

MHEC/Open Systems-Cleveland
VMWare Master Price Agreement
Effective September 1, 2008 through August 31, 2011

The Midwestern Higher Education Commission (MHEC) located at 1300 South Second Street, Suite 130, Minneapolis, Minnesota, 55454, and Open Systems-Cleveland, located at 22999 Forbes Rd, Ste A, Cleveland, Ohio, 44146 (referred to collectively as the Parties or individually as Party) enter into this MHEC/Open Systems VMWare Master Price Agreement (Master Agreement), subject to the terms and conditions herein, effective this First day of September, 2008 (Effective Date).

1. Definitions

Announced Promotion Prices: refers to prices that are offered nationally or regionally to a specific category of customers intended to include Eligible Organizations for defined time periods under defined terms and conditions.

Eligible Organizations: This Master Agreement shall be made available to all Eligible Organizations. Eligible Organizations shall include:

- all not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions) located in a Member State;
- all K-12 schools and school districts located in a Member State;
- Eligible Organizations located in a Member State that terminates its association with the Compact will no longer be eligible under this Master Agreement to purchase pursuant to this Master Agreement. Termination by any Member State shall not prohibit or restrict OSC from negotiating or contracting with such Member State or entity within such Member State outside the Compact. MHEC shall promptly notify OSC in writing of the termination of any Member States' membership in the Compact. If any Member State so terminates its membership in the Compact, such termination shall not effect the validity or enforceability of or constitute a default under any purchase order then in effect with any Participant. Similarly, MHEC shall promptly notify OSC if other states join the Compact after which such states shall be deemed to be Member States for purposes of this Master Agreement.

Large Order Negotiated Prices: refers to the price offered to specific Eligible Organizations under defined additional terms and conditions. Selection and pricing of large order negotiated prices shall be by mutual agreement of the Eligible Organization and OSC. Large Order Negotiated Prices shall apply only to those items that meet the applicable additional terms and conditions negotiated by OSC and the Eligible Organization.

Member State: refers to any state that is a member, or an affiliate member, of the Midwestern Higher Education Compact. The current Member States are Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. MHEC shall promptly notify OSC if any other states join the Compact and thereby become a Member State for purposes of this Master Agreement.

Price Agreement: refers to an indefinite quantity contract, which requires OSC to furnish Products or Services to a Procuring Eligible Organization that issues a valid purchase order.

Procuring Eligible Organization: refers to an Eligible Organization who desires to purchase under this Master Agreement and has executed a purchase order.

Products: refers to the full product line of VMware software, updates, upgrades, documentation and software maintenance.

Product List: refers to the complete list of Products and the corresponding prices for those Products made available for purchase by Eligible Organizations under this Master Agreement. The Product List contains an item number, item description and the maximum price for each Product. The Product List is set forth as Exhibit B and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.

Services: refers to the VMware related services offered by OSC, including pre-sales Assessment, Installation and Implementation Assistance, Technical Support and Training.

Services List: refers to the complete list of Services and the corresponding prices for those Services made available for purchase by Eligible Organizations under this Master Agreement. The Services List contains an item number, item description and the maximum price for each service. Where travel is necessary to perform the Services, additional reasonable costs may be levied. The Service List is set forth as Exhibit C and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.

2. Scope of Work

Procuring Eligible Organizations shall purchase from OSC, and OSC shall distribute to Procuring Eligible Organizations VMware Products and Services in accordance with the terms of this Master Agreement. All Eligible Organizations are qualified to purchase under this Master Agreement, including those Eligible Organizations currently under a separate agreement with OSC. This Master Agreement is a price agreement. Accordingly, OSC shall provide Products or Services only upon the issuance and acceptance by OSC of valid purchase orders. Purchase orders may be issued to purchase any Products listed on the Product List or for any Services listed on the Services List. A Procuring Eligible Organization may purchase any quantity of Products or Services listed in OSC's Product List and Services List at the prices stated therein. For Large Order Negotiated Prices, OSC and Eligible Organization may negotiate quantity discounts below the Product and Services List price(s) for a given purchase order. As it sees fit, OSC may offer under this Master Agreement promotional price discounts that result in prices below those listed in the Product Price List and the Services Price List.

MHEC shall not be liable for any Eligible Organization that executes a purchase order under this Master Agreement. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own purchase order under this Master Agreement.

3. Purchasing Under Master Agreement

- A. **Products:** Procuring Eligible Organization shall purchase from OSC the license for VMware Products and shall enter into the license agreement with VMware as set forth in Exhibit A. As between the Procuring Eligible Organization and VMware, the

license in Exhibit A shall control. As between the Eligible Organization and OSC, this Master Agreement shall control.

- B. **Services:** Procuring Eligible Organization shall purchase Services from OSC under the terms and conditions of this Master Agreement.
- C. Each purchase order that is accepted by OSC will become a part of the agreement as to the products listed on the purchase order only; no additional terms or conditions will be added to this agreement as a result of the acceptance of the purchase order, nor will such terms affect any purchase. A purchase order from an Eligible Organization constitutes a binding contract. All Products furnished will be subject to acceptance by Procuring Eligible Organization after delivery. No substitutions or cancellations are permitted without approval of the Procuring Eligible Organization. Nothing in this section precludes any agreements for the use of electronic purchase orders.
- D. OSC will accept a purchasing card for order placement in addition to accepting a purchase order. Actual processing fees for purchase card use, up to a maximum of three percent (3%) may be passed back to the Procuring Eligible Organization.

4. Quantity Guarantee

This Master Agreement is not a purchase order, nor does it guarantee any purchases to be made by any Eligible Organization. This Master Agreement is not an exclusive agreement. MHEC and Eligible Organizations may obtain VMWare Products and Services from other sources during the term of the Master Agreement.

5. Master Agreement Term

This Master Agreement will be formed upon execution by the Parties, and shall remain in effect, unless otherwise terminated pursuant to the terms of the Master Agreement, for a period of three (3) years from the Effective Date. The Master Agreement may be mutually renewed for four (4) additional one-year terms unless terminated pursuant to the terms of this agreement.

6. Order of Precedence

Where the terms and conditions of this Master Agreement are in conflict with an Eligible Organization's state and/or institutional laws or regulations, the Eligible Organization and OSC may enter into an addendum to amend the terms and conditions of the Master Agreement to conform to the Eligible Organization's state and/or institutional laws or regulations. The terms and conditions of the addendum shall only be applicable between the Eligible Organization that entered into the addendum and OSC.

In the event of any conflict among these documents, the following order of precedence shall apply:

- A. executed addendum between Eligible Organization and OSC
- B. the terms and conditions of this Master Agreement
- C. exhibits to this Master Agreement
- D. the list of Products and Services contained in the purchase order

7. Payment Provisions

- A. **Acceptance.** Unless otherwise agreed upon by Procuring Eligible Organization and OSC, within thirty (30) days from the date of delivery, the Procuring Eligible Organization shall accept or reject the Products or Services. OSC shall accept return of all Products for up to thirty (30) days from date of delivery with Eligible Organization paying only the return shipping. Products shall be invoiced upon acceptance. Services shall be invoiced upon completion unless otherwise specified on the Purchase Order. Payment shall be made within thirty (30) days from the date of invoice.
- B. **Payment of Invoice.** Invoices shall be submitted to the Procuring Eligible Organization. Payments shall be submitted to OSC at the address shown on the invoice. Payment shall be tendered to OSC within thirty (30) days of the date of the invoice. After the thirtieth (30) day from the date of the invoice, unless mutually agreed to, interest shall be paid on the unpaid balance due to OSC at the rate of one and one-half percent (1½) per month. The Procuring Eligible Organization shall make a good faith effort to pay within thirty (30) days after the date of the invoice.
- C. In the event an order is shipped incomplete (partial), the Procuring Eligible Organization must pay for each shipment as invoiced by OSC unless the Procuring Eligible Organization has clearly specified “No Partial Shipment” on each purchase order.
- D. **Payment of Taxes.** Unless the Procuring Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted price.

8. Shipping

OSC shall ship the Products F.O.B. destination. Title to Products shall pass to Procuring Eligible Organization upon acceptance. Risk of loss or damage to the Products shall pass to Procuring Eligible Organization upon delivery to the Eligible Participant. OSC shall bear the risk of loss with respect to returned Products except for loss or damage directly attributable to the negligence of the Eligible Participant.

9. Product Delivery

OSC agrees to deliver products to Procuring Eligible Organization within thirty (30) days after receipt of a valid purchase order. If delivery can not be made within thirty (30) calendar days, OSC will notify Procuring Eligible Organization within ten (10) business days following order placement, and Procuring Eligible Organization, as its sole remedy, can cancel the order by written, electronic, or facsimile notification.

10. Price Guarantees

The Procuring Eligible Organization shall pay the lower of the prices contained in the Product List or an Announced Promotion Price or Large Order Negotiated Price.

11. Product List

OSC agrees to maintain the Product List in accordance with the following provisions:

- A. The Product List prices for all VMWare software will conform to the Product List provided to MHEC and set forth as Exhibit B. Except as set forth in Paragraph 10,

“Price Guarantees”, the discount percentage set forth in the Product List shall not decrease during the initial twelve (12) months of the Master Agreement. Thereafter, prices are subject to change with thirty (30) days prior written notice to MHEC. The year-over-year price increase on the Product List, if any, will not exceed the year-over-year percentage increase as reflected in VMWare’s published academic price list.

- B. Should the list price on of a VMWare product on VMWare’s academic price list price decrease at any time during this Master Agreement, OSC agrees to a similar price reduction on this Master Agreement’s Product List for the same VMWare product, prior to the Administrative Fee set forth in Paragraph 36 of this Master Agreement.
- C. OSC shall add new VMWare product(s) to the Product List when VMWare adds new product(s) and makes them available for sale by resellers. The pricing for all new Products shall incorporate, to the extent possible, similar or comparable price discount levels provided herein, as agreed by the Parties.
- D. OSC will delete obsolete and discontinued products from the Product List on a timely basis.
- E. The Product List shall be maintained by OSC on an Internet web site. Notification of specific changes to this list shall be provided to MHEC within thirty (30) days of modification. Failure to comply with the requirements in this Paragraph 11, Product List, will be grounds for action to be taken against OSC, including termination.

12. Authorized Reseller of VMWare

OSC represents and warrants that it has all of the necessary rights and is authorized to market and sell the Products set forth on the Product List and the Services set forth on the Services List to all of the Eligible Organizations in all of the Member States. OSC has the unrestricted right and authority to enter into this Master Agreement and to perform the scope of work set forth in Paragraph 2 “Scope of Work” of this Master Agreement.

13. Warranties

OSC warrants that the media, if any, on which the software is delivered will be free of defects and that the Products will substantially conform to the descriptions contained in the applicable user documentation with respect to the particular Product license purchased by Eligible Organization for a period of 90 days after the delivery of the Product (“Warranty Period”). If during the Warranty Period the media is defective and the Software is still commercially available, OSC shall repair or replace the defective media. If the Product does not substantially conform to the description contained in the applicable user documentation, OSC, at its option, shall correct the defects in the Product or refund to Eligible Organization the purchase amount paid to OSC for the defective Product.

OSC represents and warrants that the Services provided under this Master Agreement will be performed in a skillful, competent, timely, professional and workmanlike manner, and that the OSC employees, agents and contractors assigned to perform Services under this Master Agreement have the proper skill, training and background so as to be able to perform in a skillful, competent, timely, professional and workmanlike manner.

14. Termination

- A. At any time MHEC may terminate this Master Agreement, in whole or in part, by giving OSC ninety (90) days written notice; provided however, neither MHEC nor Eligible Organization has the right to terminate a specific purchase order/purchase agreement for convenience after it has been issued if the Product is ultimately accepted. At any time, OSC may terminate this Master Agreement, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve OSC of any warranty or other service obligations incurred under the terms of this Master Agreement.
- B. Either Party may terminate this Master Agreement for cause based upon material breach of the Master Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all remedies available to it under the law.
- C. In the event that either Party be adjudged insolvent or bankrupt by a court of competent jurisdiction, or upon the institution of any proceedings by or against it seeking relief, reorganization or arrangement under any laws relating to insolvency, or upon any assignment for the benefit of creditors, or upon the appointment of a receiver or trustee of any of its property or assets, or upon the liquidation, dissolution or winding up of its business, then and in any such event this Master Agreement may immediately be terminated or cancelled by the other Party hereto
- D. In the event this Master Agreement expires or is terminated for any reason, an Eligible Organization shall retain its rights in all Product and Services accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted

15. Non-Appropriation

This provision applies only to government and government educational customers. The terms of this Master Agreement and any purchase order issued for multiple years under this Master Agreement is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Master Agreement or in any purchase order or other document, Procuring Eligible Organization may terminate its obligations under this Master Agreement if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The Procuring Eligible Organization's decision as to whether sufficient appropriations are available shall be accepted by OSC and shall be final and binding.

A Procuring Eligible Organization shall provide sixty (60) days notice, if possible, of its intent to terminate this contract for non-appropriation. The Procuring Eligible Organization shall send to OSC a notice of its Governing Body's decision not to appropriate funds for the installment sale payments for the subsequent fiscal year. The

notice shall also include a statement that the Procuring Eligible Organization was unsuccessful in finding another assignee within its own organization to continue the installment sale payments and that the Product will not be replaced by a similar product during the ensuing fiscal year. Such termination shall relieve the Procuring Eligible Organization, its officers and employees from any responsibility or liability for the payment of any future purchase orders. However, all outstanding invoices from OSC will be paid by the Procuring Eligible Organization.

16. Records and Audit

OSC agrees to maintain detailed records pertaining to the price of services rendered and products delivered for a period of six (6) years from the date of acceptance of each purchase order. These records shall be subject to inspection by Procuring Eligible Organization and appropriate governmental authorities with Procuring Eligible Organization's state. The Procuring Eligible Organization shall have the right to audit billings either before or after payment. Payment under this Master Agreement shall not foreclose the right of the Procuring Eligible Organization to recover excessive or illegal payments.

17. Independent Contractor

OSC and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. OSC has no authorization, express or implied to bind MHEC or any Eligible Organization to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Eligible Organization, except as expressly set forth herein. Nothing in this Master Agreement is intended, or shall be deemed, or construed to constitute a partnership or a joint venture between the parties.

18. Patent, Copyright, Trademark and Trade Secret Indemnification

OSC will indemnify, defend and hold MHEC and Eligible Organization harmless from a claim that any Service or Product provided to Eligible Organization pursuant to this Master Agreement infringes on another person's or entity's patent, copyright, trade secret or any other proprietary right of a third party. OSC will have no obligation under this section with respect to any claim of infringement resulting from (a) Services performed, or Product provided, pursuant to Eligible Organization's specification or design; (b) an Eligible Organization's unauthorized modification of a Product; or (c) any combination, operation, or use of the Product with systems other than those provided by OSC to the extent that such a claim is caused by such modification, combination, operation, or use of the product.

19. Indemnification

OSC will indemnify, protect, save and hold harmless MHEC and Eligible Organizations, as well as the representatives, agents and employees of MHEC and Eligible Organizations, from any and all claims or causes of action related to a claim of personal injury or damage to property, including all attorneys' fees incurred by MHEC and/or Eligible Organizations, arising from the performance of the Master Agreement by OSC, OSC's agents, employees, or subcontractors. MHEC and/or Eligible Organization shall

give OSC written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder, and, subject to any legally required approval, including approval of state's attorney general, or consistent with applicable law permits OSC to control the defense of any such claim or action at OSC's own expense. MHEC and/or Eligible Organization agree that OSC may employ attorneys of its own choice to appear and defend the claim or action and that MHEC and/or Eligible Organization shall do nothing to compromise the defense of such claim or action or any settlement thereof and shall provide OSC with all reasonable assistance that OSC may require.

20. Limitation of Liability

OSC shall not be liable to MHEC or Eligible Organization for any direct damages in excess of \$100,000 or the amounts paid hereunder, whichever is greater. The foregoing limitation does not apply to any indemnification obligations under this Master Agreement or to damages resulting from personal injury or property damage caused by OSC's negligence or willful misconduct. OSC, MHEC nor any Eligible Organization shall be liable for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Master Agreement, whether the claim alleges tortious conduct (including negligence) or any other legal theory.

21. Confidentiality

- A. While OSC is providing Services hereunder, Eligible Organization or OSC may disclose to the other certain business information identified as confidential ("Confidential Information"). All such information shall be marked or otherwise designated as "Confidential" or "Proprietary". In order for such information to be considered Confidential Information pursuant to this Paragraph, it must conform to the data practices laws or similar type laws of the State in which the Eligible Organization is located or was founded. Information of a proprietary nature which is disclosed orally to the other party shall not be treated as Confidential Information unless it is stated at the time of such oral disclosure that such information is Confidential Information and such information is reduced to writing and confirmed as Confidential Information to the recipient within ten (10) days after oral disclosure. Both Eligible Organization and OSC agree that, with respect to Confidential Information it receives (as "Recipient") from the other (as a "Discloser") in connection with this Master Agreement or an order pursuant to this Master Agreement, that it (i) will use such Confidential Information solely for the purposes contemplated by the Master Agreement or an order placed under this Master Agreement, (ii) shall not use any such Confidential Information for any other purpose and in particular shall not so use such Confidential Information in any manner either to the detriment of the Discloser or for the benefit of the Recipient or any third party, and (iii) shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser.
- B. Each party will make reasonable efforts not to disclose the other party's Confidential Information to any third party, except as may be required by law, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party's possession or the possession of any third

party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. Confidential Information shall remain the property of and be returned to the Disclosure (along with all copies or other embodiments thereof) within fifteen (15) days of (a) the termination or completion of the order under this Master Agreement, or (b) the earlier receipt by the Recipient from the Discloser of a written demand following a breach by Eligible Participant or OSC of this Master Agreement or an order under this Master Agreement directing that Confidential Information described generally or specifically in such demand be returned to the Disclosure .

- C. Notwithstanding anything to the contrary in this Agreement or MSA Article, both Eligible Participant and OSC agree to comply with the data practices or similar type laws of the State in which Eligible Participant is located or founded.

22. FERPA (and Other Privacy Laws)

Where applicable OSC agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act (GLBA) and all other state and Federal privacy laws; and agrees to implement and maintain safeguards to protect the security, confidentiality, and integrity of information it receives from Eligible Organization.

23. Amendments

Except as provided for in Paragraph 5, "Order of Preference"; and Paragraph 10, "Product List"; this Master Agreement shall only be amended by written instrument executed by the Parties.

24. Scope of Agreement

This Master Agreement incorporates all of the agreements of the Parties concerning the subject matter of this agreement, and all prior agreements have been merged into this Master Agreement. No prior agreements, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Master Agreement.

25. Invalid Term or Condition

If any term or condition of this Master Agreement shall be held invalid or unenforceable, the remainder of this Master Agreement shall not be affected and shall be valid and enforceable.

26. Enforcement of Agreement

A party's failure to require strict performance of any provision of this Master Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Master Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

27. Web Site Maintenance

OSC agrees to maintain and support Internet website(s) for access to the Product List, product descriptions, product specifications, and other aids in accordance with instructions provided by MHEC. In addition, OSC will provide electronic commerce assistance for the electronic submission of purchase orders, purchase order tracking and reporting.

28. Equal opportunity Compliance

OSC agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, OSC agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by OSC under this Master Agreement. If OSC is found to be not in compliance with these requirements during the life of this Master Agreement, OSC agrees to take appropriate steps to correct these deficiencies.

29. Compliance with Law

OSC shall comply with all applicable laws and governmental regulations, which by their terms, apply to OSC's performance under a purchase order pursuant to this Master Agreement. Eligible Organization agrees to comply with all applicable laws and governmental regulations in connection with this Master Agreement. MHEC agrees to comply with all applicable laws and governmental regulations in connection with this Master Agreement.

30. Applicable Law

As between Eligible Organization and OSC, this Master Agreement will be construed in accordance with, and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state of the Eligible Organization.

As between MHEC and OSC this Master Agreement will be construed in accordance and its performance governed by the laws of the state of Minnesota. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota.

As between Eligible Organization, MHEC, and OSC this Master Agreement will be construed in accordance and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state of the Eligible Organization.

31. Conflict of Interest

OSC warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Master Agreement.

32. Assignment

OSC agrees not to sell, transfer, assign or otherwise dispose of the Master Agreement or any portion thereof or of any right, title, or interest herein without the prior written consent of MHEC. This consent requirement includes reassignment of this Master Agreement due to change in ownership, merger, or acquisition of OSC or its subsidiary or affiliated corporations.

33. Survival

Certain paragraphs of this Master Agreement including but not limited to Indemnification; and Limitation of Liability shall survive the expiration of this Master Agreement. Software licenses, warranty and service agreements, and non-disclosure agreements that were entered into under terms and conditions of this Master Agreement shall survive this Master Agreement.

34. Notification

A. **Between the Parties:** Whenever under the terms of this Master Agreement any notice is required or permitted to be given by one Party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof if given by facsimile or mail, postage prepaid, to the Parties at the addresses set forth below, or at such other address as the Parties may direct in writing from time to time:

<u>To MHEC:</u>	<u>To OSC:</u>
MHEC	Open Systems -of Cleveland, Inc.
1300 South Second Street	22999 Forbes Rd.
Suite 130	Suite A
Minneapolis, Minnesota 55454-1079	Cleveland, OH 44146
Attn: Grant Crawford	Attn: Diane Kearney
Facsimile: 612-626-8290	Fax: (440) 439-3794

B. **To Eligible Organization:** Notices shall be sent to Eligible Organization's business address. The term "business address" shall mean the "Bill to" address set forth in an invoice submitted to Eligible Organization.

35. Most Favored Customer

OSC guarantees the prices offered under this Master Agreement are the lowest prices that it makes available in the Member States. OSC will not offer the pricing and discount structure as set forth in this Master Agreement to any Eligible Organization other than through the Master Agreement or with the consent of MHEC. If OSC offers any Eligible Organization more favorable pricing, terms, warranties, and/or benefits than those provided under this Master Agreement, OSC will in turn offer the same or better pricing,

terms, warranties, and/or benefits to MHEC and Eligible Participants for all subsequent purchase under this Master Agreement.

36. Administrative Reporting and Fees

On a quarterly basis, OSC will, in a timely manner, make available to MHEC reports and information generated by this Master Agreement, including but not limited to state-by-state and institution-by-institution information on sales volume and volume savings. The information and reports shall be accompanied with a check payable to the Midwestern Higher Education Commission for an amount equal to one-quarter percent (0.25%) of the net Product sales for that quarter period (the "Fee"). MHEC, from time to time and at its sole discretion, may change the percentage of the Fee it will receive as a result of this Master Agreement. Any change in the fee may also require a change in the Product List price.

37. MHEC Not Liable For Eligible Participants

MHEC is not liable to OSC for the failure of any Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of a purchase order and/or the Master Agreement.

38. Announcements and Publicity

Any announcements and publicity given to MHEC resulting from this Master Agreement must receive the prior approval of MHEC. OSC will not make any representations of MHEC's opinion or position as to the quality of effectiveness of the products, supplies and/or services that are the subject of this Master Agreement without the prior written consent of MHEC.

39. Marketing

OSC will assist MHEC in developing and implementing appropriate marketing strategies including seminars, printed materials and a full service, on-line MHEC-specific web site to receive information on products, supplies, services and prices and to place orders.

40. Oversight Committee

An Oversight Committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and OSC in developing and refining the implementation of this Master Agreement. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services; and to advise OSC on the effectiveness of its implementation progression. There will be an annual meeting between OSC and MHEC (and perhaps members of the Oversight Committee) to perform a contract health check; including items such as those above.

41. Force Majeure.

Neither OSC nor MHEC nor Procuring Eligible Organization shall be liable to each other during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are

not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; epidemic; strike or other labor dispute; riot; piracy or other misadventure of the sea; embargo; inability to secure materials and / or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, OSC shall undertake reasonable action to notify the Procuring Eligible Organization of the same.

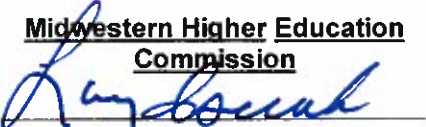
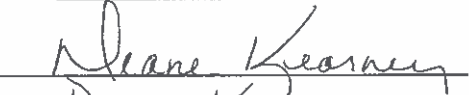
42. Sovereign Immunity.

Notwithstanding anything to the contrary in this Agreement or purchase order under this Agreement, this Agreement shall not be construed to deprive a Eligible Organization of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Agreement or afforded by Eligible Organization's State to the Eligible Organization.

43. Miscellaneous.

All parties to this Agreement may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Agreement that shall be considered an original and shall be admissible in any action to enforce this Agreement. OSC may accept this Agreement either by its authorized signature or a signed purchase order. Except as provided for in this Agreement, all changes to this Agreement must be made in writing signed by both parties; accordingly any additional terms on the Procuring Eligible Organization's ordering documents shall be of no force or effect. .

The parties, by their representatives signing below, agree with the terms of this Agreement and further certify that their respective signatories are duly authorized to execute this Agreement.

	<u>Midwestern Higher Education Commission</u>	<u>Open Systems of Cleveland</u>
Signature:		
Name:	Larry Isaak	DIANE KEARNEY
Title:	President	ACCOUNT EXECUTIVE
	<u>Midwest Higher Education Compact</u>	<u>Open Systems of Cleveland</u>
Address:	1300 South Second Street, Suite 130	22999 Forbes Rd., Ste A
	Minneapolis, Minnesota, 55454	Cleveland, Ohio, 44146
Date:		

Formatted: Indent: First line: 0.25", Right: 0.25"

Exhibit A – VMWare License Agreement

