

NASPO ValuePoint
**PARTICIPATING ADDENDUM
 WITH VMWARE, INC.**



CLOUD SOLUTIONS 2016-2026

Led by the State of Utah

Master Agreement #: AR2493

Contractor: **VMWARE, INC.**

Participating Entity: **STATE OF WISCONSIN**

This Participating Addendum is entered into between VMware, Inc., a Delaware corporation with offices at 3401 Hillview Avenue, Palo Alto, CA 94304 ("Contractor") and the State of Wisconsin ("State" or "Participating Entity"), which includes all State of Wisconsin Agencies ("State Agencies") and the University of Wisconsin System and Campuses ("Universities"), as represented by its Department of Administration, located at 101 E Wilson Street, Madison, WI 53702, effective as of the last signature date below.

This Contract, including all attachments and documents incorporated by reference, including but not limited to Master Agreement #AR2493, Cloud Services, between the Contractor and the State of Utah (the Lead State), sets forth the terms and conditions under which Contractor will provide Products and Services to the State pursuant to orders to be issued by Purchasing Entities to Contractor or Contractor's authorized reseller.

The following products or services are included in this contract portfolio:

- All products, services and accessories listed on the Contractor page of the NASPO ValuePoint website including the Cloud Management Platform.

Master Agreement Terms and Conditions:

1. Scope: This Participating Addendum between Contractor and Participating Entity (the "Parties") modifies and amends the **Cloud Solutions** Contract number AR2493 led by the State of Utah and referred to in this Participating Addendum as the "Master Agreement" for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the Bureau Director, State Bureau Procurement. Issues of interpretation and eligibility for participation are solely within the authority of the Bureau Director, State Bureau Procurement.
2. Participation:

INDIVIDUAL CUSTOMER: The State of Wisconsin, Department of Administration, Division of Enterprise Technology ("DET") is authorized to allow use of the Master Agreement as amended by this Participating Addendum (collectively, this "Contract") for the procurement of all products and services covered by the scope of the Master Agreement. **Any State of Wisconsin agency, municipality or other political subdivision, or higher education institution within the University of Wisconsin System that desires to procure Products or Services under the Contract must contact DET directly to request use of this Contract: Dave Meyer; davidj.meyer@wisconsin.gov, 608-261-6628.** All products and services covered by the



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scope of the Master Agreement available from the Contractor and its Fulfillment Partners are authorized for procurement within this Contract.

Each entity that purchases Products or Services under the Contract (Purchasing Entity) will be treated as if they were individual customers. Each Purchasing Entity shall be subject to the terms and conditions of the Contract as if it were the signatory to this Participating Addendum, and shall have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each Purchasing Entity will be responsible for their own charges, fees, and liabilities. Each Purchasing Entity will have the same rights to any indemnity or to recover any costs as allowed in the Contract. The Contractor will apply the charges to each Purchasing Entity individually.

3. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Karin Whitwood
Address:	12100 Sunset Hills Rd. Suite 600, Reston, VA 20190
Telephone:	571-375-3481
Email:	NASPO-VP@vmware.com

Participating Entity

Name:	Ceotrid Gilbert
Address:	101 E. Wilson Street, 6 th Floor, Madison, WI 53703
Telephone:	608-267-4506
Email:	Ceotrid.Gilbert@Wisconsin.gov

5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

[X] The following changes are modifying or supplementing the Master Agreement terms and conditions.



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5.1 DEFINED TERMS

For purposes of this Agreement, the following terms shall have the meanings defined below. Any other capitalized terms in this Participating Addendum not otherwise defined in this Participating Addendum shall have the meanings ascribed to them in the Master Agreement.

“Contractor Services” mean any Product or Services that may be provided directly by Contractor or its Fulfillment Partners under the Contract.

“Contractor Terms and Conditions” means Contractor’s applicable terms and conditions incorporated into the Master Agreement, of which the then-current version found at <http://www.vmware.com/download/eula.html> at the time an Order is placed, shall govern an Eligible User’s access to and use of an ordered Product. The parties agree that the Purchasing Entity shall have the right to review and may request to negotiate the Contractor Terms and Conditions, as applicable, at such time an Order is placed.

“Deliverables” means any reports, analyses, scripts, templates, code, project materials, including software licenses, data, and documentation to be delivered and other work results to be delivered by VMware to Customer under this Agreement and as set forth applicable SOW as described in the Master Consulting Services Agreement.

“Master Consulting Services Agreement” means the agreement executed by and between the State and Contractor on May 24, 2016, attached hereto as Exhibit A.

“Purchasing Entity” means a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

“Subcontractor(s)” means an entity that enters into subcontract with Contractor for the purpose of delivering Deliverables or rendering Services to the State.

“State Data” means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State or a Purchasing Entity whether such data or output is stored on the State or an Purchasing Entity’s hardware, Contractor’s hardware, or exists in any system owned, maintained or otherwise controlled by the State, a Purchasing Entity, or by Contractor. State Data includes any federal data, that the State or a Purchasing Entity controls or maintains, that is protected under federal laws, statutes, and regulations.

“State Information” means data, technical information, and materials that, originate with the State, or are developed, or prepared, or provided by the State or which Contractor obtains or gathers from the State in the performance of this Agreement, including, but not limited to, reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and

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accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion or format. State Information also includes those Deliverables owned by the State pursuant to Section 5.6(b) and (c).

5.2 Usage Reports

Contractor shall submit a quarterly State of Wisconsin gross sales report to the Participating State contact person listed in Section 4, above (or as amended), in accordance with the following schedule:

<u>Quarter Ending</u>	<u>Report Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The State shall provide a format for the quarterly report to be used for this function. The quarterly report shall be subtotaled by each Participating Entity. The quarterly report shall also include any adjustments from prior periods. However, the Contractor agrees to provide additional reports if requested to the State of Wisconsin in a format and frequency as mutually agreed by both parties.

5.3 The validity of this Participating Addendum, any of its terms or provisions, as well as the rights and duties of the Parties to this Participating Addendum, shall be governed by the laws of the State of Wisconsin and the federal laws of the United States. Any action at law or in equity to enforce or interpret the provisions of this Participating Addendum shall be brought in a court of competent jurisdiction in Wisconsin.

5.4 Contractor's Representation

Contractor warrants that qualified personnel shall provide Contractor Services in a workmanlike manner, as applicable. Contractor shall serve as the prime contractor under this Agreement for the Contractor Services. Should Contractor engage any Subcontractor(s) to deliver Contractor Services pursuant to an SOW under this Contract, the Contractor shall be legally responsible for the performance and payment of the Subcontractor(s). Subject to applicable Contractor Terms and Conditions, the Participating Entity is not agreeing to and is not responsible for any terms and conditions with third parties. Names of any Subcontractors of Contractor may appear for purposes of convenience in this Contract and shall not limit Contractor's obligations hereunder. Subject to applicable Contractor Terms and Conditions, Contractor shall retain responsibility for functional and technical expertise as needed in order to incorporate any work by Subcontractor(s) in the delivery of Contractor Services.

- a. Inherent Services. Unless otherwise expressly provided in this Agreement, Contractor shall furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Contractor to provide and deliver the Contractor Services and Deliverables.



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- b. Contractor represents, as of the date of this Participating Addendum, that Contractor has no actual knowledge of an actual or potential legal proceeding being brought against Contractor that will materially adversely affect performance of this Agreement; and that entering into this Agreement is not prohibited by any contract, or order by any court of competent jurisdiction.

5.5 Consulting Services

The parties acknowledge and agree that: (i) Contractor Services that may be provided under the Contract include professional consulting services; (ii) notwithstanding anything to the contrary in the Contract, any such professional consulting services shall be governed by the terms and conditions set forth in the Master Consulting Services Agreement.

5.6 Warranty of Third Party Products

The Parties agree that, because the Contractor is not the manufacturer or developer of third-party vendors' products or services, any third-party vendors' products and services provided hereunder are not warranted by Contractor and any warranties shall solely under the terms and conditions of the third-party licenses or other agreements extended directly to the State by the third-party vendor and by which such products are governed. Contractor shall pass through to the State any warranty and indemnification rights available for pass through to the State from the manufacturers or vendors of such products and services comprising the Deliverables. Such third-party warranty coverage shall not relieve the Contractor from Contractor's warranty obligations for Contractor's Services as provided in the Contract.

5.7 Payment Terms and Invoicing

Order-specific pricing shall be set forth in the applicable Order. Payments terms are as follows, unless otherwise agreed to a Statement of Work:

- a. All invoices shall include Contractor's tax identification number and a detailed description of Products or Services provided. If the State fails to pay a properly submitted invoice within thirty (30) days of receipt, it shall pay a late payment penalty as provided in s. 16.528, Wis. Stats. However, if the State declares a good faith dispute in regard to an invoice pursuant to s. 16.528 (3)(e), Wis. Stats., it shall pay any undisputed portion of said invoice, and will be excused from the prompt payment requirement for the disputed portion pending resolution of the dispute, provided it gives timely notice of such dispute to Contractor in writing and escalates the matter through the dispute resolution process in section 5.25 of this Agreement.
- b. All purchase orders issued by Purchasing Entities under this Participating Addendum shall include the Participating State contract number: **505ENT-O18-VMWARE-00** and the Lead State, State of Utah-State Cooperative Contract Number AR2493. Purchasing Entities may

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use a PCard, subject to its credit limit, or issue a purchase order, provided that any additional or different terms of such PCard or purchase order shall not apply.

- c. Contractor shall forward invoice(s), directly to the ordering agency. If purchasing directly from Contractor, Orders and payments shall be made to VMware, Inc.

5.8 Taxes

Contractor's charges are, except as expressly provided in an Order, exclusive of any applicable taxes that are the State's responsibility to pay. The State of Wisconsin represents it and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.

The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials. Contractor will invoice and the State will pay any tax which is, according to the governing tax authority, the State's responsibility to pay, exclusive of taxes based on the gross or net income of Contractor. The Purchasing Entity shall provide Contractor documentation reasonably acceptable to Contractor evidencing Customer's tax-exempt status.

5.9 Pricing and Discount

Contractor's stated prices approved and agreed to with NASPO under the Master Agreement shall apply to this Participating Addendum and its Orders unless otherwise mutually agreed for a specific Order. The State of Wisconsin qualifies for governmental discounts, if available; and its educational institutions also qualify for educational discounts, if available. The Contractor may offer, within written quotes, a greater discount than the approved minimum discount for the State of Wisconsin, volume purchases or for competitive reasons.

5.10 Right to Assurance

If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within thirty days, from Contractor's receipt of such notice may, at the State's option, be the basis for terminating the Agreement for the State's convenience per the terms of this Contract or other rights and remedies available by law.

5.11 Right of Offset



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Subject to s. 16.767 and s. 73.12, Wis. Stats. and upon written notice to the Contractor, the State may offset against contractual payments due to the Contractor in an amount necessary to satisfy a certified or verifiable delinquent payment owed by the Contractor to the State of Wisconsin or any Purchasing Entity in Wisconsin that is not under formal written appeal. The State also reserves the right to cancel this Agreement as provided in Section 5.14.2, Termination, if a delinquency is not satisfied by the offset or other means during the Agreement Term.

5.12 Contractor Compliance and Responsibility for Actions

The Contractor shall at all times comply with and observe all applicable Federal, State, and local laws, ordinances, and regulations that are in effect during the term of this Agreement that govern Contractor's business and operations.

The Contractor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors under this Agreement, and neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of the State.

5.13 Renegotiation of Agreement

Each party shall have the right to request the other renegotiate the terms and conditions of this Participating Addendum to the extent required to accommodate a change in governing law or policy that, in the sole discretion of the requesting party, prohibits such party from fulfilling its obligations under the Contract.

5.14 Term and Termination

5.14.1 This Contract shall end conterminously with the Master Agreement, provided that any Orders entered into prior to expiration or termination of this Contract shall survive such expiration of the Master Agreement, for the term stated in the Order, and continue to be subject to its terms.

5.14.2 Termination for Cause

a. The State may terminate this Participating Addendum with written notice if, after providing the Contractor with thirty (30) days written notice to cure a material breach of any term or condition of the Contract, the Contractor fails to cure such material breach within the thirty (30) day cure period.

The Contractor may terminate this Participating Addendum if, after providing the State with thirty (30) days written notice of the State's right to cure a material breach of any term or condition of the Contract, the State fails to cure such material breach within the thirty (30) day cure period.

Any termination for cause must be preceded by written notice and an opportunity to cure as provided in this section. Termination of this Participating Addendum shall not terminate any Orders in progress. Upon the termination of this Participating Addendum for any reason, or upon Participating Addendum expiration, each party shall be released from all obligations to the



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other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration (including any surviving Orders).

b. The State may, upon termination of this Participating Addendum for cause, procure on terms and in the manner that it deems appropriate, materials or services to replace those terminated for cause under this Participating Addendum.

5.14.3 Termination for Convenience

The State reserves the right to terminate the Contract without cause in whole or in part upon sixty (60) days advance written notice to Contractor, when in the best interests of the State and without penalty or recourse, provided that the State may only terminate in part if the remaining elements are not dependent upon the terminated elements and provided further that any existing Orders entered into prior to such termination shall not be affected by termination of the Contract under this section and shall survive for the term of the Order unless the Order is separately terminated according to the Contract and the applicable Order.

The Contractor may terminate the Contract at any time, without cause, in whole or in part by providing a written notice to the State at least ninety (90) days in advance of the intended date of termination provided that the Contractor may only terminate in part if the remaining elements are not dependent upon the terminated elements and provided further that any existing fully executed Order entered into prior to such termination shall not be affected by termination of the Contract under this section and shall survive for the term of the Order unless the Order is separately terminated according to the Contract and the applicable Order.

In the event either party exercises its right to terminate the Contract for Convenience pursuant to this Section of the Participating Addendum, the Contractor shall be entitled to payment for applicable fees incurred as of the date of termination or cancellation, such payment will be due according to the payment terms as set forth in the Contract. The State shall have no other liability arising out of termination or cancellation exercised according to this Agreement.

5.15 Termination of Orders

If Services performed under any Purchasing Entity's Order are terminated, upon such termination, as applicable, the Purchasing Entity will only be liable for all usage and other documented fees incurred up to the termination effective date, and is subject to the Purchasing Entity's rights under s. 16.528 (3)(e), Wis. Stats. The time period the Purchasing Entity will have from the date of termination of any Services to remove its data from the applicable Contractor Service offering shall be in accordance with the applicable Contractor Terms and Conditions.

With regard to termination of an Order for any professional consulting services, upon such termination: (i) the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and use commercially reasonable efforts to minimize all further costs to such Purchasing Entity; and (ii) all Deliverables prepared by the



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Contractor under such Order and paid for by the Purchasing Entity shall be delivered to the Purchasing Entity.

5.16 No Quantity Guarantees

Purchase under this Participating Addendum pursuant to the State of Utah-State Cooperative Contract is not mandatory. This Participating Addendum is non-exclusive.

The State of Wisconsin may obtain related goods or services from other sources during the term of the Contract in its sole discretion and at its sole option. Subject to the foregoing, the State of Wisconsin makes no express or implied warranties whatsoever that any particular quantity or dollar amount of Services shall be procured through the Contract.

5.17 Independent Contractor

The Contractor shall act as an independent contractor in performing all Services under the Contract and, except as otherwise outlined herein, as between the State and Contractor, shall maintain complete control over its employees, Contractor Personnel, and Subcontractors, if any.

5.18 Confidential, Proprietary and Personally Identifiable Information

Any additional or different terms applicable to Confidential Information or personally identifiable information from those set out in the Master Agreement may be addressed as mutually agreed and applicable to the work in the governing Statement of Work.

5.19 Non-Exclusive

Except for remedies designated herein as exclusive or which are exclusive as a matter of law, no remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one (1) or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

5.20 Insurance Responsibility

The Contractor shall maintain the following insurance coverage:

- Worker's compensation insurance, as required under Chapter 102 of the Wisconsin Statutes, for all of the Contractor's employees engaged in the Contractor Services performed under this Contract;
- Commercial liability, bodily injury and property damage insurance against claim(s) that may occur in carrying out the Contractor Services pursuant to this Contract, with a



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minimum coverage of one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations; and

- Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the Contractor Services pursuant to this Contract, with a minimum coverage of one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
- Certificate of Insurance, showing up-to-date coverage, shall be on file in the Agency before the Contractor Services may commence. (if applicable)

The State reserves the right to require higher or lower insurance limits, where warranted, provided any higher required limits shall not apply to existing Statements of Work unless otherwise agreed in writing and Contractor may terminate this Contract (but not existing SOWs) for its convenience (upon the 90 days' notice as required in 5.14.3) if it does not agree to comply with the higher limits.

5.21 Recordkeeping and Record Retention

§19.36 (3) of the Wisconsin Statutes applies to the Contract, and Records (as defined in §19.32 of the Wisconsin Statutes) that are produced or collected under the Contract may be subject to disclosure pursuant to a public records request. The parties acknowledge and agree that the State may disclose such records to the extent required by law, regulation, or order of a court or similar judicial or administrative body, provided the State (i) limits the scope of such disclosure to the minimum required and (ii) promptly notifies Contractor of such disclosure in writing.

The Contractor shall establish and maintain adequate records of all documentation developed or compiled by it for the State and expenditures incurred by it under this Agreement. All such records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP), as applicable, in accordance with federal, State and local laws or ordinances applicable to Contractor. The Contractor, following final payment, shall retain all such records for three (3) years.

Any additional responsibilities relative to Contractor's retention of records may be addressed as mutually agreed in the applicable Order.

5.22 Promotional Advertising and News Releases

Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Agreement shall not be made by Contractor without prior written approval of the State.

5.23 Anti-Trust Assignment



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By entering into this Agreement, Contractor conveys, sells, assigns and transfers to the State all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the State relating specifically to that proportionate amount of the Products or Services attributable to the Products or Services purchased or acquired by the State from the Contractor under the Contract.

5.24 Assignment of Agreement

The Contractor shall provide prior written notice to the State before assigning the rights and obligations of this Agreement to another party. The State reserves the right to withhold approval of any such assignment in its sole discretion (such approval not to be unreasonably withheld), except for assignment to a successor in interest to any portion of Contractor's business or assets. The terms and conditions of this Agreement as well as any rights obligations and liabilities associated with such shall survive any and all assignments, mergers, or acquisitions by a third party until cancelled in writing by both parties. Notwithstanding the above, Contractor may utilize its affiliates and Fulfillment Partners as provided in the Agreement, provided that Contractor remains responsible for the Products and/or performance of Service.

5.25 Agreement Dispute Resolution

In the event of any dispute or disagreement between the parties under the Contract, whether with respect to the interpretation of any provision of the Contract, or with respect to the performance of either party hereto, except for breach of Contractor's intellectual property rights, each party shall use its best efforts to appoint a representative to meet within fifteen (15) days of being notified of such dispute, for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. Except as may be necessary to avoid expiration of the applicable statute of limitations, no legal action of any kind between the parties, except for the seeking of equitable relief in the case of the public's health, safety or welfare or protection of Contractor's or its licensors, affiliates, or Fulfillment Partners' intellectual property rights, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's applicable executive manager and the equivalent executive authority within the State, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.

5.26 Miscellaneous Terms:

a. NOTIFICATION: As part of VMware's contract use and training program, Contractor will instruct its sales representatives associated with this Contract to use reasonable efforts to notify the Division of Enterprise Technology per Section (2) herein, of any expansions to a Purchasing Entity's existing cloud operations under the Contract that it becomes aware of that are being pursued by any Wisconsin agency or public procurement unit.



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b. **APPLICABLE LAW AND COMPLIANCE:** This Agreement shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all applicable federal and state laws, local laws, ordinances, and regulations which are in effect during the period of the Contract and which govern Contractor's business. The State of Wisconsin reserves the right to cancel the Contract if the contractor fails to cure any failure to follow the applicable requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to terminate the Contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

c. **DISCLOSURE:** If a state public official (s. 19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which Contractor knows a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, the Contract is voidable by the State unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the Contract. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, s. 16.417, Wis. Stats.

d. Contractor certifies to the best of its knowledge and belief, no relationship exists between it and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the contractor and another person or organization that constitutes a conflict of interest with respect to a State contract. The Department of Administration may waive this provision, in writing, if those activities of the potential contractor will not be adverse to the interests of the state.

e. **DUAL EMPLOYMENT:** Contractor shall abide by any requirements applicable to Contract in Section 16.417, Wis. Stats.

f. **EMPLOYMENT:** The contractor will not engage the services of any person or persons it knows is now employed by the State of Wisconsin, including any department, commission or board thereof, to provide Contractor Services relating to the Contract without the written consent of the employing agency of such person or persons and of the contracting agency.

g. **CONFLICT OF INTEREST:** To the extent applicable to Contractor, Contractor agrees to comply and cooperate in good faith with Sections 180.0831, 180.1911(1), and 181.0831 Wis. Stats., regarding conflicts of interests by directors in the conduct of state contracts.

h. **INDEPENDENT CAPACITY OF CONTRACTOR:** The parties hereto agree that the Contractor, its officers, agents, and employees, in the performance of this agreement shall act



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in the capacity of an independent contractor and not as an officer, employee, or agent of the state. The Contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the Contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State.

i. **ACCEPTANCE:** Acceptance criteria for Deliverables will be provided for in the Statement of Work.

j. **TESTING:** If applicable, testing criteria will be provided for in the Statement of Work.

k. **SUBCONTRACTORS:** All contactors, dealers, and resellers authorized by the State of Wisconsin, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

l. **ORDERS:** Any order placed by a Purchasing Entity for a Product and/or Service available from the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

m. **PURCHASE ORDER INSTRUCTIONS:** The form of "engagement" and required information on the invoice related to services provided under the Master Agreement have been determined by NASPO and agreed to by Contractor. Any additional information requirements should be detailed in Section 5 (above).

n. **ORDER OF PRECEDENCE:** In the event of any conflict among the terms and conditions of this Participating Addendum and the Master Agreement, together with all exhibits, the order of precedence shall be as described in the Master Agreement #AR2492, provided, however, that the terms and conditions of an Order shall prevail over any additional or conflicting terms in any purchase order issued by a Participating Entity or any other terms in the Contract or accompanying the Products and Services.

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VMware WI PA #00281422



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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity:	Contractor: VMware, Inc.
Signature: 	Signature: 
Name: Rick Hughes	Name: Karin Whitwood
Title: Director, State Bureau of Procurement	Title: Contracts Manager, Public Sector
Date: 8.23.2017	Date: August 17, 2017

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

**Please email fully executed PDF copy of this document
to
PA@naspovaluepoint.org
to support documentation of participation and posting
in appropriate data bases.**



EXHIBIT A

MASTER CONSULTING SERVICES AGREEMENT

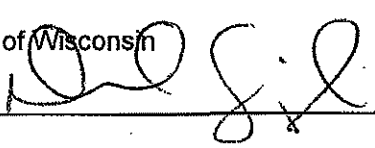
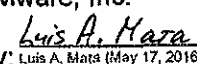
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MASTER CONSULTING SERVICES AGREEMENT

This Master Consulting Services Agreement (this "Agreement") is entered into between VMware, Inc., a Delaware corporation with offices at 3401 Hillview Avenue, Palo Alto, CA 94304 ("VMware" or "Contractor") and the State of Wisconsin ("State" or "Customer") named below, effective as of the date executed by VMware, Inc. This Agreement is comprised of this cover page and the attached terms and conditions, the terms of which are incorporated herein by this reference.

Customer (Legal Name):	State of Wisconsin
Street Address:	101 East Wilson Street Madison, Wisconsin 53703
Form of Business:	State of Wisconsin
Organization's Country:	USA

By signing below, each Party acknowledges that it has read and understood this Agreement and agrees to be bound by its terms.

Customer:	VMware:
State of Wisconsin	VMware, Inc.
By: 	By: 
Name: <u>David Cagigal</u>	Name: <u>Luis A. Mata</u>
Title: <u>Chief Information Officer/Division Administrator</u>	Title: <u>Sr. Contracts Administrator</u>
Date: <u>5/24/2016</u>	Effective Date: <u>May 17, 2016</u>

Approved by Kay Patterson

GENERAL TERMS AND CONDITIONS

This Agreement sets forth the general terms and conditions under which VMware will provide the Consulting Services to Customer. The specific business details and description of the work to be performed will be set forth in a Statement of Work and executed by both Parties.

1. Definitions

- a. **"Acceptance Period"** means a period of ten (10) business days following unless otherwise negotiated in an individual Statement of Work, (i) for a fixed fee engagement, delivery of the applicable Project Milestone Completion Form, or (ii) for a time and materials engagement, the submission of timesheets to Customer.
- b. **"Confidential Information"** means information or materials provided by one Party ("Discloser") to the other party ("Recipient") which are in tangible form and labeled "confidential" or the like, or, information which a reasonable person knew or should have known to be confidential in the circumstances, disclosed in the performance with this Agreement or an SOW, in any form or medium without regard to whether the information is owned by the State or by a third party, provided that such third party information meets the definition and criteria of Confidential Information hereunder. Information which satisfies at least one of the following criteria shall be considered Confidential Information hereunder: (i) Personally Identifiable Information; or (ii) non-public information related to the State's employees which is identified at the time of disclosure by the State, or any person acting on its behalf, to VMware as such in writing; or (iii) nonpublic information expressly designated as confidential in writing by the State or VMware. The foregoing notwithstanding, the following information will be considered Confidential Information whether or not marked or identified as confidential: any personally identifiable information (such as 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.
- c. **"Consulting Services"** means those services provided by VMware to Customer as described under this Agreement and in a Statement of Work ("SOW"), including work performed, and labor, actions, plans, research, customizations, modifications, documentation, as described under this Agreement or in a Statement of Work ("SOW") which the Contractor is obligated to accomplish under this Agreement and an SOW.
- d. **"Contracted Personnel"** means a Contractor's employees or other personnel (including officers, agents and Subcontractors) provided by the Contractor specifically to render Services under this Agreement.
- e. **"Customer Materials"** means any materials or Technology provided to VMware by Customer in connection with the Consulting Services.
- f. **"Deliverables"** means any reports, analyses, scripts, templates, code, project materials, including software licenses, data, and documentation to be delivered and other work results to be delivered by VMware to Customer under this Agreement and as set forth applicable SOW.
- g. **"Derivative Work"** means a derivative work as defined under the applicable intellectual property laws of the United States.
- h. **"Intellectual Property Rights"** means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know-how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

- i. **"Parties"** means VMware and Customer collectively, and a **"Party"** means VMware or Customer individually.
- j. **"State Personally Identifiable Information"** means an individual's last name and the individual's first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual's Social Security number; (b) the individual's driver's license number or state identification number; (c) the number of the individual's financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account; (d) the individual's DNA profile; or (e) the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.
- k. **"Properly-submitted Invoice"** is one that is submitted in accordance with instructions contained on the State's Purchase Order as determined in the corresponding SOW, includes a reference to the proper Purchase Order number, and is submitted to the proper address for processing.
- l. **"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 transactions contemplated by an applicable SOW that are imposed by any government or other authority.
- m. **"Subcontract"** means an agreement, written or oral between the Contractor and any other party to fulfill the requirements and performance obligations of this Agreement.
- n. **"Subcontractor"** means an entity that enters into subcontract with the Contractor for the purpose of delivering Deliverables or rendering Services to the State.
- o. **"Technology"** means algorithms, approaches, source and object codes, concepts, data, designs, developments, documentation, discoveries, expressions, inventions, knowhow, methodologies, multimedia files, processes, programs, skills, software, techniques, technology, templates, text, tools, and web pages.
- p. **"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

- 2.1 **Consulting Services.** VMware will provide the Consulting Services and the Deliverables under this Agreement and as specified in an applicable SOW. Each SOW will (i) incorporate by reference this Agreement; 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 Agreement and the terms of an SOW, the terms of this Agreement will govern unless otherwise explicitly superseded in an applicable SOW.

3. Acceptance.

- 3.1 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 the Consulting Services.

- 3.2 If Customer reasonably believes that VMware did not perform the Consulting Services or deliver the Deliverables in conformance with an applicable 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 applicable SOW. VMware will use all commercially reasonable efforts to correct Customer's issues and then again present the Project Mile Stone Completion Form or timesheets for Customer's acceptance in accordance as required by this Section 2 (Consulting Services).
- 3.3 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.

4. Project Change Request ("PCR")

- 4.1 Either Party may request a modification to an agreed Deliverables or to any material provision of an applicable 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. All PCRs shall be approved in writing by both Parties.
- 4.2 If the Parties agree on the PCR, VMware will attach the final PCR to the applicable 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 applicable SOW. If the applicable SOW is terminated, the only payments due are for Deliverables delivered, Consulting Service performed, and expenses incurred by VMware prior to the termination date.

5. **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.
6. **Rolling Estoppel.** Customer assumes the obligation for the resources as indicated in the Statement of Work upon which VMware's will rely to meet its performance and work product obligations. Customer will be conclusively deemed to have fulfilled its obligations, unless it receives a deficiency report obligations from the VMware of the alleged deficiencies and the VMware identifies specific deficiencies in the Customer's fulfillment of its obligations in that report. Deficiencies must be described in terms of how they have affected the specific performance requirement of the VMware.

VMware is estopped from claiming that a situation has arisen that might otherwise justify changes in the project timetable, the standards of performance under the Agreement or the contract price, if the VMware knew of that problem and failed to include it in the applicable report.

In the event VMware know of a situation wherein the State is impairing VMware's ability to perform for any reason, VMware will notify the customer in writing. VMware will include in the notice a summary of how Customer is impairing performance and VMware's suggested solutions to the situation(s)). These suggestions should be in sufficient detail so that the Customer's project managers can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

If the problem is one that allows VMware (within the terms of the Agreement) to ask for changes in the project timetable, the standards of performance, the project price or all of these elements, the report should comply with the change order procedures.

7. **Contracted Personnel.** VMware will determine its Contracted Personnel) assigned to perform Consulting Services. VMware agrees that the Consulting Services will be performed by personnel with the required training, background and experience to perform such Consulting Services under the Agreement in accordance with the terms of the applicable SOW. 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.

VMware shall furnish Contracted Personnel with a means of identifying themselves as agents, Subcontractors, or employees of VMware assigned to perform Consulting Services under the Agreement, and furnish the State with security credentials on these Contracted Personnel, if requested.

8. **Performance.** Consulting Services rendered under this Agreement shall be performed in a timely, professional and diligent manner by qualified and efficient personnel. VMware shall be solely responsible for controlling the manner and means by which it and its Contracted Personnel or its Subcontractor render Services, and VMware shall observe, abide by, and perform all of its obligations in accordance with all applicable, legal requirements and Customer work rules.
9. **Cooperation with Other Contractors.** In the event that the State enters into a contract with another contractor for additional services and makes VMware aware of such relationship in writing, VMware shall ensure that Contracted Personnel cooperate with such other contractor to the extent such cooperation either i) is required under the applicable SOW or ii) does not cause VMware to incur additional time, labor, expenses or iii) adversely affect VMware's rights. Contracted Personnel shall not intentionally commit any act that interferes with the rendering of services by any other contractor or by the State. Contracted Personnel shall reasonably cooperate with State personnel, hardware manufacture representatives, system software suppliers, and communications systems suppliers in the provision of Consulting Services to the State consistent with the provisions of the applicable SOW.

10. Intellectual Property.

- 10.1 **Grant of Copyright Rights in the Deliverables.** Subject to Customer's payment of the applicable amounts due under the applicable SOW and to Customer's compliance with the SOW, Customer will own all copyright 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 applicable SOW, provided that Customer will exercise its rights for Customer's State government-related business operations only and will not resell or distribute the Deliverables to any third party.
- 10.2 **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 by VMware in connection with the Consulting Services, VMware grants Customer a non-exclusive, non-transferrable, irrevocable (except in case of breach of this Agreement or the applicable SOW) perpetual license, without the right to sublicense, to use and copy, for State's government-related business operations only (the "Deliverables License"). The Deliverable License does not apply to (i) Customer Materials, and (ii) any other products or items licensed, or otherwise provided, under a separate agreement.
- 10.3 **Customer Materials.** Any Customer Materials used by VMware in connection with an applicable SOW remain Customer property. Pursuant to Customer's Intellectual Property Rights in the Customer Materials, Customer grants VMware a non-exclusive, non-

transferrable right to use the Customer Materials solely for the benefit of Customer in the performance of Consulting Services pursuant to the applicable SOW. Customer warrants that it has the necessary rights to provide the Customer Materials to VMware so that VMware can access, use and modify them as necessary for VMware's performance of the Consulting Services.

10.4 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 to VMware Retained Materials remain VMware's sole property. VMware will not be limited in developing, using or marketing services or products that are similar to the Deliverables or the Consulting Services or, subject to VMware's confidentiality obligations to Customer, in using the Deliverables or performing similar Consulting Services for any other projects or parties.

10.5 Duty of Non-Disclosure and Security Precautions. Neither Recipient shall use Confidential Information or any purpose other than the limited purposes set forth in the Agreement and an SOW to exercise its rights and perform its obligations under this Agreement and an applicable SOW; or (ii) in connection with the Parties' ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by this Agreement. The Parties shall hold the Confidential Information of the other party in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents ("Representatives") who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Agreement and applicable SOW, and who have been apprised of, and shall maintain, the confidential nature of such information in accordance with the terms of this Agreement. The Parties shall be responsible for the breach of this Agreement by any of their Representatives.

The parties shall apply the same level of care as it employs to protect its own confidential information of like nature.

The parties shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced on any reproduction, modification, or translation of such Confidential Information. If requested by the State, VMware shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the State, as directed.

If requested by the Discloser, the Recipient shall return or destroy all Personally Identifiable Information or other Confidential Information it holds upon termination of this Agreement.

10.6 Limitations on Obligations. The obligations of confidentiality assumed by each Party pursuant to this Agreement shall not apply to the extent a Party can demonstrate that such information:

- is part of the public domain without any breach of this Agreement by the party;
- is or becomes generally known on a non-confidential basis, through no wrongful act of the party;
- was known by the party prior to disclosure hereunder without any obligation to keep it confidential;
- was disclosed to it by a third party which, to the best of the party's knowledge, is not required to maintain its confidentiality;
- was independently developed by the party; or

- is the subject of a written agreement whereby the disclosing party consents to the disclosure of such Confidential Information by the receiving party on a non-confidential basis.

10.7 Legal Disclosure. If VMware or any of its Representatives shall be under a legal obligation in any administrative, regulatory or judicial circumstance to disclose any Confidential Information, VMware shall give the State prompt notice thereof (unless it has a legal obligation to the contrary) so that the State may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, VMware and its Representatives shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature. Notwithstanding anything to the contrary, neither Party will disclose the terms and conditions of and an applicable SOW to any third party, without a prior written consent of the other Party. Notwithstanding the foregoing each Party may disclose the Confidential Information without a 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 or financing sources and other professional advisors; (v) in connection with the enforcement of this Agreement and/or rights under an applicable 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 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.

10.8 Unauthorized Use, Disclosure, or Loss. If Recipient becomes aware of any actual use or disclosure of any Confidential Information that is not specifically authorized by this Agreement or a SOW, Recipient, Recipient shall promptly notify the disclosing Party upon becoming aware or reasonably should have been aware of such use, disclosure, or loss. Such notice shall include, to the best of the disclosing Party's knowledge at that time, the persons affected, their identities, and the Confidential Information disclosed.

Customer will use best efforts to prevent disclosure to VMware of any personally identifiable information (PII) regarding Customer's employees or customer(s) or any third party. Customer is solely responsible for complying with any requirements regarding PII disclosed to VMware. The parties agree that VMware does not require, desire or expect to have access to PII owned or held by the State. To the extent that i) the State is authorized to disclose PII to VMware's Contracted Personnel for use in performance of this Agreement or an SOW, ii) VMware requires such disclosure in order to perform under an SOW, and iii) the Parties agree in writing that PII will be disclosed, VMware shall be obligated to protect such PII in accordance with the restrictions pertaining to Confidential Information.

Receiving Party will use Disclosing Party's Confidential Information solely to perform its obligations under the Agreement. Receiving Party will take commercially reasonable steps to safeguard Disclosing Party's Confidential Information, including no less than the steps taken to protect its own Confidential Information. Receiving Party must promptly notify Disclosing Party in writing of unauthorized use or disclosure of Confidential Information. Receiving Party, at its expense, must take all reasonable action to recover Confidential Information and prevent further unauthorized use or disclosure, including action for seizure and injunctive relief. If Receiving Party fails to do so in a timely manner, Disclosing Party may, after providing written notice to Receiving Party, take reasonable action to do so at Receiving Party's expense, and Receiving Party must reasonably cooperate.

- 10.9 **Liability for Loss of Data.** The State shall maintain adequate supporting material or copies to enable VMware to regenerate data furnished to VMware by the State such as IP addresses and passwords. In the event of loss of such State supplied data due to negligence of the VMware or its Contracted Personnel, the VMware shall be liable for such loss and shall replace or regenerate the lost data from the State's supporting material by the methods or means deemed most suitable as agreed between the Parties and the State.

10.10 Remedies for Breach of this Section.

Indemnification: VMware shall defend the State and any of its officers, employees, or agents from any claims arising from the negligence or willful misconduct of VMware, and its Subcontractors, employees and agents, in violation of this Section, and indemnify the State and its officers, employees or agents against the resulting costs and damages finally awarded by a court of competent jurisdiction or otherwise agreed to by VMware.

Equitable Relief: Each party acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information of the other party may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State or VMware, which injury shall not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that each party, on its own behalf or on behalf of the affected individuals, shall be entitled to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Agreement or under applicable law, and where such breach is due to the actions of the other party or, in the case of VMware, its Subcontractors.

The warranties and agreements set forth in this section shall not be subject to any disclaimer or exclusion of warranties or to any limitation of either party's liability.

It is the desire of the Parties that the State not disclose any Personally Identifiable Information or any of its non-public information related to the State's employees to VMware or its Contracted Personnel, and the State expressly agrees to exercise its best efforts to prevent disclosure of such Personally Identifiable Information and/or non-public information related to the State's employees to VMware or its Contracted Personnel. If it is necessary for Personally Identifiable Information and/or non-public information related to the State's employees to be disclosed in order to carryout Consulting Services, the Parties shall set forth such requirement in the applicable SOW and the reasons and parameters for the disclosure.

11. Intellectual Property Indemnification.

- 11.1 **Defense and Indemnification.** Subject to the remainder of this Section 11, VMware will defend Customer against any third party claim that the Deliverables when used as contemplated by this Agreement and an applicable 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 : (i) the United States and Canada; (ii) the European Economic Area; (iii) Australia; (iv) New Zealand; (v) Japan; or (iv) 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 settlement negotiation; (iii)

reasonably cooperates in response to VMware's requests for assistance; and (iv) is not in material breach of this Agreement and the applicable SOW. Customer may not settle or compromise any Infringement Claim without the prior written consent of VMware.

11.2 Remedies. Should the allegedly infringing Deliverables become, or in VMware's opinion be likely to become, the subject of an Infringement Claim, VMware will, at VMware's option and expense, do one of the following: (i) procure the rights necessary for Customer to make continued use of the affected Deliverables; (ii) replace or modify the affected Deliverables to make them non-infringing; or (iii) 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 11.2 will limit VMware's obligation under Section 11.1 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.

11.3 Exclusions. Notwithstanding the foregoing, VMware will have no obligation with respect to any claim based on: (i) 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); (ii) use for a purpose or in a manner for which the Deliverables was not designed; (iii) use of any older version of the Deliverables or VMware software when use of a newer VMware revision would have avoided the infringement; (iv) any modification to the Deliverables made without VMware's express written approval; (v) any Deliverables provided by VMware in accordance with Customer's specifications or designs; (vi) 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 (vii) Customer Materials or Technology that Customer instructs VMware to develop in a specific way or to achieve a specific end result. THIS SECTION 11 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT AND THE APPLICABLE SOW.

12. Warranties and Limitation of Liability.

12.1 VMware Warranty. VMware warrants that the Deliverables and Services rendered shall be strictly in accordance with the Statement of Work, without the prior written approval of the State. Deliverables delivered under this Agreement shall conform to the specifications of the applicable SOW and will be subject to inspection and testing if procedures and criteria for inspection and testing are detailed in the SOW. VMware further 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 (i) use all commercially reasonable efforts to correct that breach, or (ii) terminate an applicable SOW and refund the portion of any fees received that correspond to that breach.

12.2 Disclaimer of Warranties TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY IS GIVEN EXPRESSLY AND IN PLACE OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TO THE MAXIMUM EXTENT MANDATED BY

LAW, THIS REMEDY WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF SERVICES.

12.3 Limitation of Liability.

12.3.1. Limitation on Direct Damages. Except as stated in subsection (12.3.3 (iii)) below, VMware's total liability and Customer's sole and exclusive remedy for a claim of any nature arising out of this Agreement or an applicable SOW, regardless of whether the claim is based on contract, tort, strict liability, or otherwise, will be limited to proven direct damages caused by negligence of VMware in an amount not to exceed (i) US\$1,000,000, for damage to real or tangible personal property; and (ii) the fees paid to VMware for Consulting Services from which claim the claim arises, for damage of any type not identified in (i) above or otherwise excluded hereunder.

12.3.2. 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 any loss of profits, business opportunity, revenue, goodwill or data, even if advised of the possibility of those damages.

12.3.3. Limitation of Liability Exclusions. The limitations of liability in this Section 12 will not apply to (i) 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 this Agreement and an applicable SOW; (ii) VMware's indemnification obligations under Section 5; (iii) either Party's breach of confidentiality under this Agreement and an applicable SOW; (iv) Customer's payment obligations under the applicable SOW; or (v) any liability which may not be excluded by applicable law.

12.3.4. Further Limitations. VMware's licensors will have no liability of any kind under this Agreement and an applicable SOW, and VMware's liability with respect to any third party software embedded in the Deliverables will be subject to Section 12.1 and 12.2. Customers may not bring a claim under this Agreement and an applicable SOW more than eighteen (18) months after the cause of action arises.

13. Fees and Payment.

13.1 Payment. VMware will provide the Consulting Services for (i) a fixed fee or (ii) on a time and materials basis, as described in an applicable SOW. Travel expense if permitted in the SOW shall be in accordance with the State of Wisconsin travel policies (<http://oser.state.wi.us/docview.asp?docid=7365>). Invoicing occurs upon Customer acceptance of each milestone or timesheet (as is applicable and approval of travel expenses, and must be paid by Customer within forty-five (45) days of date of invoice. If Customer uses pre-purchased VMware Consulting and Training Credits as the means of payment, upon Customer's acceptance of Project Milestone Completion Form(s), timesheets, or travel expenses, the VMware Consulting & Training Credits will be deducted from the Customer's balance. Customer will be responsible for ensuring that its purchase order ("PO") issued to VMware for the Consulting Services reflects the pricing set forth in an applicable SOW. Once VMware performs its obligations under the PO from Customer, VMware will have no liability for any pricing in Customer's PO that is inconsistent with that pricing. Customer agrees that POs do not have to be signed to be valid and enforceable. Subject to this Agreement, all fees paid by Customer are non-refundable.

Pricing and payment terms shall be set forth in the individual Statements of Work. All invoices shall include Contractor's tax identification number and a detailed description of Services rendered.

- 13.2 **Taxes.** The State is exempt from payment of Wisconsin sales or use tax on all purchases, and shall be liable for any such taxes owed in connection with any Contractor purchases made pursuant to this Agreement and has provided evidence of its exemption to VMware. If Customer is required to pay or withhold any Tax in respect of any payments due to VMware, Customer will gross up payments actually made such that VMware will receive sums due hereunder in full and free of any deduction for any such Tax. Customer confirms that VMware can rely on the Customer address set forth in the applicable SOW as being the place of supply for tax purposes
- 13.3 **Late Payments.** If the State fails to pay a properly submitted invoice within thirty (30) days of it shall pay a late payment penalty as provided in s. 16.528, Wis. Stats. However, if the State declares a good faith dispute in regard to an invoice pursuant to s. 16.528 (3)(e), Wis. Stats., it may pay any undisputed portion of said invoice, and will be exempt from the prompt payment requirement for the disputed portion.
- 13.4 **Currency.** All charges and fees provided for in the applicable SOW will be in the currency specified in the applicable SOW.
- 13.5 **Canceling/Rescheduling SOW before Commencement.** A minimum of fifteen (15) business days' written notice is required for rescheduling or canceling an applicable SOW prior to the commencement of the Consulting Services. Only incurred expenses (e.g., airfare) will be owed and invoiced if that notice is given. The entire payment and incurred expenses are owed if an applicable SOW is canceled with less than that notice.

14. Term and Termination.

- 14.1 **Term.** This Agreement takes effect on the Effective Date and will continue until December 28, 2019 or for a period of any incomplete SOW(s) in existence on the expiration date, whichever is later, unless terminated earlier under this Agreement. This Agreement may be amended to establish a later expiration date by a written agreement signed by both Parties.
- 14.2 **Termination for Convenience.** Either Party will have the right to terminate this Agreement at any time, without cause, by providing the other with a written notice, which termination will become effective upon the later of (i) thirty (30) days after receipt of the notice by the other Party or (ii) completion and payment for the Consulting Services set forth in any SOW(s) effective on the date of receipt of the termination notice. In addition, Customer may terminate any SOW thirty (30) days after VMware's receipt of Customer's written notice.
- 14.3 **Other Termination.** Either party may terminate this Agreement or an SOW if one of the following events occurs:
- 14.3.1. **Termination for Breach.** Notwithstanding Sections 14.3.3 and 14.3.7, either Party may terminate this Agreement or an applicable SOW immediately upon written notice if the other Party breaches any provision under this Agreement or an applicable SOW which is not cured within thirty (30) days after giving written notice of that breach to the other Party.
- 14.3.2. **Termination for Insolvency.** Upon the insolvency of the Customer, defined as the filing of a voluntary petition of bankruptcy; the filing of an involuntary petition for bankruptcy that is not dismissed within sixty (60) days; upon the lawful dissolution of Customer; or upon the making of a general assignment for the benefit of Customer's creditors.
- 14.3.3. **Non-payment.** Notwithstanding Section 8(c)(1) above, Customer's failure to pay an invoice when due will be sufficient cause for VMware's termination of this Agreement and any SOW if Customer does not cure within ten (10) days of receipt of written notice of nonpayment from VMware. Further, VMware may, commencing on the date that

notice is provided to Customer, suspend performance under the SOW for the duration of any period during which Customer is delinquent in making payment to VMware under any invoice.

14.3.4. Force Majeure. Either Party may terminate this Agreement pursuant to Section 17.8 (Force Majeure).

14.3.5. Project Change Request Impasse. Either Party may terminate an SOW upon ten (10) days' prior written notice to the other Party for an inability to resolve a PCR impasse pursuant to an SOW.

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

14.3.7. Confidentiality Breach. Either Party may terminate this Agreement or an applicable SOW immediately upon issuance of a written notice to the other Party in the event of the other Party's breach of its confidentiality duties under this Agreement.

14.4 Effect of Termination. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including provisions relation to payment of outstanding fees, confidentiality, intellectual property, warranties and limitation of liability. Upon termination of this Agreement, Customer will return (or destroy if requested) all VMware property. Upon VMware's written request, an authorized officer of Customer will certify Customer's compliance with this Section. Customer will be responsible for payment to VMware for all Consulting Services rendered and expenses incurred prior to the effective termination date. In the event of termination under Section 12.3 (Limitation of Liability), VMware expressly disclaims liability for any resultant damages, delays, or any claims of Customer and disclaims any warranties made in the Agreement or an applicable SOW for the Deliverables which have not been accepted as of the termination date.

15. Non-Appropriation

The State reserves the right to cancel this Agreement in whole or in part without penalty if the Legislature fails to appropriate funds necessary to complete the Agreement. However, the State shall remain liable for payment for services performed prior to written notification of non-appropriation by the State to VMware.

16. Contract Cancellation

16.1 The State reserves the right to cancel this Contract in whole or in part without penalty, and with 30 days' prior written notice, if the Contractor:

- Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity
- Makes an assignment for the benefit of creditors
- Fails to maintain and keep in force all required insurance, permits and licenses as provided in this Contract and does not cure within 30 days of written notice from the State;
- Fails to maintain the confidentiality of the State's information that is considered to be Confidential Information, or
- Performs in a manner that threatens the health or safety of a State employee, citizen, or customer

16.2 The State reserves the right to cancel this Contract in whole or in part without penalty, with 30 days' notice, if the Contractor:

- Fails to follow the sales and use tax certification requirements of s. 77.66 of the Wisconsin Statutes;
- Becomes a state or federally debarred contractor.

17. Miscellaneous.

17.1 Insurance. VMware will, for the term of and this Agreement and an applicable SOW, carry general and professional liability, automobile, and worker's compensation insurance, for claims for personal injury (including death) or damage to tangible or real property, which may arise or result from VMware's performance under this Agreement and the applicable SOW. VMware will provide Customer with its then-current Memorandum of Insurance upon reasonable request. VMware will maintain the following insurance coverage:

17.1.1. Worker's compensation insurance, as required under Chapter 102 of the Wisconsin Statutes, for all of the VMware's employees and Contracted Personnel engaged in the work performed under this Contract;

17.1.2. Commercial liability, bodily injury and property damage insurance against any claim(s) that may occur in carrying out the terms of this Contract, with a minimum coverage of one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations; and

17.1.3. Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the terms of this Contract, with a minimum coverage of one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

17.1.4. Certificate of Insurance, showing up-to-date coverage, shall be on file with the Customer before the Agreement may commence (if applicable).

17.1.5. Carry general and professional liability, automobile, and workers compensation insurance, for claims for personal injury (including death) or damage to tangible or real property, which may arise or result from VMware's performance under this Agreement and the applicable SOW. VMware will provide Customer with its then-current Memorandum of Insurance upon reasonable request.

17.2 Non-Discrimination and Affirmative Action. The Contractor shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, national origin, developmental disability as defined in § 51.01(5), Wis. Stats., or sexual orientation as defined in §111.32(13m), Wis. Stats. This provision shall include, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor shall take affirmative action to ensure equal employment opportunities.

Unless exempted by workforce size (50 or fewer employees) or Contract amount (\$50,000 or less), the Contractor must submit a written affirmative action plan to the State.

The Contractor shall post a notice provided by the State, setting forth the provisions of the State's nondiscrimination laws, in its workplace, website or conspicuous places in order that the Contractor's employees and applicants for employment are able to read it.

Failure to comply with the conditions of this provision may result in the following consequences:

- termination of this Contract as provided in Contract Cancellation section herein,
 - designation of the Contractor as "ineligible" for future consideration as a responsible, qualified bidder or proposer for State contracts, or
 - withholding of a payment due under the Contract until the Contractor is in compliance
- 17.3 **Non-solicitation.** During the period of the performance and one year from the completion of the Consulting Service under the applicable SOW, neither Party will directly solicit, the employment or services of the employees or contractors of the other Party who were involved in the performance under the applicable 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 purposes of this provision, and (ii) this provision is not intended to limit the individual's right to change jobs.
- 17.4 **Assignment.** Neither party may assign or transfer this Agreement or any of its rights or obligations hereunder without the other party's written permission, which permission will not be unreasonably withheld, provided however that VMware may assign this Agreement, without consent, to any successor to all or substantially all its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock. Any attempted assignment or transfer in violation of the foregoing will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. The terms and conditions of this Agreement shall survive any and all assignments, mergers, or acquisitions by a third party until cancelled in writing by both parties
- 17.5 **Antitrust Assignment.** By entering into this Agreement, VMware conveys, sells, assigns and transfers to Customer all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and Customer, relating specifically to that proportionate amount the particular Software or Services purchased or acquired by Customer under this Agreement.
- 17.6 **Independent Parties.** The Parties are independent contracting Parties. Nothing in this Agreement or an SOW will be construed to create a partnership, joint venture or agency relationship between the Parties.
- 17.7 **Governing Law.** This Agreement and the SOW(s) are governed by the laws of the State of Wisconsin, and the federal laws of the United States.
- 17.8 **Force Majeure.** Except for payment of fees for work already performed, neither Party will be liable to the other Party for its failure to perform any of its obligations under this Agreement and an applicable SOW during any period if performance is delayed or rendered impracticable or impossible due to circumstances beyond that Party's reasonable control
- 17.9 **Compliance with Laws; Export Control; Government Regulations.** Each Party will comply with all laws applicable to the actions contemplated by this Agreement and an applicable SOW. All content, the Consulting Services and the technology included therein (collectively the "Materials") provided under this Agreement and an applicable 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 the United States law or other Exports Laws is expressly prohibited.

- 17.10 **End User License Agreement.** If the Consulting Services involve VMware software products licensed to Customer under a separate license agreement, unless otherwise provided herein, the terms set out in the separate license agreement will apply to each VMware software product.
- 17.11 **Acknowledgment.** Unless otherwise stated in this Agreement and an applicable SOW, Customer acknowledges that the Consulting Services set forth in the applicable SOW do not include significant production, modification or customization of VMware licensed software.
- 17.12 **Waiver.** Failure to enforce a provision of this Agreement or an applicable SOW will not constitute a waiver.
- 17.13 **Reference.** VMware will not use Customer's name, logo, or project description in press releases or other marketing material without a prior written consent of Customer, and Customer agrees that the 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.
- 17.14 **Counterparts.** Facsimile, scanned or electronic signatures on this Agreement and an applicable SOW will legally bind the Parties to the same extent as originals. This Agreement and an applicable SOW may be executed in multiple counterparts all of which taken together will constitute one single agreement between the Parties.
- 17.15 **Severability.** If any provision in this Agreement and an applicable SOW is held to be unenforceable, the validity of all remaining parts will not be affected.
- 17.16 **Construction.** The headings of sections of this Agreement and an applicable SOW are for convenience and are not to be used in interpreting this Agreement and an applicable SOW. As used in this Agreement and an applicable SOW, the word "including" means "including but not limited to."
- 17.17 **Notices.** Unless otherwise set forth in an applicable SOW, any notice regarding this Agreement and an applicable SOW or required by law must be in writing and delivered to the other Party's legal department at the address listed below via: (i) personal delivery confirmed in writing by the recipient; (ii) certified mail with return receipt requested; or (iii) 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 this Agreement or an applicable SOW, and to VMware as follows: VMware, Inc., 3401 Hillview Ave., Palo Alto CA 94304, Attention: Legal Department.
- 17.18 **Other Documents.** The parties to this Agreement understand and agree that standard forms or templates may be used for various purposes, not directly related to performance of the Consulting Services under this Agreement or an SOW, including but not limited to, purchase orders, invoices, quotes, 'Website Terms and/or Conditions' or some of which may contain boilerplate or standard terms and conditions ("Other Documents"). However, any use of Other Documents is not a part of this Agreement.
- 17.19 **Entire Agreement.** This Agreement and an applicable SOW contain the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all previous or contemporaneous communications, representations, proposals, commitments,

understandings and agreements, whether oral or written, between the Parties. This Agreement and an applicable SOW may be amended only in writing 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.

Signature: Luis A. Mala
Luis A. Mala (May 17, 2016)

Email: lmata_echosign@vmware.com

Title: Sr. Contracts Administrator