the Customer terminates the maintenance before the end of a current year, the Customer remains liable for the payment of the full fee for the current year.

In the event of a serious breach by one of the Parties of one of its obligations, the other Party may terminate the Contract by operation of law, fifteen days after formal notice has been given by registered letter with acknowledgement of receipt which has remained without effect.

In the event of receivership or liquidation proceedings against one of the Parties, this Contract shall be subject to the procedures specified in Articles L.621-28 et seq. of the French Commercial Code.

In all cases, the Customer undertakes to pay to Vates the amounts due.





# Article 5 – Description of Maintenance Services

## 5.1 – Purpose of Corrective Maintenance

- To provide corrections for all anomalies reported by the customer and found by Vates, either in the form of corrections or in the form of corrective patches made available to the users of XCP-ng.
- To provide updates as necessary to ensure that XCP-ng continues to perform all the functions described in the documentation, as well as updates reflecting VATES improvements to XCP-ng.

If the reported anomaly is related to a problem arising from third-party elements (such as firmware/drivers related to physical hardware present in the customer's server), VATES will make its best efforts to assist the customer, but cannot commit to correcting the anomaly.

The customer undertakes to make a record of the anomalies found with the date and time and all technical elements allowing a diagnosis of the cause of the defect. This document will be kept at VATES' disposal.

The customer undertakes to communicate to VATES as soon as possible, spontaneously or at VATES' request, any information likely to be useful for VATES to carry out the maintenance services properly.

In practice, the customer shall report without delay, by opening an incident on the Customer Portal, to VATES any anomaly indicating all the elements, documents, information necessary to understand the problem as precisely as possible. The customer undertakes to describe the anomaly as well as possible. Only the persons on the list of main contacts whose details have been indicated by the customer on the customer portal are authorized to enter incidents on the customer portal.

If the information provided by the customer does not allow VATES to carry out a complete diagnosis of the anomaly, then VATES will contact the customer to obtain the information necessary for an analysis of the anomaly. VATES shall not be held responsible for any failure to comply with the SLA due to lack of information provided by the customer. In addition, the customer will carry out all operations requested by VATES to better identify the cause of the anomaly and will give VATES all access to data, systems, or information that it may require.

If it is indeed a software anomaly, once the anomaly is reproduced, VATES will qualify the anomaly as blocking, major, or minor, and then start working on its correction. Upon notification of the existence of the anomaly by the customer, VATES will verify the existence of such anomaly to correct it, or provide a workaround, subject to the installation by the customer of all updates made by VATES to XCP-ng.



Corrective maintenance is provided only on the latest version of XCP-ng available online via the website: [www.xcp-ng.org](http://www.xcp-ng.org) (version N), and on the previous version (N-1).

The Customer acknowledges that it has ensured that the remote use of the Software can be done from the hardware at its disposal and particularly through its browsers and its connections.

To use the Software, the Customer acknowledges having at least:

- an Internet connection,
- a recent web browser Edge, FireFox, Safari or others, accepting cookies.

All costs necessary for Customer's equipment and connection to the Internet in order to use the Software are the sole responsibility of Customer.

## 5.2 – Evolutionary Maintenance

As part of the evolutionary maintenance, the following technical and functional improvements may be provided periodically by VATES (on average every quarter) to the Customer, in order to improve the conditions of use of XCP-ng:

1. corrections of Anomalies previously resolved by workarounds: VATES will provide a release including the Corrective Patches,
2. new versions of XCP-ng including those related to the evolution of databases, operating systems and hardware.

The Customer shall install the new versions or patches sent to him by VATES.

## 5.3 – Time of correction / SLA

The commitments in terms of intervention and/or correction and associated levels of criticality, as well as the support availability times are set out in the SLA (Service Level Agreement) attached in Appendix 1.



## 5.4 – Exceptions

VATES cannot be responsible for and guarantee the correction under this maintenance agreement of any errors, data corruption or failures caused by misuse of XCP-ng or by the possible incompleteness of the description of an Anomaly, maliciousness of the Customer or misunderstanding on his part. In the event of such incidents, VATES shall nevertheless use all reasonable efforts to assist the Customer to resolve the Anomalies, at the Customer's expense.

In addition, the correction of Anomalies reported by the Customer arising from any of the following causes is not covered under this maintenance contract and will therefore, in the event of a request by the Customer for VATES to intervene in these cases, give rise to additional invoicing at VATES' rate in force at the time of the Customer's request:

- (i) use of XCP-ng not in accordance with its documentation;
- (ii) failure by the Customer to comply with the requirements indicated by VATES on the Site;
- (iii) malfunctions affecting the operating system, the hardware, the database or more generally the environment in which XCP-ng is used;
- (iv) malfunctions originating from third party elements, in particular third party software.
- (v) Subscribing to support when an incident is already ongoing in the infrastructure.

## Article 6 – Additional services

In case of request for additional assistance, not included in the corrective and/or evolutionary maintenance as defined above, VATES will provide the Customer with a quotation according to the prices in force at the time of the request, within the limits of its competences and its availability for the realization of any technical assistance and training related to XCP-ng.



# Article 7 – Financial conditions

**7.1.** The amount of the maintenance fee is defined according to the number of host (physical server) for the same Pool. The amount is indicated on the order placed by the Customer or on the VATES quote duly accepted by the Customer and valid as an order.

This amount is based on the number of Hosts in the Customer's virtual environment, with a minimum number of 3 hosts.

In case the Customer adds additional compute Hosts, according to the procedure indicated on the Site, to his environment, he must purchase support for these additional Hosts. If additional Compute Hosts are purchased during the term of this Maintenance Agreement, the annual maintenance fee resulting from the addition of such Hosts will be adjusted pro rata and added to invoices.

- **All Hosts in a Host Pool must have a similar level of support.**
- The number of Hosts in the system's covered Pools will be verified at each incident.
- **NO SUPPORT WILL BE PROVIDED TO A CUSTOMER WHO IS FOUND TO HAVE MORE HOSTS THAN THEY HAVE SUBSCRIBED TO MAINTENANCE FOR.**
- It is the Customer's responsibility to ensure that they acquire support for these additional Hosts before installing them in their XCP-ng virtual environment.
- Prices are exclusive of taxes. The taxes applied are those provided by the current regulations. In the event of a change in regulations, the new regulations will be implemented on the official date of entry into force.

**7.2** Maintenance shall be invoiced in full from the date the order is placed until the end of the first year and, in the event of renewal, at the beginning of each contract year. If a review formula is provided in the Quotation, the annual maintenance fee shall be reviewed annually by application of such formula.

Maintenance invoices are payable within 30 days of issuance by wire transfer or check.

**7.3.** In the event of orders for additional services, these are invoiced at the latest at the end of the month. Invoices are payable within 30 days of their issue.

**7.4.** Invoices shall contain the mandatory legal information. VATES is not bound by the Customer's internal rules, notices or procedures for processing orders and invoices.

**7.5.** In the event of non-payment within the contractual time limits, any unpaid amount will automatically bear interest from day to day until the date of its full payment in principal, interest, costs and accessories, at a rate equal to three (3) times the legal interest rate in force, without any prior formality, and notwithstanding any damages that VATES reserves the right to seek judicially. The Customer expressly acknowledges that any costs incurred in the collection of sums due and unpaid by him (costs of proceedings, costs, disbursements and lawyers' and bailiff's fees) shall be deemed to constitute an accessory to VATES' claim. In addition, in accordance with the legal provisions, any delay in payment shall give rise to the payment by the Customer of an



indemnity for collection costs of an amount fixed by decree, at the date hereof, at 40 (forty) euros.

VATES reserves the right to suspend any Service in the event of non-payment, fifteen (15) days after sending a formal notice to pay, by registered mail, which has remained partially or totally without effect, of the full amount of the sums owed by the Customer within the time limit, and, in general, in the event of non-payment of any invoice issued by VATES which remains unpaid. VATES also reserves the right to terminate by operation of law, with immediate effect, the current maintenance subscription.

All unpaid fees, following a bank rejection of a payment by the Customer, will remain the financial responsibility of the Customer. In addition, the failure of the Customer to pay an invoice when due will result in the forfeiture of the term of the other invoices in progress and will consequently allow VATES to demand payment of all other invoices, including those which are not yet due.

If, during a previous order, the Customer has failed to fulfil any of its obligations (in particular default or delay in payment), VATES may refuse to sell unless the Customer provides satisfactory guarantees or cash payment.

**7.6.** Any payment by way of compensation is excluded.

## Article 8 – Liability

Under this maintenance contract, each Party will only be held financially responsible for direct and foreseeable damages resulting from their own actions. Neither Party will be held liable for any indirect or unforeseeable damages, such as loss of profits, commercial losses, or any other consequential damages, including loss of turnover, customers, or opportunity, as well as any inaccuracies or corruptions of files or data.

VATES will only be held liable if proven to be at fault. In such cases, VATES' pecuniary liability is limited to the amount of the annual maintenance fee specified in this contract. The limitations and exclusions of liability are determined by balancing the extent of VATES' obligations and the prices of the Services, as well as the provisions of the insurance policy covering VATES' professional civil liability. The Customer should be aware that VATES' rates are determined by the existence of these liability limitations.

## Article 9 – Reference

The Customer authorises VATES to include its name on a list of references which it may distribute to its customers and prospective customers.



## Article 10 – Personal data

VATES does not have access to the personal data of the Customer that is processed by the Customer. VATES only has access to virtual machines and does not carry out any personal data processing on behalf of the Customer.

Moreover, the Customer should be aware that in managing its customer and supplier data, VATES acts as a data controller as defined by the GDPR. As a result, VATES informs the Customer that only the data required for the management of the Customer's account, such as email addresses of Customer contacts, will be collected and kept by VATES. The Customer acknowledges and accepts these terms upon signing this agreement. This collected data is intended to facilitate the referencing and management of its customers and suppliers, including but not limited to:

- Conducting administrative tasks related to contracts, orders, invoices, payments, and accounting;
- Processing payment transactions;
- Providing communication tools for the dematerialization of relationships.

The Customer should also be aware that each contact/user has the right to request that VATES update, object, delete, or correct their data for legitimate reasons. VATES is committed to ensuring the confidentiality and security of all data and would like to inform the Customer and the contacts/users that none of the data collected for the management of the Customer's account will be transferred to a third party or outside of Europe in the context of this processing.

## Article 11 – insurance

VATES hereby certifies that it maintains an up-to-date insurance policy that covers its civil liability. VATES also undertakes to provide proof of this insurance policy to the Customer upon request.

The Customer hereby certifies that it maintains an insurance policy that covers its civil liability and any damage to its property.



## Article 12 – privacy

Both Parties agree to maintain strict confidentiality regarding any information and documents designated as confidential by the other Party that they may access during the performance of the services outlined in this Agreement. This confidentiality obligation will remain in effect for a period of three years after the termination or expiration of this Agreement, except when required by law or court order, or when such disclosure is necessary to enforce or prove rights under this Agreement.

Information shall not be considered confidential under this section if:

- It was already public at the time of disclosure or became public after disclosure without violating this Agreement.
- It was known by one of the Parties without any obligation of confidentiality at the time of signing this Agreement. The Party asserting this must be able to provide proof.
- It was communicated to either Party or its personnel by third parties who obtained the information legitimately.

If necessary, both Parties may disclose the terms of this Agreement and any related documents to their auditors, insurers, and tax and social security agencies for auditing purposes and with strict confidentiality.

## Article 13 – NON-SOLICITATION OF EMPLOYEE

The Parties mutually agree not to directly or indirectly solicit or employ any employee of the other Party who has been assigned to the performance of this Contract, even if the initial solicitation is made by the employee, unless such solicitation or employment has been previously agreed to in writing. This prohibition shall be in effect for the duration of the maintenance Contract and for a period of twelve months following the end of the Contract. Any breach of this obligation shall require the defaulting Party to pay the other Party an amount equal to twelve times the gross monthly remuneration of the employee concerned, as a form of contractual compensation, without delay.



## **Article 14 – FORCE MAJEURE / EXTERNAL CAUSES**

Both parties shall be exempt from liability to the other in the event that performance of the Contract is delayed or prevented due to force majeure or external causes. Force majeure shall be defined as set forth in Article 1218 of the Civil Code. The Parties agree that labor disputes, electrical network malfunction or interruption, or the failure of the regional or national telecommunications operator(s) shall be deemed external causes for the purposes of this article.

The Party affected by force majeure or an external cause shall promptly inform the other Party through means it deems appropriate, confirmed by registered letter with acknowledgement of receipt, justifying the exceptional circumstances that make it impossible to perform its contractual obligations and providing all useful justifications.

In any event, the Party affected by the force majeure event or external cause shall make its best efforts to limit its duration and consequences. If the event giving rise to the force majeure case continues for more than three months, either Party may terminate the Contract by registered letter with acknowledgement of receipt, unless the Parties have expressly agreed otherwise.

## **Article 15 – renunciation**

If one party fails to enforce any of the obligations referred to in this agreement, it shall not be construed as a waiver of that obligation for the future.

## **Article 16 – Partial invalidity**

If any provision or part of this Agreement is found to be invalid under any applicable law or statute, it shall be considered as though it were not written, but the Agreement or the remaining portions of it shall remain valid and in effect.

## **Article 17 – Titles**

In case of difficulties of interpretation between any of the titles and any of the clauses, the titles will be declared non-existent.





# Article 18 – APPLICABLE LAW AND JURISDICTION

This Agreement is governed by French law.

In the event of any disputes or disagreements arising from the execution of this Agreement that cannot be resolved through amicable means within the framework of the conciliation procedure, such disputes shall be exclusively under the jurisdiction of the Commercial Court of Grenoble. This applies regardless of the number of defendants or whether the dispute is on appeal or subject to emergency or conservatory procedures. The dispute may be resolved through referee or by petition.



# ANNEXE 1

## 1.A – Support access conditions

VATES would like to inform its customers that in order to access support, they must follow a specific protocol. Any requests made outside of this protocol will not be processed within the guaranteed timeframe outlined in the SLA.

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

1. Log in to their support area using the main contact account as defined in the terms and conditions, or any other account that has been previously added to the customer's organization by the main contact. The support area can be accessed via <https://account.vates.fr/#/support>.
2. The customer must open a support ticket describing the problem with their infrastructure to the best of their ability. They can provide the following elements to help with this:
  - o A description of the problem
  - o A screenshot from Xen Orchestra Appliance
  - o A log containing any error message(s)
3. To process the request, VATES technical support teams may require additional information or request that the customer open a secure support tunnel from the Xen Orchestra interface. It is important for the customer to understand that failure to provide the necessary elements required by VATES may result in abnormally long delays in processing the problem. VATES cannot be held responsible for any such delays.

## 1.B – Service Level Agreement

The conditions specified below shall apply depending on the support level selected by the customer:

	Essential	Essential +	Pro	Enterprise
<b>Coverage</b>	Business Day	Business Day	Business Day	24-7
<b>Response time</b>	24h	24h	24h	1 hour
<b>Solution plan</b>	48h	48h	48h	3 hours
<b>Target resolution</b>	72h	72h	72h	24h

