STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 1

CONTRACT #: AR2493

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and VMware, Inc. (Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Replace the language of Article 43 ("Entire Agreement") in Attachment A in its entirety with the following language to incorporate the Contractor's updated terms and conditions which reflect the more unified cloud services business and delivery model:

43. Entire Agreement: This Master Agreement, along with any exhibits and/or attachment, contains the entire understanding of the parties hereto with respect to the Master Agreement unless a term is modified in a Participating Addendum or an Order with a Participating Entity or an Order with a Purchasing Entity. Except as agreed to in this Master Agreement, a Participating Addendum, or Order, no click-through, or other end user terms and conditions or agreements required by the Contractor ("Additional Terms") provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, even if use of such Services requires an affirmative "acceptance" of those Additional Terms before access is permitted.

Exhibits:
Contractor terms and conditions are attached hereto as Exhibit 1 to the Master Agreement for reference purposes only, and the then-current version of the terms and conditions found at http://www.vmware.com/download/eula.html will apply at the time an Order is placed by the Purchasing Entity. The terms of this Attachment A shall supersede and take precedence over any conflicting Contractor terms and conditions

Exhibit 1 to the Master Agreement includes:
- VMware Cloud Service Offerings Terms of Service
- VMware End User License Agreement
- Subscription and Support Terms
- VMware Professional Services General Terms and Conditions

The three updated documents listed above as Exhibit 1 completely replace the previous documents of Exhibit 1 to the Master Agreement.

Effective Date of Amendment: date of last signature below.

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.
IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

Contractor's Signature — March 6, 2018 Date

VMware, Inc.
Contractor's Name (Print)

Karin Whitwood, Contracts Manager Public Sector
Title (Print)

STATE OF UTAH

Director, State of Utah Division of Purchasing — 3/8/18 Date

Purchasing Agent	Phone #	e-mail	**Contract #**
Solomon Kingston	801-538-3228	skingston@utah.gov	AR2493

VMware Cloud Service Offerings

TERMS OF SERVICE

Last updated: 4 November 2017

By using a VMware cloud service offering ("**Service Offering**"), you agree to be bound by these terms of service between you and VMware ("**Terms of Service**"), and by the Service Offering Documentation, which together constitute the "**Agreement**". If you do not agree to these Terms of Service or to any other portion of the Agreement you must not use the Service Offering. "**You**" means you individually (and, as applicable, your Users) or the entity that you represent. If you are entering into the Agreement for an entity, you represent that you have the authority to bind that entity. "**VMware**", "**we**" or "**us**" means VMware, Inc., a Delaware corporation, if the billing address for your Order is in the United States, or VMware International Limited, a company organized and existing under the laws of Ireland, if the billing address for your Order is outside the United States. Capitalized terms used in these Terms of Service are defined throughout these Terms of Service and in Section 14 ("Definitions"). Section references in this document are to the provisions of these Terms of Service.

The Agreement takes effect when you click "I accept" or similar button or check box presented to you as part of the sign-up process or when you first use the Serving Offering, whichever is earlier, and will remain in effect during the relevant Subscription Term or until terminated as specified in the Agreement. The applicable Service Description for any Service Offering sets forth details on renewal, including any auto-renew feature, and termination of the Subscription Term.

1. THE SERVICE OFFERING.

1.1 Generally. We may deliver the Service Offering with the assistance of our affiliates or suppliers. We will remain responsible to you for delivery of the Service Offering.

1.2 Use of the Service Offering.

1.2.1 You and your Users must comply with all laws, rules, and regulations applicable to your use of the Service Offering and to any Content.

1.2.2 You may use the Service Offering only: (a) during the Subscription Term; (b) for your own benefit; and (c) in accordance with the Agreement. To use the Service Offering you must register and set up an authorized account with Login Credentials. You must keep your registration information accurate and complete during the term of the Agreement. You must keep your Login Credentials confidential. You can manage your Service Offering account through the Service Offering portal as specified in the Service Description.

1.2.3 You are responsible for any use of the Service Offering that occurs under your Login Credentials. You are responsible for your Users' compliance with the Agreement. If you become aware of any User's violation of the Agreement you must promptly terminate that User's: (a) access to Content; and (b) use of the Service Offering. If you believe your account has been compromised, including any unauthorized access to or use or disclosure of any account information, passwords, user names, or Login Credentials, you must notify us as soon as possible by submitting a Severity 1 Service Request (see the applicable Support Policy) or as we may otherwise notify you from time to time.

1.2.4 You may receive software from us, incidental to your use of the Service Offering, which must be installed in your on-premises environment to enable you to use the Service Offering. If that software is subject to an accompanying license agreement, you must comply with the terms of that license. If that software does not have an accompanying license agreement, then VMware's standard end user license agreement applies, but you may only use that software: (a) in connection with your use of the Service Offering; (b) for the Subscription Term; and (c) in accordance with the Agreement.

1.3 Verifying Compliance. We have the right to verify your and your Users' compliance with the Agreement. We may request information from you to assist in that verification, which you must provide to us. If we reasonably believe a problem with the Service Offering may be attributable to any Content or to your or your Users' use of the Service Offering, you must cooperate with us to identify the source of the problem and to resolve the problem.

1.4 Monitoring. We may monitor your and your Users' use of the Service Offering, and collect configuration, performance, usage, and consumption data relating to that use: (a) to facilitate delivery of the Service Offering (such as tracking entitlements, providing support, monitoring the performance, integrity, and stability of the Service Offering's infrastructure, and preventing or addressing service or technical issues); and (b) to improve our products and services, and your and your Users' experience. You may not block or interfere with that monitoring. We will not access any Content except as necessary to provide the Service Offering, or as permitted pursuant to Section 1.10 ("Permitted Disclosures").

1.5 Third Party Content. As part of your use of the Service Offering you may receive access to Third Party Content. You are responsible for complying with any terms that may be presented to you when you access that Third Party Content. Third Party Content is available "AS IS" without indemnification, support (unless otherwise specified), or warranty or condition of any kind. We may suspend or terminate provision of any Third Party Content at any time, and that suspension or termination will not be deemed a material, detrimental change.

1.6 Evaluation and Beta Use. If you use any Evaluation Service, the terms of this Section 1.6 govern that use, and control over any conflicting provision of these Terms of Service; provided however that the term "Service Offering" will include an Evaluation Service in all provisions that are not in conflict with the provisions of this Section 1.6. If you are participating in a separate VMware beta program, then the terms of that program will apply.

1.6.1 You may use an Evaluation Service only (a) for internal testing and evaluation purposes, and (b) for the period we specify. Unless we specify otherwise, use of an Evaluation Service will be for a period of 30 days beginning on the date we provide you Login Credentials for the Evaluation Service or provide you access to the Evaluation Service. You will not have access to the Evaluation Service or to any data or Content in the Evaluation Service after your authorized use period ends.

1.6.2 Use of an Evaluation Service may require additional terms from a third party service provider.

1.6.3 You may use the Service Offering Documentation provided with an Evaluation Service solely in support of your authorized use of the Evaluation Service.

1.6.4 We will provide the Evaluation Service: (a) free of charge; (b) without support; (c) "AS IS"; and (d) without indemnification, warranty, or condition of any kind. No service level commitment will apply to the Evaluation Service.

1.6.5 The Data Processing Addendum does not apply to your use of any Evaluation Service.

1.6.6 You must not put any of the following into an Evaluation Service: (a) production data; or (b) any information relating to an identified or identifiable natural person; or (c) Prohibited Data. If you put any such data into an Evaluation Service, you do so at your own risk, and we will not be responsible for the consequences of that use.

1.6.7 If you use an Evaluation Service in violation of the terms of the Agreement, including Section 1.6.6, you will indemnify us as specified in Section 10.1 ("Indemnification by You").

1.6.8 Certain features or functionality of a particular Service Offering, as specified in the applicable Service Description, may not be available in an Evaluation Service for any feature or functionality within that Service Offering. Provision of any Evaluation Service, or any feature or functionality in an Evaluation Service, does not constitute our commitment to offer it or the Evaluation Service on a generally available basis.

1.6.9 We may modify or terminate an Evaluation Service at any time, and any modification or termination will not be deemed a material, detrimental change.

1.6.10 You will use reasonable efforts to participate in marketing and publicity activities related to an Evaluation Service, as we may reasonably request from time to time.

1.7 Open Source Software. You may receive open source software when you use the Service Offering or any Evaluation Service. The open source software you receive, as well as open source software that you may interact with when using the Service Offering and that we are required to disclose to you, is made available under the applicable open source licenses, found at http://www.vmware.com/download/open_source.html. You can obtain a copy of these licenses and any source code (and modifications) that we are required to make available under these licenses ("**Source Files**") at the foregoing URL or by sending a written request, with your name and address, to: VMware, Inc., Attention: General Counsel, 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All requests must clearly specify: "Open Source Files Request". This offer to obtain a copy of the Source Files is valid for three years from the date you last received open source software or interacted with the open source software when using the Service Offering.

1.8 Feedback. We may use any feedback (such as comments or suggestions) that you or any User provide to us regarding a Service Offering, including any Evaluation Service. Your feedback is not deemed to be Confidential Information. You hereby grant us a non-exclusive, perpetual, irrevocable, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, perform, display, disclose, distribute, modify, prepare derivative works of, and otherwise exploit the feedback without restriction in any manner now known or in the future conceived, and to make, use, sell, offer to sell, import, and export any product or service that incorporates the feedback.

1.9 Modifications.

1.9.1 We may from time to time: (a) change (i) the Service Offering, (ii) the terms of your use of the Service Offering, or (iii) any portion of the Service Offering Documentation; or (b) elect to cease providing any Service Offering. We will give you prior notice of updates, and the effective dates of any updates, by posting on the My VMware portal, or via email or other communications we typically use to notify you of changes in our offerings. The modifications will become effective on the date specified in our notice. Your continued use of the Service Offering after the effective date of any modification will be deemed acceptance of the modified terms. It is your responsibility to check the Service Offering portal and the My VMware portal regularly for updates.

1.9.2 If we make a material, detrimental change to the Service Offering or to any part of the Service Offering Documentation that affects your use of the Service Offering, you may terminate the Agreement by notifying us not later than 30 days after the effective date of the change. If you terminate the Agreement pursuant to this Section 1.9.2, the termination will be effective as of: (a) the date we receive your notice; or (b) any later date specified in your notice (but in any event the effective termination date will not be more than 60 days after the date on which we receive your notice). You will be responsible for all fees incurred to and including the effective date of any termination pursuant to this Section 1.9.2. If you terminate a subscription-based Service Offering pursuant to this Section 1.9.2, we will refund any prepaid fees prorated as of the effective date of the termination, less any discounts not earned as of the effective date of the termination.

1.10 Permitted Disclosures. If we are required by a subpoena, court order, agency action, or any other legal or regulatory requirement, to disclose any of your or any User's Content, we will provide you with notice and a copy of the demand as soon as practicable, unless we are prohibited from doing so pursuant to applicable law or regulation. If you or the User request, we will, at your (or the User's) expense, take reasonable steps to contest and to limit the scope of any required disclosure.

2. DATA PROTECTION AND SECURITY. We will process Content in accordance with the Data Processing Addendum. We collect and use personal information you submit to the Service Offering as set

forth in the VMware Privacy Policy, found at https://www.vmware.com/help/privacy.html. You are responsible for ensuring that the security of the Service Offering is appropriate for your intended use of the Service Offering and the storage, hosting, or processing of any Content. You are responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity, and security of all Content from unauthorized access, use, loss, or destruction. Those steps include: (a) controlling access you provide to your Users; (b) configuring the Service Offering appropriately; (c) ensuring the security of Content while it is in transit to and from the Service Offering; (d) using encryption technology to protect Content; and (e) backing up Content. You are responsible for providing any necessary notices to Users, and obtaining any legally required authorizations or consents from Users regarding their use of the Service Offering.

3. ACCEPTABLE USE.

3.1 General Restrictions. You and your Users must not: (a) resell or sublicense the Service Offering; or (b) use the Service Offering (i) in a way prohibited by law, regulation, or governmental order or decree, (ii) to violate any rights of others, (iii) to try to gain unauthorized access to, test the vulnerability of, or disrupt the Service Offering or any other service, device, data, account, or network, (iv) to distribute spam or malware, (v) in a way that could harm the Service Offering or impair anyone else's use of it, (vi) in a way intended to work around the Service Offering's technical limitations, recurring fees calculation, or usage limits, or (vii) for any High Risk Activities.

3.2 Content Restrictions.

3.2.1 You must not post, and you must take steps to ensure that no User posts, any Content that: (a) may create a risk of harm, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness, or any other loss or damage to any person or property; (b) may constitute or contribute to a crime or a tort; (c) includes any data that is illegal, unlawful, harmful, abusive, pornographic, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, or otherwise objectionable; or (d) contains any information or content that you or the User do not have a right to upload into the Service Offering.

3.2.2 Some Service Offerings may not permit any Prohibited Data to be uploaded to, hosted by, stored in, or processed by the Service Offering. You must not use the Service Offering to transmit, store, host, or process any Prohibited Data; if you do, then you are solely responsible for the consequences of that use, and you will indemnify VMware as specified in Section 10.1 ("Indemnification by You").

3.2.3 The Service Offerings are not intended for use by children under the age of 13 (in the United States) or such other age as provided by applicable law in other countries. Unless you have obtained the appropriate prior consent for that use, you may not allow any Service Offering to be offered to children under the applicable statutory age of consent, and you must not use the Service Offering to collect, disclose, publish, or store information about children under the legal age of consent where prohibited by applicable law.

3.3 Violations of Acceptable Use. If you become aware that any Content or any User's use of the Service Offering violates Section 3.1 or Section 3.2, you must take prompt action to remove the applicable Content and/or to suspend the User's use of the Service Offering. We may ask you to take action within a certain time period. If you fail to comply with our request we may suspend your account pursuant to Section 6 ("Suspension").

3.4 Notification of Infringement Concerns. If you believe that your copyrighted work has been copied and is accessible on the Service Offering in a way that constitutes copyright infringement you may send a notice to our copyright agent, providing the following information: (a) a description of the copyrighted work that you claim has been infringed and a description of the infringing activity; (b) the location of the material that you claim is infringing, such as the URL where it is posted; (c) your name, address, telephone number, and email address; (d) a statement by you that you have a good faith belief that the disputed use of the material is not authorized by the copyright owner, its agent, or the law; (e) your statement under

penalty of perjury that the information in your notice of infringement concern is accurate, and that you are the copyright owner or are authorized to act on the copyright owner's behalf; and (f) your electronic or physical signature, as the copyright owner or as the person authorized to act on the copyright owner's behalf. Solely for purposes of reporting copyright infringement, please contact VMware's copyright agent as follows:

VMware, Inc.
Intellectual Property Counsel
3401 Hillview Avenue
Palo Alto, California 94304
United States of America
Email: copyright@vmware.com
Telephone: +1-877-486-9273

4. INTELLECTUAL PROPERTY OWNERSHIP.

4.1 Ownership of Service Offering. As between you and us, we and our suppliers own and retain all right, title, and interest in and to the Service Offering and any related VMware Software, including all improvements, enhancements, modifications, and derivative works of them, and all Intellectual Property Rights in all of them. This includes any information we collect and analyze in connection with the Service Offering. Your rights to use the Service Offering are limited to those expressly granted in the Agreement. No other rights with respect to the Service Offering, any related VMware Software, or any related Intellectual Property Rights are implied.

4.2 Ownership of Content. As between you and us, you and your Users retain all right, title and interest in and to any Content and all Intellectual Property Rights in your Content. Our rights to access and use Content are limited to those expressly granted in the Agreement.

5. ORDERS, DELIVERY, PAYMENT, AND TAXES.

5.1 Orders Generally. All Orders are subject to the terms of the Agreement and are not binding until accepted by us. Your Order will be deemed accepted when we provide your Login Credentials to the email address associated with your account. We are not required to provide the Service Offering to you until you provide to us all information we require for processing your Order and provisioning the Service Offering for you. All Orders are non-refundable and non-cancellable except as expressly provided in the Agreement.

5.2 Delivery. When we accept your Order, we will deliver your Login Credentials to the email address associated with your account. If we ship a physical object in connection with an add-on feature of a Service Offering, shipping and delivery terms are Ex Works VMware's regional fulfillment facility (INCOTERMS 2010).

5.3 Direct Orders. This Section 5.3 applies only to Orders directly with VMware. If you purchase the Service Offering through a VMware authorized reseller, different terms regarding invoicing, payment, and taxes may apply.

5.3.1 Purchase Orders. If you purchase the Service Offering on a subscription basis (rather than on an on-demand basis, if applicable) you must issue a purchase order to VMware for your initial Order.

5.3.2 Invoicing and Payment. Unless you and we have agreed otherwise, fees for the Service Offering will be governed by the applicable price list at the time of invoicing. You must pay all fees for use of the Service Offering in the amount and currency specified in your invoice, not later than 30 days after the date of the invoice. Some Service Offerings may permit you to pay fees for your use of the Service Offering through a credit card. If a Service Offering does permit payment through a credit card, and you elect to pay through a credit card, then those payments will be subject to the terms presented to you by our third party credit card payment processor. See the applicable Service Description for details on invoicing and payment.

5.3.3 Taxes. Service Offering fees are exclusive of Taxes. "**Taxes**" means any sales, VAT (Value Added Tax), GST (Goods and Services Tax), use, gross receipts, business and occupation, and other taxes (other than taxes on our income), export and import fees, customs duties, and similar charges imposed by any government or other authority. You must pay or reimburse us for all Taxes arising out of the transactions contemplated by the Agreement. If you are required to pay or withhold any Tax for payments due under the Agreement, you must gross up your payments to us so that we receive all sums due in full and free of any deductions. If you are required to pay any Tax to a taxing authority, you must also provide documentation to us showing that you paid those Taxes. You confirm that we can rely on the name and address you provide to us when you register for the Service Offering or in connection with your payment method as being the place of supply for sales tax and income tax purposes, or as being the place of supply for VAT purposes where you have established your business.

6. SUSPENSION.

6.1 Generally. We may suspend your use of any Service Offering if: (a) we have not received payment for the Service Offering within 30 days after the date on which payment is due; (b) you are in breach of the Agreement (other than as specified in the preceding clause (a)) and do not cure that breach within 10 days after we notify you of that breach; (c) your use of the Service Offering poses a security risk to the Service Offering or to other users of the Service Offering; or (d) suspension is required pursuant to a subpoena, court order, or other legal requirement. We will give you notice before suspending your use of the Service Offering if permitted by applicable law or unless we reasonably determine that providing notice presents a risk of harm to the Service Offering, to other users of the Service Offering, or to any person or property, in which case we will notify you as soon as feasible or permitted.

6.2 Effect of Suspension. You will remain responsible for all fees incurred before or during any suspension. You will not be entitled to any service credits under the Service Level Agreement that you might have otherwise accrued during any suspension.

7. TERMINATION.

7.1 Termination for Cause.

7.1.1 We may terminate the Agreement effective immediately upon written notice to you if: (a) you fail to pay any portion of the fees under an applicable Order within ten (10) days after notice from us that payment is past due; or (b) you do not resolve the underlying cause resulting in a suspension pursuant to Section 6.1 ("Suspension; Generally") (other than suspension due to a subpoena, court order, or other legal requirement) within 10 days after your account is suspended.

7.1.2 Subject to Section 7.1.1, either party may terminate this Agreement effective immediately upon written notice to the other party if that party: (a) commits a breach of the Agreement and fails to cure within 30 days of notice of the breach; or (b) commits a material breach of this Agreement that cannot be cured; or (c) terminates or suspends its business.

7.1.3 If you terminate a subscription-based Service Offering pursuant to this Section 7.1, we will refund any prepaid fees prorated as of the effective date of the termination, less any discounts not earned as of the effective date of the termination.

7.2 Termination for Insolvency. Either party may terminate the Agreement effective immediately upon sending the other party notice notice if that party: (a) becomes insolvent, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or (b) becomes subject to control of a trustee, receiver, or similar authority, or to any bankruptcy or insolvency proceeding.

7.3 Effect of Termination.

7.3.1 Upon the effective date of termination of the Agreement for any reason: (a) all rights granted to you under the Agreement, including your right to use the Service Offering, will immediately terminate; (b) you must stop all use of the Service Offering, and (c) you must return or, if we request, destroy any Confidential Information of VMware or our suppliers. Deletion of any data or Content remaining in the Service Offering

will occur as specified in the applicable Service Description. As between you and us, you are responsible for ensuring that you have necessary copies of all Content prior to the effective date of any termination.

7.3.2 Any provision that, by its nature and context is intended to survive termination or expiration of this Agreement, will survive. The Data Processing Addendum (to the extent we continue to process Personal Data (as defined in the Data Processing Addendum) following any termination of the Agreement) will also survive any termination or expiration of the Agreement.

7.3.3 Except to the extent termination is permitted under Sections 1.9 ("The Service Offering; Modifications"), 7.1 ("Termination for Cause"), or 10.2 ("Indemnification by VMware"), termination of the Agreement will not entitle you to any refunds, credits, or exchanges, and you will be liable for all fees incurred as of the effective date of the termination.

8. SUPPORT. We will provide support for the Service Offering in accordance with the applicable Support Policy, and as specified in the applicable Service Description. We will not provide support to end users of any Content.

9. WARRANTIES.

9.1 Limited Warranty: Duration and Remedy. We warrant that the Service Offering will perform in accordance with the applicable Service Level Agreement, if any, from the time following issuance of your Login Credentials and for the duration of your use of the Service Offering, provided that the Service Offering has at all times been used in accordance with the Agreement. If we fail to meet this limited warranty, and you notify us as required in the Service Level Agreement, then we will, as our sole obligation and your exclusive remedy for any breach of this limited warranty, provide the remedies specified in the Service Level Agreement for the affected Services Offering.

9.2 Disclaimer. OTHER THAN THE LIMITED WARRANTY SET FORTH IN SECTION 9.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE, FOR OURSELVES AND ON BEHALF OF OUR SUPPLIERS, DISCLAIM ALL WARRANTIES RELATING TO THE SERVICE OFFERING OR TO ANY MATERIALS OR SERVICES PROVIDED TO YOU UNDER THE AGREEMENT, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. WE AND OUR SUPPLIERS DO NOT WARRANT THAT THE SERVICE OFFERING WILL BE UNINTERRUPTED OR FREE FROM DEFECTS OR ERRORS, OR THAT THE SERVICE OFFERING WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS. THE SERVICE OFFERING, OR ANY PART OF IT, IS NOT DESIGNED OR INTENDED FOR HIGH RISK ACTIVITIES.

10. INDEMNIFICATION.

10.1 Indemnification by You. If we are subject to any third party claim or demand arising from or relating to: (a) any Content; (b) any infringement or misappropriation of any Intellectual Property Rights by you or any Users in connection with use of the Service Offering; (c) any violation of law by you or your Users in connection with use of the Service Offering; (d) your use or your Users' use of the Service Offering and any Evaluation Service in violation of the Agreement; or (e) your use or your Users' use of any Third Party Content (collectively, "**Claims**"), then you will (i) defend us against any Claims, and (ii) indemnify us for any and all fines, damages, or other costs arising out of or otherwise relating to the Claims, or agreed to in settlement of the Claims. We will: (A) provide you with notice of any Claim within a reasonable period of time after learning of the Claim; and (B) reasonably cooperate in response to your requests for assistance. You will have sole control over the defense regarding any Claim. You may not, without our prior written consent, which will not be unreasonably withheld, conditioned, or delayed, settle or compromise any Claims subject to this Section 10.1 if any settlement or compromise requires VMware to admit any liability, or would affect any Service Offering or our business practices or policies, or impose any unreimbursed cost on us.

10.2 Indemnification by VMware.

10.2.1 Subject to the remainder of this Section 10.2, we will: (a) defend you against an Infringement Claim; and (b) indemnify you from costs, fines, and damages finally awarded against you by a court of competent jurisdiction or a government agency, or agreed to by us in settlement. The foregoing obligations are applicable only if you: (i) provide us with notice of any Infringement Claim within a reasonable period of time after learning of the claim; (ii) allow us sole control over the claim's defense and settlement; and (iii) reasonably cooperate in response to our requests for assistance. We will not, without your prior written consent, which will not be unreasonably withheld, enter into any settlement that obligates you to admit any liability or to pay any unreimbursed amounts to the party bringing the claim.

10.2.2 If the Service Offering becomes or in our opinion is likely to become the subject of an Infringement Claim, we will at our option and expense: (a) procure the rights necessary for you to keep using the Service Offering; or (b) modify or replace the Service Offering to make it non-infringing; or (c) terminate the Agreement and refund any prepaid fees, prorated for the remaining portion of the then-current Subscription Term.

10.2.3 We will have no obligation under this Section 10.2 or otherwise with respect to any Infringement Claim based on: (a) combination of VMware Software with non-VMware products or content, including any Content and/or any Third Party Content; (b) use of the Service Offering for a purpose or in a manner not permitted by the Agreement; (c) any modification to the Service Offering made without our express written approval; or (d) any Service Offering provided on a no-charge basis, including an Evaluation Service.

10.2.4 This Section 10.2 states your exclusive remedy and our entire liability for any Infringement Claims.

11. LIMITATION OF LIABILITY.

11.1 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE OR OUR SUPPLIERS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE OF THE SERVICE OFFERING OR OF ANY CONTENT, OR LOSS OF DATA, FOR ANY REASON INCLUDING POWER OUTAGES, SYSTEM FAILURES, SUPPLY FAILURES, OR OTHER INTERRUPTIONS (SUBJECT TO OUR OBLIGATIONS UNDER THE APPLICABLE SERVICE LEVEL AGREEMENT), LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. THIS LIMITATION WILL APPLY REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE FOREGOING LIMITATION MAY NOT APPLY.

11.2 Cap on Monetary Liability. OUR LIABILITY FOR ANY CLAIM UNDER THE AGREEMENT WILL NOT EXCEED THE GREATER OF: (a) AN AMOUNT EQUAL TO THE TOTAL FEES PAID OR PAYABLE TO US FOR YOUR USE OF THE PARTICULAR SERVICE OFFERING GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM, OR (b) FIVE THOUSAND U.S. DOLLARS ($5,000 USD) (OR THE EQUIVALENT IN LOCAL CURRENCY). THE LIMITATIONS OF LIABILITY IN THIS SECTION 11.2 WILL NOT APPLY TO (i) VMWARE'S INDEMNIFICATION OBLIGATIONS UNDER THE AGREEMENT OR (ii) ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY APPLICABLE LAW.

11.3 Further Limitations.

11.3.1 Our suppliers have no liability of any kind under the Agreement. You may not bring a claim directly against any of them under the Agreement.

11.3.2 You may not bring a claim under the Agreement more than eighteen (18) months after the cause of action arises.

12. CONFIDENTIAL INFORMATION.

12.1 Protection. Either party (the "**recipient**") may use Confidential Information of the other party (the "**discloser**") disclosed to it in connection with the Agreement solely to exercise its rights and perform its obligations under the Agreement or as otherwise permitted by the Agreement. You and we will each use reasonable care to protect that Confidential Information in the same manner as we each protect our own Confidential Information of a similar nature, but in any event with not less than reasonable care. The recipient may disclose that Confidential Information only to the recipient's employees, or to third parties, who have a need to know the Confidential Information for purposes of the Agreement, and who are under a duty of confidentiality no less restrictive than as specified in this Section 12. The recipient may also disclose the discloser's Confidential Information, in accordance with the procedures set forth in Section 1.10 ("Permitted Disclosures").

12.2 Exceptions. The recipient's obligations under Section 12.1 with respect to any of the discloser's Confidential Information will terminate if the recipient can show by written records that the information: (a) was, at the time of disclosure by the discloser, already rightfully known to the recipient without any obligation of confidentiality; (b) was disclosed to the recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (c) at the time of disclosure is, or through no fault of the recipient has become, generally available to the public; or (d) was independently developed by the recipient without access to or use of the discloser's Confidential Information.

13. GENERAL.

13.1 Assignment. You may not assign or transfer the Agreement, in whole or in part, by operation of law or otherwise, without our prior written consent, except in connection with the sale of all or substantially all of your assets, provided that: (a) you give us reasonable prior notice of any proposed assignment; and (b) the assignee agrees in writing to be bound by the Agreement. We may prohibit any assignment to a competitor of ours. Any attempted assignment or transfer of the Agreement without our consent will be void and will be a breach of the Agreement. Subject to these limitations, the Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.

13.2 Notices. Any notice by us to you under the Agreement will be given: (a) by email to the email address associated with your account; or (b) by posting on either the Service Offering portal or the My VMware portal, except as otherwise set forth in the Agreement. You must direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department.

13.3 Waiver. Waiver of a breach of any provision of the Agreement will not constitute a waiver of any later breach of that provision, or waiver of a breach of any other provision.

13.4 Severability. If any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in force to the extent feasible.

13.5 Compliance with Laws; Export Control. Each party must comply with all laws applicable to the actions contemplated by the Agreement. You acknowledge that the Service Offering is of United States origin, is provided subject to the U.S. Export Administration Regulations (including "deemed export" and "deemed re-export" regulations), and may be subject to the export control laws of any other applicable country. You represent and warrant that: (a) you, and any User, are not, and are not acting on behalf of, (i) any person who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; or (ii) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List, or any similar designated persons list published for the jurisdiction in which the applicable data center is located; (b) you, and any User, will not permit the Service Offering to be used for any purposes prohibited by law, including any prohibited development, design, manufacture, or production of missiles or nuclear, chemical, or biological weapons; (c) no Content will be classified or listed on the United States Munitions list or similar list published for the jurisdiction in

which the applicable data center is located, or contain defense articles, defense services, or ITAR-related data; (d) no Content will require an export license or is restricted under applicable export control laws from export to any country where VMware or VMware's service providers maintain facilities or personnel; and (e) you, and any User, are not subject, either directly or indirectly, to any order issued by any agency of the United States government revoking or denying, in whole or in part, your United States export privileges. You must notify VMware immediately if you or any User becomes subject to any order of that type. For purposes of sales to government entities in the United States, any Service Offering and the accompanying Service Offering Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosure of any Service Offering or the Service Offering Documentation, by or for the U.S. Government will be governed solely by the terms and conditions of the Agreement, in conjunction with statutes, regulations, and the terms of the GSA Schedule, and in accordance with the provisions of Section 13.11 ("Order of Precedence").

13.6 Force Majeure. Neither party will be liable for any delay or failure to perform its obligations under the Agreement, except for your payment obligations, due to any cause beyond its reasonable control including labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, earthquakes, storms or other acts of nature, embargoes, riots, acts or orders of government, acts of terrorism, or war.

13.7 Construction. The headings of sections of these Terms of Service are for convenience and are not for use in interpreting these Terms of Service. As used in these Terms of Service, the word "including" means "including but not limited to".

13.8 Language. The Agreement is in English, and the English language version governs any conflict with a translation into any other language.

13.9 Governing Law. The Agreement is governed by the laws of the State of California (excluding its conflict of law rules), and the federal laws of the United States, except as follows: if a Service Offering in your Order is provisioned at a data center that is outside the United States of America, then the governing laws are those of the country in which the data center is located (excluding its conflict of law rules). The U.N. Convention on Contracts for the International Sale of Goods does not apply.

13.10 Third Party Rights. Other than as expressly provided in the Agreement, the Agreement does not create any rights for any person who is not a party to it, and only persons who are parties to the Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it; provided however our suppliers are beneficiaries of the warranty disclaimers and limitations of liability in the Agreement.

13.11 Order of Precedence. The terms of the Agreement will supersede and control over any conflicting or additional terms and conditions of any purchase order or other purchasing-related document issued by you in connection with any Order for the Service Offering.

13.12 Entire Agreement. The Agreement as it may be modified from time to time is the entire agreement of the parties regarding its subject matter. The Agreement supersedes all prior or contemporaneous communications, understandings and agreements, whether written or oral, between the parties regarding its subject matter.

14. DEFINITIONS.

"**Confidential Information**" means non-public technical, business, or other information or materials disclosed or otherwise made available in connection with the Agreement or the Service Offering, that are in tangible form and labeled "confidential" or the like, or are provided under circumstances reasonably indicating confidentiality. Our Confidential Information includes the Login Credentials. Your Confidential Information does not, for purposes of the Agreement, include any Content, unless you disclose that Content to us or we access that Content as permitted by the Agreement.

"Content" means any and all data uploaded into the Service Offering for storage or hosting, by you or any User, or by us (acting upon your instructions and on your behalf as part of a Service Offering), but does not include (i) Third Party Content, or (ii) data we collect as specified in Section 1.4 ("The Service Offering; Monitoring").

"Data Processing Addendum" means the then-current version of the VMware Data Processing Addendum, at www.vmware.com/download/eula.html.

"**Evaluation Service**" means any new Service Offering, or a new feature or functionality of an existing Service Offering, that we offer on an evaluation or beta basis.

"**High Risk Activities**" means activities with a likelihood of injury or death, including but not limited to controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, weaponry systems, or any similar scenario where failure could lead to personal injury, death, or environmental damage.

"**Infringement Claim**" means any claim by a third party that the Service Offering, or any VMware Software used to provide the Service Offering, infringes any patent, trademark, or copyright of the third party, or misappropriates a trade secret of the third party (but only to the extent that the misappropriation is not a result of your actions), under the laws of: (a) the United States, (b) Canada, (c) European Economic Area member states, (d) Australia, (e) New Zealand, (f) Japan, or (g) the People's Republic of China, to the extent you are authorized to use the Service Offering in those countries.

"**Intellectual Property Rights**" means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.

"**Login Credentials**" mean any passwords, authentication keys, or security credentials that enable your access to and management of the Service Offering.

"**Order**" means the internet order page, or other ordering document, that specifies your purchase of a Service Offering, whether you purchase a subscription or use the Service Offering on an on-demand basis.

"Prohibited Data" means any of the following types of personal data: (a) financial account or payment or credit card information, including information regulated under the Gramm-Leach-Bliley Act; (b) patient, medical, or other information related to an individual's physical or mental health, and the provision of or payment for health care, whether regulated by HIPAA or any similar federal, state, or local laws, rules, or regulations; (c) government-issued identifications; or (d) other information as specified in the applicable Service Description. "HIPAA" means the Health Insurance Portability and Accountability Act, as amended and supplemented, and the regulations thereunder.

"Service Description" means the then-current version of the Service Description for the particular Service Offering, at www.vmware.com/download/eula.html.

"Service Level Agreement" means the then-current version of the Service Level Agreement for the particular Service Offering, at www.vmware.com/download/eula.html. Certain offerings may not have a Service Level Agreement.

"Service Offering" means the VMware cloud service offering specified in your Order, including services to host Software, on your behalf, to enable you to use VMware Software in a production environment via internet-based consoles.

"Service Offering Documentation" means: (a) the VMware Data Processing Addendum, which is applicable to all Service Offerings, and (b) the specific Service Description, Support Policy, and Service Level Agreement (if any) for the particular Service Offering, all as revised by VMware from time to time.

"Subscription-based Service Offering" means a Service Offering for which you pay in advance for use of the Service Offering or commit to paying for use of the Service Offering, for a fixed period, as specified

in your Order. A subscription-based Service Offering may also include optional services (e.g., add-ons) and metered usage components, as set forth in the applicable Service Description.

"Subscription Term" means the initial term of your authorized use of the Service Offering, as set forth in the applicable Order, together with any renewal terms (if applicable). The initial term begins on the earlier of: (a) the date on which you start using the Service Offering; or (b) the date you complete the registration process, or as otherwise specified in the Order or in the applicable Service Description. For purposes of any on-demand Service Offering, "Subscription Term" means the period during which you are using the Service Offering, for which you will be billed, as set forth in the applicable Service Description.

"Support Policy" means the then-current version of the Support Policy for the particular Service Offering, at www.vmware.com/download/eula.html.

"Third Party Content" means data, services, content, software, or applications provided by a third party, that interoperates with the Service Offering. As an example, Third Party Content may include an application that is listed on a marketplace or in a catalog. Third Party Content includes open source software.

"User" means any person who uses the Service Offering or accesses Content under your Login Credentials, and may include your employees, contractors, service providers, and other third parties.

"VMware Software" means the software programs listed in our commercial price list.

15. TERMS APPLICABLE TO DATA CENTERS OUTSIDE THE UNITED STATES. If the Service Offering is provisioned at a data center located in the countries listed below, the following provisions replace or supplement the referenced sections of these Terms of Service.

15.1 Australia:

15.1.1 Supplement Section 9.2 ("Warranties; Disclaimer") with the following additional paragraph:

"Nothing in these Terms of Service (including this Section 9 and Section 1.6) excludes, restricts or modifies any consumer guarantee, right or remedy conferred on you by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified by agreement. Subject to the preceding sentence, any condition, warranty, guarantee, right or liability which would otherwise be implied in these Terms of Service or imposed by law is excluded. VMware's liability for any breach of any consumer guarantee, right or remedy conferred by the Australian Consumer Law which cannot be excluded is limited, at VMware's option, to supplying the applicable service again or to the payment of the cost of having that service provided again."

15.1.2 Replace the first sentence of Section 13.9 ("Governing Law") with the following:

"The Agreement is governed by the laws of New South Wales, Australia, without regard to conflict of law principles."

15.2 France:

15.2.1 Replace Section 7.2 ("Termination for Insolvency") with the following:

"**7.2** [Reserved]"

15.2.2 Replace Section 9.2 ("Warranties; Disclaimer") with the following:

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE, FOR OURSELVES AND ON BEHALF OF OUR AFFILIATES AND SUPPLIERS, EXPRESSLY DISCLAIM ALL WARRANTIES RELATING TO THE SERVICE OFFERING OR TO ANY MATERIALS OR SERVICES PROVIDED TO YOU UNDER THE AGREEMENT, INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. WE AND OUR AFFILIATES AND SUPPLIERS DO NOT WARRANT THAT THE SERVICE OFFERING WILL BE UNINTERRUPTED OR FREE FROM DEFECTS, OR THAT THE SERVICE OFFERING WILL MEET (OR IS DESIGNED TO MEET)

YOUR BUSINESS REQUIREMENTS. WE DO NOT COMMIT TO FIXING ALL ERRORS. THE SERVICE OFFERING, OR ANY PART OF IT, IS NOT DESIGNED OR INTENDED FOR HIGH RISK ACTIVITIES.

15.2.3 Replace the last sentence of Section 11.2 ("Cap on Monetary Liability") with the following:

"THE LIMITATIONS OF LIABILITY IN THIS SECTION 11.2 WILL NOT APPLY TO VMWARE'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE ANY PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY, FOR FRAUDULENT MISREPRESENTATION, OR FOR ANY OTHER LIABILITY WHICH MAY NOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW."

15.3 Germany:

15.3.1 Replace the last sentence of Section 1.5 ("Third Party Content") with the following sentence:

"Except as permitted under Sections 6 ("Suspension") and 7 ("Termination") of these Terms of Service, we will only suspend or terminate Third Party Content during a Subscription Term with thirty (30) days prior notice, in which case we will provide a pro-rata refund of any pre-payments (if any) made for such suspended or terminated Third Party Content."

15.3.2 In Section 1.6.4 ("Evaluation and Beta Use"), add the following to the end of the first sentence:

"..., except insofar as defects have been fraudulently concealed by us."

15.3.3 Replace Section 7.2 ("Termination for Insolvency") with the following:

"**7.2** [Reserved]"

15.3.4 Replace Section 9 ("Warranties") with the following:

"**9. Limited Warranty.**

"**9.1 Qualities.** During the Service Offering term, the Service Offering will substantially conform to the applicable Service Description unless otherwise stated in the Agreement. We do not commit that the Service Offering will be uninterrupted or that the Service Offering does fulfill any warranty of merchantability or fitness for a particular purpose, or will meet (or is designed to meet) your business requirements, unless stated otherwise in the applicable Service Description or individually agreed between the parties.

"**9.2 Warranty.** We will correct any defect in the aforementioned qualities of the Service Offering reported to us by you in writing. If we are unable to correct the defect, we will refund an appropriate portion of the fees paid by you with respect to the affected portion of the affected Service Offering.

"**9.3 Service Credits.** Any Service Credits (as set forth in the Service Level Agreement), will be set off against any refund for breach of warranty, if and to the extent the Service Credits are provided for the same event that entitles you to a refund for breach of warranty.

"**9.4 Sole Remedy.** Subject to Section 11, the remedies in this Section 9 are your sole and exclusive remedies for breach of warranty and our sole and exclusive liability for breach of warranty."

15.3.5 Replace Section 11 ("Limitation of Liability") with the following:

"**11.1 Limitation.** Our liability for a claim of any nature arising out of the Agreement, regardless of whether the claim is based in contract, tort, strict liability, or otherwise,

"**11.1.1** will be limited to damages that are foreseeable and typical for this type of contract ("vertragstypische und vorhersehbare Schäden") arising from a slight negligent breach of a material contractual obligation ("Kardinalpflicht", i.e. an obligation the fulfillment of which is essential to enable the proper performance of the contract, and on which fulfillment you may rely); and

"**11.1.2** will not exceed per damage event (i) EUR 250.000 (Two Hundred Fifty Thousand Euro), or (ii) if the aggregate fees paid or payable to us for your access to and use of the Service Offering in the twelve (12) months prior to the event giving rise to your claim are higher, then those fees for the specific Service Offering given rise to the claim (subject to the limit set forth in Section 11.1.3 below).

"**11.1.3** In no event will our total and cumulative liability for all claims arising out of the Agreement exceed EUR 500.000 (Five Hundred Thousand Euro).

"**11.2 Disclaimer of Liability**. In case of slight negligence, we will not be liable for any indirect or consequential damages (including but not limited to any loss of profits, business opportunity, revenue or goodwill), even if we have been advised as to the possibility of those damages.

"**11.3 Further Limitations.** Our suppliers will have no liability of any kind under the Agreement. You may not bring a claim under the Agreement more than eighteen (18) months after the cause of action arises.

"**11.4 Exceptions**. Nothing in the Agreement will limit or exclude our liability for death or personal injury, for intentional act or gross negligence, fraudulent misrepresentation, fraudulent concealment of a defect, mandatory liability under the German Product Liability Act (Produkthaftungsgesetz), or liability for any damages resulting from a breach of a given guarantee."

15.4 United Kingdom:

15.4.1 Replace the last sentence in Section 1.5 ("Third Party Content") with the following sentence:

"Except as permitted under Sections 6 and 7 of these Terms of Service, we will only suspend or terminate Third Party Content during a subscription term with thirty (30) days prior notice, in which case we will provide a pro-rata refund of any pre-payments (if any) made for the suspended or terminated Third Party Content."

15.4.2 Supplement Section 7.2 ("Termination for Insolvency") with the following:

" or (c) if you are deemed unable to pay your debts within the meaning of Section 123 of the Insolvency Act of 1986; or (d) suffer or undergo any similar or analogous suspension or proceeding in any jurisdiction."

15.4.3 Add the following to the end of Section 9.2 ("Warranties; Disclaimer"):

"Any reference to 'warranty or condition' is deemed to refer to 'warranty, condition or other terms', and any reference to 'warranties and conditions' is deemed to refer to 'warranties, conditions, and other terms'."

15.4.4 Replace Section 10.2.4 ("Indemnification by VMware") with the following:

"This Section 10.2 states your exclusive remedy for any Infringement Claims or any assertions or actions arising out of or related to any Infringement Claims."

15.4.5 Replace the last sentence of Section 11.2 ("Cap on Monetary Liability") with the following:

"THE LIMITATIONS OF LIABILITY IN THIS SECTION 11.2 WILL NOT APPLY TO VMWARE'S INDEMNIFICATION OBLIGATIONS UNDER THE AGREEMENT. NOTHING IN THE AGREEMENT SHALL LIMIT OR EXCLUDE ANY PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY, FOR FRAUDULENT MISREPRESENTATION, OR FOR ANY OTHER LIABILITY WHICH MAY NOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW."

15.4.6 Supplement Section 12.2 ("Confidential Information; Exceptions") with the following:

"Breach of this Section 12 by the recipient party may cause the disclosing party substantial harm for which monetary damages are an insufficient remedy. Accordingly, each party agrees that the

other party may apply for injunctive relief in respect of any threatened or actual breach of this Section 12."

16. TERMS APPLICABLE TO UNITED STATES FEDERAL, STATE, AND LOCAL GOVERNMENT CUSTOMERS. For United States federal, state, and local government customers, the following terms and conditions supersede or modify the referenced provisions of these Terms of Service.

16.1 Replace the preamble with the following:

"If you are an executive agency of the U.S. Government or a state or local government agency, then, in order to be applicable, these terms of service between you and VMware ("**Terms of Service**") must be incorporated into any Order for a VMware cloud service (the "**Service Offering**"). These Terms of Service incorporate by reference the applicable Service Description, Data Processing Addendum, Support Policy and Service Level Agreement, all of which together constitute the "**Agreement**". The incorporation of these additional documents does not diminish your rights under these Terms of Service. If you do not agree to these Terms of Service or to any other portion of the Agreement, or if this Agreement is not incorporated into the Order, you must not use the Service Offering. "**You**" means the agency or entity accepting the Agreement. "**VMware**", "**we**" or "**us**" means VMware, Inc., a Delaware corporation. Capitalized terms used in these Terms of Service are defined throughout these Terms of Service and in Section 14 ("Definitions"). Section references in this document are to the provisions of these Terms of Service."

16.2 Add the following to the end of Section 1.3 ("Verifying Compliance"):

"VMware and any third party auditor retained by VMware for the verification shall not have physical access to your computing devices in connection with any the verification activities without your prior written consent, which will not be unreasonably withheld."

16.3 Replace the last sentence of Section 1.5 ("Third Party Content") with the following:

"We will use commercially reasonable efforts to provide reasonable notice of that suspension or termination, and will use commercially reasonable efforts to provide access to similar content where necessary to maintain your uninterrupted use of the Service Offering."

16.4 Replace the last two sentences of Section 3.3 ("Violations of Acceptable Use") with the following:

"We may ask you to take action within a reasonable time period to correct a violation, and if you fail to comply with our request we may suspend your account pursuant to Section 6 ('Suspension')."

16.5 Replace Section 5.1 ("Orders Generally") with the following:

"All Orders are subject to the terms of the Agreement, except as required by applicable law or, if applicable, the GSA Schedule's Order of Precedence clause, and are not binding until accepted by VMware. We are not required to provide any Service Offering to you until you provide to us all information we require for processing your Order and provisioning the Service Offering for you. Your Order will be deemed accepted when we provide your Login Credentials."

16.6 Add the following to the end of Section 5.3.3 ("Taxes"):

"This Section 5.3.3 does not apply to you to the extent you are exempt from any Taxes. If you are a state or a local government entity you shall, upon issuing an Order for a Service Offering, provide documentation reasonably acceptable to VMware evidencing your tax-exempt status."

16.7 Add the following at the beginning of the first sentence of Section 6.1 ("Suspension; Generally"):

"Subject to and to the extent not prohibited by 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes) or applicable state law prohibiting a contractor from suspending performance of a contract, ..."

16.8 Replace the first sentence of the second introductory paragraph with the following:

"The Agreement takes effect when you click "I accept" or similar button or check box presented to you as part of the sign-up process or when you first use the Service Offering, whichever is earlier, and will be in effect until the earlier of (1) the end of the term specified in the Order or (2) the date on which the Agreement is terminated as permitted in the Agreement."

16.9 Add the following to the beginning of Section 7.1 ("Termination for Cause"):

"Subject to and to the extent not prohibited by 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes), we may terminate the Agreement if it is determined that you failed to comply with the terms of the Agreement."

16.10 Replace Section 7.2 ("Termination for Insolvency") with the following:

"**7.2 Termination by You**. You may terminate the Agreement for your sole convenience in accordance with FAR 52.212-4(l) or GSAR 552.212-4(l) if either clause is applicable to the relevant Order. You may terminate the Agreement in accordance with FAR 52.212-4(m) or GSAR 552.212-4(m) if either clause is applicable to the relevant Order in the event of our default under the Agreement."

16.11 Replace the first sentence of Section 7.3 ("Effect of Termination") with the following:

"Upon expiration of the Agreement, or in the event of termination of the Agreement in accordance with 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes): (a) all rights granted to you under the Agreement, including your ability to use the Service Offering, will be terminated; and (b) you must promptly discontinue your use of the Service Offering and delete or destroy any VMware or our licensors' Confidential Information in your possession."

16.12 Replace Section 9.2 ("Warranties; Disclaimer") with the following:

"TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE, FOR OURSELVES AND ON BEHALF OF OUR AFFILIATES AND SUPPLIERS, EXPRESSLY DISCLAIM ALL WARRANTIES RELATING TO THE SERVICE OFFERING OR TO ANY MATERIALS OR SERVICES PROVIDED TO YOU UNDER THE AGREEMENT, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF TITLE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. WE AND OUR AFFILIATES AND SUPPLIERS DO NOT WARRANT THAT THE SERVICE OFFERING WILL BE UNINTERRUPTED OR FREE FROM DEFECTS, OR THAT THE SERVICE OFFERING WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS. WE DO NOT COMMIT TO FIXING ALL ERRORS. THE SERVICE OFFERING, OR ANY PART OF IT, IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR HIGH RISK ACTIVITIES."

16.13 Modify Section 10.1 ("Indemnification by You") by adding the following language to the end of the section:

"Notwithstanding anything to the contrary in this Section 10.1, the maximum amount of all fees and damages paid in connection with your indemnification of VMware shall not exceed the amount of appropriated funds available at the time payment must be made."

16.14 Replace Section 10.2.1 ("Indemnification by VMware") with the following:

10.2.1 Subject to the remainder of this Section 10.2 and to the provisions of 28 U.S.C. 516 if you are a federal government entity, or the applicable state statute governing control of litigation if you are a state or local government entity, we will (a) defend you against an Infringement Claim, and (b) indemnify you from costs and damages finally awarded against you by a court of competent jurisdiction or a government agency or agreed to by us in settlement. You will: (i) provide us with notice of any Infringement Claim within a reasonable period of time after learning of the claim; (ii) allow us the opportunity to participate in the claim's defense and settlement as provided in applicable laws, rules or regulations; and (iii) reasonably cooperate in response to our requests for

assistance. You shall make every effort to permit us to participate fully in the defense or settlement of any Infringement Claim; however, we acknowledge that such participation will be under the control of the U.S. Department of Justice if you are a federal government entity, or may be under the control of the applicable state attorney general's office if you are a state or local government entity."

16.15 Replace Section 10.2.4 ("Indemnification by VMware") with the following:

"To the extent permitted by applicable law, this Section 10.2 states your exclusive remedy for any Infringement Claims."

16.16 Add the following to the end of Section 11.2 ("Cap on Monetary Liability"):

"THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF THE AGREEMENT AS PERMITTED UNDER ANY APPLICABLE FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT (31 U.S.C. 3729-3733)."

16.17 Replace Section 13.1 ("Assignment") with the following:

"Except to the extent transfer may not legally be restricted, you will not assign the Agreement, any Order, or any right or obligation under the Agreement, or delegate any performance, without our prior written consent, which consent will not be unreasonably withheld. We may assign our right to receive payment in accordance with the Assignment of Claims Act (31 U.S.C. 3727) and FAR 52.212-4(b), and we may assign the Agreement to the extent not prohibited by the Anti-Assignment Act (41 U.S.C. 15). Subject to the requirements of FAR 42.12 (Novation and Change-of-Name Agreements), you shall recognize our successor in interest following a transfer of our assets or a change in our name. Any attempted assignment or transfer in violation of the foregoing will be void. Subject to the foregoing, the Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns."

16.18 Replace Section 13.9 ("Governing Law") with the following:

"If you are a federal government entity, the Agreement is governed by the applicable federal laws of the United States. If the federal laws of the United States are not dispositive, then to the extent permitted by federal law, the Agreement will be governed by the laws of the State of California, excluding its conflict of law principles. If you are a state or local government entity, the Agreement is governed by the laws of your state, excluding its conflict of laws principles. The Agreement does not affect statutory rights that cannot be waived or changed by contract."

16.19 Add the following to the end of Section 13.10 ("Third Party Rights"):

"Notwithstanding the foregoing, for any Orders placed with a VMware authorized reseller, the reseller may, at our request, bring a claim against you on our behalf to enforce the terms of the Agreement."

16.20 Replace Section 13.11 ("Order of Precedence") with the following:

"Your use of the Service Offering is subject to the Agreement to the extent that all such terms and conditions are consistent with federal law and regulations that are applicable, mandatory, and controlling. To the extent terms and conditions of the Agreement are inconsistent with federal law and regulations that are applicable, mandatory, and controlling (see FAR 12.212(a)), they shall be deemed deleted and unenforceable as applied to any Orders."

16.21 Replace Section 15 titled "Terms Applicable to Data Centers Outside the United States" with the following:

"For customers procuring a Service Offering under an F-SKU, the Service Offering is provisioned from a data center located in the United States."

vmware

VMware, Inc. Support and Subscription Services "SnS" Terms and Conditions (For On-Premise Software Products)

VMware, Inc., a Delaware corporation, or VMware International Limited, a company organized under the laws of Ireland, as applicable (**"VMware"**), shall provide Technical Support and Subscription Services (as defined herein) (collectively, the **"Services")** to the Customer, per the terms of this Agreement (the "**Agreement**") and as set forth at the VMware Support Services Website, at http://www.vmware.com/support/services/. The applicable VMware entity, **Effective Date**, **Software**, and Services level will be set forth on the applicable enterprise license agreement, SnS order form, Customer's purchase order, or, if Customer has purchased support on a per-incident basis (**"Per Incident"**), in the registration form completed by Customer upon such purchase (collectively the **"Order"**).

1. Definitions.

1.1 "**Error**" means a failure in the Software to materially conform to the specifications described in the applicable product documentation ("**Documentation**").

1.2 "**Modified Code**" means any modification, addition and/or development of code scripts deviating from the predefined product code tree(s)/modules developed by VMware for production deployment or use. Modified Code excludes customizable Software options for which VMware offers Services on the applicable VMware price list.

1.3 "**Services Fees**" means the fees for Services specified in a corresponding VMware or reseller invoice.

1.4 "**Services Period**" means the period for which Customer has purchased the Services and any subsequent renewal periods and shall commence: (a) for Software Licenses for which Services are mandatory, on the date the applicable Software License Key(s) are made available for download, and (b) for Software Licenses for which Services are optional, on the date of purchase of the Services.

1.5 "**Severity**" is a measure of the relative impact an Error has on the use of the Software, as defined by VMware, and assigned by Customer when opening a Support request. The following Severity levels apply to all Software:

(a) "**Severity One**" means Customer's production server or other mission critical system(s) are down and no workaround is immediately available and (i) all or a substantial portion of Customer's mission critical data is at a significant risk of loss or corruption; (ii) Customer has had a substantial loss of service; or (iii) Customer's business operations have been severely disrupted.

(b) "**Severity Two**" means that major functionality is severely impaired such that (i) operations can continue in a restricted fashion, although long-term productivity might be adversely affected; (ii) a major milestone is at risk; ongoing and incremental installations are affected; or (iii) only a temporary workaround is available.

(c) "**Severity Three**" means a partial, non-critical loss of functionality of the software such that: (i) the operation of some component(s) is impaired but allows the user to continue using the Software; or (ii) initial installation milestones are at minimal risk.

(d) "**Severity Four**" means general usage questions and cosmetic issues, including errors in the Documentation.

1.6 "**Software**" means software offered on the VMware price list, and all components shipped with the Software, including Open Source components.

1.7 "**Subscription Services**" means any Maintenance Releases, Minor Releases and Major Releases (each defined below) to the Software and their Documentation that VMware provides to Customer.

(a) "**Maintenance Release**" or "**Update**" means a generally available release of the Software that typically provides maintenance corrections only or high severity bug fixes, designated by VMware by means of a change in the digit to the right of the second decimal point (e.g. Software 5.0 >> Software 5.0.1), or for certain Software, by means of a change in the digit of the Update number (e.g. Software 5.0 Update 1).

(b) "**Minor Release**" means a generally available release of the Software that (i) introduces a limited amount of new features, functionality and minor enhancements; (ii) fixes for high severity and high priority bugs identified in the current release, and (iii) is designated by VMware by means of a change in the digit to the right of the decimal point (e.g., Software 5.0>>Software 5.1).

(c) "**Major Release,**" also known as an "**Upgrade**," means a generally available release of the Software that (i) contains functional enhancements and extensions, (ii) fixes for high severity and high priority bugs, and (iii) is designated by VMware by means of a change in the digit to the left of the first decimal point (e.g., Software 5.0 >> Software 6.0).

1.8 "**Technical Support**" means the provision of telephone or web-based technical assistance by VMware to Customer's technical contact(s) with respect to installation, Errors and technical product problems, at the corresponding Services level purchased by Customer.

1.9 "**Third Party Products**" means any software or hardware that is manufactured by a party other than VMware and is either: (i) not delivered with the Software; or (ii) not incorporated into the Software.

2. Service Terms.

2.1 Provision of Services. Subject to the terms of this Agreement, VMware shall provide Services to Customer during the Services Period at the Services level purchased. Customer's use of a Subscription Services release will be subject to the terms of the VMware Product Guide posted at https://www.vmware.com/download/eula on the date Customer first installs that release.

2.2 End of Availability. VMware may, at its discretion, decide to retire Software and/or Services from time to time ("**End of Availability**"). VMware shall publicly post for all customers notice of End of Availability, including the last date of general commercial availability of the affected Software and the timeline for discontinuing Services, at https://www.vmware.com/support/policies/lifecycle.html. VMware shall have no obligation to provide Services for Software that is outside of the applicable Service life.

2.3 Purchase Requirements.

(a) Except as otherwise provided for by VMware, Customer may purchase initial Services only for the most current, generally available release of the Software.

(b) Customer must purchase and/or renew Services at the same Services level for all of the licenses for a particular Software product or suite that has been or is being installed in a given environment, such as Test, Development, QA, or Production (i.e. Customer cannot purchase Production level support for only one license of vSphere in its lab and purchase Basic level support for the other vSphere licenses in that environment).

(c) Except as otherwise provided in the applicable price list, the minimum term for any Service offering is one (1) year.

(d) These Services Terms and conditions will automatically update to VMware's then-current Services terms and conditions set forth at https://www.vmware.com/files/pdf/support/support_terms_conditions.pdf upon any renewal of Services.

2.4 Exclusions.

(a) Services do not cover problems caused by the following:

(i) unusual external physical factors such as inclement weather conditions that cause electrical or electromagnetic stress or a failure of electric power, air conditioning or humidity control; neglect; misuse; operation of the Software with other media not in accordance with the manufacturer's specifications; or causes other than ordinary use;

(ii) use of the Software that deviates from any operating procedures as specified in the Documentation;

(iii) Third Party Products, other than the interface of the Software with the Third Party Products;

(iv) Modified Code;

(v) issues relating to Software offered as a Service ("SaaS"), or other "X"aaS offerings;

(vi) any customized deliverables created by VMware, VMware partners or third-party service providers specifically for Customer as part of consulting services;

(vii); use of the Software with unsupported tools (i.e., Java Development Kit (JDK); Java Runtime Environment (JRE)), APIs, interfaces or data formats other than those included with the Software and supported as set forth in the Documentation. Customer may request assistance from VMware for such problems, for an additional fee.

(b) In the event that VMware suspects that a reported problem may be related to Modified Code, VMware, may, in its sole discretion,

(i) request that the Modified Code be removed, and/or

(ii) inform Customer that additional assistance may be obtained by Customer directly from various product discussion forums or by engaging VMware's consulting services group for an additional fee.

2.5 Customer Responsibilities. VMware's obligations regarding Services are subject to the following:

(a) Customer agrees to receive from VMware communications via e-mail, telephone, and other formats, regarding Services (such as communications concerning support coverage, Errors or other technical issues and the availability of new releases of the Software and training options).

(b) Customer's technical contact shall cooperate to enable VMware to deliver the Services.

(c) Customer is solely responsible for the use of the Software by its personnel and shall properly train its personnel in the use and application of the Software.

(d) Customer shall promptly report to VMware all problems with the Software, and shall implement any corrective procedures provided by VMware reasonably promptly after receipt.

(e) Customer is solely responsible for protecting and backing up the data and information stored on the computers on which the Software is used and should confirm that such data and information is protected and backed up in accordance with any internal or regulatory requirements as applicable, before contacting VMware for Technical Support. VMware is not responsible for lost data or information in the event of errors or other malfunction of the Software or computers on which the Software is used.

(f) Customer will have dedicated resources available to work 24X7 on Severity One Errors.

3. Services Offerings and Fees.

3.1 Services Fee Terms.

(a) Services Fees are payable on the Effective Date or, in the case of a renewal term, no later than the date of commencement of the applicable Services Period. Services Fees are specified in the applicable price list and are non-refundable.

(b) In the event that Customer renews or adds a Services offering that has a minimum term of one (1) year, Customer may elect to make Services for all of its Software Licenses coterminous with the renewed or added Services. In such case, VMware will prorate the applicable Services Fees to extend the current Services Period to make it coterminous with such renewed or added Services.

(c) For Software that is licensed on a perpetual basis, if a Customer purchases Services after acquiring the Software Licenses, or had elected not to renew Services and later wishes to re-enroll in the Services, Customer must move to the then-current Major Release of the Software and must pay: (i) the applicable Services Fees for the current Services Period; (ii) the amount of Services Fees that would have been paid for the period of time that Customer had not enrolled in the Services, and (iii) a twenty-percent (20%) reinstatement fee on the sum of the Services Fees in (i) and (ii).

(d) In cases where Customer purchases a License to migrate up from one edition of the Software to another (e.g., VMware vSphere Standard to VMware vSphere Enterprise Plus), any unused period of the Services Period on the original License will be converted and used to extend the Services Period for the newly purchased upgraded License. This paragraph (d) shall not apply to enterprise license agreements.

3.2 Advanced and Complimentary Offerings.

(a) Certain Services (e.g., Business Critical Support, Mission Critical Support, and AirWatch Enterprise Support) require that Customer also purchase a base level of support. See the applicable price list for details.

(b) VMware may offer complimentary Services, including VMware Complimentary Update Services for certain Software, as more fully described at the VMware Technical Support Services website. "**VMware Complimentary Update Services**" means the provision of Maintenance Releases and Minor Releases, if any, to Customer. This VMware Complimentary Update Service does not include the provision of any Major Releases.

4. Miscellaneous Terms

4.1 Payment Terms. VMware will invoice Customer for Services promptly following Customer's purchase. All invoices issued hereunder by VMware are due and payable within thirty (30) days of the date of the invoice. By placing an order for Services, Customer represents that Customer is authorized pursuant to applicable laws and regulations to commit to payment prior to completion of the Services Period, as set forth herein. Services Fees are exclusive of any taxes, duties, or similar charges imposed by any government. Customer shall pay or reimburse VMware for all federal, state, dominion, provincial, or local sales, use, personal property, excise, value added, withholding or other taxes, fees, or duties relating to the transactions contemplated by this Agreement (other than taxes on the net income of VMware). Amounts not paid on time are subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount allowed by applicable law. If payment of any Services Fee is overdue, VMware may also suspend performance until such delinquency is corrected.

4.2 Limited Warranty. VMware warrants that the Services to be performed hereunder will be done in a workmanlike manner and shall conform to industry standards. Upon Customer providing VMware with a reasonably detailed written notice to cure within thirty (30) days of occurrence of the nonconformance, VMware will re-perform the Services to achieve commercially reasonable conformance with the above warranty. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY IS GIVEN EXPRESSLY AND IN PLACE OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TO THE MAXIMUM EXTENT MANDATED BY LAW, THIS REMEDY WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF SERVICES.

4.3 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, VMWARE SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO CUSTOMER. VMWARE'S LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE SERVICES

FEES PAID BY CUSTOMER TO VMWARE UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT MOST DIRECTLY GIVING RISE TO THE CLAIM.

4.4 Termination. VMware may terminate the Agreement and all Services at any time if (1) it is discovered that Customer is currently in breach of its Software license restrictions, pursuant to Customer's Software license or (2) Customer is in material breach of this Agreement.

4.5 Data Sharing. Customer acknowledges that correspondence and log files generated in conjunction with a request for Services may contain sensitive, confidential or personal information. Customer is solely responsible for taking the steps it considers necessary to protect such data, including obfuscating the logs or otherwise guarding such information prior to sending it to VMware.

4.6 Other. Customer may not assign or delegate this Agreement to any third party without the prior written consent of VMware. This Agreement shall be governed by the laws of the State of California without regard to conflict of laws principles. The parties consent to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California. This Agreement constitutes the entire agreement of the parties with respect to the provision of the Services by VMware to Customer, and supersedes all prior written or oral communications, understandings and agreements. This Agreement may not be amended except in a written document signed by both parties. Any waiver of the provisions of this Agreement must be in writing to be effective. Except as expressly set forth herein, no terms of any purchase order or other business form that Customer may use will affect the obligations of the parties under this Agreement, and any such purchase order or other business form of Customer which contains additional or conflicting terms are hereby rejected by VMware. Customer agrees that purchase orders do not have to be signed to be valid and enforceable. If any provision of this Agreement is found to be invalid or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law. The version of the Technical Support guide found at https://www.vmware.com/files/pdf/support/tech_support_guide.pdf and the policies located at https://www.vmware.com/support/policies/index/ are the governing versions of such documents/policies; any translation into other languages is for convenience only. VMware may update the Technical Support guide and support policies periodically, without prior notice.

VMware Professional Services
General Terms & Conditions (Exhibit A to SOW)

1. Definitions.

a) **"Acceptance Period"** means a period of ten (10) business days following, (i) with respect to a fixed fee engagement, delivery of the Project Milestone Completion Form, or (ii) with respect to time and materials engagements, the submission of timesheets to Customer.

b) **"Affiliate"** means, with respect to a party, an entity that is directly or indirectly controlled by or is under common control with that party, where "control" means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests of the entity (but only as long as that person or entity meets these requirements).

c) **"Consulting Services"** means the services provided by VMware to Customer as described in the Statement of Work to which these General Terms & Conditions are attached (**"SOW"**). Alternatively, if Customer ordered the services via a VMware online datasheet, all references to the SOW will be deemed to refer to that online datasheet.

d) **"Customer Materials"** means any materials or Technology provided to VMware by Customer in connection with the Consulting Services.

e) **"Deliverables"** means any reports, analyses, scripts, templates, code or other work products, tangible or intangible, to be delivered by VMware to Customer as set forth in the SOW.

f) **"Derivative Work"** means a derivative work as defined under applicable intellectual property laws. [For the US only, we will replace "applicable" with "U.S."]

g) **"Intellectual Property Rights"** means all worldwide intellectual property rights including copyrights, trademarks, service marks, trade secrets, know-how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

h) **"Parties"** means VMware and Customer collectively, and a **"Party"** means VMware or Customer individually.

i) **"Taxes"** means any sales, use and other taxes (other than taxes on VMware's income), export and import fees, customs duties, and value added taxes, and similar charges applicable to the Consulting Services as described in the SOW that are imposed by any government or other authority.

j) **"Technology"** means algorithms, approaches, source and object codes, concepts, data, designs, developments, documentation, discoveries, expressions, inventions, know-how, methodologies, multimedia files, processes, programs, skills, software, techniques, technology, templates, text, tools, and web pages.

k) **"Territory"** means the country or countries in which Customer has been invoiced, unless otherwise specified in the SOW.

l) **"Third Party Agent"** means a third party delivering information technology services to Customer pursuant to a written contract with Customer.

m) **"VMware Retained Materials"** means (i) materials (other than products) developed or obtained by or for VMware independently of the Consulting Services, and (ii) subsets or modules of the Deliverables that by themselves provide generic technical information not unique to Customer's business.

2. Consulting Services.

a) Consulting Services. VMware will provide the Consulting Services and the Deliverables as specified in the SOW. The SOW will (i) incorporate by reference this Professional Services General Terms and Condition; and (ii) specify and describe the relevant business parameters, including, but not limited to, the Consulting Services, the Deliverables, the Customer Materials, primary contact information for VMware and Customer, project description, delivery schedule, staff roles, pricing, and a payment schedule. In the event of a conflict between the terms of this General Terms and Conditions and the terms of an SOW, the General Terms and Conditions will govern unless otherwise explicitly superseded in the SOW. The General Terms and Conditions and the SOW are collectively referred as "SOW" hereinafter.

b) Acceptance.

i) For fixed fee engagements, upon completion of each milestone, VMware will deliver to Customer a Project Milestone Completion Form. For time and materials engagements, VMware will deliver timesheets to Customer. Customer will return the Project Milestone Completion Form or timesheets, as applicable, to VMware within the Acceptance Period, indicating Customer's acceptance of the SOW's Deliverables or Consulting Services.

ii) If Customer reasonably believes that VMware did not perform the Consulting Services or the Deliverables in substantial conformance with the SOW, Customer will notify VMware, in writing, within the Acceptance Period. Customer's notice must specifically identify and explain each alleged non-conformance with the terms of the SOW. VMware will use reasonable efforts to correct Customer's issues and then again present the Project Milestone Completion Form or timesheets for Customer's acceptance as required by this Section 2.

iii) If VMware does not receive Customer's acceptance or rejection within the Acceptance Period, the Consulting Services and the Deliverables will be deemed accepted by Customer, and Customer will have waived any right of rejection.

c) Project Change Request.

i) Either Party may request a modification to the Deliverables or to any material provision of the SOW by submitting a Project Change Request (**"PCR"**). Upon receipt of a PCR, VMware will estimate its financial and schedule impacts, if any. The Parties will review these estimates to determine whether the PCR would be mutually acceptable. VMware may not unreasonably refuse to accept a PCR initiated by Customer, if Customer agrees to bear the pricing and schedule impacts.

ii) If the Parties agree on the PCR, the Parties will execute the PCR, and VMware will attach the final PCR to the SOW. If the Parties are unable to agree within five (5) business days after the PCR is submitted, then the submitting Party may either withdraw the PCR or terminate the SOW. If the SOW is terminated, the only payments due are for the Deliverables delivered, Consulting Services performed, and expenses incurred by VMware prior to the termination date.

d) Customer Materials Delays. Customer acknowledges that VMware's performance of the Consulting Services and delivery of the Deliverables is contingent on Customer's timely delivery of the Customer Materials required to perform the Consulting Services. Customer agrees that any reasonable scheduling or financial impacts caused by Customer's failure to deliver Customer Materials within the specified time will be treated as a PCR.

e) Personnel. VMware will determine the personnel assigned to perform the Consulting Services. Customer may request, in writing, with specific reasons stated, the replacement of VMware personnel or VMware contractors that Customer reasonably believes are not adequately performing the Consulting Services.

3. Intellectual Property.

a) Grant of Copyright in the Deliverables. Subject to Customer's payment of the amounts due under the SOW and to Customer's compliance with the SOW, Customer will own all copyrights to the portion of the Deliverables consisting solely of written reports, analyses, and other working papers (other than VMware Retained Materials), prepared and delivered by VMware to Customer under the SOW, provided that Customer will exercise its rights for Customer's internal business operations only and will not resell or distribute the Deliverables to any third party.

b) Grant of License Rights in the Deliverables. For VMware Retained Materials and the portion of the Deliverables that consists of scripts, code, templates, and all other materials developed or otherwise provided by VMware in connection with the Consulting Services, VMware grants Customer a non-exclusive, non-transferable, irrevocable (except in case of breach of the SOW), perpetual license, without the right to sublicense, to use and copy (without the right to sublicense), for Customer's internal business operations only (the "Deliverables License"). The Deliverables License does not apply to (i) Customer Materials, and (ii) any other products or items licensed, or otherwise provided, under a separate agreement. Notwithstanding anything herein to the contrary, open source software is licensed to the customer under that open source software's own applicable license terms. The open source license terms may contain additional rights benefiting Customer. Except for the provisions of Section 5(c) of this Exhibit A the open source software license terms take precedence over the terms of this Exhibit A.

c) Customer Materials. Any Customer Materials used by VMware in connection with the SOW remain Customer property. Pursuant to Customer's Intellectual Property Rights in Customer Materials, Customer grants VMware a non-exclusive and non-transferable right to use Customer Materials solely for the benefit of Customer in fulfillment of VMware's obligations under the SOW. Customer warrants that it has the necessary rights to provide Customer Materials to VMware, so that VMware can access, use, and modify Customer Materials as necessary for VMware's performance of the Consulting Services.

d) Reservation of other Intellectual Property Rights. Each Party reserves for itself all other Intellectual Property Rights that it has not expressly granted to the other. All rights in VMware Retained Materials remain VMware's sole property. VMware will not be limited in developing, using or marketing services, materials or products that are similar to or related to the Deliverables (other than those portions of the Deliverables where ownership of the copyright has been granted to Customer) or the Consulting Services, or, subject to VMware's confidentiality obligations to Customer, in using the Deliverables in or performing similar Consulting Services for any other projects or parties.

4. Confidentiality.

a) Definition. "**Confidential Information**" means information or materials provided by one Party ("Discloser") to the other Party ("Recipient") which are in tangible form and labelled "confidential" or the like, or information which a reasonable person knew or should have known to be confidential in the circumstances. The following information will be considered Confidential Information whether or not marked or identified as confidential: any personally identifiable information (such as the names of Discloser's customers), or the physical address of any equipment contained in any information collected about Discloser's computing environment, Discloser's business operations, pricing, discounts, source code, product roadmaps or strategic marketing plans.

b) Protection. Recipient may use Confidential Information of Discloser; (i) to exercise its rights and perform its obligations under the SOW; or (ii) in connection with the Parties' on-going business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by the SOW, and will disclose the Confidential Information of Discloser only to Recipient's employees or contractors who have a need to know the Confidential Information for purposes of the SOW and who are under a duty of confidentiality no less restrictive than Recipient's duty under the SOW. Recipient will protect Discloser's Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature, but with no less than reasonable care.

c) Exceptions. Recipient's obligation under this Section 4 with respect to any of Discloser's Confidential Information will terminate if Recipient can show by written records that this information: (i) was already rightfully known to the Recipient at the time of disclosure; (ii) was disclosed to Recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (iii) is, or through no fault of Recipient, has become, generally available to the public; or (iv) was independently developed by Recipient without access to, or use of, Discloser's Confidential Information. In addition, Recipient will be allowed to disclose Discloser's Confidential information to the extent that the disclosure is required by law or by order of a court or similar judicial or administrative body, provided that Recipient notifies (to the extent permitted by law) Discloser of that required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of that required disclosure.

d) Permitted Disclosure. Notwithstanding anything to the contrary in these General Terms & Conditions, neither Party will disclose the SOW to any third party without prior written consent of the other Party. Notwithstanding the foregoing, each Party may disclose the terms and conditions of the SOW without the prior written consent of the other Party (i) as required by any court or other governmental body, (ii) as otherwise required by law, (iii) to legal counsel of the Parties, (iv) in confidence, to their respective accountants, banks, and financing sources and other professional advisors, (v) in connection with the enforcement of the SOW or the Party's rights under the SOW; (vi) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction; or (vii) if compelled by law, in which case the Party compelled to make the disclosure will use its best efforts to give the other Party advance notice of the requirement .

5. Intellectual Property Indemnification.

a) Defense and Indemnification. Subject to the remainder of this Section 5, VMware will defend Customer against any third party claim that the Deliverables, when used as contemplated by the SOW, infringe any patent, trademark or copyright of a third party, or misappropriate a trade secret (but only to the extent that the misappropriation is not a result of Customer's actions), under the laws of: (a) the United States; (b) Canada; (c) the European Economic Area; (d) Australia; (e) New Zealand; (f) Japan; or (g) the People's Republic of China, to the extent that those countries are part of the Territory for the use of the Deliverables ("Infringement Claim"), and indemnify Customer from the resulting costs and damages finally awarded against Customer to a third party by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if Customer: (i)promptly notifies VMware in writing of the Infringement Claim; (ii) allows VMware sole control over the defense for the claim and any settlement negotiations; (iii) reasonably cooperates in response to VMware's requests for assistance; and (iv) is not in material breach of the SOW. Customer may not settle or compromise any Infringement Claim without the prior written consent of VMware.

b) Remedies. If the allegedly infringing Deliverables become, or in VMware's opinion be likely to become, the subject of a Infringement Claim, VMware will, at VMware's option and expense, do one of the following: (a) procure the rights necessary for Customer to make continued use of the affected Deliverables; (b) replace or modify the affected Deliverables to make them non-infringing; or (c) terminate the Deliverables License to the affected Deliverables, and, upon Customer's certified deletion or destruction of the affected Deliverables, refund that portion of the fees paid by Customer for the affected Deliverables. Nothing in this Section 5(b) will limit VMware's obligation under Section 5(a) to defend and indemnify Customer, provided that Customer replaces the allegedly infringing Deliverables upon VMware's making alternate Deliverables available to Customer or Customer discontinues using the allegedly infringing Deliverables upon receiving VMware's notice.

c) Exclusions. Notwithstanding the foregoing, VMware will have no obligation with respect to any claim based on: (a) a combination of the Deliverables with non-VMware products (other than non-VMware products that are listed on the relevant purchase order and used in an unmodified form); (b) use for a purpose or in a manner for which the Deliverables was not designed; (c) use of any older version of VMware software or the Deliverables when use of a newer VMware revision would have avoided the infringement; (d) any modification to the Deliverables made without VMware's express written approval; (e) any Deliverables provided by VMware in accordance with Customer's specifications or designs; (f) any claim that relates to open source software or freeware technology or any derivatives or other adaptations that is not embedded by VMware into VMware software listed on VMware's commercial price list or into Deliverables; or (g) Customer Materials or Technology that Customer instructs VMware to develop in a specific way or to achieve a specific end result. THIS SECTION 5 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS ARISING UNDER OR IN CONNECTION WITH THE SOW.

6. Warranties and Limitation of Liability.

a) VMware Warranty. VMware warrants that the Consulting Services will be performed in a workmanlike manner in accordance with the standards of the industry. Customer must notify VMware of any alleged breach of this warranty before the end of the Acceptance Period. VMware's entire liability and Customer's sole remedy for VMware's breach of this warranty will be for VMware to, at its option, (i) use reasonable efforts to correct that breach, , or (ii) terminate the SOW and refund that portion of any fees received that corresponds to that breach.

b) Disclaimer of Warranties. THE EXPRESS WARRANTY SET FORTH IN SECTION 6(a) ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMWARE DISCLAIMS, ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE REGARDING OR RELATING TO THE CONSULTING SERVICES OR DELIVERABLES, OR ANY OTHER MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THE SOW. VMWARE WILL NOT BE LIABLE FOR ANY THIRD-PARTY SERVICES OR PRODUCTS IDENTIFIED OR REFERRED TO CUSTOMER BY VMWARE. NO EMPLOYEE, AGENT, REPRESENTATIVE OR AFFILIATE OF VMWARE HAS THE AUTHORITY TO BIND VMWARE TO ANY REPRESENTATIONS OR WARRANTIES OUTSIDE OF THE SOW.

c) Limitation of Liability.

i) Limitation on Direct Damages. Except with respect to claims pursuant to Section 5 above, VMware's total liability and Customer's sole and exclusive remedy for a claim of any nature arising out of the SOW, regardless whether the claim is based on contract, tort, strict liability or otherwise, will be limited to proven direct damages caused by VMware's sole negligence in an amount not to exceed (i) US$1,000,000 for damages to real or tangible personal property; and (ii) the fees paid to VMware for the Consulting Services from which the claim arises, for damages of any type not identified in (i) above or otherwise excluded under the SOW.

ii) Disclaimer of Liability. To the maximum extent permitted by applicable law, neither Party will be liable for any indirect, incidental, special, punitive or consequential damages, or for any loss of profits, business opportunity, revenue, goodwill or data, even if advised of the possibility of those damages.

iii) Limitation of Liability Exclusions. **[NASA Version]** The limitations of liability in this Section 6(c) will not apply to (a) Customer's violation of VMware's or its licensors' Intellectual Property Rights or Customer's use of the Deliverables in a manner not expressly authorized by the SOW; (b) VMware's indemnification obligations under Section 5; (c) either Party's breach of confidentiality under the SOW; (d) Customer's payment obligations under the SOW; or (e) any liability which may not be excluded by applicable law. **[EMEA/APAC Version:]** The limitations of liability in this Section 6(c) shall not apply to: (a) Customer's liability for violation of VMware's or its licensors' Intellectual Property Rights or use of the Deliverables by Customer in a manner not expressly authorized by the SOW; (b) VMware's indemnification obligations under the SOW; (c) either Party's liability for breaches of confidentiality under the SOW; (d) Customer's payment obligations under the SOW; (e) either Party's liability for death or personal injury caused by its negligence; (f) either Party's liability for any fraudulent pre-contractual misrepresentations made by one party on which the other party can be shown to have relied; or (g) any liability which cannot be excluded by applicable law.

iv) Further Limitations. VMware's licensors will have no liability of any kind under the SOW, and VMware's liability with respect to any third party software embedded in the Deliverables will be subject to Section 6 (a) and (b) above. Customers may not bring a claim under the SOW more than eighteen (18) months after the cause of action arises.

7. Fees and Payment.

a) Payment. VMware will provide the Consulting Services (i) for a fixed fee or (ii) on a time and materials basis, as described in the SOW, plus applicable taxes and travel expenses in accordance with VMware's travel and expense policy. Invoicing occurs upon Customer's acceptance of each milestone or timesheet, or approval of travel expenses, and must be paid by Customer within thirty (30) days of the date of invoice. If Customer uses pre-purchased VMware Consulting and Training Credits as the means of payment, then upon Customer's acceptance of Project Milestone Completion Form(s), timesheets, or travel expenses, the VMware Consulting & Training Credits will be deducted from Customer's balance. Customer is responsible for ensuring that its purchase order ("**PO**") issued to VMware for the Consulting Services reflects the pricing set forth in the SOW.. If there is any difference in pricing listed in the SOW and the pricing listed in the PO, the pricing in the SOW will control. Customer agrees that POs do not have to be signed by Customer to be valid and enforceable. Subject to the SOW, all fees paid by Customer are non-refundable.

b) Taxes. **[NASA Version]** Fees are exclusive of Taxes, and Customer will pay or reimburse VMware for all Taxes arising out of the SOW. If Customer is required under applicable law to pay its local taxing authority any withholding tax, charge or levy in respect of any payments due to VMware hereunder ("**Withholding Tax**"), Customer may deduct such Withholding Tax from applicable payments due to VMware provided that (a) Customer cooperates with VMware to minimize any such Withholding Tax, including obtaining treaty exemption certificates and filing for a tax ruling with the applicable taxing authority and (b) such withheld amounts shall be paid to the appropriate taxing authority by Customer, and Customer shall provide VMware with (i) copies of all official government issued receipts issued by the said taxing authority and all such other evidence as is reasonably necessary for VMware to establish that such taxes have been paid, and (ii) a schedule showing the invoice number and gross amounts to which such receipts relate (collectively, "**Payment Documentation**"). Such Payment Documentation must be provided to VMware by email to: ar@vmware.com within forty-five (45) days of the date Customer remits payment for each applicable VMware invoice. A failure to pay an invoice in full without submitting the Payment Documentation to VMware will cause interest to accrue on unpaid and undocumented amounts. Customer confirms that VMware can rely on the Customer address set forth in the SOW as being the place of supply for tax purposes. **[EMEA/APAC Version]** Fees are exclusive of Taxes, and Customer will pay or reimburse VMware for all Taxes arising out of the SOW. If Customer is required under applicable law to pay its local taxing authority any withholding tax, charge or levy in respect of any payments due to VMware hereunder ("**Withholding Tax**"), Customer may deduct such Withholding Tax from applicable payments due to VMware provided that (a) Customer cooperates with VMware to minimize any such Withholding Tax, including obtaining treaty exemption certificates and filing for a tax ruling with the applicable taxing authority and (b) such withheld amounts shall be paid to the appropriate taxing authority by Customer, and Customer shall provide VMware with (i) copies of all official government issued receipts issued by the said taxing authority and all such other evidence as is reasonably necessary for VMware to establish that such taxes have been paid, and (ii) a schedule showing the invoice number and gross amounts to which such receipts relate (collectively, "**Payment Documentation**"). Such Payment Documentation must be provided to VMware by email to: ar@vmware.com within forty-five (45) days of the date Customer remits payment for each applicable VMware invoice. A failure to pay an invoice in full without submitting the Payment Documentation to VMware will cause interest to accrue on unpaid and undocumented amounts. Where VMware is making a supply of services under Article 44 of VSAT Directive 2006/112/EC, Customer confirms that VMware can rely on the "bill to" name and address as per the PO issued by Customer to VMware as being the place of supply for VAT purposes where Customer has established its business.

c) Late Payments. All amounts not paid when due will incur a late charge equal to the lesser of one and one-half percent (1.5%) per month, or the maximum amount allowed by applicable law. VMware may suspend performance of the Consulting Services while any payment is delinquent.

d) Currency. All charges and fees provided for in the SOW will be in the currency specified in the SOW.

e) Canceling/Rescheduling SOW before Commencement. A minimum of fifteen (15) business days' written notice is required for rescheduling or canceling the SOW prior to the commencement of the Consulting Services. Customer will owe only incurred expenses (e.g., airfare), if any, if Customer gives that notice. Customer will owe the entire payment and any incurred expensesif the SOW is canceled with less than that notice.

8. Term and Termination.

a) Term. The term of the SOW begins on the date stated in the SOW and continues until (i) Customer's acceptance of the final Deliverables or final timesheet, (ii) terminated under Section 8(b), or (iii) the Parties mutually terminate the SOW in writing.

b) Termination. Either Party may terminate the SOW immediately upon written notice if: (i) the other Party breaches any provision of the SOW and does not cure the breach within thirty (30) days after receiving written notice from the other Party; or (ii) the other Party commits a material breach of the SOW that is not capable of being cured. VMware may terminate the SOW in its entirety effective immediately upon written notice to Customer if Customer: (i) terminates or suspends its business; (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to control of a trustee, receiver or similar authority; or (iii) becomes subject to any bankruptcy or insolvency proceeding.

c) Survival. Any provision of the SOW will survive any termination or expiration of the SOW if by its nature and context it is intended to survive, including provisions relation to payment of outstanding fees, confidentiality, intellectual property, warranties and limitation of liability.

9. Miscellaneous.

a) Insurance. VMware will, for the term of the SOW, carry general and professional liability, automobile, and workers compensation insurance, for claims for bodily injury (including death) or damage to tangible or real property, which may arise or result from VMware's performance under the SOW. The Memorandum of Insurance may be viewed at https://online.marsh.com/marshconnectpublic/marsh2/public/moi?client=362542334.

b) Non-solicitation. During the period of the performance and one year from the completion of the Consulting Services under the SOW, neither Party will solicit directly or indirectly the employment or services of the employees or contractors of the other Party who were involved in the performance under the SOW. Both Parties acknowledge that (i) any newspaper or other public solicitation not directed specifically to that person will not be deemed to be a solicitation for purpose of this provision, and (ii) this provision is not intended to limit the individual's right to change jobs.

c) Assignment. Customer will not assign this SOW or a PO or any right or obligation herein or delegate any performance without VMWare's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by Customer will be void. VMware may use its Affiliates or other sufficiently qualified subcontractors to provide the Consulting Services to Customer, provided that VMware remains responsible to Customer for the Consulting Services' performance.

d) Independent Parties. The Parties are independent contracting parties. Nothing in the SOW will be construed to create a partnership, joint venture or agency relationship between the Parties.

e) Governing Law. **[NASA Version]** The SOW is governed by the laws of the State of California (excluding its conflict of law rules) and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in Santa Clara County, California, will be the exclusive jurisdiction for disputes arising out of or in connection with the SOW. The UN Convention on Contracts for International Sale of Goods does not apply. **[EMEA/APAC Version]** The SOW is governed by the laws of England. The UN Convention on Contracts for the International Sale of Goods does not apply. The Parties consent to the exclusive jurisdiction of English courts.

f) Force Majeure. Except for payment of fees, neither Party will be liable for failure to perform its obligations during any period if performance is delayed or rendered impracticable or impossible due to circumstances beyond that Party's reasonable control.

g) Compliance with Laws; Export Control; Government Regulations. Each Party will comply with all laws applicable to the actions contemplated by the SOW. All content, including the Consulting Services and the Technology included therein (collectively the "Materials") provided under the SOW are subject to governmental restrictions on (i) exports from the United States; (ii) exports from other countries in which the Materials may be produced or located; (iii) disclosure of Technology to non-U.S. persons; (iv) exports from abroad of products derivative of the Materials; (v) the importation and/or use of the Materials outside of the United States or other countries (collectively, "Export Laws"). Customer must comply with all Export Laws. Diversion contrary to United States law or other Exports Laws is expressly prohibited.

h) End User License Agreement. If the Consulting Services involve VMware software products licensed to Customer under a separate license agreement, unless otherwise provided in the SOW, the terms set out in the separate license agreement will apply with respect to each VMware software product.

i) Acknowledgement. Unless otherwise stated in the SOW, Customer acknowledges that the Consulting Services do not include significant production, modification or customization of VMware licensed software.

j) Waiver. Failure to enforce a provision of the SOW will not constitute a waiver.

k) Reference. VMware will not use Customer's name, logo, or project description in press releases or other marketing material without the prior written consent of Customer, and Customer agrees that consent will not be unreasonably withheld. Customer agrees to allow VMware to use its name and industry in alphabetical customer listings of VMware's customers generally, provided that no additional project information or other detail is used without Customer's written consent.

l) Counterparts. Facsimile, scanned or electronic signatures on the SOW will bind the Parties to the same extent as originals. The SOW may be executed in multiple counterparts all of which taken together shall constitute one single agreement between the Parties.

m) Severability. If any part of the SOW is held to be unenforceable, the validity of all remaining parts will not be affected.

n) Construction. The headings of sections of the SOW are for convenience and are not to be used in interpreting the SOW. As used herein, the word "including" means "including but not limited to."

o) Notices. Unless otherwise set forth in the SOW, any notice regarding the SOW or required by law must be in writing and delivered to the other Party's legal department at the address listed below via: (a) personal delivery confirmed in writing by the recipient; (b) certified mail, return receipt requested; or (c) recognized commercial courier offering confirmation of delivery. Notices will be deemed received upon the date of delivery shown by the corresponding confirmation. Either Party may change its address by notice to the other Party. All notices will be directed to Customer to the address set forth in the SOW, and to VMware as follows: VMware, Inc., 3401 Hillview Ave., Palo Alto CA 94304, Attention: Legal Department.

p) Entire Agreement. The SOW (including these General Terms & Conditions, and the Exhibits) contains the entire agreement between the Parties with respect to the subject matter of the SOW and supersedes all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether oral or written, between the Parties regarding the subject matter of the SOW. The SOW may be amended only in writing and signed by authorized representatives of both Parties. VMware rejects any additional or conflicting terms and conditions on any PO, acknowledgement or other business form issued by Customer, unless expressly otherwise agreed to by the Parties in writing.

VMWARE END USER LICENSE AGREEMENT

PLEASE NOTE THAT THE TERMS OF THIS END USER LICENSE AGREEMENT SHALL GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE.

IMPORTANT-READ CAREFULLY: BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, YOU (THE INDIVIDUAL OR LEGAL ENTITY) AGREE TO BE BOUND BY THE TERMS OF THIS END USER LICENSE AGREEMENT ("EULA"). IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MUST NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE, AND YOU MUST DELETE OR RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT WITHIN THIRTY (30) DAYS AND REQUEST A REFUND OF THE LICENSE FEE, IF ANY, THAT YOU PAID FOR THE SOFTWARE.

EVALUATION LICENSE. If You are licensing the Software for evaluation purposes, Your use of the Software is only permitted in a non-production environment and for the period limited by the License Key. Notwithstanding any other provision in this EULA, an Evaluation License of the Software is provided "AS-IS" without indemnification, support or warranty of any kind, expressed or implied.

1. DEFINITIONS.

1.1 "**Affiliate**" means, with respect to a party at a given time, an entity that then is directly or indirectly controlled by, is under common control with, or controls that party, and here "control" means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of that entity.

1.2 "**Documentation**" means that documentation that is generally provided to You by VMware with the Software, as revised by VMware from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

1.3 **"Guest Operating Systems"** means instances of third-party operating systems licensed by You, installed in a Virtual Machine and run using the Software.

1.4 "**Intellectual Property Rights**" means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

1.5 "**License**" means a license granted under Section 2.1 (General License Grant).

1.6 "**License Key**" means a serial number that enables You to activate and use the Software.

1.7 "**License Term**" means the duration of a License as specified in the Order.

1.8 "**License Type**" means the type of License applicable to the Software, as more fully described in the Order.

1.9 **"Open Source Software" or "OSS"** means software components embedded in the Software and provided under separate license terms, which can be found either in the open_source_licenses.txt file (or similar file) provided within the Software or at www.vmware.com/download/open_source.html.

1.10 "**Order**" means a purchase order, enterprise license agreement, or other ordering document issued by You to VMware or a VMware authorized reseller that references and incorporates this EULA and is accepted by VMware as set forth in Section 4 (Order).

1.11 **"Product Guide"** means the current version of the VMware Product Guide at the time of Your Order, copies of which are found at www.vmware.com/download/eula.

1.12 **"Support Services Terms"** means VMware's then-current support policies, copies of which are posted at www.vmware.com/support/policies.

1.13 **"Software"** means the VMware Tools and the VMware computer programs listed on VMware's commercial price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.

1.14 "**Territory**" means the country or countries in which You have been invoiced; provided, however, that if You have been invoiced within any of the European Economic Area member states, You may deploy the corresponding Software throughout the European Economic Area.

1.15 "**Third Party Agent**" means a third party delivering information technology services to You pursuant to a written contract with You.

1.16 **"Virtual Machine"** means a software container that can run its own operating system and execute applications like a physical machine.

1.17 "**VMware**" means VMware, Inc., a Delaware corporation, if You are purchasing Licenses or services for use in the United States and VMware International Limited, a company organized and existing under the laws of Ireland, for all other purchases.

1.18 "**VMware Tools**" means the suite of utilities and drivers, Licensed by VMware under the "VMware Tools" name, that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running in a Virtual Machine.

2. LICENSE GRANT.

2.1 **General License Grant.** VMware grants to You a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment)) license to use the Software and the Documentation during the period of the license and within the Territory, solely for Your internal business operations, and subject to the provisions of the Product Guide. Unless otherwise indicated in the Order, licenses granted to You will be perpetual, will be for use of object code only, and will commence on either delivery of the physical media or the date You are notified of availability for electronic download.

2.2 **Third Party Agents**. Under the License granted to You in Section 2.1 (General License Grant) above, You may permit Your Third Party Agents to access, use and/or operate the Software on Your behalf for the sole purpose of delivering services to You, provided that You will be fully responsible for Your Third Party Agents' compliance with terms and conditions of this EULA and any breach of this EULA by a Third Party Agent shall be deemed to be a breach by You.

2.3 **Copying Permitted.** You may copy the Software and Documentation as necessary to install and run the quantity of copies licensed, but otherwise for archival purposes only.

2.4 **Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or otherwise distribute the results of such studies to third parties as follows: (a) if with respect to VMware's Workstation or Fusion products, only if You provide a copy of Your study to benchmark@vmware.com prior to distribution; (b) if with respect to any other Software, only if VMware has reviewed and approved of the methodology, assumptions and other parameters of the study (please contact VMware at benchmark@vmware.com to request such review and approval) prior to such publication and distribution.

2.5 **VMware Tools.** You may distribute the VMware Tools to third parties solely when installed in a Guest Operating System within a Virtual Machine. You are liable for compliance by those third parties with the terms and conditions of this EULA.

2.6 **Open Source Software**. Notwithstanding anything herein to the contrary, Open Source Software is licensed to You under such OSS's own applicable license terms, which can be found in the open_source_licenses.txt file, the Documentation or as applicable, the corresponding source files for the Software available at www.vmware.com/download/open_source.html. These OSS license terms are consistent with the license granted in Section 2 (License Grant), and may contain additional rights benefiting You. The OSS license terms shall take precedence over this EULA to the extent that this EULA imposes greater restrictions on You than the applicable OSS license terms. To the extent the license for any Open Source Software requires VMware to make available to You the corresponding source code and/or modifications (the "**Source Files**"), You may obtain a copy of the applicable Source Files from VMware's website at www.vmware.com/download/open_source.html or by sending a written request, with Your name and address to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date You acquired this Software.

3. RESTRICTIONS; OWNERSHIP.

3.1 **License Restrictions.** Without VMware's prior written consent, You must not, and must not allow any third party to: (a) use Software in an application services provider, service bureau, or similar capacity for third parties, except that You may use the Software to deliver hosted services to Your Affiliates; (b) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of VMware's Software done by or on behalf of You, except as specified in Section 2.4 (Benchmarking); (c) make available Software in any form to anyone other than Your employees or contractors reasonably acceptable to VMware and require access to use Software on behalf of You in a matter permitted by this EULA, except as specified in Section 2.2 (Third Party Agents); (d) transfer or sublicense Software or Documentation to an Affiliate or any third party, except as expressly permitted in Section 12.1 (Transfers; Assignment); (e) use Software in conflict with the terms and restrictions of the Software's licensing model and other requirements specified in Product Guide and/or VMware quote; (f) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Software, or reverse engineer, decompile, or otherwise attempt to derive source code from the Software, except as specified in Section 3.2 (Decompilation); (g) remove any copyright or other proprietary notices on or in any copies of Software; or (h) violate or circumvent any technological restrictions within the Software or specified in this EULA, such as via software or services.

3.2 **Decompilation**. Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of the Territory give You the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, You must first request such information from VMware, provide all reasonably requested information to allow VMware to assess Your claim, and VMware may, in its discretion, either provide such interoperability information to You, impose reasonable conditions, including

a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that VMware's proprietary rights in the Software are protected and to reduce any adverse impact on VMware's proprietary rights.

3.3 **Ownership.** The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of VMware and its licensors. Your rights to use the Software and Documentation shall be limited to those expressly granted in this EULA and any applicable Order. No other rights with respect to the Software or any related Intellectual Property Rights are implied. You are not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this EULA or the applicable Order. VMware reserves all rights not expressly granted to You. VMware does not transfer any ownership rights in any Software.

3.4 **Guest Operating Systems.** Certain Software allows Guest Operating Systems and application programs to run on a computer system. You acknowledge that You are responsible for obtaining and complying with any licenses necessary to operate any such third-party software.

4. **ORDER.** Your Order is subject to this EULA. No Orders are binding on VMware until accepted by VMware. Orders for Software are deemed to be accepted upon VMware's delivery of the Software included in such Order. Orders issued to VMware do not have to be signed to be valid and enforceable.

5. **RECORDS AND AUDIT.** During the License Term for Software and for two (2) years after its expiration or termination, You will maintain accurate records of Your use of the Software sufficient to show compliance with the terms of this EULA. During this period, VMware will have the right to audit Your use of the Software to confirm compliance with the terms of this EULA. That audit is subject to reasonable notice by VMware and will not unreasonably interfere with Your business activities. VMware may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. You will reasonably cooperate with VMware and any third party auditor and will, without prejudice to other rights of VMware, address any non-compliance identified by the audit by promptly paying additional fees. You will promptly reimburse VMware for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Software fees payable by You for the period audited, or that You have materially failed to maintain accurate records of Software use.

6. **SUPPORT AND SUBSCRIPTION SERVICES.** Except as expressly specified in the Product Guide, VMware does not provide any support or subscription services for the Software under this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software developed by VMware unless you separately purchase VMware support or subscription services. These support or subscription services are subject to the Support Services Terms.

7. **WARRANTIES.**

7.1 **Software Warranty, Duration and Remedy.** VMware warrants to You that the Software will, for a period of ninety (90) days following notice of availability for electronic download or delivery ("**Warranty Period**"), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than VMware or its authorized representative. VMware will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to VMware by You in writing during the Warranty Period. If VMware determines that it is unable to correct the error or replace the Software, VMware will refund to You the amount paid by You for that Software, in which case the License for that Software will terminate.

7.2 **Software Disclaimer of Warranty.** OTHER THAN THE WARRANTY ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMWARE AND ITS SUPPLIERS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS EULA, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. VMWARE AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET YOUR REQUIREMENTS.

8. **INTELLECTUAL PROPERTY INDEMNIFICATION.**

8.1 **Defense and Indemnification.** Subject to the remainder of this Section 8 (Intellectual Property Indemnification), VMware shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People's Republic of China, to the extent that such countries are part of the Territory for the License ("Infringement Claim") and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if You: (i) promptly notify VMware in writing of the Infringement Claim; (ii) allow VMware sole control over the defense for the claim and any settlement negotiations; and (iii) reasonably cooperate in response to VMware requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of VMware.

8.2 **Remedies**. If the alleged infringing Software become, or in VMware's opinion be likely to become, the subject of an Infringement Claim, VMware will, at VMware's option and expense, do one of the following: (a) procure the rights necessary for You to make continued use of the affected Software; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related support services, and, upon Your certified deletion of the affected Software, refund: (i) the fees paid by You for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date such Software was delivered; and (ii) any pre-paid service fee attributable to related support services to be delivered after the date such service is stopped. Nothing in this Section 8.2 (Remedies) shall limit VMware's obligation under Section 8.1 (Defense and Indemnification) to defend and indemnify You, provided that You replace the allegedly infringing Software upon VMware's making alternate Software available to You and/or You discontinue using the allegedly infringing Software upon receiving VMware's notice terminating the affected License.

8.3 **Exclusions**. Notwithstanding the foregoing, VMware will have no obligation under this Section 8 (Intellectual Property Indemnification) or otherwise with respect to any claim based on: (a) a combination of Software with non-VMware products (other than non-VMware products that are listed on the Order and used in an unmodified form); (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer VMware version would have avoided the infringement; (d) any modification to the Software made without VMware's express written approval; (e) any claim that relates to open source software or freeware technology or any derivatives or other adaptations thereof that is not embedded by VMware into Software listed on VMware's commercial price list; or (f) any Software provided on a no charge, beta or evaluation basis. THIS SECTION 8 (INTELLECTUAL PROPERTY INDEMNIFICATION) STATES YOUR SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.

9. LIMITATION OF LIABILITY.

9.1 **Limitation of Liability.** TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL VMWARE AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. VMWARE'S AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE GREATER OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM OR $5000. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER VMWARE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

9.2 **Further Limitations**. VMware's licensors shall have no liability of any kind under this EULA and VMware's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1 (Limitation of Liability). You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.

10. TERMINATION.

10.1 **EULA Term.** The term of this EULA begins on the notice of availability for electronic download or delivery of the Software and continues until this EULA is terminated in accordance with this Section 10.

10.2 **Termination for Breach**. VMware may terminate this EULA effective immediately upon written notice to You if: (a) You fail to pay any portion of the fees under an applicable Order within ten (10) days after receiving written notice from VMware that payment is past due; or (b) You breach any other provision of this EULA and fail to cure within thirty (30) days after receipt of VMware's written notice thereof.

10.3 **Termination for Insolvency**. VMware may terminate this EULA effective immediately upon written notice to You if You: (a) terminate or suspend your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.

10.4 **Effect of Termination**. Upon VMware's termination of this EULA: (a) all Licensed rights to all Software granted to You under this EULA will immediately cease; and (b) You must cease all use of all Software, and return or certify destruction of all Software and License Keys (including copies) to VMware, and return, or if requested by VMware, destroy, any related VMware Confidential Information in Your possession or control and certify in writing to VMware that You have fully complied with these requirements. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including Sections 1 (Definitions), 2.6 (Open Source Software), 3 (Restrictions; Ownership), 5 (Records and Audit), 7.2 (Software Disclaimer of Warranty), 9 (Limitation of Liability), 10 (Termination), 11 (Confidential Information) and 12 (General).

11. CONFIDENTIAL INFORMATION.

11.1 **Definition. "Confidential Information"** means information or materials provided by one party (**"Discloser"**) to the other party ("Recipient") which are in tangible form and labelled "confidential" or the like, or, information which a reasonable person knew or should

have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) License Keys; (b) information regarding VMware's pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.

11.2 Protection. Recipient may use Confidential Information of Discloser; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties' ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by this EULA, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.

11.3 Exceptions. Recipient's obligations under Section 11.2 (Protection) with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

11.4 Data Privacy. You agree that VMware may process technical and related information about Your use of the Software which may include internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services and may transfer such information to other companies in the VMware worldwide group of companies from time to time. To the extent that this information constitutes personal data, VMware shall be the controller of such personal data. To the extent that it acts as a controller, each party shall comply at all times with its obligations under applicable data protection legislation.

12. GENERAL.

12.1 Transfers; Assignment. Except to the extent transfer may not legally be restricted or as permitted by VMware's transfer and assignment policies, in all cases following the process set forth at www.vmware.com/support/policies/licensingpolicies.html, You will not assign this EULA, any Order, or any right or obligation herein or delegate any performance without VMware's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by You will be void. VMware may use its Affiliates or other sufficiently qualified subcontractors to provide services to You, provided that VMware remains responsible to You for the performance of the services.

12.2 Notices. Any notice delivered by VMware to You under this EULA will be delivered via mail, email or fax.

12.3 Waiver. Failure to enforce a provision of this EULA will not constitute a waiver.

12.4 Severability. If any part of this EULA is held unenforceable, the validity of all remaining parts will not be affected.

12.5 Compliance with Laws; Export Control; Government Regulations. Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this EULA.

12.6 Construction. The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word 'including' means "including but not limited to".

12.7 Governing Law. This EULA is governed by the laws of the State of California, United States of America (excluding its conflict of law rules), and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in Santa Clara County, California will be the exclusive jurisdiction for disputes arising out of or in connection with this EULA. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

12.8 Third Party Rights. Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

12.9 Order of Precedence. In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Product Guide, (b) this EULA and (c) the Order. With respect to any inconsistency between this EULA and an Order, the terms of this EULA shall supersede and control over any conflicting or additional terms and conditions of any Order, acknowledgement or confirmation or other document issued by You.

12.10 Entire Agreement. This EULA, including accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.

12.11 Contact Information. Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department.