

Board of Commissioners
Agenda Item Transmittal Form
Procurement/Contract Transmittal Form



Type of Contract:		CC Use Only Contract #:
Submission Information:		Vendor Information:
Contact Name: Sharon Webb, Director of Emergency Management Agency	Vendor Name: Solutions II	
Department: EMA	Address: 8822 S. Ridgeline Blvd., Ste 117 Littleton, CO 80129	
Project Title: VMware vSphere Foundation software for E911	Email: angel.derby@solutions-ii.com	
Budgeted: No	Phone #: 303-524-3266	
Funding Account Number: 215-3800-522200-34	Contact: Angel Derby	
Contract Amount: \$20,102.40	Term of Contract: Yearly	
Contract Type: Services		
Contract Action: Renewal		
Original Contract Number:		
Notes and Comments: Virtual server environment that manages the virtual serve system for E911. ** This is a yearly renewal and used to be managed by Motorola, but due to ongoing price changes with many vendors Motorola has asked the vendors to handle their renewals directly. ** Server system at 2120 Farmer Rd building.		

2026-392



Price Quote

Quote #: AD51926RDVMRNL

Company: Rockdale
Project: VMware Renewal
Valid Until: 6/30/2026

Account Rep.: Dan Brito
Phone 303-524-3282
Email: dan.brito@solutions-ii.com

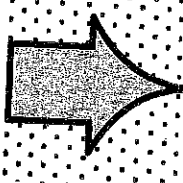
Notes

1. Taxes are not included in this price quote and will be invoiced if applicable.
2. Any Shipping/Freight will show as estimated and will be invoiced accordingly.
3. This price quote, supporting configurations, and any associated contracts are confidential to the client specified and Solutions II.
4. Final configuration and prices subject to change based upon the final solutions assurance review and consultation with client.
5. Prices quoted assume standard terms and conditions, net 30.
6. By purchasing the product you accept any warranties and terms and conditions of the vendor.
7. Once an order is placed and confirmed, it is considered non-cancelable. The customer agrees that no cancellations will be accepted once an order has been placed.
8. All sales are final and non-refundable. The customer acknowledges that products once purchased cannot be returned for any reason unless otherwise stated explicitly by the seller.
9. Managed Services Clients: A lapse in maintenance/support renewal will directly impact our ability to provide complete managed services.

Qty	Part #	Serial #	Description	Start Date	End Date	Unit Price	Extended
1	VMware vSphere Foundation 1 Year		VMWARE VSPHERE FOUNDATION 1-YEAR - 144 Cores - 1 Year	6/30/2026	6/29/2027	\$ 20,102.40	\$
							Subtotal \$ 20,102.40
							Freight Estimate \$
							Grand Total \$ 20,102.40

Dell / HPE	* Rated server components are not under support and a contract for services will be required for repair. * Firmware updates are not available from the manufacturer.	Late fees may be assessed.
Red Hat	* No longer receive updates.	Late fees may be assessed.
Veeam	* Backup, replication, and restore jobs stop functioning. * Configuration changes and new actions in the console are blocked. * Operations resume only after renewal.	A 30-day grace period is typically provided during which all functionality continues to work. Post-grace period, all operations stop. Late fees may be assessed.
VMware	* Subscription-based licenses cease to function upon expiration. * Example: For vSphere, hosts enter a "disconnected" state; VMs continue running, but cannot be managed through vCenter.	Please see attached letter regarding penalties and fees.

SIGN
HERE



Signature: _____

Name: JaNice Van Ness, Chair & CEO

Date: _____

THANK YOU FOR YOUR BUSINESS:

ATTEST:

Approved As To Form:

Jennifer Rutledge, County Clerk

M. Qader A. Baig, County Attorney

Performing Ahead of the Curve

Solutions II



Immediate Action Required: VMware Licensing Changes from Broadcom

Thank you for being a valued client of Solutions II. We are committed to keeping you informed and protected, especially when industry changes could impact your business.

We are writing to inform you of changes Broadcom has implemented regarding VMware licensing that impact your upcoming renewal.

Following Broadcom's acquisition of VMware, new licensing policies have been introduced that eliminate prior flexibility and significantly increase costs. Most notably:

- **No Grace Period** – Broadcom does not offer a grace period after license expiration. Renewals must be processed before the expiration date to avoid service interruptions.
- **Cost Increases** – Clients are experiencing drastic price increases, along with late fees of up to 200% if renewals are not completed prior to expiration. Broadcom is also reducing their offerings, which may lead to additional cost implications.
- **Mandatory Subscription Model** – Legacy perpetual licenses can no longer be renewed. All VMware clients are required to move to Broadcom's new subscription-based licensing. Solutions II does offer alternative solutions for any client still on Perpetual licenses.
- **Cease and Desist Letters** – Broadcom is actively sending cease and desist letters to clients immediately upon expiration of support contracts and subscriptions. This marks a serious escalation in enforcement, with operational risks for non-compliant environments.

According to our records, your VMware license is set to expire on: **6/29/26**

We urge you to begin the renewal or transition process immediately to avoid potential service disruption or unexpected financial impact. Our team is available to review your current VMware footprint and help you navigate these changes with as little disruption as possible.

Please contact us at your earliest convenience with any questions or to schedule a review.

Sincerely,

Angel Derby

Sales Operations Rep | Solutions II, Inc.

8822 S. Ridgeline Blvd., Ste 117 | Littleton, CO 80129

Phone (Single-Reach): 303.524.3266

Email: angel.derby@solutions-ii.com

Corporate Headquarters
8822 South Ridgeline Blvd.
Suite 117
Littleton, CO 80129

(303) 796-8393 TEL
(303) 796-8399 FAX
www.Solutions-II.com

HPE

**HPE End User
License—
Enterprise Version**

1. **Applicability.** This end user license agreement (the "Agreement") governs the use of accompanying software, unless it is subject to a separate agreement between you and Hewlett Packard Enterprise Company and its subsidiaries ("HPE"). By downloading, copying, or using the software you agree to this Agreement. HPE provides translations of this Agreement in certain languages other than English, which may be found at: www.hpe.com/software/SWLicenseing.
2. **Terms.** This Agreement includes supporting material accompanying the software or referenced by HPE, which may be software license information, additional license authorizations, software specifications, published warranties, supplier terms, open source software licenses and similar content ("Supporting Material"). Additional license authorizations are at: hpe.com/software/SWLicenseing.
3. **Authorization.** If you agree to this Agreement on behalf of another person or entity, you warrant you have authority to do so.
4. **Consumer Rights.** If you obtained software as a consumer, nothing in this Agreement affects your statutory rights.
5. **Electronic Delivery.** HPE may elect to deliver software and related software product or license information by electronic transmission or download.
6. **License Grant.** If you abide by this Agreement, HPE grants you a non-exclusive non-transferable license to use one copy of the version or release of the accompanying software for your internal purposes only, and is subject to any specific software licensing information that is in the software product or its Supporting Material.
Your use is subject to the following restrictions, unless specifically allowed in Supporting Material:
 - a. You may not use software to provide services to third parties.
 - b. You may not make copies and distribute, resell or sublicense software to third parties.
 - c. You may not download and use patches, enhancements, bug fixes, or similar updates unless you have a license to the underlying software. However, such license doesn't automatically give you a right to receive such updates and HPE reserves the right to make such updates only available to customers with support contracts.
 - d. You may not copy software or make it available on a public or external distributed network.
 - e. You may not allow access on an intranet unless it is restricted to authorized users.
 - f. You may make one copy of the software for archival purposes or when it is an essential step in authorized use.
 - g. You may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of software. If you have a mandatory right to do so under statute, you must inform HPE in writing about such modifications.
7. **Remote Monitoring.** Some software may require keys or other technical protection measures and HPE may monitor your compliance with the Agreement, remotely or otherwise. If HPE makes a license management program for recording and reporting license usage information, you will use such program no later than 180 days from the date it's made available.
8. **Ownership.** No transfer of ownership of any intellectual property will occur under this Agreement.
9. **Copyright Notices.** You must reproduce copyright notices on software and documentation for authorized copies.
10. **Operating Systems.** Operating system software may only be used on approved hardware and configurations.

11. 90-day Limited Warranty for HPE Software.

- a. HPE-branded software materially conforms to its specifications, if any, and is free of malware at the time of delivery; if you notify HPE within 90 days of delivery of non-conformance to this warranty, HPE will replace your copy. This Agreement states all remedies for warranty claims.
- b. HPE does not warrant that the operation of software will be uninterrupted or error free, or that software will operate in hardware and software combinations other than as authorized by HPE in Supporting Material. To the extent permitted by law, HPE disclaims all other warranties.

12. Intellectual Property Rights Infringement. HPE will defend and/or settle any claims against you that allege that HPE-branded software as supplied under this Agreement infringes the intellectual property rights of a third party. HPE will rely on your prompt notification of the claim and cooperation with our defense. HPE may modify the software so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to you the amount paid for the affected product in the first year or the depreciated value thereafter. HPE is not responsible for claims resulting from any unauthorized use of the software.

13. Limitation of Liability. HPE's liability to you under this Agreement is limited to the amount actually paid by you to HPE for the relevant software, except for amounts in Section 12 ("Intellectual Property Rights Infringement"). Neither you nor HPE will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; willful repudiation of the Agreement; or any liability that may not be excluded or limited by applicable law.

14. Termination. This Agreement is effective until terminated or in the case of a limited-term license, upon expiration; however, your rights under this Agreement terminate if you fail to comply with it. Immediately upon termination or expiration, you will destroy the software and documentation and any copies, or return them to HPE. You may keep one copy of software and documentation for archival purposes. We may ask you to certify in writing you have complied with this section. Warranty disclaimers, the limitation of liability, this section on termination, and Section 15 ("General") will survive termination.

15. General.

- a. **Assignment.** You may not assign this Agreement without prior written consent of HPE, payment of transfer fees and compliance with HPE's software license transfer policies. Authorized assignments will terminate your license to the software and you must deliver software and documentation and copies thereof to the assignee. The assignee will agree in writing to this Agreement. You may only transfer firmware if you transfer associated hardware.
- b. **U.S. Government.** If the software is licensed to you for use in the performance of a U.S. Government prime contract or subcontract, you agree that, consistent with FAR 12.211 and 12.212, commercial computer software, computer software documentation and technical data for commercial items are licensed under HPE's standard commercial license.
- c. **Global Trade Compliance.** You agree to comply with the trade-related laws and regulations of the U.S. and other national governments. If you export, import or otherwise transfer products provided under this Agreement, you will be responsible for obtaining any required export or import authorizations. You confirm that you are not located in a country that is subject to trade control sanctions (currently Cuba, Iran, N. Korea, N. Sudan, and Syria) and further agree that you will not retransfer the products to any such country. HPE may suspend its performance under this Agreement to the extent required by laws applicable to either party.
- d. **Audit.** HPE may audit you for compliance with the software license terms. Upon reasonable notice, HPE may conduct an audit during normal business hours (with the auditor's costs being at HPE's expense). If an audit reveals underpayments then you will pay to HPE such underpayments. If underpayments discovered exceed five (5) percent, you will reimburse HPE for the auditor costs.

- e. **Open Source Components.** To the extent the Supporting Material includes open source licenses, such licenses shall control over this Agreement with respect to the particular open source component. To the extent Supporting Material includes the GNU General Public License or the GNU Lesser General Public License: (a) the software includes a copy of the source code; or (b) if you downloaded the software from a website, a copy of the source code is available on the same website; or (c) if you send HPE written notice, HPE will send you a copy of the source code for a reasonable fee.
 - f. **Notices.** Written notices under this Agreement may be provided to HPE via the method provided in the Supporting Material.
 - g. **Governing Law.** This Agreement will be governed by the laws of the state of California, U.S.A., excluding rules as to choice and conflict of law. You and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.
 - h. **Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
 - i. **Entire Agreement.** This Agreement represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties. If HPE doesn't exercise its rights under this Agreement, such delay is not a waiver of its rights.
16. **Australian Consumers.** If you acquired the software as a consumer within the meaning of the 'Australian Consumer Law' under the *Australian Competition and Consumer Act 2010 (Cth)* then despite any other provision of this Agreement, the terms at this URL apply: www.hpe.com/software/SWLicensing.
17. **Russian Consumers.** If you are based in the Russian Federation and the rights to use the software are provided to you under a separate license and/or sublicense agreement concluded between you and a duly authorized HPE partner, then this Agreement shall not be applicable.

Visit HPE.com

[Chat now](#)

© Copyright 2025 Hewlett Packard Enterprise Development LP. The information contained herein is subject to change without notice. The only warranties Hewlett Packard Enterprise products and services are set forth in the express warranty statements accompanying such products and services. Nothing herein should be construed as constituting an additional warranty. Hewlett Packard Enterprise shall not be liable for technical or editorial errors or omissions contained herein.

a50011616ENW, Rev. 1

HEWLETT PACKARD ENTERPRISE

hpe.com



End User License Agreement

Last updated: April 11, 2025

This End User License Agreement ("EULA") is a legal agreement between the end user (as an individual or entity, "End User") and the applicable Licensor entity defined in Section 16.0 ("Licensor Party"), which sets forth the rights and obligations governing software products defined in the licensing policy ("Software"), limited support services, and associated documentation ("Documentation"). By installing, using, or otherwise interacting with the Software or Documentation, delivering, or receiving services involving the Software, the End User agrees to be bound by the terms of this EULA. If the End User does not agree with the terms of this EULA, do not use or otherwise interact with the Software, Documentation, or services.

1. General Terms

1.1. License Grant. Licensor grants to End User a non-exclusive, non-transferable, non-sublicensable right to install and use the Software in object code form and also the Documentation for End User's internal business purposes under the terms and conditions stated herein within the scope, type of use, limitations on deployment or as otherwise set forth in the applicable ordering document and for which End User has paid the applicable fees.

1.2. The Software is to be used in accordance with the Documentation, the terms of this EULA, and the Licensing Policy in which descriptions of the license(s) purchased can be found ("Licensing Policy"). End User may only use the number of licenses or capacity that has been purchased or granted unless the product specifically allows exceed usage. In the event End User exceeds the purchased or granted capacity, the Software may not process additional workloads and Licensor shall not provide Maintenance for such overage license use.

1.3. End User is permitted to make copies of the Software and Documentation for internal purposes in accordance with this EULA and the Licensing Policy. Any copies or partial copies of the Software and Documentation that End User makes shall remain Licensor's intellectual property and must incorporate all relevant patent, copyright and trademark notices.

2. Prohibited Use

Without Licensor's express prior written consent, End User may not (directly or indirectly through any employee, contractor, consultant, agent or other representative): (a) resell, transfer, share, or make the Software or license keys available to any third party (including, without limitation, sharing license keys on any website, forum or social media); (b) process third-party data (as a service provider), provide commercial hosting or support services, sublicense, rent or lease, in whole or in part, the Software to another party, or otherwise use the Software on a service bureau basis, without purchasing a specific license to do so; (c) decipher, decompile, disassemble, reverse assemble, reverse engineer, modify, or otherwise attempt to derive source code, algorithms, tags, specifications, architectures, structures or other elements of the Software, including any license keys, in whole or in part, for any purpose or in any manner (except to the extent such prohibition is expressly prohibited by law); (d) write or develop any derivative software or documentation or other software programs based upon the Software or Documentation; (e) violate applicable laws or regulations through use of the Software; or (f) disclose, transfer or otherwise make available to any third party the results of any performance, capacity or functionality tests or any benchmark testing of the Software.

3. Maintenance and Support

3.1. Maintenance and support (collectively, "Maintenance") for the Software is available in accordance with the Licensing Policy and Licensor's support policy (the "Support Policy"). If Maintenance is included in End User's plan purchased, it will commence upon the date the order is processed. End User will receive support for the Software including any updates, enhancements, or improvements that are included or defined in the Support Policy. Expired Maintenance plans are not eligible for Software updates. Violating any material provision of this EULA and/or Licensing Policy (including exceeding the purchased licensing capacity stated in Section 1.2) may result in postponement or rejection of Software Maintenance. Licensor may use collected telemetry (as prescribed in Section 4 below) to provide proactive Maintenance, including security update notifications and risk alerts.

3.2. The Software may include an automatic update functionality ("Automatic Updates") that, when enabled, downloads and installs updates to the Software, including updates to third-party packages and components. By using the Software, End User acknowledges and agrees to the following:

- a) Automatic Updates may include modifications to the Software, updates to existing third-party components and/or new third-party components.
- b) End User agrees that by continuing to use the Software following any update, End User accepts and are bound by the terms of the latest version of this EULA available at <https://www.veeam.com/legal/eula> and the terms of any applicable third-party license terms and conditions.
- c) The Automatic Updates functionality can be controlled through the Software's settings at any time. However, changing the default settings of the Automatic Updates may impact the security and functionality of the Software, and Licensor disclaims any liability arising from End User's decision to disable updates.

4. Technical Information Collection

4.1. Licensor cannot access the Software installed in End User's chosen environment(s) or any data that is managed using the Software. Licensor cannot access any technical information pertaining to the configuration or performance of the Software unless End User voluntarily provides it to Licensor by uploading log files, sharing

telemetry data, sharing screenshots, descriptions, reports, survey information, etc., pertaining to the Software use or utilize the Assistant (as defined in Section 9.1 below). Additional information and requirements regarding End User's use of the Assistant are set forth in Section 9 below.

4.2. Licensor products that support automatic license updates and telemetry generate and send license usage statistics and telemetry data to Licensor. THIS FUNCTIONALITY IS TURNED ON BY DEFAULT AND CAN BE DISABLED AT ANY TIME. However, the data collection is mandatory for all Free and Community Edition licenses and cannot be disabled.

4.3. Certain Licensor products require online licensing services accessibility for license activation and/or usage reporting due to the protected platform's requirements. THIS DATA COLLECTION IS ALWAYS ON AND CANNOT BE DISABLED.

5. Personal Information

In the event End User voluntarily provides personal data to Licensor in connection with Maintenance or otherwise, End User's personal information will be used and stored in accordance with Licensor's Privacy Notice. End User can always update preferences to adjust personal information settings by visiting the customer portal in the Software tool.

6. Intellectual Property Rights

The Software is LICENSED, NOT SOLD. The Software is protected by patent, copyright, trademark, trade secret, and other laws, including, without limitation, international treaties. A list of relevant patents and trademarks can be found [here](#). All rights, title, and interest in and to the Software, Documentation, and any other Licensor materials or information provided or made available in connection with this EULA are retained solely by Licensor. End User hereby agrees that Licensor shall have the unrestricted, worldwide, fully paid, royalty-free right and license to use any and all ideas, feedback and suggestions made by End User to Licensor regarding the Software, Documentation, and other materials or information (collectively, "Feedback") including the right to use all intellectual property rights in the Feedback. Third-party licensors, in addition to any other rights or remedies available to them, are third-party beneficiaries of this EULA with regard to their respective component(s).

7. Open Source Software

7.1. Licensor may include various open source software components in or with the Software (collectively, "OSS"), each of which is owned by a third party and is subject to its own applicable license terms and conditions. A current list of OSS components used by Licensor, along with their applicable license terms, is included in a text file located in the folder where the Software files are installed (the "OSS License File").

For informational purposes only, Licensor may also make available a list of OSS components and their associated license terms on the special webpage. However, the definitive and governing list of OSS components and their applicable licenses is contained within the OSS License File distributed with the Software.

7.2. As part of the Software's functionality, Licensor may update, modify, or replace OSS components included in the Software during the course of providing Automatic Updates. These updates may result in changes to the applicable license terms of the OSS.

7.3. By continuing to use the Software after an update that includes changes to OSS components, End User acknowledges and agrees to comply with the updated license terms of such OSS, as provided in the updated OSS License File included in the Software files.

7.4. Any warranties, representations, or liabilities related to such OSS, if any, are governed solely by the applicable OSS license terms. Nothing in this EULA is intended to modify, limit, or supersede the terms of any OSS license. In the event of any conflict between this EULA and an applicable OSS license, the terms of the OSS license shall control solely with respect to the applicable OSS component.

8. Audit

8.1. During the term of the EULA and for a period of one year thereafter, Licensor may, during normal business hours and upon reasonable prior notice to End User, inspect files, computer processors, equipment, and facilities to verify End User's compliance with the terms and conditions of this EULA, including but not limited to all license terms, policies, and quantities purchased via authorized Licensor resellers or online marketplaces. The scope of the audit may encompass the verification of compliance with this EULA as a whole, which by reference includes the Licensing Policy.

8.2. Licensor may conduct such an audit no more than once per year unless there are reasonable grounds for the audit, such as suspected breaches of the EULA. The audit may be conducted in any form, including online requests for information (logs) or by inspecting End User's infrastructure, by itself and/or with the involvement of third parties at Licensor's discretion. In case of such an audit, End User must provide Licensor and/or any third party selected by Licensor the requested information (logs) and/or access to End User's infrastructure within thirty (30) days after receiving the Licensor's notice and make reasonable efforts to facilitate the audit.

8.3. Any information received by Licensor as a result of the audit shall be treated as confidential and be used solely for the purposes of performing the audit. Should the audit reveal that End User is in breach of any terms of this EULA, the costs of the audit conducted by a third party will be borne by End User.

9. AI-enabled Assistant

9.1. Some Software may contain an artificial intelligence ("AI")-enabled assistant trained to provide End User with assistance regarding use of the Software (the "Assistant"). Use of this feature is subject to the AI Terms of Use. By using the Assistant, End User acknowledges and agrees that, in addition to the terms of this Section 9, End User has read, understand and agrees to comply with the AI Terms of Use. End User further agrees that Licensor is not responsible for the Assistant's output or any information that End User inputs into the Assistant. End User may not use the Assistant for any purpose other than to seek information about the Software's functionality. End User agrees that under no circumstances will End User or any user in End User's organization input to the Assistant information that is considered "personal information" or "personal data" (as those or similar terms are defined under any laws applicable to End User) or information that End User's organization considers confidential or non-public. The

Assistant is based on Azure OpenAI Service from Microsoft Corporation. All input End User shares with this Assistant will be processed in accordance with Microsoft's Azure OpenAI Terms and this EULA. By using the Assistant, End User acknowledges and agrees that End User has read, understands and agrees to comply with those terms. Please review the documentation before using the Assistant. End User may not use the Assistant if End User does not agree to those terms. In some Software, the Assistant may have two modes; basic ("Basic Mode"), which only utilizes information End User inputs to the chat window, and advanced ("Advanced Mode"), which utilizes information End User inputs to the chat window and product data received from the Software (the combined information, "Mixed Input"). Basic Mode is turned on by default. Advanced Mode is turned off by default, and End User needs to turn it on explicitly. The Software also includes an option to completely disable the Assistant.

9.2. Basic Mode. Licensor may store and review any input End User shares with the Assistant and the Assistant's output in order to improve the Assistant's functionality or as otherwise necessary or useful for Licensor to provide its services. Licensor will delete all stored input and output after 30 days from the store date.

9.3. Advanced Mode. Mixed Input is deleted immediately after End User closes the conversation session or the session times out. Licensor may store and review the Assistant's output (but not Mixed Input) in order to improve the Assistant's functionality or as otherwise necessary or useful for Licensor to provide its services. Licensor will delete all stored output after 30 days from the store date.

9.4. Licensor does not review all of the Assistant's output; if the Assistant is unable to answer End User's question or if End User has any concerns regarding its output, End User may contact Licensor's customer support personnel.

10. Indemnification

Licensor will defend or, at its option, settle any action, suit or proceeding against End User that is based upon a claim that End User's use of the Software infringes any patent, copyright or other intellectual property right of a third party, and will indemnify End User against any amounts awarded against End User as a result of the claim, suit or proceeding; provided that (a) Licensor is promptly notified of the assertion of the claim, suit or proceeding, (b) Licensor has sole control of its defense and/or settlement, and (c) End User provides reasonable assistance and cooperate in Licensor's defense and/or settlement, at Licensor's expense. Licensor's defense and indemnity obligations do not apply, and End User shall be responsible for the defense and/or settlement of any claims where (1) End User's use of the Software or Documentation is beyond the scope of license granted in this EULA or otherwise in violation of any of the terms or conditions set forth in this EULA or any terms, policies or information referenced or to which a link has been provided in this EULA, (2) End User modified or created derivative works from the Software or Documentation, (3) End User used an outdated and infringing version of the Software or Documentation after release of a non-infringing version by Licensor, (4) End User used or combined the Software with any technology, software or hardware not supplied by Licensor, where the alleged infringement would not have occurred absent such use or combination, or (5) End User's use of the Evaluation Licenses or Free and Community Edition Licenses. In the event any such infringement action, suit, or proceeding is brought or threatened, Licensor will, at its sole option and expense: (i) procure for End User the right to continue the use of the Software or the allegedly infringing part thereof; or (ii) modify or amend or replace the same with other software or material having substantially similar functionality and performance.

11. Limited Warranty and Limitations of Liability

11.1. The purchase of the Software license (perpetual or subscription) is non-returnable and non-refundable. Licensor warrants that the Software, in its unmodified form as initially delivered or made available to End User, will perform substantially in accordance with the Documentation for such Software for a warranty period of ninety (90) days from the date the Software is delivered to End User (the "Warranty Period"). In the event the Software fails in a material respect to operate in accordance with the Documentation during the Warranty Period and Licensor is unable to correct the defect, Licensor's sole and exclusive liability and End User's sole and exclusive remedy shall be a refund of the license fees, if any, paid by You for the Software. All claims must be raised within the Warranty Period. The foregoing limited warranty will not apply to Evaluation Licenses or Free and Community Edition Licenses, that are provided "as is". In the event a reported problem with the Software is contributed to End User's fault and End User requests that Licensor works to resolve the problem, End User agrees to pay for such remediation efforts in accordance with Licensor's then-current rates.

11.2. For any Evaluation Licenses and Free and Community Edition Licenses in no event will Licensor be liable for any damages, for any claim or cause for any damages of any kind, including, without limitation, any direct, indirect, special, incidental, exemplary, statutory, punitive or consequential damages (including, without limitation, loss of profits, loss of use or data, damage to systems or equipment or business interruption). End User is not entitled to any defense, indemnification, or warranty protection for licenses granted pursuant to Section 11.1.

11.3. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 11.1, THE SOFTWARE AND MAINTENANCE ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE SOFTWARE IS FREE OF DEFECTS, WILL BE UNINTERRUPTED, IS MERCHANTABILITY, OR FIT FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR OR ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY LICENSOR DISTRIBUTORS OR RESELLERS, SHALL CREATE ANY WARRANTY IN ADDITION TO, OR IN ANY WAY INCREASE THE SCOPE OF, THIS LIMITED WARRANTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL USE OF THE ASSISTANT BY END USER OR ANY OF END USER'S PERSONNEL SHALL BE AT END USER'S SOLE RISK.

11.4. IN NO EVENT WILL LICENSOR OR ANY OF ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, STATUTORY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF USE OR DATA, DAMAGE TO SYSTEMS OR EQUIPMENT, BUSINESS INTERRUPTION OR COST OF COVER) IN CONNECTION WITH OR ARISING OUT OF THE DELIVERY, PERFORMANCE OR USE OF THE SOFTWARE (INCLUDING THE ASSISTANT) OR ANY OTHER MATERIALS OR MAINTENANCE PROVIDED BY LICENSOR UNDER THIS EULA, WHETHER ALLEGED AS A BREACH OF CONTRACT CLAIM OR AS ANOTHER TYPE OF CLAIM, INCLUDING, WITHOUT LIMITATION, CLAIMS FOR UNJUST ENRICHMENT, UNFAIR COMPETITION OR BUSINESS PRACTICES, OR OTHER TORTIOUS CONDUCT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S MAXIMUM AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS EULA, INCLUDING, WITHOUT LIMITATION, USE OF THE SOFTWARE (INCLUDING THE ASSISTANT) OR ANY OTHER MATERIALS OR MAINTENANCE PROVIDED BY LICENSOR UNDER THIS EULA, AND LICENSOR'S RELATIONSHIP WITH END USER SHALL NOT, IN ANY EVENT, EXCEED THE FEES PAID BY END USER FOR THE SOFTWARE DURING THE ONE (1) YEAR PERIOD PRIOR TO THE DATE THE APPLICABLE CAUSE OF ACTION AROSE.

11.5. NO ACTION ARISING OUT OF ANY ACTUAL OR ALLEGED BREACH OF THIS EULA OR TRANSACTIONS CONTEMPLATED BY THIS EULA MAY BE BROUGHT BY EITHER PARTY MORE THAN ONE (1) YEAR AFTER THE CAUSE

OF ACTION HAS ACCRUED. FOR PURPOSES OF THIS EULA, A CAUSE OF ACTION SHALL BE DEEMED TO HAVE ACCRUED WHEN A PARTY KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE BREACH OR CLAIMED BREACH.

12. Export Control

The parties will comply with all applicable export or import regulations and trade sanctions imposed by various countries, including the U.S., E.U., U.K., and U.N. Customer confirms that it is not included on any sanctions-related list of designated persons and is not organized under the laws of, resides in, or is controlled by any country or region subject to comprehensive sanctions or embargoes (currently, Belarus, Cuba, Iran, North Korea, Russia, Syria, and the Crimea, Donetsk, Kherson, Luhansk, and Zaporizhzhia regions of Ukraine). Without limiting the foregoing, Customer agrees that it will not export, re-export, or otherwise transmit the Software: (i) to any country or region subject to an embargo or comprehensive trade sanctions; (ii) to any individual or entity identified on any restricted party lists (including the Consolidated Sanctions, Specially Designated Nationals, Denied Persons, Entity, or Unverified Lists); or (iii) to any end user with knowledge or reason to know that the Software will be used for any unlawful purpose. Veeam reserves the right to block access to the Software for violations of this clause without prior notice.

13. United States Government Users

The Software licensed under this EULA is "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires the Software and/or Documentation subject to the terms of this EULA as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires the Software and Documentation subject to the terms of this EULA as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

14. Confidentiality

Each party agrees to maintain the confidentiality of all information disclosed by the other party in relation to the provision and use of the Software, designated as confidential or reasonably understood to be confidential due to the nature of the information and the circumstances of disclosure ("Confidential Information"). Confidential Information shall be used solely to fulfil obligations under this EULA and protected with no less diligence than that used for one's own confidential information but no less than reasonable care. This excludes information which is publicly known, received from third parties without breach, or independently developed. If legally compelled to disclose Confidential Information, the receiving party must notify the disclosing party promptly and cooperate with any effort to contest the disclosure. Upon termination of this EULA, Confidential Information must be returned or destroyed as directed by the disclosing party.

15. General

This EULA, together with the terms, policies and information referenced herein, sets forth Licensor's entire obligation and End User's exclusive rights as to the Software and Maintenance, and supersedes any conflicting terms of any purchase order and any other communication regarding the same. No failure of either party to exercise or enforce any of its rights hereunder will act as a waiver.

15.1. Severability. If any provision of this EULA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this EULA will not be affected.

15.2. Assignment. Neither party may assign or transfer this EULA, in whole or in part, without the other's prior written consent. Notwithstanding the foregoing, Licensor may, without End User's consent, assign the EULA to any of its affiliates, or to an entity who acquires all or substantially all of its business or assets, or in connection with a change in control of Licensor (through merger, consolidation, reorganization, operation of law or otherwise). Subject to the foregoing, this EULA is binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

16. Licensor Party

Kasten Inc., USA, licenses Veeam Kasten for Kubernetes and Veeam Software Group GmbH, Switzerland, licenses all other Software.

17. Governing Law and Jurisdiction

17.1. End User agrees that if End User licenses the Software from either of the entities below, any claim or dispute arising from or in connection with this EULA is governed by the corresponding laws without regard to its conflict of law principles and excluding the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act and End User consents to the exclusive jurisdiction of the specified courts:

a) Veeam Software Group GmbH- Switzerland; Canton of Zug, Switzerland;

b) Kasten Inc.- New York; federal or state courts of New York County, New York.