

## **BROADCOM VMWARE PASS-THROUGH TERMS**

By purchasing Broadcom, Inc. or its applicable affiliate ("**Broadcom**") products from TD SYNEX Corporation in the U.S. or its subsidiary TD SYNEX Canada ULC in Canada (together "**TD SYNEX**"), the entity purchasing products from TD SYNEX ("**Buyer**") agrees to these Broadcom VMware Pass-Through Terms ("**Pass-Through Terms**"). Except as modified herein, Buyer's purchase of Broadcom Offerings is governed by TD SYNEX's Terms of Sale, available at <https://www.tdsynex.com/us/en/terms-and-conditions.html> ("**Terms of Sale**"). If there is a conflict between these Pass-Through Terms and the Terms of Sale, these Pass-Through Terms shall control. Deal specific special terms will be provided on the quote ("**Special Terms**"). By placing an order pursuant to the quote, Buyer is agreeing to the Special Terms.

### **1. Definitions.**

- a) "**Broadcom Offering**" means the VMware branded Software, SaaS, appliances, education, and any other offering or service which Broadcom makes generally available to its partners.
- b) "**Documentation**" means the documentation, technical product specifications and/or user manuals, published and made generally available for Broadcom Offerings.
- c) "**End User**" means end user that is granted the right to use the Broadcom Offering for its internal use subject to the restrictions set forth herein.
- d) "**End User Agreement**" means collectively the terms governing the End User's use of the Broadcom Offering located at: <https://www.vmware.com/agreements.html> including support terms, the Specific Program Documentation (the "SPD") and SaaS Listing(s) applicable to the Broadcom Offering.
- e) "**Marks**" means the trademarks, service marks, logos, certifications, designations and insignias of Broadcom, Inc., a Broadcom company, and its affiliates.
- f) "**Buyer Portal**" means the website Broadcom manages (currently <https://partnerportal.broadcom.com/>) that defines the specific programs available to its partners, including policies, links and information that apply to the partner programs which are referenced in these Pass-Through Terms and includes the segments of the website which is specific to the applicable Buyer.
- g) "**Public Sector**" or "**Government End User**" means any country, state, county, city or local government bodies or agencies, including judiciaries, legislatures and departments created and or funded by any of the foregoing governmental funds. With respect to the United States government, a Public Sector End User means the United States government, including legislative, judicial and executive branches, any US Government agency or corporation that was formed by and is currently existing and operating pursuant to an act of Congress, as well as any US Government owned contractor operated facility.

### **2. Buyer Affirmation.** Buyer affirms:

- a) it has a written agreement with the End User for the sale of the Broadcom or Offering(s) identified in the applicable quote; such that the End User is contractually bound and agrees in writing that End User's use of the Broadcom Offering(s) shall be subject to the End User Agreement;
- b) the End User has agreed to pay Buyer an agreed upon fee for the Broadcom Offering(s);
- c) Buyer shall ensure information relating to license type, Authorized Use Limitations and other Broadcom Offering related information set forth herein is provided to the End User; and
- d) in furtherance of your contractual and legal obligation to strictly comply with U.S. law relating to export, re-export, and transfer, and to the extent required by law, Buyer understands that TD SYNEX will not accept and Buyer agrees not to submit orders from (a) customers who are military end users of China, Russia or Venezuela for products with ECCN starting with 5D992, or (b) Broadcom, TD SYNEX, Buyer, or End User reasonably knows the Broadcom Offerings are intended or likely to be transferred or resold to such end users; and
- e) Broadcom Offerings will be sold to End Users in the U.S. or Canada as applicable.

### **3. Payment.** Failure to timely remit payment of all amounts set forth in the Payment Schedule after written notice by TD SYNEX and a reasonable opportunity to remit such payment by Buyer, to the maximum extent permitted by applicable law, shall relieve Broadcom of any and all support obligations hereunder and Buyer rights to resell licensed usage rights to the End User may be suspended until payment is tendered at which time use rights shall recommence.

### **4. US Government Restricted Rights.** Any Broadcom Offering provided to the U.S. Government (or any of its agencies) shall be provided with "Restricted Rights" and Buyer shall affix (if not already affixed) to any media containing all or any portion of the Broadcom Offering a restricted rights legend substantially similar to the following: "This offering is provided with Restricted Rights as defined in the United States Federal Acquisition Regulations. Use, duplication or disclosure by the Government is subject to the restrictions set forth in DFARs 252.227-7013 (c) (1) (ii) and 48 CFR 52.227-19 (c) (1) and (2) or applicable successor provisions.

### **5. Marketing.**

- a) Buyer will bear its own cost for marketing unless otherwise provided in these Pass-Through Terms. Buyer shall be responsible for the preparation and response to its resellers and End User's requests (to the extent authorized by Broadcom) for proposals, technical questions, questionnaires, and related End User inquiries. Broadcom may make available to Buyer supporting resources via the Broadcom Buyer Program.
- b) To the extent authorized by Broadcom on the Buyer Portal, Buyer is authorized to use the Marks and marketing materials provided by Broadcom in relation to the Broadcom Offerings during the Term of these Pass-Through Terms, in accordance with the then-current Broadcom marketing and trademark usage policies set forth on the Buyer Portal as may be updated from time to time.
- c) Broadcom and/or TD SYNEX reserves the right to require Buyer to discontinue use of any advertising or marketing materials relating to Broadcom or the Broadcom Offering that Broadcom reasonably believes are inappropriate and/or may have a detrimental effect on the Broadcom's business. Upon termination of these Pass-Through Terms, Buyer agrees to cease all display, advertising and use of any and all Marks and trade names. Buyer recognizes the ownership and title of Broadcom and its licensors (as appropriate) to the trade names and Marks and the goodwill attaching to the trade names and Marks. Buyer agrees that any goodwill that accrues because of its use of the trade names and/or Marks belongs to Broadcom or its licensor (as appropriate). Buyer agrees that if it contests the Marks or trade names, or makes application for registration of any Marks or trade names without Broadcom's prior written consent, Broadcom shall be entitled to terminate these Pass-Through Terms immediately upon written notice to Buyer. Buyer agrees not to use, employ or attempt to register any Marks or trade names that are confusingly similar to the Marks or trade names.

- d) Buyer shall not attach, remove or disfigure any Marks on the Broadcom Offerings and shall not attach any additional Marks or other marks to the Broadcom Offerings except as otherwise agreed in writing by Broadcom in advance. Buyer shall not attach the Marks to any products other than the respective Broadcom Offering. Buyer agrees not to alter or remove or obscure any copyright or other proprietary notices on or in the Broadcom Offering or related documentation or materials including Buyer translations of such materials. Broadcom may from time to time use other or additional Marks with respect to any Broadcom Offering. The provisions of these Pass-Through Terms governing Buyer's use of the Marks shall also apply to such other Marks.
- e) Buyer agrees to participate in reference activities. References will be based upon Buyer's experience with Broadcom Offerings. Broadcom can provide a selection of reference activities to select from (including success stories, logo usage, speaking engagements, name drops, social media posts, peer discussions). Individual reference activities and collateral are at the Buyer's discretion and will be presented to Buyer for review and approval prior to publication.
- f) Buyer shall have and use throughout the Term a marketing automation system, which includes a process for lead management.

## 6. Compliance Rules.

- a) Buyer shall, at its own expense, comply with all statutes, regulations, rules, ordinances, and orders of any governmental body, department or agency which apply to or result from its obligations under these Pass-Through Terms. The foregoing notwithstanding, it is understood that Broadcom's Offerings are developed for a global audience. Accordingly, it is the Buyer's responsibility to assess the applicability of any local statutes, regulations, rules, ordinances, and orders of any governmental body, department or agency prior to executing any transaction document hereunder.
- b) In particular, Buyer shall comply with the following: US Foreign Corrupt Practices Act, as if it directly applied to Buyer; local laws on prevention of bribery in the country in which Buyer carries on its business; the OECD Convention on Combating Bribery of Foreign Public Official in International Business Transactions; Broadcom's then-current rules and policies, including, but not limited to, Broadcom's Code of Conduct, which is posted at <https://investors.broadcom.com/static-files/3fae5e73-6bcd-438d-83cc-29d62c01830d>; and international accounting standards.
- c) Buyer represents and warrants on a continuing basis that: (i) neither it nor anyone acting on its behalf has made or shall make any payments (or promises of payments) or otherwise give anything of value (directly or indirectly) to any entity with whom it is conducting business on behalf of Broadcom in an attempt to obtain or retain business or otherwise obtain an improper advantage; and, (ii) neither it nor anyone acting on its behalf is a government official or a family member of a government official (as defined by anti-corruption laws) who may be in a position in his/her role to influence the business of Buyer as it relates to that government. Buyer as it relates to this section also includes Buyer's owners, directors, officers, employees or its agents.
- d) Buyer shall (i) avoid deceptive, misleading or unethical practices (ii) refrain from making any false or misleading representations with regard to Broadcom or the Broadcom Offering; and (iii) refrain from making any representations, warranties or guarantees with respect to the specifications, features or capabilities of the Broadcom Offering that are inconsistent with the literature distributed by Broadcom.
- e) Buyer agrees that under no circumstances will Broadcom be bound to honor or observe any form of agreement, arrangement or understanding, whether in writing or not, entered into by any person, whether or not an employee of Broadcom, which purports to add to or vary any of Broadcom's obligations under these Pass-Through Terms, other than an agreement or arrangement entered into in writing and signed by an official signatory of Broadcom ("side agreements"). Such side agreements will be deemed void and of no effect.
- f) In order to maintain Buyer appointment, Buyer must comply with all organizational conflict of interest, anti-kickback, and other provisions of law applicable to transactions including those relating to a Public Sector or to Government End Users. In addition, Buyer is solely responsible for properly disclosing any actual or perceived conflicts of interest and other required information to purchasers or potential purchasers in connection with Buyer's marketing and sales activities.
- g) If Buyer provides any Broadcom Offering to a Public Sector or Government End Users, for any cost reimbursement type contract, GSA Federal Supply Schedule contract, or other agreement in which Buyer has an obligation to disclose, notify, or provide the government with any rebates, discounts, credits, etc. that it receives under the Broadcom Buyer Program or otherwise, Buyer agrees that it shall comply and be solely responsible for fulfilling this obligation.

7. **Intellectual Rights.** Nothing in these Pass-Through Terms will (i) preclude Broadcom from using the ideas, concepts and know-how which are developed in the course of providing any Broadcom Offerings to Buyer or (ii) be deemed to limit Broadcom's rights to provide similar Broadcom Offerings to other End Users. Buyer agrees that Broadcom may use any feedback provided by Buyer and its End User(s) related to any Broadcom Offering for any Broadcom business purpose, without requiring consent including reproduction and preparation of derivative works based upon such feedback, as well as distribution of such derivative works.

## 8. Title of Broadcom Offerings.

- a) Nothing in these Pass-Through Terms will (i) preclude Broadcom from using the ideas, concepts and know-how which are developed in the course of providing any Broadcom Offerings to Buyer or (ii) be deemed to limit Broadcom's rights to provide similar Broadcom Offerings to other End Users. Buyer agrees that Broadcom may use any feedback provided by Buyer and its End User(s) related to any Broadcom Offering for any Broadcom business purpose, without requiring consent including reproduction and preparation of derivative works based upon such feedback, as well as distribution of such derivative works.
- b) Buyer agrees not to de-compile, reverse engineer, reverse compile, modify, translate or perform any similar type of operation on any Broadcom Offering, in any fashion or for any purpose whatsoever. Buyer also agrees that any such works are derivative works and as such are the sole and exclusive property of Broadcom or its licensors, as appropriate.

9. **Third Party Terms.** In the event that the Broadcom Offering contains third-party software components, additional terms, notices and/or information that may be applicable to such third-party software components may be found in the Documentation accompanying the Broadcom Offering (e.g., a user manual, user guide, or readme.txt or notice.txt file), and/or at <https://support.ca.com/prodinfo/tpterms> or as such other url as Broadcom may notify Buyer from time to time.

10. **Term for Convenience.** Excluding transactions for VMware End User Computing offerings, Buyer (upon approval from Broadcom) may terminate an End User's Order, provided that the End User directly and through each of its partners also terminates each and all other agreements (directly or indirectly through any partner, and whether or not related to these Pass-Through Terms) under which the End User may procure any VMware offering (excluding any hardware offerings and associated support contracts therefor), together with each and all orders (however titled) in effect between the parties as of the date of termination, except in the case of VMware where only those orders entered into after November 21, 2023 need to be terminated (collectively, the "**Agreements**"), without cause and without further charge or expense at any time, immediately upon written notice of End

User's and each affected partner's direction to terminate its rights, to be sent in accordance with the applicable notice provision under this Agreement and to VMware at [usage.reporting@broadcom.com](mailto:usage.reporting@broadcom.com). On or after the termination date, with the exception of any Fully Paid-Up perpetual licenses (where the amount of "Fully Paid Up" licenses will equal the total whole number of licenses earned prior to the termination and are assumed to be paid for equally over the initial term of the associated Support Services) Buyer shall instruct End User to either: a) delete all full or partial copies of the VMware and CA software from all computing or storage equipment and verify such deletion in a statement signed by a Vice-President or a duly authorized representative and sent to [usage.reporting@broadcom.com](mailto:usage.reporting@broadcom.com), or b) return to VMware all full or partial copies of the VMware software. Upon VMware's receipt of an End User's verification or the VMware software copies are received by VMware, Buyer shall receive a pro-rata refund of any license, SaaS/Cloud Service, Support Service, or other fees Buyer pre-paid to VMware ("**Refund Fees**") in accordance with the paragraph below. Refund Fees will be calculated on the number of days remaining in the term (which for the purposes of this calculation will be deemed to commence from the date End User's verification or the VMware software copies are received) of the offering eligible for the refund. If the VMware software is licensed as a perpetual license and the associated Support Services is in its initial term, End User, or Buyer as appropriate, will receive a pro-rated refund of the cash consideration paid to VMware based on the initial payment schedule and End User shall be entitled to keep the whole number of perpetual licenses Fully Paid-Up through such date, absent language to the contrary in the applicable Order. Notwithstanding the foregoing paragraph, if the Agreements are terminated without cause, neither VMware nor Buyer shall have further obligations under the Agreements as to the applicable End User, except that the parties shall remain bound by the surviving obligations in the Agreement. The invoicing or reimbursement of fees will be processed as appropriate and under the commercial terms set out under the Agreements. Any unpaid fees reflecting the VMware offerings delivered prior to the termination date shall become immediately due. Refund Fees will be paid within sixty (60) days from the receipt of End User's verification or the software copies and TD SYNnex's receipt of Refund Fees from Broadcom. Buyer will process the invoicing or reimbursement of fees to End User, as appropriate and under the commercial terms between Buyer and the relevant End User. **Buyer shall ensure the terms of this Section are flowed down to the End User.**

#### 11. Warranty.

- a) Buyer understands and agrees that where applicable, any hardware equipment or third-party software supplied by Broadcom shall be supplied on an "as is basis" and the warranties or other license terms thereto shall be made available by the original manufacturer of such hardware or third-party software. Broadcom shall not, in any way, be liable for the said hardware or third-party software.
- b) THE ABOVE WARRANTY IS THE SOLE WARRANTY PROVIDED BY BROADCOM. TO THE EXTENT PERMITTED BY LAW NO OTHER WARRANTIES, INCLUDING THAT THE BROADCOM OFFERING IS ERROR FREE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, CORRESPONDENCE TO THE DESCRIPTION, NONINFRINGEMENT, OR SUITABILITY AND/OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY BROADCOM OR ITS SUPPLIERS.

#### 12. End User Flow-Through Terms. Buyer shall ensure the following terms are flowed down to the End User.

- a) End User acknowledges and agrees that Broadcom will process Personal Data as part of the provision of the Broadcom Offerings in accordance with Broadcom's Privacy Policy located at: <https://www.broadcom.com/company/legal/privacy>. End User hereby authorizes Broadcom to make necessary transfers of Personal Data and that any Broadcom Affiliates and subcontractors may process such Personal Data for the purposes of providing the Broadcom Offering contemplated under the End User Agreement. Broadcom complies with the provisions of the General Data Protection Regulation ("**GDPR**"), and/or the Swiss Federal Data Protection Act and/or other applicable local legislation, with respect to such transfers. Where Broadcom is a processor for End User under the GDPR, and/or the Swiss Federal Data Protection Act and/or other applicable local legislation, Broadcom's processing shall be subject to and in accordance with Broadcom's global Data Processing Addendum ("**DPA**"), including the relevant Standard Contracting Clauses ("**SCC**") located at: <https://www.broadcom.com/company/legal/privacy/data-transfers> for international data transfer incorporated therein. End User has been advised that during the term of this Order Broadcom will collect Personal Data and process it as a Controller pursuant to the Privacy Policy and to the extent permitted by GDPR, and/or the Swiss Federal Data Protection Act and/or other applicable local legislation.
- b) End User understands that Broadcom may migrate a previously licensed software (the "**Original Product(s)**") to a new software product (the "**Migrated Product(s)**"). It is the End User's responsibility to understand which products herein may be migrated products. Any migrated products are provided in consideration of Original Product(s) being terminated. End User shall cease using and de-install the Original Product(s) following a transition period not to exceed ninety (90) days, as of the date of receipt of the Migrated Product(s); The Migrated Product(s) are subject to the Agreement, the Specific Program Documentation (the "**SPD**") applicable to the Broadcom Software and Maintenance, located at Broadcom's website address at <https://www.broadcom.com/licensing> and this transaction document including all financial obligations relating to the Original Product(s) which remain valid and enforceable and are applicable to the Migrated Product(s). Prior to signature of this Order, End User should ensure it understands the migration for the products licensed herein. Execution of this order shall constitute acceptance of such migration and shall also constitute a representation and warranty by End User that it has reviewed and fully understands same. Migration path for licensed products can be obtained at <https://www.broadcom.com/docs/product-migration>.
- c) End User understands that Broadcom may either (i) stabilize software in which no future enhancements, versions, releases, development, or service packs are planned, or (ii) the software may be end of life or a particular version is end of service in which Broadcom will no longer provide (a) operational or technical support and (b) develop and provide new enhancements, features, upgrades, service packs, and fixes for the software offering (the "Software Support Availability"). Prior to acceptance of this Order, End User should ensure it understands the support for the products licensed herein. Acceptance of this order shall constitute acceptance of such support and shall also constitute a representation and warranty by End User that it has reviewed and fully understands same. Software Support Availability for licensed products can be obtained at <https://www.broadcom.com/docs/end-of-support>.
- d) Neither Broadcom nor End User may assign the End User Terms or any of its rights or delegate any of its duties under the End User Terms, either by operation of law, agreement, or any other process, without the prior written consent of the other party, except that Broadcom shall have the right to assign the End User Terms or any of its rights or delegate any of its duties under the Agreement at any time to any Broadcom Affiliate(s), or to a successor in interest of all or substantially all of the business to which the End User Terms relate. Subject to the foregoing, the End User Terms will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and assigns. Any attempted assignment in violation of this section shall be null and void. "**Affiliate**" shall mean any person or entity which directly or indirectly owns, controls, is controlled by, or is under common control with a party, where control is defined as owning or directing more than fifty percent (50%) of the voting equity securities or a similar ownership interest in the controlled entity.
- e) Broadcom is authorized to use the End User trademarks, service marks, logos, certifications, designations and insignias in connection with press and earnings releases. In addition, CA is authorized to use a specific designation (such as preferred business partner etc.) it may have in describing its relationship to End User.