



**Information &
Communications
Technology
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: October 23, 2018

| | | | | |
|---|-----|-------------------------------------|-----|-------------------------------------|
| Public Hearing Required | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Scheduled Public Hearing w/Clerk | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Published Notice Required | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Advertised Published Notice | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| County Counsel Sign-Off | Yes | <input checked="" type="checkbox"/> | N/A | <input type="checkbox"/> |
| Meet & Confer Required | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Electronic file(s) has been sent | Yes | <input checked="" type="checkbox"/> | N/A | <input type="checkbox"/> |
| Budget Transfer (Aud 308) attached | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Personnel Resolution attached | Yes | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s) | Yes | <input checked="" type="checkbox"/> | N/A | <input type="checkbox"/> |
| CONTACT PERSON: Marilyn Lucas PHONE: 622-7313 | | | | |

SUBJECT: Approve Enterprise agreement with VMware Inc. for the provision of VxLAN across the network.

REQUEST(S):
That the Board of Supervisors:

1. Approve Enterprise agreement with VMware, Inc. in an amount not to exceed \$1,200,185.55 for Enterprise Licensing Agreement for time period of October 23, 2018 to October 23, 2021.
2. Authorize the Chairman of the Board to sign three copies of the agreement, and the Key Government Finance Application.

SUMMARY:
As the County needs continue to change, and the systems that the county uses continue to improve TCiCT must continue to change; improving the base on which these applications reside. Without a solid foundation the applications that the County uses to handle its day to day operations will not be able to run at optimal performance. As we continue to move further into this new century we must look at doing business well and efficiently with the staffing that is currently provided. Therefore, one of the new technologies TCiCT is reviewing for applications is the cloud. This technology will require us to change some of the basic infrastructure to gain some of the advantages that we are looking for.

The implementation of the VMWare product will greatly simplify the management of the virtual environment allowing us to focus staff on more crucial tasks. As we implement this technology we will need to provide training to our staff on the new

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DATE: October 23, 2018

technology and this project will account for that as well. NSX will also enhance the data security of the County by providing finer granular control over network traffic to, and between virtual servers and the clients who access their data.

At the conclusion of this phase of the project, VMWare will be installed, training will be provided, VxLAN will be implemented across the network and a test bed for micro segmentation will be implemented. Network micro segmentation will require closer cooperation between the various divisions within TCiCT on the development, implementation, and auditing of new security roles and policies. This frame work will be built out in a following fiscal year of the project. The implementation of NSX will allow the County to save on its new core router as well. The purchase and implementation of this product will allow the County to save approximately \$150,000 on the new core router.

This agreement has been approved as to form by County Counsel. The following terms deviate substantively from the standard County boilerplate:

Late Fees – Under the Agreement, all amounts not paid when due will incur a late charge equal to 1.5% per month.

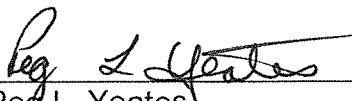
FISCAL IMPACT/FINANCING:

The purchase of the Enterprise License Agreement and the first year of Services is included in the FY 2018/19 requested budget. The initial cost of this system is not to exceed \$400,061.85 and funding is from operating transfers from the Tulare County Health & Human Services Agency (\$183,228.33), and County General Trust Fund (\$216,833.52). The next two (2) years of services will be included in department future budgets. Each of the next two (2) years would have a payment of \$400,061.85 which includes all charges including interest. Please note that the ELA will be a three (3) year contract and the other two (2) years will need to be budgeted in maintenance charges for TCiCT budget appropriately. The Services will only last for FY 18/19. There is no Net County Cost.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five-year strategic plan includes the Safety and Security Performance Initiative to provide for the safety and security of the public. The ability of the County to maintain community safety and security is dependent on the ability to keep the network equipment operational and, when there is an issue, react to it quickly. The approval of this agreement gives us the ability to maintain the network.

ADMINISTRATIVE SIGN-OFF:



Peg L. Yeates

Information & Communications Technology Director

SUBJECT: Approve Enterprise agreement with VMware Inc. for the provision of VxLAN across the network.

DATE: October 23, 2018

cc: County Administrative Office

Attachment(s)

Attachment A – VMware Professional Services Statement of Work

Attachment B – Key Government Finance, Inc., on behalf of Cisco Systems Capital Corp. Finance Application

Attachment C – Cisco Capital Leasing Option

Attachment D – VMware Professional Services General Terms & Conditions

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF APPROVE)
ENTERPRISE AGREEMENT WITH) Resolution No. _____
VMWARE INC FOR THE PROVISION) Agreement No. _____
OF VxLAN ACROSS THE NETWORK)
)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: MICHAEL C. SPATA
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Approved Enterprise agreement with VMware, Inc. in an amount not to exceed \$1,200,185.55 for Enterprise Licensing Agreement for time period of October 23, 2018 to October 23, 2021
2. Authorized the Chairman of the Board to sign three copies of the agreement, and the Key Government Finance Application.

Order #

Date: October 9, 2018

This Statement of Work ("SOW") is made by and between VMware, Inc. ("VMware") and Tulare County ("Customer") This SOW authorizes VMware to provide Customer with Consulting Services that are subject to the terms and conditions of Section 1 [Model N Quote #Q564035] to the ELA Order Form by and between VMware and Customer (the "Agreement"). Capitalized terms used herein shall have those meanings set forth in the Agreement.

Overview

VMware will assist with the development of the Customer's capability to do the following:

- Abstract and pool network resources
- Provide granular application security and isolation

VMware will provide the following services:

- Design a network virtualization foundation
- Deploy a network virtualization foundation
- Design an application security and isolation foundation
- Deploy an application security and isolation foundation

The following are high-level activities included in this project:

- **Design** – Solution design through a series of workshops and consultation.
- **Implement** – Deployment and verification of the solution.
- **Knowledge Transfer** – Knowledge transfer of the design, deployment, and operations procedures.

This project requires the following VMware SaaS and third-party products, with vendor-supported versions as agreed to by VMware and Customer at project kick-off, but limited to those that are in general availability (GA) on the date of SOW signing:

- VMware NSX™ 6.4.

Project Scope

The scope of the service includes the following.

Design a network virtualization foundation

Design of a network virtualization solution based on NSX for vSphere according to a VMware standard architecture that is modified in a series of design workshops to tailor the design for the Customer environment. It includes validation of customer's business and technical requirements, assessment of platform constraints, risks and prerequisites to design the network virtualization solution.

| Specification | Parameters | Description |
|--|--------------------|--|
| NSX Manager instances | Up to two (2) | NSX Manager instances designed. |
| Logical switches | Up to fifteen (15) | Logical switches designed. |
| NSX Edge Services Gateway instances | Up to four (4) | Edge Services Gateways designed to provide North-South connectivity. |
| Firewall rules | Up to fifteen (15) | Sample firewall rules designed to support infrastructure service delivery. Configured only for the distributed firewall. |
| NSX Logical Distributed Router instances | Up to one (1) | Logical Distributed Router (DLR) instances designed. |

Security groups Up to eight (8) Security groups defined to support infrastructure service delivery.

Design an application security and isolation foundation

Design of a micro-segmentation and security solution based on NSX for vSphere according to a VMware standard architecture that is modified in a set of design workshops to tailor the design for the Customer environment. It includes validation of Customer's business and technical requirements, assessment of platform constraints, risks and prerequisites to design the micro-segmentation and security solution.

| Specification | Parameters | Description |
|--|-----------------|---|
| Review Solution Requirements | | Analysis of solution requirements and use case definition workshops to ascertain Customer's business and technology requirements and overall goals. The result of these workshops is combined with the materials in the Service Checklist to establish functional design parameters. These design parameters are used to develop the design for the selected use cases. |
| Review current-state Infrastructure | | Confirmation that vSphere and underpinning physical environment is prepared and ready for NSX components. Identification of gaps and risks which requires a change in physical network configurations (e.g., IP addressing, subnets, MTU, DMZ, auto-deploy, jumbo frames, and multicast), and that they are appropriately designed to support the NSX micro-segmentation security services. Any parameters that impact design options are discussed in the workshops. Where applicable, VMware presents options and make VMware best practice recommendations for resolution. |
| NSX for vSphere Component Design | Up to two (2) | NSX Manager and NSX for vSphere component design |
| Design Sessions | | Focusing on: virtual networking and security architecture, firewall policy, data classification guidelines and trust boundary topologies. |
| Distributed Firewall | | Firewall policy, distributed firewall operational requirements, security group design. |
| Service Composer | | Service Composer use and interaction. |
| Firewall rule design pack(s) | Up to three (3) | Firewall rule design packs designed. Firewall rule design packs consist of up to ten (10) firewall rule designs, including firewall policy design, security group design, rule bases for distributed firewall, layer 3 Edge firewall and identity firewall. |
| VMware NSX Edge™ firewall | Up to two (2) | Development of VMware NSX Edge™ firewall architecture design and layer 3 firewall operational requirements. |
| Operations | | Logging and monitoring guidelines. |

Deploy a network virtualization foundation

Deploy NSX-V Foundation

Foundational VMware NSX® for vSphere® deployment. This includes the preparation work, the deployment and verification of NSX Manager.

| Specification | Parameters | Description |
|---------------|------------|-------------|
|---------------|------------|-------------|

| | | |
|-----------------------|---------------|--|
| NSX Manager instances | Up to two (2) | NSX for vSphere manager appliances deployed and configured, with registration to existing configured VMware vCenter Server® instances. |
|-----------------------|---------------|--|

Deploy NSX-V for Network Virtualization

Deployment of a network virtualization solution based on NSX for vSphere according to a VMware standard architecture that is implemented and verified in the Customer environment. The service includes technical verification of platform prerequisites, the deployment of network virtualization using NSX for vSphere, functional testing and a knowledge transfer session for the Customer.

| Specification | Parameters | Description |
|--|--------------------|--|
| NSX Distributed Logical Router instances | Up to one (1) | Distributed Logical Router (DLR) instances deployed and configured. |
| NSX Edge Services Gateway instances | Up to four (4) | Edge Services Gateways with ECMP enabled to provide dynamic routing peering (OSPF or BGP) to the Logical Distributed Router and to external physical routers. |
| NSX Logical switches | Up to fifteen (15) | Logical switches configured. |
| Security groups | Up to eight (8) | Security groups defined to support infrastructure service delivery. |
| Firewall rules | Up to fifteen (15) | Sample firewall rules configured to support infrastructure service delivery. Configured only for the distributed firewall. |
| L2/L3 Functionality (VXLAN Configuration) | | Configuration of L2 logical connectivity between sites for workload mobility OTV will be removed after VXLAN is configured |
| NSX workshop activities | | Activities performed in conjunction with this service include the following: |
| NSX basic consumption activities workshop | | Workshop to provide guidance and enablement in the form of "See One, Do One" methodologies. This will be based on operational activities that are predefined at the start of the workshop. |
| NSX monitoring workshop | | Workshop to provide guidance and enablement in NSX Monitoring activities. Review Standards vCenter Alarm related to NSX and other possibilities. |
| NSX troubleshooting concept workshop | | Workshop to provide guidance and enablement in basic troubleshooting concepts. |
| NSX platform maintenance activities workshop | | Workshop to provide guidance and enablement in NSX Platform Maintenance. Discuss on backup and recovery strategy for NSX Components. |

Deploy NSX-V for Micro-segmentation and Security

Deployment of a micro-segmentation and security solution based on NSX for vSphere according to a VMware standard architecture that is implemented and verified in the Customer environment. The service includes technical verification of platform prerequisites, the deployment of micro-segmentation using NSX for vSphere, functional testing and a knowledge transfer session for the Customer.

| Specification | Parameters | Description |
|---------------|------------|-------------|
|---------------|------------|-------------|

Micro-Segmentation Deployment

| | | |
|---|------------------|---|
| Distributed firewall ESXi™ kernel modules | Up to fifty (50) | Distributed firewall ESXi kernel modules installed and configured. |
| Firewall rules configuration packs | Up to three (3) | One pack consists of up to ten (10) firewall rule configurations, including firewall policy design, security group design, rule bases for distributed firewall, layer 3 Edge firewall, and identity firewall. |
| Logging and Monitoring | | Direct logging output to a pre-installed End Customer-designated syslog target e.g., VMware vRealize™ Log Insight™. |
| Distributed Firewall (DFW) | | Configuration of stateful firewall functionality between tenant virtual machines within the same ESXi host or across different ESXi hosts using the DFW functionality. This includes configuration of one sample security groups and associated firewall rules. Configured only for the Distributed Firewall (DFW). |

Micro-segmentation Functional Services

| | | |
|-----------------|--|---|
| Virtual Machine | | Configuration of workload virtual machines using a VMware provided sample application, with up to two (2) communication flows between them that can be allowed or blocked individually. |
|-----------------|--|---|

Out of Scope

The following are out of scope for this engagement:

General

- Installing and configuring tailored or third-party applications and operating systems on deployed virtual machines.
- Operating system administration including the operating system itself or any features or components contained within it.
- Management of change to virtual machines, operating systems, tailored or third-party applications, databases, and administration of general network changes within Customer control.
- Installation or configuration of VMware products not included in the scope of this SOW.
- Installation and configuration of third-party software or other technical services that are not applicable to VMware components.
- Installation and configuration of Customer-signed certificates.
- Customer solution training other than the defined knowledge transfer session.

Schedule

VMware estimates that the execution of this project will have a duration of eight (8) weeks to execute if all assumptions in Customer Responsibilities and Assumptions section are met and there are no intervening delays outside of VMware control. Work will be performed according to a schedule agreed upon by both parties. Typically, work will be performed during normal business hours and workdays (weekdays and non-holidays).

Project Activities

The activities for this engagement are organized in the engagement-specific phases shown below.

Phase 1: Initiate

The VMware Senior Project Manager hosts project initiation call with key Customer and VMware stakeholders. Topics to be discussed include the following:

- Project business drivers, scope, and objectives.
- Project deadlines, timelines, scheduling, and logistics.
- Identification of key Customer team members that VMware will work with to assist with performing the tasks defined in this SOW.
- Participating team members are confirmed and contact details are exchanged to schedule the project kick-off meeting.

Work products

- Project initiation call

Phase 2: Plan

VMware leads project kick-off meeting with Customer project sponsors and stakeholders to review expectations about the purpose of the engagement, the delivery approach, and timelines. The following are the objectives of the meeting:

- Introducing the VMware team, roles, and responsibilities.
- Describing the project goals, phases, and key dates.
- Agreeing on communication and reporting process and creating a communications plan.
- Validating the project expectations and clarifying roles and responsibilities
- Confirming prerequisites are met as detailed in the checklist for specified solutions.
- Presenting the solution overview for the specified solution including estimated project results and work products.
- The VMware Senior Project Manager and the Customer Project Manager collaborate to develop the project plan.

Work products

- Cybersecurity solution checklist
- Cybersecurity solution overview presentation
- Communications plan
- One (1) project kick-off meeting
- Project Plan

Phase 3: Execute

The key activities for this phase are organized in the following sub-phases:

- Execute: Design
- Execute: Implement
- Execute: Knowledge Transfer

Execute: Design

VMware leads the Customer project team in a series of workshops to develop a design. VMware does the following:

- Conducts up to fifty-two (52) hours of design workshops.
- Documents the design for the specified VMware solution.

Work products

- Up to fifty-two (52) hours of design workshops
- Documents the design for the specified VMware solutions.

Execute: Implement

VMware implements the solution according to the VMware solution specification. VMware does the following:

- Implements the specified solution as detailed in the specification workbooks.
- Verifies the implementation and documents results in the verification workbooks for the specified solution.

Work products

- Cybersecurity solution specification workbook
- Cybersecurity solution verification workbook

Execute: Knowledge Transfer

VMware conducts knowledge transfer sessions covering the design, implementation, and operational considerations relating to the scope of this project. VMware does the following:

- Conducts up to twenty-two (22) hours of knowledge transfer sessions for Customer representatives.
- Provides an adoption guide containing operational guidance for the specified solution.

Note: For the avoidance of doubt, the Knowledge transfers herein do not comprise VMware product training or certification courses as offered by the VMware Education unit - (<http://mylearn.vmware.com/mgrreg/index.cfm>).

Work products

- Up to twenty-two (22) hours of knowledge transfer sessions
- Cybersecurity adoption guide document
- Cybersecurity knowledge transfer workshop presentation

Phase 4: Close

The VMware Senior Project Manager conducts closure meeting with Customer covering project status, next steps, and how to engage further with VMware.

Work products

- Engagement summary presentation
- Closure meeting

Prerequisites

The following are prerequisites for this service engagement.

Customer is responsible for executing all items discussed in the Service Checklist prior to arrival of VMware consultants on site.

Hardware Requirements

Customer will provide computer hardware and systems support for the knowledge transfer workshops, including: working hardware, network and storage that is compatible with VMware products.

Software Requirements

Customer will be solely responsible for procuring products and product support for all software to be used in connection with this SOW.

Technical Requirements

Deploy NSX-V Foundation

- vSphere Distributed Switches Required. Defined minimum: one (1)
- ESXi version. Defined minimum: 6.0.0 U2
- vCenter Server version. Defined minimum: 6.0.0 U2
- Service account with permissions in vCenter.
- NTP must be setup and time verified to be correct.

Design NSX-V for Network Virtualization

- Number of IP subnets required. Defined minimum: 1

Deploy NSX-V for Network Virtualization

- Minimum number of hosts required of. Defined minimum: seven (7)
- MTU Size required. Defined minimum: one-thousand-six-hundred (1,600)
- Number of IP subnets required. Defined minimum: one (1)
- Physical network configured for dynamic routing (BGP or OSPF).

Design NSX-V for Micro-segmentation and Security

- Security policies, including traffic flow control, access control, application and data classification policy documents to be provided to VMware during requirement assessment sessions.

Deploy NSX-V for Micro-segmentation and Security

- Minimum number of hosts required of. Defined minimum: 2
- Syslog events must be sent to a log centralization system (ideally vRealize Log Insight).
- Number of hosts in the Payload Cluster or Workload domain. Defined minimum: one (1) to fourteen (14)

Roles and Responsibilities

VMware Roles and Responsibilities

VMware provides and coordinates the activities of VMware resources. The VMware technical resources are VMware certified professionals and have significant technical expertise with the VMware products required for this service.

VMware Project Team

The VMware team will be comprised of multiple roles and may vary in the level of effort, as dictated by the project needs. VMware anticipates that all team members will contribute throughout the work efforts, utilizing their respective skills and integrating the findings. The roles anticipated for this engagement are described below.

VMware Technical Resources

The VMware Technical Resource(s) have primary responsibility for drafting the design documentation as well as implementing and testing the systems as defined by the design and test plans.

VMware Technical Resources do the following:

- Lead requirements gathering and design workshops
- Assist with performing process, technical and architectural duties outlined in this SOW
- Produce the document work products

Senior Project Manager

- Provides overall Customer relationship and project management.
- Provides escalation troubleshooting and maintains risk register.
- Provides final versions of all project documents.
- Identifies the project team, roles and responsibilities and assignment dates.
- Identifies final work products.
- Establishes the communication plan and directs formal communication and coordination with Customer Project Manager.
- Reports project status and holds weekly update meetings.
- Schedules resources.
- Maintains the project timeline, including activities, duration, and task owners.
- Handles planning and pre-engagement preparation.
- Oversees logistics, including security, remote access, and facility access.

Refer to [Appendix A](#)

Customer Roles & Responsibilities

- Customer will provide a Project Manager knowledgeable in pertinent internal Customer processes and able to collaborate with the VMware Senior Project Manager as specified in this SOW. VMware consulting services will not commence until the Customer Project Manager is assigned.
- Customer will support and provide representation at project review meetings at a mutually agreed to time and location to discuss the project status, issues, new requirements and overall project satisfaction. These meetings may also cover performance status updates, schedule updates, pending changes, open issues, and action items.
- Customer's Project Manager must have the authority to make project decisions and represent Customer in all matters related to this SOW. Customer's Project Manager will provide a single consolidated response to any review, approval, change, or decision request and will coordinate internal Customer technical resources in a manner consistent with the overall project schedule.
- Customer Project Manager will arrange for and coordinate internal Customer technical resources that will be required to interface with VMware consultants for the execution of the project. Customer staff will actively participate in this engagement, and individuals with relevant domain, business, and/or technical expertise will be available as required. These participants are the acknowledged spokespersons for the areas they represent, and the VMware project team requires regular and timely access to them. If participants are unable to attend a scheduled meeting, then the Customer Project Manager becomes the final authority on all items of discussion.
- Customer will provide access to facilities and computer systems as required for VMware project team to perform tasks as outlined in this SOW.
- For engagement activities that need to occur at Customer work locations, VMware expects Customer to make reasonable facilities accommodations for the VMware project team at these locations. These accommodations will include a desk/cubicle, voice telephone, permission to operate mobile telephone within Customer work locations, internet access, and shared access to laser printer, copier, and conference room facilities.
- Customer will provide a suitable environment for knowledge transfer (overhead projector and conference facilities). Computer hardware and systems support is required for the knowledge transfer workshops, including: working hardware, network, and storage that is compatible with VMware ESXi™.
- Customer is responsible for, and assumes any risk associated with, any problems resulting from the content, completeness, accuracy and consistency of any data, materials, and information supplied by Customer.
- Any change to the scope of work explicitly described in this SOW, and any associated additional fees, must be mutually agreed to in writing.

- The following stakeholders are required for this service:
 - VMware operations team leads
 - Enterprise Architect
 - Infrastructure Architect
 - Network Architecture team leads
 - Network Operations team leads

Payment Terms and Schedule

VMware will provide the services as outlined in this SOW, inclusive of travel expenses but exclusive of applicable taxes, on a time and materials basis, through the redemption of VMware Consulting and Training Credits purchased by Customer.

Daily credit redemption rates for each VMware resource, and an estimate of the number of days likely to be required from that resource to complete the services, are set forth in the table below. VMware shall deduct the VMware Consulting and Training Credits from the Customer balance based on Customer approval of timesheets.

The scope above includes suggested work products or deliverables. Notwithstanding anything to the contrary contained herein, however, the actual delivery of work products or deliverables will be limited by the time available under this SOW.

| Consulting Resources | # | VMware Consulting and Training Credit Daily Rate | Days | Extended Quantity of VMware Consulting and Training Credits |
|------------------------|---|--|------|---|
| Senior Consultant | 1 | 25.25 | 20 | 505 |
| Architect | 1 | 30.88 | 17 | 525 |
| Consultant | 1 | 22.90 | 21 | 481 |
| Senior Project Manager | 1 | 27.33 | 12 | 328 |
| Totals | | | | 1,839 |

For engagements requiring on-site consulting resources that are not local to the Customer's facility, travel for VMware consultants will occur on Mondays and Thursdays. It is expected that consultants will travel to the Customer's facility on Monday morning, arriving on site as early on Monday as possible, as dictated by flight options and travel time. The consultants will work on-site through Thursday and will schedule return travel on Thursday evenings, as available. It is expected that the consultants will provide forty (40) hours of work during a typical week and will accrue that time in a combination of on-site work on Monday through Thursday and off-site work on Friday.

Engagements that require consultants to work in excess of 40 hours per week, to work on weekends or major national holidays and/or to travel outside of this schedule will be considered exceptions to this policy and will be reviewed and approved by VMware and Customer as required.

The parties indicate their acceptance of the terms outlined herein by execution of this Statement of Work by their duly authorized representatives. These terms expire 30 days after the date on this SOW unless executed by both parties.

| | |
|---|---|
| Agreed to: | Agreed to: |
| VMware, Inc. | Customer: Tulare County |
| By Authorized Signature | By Authorized Signature |
| Date: | Date: |
| Name: Title: | Customer Name: Address: City: State: ZIP: Country: U.S.A Phone: Email: |
| VMware PSO order contact (Name, Title): | |

After this SOW is signed by Customer, it must be emailed to the VMware PSO order contact along with the purchase order, if required. The purchase order must be addressed to VMware, Inc. Dept. CH10806, Palatine, IL 60055-0806, and shall include the end user's email address and phone number, billing email address, and billing and shipping addresses.

Appendix A – Project Management Scope

| PROJECT MANAGEMENT SERVICES | | |
|--|-------------------------------------|-------------------------------------|
| VMware will designate a Senior Project Manager as the principal point-of-contact for the Project to provide the project management services below. Customer agrees to designate a Customer Project Manager to assist the VMware Senior Project Manager to fulfill the responsibilities as set out below. | | |
| Project Management Scope | | |
| | VMware Responsibility | Customer Responsibility |
| Project Setup and Initiation | | |
| Conduct kick-off conference call with key stakeholders | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Develop high-level project schedule | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Develop Project Management Plan | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Conduct kick-off meeting with select members of project team | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Validate project setup between multiple VMware projects | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Scope Management | | |
| Validate that all work is within scope of SOW | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Document changes to scope and execute change control process | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Maintain list and status of project work products | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Maintain Work Breakdown Structure (WBS) | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Schedule Management | | |
| Create and maintain schedule and status of work products | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Maintain schedule as need arises | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Assign resources to project schedule | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Manage Customer resources in schedule | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Communicate impact of scheduling conflict between multiple VMware projects | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Financial Management | | |
| Track actual hours and expenses | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Report project expenditures vs. budget (hours for T&M projects only) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Review invoices for accuracy | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Multi-project consolidated reporting | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Quality Management | | |
| Define and execute formal review process | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Establish Customer's project readiness | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Document requirements for operational readiness and incorporate into schedule | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Facilitate review meetings | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Risk and Issue Management | | |
| Track and manage product risks and issues | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Track and manage technical project risks and issues | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Track and manage project risks and issues | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Resource Management | | |
| Identify and assign qualified VMware resources | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Determine and document Customer resources required for project | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Integrate Customer resources into the project schedule | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Communications Management | | |
| Weekly status report | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Weekly status meeting | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Facilitate requirements gathering meetings | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Facilitate design meetings | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Facilitate meetings for major project decisions | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Periodic stakeholder meeting | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Executive briefing | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Multi-project consolidated reporting | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Project Closure | | |
| Obtain Customer signature on Time sheets for T&M engagements | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Project closure conference call | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Formal project closure meeting | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Facilitate "Lessons Learned" session | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Key Government Finance, Inc., on behalf of Cisco Systems Capital Corp. ATTACHMENT B
Financing Application

| | | | |
|--|---------------------------|--------------------------------|---------------------------------|
| Borrower's Legal Name as Shown on Audited Financials: | | County of Tulare | |
| If Borrower's Parent is Different, Input Parent Name Here: | | | |
| Website to Obtain 3 years of Audited Financials Found At: | | www.co.tulare.ca.us | |
| Street Address | 221 S. Mooney Blvd Rm 9-E | | |
| City | Visalia | Invoices to be sent to: | |
| State | CA | Contact | Sheryl Montanez |
| Zip Code | 93291 | Department | TCiCT |
| Contact | Peg Yeates | Address | 221 S. Mooney Blvd Rm 9-E |
| Phone Number | 559-636-4805 | City, State, Zip | Visalia, CA 93291 |
| Fax Number | 559-730-2568 | Phone & Fax Number | 559-636-4752, 559-730-2568 |
| Email | PYeates@co.tulare.ca.us | Email | TCiCT_Logistics@co.tulare.ca.us |
| EIN (Required) | 94-6000545 | Special Instructions | |

Double-clicking on a response box will allow you to add or remove a check mark

- 1) Have you ever defaulted or non-appropriated on a lease purchase, loan or bond obligation? Yes: No:
- 2) Are you currently operating under emergency financial/fiscal management or have you in the past 3 years? Yes: No:
- 3) Are there any known issues that could impact the future repayment of this financing? Yes: No:
- 4) Will any loan or grant proceeds be used as the dedicated source of repayment for this financing? Yes: No:
- 5) Have you issued or do you reasonably intend to issue more than \$10MM in tax exempt debt during the calendar year? Yes: No:
- 6) For any payments due in your current FY, have those payments been formally appropriated? Yes: No:
 If no or if your 1st payment is due in next fiscal year, has this been formally approved by board resolution? Yes: No:
- 7) Will payments be made from your General Fund? Yes: No:
 If no, which fund & provide page in most recent audit where found?
- 8) Will any portion of the financed property be used by a private corporation or individual? Yes: No:
 If Yes, what % will be used by a private corporation or individual?
- 9) Do you operate under home-rule (a charter)? Yes: No: Unsure:
- 10) Will the proceeds of this lease be used entirely for software? Yes: No:
 If "Yes", will the software be installed on equipment that you own or are financing? Own: Financed:
- 11) Will any portion of the financed property be affixed to real property? Yes: No:
- 12) Are you self insured for property damage? Yes: No:
- 13) Are you self insured for liability? Yes: No:
- 14) Are you a member of a managed risk pool for insurance? Yes: No:
- 15) Is this replacing equipment, expanding an existing system or completely brand new? Replacement: Expansion: New:
 If replacement, what is the age of the equipment it is replacing?
 If replacement or expansion, is the existing equipment paid off?

| | | | |
|--|-----------------|------------------|-----------|
| 16) What is your population or enrollment? | 459,863 | As of what date? | 2015 |
| 17) What is your tax-based assessed value? | \$34,735,655.00 | As of what date? | 6/14/2018 |

18) Equipment/Product Description (*please refrain from using acronyms or part numbers*):
 Multi-year software maintenance and support agreement for VMware software.

19) What is the purpose of this acquisition, what makes it essential & what benefits are expected (*eg, cost savings, productivity, functionality, etc.*)?
 To provide VMware maintenance and support of County Infrastructure.

| | | | |
|----------------------|---------------------|--------|---|
| Submitted By (Name): | Jay Steven Worthley | Title: | Tulare County Board Supervisors -Chairman |
| Signature | | Date: | |

A representative may reach out to you for further detail or to explain any adverse responses to questions on this application.

So that we may begin our credit review process, please scan and email this application, along with your equipment quote (bill of materials) and the signed financing proposal, to katie.l.hamilton@key.com or Fax to: 216-370-9393



CISCO CAPITAL LEASING OPTION - Public Entities

September 25, 2018
**Quote Expires:10-24-2018

County of Tulare

EQUIPMENT LEASE OPTION:

The lease financing will be completed by Key Government Finance, Cisco Systems Capital's financing partner for government and education customers.

LESSOR: Key Government Finance, Inc.

LESSEE: County of Tulare

EQUIPMENT: Cisco Systems Product & Service

Table with 2 columns: Item, Amount. Rows: Cisco Systems Product & Service (\$1,200,185.55), TOTAL AMOUNT TO BE LEASED (\$ 1,200,185.55)

FINANCING

STRUCTURE: This is a tax-exempt state and municipal government lease with the title to the equipment passing to lessee. This is a net lease under which Lessee pays all costs, including insurance, maintenance and taxes, for the term of the lease. At the end of the lease term the equipment can be purchased for \$1

Table with 8 columns: Amount to be Leased, Interest Rate, Payments, Payment Factor(*), Pmts / Year, Term, Adv. / Arr., Total Incentive Discount. Row 1: \$1,200,185.55, 0.00%, \$400,061.85, 0.3333333, 1, 3 years, Adv., \$ 54,000.00

(* The payment factor expresses the payment as a percentage of the Equipment Cost. To calculate the periodic lease payment for any Equipment Cost, multiply the payment factor by the Equipment Cost.

RATE INDEX: The interest rate provided above is based on current market rates as of the date of this proposal, and will be subject to change based on market conditions as of the time of closing. After closing the interest rate will be fixed for the term of the financing.

APPROVAL: The financing contemplated by this proposal is subject to the execution and delivery of all appropriate documents (in form satisfactory to Lessor), including without limitation, to the extent applicable, the Master Lease Agreement, any Schedule, financing statements, legal opinion or other documents or agreements reasonably required by Lessor. This proposal, until credit approved, serves as a quotation, not a commitment by Key Government Finance to provide credit. Final acceptance of this proposal is subject to credit, collateral and essential use review and approval by Lessor.

The interest rate quoted herein assumes that the interest component of the Payments is exempt from federal income tax. Lessor will provide a taxable financing proposal if it is determined that the financing will not qualify for tax-exempt interest rates.

CONTACT: Contact your financing representative with any questions:

Stan Hulshof, Cisco Capital
Financial Solutions Manager
Mobile 714-813-0916
shulshof@cisco.com

Katie Hamilton - Inside Sales Representative
Key Government Finance, a Cisco Systems Capital Partner
1000 South McCaslin Blvd
Superior Colorado 80027
720-980-3811, 216-370-9393 Fax
katie.hamilton@Key.com

Kendall Hansen - Region Manager
Key Government Finance, a Cisco Capital Partner
503-701-8476 office
kendall.hansen@Key.com

NOTES: Alternative financing options available on request. The quoted interest rate assumes the Lessee designates the Lease as "bank-qualified" pursuant to Section 265(b) of the Code.

The rates provided above are based on a minimum funding amount of \$250,000. If total to be funded will be less than \$250,000 please contact us for a revised Proposal.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR APPLYING FOR FINANCING WITH Key Government Finance.

[Lessor] notifies [Lessee] that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, as amended and supplemented) (the "Patriot Act"), that [Lessor] is required to obtain, verify and record all information that identifies [Lessee], which information includes the name and address of [Lessee] and other information that will [Lessor] to identify [Lessee] in accordance with the Patriot Act.

*This proposal is issued in reliance upon the accuracy of all information presented by you to us and is contingent upon the absence of any material adverse change in your condition, financial or otherwise, from the condition as it was represented to us at the time of this proposal. This proposal is subject to our formal approval and the execution of documentation acceptable to each of us. IT IS NOT A COMMITMENT BY US TO ENGAGE IN THIS TRANSACTION.

(a) Key Government Finance ("KGF") is not acting as an advisor to you and does not owe a fiduciary duty pursuant to Section 15B of the Exchange Act to you with respect to the information and material contained in this communication, (b) KGF is acting for its own interests, and (c) you should discuss any information and material contained in this communication with any and all internal or external advisors and experts that you deem appropriate before acting on this information or material. The legal documentation will contain provisions relating to increase costs, liability and changes in corporate income tax rates.

Date: _____ Signature: _____

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

ATTACHMENT D

1. Definitions.

- a) "Acceptance Period" means a period of ten (10) business days following, (i) with respect to a fixed fee engagement, delivery of the Project Milestone Completion Form, or (ii) with respect to time and materials engagements, the submission of timesheets to Customer.
- b) "Affiliate" means, with respect to a party, an entity that is directly or indirectly controlled by or is under common control with that party, where "control" means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests of the entity (but only as long as that person or entity meets these requirements).
- c) "Consulting Services" means the services provided by VMware to Customer as described in the Statement of Work to which these General Terms & Conditions are attached ("SOW"). Alternatively, if Customer ordered the services via a VMware online datasheet, all references to the SOW will be deemed to refer to that online datasheet.
- d) "Customer Materials" means any materials or Technology provided to VMware by Customer in connection with the Consulting Services.
- e) "Deliverables" means any reports, analyses, scripts, templates, code or other work products, tangible or intangible, to be delivered by VMware to Customer as set forth in the SOW.
- f) "Derivative Work" means a derivative work as defined under applicable intellectual property laws. [For the US only, we will replace "applicable" with "U.S."]
- g) "Intellectual Property Rights" means all worldwide intellectual property rights including copyrights, trademarks, service marks, trade secrets, know-how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.
- h) "Parties" means VMware and Customer collectively, and a "Party" means VMware or Customer individually.
- i) "Taxes" means any sales, use and other taxes (other than taxes on VMware's income), export and import fees, customs duties and similar charges applicable to the Consulting Services as described in the SOW that are imposed by any government or other authority.
- j) "Technology" means algorithms, approaches, source and object codes, concepts, data, designs, developments, documentation, discoveries, expressions, inventions, know-how, methodologies, multimedia files, processes, programs, skills, software, techniques, technology, templates, text, tools, and web pages.
- k) "VMware Retained Materials" means (i) materials (other than products) developed or obtained by or for VMware independently of the Consulting Services, and (ii) subsets or modules of the Deliverables that by themselves provide generic technical information not unique to Customer's business.

2. Consulting Services.

- a) Consulting Services. VMware will provide the Consulting Services and the Deliverables as specified in the SOW. The SOW will (i) incorporate by reference this Professional Services General Terms and Condition; and (ii) specify and describe the relevant business parameters, including, but not limited to, the Consulting Services, the Deliverables, the Customer Materials, primary contact information for VMware and Customer, project description, delivery schedule, staff roles, pricing, and a payment schedule. In the event of a conflict between the terms of this General Terms and Conditions and the terms of an SOW, the General Terms and Conditions will govern unless otherwise explicitly superseded in the SOW. The General Terms and Conditions and the SOW are collectively referred to as "SOW" hereinafter.
- b) Acceptance.
- i) For fixed fee engagements, upon completion of each milestone, VMware will deliver to Customer a Project Milestone Completion Form. For time and materials engagements, VMware will deliver timesheets to Customer. Customer will return the Project Milestone Completion Form or timesheets, as applicable, to VMware within the Acceptance Period, indicating Customer's acceptance of the SOW's Deliverables or Consulting Services.
- ii) If Customer reasonably believes that VMware did not perform the Consulting Services or the Deliverables in substantial conformance with the SOW, Customer will notify VMware, in writing, within the Acceptance Period. Customer's notice must specifically identify and explain each alleged non-conformance with the terms of the SOW. VMware will use reasonable efforts to correct Customer's issues and then again

present the Project Milestone Completion Form or timesheets for Customer's acceptance as required by this Section 2.

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

c) Project Change Request.

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

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

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

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

3. Intellectual Property.

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

b) Grant of License Rights in the Deliverables. For VMware Retained Materials and the portion of the Deliverables that consists of scripts, code, templates, and all other materials developed or otherwise provided by VMware in connection with the Consulting Services, VMware grants Customer a non-exclusive, non-transferable, irrevocable (except in case of breach of the SOW), perpetual license, without the right to sublicense, to use and copy (without the right to sublicense), for Customer's internal business operations only (the "Deliverables License"). The Deliverables License does not apply to (i) Customer Materials, and (ii) any other products or items licensed, or otherwise provided, under a separate agreement.

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

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

4. Confidentiality.

a) Definition. "Confidential Information" means information or materials provided by one Party ("Discloser") to the other Party ("Recipient") which are in tangible form and labelled "confidential" or the like, or information which a reasonable person knew or should have known to be confidential in the circumstances. The following information will be considered Confidential Information whether or not marked or identified as

**VMware Professional Services
General Terms & Conditions**

confidential: any personally identifiable information (such as the names of Discloser's customers), or the physical address of any equipment contained in any information collected about Discloser's computing environment, Discloser's business operations, pricing, discounts, source code, product roadmaps or strategic marketing plans.

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

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

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

5. Intellectual Property Indemnification.

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

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

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

6. Warranties and Limitation of Liability.

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

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

c) **Limitation of Liability.**

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

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

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

iv) **Further Limitations.** VMware's licensors will have no liability of any kind under the SOW, and VMware's liability with respect to any third party software embedded in the

**VMware Professional Services
General Terms & Conditions**

Deliverables will be subject to Section 6 (a) and (b) above. Customers may not bring a claim under the SOW more than eighteen (18) months after the cause of action arises.

VMware's performance under the SOW. VMware will provide Customer with its then-current Memorandum of Insurance upon reasonable request.

7. Fees and Payment.

a) **Payment.** VMware will provide the Consulting Services (i) for a fixed fee or (ii) on a time and materials basis, as described in the SOW, plus applicable taxes and travel expenses in accordance with VMware's travel and expense policy. Invoicing occurs upon Customer's acceptance of each milestone or timesheet, or approval of travel expenses, and must be paid by Customer within thirty (30) days of the date of invoice. If Customer uses pre-purchased VMware Consulting and Training Credits as the means of payment, then upon Customer's acceptance of Project Milestone Completion Form(s), timesheets, or travel expenses, the VMware Consulting & Training Credits will be deducted from Customer's balance. Customer is responsible for ensuring that its purchase order ("PO") issued to VMware for the Consulting Services reflects the pricing set forth in the SOW. Once VMware fulfills its obligations under a PO from Customer, VMware will have no liability for any pricing in Customer's PO that is inconsistent with the pricing set forth in the SOW. Customer agrees that POs do not have to be signed by Customer to be valid and enforceable. Subject to the SOW, all fees paid by Customer are non-refundable.

b) **Taxes.** [NASA Version] Fees are exclusive of Taxes, and Customer will pay or reimburse VMware for all Taxes arising out of the SOW. If Customer is required to pay or withhold any Taxes in respect of any payments due to VMware, Customer will gross up payments actually made such that VMware will receive sums due in full and free of any deduction for any Taxes. Customer confirms that VMware can rely on the Customer address set forth in the SOW as being the place of supply for tax purposes. [EMEA/APAC Version] Fees are exclusive of Taxes, and Customer will pay or reimburse VMware for all Taxes arising out of the SOW. If Customer is required to pay or withhold any Taxes in respect of any payments due to VMware, Customer will gross up payments actually made such that VMware will receive sums due in full and free of any deduction for any Taxes. Where VMware is making a supply of services under Article 44 of VAT Directive 2006/112/EC, Customer confirms that VMware can rely on the "bill to" name and address as per the PO issued by Customer to VMware as being the place of supply for VAT purposes where Customer has established its business.

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

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

e) **Canceling/Rescheduling SOW before Commencement.** A minimum of fifteen (15) business days' written notice is required for rescheduling or canceling the SOW prior to the commencement of the Consulting Services. Only incurred expenses (e.g., airfare), if any, will be owed and invoiced if that notice is given. The entire payment and any incurred expenses are owed if the SOW is canceled with less than that notice.

8. Term and Termination.

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

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

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

9. Miscellaneous.

a) **Insurance.** VMware will, for the term of the SOW, carry general and professional liability, automobile, and workers compensation insurance, for claims for bodily injury (including death) or damage to tangible or real property, which may arise or result from

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

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

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

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

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

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

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

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

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

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

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

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

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

o) **Notices.** Unless otherwise set forth in the SOW, any notice regarding the SOW or required by law must be in writing and delivered to the other Party's legal department at the address listed below via: (a) personal delivery confirmed in writing by the recipient;

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(b) certified mail, return receipt requested; or (c) recognized commercial courier offering confirmation of delivery. Notices will be deemed received upon the date of delivery shown by the corresponding confirmation. Either Party may change its address by notice to the other Party. All notices will be directed to Customer to the address set forth in the SOW, and to VMware as follows: VMware, Inc., 3401 Hillview Ave., Palo Alto CA 94304, Attention: Legal Department.

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