

Master Agreement

1. Nature of this Agreement

1.1 This Master Agreement (**Agreement**) establishes the framework terms and conditions under which the **Customer** may acquire certain Services, Deliverables and Third Party Products from Tech Data Advanced Solutions (ANZ) Limited (**Tech Data**).

1.2 This Agreement will commence the earliest of:
1.2.1 the date Tech Data countersigns this Agreement or an Order; or
1.2.2 Tech Data commences providing the Services, Deliverable or Third Party Product,
and continue until terminated in accordance with its terms.

1.3 The Customer may order Services, Deliverables and Third Party Products from Tech Data by entering into this Agreement and placing an order using a form that is substantially similar to that in Schedule 2 (Order Form).

1.4 Each Order will constitute a separate binding contract between the Customer and Tech Data, which incorporates the terms and conditions of this Agreement and contain additional terms specific to the Services, Deliverables or Third Party Products the Customer is ordering as specified in the Order or made available to the Customer by Tech Data.

1.5 If there is any inconsistency between the provisions of this Agreement and the provisions in an Order, the provisions of this Agreement prevails to the extent of inconsistency. Despite that, provisions of an Order will have priority over the terms and conditions of this Agreement if it is expressly stated in the Order that the relevant provisions of the Order are to take priority.

2. Services and Deliverables

2.1 Tech Data will perform the Service for the Customer for the Service Term.

2.2 Tech Data will use commercially reasonable endeavour to commence the Service on the Service Start Date, and deliver the Deliverables by or on the Deliverable Delivery Date, or as subsequently agreed by the Parties in writing.

2.3 If the Service Start Date falls on a day that is not a Business Day, then the Service Start Date will be the next Business Day. The same applies to the Deliverable Delivery Date.

2.4 Notwithstanding clause 2.2, Tech Data is not responsible for any delay in the commencement of the Service or delivery of the Deliverable, and any consequence of that delay, to the extent that the delay is caused by the Customer or any other third party, or a Force Majeure Event.

2.5 If the Parties continue to provide and receive the Service and the Deliverables after the expiry of the Service Term then (but without prejudice to any other right or remedy of the parties):

2.5.1 the term of the Service is deemed to be extended and continue on a monthly basis; and

2.5.2 the Service may be terminated by either Party giving the other Party at least 1 month's written notice in which case the Service will terminate at the end of the notice period.

Delivery of physical Deliverables

2.6 Any physical Deliverables will be delivered to the Physical Deliverable Delivery Address specified in the relevant Order or, if no physical address is specified, the Customer's address under the relevant Order.

2.7 The Customer must notify Tech Data within 3 Business Days after delivery of any physical Deliverables, if there is a shortfall in the quantity delivered or any damage to the Deliverables (or any part thereof) at the time of delivery. If the Customer does not notify Tech Data within the timeframe set out in this clause, the Customer is deemed to have accepted the Deliverables.

Location of Service

2.8 Tech Data may provide the Service or Deliverable from any location, without the Customer's prior written consent.

2.9 If Tech Data is to provide the Service or Deliverable to any site owned or used by the Customer, the Customer must provide Tech Data with access without limitation to and use of information, resources, facilities (including office space, desks, storage, furniture) and networks as may be reasonably required by Tech Data in order to perform the Service or provide the Deliverable.

Warranties in relation to Services

2.10 Tech Data warrants that:

2.10.1 the Service will be performed with reasonable care and skill in accordance with the relevant Order;

2.10.2 the Deliverables will comply with the relevant Order at the time of delivery; and

2.10.3 it will comply with laws that apply to Tech Data as an IT service provider in performing the Service and providing the Deliverable.

2.11 Unless otherwise specified in an Order and to the extent permitted by Law, no warranties, other than those provided in this clause 2.10, are given in respect of the Service and Deliverables. Without limiting that, Tech Data does not warrant that the Service (nor the Deliverables in connection with such Service) will be continuous or error free.

2.12 Any software provided in connection with a Service is provided 'as-is', without warranty of any kind.

3. Cloud Service

3.1 This clause 3 applies in relation to Service that Tech Data makes available via a network as set out in an Order that are not Third Party Products (**Cloud Service**). Notwithstanding the Service Start Date, the term of Cloud Service begin on the

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- date Tech Data notifies the Customer that the Customer can access the Cloud Service and will be made available by Tech Data for the Service Term specified in an Order.
- 3.2 If the Parties continue to provide and receive the Cloud Service after the expiry of the Service Term then (but without prejudice to any other right or remedy of the parties), the:
- 3.2.1 term of the Cloud Service is deemed to be extended and continue on a monthly basis; and
 - 3.2.2 Cloud Service may be terminated by either Party giving the other Party at least 1 month's written notice in which case the Cloud Service will remain available until, and cease at, the end of the notice period.
- Terms of use**
- Access**
- 3.3 Subject to the Customer's compliance with the terms and conditions of this Agreement, Tech Data grants to the Customer a non-exclusive, non-transferable, non-sublicensable right to access and use the Cloud Service during the Service Term as specified in an Order solely for the Customer's own internal purposes.
- Customer Account**
- 3.4 In order to access the Cloud Service, the Customer must have a Customer Account.
- 3.5 The Customer is solely responsible for:
- 3.5.1 all acts and activities that occur using the Customer Account, including any unauthorised use of the Customer Account or any unauthorised, excessive or incomplete use of the Cloud Service, whether undertaken by the Customer, its personnel or any third party; and
 - 3.5.2 all losses, costs, damages and expenses that are incurred as a result of lost, stolen or compromised log-in credentials for the Customer Account or any other unauthorised use of the Customer Account.
- 3.6 The Customer must not (directly or indirectly):
- 3.6.1 copy, alter, modify or reproduce the Cloud Service;
 - 3.6.2 reverse engineer, reverse assemble, reverse compile or otherwise attempt to gain access to the source code of the whole or any part of the Cloud Service;
 - 3.6.3 attempt to bypass any security measures within the Cloud Service; or
 - 3.6.4 display, disclose, sell, resell, transfer, license, sublicense, repurpose, rent, lease, loan, provide, distribute or redistribute all or any portion of the Cloud Service.
- 3.7 The Customer must only access the Cloud Service via equipment specified by Tech Data as meeting the relevant operational requirements. The Customer must also maintain adequate internet connection bandwidth to be able to access the Cloud Service and download any Customer Data to its local hardware. The Customer acknowledges and agrees that, if the Customer chooses to access the Service via any other equipment or does not maintain adequate bandwidth:
- 3.7.1 the functionality of the Service may be reduced or materially affected; and
 - 3.7.2 the Customer will be using such alternative equipment at the Customer's sole risk.
- 3.8 In relation to Cloud Service, the Customer must:
- 3.8.1 not do anything that would interfere with or otherwise disrupt the provision of the Cloud Service to, or the enjoyment of the Cloud Service by, the Customer or any other customer of Tech Data;
 - 3.8.2 not use the Cloud Service to transmit any materials, or store any data, files or content, that is unlawful, immoral, libellous, pornographic, vulgar, defamatory, abusive, insulting, threatening, obscene, inflammatory, offensive or otherwise inappropriate or objectionable;
 - 3.8.3 not transmit any materials that contain Viruses;
 - 3.8.4 not access or attempt to access the System Infrastructure without Tech Data's prior written consent;
 - 3.8.5 not disclose log-in credentials supplied by Tech Data to access the Cloud Service to any person other than Customer Users;
 - 3.8.6 maintain adequate security and safety procedures for the protection and safe-keeping of the Cloud Service, including to protect against any malware;
 - 3.8.7 notify Tech Data of any actual or suspected unauthorised access to the Cloud Service or the Customer Account or any breach of the Customer's security measures which relates to the Cloud Service or Customer Account; and
 - 3.8.8 ensure that Users access and use the Cloud Service in accordance with the terms and conditions of this Agreement.
- Updates**
- 3.9 Tech Data may (but is under no obligation to), from time to time and without notice, offer an Update or a New Release in connection with the Cloud Service to Customer free of charge from the

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- support area within Tech Data's website (**Cloud Service Updates**).
- 3.10 When Cloud Service Updates are made available, Tech Data may notify the Customer through one of its communication channels, including by:
- 3.10.1 email to Tech Data's mailing list; or
- 3.10.2 posting an announcement on Tech Data's website.
- 3.11 This Agreement will continue to apply in all respects to any Cloud Service Update, which shall be deemed to be included in the Cloud Service for the purpose of this Agreement or any Order.
- Changes**
- 3.12 Tech Data has the right to modify, change or discontinue the Cloud Service at any time and for any reason without penalty.
- 3.13 Prior to Tech Data modifying, changing or discontinuing the Service or any part of the Cloud Service in a manner that results in a material change to the Cloud Service that adversely affects the Customer, Tech Data will notify the Customer of the change.
- 3.14 If the Customer does not raise any issues to Tech Data regarding the change to the Cloud Service, then the Customer is deemed to have accepted the change to the Cloud Service.
- Suspension of Service**
- 3.15 Tech Data may suspend the Customer's access to the Cloud Service if:
- 3.15.1 Tech Data believes, in its sole discretion, that the Customer has breached any of the provisions of this Agreement or otherwise failed to perform any of its obligations under this Agreement, including any payment obligations;
- 3.15.2 the Customer's use of the Cloud Service:
- (a) is fraudulent or may cause Tech Data to be subject to liability;
- (b) breaches any applicable law;
- (c) otherwise poses a risk to the Service, Tech Data, the System Infrastructure or any third party; or
- (d) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration.
- 3.16 If Tech Data suspends the Customer's access to the Service, the Customer:
- 3.16.1 will not be entitled to access the Service during the suspension; and
- 3.16.2 will not be entitled to any Service Credits or any other relief or remedies as a result of the suspension.
- Termination or expiration of Cloud Service**
- 3.17 Tech Data will retain Customer Data stored as part or in connection with the Cloud Service for 30 days or another period agreed by the Parties in writing following termination or expiration of the Cloud Service. After that period, Tech Data may delete all Customer Data stored in Cloud Service.
- 3.18 The Customer is solely responsible for the retrieval, download or migration of Customer Data to another location. Tech Data may assist the Customer with that if separately ordered by the Customer in an Order. Such assistance may be subject to separate Fees and additional terms and conditions as set out in an Order.
- 3.19 Tech Data is not responsible for Customer's failure to retrieve, download or migrate Customer Data prior to the period referred to in clause 3.17 and for the deletion and loss of Customer's Data as a result of that failure.
- 4. Third Party Products**
- 4.1 When a Third Party Product is ordered under this Agreement, Tech Data is merely acting as a reseller that facilitates the distribution of the Third Party Product, in which case:
- 4.1.1 the Customer will enter into a contract directly with the Third Party Provider for the supply of the Third Party Product, which in the case of:
- (a) a Third Party Service such contract is described in this Agreement and an Order as **Third Party Service Terms**;
- (b) Third Party Software such contract is described in this Agreement and an Order as **Third Party Software Terms**;
- (c) Third Party Software Maintenance such contract is described in this Agreement and an Order as **Third Party Software Maintenance Terms**;
- (d) Third Party Hardware (including any Machine Code) such contract is described in this Agreement and an Order as **Third Party Hardware Terms**, (also described individually or collectively, as the context requires, **Third Party Product Agreement**). The terms of the Third Party Product Agreement between the Customer and the Third Party Provider for the Third Party Product will be:
- (e) included in the relevant Order as an Attachment;
- (f) referenced in the Order; or

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- (g) available for the Customer to accept online from the website of the Third Party Provider or such other website as nominated by Tech Data,
and such Third Party Product Agreement will be deemed to have been reviewed by the Customer and entered into by the Customer and the Third Party Provider on the date the Customer enters into the relevant Order.
 - 4.1.2 subject to the Third Party Product Agreement, Tech Data's obligations in relation to the supply of the Third Party Product under this Agreement are limited to:
 - (a) processing Customer's order for the Customer to acquire the Third Party Product;
 - (b) delivering to the Customer or providing the Customer access to the Third Party Product; and
 - (c) co-ordinating any claims for warranty and Service Credits (to the extent provided under the Third Party Product Agreement) for the Customer.
 - 4.1.3 to the maximum extent permitted by Law, Third Party Products are provided by Tech Data 'as-is' without warranty of any kind. To the extent that the Third Party Provider provides warranty in relation to the Third Party Product, Tech Data will coordinate and facilitate any warranty claims in accordance with clause 4.1.2(c).
 - 4.2 The Customer warrants to Tech Data that the Customer and Customer Users will comply with the Third Party Policies and Third Party Product Agreement.
 - 4.3 The Customer acknowledges that Tech Data may allow Third Party Provider or their affiliates to have access to the Customer Data in order for Tech Data to perform its obligations in connection with its supply of Third Party Products to the Customer. Without limiting clause 20 (Limitation of Liability), Tech Data will not be responsible for any disclosure, modification or deletion of Customer Data in connection with any access by the relevant Third Party Provider to the Customer Data.
 - 4.4 The Customer acknowledges that the Third Party Provider may update the Third Party Product Agreement and Third Party Policies from time to time and it is the Customer's responsibility to ensure that it complies with the then-current Third Party Product Agreement and Third Party Policies at all times.
 - 4.5 The Customer indemnifies Tech Data in relation to any Loss sustained, incurred or suffered by Tech Data as result of or in connection with a breach by
 - a Customer or Customer User of the Third Party Product Agreement or any Third Party Policies.
 - 4.6 Where a Third Party Provider provides for a Service Credit in respect of the Third Party Product, Tech Data will, after receiving payment of such credit by the Third Party Provider, credit such amounts against the next invoice issued by Tech Data to the Customer.
- ## 5. Third Party Service
- 5.1 Tech Data will procure for the Customer the Third Party Service for the Third Party Service Term.
 - 5.2 Tech Data will use commercially reasonable endeavour to make available the Third Party Service to the Customer by the Third Party Service Start Date, or another date subsequently agreed by the Parties in writing.
 - 5.3 If the Third Party Service Start Date falls on a day that is not a Business Day, then the Third Party Service Start Date will be the next Business Day.
 - 5.4 Notwithstanding 5.1, Tech Data is not responsible for any delay in the commencement of the Third Party Service, and any consequence of that delay, to the extent that the delay is caused by the Customer or any other third party, or a Force Majeure Event.
- ## 6. Third Party Software and Third Party Software Maintenance
- ### Third Party Software
- 6.1 Tech Data will procure for the Customer the Third Party Software for the Third Party Software Term in the Quantity specified in an Order.
 - 6.2 Tech Data will procure the license of the Third Party Software to be extended to a Customer Group Member only if the Customer Group Member is identified in the Order.
 - 6.3 Where the use of a Third Party Software is extended to a Customer Group Member, Customer agrees and warrants that:
 - 6.3.1 the Customer Group Member has been notified of the terms of use of the Third Party Software and any use of the Third Party Software will be in accordance with this Agreement; and
 - 6.3.2 any breach of this Agreement by the Customer Group Member will be deemed to be a breach by the Customer.
 - 6.4 Tech Data will use commercially reasonable endeavour to make available the Third Party Software to the Customer by the Third Party Software Start Date or another date subsequently agreed by the Parties in writing.
 - 6.5 If the Third Party Software Start Date falls on a day that is not a Business Day, then the Third Party Software Start Date will be the next Business Day.
 - 6.6 Notwithstanding 6.4, Tech Data is not responsible for any delay in the provision of the Third Party Software, and any consequence of that delay, to

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- the extent that the delay is caused by the Customer or any other third party, or a Force Majeure Event.
- 6.7 Unless otherwise specifically stated in an Order, Third Party Software does not include:
- 6.7.1 any Update or New Release for the Third Party Software; or
 - 6.7.2 training for the use of the Third Party Software.
- 6.8 Tech Data will provide training regarding the use of the Third Party Software if separately ordered by the Customer in an Order. Such training may be subject to separate Fees and additional terms and conditions as set out in an Order.
- Third Party Software Maintenance**
- 6.9 Tech Data will procure for the Customer any Third Party Software Maintenance for the Third Party Maintenance Term in the Quantity specified in an Order.
- 6.10 Tech Data will use commercially reasonable endeavour to make the Third Party Software Maintenance available for the Customer by the Third Party Software Maintenance Start Date.
- 6.11 Notwithstanding 7.2, Tech Data is not responsible for any delay in the delivery of the Third Party Software Maintenance, and any consequence of that delay, to the extent that the delay is caused by the Customer or any other third party, or a Force Majeure Event.
- 7. Third Party Hardware**
- 7.1 Tech Data will procure for the Customer the Third Party Hardware in the Quantity specified in an Order.
- 7.2 Tech Data will use commercially reasonable endeavour to deliver the Third Party Hardware in the Quantity specified in an Order to the Third Party Hardware Delivery Address on the Delivery Date.
- 7.3 If the Delivery Date of the Third Party Hardware falls on a day that is not a Business Day, then the Delivery Date will be the next Business Day.
- 7.4 Notwithstanding 7.2, Tech Data is not responsible for any delay in the delivery of the Third Party Hardware, and any consequence of that delay, to the extent that the delay is caused by the Customer or any other third party, or a Force Majeure Event.
- 7.5 If after placing an Order, the Customer wishes the Third Party Hardware to be delivered to a location other than the Delivery Address, it must make a request in writing to Tech Data no later than thirty days (or such other period as is agreed between the Parties) prior to the Delivery Date. Tech Data may in its sole discretion, determine whether to agree to such a request and what conditions are to apply if it agrees to such a request.
- 7.6 The Customer must notify Tech Data within 3 Business Days after delivery of any Third Party Hardware, if there is a shortfall in the quantity delivered or any damage to the Third Party Hardware (or any part thereof) at the time of delivery. If the Customer does not notify Tech Data within the timeframe set out before, the Customer is deemed to have accepted the Third Party Hardware.
- 7.7 Unless otherwise specified in an Order, the Fees for the Third Party Hardware do not include a training fee. Tech Data will provide training in the use of the Third Party Hardware if separately ordered by the Customer in an Order. Such training may be subject to separate Fees and additional terms and conditions as set out in an Order.
- 8. Customer's obligations**
- General**
- 8.1 The Customer acknowledges and agrees that:
- 8.1.1 it is responsible for undertaking its own enquiries and making its own checks in relation to the suitability and applicability of the Service, Deliverables or Third Party Products for its required purpose; and
 - 8.1.2 the Customer is solely responsible for all Customer Data and all other data, information and other materials it inputs into the Service or Third Party Products.
- Compliance with Laws and Policies**
- 8.2 The Customer must comply with all:
- 8.2.1 Laws; and
 - 8.2.2 Policies,
- with respect to receipt and use of the Service and Deliverables.
- 8.3 Without limiting the generality of clause 8.1, the Customer must comply with:
- 8.3.1 the anti-corruption laws (including but not limited to the United States Foreign Corrupt Practices Act); and
 - 8.3.2 import, export and economic sanction laws and regulations, including those of the United States and European Union that prohibit the export, re-export or transfer of products, technology, Service or data.
- 8.4 The Customer acknowledges and agrees that Tech Data may change Tech Data Policies by notice to the Customer from time to time;
- Customer Data**
- 8.5 The Customer acknowledges that it is solely responsible for:
- 8.5.1 ensuring the Customer Data is accurate, complete and appropriate;
 - 8.5.2 all modifications to, or deletions of, the Customer Data;
 - 8.5.3 taking all necessary steps to secure, protect, backup and archive all of the

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- Customer Data, including any encryption that may be required to prevent unauthorised access to the Customer Data;
- 8.5.4 the security of all log-in credentials to access the Service; and
- 8.5.5 ensuring that the Customer Data, and the use of the Customer Data by Tech Data in connection with the Service, and any Third Party Provider in connection with Third Party Products:
- (a) complies with all applicable Laws.
 - (b) does not infringe the Intellectual Property Rights of any person; and
 - (c) does not contain any content that is obscene, upsetting, defamatory or discriminatory.
- Customer indemnity**
- 8.6 The Customer must indemnify and hold harmless Tech Data against all Loss sustained, incurred or suffered by Tech Data as result of or in connection with a breach by a Customer of this Agreement.
- 9. Service Levels**
- 9.1 Where a Service is subject to Service Credit as expressly provided in an Order, Tech Data will credit such amounts against the next invoice issued by Tech Data following an approval by Tech Data of a claim by the Customer in accordance with the relevant service level agreement, as set out or referred to in an Order.
- 9.2 The Parties agree that any Service Credits are a genuine pre-estimate of the minimum damage which the Customer would suffer by reason of Tech Data's failure to meet its obligations under the relevant Service Levels. The Parties agree that the purpose of the Service Credits is to incentivise Tech Data and that they are not intended as a penalty for non-performance and do not quantify the full extent of any Customer Group Member's losses in relation to any failure.
- 9.3 A Service Credit is the Customer's sole and exclusive remedy in connection with the failure of Tech Data to meet its obligations under the Service Levels.
- 10. Intellectual Property**
- Licence to use the Service and Deliverables**
- 10.1 Tech Data grants, subject to clause 10.3, to the Customer a non-exclusive licence to use the Intellectual Property Rights in the Service and Deliverables, solely for the purposes of enjoying the benefit of and exercising its rights in relation to the Service and Deliverables in accordance with the terms and conditions of this Agreement and for the duration of this Agreement.
- Ownership**
- 10.2 All Intellectual Property Rights in the Work, Service and Deliverables is owned by Tech Data and nothing in this Agreement assigns or transfer any such Intellectual Property Rights to the Customer.
- 10.3 The Customer must not reverse engineer, decompile, disassemble, copy or modify any part of the Service or Deliverables (or permit any of these things to be done) without Tech Data's prior written consent (in its absolute discretion)
- Third party software / tools**
- 10.4 If any Intellectual Property Rights owned, or used under licence, by a third party are incorporated into any Work, Service or Deliverable, the Customer must comply with all third party terms, conditions and policies which apply to such Intellectual Property Rights, as set out in the relevant Order, or notified by Tech Data.
- Customer Data**
- 10.5 The Customer hereby grants to Tech Data a non-exclusive, fully paid-up, royalty free licence for the Term to use, copy and modify the Customer Data provided or made available by the Customer to Tech Data, for the purposes of providing the Service and Deliverables and performing its other obligations under this Agreement.
- Indemnity in relation to information provided by the Customer**
- 10.6 The Customer must indemnify Tech Data against all Loss sustained, incurred or suffered by any Tech Data as a result of any claim, action or proceeding by a third party alleging that the use, copying, modification, possession or receipt by Tech Data of any materials or information provided or made available by the Customer to Tech Data infringes the Intellectual Property Rights or other rights of any third party.
- 11. Title and risk**
- 11.1 Tech Data retains legal and beneficial title in the Deliverables, or any physical medium on which Deliverables or Third Party Products (including software) are stored (which for the purposes of this clause 11 is collectively referred to as "**Collateral**") until full payment by the Customer for such Deliverables or Third Party Product (as applicable) at which time that title passes to the Customer.
- 11.2 Risk in the Collateral passes to the Customer upon delivery of the Deliverables or Third Party Product to the delivery address specified in the Order, or at another site agreed by the Parties in writing.
- 11.3 The Customer acknowledges that Tech Data may register a financing statement in relation to its security interest in the Collateral. The Customer waives its right under section 157 of the *Personal Property Securities Act 2009* (Cth) to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.

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- 11.4 The Customer acknowledges and agrees that, in the event of non-payment by the Customer or other relevant dispute, Tech Data may retake possession of, and otherwise enforce its security interest in the, Collateral where title has not passed to the Customer in accordance with clause 11.1 and to that extent, enter any premises of the Customer to repossess such Collateral.
- 11.5 To the extent that Chapter 4 of the PPS Act would otherwise apply to an enforcement by the Tech Data of its security interest in the Collateral, the Parties agree that the following provisions of the PPS Act do not apply, to the extent the PPS Act allows them to be excluded:
- 11.5.1 **(enforcement methods)** ss 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 137 (Persons entitled to notice may object to proposal) and 138B(4) (Seizure and disposal or retention of crops);
- 11.5.2 **(notices)** ss 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice of disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
- 11.5.3 **(rights to remedy)** ss 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).
- 11.6 The Customer must promptly do anything Tech Data requires to ensure that its security interest is a perfected security interest and has priority over all other security interests.
- 11.7 Nothing in this clause is limited by any other provision of any other agreement between Tech Data and the Customer. Nothing in this clause limits Tech Data's rights or the Customer's obligations apart from under this clause.
- 12. Suspension and security**
- Suspension**
- 12.1 If in the reasonable opinion of Tech Data that the Customer has breached this Agreement, Tech Data may upon seven (7) Business Days' notice suspend access to or provision of the Service, Deliverables or Third Party Product until such time as the Customer has remedied the breach to Tech Data's reasonable satisfaction.
- Security and Personal Information**
- 12.2 The Customer will comply with all applicable the Privacy Legislation and all applicable Laws with respect to the collection, use, disclosure and storage of Personal Information.
- 12.3 The Customer represents and warrants it has obtained all necessary consents to enable Tech Data to access and use Personal Information necessary to provide the Service, Deliverables or Third Party Product in accordance with this Agreement and from any location.
- 13. Fees and Payment Terms**
- Orders**
- 13.1 The Customer agrees to pay all applicable Fees for any Service, Deliverables and Third Party Product specified in an Order .
- Invoices**
- 13.2 Tech Data will issue invoices on a monthly basis in advance unless otherwise specified in an Order. If the parties have agreed on a Payment Plan or if a Payment Plan is specified in an Order, then Tech Data will issue invoices in accordance with such Payment Plan. Tech Data will send the invoice to the address specified in an Order or as otherwise agreed by the Parties in writing.
- 13.3 The Customer must pay each invoice issued by Tech Data within thirty (30) days of the date of the relevant invoice by the Customer in the manner specified by Tech Data in the relevant invoice or other notified to the Customer by Tech Data in writing.
- Disputed invoices**
- 13.4 If the Customer acting reasonably and in good faith, disputes the correctness of any invoice, then it may, without prejudice to its other rights and remedies, after notifying Tech Data, withhold payment of the disputed sum but must pay any undisputed amount of such invoice.
- 13.5 If Tech Data disputes that the Customer is entitled to withhold the disputed sum, then:
- 13.5.1 the matter must be resolved by the procedure specified in clause 17; and
- 13.5.2 the Customer remains liable to pay all future invoices in accordance with the terms of this Agreement.
- Interest**
- 13.6 Tech Data may charge the Customer interest on any invoices paid late at a rate equal to three per cent (3%) above the rate set by the Commonwealth Bank of Australia on overdrafts in excess of \$100,000 per annum compounded daily.
- 13.7 Interest is calculated on outstanding amounts from the due date of the invoice up to and including the day of payment.
- Taxes**
- 13.8 All prices quoted are exclusive of all taxes. Each Party is responsible for its own taxes relating to transactions under this Agreement and shall report and pay any relevant taxes to the respective tax authorities.

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Taxes

- 13.9 If Customer is required by law to deduct or withhold any tax or other amount from any sum paid or payable by the Customer under the Agreement, the Customer shall pay such additional amount as is necessary so that Tech Data receives on the due date and retains (free from any liability other than tax on its own overall net income) a net sum equal to what it would have received and so retained had no such deduction or withholding been required or made.
- 13.10 The Customer shall pay any GST, sales tax and/or any other value added tax chargeable on any payment to Tech Data.
- 13.11 The Customer will, upon written request from Tech Data, supply necessary documentary evidence that may be reasonably required by Tech Data regarding any payment of tax under or in connection with this Agreement.
- 13.12 Tech Data shall invoice Customer for all taxes applicable to the sales under this Agreement, itemised by type and jurisdiction, which Tech Data is required by law to collect from Customer. Upon Customer's written request, Tech Data shall provide Customer with sufficient documentation to enable Customer to complete any necessary tax filings or claim any applicable tax credits for amounts paid to Tech Data.

Currency

- 13.13 All payments under or in connection with this Agreement will be made in Australian dollars, unless specified otherwise in the relevant Order.

Expenses

- 13.14 The Customer must reimburse Tech Data on demand for all reasonable Expenses incurred in the provision of the Deliverables, Third Party Products and the Service to the Customers.

14. GST

- 14.1 In this clause 14 words that are defined in *A New Tax System (Goods and Service Tax) Act 1999* (Cth) have the same meaning as their definition in that Act.

Exclusive of GST

- 14.2 Except as otherwise provided by this clause 14, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

Recipient must pay

- 14.3 If GST is payable in respect of any supply made by Tech Data under this Agreement, the Customer will pay to Tech Data an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

Tax Invoice

- 14.4 Tech Data will provide a tax invoice to the Customer.

15. Personnel

Compliance with policies while on premises

- 15.1 Each Party must procure that its Personnel comply with the other Party's generally applicable staff, health and safety and security policies and practices while attending that other Party's premises.

No solicitation of Personnel

- 15.2 Each Party must not, during the Term and thereafter for twelve (12) months, solicit, or attempt to solicit, any of the other Party's Personnel, or any person who was in employment of the other Party during the Term or for a twelve (12) month period thereafter, without the other Party's prior consent (which may be withheld in the other Party's absolute discretion). For the purpose of this clause 15.2, **solicit** means an approach by a Party, or a third party acting on its behalf, to an individual with a view to employing or engaging, or procuring the employment or engagement of, such person as an officer or employee, independent contractor or consultant, other than by way of general advertising.

16. Confidentiality and publicity

Obligations of confidence

- 16.1 Subject to the provisions of clauses 16.2 to 16.5, each Party must:
- 16.1.1 treat as strictly confidential and only use the other Party's Confidential Information solely for the purposes contemplated by this Agreement;
- 16.1.2 not, without the prior written consent of the Party from whom the Confidential Information was obtained (which may be withheld in that Party's absolute discretion), publish, use or otherwise disclose to any person the other Party's Confidential Information except for the purposes contemplated by and only as expressly permitted by the terms and conditions of this Agreement;
- 16.1.3 maintain adequate security for the other Party's Confidential Information while in its possession or control, including protecting the same against any use, disclosure, access, damage or destruction which is inconsistent with the terms and conditions of this Agreement; and
- 16.1.4 not make use of the other Party's Confidential Information to the commercial, financial or competitive disadvantage of the other Party.

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Permitted disclosures

- 16.2 Each Party may disclose Confidential Information which it would otherwise be prevented from disclosing pursuant to clause 16.1 if, but only to the extent it can demonstrate that:
- 16.2.1 such disclosure is required by applicable Law or by any securities exchange or regulatory or governmental body having jurisdiction over it, wherever situated;
 - 16.2.2 the Confidential Information was lawfully in its possession prior to disclosure by the other Party (as evidenced by written records) and had not been obtained from the other Party; or
 - 16.2.3 the Confidential Information has come into the public domain, other than as a result of a breach of this Agreement or any other obligation of confidence,
- provided that any disclosure under clause 16.2.1 must, to the extent permitted by applicable Law, not be made without prior consultation with the Party from whom the Confidential Information was obtained and must be made so as to minimise any such disclosure.
- 16.3 Tech Data may disclose the Customer's Confidential Information to a Third Party Provider to the extent relevant to the provision of Service or Deliverable under this Agreement.
- 16.4 Each Party may for the purposes contemplated by this Agreement and on a strictly 'need-to-know' basis disclose the other Party's Confidential Information to the following persons or any of them, provided that such persons have first been directed (**Direction**) by the disclosing Party to keep it confidential:
- 16.4.1 its Personnel; and
 - 16.4.2 its professional advisers, auditors, bankers, financiers and insurers, acting as such.
- 16.5 The disclosing Party under clause 16.4 must enforce each Direction at its own cost.
- 16.6 If a Party discloses the other Party's Confidential Information to any person, such disclosure does not excuse the disclosing Party from complying with its obligations under this Agreement and the disclosing Party is responsible for the acts and omissions of that person in respect of that Confidential Information as though they were the acts and omissions of the disclosing Party itself.

Notification of unauthorised disclosures

- 16.7 Each Party must promptly give notice in writing to the other Party if it becomes aware of any unauthorised or suspected unauthorised disclosure to any third party of any of the other Party's Confidential Information and provide the other Party with all information and assistance reasonably required by the other Party in respect of such unauthorised disclosure.

Publicity

- 16.8 Each Party must not disclose in its advertising, referral or publicity material or otherwise (including in any electronic media) the existence of this Agreement or the terms of the relationship between the Parties without the prior written consent of the other Party provided that Tech Data may disclose the existence of this Agreement to a Third Party Provider.

17. Resolution of Disputes

- 17.1 A Party claiming that a dispute (**Dispute**) has arisen under or in connection with this Agreement must notify the other Party in writing giving details of the dispute.
- 17.2 During the ten (10) Business Day period after a notice is given under clause 17.1 (or any longer period agreed in writing between the Parties) (the **Initial DR Period**) the Parties' Contract Managers must work in good faith to resolve the Dispute.
- 17.3 If the Dispute is not resolved by the Parties within the Initial DR Period, the Dispute must be referred to the Customer's chief information officer (or equivalent) and Tech Data's chief information officer (or equivalent), who must work together in good faith to resolve the Dispute within a period of ten (10) Business Days (or any longer period agreed in writing between the Parties).
- 17.4 While the procedure set forth in this clause 17 is being followed, both Parties must continue to fulfil their obligations under this Agreement.
- 17.5 The procedure set out in this clause 17 does not limit or exclude a Party's rights under this Agreement or at common law or equity (including the right to make applications for interim relief, including injunctions).

18. Termination

Termination for cause

- 18.1 A Party (**Non-defaulting Party**) may terminate this Agreement in whole (including all Orders) or in part (including any relevant Order) with immediate effect by providing written notice to the other Party (**Defaulting Party**):
- 18.1.1 if the Defaulting Party is in material breach of this Agreement and the Defaulting Party has failed to remedy the breach within thirty (30) days of receipt of a written notice from the Non-defaulting Party requiring it to do so; or
 - 18.1.2 if the Defaulting Party is subject to an Insolvency Event.

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- 19. Effects of termination**
- Return of Confidential Information and property**
- 19.1 On termination or expiration of this Agreement in whole or in part, each Party (the **First Party**) must promptly return to the other Party (or at the request or with the consent of the other Party, destroy):
- 19.1.1 all Work, whether complete or partially complete;
 - 19.1.2 all Confidential Information (including copies, summaries and excerpts);
 - 19.1.3 all software, hardware, books, documents, papers, materials, equipment, customer lists, technical information, data and reports; and
 - 19.1.4 any other property,
(in whatever form, including in electronic format) of or belonging to the other Party (or its licensors) which are in possession or control of the First Party.
- 19.2 A Party is not obliged to return anything under clause 19.1 to the extent that it needs to be retained for that Party to comply with any continuing obligations under this Agreement or any Order.
- Survival**
- 19.3 On termination or expiry of this Agreement:
- 19.3.1 the obligations of confidentiality (but not the rights to use or disclose) under clause 16; and
 - 19.3.2 any other provision of this Agreement which expressly or by implication is intended to come into or remain in force on or after termination or expiration of this Agreement,
- will continue in full force and effect notwithstanding any such termination or expiry.
- 19.4 Termination or expiration of this Agreement for whatever reason does not affect the rights and obligations of the Parties which have accrued due prior to the date of termination or expiration, including the right to claim damages as a result of a breach of this Agreement.
- 20. Limitation of liability**
- Exclusion of Consequential Loss**
- 20.1 Neither Party (nor its Affiliates) will be liable, whether in contract, tort (including negligence), breach of statutory duty, or any other basis of claim, under or in connection with this Agreement for any Consequential Loss, even if such Party has been advised of the possibility of such loss or damage. Without limitation, Tech Data will not be liable for lost profits, business, value, revenue, goodwill or anticipated savings. These limitations apply collectively to Tech Data, its Affiliates, contractors and suppliers.
- Cap on Tech Data's liability generally**
- 20.2 To the extent permitted by the applicable law, Tech Data's (and its Affiliates') entire liability arising under or in connection with this Agreement is limited to an amount of any actual direct damages incurred by the Customer up to the Fees paid by the Customer to Tech Data for the product or service that is the subject of the claim under an Order (if recurring Fees, the last twelve (12) month period immediately prior to the relevant claim, regardless of the basis of the claim).
- Cap on Tech Data's liability in relation to Tech Data's Services**
- 20.3 To the extent that the exclusion of warranty in clause 2.11 is found by a court of competent jurisdiction to contravene a Law or otherwise be void, Tech Data's total liability to the Customer under or in connection with the Service or Deliverable is limited, at Tech Data's option, to:
- 20.3.1 resupplying the Service (including the Deliverable in connection with such Service); or
 - 20.3.2 refunding the price of the Service (including the Deliverable in connection with such Service) in respect of which the breach occurred.
- Cap on Tech Data's liability in relation to Third Party Products**
- 20.4 The Customer acknowledges that, in accordance with clause 4.1, when a Third Party Product is ordered under this Agreement, Tech Data is merely acting as a reseller that facilitates the distribution of the Third Party Product and the terms for the supply of the Third Party Product will exclusively be between the Customer and the relevant Third Party Provider. Accordingly, to the maximum extent permitted by Law Tech Data has no liability to the Customer or any Customer User in connection with any Third Party Products.
- 20.5 To the extent that the exclusion of warranty in clause 4.1.3 or the exclusion of liability in clause 20.4 is found by a court of competent jurisdiction to contravene a Law or otherwise be void, Tech Data's total liability to the Customer under or in connection with the Third Party Products is limited, at Tech Data's option, to:
- 20.5.1 replacing or repairing the Third Party Product; or
 - 20.5.2 refunding the price of the Third Party Product in respect of which the breach occurred.
- Vienna Convention**
- 20.6 The Parties agree that, to the extent permitted by applicable Law, the Vienna Convention of 1980 (The Convention on Contracts for the International Sale of Goods) and all international and domestic legislative (or other) implementations of that Convention do not apply in relation to the supply of the Service or Deliverables under this Agreement.

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Apportionment

20.7 Notwithstanding any other provision of this Agreement, the liability of a Party (or its Affiliates) for any Loss sustained, incurred or suffered by the other Party (or its Affiliates) arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, is reduced to the extent that such Loss is caused by the other Party's (or its Affiliates') own negligence or breach of this Agreement.

Obligation to mitigate

20.8 Each Party must use reasonable efforts, to the extent within its control and consistent with each Party's obligations under this Agreement, to promptly mitigate any Loss likely to be or actually sustained, incurred or suffered by it (or its Affiliates) under or in connection with this Agreement.

21. Indemnity assistance

21.1 On a Party (the **Indemnified Party**) becoming aware of any facts that could give rise to a claim covered by an indemnity given by the other Party (the **Indemnifying Party**) in this Agreement in respect of claims by a third party against the Indemnified Party, the Indemnified Party must:

21.1.1 notify the Indemnifying Party of the same, together with all relevant facts, as soon as practicable; and

21.1.2 allow the Indemnifying Party to defend and have conduct of any negotiations and settlement of any matter in respect of which the Indemnifying Party has given an indemnity, subject to the Indemnifying Party properly considering and taking into account:

(a) any reasonable request made by the Indemnified Party;

(b) if the Indemnified Party is likely to suffer any adverse publicity or detriment to its commercial interests; and

21.1.3 provide the Indemnifying Party with such information and assistance (at the Indemnifying Party's expense) as the Indemnifying Party may reasonably request.

21.2 If, contrary to what is contemplated by clause 21.1.2, the Indemnifying Party does not assume the defence of any matter in respect of which the Indemnifying Party has given an indemnity, then the Indemnified Party will defend the claim, action or proceeding and will consult with Indemnifying Party (but is not bound to act in accordance with the Indemnifying Party's wishes) before taking any material action in relation to the claim, action or proceeding and will keep the Indemnifying Party fully informed of the progress of the defence.

22. Assignment and subcontracting

Tech Data may assign, novate, transfer, sub-licence, sub-contract or otherwise dispose of any or all of its rights and/or obligations under this Agreement without the prior consent of the Customer and, in the case of a novation, the Customer, Tech Data and the relevant third party will each execute a novation agreement in a form reasonably prescribed by Tech Data.

23. Force Majeure Events

23.1.1 If a Force Majeure Event prevents a Party (**Affected Party**) from performing some or all of its obligations under this Agreement (**Affected Obligations**), then:

(a) the Affected Obligations are suspended from the date the Force Majeure Event starts until the earlier of the date on which the Affected Party ceases to be prevented; and

(b) a failure of the Affected Party to perform the Affected Obligations during the period of suspension referred to in clause 23.1.1(a) is not a breach of this Agreement.

23.1.2 If a Force Majeure Event occurs the Affected Party must, as soon as reasonably practicable, give written notice to the other Party including:

(a) particulars of the Force Majeure Event;

(b) the likely duration of the Force Majeure Event; and

(c) each of the obligations which will be delayed or which the Affected Party is unable to perform.

23.1.3 While the Force Majeure Event is continuing the Affected Party must take all reasonable steps to minimise the duration of the Force Majeure Event.

23.1.4 When a Force Majeure Event ceases to prevent the performance of the Affected Obligations, the Affected Party must immediately:

(a) give written notice to that effect to the other Parties; and

(b) resume performance of the Affected Obligations.

23.1.5 If a Force Majeure Event prevents the performance of the Affected Obligations for a continuous period of 30 days then either Party may terminate this Agreement by giving written notice to the other. On termination of this Agreement under this clause, the Customer must pay

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- Tech Data for all Fees incurred up to and including the date of termination.
- 23.1.6 Subject to clause 23.1.5, neither Party is entitled to make any claim against, or be liable to, the other Party in connection with a Force Majeure Event.
- 24. General Warranties**
- 24.1 Each Party represents, warrants and undertakes to the other Party that:
- 24.1.1 it is validly existing under the Laws of the place of its incorporation and has the power and authority to carry on its business as that business is now being conducted;
- 24.1.2 it has the power, capacity and authority to enter into and observe its obligations under this Agreement; and
- 24.1.3 this Agreement and the obligations created hereunder are legal, valid and binding upon it and enforceable against it in accordance with their terms and do not and will not violate the terms of any other agreement or any judgment or court order to which it is bound.
- 25. Notices**
- 25.1 Any notice (which term in this clause 25 includes any other communication) required to be given under, or in connection with the matters contemplated by, this Agreement must, except where otherwise specifically provided, be in writing in the English language.
- 25.2 Any notice relating to a breach (or an alleged breach) or termination (or purported termination) of this Agreement must be addressed as per the Parties' details set out on the first page of this Agreement (as updated from time to time in accordance with clause 25.4) and must be:
- 25.2.1 personally delivered, in which case it is deemed to have been given upon delivery at the relevant address if it is delivered not later than 17.00 hours on a Business Day, or, if it is delivered later than 17.00 hours on a Business Day or at any time on a day which is not a Business Day, at 09.00 hours on the next Business Day; or
- 25.2.2 sent by pre-paid post (or equivalent), in which case it is deemed to have been given four (4) Business Days after the date of posting (or seven (7) Business Days after the date of posting if international post).
- 25.3 All other notices, including invoices, not expressly subject to clause 25.2 may be sent in accordance with clause 25.2, but alternatively may be sent via email addressed to a Party's Contract Manager. Provided that in reply to a notice or invoice sent by email the sender does not receive an 'out of office' or 'message undeliverable' (or similar) reply, notices and invoices sent by email are deemed to have been given upon sending if sent not later than 17.00 hours on a Business Day, or, if it sent later than 17.00 hours on a Business Day or at any time on a day which is not a Business Day, at 09.00 hours on the next Business Day.
- 25.4 A Party may notify the other Party of any change to its, or its Contract Manager's, address details, provided that such notification is only effective on the date specified in such notice or five (5) Business Days after the notice is given, whichever is later.
- 26. Variations**
- 26.1 A Party may at any time give written notice to the other Party proposing a variation to this Agreement. However, no variation of this Agreement or any Order will be effective unless agreed in writing and signed by authorised representatives of each of the Parties.
- 27. Entire Agreement**
- 27.1 This Agreement constitutes the whole agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 27.2 Each Party acknowledges that it has not been induced to enter into this Agreement by any representation or warranty other than those contained in this Agreement and, having negotiated and freely entered into this Agreement, agrees that it will have no remedy in respect of any other such representation or warranty except in the case of fraud.
- 28. Rights etc., Cumulative and Other Matters**
- 28.1 The rights, powers, privileges and remedies provided under any provision of this Agreement, including under any indemnity, are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of this Agreement or by applicable Law or otherwise.
- 28.2 A failure to exercise, or any delay in exercising, any right, power, privilege or remedy under this Agreement by any Party will not impair such right, power, privilege or remedy, or operate as a waiver thereof, in whole or in part.
- 28.3 No single or partial exercise of any right, power privilege or remedy under this Agreement prevents any further or other exercise thereof or the exercise of any other right, powers, privilege or remedy.

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29. Further Assurance

At any time after the Effective Date each of the Parties must, at the request and cost of the requesting Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the requesting Party may reasonably require to receive the full benefit of all the terms and conditions of this Agreement.

30. Invalidity

If any provision of this Agreement is held to be illegal, void, invalid or unenforceable under the applicable Laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction is not affected, and the legality, validity and enforceability of the whole of this Agreement in any other jurisdiction is not affected.

31. Costs

Subject to any express provision in this Agreement to the contrary, each Party must pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

32. Counterparts

This Agreement, any Order may be executed in any number of counterparts. Any Party may enter into this Agreement, any Order by signing any such counterpart. Counterparts may be signed and exchanged electronically, including by email.

33. Relationship of the Parties

33.1 Each of the Customer and Tech Data are independent contractors.

33.2 Nothing in this Agreement constitutes, or will be deemed to constitute, a relationship of employer and employee between the Parties, a partnership between the Parties or that either Party is the agent of the other Party for any purpose.

33.3 Subject to any express provision in this Agreement to the contrary, neither Party has any right or authority to and must not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the other Party or bind the other Party in any way.

34. Governing law and jurisdiction

34.1 This Agreement is governed by, and must be construed in accordance with, the laws of New South Wales.

34.2 In relation to any legal action or proceedings to enforce this Agreement or arising out of or in connection with this Agreement (**Proceedings**), each of the Parties irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that the Proceedings have been brought in an inconvenient forum.

35. Interpretation

35.1 In this Agreement, unless the context requires otherwise:

35.1.1 any reference to a 'person' includes any individual, company, corporation, firm partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same includes a reference to the others;

35.1.2 references to any legislation, statute or statutory provisions includes a reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and any reference to a statutory provision includes any subordinate legislation made from time to time under that provision;

35.1.3 references to clause(s) and Schedule(s) are references to clause(s) and Schedule(s) of and to this Agreement;

35.1.4 references to sections(s) and Attachment(s) are references to sections(s) of and Attachment(s) to an Order;

35.1.5 references to any Party include its successors (whether by operation of applicable Law or otherwise) and permitted assigns;

35.1.6 any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words;

35.1.7 references to the singular include the plural and to the masculine include the feminine, and in each case vice versa;

35.1.8 references to a website link include the successor links; and

35.1.9 a reference to '\$' or 'dollars' is a reference to Australian dollars.

35.2 The headings and sub headings in this Agreement are inserted for convenience only and do not affect the meaning of this Agreement.

35.3 Each of the Schedules to this Agreement has effect as if set out in this Agreement.

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- 35.4 Each of the Attachments to an Order has effect as if set out in that Order.
- 35.5 If a payment is required by this Agreement to be made on a day which is not a Business Day, the payment must be made on the following Business Day.

36. Definitions

- 36.1 In this Agreement, certain abbreviations, words and phrases have the meanings assigned to them in Schedule 1 (Dictionary), unless the context requires otherwise.

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Schedule 1

Dictionary

1. Definitions

Acceptable Use Policy means Tech Data's acceptable use policy in connection with the Service and Deliverables or a Third Party Provider's acceptable use policy in connection with the Third Party Products (as applicable) as specified in the Order or notified by Tech Data, as may be updated from time to time.

Affiliate means, in respect of a company or other business entity, any company or other business entity Controlled by, Controlling, or under the common Control of a third party that also Controls that company or other business entity from time to time. For the purpose of this Agreement, Affiliate of Tech Data shall include any Third Party Provider.

Agreement is defined in 1.1 as this Master Agreement, which includes clauses 1 to 36, the schedules attached to it at the time of execution by the Parties and any Orders.

Attachment means an attachment to a Order in relation to a specific subject matter (such as Service, Third Party Products, Service Levels, Fees, Reports, etc).

Business Day means any day which is not a Saturday, Sunday or public holiday in the place where the Service or Deliverable is being provided by Tech Data.

Confidential Information means, in relation to a Party, information relating to that Party and its Affiliates and records (in whatever form, including in electronic format) of that Party and its Affiliates, and their relationships with their customers and suppliers that is identified as confidential at the time of disclosure or otherwise not generally known to the public, including (without limitation) information concerning the business, products, Service, Systems, procedures.

Consequential Loss means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the agreement, as the probable result of the relevant breach.

Contract Manager means, in relation to a Party, the person appointed by that Party to manage the exercise of its rights and performance of its obligations under an Order, and to act as the single point of contact for the other Party in relation to the same. Each Party's Contract Manager for an Order is as specified in the Order respectively.

Control means the direct or indirect power to direct or cause the direction of the management and policies of a company or other business entity, whether through ownership of fifty per cent (50%) or more of the voting interest, by contract, or otherwise (and **Controlled** and **Controlling** are to be construed accordingly).

Customer refers to the party specified in the execution block in this Agreement, a party that accepts this Agreement (by any means), or uses, receives or orders Services or Third Party Products from Tech Data.

Customer Account means an account issued by Tech Data to the Customer that will utilise unique log-in credentials to provide any Customer Users authorised by the Customer with access to use the Service in accordance with this Agreement.

Customer User means a member of the Customer's personnel who has been issued log-in credentials or otherwise permitted by Tech Data to access and use the Service on behalf of the Customer.

Customer Data means all materials, data and other information transmitted, inputted or stored by the Customer using the Service. The Customer Data does not include any software applications or tools (or any information or data related to such software or tools) used or implemented by Tech Data in order to deliver the Service

Customer Group means:

- (a) the Customer and its Affiliates from time to time;
- (b) any company, corporation, firm, partnership, joint venture, association, organisation, trust or other entity (in each case, whether or not having separate legal personality) in which the Customer or any of its Affiliates has an interest (of at least 20% (or equivalent)) from time to time; and
- (c) any other company, corporation, firm, partnership, joint venture, association, organisation, trust or other entity agreed in writing between the Parties (acting reasonably) from time to time.

Customer Group Member means a Member of the Customer Group.

Cloud Service is defined in clause 3.

Cloud Service Updates is defined in clause 3.9.

Deliverable means a deliverable (if any) arising out of the Service or otherwise supplied to the Customer under or in connection with this Agreement, including any Documentation, as set out, described or referred to in an Order.

Delivery Date means:

- (a) in the case of physical Deliverable, the date for the delivery of the physical Deliverable as specified in an Order or otherwise as subsequently agreed to by the Parties in writing;
- (b) in the case of Third Party Hardware, the date Tech Data will request the Third Party Provider to deliver, or make available the Third Party Hardware for Tech Data to deliver, the ordered Third Party Hardware to the Customer.

Documentation means, in relation to any Services, Deliverables or Third Party Product, the

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user manuals, reference manuals and other materials and documentation (in whatever form, including in electronic format) relating to the installation, use, operation, performance, capacity, quality, scope or functionality of the Services, Deliverables or Third Party Product, including any documentation expressly identified in the relevant Order.

Expenses means any 'out-of-pocket' expenses (for example, travel or accommodation) incurred by Tech Data under or in connection with performing its obligations under this Agreement.

Fees means the fees and charges set out or referred to in or calculated in accordance with the relevant Order.

Force Majeure Event means any:

- (a) fire, flood, earthquake or act of God; and
- (b) riot, civil disorder, rebellion or revolution;
- (c) act or omission of a third party that is beyond the reasonable control of the affected Party.

GST means any goods and services or value added tax, or any similar turnover, sales or purchase tax or duty levied by any jurisdiction (including but not limited to any central, regional or local jurisdiction), and whether in Australia or internationally, including the goods and Service tax imposed by the *A New Tax System (Goods and Service) Act 1999* (Cth).

Hardware means computer equipment, including components, options and spare parts as described in an Order.

Insolvency Event means, in relation to a Party, any of the following events:

- (a) the Party becomes insolvent;
- (b) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Party or the Party enters into a scheme of arrangement with its creditors or is wound up;
- (c) the Party assigns any of its property for the benefit of creditors or any class of them;
- (d) an encumbrance takes any step towards taking possession or takes possession of any assets of the Party or exercises any power of sale;
- (e) the Party has a judgment or order given against it in an amount exceeding \$1,000,000.00 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within twenty (20) Business Days after being given; or
- (f) the Party's credit rating is downgraded by a generally recognised credit rating agency such that its credit rating falls below 'investment grade'.

Intellectual Property Rights means patents, trade marks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights; inventions, know-how, secret formulae and processes and other proprietary knowledge and information; internet domain names; rights protecting goodwill and reputation; database rights; and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licences and consents in respect of any of the rights and forms of protection mentioned in this definition.

Law includes:

- (a) any treaty, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time;
- (b) the common law and the law of equity;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code, policy or standard; and
- (e) any applicable direction, policy, rule or order that is given in writing by a Regulator.

Loss includes claims, actions, proceedings, losses, damages, liabilities and costs (including legal expenses).

Machine Code means any microcode, basic input/ output system code, utility programs, device drivers, diagnostic, fixed software code and/or data structures that internally controls elements within the Third Party Hardware, and any other code, delivered with the Third Party Hardware for the purpose of enabling the Hardware to function as set out in an Order. The term **Machine Code** excludes the operating system and any Third Party Software applications.

New Release means software which has been produced primarily to extend, alter or improve a software by providing additional functionality or performance enhancement. New Release does not include any software that is generally licensed as a different product.

Order means a document substantially in the form of an Order Form for the provision of a Service, Deliverable or Third Party Product by Tech Data under this Agreement, which is agreed between any Customer and Tech Data or signed by their authorised representatives.

Order Form means the form of a purchase order as set out in Schedule 2 (Order Form).

Party refers to either Tech Data or Customer, and **Parties** refer to both Tech Data and Customer.

Payment Plan means the payment plan for the payment of Fees payable under this Agreement or an Order as set out or referred to in the relevant Order.

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Personal Information has the meaning given to that term in the Privacy Legislation.

Personnel means, in relation to a Party:

- (a) that Party's officers and employees; and
- (b) in the case of the Customer only, each Customer Member's officers and employees.

Policies means:

- (a) Tech Data Policies;
- (b) Acceptable Use Policy; and
- (c) any other policy or procedure notified by Tech Data to the Customer relating to the Service or the Deliverables.

Physical Deliverable Delivery Address means the address where Tech Data will deliver the physical Deliverable to, as specified in an Order or as agreed by the Parties in writing.

Privacy Legislation means the *Privacy Act 1988* (Cth) and any applicable analogous legislation in any jurisdiction from time to time.

Regulator means, in relation to a Party, any statutorily recognised supervisory or government agency, body or authority having regulatory or supervisory authority over a Party's assets, resources or business, including any organisation reporting to such bodies, to the extent that such entity has jurisdiction over that Party.

Service Credit means:

- (a) in relation to a Service, an amount to be credited to the Customer in accordance with the relevant service level agreement as set out or referred to in the relevant Order;
- (b) in relation to a Third Party Product, an amount paid or credited by the Third Party Provider for breach of Service Levels.

Service Levels means the required levels of performance for the Service, Deliverable or Third Party Product set out or referred to in the relevant Order.

Service means a service, including the provision of any Deliverables and Cloud Service, set out, described or referred to in an Order that are not Third Party Products.

Service Term means the term of the Service (or Cloud Service) as specified in an Order calculated from the date the Service actually commence (regardless of the Service Start Date). If that date is not ascertainable, then the Service will be deemed to have commenced on the Service Start Date.

Service Start Date means the date the Service is projected to commence as specified in an Order.

Systems includes telecommunications systems, computer systems, networks, computer programs and databases, and the tangible media on which they are recorded and their supporting documentation.

System Infrastructure means the physical infrastructure, including equipment, cabling and systems together with related computer software used to provide the Cloud Service, which may be provided by Tech Data or a third party.

Term means the Initial Term and, if applicable, the Further Term.

Tech Data Group means the Tech Data and its Affiliates from time to time.

Tech Data Group Member means a member of Tech Data Group.

Tech Data means Tech Data Advanced Solutions (ANZ) Limited and its Affiliates from time to time.

Tech Data Policies means the policies of Tech Data, including Acceptable Use Policy, specified in the relevant Order as updated from time to time.

Third Party Provider means a person other than Tech Data who provide Service or Deliverables (or a part thereof) to the Customer under this Agreement.

Third Party Policies means any policies (including acceptable use policies) relating to the use of Third Party Product as notified by Tech Data, or specified or referred to in an Order.

Third Party Product Agreement, in relation to:

- (a) Third Party Service means Third Party Service Terms;
- (b) Third Party Software, means Third Party Software Terms;
- (c) Third Party Software Maintenance, means Third Party Maintenance Terms;
- (d) Third Party Hardware, means Third Party Supply Terms.

Third Party Product means a product or service of a Third Party Provider which Tech Data procures for the Customer under this Agreement. Third Party Product may either be:

- (a) Third Party Software;
- (b) Third Party Software Maintenance;
- (c) Third Party Hardware or
- (d) a Third Party Service.

Third Party Hardware means the physical component of a computer including the Machine Code (if any) that Tech Data procures from a Third Party Provider for the Customer, as described or set out in an Order.

Third Party Hardware Delivery Address means the address where Tech Data will deliver the Third Party Hardware to, as specified in an Order or as agreed by the Parties in writing.

Third Party Service means a service (including any as-a-service offering) that Tech Data procures from a Third Party Provider for the Customer, as described or set out in an Order.

Third Party Service Start Date means the date Tech Data will request the relevant Third Party Provider to make the ordered Third Party Service

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available or provide to the Customer, as specified in an Order.

Third Party Service Term means the term or duration of the Third Party Service that Tech Data will procure for Customer from a Third Party Provider, as specified in an Order.

Third Party Software means standard off-the-shelf software that Tech Data procures from a Third Party Provider for the Customer, as described or set out in an Order.

Third Party Software Start Date means the date Tech Data will request the relevant Third Party Provider to make the ordered Third Party Software available to the Customer, as specified in an Order.

Third Party Software Term means the term or duration of the Third Party Software that Tech Data will procure for Customer from a Third Party Provider, as specified in an Order.

Third Party Software Maintenance means software Update or New Release for the Third Party Software that Tech Data procures for the Customer under this Agreement, as described or set out in an Order.

Third Party Software Maintenance Start Date means the date Tech Data will request the relevant

Third Party Provider to make the Third Party Software Maintenance available to the Customer, as specified in an Order.

Third Party Software Maintenance Term means the term or duration of the Third Party Software Maintenance that Tech Data will procure for Customer from a Third Party Provider, as specified in an Order.

Update means any improvements, extensions in performance, or updates to the Service or software.

Work means any:

- (a) Deliverable; and
- (b) idea, method, invention, discovery, design, business process or method, communication, analysis, drawing, composition, database, writing, computer software, computer data or any other similar item (in any media) created by or on behalf of Tech Data (including by Tech Data's Personnel) for any Customer under or in connection with this Agreement.

Quantity means the number of units of hardware, software or software maintenance (as applicable) as specified in an Order.