

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

By purchasing Broadcom, Inc. or its applicable affiliate ("**Broadcom**") products in the United States from TD SYNEX Corporation ("**Distributor**"), 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.

### **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) "**Marks**" means the trademarks, service marks, logos, certifications, designations and insignias of Broadcom, Inc., a Broadcom company, and its affiliates.
- e) "**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.
- f) "**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 Terms (defined below);
- 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.

### **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 Distributor 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 honour 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. 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.