



BROADCOM VMWARE PASS-THROUGH TERMS

These Broadcom VMware Pass-Through Terms ("Pass-Through Terms") apply to purchases of Broadcom Offerings (as defined below) in the United States from Sterling Computers Corporation ("Sterling") and are a contract between Broadcom and Buyer. By purchasing any Broadcom Offerings in the United States from Sterling, Buyer agrees to these Pass-Through Terms. Any terms that might appear on Buyer's purchase order that vary from or purport to add to the Pass-Through Terms (including, without limitation, pre-printed terms) are deemed not appended, inapplicable, and void.

1. Definitions.

- 1.1. "Broadcom" means Broadcom, Inc. or its applicable affiliate.
- 1.2. "Broadcom Offerings" means the VMware branded Software, SaaS, appliances, education, and any other offering or service which Broadcom makes generally available through its partners.
- 1.3. "Documentation" means the documentation, technical product specifications and/or user manuals, published and made generally available for Broadcom Offerings.
- 1.4. "Buyer" means an end user that is granted the right to use the Broadcom Offerings for its internal use subject to the restrictions set forth herein, or a system integrator that incorporates the Broadcom Offerings into their own offering.
- 1.5. "Marks" means the trademarks, service marks, logos, certifications, designations and insignias of Broadcom.

2. Purchase Orders.

- 2.1. This agreement governs Buyer's access to and use of the Broadcom Offerings in connection with a purchase order between Buyer and Sterling. Broadcom shall have the benefit of and right to enforce this agreement against Buyer. If any provision of this agreement conflicts with a provision in Buyer's purchase order or other agreement between Buyer and Sterling with respect to this agreement or the Broadcom Offerings, the terms of this agreement will control as between Buyer and Broadcom.
- 2.2. Broadcom terms and conditions published at <https://www.broadcom.com/licensing>, or an agreement for CA, Symantec, or VMware branded offerings ordered in this order, and the Specific Program Documentation (the "SPD"), or Product Use Rights (the "PUR"), and/or SaaS Listing applicable to the Broadcom Software, SaaS and Maintenance located at <https://www.broadcom.com/licensing>, are incorporated into and made a part of this agreement.
- 2.3. Sterling will not accept and Buyer shall not submit orders for military end users of China, Russia or Venezuela for products with ECCN starting with 5D992, or (b) where Broadcom, Sterling, or Buyer reasonably knows the Broadcom Offerings are intended or likely to be transferred or resold to such end users.

3. **Payment.** Buyer's failure to timely remit payment of all amounts set forth in a Sterling invoice, after written notice by Sterling and a reasonable opportunity to remit such payment by Buyer, to the maximum extent permitted by applicable law, will relieve Broadcom of any and all support obligations and Buyer's right to use the Broadcom Offerings may be suspended until payment is tendered, at which time use rights will recommence.



4. **US Government Restricted Rights.** Any Broadcom Offerings provided to the U.S. Government (or any of its agencies) are provided with "Restricted Rights" and Buyer shall affix (if not already affixed) to any media containing all or any portion of the Broadcom Offerings 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. **Use of Intellectual Property.**
 - 5.1. 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). If Buyer 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 this 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.
 - 5.2. 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 Offerings. Buyer agrees not to alter or remove or obscure any copyright or other proprietary notices on or in the Broadcom Offerings or related documentation or materials. Broadcom may from time to time use other or additional Marks with respect to any Broadcom Offerings. The provisions of these Pass-Through Terms governing Buyer's use of the Marks shall also apply to such other Marks.
6. **Compliance Rules.**
 - 6.1. 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 this agreement. The foregoing notwithstanding, it is understood that Broadcom Offerings are developed for a global audience. Accordingly, it is 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.
 - 6.2. 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.
 - 6.3. 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.



7. **Personal Data.** Buyer 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>. Buyer 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 Offerings contemplated under this 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 Buyer 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. Buyer has been advised that while using Broadcom Offerings, 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.
8. **Assignment.** Neither Broadcom nor Buyer shall assign this agreement or any of its rights or delegate any of its duties under this 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 this agreement or any of its rights or delegate any of its duties under this 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 this agreement relates. Subject to the foregoing, this 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.
9. **Software Support Availability.** Buyer 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 an order, Buyer should ensure it understands the support for the products licensed herein. Acceptance of an order shall constitute acceptance of such support and shall also constitute a representation and warranty by Buyer 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>.
10. **Migration.** Buyer understands that Broadcom may migrate a previously licensed software (the "Original Product(s)") to a new software product (the "Migrated Product(s)"). It is Buyer's responsibility to understand which products herein may be migrated products. Any migrated products are provided in consideration of Original Product(s) being terminated. Buyer 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 Pass-Through Terms agreement, 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 purchasing Broadcom Offerings, Buyer should ensure it understands the migration for the products licensed herein. Purchasing Broadcom Offerings constitutes acceptance of such migration and also constitutes a representation and warranty by Buyer that it has reviewed and fully understands same. Migration path for licensed products can be obtained at <https://www.broadcom.com/docs/product-migration>.

11. **Symantec/VMWare Agreements.** For any order of Symantec/VMware offerings for a Buyer utilizing a fully executed agreement by and between Buyer and Symantec/VMware: Broadcom is the successor in interest to Symantec/VMware. For any order of a Broadcom offering for a Buyer utilizing a fully executed agreement by and between Broadcom and such Buyer: Any prior Broadcom party to Buyer's fully executed Broadcom agreement shall be replaced, if not already the contracting party, with the following entity: (a) North America - CA, Inc.; (b) Latin America excluding Brazil - CA, Inc; (c) Brazil - CA Programas de Computador, Parte Serv Ltda; and (d) Europe, Middle East and Africa, and Asia Pacific and Japan - VMWare International Unlimited Company.
 - 11.1. **Symantec Orders.** For hardware orders only, all orders placed on CA are non-cancellable and non-refundable. Buyer may not reschedule delivery of CA hardware product(s), unless CA gives prior permission. CA will endeavor to ship CA hardware products for delivery on CA's acknowledged delivery date (the "Acknowledged Date"). CA may make partial deliveries, which may be separately invoiced. Delivery delay will not relieve Buyer of its obligation to pay for the CA hardware products or to accept subsequent deliveries. Any lead times or shipment dates provided by CA are estimates only and CA 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 CA cannot meet the acknowledged date, Buyer and CA may agree to alternative arrangements. However, in the event that CA's ability to supply CA hardware product(s) becomes constrained, CA may, as CA deems reasonable, reduce quantities or delay shipments to Buyer and may allocate production and delivery among its customers.
12. **Delivery.** Broadcom Offerings, (and any hardware components if included within the order), will be delivered either in tangible media FCA SD (FCA Shipping Dock), as defined in INCOTERMS 2010, from the Broadcom shipping point stated in the order or by electronic delivery (ESD).
13. **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. Buyer agrees that Broadcom may use any feedback provided by Buyer related to any Broadcom Offerings 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. Broadcom is authorized to use Buyer's 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 Buyer.
 - 13.1. Buyer agrees not to de-compile, reverse engineer, reverse compile, modify, translate or perform any similar type of operation on any Broadcom Offerings, 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.
14. **Third Party Terms.** In the event that Broadcom Offerings 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.

15. Warranty.

- 15.1. 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.
- 15.2. THE ABOVE WARRANTY IS THE SOLE WARRANTY PROVIDED BY BROADCOM. TO THE EXTENT PERMITTED BY LAW NO OTHER WARRANTIES, INCLUDING THAT BROADCOM OFFERINGS ARE 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.