



Vendor Pass-Through Terms for Broadcom Offerings - Resell

Vendor: CA, Inc. (a Broadcom Inc. Company, "Broadcom")

Product(s):

1. CA, Symantec, or VMware branded Software, SaaS, appliances, education, and any other offering or service which Broadcom makes generally available to its partners („Broadcom Offering“)
2. CA, Symantec, or VMware branded computer software programs, either provided individually or packaged as a suite or software appliance, made generally available to Partner including all versions and releases („Broadcom Software“)

Version: October 31, 2024

In addition to the Terms and Conditions (available at <https://mr-daten.de/agb/vmware-by-broadcom-omnissa-veeam/>) these terms and conditions ("**Vendor Pass-Through Terms**") apply to the purchase or licensing, as applicable, of Vendor Products (as set out above) by Buyer from MR Datentechnik.

By purchasing or licensing, as applicable, the Vendor Products from MR Datentechnik, Buyer agrees to these Vendor Pass-Through Terms, which shall form a part of the Agreement between MR Datentechnik and Buyer.

To the extent required under these Vendor Pass-Through Terms, Buyer will flow down such terms to its customer in its agreements with such customer.

These Vendor Pass-Through Terms may be amended from time to time to the extent required by the Vendor. In such a case, MR Datentechnik will publish the updated terms on its website at: <https://mr-daten.de/agb/vmware-by-broadcom-omnissa-veeam/#downloads>. It is Buyer's responsibility to check such link from time to time.

The parties agree that all terms of any Transaction Document (s) or similar document provided by the Buyer, that conflict with these Vendor Pass-Through Terms shall be null and void and of no legal force or effect. In the event of a conflict between any terms of MR Datentechnik's Terms and Conditions of Sale, the terms of these Vendor Pass-Through Terms, the following order of precedence applies:

- a) these Vendor Pass-Through Terms;
- b) any Transaction Document;
- c) any previously agreed different terms and conditions between the Parties;
- d) MR Datentechnik's Terms and Conditions of Sale.

1. Definitions

- Authorized Use Limitation** – means the quantity of the Broadcom Offering licensed or provided in accordance with the License Metric specified on the Transaction Document.
- 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.
- End User Agreement** – means collectively the terms governing the End User's use of the Broadcom Offering located at: <https://www.broadcom.com/company/legal/licensing> including support terms, the Specific Program Documentation (the "SPD") and SaaS Listing(s) applicable to the Broadcom Offering.
- Broadcom Offering** – CA, Symantec, or VMware branded Software, SaaS, appliances, education, and any other offering or service which Broadcom makes generally available.
- Broadcom Software** – means CA, Symantec, or VMware branded computer software programs, either provided individually or packaged as a suite or software appliance, made generally available, including all versions and releases.
- Documentation** – means the documentation, technical product specifications and/or user manuals, published and made generally available for Broadcom Offerings.
- License Metric** – means the authorized measurement for the usage of the Broadcom Offering (such as MIPS, CPUs, tiers, servers, or users).
- Marks** – means the trademarks, service marks, logos, certifications, designations and insignias of Broadcom, Inc., a Broadcom company, and its affiliates.
- Transaction Document** – means a mutually agreed ordering document between MR Datentechnik and Buyer, such as purchase order for the specific Broadcom Offering licensed or purchased.

2. Buyer Representations

Buyer represents:

- a) it has a written agreement with the End User for the sale of the Broadcom 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 terms defined herein 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(s) related information set forth herein is provided to the End User.

3. Buyer Obligations

- 3.1. To the extent Buyer is granted rights to resell, access or use Broadcom Offering(s), Buyer will provide End User with the End User Agreement and obtain End User's agreement to such terms (excluding any terms governing payments, pricing, delivery, and discounts as such terms are between End User and Buyer), prior to placing an order. End User Agreement shall be referenced in the Transaction Document(s). Specific End User Agreement requirements will be specified, if applicable, within Transaction Document(s).
- 3.2. Buyer shall not remove, modify, or alter the End User Agreement or allow any third party to do so. Buyer acknowledges that MR Datentechnik will not engage in negotiations of End User Agreement or related terms with an End User.
- 3.3. Buyer shall provide End User accurate information relating to license type, Authorized Use Limitations and other information related to Broadcom Offering(s), and in the event Buyer is shipping the Broadcom Offering(s), Buyer must deliver to the End User indicated on the Transaction Document.

4. Payment

Failure to timely remit payment of all amounts set forth in a Transaction Document after written notice from MR Datentechnik, and to the full extent permitted by the applicable law, relieve Broadcom and MR Datentechnik of any and all support obligations hereunder and all Buyer's resell subscription use rights shall be suspended until payment is tendered at which time use rights and support shall recommence.

5. Title of Broadcom Offerings / IP Rights / Third-party software

- 5.1. Title of Broadcom Offerings. IP Rights. No title to or ownership of any Broadcom Offering(s) or anything produced by Broadcom is transferred to Buyer pursuant to these Vendor Pass-Through Terms or any other document, if applicable. Broadcom and its licensors retain all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to all Broadcom Offering(s) or anything produced by Broadcom and any derivatives thereof. No title, copyright, patent, trademark, trade secret or other right of intellectual property is granted to the Buyer unless expressly granted in a separate document / agreement.
- 5.2. Broadcom does not transfer any portion of such title and ownership or any of the associated goodwill in the Broadcom Offering(s) to Buyer, and this Vendor Pass-Through Terms shall not be construed to grant Buyer or its End User(s) any right or license, whether by implication, estoppel, or otherwise, except as expressly provided herein.
- 5.3. Buyer agrees not to de-compile, reverse engineer, reverse compile, modify, translate or perform any similar type of operation on any Broadcom Offering(s), 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.
- 5.4. Third-party software. 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.

6. Marketing

- 6.1. Buyer will bear its own cost for marketing. Buyer shall be responsible for the preparation and response to its End User's requests (to the extent authorized by Broadcom) for proposals, technical questions, questionnaires, and related End User's inquiries. Broadcom may make available to Buyer supporting resources via the Broadcom Partner Program.
- 6.2. To the extent authorized by Broadcom on the Partner Portal, Buyer is authorized to use the Marks and marketing materials provided by Broadcom in relation to the Broadcom Offering(s) during the period in which the Buyer remains as an authorized Broadcom Partner or the duration of Broadcom Offering(s), whichever is longer, in accordance with the then-current Broadcom marketing and trademark usage policies set forth on the Partner Portal as may be updated from time to time.
- 6.3. Broadcom reserves the right to require Buyer to discontinue use of any advertising or marketing materials relating to Broadcom or the Broadcom Offering(s) that Broadcom reasonably believes are inappropriate and/or may have a detrimental effect on the Broadcom's business. From the time the Buyer ceases to be an authorized Broadcom Partner 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 the Agreement 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.
- 6.4. 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(s). 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's 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 Vendor Pass-Through Terms governing Buyer's use of the Marks shall also apply to such other Marks.

- 6.5. 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.
- 6.6. Buyer shall have and use a marketing automation system, which includes a process for lead management.

7. Warranty, Disclaimer of Warranties

- 7.1. The Buyer shall inform the End User, unless otherwise specified for a Broadcom Offering, that Broadcom warrants the Broadcom Offering in accordance with the End User Agreement. Due to the nature of computer software, Broadcom does not warrant that operation of Broadcom Offerings will be error-free or uninterrupted.
- 7.2. The Buyer is not authorized to make any warranty commitment on Broadcom's or MR Datentechnik's behalf, whether written or oral, unless otherwise provided for in these Vendor Pass-Through Terms. Buyer agrees to validate or cause to be validated all warranty claims presented to Buyer by End Users.
- 7.3. 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.
- 7.4. THE ABOVE WARRANTIES ARE THE SOLE WARRANTIES 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.

8. Indemnification

Buyer shall indemnify MR Datentechnik against any and all damages, losses, liabilities including fines, incurred by MR Datentechnik, arising out of or in connection with any event that Buyer

- i) causes any personal injury and/or tangible property damage or harm to an End User or End User's computer system or privacy; and/or
- ii) improperly characterizes, removes or interferes with third-party software, files, data, text or code or any similar claim or
- iii) makes any misrepresentation regarding Broadcom or the Broadcom Offering; and/or
- iv) makes any warranty, condition, representation, indemnity or guarantee with respect to the Broadcom Offering in addition to those specified in these Vendor Pass-Through Terms or in Broadcom End User Agreement.

9. Termination

- 9.1. All Transaction Documents are non-cancellable except for cases where MR Datentechnik may terminate the Transaction Document according to sections 9.2 – 9.3 below.
- 9.2. Termination for cause. The applicable Transaction Document may be terminated by MR Datentechnik
 - i) upon a material breach by the Buyer, provided that, in each instance of a claimed breach:

- ii) MR Datentechnik notifies the Buyer in writing of such breach; and
 - iii) the Buyer fails to cure such breach within 10 (ten) days from receipt of such notice; or
 - iv) upon insolvency of the Buyer, if permitted by law.
- 9.3. MR Datentechnik may terminate the applicable Transaction Document immediately if
- i) Buyer or its End User infringes Broadcom's intellectual property rights, or
 - ii) Buyer or its End Users continue to use Broadcom Offerings beyond the granted Term, or
 - iii) Buyer is debarred or files for bankruptcy or insolvency, or
 - iv) MR Datentechnik has become aware that the Buyer has failed to comply with laws as defined in these Vendor Pass-Through Terms including FCPA, Import and Export requirements, or
 - v) Buyer permits unlicensed use of Broadcom Offering(s), including use in excess of the Authorized Use Limitation
 - vi) Broadcom terminates the related agreement with MR Datentechnik as a consequence of which MR Datentechnik will not be entitled to offer or sell Broadcom products any longer.
- 9.4. Upon termination of the Transaction Document for any reason, Buyer shall pay MR Datentechnik any committed fees and expenses under the applicable Transaction Document whether due before or after the date of termination which shall become immediately due and payable to MR Datentechnik on such termination.
- 9.5. If Buyer requests post termination rights or a wind down period to accommodate its End Users in order to fulfill active orders entered into prior to termination, MR Datentechnik will consider such requests in good faith, except where termination is for reason of Buyer's or End User's breach as stipulated in this section 9.
- 9.6. MR Datentechnik shall not incur any liability or compensation obligation whatsoever for any damage (including and without limitation damage to or loss of goodwill or investment), loss or expenses of any kind suffered or incurred by the Buyer arising from or relating to the termination of the Transaction Document pursuant to the terms hereof, whether or not the Buyer is aware of any such loss or expenses.
- 9.7. MR Datentechnik will not by reason of the termination be liable for compensation, reimbursement, or damages on account of the loss of prospective profits on anticipated sales, or on account of expenditures, investments, leases, or commitments in connection with Buyer's business or goodwill, or otherwise.

10. Compliance, Import/ Export Regulations, Sanctions

- 10.1. 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 Vendor Pass-Through Terms. The foregoing notwithstanding, it is understood that Broadcom's Offering(s) 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.
- 10.2. 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, and the then-current version of Broadcom's Code of Conduct (available at <https://investors.broadcom.com/corporate-governance/corporate-governance>) and international accounting standards.
- 10.3. 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.

10.4. 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.

10.5. 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 Vendor 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.

10.6. 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.

10.7. 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 Partner Program or otherwise, Buyer agrees that it shall comply and be solely responsible for fulfilling this obligation.

10.8. In the event that Buyer that is engaged in the resale of Broadcom Offering(s) fails to meet the standards prescribed in this section, MR Datentechnik reserves the right to immediately terminate the Transaction Document upon written notice to Buyer.

For Italy: Pursuant to Article 1341 of the Civil Code, the Reseller confirms that he/she has read and understood, and agrees to be bound by, the following provisions 3.1, 3.2, 4, 5.3, 6.1, 6.2, 6.3, 6.6, 7.1, 7.2, 7.3, 7.4, 10.8