

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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AT&T SERVICES, INC.,	: INDEX NO.:
	:
Plaintiff,	:
	:
-against-	: <u>VERIFIED COMPLAINT FOR</u>
	: <u>INJUNCTIVE RELIEF</u>
	:
BROADCOM INC. as successor-in-interest	:
to VMware, Inc., and VMWARE, INC.,	:
	:
Defendants.	:
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Plaintiff AT&T Services, Inc. brings this action for breach of contract, breach of the implied covenant of good faith and fair dealing, declaratory judgment, and injunctive relief against Defendants Broadcom Inc., as successor-in-interest to VMware, Inc., and VMware, Inc.¹ AT&T’s allegations are based on knowledge as to its own acts, and on information and belief as to all other matters except where expressly indicated:

NATURE OF THE ACTION

1. In November 2023, Broadcom spent \$61 *billion* to acquire VMware, a provider of “virtualized” software solutions. Almost immediately, Broadcom began reshaping VMware’s business model from selling stand-alone perpetual software licenses to selling more expensive subscription software licenses bundled with additional products and services. As its new owner, Broadcom has every right to change VMware’s business model *prospectively*. What it cannot do, however, is *retroactively* change *existing* VMware contracts to match its new corporate strategy. But that is exactly what Broadcom seeks to do here.

¹ The relevant agreements are between AT&T and VMware. In November 2023, Broadcom acquired VMware and, upon information and belief, assumed control over the contracts, software, and services at issue. Although AT&T directs its allegations throughout this Complaint at each specific Defendant as appropriate, AT&T’s causes of action are asserted against both Defendants coextensively.

2. Specifically, Broadcom is threatening to withhold essential support services for *previously* purchased VMware perpetually licensed software unless AT&T capitulates to Broadcom's demands that AT&T purchase hundreds of millions of dollars' worth of bundled subscription software and services, which AT&T does not want.

3. Not only is Broadcom contractually obligated to continue providing the software support services, but without them AT&T has no way to ensure the VMware software installed on approximately 8,600 AT&T servers that deliver services to millions of AT&T customers worldwide will continue to operate.

4. These software support services, which include daily maintenance, security patches, upgrades, and troubleshooting, are essential to ensuring that the VMware software remains functional, and thus critical to AT&T's ability to provide services to millions of its customers around the world.

5. For example, the support services are critical to AT&T's provision of emergency communication services relied on by the U.S. government and the extended public safety community including, but not limited to, millions of police officers, firefighters, paramedics, emergency workers, and incident response team members nationwide. Each day, millions of devices used by these emergency responders depend on AT&T's emergency communications services. The VMware software enables AT&T to provide these emergency communication services to allow emergency responders to freely communicate during emergencies.

6. The support services are also integral to AT&T's provision of services to local, state and federal governments, and intelligence communities. This includes tens of thousands of virtual operating systems managed by AT&T that are dedicated to various national security and public safety agencies within the federal government as well as the Office of the President. As such,

Broadcom's threat not only poses a risk to critical government services, but potentially national security and public safety as well.

7. Additionally, the support services enable tens of thousands of agents at various AT&T customer contact centers to assist roughly 1,000,000 AT&T customers every day with their communication needs. Without the support services, it is not a question of if but when the software will crash due to a software error, security issue, or lack of upgrades and maintenance. When that happens, these 1,000,000 daily customers will find it significantly more difficult to resolve issues with their accounts because thousands of fewer customer contact agents will be available to assist them.

8. Given the public safety, national security, government, and emergency assistance functions enabled by the virtual operating systems most likely to be affected by the loss of support services, the consequences of Broadcom's termination of support services would likely be devastating to AT&T, its customers, and the public at large.

9. Broadcom is contractually obligated to provide support services for the VMware software through September 8, 2024. However, under an amendment the Parties signed in August 2022, AT&T obtained the right to renew the support services for "up to" two more years at its "sole option" as long as it does so prior to the end of the current term.

10. Although AT&T has already advised Broadcom that it is exercising its option to renew support services for at least another year, Broadcom is refusing to honor AT&T's renewal.

11. Instead, Broadcom states it will only continue to provide support services if AT&T agrees to purchase scores of subscription services and software that: (1) AT&T does not want or need; (2) would impose significant additional contractual and technological obligations on AT&T; (3) would require AT&T to invest potentially millions to develop its network to

accommodate the new software; (4) may violate certain rights of first refusal that AT&T has granted to third-parties; and (5) would cost AT&T tens of millions more than the price of the support services alone.

12. Many predicted these sorts of bullying tactics when Broadcom first announced the VMware deal in May 2022. For example, industry insiders opined the sale would “affect VMware’s customer relationships, as customers may push back against the shift to subscriptions, which are generally perceived as more expensive than perpetual licenses.” *See* <https://www.forbes.com/sites/stevemcdowell/2023/12/10/vmware-customers-cautious-after-recent-broadcom-actions/>.

13. Numerous VMware customers feared they would see significant cost increases for purchases and renewals of VMware products because Broadcom emphasized these drastically more expensive subscription bundles. *See* <https://blogs.idc.com/2024/08/07/vmware-cost-increases-how-broadcom-vmware-product-offerings-are-evolving/>.

14. Industry analysts warned VMware customers to “[v]alidate existing inventory to prepare for licensing changes and/or to explore vendor alternatives. Push VMware for written roadmap commitments and add price-caps and exit-clauses for multi-year license agreements.” *See* <https://www.networkworld.com/article/971102/can-broadcom-vmware-move-enterprise-networking-forward.html>.

15. Once the deal closed, Broadcom wasted no time strong-arming customers into highly unfavorable subscription models marked by “steeply increased prices[,]” “refusing to maintain security conditions for perpetual license[d] [software,]” and threatening to cut off support for existing products already licensed by customers—exactly as it has done here. *See* [Broadcom says “many” VMware perpetual licenses got support extensions | Ars Technica](#).

16. Similar complaints have been made against Broadcom for “unilaterally cancelling all licenses for essential VMware virtualization software[.]” “unjustifiable hikes in prices, the re-bundling of products, altered basis of billing and the imposition of unfair software licensing terms that restrict choice and lock-in customers and partners,” and driving deals in which “companies that license VMware software were forced to accept unfair terms.” See [The Capitol Forum, Vol 12, No. 360 \(June 14, 2024\)](#).

17. Broadcom’s unsavory business practices are not limited to software. Just last month, for example, Samsung sued Broadcom for, *inter alia*, “refus[ing] to restart shipments and threaten[ing] to terminate the Parties’ entire commercial relationship unless Samsung agreed to enter into a long-term contract pursuant to which Samsung would purchase all of its Critical Components for Flagship Devices from Broadcom.” See *Samsung Electronics Co., Ltd. v. Broadcom Inc. et al.*; Case No. 3:24-cv-03959 (N.D. Cal.), [Dkt No. 1 ¶ 7](#).

18. The FTC has also accused Broadcom of anticompetitive conduct, including that Broadcom forces customers to source core circuitry from Broadcom—semiconductor components, or chips, that are essential to the use of television, DSL, and fiber broadband devices—on an exclusive or near exclusive basis by threatening to cut off the customers’ supply of such components if they refuse.

19. In November 2021, the FTC issued a final Decision and Order related to those semiconductor components prohibiting Broadcom from engaging in various anticompetitive behavior including (1) requiring customers to enter into exclusivity or loyalty agreements for access to Broadcom’s supply of key chips, and (2) retaliating against customers for doing business with Broadcom’s competitors. See [FTC Approves Final Order Requiring Semiconductor Supplier Broadcom to Cease its Anticompetitive Conduct](#). However, apparently not even the FTC can make

Broadcom see the error of its ways because Broadcom is still employing the same intimidation playbook that landed it in hot water to begin with.

20. Here, Broadcom's attempt to bully AT&T into paying a king's ransom for subscriptions AT&T does not want or need, or risk widespread network outages that could cripple the operations of millions of AT&T customers worldwide, is precluded by the express terms of the parties' written agreement. Accordingly, refusing to be extorted, AT&T brings this action for breach of contract, declaratory judgment, breach of the implied covenant of good faith and fair dealing, and injunctive relief.

21. Injunctive relief is required here. The threat of irreparable harm is imminent. Absent AT&T submitting to Broadcom's demands, Broadcom plans to terminate AT&T's support services on September 9, 2024—fewer than fourteen days from now—and cut off AT&T's contractual right to renew support services under the terms of the parties' agreement. Without the support services, AT&T cannot address—much less, prevent—software errors, security vulnerabilities, and system outages that routinely occur in the ordinary course of the Software's operation. As a result, more than 75,000 virtual machines operating with the Software—and the millions of AT&T customers worldwide those machines support—are living on borrowed time.

22. If Broadcom follows through on its threat, the harm to both AT&T—its operations, customer relations, and reputation—and the general public will be irreparable. This is particularly true given the millions of public safety workers and emergency responders nationwide as well as various local, state, and federal government agencies that rely on AT&T's systems. Accordingly, AT&T seeks injunctive relief to prevent Broadcom from reneging on AT&T's option in breach of the parties' agreement.

THE PARTIES

23. Plaintiff AT&T Services, Inc. is a Delaware corporation with a principal place of business located at 208 S. Akard Street, Dallas, Texas 75202-4206. AT&T also has offices in New York, New York located at 157 W. 57th Street and 60 Hudson Street.

24. Upon information and belief, Defendant Broadcom Inc. is the successor-in-interest to VMware, Inc., and is a Delaware corporation with a principal place of business located at 3401 Hillview Avenue, Palo Alto, California 94304. Upon information and belief, Broadcom also has offices in Melville, New York that relate to its software business.

25. Upon information and belief, Defendant VMware, Inc. is a predecessor-in-interest to Broadcom, and is a Delaware corporation with a principal place of business located at 3401 Hillview Avenue, Palo Alto, California 94304. Upon information and belief, VMware also has offices located at 2 Pennsylvania Plaza, 17th Floor, New York, New York 10121.²

JURISDICTION AND VENUE

26. Jurisdiction is proper pursuant to CPLR §§ 301 and 302 because, among other things: (1) upon information and belief, Defendants are authorized to conduct business in New York and regularly transact or solicit business in New York, including, but not limited to, from their offices in New York; and (2) Defendants' actions and inactions have caused injury to AT&T in New York.

27. Jurisdiction is also proper by agreement of the Parties. Section 8.5 of the Parties' VMware Master End User License Agreement dated September 27, 2007 (as amended, the "EULA"), which Defendants contend permits them to terminate the support services, states that "[t]his Agreement is governed by the laws of the State of New York without regard to its choice

² Broadcom, VMware, and AT&T are collectively referred to herein as the "Parties."

of law principles . . . If any litigation or other proceeding is commenced with respect to this Agreement, the federal and state courts located in the Southern District of New York, State of New York shall have jurisdiction thereof, and any proceeding shall be filed in such courts.”³

While AT&T does not believe the EULA has any bearing on this dispute, to the extent Defendants intend to rely on it, Section 8.5 (the “Forum Selection Clause”) applies.

28. Venue is proper pursuant to CPLR §503(a) because neither party’s principal office is located in the state and AT&T has designated New York County as the venue. Further, to the extent Defendants intend to rely on the EULA, the Parties also consented to venue in New York County under the Forum Selection Clause.

FACTUAL BACKGROUND

A. AT&T’s Business.

29. AT&T is one of the world’s leading communications providers. It offers an array of cellular, telephone, network, and related services to hundreds of millions of customers across the United States.

30. Among other things, AT&T designs, operates, and maintains computer networks intended to help AT&T customers connect enterprise sites, data centers, workstations, and cloud-based applications for business and personal use. In connection with these efforts, AT&T’s engineers analyze customer applications, security requirements, and traffic patterns to optimize the performance of its customers’ networks. The goal is to simplify its customers’ operations, support application growth, and provide high-performance access to cloud-based services, data centers, web-portals, and certain operating system-based applications.

³ This language was added in Amendment No. 4 to the EULA, executed by the Parties on September 27, 2013.

B. *Defendants' Business.*

31. Upon information and belief, Broadcom is a global technology company that designs, develops, and supplies semiconductor and infrastructure software solutions.

32. In November 2023, Broadcom acquired VMware, the developer of the VMware software at issue (the "Software"). The Software is a type of virtualization software used in the data centers of large organizations' networks.

33. Virtualization software allows large businesses, organizations, or governmental entities to operate their networks more cost effectively by enabling one server to run multiple operating systems and applications using "virtual machines."

C. *The Importance of the Software and Support Services to AT&T and Its Customers.*

34. The Software is an essential component of AT&T services that impact substantially all of its customers.

35. AT&T uses the Software to construct a "virtualized environment" by compartmentalizing AT&T's hardware. In basic terms, the Software runs an operating system on a piece of AT&T hardware (*e.g.*, a server or an individual computer) that enables the hardware to host multiple sub-operating systems, or "virtual machines," each of which can run applications for separate users.

36. Put another way, the Software allows one physical computer to function as multiple virtual computers. It is essentially like taking a large office space and dividing it into several smaller offices. Each smaller office can be used for different purposes, like meeting clients, doing research, or handling paperwork without interfering with each other.

37. The virtualized environment created by the Software allows AT&T to, among other things, take one physical host computer and logically subdivide it into several virtual

computers (known as Virtual Machines or VMs), each one operating as if it were its own physical computer. This enables AT&T to better utilize the resources of the physical host computer, improve overall performance, and operate more efficiently (*i.e.*, less power is required for one physical host computer running five virtual computers than for five physical computers each running independently). By allowing AT&T to run multiple tasks/applications on a single machine, the Software enables AT&T to manage its operations more efficiently and provide the support needed for its customers' operations.

38. Without properly functioning Software, the hardware for which the Software creates these virtualized environments would not be able to operate. The support services at issue (the "Support Services") are required to ensure that the Software, and therefore all hardware on which the Software is loaded, continues to operate.

39. In total, AT&T has at least 75,000 virtual machines created by the Software across approximately 8,600 AT&T servers. The applications running on these virtual machines touch innumerable aspects of AT&T's services to its customers. Without the Software, it would require at least 75,000 separate servers or machines to replicate the operations of all the virtual machines created using the Software.

40. The Support Services provide essential support for the Software in at least two key respects: (1) they address Software breakdowns or errors that must be fixed for the Software to continue to operate and for the systems that rely on the Software's virtualized environments to continue to run; and (2) they provide on-going upkeep, such as critical security patches (needed to address any breaches in a system's security), maintaining the Software to ensure it runs efficiently, and installing Software upgrades.

41. Without the Support Services, the more than 75,000 virtual machines operated by

AT&T—impacting millions of its customers worldwide—would all be just an error or software glitch away from failing.

42. Broadcom and VMware are the only entities with the source code for the Software and, therefore, the only entities that can provide the Support Services.

43. On average, AT&T requires the Support Services daily.

D. The Parties' Relationship and the EULA.

44. AT&T has had a business relationship with VMware, the predecessor-in-interest to Broadcom, for more than twenty years.

45. Effective September 27, 2007, AT&T and VMware executed the EULA, which granted AT&T licenses to use certain VMware software products.

46. The EULA is “governed by the laws of the State of New York and the United States of America, without regard to its choice of law principles” (the “Governing Law Provision”). (EULA § 8.5.)

47. The EULA expressly provides that, “VMware may offer support and subscription services [to AT&T] (hereinafter referred to as ‘Services’) separately.” (EULA § 5.)

48. AT&T and VMware signed at least eleven amendments to the EULA—memorializing AT&T’s additional purchases of VMware software, incorporating or modifying select EULA terms, and/or extending the EULA’s term.

49. Effective September 27, 2013, AT&T and VMware signed Amendment No. 4 to the EULA (“EULA Amendment 4”), which amended certain EULA terms.

50. Among other things, EULA Amendment 4 added the Forum Selection Clause, which renders the EULA subject to New York law and requires that any disputes “with respect to [the EULA]” be litigated in “the federal and state courts located in the Southern District of New

York, State of New York[.]” (EULA Amendment 4 ¶ 55.)

51. EULA Amendment 4 also added an “Order of Precedence” clause:

The terms of [the EULA] govern all Orders that AT&T may place with VMware while [the EULA] remains in effect. The Parties may not vary or supplement the terms of [the EULA], in connection with any Order, except by Special Terms and Conditions on which both Parties have agreed. When Special Terms and Conditions are included in an Order and agreed upon, they shall take precedence over any inconsistent term of [the EULA], but only with reference to the transaction governed by that Order

(*Id.* ¶ 68.)

52. EULA Amendment 4 defines “Special Terms and Conditions” as follows:

“**Special Terms and Conditions**” means written terms and conditions that are (a) different from or additional to the terms and conditions set forth in [the EULA], (b) specially negotiated by the Parties in reference to an Order, and (c) expressed in an Order or incorporated by reference to a document attached to an Order, that is executed by both Parties.

(*Id.* ¶ 19.)

53. EULA Amendment 4 defines an “Order” as follows:

“**Order**” means a purchase order, enterprise license agreement, or other ordering document issued by AT&T under this Agreement to VMware or to a VMware authorized reseller, that is accepted by VMware or a VMware authorized reseller, which may include purchase of Technical Support services on a ‘per incident’ basis.

(*Id.* ¶ 16.)

54. As a result, under the EULA, any written terms and conditions that are “different from or additional to the terms and conditions” of the EULA, specially negotiated by AT&T and VMware and expressed in a purchase order, enterprise license agreement or other ordering document, take priority over any inconsistent term of the EULA with respect to that order.

55. Paragraph 45 of EULA Amendment 4 lets AT&T place Orders for Software or Support Services with authorized VMware resellers who are free to “separately negotiate pricing

and delivery terms[,]” although the terms of the EULA would otherwise apply. (*Id.* ¶ 45.)

56. Pursuant to Amendment No. 10 to the EULA (“EULA Amendment 10”), effective August 3, 2022, the Parties agreed to extend the EULA’s term until September 9, 2026. (EULA Amendment 10 ¶ 1.)

E. The ELA.

57. Effective September 27, 2013, AT&T and VMware executed the Enterprise License Agreement (the “ELA”) that permits AT&T to purchase additional Software from VMware “on the terms and conditions set forth in the ELA Order Form [the “ELA Order Form”] attached hereto.” (ELA at 1.)

58. The ELA is a valid and enforceable Agreement between the Parties.

59. The ELA references the EULA, as well as Amendments Nos. 1 through 4 of the EULA, and provides that “in the event of a conflict between the terms of the [EULA], on the one hand, and this ELA, on the other hand, the terms of this ELA shall control.” (ELA § 1.) Accordingly, the ELA expressly controls over the EULA.

60. The ELA Order Form is Attachment 1 to the ELA. It identifies the Software Licenses and related Support Services that VMware was required to provide to AT&T.

61. The ELA Order Form requires VMware to provide AT&T with Software and Support Services from September 27, 2013 to September 30, 2015 (the “ELA Period”). It also provides that Support Services for software AT&T previously licensed—referred to as the “Pre-ELA Installed Software”—“are coterminous with the ELA Period.” (Order Form at 1.)

62. The ELA Order Form further provides that, “[a]t any time prior to the expiration of the ELA Period, AT&T may renew the Production level Support Services . . . either from VMware or its authorized reseller[,]” for a period of two years. (*Id.* § B.2.) However, AT&T and

VMware repeatedly extended the ELA Period and AT&T's ability to renew the Support Services under various amendments to the ELA and/or order forms.

63. AT&T and VMware executed six amendments to the ELA—again, primarily to update the Software and Support Services to be provided to AT&T as well as to extend the ELA Period during which VMware would provide Software and related Support Services to AT&T.

64. Effective September 9, 2016, AT&T and VMware executed Amendment No. 6 to the ELA (“ELA Amendment 6”) to address AT&T's purchase of certain Software and Services.

65. Under ELA Amendment 6: (1) VMware licensed Software to AT&T identified in Exhibit A to ELA Amendment 6 (the “Pre-ELA Installed Software”); (2) the ELA Period was extended four years until September 9, 2020; and (3) AT&T obtained an option (the “Conversion Option”) to convert certain subscription-based software licenses (*i.e.*, licenses that permit software use for defined periods of time) previously obtained from VMware to perpetual licenses (*i.e.*, licenses that typically permit software use indefinitely) (the “Converted Perpetually Licensed Software”).

66. Although ELA Amendment 6 extends the ELA Period for four years (until September 9, 2020), it also grants AT&T one year after the ELA Period ends (until September 9, 2021) to advise VMware of the amount of Converted Perpetually Licensed Software licenses it has deployed.

67. ELA Amendment 6 also provides AT&T with rights to renew Support Services for the Pre-ELA Installed Software and Converted Perpetually Licensed Software (if it exercises the Conversion Option) following expiration of the ELA Period, as follows:

If AT&T elects to exercise the Conversion Option, after year 5 ends (beginning on 9/9/2021), for five (5) additional years (beginning on 9/9/2021 and continuing on 9/9/2022, 9/9/2023, 9/9/2024 and 9/9/2025), AT&T may renew on an annual basis at

AT&T's sole discretion, the Pre-ELA Installed Software and the Converted Perpetually Licensed Software Production Level Support Services . . . either from VMware or its authorized reseller, beginning on 9/9/2021, for an annual (i.e., per year) of no more than [fee amount in USD]. For avoidance of doubt, AT&T may renew the Production Level Support Services for the Pre-ELA Installed Software and the Converted Perpetually Licensed Software for five (5) each one (1) year periods, or one (1) five (5) year period, in minimum one (1) year increments at no more than [fee amount in USD] annually (i.e., for each one (1) year period), at AT&T's election. AT&T must order Production Level Support Services prior to the expiration of support in any of the above stated periods.

(ELA Amendment 6 § 2.)

68. ELA Amendment 6 therefore granted AT&T the right to renew Support Services annually from September 9, 2021 (one year after the ELA Period ends) to September 9, 2025. If AT&T renewed Support Services for the full five-year period, it would receive Support Services through September 8, 2026.

69. ELA Amendment 6 also provides AT&T with the ability to reduce the Support Services levels for the Pre-ELA Installed Software and the Converted Perpetually Licensed Software by five percent per year during the renewal periods:

Starting in Year 6 (beginning on 9/1/2021), and for 5 consecutive one year periods (beginning 9/9/2021, 9/9/2022, 9/9/2023, 9/9/2024, and 9/9/2025) AT&T may reduce the Pre-ELA Installed Software Production Level Support and Converted Perpetually Licensed Software Production Level Support Services annual (i.e. per year) fee by no more than five percent (5%) per year. AT&T must report to VMware which licenses, if any, are to be removed from the production level Support Services at the beginning of each renewal year.

(*Id.*)

F. The 2021 ELA Order Form.

70. Effective October 29, 2021, the Parties signed an ELA Order Form (the "2021 ELA Order Form").

71. One of the purposes of the 2021 ELA Order Form was to extend the ELA Period for an additional year from October 29, 2021 to October 28, 2022, to provide the Parties with time to negotiate a longer extension. Otherwise, AT&T's agreement with VMware for the Software and Support Services remained the same.

G. *Broadcom's Acquisition of VMware.*

72. On May 26, 2022, Broadcom announced that it was acquiring VMware for \$61 billion. Broadcom declared that "the combined company will provide enterprise customers an expanded platform of critical infrastructure solutions to accelerate innovation and address the most complex information technology infrastructure needs." *See* <https://www.broadcom.com/company/news/financial-releases/60271>.

73. However, the sale swiftly raised concerns with many of VMware's customers because Broadcom typically emphasized subscription-based licensing rather than perpetual licenses, such as the Pre-ELA Installed Software and the Converted Perpetually Licensed Software that AT&T had obtained under the ELA. Some industry insiders predicted the sale "could also affect VMware's customer relationships, as customers may push back against the shift to subscriptions, which are generally perceived as more expensive than perpetual licenses." *See* <https://www.forbes.com/sites/stevemcdowell/2023/12/10/vmware-customers-cautious-after-recent-broadcom-actions/>.

74. As the industry press reported, many VMware customers feared they would see significant cost increases for purchases and renewals of VMware products because Broadcom emphasized these drastically more expensive subscription bundles. *See* <https://blogs.idc.com/2024/08/07/vmware-cost-increases-how-broadcom-vmware-product-offerings-are-evolving/>.

75. Industry analysts reviewing the deal expected Broadcom to increase pricing for VMware customers and advised VMware customers to “[v]alidate existing inventory to prepare for licensing changes and/or to explore vendor alternatives, push VMware for written roadmap commitments and add price-caps and exit-clauses for multi-year license agreements.” See <https://www.networkworld.com/article/971102/can-broadcom-vmware-move-enterprise-networking-forward.html>.

H. The Negotiation of the Amendment at Issue.

76. Upon information and belief, following its acquisition of VMware, Broadcom immediately sought to impose its will on VMware’s existing customers by cutting VMware’s product offerings from nearly 1,000 different products to just two bundles and purporting to end VMware’s sales of perpetual licenses characterized by one-time payments for indefinite use of the Software.

77. Based on these moves, it was widely reported that, “Broadcom is killing off VMware’s on-premises perpetual licenses – and getting set to strong-arm VMware customers onto subscriptions, by also ending the sale of Support and Subscription renewals for such customers.” See <https://www.thestack.technology/broadcom-is-killing-off-vmware-perpetual-licences-sns/>. The change in philosophy was especially jarring to VMware’s customers since, just prior to the sale to Broadcom, VMware’s CTO described perpetual licenses as VMware’s “most renowned licenses.”

78. All of this was intended to force VMware customers to move to Broadcom’s preferred subscription-based software and services model at significantly higher prices. Customers without contracts were easy prey for Broadcom who threatened to cut off their supply of products and/or services unless they caved to Broadcom’s demands.

79. For example, in March 2024, the Cloud Infrastructure Service Providers (the “CISPE”), an industry group representing Europe’s leading cloud infrastructure providers, publicly called upon European regulators to investigate Broadcom’s widespread cancellation of VMware software licenses and imposition of new licensing terms. CISPE alleged that its members reported price hikes of as much as 1200 percent, coupled with the removal of hundreds of products and “the remaining ones re-bundled through new contract terms, without any technical modifications or software developments in ways that unfairly increase costs for customers.” See <https://cispe.cloud/broadcoms-brutal-contract-termination-and-imposition-of-prohibitive-new-licensing-terms-will-decimate-europes-cloud-infrastructure/>.

80. EU antitrust regulators heeded the call and launched a probe into Broadcom’s actions in April. See [https://www.reuters.com/technology/broadcom-questioned-by-eu-over-vmware-licensing-changes-2024-0415/#:~:text=BRUSSELS%2C%20April%2015%20\(Reuters\),users%20and%20a%20trade%20group](https://www.reuters.com/technology/broadcom-questioned-by-eu-over-vmware-licensing-changes-2024-0415/#:~:text=BRUSSELS%2C%20April%2015%20(Reuters),users%20and%20a%20trade%20group).

81. Likewise, in July 2024 Samsung sued Broadcom alleging Broadcom retaliated against it, by among other things, refusing to provide technical support, when Samsung began purchasing supplies from Broadcom’s competitors. See Compl., *Samsung Electronics Co., Ltd. v. Broadcom Inc. et al.*; Case No. 3:24-cv-03959 (N.D. Cal.), [Dkt No. 1](#) ¶ 6. Rather than attempting to compete for Samsung’s business, Broadcom allegedly threatened to terminate the companies’ relationship unless Samsung entered into a long-term contract requiring it to purchase all critical phone components from Broadcom. *Id.* ¶ 7. Without any alternative source for all of the Critical Components it sourced from Broadcom, and facing the destruction of its multi-billion dollar business selling Flagship Devices, Samsung reluctantly entered into the agreement demanded by Broadcom. *Id.*

82. Exemplifying Broadcom's bully-tactics, even the FTC accused Broadcom of being "a monopolist" in its sales of certain products and, in November 2021, approved a final order settling charges that Broadcom illegally monopolized markets used to deliver television and broadband internet services through exclusive dealing and related conduct. The FTC's order prohibited Broadcom from requiring its customers to enter into certain types of exclusivity or loyalty agreements and retaliating against customers for doing business with Broadcom's competitors. See <https://www.ftc.gov/news-events/news/press-releases/2021/11/ftc-approves-final-order-requiring-semiconductor-supplier-broadcom-cess-its-anticompetitive-conduct>.

83. Analysts warned that "Broadcom may get unpleasant with customers after it acquires VMware, and customers need to be ready to jump." These cautions were "based on history. Customers complained about dramatic cost increases during renewals, with limited flexibility for negotiations, after Broadcom acquired CA Technologies in 2018 and Symantec's enterprise security business in 2019[.]" See <https://www.fierce-network.com/multi-cloud/vmware-customers-should-find-exit-ramps-ahead-broadcom-deal-gartner>.

84. To ensure that Broadcom's acquisition of VMware would not change the terms on which AT&T had done business with VMware for years, and heeding the advice of industry analysts who advised VMware customers to "push for written roadmap commitments[.]" AT&T sought to negotiate an amendment to the ELA Order Form to cement the commercial terms of its relationship with VMware for the foreseeable future.

85. Consistent with this goal, AT&T sought an agreement: (1) extending the ELA Period through 2026; (2) extending pre-negotiated discounting on new purchases through the end of the ELA Period; (3) resolving a dispute regarding the number of Converted Perpetual Licenses

deployed by AT&T (the “Deployed License Dispute”) under ELA Amendment 6;⁴ (4) setting pricing for new software products AT&T was contemplating purchasing (and related support services for those products); and, relevant to these proceedings, (5) securing renewal rights for Support Services given Broadcom’s history of price-gouging customers.

86. The Parties negotiated the proposed amendment’s terms over several months. Upon information and belief, Broadcom reviewed and commented on VMware’s proposals and AT&T’s counterproposals during the negotiations and required changes to VMware’s proposals.

I. The Amendment.

87. AT&T and VMware executed an amendment to the 2021 ELA Order Form (the “Amendment”) effective August 3, 2022.

88. The Amendment is a valid and enforceable agreement between the Parties.

89. The Amendment states that the Parties “wish to amend the [2021 ELA Order Form] to: (i) add the Offerings listed on Amendment 1 ELA Schedule[;] (ii) and extend the ELA Period.” (Amendment at 2.)

90. Pursuant to Section 11.2 of the Amendment, the Parties agreed to extend the ELA Period to September 8, 2026.

91. Under Section 11 of the Amendment, the Parties also agreed to amend the Schedule in Exhibit A to the 2021 ELA Order Form, which contained the Software AT&T was authorized to deploy. It was amended to reflect additional Software and Offerings identified in Exhibit D to the Amendment, titled “Amendment 1 ELA Schedule” (“Exhibit D”).

⁴ The Deployed License Dispute concerned the number of licenses AT&T was permitted to deploy for a fixed fee paid under ELA Amendment 6. AT&T claimed the fee covered 66,500 deployments and VMware claimed it covered 15,000 fewer licenses. As discussed below, this dispute was resolved in the Amendment.

92. The Amendment further confirms that AT&T may make its purchase from “[AT&T’s] preferred reseller or directly from VMware.” (Amendment at 2.)

93. Although the Amendment states the “*use*” of the Software and Support Services is subject to the EULA’s terms, the Parties intended that to apply precisely as written—to how AT&T *uses* the Software or Support Services, *not* AT&T’s entitlement to the Software and Support Services. (Amendment §§ 11.1, 11.4.)

94. The Amendment states that, “[u]nless otherwise modified herein, the remaining terms of the [2021 ELA Order Form] shall remain in full force and effect.” (Amendment § 20.) But in the event of a conflict between the 2021 ELA Order Form and the Amendment, “the terms of [the] Amendment shall control.” (*Id.*)

95. The Amendment also resolved the Deployed License Dispute regarding the total number of Converted Perpetual Licenses deployed by AT&T as follows:

In consideration for executing this Amendment, each party agrees as follows: in full settlement of a dispute as to the number of such [Converted Perpetually Licensed Software] license[s] deployed, to accept 55,600 as the number of Converted Perpetually Licensed Software licenses deployed; to never claim against the other to the contrary regardless of new information that may arise; and, excluding any fraudulent acts to release the other from any claims related to or arising out of that reported number or licenses to the Converted Perpetually Licensed Software.

(Amendment § 22.1.)

96. In settling the Deployed License Dispute through the Amendment, AT&T was left with a total of 55,600 Converted Perpetually Licensed Software licenses. (*Id.*) The Amendment confirms that Converted Perpetually Licensed Software is governed by the ELA. (*Id.* § 22.2.)

97. The settlement of the Deployed License Dispute essentially required AT&T to destroy 10,000 Converted Perpetually Licensed Software licenses worth millions. AT&T also agreed to pay VMware an additional fee for the updated schedule of Offerings, including the

Software. In consideration for these concessions, AT&T received additional rights and benefits under the Amendment, including certain renewal rights.

J. AT&T's Renewal Rights Under the Amendment.

98. Exhibit D to the Amendment contains the various Software and Offerings licensed to AT&T.

99. Section I.D.1 of Exhibit D establishes VMware's obligation to provide AT&T with the Support Services for *both* the Pre-ELA Installed Software and the Converted Perpetually Licensed Software licensed under the ELA, as amended by ELA Amendment 6, which the Amendment collectively refers to as the "Pre-2022 ELA Installed Software." This is the Software to which the Support Services at issue apply.⁵

100. Specifically, the Amendment requires VMware to provide the Support Services for the Software (which Exhibit D refers to as the "Pre-2022 ELA Installed Software") from the Effective Date (*i.e.*, August 3, 2022) to September 9, 2023, as follows:

D.1 Pre-2022 ELA Installed Software: From the Amendment Effective Date to September 9, 2023, VMware shall provide [AT&T] with Production Level Support Services^[6] for the "Pre-ELA Installed Software" and "Converted Perpetually Licensed Software from [ELA Amendment 6] ("Pre-2022 ELA Installed Software"). The Pre-2002 ELA Installed Software is not subject to any license fees in this ELA.

(Amendment, Exhibit D § I.D.1 ("Section I.D.1").)

101. Section I.D.1 entitles AT&T to Support Services for the Software beyond September 9, 2023, as long as AT&T exercises "its *right to renew*" in accordance with Section II.B.2 of Exhibit D ("Section II.B.2") as follows:

⁵ Per the Amendment, AT&T updated the list of "Pre-ELA Installed Software" from the schedule of Software identified in Section B.2 of ELA Amendment 6.

⁶ The Amendment does not define "Production Level Support Services[.]" however, these are the Support Services at issue.

Unless Customer exercises *its right to renew* under Exhibit D Section [II.] B, Production Level Support Services for the Pre-2022 ELA Installed Software will expire on September 9, 2023.

(*Id.* (emphasis added).)

102. Section II.B.2 provides AT&T with the option to renew the Support Services for *either* “up to” three additional one-year terms (the “Yearly Option”) or one additional three-year term (the “Three-Year Option”), at its “sole option,” as long as it advises VMware of its election by September 9, 2023 (the “2023 Deadline”), as follows:

B.2 RENEWAL FEES FOR PRE-2022 ELA INSTALLED SOFTWARE (EXHIBIT D A 1.D.1)

At any time prior to September 9, 2023, at Customer’s sole option, Customer may renew the Covered Offerings listed in Exhibit D, 1 D.1 ‘Pre-2022 ELA Installed Software’ from VMware for either up to three (3) additional one (1) year renewal terms or one additional three (3) year renewal term. If Customer renews the Covered Offerings for an additional one (1) year period, Customer must purchase Production Level Support Services prior to the expiration of support for each stated one (1) year renewal period. During the renewal period, Customer may reduce the Pre-2022 ELA Installed Software Production Level Support annual fee by no more than ten percent (10%) per year, regardless of whether it is a one (1) or three (3) year renewal term. Customer must report to VMware which licenses will be removed from the Production Level Support Services prior to the beginning of each renewal year. If Customer does not renew the Covered Offerings prior to the expiration of Product Support Level Service period, Customer may purchase such offerings thereafter at the fees set forth on VMware’s then-current price list. For avoidance of doubt, to the extent this Section 2.B. conflicts with Section 2 of Amendment No. 6 to ELA VMware Contract No. 00095444, AT&T Contract No. 10453.W.001.A.006, this Section 2.B. will supersede those terms for purposes of this amendment.

Support Services Renewal Fee: USD \$[Annual Fee Amount], due on or before September 9, 2023

Covered Offerings: Covers one-year renewal of Support Services for the Pre-2022 ELA Installed Software.

(Amendment, Ex. D § II.B.2.)

103. Section II.B.2 modifies AT&T's renewal option under ELA Amendment 6 by permitting AT&T to reduce the level of Support Services by ten percent per year—up from five percent under ELA Amendment 6—providing AT&T advises VMware which licenses no longer required Support Services “prior to the beginning of *each* renewal year.” (*Id.* (emphasis added).)

104. Among other things, the Three Year Option offered AT&T the ability to:

(1) avoid the administrative hassle of tracking the expiration date for Support Services each year to ensure it did not miss the renewal deadline; (2) manage its long-term budget by paying for three years of Support Services up front, to the extent its budget allowed for it, to avoid budget risks in later years; and (3) seek larger Support Services discounts from VMware's authorized resellers who typically offered steeper discounts on multi-year purchases.

105. By contrast, the Yearly Option offered AT&T different benefits, including:

(1) greater financial flexibility by avoiding having to pay for three full years of Support Services as would have been required under the Three Year Option; and (2) a greater ability to reduce Support Services by up to the ten percent maximum, if it chose to do so, by allowing AT&T to assess its need for Support Services annually (as opposed to forecasting future reductions over a three-year period).

106. Section II.B.2 expressly contemplates that AT&T might take the Yearly Option by renewing Support Services for an initial one-year renewal period prior to the 2023 Deadline and electing whether to renew for “up to” two additional one-year renewal terms annually.

107. For example, Section II.B.2 states that “[i]f [AT&T] renews the [Support Services] for *an additional one (1) year period*, [AT&T] must purchase Production Level

Support Services *prior to the expiration of* support for *each* stated one (1) year renewal period.”
(Section II.B.2.)

108. AT&T’s ability to reduce Support Services by up to ten percent “per year” is also far more easily accomplished on an annual basis. Section II.B.2 recognizes this reality by requiring AT&T to advise VMware of the licenses that no longer require Support Services “prior to the beginning of *each renewal year*.”

109. And Section II.B.2 provides that “if [AT&T] does not renew [the Support Services] prior to the expiration of the Product Support Level Service period, [AT&T] may purchase such offerings thereafter at the fees set forth on VMware’s *then-current* price list.”

110. Each of these provisions in Section II.B.2 demonstrates that the Parties envisioned the Yearly Option would be exercised through a series of one-year renewals—“up to three”—executed in succession over time.

K. AT&T Exercises Its Renewal Rights.

111. On September 8, 2023, AT&T exercised the Yearly Option by issuing Purchase Order No. P01946553 (the “Purchase Order”), which renewed the Support Services for an additional year. This was the first of the “three (3) additional one (1) year renewal terms” available to AT&T under Section II.B.2’s Yearly Option.

112. The Purchase Order satisfied AT&T’s obligation to renew Support Services (if it elected to do so) by exercising either the Three Year or Yearly Option prior to the 2023 Deadline. AT&T opted for the Yearly Option.

113. The Support Services covered by the Purchase Order expire on September 9, 2024 (the “Expiration Date”).

114. However, AT&T has already advised Broadcom and VMware (collectively, “Defendants”) that it is renewing Support Services for at least one, and potentially two more years in accordance with its rights under Section II.B.2. To this end, on August 26, 2024, AT&T issued a purchase order to renew the Support Services for a second year one-year renewal term.

115. Because AT&T has advised Defendants that it is renewing Support Services for an additional one-year term “prior to the expiration of support” for the current one-year renewal period, AT&T’s renewal satisfies Section II.B.2’s timing requirements.

116. Accordingly, AT&T is entitled to receive another year—and potentially two more years—of Support Services under Section II.B.2.

L. Defendants’ Refusal to Honor AT&T’s Renewal Rights.

117. Despite AT&T’s timely renewal of Support Services, Defendants have advised AT&T that they do not intend to honor the Support Services renewal. Instead, they plan to terminate all Support Services to AT&T on the Expiration Date.

118. On July 19, 2024, Charlie Kawwas, who leads Global Operations and Intellectual Property for Broadcom, wrote to Susan Johnson, AT&T’s Executive VP and General Manager-Wireline Transformation and Global Supply Chain, to advise that Broadcom would not recognize AT&T’s renewal of Support Services for another one-year term (the “Rejection Email”).

119. The Rejection Email claims AT&T cannot renew the Support Services after the Expiration Date because: (1) “AT&T did not choose the 3-year option and instead opted to renew one additional 1 yr. term” when it issued the Purchase Order in September 2023; and (2) “[the Amendment] is subject to the VMware support policies, which permit the end of availability of the product offerings” and “customers do not have the option to renew [Support

Services] for perpetual licenses [including the Software] after the end of availability announcement of December 11, 2023.”

120. In other words, Defendants claimed that for AT&T to have preserved its ability to renew Support Services for the full three years available to AT&T under Section II.B.2, AT&T was required to elect the Three Year Option or *all three* one-year renewal terms available to it under the Yearly Option by the 2023 Deadline.

121. Accordingly, Defendants have refused to honor AT&T’s renewal rights.

M. Defendants’ Refusal to Honor AT&T’s Renewal Rights Is Not Supported By the Amendment, the ELA, or Any Other Agreement Between the Parties.

122. Defendants’ refusal to honor AT&T’s renewal rights violates Section II.B.2.

123. On its face, Section II.B.2 establishes that the Yearly Option permits AT&T to renew Support Services annually for “up to” three one-year renewal terms.

124. For example, Section II.B.2’s second sentence provides that “[i]f Customer renews the Covered Offerings [defined as a “one-year renewal of Support Services for the Pre-2022 ELA Installed Software”] for *an* additional one (1) year period, Customer must purchase Production Level Support Services prior to the expiration of support *for each stated one (1) year renewal period.*” (Amendment, Ex. D § II.B.2 (emphasis added).)

125. Thus, Section II.B.2 expressly contemplates: (1) that AT&T might renew the Covered Offerings “for *an* additional one (1) year period” (singular); *and* (2) that AT&T would be responsible for purchasing the required level of Support “for *each* stated one (1) year renewal period”—indicating the possibility of more than a single one-year renewal period.

126. Likewise, Section II.B.2’s third sentence provides AT&T with a right “[d]uring the renewal period” to “reduce the Pre-2022 ELA Installed Software Production Level Support annual fee by no more than ten percent (10%) per year[.]” It would make no sense to provide

AT&T with the ability to reduce the level of Support Services required annually if AT&T did not also have the corresponding ability to renew annually.

127. Further, Section II.B.2's fourth sentence provides that, "[i]f Customer does not renew the Covered Offerings prior to the expiration of [the] Product Support Level Service period, Customer may purchase such offerings thereafter at the fees set forth on VMware's then-current price list." (Amendment, Ex. D, § II.B.2.)

128. Here, Section II.B.2's reference to AT&T's ability to "renew the Covered Offerings *prior to the expiration of [the] Product Support Level Service period,*" rather than "prior to September 9, 2023" (the deadline for AT&T's initial election), confirms the Parties intended to provide AT&T with the ability to renew Support Services annually provided it did so before the relevant renewal term expired.

129. Tellingly, the Purchase Order describes the Support Services ordered for the first one-year renewal period (September 2023 – September 2024), as "Renewable Services."

130. Section II.B.2 also provides a "Support Services Renewal Fee" for a *single* "one-year renewal of Support Services" which was "due on or before September 9, 2023." This language was agreed to before AT&T elected the Yearly Option.

131. If the Parties truly intended Section II.B.2 to require that AT&T exercise its Yearly Option for up to three one-year renewal terms all at once before the 2023 Deadline, the renewal fee due "on or before September 9, 2023" would be listed as an amount owed "per year" and AT&T would have been required to pay three times that amount by September 9, 2023, to secure either the Three Year Option or the Yearly Option for three years. But that is *not* what the Amendment says, nor what was required.

132. A plain reading of Section II.B.2 confirms that if AT&T elects to exercise the Yearly Option it need only renew for the first one-year renewal term prior to the 2023 Deadline, which AT&T did when it issued the Purchase Order on September 8, 2023.

133. Because AT&T renewed Support Services for the first one-year renewal term by the 2023 Deadline, AT&T fully complied with Section II.B.2's requirements for exercising the Yearly Option. It also secured its right to renew the Support Services for a second one-year term (and potentially a third one-year renewal term) as long as it renews for another one-year renewal term before the current renewal term expires on September 9, 2024, which AT&T has done.

134. Defendants' claim that AT&T was required to exercise all three one-year renewal terms before the 2023 Deadline is not only inconsistent with Section II.B.2's language, it eviscerates the distinction between the Three Year and Yearly Options. There would be absolutely no difference between the two under Broadcom's interpretation, rendering the Yearly Option meaningless.

135. Read properly as a whole, Section II.B.2 confirms that AT&T was only required to advise VMware, prior to September 9, 2023, whether it was electing the Three Year Option or the Yearly Option. Once AT&T advised VMware that it was exercising the Yearly Option, AT&T retained the right to exercise renewal rights for up to two additional one-year renewal terms provided it did so "prior to the expiration of [the] Product Support Level Service period." If it did not, AT&T could still purchase Support Services, but it would have to do so "at the fees set forth on VMware's then-current price list." (Amendment, Ex. D § II.B.2.)

136. Defendants' reliance on its December 11, 2023 "end of availability announcement" is baseless. In that announcement, Broadcom declared that it had "[c]omplete[d] the transition of all VMware by Broadcom solutions to subscription licenses, with the end of sale

of perpetual licenses, Support and Subscription (SnS) renewals for perpetual offerings[,]” (the “EOA Argument”) (<https://news.broadcom.com/news/vmware-by-broadcom-business-transformation>). But that does not alter AT&T’s renewal rights under the Amendment.

137. Defendants’ EOA Argument relies on a provision from Appendix A to EULA Amendment 4, which was executed nearly a decade before the Amendment, and states:

1.2 End of Availability. VMware may, at its discretion, decide to retire Software and/or Services at any time (“End of Availability”) upon notice. Notice of End of Availability, the last date of general commercial availability of the Software and applicable support lifecycle support policies and timelines for discontinuance, shall be provided via the VMware Support Services website at www.vmware.com/support. VMware shall use commercially reasonable efforts to ensure that the VMware account team for AT&T shall provide notice to AT&T of any such End of Availability through periodic discussions with AT&T.

(EULA Amendment 4, Appendix A § 1.2 (the “EOA Provision”).)

138. But the EOA Provision does not permit Defendants to reject AT&T’s renewal of Support Services under the Amendment. At bottom, Defendants’ reliance on the EOA Provision fails for numerous, independent reasons.

139. As a threshold matter, Defendants ignore the EULA’s “Order of Precedence” provision, which provides that any Special Terms and Conditions on which both Parties have agreed “shall take precedence over any inconsistent term of [the EULA]” (EULA Amendment 4 ¶ 68.)

140. AT&T’s renewal rights under Section II.B.2 qualify as Special Terms and Conditions, as defined under the EULA. Accordingly, AT&T’s renewal rights take precedence over the EOA Provision.

141. The EOA Provision also conflicts with provisions of the ELA, which expressly governs AT&T's purchase of the Software and Support Services from VMware and controls in the event of a conflict with the EULA. (ELA Agreement § 1.)

142. The Amendment confirms that the Software to which the Support Services relate was licensed under the ELA. (Amendment, Ex. D § D.1.) Moreover, Section 22.2 of the Amendment states that the ELA governs the 55,600 licenses of "Converted Perpetually Licensed Software" comprising the overwhelming majority of the Software.

143. AT&T specifically obtained rights to renew Support Services for the Software at "AT&T's sole discretion" as part of ELA Amendment 6. (ELA Amendment 6 § 2.)

144. Because the ELA Agreement governs the Software and expressly controls over the EULA, Defendants' reliance on the EULA is misplaced.

145. Further, even assuming the EULA is relevant, the "End of Availability" provision does not permit Defendants to unilaterally revoke their obligation to provide AT&T with the Yearly Option under the Amendment.

146. To the contrary, Section 1.1 of the EULA states that "VMware shall provide the Support Services at the Support Services level purchased during the Services Period, subject to Section 2.2 below." (EULA § 1.1.)

147. The EULA defines "Support Services Period" as "the period for which AT&T has purchased the Support Services and any subsequent renewal periods" (*Id.* § 27.) And Section 2.2 simply refers to the Services Fees for Support Services. (*Id.* § 2.2.)

148. Thus, the only limitation on Defendants' obligation to provide Support Services purchased during the current renewal period is AT&T's payment of Service Fees.

N. Defendants' Communications Further Demonstrate the Errors of Their Position.

149. Since at least July 2024, the Parties have discussed whether Defendants intend to honor AT&T's renewal of Support Services for a second one-year term (and a potential third one-year renewal term after that).

150. Defendants maintain that they will not honor AT&T's annual renewal under the Yearly Option any further. But Defendants' communications confirm the errors of their position.

151. For example, on August 2, 2024, Broadcom's Assistant General Counsel, Danny Nydegger, wrote to AT&T to reiterate the arguments contained in the Rejection Email (the "Nydegger Letter").

152. The Nydegger Letter confirms that Defendants do not dispute that "AT&T elected the Yearly Option before the 2023 Deadline." (Nydegger Letter at 1.)

153. Instead, Defendants claim that "AT&T is not automatically entitled to years two and three [of the Yearly Option] simply because AT&T elected the Yearly Option before the 2023 Deadline." (*Id.*)

154. In other words, Defendants contend that AT&T could only exercise the Yearly Option for all three one-year renewal terms available to AT&T under Section II.B.2 if it submitted Purchase Orders for all three one-year renewal terms by the 2023 Deadline. The Amendment does not support this.

155. The Nydegger Letter also claims that the "second and third years of the Yearly Option [are] **subject to the availability** of the related offerings." (*Id.* at 2 (emphasis added).) But Section II.B.2 does not contain that language.

156. Not only does Section II.B.2 lack any language suggesting that AT&T's renewal rights are "subject to the availability" of the Support Services, but Defendants' argument strikes

from Section II.B.2 AT&T's right to renew Support Services at its "sole option" for "up to three (3) additional one (1) year renewal terms." (*See* Section II.B.2.)

157. On August 9, 2024, Defendants' outside counsel wrote to AT&T repeating the same failed arguments from the prior letters. Among the arguments was that the EULA's EOA Provision governed over the Amendment. However, that argument fails for numerous independent reasons including the EULA's "Order of Precedence" clause as well as the EULA's clear statement that it governs in a conflict. But even if the EULA did apply, the Amendment limits its application to the "use" of the Software, not AT&T's entitlement to the Software and Support Services. (Amendment §§ 11.1, 11.4.) Instead, AT&T's renewal rights for Support Services are governed by Section II.B.2 of the Amendment.

158. Defendants' counsel also claimed "that general availability [of the Support Services] is a condition precedent to purchase or renew Support Services." But Section II.B.2 lacks any language creating "a condition precedent" to AT&T's renewal rights under the Yearly Option (or otherwise).

159. At its core, Defendants' "end of availability" argument is a farce: it has been manufactured to give Defendants some pretext to cover their tracks as they trample AT&T's renewal rights under the Amendment. Further bolstering that point, upon information and belief, the Support Services are still available.

160. In April 2024, Broadcom's President and Chief Executive Officer, Hock Tan, announced that Broadcom "heard that fast-moving change may require more time, so we have given support extensions to many customers who came up for renewal while these changes were rolling out." *See* <https://www.broadcom.com/blog/a-changing-market-landscape-requires-constant-evolution-our-mission-for-vmware-customers>.

161. Even the Nydegger Letter states that the Support Services AT&T seeks to renew “have not been *generally* available since December, 2023[.]” (Nydegger Letter at 1 (emphasis added).)

162. Upon information and belief, Defendants have selectively permitted certain renewal rights and decided unilaterally to deny others. Defendants have decided not to honor AT&T's renewal rights in bad faith in an effort to squeeze AT&T for hundreds of millions in subscription fees for products that AT&T does not want or need.

163. Although they have absolutely no right to do so, as it stands, Defendants refuse to renew AT&T's Support Services for the next one-year renewal term—the second of the three one-year renewal terms available to AT&T under the Yearly Option. In doing so, Defendants have breached the Amendment.

164. Based on Defendants' breach of the Amendment, all Support Services for the Software will cease after September 8, 2024.

O. Defendants' Termination of Support Services Will Cause AT&T Irreparable Harm.

165. AT&T will be irreparably harmed by Defendants' breach of the Amendment and termination of all Support Services for the Software after September 8, 2024.

166. The Support Services are essential to the continued operation of thousands of AT&T servers that rely on the Software to establish their operating and sub-operating systems. The virtual machines created by the Software provide services that impact substantially all of AT&T's customers around the world. It would likely take a period of years for AT&T to transition away from the Software and the Support Services.

167. Without the Support Services, AT&T will have no way of resolving errors that occur in the ordinary course of the Software's operation. Nor will AT&T be able to provide on-

going maintenance, security patches, modifications or upgrades for the Software.

168. As a result, without Support Services, any of AT&T's virtual machines could fail at any moment. When that happens, it will impact the daily operations of substantially all of AT&T's customers including, but not limited to, state and federal agencies, police, fire and emergency medical units, and other essential services.

169. For example, of the more than 75,000 virtual machines reliant on the Software, approximately 22,000 are used in some way to support AT&T's provision of services to millions of police officers, firefighters, paramedics, emergency workers and incident response team members nationwide (collectively, the "Emergency Responders") for use in connection with matters of public safety and/or national security.

170. Currently, AT&T hosts millions of devices and/or connections used by Emergency Responders.

171. The Software is critical to AT&T's provision of services to Emergency Responders. AT&T's services rely on the Software to ensure Emergency Responders can freely communicate with each other to address matters of public safety, natural disasters, emergency medical events, and other situations for which Emergency Responders are needed.

172. Without the Support Services, the Software is virtually certain to experience errors and/or related performance issues that AT&T will be unable to address. Simply put, without Support Services, AT&T's ability to provide emergency communication services to Emergency Responders will be severely compromised. This will have a direct and devastating impact on Emergency Responders and the public at large.

173. Given AT&T's critical role in providing lines of communications for Emergency Responders nationwide, the loss of Support Services and, as a result, the VMware Servers on

which AT&T relies to provide communication services to Emergency Responders, would be disastrous.

174. The Software is also essential to AT&T's provision of support to its customers through the use of virtual machines.

175. AT&T runs Customer Contact Centers that are dedicated to serving the network and cellular needs of millions of AT&T customers. These Customer Contact Centers respond to inquiries (over the phone or online) from nearly one million AT&T customers daily. The Customer Contact Centers are dependent on the virtual machines operating with the Software.

176. Indeed, AT&T runs its Customer Contact Centers' telephony systems (a collection of devices and technologies that allow for the transmission of multimedia data and voice communication over a network) as well as its IVR (interactive voice response solutions) and chat features on virtual machines operating with the Software.

177. If the virtual machines cease to operate, AT&T representatives at its Customer Contact Centers would not be able to make or receive phone calls or chats. Moreover, any customers calling in for assistance would not be able to use AT&T's IVR system to assist themselves (*i.e.*, self-assist) through AT&T's system.

178. AT&T's mobility troubleshooting services ("TRIP") would also not be available to AT&T's customers in the event AT&T's virtual machines cease to operate. This means that AT&T could not help customers troubleshoot wireless devices or address connectivity issues.

179. The loss of Support Services will essentially remove tens of thousands of agents from AT&T's Customer Contact Centers due to their inability to make or receive contact with customers. Roughly a million AT&T customers each day will find it significantly more difficult to resolve issues with their accounts due to the thousands of fewer customer contact agents

available to them.

180. Additionally, thousands of AT&T's virtual machines have some kind of restriction on user access, *i.e.*, they require a security clearance or for the user to be a U.S. citizen, meaning they are used to support U.S. government clients involved in national security or AT&T's business security. Again, if an issue arises with the Software on these virtual machines, it will significantly impact the services AT&T provides to these customers as well as AT&T's own operations.

181. AT&T provides connectivity and data for use by dozens of federal, state and local governments, and intelligence communities across the country including various national security and public safety agencies of the United States Government (the "National Security and Public Safety Agencies").

182. The Software provides the operational environment that runs the applications used by a substantial portion of these National Security and Public Safety Agencies. Without Support Services, the operating systems of countless AT&T customers—including the Government and Intelligence Agencies—are just one issue away from failing.

183. Moreover, Defendants' cessation of Support Services would threaten AT&T's compliance with government contracts, which typically prohibit AT&T from using any software that is not under constant maintenance. This makes perfect sense given the critical functions served by the Government and Intelligence Agencies who rely on AT&T's network and operations.

184. AT&T could not maintain or fix the overwhelming majority of errors impacting the virtual operating systems on which the Government and Intelligence Agencies depend without the Support Services.

185. For all these reasons identified above, Defendants threat to terminate Support Services poses a significant risk of harm to the public.

186. Apart from the harm to AT&T's customers and the public at large, the harm to AT&T's reputation and customer relationships would also be irreparable.

187. It is difficult to quantify the magnitude of the reputational damage AT&T would suffer if thousands of its servers operating with the Software were to fail as AT&T believes they will if Defendants terminate their Support Services without sufficient time for AT&T to devise alternative solutions to the Software, which could take years.

188. Accordingly, Defendants' breach of the Amendment and denial of AT&T's renewal rights under Section II.B.2 will irreparably harm AT&T and its customers.

189. By contrast, Defendants would suffer no harm if they were enjoined from shutting off the Support Services and directed to abide by the contractual commitment VMware made to AT&T under the Amendment. Should the Court direct Defendants to honor AT&T's renewal rights, Defendants will get just what they bargained for under the Amendment.

190. At this moment, Defendants are providing the Support Services to AT&T and AT&T will continue to pay precisely the same fees for the renewal as required under the Amendment. However, the damage to AT&T, its customers, and the American public would likely be disastrous if Defendants make good on their threats and are not ordered to maintain the status quo pending adjudication of this matter.

FIRST CAUSE OF ACTION
(Breach of Contract and Injunctive Relief)

191. AT&T hereby repeats, realleges, and incorporates by reference each and every allegation contained in Paragraphs 1 through 190 as if fully set forth herein.

192. The Amendment is a valid and enforceable contract between the Parties.

193. AT&T has performed all of its obligations to Defendants under the Amendment.

194. Under the Amendment, AT&T was granted the Option to purchase Support Services for the Software at an agreed upon rate for up to three additional years using either the Three Year Option or the Yearly Option.

195. On September 8, 2023, AT&T elected to exercise the Yearly Option by issuing the Purchase Order for an initial one-year renewal term. By doing so, AT&T secured its right to renew the Support Services for up to two additional one-year renewal periods under the Yearly Option.

196. The current renewal term expires on September 9, 2024. AT&T has repeatedly advised Defendants that it is renewing Support Services for another one-year term—the second of the “up to” three one-year renewal terms available to AT&T under Section II.B.2’s Yearly Option—including by issuing a purchase order to renew the Support Services for a second year.

197. Despite AT&T’s proper exercise of the Yearly Option, Defendants have rejected AT&T’s renewal in breach of Section II.B.2 of the Amendment, Exhibit D.

198. Specifically, on no fewer than three occasions, including in the Rejection Email, the Nydegger Letter, and the Outside Counsel Letter, and in numerous calls between the Parties, Defendants have repeatedly made positive, clear, and unequivocal statements that they will not renew AT&T’s Support Services for the next one-year renewal term to which AT&T is entitled under the Yearly Option, will not provide Support Services beyond September 8, 2024, and are rejecting AT&T’s renewal.

199. Therefore, Defendants have materially breached the Amendment.

200. As a result of Defendants’ breach of the Amendment, AT&T faces immediate irreparable harm. As detailed herein, Defendants’ termination of Support Services would impact

the operations of millions of AT&T customers worldwide, including governmental entities that rely on AT&T to provide critical services for the public, and cause irreparable damage to AT&T's operations, reputation, customer relationships, and goodwill.

201. Without injunctive relief prohibiting Defendants from terminating their Support Services to AT&T and requiring Defendants to abide by the terms of AT&T's renewal rights under Section II.B.2 of Exhibit D to the Amendment, AT&T will also be irreparably harmed by the anticipated failures of the tens of thousands of its virtual operating systems on which millions of AT&T customers depend—including users of AT&T's Government and Intelligence Agencies and Emergency Responders, who rely on AT&T to provide critical emergency communication services for the public.

202. On the other hand, Defendants would suffer no harm if they are enjoined from shutting off the Support Services. Defendants will get just what they bargained for under the Amendment. At this moment, Defendants are providing the Support Services they contracted to provide to AT&T and AT&T will continue to pay precisely the same fees for those Support Services as required under the Amendment.

203. Accordingly, AT&T is entitled to a permanent injunction preventing Defendants from reneging on AT&T's renewal rights in breach of Section II.B.2 of Exhibit D to the Amendment, and requiring Defendants to honor AT&T's renewal of Support Services for another one-year term running from September 9, 2024 to September 8, 2025 (and potentially another one-year renewal term running from September 9, 2025 to September 8, 2026, at AT&T's "sole option"), in accordance with AT&T's rights under Section II.B.2 of Exhibit D to the Amendment.

SECOND CAUSE OF ACTION
(Declaratory Judgment and Injunctive Relief)

204. AT&T hereby repeats, realleges, and incorporates by reference each and every allegation contained in Paragraphs 1 through 203 as if fully set forth herein.

205. The Amendment is a valid and enforceable contract between the Parties.

206. AT&T has performed all of its obligations to Defendants under the Amendment.

207. Under the Amendment, AT&T was granted the Option to purchase Support Services for the Software at an agreed upon rate for up to three additional years using either the Three Year Option or the Yearly Option.

208. On September 8, 2023, AT&T exercised the Yearly Option by issuing the Purchase Order for an initial one-year renewal term. By doing so, AT&T secured its right to renew VMware, Inc.'s and/or Broadcom's Support Services for up to two additional one-year renewal periods under the Yearly Option.

209. The current renewal term expires on September 9, 2024. AT&T has repeatedly advised Defendants that it is renewing Support Services for another one-year term—the second of the “up to” three one-year renewal terms available to AT&T under Section II.B.2's Yearly Option—including, by issuing a purchase order to renew the Support Services for a second year.

210. Despite AT&T's proper exercise of the Yearly Option, Defendants have rejected AT&T's renewal in breach of Section II.B.2 of Exhibit D to the Amendment.

211. Specifically, on no fewer than three occasions, including in the Rejection Email, the Nydegger Letter, and the Outside Counsel Letter, and in numerous calls between the Parties, Defendants have repeatedly made positive, clear, and unequivocal statements that they will not renew AT&T's Support Services for the next one-year renewal term to which AT&T is entitled

under the Yearly Option, will not provide Support Services beyond September 8, 2024, and are rejecting AT&T's renewal.

212. Therefore, Defendants have materially breached the Amendment.

213. As a result of Defendants' actions, AT&T faces immediate irreparable harm. Defendants' termination of Support Services would impact the operations of millions of AT&T customers worldwide, including governmental entities that rely on AT&T to provide critical services for the public, and will cause irreparable damage to AT&T's operations, reputation, customer relationships, and goodwill.

214. Absent immediate intervention from the Court, Defendants will cut off Support Services to which AT&T is entitled under the Amendment after September 8, 2024 (*i.e.*, as of September 9, 2024).

215. AT&T disputes Defendants' right to cut off Support Services. Accordingly, an actual case or controversy exists between AT&T and Defendants regarding whether Defendants are entitled to terminate the Support Services under Section II.B.2 of Exhibit D to the Amendment.

216. Without injunctive relief prohibiting Defendants from terminating the Support Services to AT&T and requiring Defendants to abide by the terms of AT&T's renewal rights under Section II.B.2 of Exhibit D to the Amendment, AT&T will be irreparably harmed by the anticipated failures of the tens of thousands of its virtual operating systems on which millions of AT&T customers depend—including users of AT&T's Government and Intelligence Agencies and Emergency Responders, who rely on AT&T to provide critical emergency communication services for the public.

217. On the other hand, Defendants would suffer no harm if they were enjoined from shutting off the Support Services. Defendants will get just what they bargained for under the Amendment. At this moment, Defendants are providing the Support Services they contracted to provide to AT&T and AT&T will continue to pay precisely the same fees for those Support Services as required under the Amendment.

218. Accordingly, AT&T is entitled to injunctive relief and a declaration pursuant to CPLR § 3001 that it is entitled to renew the Support Services for up to two more one-year renewal terms (between September 9, 2024 and September 8, 2026) under Section II.B.2 of Exhibit D to the Amendment.

THIRD CAUSE OF ACTION
**(In the Alternative, Breach of the Implied Covenant of
Good Faith and Fair Dealing and Injunctive Relief)**

219. AT&T hereby repeats, realleges, and incorporates by reference each and every allegation contained in Paragraphs 1 through 218 as if fully set forth herein.

220. AT&T has performed all of its obligations to Defendants under the Amendment.

221. Under the Amendment, AT&T was granted the Option to purchase Support Services for the Software at an agreed upon rate for up to three additional years using either the Three Year Option or the Yearly Option.

222. On September 8, 2023, AT&T exercised the Yearly Option by issuing the Purchase Order for an initial one-year renewal term. By doing so, AT&T secured its right to renew Defendants' Support Services for up to two additional one-year renewal periods under the Yearly Option.

223. The current renewal term expires on September 9, 2024. AT&T has repeatedly advised Defendants that it is renewing Support Services for another one-year term—the second

of the “up to” three one-year renewal terms available to AT&T under Section II.B.2’s Yearly Option—including, by issuing a purchase order to renew the Support Services for a second year.

224. Despite AT&T’s proper exercise of the Yearly Option, Defendants have rejected AT&T’s renewal in breach of Section II.B.2 of Exhibit D to the Amendment.

225. However, to the extent the Court determines that Defendants had discretion to deny AT&T’s renewal of Support Services under the Amendment, Defendants have exercised such discretion in bad faith in violation of the implied covenant of good faith and fair dealing.

226. Defendants owe AT&T the obligation to act in good faith and engage in fair dealing including the obligation to refrain from any action that frustrates AT&T’s contractual expectations or deprives it of the benefit of its bargain.

227. To the extent the Court determines that Defendants had discretion to deny AT&T’s renewal of Support Services under the Amendment, Defendants materially breached the implied covenant of good faith and fair dealing by, among other things, refusing to renew AT&T’s Support Services to extort hundreds of millions in subscription fees from AT&T while, at the same time, selectively permitting other customers to renew support services despite claiming they are no longer available.

228. As a result of Defendants’ material breach of the implied covenant of good faith and fair dealing, AT&T will be irreparably harmed by the anticipated failures of tens of thousands of virtual operating systems on which millions of AT&T customers depend, including users of AT&T’s Government and Intelligence Agencies and Emergency Responders, who rely on AT&T to provide critical services for the public. AT&T will also suffer irreparable harm to its operations, reputation, customer relationships, and goodwill.

229. Without injunctive relief prohibiting Defendants from terminating their Support Services to AT&T in violation of the covenant of good faith and fair dealing, AT&T will be irreparably harmed by the anticipated failures of the tens of thousands of its virtual operating systems on which millions of AT&T customers depend, including users of AT&T's Government and Intelligence Agencies and Emergency Responders, who rely on AT&T to provide critical emergency communication services for the public.

230. Accordingly, AT&T is entitled to a permanent injunction preventing Defendants from renegeing on, and requiring Defendants to honor, AT&T's right to renew Defendants' Support Services for up to two more one-year renewal terms (between September 9, 2024 and September 8, 2026) in accordance with its rights under Section II.B.2 of Exhibit D to the Amendment.

PRAYER FOR RELIEF

WHEREFORE, AT&T respectfully requests that the Court issue a judgment in its favor and against Defendants granting:

1. A Permanent Injunction Order enjoining Defendants from terminating Support Services for the Software to AT&T and enforcing AT&T's right to renew the Support Services for up to two additional one-year terms between September 9, 2024 and September 8, 2026, pursuant to Section II.B.2 of Exhibit D to the Amendment;
2. A Declaration that AT&T is entitled to renew Support Services for the Software for up to two additional one-year renewal terms from September 9, 2024 to September 8, 2026, pursuant to Section II.B.2 of Exhibit D to the Amendment; and
3. Awarding AT&T such further relief as the Court deems necessary and just.

Dated: New York, New York
August 29, 2024

Respectfully submitted,
BAKER & HOSTETLER LLP

By: /s/ Jonathan D. Pressment

Jonathan D. Pressment
Christos G. Papapetrou
Deirdre Farrell
45 Rockefeller Plaza, 14th Floor
New York, New York 10111
Telephone: (212) 589 4200
Email: jpressment@bakerlaw.com
Email: cpapapetrou@bakerlaw.com
Email: dfarrell@bakerlaw.com
Attorneys for Plaintiff AT&T Services, Inc.

VERIFICATION

STATE OF TEXAS)
) ss.:
COUNTY OF DALLAS)

I, Tom Paris, am the Director of Technical Sourcing Operations for the Plaintiff, AT&T Services, Inc., in the within action and am authorized by Plaintiff to execute this Verification. I have read the foregoing Complaint and know the contents thereof. The contents of the Complaint are true to the best of my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.




Tom Paris

Acknowledgement

STATE OF TEXAS)
) ss.:
COUNTY OF DALLAS)

On the 29th day of August in the year 2024, before me, the undersigned, personally appeared Tom Paris, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary: Subscribed and sworn/affirmed before me this 29th day of August, 2024


My commission expires on: 01/09/2027

