

CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

Master Agreement #: AR2493

Contractor: **VMWARE, INC.**

Participating State: **STATE OF UTAH**

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.*

Master Agreement Terms and Conditions:

1. Scope: This Participating Addendum covers **Cloud Solutions** led by the State of *Utah* 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 State's Chief Procurement Official.
2. Participation: The Contract may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Utah. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
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
Fax:	
Email:	NASPO-VP@vmware.com

Participating Entity

Name:	Solomon Kingston
Address:	3150 State Office Building, Capitol Hill, Salt Lake City, Utah 84114-1061
Telephone:	801-538-3228
Fax:	801-538-3882
Email:	skingston@utah.gov

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5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity. Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement #AR2493 terms and conditions.

1. DEFINITIONS: Capitalized terms used but not defined herein shall have the meaning ascribed to them in Master Agreement #AR2493.

- a. "Access to Secure Public Facilities, State Data, and Technology" means Contractor may in order to provide Consulting Services (A) enter upon secure premises controlled, held, leased, or occupied by the State of Utah or an Eligible User; (B) have on-premise or remote access to the State of Utah or Eligible User's network or systems and related hardware, software, firmware, or any other technology; or (B) have on-premise or remote access to or receive any State Data or Confidential Information during the course of performing this Contract.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who need to access State Data to enable the Contractor to perform its responsibilities under this Contract.
- c. "Confidential Information" means information of any form that is (i) marked as confidential; (ii) is deemed as confidential under applicable record laws; or (iii) provided under circumstances reasonably indicating its confidentiality. The State of Utah and the Eligible Users reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws by Contractor which shall be communicated in writing to Contractor.
- d. "Contract" means this Participating Addendum, including all referenced attachments and documents incorporated by reference, including but not limited to Contractor's Master Agreement #AR2493. This Contract may include any Orders that result from the parties entering into this Contract.
- e. [Reserved]
- f. [Reserved]
- g. [Reserved]
- h. [Reserved]
- i. "Contractor Terms and Conditions" means Contractor's applicable terms and conditions incorporated into the Master Agreement #AR2493, 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.
- j. "Division" means the State of Utah Division of Purchasing.
- k. "DTS" means the Department of Technology Services.
- l. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts that will be allowed to use this Contract. For the purpose of this Contract, "Eligible User(s)" shall include "Purchasing Entity" (as defined in Master Agreement #AR2493), and "Purchasing Entity" as used in the Master Agreement #AR2493 shall include "Eligible User(s)."

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- m. "Federal Criminal Background Check" means an in depth background check conducted and processed by the FBI that covers all states. Federal Criminal Background Check reports will show if applicant has had any criminal cases filed against them that violated federal criminal law.
 - n. "Good" means any deliverable not classified as a Custom Deliverable or Service that Contractor may deliver to the Eligible Users under this Contract.
 - o. "Non-Public Data" means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State of Utah and the federal government because it contains information that is exempt by state, federal and local statutes, ordinances, or administrative rules from access by the general public as public information.
 - p. [Reserved]
 - q. "Proposal" means Contractor's response documents, including attachments, to the Division's Solicitation.
 - r. "Protected Health Information" (PHI) has the same definition as set forth in the Master Agreement #AR2493.
 - s. [Reserved]
 - t. [Reserved]
 - u. "Solicitation" means the documents used by the Division to solicit Contractor's Proposal for the Products identified in this Contract.
 - v. "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 of Utah or an Eligible User whether such data or output is stored on the State of Utah's or an Eligible User's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah, an Eligible User, or by Contractor. State Data includes any federal data, that the State of Utah or an Eligible User controls or maintains, that is protected under federal laws, statutes, and regulations.
 - w. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - x. [Reserved]
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah (excluding its conflict of law rules), and the federal laws of the United States. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all the Goods delivered under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations.
4. **NO WAIVER OF SOVEREIGN IMMUNITY:** In no event shall this Contract be considered a waiver by the Division, an Eligible User, or the State of Utah of any form of defense or immunity, whether sovereign immunity, governmental immunity, or any other immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
5. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Upon Contractor's receipt and acceptance of evidence, which shall not be unreasonably withheld, from the Division or the Division's auditor substantiating any overpayment of fees inconsistent with the terms of this Contract or Order, Contractor must refund to the Division any such fee overpayment within thirty (30) days of receipt of such evidence, and Contractor is not permitted to offset identified overpayments by alleged undercharges to Eligible Users.

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- 6. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
- (1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
- (2) To the extent Section 63G-12-302 of the Utah Code is applicable, each subcontractor who works under or for Contractor shall certify to Contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor.
- (3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
- 7. CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made to the Division.
- 8. CONFLICT OF INTEREST WITH STATE EMPLOYEES:** Contractor agrees to comply and cooperate in good faith will all applicable conflict of interest and ethic laws including Section 63G-6a-2404, Utah Procurement Code, as amended.
- 9. INDEPENDENT CONTRACTOR:** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an independent contractor, shall have no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the Division, the Eligible Users, or the State of Utah. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.
- 10. CONTRACTOR ACCESS TO SECURE PUBLIC FACILITIES, STATE DATA, AND TECHNOLOGY:** An employee of Contractor or a Subcontractor may be required to complete a Federal Criminal Background Check, if said employee of Contractor or a Subcontractor will have Access to Secure Public Facilities, State Data, and Technology. In the event Eligible User requests, in its sole discretion, a Federal Criminal Background Check, Eligible User shall be obligated to obtain from each affected Contractor employee a completed VMware Personnel Background Check/Fingerprint Authorization Form so that such Federal Criminal Background Check may be completed by the Eligible User, at the Eligible User's expense. The Eligible User may also require Contractor to execute a non-disclosure agreement prior to gaining Access to Secure Public Facilities, State Data, and Technology. Additionally, each employee of Contractor or a Subcontractor, who will have Access to Secure Public Facilities, State Data, and Technology, will be scheduled by the Eligible User to be fingerprinted, at a minimum of one week prior to having such access. At the time of fingerprinting, said employee of Contractor or a Subcontractor will disclose, in full, any past record of felony or misdemeanor convictions. The Eligible User is authorized to conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided by the employee. An employee may decline to provide fingerprints and information, and in such case, will not be perform services under the SOW. The Eligible User may use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) every two years if such employee is continuing to perform under a SOW and reserves the right to revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor agrees to notify the Eligible User within a reasonable time period upon becoming aware of an arrest or conviction of any employee of Contractor or a Subcontractor that has Access to Secure Public Facilities, State Data and Technology if such arrest or conviction occurs during said employee's performance under the SOW. A felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred. Contractor confirms that it has performed a lawful background check (subject to any restrictions presented by applicable law and the availability of records in the applicable jurisdictions), including for criminal convictions within the past seven (7) years (as permitted by law), respecting each Contractor employee selected to perform consulting services at Eligible User's premises pursuant to a SOW. Such background checks were performed through a reputable third-party vendor. In addition, Contractor has used commercially reasonable efforts to verify such employee's professional references, and to verify the highest level of education achieved. Contractor does not disclose the specific findings of such background checks to third parties, as a matter of policy

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and in accordance with applicable privacy laws.

11. **DRUG-FREE WORKPLACE:** Eligible User shall provide, and Contractor shall agree to abide by, the Eligible User's drug-free workplace policies prior to Contractor providing Services on such Eligible User's or the State of Utah's premises.
12. **CODE OF CONDUCT:** While any Contractor employee is working at facilities controlled or owned by the State of Utah, such Contractor employee shall follow the applicable code of conduct which will be provided by Eligible User to the Contractor prior to commencement of such work. Contractor will assure that each employee or each employee of Subcontractor(s) under Contractor's supervision receives a copy of such code of conduct.
13. [Reserved]
14. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other applicable laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
15. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
16. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract.
17. **DEBARMENT:** Contractor certifies, to the best of its knowledge, that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract, by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
18. **TERMINATION:**
 1. **Contract:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given to the other party. The party in breach of this Contract will first be given thirty (30) days after receipt of written notification thereof to cure such breach, after which this Contract may be terminated for cause immediately and subject to the remedies below if the breaching party fails to cure. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.
 2. **Order:** If Services performed under any Eligible User's Order are terminated, such Eligible User and Contractor agree that upon such termination of Services, as applicable, the Eligible User will only be liable for all usage and other fees incurred up to the termination effective date, as further described in the Contractor Terms and Conditions.
 3. Notwithstanding the expiration or termination of this Contract, any Orders issued prior to such termination or expiration of this Contract shall survive and the applicable Eligible User(s) and Contractor shall retain their respective rights under this Contract and any such Order for the Order's then-effective term.
19. **SUSPENSION OF WORK:** Should circumstances arise which would cause the Division to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Division.
20. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:**

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- 1. Contract Termination.** Upon thirty (30) days written notice delivered to the other party, (i) pursuant to Section 63G-6a-1204(3)(b) of the Utah Procurement Code, the Division may terminate this Contract if it is reasonably determined by the Division that funds sufficient to fulfill its payment obligations under this Contract are not appropriated or otherwise available to continue this Contract, whether as a result of a legislative act or by order of the President, the Utah Governor, or other duly authorized entity; or (ii) either party may terminate this Contract if federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted in a manner that prohibits either party from fulfilling its obligations under this Contract.
- 2. Order Termination.** Upon thirty (30) days written notice delivered to the other party, (i) pursuant to Section 63G-6a-1204(3)(b) of the Utah Procurement Code, an Eligible User may terminate an Order if it is reasonably determined by Eligible User that funds sufficient to fulfill its payment obligations under an Order are not appropriated or otherwise available to continue the Order, whether as a result of a legislative act or by order of the President, the Utah Governor, or other duly authorized entity; or (ii) either party may terminate an Order if federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted in a manner that prohibits either party from fulfilling its obligations under the Order. If an Eligible User terminates an Order pursuant to this section, the Eligible User will be liable for all usage and other fees incurred up to the termination effective date, as further described in the Contractor Terms and Conditions.
- 21. SALES TAX EXEMPTION:** The Products being purchased by the Eligible Users under this Contract are being paid from the Eligible User's funds and used in the exercise of the Eligible User's essential function as an Eligible User. The Eligible User will provide Contractor with a copy of its sales tax exemption number upon request. It is the Contractor's responsibility to request the sales tax exemption number from the Eligible User.
- 22.** [Reserved]
- 23. HARDWARE WARRANTY:** [Reserved].
- 24.** [Reserved]
- 25.** [Reserved]
- 26. UPDATES AND UPGRADES:** Contractor shall make available updates and upgrades pursuant to the Contractor Terms and Conditions.
- 27. BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall provide technical support for reported software problems pursuant to the Contractor Terms and Conditions. With an Eligible User's prior authorization, Contractor may perform remote diagnostics to work on reported problems, subject to the Contractor Terms and Conditions. In the event that an Eligible User declines remote diagnostics, pursuant to the Contractor Terms and Conditions, Contractor may provide on-site technical support if such support is available under the Contractor support offering ordered by the Eligible User.
- 28. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Goods or Custom Deliverables that Contractor provides under this Contract, Contractor will provide such technical support and maintenance pursuant to the Contractor Terms and Conditions.
- 29. SECURE PROTECTION AND HANDLING OF STATE DATA:** To the extent that such State Data is uploaded or imported into an applicable Service offering, Contractor shall safeguard the confidentiality, integrity and availability of such State Data as described in the Contractor Terms and Conditions and comply with the following conditions outlined below:
- 1. Network Security:** Contractor agrees at all times to maintain network security as further described in the Contractor Terms and Conditions.
 - 2. State Data Security:** Contractor agrees to maintain appropriate technical and organizational measures (including administrative, physical, and technical safeguards) to protect any State Data an Eligible User uploads or imports into an applicable Service offering and the Contractor processes on Eligible User's behalf, as further described in the Contractor Terms and Conditions.
 - 3. State Data Transmission:** To the extent that Contractor and an Eligible User exchange system application data, Contractor agrees that such exchange of system application data with the Eligible Users shall take place via secure means as further described in the Contractor Terms and Conditions.

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4. **State Data Storage:** Contractor agrees that all State Data uploaded or entered into an applicable Service offering will be stored and maintained in data centers pursuant to the Contractor Terms and Conditions. Contractor agrees that no State Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except to fulfill performance obligations under this Contract. To the extent that Contractor processes State Data, such processing shall be pursuant to Contractor Terms and Conditions. Contractor shall permit its employees and Subcontractors to access non-Public Data remotely only as required to provide technical support. Contractor may provide technical support on a 24/7 basis using a follow-the-sun model.
5. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to the Eligible Users or State of Utah networks, or stores any State Data is equipped with strong and secure password protection.
6. **State Data Re-Use:** Contractor agrees that any and all State Data uploaded or entered into an applicable Service offering shall be used expressly and solely for the purposes enumerated in the Contractor Terms and Conditions.
7. **State Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it shall erase, destroy, or render unreadable all State Data from Contractor data centers and information systems in accordance with Contractor Terms and Conditions, Contractor data retention policies, and applicable law.
30. **SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Contractor shall promptly inform an Eligible User of any Security Incident or Data Breach.
 1. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident or Data Breach, which may include contacting law enforcement and seeking external expertise. Contractor will periodically update Eligible User of developments relating to a Data Breach or Security Incident as part of Contractor's communication and mitigation processes.
 2. **Security Incident Reporting Requirements:** Contractor shall report a Security Incident to the Eligible User promptly.
 3. **Breach Reporting Requirements:** If Contractor has actual knowledge of a confirmed Data Breach that is subject to applicable data breach notification law, Contractor shall: (a) promptly notify the Eligible User, unless shorter time is required by applicable law; (b) take commercially reasonable measures to address the Data Breach as described in Contractor Terms and Conditions; and (c) be responsible for its Data Breach responsibilities, as provided in the Contractor Terms and Conditions.
31. **DATA BREACH RESPONSIBILITIES:** This Section only applies when a Data Breach occurs. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach. In the event of a Data Breach requiring notification under Utah Protection of Personal Information Act (Utah Code § 13-44-101 thru 301), Contractor shall: (a) cooperate with the Eligible User by promptly notifying the Eligible User of the Data Breach and periodically sharing information relevant to the Data Breach, including responsive actions taken by Contractor related to the Data Breach; (b) use reasonable endeavors to mitigate and, where possible, to remedy the effects of any Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User.
32. [Reserved]
33. **PUBLIC INFORMATION:** Contractor agrees that this Contract, any related purchase orders, related invoices, related pricing lists, and the Proposal will be public documents, and may be available for distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, any related purchase orders, related invoices, related pricing lists, and Proposal in accordance with GRAMA. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. The Division, the Eligible Users, or the State of Utah will not inform Contractor of any request for a copy of this Contract, including any related purchase orders, related invoices, related pricing lists, or the Proposal.
34. **DELIVERY:** Unless otherwise specified in this Contract, all deliveries will be Ex Works Contractor's regional fulfillment facility (INCOTERMS 2010).

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- 35. ELECTRONIC DELIVERY:** Contractor may electronically deliver any Product to Eligible Users or provide any Product for download from the Internet. Contractor should take all reasonable and necessary steps to ensure that the confidentiality of those electronic deliveries is preserved in the electronic delivery process, and are reminded that failure to do so may constitute a breach of obligations owed to the Eligible Users under this Contract. Any electronic delivery that includes State Data that Contractor processes or stores must be delivered within the specifications of this Contract.
- 36. [Reserved]**
- 37. ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 business days after shipment or delivery of Products, or the beginning of the billing period, as applicable) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.
- 38. PROMPT PAYMENT DISCOUNT:** Contractor may quote a prompt payment discount based upon early payment. Contractor shall list payment discount terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received.
- 39. PAYMENT:**
1. Payments will be made within forty-five (45) days from a correct invoice is received, whichever is later. After forty-five (45) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.
 2. Unless otherwise stated in this Contract, all payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not allow Contractor to charge electronic payment fees of any kind.
 3. The acceptance by Contractor of final payment without a written protest filed with the Eligible User within ten (10) working days of receipt of final payment shall release the Eligible User, the Division, and the State of Utah from all claims and all liability to Contractor for fees and costs pursuant to this Contract.
 4. Contractor agrees that if during, or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible Users to Contractor, and upon Contractor's receipt and acceptance of evidence, which acceptance shall not be unreasonably withheld, substantiating such inaccuracies, then Contractor shall, upon written request, promptly refund to the Eligible Users any such overpayments.
 5. If Eligible User, in good faith, disputes any invoice issued by Contractor hereunder, Eligible User shall provide Contractor with written notice of such dispute within ten (10) days of receipt of invoice and shall pay any undisputed portion of the invoice on or before the applicable due date. That written notice shall specify the reasons for the dispute by Eligible User. The parties shall negotiate in good faith to resolve the dispute as soon as reasonably practicable. Nothing in this Section 39(5) shall be construed to limit or amend the rights and obligations described in Section 26 of the Master Agreement #AR2493.
- 40. [Reserved]**
- 41. OWNERSHIP IN INTELLECTUAL PROPERTY:** The parties each recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name or any logo, or intellectual property owned or licensed by the other. Each agree that, without prior written consent of the other or as described in this Contract, it shall not use the name, any logo, or intellectual property owned or licensed by the other.
- 42. [Reserved]**

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- 43. OWNERSHIP, PROTECTION AND USE OF RECORDS:** Except for confidential medical records held by direct care providers, the Eligible Users shall be granted a perpetual copyright license to the portion of Deliverables consisting solely of written reports, analyses, and other working papers (other than VMware Retained Materials as defined below), prepared and delivered by Contractor to Eligible User pursuant to this Contract, provided that the Eligible User will exercise its rights for its internal business operations only and will not resell or distribute the Deliverables to any third party. Contractor may not use, except in meeting its obligations under this Contract, such Deliverables or any State Data without the express written consent of the Eligible User. Contractor agrees to maintain the confidentiality of records it holds for the Eligible Users as required by applicable federal, state, or local laws, provided that Eligible Users shall not provide any PII or PHI to Contractor without first obtaining Contractor's written approval to do so. For VMware Retained Materials and the portion of the Deliverables that consists of scripts, code, templates, and all other materials developed or otherwise provided by Contractor in connection with this Contract, Contractor grants to Eligible User a non-exclusive, non-transferable, irrevocable (except in case of breach by Eligible User), perpetual license, without the right to sublicense, to use and copy, for Customer's internal business operations only (the "Deliverables License"). The Deliverables License does not apply to materials furnished by Eligible User and/or any other products or items licensed, or otherwise provided, under a separate agreement. "VMware Retained Materials" means (i) materials (other than products) developed or obtained by or for Contractor independently of this Contract and (ii) subsets or modules of the Deliverables that by themselves provide generic technical information not unique to Eligible Users' business.
- 44. PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** In the event that the Eligible User provides Contractor with federal or state business processes, policies, procedures, or practices that are Confidential Information, pursuant to this Contract, Contractor agrees to hold such information in confidence in accordance with the provisions outlined in the Master Agreement.
45. [Reserved]
46. [Reserved]
- 47. ASSIGNMENT/SUBCONTRACT:** Except for assignment to a successor in interest to any portion of Contractor's business or assets, in which case Contractor shall provide the Division reasonable written notice, Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division.
- 48. DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (a) nonperformance of contractual requirements or (b) a material breach of any term or condition of this Contract. The Division will issue a written notice of default providing a thirty (30) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (a) exercise any remedy provided by law; (b) terminate this Contract; (c) suspend Contractor from receiving future solicitations; or (d) request a refund as permitted under the Contractor Terms and Conditions.
- 49. TERMINATION UPON DEFAULT:** In the event this Contract is terminated as a result of a default by Contractor, the Division may procure or otherwise obtain, upon such terms and conditions as the Division deems appropriate, Goods, Custom Deliverables, or Services similar to those terminated.
- 50. FORCE MAJEURE:**
1. **Contract:** Neither party to this Contract will be held responsible or liable for any delay or default caused by fire, riot, acts of God and/or war, electrical, telecommunications or other utility failures, or other causes which are beyond that party's reasonable control. Upon the occurrence of any such force majeure event, the Division may immediately terminate this Contract after determining such termination is reasonably necessary to preserve public safety or prevent immediate public crisis.
 2. **Order:** Neither Eligible User nor Contractor will be held responsible or liable for any delay or default under an Order caused by fire, riot, acts of God and/or war, systemic, electrical, telecommunications or other utility failures, or other causes which are beyond that party's reasonable control. Upon the occurrence of any such force majeure

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event, the Eligible User may immediately terminate the Order after determining such termination is reasonably necessary to preserve public safety or prevent immediate public crisis.

51. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
52. [Reserved]
53. **LIABILITY INSURANCE:** In addition to the Liability Insurance requirements described in Master Agreement #AR2493, Contractor must provide proof of such insurance to the Division and Contractor's Commercial General Liability policy shall be endorsed to name the State of Utah as an additional insured. The insurer for each insurance policy required herein shall provide notice of cancellation subject to the notice provisions of such policy. Contractor acknowledges that within thirty (30) days of contract award, Contractor and/or Contractor's Subcontractors must submit proof of certificate or memorandum of insurance that meets the above requirements. Failure to provide proof of insurance, as required, could result in this Contract being terminated for cause. Contractor shall ensure that each of its Subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the Subcontractor would maintain.
54. **CONFLICT OF TERMS:** Contractor terms and conditions that apply are attached to the Master Agreement #AR2493 as an exhibit, for reference purposes, and the then-current version of such terms and conditions found at <http://www.vmware.com/download/eula.html> will apply at the time an Order is placed by an Eligible User. In the event of any conflict in the contract terms and conditions, the order of precedence shall be as described in the Master Agreement #AR2493.
55. **ENTIRE AGREEMENT:** This Contract shall constitute the entire agreement between the parties, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
56. **SURVIVORSHIP:** This paragraph defines the specific contractual provisions that will remain in effect after expiration of, the completion of, or termination of this Contract, for whatever reason: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of State Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records (Section 43 above), including residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, State, or Local Government Internal Business Processes (Section 44), including residuals of such confidential business processes; (g) Confidentiality; (h) Conflict of Terms (Section 54); and (j) any other terms that by their nature would survive the expiration of, completion, or termination of this Contract.
57. **WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract.
58. **CONTRACT INFORMATION:** During the duration of this Contract, the Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.
59. **COMPLIANCE WITH ACCESSIBILITY STANDARDS:** Contractor represents that Products available for purchase under this Contract substantially comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973, to the extent described in the Voluntary Product Accessibility Templates (VPATs) posted at <http://www.vmware.com/help/accessibility.html>. Contractor acknowledges that all Products available for purchase under this Contract are accessible to people with disabilities, to the extent described in VPAT documentation found at the abovementioned website link.
60. [Reserved]
61. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for

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large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.

- 62. ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. For each Order any Eligible User submits and Contractor accepts under this Contract, Contractor agrees to supply such Eligible Users with Products based upon the same terms, conditions and prices of this Contract.
- 63. INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Products from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
- 64. QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
- 65. ORDERING:** Orders will be placed by the Eligible User directly with Contractor or authorized Fulfillment Partner. All Orders will be shipped promptly in accordance with the terms of this Contract.
- 66. REPORTS AND FEES:**

1. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be 1% and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
2. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.
3. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

4. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

If Services are applicable to this Contract, the following terms and conditions apply to this Contract:

- 67. TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence.
- 68. PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
- 69. ADDITIONAL INSURANCE REQUIREMENTS:**

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1. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, state, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
2. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order.
70. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in a workmanlike manner in accordance with the applicable industry standard of care, exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.
71. **STATE REVIEWS, LIMITATIONS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor.
72. **TRAVEL COSTS:** The following will apply unless otherwise agreed to in the contract: All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the GSA Federal Travel Regulation located at <https://www.gsa.gov/portal/category/100120>. Invoices containing travel costs outside of these rates will be returned to the Contractor for correction.
73. **CONTRACT DATES:** The Master Agreement #AR2493 effective and expiration dates apply to this participating addendum. A contract amendment is not necessary in the event of the renewal or extension of the Master Agreement #AR2493.
74. **SUBCONTRACTORS:** All contractors, dealers, and resellers, at any tier, authorized in the State of Utah, 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 #AR2493.
75. **ORDERS:** Any Order placed by an Eligible User for a Product available under this Contract shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of this Contract unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

NASPO ValuePoint
PARTICIPATING ADDENDUM



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Unless otherwise modified herein, the remaining terms of Master Agreement #AR2493 shall remain in full force and effect. In the event of a conflict between the terms of Master Agreement #AR2493 and this Participating Addendum, the terms of this Participating Addendum shall control. This Participating Addendum may not be modified or rescinded except as mutually agreed to by the parties in writing.

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

Participating Entity: <u>Utah</u>	Contractor: VMware, Inc.
Signature: 	Signature: 
Name: <u>Chris Hughes</u>	Name: Karin Whitwood
Title: <u>Assistant Director - Purchasing</u>	Title: Contracts Manager, Public Sector
Date: <u>5/3/17</u>	Date: May 2, 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.**