

Vendor Pass-Through Terms for Broadcom VCSP Partners

Vendor:	CA, Inc. (a Broadcom Inc. Company, “Broadcom”)
Product(s):	Software, SaaS, appliances, education, and any other offering or service that Broadcom makes generally available to its partners
Version:	October 16, 2024
Territories:	European Economic Area (exc. Germany, Austria and Italy which are governed by different Vendor Pass-Through Terms), United Kingdom, Switzerland & Turkey

- i) In addition to the Terms and Conditions (available at eu.tdsynnex.com/terms-and-conditions) and the Country Specific Terms (available at eu.tdsynnex.com/country-specific-terms-of-sale), any Transaction Document, any “VMware Cloud Service Provider (“VCSP”) Appointment of Rights, any other referenced document or agreement concluded between Broadcom and VCSP Partner , as the case may be, and 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 (also called “**VMWare Cloud Service Provider Partner**”, “**VCSP Partner**”, or “**Partner**” as the case may be) from TD SYNnex.
- ii) By purchasing or licensing, as applicable, the Vendor Products from TD SYNnex, Buyer agrees to these Vendor Pass-Through Terms, which shall form a part of the Agreement between TD SYNnex and Buyer.
- iii) 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.
- iv) Vendor may amend these Vendor Pass-Through Terms from time to time. In such case, TD SYNnex will publish the updated terms on its website at: eu.tdsynnex.com/vendor-pass-through-terms. Buyer agrees to be bound by such updated pass-through terms. It is Buyer’s responsibility to check such link from time to time.
- v) In the event of a conflict between these Vendor-Pass-Through Terms, the TD SYNnex’s Terms and Conditions, the Country Specific Terms or any other referenced documents, the following order of precedence applies with respect to the provision of Vendor Products:
 - a. These Vendor Pass-Through Terms;
 - b. Any Transaction Document;
 - c. Any “VMware Cloud Service Provider (“VCSP”) Appointment of Rights” and any other agreement concluded between Vendor and Buyer;
 - d. Any previously agreed different terms and conditions between TD SYNnex and Buyer;
 - e. TD SYNnex’s Terms and Conditions and Country Specific Terms.
- vi) Unless agreed otherwise in the following for the purposes of these Vendor Pass-Through Terms, capitalized terms shall have the meaning given in the Agreement.

1. Definitions

In these Vendor Pass-Through Terms, the following words and phrases shall have the following meanings:

- 1.1. “**Broadcom Offering**” means the Software, SaaS, appliances, education, and any other offering or service that Broadcom makes generally available to its partners.
- 1.2. “**Documentation**” means the documentation, technical product specifications, and/or manuals published and made generally available for Broadcom Offerings.
- 1.3. “**Hosted IT Services**” means a VCSP Partner’s cloud computing service (under the Broadcom VCSP route-to-market), which utilizes term- based subscription licenses that allows third parties to access the processing power, computing, or software applications from systems that are installed and operated by the VCSP Partner.

- 1.4. **“Marks”** means the trademarks, service marks, logos, certifications, designations and insignias of Broadcom, Inc., a Broadcom company, and its affiliates.
- 1.5. **“Party”** or **“Parties”** means individually and or collectively TD SYNEX and or the VCSP Partner.
- 1.6. **“Partner 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 the Agreement and includes the segments of the website which is specific to the applicable Partner.
- 1.7. **“Territory”** means the geographic region identified in the Partner’s Appointment of Rights document which may be superseded by the Territory specified in an applicable Transaction Document, but always excluding any countries which Broadcom is prohibited from exporting its products to as prescribed by US or local export laws.
- 1.8. **“Transaction Document”** means a mutually agreed ordering document such as an order form, registration form, or purchase order for the specific Broadcom Offering licensed or purchased.
- 1.9. **“Vendor”** means the applicable Regional Broadcom Entity set forth in a referencing Transaction Document.
- 1.10. **“VMware Cloud Service Provider”** or **“VCSP Partner”** or **“Partner”** means the Broadcom’s VMware Cloud Services Provider partner accepting the terms and conditions of these Vendor Pass-Through Terms.

2. VCSP Partner’s Obligations

- 2.1. VCSP Partner certifies it has obtained any necessary approval from and is in compliance with any applicable terms and conditions required by the Vendor, to the extent VCSP Partner has been informed of such approval prerequisites and terms and condition.
- 2.2. VCSP Partner understands and acknowledges that TD SYNEX is only acting as the Vendor’s fulfillment partner. Accordingly, the fees for subscription licenses purchased by VCSP Partner and used to provide Hosted IT Services are set by Vendor but to be invoiced by and paid to TD SYNEX. TD SYNEX will only act as Vendor’s invoicing and payment processor responsible for processing invoices and ensuring the collection of payments of VCSP Partner’s minimum commitment as set forth in commitment documents and any overages for usage of the subscription licenses for Hosted IT Services beyond the minimum commitment (VCSP Partner’s usage of the subscription licenses for Hosted IT Services including VCSP Partner’s minimum commitment and any and all overage(s) shall be collectively referred to as **“usage”** herein). Hence, VCSP Partner commits to pay any and all fees owed to Vendor related to VCSP Partner’s usage in due time.

3. Commitment and Ordering

- 3.1. VCSP Partner shall be responsible for payments for the VCSP Partner’s minimum commitment as set forth in the respective Transaction Documents and any overages for usage of the subscription licenses for Hosted IT Services beyond the minimum commitment (VCSP Partner’s usage of the subscription licenses for Hosted IT Services including VCSP Partner’s minimum commitment and any and all overage(s) shall be collectively referred to as **“usage”** herein).
- 3.2. As Vendor’s fulfillment partner, TD SYNEX will process VCSP Partner’s commitment documents, and invoice and collect payments from VCSP Partner relating to VCSP Partner’s usage.
- 3.3. TD SYNEX and VCSP Partner shall define its usage commitment details (e.g., pre-pay or monthly commit, new customer commit, product add-on, number of cores, etc.).
- 3.4. VCSP Partner shall be liable to TD SYNEX for payment of any and all usage fees due and owing to Broadcom that TD SYNEX collects from VCSP Partner and related to its usage in due time.
- 3.5. Partner shall enter into a Transaction Document before using any Offering.
- 3.6. VCSP Partner will provide TD SYNEX a PO number that will be used for each bill for the committed term (e.g., a period of 36 months or 60 months) for each commitment.
- 3.7. If VCSP Partner is pre-paying for a commitment, VCSP Partner will provide TD SYNEX with one PO representing the entirety of the pre-pay commitment for all of the pre-paid committed years, and a separate PO for overages.
- 3.8. Amounts paid for a pre-paid commitment cannot be used for overages, only for VCSP Partner’s minimum commitment. TD SYNEX will raise a quote and attach the commitment. When the quote is approved, the order is booked and becomes a contract between TD SYNEX and VCSP Partner.
- 3.9. VCSP Partner’s commitment will start on the 1st of the month. On the 1st of each month during the term of the VCSP Partner’s commitment, an invoice for the minimum commitment will be provided by TD SYNEX to VCSP Partner. For each following month, TD SYNEX will issue an invoice to VCSP Partner for VCSP

Partner's current month's minimum commitment requirement along with a second invoice for any overages from the prior month.

- 3.10. VCSP Partner will be invoiced separately for the current month's minimum commitment and the overage from the prior month. This process will be repeated for every commitment and for every add-on or variation of the authorized usage.

4. Invoicing and Payment

- 4.1. The Broadcom Offering and associated pricing will be more detailed in any relevant Transaction Document, notwithstanding that any order placed by VCSP Partner and accepted by TD SYNnex is non-cancellable.
- 4.2. VCSP Partner must pay all fees to TD SYNnex within the period noted on TD SYNnex's invoice or, if not noted, then within 30 days from the date of invoice, subject to maintaining credit approval with TD SYNnex, and in the currency agreed in the Order.
- 4.3. Fees should be invoiced and paid in USD, unless agreed otherwise between the Parties. In the event the prices are quoted in EUR, the VCSP Partner acknowledges and agrees that the quoted prices may be subject to adjustment in respect of any USD/EUR exchange rate fluctuations. TD SYNnex reserves the right to adjust the price appropriately due to exchange rate fluctuations. Upon request of VCSP Partner, TD SYNnex shall document the reasons for the price adjustment.
- 4.4. All charges and fees arising out of or related to these Vendor Pass-Through Terms are exclusive of any taxes. VCSP Partner is responsible for and shall pay or reimburse all applicable taxes.
- 4.5. For clarity, TD SYNnex will continue to invoice VCSP Partner even if VCSP Partner defaults on payment and VCSP Partner remains liable for payment of any and all usage fees due.
- a. If payment by VCSP Partner is not made in accordance with VCSP Partner's applicable contractual obligations to TD SYNnex, TD SYNnex may charge late payment interest in accordance with applicable law and TD SYNnex will send a joint resolution letter from TD SYNnex and Vendor to the VCSP Partner with a deadline of eight (8) calendar days to respond. The letter will contain details regarding the outstanding invoice(s) and usage period(s) to be paid and a deadline for the payment to be received by TD SYNnex to avoid further action.
 - b. If the VCSP Partner does not pay the outstanding amount to TD SYNnex by the set deadline and alternative resolution has not been agreed to by Vendor, TD SYNnex and the VCSP Partner, the VCSP Partner's subscription use rights, including support services, will be put into suspension pursuant to the applicable agreement(s) (e.g., Regional Partner Agreement, VCSP Appointment of Rights, etc.).
 - c. If the VCSP Partner remains non-responsive and does pay the outstanding invoice(s) to TD SYNnex for a period of thirty (30) days after the instigation of the suspension and the issue is still unresolved then TD SYNnex may terminate this Agreement. TD SYNnex may also inform the VENDOR of the outstanding invoice(s), who, at its sole discretion, may move forward with contract termination for the VCSP Partner. Termination pursuant to this section does not release either party from any liability which, at the time of such termination, had already accrued to the other party or which is attributable to a period prior to such termination, nor preclude either party from pursuing any rights or remedies it may have under law or in equity with respect to any breach of these Vendor Pass-Through Terms. Unless agreed otherwise between VCSP Partner and Vendor directly, upon termination for any reason, VCSP Partner shall pay TD SYNnex 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 TD SYNnex on such termination.

5. Audit

- 5.1. During the term and for a period of three (3) years following termination or expiry of the Agreement, in order for Vendor and/or TD SYNnex to verify compliance with the Agreement, VCSP Partner shall keep complete, clear and accurate records in connection with the activities under the Agreement. Not more than once per calendar year, VCSP Partner shall permit TD SYNnex or Vendor or its designee to audit such records – provided such auditor signs a non-disclosure agreement with the VCSP Partner – to verify compliance with the Agreement, and VCSP Partner shall provide its full cooperation in such audit. Reasonable notice of intent to conduct an audit shall be provided to VCSP Partner and such audit shall occur during normal business hours and be conducted in a manner that uses commercially reasonable efforts to minimize disruption to VCSP Partner's business. No physical access to VCSP Partner's computing devices in connection with any such audit will be done without VCSP Partner's prior written consent. VCSP Partner shall promptly pay to TD SYNnex any underpayments revealed by such audit, including interest for late payments calculated from the date that payments should have been made. VCSP Partner shall also promptly reimburse Vendor or TD SYNnex, as the

case may be, for the cost of such audit if: (a) the audit reveals an underpayment by VCSP Partner of more than five percent (5%) of the amounts payable for the period reviewed; or (b) the audit reveals that VCSP Partner has materially failed to comply with this section 5.1.

6. Compliance Rules

Unless agreed otherwise between the VCSP Partner and Vendor directly, the following shall apply:

- 6.1. Each Party 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 the Agreement. The foregoing notwithstanding, it is understood that Broadcom Offerings are developed for a global audience. Accordingly, it is the VCSP Partner'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, VCSP Partner shall comply with the following: US Foreign Corrupt Practices Act, as if it directly applied to VCSP Partner; local laws on prevention of bribery in the country in which VCSP Partner 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. VCSP Partner 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 VCSP Partner as it relates to that government. VCSP Partner as it relates to this section also includes VCSP Partner's owners, directors, officers, employees or its agents.
- 6.4. VCSP Partner shall (i) avoid deceptive, misleading or unethical practices; (ii) refrain from making any false or misleading representations with regard to 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.
- 6.5. VCSP Partner 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 the Agreement, 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.
- 6.6. In order to maintain VCSP Partner appointment, VCSP Partner must comply with all organizational conflict of interest, anti-kickback, and other provisions of law applicable to transactions.

7. Intellectual Property Rights

Unless agreed otherwise between the VCSP Partner and Broadcom directly, the following should apply:

- 7.1. No title to or ownership of any Broadcom Offering or any materials, Documentation, data, information or anything provided or produced by Broadcom ("**Broadcom Intellectual Property**") is transferred to VCSP Partner pursuant to the Agreement or any associated agreed document. Broadcom and its licensors retain all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to all Broadcom Intellectual Property or anything produced by Broadcom and any derivatives thereof. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted under the Agreement is exchanged between the Parties. There is no transfer of any portion of such title and ownership or any of the associated goodwill in the Broadcom Intellectual Property to VCSP Partner, and the Agreement shall not be construed to grant VCSP Partner any right or license, whether by implication, estoppel, or otherwise, except as expressly provided herein.
- 7.2. VCSP Partner 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. VCSP

Partner 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.

- 7.3. The Broadcom Intellectual Property, and all other proprietary information to VCSP Partner hereunder contain and constitute trade secrets, information, and data proprietary to Broadcom. Neither VCSP Partner nor its employees shall cause or permit such information or data to be disclosed to third parties or duplicated except as expressly permitted in the Agreement or any associated agreed document. VCSP Partner acknowledges and agrees that the unauthorized disclosure, use or copying of the Broadcom Intellectual Property may cause Broadcom serious financial loss. Accordingly, in the event of any unauthorized disclosure, use or copying of the Broadcom Intellectual Property, VCSP Partner agrees that Broadcom shall have the right to seek injunctive or other equitable relief in a court of competent jurisdiction without the posting of any bond.
- 7.4. 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 VCSP Partner or (ii) be deemed to limit Broadcom's rights to provide similar Broadcom Offerings to other End Users. VCSP Partner agrees that Broadcom may use any feedback provided by VCSP Partner, and its End User(s) as the case may be, 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. REPRESENTATIONS AND WARRANTIES

- 8.1. VCSP Partner 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. Neither TD SYNTEX nor Broadcom shall, in any way, be liable for the said hardware or third-party software.
- 8.2. 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.
- 8.3. VCSP Partner acknowledges and agrees that no other representations or warranties concerning Broadcom Offerings are made by TD SYNTEX other than those compliant with the specifications published by Broadcom for each applicable Broadcom Offering.

9. LIMITATION OF LIABILITY

- 9.1. Neither Party excludes or limits its liability for damages caused by fraud or fraudulent misrepresentation or for death or personal injury caused by the negligence or willful default of that Party.
- 9.2. EXCEPT IN THE CASE OF A BREACH OF INTELLECTUAL PROPERTY/CONFIDENTIALITY, THIRD PARTY CLAIMS ARISING UNDER INDEMNIFICATION SECTION, LIABILITY ARISING FROM VCSP PARTNER'S BREACH OF ITS PAYMENT OBLIGATIONS, OR LIABILITY THAT CANNOT BE EXCLUDED BY APPLICABLE LAW: IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, BUT NOT NECESSARILY LIMITED TO, LOSS OF PROFIT, DAMAGES RELATING TO MONIES SAVED OR FEES GENERATED AND/OR ANY LOSS OF VCSP PARTNER DATA BY USE OF ANY BROADCOM OFFERING, REGARDLESS OF WHETHER A PARTY WAS APPRISED OF THE POTENTIAL FOR SUCH DAMAGES AND WHETHER BASED ON CONTRACT, TORT, OTHER LEGAL THEORY THAT MAY ARISE HEREUNDER; AND B) IN NO EVENT WILL A PARTY'S LIABILITY FOR DIRECT DAMAGES EXCEED TWICE THE AMOUNTS PAID OR PAYABLE BY VCSP PARTNER IN THE TWELVE MONTHS PRIOR TO THE DATE SUCH BREACH OCCURRED FOR THE BROADCOM OFFERING THAT GAVE RISE TO THE BREACH.
- 9.3. The remedies provided in the Agreement are the exclusive remedies of the Parties.

10. TERMINATION

- 10.1. The Agreement shall continue in effect unless otherwise terminated in accordance with this section.

- 10.2. The Agreement and/or the applicable Transaction Document and/or commit contract(s) may be terminated by the non-breaching Party or Broadcom without any further notice, if the breaching Party materially breaches any material provisions of the Agreement and/or the applicable Transaction Document and/or commit contract(s) and/or any referenced document and fails to cure such breach within ten (10) days after written notice thereof.
- 10.3. TD SYNEX may terminate this Agreement and/or the applicable Transaction Document immediately if (i) VCSP Partner violates any of the conditions of the section herein entitled Intellectual Property Right and/or its confidentiality obligation (ii) VCSP Partner shall cease business, file for bankruptcy, be adjudged bankrupt or insolvent or commit any other act of bankruptcy, or (iii) VCSP Partner has failed to comply with laws as defined in this Agreement including FCPA, Import and Export requirements.
- 10.4. Either Party may terminate this Agreement at any time without cause by giving sixty (60) days' notice in writing to the other Party.
- 10.5. This Agreement may be terminated by TD SYNEX as a consequence of any termination's right exercised by Broadcom in accordance with VMware Cloud Service Provider ("VCSP") Appointment of Rights" and any other terms applicable between Broadcom and VCSP Partner.
- 10.6. This Agreement may be terminated by TD SYNEX in the event Broadcom terminates its agreement with TD SYNEX. TD SYNEX will provide the VCSP Partner with a prior written notice provided that TD SYNEX has received such notice from Broadcom.
- 10.7. TD SYNEX 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 VCSP Partner's business or goodwill, or otherwise.
- 10.8. Termination does not release either Party from any liability which, at the time of such termination, had already accrued to the other Party or which is attributable to a period prior to such termination, nor preclude either Party from pursuing any rights or remedies it may have under law or in equity with respect to any breach of the Agreement. Upon termination for any reason, VCSP Partner shall pay TD SYNEX 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 TD SYNEX on such termination.

11. PERSONAL DATA

- 11.1. If VCSP Partner transfers any Personal Data to Broadcom as a requirement pursuant to any Broadcom Offering, then VCSP Partner represents that it is duly authorized to provide personal data to Broadcom and it does so lawfully in compliance with relevant legislation. VCSP Partner hereby authorizes Broadcom to make necessary transfers of Personal Data and Broadcom, and any Broadcom affiliates and subcontractors, may process such Personal Data for the purposes of providing the Broadcom Offering contemplated under the Agreement. Broadcom shall not transfer such Personal Data except lawfully, in compliance with applicable Data Protection Laws, and in accordance with Broadcom's statement and terms set out at <https://www.broadcom.com/company/legal/privacy/data-transfers>.
Notwithstanding, in the event that Personal Data of VCSP Partner is transferred from the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom to countries which do not ensure an adequate level of data protection within the meaning of the Data Protection Laws of the foregoing territories ("**Restricted Transfers**"), Broadcom complies with the provisions of Art. 44 – 46 GDPR, with respect to such Restricted Transfers. In the event Broadcom is acting as a data processor for End User under the GDPR, Broadcom's processing shall be subject to and in accordance with Broadcom's global Data Processing Addendum, including the relevant Standard Contracting Clauses (SCC) for international data transfer incorporated in it, as located at: <https://www.broadcom.com/company/legal/privacy/data-transfers> ("**DPA**"). Where VCSP Partner processes Personal Data on behalf of its End User under the GDPR, the VCSP Partner shall be responsible for entering into a relevant data processing agreement with its End User.
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