

## **VMware (by Broadcom) Pass-Through Terms and Conditions**

- 1. Annual Increases:** During the term for Broadcom offerings above, Broadcom may increase the fees hereunder for such offerings up to 10% annually by providing Customer with advance notice including through pricing notices posted at Broadcom support site no less than 90 days prior to such changes taking place but in no event will Broadcom purport to effect a price change while in any particular calendar year (i.e., price changes will only be effective on January 1 of the year following that in which notice was provided).
- 2. End User License Agreement:** The use of these Products and Services is governed by these ordering terms and conditions as well as: (a) by the Broadcom terms and conditions published at <https://www.vmware.com/vmware-general-terms.html>, (b) the Specific Program Documentation (the "SPD"), Product Use Rights (the "PUR"), and/or SaaS Listing applicable to the Broadcom Software SaaS and Maintenance located at <https://www.broadcom.com/licensing>, and (c) the additional terms herein and as ordered respectively hereunder (collectively, the "Governing Terms"). Any terms that may appear on Your purchase order that vary from or purport to add to the Governing Terms (including, without limitation, pre-printed terms) are deemed not appended, inapplicable and void.
- 3. Hardware Orders (Applicable to Hardware Orders Only):** All orders placed on Broadcom are non-cancellable and non-refundable and Partner/Customer shall agree the obligation that all orders relating to Broadcom hardware product(s) are non-cancellable and non-refundable. Partner/Customer may not reschedule delivery of Broadcom hardware product(s) unless Broadcom gives prior permission.
- 4. Hardware Delivery (Applicable to Hardware Orders Only):** Broadcom will endeavor to ship Broadcom hardware products for delivery on Broadcom's acknowledged delivery date (the "Acknowledged Date"). Broadcom may make partial deliveries, which may be separately invoiced. Delivery delay will not relieve the Partner/Customer of its obligation to pay for the Broadcom hardware products or to accept subsequent deliveries. Any lead times or shipment dates provided by Broadcom are estimates only and Broadcom is not liable for any loss, damage, costs or expenses for any failure to deliver in accordance with the given lead time or Acknowledged Date. If Broadcom cannot meet the Acknowledged Date, Partner/Customer and Broadcom may agree to alternative arrangements. However, in the event that Broadcom's ability to supply Broadcom hardware product(s) becomes constrained, Broadcom may, as Broadcom deems reasonable, reduce quantities or delay shipments to Partner/Customer and may allocate production and delivery among its customers.
- 5. Personal Data:** Broadcom will process Personal Data as part of the provision of the Products and Services in accordance with Broadcom's Privacy Policy located at: <https://www.broadcom.com/company/legal/privacy>.
- 6. Additional Export Requirements:** In furtherance of Your contractual and legal obligation to strictly comply with U.S. law relating to export, re-export, and transfer, You certify that (a) You are not, and no affiliate of Yours is, a military end user of China, Russia, or Venezuela for products with ECCN starting with 5D992, and (b) You will not transfer or resell any such

products to any person, entity, or environment where You know or should have knowledge that such products are intended or likely to be used by a military end user of China, Russia, or Venezuela.

7. **Assignment:** Neither Party shall assign the Agreement or any of its rights or delegate any of its duties under the Agreement without the prior written consent of the other Party, except that Broadcom shall have the right to assign the Agreement 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 Agreement relates. Subject to the foregoing, the Agreement 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.
8. **Software Support Availability:** 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 ("Software Support Availability"). Prior to signature of this Order, Customer should ensure it understands the support for the products licensed herein. Execution of this order shall constitute acceptance of such support and shall also constitute a representation and warranty by Customer 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>.
9. **Migration:** Broadcom may migrate a previously licensed software ("Original Product(s)") to a new software product ("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 execution of this quote, Customer should ensure it understands the migration for the products licensed herein. Execution of this quote shall constitute acceptance of such migration and shall also constitute a representation and warranty by Customer that it has reviewed and fully understands same. Migration path for licensed products can be obtained at <https://www.broadcom.com/docs/product-migration>.
10. **Publicity:** 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, Broadcom is authorized to use a specific designation (such as preferred business partner etc.) it may have in describing its relationship to End User.