**Purchase Order**

**Vendor Number:** 00002217  
**CDW Government Inc**  
**75 Remittance Dr Ste 1515**  
**Chicago, IL 606751515**

INVOCING VENDOR SHALL SUBMIT AN ITEMIZED INVOICE SHOWING PURCHASE ORDER NUMBER. IF YOUR INVOICE IS NOT PROCESSED AS INSTRUCTED, PAYMENT MAY BE DELAYED.

**Texas A&M University School of Law**  
**Attn: Contact LORI ROGDE at (817)584-4275**  
**Law Building**  
**1515 Commerce St.**  
**Fort Worth, TX 76102**  
**US**  
**Email: cllw@law.tamu.edu**  
**Phone: (817) 212-4081**

**ATTN: FMO Accounts Payable**  
**750 Agronomy Road - Suite 3101**  
**6000 TAMU**  
**Attn: Email invoices to invoices@tamu.edu**  
**Attn: Do not mail invoice if sending via email**  
**College Station, TX 778436000**  
**USA**  
**Email: invoices@tamu.edu**  
**Phone: (979) 845-8362**

Please login to Buy A&M to retrieve attachments associated with the Purchase Order.  
Solicitation (Bid) No.:

**Item # 2**  
Reference DIR Contract #DIR-SDD-2035 and CDW-G Quote #HPFS719

**Item # 1**  
Class-Item 208-00  
3 year Academic VMware Horizon Air Cloud Hosted Business starter Bundle  
Mfg. Part #DSD-ACBSB-36MTo-A1S  
36 Monthly payments

<table>
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<tr>
<th>Quantity</th>
<th>Unit Price</th>
<th>UOM</th>
<th>Discount %</th>
<th>Total Discount Amt.</th>
<th>Tax Rate</th>
<th>Tax Amount</th>
<th>Freight</th>
<th>Total Cost</th>
</tr>
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<tr>
<td>36.00</td>
<td>$1,610.00</td>
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<td>$0.00</td>
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Payment Terms: Net 30  
Shipping Terms: F.O.B., Destination  
Freight Terms: Freight Allowed  
Delivery Calendar Day(s) A.R.O.: 0
ANY EXCEPTIONS TO PRICING OR DESCRIPTION CONTAINED HEREIN MUST BE APPROVED BY THE TEXAS A&M UNIVERSITY AGENCY PROCUREMENT OFFICE PRIOR TO SHIPPING.

The State of Texas is Exempt from all Federal Excise Taxes.
State and City Sales Tax Exemption Certificate: The A&M System claims an exemption from taxes under Chapter 20, Title 122A Revised Civil Statutes of Texas for purchase of tangible personal property described in this order, purchased from Vendor listed above as this property is being secured for the exclusive use of the State of Texas.

FAILURE TO DELIVER: If the Vendor fails to deliver these supplies by the promised delivery date or a reasonable time thereafter, without giving acceptable reasons for delay, or if supplies are rejected for failure to meet specifications, the State reserves the right to purchase specified supplies and equipment elsewhere, and charge the increase in price and cost of handling to the Vendor. No substitution or cancellations permitted without prior approval of The Texas A&M University System.

THE TEXAS A&M UNIVERSITY SYSTEM TERMS AND CONDITIONS APPLY.

TAX: $ 0.00
FREIGHT: $ 0.00
TOTAL: $ 57,960.00

APPROVED
By: Patty Winkler
Email: p-winkler@tamu.edu
Phone#: (979) 845-4556

BUYER
ADDENDUM
VMware Horizon® Air™ Desktops and Horizon Air Hybrid Mode
Terms of Service
VMware, Inc.

&
TEXAS A&M UNIVERSITY

This addendum ("Addendum") amends and supplements the VMware Horizon® Air™ Desktops and Horizon Air Hybrid Mode Terms of Service ("Agreement") located at http://www.vmware.com/download/eula/horizon-air-terms-of-service.html between VMware, Inc. ("VMware") and Texas A&M University, a member of the Texas A&M University System, an agency of the State of Texas ("TAMU"). All terms used herein and not otherwise defined shall have the meaning as in the Agreement. In the event of any conflict in the terms of the Agreement and the terms of this Addendum, the terms of this Addendum shall in all aspects govern and control. Both parties agree the Agreement is hereby amended and supplemented as follows:

Section 2.1 Data Protection – the following is added: To the extent VMware is deemed a “school official” for purposes of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), VMware will comply with the use and disclosure restrictions imposed on school officials under the Family Educational Rights and Privacy Act.

Section 10.1 Indemnification by You: TAMU agrees to this indemnity provision to the extent permitted by the Constitution and laws of the State of Texas.

Section 10.2 Defense and Indemnification. Subsection (b) – VMware acknowledges the Texas Attorney General is the attorney of record for TAMU and nothing in this Section 10.2 will serve to limit the rights of the Texas Attorney General in its representation of TAMU.

Section 11.2 Further Limitations - TAMU agrees to this limitation provision to the extent permitted by the Constitution and laws of the State of Texas.

Section 13.10 Governing Law – this section is deleted and replaced with the following: This Agreement is construed under and in accordance with the laws of the State of Texas, and is performable in Brazos County, Texas. In addition, by statute (Texas Education Code §85.18), mandatory venue for all legal proceedings against TAMU is to be in the county in which the principal office of the governing officer is located. At execution of this Agreement, such county is Brazos County, Texas.

Section 13.12 Order of Precedence – this section is deleted and replaced with the order of precedence established in the preamble to this Addendum.

The following is incorporated into the Agreement for all purposes:

Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

If VMware is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then VMware certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that VMware is exempt from the payment of franchise (margin) taxes.

VMware understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. VMware agrees to cooperate with the Auditor in the conduct of the audit or investigation in connection with this Agreement. VMware will include this provision in all contracts with permitted subcontractors.

VMware expressly acknowledges that TAMU is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMU of its right to claim such exemptions, privileges, and immunities as may be provided by law.

By executing and/or accepting this Agreement, the parties acknowledge and agree, that to the best of their knowledge and belief, no member of The Texas A&M University System (TAMUS) or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by TAMU or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

To the extent Chapter 2260 of the Texas Government Code is applicable to this Agreement, VMware will use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve a dispute arising under this Agreement.

PUBLIC INFORMATION ACT:
(a) VMware acknowledges that TAMU is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

(b) VMware acknowledges that TAMU may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

Page 1 of 2

VMWARE.32526

1/17/2017 8:57 AM
VMware, Inc.

Luis Mata
Sr. Contracts Administrator

Jan 17, 2017

Approved by Clinton Cole

Texas A&M University

Rex E. James
University Contracts Officer

Jan 17, 2017
## VMware Cloud Service Order Form

**Seller:** CDW Direct LLC  
**Customer:** TEXAS A&M UNIVERSITY SCHOOL OF LAW

<table>
<thead>
<tr>
<th>Cloud Services</th>
<th>Quantity</th>
<th>Initial Subscription Term Length (“Initial Subscription Term”)</th>
<th>Monthly Service Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>VMware Horizon Desktop Service</td>
<td>1</td>
<td>36 Months*</td>
<td>$1610.00</td>
</tr>
</tbody>
</table>

*The term will automatically renew for additional terms equal to the Initial Subscription Term (each a “Renewal Term”) unless Customer cancels the Cloud Services as set forth below.

**Order Initial Subscription Term Total:** $57960.00

**Special Terms for this Order:**

1. **PAYMENT** - Customer will pay all fees for use of the Cloud Services as set forth in any Seller invoice, within 30 days after the date of the invoice, or in accordance with such other payment terms that may have been negotiated between Customer and Seller. Customer will also be responsible for all additional fees for any subscription renewals and extensions, metered usage components consumed by Customer, and other subscriptions, features, products, services, or add-ons that Customer uses within the Cloud Services. Seller will invoice Customer in advance for the monthly or prepaid charges due for the Cloud Services purchased. Seller will invoice Customer in arrears for any metered usage or overage components (e.g., capacity overages, third party content, etc.).

2. **CANCELLATION** - If Customer wants to cancel the Cloud Services at the end of the Initial Subscription Term or any Renewal Term, Customer must provide notice of cancellation at least thirty (30) days prior to expiration of the Initial Subscription Term or Renewal Term through the VMware web portal. If VMware does not receive Customer’s timely notice of cancellation, the Cloud Services will automatically be extended for additional Renewal Terms. Customer will remain financially responsible for all additional fees for any metered usage or overage based fees (e.g., capacity overages, third party content, etc.), and other subscriptions, features, products, services or add-ons, incurred prior to cancellation.

3. **EARLY TERMINATION** - Monthly-paid subscriptions for Cloud Services with an initial term of 12 months or more are eligible for early termination (“Termination Eligible Cloud Services”). Pre-paid subscriptions are not eligible. Customer may Termination Eligible Cloud Services only after the first 3 months of the applicable Initial Subscription Term or Renewal Term, and upon advance written notice to Seller. Customer also must pay a fee equal to one month of the Monthly Service Fee (including add-on fees) for every 12 month period (or portion thereof) remaining on Customer’s Initial Subscription Term or Renewal Term. For example:

<table>
<thead>
<tr>
<th>Months Remaining on Initial Subscription or Renewal Term</th>
<th>Early Termination Fee Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 12 months</td>
<td>Equal to 1 month of the Monthly Service Fee (including add-on fees)</td>
</tr>
<tr>
<td>At least 12 months, but less than 24 months</td>
<td>Equal to 2 months of the Monthly Service Fee (including add-on fees)</td>
</tr>
<tr>
<td>At least 24 months, but less than 36 months</td>
<td>Equal to 3 months of the Monthly Service Fee (including add-on fees)</td>
</tr>
</tbody>
</table>

Customer must provide Seller with at least thirty (30) days prior written notice of Early Termination. The Cloud Services will be effectively terminated on the last day of Customer’s next subscription billing period. For example, if Customer’s subscription billing period ends on the 15th of each month (note: that this may be different from Customer’s billing date), Customer must notify Seller by April 15th to terminate the Cloud Service effective May 15th. If Customer provides notice on April 16th, the Cloud Services will be terminated effective June 15th.

4. **SERVICE SUSPENSION** - Seller may suspend the Cloud Services if Customer fails to pay any Service Fee within ten (10) business days after the applicable due date.

5. **NON-CANCELLABLE/NON-REFUNDABLE** - Except as set forth above, the Cloud Services purchased under this Order are non-cancellable and all Service Fees paid to Seller are non-refundable.
VMware Cloud Service Order Form

BY SIGNING BELOW, Customer acknowledges and agrees that it is receiving the Cloud Services directly from VMware, Inc. (the "VMware") pursuant to VMware’s standard terms and conditions. Customer further acknowledges that VMware and not Seller will be responsible for performance of the Cloud Services. Customer’s obligation to pay the Service Fees above are subject to the terms and conditions on Seller’s website at CDW.com, except that it shall be governed instead by a written agreement, if any, between Customer and Seller covering Customer’s purchase of products and services from Seller ("Purchase Agreement"). Commencing on the Order Effective Date, the quantity listed above hereby becomes a minimum commitment under the Purchase Agreement and may not be adjusted without mutual agreement which must be in writing and signed by both Customer and Seller.

CUSTOMER AUTHORIZED REPRESENTATIVE

Signature: ____________________________
Name: ____________________________
Title: University Contracts Officer
Date: Jan. 13, 2017 [This date shall be the Order Effective Date.]
VMware Horizon® Air™ Desktops and Horizon Air Hybrid-Mode

TERMS OF SERVICE - Last updated: December 1, 2016

By accessing the VMware hosted service specified in your Order (the “Service Offering”), you agree to be bound by these terms of service between you and VMware ("Agreement"). This Agreement also includes the applicable Service Description, Privacy Addendum, Third Party Terms, Support Policy, and Service Level Agreement. If you do not agree to this Agreement, you must not access the Service Offering. “You” means you individually or the entity that you represent. If you are entering into this Agreement for an entity, you represent to us that you have legal authority to bind that entity. “VMware,” “we,” or “us” means VMware, Inc., a Delaware corporation, to the extent that you purchase the Service Offering in the United States, and VMware International Limited, a company organized and existing under the laws of Ireland, to the extent that you purchase the Service Offering elsewhere. Capitalized terms used in this Agreement are defined throughout this Agreement and in Section 14.

1. The Service Offering.

1.1 Generally. This Agreement governs your access to and use of the Service Offering. We may deliver the Service Offering to you with the assistance of our affiliates, licensors and service providers. You will comply with all laws, rules and regulations applicable to your use of the Service Offering. You also will comply with the applicable Third Party Terms, Service Description, Privacy Addendum, and Support Policy. If you access the Service Offering, or any of its features or functionality, on an evaluation or beta basis, please see Section 1.5 for other terms that apply to you.

1.2 Access to the Service Offering. You may access and use the Service Offering solely for your own benefit and only in accordance with this Agreement. To access the Service Offering, you must register for the Service Offering and set up an authorized account with Login Credentials. You may monitor and manage your Service Offering account via the My VMware Portal available at www.vmware.com/accounts and through the Service Offering Portal made available to you. You must keep confidential your Login Credentials. If you set up an authorized account for an organization, you must require that all authorized Users of that account (including anyone providing services to you) keep confidential their Login Credentials. You must keep your registration information accurate, complete and current for as long as you use the Service Offering. You are responsible for any use that occurs under your Login Credentials, including any activities by you or your employees, contractors or agents. If you believe an unauthorized person has gained access to your Login Credentials, you must notify us as soon as possible by submitting a Severity 1 Service Request (see the applicable Support Policy).

1.3 Verifying Compliance; Cooperation. We have the right to verify your compliance with this Agreement. If we seek to verify that compliance, you will provide information or other materials reasonably requested by us to assist in the verification. We monitor the overall performance and stability of the infrastructure of the Service Offering. You may not block or interfere with that monitoring. If we reasonably believe a problem with the Service Offering may be attributable to Your Content or your use of the Service Offering, you will cooperate with us to identify the source of and resolve that problem.

1.4 Third Party Content. As part of your use of the Service Offering, you may receive access to Third Party Content, which is subject to separate terms. If so, those separate terms will prevail over this Agreement as to your use of the Third Party Content. Third Party Content is available “AS IS” without indemnification, support (unless otherwise noted in the Third Party Terms), or warranty or condition of any kind. You are responsible for reviewing, accepting, and complying with any third party terms of use or other restrictions applicable to the Third Party Content. Those terms will be available to you in the Third Party Terms or through a notification within the Service Offering. We reserve the right to suspend or terminate the Third Party Content at any time. We will use commercially reasonable efforts to provide reasonable notice of that suspension or termination.

1.5 Evaluation and Beta Use. If you access the Service Offering, or a feature or functionality of the Service Offering, on an evaluation or beta basis (either referred to as the “Evaluation Service”), then you may use the Evaluation Service only for evaluation purposes and for the period we specify. You must not use the Evaluation Service for any production computing activity. Notwithstanding any other provision of this Agreement, we provide the Evaluation Service (a) free of charge and without support; and (b) "AS IS", excluding any Service Level Agreement, and without indemnification or warranty or condition of any kind. Also, certain features or services described in the Service Description may not be available for the Evaluation Service. You will not have access to Your Content or the Evaluation Service when it terminates, and the features and functionality of the Evaluation Service do not constitute an implied commitment to offer them to you or anyone as part of the Service Offering on a generally available basis.

1.6 Open Source Software. You may receive open source software when you use the Service Offering. Any open source software distributed to you is made available under the applicable open source license, which can be found at: http://www.vmware.com/download/open_source.html. You may obtain a copy of these licenses and any source code (and modifications) that we are required to make available under these licenses (the “Source Files”) at http://www.vmware.com/download/open_source.html or by sending a written request, with your name and address, to VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All written requests must clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date you last received open source software as part of the Service Offering.

2.1 Data Protection. We will process personal data contained in Your Content, and maintain appropriate technical and organizational measures (administrative, physical and technical safeguards), as set forth in the Privacy Addendum.

2.2 Your Content; Security. You are solely responsible for Your Content. Except as provided by the Privacy Addendum, You are responsible for protecting the security of Your Content, including any access to Your Content that you might provide to your employees, customers or other third parties, and when it is in transit to and from the Service Offering. The Service Offering provides you with certain software and functionality to help you protect Your Content from unauthorized access. You must take and maintain appropriate steps regarding the security, protection and backup of Your Content, which might include the use of encryption technology to protect Your Content from unauthorized access. You are responsible for providing any necessary notices to Users and for obtaining any legally-required consents from Users concerning their use of the Service Offering. You are responsible for complying with any laws or regulations that might apply to Your Content. You are responsible for any losses or other consequences arising from your failure to encrypt or back up Your Content.

3. Acceptable Use.

3.1 General Restrictions. You and any Users accessing the Service Offering through you may not: (a) resell or sublicense the Service Offering; or (b) use or access the Service Offering: (i) in a way prohibited by law, regulation, governmental order or decree; (ii) to violate any rights of others; (iii) to try to gain unauthorized access to; test the vulnerability of, or disrupt the Service Offering or any other service, device, data, account or network; (iv) to spam or distribute malware; (v) in a way that could harm the Service Offering or impair anyone else’s use of it; (vi) in a way intended to work around the Service Offering’s technical limitations, recurring fees or usage limits; or (vii) in any application or situation where failure of the Service Offering could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage. You must ensure that your Users comply with the terms of this Agreement, and you agree that if you become aware of any violation by one of your Users, you will immediately terminate that User's access to Your Content. If we have reason to believe that you or your Users have breached this Agreement, we or our designated representative may review your use of the Service Offering, including your account, Your Content, and your records, to verify your compliance with this Agreement.

3.2 Content Restrictions. You will take steps to ensure that any User does not post content that: (a) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to anyone; (b) may create a risk of any other loss or damage to any person or property; (c) may constitute or contribute to a crime or tort; (d) contains any information or content that is illegal, unlawful, harmful, abusive, pornographic, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, or otherwise objectionable; or (e) contains any information or content that you do not have a right to make available under any law or under contractual or fiduciary relationships. You are responsible for any software, product or service that a third party licenses, sells or makes available to you that you install or use with the Service Offering. Your use of that software, product or service is governed by separate terms between you and that third party. We are not a party to and are not bound by any of those separate terms. You represent and warrant that Your Content does not and will not violate any third-party rights, including any Intellectual Property Rights, and rights of publicity and privacy. You will ensure that your use of the Service Offering complies at all times with your privacy policies and all applicable laws and regulations, including any encryption requirements.

3.3 Violations of Acceptable Use. If you become aware that any of Your Content or any User’s access to or use of Your Content violates Sections 3.1 or 3.2, you will take immediate action to remove the applicable part of Your Content or suspend the User’s access. We may also ask you to take action within a certain time period, and if you fail to comply with the request, we may suspend your account pursuant to Section 6.

3.4 Notification of Infringement Concerns. If you believe that your copyrighted work has been copied and is accessible on the Service Offering in a way that constitutes copyright infringement, please send a notice to us as provided in Section 8 of the Community Terms of Use available at http://www.vmware.com/community_terms.html.

4. IP Ownership.

4.1 Ownership of Service Offering. We and our licensors own and retain all right, title and interest in and to the Service Offering and any related VMware Software, including all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein. This includes any information that we collect and analyze in connection with the Service Offering, such as usage patterns, user feedback and other information to improve and evolve our software products and services offerings. Your rights to use the Service Offering are limited to those expressly granted in this Agreement. No other rights with respect to the Service Offering, any related VMware Software, or any related Intellectual Property Rights are implied.

4.2 Ownership of Your Content. You and your authorized Users retain all right, title and interest in and to Your Content and all Intellectual Property Rights therein. Our rights to access and use Your Content are limited to those expressly granted in this Agreement. No other rights with respect to Your Content or any related Intellectual Property Rights are implied.

4.3 Feedback. We will be free to use for any purpose any feedback (such as comments or suggestions) that you provide to us regarding the Service Offering. You hereby grant to us a non-exclusive, perpetual, irrevocable, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, perform, display, disclose, distribute, modify, prepare derivative works of
and otherwise exploit the feedback without restriction in any manner now known or in the future conceived and to make, use, sell, offer to sell, import and export any product or service that incorporates the feedback.

5. Orders, Delivery, Payment, and Taxes.

5.1 Orders Generally. All Orders issued to VMware are subject to the terms of this Agreement and are not binding until accepted by VMware. We are not required to provide any Service Offering to you until you provide all information we require for processing your Order. Your Order will be deemed accepted when we authorize the purchased Service Offering for your Login Credentials.

5.2 Delivery. When VMware accepts your Order for the Service Offering, we will deliver the corresponding Login Credentials to you by email to the address associated with your account. If VMware ships a physical object in connection with an add-on feature of the Service Offering, shipping and delivery terms are Ex Works VMware’s regional fulfillment facility (INCOTERMS 2010).

5.3 Direct Orders. This Section 5.3 applies only to Orders and purchases you make directly with VMware. A VMware authorized reseller might specify similar terms when you make an Order or purchase through that reseller.

5.3.1 Purchase Orders. For Subscription-based Service Offering orders placed directly with VMware, you must issue a purchase order to VMware for the initial Service Offering order, but a purchase order is not required for us to invoice you for the monthly billings that occur after the initial Order billing.

5.3.2 Invoicing and Payment. We will bill you as specified in the Service Description. You will pay all fees for use of the Service Offering in the amount and currency specified in your invoice by one of the payment methods that we support as specified in the Service Description, and in any event no later than 30 days after the date of the invoice. For an OnDemand-based Service Offering, you will pay in arrears on a monthly basis the applicable fees based on your actual metered usage of the Service Offering. For a Subscription-based Service Offering, you will pay in advance the applicable fees for the monthly or prepaid charges due, and you will pay in arrears the initial monthly fees and for any metered usage components consumed. The applicable fees for the Service Offering will be governed by the then-current applicable price list at the time of invoicing.

We may increase or add new fees for the Service Offering by notifying you at least 30 days in advance.

5.3.3 Taxes. Service Offering fees are exclusive of Taxes. “Taxes” means any sales, VAT, GST (Goods and Services Tax), use, gross receipts, business and occupation, and other taxes (other than taxes on our income), export and import fees, customs duties and similar charges imposed by any government or other authority. You shall pay or reimburse us for all Taxes arising out of the transactions contemplated by this Agreement. If you are required to pay or withhold any Tax for payments due under this Agreement, you shall gross up your payments to us so that we receive sums due in full and free of any deductions. If you are required to pay any Tax to a taxing authority, you will also provide documentation to us showing that you paid those Taxes to the relevant taxing authority. You hereby confirm that we can rely on the name and address you provide to us when you agree to the Service Offering or in connection with your payment method as being the place of supply for sales tax and income tax purposes or as being the place of supply for VAT purposes where you have established your business.

6. Temporary Suspension.

6.1 Generally. We may suspend your use of the Service Offering if we reasonably determine: (a) payment for the Service Offering is not received within 30 days from the date on which payment is due; (b) you are, or your use of the Service Offering is, in breach of this Agreement; (c) you fail to address our request to take action as specified in Section 3.3; (d) your use of the Service Offering poses a security risk to the Service Offering or other users of the Service Offering; or (e) suspension is required pursuant to our receipt of a subpoena, court order, or other request by a law enforcement agency. We will give you notice before we suspend, subject to applicable law, and unless we reasonably determine that providing the notice presents risk of harm to the Service Offering or any person or property.

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

7. Term and Termination.

7.1 Term of Agreement. This Agreement will be in effect until it is terminated as permitted herein or under the Service Description. For Subscription-based Service Offerings, the subscription will automatically renew as specified in the Service Description, unless terminated as permitted therein.

7.2 Termination for Cause. We may terminate this Agreement effective immediately upon sending you an email notice if you: (a) breach any provision of Sections 3.1 or 3.2; (b) do not resolve the underlying cause resulting in a suspension of your account pursuant to Section 6.1 (other than suspension due to a subpoena, court order, or other request by a law enforcement agency) within 10 days after
your account is suspended; (c) commit a material breach of this Agreement that cannot be cured; or (d) terminate or suspend your business.

7.3 Termination for Insolvency. We may terminate this Agreement effective immediately upon sending you an email notice if you: (a) become insolvent, admit in writing your inability to pay your debts as they mature, or make an assignment for the benefit of creditors; or (b) become subject to control of a trustee, receiver or similar authority or any bankruptcy or insolvency proceeding.

7.4 Effect of Termination. Upon the effective date of termination of this Agreement for any reason: (a) all rights granted to you under this Agreement, including your ability to access the Service Offering, will immediately terminate; and (b) you must promptly discontinue all use of the Service Offering and delete or destroy any of our Confidential Information. Deletion and retrieval of Your Content will be handled as set forth in the Privacy Addendum. Section 1.6 (Open Source Software), 3 (Acceptable Use), 4 (IP Ownership), 5 (Orders, Delivery, Payment and Taxes), 7 (Term and Termination), 9 (Disclaimer), 11 (Limitation of Liability), 12 (Confidential Information), 13 (General), 14 (Definitions), 15 (Provisions for Specific Data Centers), and the Privacy Addendum will survive the termination of this Agreement. Termination of your use of the Service Offering (except to the extent that the termination is permitted under Sections 10.3 and 13.3 of this Agreement or Section 3.6 of the Service Description) will not entitle you to any refunds, credits, or exchanges, and you will be liable for all usage and other fees incurred up to the termination effective date, including any monthly billing fees for the remaining term of a Subscription-based Service Offering after the termination effective date.

8. Support and Subscription Services. When applicable, and subject to the terms of this Agreement, we will provide support for the Service Offering in accordance with the terms specified in the applicable Support Policy. We will not provide support to any end users of Your Content.

9. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE AND OUR LICENSORS AND SERVICE PROVIDERS DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, RELATING TO THE SERVICE OFFERING OR ANY MATERIALS OR SERVICES PROVIDED TO YOU UNDER THIS AGREEMENT. WE AND OUR LICENSORS AND SERVICE PROVIDERS DO NOT WARRANT THAT THE SERVICE OFFERING WILL BE UNINTERRUPTED OR FREE FROM DEFECTS, OR THAT THE SERVICE OFFERING WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS.

10. Indemnification.

10.1 Indemnification by You. You will defend and indemnify us against any third party claim arising from or relating to: (a) Your Content; (b) any infringement or misappropriation of any Intellectual Property Rights by you, Users or your suppliers in connection with your use of the Service Offering; (c) any violation of law by you or Users in connection with use of the Service Offering; (d) your or Users’ use of the Service Offering in violation of this Agreement, or (e) your or Users’ use of any Third Party Content. We will (1) provide you with notice of the claim within a reasonable period of time after learning of the claim; and (2) reasonably cooperate in response to your requests for assistance. You may not settle or compromise any indemnified claim without our prior written consent.

10.2 Defense and Indemnification. Subject to the remainder of this Section 10, we will defend you against an Infringement Claim and indemnify you from the resulting costs and damages finally awarded against you to that third party by a court of competent jurisdiction or agreed to in settlement. You will (a) provide us with notice of any Infringement Claim within a reasonable period of time after learning of it; (b) allow us sole control over the claim’s defense and settlement; and (c) reasonably cooperate in response to our requests for assistance. You may not settle or compromise any Infringement Claim without our prior written consent.

10.3 Remedies. If the Service Offering becomes, or in our opinion is likely to become, the subject of an Infringement Claim, we will at our option and expense: (a) procure the rights necessary for you to keep using the Service Offering; (b) modify or replace the Service Offering to make it non-infringing; or (c) terminate this Agreement and refund any pre-paid fees for a Subscription-based Service Offering pro-rated for its remaining term.

10.4 Exclusions. We will have no obligation under this Section 10 or otherwise with respect to any claim based on: (a) a combination of VMware Software with non-VMware products or content, including Your Content; (b) use of the Service Offering for a purpose or in a manner not specified in this Agreement or the Service Description; (c) any modification to the Service Offering made without our express written approval; or (d) any Service Offering provided on a no-charge basis. This Section 10 states your exclusive remedy for any infringement claims.

11. Limitation of Liability.

11.1 Generally. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE OF THE SERVICE OFFERING OR YOUR CONTENT, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE. IN ANY EVENT, OUR LIABILITY UNDER THIS AGREEMENT WILL NOT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY
12. Confidential Information.

12.1 Protection. A party may use Confidential Information of the other party solely to exercise its rights and perform its obligations under this Agreement or as otherwise permitted under this Agreement. Each party will disclose the Confidential Information of the other party only to the employees, service providers or contractors of the recipient party who have a need to know the Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than each party's duty under this Agreement. Each party will use reasonable care to protect the confidentiality of the other party's Confidential Information.

12.2 Exceptions. The recipient's obligations under Section 12.1 with respect to any Confidential Information will terminate if the recipient can show by written records that the information: (a) was already rightfully known to the recipient at the time of disclosure by the other party; (b) was disclosed to the recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (c) is, or through no fault of the recipient has become, generally available to the public; or (d) was independently developed by the recipient without access to, or use of, discloser's Confidential Information. The recipient may disclose Confidential Information to the extent the disclosure is required by law or regulation or the listing rules of any stock exchange. The recipient will provide the other party notice, when practicable, and will take reasonable steps to contest and limit the scope of any required disclosure.


13.1 Assignment. You may not assign or transfer this Agreement, in whole or in part, by operation of law or otherwise, without our prior written consent. Any attempted assignment or transfer without that consent will be void. Subject to these limits, this Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.

13.2 Notices. Any notice delivered by us to you under this Agreement will be delivered by email to the email address associated with your account or by posting on either the Service Offering Portal or the My VMware Portal, except as otherwise set forth in this Agreement. You will direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department.

13.3 Modifications. We may change periodically the Service Offering, the terms of your access to the Service Offering, this Agreement, the Service Description, the Privacy Addendum, the Third Party Terms, the Service Level Agreement, or the Support Policy. It is your responsibility to regularly check the Service Offering and My VMware portals for updates. We will notify you of any material, detrimental change to this Agreement, the Service Description, the Privacy Addendum, the Service Level Agreement, or the Support Policy. In the case of a material, detrimental change to the Service Level Agreement, we will notify you at least 90 days prior to the effective date of the change. The modified Agreement, Service Description, Privacy Addendum, Service Level Agreement, or Support Policy, as applicable, will become effective as of the date stated in that notification. If we make a material, detrimental change to the Service Offering (other than the termination or modification of any beta feature or functionality), this Agreement, the Service Description, the Privacy Addendum, the Service Level Agreement, or the Support Policy, then you may terminate this Agreement no later than 30 days after the effective date of the change. If you terminate this Agreement pursuant to this Section 13.3, the termination will be effective as of the date we receive your notification, unless you state in your notification an effective date that is later but within 45 days after we receive your notification. If you terminate a Subscription-based Service Offering, we will refund any prepaid fees, pro-rated for the remainder of the term, and less any discounts that would not be earned as of the effective date of the termination. Your continued use of the Service Offering after the effective date of any modification to the Agreement, the Service Description, the Privacy Addendum, the Third Party Terms, the Service Level Agreement, or the Support Policy will be deemed acceptance of the modified terms, as applicable.

13.4 Waiver. The waiver of a breach of any provision of this Agreement will not constitute a waiver of any other provision or any later breach.

13.5 Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in force.
13.6 Compliance with Laws; Export Control. Each party will comply with all laws applicable to the actions contemplated by this Agreement. You acknowledge that the Service Offering is of United States origin, is provided subject to the U.S. Export Administration Regulations (including “deemed export” and “deemed re-export” regulations), and may be subject to the export control laws of the applicable country. You represent and warrant that (a) you are not, and are not acting on behalf of, (1) any person who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; (2) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List, or any similar designated persons list published for the jurisdiction in which the data center you choose for the Service Offering is located; (b) you will not permit the Service Offering to be used for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons; (c) Your Content will not be classified or listed on the United States Munitions list or similar list published for the jurisdiction in which the data center you choose for the Service Offering is located, or contain defense articles, defense services or ITAR-related data; (d) Your Content will not require an export license and is not restricted under applicable export control laws from export to any country where VMware or VMware’s service providers maintain facilities or personnel; and (e) you are not subject, either directly or indirectly, to any order issued by any agency of the United States government, revoking, in whole or in part, your United States export privileges. You will notify VMware immediately if you become subject to any such order.

13.7 Government Regulations. For purposes of sales to government entities in the U.S.: The Service Offering and its documentation are deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFARS Section 227.7202 and FAR Paragraph 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Service Offering and documentation by or on behalf of the U.S. Government will be governed solely by the terms and conditions of this Agreement.

13.8 Force Majeure. We will not be liable for any delay or failure to perform any obligations under this Agreement due to any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, earthquakes, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism or war.

13.9 Construction. The headings of sections of this Agreement are for convenience and are not for use in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”

13.10 Governing Law. This Agreement is governed by the laws of the State of California, United States of America (excluding its conflict of law rules), except as follows: for Service Offering purchases where you choose a data center that is outside the United States of America, the governing laws are those of the country in which the data center is located (excluding its conflict of law rules). The United Nations Convention for the International Sale of Goods does not apply. This Agreement does not affect your statutory rights that cannot be waived or changed by contract.

13.11 Third Party Rights. Other than as expressly provided in this Agreement, this Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

13.12 Order of Precedence. The terms of this Agreement will supersede and control over any conflicting or additional terms and conditions of any other purchasing related document issued by you.

13.13 Entire Agreement. This Agreement, as it may be revised by us, is the entire agreement of the parties regarding its subject matter. This Agreement supersedes all prior or contemporaneous communications, understandings and agreements, whether written or oral, between the parties regarding its subject matter.


14.1 “Confidential Information” means non-public technical, business or other information or materials disclosed or otherwise made available by one party in connection with the Service Offering that are in tangible form and labeled “confidential” or the like, or are provided under circumstances reasonably indicating their confidentiality. Our Confidential Information includes: (1) Login Credentials; and (2) any information or materials relating to the Service Offering.

14.2 “Infringement Claim” means any third party claim that any VMware Software used to provide the Service Offering infringes any patent, trademark or copyright of the third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of your actions) under the laws of: (a) the United States; (b) Canada; (c) the European Economic Area member states; (d) Australia; (e) New Zealand; (f) Japan; or (g) the People’s Republic of China, to the extent that those countries are part of your places of use of the Service Offering.

14.3 “Intellectual Property Rights” means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, and moral rights, whether registered or unregistered.
14.4 “Login Credentials” mean any passwords, authentication keys or security credentials that enable your access to and management of the Service Offering.

14.5 “OnDemand-based Service Offering” means a Service Offering for which you pay for actual usage in arrears on a periodic basis, as specified in your Order.

14.6 “Order” means the internet order page, or other ordering document, that specifies your purchase of the Service Offering.


14.10 “Subscription-based Service Offering” means a Service Offering for which you pay in advance for use of the Service Offering for a fixed period as specified in your Order. A Subscription-based Service Offering may also include optional services (e.g., add-ons) and metered usage components.

14.11 “Support Policy” means the then-current version of the Service Offering Support Policy document available at https://www.vmware.com/support/policies/saas-support.html, which we may modify from time to time.

14.12 “Third Party Content” means third party data, service, content, software or applications, including open source software.

14.13 “Third Party Terms” means the then-current version of the third party terms applicable to Third Party Content that you obtain in connection with the Service Offering that are available at www.vmware.com/files/pdf/support/horizon-air-third-party-terms.pdf.

14.14 “User” means any person that accesses Your Content or uses the Service Offering under your Login Credentials.

14.15 “VMware Software” means the software programs listed in our commercial price list.

14.16 “Your Content” means any and all applications, services, files, information, data or other content uploaded to or published or displayed through the Service Offering by you, Users, or us (acting upon your instructions as part of a service).

15. Provisions for Specific Data Centers. For Service Offering purchases where you choose a data center located in the countries listed below, the following provisions replace or supplement the referenced sections of this Agreement, as noted.

15.1 Australian Data Center:

15.1.1 Supplement Section 9 titled “Disclaimer” with the following additional paragraph:

“Nothing in this Agreement (including this Section 9 and Section 1.5) excludes, restricts or modifies any consumer guarantee, right or remedy conferred on you by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified by agreement. Subject to the preceding sentence, any condition, warranty, guarantee, right or liability which would otherwise be implied in this Agreement or imposed by law is excluded. VMware’s liability for any breach of any consumer guarantee, right or remedy conferred by the Australian Consumer Law which cannot be excluded is limited, at VMware’s option, to supplying the applicable service again or to the payment of the cost of having that service provided again.”

15.1.2 Replace the first sentence of Section 13.10 titled “Governing Law” with the following:

“This Agreement is governed by the laws of New South Wales, Australia, without regard to conflict of law principles.”

15.2 German Data Center:
15.2.1 Replace the last sentence of Section 1.4 titled “Third Party Content” with the following sentence:

"Except as permitted under Sections 6 and 7, we will only suspend or terminate Third Party Content during a subscription term with thirty (30) days prior notice, in which case we will provide a pro-rata refund of any pre-payments (if any) made for such suspended or terminated Third Party Content."

15.2.2 In Section 1.5 titled “Evaluation and Beta Use”, remove the period at the end of the third sentence which reads "[...]
(1) "AS IS", excluding any Service Level Agreement, and without indemnification or warranty or condition of any kind.” And add the following to the end of the third sentence:

"... except insofar as defects have been fraudulently concealed by us."

15.2.3 Replace Section 7.3 titled “Termination for Insolvency” with the following:

“7.3 [Reserved]"

5.2.4 Replace Section 9 titled “Disclaimer” with the following:


9.1 Qualities. During the Service Offering term, the Service Offering will substantially conform to the applicable Service Description unless otherwise stated herein. We do not commit that the Service Offering will be uninterrupted or that the Service Offering does fulfill any merchantability or fitness for a particular purpose, or will meet (or is designed to meet) your business requirements, unless stated otherwise in the applicable Service Description or individually agreed between the parties.

9.2 Warranty. We will correct any defect in the aforementioned qualities of the Service Offering reported to us by you in writing. If we are unable to correct the defect, we will refund an appropriate portion of the fees paid by you with respect to the affected portion of the affected Service Offering.

9.3 Any Service Credits (as set forth in the Service Level Agreement), will be set off against any refund for breach of warranty, if and to the extent such Service Credits are provided for the same event that entitles you to a refund for breach of warranty.

9.4 Subject to Section 11, the remedies in Section 9.2 are your sole and exclusive remedies for breach of warranty and our sole and exclusive liability for breach of warranty."

15.2.5 Replace Section 11 titled “Limitation of Liability” with the following:

“11.1 Limitation. Our liability for a claim of any nature arising out of this Agreement, regardless of whether the claim is based in contract, tort, strict liability, or otherwise,

11.1.1 will be limited to damages that are foreseeable and typical for this type of contract ("vertragstypische und vorhersehbare Schäden") arising from a slight negligent breach of a material contractual obligation ("Kardinalpflicht", i.e. an obligation the fulfillment of which is essential to enable the proper performance of the contract, and on which fulfillment you may rely on); and

11.1.2 will not exceed per damage event (i) EUR 250,000 (Two Hundred Fifty Thousand Euro), or (ii) if the aggregate fees paid or payable to us for your access to and use of the Service Offering in the twelve (12) months prior to the event giving rise to your claim are higher, then those fees for the specific Service Offering given rise to such claim (subject to the limit set forth in Section 11.1.3 below).

11.1.3 In no event will our total and cumulative liability for all claims arising out of this Agreement exceed EUR 500,000 (Five Hundred Thousand Euro).

11.2 Disclaimer of Liability. In case of slight negligence, we will not be liable for any indirect or consequential damages (including, but not limited to any loss of profits, business opportunity, revenue or goodwill), even if we have been advised as to the possibility of such damages.
11.3 Further Limitations. Our licensors and service providers will have no liability of any kind under this Agreement. You may not bring a claim under this Agreement more than eighteen (18) months after the cause of action arises.

11.4 Exceptions. Nothing in this Agreement will limit or exclude our liability for death or personal injury, for intentional act or gross negligence, fraudulent misrepresentation, fraudulent concealment of a defect, mandatory liability under the German Product Liability Act (Produkthaftungsgesetz), or liability for any damages resulting from a breach of a given guarantee.”

15.3 United Kingdom Data Center:

15.3.1 Replace the last sentence in Section 1.4 titled “Third Party Content” with the following sentence:

“Except as permitted under Sections 6 and 7, we will only suspend or terminate Third Party Content during a subscription term with thirty (30) days prior notice, in which case we will provide a pro-rata refund of any pre-payments (if any) made for such suspended or terminated Third Party Content.”

15.3.2 Supplement Section 7.3 titled “Termination for Insolvency” with the following:

“(c) if you are deemed unable to pay your debts within the meaning of Section 123 of the Insolvency Act of 1986; or (d) suffer or undergo any similar or analogous suspension or proceeding in any jurisdiction.”

15.3.3 Replace the last sentence of Section 10.4 “[Indemnification] Exclusions” with the following:

“This Section 10 states your exclusive remedy for any infringement claims or any assertions or actions arising out of or related to any infringement claims.”

15.3.4 Replace the last sentence of Section 11.1 titled “Generally” with the following:

“THE LIMITATIONS OF LIABILITY IN THIS SECTION 11.1 WILL NOT APPLY TO VMWARE’S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE ANY PARTY’S LIABILITY FOR DEATH OR PERSONAL INJURY, FOR FRAUDULENT MISREPRESENTATION, OR FOR ANY OTHER LIABILITY WHICH MAY NOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW.”

15.3.5 Supplement Section 12.2 titled “[Confidential Information] Exceptions” with the following:

“Breach of this Section 12 by the recipient party may cause the disclosing party substantial harm for which monetary damages are an insufficient remedy. Accordingly, each party agrees that the other party may apply for injunctive relief in respect of any threatened or actual breach of this Section 12.”

15.3.6 Any reference to “warranty or condition” is deemed to refer to “warranty, condition or other terms”, any reference to “warranties and conditions” is deemed to refer to “warranties, conditions, and other terms” and any reference to “warranties or conditions” is deemed to refer to “warranties, conditions or other terms.”