Omnissa General Terms

Dated: 06 May 2024
By downloading or using an Offering, Customer agrees to be bound by the terms of the Agreement.

1.   OFFERINGS.

1.1.   **Applicable Terms.** The terms of the Order and these General Terms, including the applicable Exhibits and Offering-specific Notes (collectively, the "**Agreement**") govern Customer's use of the Offerings. The following descending order of precedence applies: (a) the Order; (b) the General Terms; (c) the Exhibits; and (d) the Offering-specific Notes.

1.2.   **Users**. Customer is responsible for its Users' compliance with the Agreement.

1.3.   **Restrictions**. Customer may use the Offerings only for its internal use and for the benefit of its Affiliates. Affiliates may not use the Offerings. Customer may not resell or sublicense its rights to the Offerings. Customer may not use the Offerings in an application service provider, service bureau, hosted IT service, or similar capacity for third parties.

1.4.   **Benchmarking**. Customer may use the Offerings to conduct internal performance testing and benchmarking studies. Customer may only publish or distribute study results with Omnissa's approval.

1.5.   **Evaluations**. Evaluations are for 30 days (unless Omnissa specifies otherwise in writing). Customer may not have access to data in the Evaluation after it ends. Evaluations are provided "AS IS" without indemnification, support, service level commitment, or warranty of any kind, express or implied.

2.   ORDERS AND PAYMENTS.

2.1.   **Orders**. Orders are binding when Omnissa accepts them, which is deemed to occur on Delivery.

2.2.   **Purchase Orders**. Purchase orders do not have to be signed to be valid. Terms contained in any purchase order or other business form issued by Customer do not apply.

2.3   **No Refunds**. All Orders are non-refundable and non-cancellable except as expressly provided in the Agreement.

2.4.   **Overages**. Customer must pay all fees for use of the Offerings, including amounts for add-on features and fees incurred based on usage. Omnissa may bill Customer directly for metered or overage fees, even if Customer originally purchased the Offerings through an Omnissa authorized reseller.

2.5.   **Direct Orders**. This section 2.5 (Direct Orders) applies only to Orders placed directly with Omnissa. If Customer purchases entitlements to the Offerings through an Omnissa authorized reseller, different terms regarding invoicing, payment, and taxes may apply.

2.5.1   **Payments**. Except as specified in an Order, fees for the Offerings will be governed by the applicable price list at the time of invoicing. Customer must pay all undisputed fees and approved expenses within 30 days from the date of invoice. After 30 days, interest will accrue at the lesser of 1.5% per month or the highest lawful rate.

2.5.2   **Disputes**. To dispute any fees in good faith, Customer must notify Omnissa in writing of the reasons for the dispute before the payment due date. The parties must negotiate in good faith to resolve the dispute as soon as reasonably practicable. Omnissa will not suspend or terminate Customer's access to any Offering because of any unpaid, disputed fees while

Customer and Omnissa are negotiating to resolve the dispute.

2.5.3 **Taxes**. Fees are exclusive of Taxes. Customer must pay or reimburse Omnissa for all Taxes. If Customer is required to withhold any Tax, Customer must gross up its payments so that Omnissa receives all sums due in full. If Customer's address is outside of the United States, Omnissa will treat the Customer's "bill to" address as the place of supply for VAT purposes.

3. **TERM.**

3.1. **Term**. The Agreement applies to the Offerings from the effective date of the Order until the expiration or termination of Customer's entitlement to the Offerings as set forth in the Agreement.

3.2. **Temporary Suspension**. In the event of a security risk to a Service or its users, Omnissa may suspend Customer's use of that Service.

3.3. **Termination for Cause**. Either party may terminate the Agreement or Customer's entitlement to an Offering under the Agreement effective immediately upon written notice if the other party: (a) materially breaches any provision of the Agreement and fails to cure within 30 days after receiving written notice; or (b) becomes insolvent or subject to any form of bankruptcy proceeding.

3.4. **Effect of Termination**: Upon termination of the Agreement: (a) all entitlements to the applicable Offerings immediately end; (b) Customer must stop using, and destroy any copies of, those Offerings; and (c) each party must return or destroy any Confidential Information of the other party in its control (other than information that must be retained by law). Any provision of the Agreement that is intended by the parties to survive termination of the Agreement will survive.

4. **CONFIDENTIAL INFORMATION.**

4.1. **Protection**. Recipient must protect Discloser's Confidential Information with at least the same care as it protects its own Confidential Information but not less than reasonable care. Recipient may not use Discloser's Confidential Information except to exercise its rights and perform its obligations under the Agreement. Recipient may disclose Confidential Information only to Recipient's Affiliates, employees and contractors who need to know the Confidential Information for purposes of the Agreement and who have a duty of confidentiality no less restrictive than this section 4. (Confidential Information).

4.2. **Exceptions**. Recipient's obligations under section 4.1. (Protection) do not apply if the information: (a) is rightfully known by Recipient at the time of disclosure without any obligation of confidentiality; (b) is lawfully disclosed to Recipient by a third party without confidentiality restrictions; (c) becomes publicly available through no fault of Recipient; or (d) is independently developed by Recipient without access to or use of Discloser's Confidential Information.

4.3. **Injunctive Relief**: Nothing in the Agreement limits a party's right to seek equitable relief for breach of this section 4. (Confidential Information).

5. **OWNERSHIP.**

5.1. **Customer Content**. Customer retains all Intellectual Property Rights in and to Customer Content.

5.2. **OMNISSA IP**: Omnissa retains all Intellectual Property Rights in and to the Offerings, including any improvements, enhancements, modifications, and derivative works. If Customer provides any feedback about the Offerings, Omnissa may use that feedback without restriction.

5.3. **Reservation of Rights**. Except as expressly provided in the Agreement, the Agreement does not grant either party any rights, implied or otherwise, to the other party's content or intellectual property.

6.   **LIMITED WARRANTIES.**

6.1.   **Software and Cloud Services**. Omnissa warrants that Software and Cloud Services will substantially conform with the Documentation: (a) for Software, for 90 days following Delivery; or (b) for Cloud Services, for the Subscription Term. Customer must properly install and use the Offerings without modification and in accordance with the Documentation. Customer must notify Omnissa of an alleged breach of this warranty within the applicable warranty period. As Customer's sole remedy for a breach of this warranty, Omnissa must either: (1) correct any reproducible error in the Software or Cloud Service; or (2) terminate Customer's entitlement to the Software or Cloud Service and refund any applicable: (i) prepaid fees for Cloud Services or Subscription Software, prorated for the remaining portion of the then-current Subscription Term; (ii) fees paid for Perpetual Licenses, less straight-line depreciation over a three-year useful life; and (iii) unamortized prepaid fees for discontinued Support Services.

6.2.   **Professional Services and Support Services**. Omnissa warrants that Professional Services and Support Services will be performed in a professional manner following industry standards. Customer must notify Omnissa within 30 days of an alleged breach of this warranty. As Customer's sole remedy for a breach of this warranty, Omnissa must either:

(a) Rectify the breach; or (b) terminate the applicable Service and refund any unamortized prepaid fees for that Service.

6.3.   **Disclaimer of Warranties**. Except for the limited warranties in this section 6 (Limited Warranties), to the maximum extent permitted by law Omnissa, for itself and on behalf of its suppliers, disclaims all warranties and conditions whether express, implied, or statutory, including any warranties of merchantability, satisfactory quality, fitness for a particular purpose, title, or non-infringement, and any warranty arising from course of dealing or course of performance, relating to the Offerings. Neither Omnissa nor its suppliers warrant that the Offerings will operate uninterrupted, that Offerings will be free from defects or errors, or that the Offerings will meet (or are designed to meet) Customer's requirements.

7.   **INDEMNIFICATION.**

7.1.   **Defense and Indemnification**. Subject to the remainder of this section 7 (Indemnification), Omnissa will: (a) defend Customer against any Infringement Claim; and (b) indemnify Customer from amounts finally awarded against Customer by a court of competent jurisdiction or a government agency, or agreed to in settlement, for the Infringement Claim.

7.2.   **Requirements**. Customer must provide Omnissa with prompt notice of any Infringement Claim and reasonably cooperate with Omnissa's requests for assistance. Omnissa will have sole control of the defense and settlement of the Infringement Claim.

7.3.   **Exclusions**. Omnissa has no obligation under this section 7 (Indemnification) with respect to an Infringement Claim based on: (a) combination of Indemnified Materials with non-Omnissa materials; (b) use of an older version of Indemnified Materials when use of a newer version would have avoided the infringement; (c) any modification to Indemnified Materials other than those made by Omnissa; (d) any Deliverable provided by Omnissa in accordance with Customer's specifications; (e) any claim relating to open source software or freeware technology that is not embedded by Omnissa into the Offerings; or (f) any Indemnified Material provided on a no-charge, beta, or evaluation basis.

7.4.   **Remedies**. If Indemnified Materials become, or in Omnissa's reasonable opinion are likely to become, the subject of an Infringement Claim, Omnissa will, at its option and expense, either:
(a) procure the necessary rights for Customer to keep using the Indemnified Materials; or (b) modify or replace the Indemnified Materials to make them non-infringing. If those remedies are not commercially feasible, Omnissa may terminate Customer's entitlement to the Indemnified Materials and refund any applicable: (i) prepaid fees for Cloud Services or Subscription Software, prorated for the remaining portion of the then-current Subscription Term; (ii) fees paid for Perpetual Licenses or Deliverables, less straight-line depreciation over a three-year useful life; and (iii) unamortized prepaid fees for discontinued Support Services.

7.5.   **Sole Remedy**. This section 7. (Indemnification) states Customer's sole remedy and Omnissa's

entire liability for Infringement Claims.

8. **LIMITATION OF LIABILITY.**

8.1. **Disclaimer**. To the maximum extent permitted by law, neither party will be liable under the Agreement for lost profits or business opportunities, loss of use, loss of data, loss of goodwill, business interruption, or any indirect, special, incidental, or consequential damages under any theory of liability. This limitation will apply regardless of whether a party has been advised of the possibility of those damages and regardless of whether any remedy fails of its essential purpose.

8.2. **Cap on Monetary Liability**. Each party's aggregate liability under the Agreement will not exceed amounts paid or payable by Customer for the Offering giving rise to the claim in the 12 months prior to the event giving rise to the claim, except for Perpetual Licenses, where each party's aggregate liability will not exceed the license fees paid for the Software giving rise to the claim. Omnissa's aggregate liability for an Evaluation will not exceed $5,000 USD.

8.3. **Exclusions**. The limitations of liability in sections 8.1 (Disclaimer) and 8.2 (Cap on Monetary Liability) will not apply to: (a) Omnissa's indemnification obligations under section 7. (Indemnification); (b) either party's infringement of the other party's Intellectual Property Rights; (c) Customer's violation of section 2 of the Cloud Services Exhibit (Acceptable Use); or (d) any liability that may not be limited by law.

8.4. **Further Limitations**. Omnissa's liability for any third-party software embedded into any Software (including, for the avoidance of doubt, Subscription Software) or Cloud Service is subject to this section 8 (Limitation of Liability). Omnissa's suppliers have no liability under

the Agreement, and Customer may not bring claims directly against them. Omnissa has no liability with respect to any Third-Party Content.

9. **DATA USE AND PRIVACY.**

9.1. **Personal Data**. If Omnissa acts as a processor of Personal Data, Omnissa will process that Personal Data in accordance with the Data Processing Addendum.

9.2. **Account, Operations, and Usage Data**. Omnissa collects Customer contact and purchase information to manage Customer's account and to fulfill Orders. Omnissa also processes: (a) information necessary to facilitate delivery and operation of the Offerings, verify compliance with the terms of the Agreement, to invoice, and to provide Support Services; and (b) configuration, performance, and usage data to improve Omnissa products and services, and other analytics purposes as detailed in the Offering-specific Notes. To the extent any of that data includes information that identifies an individual, Omnissa will process that information in accordance with Omnissa's Products and Services Privacy Notice available at www.vmware.com/help/privacy.html.

9.3. **Support Requests and Professional Services**. Customer is responsible for taking steps necessary to protect any sensitive information or Personal Data that it provides to Omnissa while receiving Support Services or Professional Services. Those steps may include obfuscating or removing such information, or working with Omnissa at the time of submission to limit disclosure.

9.4. **Required Disclosures**. Omnissa may disclose Customer Content or Confidential Information if Omnissa is required by law or by order of a judicial or administrative body of competent jurisdiction (a "Demand"). Unless legally prohibited from doing so, Omnissa will provide Customer with notice and a copy of the Demand. If the Demand relates to Cloud Services, Omnissa will (i) inform the relevant authority that Omnissa is a service provider acting on Customer's behalf and that all requests for access to Customer Content must be directed in writing to the contact that Customer identifies (or, if no contact is timely provided, to Customer's legal department) and (ii) only provide access to Customer Content if the competent authority rejects the redirect request. If Customer requests, and at Customer's expense, Omnissa will take reasonable steps to contest the Demand. If Omnissa is legally prohibited from notifying Customer of the Demand, Omnissa will evaluate the validity of the Demand, and, if Omnissa does not believe the Demand is legal, Omnissa will challenge the Demand. Omnissa will limit the scope of any disclosure to the minimum information required to comply with the Demand.

9.5 **Security Measures**. Omnissa has implemented and will maintain the technical and organizational security measures set forth in the Omnissa Security Addendum, found at https://omnissa.com/legal-center/

10. **OPEN SOURCE SOFTWARE**. Open source software is licensed to Customer under the open source software's own applicable license terms, which can be found in either the open source_licenses.txt file accompanying the Offerings, the Documentation, or at www.vmware.com/download/open_source.html. These license terms are consistent with the license granted in the Agreement and may contain additional rights benefiting Customer. The open source license terms take precedence over the Agreement to the extent that the Agreement imposes greater restrictions on Customer than the applicable open source license terms. To the extent the license for any open source software requires Omnissa to make the corresponding source code and/or modifications (the "**Source Files**") available to Customer, Customer may obtain a copy of the applicable Source Files by sending a written request to opensource@broadcom.com. All requests should clearly specify: Customer's name, address, the product name and version, operating system, date of purchase, and Source Files requested. This offer to obtain a copy of the Source Files is valid for three years from the date Customer acquires its entitlement to the Offering.

11. **MISCELLANEOUS**.

11.1. **Assignment**. Customer may not assign the Agreement or any Order without Omnissa's prior consent. Once validly assigned, the Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.

11.2. **Notice**. All notices must be in writing. Notices to Customer will be given (a) by email to the email address associated with Customer's account, if Customer has subscribed to email notices; or (b) by posting in the Omnissa customer portal. Legal notices to Omnissa will be given to Omnissa at Omnissa-Legal-Notices.pdl@broadcom.com.

11.3. **Waiver**. Waiver of a breach of the Agreement will not constitute a waiver of any later breach of the Agreement.

11.4. **Severability**. If any part of the Agreement is held to be invalid or unenforceable, all remaining provisions will remain in force to the extent feasible to effectuate the intent of the parties.

11.5. **Compliance with Laws**. Each party must comply with all applicable laws regarding the party's performance under the Agreement.

11.6. **Export Control**. The Offerings are subject to the U.S. Export Administration Regulations and may be subject to the export control laws of other countries. Customer represents and warrants that: (a) Customer and any User 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; (b) Customer and any User will not permit the Offerings to be used for any purposes prohibited by law, including any prohibited development, design, manufacture, or production of missiles or nuclear, chemical, or biological weapons; and (c) Customer and any User are not subject, either directly or indirectly, to any order issued by any agency of the United States government revoking or denying, in whole or in part, Customer's United States export privileges. Customer must notify Omnissa promptly if Customer or any User becomes subject to any order of that type.

11.7. **Governing Law**. The Agreement is governed by the laws of the State of California if the billing address for Customer's Order is in the United States, and by the laws of Ireland if the billing address for Customer's Order is outside the United States. Conflict of law rules are expressly disclaimed. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

11.8. **Public Sector End User**. If Customer is a Public Sector End User, the Public Sector Exhibit available at https://omnissa.com/legal-center/ supersedes or modifies the referenced provisions of the Agreement.

11.9. **Third Party Rights**. Other than as expressly stated, the Agreement does not create any rights for any person who is not a party to it. Only persons who are parties to the Agreement may enforce or rely on any of its terms.

11.10. **Force Majeure**. Except for Customer's payment obligations, neither party will be liable for any delay or failure to perform due to any cause beyond the party's reasonable control, including labor disputes, industrial disturbances, systemic utility failures, acts of nature, pandemics, embargoes, riots, government orders (including sanctions or similar restrictions), or acts of terrorism or war.

11.11. **No Agency**. Nothing in the Agreement is intended to constitute a fiduciary relationship, agency, joint venture, partnership, or trust between the parties. Neither party has authority to bind the other party.

11.12. **Translation**. Any non-English version of these General Terms is provided only as a courtesy, and Customer's use of the Offerings is governed by the English version of these General Terms, published at https://omnissa.com/legal-center/

11.13. **Counterparts**. The Agreement may be signed electronically or in counterparts, in which case each signed copy will be deemed an original as though both signatures appeared on the same document.

11.14. **Entire Agreement**. The Agreement contains the entire agreement of the parties with respect to the subject matter of the Agreement, and supersedes all previous or contemporaneous communications, representations, proposals, commitments, understandings, and agreements, whether written or oral, between the parties regarding its subject matter. The Agreement may be amended only in writing and signed by both parties.

12. DEFINITIONS.

Affiliate means an entity that is directly or indirectly controlled by, is under common control with, or controls a party, where "control" means an ownership, voting, or similar interest representing more than 50% of the total interests outstanding of that entity at the relevant time.

Cloud Service means the Omnissa cloud service specified in Customer's Order.

Cloud Services Guide means the then-current Omnissa Cloud Services Guide, available at https://omnissa.com/legal-center/

Confidential Information means information or materials provided by a party ("Discloser") to the other party ("Recipient") that: (a) is in tangible form and labelled "confidential" or similar; or (b) information which a reasonable person knew or should have known to be confidential. Confidential Information includes: (1) license keys; (2) Omnissa pricing, product roadmaps, or strategic marketing plans; (3) non-public materials relating to the Offerings; and (4) Customer Login Credentials.

Customer means the entity identified in the Order as "Customer".

Customer Content means content uploaded by Customer or any User into a Cloud Service or provided to Omnissa as a part of Support Services but does not include Third-Party Content or account information. For purposes of this definition, "content" means any data, including all text, sound, video, or image files, and software (including machine images).

Data Processing Addendum means the then-current Omnissa Data Processing Addendum, available at https://omnissa.com/legal-center/

Deliverables means any reports, analyses, scripts, templates, code, or other work results delivered by Omnissa as specified in the applicable SOW for Professional Services.

Delivery means: (a) for Cloud Services, when Omnissa emails the Login Credentials to the email address associated with Customer's account; (b) for Software, when Omnissa notifies Customer of availability of the Software for download; (c) for Support Services, upon Omnissa's issuance of an invoice for those Support Services; and (d) for Professional Services, as specified in the applicable SOW.

Documentation means the product documentation describing the features, functionality, and use of the Offerings published and updated by Omnissa from time to time.

Evaluation means an Offering (or part of an Offering) made available free of charge, for evaluation, trial, proof of concept, or similar purpose.

Exhibits means the exhibits to these General Terms available at https://omnissa.com/legal-center/

Indemnified Materials means the Cloud Services, Software, and Deliverables.

Infringement Claim means any claim by a third party that the Indemnified Materials infringe any patent, trademark, or copyright of that third party, or misappropriate a trade secret (only to the extent that misappropriation is not a result of Customer's actions).

Intellectual Property Rights means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, know-how, inventions, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.

Login Credentials means any passwords, authentication keys, or security credentials that enable Customer's access to and management of the Cloud Service.

Offering(s) means, collectively, Services or Software.

Offering-specific Notes means the applicable license notes or services notes found in the Product Guide, the Cloud Services Guide, and the Support Services Guide.

Order means an enterprise order, SOW, quote, or other ordering document for Offerings, issued by Customer to Omnissa or to Customer's Omnissa authorized reseller and accepted by Omnissa described in section 2. of these General Terms (Orders and Payments).

Perpetual License means a license to the Software with a perpetual term.

Personal Data is defined in the Data Processing Addendum.

Product Guide means Omnissa's then-current Product Guide available at https://omnissa.com/legal-center/

Professional Services means those services described in the applicable SOW.

Public Sector End User means a Public Sector End User, as those terms are defined in the Public Sector Exhibit.

Service Level Agreement means the then-current version of the applicable service level agreement for a Cloud Service, available at https://omnissa.com/legal-center/

Service(s) means Cloud Services, Support Services, or Professional Services.

Software means the Omnissa computer programs that Customer licenses under an Order, together with any related software code that Omnissa provides as part of Support Services and that is not subject to a separate license agreement.

SOW means a written agreement between Customer and Omnissa containing project-specific details of the Professional Services or the applicable Omnissa online datasheet.

Subscription Software means Software that is licensed for a specific term.

Subscription Term means the period Customer is permitted to use a Cloud Service or Subscription Software, as stated in the applicable Order. For any on-demand Cloud Services, Subscription Term means the period during which Customer uses the Cloud Service.

Support Services means Omnissa support that are purchased under an Order or included with purchase of Subscription Software or Cloud Services.

Support Services Guide means Omnissa's then-current Support Services Guide, available at https://omnissa.com/legal-center/

Tax means any sales, consumption, VAT, GST, use, gross receipts, business and occupation, withholding, and other taxes (other than taxes on Omnissa's income), export and import fees, customs duties, and similar fees imposed by any government or other authority.

Third-Party Agent means a third party delivering information technology services to Customer under a contract with Customer.

Third-Party Content means content provided by a third party that interoperates with a Cloud

Service, but that is not part of the Cloud Service. Third-Party Content is optional and is subject to the third-party terms accompanying the Third-Party Content.

User means an employee, contractor, or Third-Party Agent that Customer authorizes to use the Offerings as permitted under the Agreement or under Customer's Login Credentials.

Omnissa means Omnissa, LLC, a Delaware limited liability company, if the billing address for the Order is in the United States, or Omnissa International Unlimited Company, a company organized and existing under the laws of Ireland, if the billing address for the Order is outside the United States.