

### Amendment 7

This Amendment 7 (this "Amendment") amends the Master Price Agreement Between  
Midwestern Higher Education Compact and Arrow Enterprise Computing Solutions, Inc.,  
Contract No.: MHEC-021213, dated December 2, 2013 (the "Agreement").

Whereas the parties agree to amend the Agreement as follows:

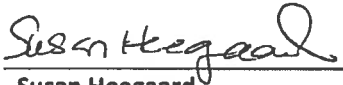
1. Section 1. Term shall be deleted in its entirety and replaced with the following:

"1. Term: This Master Agreement shall be effective on December 2, 2013 and shall remain in effect until November 30, 2020, or unless otherwise terminated pursuant to the terms of the Master Agreement. "

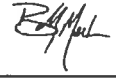
Subject to the modifications herein, the Agreement shall remain in full force and effect.

In witness whereof, the parties hereto have executed this Amendment by their respective duly authorized representative effective as of the last signature date below.

**Midwestern Higher Education Commission**

Signature:   
Name: Susan Heegaard  
Title: President  
Address: 105 Fifth Avenue South  
Minneapolis, MN 55401  
Date: 11/22/19

**Arrow Enterprise Computing Solutions, Inc.**

  
Digitally signed by Bobby Meeks  
Date: 2019.11.13 09:25:49 -0700  
Bobby Meeks  
Contract Manager  
9201 East Dry Creek Rd  
Centennial, Co 80112  
11/13/2019

**Amendment 6  
to  
Master Price Agreement**

This Amendment 6 (this "Amendment") amends the Master Price Agreement between Midwestern Higher Education Compact and Arrow Enterprise Computing Solutions, Inc., Contract No. MHEC-021213, dated December 2, 2013 (the "Agreement").

Whereas the parties desire to amend the Agreement as follows:

1. Section 1 - Term shall be deleted in its entirety and replaced with the following:

"1. Term: This Master Agreement shall be effective on December 2, 2013 and shall remain in effect until November 30, 2019, or unless otherwise terminated pursuant to the terms of the Master Agreement. The Master Agreement may be mutually renewed for one (1) additional one (1) year terms unless terminated pursuant to the terms of this Master Agreement."

Subject to the modifications herein, the Agreement shall remain in full force and effect.

In witness whereof, the parties hereto have executed this Amendment by their respective duly authorized representative effective as of the last signature date below.

**Midwestern Higher Education Compact**

Signature: Susan Heegaard  
Name: Susan Heegaard  
Title: President  
Address: 105 Fifth Avenue South  
Minneapolis, MN 55401  
Date: 11/28/18

**Arrow Enterprise Computing Solutions, Inc.**

Charles Cobb  
Digitally signed by Charles Cobb  
DN: cn=Charles Cobb, o=Arrow Electronics,  
Inc., ou, email=ccobb@arrow.com, c=US  
Date: 2018.11.30 15:02:31 -07'00'  
Charles Cobb  
Manager - Customer Contracts  
9201 East Dry Creek Road  
Centennial, CO 80112-2818  
11/30/18

**Amendment #5 TO MASTER PRICE AGREEMENT  
MHEC-021213  
BETWEEN  
MIDWESTERN HIGHER EDUCATION COMMISSION  
AND  
ARROW ENTERPRISE COMPUTING SOLUTIONS, INC.**

Whereas, this Amendment #5 ("Amendment #5") is entered into by and between Arrow Enterprise Computing Solutions, Inc. and the Midwestern Higher Education Commission (MHEC), contract number MHEC-021213, effective as of February 15, 2018 (the Effective Date"),

Whereas, MHEC has entered into separate agreements with the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE) respectively to allow entities in the NEBHE Member States, the SREB Member States and the WICHE Member States access to MHEC's Technology Initiative contracts, including this Master Agreement; and

Whereas, the parties entered into the Master Price Agreement dated December 2, 2013 (the "Master Agreement") and the parties now desire to amend the terms of the Master Agreement.

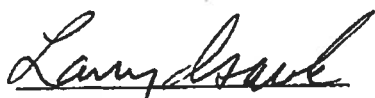
Now, therefore:

**Section 2. Member State.** Section 2. shall be deleted in its entirety and replaced with the following:

**2. Member State:** refers to any state that is a member, or an affiliate member, of the MHEC, NEBHE, SREB, and WICHE as defined herein and for MHEC in the above Whereas clause. The current NEBHE Member States are Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont. The current SREB Member States are Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The current WICHE Member States are Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. The term "Member State" is used collectively to refer to members of MHEC, NEBHE, SREB, and WICHE.

Except as set forth above, the Master Price Agreement shall remain as stated. In the event of a conflict between the terms found elsewhere in the Master Agreement and this Amendment #5, this Amendment #5 shall control.

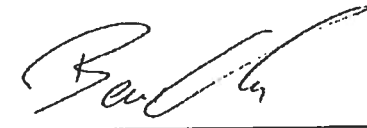
Midwestern Higher Education  
Commission

  
Signature

Larry Isaak, President  
Name and Title

3/7/18  
Date

Arrow Enterprise Computing Solutions, Inc.

  
Signature

Ben Klay, VP Sales, ECS NA  
Name and Title

March 5, 2018  
Date

#### Amendment 4

This amendment 4 amends the Master Price Agreement Between Midwestern Higher Education Compact and Arrow Enterprise Computing Solutions, Inc., Contract No.: MHEC-021213, dated December 2, 2013 (the "Agreement").

The parties agree to amend the Agreement as follows:

1. Section 1. Term shall be deleted in its entirety and replaced with the following:

1. **Term:** This Master Agreement shall be effective on December 2, 2013 and shall remain in effect until November 30, 2018, or unless otherwise terminated pursuant to the terms of the Master Agreement. The Master Agreement may be mutually renewed for two (2) additional one (1) year terms unless terminated pursuant to the terms of this Master Agreement.

Subject to the modifications herein, the Agreement shall remain in full force and effect.

The effective date of this Amendment 4 is December 1, 2017.

Midwestern Higher Education Commission

Arrow Enterprise Computing Solutions, Inc.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

Larry Isaak

President

105 Fifth Avenue South

Minneapolis, MN 55401

11-27-17

\_\_\_\_\_

Jennifer Poulis

VirtualizationLOB Leader

9151 E. Panorama Cir.

Centennial, CO 80112

11-21-2017

### Amendment 3

This Amendment 3 amends the Master Price Agreement Between Midwestern Higher Education Compact and Arrow Enterprise Computing Solutions, Inc., Contract No.: MHEC-021213, dated December 2, 2013 (the "Agreement").

The parties agree to amend the Agreement as follows:

1. Section 1. Term shall be deleted in its entirety and replaced with the following:

1. **Term:** This Master Agreement shall be effective on December 2, 2013 and shall remain in effect until November 30, 2017, or unless otherwise terminated pursuant to the terms of the Master Agreement. The Master Agreement may be mutually renewed for three (3) additional one (1) year terms unless terminated pursuant to the terms of this Master Agreement.

Subject to the modifications herein, the Agreement shall remain in full force and effect.

The effective date of this Amendment 3 is December 1, 2016.

**Midwestern Higher Education  
Commission**

Signature: 

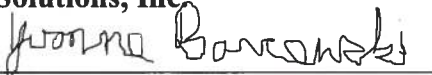
Name: LARRY ISRAK

Title: PRESIDENT

Address: 105 FIFTH AVENUE S.  
SUITE 450  
MINNEAPOLIS, MN 55401

Date: 11 / 17 / 2016

**Arrow Enterprise Computing  
Solutions, Inc.**



Yvonne Barcewski

Contract Manager

9201 E. Dry Creek Rd.

Centennial, CO 80112

11/17/2016

## Amendment 2

This amendment 2 amends the Master Price Agreement Between Midwestern Higher Education Compact and Arrow Enterprise Computing Solutions, Inc., Contract No.: MHEC-021213, dated December 2, 2013 (the "Agreement").

The parties agree to amend the Agreement as follows:

1. Section 7 Reseller and Exhibits shall be deleted in its entirety and replaced with the following:

7. **Reseller:** refers to resellers authorized by Vendor to resell VMware Products and Services to Eligible Organizations in Member States. Vendor will certify and register Resellers by ensuring that when reselling to Eligible Organizations Resellers adhere to terms no less material than those set forth in this Master Agreement. This may be accomplished through Vendor's quote process using Vendor's quote form and standard Terms and Conditions of Sale if Vendor determines that such documents are sufficient to ensure that for any sales made by Resellers to Eligible Organizations in Member States Reseller will adhere materially to the same terms as those in this Master Agreement or by separate contracts entered into by Vendor and Reseller. Vendor must maintain a dedicated website and provide a list of authorized Resellers at <http://ecs.arrow.com/MHEC>. At any time during the term of this Master Agreement should MHEC protest the inclusion of a Reseller on this list for cause, Vendor will require that Reseller undergo recertification. Vendor will notify MHEC in writing, within 30 days, Resellers additions or deletions made to the list.

2. Exhibit B – Reseller List is deleted in its entirety and replaced with Vendors dedicated website <http://ecs.arrow.com/MHEC> MHEC Authorized VARs.

Subject to the modifications herein, the Agreement shall remain in full force and effect.

The effective date of this Amendment 2 is April 15, 2014.

**Midwestern Higher Education  
Commission**

Signature: Larry Isaak

Name: Larry Isaak

Title: President

Address: 105 Fifth Ave So.  
Suite 450 Mpls, MN 55401

Date: 4-16-14

**Arrow Enterprise Computing  
Solutions, Inc.**

Yvonne Barcewski

Yvonne Barcewski  
**Arrow Electronics, Inc.**  
**Contract Manager**

#17459 S. Lima ST  
Englewood CO 80112

4/15/14

### Amendment 1

This Amendment 1 amends the Master Price Agreement between Midwestern Higher Education Compact and Arrow Enterprise Computing Solutions, Inc., Contract No.: MHEC-021213, dated December 2, 2013 (the "Agreement").

The parties agree to amend the Agreement as follows:

1. Section 3 Eligible Organizations and Exhibits shall be deleted in its entirety and replaced with the following:

**3. Eligible Organizations and Exhibits:** This Master Agreement shall be a framework for the general program under which the MHEC, will make aware to Eligible Organizations the ability to buy Products and Services from Resellers, as defined in Section 7 below. Eligible Organizations shall include:

- a) 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;
- b) all K-12 schools and school districts located in a Member State;
- c) all city, county, and other local governments located in a Member State;
- d) all state governments and their departments of Member States;
- e) The Master Agreement Exhibits may be modified upon the Parties' prior written agreement.

2. Exhibit A-Product and Services Discount is deleted in its entirety and replaced with a new Exhibit A attached hereto.

Subject to the modifications herein, the Agreement shall remain in full force and effect.

The effective date of this Amendment 1 is February 1, 2014.

**Midwestern Higher Education  
Commission**

Signature: Larry A. Isaak

Name: Larry A. Isaak

Title: President

Address: Midwestern Higher Ed. Compact

105 5th Ave. S. Suite 450  
Minneapolis, MN 55401

Date: 1-31-14

**Arrow Enterprise Computing  
Solutions, Inc.**

Yvonne Barcewski

Yvonne Barcewski  
Arrow Electronics, Inc.  
Contract Manager

Enclosed 6/2/12

1/31/14

## Exhibit A

Product and Services Discount for not-for-profit private and public institutions and/or systems of higher education and K-12 schools and school districts

Table 1: MHEC Discount from VMware Academic Pricing

Product Category	Discount
Licenses	17%
Support (including renewals)	3%
Consulting Services	3%
Training (VMware provided)	19%
VCHS (VMware Hybrid Cloud Services)	5%

Product and Services Discount for city, county and other local units of government and state governments and their departments

Table 2: MHEC Discount from VMware Commercial Pricing

Product Category	Discount
Licenses	17%
Support (including renewals)	3%
Consulting Services	3%
Training (VMware provided)	19%
VCHS (VMware Hybrid Cloud Services)	5%



**MASTER PRICE AGREEMENT  
BETWEEN  
MIDWESTERN HIGHER EDUCATION COMPACT  
AND  
ARROW ENTERPRISE COMPUTING SOLUTIONS, INC.**

THIS MASTER AGREEMENT, and amendments and supplements thereto, is made between the Midwestern Higher Education Commission, the governing body of the Midwestern Higher Education Compact (hereinafter collectively MHEC) located at 105 Fifth Avenue South, Suite 450 Minneapolis, MN 55401, on behalf of the Eligible Organizations as defined below, and Arrow Enterprise Computing Solutions, Inc. (hereinafter Vendor) located at 7459 S. Lima Street, Englewood, CO 80112. For purposes of this Master Agreement MHEC and Vendor are referred to collectively as the "Parties" or individually as "Party". Additional parties may be added to this Master Agreement by written agreement of the Parties.

**Whereas**, the Midwestern Higher Education Compact is an interstate compact of twelve Midwestern states, such states being Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. MHEC is a nonprofit 501(c) (3) statutorily created governing body of the Compact established for the purposes, in part, of identifying, negotiating and making available quality and affordable services for education entities in Midwest region; and

**Whereas**, MHEC has established a Technology Initiative, the purpose of which, in part, is to identify, negotiate and make available quality and affordable technology related products and services, including virtualization software and related services, to the not-for-profit and public education related entities in the Member States; and

**Whereas**, MHEC has entered into separate agreements with the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE) respectively to allow the Southern and Western Member States access to the discount pricing model and Resellers, as defined below, under this Agreement. ; and

**Whereas**, VENDOR offers VMware, Inc. (VMware) virtualization licenses and support, consulting, and training; and

**Whereas**, MHEC conducted a competitive process for virtualization software and related services, and upon completion of the competitive process awarded a bid to Vendor; and

**Therefore**, in consideration of mutual covenants, conditions, and promises contained herein, the MHEC and Vendor agree as follows:

1. **Term:** This Master Agreement shall be effective on December 2, 2013 and shall remain in effect until November 30, 2016 or unless otherwise terminated pursuant to the terms of the Master Agreement. The Master Agreement may be mutually renewed for four (4) additional one (1) year terms unless terminated pursuant to the terms of this Master Agreement.
2. **Member State:** refers to any state that is a member, or an affiliate member, of the MHEC, SREB and WICHE as defined herein and for MHEC in the above Whereas clause. The current SREB Member States are Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The current WICHE Member States are Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. The term "Member State" is used collectively to refer to members of MHEC, SREB and WICHE.
3. **Eligible Organizations and Exhibits:** This Master Agreement shall be a framework for the general program under which the MHEC, will make aware to Eligible Organizations the ability to buy Products and Services from Resellers, as defined in Section 7 below. Eligible Organizations shall include:
  - a) 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;
  - b) all K-12 schools and school districts located in a Member State;
  - c) The Master Agreement Exhibits may be modified upon the Parties' prior written agreement.
4. **Order:** Purchase Orders issued by Eligible Organizations to Resellers.
5. **Product:** refers to the full line of VMware software licenses and support that Vendor makes available to Resellers for resale to Eligible Organizations in Member States and as set forth in the Product List on Exhibit A.
6. **Services:** refers to the full line of VMware consulting services, and training that Vendor makes available to Resellers for resale to Eligible Organizations in Member States, and as set forth in the Services List as Exhibit A. Eligible Organizations purchasing Services, including professional services, training and/or on-site consultative services, shall negotiate the terms and conditions of such purchase with the party providing the services.
7. **Reseller:** refers to resellers authorized by Vendor to resell VMware Products and Services to Eligible Organizations in Member States. Vendor will certify and register Resellers by ensuring that when reselling to Eligible Organizations Resellers adhere to terms no less material than those set forth in this Master Agreement. This may be accomplished through Vendor's quote

process using Vendor's quote form and standard Terms and Conditions of Sale if Vendor determines that such documents are sufficient to ensure that for any sales made by Resellers to Eligible Organizations in Member States Reseller will adhere materially to the same terms as those in this Master Agreement or by separate contracts entered into by Vendor and Reseller. At any time during the term of this Master Agreement should MHEC protest the inclusion of a Reseller on this list for cause, Vendor will require that Reseller undergo recertification. Vendor must maintain and provide a list of authorized Resellers to MHEC.

8. **Scope of Offering:** Procuring Eligible Organizations shall purchase from Reseller, and Vendor shall distribute to Reseller who will in turn resell the Products and Services to procuring Eligible Organizations in accordance with the terms established between the Eligible Organization and Reseller. This Master Agreement sets forth the discount schedule for the Products and Services. Accordingly, Resellers shall provide Products or Services only upon the issuance and acknowledgement by Reseller of a valid Order. An Eligible Organization may purchase any quantity of Products and Services listed on Product and Services List - Exhibit A at the discounts stated therein. For large Order quantities, Reseller and Eligible Organization may negotiate quantity discounts below the Product and Services List discount(s) for a given Order. As it sees fit, Reseller may offer under this Master Agreement promotional discounts that result in discounts below those listed in the Product and Service List. Vendor is solely responsible for fulfillment of the responsibilities under the terms and conditions of this Master Agreement. The MHEC shall not be liable for any Eligible Organization that executes an Order. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order. Vendor agrees to allow MHEC to extend the same discount pricing model as that set forth on Exhibit A – Product and Services Discount, and will consent to MHEC's disclosure of the Resellers on Exhibit B – Reseller List, to SREB and WICHE so as to allow for Eligible Organizations within SREB and WICHE to buy Products and Services from the Resellers. For avoidance of doubt SREB and WICHE will not be third party beneficiaries to this Agreement.

9. **Purchasing Under Master Agreement:**

- a) **Products and Services:** Eligible Organizations shall purchase from the Reseller the Products and/or Services listed on the Product or Services List by delivering to Reseller an Order. The Order should include: (i) Eligible Organization by name and address; (ii) the quantity, and description of the Product or Service with SOW if applicable, that Eligible Organization desires to purchase or license; (iii) the discount of the Product or Service in accordance with that as agreed to between Reseller and Eligible Organization; (iv) the "bill-to" address; (v) the "ship-to" address; (vi) the requested delivery dates and shipping instructions; (vii) a contact name and telephone number; and (viii) reference this Master Agreement. Eligible Organizations purchasing

Services, including professional services, training and/or on-site consultative services, shall negotiate the terms and conditions of such Services with the party providing the Services.

- b) Each Reseller purchase order that is acknowledged by Vendor will become subject to terms and conditions that materially reflect the terms and conditions of this Master Agreement; no additional terms or conditions will be added to this Master Agreement as a result of the acknowledgment of the Resellers' purchase order by Vendor.
- c) All Products furnished will be subject to acceptance pursuant to the terms and conditions of Section 11. A ("Acceptance") by Eligible Organization after delivery. No substitutions or cancellations are permitted without approval of the Eligible Organization. Nothing in this Section precludes any agreements for the use of electronic purchase orders.
- d) Eligible Organization may request in writing changes to an Order ("Change Request") that Reseller has previously accepted. In response to a Change Request, Reseller will provide written quotations to the Eligible Organization, including any changes to discounts, license fees, shipment or completion dates. A Change Request is a separate Order subject to Reseller's change order process.
- e) Reseller will accept a purchasing card for order placement in addition to accepting a purchase order.

**10. 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. Eligible Organizations may obtain Product and Services from other sources during the term of the Master Agreement.

**11. Payment Provisions:**

- a) **Acceptance.** (1). Products shall be deemed accepted upon successful download, installation and acceptance of the End User License Agreement. (2) For Services, Eligible Organization shall accept or reject the Services upon completion of installation and verification tests. Acceptance shall be evidenced by Eligible Organization's signature of an Installation Completion document attesting to successful completion of the Services. Rejection of the Services must be provided in writing at the time of Service completion and will state the reason for such rejection. If Services are not rejected at the time of completion they will be deemed accepted. Products shall be invoiced upon shipment. Services shall be invoiced upon acceptance.
- b) **Payment of Invoice.** Invoices shall be submitted to the Eligible Organization. Payments shall be remitted to Reseller at the address shown on the invoice. Payment shall be tendered to Reseller 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 Reseller at the rate of one and

one-half percent (1½) per month. The Eligible Organization shall make a good faith effort to pay within thirty (30) days after the date of the invoice.

- c) **Dispute Notice.** Eligible Organization shall notify Reseller of any billing discrepancies or disputes about an invoice within ten (10) days after receiving it, specifying with particularity the basis of any such dispute ("Dispute Notice"). Tender of a Dispute Notice does not relieve Eligible Organization of its obligations to pay the undisputed portion of any invoice subject to a Dispute Notice. Any amounts that were the subject of a Dispute Notice and are subsequently resolved in favor of Reseller will be subject to interest charges accruing from the original due date.
- d) **Partial Shipment.** In the event an Order is shipped incomplete (partial), the Eligible Organization must pay for each shipment as invoiced by Reseller unless the Eligible Organization has clearly specified "No Partial Shipment" on each Order.
- e) **Payment of Taxes.** The discounts listed under this Master Agreement do not include, and Eligible Organization shall reimburse Reseller for, any and all taxes and/or duties assessed against or payable by Reseller in connection with the sale of licensing of software or performance of Services except for taxes imposed upon Reseller and/or Vendor's net income. Unless the Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted discount.

**12. Shipping:** Vendor shall ship the Products F.O.B. destination unless otherwise agreed to by Reseller and Eligible Organization. Title to Products shall pass to Eligible Organization upon shipment. Risk of loss or damage to the Products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization. Vendor 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.

**13. Product Delivery:**

- a) Unless otherwise agreed to by Eligible Organization and Reseller, Reseller will deliver Products to Eligible Organization within thirty (30) days from receipt of Order. If delivery cannot be made within thirty (30) days from receipt of Order, Reseller will notify Eligible Organization as soon as it becomes aware that delivery in the agreed upon time is not feasible, and Eligible Organization, as its sole remedy, can cancel the Order by written, electronic, or facsimile notification or request expedited delivery.
- b) Vendor may choose to deliver Products electronically where practicable. This option must be under independent control of each Eligible Organization.

- 14. Discount Guarantees:** The Eligible Organization shall pay the lower of the discounts contained in the Product and Services List or an Announced Promotion Discount or Large Order Negotiated Discount (provided that, with respect to the applicability of Large Order Negotiated Discounts, the Eligible Organization is a party to the Large Order Negotiated Discount negotiations and the purchase is part of the project for which the Large Order Negotiated Discount was negotiated). Vendor shall require that Resellers not sell Products or Services to Eligible Organizations at discounts lower than those awarded via this Master Agreement and in instances where this provision is applied, this Master Agreement shall be referenced in the authorized Reseller's invoice.
- 15. Product List:** Vendor agrees to maintain the Product List in accordance with the following provisions:
- a) The initial Product Discount on Exhibit A will be based on a discount off the Product list price currently in effect with VMware. Except as set forth in Section 14, "Discount Guarantees", the discount percentage set forth in the Product and Services List shall not decrease for the duration of this Master Agreement. List discounts are subject to change with prior written notice.
  - b) Should the list price of a Product decrease at any time during this Master Agreement, Vendor agrees to a similar price reduction as basis for the discount calculation on the Product and Service List for the same Product, prior to the Administrative Fee set forth in Paragraph 41 of this Master Agreement.
  - c) Vendor shall add new product(s) to the Product List when new product(s) shall become available for sale by VMware. The discounts for all new Products shall incorporate, to the extent possible, similar or comparable discount levels provided herein, as agreed by the Parties.
  - d) Vendor will delete obsolete and discontinued Products from the Product and Services List on a timely basis.
  - e) The Product and Service List shall be maintained by Vendor on an Internet web site. Notification of specific changes to this list shall be provided to the MHEC within thirty (30) days of modification. Failure to comply with the requirements in this Paragraph 15, Product List, will be grounds for action to be taken against Vendor, including termination.
- 16. Services List:** Vendor agrees to maintain the Service List in accordance with the following provisions:
- a) The initial Service discount on Exhibit A will be based on a discount off the Service list prices currently in effect with VMware. Except as set forth in Section 14, "Discount Guarantees", the discount percentage set forth in the Product and Service List shall not decrease for the duration of this Master Agreement. List discounts are subject to change with prior written notice.

- b) The Service List shall be maintained by Vendor 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 substantially comply with the requirements in this Paragraph 16, Service List, will be grounds for action to be taken against Vendor, including termination.

**17. License:**

Eligible Organization shall use all licensed Product in accordance with this Section. All VMware software licenses provided by Vendor are subject to VMware's Standard End User Software License (EULA) and as amended in the attached Exhibit C VMWARE END USER LICENSE AGREEMENT.

**18. Warranties:**

- a) Software: Vendor warrants that the media, if any, on which the Product is delivered will be free of defects and that the Software will substantially conform to the descriptions contained in the applicable user documentation with respect to the particular Software purchased by Eligible Organization for a period of ninety (90) days after acceptance of the Software by Eligible Organization as determined by Section 11 A of this Master Agreement. Notwithstanding the foregoing, Software is covered by, and subject to, the terms, conditions, and limitations of VMware's standard warranty, which Vendor will mirror to the warranty it receives from the Software manufacturer to Resellers and require that Resellers provide warranty terms no less than those provided by Vendor to Reseller. The warranty remedy will be that as provided for in the End User License Agreement. The warranty period, if any, for the corrected Software via fixes and/or patches will be the remaining period of the original warranty period. The Software sale shall include firmware and software updates for all Software purchased by Eligible Organization under this Master Agreement.
- b) Services: Vendor 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 Vendor 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. The warranty period for Services is thirty (30) days from the date of Acceptance by Eligible Organization as determined by Section 11 A of this Master Agreement. If Vendor determines that it cannot, in a commercially reasonable manner correct any Services, then Vendor may, in its sole discretion, refund to Eligible Organization the price of the Services less a reasonable adjustment for beneficial use.

- c) Vendor warrants that it has obtained the rights that are necessary to grant to Reseller the right to market and sell the Products and Services under this Master Agreement.
- d) The MHEC acknowledges that except as specifically set forth or referenced in this paragraph, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, IN ADVERTISING MATERIALS, BROCHURES, OR OTHER DESCRIPTIVE LITERATURE) BY VENDOR OR ANY OTHER PERSON, EXPRESS OR IMPLIED, AS TO THE CONDITION OR PERFORMANCE OF ANY PRODUCTS, THEIR MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. VENDOR ASSUMES NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR MANUFACTURER'S PRODUCT SPECIFICATIONS OR THE PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATION PROVIDED TO VENDOR BY OR ON BEHALF OF THE MHEC OR ANY ELIGIBLE ORGANIZATION.

**19. Termination:**

- a) At any time the MHEC may terminate this Master Agreement, in whole or in part, by giving Vendor ninety (90) days written notice; provided however, the Eligible Organization cannot terminate a specific Order for convenience after it has been acknowledged by Vendor. At any time, Vendor may terminate this Master Agreement, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve Vendor 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.

20. 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 delivered.
21. **Non-Appropriation:** This provision applies only to publicly funded Eligible Organizations. The terms of this Master Agreement and any resulting Order 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 Order or other document, Eligible Organization may terminate its Orders if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The Eligible Organization's decision as to whether sufficient appropriations are available shall be accepted by Reseller and shall be final and binding. An Eligible Organization shall provide sixty (60) days notice, if possible, of its intent to terminate an Order for non-appropriation. The Eligible Organization shall send to Reseller a notice of its decision not to appropriate funds for the installment sale payments for the subsequent fiscal year. The notice shall also include a statement that the Eligible Organization was unsuccessful in finding another assignee within its own organization to continue the installment sale payments and that the Product or Service will not be replaced by a similar product during the ensuing fiscal year. Such termination shall relieve the Eligible Organization, its officers and employees from any responsibility or liability for the payment of any future Orders. However, all outstanding invoices from Reseller will be paid by the Eligible Organization.
22. **Records and Audit:** Vendor agrees and agrees to require Resellers to maintain detailed records pertaining to the sale of Services rendered and Products delivered for a period of six (6) years from the date of Acceptance of each Order. These records shall be subject to inspection by Eligible Organization and appropriate governmental authorities with Eligible Organization's state. The Eligible Organization shall have the right to audit billings either before or after payment provided that Eligible Organization has provided Reseller with thirty (30) day prior written notice of such audit and the audit is limited to normal working hours, initiated one time during any twelve (12) month period. Payment under this Master Agreement shall not foreclose the right of the Eligible Organization to recover excessive or illegal payments.
23. **Independent Contractor:** Vendor and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Vendor 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.

**24. Patent, Copyright, Trademark and Trade Secret Indemnification:** Vendor will indemnify, defend and hold the MHEC harmless from a claim that any Service or Product purchased by Reseller to fulfill the requirements of this Master Agreement infringes on another person's or entity's patent, copyright, trade secret or any other proprietary right of a third party. Vendor 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 Vendor to the extent that such a Claim is caused by such modification, combination, operation, or use of the Product. Following notice of a Claim or a threat of actual suit, Vendor will, at its own expense and option, (1) resolve the claim in a way that permits continued ownership and use of the affected Product or Service; (2) provide a comparable replacement at no cost; or (3) in the case of a Product accept return of the Product, freight collect, and provide a reasonable depreciated refund and in the case of a Service, provide a refund less a reasonable adjustment for beneficial use. Notwithstanding the foregoing, any indemnification pursuant to this Section 24 shall be limited to what is provided by VMware. Vendor shall require Resellers to offer indemnification terms to Eligible Organizations no less favorable than those provided for in this Section.

**25. Indemnification:** Vendor will indemnify, protect, save and hold harmless the MHEC, as well as the representatives, agents and employees of the MHEC, from any and all claims or causes of action related to a claim of personal injury or damage to tangible property, including all reasonable attorneys' fees incurred by the MHEC, arising from Vendor's negligence or willful misconduct during the performance of the Master Agreement by Vendor, Vendor's agents, or employees. MHEC shall give Vendor 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, permit Vendor to control the defense of any such claim or action at Vendor's own expense. The MHEC agree that Vendor may employ attorneys of its own choice to appear and defend the claim or action and that the MHEC shall do nothing to compromise the defense of such claim or action or any settlement thereof and shall provide Vendor with all reasonable assistance that Vendor may require. Notwithstanding the foregoing, any indemnification pursuant to this Section 25 shall be limited to what is provided by VMware to Vendor. Vendor shall require Resellers to offer indemnification terms to Eligible Organizations no less favorable than those provided for in this Section.

**26. Limitation of Liability:** Vendor shall not be liable to the MHEC for any direct damages in excess of \$500,000 or the amounts paid for the Product subject to the claim, whichever is greater. The foregoing limitation does not apply to any indemnification obligations under this Master Agreement provided that the Product manufacturer provides such exclusion to Vendor or to damages resulting from personal injury or property damage caused by Vendor's negligence or willful misconduct. Neither Vendor nor the MHEC 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.

**27. Confidentiality:**

- a) While Vendor is providing Services hereunder, Eligible Organization or Vendor 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 Section 27 of the Master Agreement, 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 Vendor 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 Discloser (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 Vendor 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 Discloser .

- c) Notwithstanding anything to the contrary in this Agreement or amendment to this Master Agreement, Vendor agrees to comply with the data practices or similar type laws of the State in which Eligible Participant is located or founded.

**28. FERPA (and Other Privacy Laws):** Where applicable the Parties agree to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPPA), the Gramm-Leach Bliley Act (GLBA) and all other state and federal privacy laws; that are applicable to this Master Agreement, and Vendor agrees to require resellers to do the same.

**29. Amendments:** Except as provided for in Section 15, "Product List"; and Section 16 "Service List"; this Master Agreement shall only be amended by written instrument executed by the Parties.

**30. 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.

**31. 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.

**32. 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.

**33. Web Site Maintenance:** MHEC agrees to maintain and support Internet website(s) for access to the Product List, Service List, Product description, Product specifications, Service descriptions, Service specifications and other aids in accordance with mutually agreed to terms. Vendor shall notify MHEC

when there are additions and/or deletions made to the list of authorized Resellers.

- 34. Equal Opportunity Compliance:** The Parties agree 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, the parties agree 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 a Party under this Master Agreement. If a Party is found to be not in compliance with these requirements during the life of this Master Agreement, such Party agrees to take appropriate steps to correct these deficiencies.
- 35. Compliance with Law:** The Parties shall comply with all applicable laws and governmental regulations, which by their terms, apply to their performance pursuant to this Master Agreement.
- 36. Applicable Law:**
- a) INTENTIONALLY OMITTED,
  - b) As between the MHEC and Vendor 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.
  - c) As between Eligible Organization, and Resellers, Orders will be construed in accordance with and its performance governed by the laws of the state in which the Eligible Organization resides as agreed to by the VAR and Eligible Organization and if the Eligible Organization is a governmental educational entity, nothing in this Agreement will be construed to deprive such an entity of any applicable sovereign immunity that is provided for by law. 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, which the Eligible Organization resides.
- 37. Conflict of Interest:** The Parties warrant 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.
- 38. Assignment:** Neither Party shall 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 the other Party. This consent requirement includes reassignment of this Master Agreement due to change in ownership, merger, or acquisition of a Party or its subsidiary or affiliated

corporations. Nothing in this Section shall preclude Vendor from employing a subcontractor in carrying out its obligations under this Master Agreement. Vendor's use of such subcontractors will not release Vendor from its obligations under this Master Agreement.

**39. 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.

**40. 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 upon evidence of receipt of a facsimile, overnight delivery 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:

<b>Midwestern Higher Education Compact</b>	<b>Arrow Enterprise Computing Solutions, Inc.</b>
Name: Nathan Sorensen	Name: Contract Manager w/copy to Legal Counsel
Address:	Address: 7459 S. Lima St.
105 Fifth Avenue South, Suite 450	Englewood, CO 80112
Minneapolis, Minnesota 55401	
Email: <a href="mailto:Nathans@mhec.org">Nathans@mhec.org</a>	Email: <a href="mailto:ybarcewski@arrow.com">ybarcewski@arrow.com</a>
Fax: 612-767-3353	Fax: call first 303-824-7762

**41. Administrative Reporting and Fees:** On a quarterly basis (where quarter one is January 1 – March 31 and the quarter one report is due by April 30), Vendor 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 Midwestern Higher Education Commission for an amount equal to one and one half percent (1.5%) of the net Product and Service sales for that quarter period (the "Fee"). The Parties will mutually agree to any change to the percentage of the Fee. Any change in the Fee may also require a change in the Product and Service List discount.

**42. The MHEC Not Liable For Eligible Participants:** MHEC is not liable to Vendor or any other entities for the failure of any Eligible Organization to

make any payment or to otherwise fully perform pursuant to the terms and conditions of an Order.

- 43. Announcements and Publicity:** Any announcements and publicity related to this Master Agreement must receive the prior approval of the Parties. Neither Party will make any representations of the other Party's opinion or position as to the quality of effectiveness of the Products and/or Services that are the subject of this Master Agreement without the prior written consent of the other Party, (or Eligible Organization).
- 44. Marketing:** Vendor will provide commercially reasonable assistance to 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 discounts. Vendor will respond to Resellers requesting a quote who receive RFPs from Eligible Organizations for the Products offered under this Master Agreement.
- 45. Oversight Committee:** An Oversight Committee comprised of representatives of Eligible Organizations shall be appointed by the MHEC to assist and support MHEC and Vendor in developing and refining the implementation of this Master Agreement. This shall include, but not be limited to, assistance with commercially reasonable efforts for supporting marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely Products and Services; and to advise Vendor on the effectiveness of its implementation progression. There will be an annual meeting between Vendor and the MHEC (and perhaps members of the Oversight Committee) to perform a contract health check; including items such as those above.
- 46. Force Majeure:** Neither Vendor nor the MHEC shall be liable to the 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, the Party unable to perform shall undertake reasonable action to notify the other Party of the same.
- 47. Sovereign Immunity:** Notwithstanding anything to the contrary in this Master Agreement or Order under this Master Agreement, this Master Agreement shall not be construed to deprive an Eligible Organization of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Master Agreement or afforded by Eligible Organization's State to the Eligible Organization.

**48. Miscellaneous:** All parties to this Master Agreement may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Master Agreement that shall be considered an original and shall be admissible in any action to enforce this Master Agreement. The Parties shall accept this Master Agreement by its authorized signature. Except as provided for in this Master Agreement, all changes to this Master Agreement must be made in writing signed by both parties; accordingly any additional terms on the Orders shall be of no force or effect.

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

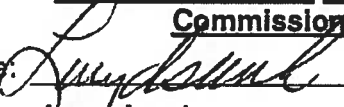
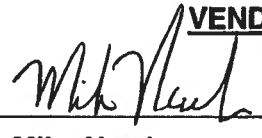
	<u><b>Midwestern Higher Education</b></u>	<u><b>VENDOR</b></u>
	<u><b>Commission</b></u>	
Signature: 		
Name: <u>Larry Isaak</u>	<u>Mike Nowlan</u>	
Title: <u>President</u>	<u>VP</u>	
	<u><b>Midwest Higher Education</b></u>	<u><b>Arrow Enterprise Computing</b></u>
Address: <u>1300 South Second Street,</u>	<u>7459 S. Lima Street</u>	
<u>Minneapolis, Minnesota, 55454</u>	<u>Englewood, CO 80112</u>	
Date: <u>12-2-13</u>	<u>12-3-13</u>	



Exhibit A – Product and Services Discount

Product Category	MHEC Disc from VMware Academic Pricing
Licenses	17%
Support (including renewals)	3%
Consulting Services	3%
Training (VMware provided)	19%
VCHS (VMware Hybrid Cloud Services)	5%

## Exhibit B - Reseller List

Company	Open Systems of Cleveland, Inc.		Company	Ahead
Contact	Diane Kearney		Contact	Jeff Schorr
Email Address	<a href="mailto:diane@osinc.com">diane@osinc.com</a>		Email Address	<a href="mailto:jeff.schorr@thinkahead.com">jeff.schorr@thinkahead.com</a>
Address 1	22999 Forbes Road		Address 1	150 South Wacker Drive
Address 2	Suite A		Address 2	
City, State, Zip	Cleveland, OH 44146		City, State, Zip	Chicago, IL 60606
Phone	440.439.2332 Ext. 102		Phone	312.340.6982
Web	<a href="http://www.osinc.com">www.osinc.com</a>		Web	<a href="http://www.thinkahead.com">www.thinkahead.com</a>
States Covered	IL, IN, IA, KS, MI, MN, MO, NE, ND, SD, OH, WI		States Covered	IL, IN, IA, KS, MI, MN, MO, NE, ND, SD, OH, WI
Company	DELL		Company	Collier IT, Inc.
Contact	Ashleigh Lane		Contact	Letonya Ackland
Email Address	<a href="mailto:ashleighlane@ dell.com">ashleighlane@ dell.com</a>		Email Address	<a href="mailto:lackland@collier-it.com">lackland@collier-it.com</a>
Address 1	One Dell Way		Address 1	2310 West County Road
Address 2	MS RR8-07		Address 2	Suite D
City, State, Zip	Round Rock, TX 78682		City, State, Zip	Roseville, MN 55112
Phone	512.723.1033		Phone	651.366.6446
Web	<a href="http://www.dell.com">www.dell.com</a>		Web	<a href="http://www.collier-it.com">www.collier-it.com</a>
States Covered	National		States Covered	MN, CO, SD, ND, IA, NE, IL, OH, WI
Company	CDW Corporation		Company	Software ONE, Inc.
Contact	Melissa Melius		Contact	Steven Gahr
Email Address	<a href="mailto:malimel@cdw.com">malimel@cdw.com</a>		Email Address	<a href="mailto:steve.gahr@softwareone.com">steve.gahr@softwareone.com</a>
Address 1	200 N. Milwaukee Avenue		Address 1	20875 Crossroads Circle
Address 2			Address 2	Suite 1
City, State, Zip	Vernon Hills, IL 60061		City, State, Zip	Waukesha, WI 53186
Phone	847.371.5657		Phone	262.953.5244
Web	<a href="http://www.cdw.com">www.cdw.com</a>		Web	<a href="http://www.softwareone.com">www.softwareone.com</a>
States Covered	National		States Covered	National
Company	SHI International Corporation		Company	Insight

Contact	Alison Fleischer	Contact	Peter McGree
Email Address	<a href="mailto:alison_fleischer@shi.com">alison_fleischer@shi.com</a>	Email Address	<a href="mailto:peter.mcgree@insight.com">peter.mcgree@insight.com</a>
Address 1	290 Davidson Avenue	Address 1	6820 South Harl Avenue
Address 2		Address 2	
City, State, Zip	Somerset, NJ 08873	City, State, Zip	Tempe, AZ 85283
Phone	732.564.8266	Phone	469.443.7484
Web	<a href="http://www.shi.com">www.shi.com</a>	Web	<a href="http://www.insight.com">www.insight.com</a>
States Covered	National	States Covered	National
Company	Sayers	Company	NOW Micro
Contact	Teresa Tacconga	Contact	Robert Wakefield
Email Address	<a href="mailto:ttacconga@savers.com">ttacconga@savers.com</a>	Email Address	<a href="mailto:robertw@nowmicro.com">robertw@nowmicro.com</a>
Address 1	825 Corporate Woods Parkway	Address 1	1645 Energy Park Drive
Address 2		Address 2	Suite 200
City, State, Zip	Vernon Hills, IL 60601	City, State, Zip	Saint Paul, MN 55108
Phone	847.391.4819	Phone	651.393.2100
Web	<a href="http://www.sayers.com">www.sayers.com</a>	Web	<a href="http://www.nowmicro.com">www.nowmicro.com</a>
States Covered	IL, IN, IA, KS, MI, MN, MO, NE, ND, SD, OH, WI	States Covered	
Company	ePlus, Inc.	Company	Capital Data
Contact	Darren Raiguel	Contact	Tim LaMalfa
Email Address	<a href="mailto:draiguel@eplus.com">draiguel@eplus.com</a>	Email Address	<a href="mailto:tlamalfa@capital-data.com">tlamalfa@capital-data.com</a>
Address 1	13595 Dulles Technology Drive	Address 1	600 North Broadway
Address 2		Address 2	Suite 100
City, State, Zip	Herndon, VA 20171	City, State, Zip	Milwaukee, WI 53202
Phone	610.495.1266	Phone	414.223.8000
Web	<a href="http://www.eplus.com">www.eplus.com</a>	Web	<a href="http://www.capital-data.com">www.capital-data.com</a>
States Covered	National	States Covered	
Company	Mainline Information Systems	Company	Heartland Technology Solutions
Contact	Laurie Restifo	Contact	
Email	<a href="mailto:laurie.restifo@mainline.com">laurie.restifo@mainline.com</a>	Email Address	

Address				
Address 1	1700 Summit Lake Drive		Address 1	1700 Stephen Street
Address 2			Address 2	
City, State, Zip	Tallahassee, FL 32317		City, State, Zip	Little Chute, WI 54140
Phone	850.219.5000		Phone	920.687.4131
Web	<a href="http://www.mainline.com">www.mainline.com</a>		Web	<a href="http://www.hbs.net">www.hbs.net</a>
States Covered	National		States Covered	
Company	Alexander Open Systems		Company	NeTech
Contact	Steven Andrews		Contact	John Bannister
Email Address	<a href="mailto:steven.andrews@aos5.com">steven.andrews@aos5.com</a>		Email Address	<a href="mailto:jbannister@netechcorp.com">jbannister@netechcorp.com</a>
Address 1	12980 Foster Street		Address 1	6355 East Paris Avenue
Address 2			Address 2	
City, State, Zip	Overland Park, KS 66213		City, State, Zip	Grand Rapids, MI 49316
Phone	913.307.2383		Phone	616.281.8100
Web	<a href="http://www.aos5.com">www.aos5.com</a>		Web	<a href="http://www.netechcorp.com">www.netechcorp.com</a>
States Covered	IL, IN, IA, KS, MI, MN, MO, NE, ND, SD, OH, WI		States Covered	MI, IN, IL, OH, WI
Company	TSG Server & Storage, Inc.			
Contact	Steven Kato			
Email Address	<a href="mailto:skato@tsg-usa.com">skato@tsg-usa.com</a>			
Address 1	One Main Street SE			
Address 2	Sulte 204			
City, State, Zip	Minneapolis, MN 55414			
Phone	612.465.0800			
Web	<a href="http://www.tsg-usa.com">www.tsg-usa.com</a>			
States Covered	MN, WI, ND, SD, IA			

**Exhibit C - VMware End User License Agreement**

Arrow represents that the EULA attached below is materially the same as that offered by VMware to buyers of VMware products.



MHEC VMWARE  
EULA June 2013 US

## VMWARE END USER LICENSE AGREEMENT

PLEASE NOTE THAT THE TERMS OF THIS END USER LICENSE AGREEMENT ("EULA") SHALL GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE. IN THIS EULA, "YOU" MEANS THE "CUSTOMER" NAMED IN THE ELA ORDER FORM TO WHICH THIS EULA IS ATTACHED.

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

**1. DEFINITIONS.**

- 1.1 "Affiliate" means, with respect to a party, an entity that is directly or indirectly controlled by or is under common control with such party, where "control" means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of the relevant entity (but only as long as such person or entity meets these requirements).
- 1.2 "Documentation" means that documentation that is generally provided to You by VMware with the Software, as revised by VMware from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.
- 1.3 "Guest Operating Systems" means instances of third-party operating systems licensed by You, installed in a Virtual Machine and run using the Software.
- 1.4 "Intellectual Property Rights" means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.
- 1.5 "License" means a license granted under Section 2.1.
- 1.6 "License Key" means a serial number that enables You to activate and use the Software.
- 1.7 "License Term" means the duration of a License as specified in the Order.
- 1.8 "License Type" means the type of License applicable to the Software, as more fully described in the Order.
- 1.9 "Open Source Software" or "OSS" means software components that are licensed under a license approved by the Open Source Initiative ("OSI") or similar open source or freeware license and are embedded in the delivered Software.
- 1.10 "Order" means a purchase order, enterprise license agreement, or other ordering document issued by You to VMware or a VMware authorized reseller that references and incorporates this EULA and is accepted by VMware as set forth in Section 4.
- 1.11 "Product Guide" means the current version of the VMware Product Guide at the time of Your Order, copies of which are found at [www.vmware.com/download/eula](http://www.vmware.com/download/eula).
- 1.12 "Services Terms" means the support services terms as indicated in the applicable Order, or if the Order does not specify any support services terms, then VMware's then-current Support and Subscription Contract Terms and Conditions, copies of which are found at [www.vmware.com/files/pdf/support/support\\_terms\\_conditions.pdf](http://www.vmware.com/files/pdf/support/support_terms_conditions.pdf).
- 1.13 "Software" means the VMware Tools and the VMware computer programs listed on VMware's commercial price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.
- 1.14 "Territory" means the Territory as set forth in the applicable Order, or if the Order does not specify the Territory, then the country or countries in which You have been invoiced; provided, however, that if You have been invoiced within any of the European Economic Area member states, You may deploy the corresponding Software throughout the European Economic Area.
- 1.15 "Third Party Agent" means a third party delivering information technology services to You pursuant to a written contract with You.
- 1.16 "Virtual Machine" means a software container that can run its own operating system and execute applications like a physical machine.
- 1.17 "VMware" means VMware, Inc., a Delaware corporation, if You are purchasing Licenses or services for use in the United States and VMware International Limited, a company organized and existing under the laws of Ireland, for all other purchases.
- 1.18 "VMware Tools" means the suite of utilities and drivers, Licensed by VMware under the "VMware Tools" name, that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running in a Virtual Machine.

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**2. LICENSE GRANT.**

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- 2.1 Scope of License.** Subject to the terms and conditions of this EULA, VMware grants You, during the License Term, a non-exclusive, non-transferable License to use the Software, in executable code form only, within the Territory, for Your internal operations in accordance with (a) the Documentation; (b) the License Type for which You have paid the applicable fees; (c) other applicable limitations set forth in the Order. The License to the Software is limited to the quantities specified in each applicable Order.
- 2.2 Third Party Use.** Under the License granted to You in Section 2.1 above, You may permit Your Third Party Agents to access, use and/or operate the Software on Your behalf for the sole purpose of delivering services to You, provided that You will be fully responsible for Your Third Party Agents' compliance with terms and conditions of this EULA and any breach of this EULA by a Third Party Agent shall be deemed to be a breach by You.
- 2.3 Permitted Copies.** You may make one copy of the Software for archival purposes only. The copy shall: (a) be kept within Your possession or control; (b) include all titles, trademarks, and copyright and restricted rights notices in the original; and (c) be subject to this EULA. You may not otherwise copy the Software without VMware's prior written consent.
- 2.4 Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or otherwise distribute the results of such studies to third parties as follows: (a) if with respect to VMware's Workstation or Fusion products, only if You provide a copy of Your study to [benchmark@vmware.com](mailto:benchmark@vmware.com) prior to distribution; (b) if with respect to any other Software, only if VMware has reviewed and approved of the methodology, assumptions and other parameters of the study (please contact VMware at [benchmark@vmware.com](mailto:benchmark@vmware.com) to request such review and approval) prior to such publication and distribution.
- 2.5 VMware Tools.** You may distribute the VMware Tools (whether or not as part of the Virtual Machine You create with the Software) to third parties solely when installed in a Guest Operating System to enhance its performance and functionality when running in a Virtual Machine, provided that You will be fully responsible for such third parties' compliance with the terms and conditions of this EULA, and any breach of this EULA by any such third party shall be deemed to be a breach of this EULA by You.
- 2.6 Open Source Software.** Notwithstanding anything herein to the contrary, Open Source Software is licensed to You under such OSS's own applicable license terms, which can be found in the `open_source_licenses.txt` file, the Documentation or as applicable, the corresponding source files for the Software available at [http://www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html). These OSS license terms are consistent with the license granted in Section 2, and may contain additional rights benefiting You. The OSS license terms shall take precedence over this EULA to the extent that this EULA imposes greater restrictions on You than the applicable OSS license terms.

**3. RESTRICTIONS; OWNERSHIP.**

- 3.1 Restrictions.** You acknowledge that the Software and the structure, organization and source code of the Software constitute valuable trade secrets of VMware. Accordingly, except as expressly permitted in Section 2 or as otherwise authorized by VMware in writing, You will not and will not permit any third party to: (a) sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part the Software or Documentation to any third party; (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part; (c) copy the Software, except for archival purposes, as set out in Section 2.3; (d) create, develop, license, install, use, or deploy any software or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software as described in this EULA; (e) translate, modify or create derivative works based upon the Software; (f) permit any use of or access to the Software by any third party; (g) remove any product identification, proprietary, copyright or other notices contained in the Software; or (h) operate the Software on behalf of or for the benefit of any third party, including the operation of any service that is accessed by a third party, except that, for the purposes of this Section 3.1 (h), You may use the Software to deliver hosted services to Your Affiliates.
- 3.2 Decompilation.** Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of the Territory give You the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, You must first request such information from VMware (at [info@vmware.com](mailto:info@vmware.com)), provide all reasonably requested information to allow VMware to assess Your claim, and VMware may, in its discretion, either provide such interoperability information to You, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that VMware's proprietary rights in the Software are protected and to reduce any adverse impact on VMware's proprietary rights.
- 3.3 Ownership.** The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of VMware and its licensors. Your rights to use the Software and Documentation shall be limited to those expressly granted in this EULA and any applicable Order. No other rights with respect to the Software or any related Intellectual Property Rights are implied. You are not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this EULA or the applicable Order.
- 3.4 Guest Operating Systems.** Certain Software allows Guest Operating Systems and application programs to run on a computer system. You acknowledge that You are responsible for obtaining and complying with any licenses necessary to operate any such third-party software.

4. **ORDER.** Your Order is subject to this EULA. No Orders are binding on VMware until accepted by VMware. Orders for Software are deemed to be accepted upon VMware's delivery of the Software Included in such Order. Orders issued to VMware do not have to be signed to be valid and enforceable.
5. **AUDIT RIGHTS.**
- 5.1 **Records.** You will, during the License Term for any Software licenses acquired under this EULA (and for a period of two (2) years from the expiration of the applicable License Term), maintain accurate records of your use of the Software sufficient to demonstrate Your compliance with the terms of this EULA and all Orders.
- 5.2 **Audit Rights.** During the period in which You are obligated to maintain such records, VMware, or its third party auditor, may, upon reasonable notice to You, audit such records to verify that You have (a) used the Software solely in the manner authorized herein; (b) paid all applicable license fees; and (c) otherwise complied with the terms of this EULA and all Orders. VMware may conduct no more than one (1) audit in any twelve (12) month period. Audits will be conducted during normal business hours and VMware will use commercially reasonable efforts to minimize the disruption of Your normal business activities. VMware, and any third-party auditor, shall not have physical access to Your computing devices in connection with any such audit, without Your prior written consent. You will reasonably cooperate with VMware and/or its third-party auditor and will promptly pay directly to VMware any underpayments revealed by such audit. You will promptly reimburse VMware for all reasonable costs and expenses incurred by VMware for such audit if: (i) such audit reveals an underpayment by You of more than five percent (5%) of the fees payable by You to VMware for the period audited, or (ii) such audit reveals You have materially failed to maintain accurate records of Your use of the Software.
6. **SUPPORT AND SUBSCRIPTION SERVICES.** Except as expressly specified in the Product Guide, VMware does not provide any support or subscription services for the Software under this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software developed by VMware unless you separately purchase VMware support or subscription services. These support or subscription services are subject to the Services Terms.
7. **WARRANTIES.**
- 7.1 **Software Warranty.** VMware warrants to You that the Software will, for a period of ninety (90) days following delivery ("Warranty Period"), substantially conform to the applicable Documentation, provided that the Software (a) has been properly installed and used at all times and in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than VMware or its authorized representative. VMware will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of the foregoing warranty, either replace the applicable Software or correct any reproducible error in the Software reported to VMware by You in writing during the Warranty Period. If VMware determines that it is unable to correct the error or replace the Software, VMware will refund to You all License fees actually paid by You, in which case the License for the applicable Software and Your right to use such Software will terminate.
- 7.2 **Disclaimer of Warranties.** THE EXPRESS WARRANTY IN SECTION 7.1 ABOVE IS IN LIEU OF AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMWARE AND ITS LICENSORS DISCLAIM, ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE) REGARDING OR RELATING TO THE SOFTWARE, THE DOCUMENTATION, OR ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS EULA. VMWARE AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT THE SOFTWARE WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS.
8. **INTELLECTUAL PROPERTY INDEMNIFICATION.**
- 8.1 **Defense and Indemnification.** Subject to the remainder of this Section 8, VMware shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that such misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People's Republic of China, to the extent that such countries are part of the Territory for the License ("Infringement Claim") and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement; provided that You: (i) promptly provide VMware with notice of such Infringement Claim; (ii) allow VMware sole control over the defense thereof and related settlement negotiation; and (iii) reasonably cooperate in response to VMware requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of VMware.
- 8.2 **Remedies.** Should the Software become, or in VMware's opinion be likely to become, the subject of an Infringement Claim, VMware will, at VMware's option and expense either: (a) procure the rights necessary for You to make continued use of the affected Software in accordance with this EULA; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related support services, and, upon Your certified deletion of the affected Software, refund: (i) the fees paid by You for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date such Software was delivered; and (ii) any pre-paid service fee attributable to related support services to be delivered after the date such service is stopped. Nothing in this Section 8.2 shall limit VMware's obligation under Section 8.1 to defend and indemnify You, provided that You replace the allegedly infringing Software upon VMware's making alternate Software available to You and/or You discontinue using the allegedly infringing Software upon receiving VMware's notice terminating the affected License.



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- 8.3 Exclusions.** Notwithstanding the foregoing, VMware will have no obligation under this Section 8 or otherwise with respect to any claim based on: (a) a combination of Software with non-VMware products (other than non-VMware products that are listed on the Order and used in an unmodified form); (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer VMware revision would have avoided the infringement; (d) any modification to the Software made without VMware's express written approval; (e) any claim that relates to open source software or freeware technology or any derivatives or other adaptations thereof that is not embedded by VMware into Software listed on VMware's commercial price list; (f) any claim that relates to Linux or Android open source software, even when it has been embedded into or distributed with the Software or (g) any Software provided on a no charge, beta or evaluation basis. THIS SECTION 8 STATES YOUR SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.
- 9. LIMITATION OF LIABILITY.**
- 9.1 Limitation of Liability.** TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL VMWARE AND ITS LICENSORS BE LIABLE FOR ANY LOSS PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. VMWARE'S AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE LICENSE FEES YOU PAID FOR THE SOFTWARE, IF ANY. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO VMWARE'S INDEMNIFICATION OBLIGATIONS IN SECTION 8. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER VMWARE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 9.2 Further Limitations.** VMware's licensors shall have no liability of any kind under this EULA and VMware's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1. You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.
- 10. TERMINATION.**
- 10.1 License Term.** This EULA will terminate in its entirety upon the termination of the License Term, unless terminated earlier under this Section 10.
- 10.2 Termination for Breach.** VMware may terminate this EULA in its entirety effective immediately upon written notice to You if: (a) You breach any provision in Section 3 and do not cure the breach within ten (10) days after receiving written notice thereof from VMware; (b) You fail to pay any portion of the fees under an applicable Order within ten (10) days after receiving written notice from VMware that payment is past due; (c) You breach any other provision of this EULA and don't cure the breach within thirty (30) days after receiving written notice thereof from VMware; or (d) You commit a material breach that is not capable of being cured.
- 10.3 Termination for Insolvency.** VMware may terminate this EULA in its entirety effective immediately upon written notice to You if You: (a) terminate or suspend your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.
- 10.4 Effect of Termination.** If VMware terminates this EULA under this Section 10: (a) all Licensed rights to all Software granted to You under this EULA will immediately cease to exist; and (b) You must promptly discontinue all use of all Software, and (destroy all copies of the Software and all License Key(s)) and return, or if requested by VMware, destroy, any related VMware Confidential Information in Your possession or control and certify in writing to VMware that You have fully complied with these requirements. Sections 1 (Definitions), 2.6 (Open Source Software), 3 (Restrictions; Ownership), 5.1 (Records), 5.2 (Audit Rights), 7.2 (Disclaimer of Warranties), 9 (Limitation of Liability), 10 (Termination), 11 (Confidential Information) and 12 (General) will any survive termination of this EULA.
- 11. CONFIDENTIAL INFORMATION.**
- 11.1 Definition.** "Confidential Information" means information or materials provided by one party ("Discloser") to the other party ("Recipient") which are in tangible form and labeled "confidential" or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) License Keys; (b) Information regarding VMware's pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.
- 11.2 Protection.** Recipient may use Confidential Information of Discloser; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties' ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by the EULA, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of the EULA and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from

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unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.

- 11.3 Exceptions.** Recipient's obligations under Section 11.2 with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.
- 12. GENERAL.**
- 12.1 Assignment.** This EULA and any Orders, and any of Your rights or obligations thereunder, may not be assigned, subcontracted or transferred by You, in whole or in part, whether voluntary, by operation of contract, law or otherwise, without the prior written consent of VMware. Any attempted assignment or transfer in violation of the foregoing will be null and void. Subject to the foregoing, this EULA will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.
- 12.2 Notices.** Any notice delivered by VMware to You under this EULA will be delivered via mail, email or fax.
- 12.3 Waiver.** The waiver of a breach of any provision of this EULA shall not constitute a waiver of any other provision or any subsequent breach.
- 12.4 Severability.** If any provision of this EULA is held to be illegal, invalid or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this EULA will remain in full force and effect.
- 12.5 Compliance with Laws; Export Control; Government Regulations.** Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by the U.S. Government shall be governed solely by the terms and conditions of this EULA.
- 12.6 Construction.** The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word 'including' means "including but not limited to."
- 12.7 Governing Law.** The UN Convention on International Sale of Goods shall not apply. If any legal action is brought by a party to enforce the Agreement, the prevailing party will be entitled to receive its reasonable attorneys' fees, court costs, and other collection expenses as determined by and pursuant to an order of a court of competent jurisdiction, in addition to any other relief it may receive from the non-prevailing party. If You are a government or governmental educational entity, nothing in this EULA shall be construed to deprive You of sovereign immunity that is mandated by applicable law.
- 12.8 Third Party Rights.** Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.
- 12.9 Product Guide.** In addition to the above sections, Your use of the Software is subject to the terms and conditions of the Product Guide, which is incorporated herein by reference.
- 12.10 Order of Precedence.** In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Product Guide, (b) this EULA and (c) the Order. With respect to any inconsistency between this EULA and an Order, the terms of this EULA shall supersede and control over any conflicting or additional terms and conditions of any Order, acknowledgement or confirmation or other document issued by You, unless the parties execute a written agreement expressly indicating: (i) that such Order shall modify this EULA; or (ii) that the terms of such Order shall supersede and control in the event of any inconsistency.
- 12.11 Entire Agreement.** This EULA, including accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.

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**12.12 Contact Information.** Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department. If You have any questions concerning this EULA, please send an email to [info@vmware.com](mailto:info@vmware.com).