

Omnissa Utilities License Agreement

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Omnissa Utilities License Agreement

This Omnissa Utilities License Agreement (the “Agreement”) is between you (either you individually or the organization you represent) (“you” or “Licensee”), and Omnissa, LLC, if you are located in the United States, and Omnissa International Unlimited Company, if you are located outside of the United States (“Omnissa”, “we”, or “us”), and covers your use of a Utilities Offering. If you are accepting this Agreement on behalf of an organization, you represent that you are authorized to bind that organization. If you do not agree to the terms of this Agreement, then you must not install or use a Utilities Offering. Capitalized terms used in this Agreement are defined throughout this document and in Section 1 (“Definitions”) below.

THIS AGREEMENT GOVERNS YOUR USE OF AND ACCESS TO THE UTILITIES OFFERINGS. YOU MAY USE THE UTILITIES OFFERING ONLY AS PERMITTED BY THIS AGREEMENT, AND ONLY FOR NON-PRODUCTION ACTIVITY. WE PROVIDE THE UTILITIES OFFERINGS STRICTLY “AS IS”, FREE OF CHARGE, AND WITHOUT ANY WARRANTY OR INDEMNIFICATION OF ANY KIND.

1. DEFINITIONS

“Documentation” means any printed and online written reference materials furnished to you in conjunction with the Utilities Offering, including, without limitation, instructions, testing guidelines, and end user guides.

“Utilities Offerings” means the unreleased, concept version of any software, cloud service offering, app or tool offered pursuant to the Omnissa Utilities program, as found at <https://techzone.omnissa.com/utilities>, which may consist of (i) software, in object form only, excluding any Open Source Software provided with the software (“Utilities Software”), and any media and Documentation provided by Omnissa with that software, or (ii) a cloud service offering (“Utilities Cloud Service”), as applicable.

“Intellectual Property Rights” means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patent, patent applications, and moral rights, whether registered or unregistered.

“Open Source Software” means various open source software components provided with a Utilities Offering, that are licensed to you under the terms of the applicable open source software license agreements.

“Updates” means a modification, error correction, bug fix, new release, or other update to or for a Utilities Offering. “User” means any person who uses a Utilities Offering under your credentials, or accesses any content you may upload into or generate using a Utilities Offering.

“Your Content” means any and all applications, files, information, data, or other content that you or your Users upload to or publish or display through a Utilities Offering. It does not include Performance Data or any technical data we may collect through our monitoring of your use of the Utilities Offering.

2. LICENSE GRANT, USE AND OWNERSHIP

2.1 Limited License

Subject to the terms and conditions of this Agreement, Omnissa grants you a non-exclusive, non-transferable license (without the right to sublicense) (i) to use the Utilities Offering solely for purposes of internal testing and evaluation, including consideration of whether or not to license or subscribe to a commercial version of the Utilities Offering if any commercial version ever becomes available, (ii) to use the Documentation provided with the Utilities Offering in support of your authorized use of the Utilities Offering, and (iii) to copy Utilities Software for archival or backup purposes, provided that all titles and trademarks, copyright, and restricted rights notices are reproduced on all copies. You must not use the Utilities Offering (including the Documentation) except as expressly permitted in this Agreement. You must not use the Utilities Offering in a production environment. If you do use the Utilities Offering in a production environment you do so at your own risk and expense.

2.2 Utilities Program

You acknowledge that (i) Omnissa has not publicly announced, other than through the Utilities program web page, the availability of the Utilities Offering, (ii) the Utilities Offering may contain features currently under development, (iii) Omnissa has not promised or guaranteed to you that the Utilities Offering will be publicly announced or made commercially available in the future, (iv) Omnissa has no express or implied obligation to publicly announce or introduce the Utilities Offering as a commercial offering, (v) Omnissa might not introduce an offering similar to or compatible with the Utilities Offering, (vi) the Utilities Offering may contain features, functionality, or modules that will not be included in any commercial version of the Utilities Offering, or that will be marketed separately for additional fees, and (vii) any version number referenced is subject to change and does not in any way represent Omnissa's commitment to release any offering, whether or not similar to the Utilities Offering, in the future. Therefore, you expressly acknowledge and agree that any research or development that you may perform regarding the Utilities Offering or any product or service associated with the Utilities Offering is done entirely at your own expense and risk.

2.3 Feedback

As consideration for access to and use of a Utilities Offering, you must, from time to time, as we may reasonably request, provide feedback (including comments and suggestions, and identifying potential errors and/or improvements) to Omnissa, and only to Omnissa, concerning the functionality and performance of the Utilities Offering. You will provide the requested feedback in a manner that is convenient to you, subject to reasonable availability of your personnel. Before you disclose to us any information under this Agreement that you consider your proprietary or confidential information, you must obtain our prior written approval to disclose that information to us; without our prior written approval, you must not disclose that information to us. We may, in our sole discretion, use any feedback to improve or enhance our offerings. You grant Omnissa a non-exclusive, perpetual, irrevocable, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, disclose, distribute, perform, display, modify, prepare derivative works of, and otherwise exploit the feedback without restriction in any manner now known or in the future conceived, and to make, use, sell, offer to sell, import, and export any product or service that incorporates the feedback.

2.4 Performance Data

The Utilities Offering, and all performance data and test results, including without limitation, benchmark test results (collectively “Performance Data”), relating to the Utilities Offering are our Confidential Information, and must be treated in accordance with the terms of Section 4 (“Confidentiality”) of this Agreement. You must not publish or disclose to any third party any Performance Data relating to the Utilities Offering.

2.5 Acceptable Use

(a) You and your Users may not: (1) resell or sublicense the Utilities Offering; (2) use the Utilities Offering (i) in a way prohibited by law, regulation, governmental order or decree; (ii) to violate the rights of others; (iii) to try to gain unauthorized access to, test the vulnerability of, or disrupt the Utilities Offering, or any other service, device, data, account, or network; (iv) to spam or to distribute malware; (v) in a way that could harm the Utilities Offering or impair anyone else’s use of it; (vi) in a way intended to work around the Utilities Offering’s technical limitations or usage limits, if any; or (vii) in any application or situation where failure of the Utilities Offering could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage; or (3) use any part of the Utilities Offering or any information we provide to you for your product development or for any other commercial purpose, including sales or marketing activities. You must ensure that your Users comply with the terms of this Agreement. You agree that if you become aware of any violation by one of your Users, you will terminate that User’s access immediately.

(b) If you become aware that any of Your Content or a User’s use of Your Content violates this Agreement, you must immediately (a) suspend access to or remove the applicable part of Your Content or (b) suspend the User’s access, or both. We may also ask you to act within a certain time period. If you fail to comply with the request we may, at our sole discretion, suspend or terminate or disable access to Your Content or to the Utilities Offering until you comply with our request.

(c) Except to the extent that any applicable mandatory laws prevent OmniSSA’s restraining you from doing so, you may not, and you may not permit any third party to, sublicense, rent, copy, modify, create derivative works of, translate, reverse engineer, decompile, disassemble, or otherwise reduce to human perceivable form any portion of any Utilities Software or accompanying Documentation.

2.6 Ownership

(a) As between you and us, we and our licensors own and retain all right, title and interest in and to the Intellectual Property Rights in all Utilities Offerings, including all improvements, enhancements, modifications, and derivative works of a Utilities Offering, subject only to the limited license granted in Section 2.1 of this Agreement. This includes any information that we collect and analyze in connection with any Utilities Offering such as usage patterns and other information to improve and evolve our products and offerings. Your rights to use any Utilities Offering are limited to those expressly granted in this Agreement. No other rights with respect to any Utilities Offering or any related Intellectual Property Rights are implied. ALL RIGHTS NOT EXPRESSLY GRANTED UNDER THIS AGREEMENT ARE RESERVED TO OMNISSA. (b) As between you and us, you retain all right, title and interest, and all Intellectual Property Rights, in and to Your Content. Our rights to access and use Your Content are limited to those

expressly granted in the Agreement. No other rights with respect to Your Content or any related Intellectual Property Rights are implied.

2.7 No Support Services

Omnissa is not obligated to provide any maintenance, technical support, or other support (including Updates) for any Utilities Offering. If Omnissa, in its sole discretion, supplies or enables any Update, the Update will be deemed a Utilities Offering under this Agreement and will be subject to the terms and conditions of this Agreement.

2.8 Expenses

Each party will bear its own expenses in connection with this Agreement. The Utilities Offerings are provided to you free of charge.

2.9 Third-Party Software

Utilities Software may enable a computer to run multiple instances of third-party guest operating systems and application programs. You acknowledge that you are responsible for obtaining any licenses necessary to operate any third-party software, including guest operating systems and application programs.

2.10 Other Omnissa Service Offerings or Software

As part of your access to or use of a Utilities Offering, you may receive access to other Omnissa data, content, service offerings, software, or applications, which may be subject to separate terms. If so, those separate terms will prevail over this Agreement regarding your access to and use of that data, content, service offerings, software, or applications.

2.11 Open Source Software

3. TERM, TERMINATION

3.1 Your rights with respect to the Utilities Offering will terminate upon the first to occur of (a) initial release of a commercially available version of the Utilities Offering, (b) expiration of the Utilities Software based on the system date or license key expiration, (c) removal of the Utilities Offering from the Utilities program, or (d) termination by Omnissa, in its sole discretion, of your rights under this Agreement with respect to the Utilities Offering.

3.2 Either you or Omnissa may terminate this Agreement or your rights with respect to a Utilities Offering at any time for any reason or for no reason by providing the other party written notice of that termination, and that termination will be effective immediately upon delivery of the notice. If you breach your confidentiality obligations as set forth in Section 4 ("Confidentiality") of this Agreement, this Agreement and your rights with respect to a Utilities Offering will automatically terminate without notice, and we may immediately revoke your access to the Utilities Offering.

3.3 Upon any expiration or termination of rights with respect to the Utilities Offering under this Agreement, the rights and license granted to you under this Agreement, including your ability to access any of Your Content stored in a Utilities Offering, will immediately terminate. You must immediately cease using the Utilities Offering, and must destroy or render practically inaccessible any Utilities Software, Documentation, and all other tangible items in your possession or control that contain Confidential Information. All provisions of this Agreement that are intended survive termination or expiration of this Agreement for any reason will survive.

4. CONFIDENTIALITY

As used in this Agreement, “Confidential Information” means the Utilities Offering, all information regarding the Utilities Offering (including any trade secrets, know-how, inventions, techniques, processes, and algorithms embodied in the Utilities Offering), Documentation, Performance Data, any Updates, and any other information we provide to you under this Agreement, whether disclosed orally, in writing, or by examination or inspection, other than information that you can demonstrate: (i) was already known to you, other than under an obligation of confidentiality, at the time of disclosure; (ii) was generally available in the public domain at the time of disclosure to you; (iii) became generally available in the public domain after disclosure other than through any act or omission by you; (iv) was subsequently rightfully disclosed to you by a third party without any obligation of confidentiality; or (v) was independently developed by you without use of or reference to any information or materials disclosed by Omnissa or its suppliers. If you are required to disclose Confidential Information pursuant to any applicable law or a court order, you must notify us of the required disclosure promptly in writing and you must cooperate with us in any lawful action to contest or limit the scope of the required disclosure. “Confidential Information” includes any information relating to Omnissa products, product roadmaps, and other technical, business, financial and product development plans, forecasts, and strategies. You must not use any Confidential Information for any purpose other than as expressly authorized in this Agreement. You must not disclose any Confidential Information to any third party. Without limiting the foregoing, you must use at least the same degree of care that you use to prevent the disclosure of your own confidential information of like importance, but in no event less than reasonable care, to prevent the disclosure of any Confidential Information.

5. LIMITATION OF LIABILITY

THE UTILITIES OFFERING IS PROVIDED TO YOU WITHOUT CHARGE, FOR LIMITED EVALUATION PURPOSES. THEREFORE, THE TOTAL LIABILITY OF OMNISSA ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED \$100.00 USD OR THE EQUIVALENT IN LOCAL CURRENCY. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL OMNISSA HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF USE OF THE UTILITIES OFFERING FOR ANY REASON, LOSS OF DATA, LOSS OF YOUR CONTENT, OR LOSS OF BUSINESS INFORMATION), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

6. WARRANTY DISCLAIMER

UTILITIES OFFERINGS ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OMNISSA, ITS LICENSORS AND SERVICE PROVIDERS DISCLAIM ALL WARRANTIES, CONDITIONS, AND OTHER TERMS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES AND CONDITIONS ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, RELATING TO ANY UTILITIES OFFERING, ANY DOCUMENTATION, AND ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT. WE, OUR LICENSORS AND SERVICE PROVIDERS DO NOT WARRANT THAT A UTILITIES OFFERING WILL BE UNINTERRUPTED OR FREE FROM DEFECTS, OR THAT A UTILITIES OFFERING WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS.

7. DATA PROTECTION, SECURITY

7.1 By accepting this Agreement, you warrant and represent that you understand that a Utilities Offering is not intended to be used with any data of a commercial or sensitive nature. You must not submit or upload any personal data to a Utilities Offering, including (a) personal data within the meaning of that term given in the Regulation 2016/679 (the EU General Data Protection Regulation) or (b) protected health information within the meaning of the United States Health Insurance Portability and Accountability Act.

7.2 We monitor the overall performance and stability of the infrastructure of any Utilities Cloud Service. You must not block or interfere with that monitoring. If we reasonably believe a problem with a Utilities Cloud Service may be attributable to your use of that offering or to Your Content, you must cooperate with us to identify the source of and to resolve that problem.

7.3 Technical Data; Log Files.

(a) Technical Data. We collect, process and store technical and related information about your use of a Utilities Offerings, including your devices, systems, applications, peripherals, internet protocol addresses, hardware identification, operating system, application software, peripheral hardware, number of active plugins and software development kits, the successful installation and launch of a Utilities Offering, the amount of computing and storage resources purchased or consumed, user counts, third party licenses or services consumed, and other Utilities Offering usage statistics (collectively, “Technical Data”). We use Technical Data to provide the Utilities Offering; for internal statistical and analytical purposes; to facilitate support (if any); to provision Updates; to develop and improve Omnissa products and services; to track and manage our infrastructure, network, storage, and software; and for capacity planning, troubleshooting, and other forecasting purposes. We may share Technical Data with our affiliates and third party service providers for these purposes and as otherwise required by applicable law.

(b) Log Files. You acknowledge that correspondence and log files generated in conjunction with any communication or notice to us may contain sensitive, confidential, or personal information. You are solely responsible for taking the steps necessary to protect such data, including obscuring the logs or otherwise

protecting such information prior to sending it to us.

7.4 You are responsible for ensuring that the security of the Utilities Offering is appropriate for your intended use of the offering and Your Content. You are responsible for (a) protecting the security of Your Content, including without limitation, any access you might provide to Your Content by your employees, customers or other third parties, and in transit to and from the Utilities Offering; (b) properly configuring the Utilities Offering so that it is suitable for your use; (c) backing up Your Content to the extent required; (d) encrypting Your Content to the extent required; (e) providing any necessary notices to your users and obtaining any legally required consents from your Users concerning your use of a Utilities Offering and Your Content; and (f) complying with any laws or regulations applicable to Your Content and your use of a Utilities Offering.

7.5 As between you and us, you are responsible for any losses or other consequences arising from your failure to encrypt or to back up Your Content, including any loss of or damage to any data.

8. OTHER PROVISIONS

8.1 Governing Law

This Agreement, and all disputes arising out of or related to this Agreement, will be governed by and construed under the laws of the State of California without reference to conflict of laws principles. The United Nations Convention for the International Sale of Goods shall not apply.

8.2 Compliance with Laws; Export Control

Each party will comply with all laws applicable to the actions contemplated by the Agreement. You acknowledge that any Utilities Offering provided to you by Omnissa pursuant to the Agreement is of United States origin, is provided subject to the U.S. Export Administration Regulations (including “deemed export” and “deemed re-export” regulations), and may be subject to the export control laws of other applicable territories. You represent and warrant that (a) you 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; (b) you will not permit a Utilities Offering 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; (c) Your Content will not be classified or listed on the United States Munitions list, contain defense articles, defense services or contain ITAR-related data; (d) Your Content will not require an export license and is not restricted from export to, or from, any Omnissa global resource or personnel under applicable export control laws; and (e) you 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, your United States export privileges. You will notify Omnissa immediately if you become subject to any such order.

8.3 Entire Agreement; Modification

This Agreement is the entire agreement between the parties relating to the Utilities Offerings and the

Utilities program, and all other terms are rejected. No waiver or modification of this Agreement will be valid unless in a writing signed by each party. The waiver of a breach of any term of this Agreement will in no way be construed as a waiver of any other term or breach of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.

8.4 Construction

The headings of sections of this Agreement are for convenience and are not for use in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to”.

8.5 Third Party Rights

Other than as expressly set forth in this Agreement, this Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

8.6 Force Majeure

We will not be liable for any delay or failure to perform any obligations under this Agreement due to any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, earthquakes, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism or war.

8.7 Order of Precedence

The terms of the Agreement will supersede and control over any conflicting or additional terms and conditions that may be presented to you in connection with your use of a Utilities Offering.

8.8 Assignment

You may not assign this Agreement or any rights or obligations hereunder, directly or indirectly, by operation of law, merger, acquisition of stock or assets, or otherwise, without our prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

8.9 Contact Information

If you have questions about this Agreement, please direct all correspondence to: Omnissa, LLC, 3402 Hillview Avenue, Palo Alto, CA 94304, United States of America or email to Legal-Notices@omnissa.com.

Omnissa is a trademark of Omnissa, LLC and is registered in the U.S. and numerous other countries.

