

MRE TECHNOLOGY SERVICES, LLC ("MRETS")

STANDARD TERMS AND CONDITIONS OF SALE

FOR TECHNOLOGY PRODUCTS AND SERVICES

1. Offer and Acceptance: MRETS offers to sell and deliver products and services (referred to herein as "products") in accordance with the terms and conditions set forth herein. Acceptance of this offer is expressly limited to such terms. MRETS hereby objects to and rejects any additional or different terms proposed by Buyer, including those contained in Buyer's purchase order, unless MRETS expressly agrees to such terms in writing.
2. Prices and Releases: MRETS's price in effect on the actual ship date for the quantity actually shipped shall apply.
3. Title and Delivery: If products are shipped from MRETS facilities, shipments inside the U.S. shall be delivered F.O.B. MRETS's offices in Houston, Texas. Shipments outside the U.S. shall be delivered FCA (Incoterms 2000) Buyer's designated carrier. Title and liability for loss or damage shall pass to Buyer upon MRETS's delivery to Buyer's designated carrier. Any subsequent loss or damage shall not relieve Buyer from its obligations. Buyer shall reimburse MRETS for insurance and transportation costs on international shipments and shall be responsible for all import duties, taxes and any other expenses incurred or licenses or clearances required. MRETS may deliver products in installments. Delivery dates are estimates. MRETS shall not be liable for any damage, losses or expenses incurred by Buyer if MRETS fails to meet the estimated delivery dates. If shipment of products is made directly from a distributor or manufacturer to Buyer, the shipping rules and conditions stated in their policies shall apply.
4. Payment Terms: If MRETS extends credit to Buyer, payment terms shall be net thirty (30) days after MRETS's invoice. MRETS may change or withdraw credit amounts or payment terms at any time for any reason. If the products are delivered in installments, Buyer shall pay for each installment in accordance with the above payment terms. If Buyer fails to make any payment when due, MRETS may suspend or cancel performance under any agreements in which MRETS has extended credit to Buyer. MRETS's suspension of performance may result in rescheduling delays. If, in MRETS's judgment, Buyer's financial condition does not justify the payment terms specified herein, then MRETS may terminate this contract unless Buyer immediately pays for all products that have been delivered and pays in advance for all products to be delivered. Termination in accordance with this clause shall not affect MRETS's right to pursue any other available remedies.
5. Taxes: Prices do not include applicable taxes or duties. Buyer is solely responsible for paying all applicable taxes and duties. MRETS will add sales taxes to the sales price where required by applicable law, and Buyer will pay such taxes unless Buyer provides MRETS with a duly executed sales tax exemption certificate. If Buyer is required by law to withhold any amount of tax from its payment to MRETS, Buyer shall promptly pay such amount to the appropriate tax authority and take all reasonable steps to minimize such withholding tax.

6. Contingencies: MRETS shall not be in breach of this contract and shall not be liable for any non-performance or delay in performance if such non-performance or delay is due to a force majeure event or other circumstances beyond MRETS's reasonable control, including but not limited to shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any government act, law or regulation, including any judicial order or decree, any communication or power failure, labor dispute, natural disaster, fire, flood, earthquake, explosion, terrorist act or Act of God.

7. Warranties and Related Remedies:

7.1 Products not manufactured by MRETS shall carry only the warranty offered by the original manufacturer, unless specified otherwise in the offering or agreed upon by MRETS. Services shall be good and workmanlike. MRETS's warranty shall not apply to products that have been improperly installed, installed in an improper application, damaged by accident or abuse, or if Buyer alters them or fails to maintain them in accordance with the manufacturer's specifications or good practice. All labor costs and transportation costs are the responsibility and the expense of Buyer or as stated in the warranty of the original manufacturer. Buyer agrees to follow all applicable return policies of the manufacturer or the manufacturer's representative with respect to refund or repair procedures. MRETS shall not be liable for any defects that result from Buyer's design, specifications or instructions for such components.

7.2 EXCEPT AS SET FORTH ABOVE, PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." MRETS DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING PRODUCTS AND SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.3 Buyer agrees that prior to using or distributing any systems that include MRETS products, Buyer will thoroughly test such systems and the functionality of such MRETS products as used in such systems. MRETS may provide technical, applications or design advice, quality characterization, reliability data or other services. Buyer agrees that providing these services shall not expand or otherwise alter MRETS's warranties, as set forth above, and no additional obligations or liabilities shall arise from MRETS providing such services.

7.4 No MRETS products are authorized for use in FDA Class III (or similar life-critical medical equipment) unless authorized officers of the parties have executed a special agreement specifically governing such use. Only those MRETS components which MRETS has specifically designated as military grade are designed and intended for use in military/aerospace applications or environments. Buyer acknowledges and agrees that any military or aerospace use of MRETS products which have not been so designated is solely at the Buyer's risk, and that Buyer is solely responsible for compliance with all legal and regulatory requirements in connection with such use.

7.5 Notwithstanding anything to the contrary, SOFTWARE PRODUCTS AND EXPERIMENTAL AND DEVELOPMENT PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." MRETS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING SUCH SOFTWARE PRODUCTS AND EXPERIMENTAL AND DEVELOPMENT PRODUCTS, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 8. Intellectual Property Indemnification:

**8.1 MRETS will not pay any damages, liabilities or costs and will not defend, indemnify or hold harmless Buyer against any claim, suit or proceeding brought against Buyer, insofar as such claim, suit or proceeding is based on an allegation that products supplied by MRETS to Buyer directly infringe any patent, copyright, or trade secret.**

THE FOREGOING STATES THE SOLE LIABILITY OF THE PARTIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING INTELLECTUAL PROPERTY INDEMNIFICATION TERMS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT, AND THAT IN THE ABSENCE OF SUCH TERMS, THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

## 9. Limitations and Damages Disclaimer:

9.1 General Limitations. IN NO EVENT SHALL MRETS BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT OR THE USE OF THE PRODUCTS PROVIDED HEREUNDER, REGARDLESS OF WHETHER MRETS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, ANCILLARY COSTS TO THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, RE-TESTING, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST MRETS MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED.

9.2 Specific Limitations. IN NO EVENT SHALL MRETS'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY USE OF ANY MRETS PRODUCT PROVIDED HEREUNDER, EXCEED THE TOTAL AMOUNT PAID TO MRETS FOR THE PARTICULAR UNITS SOLD OR SERVICES RENDERED UNDER THIS CONTRACT WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM AROSE, WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST THE PARTICULAR UNITS OR SERVICES SOLD TO BUYER UNDER THIS CONTRACT SHALL NOT ENLARGE OR EXTEND THIS LIMIT.

9.3 BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

9.4 ATTORNEYS' FEE WAIVER. If there is any dispute concerning these terms and conditions or the performance of either party pursuant to these terms and conditions, and either party retains counsel for the purpose of enforcing any of these terms and conditions or asserting these terms and conditions in defense of suit filed against it, each party will be solely responsible for its own costs and attorneys' fees incurred in

connection with the dispute irrespective of whether or not a lawsuit is actually commenced or prosecuted to conclusion, and regardless of whether applicable law provides for attorneys' fees as a recoverable cost or element of damage in such a claim or suit.

10. Cancellations and Rescheduling. No cancellation or rescheduling of orders by Buyer within fifteen (15) days of MRETS's estimated shipping date for the component will be accepted.

11. Non-waiver of Default: In the event of any default by Buyer, MRETS may decline to make further shipments. If MRETS elects to continue to make shipments, MRETS's action shall not constitute a waiver of any such default or affect MRETS's legal remedies for any such default.

12. Governing Law: This contract shall be governed by and interpreted in accordance with the laws of the State of Texas, without reference to conflict-of-laws principles. If for any reason a court of competent jurisdiction finds any provision of this contract to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of this contract will continue in full force and effect. This contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, or by the Uniform Computer Information Transactions Act (UCITA). Buyer agrees that non-exclusive jurisdiction for any dispute arising out of or relating to this contract lies within courts located in the State of Texas and consents to venue in Harris County, Texas. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and MRETS may seek injunctive relief in any United States or foreign court.

13. Export Control:

13.1 Buyer agrees that unless prior authorization is obtained from the U.S. Department of Commerce, neither Buyer nor its subsidiaries shall export, re-export, or release, directly or indirectly, any technology, software, or software source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), received from MRETS, or export, re-export, or release, directly or indirectly, any direct product of such technology, software, or software source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the technology, software, software source code, or direct product is prohibited by the EAR. Buyer furnishes the assurances provided herein to MRETS in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.

13.2 Buyer further agrees to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any product, technical data, software or software source code acquired from MRETS under this contract or any direct product of such technical data, software or software source code. Accordingly, Buyer shall not sell, export, re-export, transfer, divert or otherwise dispose of any such product, technical data, software or software source code directly or indirectly to any person, firm, entity, country or countries prohibited by US or applicable non-US laws. Further, Buyer shall give notice of the need to comply with such laws and regulations to any person, firm or entity which it has reason to believe is obtaining any such product, technical data, software or software source code from Buyer with the intention of exportation. Each party shall secure, at its own expense, such licenses and export and import documents as are necessary for each respective party to fulfill its obligations under this contract. If government approvals cannot be obtained,

MRETS may terminate, cancel or otherwise be excused from performing any obligations it may have under this contract.

13.3 Any product export classification made by MRETS shall be for MRETS's internal use only and shall not be construed as a representation or warranty regarding the proper export classification for such product or whether an export license or other documentation is required for the exportation of such product. This Section 13 shall survive termination of this contract.

14. Assignment: This contract shall not be assignable by Buyer without MRETS's prior written consent. Any unauthorized assignment shall be null and void.

15. Entire Agreement: This contract and the manufacturer's and distributor's instructions, warranties, warranty disclaimers and policies incorporated herein by reference or otherwise constitute the entire agreement between the parties relating to the sale of the products and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No prior representations or statements relating to the sale of the products made by any MRETS representative, which are not stated herein, shall be binding on MRETS. No addition to or modification of any provision of this contract shall be binding upon MRETS unless made in writing and signed by a duly authorized MRETS representative. No course of dealing or trade usage or course of performance shall be relevant to explain or supplement any term in this contract. These terms and conditions shall prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any purchase order or other writing not expressly incorporated herein, including but not limited to data sheets, application notes and purchase order acknowledgements. The section headings contained in this contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this contract. The distributor's and manufacturer's terms and conditions for use, warranties and disclaimers, limitations of liability and remedies and other terms which are incorporated into this contract are attached hereto as Exhibit A and Exhibit B.

## EXHIBIT A TO MRETS TERMS AND CONDITIONS (DISTRIBUTOR IS TECH DATA CORPORATION)

### TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale ("**Terms and Conditions**") between Tech Data Corporation on behalf of itself and its U.S. subsidiaries (together "**TDC**") and the entity purchasing products from TDC ("**Buyer**") govern the sale, license, resale and distribution, as applicable, of third-party vendor ("**Vendor**") hardware, products, services and software (including all open source licensed or distributed by Vendor, or incorporated into any Vendor software) and TDC services, which consist of a variety of services sold and/or performed by TDC (as opposed to third-party vendor services resold by TDC) ("**TDC Services**") (collectively "**Products**") by TDC to Buyer. Certain TDC Vendors require TDC to pass-through terms for the Product to resellers and end users. By purchasing the Product from TDC, Buyer agrees to these Vendor pass-through terms, which are located at <https://tdcontent.techdata.com/reseller/secure/commerce/promos/vendor-pass.aspx>.

### 1. ACCEPTANCE OF PURCHASE ORDERS

**Acceptance:** Buyer accepts these Terms and Conditions through any of the following, whichever occurs first: (a) Buyer submits a purchase order, whether electronically, by phone, or in writing ("Order") to TDC; (b) Buyer provides written acknowledgment; (c) Buyer accepts any shipment of any Products; or (d) Buyer performs any other act or expression of acceptance. All Orders are subject to TDC acceptance, which may occur in writing, Electronic Data Interchange ("**EDI**") acknowledgment, or execution of the Order. Acceptance is expressly limited to these Terms and Conditions in their entirety without addition, modification or exception. TDC rejects any term, condition, or proposal submitted by Buyer (whether oral or in writing) which are inconsistent with or in addition to these Terms and Conditions. TDC's silence or failure to respond to any subsequent or different term, condition, or proposal shall not be deemed to be TDC's acceptance. Buyer may not change, cancel, or reschedule orders for Products without TDC's prior written consent.

**Quotations:** Quotes from TDC are applicable for the period specified in the quote. TDC reserves the right to allocate the sale of Products among its buyers. Unless otherwise agreed to in writing by TDC, quotes are invitations to tender and are subject to change at any time without notice. All information relating to TDC pricing is proprietary and confidential and Buyer will keep such information confidential.

### 2. DELIVERY

**Shipping Policy:** Unless otherwise agreed in writing, TDC will deliver or arrange to deliver the Products in accordance with TDC's shipping policy in effect on the date of shipment. The current TDC shipping policy is located at <http://www.techdata.com/>

**Domestic:** For all domestic transactions, including drop shipments, title to the Products and all risk of loss or damage with respect to the Products, except software or services, shall pass to Buyer upon delivery to the carrier or Buyer's representative at the logistics center where the Products are located.

**International:** For all international transactions, including drop shipments, the Product will be shipped FCA (Free Carrier) from the logistics center where the Products are located (Incoterms 2020). TDC assumes no responsibility for Additional Fees as defined in Section 4(a) for the country designated for delivery by the Buyer. Title and risk of loss, except for software or services, shall pass to the Buyer upon delivery to the Buyer or Buyer's representative at TDC's logistics center or, for drop shipments, upon delivery of the Products to the first common carrier.

**Delivery Information:** Delivery is subject to TDC's receipt of all necessary information and documentation from Buyer including all import certificates, exemption or resale certificates, licenses, and other documents required from Buyer for export of the Product. Buyer shall notify TDC of any claimed shortages or rejections of delivery per the requirements stated in TDC's then current return policies located at <http://www.techdata.com/> ("**Return Policies**") and must meet all other TDC requirements as stated in the Return Policies. Buyer shall provide such notice in writing and with reasonable detail, stating the grounds for any such rejection. Buyer's failure to give such notice within the time specified is deemed an acceptance in full of any such delivery.

### **3. TDC SERVICES**

**Limited TDC Services Warranty:** TDC warrants that TDC Services will be performed in a reasonable and workmanlike manner. To the extent permitted by law, TDC makes no other warranty, express or implied, such as warranty of merchantability, fitness for purpose or non-infringement. Buyer's sole remedies for breach of this Limited TDC Services warranty are, at TDC's sole discretion, to: (i) re-perform the TDC Services, or (ii) refund the portion of the fees paid by Buyer that relate to the non-conforming TDC Services.

**Exclusive Remedy:** THIS SECTION STATES TDC'S ENTIRE LIABILITY FOR WARRANTY CLAIMS FOR TDC SERVICES. BUYER MUST NOTIFY TDC IN WRITING OF ANY ALLEGED BREACH OF WARRANTY NO LATER THAN THIRTY (30) DAYS AFTER COMPLETION OF THE APPLICABLE TDC SERVICES. TO THE EXTENT PERMITTED BY LAW, TDC MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SUCH AS WARRANTY OF MERCHANTABILITY, FITNESS OR PURPOSE OR NON-INFRINGEMENT. TDC

DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, STATUTORY OR OTHERWISE. IN PARTICULAR, TDC DOES NOT WARRANT THAT SOFTWARE PROVIDED BY TDC IS UNINTERRUPTED OR ERROR-FREE.

## 4. PRICE AND PAYMENT

**Additional Fees:** TDC's prices stated on invoices and quotations are for Products only and do not include applicable federal, state, municipal and other government taxes (such as sales, use, value-added, and similar taxes), as well as import or customs duties, license fees, freight (except as otherwise provided in TDC shipping policy) and any other similar charges, however designated or levied on the sale or delivery of the Products or measured by the purchase price paid for the Products ("**Additional Fees**"). Buyer is responsible for all Additional Fees. TDC shall invoice Buyer for all taxes applicable to sales of the Products, itemized by type and jurisdiction, which TDC is required by law to collect from Buyer. Exemption certificates must be presented to TDC prior to shipment if they are to be honored. Upon Buyer's request, TDC will provide Buyer with sufficient documentation to enable Buyer to complete any necessary tax filings or claim any applicable tax credits for amounts paid to TDC. If applicable law requires Buyer to deduct any amount from the amounts to be paid to TDC due to withholding taxes or any other taxes or levies of any kind, Buyer shall pay all such additional amounts so that the net amounts received by TDC are the amounts specified on the invoice. To the extent that any withholding tax is payable, TDC and Buyer shall mutually collaborate and provide any and all assistance reasonably requested to obtain the benefits of any applicable tax treaty between the country where the TDC entity that accepted Buyer Order is located and the applicable jurisdiction where the withholding tax applied.

**Payment Terms:** Payment is due as stated on TDC's invoice without offset or deduction for withholding taxes or any other fees. TDC, at its discretion, may require reasonable advance assurances of payment through irrevocable bank letters of credit or otherwise. All unpaid invoices will bear interest at an amount equal to 1-1/2% of the outstanding balance per month (or the maximum rate of interest allowed to be contracted for by law, whichever is less), starting on the date payment is due. Buyer's failure to make timely payment may result in such action as commencement of proceedings for collection, revocation of credit, cancellation of Orders, stoppage of shipment, delay or cessation of future deliveries, repossession of unpaid delivered goods, and termination of any one or more sales agreements. At any time, TDC may change the terms of Buyer's credit. TDC may apply payments to any of Buyer's accounts. Notwithstanding any "net" payment provisions specified on the invoice, TDC shall have no continuing obligation to deliver Products on credit, and any credit approval may be withdrawn by TDC at any time and without prior notice. Prior to accepting an Order, TDC may require Buyer to grant TDC a security interest in the Product, plus all accounts resulting therefrom as a condition of accepting an Order. Buyer agrees to execute a



Security Agreement in a form acceptable to TDC, and Buyer authorizes TDC to file financing statements as TDC deems appropriate to perfect and/or continue TDC's purchase money security interest therein.

**Collections:** If TDC engages an attorney or collection agency for the purpose of collection, or enforcing TDC's security interest in the Products, with or without litigation, Buyer shall pay any and all associated costs, including and without limitation, attorneys' fees and costs (whether incurred prior to, during, or subsequent to trial), collection, bankruptcy, or other creditor's rights proceedings. TDC reserves the right to effect a recoupment, to set off of any funds due at any time to Buyer from TDC, and to set off any amounts against amounts owed by Buyer to TDC.

**Currency:** If a sale is to occur (or the Product is to be shipped) outside of the United States, Buyer acknowledges and agrees that the amount due TDC shall be paid in U.S. Dollars. Any payment by Buyer in local currency or the receipt by TDC of local currency as a consequence of enforcement procedures against Buyer will be deemed (a) an authorization for TDC to use that local currency to purchase U.S. Dollars or, (b) if such purchase is prohibited by local law, an authorization to purchase appropriate bonds or other instruments and export them from the Buyer's country in order to convert the currency into U.S. Dollars and apply the proceeds to the payment of any amounts owed to TDC by Buyer. Buyer is responsible for any deficiency as a result of conversion of payment into U.S. Dollars.

## **5. RETURN**

**Returns:** All Product returns are subject to TDC's Return Policies. All Orders that are identified by TDC as non-standard or "NCNR" are non-cancelable and non-returnable. If TDC issues a return authorization to Buyer allowing Buyer to return Product to TDC, Buyer will deliver the Product to TDC's specified address in the United States and Buyer shall bear Additional Fees designated or levied, on any replacement Product to be shipped by TDC to Buyer. If TDC determines such Products are not eligible for return, TDC will, at its sole discretion, send such Products back to Buyer on freight collect basis, or hold such Products (at Buyer's expense) for Buyer's collection and on Buyer's account. The right to return defective Products as set forth herein shall constitute TDC's sole liability and Buyer's exclusive remedy in connection with any claim of any kind relating to the quality, condition, or performance of any Product, whether such claim is based upon breach of contract, warranty, negligence or other tort, breach of any statutory duty, indemnity or contribution, the failure of any limited or exclusive remedy to achieve its essential purpose, or otherwise.

### **Hazardous Materials**

Lithium Batteries: Recalled Lithium batteries or lithium batteries that are known or suspected to be defective or damaged present a high safety risk to personnel and property and are not permitted to

be returned to Tech Data facilities under any circumstances. Packaging and Labeling of Dangerous Goods: Items identified as dangerous goods for transport need to be packaged, marked and labeled according to local and global regulations for the transport of Dangerous Goods including, but not limited to, IATA, IMDG, DOT, ADR, as referenced in [Tech Data's Product Return](#) policies. These items may include but are not limited to: Lithium Batteries, Magnetic Materials, Aerosols or Pressurized Gas, and other materials that can pose a risk to property and life.

## 6. DISCLAIMER OF WARRANTIES

**Disclaimer of Warranties:** Notwithstanding any right to return defective products under TDC's Return Policy as specified in Section 5 or the limited TDC Services Warranty as specified in Section 3, TDC makes no representations or warranties of any kind with respect to the Products, including but not limited to Product information. TDC HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO THE PRODUCTS OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. TDC WILL NOT BE LIABLE FOR ANY DAMAGE, LOSS, COST, OR EXPENSE FOR BREACH OF WARRANTY. Except for the limited TDC Services Warranty as specified in Section 3, any product warranties applicable to the Products shall be provided by the Vendor. Buyer shall not make any representations and warranties on behalf of TDC or the Vendor.

## 7. LIMITATION OF LIABILITY

**Limitation of Liability:** SUBJECT TO THE LIMITATIONS OF SECTIONS 5 AND 6, TDC'S LIABILITY FOR DAMAGES ARISING UNDER THESE TERMS AND CONDITIONS, OR WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL: (1) BE LIMITED TO ACTUAL, PROVEN, DIRECT DAMAGES; AND (2) WILL NOT EXCEED THE NET AMOUNT PAID TO TDC BY BUYER FOR THE PRODUCT THAT IS THE SUBJECT OF THE CLAIM. TDC SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THESE TERMS AND CONDITIONS OR THE PRODUCT, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, LOSS OF USE, LOST DATA, COSTS OF COVER, OR FOR ANY DAMAGES OR SUMS PAID BY BUYER TO THIRD PARTIES, EVEN IF TDC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY APPLIES WHETHER ANY CLAIM IS BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE.

## 8. STREAMONE™

**StreamOne™:** StreamOne™ is an online platform offered by TDC. If Buyer chooses to use StreamOne™, Buyer's use is subject to these Terms and Conditions, and any additional StreamOne™ platform agreements, which will be communicated to Buyer at the time of purchase. The additional terms found in this Section 8 will specifically apply to all sales by TDC through StreamOne™. All data and other information available on StreamOne™ are proprietary, confidential and the sole property of TDC or third parties licensing such information to TDC.

**Electronic Delivery / Access:** Unless otherwise agreed in writing, the Products made available through StreamOne™ will be made available for use by software download or the transmission of (or access to) enabling information electronically.

**Credit Card Authorization:** If Buyer pays by credit card, Buyer represents that it is the owner of or is authorized to use the credit card and Buyer authorizes TDC to charge the credit card for all transactions through the StreamOne™ platform, unless otherwise specified. If TDC extends credit to Buyer, Buyer will be invoiced on the agreed upon terms.

## **9. AUTOMATIC RENEWALS AND RECURRING SERVICES**

**Automatic Renewals and Recurring Services:** For Products made available on a subscription or recurring term basis ("**Subscriptions**"), Buyer agrees that TDC may invoice Buyer for automatic renewals and Subscriptions, using Buyer's initial purchase order number as authorization for subsequent invoices until Buyer properly cancels the applicable Subscription. Buyer further agrees to notify end users of the applicable renewal Subscriptions and payments due and acknowledges that Buyer's obligation to pay is not conditioned on: (a) TDC's invoice for Products, (b) Buyer's placement of a renewal purchase order, or (c) Buyer's receipt of a renewal order from its customer.

**Consent to Move End Users for Default:** If Buyer defaults on these Terms and Conditions, TDC reserves the right to move Buyer's end users to another reseller or other provider to avoid interruption of access by the end user.

## **10. BUYER'S OBLIGATIONS**

**Compliance with Laws:** Buyer represents and warrants that it will comply with all applicable laws, codes, directives, ordinances, and regulations. Buyer further acknowledges and agrees that the Products are subject to the export control laws and regulations of the United States, including, but not limited to, the Export Administration Regulations, and sanctions regimes of the U.S. Department of Treasury, Office of Foreign Asset Controls. Buyer shall not, without prior U.S. government authorization, export, reexport, or transfer any Products, either directly or indirectly, to any country

subject to a U.S. trade embargo, or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury. In addition, Buyer may not export, re-export, or transfer Products to an end-user engaged in activities related to weapons of mass destruction. Such activities include, but are not necessarily limited to, activities related to the design, development, production, or use of: (1) nuclear materials, nuclear facilities, or nuclear weapons; (2) missiles or support of missiles projects; (3) chemical or biological weapons; and 4) life support systems, human implantation, or any other application where Product failure could lead to loss of life or property damage.

**Vendor Restrictions:** Buyer acknowledges and agrees that some Product sales are limited to a specified territory and shall not sell Products outside that territory. Such sales may constitute copyright or trademark infringement. Products purchased by Buyer may also be subject to additional usage restrictions or authorizations or terms and conditions imposed by the Vendor. Buyer is responsible for ensuring compliance with any such restrictions, authorizations or terms and conditions. Buyer shall comply with any applicable rights of third parties regarding Products, including software or other intellectual property, such as patents, copyrights, and user licenses.

**Anti-Bribery Anti-Corruption:** Buyer agrees it has not and will not in the future directly or indirectly offer or pay, or authorize the offer or payment of, any money or anything of value in an effort to influence any government official or any other person in order to improperly obtain or retain business or gain an improper business advantage, and has not accepted, and will not accept in the future, any such payment.

**Software:** Software is the machine-readable (object code) version of computer programs ("Software"). Buyer shall not, directly or indirectly, modify the features or functionality of, copy or create derivative works using all or any portion of, decompile, or otherwise reverse engineer or attempt to reverse engineer or derive source code, techniques, algorithms or processes from the Software or permit or encourage any third-party to do so. Buyer's use of Software and any related documentation is governed by the Software's applicable license agreements. Software embedded in or bundled with hardware must be used solely with the device for which it was intended and may not be transferred separately. Buyer authorizes TDC to accept, on Buyer's behalf, any end-user license agreement, or similar agreement for Products. Buyer shall secure this same authority from its end user. TDC has no obligation to accept any end-user license agreements but may use its sole discretion to exercise its authority. Buyer acknowledges that Vendor or Vendor's third-party licensors will provide any license required to use the Product and not TDC.

**Records and Audit:** Buyer shall keep complete and accurate books and records for seven (7) years from the date of the purchase or longer if required by applicable law. Buyer will allow TDC to audit records related to transactions under these Terms and Conditions.

**Refunds:** Buyer will reimburse to TDC any funds TDC has provided to Buyer as a pass-through from the Vendor ("**Pass-Through Funds**") in the following instances: (1) TDC is obligated to return the Pass-Through Funds to the Vendor, or (2) TDC provided the Pass-Through Funds to Buyer but did not receive the Pass-Through Funds from the Vendor. These Pass-Through Funds include but are not limited to discounts, fees, and marketing funds. TDC may also recover such Pass-Through Funds by offsetting any amounts due to Buyer from TDC.

**Notices and Communications:** Buyer consents to receive all communications from TDC or Vendor regarding Products and shall promptly notify TDC in writing of all changes to Buyer's name, address, and control/ownership of its assets. Additionally, Buyer consents to allow TDC to contact Buyer's end users regarding Products.

**Indemnification:** Buyer will indemnify, defend, and hold TDC harmless from and against any and all liabilities, losses, and damages (including but not limited to, reasonable attorney's fees, and costs of establishing rights to indemnification) for any claim including: (i) breach by Buyer of any warranty, representation, or covenant under these Terms and Conditions; (ii) breach or violation by Buyer of any agreement with a Vendor or the rights of a Vendor, respectively; (iii) non-compliance with requirements of these Terms and Conditions; or (iv) claims arising from Buyer's negligence or willful misconduct; or (v) claims arising from (1) TDC's compliance with Buyer's designs, specifications or instructions; (2) modifications of any Product by anyone other than TDC; or (3) use or sale of Products in combination with other products or in violation of the Vendor's applicable specifications and/or documentation.

**Code of Conduct:** Buyer shall comply with the requirements of TDC's then current Code of Conduct. The current TDC Code of Conduct is located at <https://www.techdata.com/code-of-conduct.html>.

## **11. GOVERNMENT SALES**

**Product Sourcing Restrictions:** Buyer has an affirmative duty to notify TDC in writing during the quotation, request, and order process of any product sourcing restrictions, including the Trade Agreement Act ("TAA"), Buy American Act, or other sourcing restrictions that apply to the Products.

**Commercial Items:** TDC is a distributor of "Commercial Items" as defined in FAR 2.101. TDC does not intend to sell Products, whether to the U.S. Government or a higher-tier contractor, that fail to

meet the "commercial item" definition in FAR 2.101. Accordingly, TDC agrees only to the clauses in the Federal Acquisition Regulation ("FAR") and agency FAR supplements (as applicable based on the U.S. Government customer) that are explicitly required to be inserted in a subcontract for commercial items, as set forth in FAR 52.244-6(c)(1) or an agency FAR supplement. In accordance with FAR 12.211, Buyer will receive only those rights in technical data customarily provided to TDC by the manufacturers. This will not be interpreted as providing Buyer unlimited rights in data, software, or intellectual property rights provided by the manufacturers or any other third party. If Buyer is not an authorized GSA Buyer, TDC specifically rejects the requirements of the: (i) Trade Agreements Act, FAR 52.225-5 or DFARS 252.225-7021; and (ii) the Buy American Act, FAR 52.225-1 or DFARS 252.225-7001. TDC does not accept any Preference for Domestic Specialty Metals regulations unless the Vendor expressly represents and warrants that the Products provided through TDC are compliant.

## **12. GENERAL**

**Entire Agreement:** These Terms and Conditions constitute the entire agreement of the parties with respect to all sales by TDC to Buyer, and supersedes any and all prior negotiations, representations and agreements, whether written or oral, between the parties. Each party acknowledges that no representations, inducements, promises or agreements, orally or otherwise have been made by any party. No other agreement, statement or promise modifies these Terms and Conditions unless it is in writing and signed by both parties. Any TDC waiver or default of one or more of these Terms and Conditions is not a waiver of the remaining Terms and Conditions or of any future defaults. No failure or delay by either party in exercising or enforcing any right hereunder shall operate as a waiver thereof or preclude any other exercise or enforcement of its rights.

**Governing Law and Venue:** Any provision of these Terms and Conditions that is prohibited or unenforceable under the laws of the State of Florida shall be ineffective to the extent of such prohibition or unenforceability, without impairing or invalidating the remaining provisions of these Terms and Conditions. These Terms and Conditions are governed by the laws of the State of Florida notwithstanding any choice of law provisions. The venue for any disputes arising out of these Terms and Conditions shall be, at TDC's sole and exclusive option, Pinellas County, Florida or the courts with proper jurisdiction at Buyer's location. ALL SALES TRANSACTIONS EXCLUDE THE APPLICATION OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, IF OTHERWISE APPLICABLE.

**Force Majeure:** TDC is not liable for failures to perform (including, without limitation, delays in delivery) due to causes beyond its reasonable control (for example, acts of nature, acts or omissions of Buyer, operational disruptions, man-made or natural disasters, acts of war, government

interference, epidemic medical crises, materials or Product shortages, strikes, criminal acts, delays in delivery or transportation, or inability to obtain labor, materials or Products through regular sources).

**Data Protection and Personal Information:** Buyer acknowledges that end user personal information is necessary for end users to access or use certain Products. Buyer agrees to provide such personal information as requested by the Vendor to both TDC and the Vendor. Buyer represents and warrants that Buyer, will comply with applicable data protections laws, including providing notice and properly obtaining the consent of the end user to provide said personal information to TDC and the Vendor for the purpose of fulfilling the transaction.

**Trademarks:** Buyer will not use TDC's name, logos, trademarks, or other intellectual property rights without TDC's written consent. Buyer grants TDC the limited right to use its logos and trademarks in any marketing and promotional materials associated with these Terms and Conditions.

**Accurate Information:** Buyer represents and warrants that the information provided in any documents to TDC will be true and correct in all material respects and contains all information necessary so that the information is not materially misleading. Buyer acknowledges that TDC is relying on the accuracy of the information provided by Buyer.

**Assignment and Survival of Obligations:** Buyer may not assign these Terms and Conditions without TDC's prior written consent. TDC may, without Buyer's consent, assign these Terms and Conditions, including all its amendments, attachments and addenda, and its rights and obligations to its successors, assigns or a purchaser of all or substantially all of its assets. All benefits of the contract will enure to the benefit of the assignee. Buyer may purchase from any Tech Data Corporation U.S. subsidiaries pursuant to these Terms and Conditions. All obligations under these Terms and Conditions that by their nature extend beyond termination, including without limitation all monetary obligations of either party to the other under these Terms and Conditions, will survive termination, remain in effect and bind all successors and assigns.

**Independent Contractors.** The Parties will act as independent contractors in the performance of these Terms and Conditions and neither Party shall act as agent for or partner of the other Party.

**Confidentiality** Each party acknowledges that during performance of its obligations pursuant to these Terms and Conditions, it may obtain certain information specifically marked as confidential or proprietary. Each party hereby agrees that all such information disclosed to it by the other party, its parent, affiliates, subsidiaries, whether before or after the effective date, shall be and was received in strict confidence, shall be used only for purposes of these Terms and Conditions, and shall not be disclosed without the prior written consent of the other party, except as may be necessary by reason

of legal, accounting or regulatory requirements beyond either party's reasonable control. The provisions of this Section 12(i) shall survive for a period of one (1) year after the date of such disclosure.



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MRETS is bound to the following terms for return of defective products or software and Purchaser agrees to be bound by these terms and to act in such a way as to follow these procedures in order to make a warranty claims against Barracuda Networks. This is the only procedure and the only warranty in connection with these products, software and services.

Warranty. Barracuda Networks warrants that the hardware will substantially comply with the Datasheet for the Product for a period of one (1) year from the date of shipment from Barracuda Networks and that the Software will substantially comply with the Datasheet for a period of thirty (30) days from the date of shipment for the Software, as set forth in the Barracuda Networks Limited Hardware Warranty located at <https://www.barracuda.com/legal/warranty>. Barracuda Networks warrants the Product solely to End Users. No warranties are extended to Reseller. Reseller expressly agrees that Reseller may not make any warranty or representation, whether express, implied or otherwise on behalf of Barracuda Networks. Reseller shall be solely responsible for being the point of contact with Barracuda Networks for any warranty or Service claims from Reseller's End Users.

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Returns. Reseller shall promptly return any defective Product under warranty or under Support Services as follows: Reseller must first obtain a Return Material Authorization ("RMA") number from Barracuda Networks. Reseller must return the entire contents of the defective Product marked with the RMA number, to a receiving point designated by Barracuda Networks within thirty (30) days of Reseller's receipt of the RMA number. Reseller will pay the transportation charges (including taxes, duties and customs) for the return of the defective Product to Barracuda Networks. Replacement Products are shipped DAP (ship to location) (Incoterms 2010) from the Delivery Point. Products returned to Barracuda Networks may be repaired or replaced by Barracuda Networks at Barracuda Networks sole discretion in accordance with Barracuda Networks warranty to the End User. Replacement Products may be new or refurbished in Barracuda Networks sole discretion.

LIMITATION AND DISCLAIMER OF BARRACUDA NETWORKS LIABILITY TO MRETS AND TO PURCHASER

LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN TO THE CONTRARY, EXCEPT IN CASE OF BODILY INJURY OR DEATH WHERE, AND THEN ONLY TO THE EXTENT THAT, APPLICABLE LAW REQUIRES SUCH LIABILITY, THE MAXIMUM LIABILITY OF BARRACUDA NETWORKS TO RESELLER, OR TO ANY PARTY WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH ANY SALE, USE, OR OTHER APPLICATION OF ANY PRODUCT OR SERVICE DELIVERED TO RESELLER HEREUNDER, WHETHER SUCH LIABILITY ARISES FROM A CLAIM BASED UPON CONTRACT, WARRANTY, TORT, OR OTHERWISE, SHALL NOT UNDER ANY CIRCUMSTANCE EXCEED THE ACTUAL AMOUNT PAID BY RESELLER FOR THE PRODUCT OR SERVICE GIVING RISE TO SUCH LIABILITY.

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## **Barracuda Networks Energize Updates and Other Subscription Terms**

### ***Barracuda Networks Software License Agreement Appendix***

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