vmware®

U.S. PUBLIC SECTOR EXHIBIT

Last updated: 21 July 2022

If Customer is a U.S. Public Sector End User, this U.S. Public Sector Exhibit to the General Terms is incorporated into and applies to the Agreement. Section 1 applies only if Customer is a U.S. Federal End User. Section 2 applies only if Customer is a U.S. State or Local Government End User.

1.   TERMS APPLICABLE TO U.S. FEDERAL END USERS.

1.1.   Replace the preamble to the General Terms with the following:

By purchasing an Offering under a contract or order that incorporates this Agreement, Customer agrees to be bound by the terms of this Agreement.

1.2.   Replace section 1.3 of the General Terms (Restrictions) with the following:

Restrictions. Customer may use the Offerings only for its internal use. Customer may not resell or sublicense its rights to the Offerings. Customer may not use the Offerings in an application service provider, service bureau, hosted IT service, or similar capacity for third parties.

1.3.   Replace section 2.1 of the General Terms (Orders) with the following:

Orders. Subject to the requirements of General Services Acquisition Manual ("**GSAM**") 552.238-113 where applicable, (1) Orders placed off a Federal Supply Schedule contract are binding when duly placed with Reseller and received by VMware, and (2) the term of any entitlements purchased in any such Order will commence upon Delivery. All other Orders are binding when VMware accepts them, which is deemed to occur on Delivery.

1.4.   Replace section 2.2 of the General Terms (Purchase Orders) with the following:

Purchase Orders. Purchase orders do not have to be signed to be valid unless required by applicable law. Additional or conflicting terms contained in any purchase order or other business form do not apply, except to the extent that mandatory and applicable law requires the inclusion of such terms in the contract and Federal Acquisition Regulation ("**FAR**") 52.212-4(s) (Order of Precedence) further requires that such terms take precedence over addenda to the solicitation or contract.

1.5.   Replace section 2.3 of the General Terms (No Refunds) with the following:

No Refunds. All Orders are non-refundable and non-cancellable except as expressly provided in the Agreement and Federal Acquisition Regulation. Any refunds to which Customer is entitled under this Agreement will be remitted to Customer or to the VMware channel partner from which Customer purchased the Offerings.

1.6.   Replace section 2.4 of the General Terms (Overages) with the following:

Overages. Customer must pay all fees for use of the Offerings, including amounts for add-on features and fees incurred based on usage. VMware reserves the right to seek recovery of any unpaid amounts in accordance with 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes).

1.7.   Replace section 2.5 of the General Terms (Direct Orders) with the following:

Direct Orders. This section 2.5 (Direct Orders) applies only to Orders placed directly with VMware. If Customer purchases entitlements to the Offerings through a VMware channel partner, terms regarding invoicing, payment, and taxes shall be as agreed between the VMware channel partner and Customer.

1.8.   Replace section 2.5.2 of the General Terms (Disputes) with the following:

Disputes. All disputes, including any dispute of fees, shall be resolved in accordance with 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes). The parties must negotiate in good faith to resolve the dispute as soon as reasonably practicable. VMware will not suspend or terminate Customer's access to any Offering because of any unpaid disputed fees between VMware and Customer, while Customer and VMware are negotiating to resolve the dispute.

1.9. Replace section 2.5.3 of the General Terms (Taxes) with the following:

Taxes. Fees are exclusive of Taxes. Customer must pay or reimburse VMware for all Taxes. If Customer is required to withhold any Tax, Customer must gross up its payments so that VMware receives all sums due in full. VMware will treat Customer's contact information as the place of supply for Taxes. This section 2.4.3 does not apply to Customer to the extent that Customer is exempt from any Taxes, including for purchases under the Federal Supply Schedule.

1.10. Replace section 3.3 of the General Terms (Termination for Cause) with the following:

Termination. Customer may terminate the Agreement (in whole or in part) or Customer's entitlement to an Offering under the Agreement in accordance with FAR 52.212-4(l) or FAR 52.212-4(m), if applicable. Subject to, and to the extent not prohibited by, 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes) or GSAM 552.238-114 (Use of Federal Supply Schedule Contracts by Non-Federal Entities). VMware may terminate the Agreement (in whole or in part) or Customer's entitlement to an Offering under the Agreement effective immediately upon written notice if Customer materially breaches any provision of the Agreement and fails to cure within 30 days after receiving written notice.

1.11. Replace section 3.4 of the General Terms (Effect of Termination) with the following:

Effect of Termination. Upon termination of the Agreement or part of it: (a) all entitlements to the applicable Offerings immediately end; (b) Customer must stop using, and destroy any copies of, those Offerings; and (c) each party must return or destroy any Confidential Information of the other party in its control (other than information that must be retained by law). Any provision that is intended by the parties to survive termination of the Agreement will survive. Except as otherwise expressly provided in this Agreement or as required by applicable law or regulation, termination of the Agreement will not entitle Customer to any credits, or exchanges, and Customer will be liable for all fees incurred as of the effective termination date.

1.12. Replace section 4.2 of the General Terms (Exceptions) with the following:

Exceptions. Recipient's obligations under section 4.1 (Protection) do not apply if the information: (a) is rightfully known by Recipient at the time of disclosure without any obligation of confidentiality; (b) is lawfully disclosed to Recipient by a third party without confidentiality restrictions; (c) becomes publicly available through no fault of Recipient; or (d) is independently developed by Recipient without access to or use of Discloser's Confidential Information. In addition, Customer may disclose Confidential Information to the extent that disclosure is required by law or by order of a judicial or administrative body of competent jurisdiction, provided that Customer notifies VMware of the required disclosure promptly and in writing and cooperates with VMware, at VMware's expense, in any lawful action to contest or limit the scope of the required disclosure. VMware recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

1.13. Replace section 7.1 of the General Terms (Indemnification) with the following:

Defense and Indemnification. Subject to the remainder of this section 7 (Indemnification) and 28 U.S.C. 516, VMware will indemnify Customer with regard to any Infringement Claim from amounts finally awarded against Customer by a court of competent jurisdiction or a government agency, or agreed to in a settlement approved by VMware, for the Infringement Claim.

1.14. Replace section 7.2 of the General Terms (Requirements) with the following:

Requirements. Customer must provide VMware with prompt notice of any Infringement Claim and reasonably cooperate with VMware's requests for assistance. Customer must make every effort to permit VMware to participate fully in the defense and/or settlement of any Infringement Claim.

1.15. Replace section 7.4 of the General Terms (Remedies) with the following:

Remedies. If Indemnified Materials become, or in VMware's reasonable opinion are likely to become, the subject of an Infringement Claim, VMware must, at its option and expense, either: (a) procure the necessary rights for Customer to keep using the Indemnified Materials; or (b) modify or replace the Indemnified Materials to make them non-infringing. If VMware determines that those remedies are not commercially feasible, Customer agrees to

terminate Customer's entitlement to the Indemnified Materials upon VMware's written request, and upon termination VMware will refund any applicable:

(1) prepaid fees for Cloud Services or Subscription Software, prorated for the remaining portion of the then-current Subscription Term;

(2) fees paid for Perpetual Licenses or Deliverables, less straight-line depreciation over a three-year useful life; and

(3) unused, prepaid fees for discontinued Support Services.

Nothing in this section 7.4 (Remedies) will limit VMware's obligations under section 7.1 (Defense and Indemnification), provided that (x) Customer replaces the Indemnified Materials upon VMware making alternate Indemnified Materials available to Customer and (y) Customer discontinues use of the allegedly infringing Indemnified Materials upon receiving VMware's written request for Customer to terminate the affected entitlement. The foregoing is subject to the Government's right to require continued use of the Indemnified Materials pursuant to 28 U.S.C. 1498. In the event of such continued use, Customer agrees to notify VMware in writing and undertake at Customer's own expense the defense of any Infringement Claim against Customer, and VMware shall have no further indemnification obligation; however, VMware may participate at our own expense in the defense of any such action if the Infringement Claim is against VMware.

1.16. Replace section 7.5 of the General Terms (Sole Remedy) with the following:

Sole Remedy. To the extent permitted by applicable law, this section 7 (Indemnification) states Customer's sole remedy and VMware's entire liability for Infringement Claims.

1.17. Replace section 8.3 of the General Terms (Exclusions) with the following:

The limitations of liability in sections 8.1 (Disclaimer) and 8.2 (Cap on Monetary Liability) will not apply to: (a) VMware's indemnification obligations under section 7 (Indemnification); (b) either party's infringement of the other party's Intellectual Property Rights; (c) Customer's violation of section 2 of the Cloud Services Exhibit (Acceptable Use); (d) personal injury or death resulting from VMware's negligence; (e) fraud, or (g) any liability that may not be limited by law.

1.18. Replace section 8.4 of the General Terms (Further Limitations) with the following:

Further Limitations.VMware's liability for any third-party software embedded into the Software or Cloud Services is subject to this section 8 (Limitation of Liability). VMware's suppliers have no liability under the Agreement, and Customer may not bring claims directly against them. VMware has no liability with respect to any Third-Party Content. Nothing in this section 8 will impair the U.S. Government's right to recover for fraud or crimes arising out of this Agreement as permitted under any applicable federal fraud statute, including the False Claims Act (31 U.S.C. 3729-3733).

1.19. Replace section 11.1 of the General Terms (Transfer and Assignment) with the following:

Transfer and Assignment. Customer may not assign the Agreement or any Order without VMware's consent. VMware may assign its right to receive payment in accordance with the Assignment of Claims Act (31 U.S.C. 3727) and FAR 52.212-4(b), and VMware may assign this Agreement to the extent not prohibited by the Anti-Assignment Act (41 U.S.C. 15). Subject to the requirements of FAR 42.12 (Novation and Change-of-Name Agreements), Customer shall recognize VMware's successor in interest following a transfer of VMware's assets or a change in VMware's name. Any other attempted assignment or transfer by either party will be void. Once validly assigned or transferred, the Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.

1.20. Replace section 11.8 of the General Terms (Governing Law) with the following:

Governing Law. The Agreement is governed by applicable U.S. Federal laws. Conflict of law rules are expressly disclaimed. The United Nations Convention on Contracts for the International Sale of Goods does not apply. To the extent that any terms and conditions in this Agreement are inconsistent with applicable U.S. Federal law, those terms shall be deemed deleted and unenforceable as applied to Customer's Order.

1.21. Replace section 11.10 of the General Terms (Third Party Rights) with the following:

Third Party Rights. Other than as expressly stated, the Agreement does not create any rights for any person who is not a party to it. Only persons who are parties to the Agreement may enforce or rely on any of its terms. Notwithstanding the foregoing, for any Orders placed with a VMware channel partner, the VMware channel partner may bring a claim to enforce the terms of this Agreement at VMware's request and on VMware's behalf.

1.22. Insert the following as section 11.11 of the General Terms:

Commercial Computer Software. The Software and Cloud Services are deemed to be "commercial computer software," and the accompanying Documentation is deemed to be "commercial computer software documentation," pursuant to FAR 12.212(b) and Defense Federal Acquisition Regulation Supplement (DFARS) 227.7202, as applicable. Any use, modification, reproduction, release, performance, display, or disclosure of the Software, Cloud Services, or Documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

1.23. Following the new section 11.11 of the General Terms (Commercial Computer Software), re-number the remainder of section 11 of the General Terms as follows:

Section 11.12 (Force Majeure)

Section 11.13 (No Agency)

Section 11.14 (Translation)

Section 11.15 (Counterparts)

Section 11.16 (Entire Agreement)

1.24. Delete "Affiliate" from section 12 of the General Terms (Definitions).

1.25. Replace the definition of "Delivery" in section 12 of the General Terms (Definitions) with the following:

Delivery means: (a) for Cloud Services, when VMware emails the Login Credentials to the email address associated with Customer's account; (b) for Software, when VMware notifies Customer of availability of Software for download; (c) for Support Services, upon VMware's issuance of an invoice for those Support Services; (d) for Professional Services, as specified in the applicable SOW; and (e) for shipping and delivery of physical objects, Ex Works VMware's regional fulfillment facility (INCOTERMS 2020™).

1.26. Replace the definition of "Order" in section 12 of the General Terms (Definitions) with the following:

Order means an enterprise order, SOW, quote, or other ordering document for Offerings, issued by Customer to VMware or to Customer's VMware channel partner that expressly incorporates this Agreement and that is accepted by VMware described in section 2 of these General Terms (Orders and Payments).

1.27. Replace the definition of "VMware" in section 12 of the General Terms (Definitions) with the following:

VMware means VMware, Inc., a Delaware corporation.

1.28. Insert the following as section 2.3 of the Cloud Services Exhibit:

VMware may ask Customer to act within a reasonable time to correct a violation of this section 2 (Acceptable Use), and if Customer fails to comply with that request, VMware may temporarily suspend Customer's account pursuant to section 3.2 of the General Terms (Temporary Suspension). VMware will promptly reinstate Customer's account once the violation has been resolved.

1.29. Replace section 4.2 of the Cloud Services Exhibit with the following:

If VMware makes a change that has a material, detrimental impact on Customer's use of a Cloud Service, then VMware must notify Customer prior to the effective date of that change. Customer will have 30 days following the date of that notice to terminate its entitlement to the Cloud Service. Customer may terminate its entitlement to the Cloud Service under this section 4.2 by providing VMware notice that states the effective termination date. Subject to and to the extent not prohibited by 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes), VMware may end availability of a Cloud Service by providing at least six months' prior notice.

1.30.   Replace section 1.1 of the Software Exhibit (License Grant) with the following:

License Grant. VMware grants Customer a non-exclusive, non-transferable commercial computer software license to: (a) deploy the number of Software licenses stated in the Order within the Territory; and (b) use the Software and the Documentation during the term of the license, solely for Customer's internal business operations and subject to the provisions of the Product Guide. Licenses granted to Customer are for use of object code only. "**Territory**" means the United States of America, including U.S. Government facilities located outside of the United States of America, unless more broadly defined in the Product Guide. For purposes of this section, "U.S. Government facilities" means any buildings, land, bases, installations, vessels, craft, and ships that are either (x) 100% owned and controlled by the U.S. Government, or (y) 100% leased to and controlled by the U.S. Government throughout the entire term of the Order.

1.31.   Replace section 2 of the Software Exhibit (License Restrictions) with the following:

LICENSE RESTRICTIONS. Customer must not, and must not allow any third party to: (a) make the Software available in any form to any third parties, except as specified in section 1.2 of this Exhibit (Third-Party Agents); (b) transfer or sublicense the Software or Documentation to any third party, except as expressly permitted in section 11.1 of the General Terms (Transfer and Assignment); (c) modify, translate, enhance, or create derivative works from the Software; (d) reverse engineer, decompile, or otherwise attempt to derive source code from the Software, except to the extent permitted by applicable law; or (e) remove any copyright or other proprietary notices.

1.32.   Replace section 3.1 of the Software Exhibit (Verification) with the following:

VERIFICATION. Customer must cooperate with VMware to show compliance with the Agreement. VMware (or a third party engaged by VMware) may verify that compliance at VMware's expense once in any 12-month period with reasonable prior notice and without unreasonably interfering with Customer's business activities. VMware reserves the right to seek recovery of any underpayments revealed by the verification in accordance with 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes). No payment obligation shall arise on Customer's behalf until the conclusion of the dispute process. If the verification requires access to classified information, as that term is defined in the National Industrial Security Program Operating Manual (NISPOM), then the verification will be conducted by individuals possessing a personal security clearance as defined in the NISPOM ("PCL") at the appropriate level. In such cases, VMware and any third party engaged by VMware will disclose classified information only to person(s) who both possess a PCL and have a need to know.

1.33.   Replace section 5 of the Professional Services Exhibit (Acknowledgment) with the following:

ACKNOWLEDGEMENT. The Professional Services are commercial services (as defined in FAR 2.101) and do not include significant production, modification, or customization of Software.

2.   **TERMS APPLICABLE TO U.S. STATE & LOCAL GOVERNMENT END USERS.**

2.1.   Replace the preamble to the General Terms with the following:

By purchasing an Offering under a contract or order that incorporates this Agreement, Customer agrees to be bound by the terms of this Agreement.

2.2.   Replace section 2.1 of the General Terms (Orders) with the following:

Orders. All Orders must expressly incorporate this Agreement. Orders are binding when VMware accepts them, which is deemed to occur on Delivery.

2.3.   Replace section 2.2 of the General Terms (Purchase Orders) with the following:

Purchase Orders. Purchase orders do not have to be signed to be valid unless required by applicable law. Additional or conflicting terms contained in any purchase order or other business form do not apply, except to the extent that Customer identifies the applicable law mandating the inclusion of such terms in the contract and requiring that such terms take precedence over addenda to the solicitation or contract.

2.4.   Replace section 2.5 of the General Terms (Direct Orders) with the following:

Direct Orders. This section 2.5 (Direct Orders) applies only to Orders placed directly with VMware. If Customer purchases entitlements to the Offerings through a VMware channel partner, terms regarding invoicing, payment, and taxes shall be as agreed between the VMware channel partner and Customer.

2.5. Replace section 3.3 of the General Terms (Termination for Cause) with the following:

Termination. Subject to and to the extent not prohibited by applicable law, either party may terminate the Agreement (in whole or in part) or Customer's entitlement to an Offering under the Agreement effective immediately upon written notice if the other party (a) materially breaches any provision of the Agreement and fails to cure within 30 days after receiving written notice; or (b) becomes insolvent or subject to any form of bankruptcy proceeding. VMware acknowledges that Customer may have additional termination rights under applicable law, which in some jurisdictions may include a Customer's right to terminate the Agreement for convenience or a Customer's right to terminate the Agreement in the event that a legislative body does not make appropriated funds available ("Non-Appropriation") for Customer to make upcoming payments under the Agreement.

2.6. Replace section 3.4 of the General Terms (Effect of Termination) with the following:

Effect of Termination. Upon termination of the Agreement or part of it: (a) all entitlements to the applicable Offerings immediately end; (b) Customer must stop using, and destroy any copies of, those Offerings; and (c) each party must return or destroy any Confidential Information of the other party in its control (other than information that must be retained by law). Any provision that is intended by the parties to survive termination of the Agreement will survive. Termination for Non-Appropriation of funds will not become effective prior to the date on which the budget for the next fiscal period goes into effect. Except as otherwise expressly provided in this Agreement or as required by applicable law or regulation, termination of the Agreement will not entitle Customer to any refunds, credits, or exchanges, and Customer will be liable for all fees incurred as of the effective termination date.

2.7. Replace section 7.1 of the General Terms (Indemnification) with the following:

Defense and Indemnification. Subject to the remainder of this section 7 (Indemnification) and applicable law, VMware will: (a) defend Customer against any Infringement Claim; and (b) indemnify Customer from amounts finally awarded against Customer by a court of competent jurisdiction or a government agency, or agreed to in a settlement approved by VMware, for the Infringement Claim.

2.8. Replace section 7.2 of the General Terms (Requirements) with the following:

Requirements. Customer must provide VMware with prompt notice of any Infringement Claim and reasonably cooperate with VMware's requests for assistance. Customer must make every effort to permit VMware to control or participate fully in the defense and/or settlement of any Infringement Claim to the maximum extent allowed under applicable law, rules or regulations; however, VMware acknowledges that such participation may be under the control of the chief legal officer for the applicable State or Local Government End User.

2.9. Replace section 7.5 of the General Terms (Sole Remedy) with the following:

Sole Remedy. To the extent permitted by applicable law, this section 7 (Indemnification) states Customer's sole remedy and VMware's entire liability for Infringement Claims.

2.10. Replace section 11.8 of the General Terms (Governing Law) with the following:

Governing Law. The Agreement is governed by applicable laws of the U.S. state or territory in which Customer is located. Conflict of law rules are expressly disclaimed. The United Nations Convention on Contracts for the International Sale of Goods does not apply. To the extent that any terms and conditions in this Agreement are inconsistent with applicable laws of the U.S. state or territory in which Customer is located, those terms shall be deemed deleted and unenforceable as applied to Customer's Order.

3.   DEFINITIONS

U.S. Federal End User means (1) any of the following agencies or establishments of the U.S. Federal Government: (a) executive departments as defined by 5 U.S.C. 101; (b) military departments as defined by 5 U.S.C. 102; (c) government corporations as defined by 5 U.S.C. 103; (d) independent establishments as defined by 5 U.S.C. 104; and (e) any establishment in the legislative or judicial branch of the U.S. Federal Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction), or (2) a

state or local government end user that purchases from the Federal Supply Schedule, subject to the provisions of GSAM 552.238-114 (Use of Federal Supply Schedule Contracts by Non-Federal Entities.

U.S. State & Local Government End User means any municipality, district, county, state, tribal, or territorial government entity, including any agency, department, commission, bureau, board, council, authority or other entity in the executive, legislative, or judicial branch of a state, local, tribal, or territorial government. For the avoidance of doubt, the foregoing includes (a) public K-12 schools and public universities; and (b) any hospitals, medical centers, or health facilities that have constitutional or statutory authority to conduct public procurements or are operated by any U.S. state, local, territorial, or tribal government.