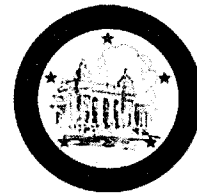


**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM: 3.6
(ID # 11864)**

MEETING DATE:

Tuesday, February 11, 2020

FROM: ASSESSOR-COUNTY-CLERK-RECORDER:

SUBJECT: ASSESSOR-COUNTY-CLERK-RECORDER: Approve the VMware Agreement, and Related Payment Plan Agreement and Payment Plan Agreement Government Rider with Dell Financial Services, L.L.C. to Obtain VMware License and Cloud Services for a Three (3) year Term through January 28, 2023, All Districts. [Total Cost: \$247,141; up to \$24,714 in additional compensation - ACR Budget – 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve VMware Agreement # 00415857 (the "Agreement") with VMware, Inc. to be used by Assessor-County-Clerk-Recorder (ACR) to procure additional subscriptions and credits for a three (3) year term through January 28, 2023 with a total cost not to exceed \$247,141 and authorize the Chairman of the Board to sign three (3) copies of the Agreement on behalf of the County;
2. Approve the Payment Plan Agreement and Payment Plan Agreement Government Rider with Dell Financial Services L.L.C. to pay fees related to the Agreement to Dell Marketing, L.P. on the County's behalf, in the total amount of \$247,141, and authorize the Chairman of the Board to sign three (3) copies of the Payment Plan Agreement and the Government Rider on behalf of the County; and

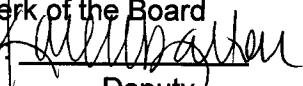
ACTION:Policy


Kan Wang, Assistant Assesor-County-Clerk Recorder 1/29/2020

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Spiegel and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: February 11, 2020
xc: ACR

Kecia R. Harper
Clerk of the Board
By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

3. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved by County Counsel to: sign amendments that exercise the options of the aforementioned agreements, including modifications of the statement of work that stay within the intent of the Agreement and sign amendments that do not increase the compensation more than 10% of the total contract amount.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 82,380	\$ 82,380	\$ 271,855	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: ACR Budget – 100%			Budget Adjustment: No	
			For Fiscal Year: 19/20 – 22/23	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

On May 7, 2019 the Board of Supervisors approved Agenda Item #: 3.20 for the agreement with Dell Marketing L.P. for VMware licensing, maintenance, support, and professional services. The current request to the Board is to purchase additional subscriptions and credits from Dell Marketing L.P./VMWare, Inc. to complete the Assessor-County-Clerk-Recorder's (ACR) initiative to establish a more robust disaster recovery infrastructure. Dell Marketing L.P. and VMWare, Inc. are entities owned by Dell Technologies, Inc. This agreement is for ACR to leverage the discounted pricing and to use \$120,000 of credits available with Dell Marketing LP to complete ACR's initiative.

Currently, ACR does not have a robust disaster recovery environment. ACR will utilize the subscriptions and credits to build a disaster recovery solution in VMware cloud that will:

- Allow ACR to achieve savings by migrating its secondary on-premise disaster recovery data center into the VMware cloud infrastructure.
- Provide ACR the flexibility to move backup data and operational systems between cloud providers, datacenters or co-location, if ACR identifies cheaper alternatives or have different disaster recovery requirements in the future.

Impact on Residents and Businesses

There is no negative impact on private residents or private businesses.

Additional Fiscal Information

The three-year reserved pricing is a longer-term subscription of services (hosts) that provides a 50% cost saving compared to On-Demand services consumed over an equivalent period. The cost is locked in for a three-year period which maximizes savings, but is paid on an annual basis, to eliminate all costs upfront.

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

The pricing summary is as follows:

Description	Payment Date March 15, 2020	Payment Date March 15, 2021	Payment Date March 15, 2022	Total
VMware license and cloud services	\$ 82,380.33	\$ 82,380.33	\$ 82,380.34	\$247,141
Additional compensation	Not to Exceed total amount			\$24,714
Total Cost	\$ 82,380.33	\$ 82,380.33	\$ 82,380.34	\$271,855

Contract History and Price Reasonableness

On May 7, 2019 (Item 3.20), the Board of Supervisors approved and authorized the Chairman to execute a three-year Enterprise License Agreement (ELA) for VMware from a bid response released in April 18, 2019, Request for Quote (RFQ) #RIVC0-2019-RFQ- 0000030 for VMware ELA. The new agreement will utilize the same pricing discounts received on the agreement approved on May 7, 2019.

ATTACHMENTS:

Attachment A: VMware Agreement #00415857

Attachment B: Dell Quote #: 3000054528283.1

Attachment C: Payment Plan Agreement Number 011-6792884-002

Attachment D: Payment Plan Agreement Government Rider Agreement Number 011-6792884-002


Misley Wang, Supervising Accountant 1/29/2020


Teresa Summers, Director of Purchasing 1/29/2020


Stephanie Peco, Principal Management Analyst 2/3/2020


Gregory H. Priamos, Director County Counsel 2/3/2020


Jim Smith, Chief Technology Officer 1/30/2020


ORDER FORM

This Order Form ("Order Form") is between Customer (as identified below) and VMware, Inc., located at 3401 Hillview Avenue, Palo Alto, CA 94304 ("VMware").

Customer Name: County of Riverside	Customer Address: 6221 Box Springs Blvd, Riverside, CA 92507-0714, UNITED STATES
Entitlement Account (EA)#: 329004189	Customer is issuing PO related to this Order Form to a VMware channel partner
Effective Date: the last indicated date of execution below	Customer Signature Return Due Date: January 31, 2020
SPP Period Commencement Date: Effective Date	SPP Period Expiration Date: 3 years following the Effective Date
Territory: The Redeemed Services will be provided from a data center in the United States.	Currency: USD

IN WITNESS WHEREOF, Customer and VMware have caused this Order Form to be signed by their duly authorized representatives.

COUNTY OF RIVERSIDE


Signature: 

Name: **V. MANUEL PEREZ**

Title: *Chairman*

Date: **FEB 11 2020**

VMware, Inc.

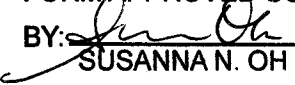
Signature: 

Name: **Luis A. Mata**

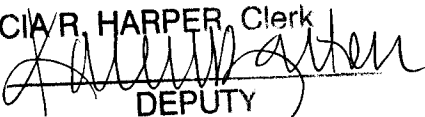
Title: **Senior Contracts Administrator**

Date: **January 14, 2020**

FORM APPROVED COUNTY COUNSEL

BY:  **SUSANNA N. OH** *2/3/2020* **DATE**

ATTEST:

KECIA R. HARPER, Clerk
By  **DEPUTY**

ORDER INFORMATION

Customer is ordering the VMware offerings listed on the Order Schedule on Exhibit A (the "Offerings").

1. SPP Credits.

a) Customer may redeem the number of SPP Credits listed on Exhibit A during the SPP Period. The "SPP Period" begins on the Effective Date and expires on the SPP Period Expiration Date. Customer can redeem SPP Credits by accessing the VMware SPP portal via My VMware located at <https://my.vmware.com/web/vmware/login>. All SPP Credits will be deemed delivered and accepted when VMware makes the SPP Credits available to Customer in the SPP Portal. Any SPP Credits that are not redeemed prior to the termination of the SPP Period will expire, and Customer will not be entitled to a refund for any unused SPP Credits. Customer's use of SPP Credits is subject to the terms of the VMware SPP Guide posted at www.vmware.com/go/spp. If there is a conflict between this Order Form and the SPP Guide, the terms of this Order Form shall govern. Any service that Customer redeems in the SPP Portal will be referred to as "Redeemed Service" for the purposes of this Order Form. Customer's use of the Redeemed Service is subject to the Terms of Service, including the Data Processing Addendum, accompanying or presented in the Service, a copy of which are attached to this ELA as Exhibits A and B for reference purposes and can be found at www.vmware.com/download/eula. Modifications to the VMware Terms of Service are detailed in Section 11 below.

b) Notwithstanding anything to the contrary in the SPP Guide or on the SPP portal, Customer may only redeem the SPP Credits purchased pursuant to this Order Form for the VMware Cloud on AWS cloud service offering (the "Eligible Service Offering").

c) As Customer redeems the SPP Credits purchased pursuant to this Order Form for the Eligible Service Offering, Customer's SPP Credit fund will be reduced by the applicable number of credits, all as more particularly specified in the SPP Guide.

2. SPP True-Up. For the purposes of this Order Form, any Service purchased pursuant to true-up SPP Credits shall also be referred to as "Redeemed Service." For any true-up SPP Credits redeemed through the SPP Portal during the Order Form Period, on or by the applicable "VMware Reporting Date" in the table below, VMware will generate a report of redeemed true-up SPP Credits for each three month period below (each a "Reporting Period"), with the first report covering the period beginning on the Effective Date through the last day of the applicable Reporting Period. If a VMware Reporting Date falls on a weekend or holiday, the VMware Reporting Date shall be the next business day.

Reporting Period	VMware Reporting Date	PO Due Date
February 1 through April 30	May 10th	May 15th
May 1 through July 31	August 10th	August 15th
August 1 through October 31	November 10th	November 15th
November 1 through January 31	February 10th	February 15th

3. SPP True-Up Payments. During the SPP Period, Customer shall issue a purchase order directly to VMware or to its preferred reseller, as applicable, for the total number of true-up SPP Credits for Redeemed Service during the applicable Reporting Period, at VMware's then-current list prices or, as applicable, as agreed upon between Customer and the preferred reseller, unless otherwise specified in this Order Form. For each Reporting Period, Customer must issue a purchase order directly to VMware or to Customer's preferred reseller by the applicable "PO Due Date" in the table above; provided, however, that if any such date falls on a weekend or holiday, Customer shall issue the purchase order on the next business day.

4. Extraordinary Corporate Transaction. Customer shall not, and shall not allow or permit any third party to, deploy, use or provide access to the Offerings for the benefit of the business of any entity which (a) becomes a part of Customer's business as a result of any merger, acquisition, consolidation, reorganization, change of control, sale of substantially all assets or other similar transaction, whether in one transaction or in a series of related transactions, or (b) purchases a part or all of Customer's business by way of divestiture, acquisition, or similar transaction.

5. Invoicing and Payment Terms. When Customer purchases any of the Offerings directly from VMware, Customer agrees to pay any invoices issued by VMware under this Order Form within 30 days of the date of the invoice. All charges and fees provided for in this Order Form shall be remitted in the currency specified in the applicable invoice and are exclusive of any taxes, duties, or similar charges imposed by any government or other authority. Customer shall pay or reimburse VMware for all federal, state, dominion, provincial, or local sales, use, personal property, withholding, excise or other taxes, fees, or duties arising out of this Order Form or the transactions contemplated by this Order Form (other than taxes on the net income of VMware). If Customer is required to pay any withholding tax, charge or levy in respect of any payments due to VMware hereunder, Customer shall gross up payments actually made such that VMware shall receive sums due hereunder in full and free of any deduction for any such withholding tax, charge or levy.

6. Customer Reference. Customer agrees that VMware may reference Customer as a customer of VMware, subject to trademark and logo usage guidelines provided by Customer.

7. Order of Precedence. The terms and conditions of this Order Form shall prevail over any additional or conflicting terms in any purchase order Customer issues to VMware or any other terms for the Offerings. Unless otherwise modified in this Order Form, any terms accompanying the

Offerings shall remain in full force. Customer hereby agrees that any purchase orders Customer issues to VMware do not have to be signed to be valid and enforceable.

8. Assignment. Customer may not assign, subcontract or transfer this Order Form and any of Customer's rights or obligations hereunder, in whole or in part, whether voluntarily, by operation of contract, law or otherwise, including by way of change of control, sale of assets, merger or consolidation without VMware's prior written consent, and any attempt by Customer to assign this Order Form without such consent shall be null and void and of no force and effect.

9. Customer Signature Return Date. Customer must sign, date and return this Order Form to VMware on or before VMware's close of business on the Customer Signature Return Date. If Customer does not sign, date and return this Order Form on or before close of business on such date, VMware shall have the option to cancel this Order Form and the terms of this Order Form shall be null and void. In addition, if applicable, Customer must issue a corresponding purchase order for this Order Form to VMware or its reseller, as applicable, by the Customer Signature Return Date, or VMware shall have the option to cancel this Order Form and the terms of this Order Form shall be null and void.

10. Counterparts. This Order Form may be executed in any number of counterparts by either handwritten or electronic signature, each of which counterparts may be delivered by emailing the other party to the Order Form a signed scanned document or electronically signed portable document format (pdf) version of the contract (as applicable). Each party agrees to the execution of this Order Form in this manner, and the parties acknowledge that execution in this manner creates a binding contract between the parties at the time of delivery of the last party's counterpart.

11. Terms of Service Modifications. The parties agree to amend the Terms of Service as follows:

a.) Section 7 ("Termination") is hereby amended by adding the following new section 7.4 and renumbering existing section 7.4 ("Effect of Termination") as section 7.5:

7.4 Termination for Convenience. At any time, you may terminate the Agreement for convenience by providing written notice to VMware. Under no circumstances will any such termination for convenience entitle you to a refund of any of the fees paid for the Service Offering. Further, you remain liable for payment of any undisputed fees that were due prior to the effective date of your notice to VMware of the termination for convenience.

b.) Section 10.2.1 ("Indemnification by VMware") is hereby deleted and replaced with the following:

Subject to the remainder of this Section 10.2, we will: (a) defend you against an Infringement Claim or a third party claim against you arising out of VMware's violation of any applicable law, rule, or regulation; and (b) indemnify you from all fines, damages, and costs finally awarded against you by a court of competent jurisdiction or a government agency, or agreed to in settlement. The foregoing obligations are applicable only if you: (i) provide us with notice of any such claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve us of our indemnification obligations only to the extent that the delay prejudices us); (ii) allow us sole control over the claim's defense; 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, conditioned, or delayed, enter into any settlement that obligates you to admit any liability or to pay any unreimbursed amounts to the claimant.

c.) Section 11.3.2 is deleted in its entirety.

d.) Section 13.1 ("Assignment") is hereby deleted in its entirety and replaced with the following:

Except to the extent transfer may not legally be restricted, you must 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. VMware may assign this the Agreement, in whole as part of a corporate reorganization, consolidation, merger, or sale of all of its assets, provided that VMware provides You with ten (10) days' prior written notice of such assignment, or if legally prohibited from providing prior notice, within 10 days after the effective date of the assignment, and You have the right to terminate the Agreement, if required by applicable law. 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.

e.) Section 13.2 ("Notices") is hereby deleted in its entirety and replaced with the following:

Any notice by us to you under the Agreement will be given: (a) by email to the email address associated with your account, if you have subscribed to this method of receiving notices, or (b) by posting on either the Service Offering portal or the My VMware portal. 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. VMware shall direct any notice from our legal department to County of Riverside - Assessor, 6221 Box Springs Blvd, Riverside, CA 92507-0714, UNITED STATES.

EXHIBIT A
Order Schedule

I. OFFERINGS

A. PURCHASING PROGRAMS.

A.1 SPP Credits.

Customer is purchasing the following SPP Credits ("Maximum SPP Credits Allowance") to redeem during the SPP Period, solely for use of the Eligible Service Offering.

MAXIMUM SPP CREDITS ALLOWANCE
2,472

Exhibit B
VMware Terms of Service



VMware Cloud Service Offerings TERMS OF SERVICE

Last updated: 19 November 2018

By using a 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 or the entity that you represent (and, as applicable, your Users). 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 Service Offering, whichever is earlier, and will remain in effect during the relevant Subscription Term or until terminated as specified in the Agreement.

1. THE SERVICE OFFERING.

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

1.2 Use of the Service Offering.

1.2.1 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.

1.2.2 You are responsible for (i) any use of the Service Offering that occurs under your Login Credentials, (ii) Your Content, and (iii) your Users' compliance with the Agreement. If you become aware of any User's or End User's violation of the Agreement you must promptly suspend that User's or End User's access to the Service Offering. If you become aware that any of Your Content, or any Third-Party Content, violates Section 3.1 ("General Restrictions") or Section 3.2 ("Content Restrictions"), you must promptly remove that Content or suspend use of that Third-Party Content. 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).

1.2.3 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. You may use that software only (a) in connection with your use of the Service Offering, (b) for the Subscription Term, and (c) in accordance with the Agreement. 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 (found [here](#)) applies.

1.2.4 If we reasonably believe a problem with the Service Offering may be attributable to Your Content or to your use of the Service Offering, you must cooperate with us to identify the source of the problem and to resolve the problem.



1.3 Monitoring. We monitor and collect configuration, performance, and usage data relating to your use of the Service Offering: (a) to facilitate delivery of the Service Offering (such as (i) tracking entitlements, (ii) providing support, (iii) monitoring the performance, integrity, and stability of the Service Offering's infrastructure, and (iv) preventing or addressing service or technical issues); and (b) to improve our products and services, and your experience. You must not interfere with that monitoring. We will not access Your Content except as necessary to provide the Service Offering, or pursuant to Section 1.9 ("Required Disclosures").

1.4 Third-Party Content. You may use Third-Party Content, at your option. If you choose to use Third-Party Content, you are responsible for complying with any terms that are presented to you when you access that Third-Party Content, including any separate fees or charges imposed by the provider of 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 and hosting of any Third-Party Content at any time, and that suspension or termination will not be deemed a material, detrimental change.

1.5 Evaluation Use. If you use any Evaluation Service, the terms of this Section 1.5 govern that use, and control over any conflicting provision of these Terms of Service. The term "Service Offering" includes an Evaluation Service in all provisions of these Terms of Service that are not in conflict with the provisions of this Section 1.5.

1.5.1 You may use an Evaluation Service only (a) for internal testing and evaluation purposes, and (b) for a period of 30 days (unless we specify otherwise) beginning on the date we provide you Login Credentials for or 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.

1.5.2 Use of an Evaluation Service may be subject to additional terms from a third-party service provider.

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

1.5.4 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.

1.5.5 The Data Processing Addendum does not apply to your use of an Evaluation Service or feature within an Evaluation Service that is not generally available to our customers.

1.5.6 You must not put production data or data regulated by law or regulation into an Evaluation Service. If you put that data into an Evaluation Service, you do so at your own risk and we will not be responsible for the consequences of that use.

1.5.7 Certain features or functionality of a Service Offering may not be available in an Evaluation Service. Providing any Evaluation Service, or any feature or functionality in an Evaluation Service, does not constitute our commitment to offer the Evaluation Service or that feature or functionality on a generally available basis.

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

1.5.9 The aggregate liability (excluding indirect damages, for which we expressly disclaim all liability) of VMware, and its affiliates and suppliers, for any claim arising from your use of an Evaluation Service will not exceed \$5,000 USD (or the equivalent in local currency).

1.6 Open Source Software.

1.6.1 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 [here](#). 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") [here](#) 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.

1.6.2 Open source software embedded in the Service Offering will not be deemed to be "Third-Party Content". All provisions in these Terms of Service applicable to the Service Offering (e.g., our warranty, liability, indemnification, and other obligations) will control as between you and VMware over any conflicting terms set forth in any open source software license otherwise applicable to that open source software.

1.7 Optional Feedback. You may provide comments and suggestions regarding a Service Offering, but you are not required to do so. If you provide comments or suggestions, we may use that feedback without restriction, and you hereby irrevocably assign to us all right, title, and interest in and to that feedback. Providing any comments and suggestions does not grant us any rights in Your Content or your intellectual property.

1.8 Modifications.

1.8.1 We may from time to time: (a) modify the Service Offering and/or the Agreement, including any Service Level Agreement, or (b) cease providing any Service Offering. Any changes will become effective on the date published or as we may notify you, but in no case less than 30 days after the date we publish notice of those changes or modifications (except for new features or functionality, which may take effect immediately). Your continued use of the Service Offering after the effective date of any change will be deemed acceptance of the modified Service Offering or terms. It is your responsibility to check the VMware website, [here](#), periodically, for modifications to the Agreement.

1.8.2 If we make a material, detrimental change to the Service Offering or the Agreement, we will notify you prior to the effective date of that change. If you elect to terminate the Agreement because of that change, you must notify us not later than 30 days after the date of our notice. If you terminate the Agreement pursuant to this Section 1.8.2, the termination will be effective as of: (a) the date we receive your notice of termination; or (b) any later date specified in your notice, provided that the effective termination date must not be more than 90 days after the date on which we receive your notice, unless you and we agree to some longer period. You will be responsible for all fees incurred prior to the effective date of any termination pursuant to this Section 1.8.2. If you terminate the Service Offering pursuant to this Section 1.8.2, we will refund any prepaid fees prorated as of the effective date of the termination. Termination and refund, as provided in this Section 1.8.2, is your sole and exclusive remedy if we make a material, detrimental change to the Service Offering or to the Agreement.

1.9 Required Disclosures. If we are required by a subpoena, court order, agency action, or any other legal or regulatory requirement to disclose any Your 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. If you request, we will, at your expense, take reasonable steps to contest any required disclosure. We will limit the scope of any disclosure to only the information we are required to disclose.

2. DATA PROTECTION AND SECURITY.

2.1 You are solely responsible for ensuring that the Service Offering and its security (a) is appropriate for Your Content and your intended use, (b) has the appropriate or required certifications for Your Content, and (c) meets all your requirements including any legal requirements that apply to you or Your Content.

2.2 You are responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity, and security of Your Content. Those steps include (a) controlling access you provide to your Users, (b) configuring the Service Offering appropriately, (c) ensuring the security of Your Content while it



is in transit to and from the Service Offering, (d) using encryption technology to protect Your Content, and (e) backing up Your Content.

2.3 You are responsible for providing any necessary notices to Users and obtaining any legally required consents from Users regarding their use of the Service Offering.

3. ACCEPTABLE USE.

3.1 General Restrictions. You must not: (a) resell or sublicense the Service Offering; or (b) use the Service Offering (i) in a way prohibited by law or that would cause you or us to be out of compliance with applicable law, (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) to host or run any applications that control or are involved in any High Risk Activities.

3.2 Content Restrictions. You must not upload into the Service Offering any Content that: (a) may create a risk of harm 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, pornographic, defamatory, infringing, or invasive of personal privacy or publicity rights; (d) contains any data that you do not have a right to upload into the Service Offering; or (e) constitutes information governed by HIPAA unless you have signed a Business Associate Agreement (as defined by HIPAA) with us. If you use the Service Offering for data regulated by law, then you are solely responsible for the consequences of that use.

3.3 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 own 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 about your use of the Service Offering pursuant to Section 1.3 ("Monitoring"). Your rights to use the Service Offering are limited to those expressly granted in the Agreement. No other rights are implied with respect to the Service Offering, any related VMware Software, or any related Intellectual Property Rights.



4.2 Ownership of Your Content. As between you and us, you retain all right, title and interest in and to Your Content and all Intellectual Property Rights in Your Content. Our rights to access and use Your 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 we accept them. Your Order will be deemed accepted when we deliver 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. If we ship a physical object in connection with the Service Offering, shipping and delivery terms are Ex Works VMware's regional fulfillment facility (INCOTERMS 2010) or as we may otherwise specify.

5.2 Direct Orders. This Section 5.2 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.

5.2.1 Invoicing and Payment.

(a) You must pay all fees you incur for use of the Service Offering. Unless you and we agree otherwise, (i) charges you incur for using the Service Offering will be governed by the applicable price list at the time of invoicing, and (ii) you must pay all charges no later than 30 days after the date of invoice. VMware will not require a purchase order to invoice you for charges you incur by your use of the Service Offering.

(b) If a Service Offering permits or requires payment through a credit card, then those payments will be subject to any additional terms presented to you by our third-party credit card payment processor, which will be the merchant of record for that transaction.

5.2.2 Taxes. Service Offering fees are exclusive of Taxes. 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 Taxes 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. TEMPORARY SUSPENSION.

6.1 Generally. We may, at our option, suspend your use of any Service Offering if: (a) you are in breach of the Agreement and do not cure that breach within 10 days after we notify you of that breach; (b) any payment is not received when due; (c) we believe that your use of the Service Offering poses a security risk to the Service Offering or to other users of the Service Offering; or (d) we suspect fraud or abuse. We will give you notice before suspending your use of the Service Offering if permitted by 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. We will suspend your access only to the Service Offering that is the subject of the issue giving rise to the suspension. We will promptly reinstate your access to the Service Offering once we have determined that the issue causing the suspension has been resolved.

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



7. TERMINATION.

7.1 Generally. You have the right to use the Service Offering during the applicable Subscription Term. You may stop using a Service Offering at any time, but you will remain liable for all fees and charges otherwise due during the applicable Subscription Term.

7.2 Termination for Cause.

7.2.1 We may, at our option, elect to terminate the Agreement effective immediately upon written notice to you (i) if we have the right to suspend under Section 6.1 ("Temporary Suspension; Generally") or (ii) to comply with applicable law.

7.2.2 Subject to Section 7.2.1, either you or we may terminate the 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 the Agreement that cannot be cured, or (c) terminates or suspends its business.

7.2.3 If you terminate the Agreement pursuant to Section 7.2.2, we will refund any prepaid Service Offering fees prorated as of the effective date of the termination.

7.3 Termination for Insolvency. Either you or we may terminate the Agreement effective immediately upon sending the other party 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.

7.4 Effect of Termination.

7.4.1 Upon termination of the Agreement for any reason: (a) you must stop using the Service Offering, and (b) you must return or, if we request, destroy, any Confidential Information of VMware or our suppliers in your possession or under your control (other than information that must be retained pursuant to law). Deletion of any 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 Your Content prior to the effective date of any termination.

7.4.2 Any provision that, by its nature and context is intended to survive termination or expiration of the 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.

7.4.3 Except to the extent you or we are permitted to terminate the Agreement pursuant to Sections 1.8 ("Modifications"), 7.2 ("Termination for Cause"), or 10.2 ("Indemnification by VMware"), any 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 termination date. If we terminate the Agreement prior to expiration of a Subscription Term pursuant to Section 7.2, you will be liable for all fees due with respect to the Service Offering for the remainder of the then-current Subscription Term.

8. SUPPORT. We will provide support to you for the Service Offering in accordance with the applicable Support Policy, and as specified in the applicable Service Description. We will not provide support for Your Content to your End Users.

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, during the Subscription Term, provided that the Service Offering has at all times been used in accordance with the Agreement. If we fail to meet this limited warranty, your sole and exclusive remedy for that failure is as specified in the Service Level Agreement.



9.2 Disclaimer. OTHER THAN THE LIMITED WARRANTY SET FORTH IN SECTION 9.1, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE, FOR OURSELVES AND ON BEHALF OF OUR SUPPLIERS, DISCLAIM ALL WARRANTIES, 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, RELATING TO THE SERVICE OFFERING AND TO ALL MATERIALS OR SERVICES PROVIDED TO YOU UNDER THE AGREEMENT, INCLUDING ANY THIRD-PARTY CONTENT. 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.

10. INDEMNIFICATION.

10.1 Indemnification by You. Subject to the remainder of this Section 10.1, you will (a) defend us against any Third-Party Claim; and (b) indemnify us from all fines, damages, and other costs finally awarded by a court of competent jurisdiction or a government agency, or agreed to in settlement. We will: (i) provide you with notice of any Third-Party Claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve you of your indemnification obligations only to the extent that the delay prejudices you), and (ii) reasonably cooperate in response to your requests for assistance. You will have sole control over the defense of any Third-Party Claim. You may not, without our prior written consent, which will not be unreasonably withheld, conditioned, or delayed, settle any Third-Party Claim if that settlement obligates us to admit any liability or to pay any unreimbursed amounts to the claimant, or would affect any Service Offering or our business practices or policies.

10.2 Indemnification by VMware.

10.2.1 Subject to the remainder of this Section 10.2, we will: (a) defend you against any Infringement Claim; and (b) indemnify you from all fines, damages, and costs finally awarded against you by a court of competent jurisdiction or a government agency, or agreed to in settlement. The foregoing obligations are applicable only if you: (i) provide us with notice of any Infringement Claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve us of our indemnification obligations only to the extent that the delay prejudices us); (ii) allow us sole control over the claim's defense; 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, conditioned, or delayed, enter into any settlement that obligates you to admit any liability or to pay any unreimbursed amounts to the claimant.

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 without materially reducing its functionality; 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 of Your 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; (d) any claim that relates to open source software or freeware technology or any derivative or other adaptation thereof that is not embedded by VMware into the VMware Software; or (e) any Service Offering provided on a no-charge basis.

10.2.4 This Section 10.2 states your sole and 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 BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE OF THE SERVICE OFFERING, OR LOSS OF ANY CONTENT FOR ANY REASON INCLUDING POWER OUTAGES, SYSTEM 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 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. THE LIMITATION OF LIABILITY IN THIS SECTION 11.2 WILL NOT APPLY TO (i) VMWARE'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10.2.1 OF THESE TERMS OF SERVICE OR (ii) ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY 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. Our liability with respect to any Third-Party Content used or made available as part of a Service Offering is subject to this Section 11.

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 the discloser's 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 1.9 ("Required 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.

12.3 Injunctive Relief. Nothing in the Agreement limits either party's ability to seek equitable relief.



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. 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, if you have subscribed to this method of receiving notices, or (b) by posting on either the Service Offering portal or the My VMware portal. 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. You and we must each comply with all laws applicable to the actions contemplated by the Agreement.

13.6 Export Control. 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 promptly 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 13.12 ("Order of Precedence").

13.7 Force Majeure. Neither you nor VMware 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 your or our 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.



13.8 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”.

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

13.10 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, subject to the modifications set forth in Section 15, below. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

13.11 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 the Agreement.

13.12 Independent Parties. We and you are independent contracting parties, and the Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship between us. Neither you nor VMware, nor any of our respective affiliates, officers, directors, or employees, is an agent of the other for any purpose or has the authority to bind the other.

13.13 Order of Precedence. The terms of the Agreement will supersede any conflicting or additional terms and conditions of any purchase order or other purchasing-related document issued by you relating to any Order for the Service Offering. Unless provided otherwise, if there is a conflict between the provisions of these Terms of Service and any other document constituting the Agreement, these Terms of Service will control.

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

14. DEFINITIONS.

“**Account Information**” means information about you that you provide to us in connection with creation or administration of your account, including names, usernames, phone numbers, email addresses, and billing information associated with your account.

“**Confidential Information**” means your Login Credentials, and any non-public technical, business, or other information or materials disclosed or otherwise made available by either you or us to the other party regarding 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. Your Confidential Information does not, for purposes of the Agreement, include Your Content. If you disclose Your Content to us or if we access Your Content as permitted by the Agreement, including for purposes of providing support to you, we will use the same standard of care with respect to that data as we use to protect our own Confidential Information.

“**Content**” means any data, including all text, sound, video, or image files, and software (including machine images).

“**Data Processing Addendum**” means the then-current version of the VMware Data Processing Addendum, found [here](#)

“**End User**” means a user of a Service Offering who is not your employee, or onsite contractor or agent. End Users include your customers (e.g., persons to whom you provide a service, and with whom you are in a commercial contractual relationship).

“**Evaluation Service**” means any Service Offering, or a feature or functionality of a Service Offering, that we offer on an evaluation basis. If you are participating in a separate VMware beta program, then the terms of that program will apply.



"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.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented, and the regulations issued pursuant to that Act.

"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 that third party, or misappropriates a trade secret of that 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 that your instance of the Service Offering is provisioned in a data center located in the applicable country (e.g., the laws of Japan would control regarding an Infringement Claim based on a Service Offering instance provisioned in a data center located in Japan).

"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.

"Law" includes any statute, ordinance, regulation, or governmental requirement, order, or decree.

"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.

"Service Description" means the then-current version of the Service Description for the particular Service Offering, found [here](#)

"Service Level Agreement" means the then-current version of the Service Level Agreement for the particular Service Offering, found [here](#). Certain Service 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" includes an Evaluation Service.

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

"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: (i) the date on which you start using the Service Offering or (ii) 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 specified in the applicable Service Description.

"Support Policy" means the then-current version of the Support Policy for the particular Service Offering, found [here](#).

"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.



“Third-Party Claim” means any third-party claim or demand arising from or relating to (i) Your Content, or (ii) your use of any Service Offering, including an Evaluation Service, in violation of the Agreement.

“Third-Party Content” means Content provided by a third party, that interoperates with the Service Offering, including open source software, but that is not embedded in or required for use of the Service Offering. As an example, Third-Party Content may include an application that is listed on a marketplace or in a catalog.

“User” means any person who is authorized to access or use the Service Offering or Your Content directly under your Login Credentials, and may include your employees, contractors, service providers, and other third parties, but does not include your End Users.

“Your Content” means Content uploaded into the Service Offering for processing, storage or hosting, by you or by any User, but does not include (i) Third-Party Content, (ii) Account Information, or (iii) data we collect as specified in Section 1.3 (“Monitoring”).

“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 13.10 (“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 7.3 (“Termination for Insolvency”) with the following:

“7.3 [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.”

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 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."

15.3 Germany:

15.3.1 Replace the last sentence of Section 1.4 ("Third-Party Content") with the following sentence:

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

15.3.2 In Section 1.5.4 ("Evaluation 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 7.3 ("Termination for Insolvency") with the following:

"7.3 [Reserved]"

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

9. Limited Warranty.

9.1 Qualities. During the Subscription 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 Japan:

15.4.1 Replace the first sentence of Section 13.10 ("Governing Law") with the following:

"The Agreement is governed by the laws of Japan, without regard to conflict of law principles. The Tokyo District Court will have jurisdiction over any claim under the Agreement."

15.5 United Kingdom:

15.5.1 Replace the last sentence in Section 1.4 ("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 only upon 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."

15.5.2 Supplement Section 7.3 ("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."

15.5.3 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'."

15.5.4 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."

15.5.5 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."



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 or a juridical body 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 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 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.

"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."

16.2 Add the following as a new fourth sentence in Section 1.2. ("Use of the Service Offering"):

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

16.3 Add the following to the end of Section 1.4 ("Third-Party Content"):

"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 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."

16.5 Add the following to the end of Section 5.2.2 ("Taxes"):

"This Section 5.2.2 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."

16.6 Add the following at the beginning of the first sentence of Section 6.1 ("Temporary 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, ..."



16.7 Replace Section 7.2.1 ("Termination for Cause") with the following:

"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."

16.8 Replace Section 7.2.2 ("Termination for Cause") with the following:

"You may terminate the Agreement effective immediately upon written notice to VMware if we (a) commit a breach of the Agreement and fails to cure within 30 days of notice of the breach, or (b) commit a material breach of the Agreement that cannot be cured, or (c) terminate or suspend our business."

16.9 Replace Section 7.3 ("Termination for Insolvency") with the following:

7.3 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."

16.10 Replace the first sentence of Section 7.4.1 ("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."

16.11 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."

16.12 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."

16.13 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 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



must 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."

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

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

16.15 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)."

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

"Except to the extent transfer may not legally be restricted, you must 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 must 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."

16.17 Replace Section 13.10 ("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."

16.18 Add the following to the end of Section 13.11 ("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."

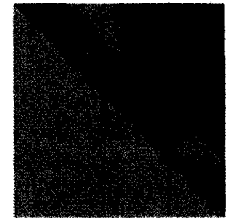
16.19 Replace Section 13.13 ("Order of Precedence") with the following:

"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."

16.20 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."

Exhibit C
Data Processing Addendum



DATA PROCESSING ADDENDUM

This Data Processing Addendum (“DPA”) forms part of the Agreement between the party identified in the Agreement (“Customer”) and VMware, and applies to the extent that (i) VMware processes Personal Data on behalf of Customer in the course of providing Services and (ii) the Agreement expressly incorporates this DPA by reference. This DPA does not apply where VMware is the Controller. All capitalized terms not defined in this DPA will have the meanings set forth in the Agreement.

1. DEFINITIONS.

1.1 “Agreement” means the written or electronic agreement between Customer and VMware for the provision of the Services to Customer.

1.2 “Controller” means an entity that determines the purposes and means of the processing of Personal Data.

1.3 “Data Protection Law” means all data protection and privacy laws applicable to the processing of Personal Data under the Agreement.

1.4 “GDPR” means Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data (General Data Protection Regulation).

1.5 “Personal Data” means any information relating to an identified or identifiable natural person contained within Customer’s Content as defined in the Agreement.

1.6 “Personal Data Breach” means a breach of security of the Services leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data.

1.7 “Processor” means an entity that processes Personal Data on behalf of a Controller.

1.8 “Services” means any cloud service offering or customer support services provided by VMware to Customer pursuant to the Agreement.

1.9 “Sub-processor” means any Processor engaged by VMware or any member of its group of companies that processes Personal Data pursuant to the Agreement. Sub-processors may include third parties or any member of VMware’s group of companies.

2. PROCESSING.

2.1 Role of the Parties. As between VMware and Customer, VMware will process Personal Data under the Agreement only as a Processor acting on behalf of the Customer. Customer may act either as a Controller or as a Processor with respect to Personal Data.

2.2 Customer Processing of Personal Data. Customer will, in its use of the Services, comply with its obligations under Data Protection Law in respect of its processing of Personal Data and any processing instructions it issues to VMware. Customer represents that it has all rights and authorizations necessary for VMware to process Personal Data pursuant to the Agreement.

2.3 VMware Processing of Personal Data. VMware will comply with its processor obligations under Data Protection Law and will process Personal Data in accordance with Customer’s documented instructions. Customer agrees that the Agreement is its complete and final instructions to VMware in relation to the processing of Personal Data. Processing any Personal Data outside the scope of the Agreement will require prior written agreement



between VMware and Customer by way of written amendment to the Agreement, and will include any additional fees that may be payable by Customer to VMware for carrying out such instructions. Upon notice in writing, Customer may terminate the Agreement if VMware declines to follow Customer's reasonable instructions that are outside the scope of, or changed from, those given or agreed to in the Agreement, to the extent such instructions are necessary to enable Customer to comply with Data Protection Laws.

2.4 Processing of Personal Data Details.

2.4.1 Subject matter. The subject matter of the processing under the Agreement is the Personal Data.

2.4.2 Duration. The duration of the processing under the Agreement is determined by Customer and as set forth in the Agreement.

2.4.3 Purpose. The purpose of the processing under the Agreement is the provision of the Services by VMware to Customer as specified in the Agreement.

2.4.4 Nature of the processing. VMware and/or its Sub-processors are providing Services or fulfilling contractual obligations to Customer as described in the Agreement. These Services may include the processing of Personal Data by VMware and/or its Sub-processors on systems that may contain Personal Data.

2.4.5 Categories of data subjects. Customer determines the data subjects which may include Customer's end users, employees, contractors, suppliers, and other third parties.

2.4.6 Categories of data. Personal Data that Customer submits to the Services.

3. SUBPROCESSING.

3.1 Use of Sub-Processors. VMware engages Sub-processors to provide certain services on its behalf. Customer consents to VMware engaging Sub-processors to process Personal Data under the Agreement. VMware will be responsible for any acts, errors, or omissions of its Sub-processors that cause VMware to breach any of VMware's obligations under this DPA.

3.2 Obligations. VMware will enter into an agreement with each Sub-processor that obligates the Sub-processor to process the Personal Data in a manner substantially similar to the standards set forth in the DPA, and at a minimum, at the level of data protection required by Data Protection Law (to the extent applicable to the services provided by the Sub-processor).

3.3 Notice. VMware will provide a list of Sub-processors that it engages to process Personal Data upon written request by Customer or as otherwise made available by VMware on its website.

3.4 Changes to Sub-processors. VMware agrees (i) to provide prior notice to Customer of any new engagement of a Sub-processor to process Personal Data if the Customer has subscribed to receive notification via the mechanisms that VMware provides for the specific Service; and (ii) if Customer objects to a new Sub-processor on reasonable data protection grounds within ten (10) days of receiving the notice, to discuss with Customer those concerns in good faith with a view to achieving resolution.

4. SECURITY MEASURES.

4.1 Security Measures by VMware. VMware will implement and maintain appropriate technical and organizational security measures to protect against Personal Data Breaches and to preserve the security and confidentiality of Personal Data processed by VMware on behalf of Customer in the provision of the Services ("**Security Measures**"). The Security Measures are subject to technical progress and development. VMware may update or modify



the Security Measures from time to time provided that any updates and modifications do not result in material degradation of the overall security of the Services purchased by the Customer.

4.2 Security Measures by Customer. Customer is responsible for using and configuring the Services in a manner that enables Customer to comply with Data Protection Laws, including implementing appropriate technical and organizational measures.

4.3 Personnel. VMware restricts its personnel from processing Personal Data without authorization (unless required to so by applicable law) and will ensure that any person authorized by VMware to process Personal Data is subject to an obligation of confidentiality.

4.4 Prohibited Data. Customer acknowledges and agrees that the Agreement may prohibit the submission of certain types of Personal Data (such as an individual's financial or health information) to the Services. Customer must not submit to the Services any Personal Data which is regulated by the United States Health Insurance Portability and Accountability Act unless Customer has entered into a business associate agreement with VMware.

5. PERSONAL DATA BREACH RESPONSE.

Upon becoming aware of a Personal Data Breach, VMware will notify Customer without undue delay and will provide information relating to the Personal Data Breach as reasonably requested by Customer. VMware will use reasonable endeavors to assist Customer in mitigating, where possible, the adverse effects of any Personal Data Breach.

6. AUDIT REPORTS.

VMware (or third parties engaged by VMware) audits its compliance against data protection and information security standards on a regular basis. The specific audits, and the data protection and information security certifications VMware has achieved, will necessarily vary depending upon the nature of the Services in question. Upon Customer's written request, and subject to obligations of confidentiality, VMware will make available to Customer a summary of its most recent relevant audit report and/or other documentation reasonably required by Customer which VMware makes generally available to its customers, so that Customer can verify VMware's compliance with this DPA.

7. DATA TRANSFERS AND EXPORTS.

7.1 Data Transfers. VMware may transfer and process Personal Data to and in other locations around the world where VMware or its Sub-processors maintain data processing operations as necessary to provide the Services as set forth in the Agreement.

7.2 Data Transfers from the EEA and Switzerland. The parties acknowledge that VMware has achieved Binding Corporate Rules ("BCR") approval for Personal Data that it processes as a Processor. A copy of VMware's BCR is available at <https://www.vmware.com/help/privacy/binding-corporate-rules.html> and evidence of VMware's approval is available on the European Commission's website at http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=613841. VMware will process all European Economic Area (including the UK) or Switzerland Personal Data transferred to it for processing under this DPA in accordance with its BCR, including when such Personal Data is processed outside of the European Economic Area by VMware, any member of its group of companies, or any external Sub-processor appointed by VMware.

8. DELETION OF DATA.

Following expiration or termination of the Agreement, VMware will delete or return to Customer all Personal Data in VMware's possession as set forth in the Agreement except to the extent VMware is required by applicable law to retain some or all of the Personal Data (in which case VMware will archive the data and implement reasonable measures to prevent the Personal Data from any further processing). The terms of this DPA will continue to apply to that retained Personal Data.



9. COOPERATION.

9.1 Data Protection Requests. If VMware receives any requests from individuals or applicable data protection authorities relating to the processing of Personal Data under the Agreement, including requests from individuals seeking to exercise their rights under Data Protection Law, VMware will promptly redirect the request to the Customer. VMware will not respond to such communication directly without Customer's prior authorization, unless legally compelled to do so. If VMware is required to respond to such a request, VMware will promptly notify Customer and provide Customer with a copy of the request, unless legally prohibited from doing so.

9.2 Customer Requests. VMware will reasonably cooperate with Customer, at Customer's expense, to permit Customer to respond to any requests from individuals or applicable data protection authorities relating to the processing of Personal Data under the Agreement to the extent that Customer is unable to access the relevant Personal Data in their use of the Services.

9.3 DPIAs and Prior Consultations. To the extent required by Data Protection Law, VMware will, upon reasonable notice and at Customer's expense, provide reasonably requested information regarding the Services to enable Customer to carry out data protection impact assessments ("DPIAs") and/or prior consultations with data protection authorities.

9.4 Legal Disclosure Requests. If VMware receives a legally binding request for the disclosure of Personal Data which is subject to this DPA, such request will be dealt with in accordance with the Agreement.

10. GENERAL.

10.1 Relationship with Agreement. Any claims brought under this DPA will be subject to the terms and conditions of the Agreement, including the exclusions and limitations set forth in the Agreement.

10.2 Conflicts. In the event of any conflict between this DPA and any privacy-related provisions in the Agreement, the terms of this DPA will prevail.

10.3 Modification and Supplementation. VMware may modify the terms of this DPA as provided in the Agreement, in circumstances such as (i) if required to do so by a supervisory authority or other government or regulatory entity, (ii) if necessary to comply with Data Protection Law, or (iii) to implement or adhere to standard contractual clauses, approved codes of conduct or certifications, binding corporate rules, or other compliance mechanisms, which may be permitted under Data Protection Law. Supplemental terms may be added as an Annex or Appendix to this DPA where such terms only apply to the processing of Personal Data under the Data Protection Law of specific countries or jurisdictions. VMware will provide notice of such changes to Customer, and the modified DPA will become effective, in accordance with the terms of the Agreement or as otherwise provided on VMware's website if not specified in the Agreement.



PAYMENT PLAN AGREEMENT

Customer: Riverside, County of
Address: 2724 Gateway Dr
Riverside, CA 92507

Billing Contact: Ofelia Acosta
Billing Address: 2724 Gateway Dr
Riverside, CA 92507

Software Licensor: One Dell Way, Round Rock, TX 78682
Vendor: Dell Marketing LP

Products Included: Software and services as described in VMware ELA Agreement # 00415857 as described in Dell Quote # 3000054528283.1

This Payment Plan Agreement ("PPA") is made effective as of 01/28/2020 between the Customer named above ("Customer") and Dell Financial Services L.L.C. ("Payee") pursuant to the following: Customer and the Software Licensor and/or Vendor have entered into a License Agreement and/or any Sale Agreement applicable (such agreement and any addenda, amendments, and schedules attached thereto, are collectively referred to as the "Agreement"), in connection with the licensing of certain software products ("Licensed Software"), and services to Customer. Pursuant to the Agreement, Customer is obligated to pay Vendor the total fees described below ("Fees"). Payee and Customer have agreed that instead of Customer paying the Fees as described in the Agreement, Customer shall pay Payee installment payments ("Payment Amounts") as set forth in the Payment Schedule below and Payee shall pay the Vendor on Customer's behalf.

1. FEES: The Fees set forth in the Agreement consist of \$ 247,141.00 in Licensed Software and services. Customer hereby agrees to pay the Payment Amounts to Payee on an installment basis in accordance with the Payment Schedule set forth below.

2. PAYMENT SCHEDULE: Customer shall pay the Payment Amounts in accordance with the schedule ("Payment Schedule") listed below, stated right after "6. MISCELLANEOUS", with each Payment Amount due and payable on the date indicated ("Due Date"). Customer shall remit Payment Amounts to the address noted in the invoice from Payee.

3. OBLIGATIONS ABSOLUTE: Customer acknowledges that upon receipt of the Licensed Software it shall be conclusively deemed accepted, and upon Customer's execution of this PPA, Customer acknowledges that (i) it has selected the Software based on its own judgment and (ii) Payee is entering into this PPA as an accommodation to Customer, and the Agreement, including all obligations, rights and remedies hereunder are separate and distinct from this PPA and any remedies which Customer may have, at law or in equity, against Vendor or Software Licensor shall be made independently and without regard to this PPA and Customer's obligations hereunder, and (iii) Customer's obligation to remit Payment Amounts to Payee, in accordance with the Payment Schedule set forth above shall be absolute, unconditional, non-cancelable, and nonrefundable, and shall not be subject to any abatement, set-off, claim, counterclaim, adjustment, reduction, or defense that Customer may have arising out of or relating to the Agreement, the Licensed Software or otherwise for any reason whatsoever, including, but not limited to termination of the Agreement or any change in, update to or transfer of the Licensed Software. If full payment of each Payment Amount and other amounts due and payable is not received by Payee within 10 days of the Due Date set forth above, Customer agrees to pay to Payee interest on the overdue amount at the lesser of 1.5% per month or the maximum rate allowed by applicable law.

4. ASSIGNMENT; WAIVER OF DEFENSES: Customer hereby consents to Payee's assignment of Payee's rights and interests in and to all or a portion of the Payment Amounts set forth above to a third party ("Assignee"). Customer shall not transfer or assign any of Customer's rights or obligations under this PPA without Payee's prior written consent. Customer agrees that neither Payee nor any Assignee shall assume any of Vendor's or Software Licensor's obligations to Customer under the Agreement, and further, expressly waives, as against Payee and any Assignee, any rights Customer may have or claim related to any matter whatsoever including, without limitation, the design or condition of the Licensed Software, its merchantability or its fitness or capacity or durability for any particular purpose, the quality of the material or workmanship of the Licensed Software or conformity of the Licensed Software to the provisions and specifications of any purchase order or orders relating thereto, and Customer expressly disclaims the same, and, as to Payee and any Assignee, Customer accepts the Licensed Software "AS IS". Payee and any Assignee shall have no liability to Customer for any claim, loss or damage caused or alleged to be caused directly, indirectly, incidentally or consequentially by the Licensed Software, or by any inadequacy thereof or deficiency or defect therein, by any incident whatsoever in connection therewith, arising in strict liability, negligence or otherwise. Customer acknowledges that Customer ordered the Licensed Software from Vendor, and that Customer may have rights under the Agreement and may be entitled to the benefit of warranties provided by Vendor or Software Licensor, and that



Customer has received an accurate and complete description of any such rights including any disclaimers or limitations on them or of the remedies thereunder, and Customer shall make any claims under the Agreement solely and directly against Vendor or Software Licensor, but shall nevertheless pay Payee and any Assignee all amounts due and payable under this PPA.

5. DEFAULT, RIGHTS AND REMEDIES: In the event (a) Customer fails to pay, when due, any Payment Amount on the Due Date set forth above, and such failure shall continue for a period of fifteen (15) days; (b) Customer materially breaches any other contract with Payee or (c) Customer materially breaches or terminates the Agreement (any of (a), (b) or (c) above, a "Default"), then any and all Payment Amounts and all other amounts due hereunder and scheduled to become due hereunder shall become Immediately due and payable by Customer, without demand or notice, and Vendor or Software Licensor may terminate (upon notification by Payee of Default) all of Customer's rights to use of the Licensed Software and related services. After the occurrence of a Default hereunder by Customer, Customer agrees to immediately cease using the Licensed Software, to de-install and delete all copies of Licensed Software from any computer systems owned or controlled by Customer or used for Customer's benefit. Customer further agrees to provide a certificate signed by a Customer officer who is responsible for Customer's information systems attesting to such cessation of use and maintenance, de-installation and deletion of Licensed Software. In the event Payee shall institute any action for the enforcement of the collection of the Payment Amounts, there shall be immediately due from Customer, in addition to the unpaid Payment Amounts, all costs and expenses of such action, including reasonable attorneys' fees. No failure or delay on the part of Payee to exercise any right or remedy hereunder shall operate as a waiver thereof. All remedies are cumulative and not exclusive.

6. MISCELLANEOUS: This PPA constitutes the entire agreement regarding the subject matter herein between Customer and Payee and shall supersede any inconsistent terms set forth in the Agreement and all prior oral and written understandings. No term or provision of this PPA may be amended except by a written instrument signed by both Payee and Customer; provided that the parties agree that this PPA may be amended by written notice from Payee to Customer to adjust the related Payment Amount (any increase up to 15% or any decrease) caused by any change to the Sale Agreement. No part of this PPA is intended to permit or provide for payment of any amount in excess of lawful amounts. In the event any unlawful excess is collected, Payee shall apply such excess as credit or otherwise refund it to Customer, and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent (if any) that this PPA constitutes chattel paper under the Uniform Commercial Code, the authoritative copy of this PPA shall be the copy designated by Payee from time to time, as the copy available for access and review by Customer and Payee. All other copies are copies of the authoritative copy. In the event of inadvertent destruction of the authoritative copy, the authoritative copy may be restored from a backup, and the restored copy shall become the authoritative copy. This PPA shall be governed by the laws of Texas and shall be deemed executed in this state as of the effective date set forth above. Any legal action related to this PPA must be brought in Williamson County, Texas. **EACH PARTY WAIVES ANY OBJECTION TO SUCH JURISDICTION AS WELL AS ITS RIGHT TO A TRIAL BY JURY.**

\$ 82,380.33 due 03/15/2020
\$ 82,380.34 due 03/15/2022

\$ 82,380.33 due 03/15/2021

(not including applicable tax)

Customer shall remit Payment Amounts to the address noted in the invoice from Payee.

Customer: Riverside, County of

By: V. Manuel Perez

Name: V. Manuel Perez

Title: Chairman, Board of Supervisors

Date: FEB 11 2020

Payee: Dell Financial Services L.L.C.

By: Kim Vodicka

Name: Kim Vodicka, Vice President

Title: Kim Vodicka, Vice President

FORM APPROVED COUNTY COUNSEL

BY: Susanna N. OH 2/3/2020 DATE

ATTEST:

KEGIA R. HARPER, Clerk

By: [Signature]
DEPUTY



PAYMENT PLAN AGREEMENT GOVERNMENT RIDER

This Rider supplements the provisions of Payment Plan Agreement No. 011-6792884-002 ("PPA") between Customer and Payee as identified below. This Rider is an integral part of the PPA. Capitalized terms used in this Rider that are not defined will have the meanings specified in the PPA. If there is any conflict between the PPA and this Rider, then this Rider will control and prevail.

1. **Funding Intent:** Customer reasonably believes that sufficient funds can be obtained to make all Payment Amounts and other costs or fees during the PPA Term. Customer agrees that Customer's Chief Executive or Administrative Officer (or administrative officer that has the responsibility of preparing the budget submitted to Customer's governing body, as applicable) will provide appropriate funding for such payments in Customer's annual budget request submitted to its governing body. If Customer's governing body chooses not to appropriate funds for such payments, Customer agrees that its governing body will evidence such nonappropriation by omitting funds for such payments due during the applicable fiscal period from the budget that it adopts. Payee agrees that Customer's obligation to make Payment Amounts under the PPA will be a current expense and will not be interpreted to be a debt in violation of applicable law or constitutional limitations or requirements. Nothing contained in the PPA will be interpreted as a pledge of Customer's general tax revenues, funds or monies.

2. **Nonappropriations of Funds:** If (a) sufficient funds are not budgeted or appropriated and budgeted by Customer's governing body in any fiscal period for Payment Amounts or other costs and fees and (b) Customer has exhausted all funds legally available for such Payment Amounts or other costs and fees due under the PPA, then Customer will give Payee reasonable written notice and the PPA will terminate as of the last day of Customer's fiscal period for which funds for Payment Amounts are available. Such termination is without any expense or penalty, except for the portions of the Payment Amounts and those expenses associated with Customer's cessation of use and maintenance, de-installation and deletion of Licensed Software, and certification thereof, in accordance with paragraph 5 of the PPA for which funds have been budgeted or appropriated or are otherwise legally available.

3. **Essential Use:** Customer represents that the use of the Licensed Software is essential to Customer's proper, efficient and economic operation and that Customer shall be the only entity to operate and use the Licensed Software.

4. **Choice of Law:** Regardless of any conflicting provision in the PPA, THE PPA WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH CUSTOMER IS LOCATED.

5. **Authority and Authorization:** Customer represents and agrees that: (a) Customer is a state or a political subdivision or agency of a state; (b) the entering into and performance of the PPA is authorized under Customer's state laws and Constitution and does not violate or contradict any judgment, law, order or regulation, or cause any default under any agreement to which Customer is a party; (c) Customer has complied with all public bidding requirements, if applicable, and, where necessary, has properly presented the PPA for approval and adoption as a valid obligation on Customer's part; and (d) Customer has sufficient appropriated funds or other monies available to pay all amounts due under the PPA for Customer's current fiscal period. Upon Payee's request, Customer agrees to provide us with an opinion of counsel as to clauses (a) through (d) above, an incumbency or municipal certificate, and other documents that Payee requests in a form satisfactory to Payee.

ATTEST:
KEGIA R. HARPER, Clerk
BY: [Signature]
DEPUTY

FORM APPROVED COUNTY COUNSEL
BY: [Signature]
DATE: 2/3/2020
SUSANNA N. OH

Customer: Riverside, County of
By: [Signature]
Name and Title: V. Manuel Perez/Chairman, Board of Supervisors
Date: 2/11/2020

Payee: Dell Financial Services, L.L.C.
By: [Signature]
Name and Title: Kim Vodicka, Vice President
Date: January 28, 2020

CERTIFICATION

I, Charles Dick, a resident of Riverside, in the State of CA, DO HEREBY CERTIFY that I am the Fiscal Manager of the Customer identified above, which is a educational, state or political subdivision or agency, duly organized and under the laws of the State of California, that I have custody of the records of the Customer, and, as of the date set forth below, V. Manuel Perez is the Board of Supervisors of Customer and is duly authorized to execute and deliver in the name of and on behalf of Customer, the PPA (including this Rider) and all related documents.

IN WITNESS WHEREOF, I have hereto set my hand and affixed this seal of Customer this 30 day of January, 2020

-seal-

Certifier's Signature: [Signature]

A quote for your consideration.

Based on your business needs, we put the following quote together to help with your purchase decision. Below is a detailed summary of the quote we've created to help you with your purchase decision.

To proceed with this quote, you may respond to this email, order online through your **Premier page**, or, if you do not have Premier, use this **Quote to Order**.

Quote No.	3000054528283.1	Sales Rep	Callie Kelley
Total	\$247,141.00	Phone	(800) 456-3355, 7289360
Customer #	4585362	Email	Callie_Kelley@Dell.com
Quoted On	Jan. 28, 2020	Billing To	OFELIA ACOSTA
Expires by	Feb. 20, 2020		COUNTY OF RIVERSIDE
			2724 GATEWAY DR
			RIVERSIDE, CA 92507-0924

Message from your Sales Rep

Please contact your Dell sales representative if you have any questions or when you're ready to place an order. Thank you for shopping with Dell!

Regards,
Callie Kelley

Shipping Group

Shipping To	Shipping Method
OFELIA ACOSTA COUNTY OF RIVERSIDE 2724 GATEWAY DR RIVERSIDE, CA 92507-0924 (951) 955-6969	Standard Delivery

Product	Unit Price	Qty	Subtotal
DTA VMWARE ELAQ759001COUNTY RIVERSIDE MUST USE QTY 1 LIC	\$247,141.00	1	\$247,141.00

Subtotal:	\$247,141.00
Shipping:	\$0.00
Non-Taxable Amount:	\$247,141.00
Taxable Amount:	\$0.00
Estimated Tax:	\$0.00

Total:	\$247,141.00
---------------	---------------------

Special lease pricing may be available for qualified customers and offers. Please contact your DFS Sales Representative for details.

Shipping Group Details

Shipping To

OFELIA ACOSTA
 COUNTY OF RIVERSIDE
 2724 GATEWAY DR
 RIVERSIDE, CA 92507-0924
 (951) 955-6969

Shipping Method

Standard Delivery

DTA VMWARE ELAQ759001COUNTY RIVERSIDE MUST USE QTY 1 LIC	\$247,141.00	Qty 1	Subtotal \$247,141.00
---	---------------------	-----------------	---------------------------------

Estimated delivery if purchased today:

Feb. 07, 2020

Contract # C000000181156

Customer Agreement # MNWNC-108/7157034003

Description	SKU	Unit Price	Qty	Subtotal
DTA VMWARE ELAQ759001COUNTY RIVERSIDE MUST USE QTY 1 LIC	AA988550	-	1	-

Subtotal:	\$247,141.00
Shipping:	\$0.00
Estimated Tax:	\$0.00

Total: \$247,141.00

Important Notes

Terms of Sale

This Quote will, if Customer issues a purchase order for the quoted items that is accepted by Supplier, constitute a contract between the entity issuing this Quote ("Supplier") and the entity to whom this Quote was issued ("Customer"). Unless otherwise stated herein, pricing is valid for thirty days from the date of this Quote. All product, pricing and other information is based on the latest information available and is subject to change. Supplier reserves the right to cancel this Quote and Customer purchase orders arising from pricing errors. Taxes and/or freight charges listed on this Quote are only estimates. The final amounts shall be stated on the relevant invoice. Additional freight charges will be applied if Customer requests expedited shipping. Please indicate any tax exemption status on your purchase order and send your tax exemption certificate to Tax_Department@dell.com or ARSalesTax@emc.com, as applicable.

Governing Terms: This Quote is subject to: (a) a separate written agreement between Customer or Customer's affiliate and Supplier or a Supplier's affiliate to the extent that it expressly applies to the products and/or services in this Quote or, to the extent there is no such agreement, to the applicable set of Dell's Terms of Sale (available at <http://www.dell.com/terms> or www.dell.com/oemterms); and (b) the terms referenced herein (collectively, the "Governing Terms"). Different Governing Terms may apply to different products and services on this Quote. The Governing Terms apply to the exclusion of all terms and conditions incorporated in or referred to in any documentation submitted by Customer to Supplier.

Supplier Software Licenses and Services Descriptions: Customer's use of any Supplier software is subject to the license terms accompanying the software, or in the absence of accompanying terms, the applicable terms posted on www.Dell.com/eula. Descriptions and terms for Supplier-branded standard services are stated at www.dell.com/servicecontracts/global or for certain infrastructure products at www.dell.com/en-us/customer-services/product-warranty-and-service-descriptions.htm

Offer-Specific, Third Party and Program Specific Terms: Customer's use of third-party software is subject to the license terms that accompany the software. Certain Supplier-branded and third-party products and services listed on this Quote are subject to additional, specific terms stated on www.dell.com/offeringspecificterms.

In case of Resale only: Should Customer procure any products or services for resale, whether on standalone basis or as part of a solution, Customer shall include the applicable software license terms, services terms, and/or offer-specific terms in a written agreement with the end-user and provide written evidence of doing so upon receipt of request from Supplier.

In case of Financing only: If Customer intends to enter into a financing arrangement ("Financing Agreement") for the products and/or services on this Quote with Dell Financial Services LLC or other funding source pre-approved by Supplier ("FS"), Customer may issue its purchase order to Supplier or to FS. If issued to FS, Supplier will fulfill and invoice FS upon confirmation that: (a) FS intends to enter into a Financing Agreement with Customer for this order; and (b) FS agrees to procure these items from Supplier. Notwithstanding the Financing Agreement, Customer's use (and Customer's resale of and the end-user's use) of these items in the order is subject to the applicable governing agreement between Customer and Supplier, except that title shall transfer from Supplier to FS instead of to Customer. If FS notifies Supplier after shipment that Customer is no longer pursuing a Financing Agreement for these items, or if Customer fails to enter into such Financing Agreement within 120 days after shipment by Supplier, Customer shall promptly pay the Supplier invoice amounts directly to Supplier.

Customer represents that this transaction does not involve: (a) use of U.S. Government funds; (b) use by or resale to the U.S. Government; or (c) maintenance and support of the product(s) listed in this document within classified spaces. Customer further represents that this transaction does not require Supplier's compliance with any statute, regulation or information technology standard applicable to a U.S. Government procurement.

For certain products shipped to end users in California, a State Environmental Fee will be applied to Customer's invoice. Supplier encourages customers to dispose of electronic equipment properly.

Electronically linked terms and descriptions are available in hard copy upon request.

^Dell Business Credit (DBC):

OFFER VARIES BY CREDITWORTHINESS AS DETERMINED BY LENDER. Offered by WebBank to Small and Medium Business customers with approved credit. Taxes, shipping and other charges are extra and vary. Minimum monthly payments are the greater of \$15 or 3% of account balance. Dell Business Credit is not offered to government or public entities, or business entities located and organized outside of the United States.