

NJEDGE – VMware Inc. Master Agreement
For Products and Services

This Master Agreement (“Agreement”), is effective as of the last date of signature below (“Effective Date”), and is by and between **Supplier** (“VMware, Inc.” or “Supplier” or “Contractor”), a Delaware Company, having an office for notices at **3401 Hillview Avenue Palo Alto CA 94304**, and the **NJEDGE.NET, INC.** (“NJEDGE”), a New Jersey corporation, located at 218 Central Avenue, Newark, NJ 07102. Supplier and NJEDGE may be referred to in this Agreement individually as a “Party” or collectively as “Parties.”

WHEREAS, NJEDGE, a non-profit serving colleges, universities, K-12 school systems, state and local government units, health care providers, libraries and other non-profit entities located in New Jersey, wishes to provide its members with the products and services of Supplier; and

WHEREAS, NJEDGE and Supplier intend that NJEDGE Members, as defined in Section 1.a below, may purchase Supplier products and services under the terms and conditions contained herein and in such case, such NJEDGE Member shall also be subject to the rights, duties and obligations of this Master Agreement,

NOW, THEREFORE, INTENDING to be legally bound, Supplier and NJEDGE agree that the following terms and conditions shall apply to the products and services procured under this Agreement.

1) SCOPE OF AGREEMENT

- a) Supplier (including via its authorized third party resellers) offers to provide to NJEDGE Members defined as: (i) a NJEDGE Member Organization or institution, campus or site of a NJEDGE Member Organization, (ii) any health care clinic or organization, governmental institution, museum, educational entity, or other publicly funded institution located in New Jersey; and, (iv) any other entity agreed upon in writing by both Parties which has contracted with Supplier under this Agreement; and includes the NJEDGE organization itself, the Products and Services which are defined as the products and services listed and described at <https://www.vmware.com/download/eula.html>. NJEDGE Members wishing to purchase such Products and Services shall execute a Purchase Order (“PO”) and/or mutually agreeable Statement of Work (“SOW”) and/or Enterprise License Agreement (“ELA”) with Supplier and/or authorized reseller as described in Section 9.
- b) Rates and Charges.
Supplier agrees to offer all NJEDGE Members and their authorized users (“End Users”) the Products and Services at the published price list rates and charges with the applicable discounts as provided by Supplier or its authorized resellers (“Authorized Resellers”) to NJEDGE.

2) ORDER OF PRECEDENCE

- a) The Supplier’s product specific End User License Agreement (EULA); product specific Terms of Service (TOS); Service Level Agreement (SLA); and services Professional Services Terms and Conditions (SOW T&Cs for professional services) are to be used at the transaction level. Any SOW, PO or ELA placed under this Master Agreement shall be subject to the terms of this Master Agreement and shall incorporate by reference or attachment the Supplier’s EULA, TOS, SLA, ELA and/or SOW, as applicable, based on the Products or Services being ordered and shall be interpreted be consistent and complementary. Any conflict among the documents shall be resolved by giving priority to the documents in the following order:
 1. This Master Agreement, including its exhibit 1;

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2. For products: Supplier's product specific End User License Agreement (EULA); product specific Terms of Service (TOS); Service Level Agreement (SLA); and for services: mutually agreed upon Statement of Work and Professional Services Terms and Conditions.
3. Enterprise License Agreement, as mutually agreed upon by NJEDGE Member and VMware
4. Purchase Order (provided that any additional terms and conditions contained in a Purchase Order shall have no force or effect unless specifically agreed to in writing by Supplier and/or an authorized reseller).

3) SERVICE LEVELS

- a) Service Level Agreement (SLA). Supplier's standard terms, which are available at <http://www.vmware.com/download/eula.html>, for the products provided under this Agreement shall apply.
- b) For consulting services to be provided by Supplier, the parties shall execute a mutually agreeable SOW which describes services Supplier will perform for NJEDGE Member and shall include Supplier's Consulting Services Terms and Conditions.
- c) The NJEDGE Member, at its expense, shall have the right to use an independent, mutually agreed upon Third Party to validate Supplier's performance under this Agreement with respect to meeting agreed upon service levels.

4) INTERRUPTIONS IN SERVICE; SUSPENSION OF SERVICE; CHANGES TO SERVICE

Supplier shall promptly notify the NJEDGE Member of any suspension of End User access to Products or Services that Supplier hosts. Supplier may suspend access to Services by an End User immediately in response to an act or omission by End User that reasonably appears to jeopardize the security or integrity of Supplier's Products, Services or the network(s) or facilities used by Supplier to provide the Products or Services. Suspension shall be to the reasonable extent, and of the reasonable duration, required to prevent or end the security or integrity issue. The suspension shall be lifted promptly once the issue is resolved. Supplier may suspend access to Products or Services by an End User in response to a material breach by such End User of any terms of use she/he/it has agreed to in connection with receiving the Products or Services.

5) TECHNICAL SUPPORT

- a) During the Term of the Master Agreement and the term of the applicable related Purchase Orders, Supplier shall provide the NJEDGE Member with standard technical support included and as defined with the purchased service. NJEDGE Members may purchase additional professional services separately.
- b) Supplier shall not withdraw from any NJEDGE Member any Technical Support that the NJEDGE Member has contracted for that is included as part of any general service offering for any Product that the NJEDGE Member maintains in accordance with the terms and conditions, without reasonable advance written notice, and in any event not less than 90 days' written notice, to the NJEDGE Member.
- c) Notice of material changes to Services will be provided to active customers via an assigned User ID and access to licenses keys in accordance with Supplier's standard policy for the applicable Service, which may be updated as needed. The Supplier notices will be sent from Supplier via automated email to the subscribed email designated by the NJEDGE Member.

6) PRODUCT ACCESSIBILITY

- a) Supplier's Voluntary Product Accessibility Templates (VPATS) indicating how an applicable product conforms to the Section 508 Accessibility Standards are available at <http://www.vmware.com/help/accessibility.html>.

7) FEES, INVOICING, PAYMENT AND TAXES

- a) The NJEDGE Member agrees to pay all amounts in U.S. dollars to NJEDGE, Supplier's Authorized Reseller, Supplier's Distributor ("Distributor"), or Supplier, as specified in the Purchase Order or SOW. NJEDGE has identified that Carahsoft Technology Corporation will serve as its administrator under this Agreement to facilitate the distribution of Software and provide certain reporting services to the parties. Notwithstanding the aforementioned, the parties acknowledge that Carahsoft is not a party to this Agreement. NJEDGE Member(s) agrees to pay all Supplier charges (except Disputed amounts, as defined below) within thirty (30) of invoice date unless otherwise mutually agreed to in a SOW or ELA. Invoices are delivered monthly unless otherwise specified in an applicable SOW. Payments must be made to the address designated on the invoice or other such place as reseller Supplier or Authorized Reseller may designate. Amounts not paid or Disputed on or before forty-five (45) days from invoice date shall be considered past due, and NJEDGE Member(s) agrees to pay a late payment charge equal to the lesser of: (a) 1.5% amount per month, compounded, or (b) the maximum amount allowed by applicable law, as applied against the past due amounts, unless otherwise agreed to by NJEDGE Member and Supplier or authorized reseller in writing. A "Disputed" amount is one for which the NJEDGE Member(s) has given reseller or Supplier written notice within forty-five (45) days of the date of invoice adequately supported by bona fide explanation and documentation. Payment of the undisputed amount shall be paid while the Disputed portion of the invoice is being resolved.
- b) VMware's Products and Services shall be identified in the applicable ordering document. NJEDGE Members may directly contact NJEDGE, Distributor, or an Authorized Reseller(s) of their choice to obtain specific price quotes under the contract, in accordance with their procurement procedures. Additionally, NJEDGE Members may compete transactions with multiple Authorized Resellers to identify whether even greater discounts are available. Should NJEDGE Member(s) purchase any products or services after the expiration of the Term, NJEDGE Member(s) shall pay Supplier's published, standard rates for those services (or Tariffs, if applicable), unless otherwise mutually agreed to.
- c) All charges are exclusive of applicable taxes, which NJEDGE Member(s) shall pay, as applicable.
- d) Invoices will set forth and itemize, as applicable:
- i. Supplier name, address, phone number, and Federal Tax Identification Number;
 - ii. NJEDGE Member Purchase Order number, if any;
 - iii. The NJEDGE VMware Master Contract Number;
 - iv. Description of Products and Services, including quantity purchased;
 - v. Date(s) of fulfillment listed as "Service Period;"
 - vi. NJEDGE Member's price per unit for each line item, and extended price;
 - vii. Applicable sales and use taxes, if any, as a separate line item;
 - viii. Other applicable charges, if any;
 - ix. Total invoice price; and
 - x. Payment terms consistent with this Agreement or otherwise mutually agreed to by the parties of the transaction.

8) APPROPRIATION OF FUNDS

If the term of a PO, ELA, or SOW extends into fiscal years subsequent to that for which it is approved, such continuation of the PO, ELA, or SOW may be subject to the appropriation of funds for such purpose by the New Jersey legislature or other funding sources external to NJEDGE or its Members. If funds to affect continued payment are not appropriated, NJEDGE or NJEDGE Member may terminate the applicable PO, ELA and/or SOW, and all services thereunder, upon fourteen (14) days prior written notice to Supplier provided such notice occurs prior to end of funding. Supplier shall then prepare a final invoice for Services delivered to the NJEDGE Member though the effective termination date (and in no event extending beyond the period of time for which funds have been appropriated) in accordance with the applicable PO, ELA and/or SOW. Payment of such final invoice shall be sole obligation and liability of NJEDGE and the NJEDGE Member with respect to the terminated PO, ELA and/or SOW.

9) ORDERING PROCEDURES

- a) Product Orders fulfilled through NJEDGE:
 - i. NJEDGE Member develops an order with assistance from Supplier sales contact, if necessary;
 - ii. NJEDGE Member issues a Purchase Order to NJEDGE for ordered Products;
 - iii. NJEDGE fulfills Supplier's Product ordered through distributor channel;
 - iv. NJEDGE, Supplier, or authorized reseller installs Product in accordance with mutually agreed upon order specifications, if installation is included in the order.
 - v. NJEDGE invoices Member for the placed order in accordance with invoicing terms herein;
- b) Product Orders fulfilled through Supplier's authorized resellers:
 - i. NJEDGE Member develops an order with assistance from Supplier or Authorized Reseller sales contact, if necessary;
 - ii. NJEDGE Member issues a Purchase Order to Supplier's Authorized Reseller for ordered Products;
 - iii. Authorized Reseller fulfills Supplier's Product ordered through distributor channel;
 - iv. Authorized Reseller installs Product ordered for NJEDGE Member, in accordance with mutually agreed upon order specifications if installation is included in the order.
 - v. Authorized Reseller invoices NJEDGE Member for the placed order with invoicing terms materially similar to the invoicing terms herein;
- c) Product Orders may be fulfilled directly by Supplier with mutual written agreement of the parties. In such cases, Product Orders shall include:
 - i. NJEDGE Member develops an order with assistance from Supplier sales contact, if necessary;
 - ii. NJEDGE Member issues a Purchase Order to Supplier or Distributor for ordered Products;
 - iii. Supplier or Distributor fulfills Product ordered;
 - iv. Supplier installs Product ordered for NJEDGE Member, in accordance with mutually agreed upon order specifications if installation is included in the order.
 - v. Supplier or Distributor invoices NJEDGE Member for the placed order with invoicing terms materially similar to the invoicing terms herein;
- d) Services fulfilled directly by Supplier:
 - i. NJEDGE Member develops a SOW with Supplier sales contact for services to be performed, which may include detailing deliverables, schedules and invoicing timelines as applicable;
 - ii. NJEDGE Member and Supplier execute a mutually agreeable SOW;
 - iii. Supplier performs contracted services, as ordered, via the detailed SOW;
 - iv. Supplier invoices NJEDGE Member in accordance with SOW and invoicing terms herein;

10) TERM AND TERMINATION; DEFAULT

- a) The term of this Agreement (“Term”) shall be three (3) years from the effective date hereof; provided, that notwithstanding the expiration of the Term, the terms and conditions of this Agreement shall remain in effect and continue to apply to the parties’ respective rights and obligations for performance under any Purchase Order or SOW. No new Purchase Orders or SOWs shall be placed under this Agreement after the expiration or termination of this Agreement.
- b) The parties may terminate this Agreement by mutual written agreement.
- c) The parties may renew this Agreement by mutual written agreement.
- d) **Default By Supplier.** Supplier shall be deemed to be in “Default” under this Agreement or the applicable Purchase Order in the event that: (i) Supplier becomes the subject of a voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding; (ii) Supplier makes an assignment for the benefit of creditors; (iii) Supplier admits in writing its inability to pay debts when due; or (iv) Supplier fails to observe and perform any material term of this Agreement or an applicable Purchase Order and such failure continues for a period of thirty (30) days after written notice from NJEDGE or Member.
 - i. For Defaults under a Purchase Order, NJEDGE Member may (A) terminate the Purchase Order or SOW in whole or in part, in which event NJEDGE Member shall have no further duties or obligations, except (i) in the case of partial termination, the rights, duties and obligations shall continue in full force and effect to the extent not terminated and (ii) for those duties or obligations that by their terms survive any termination of the Purchase Order or SOW, and/or (B) pursue any remedies NJEDGE Member may have under the SOW according to this Agreement, at law or in equity. In such event, NJEDGE Member shall be responsible for payment to Supplier for all Products and Services delivered or performed and accepted prior to the Default.
 - ii. For Defaults under this Agreement, NJEDGE may A) terminate this Agreement. In which event NJEDGE shall have no further duties or obligations, except (i) in the case of partial termination, the rights, duties and obligations shall continue in full force and effect to the extent not terminated and (ii) for those duties or obligations that by their terms survive any termination of this Agreement, and/or (B) pursue any remedies NJEDGE may have under this Agreement, at law or in equity.
- e) **Default By NJEDGE or NJEDGE Member.**
 - i. **Master Agreement Default by NJEDGE.** For the purposes of a default under this Master Agreement, NJEDGE shall be deemed to be in “Default” in the event that: (i) NJEDGE becomes the subject of a voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding; (ii) NJEDGE makes an assignment for the benefit of creditors; (iii) NJEDGE admits in writing its inability to pay debts when due; (iv) NJEDGE fails to observe and perform any material term of the Master Agreement. In the event of NJEDGE’s Default hereunder, Supplier may: (A) terminate this Agreement after providing thirty (30) days written notice to NJEDGE and/or (B) pursue any remedies Supplier may have under this Agreement, at law or in equity. Notwithstanding such termination, Supplier shall continue to perform under all Purchase Orders and SOWs then in effect, and the terms and conditions of this Agreement shall continue to apply to such Purchase Orders and SOWs.
 - ii. For the purposes of a default under a Purchase Order or SOW under this Agreement, where NJEDGE is acting as a buyer of product or services, NJEDGE shall be considered a NJEDGE Member in this section. NJEDGE Member which has placed an order under this agreement, shall be deemed to be in “Default” in the event that: (i) NJEDGE Member becomes the subject of a voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding; (ii) NJEDGE Member makes an

assignment for the benefit of creditors; (iii) NJEDGE Member admits in writing its inability to pay debts when due; (iv) NJEDGE Member fails to observe and perform any material term of the Purchase Order or SOW under this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice from Supplier; or (v) NJEDGE Member fails to make any payment required hereunder when due, and such failure continues for a period of ten (10) days after receipt of written notice from Supplier. In the event of NJEDGE Member's Default hereunder, Supplier may (A) suspend performance and/or terminate the applicable Purchase Order(s) or SOW(s) in whole or in part after providing thirty (30) days written notice to NJEDGE Member during which period Supplier shall continue to provide Services under the Purchase Order(s) or SOW(s); thereafter, Supplier shall have no further duties or obligations there under except for those duties or obligations that by their terms survive any termination of the Purchase Order or SOW, and/or (B) pursue any remedies Supplier may have under the SOW according to this Agreement, at law or in equity.

- f) **Survival.** The following Sections shall survive the expiration or termination of this Agreement: Section 2, ORDER OF PRECEDENCE; Section 7, FEES, INVOICING, PAYMENT AND TAXES; Section 9.f, TERM AND TERMINATION, Survival; Section 11.d, WARRANTIES, REPRESENTATIONS AND COVENANTS, Disclaimer; Section 12, INTELLECTUAL PROPERTY, Section 13, INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION; Section 14, GENERAL INDEMNIFICATION; Section 15, LIMITATION OF LIABILITY; Section 16, INSURANCE; Section 17, CONFIDENTIALITY; Section 18, AUDIT; Section 19, DISPUTE RESOLUTION; Section 22, GOVERNING LAW; Section 23, NOTICES; Section 24, SEVERABILITY; Section 25, WAIVER; Section 29, HEADINGS; and Section 30, ENTIRE AGREEMENT.

11) WARRANTIES, REPRESENTATIONS AND COVENANTS

- a) **Services Warranty.** Supplier or its Authorized Reseller will perform materially as described in this Agreement and SOWs, in all events in a professional and workmanlike manner in accordance with industry standards. In addition, express warranties pertaining to specific Products and Services will be provided pursuant to the applicable Terms of Service and/or End User License Agreement. In addition, Supplier warrants that the technical and management personnel proposed to perform the work hereunder are qualified to perform their assigned tasks.
- b) **Warranty of Authority.** NJEDGE and Supplier warrants to the other that (i) it has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder, (ii) the performance of its obligations and duties hereunder do not and will not violate any agreement by which it is bound, and (iii) when executed and delivered, this Agreement constitutes the legal, valid and binding agreement as to the subject matter herein between the parties.
- c) **Third Party Warranties.** Supplier shall not withhold and shall pass through to NJEDGE and its Members any applicable third party warranties that may be passed through according to the warrantor's terms
- d) Supplier represents and warrants to the NJEDGE Member that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Supplier, to any officer, employee, agent or representative of the NJEDGE Member with a view toward securing this Agreement or any related Purchase Order or SOW or securing favorable treatment with respect to any determination concerning the performance hereof or thereof and will require compliance of the same from all authorized resellers under this Master Agreement. For breach or violation of this warranty, NJEDGE shall have the right to terminate this Agreement and NJEDGE Member shall the right to terminate its related Purchase Order(s) or SOW(s). The rights and

remedies of NJEDGE or the NJEDGE Member provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

- e) Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR AN APPLICABLE EULA, TERMS OF SERVICE AND/OR SOW, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, CONCERNING ANY SERVICES, PRODUCTS OR DELIVERABLES OF EITHER PARTY HEREUNDER, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE APPLICABLE EULA, TERMS OF SERVICES, AND/OR SOW, SUPPLIER PROVIDES THE THIRD PARTY SOFTWARE “AS IS” AND THE WARRANTIES, INDEMNITIES, AND REMEDIES SET FORTH HEREIN DO NOT APPLY TO THIRD PARTY SOFTWARE OR ANY BREACH, INFRINGEMENT, OR MISAPPROPRIATION TO THE EXTENT IT IS CAUSED BY SUCH THIRD PARTY SOFTWARE.

12) INTELLECTUAL PROPERTY.

- a) Ownership. “Supplier Technology” means Supplier’s proprietary Products, technology and all related materials and data, including but not limited to software, code, scripts, templates, roadmaps, strategies, reports, analysis designs, algorithms, user interface designs, architecture, documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Supplier or licensed to Supplier from a third party) and any derivatives, improvements, enhancements or extensions of Supplier Technology. Except for the rights expressly granted herein, this Agreement does not transfer from Supplier to NJEDGE any Supplier Technology, and all right, title and interest in and to Supplier Technology will remain solely with Supplier or its licensors. Except for the rights expressly granted herein, this Agreement does not transfer from NJEDGE to Supplier any rights in the materials or technology provided by NJEDGE or a NJEDGE Member during the term of this Agreement and/or any applicable SOW or Purchase Order (“NJEDGE Materials”) or any derivatives, improvements, enhancements or extensions of NJEDGE Materials conceived, reduced to practice, or developed by NJEDGE during the term of this Agreement, and all right, title and interest in and to NJEDGE Materials and any derivatives, improvements, enhancements or extensions of NJEDGE Materials will remain solely with NJEDGE. Supplier and NJEDGE each agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets owned by the other party. Supplier will own all right, title and interest in the hardware acquired by Supplier on its own behalf to perform Services. Rights in deliverables provided by Supplier under an SOW will be governed by the terms of the applicable SOW. Licenses granted to NJEDGE Members pertaining to Suppliers Products and Services shall be governed by the applicable EULA and/or Terms of Service.
- b) Supplier shall provide the End User access to End User’s Data through the end of the term for the product (including cloud service offering). In accordance with the product specific Data Privacy Addendum (found here for specific offering: <https://www.vmware.com/download/eula>) End User may (i) retrieve its data prior to the expiration of its service term or (ii) after expiration of the service term, via written request to Supplier, requesting to retrieve data at End User’s expense or requesting Supplier to delete End User data.

13) INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

- a) Professional Services. Supplier agrees, at its expense, to defend or settle any third-party claim of infringement of U.S. patents, copyrights, trademarks, trade names, or any other intellectual property rights enforceable in the United States resulting from the NJEDGE Member's use of the deliverables under a SOW during the term of the applicable SOW and indemnify NJEDGE Member from the resulting costs and damages including attorneys' fees finally awarded against NJEDGE Member to a third party by a court of competent jurisdiction or agreed to by Supplier in a written settlement, provided that NJEDGE Member: (i) promptly delivers to Supplier any notices or papers served regarding such claim; (ii) provides Supplier sole control over the defense and any negotiation for its settlement or compromise (provided, however, that any settlement that requires NJEDGE or an NJEDGE Member to admit liability or pay any monies shall require the prior, written consent of NJEDGE and/or the NJEDGE Member, as applicable); and (iii) provides, at Supplier's expense, such assistance as Supplier reasonably requests. For the avoidance of doubt, VMware's sole liability under the foregoing indemnity obligation will be limited to the amounts awarded (as indicated above) to the third party claimant, and expressly excludes damages incurred by Customer. This Section 13 states NJEDGE Member's sole and exclusive remedy, and Supplier's sole and exclusive liability, regarding infringement of any intellectual property rights of a third party. Notwithstanding the foregoing, a NJEDGE Member will have the right, upon thirty (30) days' prior written notice to Supplier and without incurring any liability on account of such termination, to terminate any SOW for the provision of Services if such Services or the NJEDGE Member's use of such Services are subject to any third-party claim of infringement. Neither NJEDGE nor any NJEDGE Member may settle or compromise any infringement claim without the prior written consent of Supplier.
- b) Remedies. If the allegedly infringing deliverables become, or in Supplier's opinion are likely to become, the subject of an infringement claim, Supplier will, at Supplier's option and expense, do one of the following: (a) procure the rights necessary for NJEDGE Member to make continued use of the affected deliverables; (b) replace or modify the affected deliverables to make them non-infringing; or (c) terminate the license to the affected deliverables, and, upon NJEDGE Member's certified deletion or destruction of the affected deliverables, refund that portion of the fees paid by NJEDGE Member for the affected deliverables. Nothing in this section will limit Supplier's obligation under subsection (a) to defend and indemnify NJEDGE Member, provided that NJEDGE Member replaces the allegedly infringing deliverables upon Supplier's making alternate deliverables available to NJEDGE Member or NJEDGE Member discontinues using the allegedly infringing deliverables upon receiving Supplier's notice.
- c) Exclusions. Notwithstanding the foregoing, Supplier will have no obligation with respect to any claim based on: (a) a combination of the deliverables or Supplier's software with non-Supplier products (other than non-Supplier products that are listed on the relevant Purchase Order or SOW and used in an unmodified form); (b) use of the Deliverables or Supplier software other than in accordance with this Agreement and the applicable SOW or ELA (c) use of any older version of Supplier software or the deliverables when use of a newer Supplier revision made available to the NJEDGE Member without charge would have avoided the infringement; (d) any modification to the deliverables made without Supplier's express written approval; (e) any deliverables developed by Supplier in accordance with NJEDGE or NJEDGE Member's specifications or designs; or (f) any claim that relates to open source software or freeware technology or any derivatives or other adaptation that is not embedded by Supplier into Supplier software listed on Supplier's available price list(s) or into deliverables; or (g) NJEDGE Materials or technology that NJEDGE or NJEDGE Member instructs Supplier to develop in a specific way or to achieve a specific end result. THIS SECTION STATES NJEDGE AND NJEDGE MEMBERS' SOLE AND EXCLUSIVE REMEDY AND SUPPLIER'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS ARISING UNDER OR IN CONNECTION WITH A SOW.

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- d) Products (including Cloud Services). Supplier's standard intellectual property infringement indemnification for Products, including cloud services, will be set forth in the EULA and/or TOS applicable to NJEDGE Member's Purchase Order or ELA.
- e) No limitation of liability set forth elsewhere in this Agreement is applicable to the Intellectual Property Infringement Indemnification.

14) GENERAL INDEMNIFICATION

- a) Subject to section 13c, Supplier shall defend, indemnify, and hold harmless NJEDGE and each NJEDGE Member, their respective officers, employees, agents, representatives, from and against all damages and costs (including attorneys' fees) finally awarded by a court of competent jurisdiction or agreed to by Supplier in a written settlement resulting from Supplier's negligence or willful misconduct in connection with its performance of this Agreement or any related Purchase Order, SOW or ELA, except to the extent that such losses, costs, expenses, damages and liabilities are caused by the negligence of NJEDGE or such NJEDGE Member, their respective officers, employees, agents or representatives. NJEDGE and each NJEDGE Member agrees to promptly notify Supplier in writing of any and all claims for which it seeks indemnification from Supplier. NJEDGE and each NJEDGE Member further agrees to reasonably cooperate with Supplier in defending such actions and claims. If any settlement or resolution involves (i) the admission of a NJEDGE Member's wrongdoing, or (ii) making a financial commitment on behalf of the NJEDGE Member, Supplier agrees not to settle or otherwise resolve any such actions or claims without the prior written consent of the NJEDGE Member, which shall not be unreasonably withheld. For the avoidance of doubt, VMware's sole liability under the foregoing indemnity obligation will be limited to the amounts awarded (as indicated above) to the third party claimant, and expressly excludes damages incurred by Customer.
- b) Intentionally omitted.
- c) In the event of any third party claim for which a Party (the "Indemnified Party") seeks indemnification under this Section 13, the Indemnified Party shall (i) give the other Party (the "Indemnifying Party") prompt written notice of the claim and permit the Indemnifying Party sole control over the defense and settlement of the claim, and (ii) reasonably cooperate with the Indemnifying Party in the defense and or settlement of the claim. The Indemnifying Party shall keep the Indemnified Party reasonably apprised of the continuing status of any actions and claims, including any proceedings resulting from them, and shall permit the Indemnified Party, at its own expense, to participate in the defense or settlement of such actions or claims.

15) LIMITATION OF LIABILITY

- a) **LIMITATION ON DIRECT DAMAGES. SUPPLIER'S TOTAL LIABILITY AND NJEDGE OR NJEDGE MEMBER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING OUT OF THIS AGREEMENT OR A PURCHASE ORDER OR SOW SHALL BE GOVERNED BY THE LIMITATION OF LIABILITY CLAUSE IN THE APPLICABLE EULA, TOS, OR SOW.**
- b) **EXCEPT AS OTHERWISE REQUIRED BY LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY, CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR**

SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF USE OR LOST BUSINESS REVENUE, PROFITS, OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT, UNDER ANY THEORY OF TORT, CONTRACT, INDEMNITY, WARRANTY, STRICT LIABILITY, OR NEGLIGENCE EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

- c) The limitations of liability in this Section will not apply to: (i) NJEDGE or NJEDGE Member's violation of Supplier's or its licensors' intellectual property rights; (ii) Supplier's indemnification obligations under this Agreement; (iii) either Party's breach of confidentiality obligations; (iv) any liability which may not be excluded by applicable law.

16) **INSURANCE**

- a) On or before the Effective Date, Supplier shall provide to NJEDGE proof, such as an insurance certificate, evidencing full compliance with the insurance requirements set forth herein.

Supplier, at its sole cost and expense, shall insure its activities in connection with the work under this Agreement or any related Purchase Order or SOW and obtain, keep in force, and maintain insurance as follows:

- i. Comprehensive or Commercial Form General Liability Insurance (contractual liability included) with limits as follows:
Each Occurrence \$1,000,000.00
Products/Completed Operations Aggregate \$3,000,000.00
Personal and Advertising Injury \$1,000,000.00
General Aggregate (Not applicable to the Comprehensive Form) \$3,000,000.00
- ii. Technology Errors & Omissions, as well as Cyber and Privacy Liability insurance with a limit of \$2,000,000 per claim and aggregate, covering the acts, errors and/or omissions of Supplier in connection with the professional services under this Agreement.

If this insurance is written on a claims-made form, it shall continue for one (1) year following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the Effective Date.

Supplier will not insure or be responsible for any loss or damage to property of any kind owned or leased by NJEDGE or a NJEDGE Member, or by its employees and agents other than losses or damages proximately caused by Supplier's negligence.

17) **CONFIDENTIALITY**

- a. Each Party acknowledges that certain information that it shall acquire from the other Party is of a special and unique character and constitutes confidential information of the owning party. "Confidential Information" means information or materials provided by one party ("Discloser") to the other party ("Receiving Party") 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 in the circumstances. The following information will be considered Confidential Information whether or not so marked or identified: any personally identifiable information (such as the names of Discloser's customers or end users) or the

physical address of any equipment contained in any information collected about Discloser's computing environment, Discloser's business operations, pricing, discounts, source code, product roadmaps or strategic marketing plans.

- b. The Receiving Party agrees that it: i) will use the Confidential Information solely to perform its obligations and rights in connection with this Agreement, ii) will exercise the same degree of care and protection with respect to the Confidential Information of the Discloser that it exercises with respect to its own similar confidential information and iii) will not directly or indirectly provide, disclose, copy, distribute, republish or otherwise allow anyone to have access to any Confidential Information of the Discloser without prior written permission from the Discloser, except that it may disclose Confidential Information to its employees, consultants and subcontractors who have a need to know, are bound by nondisclosure restrictions at least as protective as those set forth in this Agreement. The Receiving Party shall be liable for acts or omissions of its employees, consultants and subcontractors that results in use or disclosure of the Discloser's Confidential Information not permitted hereunder. Either Party may disclose Confidential Information to the extent required by law or regulation (including court order or subpoena), but only to the extent of such requirement and only to the governmental authority requiring disclosure. Recipient will give Discloser reasonable advance notice of any such required disclosure and will limit the scope of such disclosure to the minimum required by the law or regulation.
- c. Neither Party's confidentiality obligations hereunder shall apply to information which: (a) is already or rightfully becomes known to the receiving Party (other than through the terms of this Agreement) and through no wrongful act or omission of receiving Party; (b) becomes publicly available without fault or omission of the receiving Party; (c) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure, or such confidential information is approved for release by written authorization of the Party having the rights in such Confidential Information; (d) is developed independently by the receiving Party without use of the disclosing Party's Confidential Information.
- d. Nothing in this Agreement shall in any way limit the ability of the NJEDGE Member to comply with any applicable laws or legal process concerning disclosures by public entities. Supplier acknowledges that any responses, materials, correspondence, documents or other information provided to the NJEDGE Member are subject to applicable state and federal law, including the California Public Records Act, and that the release of Confidential Information, to the extent it is not covered by an exemption from release, in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement. To the maximum extent permitted under such laws, NJEDGE Member will provide Supplier with notice and the opportunity to redact trade secrets prior to any such mandatory disclosure of Supplier's Confidential Information.

18) AUDIT

- a) Supplier shall keep accurate and timely records related to the performance of its obligations under this Agreement and each related Purchase Order or SOW. In particular, records will be kept documenting any price computations required under the Agreement and each related Purchase Order or SOW.

Neither NJEDGE Member nor End User is permitted access to or ability to scan Supplier's underlying infrastructure for multi-tenant services.

- b) Supplier shall, at all times during the term of this Agreement and for a period of three (3) years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. Supplier shall make such records available for inspection and audit at NJEDGE's expense, not more than once annually. Such records shall be made available to NJEDGE during normal business hours at the Supplier's office or place of business and subject to a fifteen business day written notice. NJEDGE Member shall have the same rights to audit with respect to their applicable Purchase Order, SOW or ELA, unless a longer period is defined in the PO, SOW or ELA.

19) DISPUTE RESOLUTION

- a) NJEDGE and Supplier agree that any dispute between the parties arising out of this Agreement shall be resolved through the procedures herein, which either party may initiate by written demand describing the party's claim(s) and the amount(s) of such claims(s) (the "Demand") delivered to the other party.
- b) The parties shall first attempt to resolve the dispute through good-faith consultation and negotiation between management representatives of the Parties possessing full authority to resolve the matter for their respective organizations. Such representatives shall meet promptly after delivery by either Party to the other of a Demand for a dispute resolution meeting.

20) JOINT DRAFTING

Intentionally omitted.

21) ASSIGNMENT AND USE OF AUTHORIZED RESELLERS

This Agreement shall be binding on the Parties and their successors (through merger, acquisition or other process) and permitted assigns. Except as expressly provided, neither Party may assign, delegate or otherwise transfer its obligations or rights under this Agreement or any related Purchase Order or SOW to a third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that either Party may assign its rights and obligations under this Agreement without the approval of the other Party: (a) to an entity which acquires all or substantially all of the assets of the assigning Party; (b) to any Affiliate, in which event the assignor shall remain liable as a guarantor of the assignee/Affiliate's performance of such Party's obligations hereunder; (c) to a successor in a merger or acquisition, but only if the assignee agrees to assume all responsibilities of the assigning Party under the Agreement; or (d) as collateral to any institutional lender except in the case that such assignee is a competitor of the non-assigning Party.

22) GOVERNING LAW

This Agreement, any related Purchase Order or SOW, and all claims arising thereunder, shall be governed by, and construed in accordance with, the laws of the State of New Jersey, excluding its conflict of laws provisions to the contrary. Any dispute, claims, demands or actions arising out of or in relation to this Agreement or any related Purchase Order or SOW, or the interpretation, making, performance, breach or termination thereof shall be brought in and resolved by the state or federal courts located in the State of New Jersey.

23) NOTICES

- a) All notices, requests, consents, approvals, or authorizations in connection with this Agreement (collectively, "Notices") must be given in writing, sent by email with delivery receipt requested, personal delivery,

messenger, overnight delivery service, or the United States mail, postage prepaid, certified or registered, return receipt requested, and addressed as follows:

If to Supplier:

VMware, Inc.
Attn: Legal Department
3401 Hillview Avenue
Palo Alto, CA 94304

If to NJEDGE:

President & CEO
NJEDGE
218 Central Avenue
Newark, NJ 07102

With copies sent to:

VMware, Inc.
12100 Sunset Hills Road, Suite 600
Reston, VA 20190
Attn: Karin Whitwood, Contracts Mgr.

With copies sent to:

legal@njedge.net

- b) All Notices sent in accordance with the foregoing shall be deemed received by the intended recipient: (a) upon personal delivery; or (b) one (1) business day following confirmation of delivery receipt for email or deposit with an overnight courier service submitted in time for next day delivery; or (c) two (2) business days following deposit in the United States mail as provided above.
- c) Either Party may change its notice contact information above by written notice to the other Party in accordance with this Section.

24) SEVERABILITY

- a) The terms of this Agreement are severable. If any provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement will remain in full force and effect.
- b) In the event that any provision shall be held to be illegal, void, invalid or unenforceable, that provision shall in good faith be renegotiated to reflect as closely as possible the intent of the original provisions of this Agreement in a manner that is valid and enforceable.

25) WAIVER

- a) No waiver of any right or remedy under this Agreement or any related Purchase Order or SOW shall be effective unless such waiver is in writing signed by both Parties.
- b) The waiver of any performance required under this Agreement or any related Purchase Order or SOW, or of any breach of any provision of this Agreement or any related Purchase Order or SOW, shall not operate or be construed as a waiver of any subsequent failure to perform or breach of the same or any other provision of this Agreement or any related Purchase Order or SOW.
- c) The delay or omission by either Party to exercise any right or remedy under this Agreement or any related Purchase Order or SOW shall not be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.

26) FORCE MAJEURE

Neither Party shall be liable to the other for failure or delay of performance hereunder due to causes beyond its reasonable control that such Party was unable to avoid or overcome through the exercise of reasonable diligence. The non-performing Party shall promptly notify the other Party in writing of an event of force majeure, the expected duration of the event, and its anticipated effect on the ability of the affected Party to perform its obligations, and the affected Party shall use its best efforts to remedy the event of force majeure in a timely fashion. The Party whose performance was not affected by the force majeure event may terminate or suspend its performance under this Agreement if the non-performing Party fails to perform its obligations under this Agreement for more than thirty (30) consecutive calendar days.

27) COUNTERPARTS

This Agreement and each related Purchase Order or SOW may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. Each Party shall receive a duplicate original of the counterpart copy or copies executed by it. For purposes hereof, a facsimile or emailed copy of this Agreement and each related Purchase Order or SOW, including the signature pages hereto, shall be deemed to be an original, and each Party agrees that it will not contest the validity of the execution of this Agreement or any related Purchase Order or SOW solely on the basis of any signature being a facsimile or electronic transmission. Notwithstanding the foregoing, NJEDGE Member shall deliver acceptable execution copies of each related Purchase Order to Supplier or authorized reseller in accordance with their procurement policies and the invoicing requirements of this Agreement. If this Agreement or any related SOW is executed in counterparts, no signatory hereto shall be bound by this Agreement until both Parties have executed a counterpart of this Agreement or such related SOW.

28) RELATIONSHIP BETWEEN THE PARTIES

The Parties intend by this Agreement to create an independent contractor relationship and nothing contained in this Agreement shall be construed to make NJEDGE or Supplier partners, joint venturers, principals, agents or employees of the other. No officer, director, employee, affiliate, agent, representative or subcontractor retained by Supplier to perform work on the NJEDGE's behalf under this Agreement shall be deemed to be an employee or agent of the NJEDGE. Neither Party shall have any right, power or authority, express or implied, to bind the other Party. While Supplier may (or may not) be required under the terms of this Agreement to carry Worker's Compensation Insurance, Supplier is not entitled to unemployment or workers' compensation benefits from the NJEDGE. Supplier and Supplier partners and resellers may not imply NJEDGE endorsement of VMware Products or Services or VMware partners and resellers nor, without prior written consent, use NJEDGE logo in any communications.

29) HEADINGS

The section headings in this Agreement are inserted for convenience of reference only, are not substantive, and shall not be interpreted to define, describe, modify or otherwise limit the interpretation or scope of any provision of this Agreement.

30) ENTIRE AGREEMENT

This Agreement, together with the referenced exhibits constitutes the entire, final and exclusive Agreement between the Parties with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the Parties with respect to such subject matter. The Parties expressly disclaim the right to claim the enforceability or effectiveness of any oral modifications to this Agreement or any oral amendments based solely on course of dealing, waiver, release, estoppel or other similar legal theory. This Agreement may be amended only in writing signed by authorized representatives of each Party.

Each Party represents to the other Party that its signatory is authorized to bind the representing Party. This Agreement shall become binding when signed by the authorized signatories of both Parties.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

Supplier

NJEDGE

By: *Luis Mata*
By: Luis Mata (Jul 25, 2017)

By: *Samuel S. Conn*

Print Name: Luis Mata

Print Name: Samuel S. Conn, Ph.D.

Title: Sr. Contracts Administrator

Title: President and CEO

Date: Jul 25, 2017

Date: July 24, 2017

Approved by Karin Whitwood

Exhibits: Exhibit 1 – Links to applicable VMware EULAs, Policies & Terms

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EXHIBIT 1 –
Links to applicable EULAs, Policies, Terms & Conditions

- **VMware End User License Agreements (EULAs):** http://www.vmware.com/download/eula/universal_eula.html
- **VMware Support Policies and VMware, Inc. Support and Subscription Services “SnS” Terms and Conditions:** <https://www.vmware.com/support/policies>
- **Airwatch Hosted Services Policy:** <http://www.air-watch.com/downloads/pricing/hosting-services-policy.pdf>
- **Software as a Service (SaaS)**
 - **Identity Manager Terms of Service:** <http://www.vmware.com/download/eula/identity-manager-terms-of-service.html>
 - **Social Cast Terms of Service:** http://www.vmware.com/download/eula/socialcast_tos.html
 - **VMware vRealize Air Terms of Service:** <http://www.vmware.com/download/eula/vrealize-air-terms-of-service.html>
 - **VMware vRealize ITBM Terms of Service:** https://www.vmware.com/download/eula/digital_fuel_tos
 - **VMware Workspace One Terms of Service:** <http://www.vmware.com/download/eula/workspace-one-terms-of-service.html>
 - **Software as a Service (SaaS) Support:** <https://www.vmware.com/support/services/>
- **Infrastructure as a Service (IaaS)**
 - **vCloud Air Terms of Service:** <http://vcloud.vmware.com/legal>
 - **Horizon Air Desktops Terms of Service:** <http://www.vmware.com/download/eula/horizon-air-terms-of-service.html>
- **Professional Consulting Services (PSO)**
<https://www.vmware.com/content/dam/digitalmarketing/vmware/en/pdf/professional-services/vmware-general-terms-and-conditions-professional-services.pdf>
- **VMware Product Guide:**
VMware's public facing website with its Product Guide <http://www.vmware.com/files/pdf/vmware-product-guide.pdf>.
- **VMware Voluntary Product Accessibility Templates (VPATS):**
VPATS contain product specific information regarding accessibility for people with physical, sensory or cognitive disabilities:
<http://www.vmware.com/help/accessibility.html>