

## **PARTNER EDI TERMS AND CONDITIONS**

These Partner EDI Terms and Conditions (“Ordering Terms and Conditions”) are entered into by and between Partner and the Broadcom Entity set forth in the referencing Transaction Document, (also referred to as “Order Form” or “Order”), (“Broadcom”).

For purposes of these Ordering Terms and Conditions, Broadcom shall mean the Broadcom entity identified within issued quotes and/or Order Form referencing these Ordering Terms and Conditions.

### **PARTNER AFFIRMATION**

Partner affirms:

- (i) it (or its reseller) has a written agreement with the End User for the sale of the Broadcom Offering(s) identified hereon;
- (ii) the End User is contractually bound and agrees in writing that use of the Broadcom Offering(s) shall be subject to the End User Terms (defined below);
- (iii) if the total fees due herein are greater than zero, the End User has agreed to pay the Partner an agreed upon fee for the Broadcom Offering(s);
- (iv) it has complied with its obligations under the Governing Contract with Broadcom to provide the End User with information relating to the Broadcom Offering and related use limitations;
- (v) it has complied with its obligations under applicable law in order lawfully to provide Broadcom with all information relevant to the Order, and it will hold Broadcom harmless of any consequences of Partner failing to meet this condition;
- (vi) the information provided to Broadcom via Partner’s request for a quote and the content within the Order are complete, accurate and sufficient for Broadcom to fulfil its obligations under the Order (e.g., Customer’s information, technical contact and email address). Any erroneous content provided by Partner may result in (a) the misrouting of Broadcom Offerings and potential access by unintended parties, (b) impact Broadcom’s ability to effectively and accurately record, document, administer and fulfill the Order for the rightful End Users, and (c) consequently impose delays and related liability upon Partner;
- (vii) in furtherance of Partner’s 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, Partner understand that Broadcom will not accept and Partner agrees not to submit orders from partners, resellers or customers who (a) are military end users of China, Russia or Venezuela for products with ECCN starting with 5D992, or (b) Broadcom, the Partners, reseller or End User reasonably knows the Broadcom Offerings are intended or likely to be transferred or resold to such end users. Partner represents and warrants that: (a) Partner and any partners, resellers, or customers, are not, and are not acting on behalf of: (1) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (2) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List, or any similar applicable designated persons list; and
- (viii) unless otherwise agreed to, Broadcom is authorized to use the Partner trademarks, service marks, logos, certifications, designations and insignias in connection with press and earnings releases. If available, Broadcom may be authorized to use a specific designation (e.g., preferred business partner)

to describe its relationship to Partner.

## **ORDERING TERMS AND CONDITIONS AND GOVERNING TERMS**

“Broadcom Offerings” shall mean the CA, Symantec or VMware branded individual offerings identified with a quote or Transaction Document (also referred to as “Order Form” or “Order”), referencing these Ordering Terms and Conditions.

The Broadcom Offerings, (and any hardware components if included within this Order), will be delivered either in tangible media FCA SD (FCA Shipping Dock), as defined in INCOTERMS 2020, from the Broadcom shipping point stated in this Order or by electronic delivery (ESD). Partner agrees to be responsible for all customs, duties, and import clearances. Title and risk of loss to any hardware components, if included, will pass upon delivery to Partner’s carrier at Broadcom’s shipping location. For non US customers, title to the hardware components will transfer when the same leave the national territory of the US. You agree to pay any sales, use, value added, consumption, ISS, PIS, COFINS and any similar taxes in addition to the fees when such payments are due. You (a) may only withhold tax as required by law, subject to the application of any reduced rate allowed in an income tax treaty or otherwise, (b) shall request all documentation required for the reduction of withholding tax, and (c) shall provide proof of payment of the withholding tax for credit relative to the applicable invoice(s).

Partner’s procurement of these offerings for distribution/resale to designated End User are governed by the Order, these Ordering Terms and Conditions as well as the applicable fully executed Symantec Distribution Agreement or Regional Partner Agreement by and between Partner and Broadcom governing the Broadcom Offerings ordered (collectively, the “Governing Contract”).

## **TERMINATION FOR CONVENIENCE**

Partner, on behalf of itself or its reseller, may terminate an End User’s Order (however titled) under which the End User may procure Broadcom Offerings (but in all cases excluding any hardware offerings and associated support contracts therefor) between the parties so long as such Order is governed by these Ordering Terms and Conditions as of the date of termination, without cause and without further charge or expense at any time. Such termination shall be effective immediately upon written notice to Broadcom sent to [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), Partner shall instruct End User to either: a) delete all full or partial copies of the Broadcom Offering(s) 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 Broadcom all full or partial copies of the Broadcom software.

Once End User’s verification or the Broadcom software copies are received, Broadcom will pay Partner, a pro-rata refund of any License, SaaS/Cloud Service, Support Services, or other Partner pre-paid (“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 Broadcom software copies are received) of the offering eligible for the refund. If the Broadcom software is licensed as a perpetual license and the associated Support Services is in its initial term, Partner as appropriate, will receive a pro-rated refund of the cash consideration paid to Broadcom based on the initial payment schedule and 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 an Order is terminated without cause, neither Party shall have further obligations under the Agreement with respect to such Order, except that the Parties shall remain bound by the obligations within the survival sections of the Agreements. Refund Fees will be paid within sixty

(60) days to Partner (who will process the invoicing or reimbursement of fees to End User as appropriate and under the commercial terms between the Broadcom Partner and End User), from the date End User's verification or the Broadcom software copies are received, and any unpaid fees reflecting the Broadcom Offerings delivered prior to the termination date shall become immediately due.

#### **ORDER AND PAYMENT**

Partner hereby places an order, pursuant and subject to the terms of its Governing Contract for the Broadcom Offering(s) listed herein and agrees to pay Broadcom the fees for the Broadcom Offering(s). Notwithstanding anything contrary in the Governing Contract, payment terms will be net 30, date of invoice. Broadcom reserves the right to change credit or payment terms at Broadcom's discretion if Partner's financial condition or previous payment history so warrant.

Partner confirms that it understands that use of the Broadcom Offering(s) is restricted to the Authorized Use Limitation and terms stated above and any use beyond shall require a further order and payment by Partner to Broadcom of additional fees. Unless an alternative date of payment is set forth in the Governing Contract, payment is due upon Broadcom's due date as specified on the invoice. In the event a payment due date falls on a weekend or a holiday the payment shall be payable by Partner to Broadcom on the business day immediately prior to such date. Broadcom will send Partner an invoice containing the applicable wire transfer instructions at least thirty (30) days prior to each respective due date. Partner shall wire payments in accordance with the wire transfer instructions on the invoice. Partner shall notify Broadcom in writing within five (5) days after receipt of any invoice that is materially deficient and in good faith prevents Partner from making timely payment. If and when appropriate, Broadcom shall issue a revised invoice as soon as practically possible, which will remain payable on the original due date or such later date as Broadcom may provide on the revised invoice.

#### **PURCHASE ORDER**

A Partner purchase order ("PO") must be issued in order to comply with the payment terms of the Agreement, Partner shall issue and provide Broadcom a PO or series of POs for the full term and total fees that are due contemporaneously with the execution of this transaction document.

Failure to timely remit payment of all amounts set forth in the Payment Profile after written notice by Broadcom and a reasonable opportunity to remit such payment by Partner, to the maximum extent permitted by applicable law, relieve Broadcom of any and all support obligations hereunder and Partner rights to resell licensed usage rights to the End User may be suspended until payment is tendered at which time use rights shall recommence. Broadcom reserves the right to impose late fees as may be permitted by law on any past due amounts.

#### **MANDATORY END USER FLOW DOWN TERMS**

**Partner shall, either itself or cause its resellers to flow down the following additional terms to the End User ("Mandatory End User Flow Down Terms").**

End User's use of the Broadcom Offerings is governed by: (a) either (i) the Broadcom end user agreement published at <https://www.broadcom.com/licensing>, or (ii) the fully executed agreement by and between End User and the Broadcom entity governing the Broadcom Offerings ordered as amended, (b) the Specific Program Documentation (the "SPD"), and/or SaaS Listing applicable to the Broadcom Software, SaaS and Maintenance located at <https://www.broadcom.com/licensing>, and (c) the Mandatory End User Flow Down Terms below (collectively, the "End User Terms"). Partner agrees to ensure such End User Terms are presented to and agreed by the End User along with the Mandatory Flow Down Terms noted below before or at the time of closing the End User transaction. Any terms that may appear on Partner's purchase order that vary from or purport to add to the Governing Contract, End User Terms or these Ordering Terms and Conditions (including, without limitation, pre-printed terms) are deemed not appended, inapplicable and void.

## **UPGRADE**

In the event the End User is migrating off of an existing Broadcom Offering and receiving Upgraded Product(s), the following terms shall apply:

- The End User is receiving the Upgraded Product(s) reflected in the quote in consideration of the existing Broadcom Offering(s) being terminated.
- End User shall cease using and de-install, if applicable, the existing Broadcom Offering(s) following a transition period not to exceed ninety (90) days, as of the date of receipt of the Upgraded Product(s).
- The Upgraded Product(s) are subject to the applicable End User Terms, its Transaction Document, and any Mandatory End User Flow Down Terms, including all financial obligations relating to the existing Broadcom Offering(s) which remain valid and enforceable and are applicable to the Upgraded Product(s).

## **NEW HARDWARE PURCHASES**

In the event Partner is procuring hardware on behalf of its End User, the following terms shall apply:

- The Contract Start date is hereby adjusted to the date the Hardware ships ("Activation Date") and the Contract End date is adjusted accordingly. The initial Billing Date is hereby adjusted to the Activation Date.
- Hardware Delivery. Broadcom will endeavor to ship Broadcom hardware products for delivery on Broadcom's acknowledged delivery date ("Acknowledged Date"). Broadcom may make partial deliveries, which may be separately invoiced. Delivery delay will not relieve the Partner 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 and agree to alternative arrangements. However, in the event that Broadcom's ability to supply Broadcom hardware product becomes constrained, Broadcom may, as Broadcom deems reasonable, reduce quantities or delay shipments to Partner and may allocate production and delivery among its customers.
- Hardware Orders. All orders placed on Broadcom non-cancellable and non-refundable and Partner shall pass through to its partners and customers the obligation that all orders relating to Broadcom hardware product are non-cancellable and non-refundable. Partner may not reschedule delivery of Broadcom hardware products unless Broadcom gives prior permission.

## **TERMINATION FOR CONVENIENCE**

End User may terminate any Order under which End User may procure Broadcom Offerings (but in all cases excluding any hardware offerings and associated support contracts therefor) between the parties so long as such Order is governed by these Ordering Terms and Conditions as of the date of termination, without cause and without further charge or expense at any time, End User's termination shall be effective immediately upon written notice to Broadcom sent to [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), End User must either: a) delete all full or partial copies of the Broadcom Offering(s) 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 Broadcom all full or partial copies of the Broadcom software.

Once End User's verification or the Broadcom software copies are received, Broadcom will pay End User, or Broadcom Partner, a pro-rata refund of any License, SaaS/Cloud Service, Support Services, or other fees End

User or Broadcom Partner pre-paid ("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 Broadcom software copies are received) of the offering eligible for the refund. If the Broadcom software is licensed as a perpetual license and the associated Support Services is in its initial term, End User, or Broadcom Partner as appropriate, will receive a pro-rated refund of the cash consideration paid to Broadcom based on the initial payment schedule and 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 an Order is terminated without cause, neither Party shall have further obligations under the Agreement with respect to such Order, except that the Parties shall remain bound by the obligations within the survival sections of the Agreements. Refund Fees will be paid within sixty (60) days to End User (or Broadcom Partner who will process the invoicing or reimbursement of fees to End User as appropriate and under the commercial terms between the Broadcom Partner and End User), from the date End User's verification or the Broadcom software copies are received, and any unpaid fees reflecting the Broadcom offerings delivered prior to the termination date shall become immediately due.

Broadcom is authorized to use the End User trademarks, service marks, logos, certifications, designations and insignias in connection with press and earnings releases. If available, Broadcom may be authorized to use a specific designation (such as preferred business partner, etc.) describing its relationship to End User.

#### **PERSONAL DATA**

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>. Where Broadcom is a data processor for End User under 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.

#### **ASSIGNMENT**

Neither Party shall assign any Transaction Document, its End User Terms or any of its licenses or rights or delegate any of its duties under the Agreement, 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 Transaction Document(s) and 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 Transaction Document(s) and Agreement relates. Subject to the foregoing, the Transaction Document(s) and 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.