



Veristor Capital LLC  
 4850 River Green Parkway  
 Duluth, GA 30096

# Installment Payment Agreement

Agreement Number 110938 dated as of December 6, 2017

Customer Name and Address:  
 County of Gordon  
 201 North Wall Street  
 Calhoun, GA 30701

**Notice: Payee reserves the right to withdraw the terms of this Installment Payment Agreement and issue a modified Installment Payment Agreement without notice to Customer if Payee is not in receipt of a fully executed original or facsimile of this document within five (5) business days of the date of this Installment Payment Agreement. However, in that event, no such modifications will be binding on Customer unless and until Customer executes the modified document containing all such modifications.**

Customer is a City Government organized and existing under the laws of the State of Georgia

Re: VMware Horizon Software ("Product Agreement") between Customer and VMware, Inc. ("Licensor"), dated December 6, 2017

This INSTALLMENT PAYMENT AGREEMENT ("IPA") is entered into this 6th day of December 2017 by and between VERISTOR CAPITAL LLC ("Payee") and Customer. This IPA constitutes a discreet financing agreement, and is separate and distinct from the Product Agreement. Customer authorizes and requests Payee to remit the sum of \$ 22,800.00 (the "Loan Amount") to Licensor on account of Customer's payment obligations to Licensor under the above Product Agreement, and in consideration of remitting the Loan Amount, Customer unconditionally agrees to pay the following amounts, on or before the following dates, to the order of Payee:

<u>Payments</u>	<u>Due Dates</u>
4 Annual Payments of \$6,040.00	January 1, 2018, January 1, 2019, January 1, 2020, January 1, 2021

The Payments described above include interest at the rate of 4 percent per annum. This IPA may not be prepaid, in whole or in part, except that Customer may prepay this IPA, after the first-year anniversary of the initial payment detailed above, in full by paying to Payee an amount equal to the Payee's Loss, as defined in Section 8, below.

1. Payments Unconditional. If any payment due hereunder is not received within ten (10) days of its due date, Customer agrees to pay a late fee equal to the lesser of: (i) 5% of the past due amount or (ii) the highest amount allowed by law. CUSTOMER AGREES THAT ITS OBLIGATIONS TO MAKE PAYMENTS UNDER THIS IPA ARE ABSOLUTE AND UNCONDITIONAL AND SHALL NOT BE SUBJECT TO ANY ABATEMENT, SETOFF, CLAIM, COUNTERCLAIM, ADJUSTMENT, REDUCTION OR DEFENSE OF ANY KIND. NOTWITHSTANDING ANY PROVISIONS HEREOF, INTEREST, FEES AND OTHER CHARGES SHALL NOT EXCEED THE MAXIMUM RATE PERMITTED BY APPLICABLE LAW. Payee has not assumed and shall not be liable to perform any obligations of the Licensor.

2. Customer Representations. Customer represents, warrants and agrees that (i) it is a registered entity of the type set forth above duly organized, existing and in good standing under the laws of the State set forth above, (ii) that it will not change the type of entity that it currently exists as or its State of organization, (iii) that this IPA has been duly authorized and constitutes a legal, valid, binding and enforceable obligation of Customer, and that the execution, delivery and performance of this IPA will not violate or create a default under any law (including any applicable usury law), regulation, judgment, order, instrument, agreement or charter document binding upon Customer or its property, (iv) each signatory of this IPA has the authority to bind Customer to this IPA, (v) any and all information furnished to Payee is and will be true and correct in all material respects and prepared in accordance with generally accepted accounting principles (GAAP), (vi) it shall not permit the sale or transfer of any shares of its capital stock or of any ownership

**THIS AGREEMENT INCLUDES THE TERMS ON THE ATTACHED PAGE(S).**

Payee: VERISTOR CAPITAL, LLC

Customer: COUNTY OF GORDON

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

interest in the Customer to any person, persons, entity or entities (whether in one single transaction or in multiple transactions) which results in a transfer of a majority interest in the ownership and/or the control of the Customer from the person, persons, entity or entities who hold ownership and/or control of the Customer as of the date of this IPA; and (vii) it shall not consolidate with or merge into or with any other entity, or sell, transfer, lease or otherwise dispose of all or substantially all of Customer's assets to any person or entity. Customer shall promptly furnish to Payee such financial or other information regarding the condition and operations of Customer and any guarantor, and information regarding the Product Agreement, as Payee may from time to time request.

3. **Assignments by Payee.** This IPA shall inure to the benefit of Payee's successors and assigns, and Customer agrees that Payee may assign or grant a security interest in some or all of its rights under this IPA to a third party ("Assignee") without notice to or consent of Customer. CUSTOMER AGREES THAT UPON WRITTEN INSTRUCTION OF PAYEE, IT WILL MAKE PAYMENTS UNDER THIS IPA DIRECTLY TO ASSIGNEE WITHOUT ABATEMENT, SETOFF, CLAIM, COUNTERCLAIM, ADJUSTMENT, REDUCTION OR DEFENSE OF ANY KIND WHICH IT MAY HAVE AGAINST PAYEE OR OTHERWISE.

4. **No Warranties by Payee.** PAYEE MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE SOFTWARE OR ANY SERVICES, GOODS OR OTHER PRODUCTS COVERED BY THE PRODUCT AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. CUSTOMER WAIVES ANY CLAIM (INCLUDING ANY CLAIM BASED ON STRICT OR ABSOLUTE LIABILITY IN TORT) THAT IT MAY HAVE AGAINST PAYEE FOR ANY LOSS, DAMAGE (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF DATA OR SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGE) OR EXPENSE CAUSED BY THE SOFTWARE OR ANY SERVICES, GOODS OR OTHER PRODUCTS COVERED BY THE PRODUCT AGREEMENT, EVEN IF PAYEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, LOSS, EXPENSE OR COST. CUSTOMER ACKNOWLEDGES THAT PAYEE DID NOT SELECT, MANUFACTURE, DISTRIBUTE OR LICENSE THE SOFTWARE, GOODS OR OTHER PRODUCTS AND THAT CUSTOMER HAS MADE THE SELECTION OF SUCH SOFTWARE, GOODS OR OTHER PRODUCTS BASED UPON ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS ANY RELIANCE ON STATEMENTS MADE BY PAYEE OR ITS AGENTS. CUSTOMER'S OBLIGATION UNDER THIS IPA ARE COMPLETELY INDEPENDENT OF THE DELIVERY, PERFORMANCE OR QUALITY OF THE SOFTWARE OR ANY SERVICES.

5. **Transfer of Software Products.** In consideration of and to secure Customer's full and timely payment of its obligations hereunder, Customer irrevocably transfers and grants Payee a license and right, which Payee may avail itself of after an Event of Default, in all of Customer's rights to use the software, goods or other products and receive the services covered under the Product Agreement ("Software Products"), and to suspend, cancel and/or terminate Customer's license for such software, goods or other products and rights to receive such services. This is a present grant to Payee, but may be acted upon by Payee only after an Event of Default. Customer and Payee each acknowledge that Payee's rights to use and receive the Software Products may be subject to the provisions of the Product Agreement and rights of the software licensor, but, as between Customer and Payee, after an Event of Default and upon Payee's written exercise of its rights hereunder, there shall be a total relinquishment of Customer's rights in the Software Products to Payee.

6. **Security Interest.** In further consideration of Payee funding the Loan Amount or any part thereof, and to further secure Customer's full and timely payment and performance of its obligations hereunder, Customer hereby assigns over to and grants to Payee a continuing security interest in all of the following property, whether now owned or hereafter acquired by Customer: the Product Agreement including, without limitation, the licenses granted thereunder, all rights to payment thereunder, including, without limitation, all rights to any refund, indemnification, and/or abatement to which Customer is, or becomes entitled, no matter how or when arising, whether such rights are classified as accounts, general intangibles, or otherwise, and all products and proceeds of any of the foregoing, and all of Customer's right, title and interest in the Software Products (collectively, the Collateral"). Customer shall execute and deliver to Payee such instruments and shall do all such things from time to time hereafter as Payee may request to carry into effect the provisions and Intent of this IPA, to protect and perfect Payee's security interest in and to the Collateral, and to comply with all applicable statutes and laws. Contemporaneously with the execution of this IPA, Customer shall execute all such documents and instruments as may be required by Payee with respect to the perfection of the security interests granted herein. Customer hereby authorizes Payee to file any and all financing statements and take all other steps necessary to perfect the grant of such security interest and to maintain perfection thereof under the Uniform Commercial Code and other applicable laws. In addition to all other rights and remedies of a secured creditor, and without limitation of any other provisions of this IPA, upon an Event of Default, Payee shall have the right to do each of following: (a) take possession of the Software and (b) require Customer to assemble the Collateral and make it available to Payee at a place to be designated by Payee.

7. **Events of Default.** Any of the following shall constitute an "Event of Default": (i) Customer fails to pay any installment or other amounts payable hereunder within ten (10) days of when due; (ii) any representation or warranty made by Customer under this IPA proves to be false in any material respect; (iii) Customer fails to comply with any of its covenants or agreements set forth in this IPA (or in any other agreement with Payee or its assignee) and such failure is not cured within 10 days after Payee's written notice to Customer; (iv) Customer's license to use any software component of the Software Products is canceled, terminated, suspended or materially restricted or limited; (v) there is a material adverse change in Customer's or any guarantor's financial condition since the date of this IPA; (vi) Customer ceases doing business as a going concern, or becomes insolvent, or makes an assignment of assets for the benefit of creditors; (vii) any receiver, trustee or similar officer is appointed for Customer or for any or all of its property; or (viii) any bankruptcy, reorganization, rescheduling of debt, liquidation or similar proceeding is instituted by or against Customer or its property.

8. **Payee's Remedies.** Should an Event of Default occur, then without notice to Customer or any other party: (a) Payee may declare immediately due and payable (as liquidated damages and not as a penalty) the sum of (i) all accrued and unpaid Installment

Payments then due, (ii) all remaining Installment Payments and other sums scheduled to become due, discounted to present value calculated using the simple interest method and the Discount Rate, and (iii) any accrued late charges and costs of collection (the foregoing items (i), (ii) and (iii) being collectively, the "Payee's Loss"); (b) Payee may cancel, terminate, or cause the cancellation and/or termination of all licenses for Software Products granted to Customer, and may further cancel, terminate, suspend or withhold or cause the cancellation, termination, suspense or withholding of Software Products; (c) Payee may exercise any rights under the Product Agreement which have been granted to Payee by Licensor; (d) Payee may exercise the transfer of rights in Software Products, as provided in Section 5; and (e) Payee may exercise any other remedies available under the law or in equity. Upon Payee's instructions after an Event of Default, Customer agrees to immediately cease using the Software Products, to deinstall and delete all copies of licensed Software Products from any computer systems owned or controlled by Customer or used for Customer's benefit, deliver to Payee or at Payee's request, destroy all written manuals and materials provided with the Software Products, and provide Payee with a certificate signed by a Customer officer who is responsible for Customer's information systems, attesting to such cessation of use and maintenance, deinstallation, deletion, delivery and destruction. Payee or its designees will have full and unrestricted access to Customer's records, computer systems, service provider systems (if any) and facilities to verify Customer's cessation of use, deinstallation, deletion and destruction. Payee's remedies shall be cumulative, may be exercised concurrently or successively, and may be specifically enforced. In the event that the amounts due hereunder are declared to be immediately due and payable, Customer shall pay the amounts due in accordance with this Section 8 upon demand. Customer shall pay interest on such amounts on a per diem basis from the date of declaration until paid in full at a rate equal to the lesser of 1.5% per month or the highest rate permitted by law. As used herein, "Discount Rate" means (i) the rate set forth for the United States Treasury Bond or Note having the closest term to (but not longer than) the original term hereof, as set forth in the Wall Street Journal two business days prior to the date hereof, (ii) the rate set forth for the United States Treasury Bond or Note having the closest term to (but not longer than) the remaining term hereof, as set forth in the Wall Street Journal two business days prior to the date of calculation of the amounts due hereunder, or (iii) 3%, whichever is lowest. If a rate referred to in the preceding clauses "(i)" or "(ii)" is not published in the Wall Street Journal, such rate shall be taken from a reputable source selected by Payee. In the event Payee shall take any action for the enforcement of this IPA or for collection of any amount due hereunder, there shall be immediately due from Customer, in addition to the amounts due above, all costs and expenses incurred by Payee, including reasonable attorneys' fees.

9. **Miscellaneous.** No delay or omission by Payee in its exercise of any right shall operate as a waiver thereof. All remedies are cumulative and non-exclusive. Payee shall not be required to re-license, lease, transfer or use the licensed software in mitigation of damages hereunder. All obligations of Customer under this IPA shall survive any termination of the licenses. Time is of the essence with regard to the performance by Customer of its obligations hereunder. Any transfer or assignment of Customer's obligations under this IPA shall require Payee's prior written consent. A transfer shall include a change in majority ownership or control of Customer. Customer agrees to promptly execute any ancillary documents and take further actions as Payee may reasonably request, including, but not limited to, assignment notifications and certificates of authorization. Customer agrees to provide Payee copies of Customer's balance sheet, income statement and other financial reports as Payee may reasonably request. This IPA shall constitute the complete and entire agreement of Customer and Payee with respect to the payment of license and services fees, and supersedes all prior oral or written understandings. No term or provision of this IPA may be amended, waived, discharged or terminated except by a written instrument signed by Customer and Payee. Wherever possible, each provision of this IPA shall be interpreted as effective and valid under applicable law. If any provision of this IPA is prohibited or invalid under any applicable law, the provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this IPA. Section captions are included for convenience of reference only and shall not define or limit, or be used to construe any of the terms or provisions hereof

10. **Enforcement.** This IPA has been delivered to Payee in Duluth, GA and will be governed and construed in accordance with the laws of the State of New York. Customer and Payee each WAIVES ANY RIGHT TO A TRIAL BY JURY in any action arising from or related to this IPA; Customer (i) irrevocably submits to the jurisdiction of any state or federal court located in Gwinnett County, Georgia, over any action arising from or related to this IPA; (ii) irrevocably waives any defense of an inconvenient forum to the maintenance of any such action or proceeding; (iii) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other; and (iv) agrees not to institute any legal action or proceeding against Payee or its directors, officers, employees, agents or property, concerning any matter arising out of or relating to this IPA in any court other than one located in Gwinnett County, Georgia.



## STATE AND LOCAL GOVERNMENT ADDENDUM

### AGREEMENT #110938

Addendum to Agreement #110938 dated December 6, 2017 between County of Gordon as Customer and VeriStor Capital, LLC, as Lessor.

The parties wish to amend the above-referenced Agreement by adding the following language:

**REPRESENTATIONS AND WARRANTIES OF CUSTOMER:** You hereby represent and warrant to us that: (a) you have been duly authorized by the Constitution and laws of the applicable jurisdiction and by a resolution of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (b) all legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement; (c) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (d) the Equipment will be used by you only for essential governmental or proprietary functions of you consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (e) you have funds available to pay contracted Payments until the end of your current appropriation period, and you intend to request funds to make contracted Payments in each appropriation period, from now until the end of the term of this Agreement; and (f) your exact legal name is as set forth on page one of this Agreement.

**NON-APPROPRIATION OR RENEWAL:** If either sufficient funds are not appropriated to make contracted Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed, this Agreement shall terminate and you shall not be obligated to make contracted Payments under the Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which contracted Payments have been appropriated, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of contracted Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after your failure to appropriate funds sufficient for the payment of the contracted Payments or (to the extent required by applicable law) this Agreement is not renewed, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to you.

**TITLE TO THE EQUIPMENT:** If the selected purchase option for this Agreement is \$1.00 or \$101.00, unless otherwise required by law, upon your acceptance of the Equipment, title to the Equipment shall be in your name, subject to our interest under this Agreement.

The parties wish to amend the above-referenced Agreement by restating the following language:

Any provision in the Agreement stating this Agreement supersedes any invoice and/or purchase order is hereby amended and restated as follows: "You agree that the terms and conditions of the Agreement and any supplement or schedule thereto and any related acceptance certificate constitutes the entire agreement regarding the financing or lease of the Equipment and supersedes any purchase order, invoice, request for proposal or other related document."

Any provision in the Agreement stating that the Agreement shall automatically renew unless the Equipment is purchased, returned or a notice requirement is satisfied is hereby amended and restated as follows: "This Agreement will renew for month-to-month terms unless you purchase or return the Equipment (according to the conditions herein) or send us written notice at least 30 days (before the end of any term) that you do not want it renewed."

Any provision in the Agreement stating that we may assign this Agreement is hereby amended and restated as follows: "We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent."

Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby amended and restated as follows: "To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement, and you authorize us to file a UCC-1 financing statement or be named on the vehicle title to show our interest."

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: "You shall not be required to indemnify or hold us harmless against liabilities arising from the Agreement. However, as between you and us, and to the extent permitted by law and legally available funds, you shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of the Agreement to us or that arise directly from our gross negligence or willful misconduct."

Any provision in the Agreement stating that a default by you under any agreement with our affiliates or other lenders shall be an event of default under the Agreement is hereby amended and restated as follows: "You will be in default if: (i) you do not pay any Payment or other sum due to us under the Agreement when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement, (ii) you make or have made any false statement or misrepresentation to us, (iii) you dissolve, terminate your existence or file bankruptcy, or (iv) there has been a material adverse change in your financial, business or operating condition."

Any provision in the Agreement stating that you shall pay our attorneys' fees is hereby amended and restated as follows: "In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay, to the extent permitted by law and to the extent of legally available funds, our reasonable attorneys' fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee."

Any provision in the Agreement requiring you to pay amounts due under the Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew the Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

Any provision in the Agreement stating that the Agreement is governed by a particular state's laws and you consent to such jurisdiction and venue is hereby amended and restated as follows: "This Agreement will be governed by and construed in accordance with the laws of the state where you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum."

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor to make such changes. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

**VERISTOR CAPITAL, LLC**  
\_\_\_\_\_  
Lessor  
  
\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Title  
Date

**COUNTY OF GORDON**  
\_\_\_\_\_  
Customer  
**X**  
\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Title  
Date



VERISTOR CAPITAL, LLC

ACKNOWLEDGEMENT OF ASSIGNMENT

Installment Payment Agreement Dated: December 6, 2017

Assignee: U.S. Bank Equipment Finance, a division of U.S. Bank National Association

Installment Payment: \$6,040.00

Address: 1310 Madrid Street Marshall, MN 56258

Term: 4 Annual

- 1. You acknowledge and agree, with respect to the referenced Installment Payment Agreement (the "IPA") between you and VeriStor Capital, LLC ("VeriStor Capital"), that
A. The IPA, as it incorporates the terms of the Service Agreement, constitutes the entire agreement regarding the services.
B. The IPA is in full force and effect and VeriStor Capital is not in default.
C. The Term of the IPA and the Installment Payment are correctly stated above.
D. You have not prepaid any of the Installment Payments.
2. You are hereby notified that VeriStor Capital has assigned to the Assignee identified above VeriStor Capital's right, title and interest in and to the Installment Payment Agreement. With respect to that assignment, you acknowledge and agree that:
A. You will pay to the Assignee, without deduction or set-off, all Installment Payments (plus any applicable taxes) for the Term of the IPA, unless otherwise indicated on the IPA to pay the first Installment Payment to VeriStor Capital.
B. The Assignee has not assumed any of VeriStor Capital's obligations under the IPA, and you will look to VeriStor Capital, not the Assignee, for the performance of such obligations and not assert against the Assignee any defense, set-off, recoupment, claim or counterclaim you have against VeriStor Capital.

COUNTY OF GORDON (Customer)

By: \_\_\_\_\_ Authorized Signature

\_\_\_\_\_  
Name (Type or Print) Title

\_\_\_\_\_  
Date



VERISTOR CAPITAL, LLC

OFFICER'S CERTIFICATE

Name of Corporation: COUNTY OF GORDON Name of Officer: \_\_\_\_\_  
Corporation Address: 201 North Wall Street Officer Title: \_\_\_\_\_  
Calhoun, GA 30701  
Signature of Officer \_\_\_\_\_

I certify that I am an Officer of the Corporation, that I have access to the original records of the Corporation, and that the Officer identified above holds the office specified above, and in that capacity, the Officer is authorized to execute, on behalf of the Corporation, leases, installment sales contracts, guarantees, promissory notes, security agreements, installment payment agreements and service agreements, together with any and all related documents, in connection with the financing of services or equipment from Veristor Capital, LLC. These documents will be in such form and contain such terms, as the Officer shall approve such approval to be conclusively evidenced by the Officer's signature.

**THIS CERTIFICATE NEEDS TO BE SIGNED BY AN OFFICER OTHER THAN THE ONE IDENTIFIED ABOVE.**

COUNTY OF GORDON

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name (Type or Print) Title