

# Private Compute-as-a-Service Terms of Service

Dimension Data Americas



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## 1. Introduction

- 1.1 These Terms describe the terms and conditions applicable to Dimension Data's provision and Client's use of the Services (as defined below).

## 2. Definitions and Interpretation

- 2.1 Capitalised terms used in these Terms and not otherwise defined have the following meanings:

**Activation Services** means services associated with Dimension Data's implementation and installation of the Hosted Private MCP or On-Site Private MCP, as applicable.

**Agreement** means the agreement between Client and Dimension Data, comprising these Terms (including all Exhibits hereto), all applicable Orders and Third Party Software Terms, the AUP, and the applicable Service Descriptions (including, if applicable, the Tech Ops Service Description) and Service Level Terms.

**Administrator** means a single employee, agent or independent contractor of Client, indicated on the applicable Order, who is authorised by Dimension Data to provision, manage and administer certain aspects of the Services.

**API** means the application programming interface made available by Dimension Data in connection with the Services, including the technical and administrative specifications, standards, requirements, procedures and communication protocols promulgated by Dimension Data in connection with such application programming interface.

**AUP** means the Dimension Data Acceptable Use Policy that describes certain requirements for use of the Services, located at <http://www.dimensiondata.com/Services/CloudServices/Legal/AcceptableUsePolicy>, as updated by Dimension Data from time to time.

**Authorised User** means the Administrator or a Sub-Administrator, as applicable.

**CaaS, or Compute (or Computing) as a Service**, means the cloud computing services (which may include access to and use of hosted Software and Documentation) provided by Dimension Data to Client as set forth in an Order and more fully described in the applicable Service Description. CaaS specifically excludes Tech Ops Services.

**Client** means the entity ordering Services from Dimension Data, as identified in the applicable Order(s).

**Client Application** means a software application that Client installs and hosts on the Services for use by Client's Authorised Users and any third parties authorised by Client, including Client's customers and other end-users.

**Client Content** means the Client Applications, Logo and any other content, materials or data that Client uses, installs, uploads or hosts on the Services.

**Client Equipment** means any hardware, peripheral devices, servers, physical media, networks, communications links and other equipment provided by Client in connection with receiving Private CaaS via an On-Site Private MCP.

**Client Material** means any Client Content or Client Equipment.

**Credentials** means a unique log in and password that enables Client to access and use the Services.

**Data Centre Facility** means, if Client is receiving Private CaaS via an On-Site Private MCP, the Client or third-party data Centre identified in the applicable Order as the "**Data Centre Facility**" at which the On-Site Private MCP is required to be installed.

**Dimension Data** means the Dimension Data entity providing Services to Client, as identified in the applicable Order.

**Dimension Data Equipment** means any hardware, peripheral devices, servers, physical media, networks, communications links and other equipment provided or required to be provided by Dimension Data in connection with providing Private CaaS via an On-Site Private MCP, which equipment is specifically listed in the Technical Specification attached to the applicable Order for such On-Site Private MCP.

**Documentation** means the developer guides, getting started guides, user guides, quick reference guides, and other documentation for the Services that Dimension Data provides to Client in the Welcome Pack or makes available via one or more web-based user interfaces, as updated by Dimension Data from time to time.

**Emergency Incident** means an Incident that renders the Services inoperative or causes a complete failure of the Services and impacts a large number of users, for which an effective workaround is not available.

**Excusing Event** means:

- (a) Client's act or omission or an act or omission of a third party for which Client is responsible, including failure to supply accurate, complete, and timely information when requested;
- (b) a Force Majeure Event (as described in Section 18.10);
- (c) failure of a Data Centre Facility to meet any requirements provided by Dimension Data, or Client's failure to provide power, telecommunications or other required services at a Data Centre Facility;
- (d) routine or emergency maintenance of the Services (as described in Section 7.2);
- (e) defects in Third Party Software or Dimension Data's loss of license rights or restrictions imposed by third party licensors with respect to Third Party Software;
- (f) unavailability of necessary technology or other resources on commercially reasonable terms;
- (g) any operating system, database, application or other code or materials not provided by Dimension Data, including configuration issues in connection with the foregoing;
- (h) any act or omission of a third party or that is not caused by Dimension Data (for example, hacking, denial of service attacks and the introduction of viruses), provided that Dimension Data uses reasonable efforts to maintain current versions of Software patches;
- (i) compliance with any applicable law or requests of governmental entities; or
- (j) any destruction, damage, loss or theft of or to any Dimension Data Equipment or other Dimension Data equipment or materials; in each case that adversely affects Dimension Data's ability to provide the Services.

**Fees** mean the fees payable by Client to Dimension Data for the Services, as described in Section 14 and the applicable Order.

**Hosted Private CaaS Service Description** means the description of the features, functions, limitations, and restrictions with respect to Private CaaS as provided via a Hosted Private MCP, located at <http://www.dimensiondata.com/Services/CloudServices/CaaS/PrivateHosted/ServiceDescription>, as updated by Dimension Data from time to time.

**Hosted Private MCP** means an MCP hosted by Dimension Data in its data Centre and designated for use by Client, as further described in the applicable Service Description and Technical Specifications.

**Incident** means a failure of the Services to conform in a material respect with the applicable Service Description(s).

**Incident Correction** means a bug fix, patch, or other modification or addition that brings the Services into material conformity with the applicable Service Description.

**Location** means a physical location in which Dimension Data or Client (as applicable) maintains an MCP necessary to provide the Services locally. The Location(s) in which Dimension Data or Client (as applicable) maintains MCP(s) are indicated in the applicable Order and Technical Specifications, and can be viewed through the Management Portal.

**Logo** means the logo provided by Client to be embedded in Client's user interface seen while accessing the Services.

**Management Portal** means a Dimension Data portal accessible by Authorised Users that enables Client to manage and administer certain functions of the Services on its own.

**MCP** means a managed cloud platform provided to Client by Dimension Data as part of CaaS and as may be set forth in an Order, consisting of computing hardware and software resources and including Dimension Data's automation and orchestration tools necessary for the provision of the Services, as more fully described in the applicable Service Description.

**Order** means each order for the Services submitted by Client and accepted by Dimension Data.

**Other Incident** means any Incident other than an Emergency Incident.

**On-Site Private CaaS Service Description** means the description of the features, functions, limitations, and restrictions with respect to Private CaaS as provided via an On-Site Private MCP, located at <http://www.dimensiondata.com/Services/CloudServices/CaaS/Private/ServiceDescription>, as updated by Dimension Data from time to time.

**On-Site Private MCP** means an MCP that Dimension Data provides to Client for Client's dedicated use in the Client or third-party data Centre agreed upon by the parties, as further described in the applicable Service Description and Technical Specifications.

**On-Site Private MCP Terms** means Dimension Data's additional terms and conditions that apply to CaaS provided via an On-Site Private MCP (including certain terms and conditions related to Activation Services), which are attached hereto as Exhibit B and incorporated herein by this reference.

**Personnel** means any director, employee, agent, consultant, contractor or other representative of a party.

**Private CaaS** means CaaS provided through a Hosted Private MCP or On-Site Private MCP.

**Public CaaS** means CaaS provided through a Public MCP.

**Public MCP** means an MCP hosted by Dimension Data in its data Centre and made available to Dimension Data CaaS clients under the Dimension Data Public CaaS Terms of Service, located at <http://www.dimensiondata.com/Services/CloudServices/Legal/TermsOfService/CaaSPublic> (the "Public CaaS Terms").

**Public Software** means software or similar subject matter that is distributed under an open source license such as (by way of example only) the GNU General Public License, GNU Lesser General Public License, Apache License, Mozilla Public License, BSD License, MIT License, Common Public License, any derivative of any of the foregoing licenses, or any other license approved as an open source license by the Open Source Initiative, or any software or similar subject matter that is distributed under similar licensing or distribution terms.

**Services** means:

- (a) Private CaaS;
- (b) Activation Services; and
- (c) if both Client accesses Private CaaS through a Hosted Private MCP and Tech Ops Services are included in the applicable Order, Tech Ops Services, in each case, provided by Dimension Data to Client as set forth in an Order and more fully described in the applicable Service Description(s).

**Service Description** means, as applicable, the Hosted Private CaaS Service Description, the On-Site Private CaaS Service Description, or the Tech Ops Service Description.

**Service Level Credit** means a credit that Client may receive if Dimension Data fails to meet a Service Level, calculated as set forth in the applicable Service Level Terms.

**Service Level Failure** means, for a particular Service Level during a particular calendar month, a failure by Dimension Data to meet such Service Level during such calendar month (excluding any failure comprising or caused by an Excusing Event).

**Service Levels** mean the service levels applicable to the Services (excluding Activation Services and Tech Ops Services), which are attached hereto as Exhibit A and incorporated herein by this reference (the “**Service Level Terms**”).

**Service Request** means a request by Client to Dimension Data for Technical Support.

**Software** means the software (including the API) that Dimension Data makes available for Client’s use as part of the Services, including both Dimension Data’s software and Third Party Software.

**Sub Administrator** means an employee, agent, independent contractor or automated application account of Client whom the Administrator authorises to access and use the Services.

**Support** means Incident Correction and Technical Support.

**Tech Ops Services** means management services that Dimension Data will provide to Client if included in an Order for Services provided via a Hosted Private MCP. Tech Ops Services are more fully described in the Service Description for Tech Ops Services (“**Tech Ops Service Description**”), located at <http://www.dimensiondata.com/Services/CloudServices/CaaS/TechOps/ServiceDescription>, as updated by Dimension Data from time to time.

**Technical Specifications** means a document attached as an Appendix to the applicable Order that sets forth the parties agreed-upon technical specifications and architectural diagrams for the MCP that Client will use to access the Services. Technical Specifications are specific to each Order and may include, among other things, diagrams, plans, schematics, a bill of materials, and descriptions of or for the MCP and, for an On-Site Private MCP, each item of dedicated Dimension Data Equipment that will comprise the On-Site Private MCP.

**Technical Support** means answering questions and providing information regarding the Services or their functionality, but not including Incident Correction.

**Terms** means the terms and conditions included in this document.

**Third Party Software** means any third party software, including both proprietary third party software and Public Software, that Dimension Data uses or makes available to Client in connection with the Services under the terms of the applicable third party license agreements located at <http://www.dimensiondata.com/Services/CloudServices/Legal/ThirdPartySoftwareTerms>, as updated by Dimension Data from time to time (“**Third Party Software Terms**”).

**Welcome Pack** means the materials, including Administrator’s Credentials and access instructions, that Dimension Data provides to Client to allow Client to access the Services.

### 3. Orders

#### Ordering Services

- 3.1 Client may request Services by submitting an Order to Dimension Data. Client must use Dimension Data’s standard order form to place Orders and no Order will be effective until Dimension Data accepts the Order by issuing to Client, via email, a Welcome Pack. The Welcome Pack will include Credentials to enable the designated Administrator to access the Services. Client will be deemed to have access to the Services on the date Dimension Data issues the Welcome Pack (the “**Effective Date**”). Dimension Data will keep a record of the Effective Date for each Order. Each Order will include Technical Specifications and the applicable Fees. Each Order will incorporate these Terms and the parties will be bound by these Terms with respect to each Order. Further, if Client wishes at any time to use Public CaaS (and Tech Ops, if applicable) through the Public MCP in addition to using the Services through the Hosted Private MCP or On-Site Private MCP (as applicable), Client will be required execute a new Order for use of Public CaaS (and Tech Ops Services, if applicable) through the Public MCP that incorporates the Dimension Data Public CaaS Terms, including pricing terms, and such terms will apply to Client’s use of Public CaaS (and Tech Ops Services, if applicable) through the Public MCP.

### **Capacity Increase**

- 3.2 If Client wishes to increase the capacity of the Services or of an MCP available under an existing Order, Client will, through its Administrator, a Sub-Administrator or another duly authorised representative agreed to by the parties, contact Dimension Data to discuss entering into a new Order to accommodate such capacity increase, which may include new or revised Technical Specifications. Client will pay any additional Fees for such changes as specified in the applicable new Order.

### **On-Site Private MCP Terms**

- 3.3 If an Order provides for Client to receive Private CaaS via an On-Site Private MCP, the On-Site Private MCP Terms, which include additional terms and conditions governing the provision of Activation Services, will apply to the Order in addition to these Terms. If there is any conflict or inconsistency between these Terms (or any Order) and the On-Site Private MCP Terms, then the On-Site Private MCP Terms will take precedence and will resolve such conflict or inconsistency.

## **4. License**

### **Grant of License**

- 4.1 Subject to Client's payment of all Fees, and in accordance with the terms and conditions of this Agreement, Dimension Data hereby grants to Client a limited, non-exclusive, non-transferable, non-sublicenseable right and license during the term of each applicable Order to have Client's Authorised Users access and use the Services as made available by Dimension Data for the purposes described in the applicable Service Description(s). This license includes the right to use the Documentation and APIs in connection with Client's authorised use of the Services.

### **Restrictions**

- 4.2 Client will not (and will ensure that its Authorised Users do not):
- (a) except to the extent expressly permitted under this Agreement, reproduce, download, frame, mirror, display, or create derivative works of or otherwise modify any Services;
  - (b) decompile, disassemble, or otherwise reverse engineer any Services;
  - (c) access or use any Services in order to build any competing product or service;
  - (d) except to the extent expressly permitted under this Agreement, license, sub-license, sell, rent, lease, transfer, assign, distribute, disclose, or otherwise make available any Services to any third party, or use any Services on a service bureau basis or otherwise to provide services to any third party;
  - (e) interfere with or impede the functionality or proper working of any Services or the servers or networks used to make the Services available, or violate any requirements, procedures, policies or regulations of such networks;
  - (f) access or use any Services in a manner that violates the AUP or any law or regulation, including anti-spam laws and regulations;
  - (g) remove, obscure or alter any trademarks, brand names, or other proprietary notices appearing on or contained within any Services;
  - (h) otherwise use or access any Services other than as expressly permitted by the Agreement (including the AUP).

### **API**

- 4.3 Authorised Users may access the Services either through a web-based user interface or through Client's own Client Application using the API. Dimension Data may modify and republish the API from time to time and Client will need to ensure that its Client Applications and systems are compatible with the then-current API. Notwithstanding the foregoing, if Dimension Data removes or changes a material feature or function of the API, Dimension Data will use commercially reasonable efforts to maintain backwards compatibility with the previous version of the API for twelve (12) months from the date of the change.

### **Third Party Software**

- 4.4 The Services may include Third Party Software. Notwithstanding anything in the Agreement to the contrary, Client's use of Third Party Software will be governed by the Third Party Software Terms. If there is any conflict or inconsistency between these Terms (or any Order) and the Third Party

Software Terms with respect to Third Party Software, then the Third Party Software Terms will take precedence and will resolve such conflict or inconsistency.

### **No Other Rights; No Sale**

- 4.5 As between the parties, Dimension Data is and will be the sole and exclusive owner of all right, title and interest in and to the Services and the Dimension Data Equipment, including all intellectual property rights related thereto. Subject only to the specific licenses granted herein, Dimension Data expressly reserves all rights with respect to the Services and the Dimension Data Equipment. Client will not acquire or claim any right, title or interest in or to the Services or the methodologies used in performing the Services, or the Dimension Data Equipment, whether by implication, operation of law or otherwise, except the limited right to access and use the Services during the term as expressly set forth in the Agreement. Further, nothing in this Agreement constitutes or will be deemed to constitute a sale or lease to Client of any Dimension Data Equipment or other equipment.

## **5. Client Applications**

- 5.1 Client may install and host Client Applications on the Services so long as Client complies with the relevant requirements and restrictions set forth in the Agreement. Client is solely responsible for the operation, support and maintenance of Client Applications and for ensuring that Client has the necessary rights to install and host such Client Applications on the Services. Client is responsible for the acts and omissions of any users of its Client Applications and will ensure that such users comply with the Agreement, including the AUP. As between the parties, Client is and will be the sole and exclusive owner of all right, title and interest in and to the Client Applications and other Client Content, including all intellectual property rights related thereto, and Dimension Data will have (and Client hereby grants to Dimension Data) only the limited right to use and host the Client Applications and other Client Content in connection with providing the Services.

## **6. Authorised Accounts**

### **Administrator**

- 6.1 Client will designate one Administrator who will be authorised by Client to access and use the Services to provision computing resources within the MCP and to appoint Sub-Administrators, as described in Section 6.2. The Administrator will also be responsible for ensuring that former Authorised Users who are no longer authorised to access the Services do not access the Services.

### **Sub-Administrators**

- 6.2 The Administrator may designate one or more Sub-Administrators to perform any (or all) acts the Administrator is permitted to perform, and will provide Credentials to each Sub-Administrator it appoints. The Administrator's and each Sub-Administrator's Credentials may only be used by the Administrator or that Sub-Administrator, as applicable; a single set of Credentials may not be shared or used by more than one person. The Administrator and each Sub-Administrator must keep his or her Credentials secure.

### **Client Responsibility**

- 6.3 Client is responsible for the acts and omissions of Authorised Users and will ensure that Authorised Users comply with the Agreement, including the AUP. Client will not permit persons other than Authorised Users to access the Services and will maintain the confidentiality of all Credentials. Client will notify Dimension Data promptly in writing if Client becomes aware of:
- (a) any loss, theft, or unauthorised use of any Credentials; or
  - (b) any breach of this Agreement by one or more Authorised Users. Client will be responsible for the acts and omissions of any person using Credentials.

## **7. Service Levels; Maintenance**

### **Service Levels**

- 7.1 The Service Levels for Private CaaS are described in the Service Level Terms and in Section 14. Client will be entitled to Service Level Credits solely as set forth in the Service Level Terms. Service Level Credits are Client's sole and exclusive remedy and Dimension Data's sole and exclusive liability with respect to Dimension Data's failure to meet the Service Levels and such failure will not be deemed to be a breach of this Agreement by Dimension Data.



## Maintenance

- 7.2 Dimension Data performs scheduled maintenance on the Services (including maintenance related to the Software, the MCP and other equipment and materials used in connection with providing the Services) from time to time. In addition, Dimension Data may occasionally need to perform emergency or unscheduled maintenance. These maintenance activities may cause interruptions to the Services. Dimension Data will use reasonable efforts to inform Client in advance of any such Service interruptions and their anticipated duration, and, if Client uses an On-Site Private MCP, will coordinate with Client to schedule non-emergency or equipment maintenance with respect to such On-Site Private MCP. Additional information regarding Dimension Data's Software and cloud maintenance policies and procedures is located at <http://www.dimensiondata.com/Services/CloudServices/CaaS/Public/Maintenance>, as updated by Dimension Data from time to time.

## 8. Support

### Dimension Data Community

- 8.1 Dimension Data will provide Client with access to Dimension Data's online community forums, located at <http://www.dimensiondata.com/Services/CloudServices/Community> (the "**Community Forum**"). If Client has questions regarding the Services, Client may use the Community Forum to seek answers. Client may also use the Community Forum to receive online Technical Support and, in some circumstances, guidance for self-administering Incident Corrections. Dimension Data, Client, and other Dimension Data clients may publish content to the Community Forum from time-to-time. Dimension Data reserves the right to review and remove any content posted to the Community Forum, including any content that Dimension Data believes, in its sole discretion, to be:
- (a) illegal, inappropriate or in violation of the AUP; or
  - (b) the subject matter of a complaint by any client.
- 8.2 Client acknowledges and agrees that all content that Client posts to the Community Forum is non-confidential.
- 8.3 Client will retain ownership of content that Client posts to the Community Forum ("**Client Community Content**"). Client hereby grants to Dimension Data a worldwide, non-exclusive, transferable, sublicenseable (including to other clients in the Community Forum), royalty-free right and license to use, reproduce, publicly display, distribute and otherwise exploit such content. Client may use the content posted in the Community Forum during the term of this Agreement solely for the purpose of accessing and using the Services.
- 8.4 Dimension Data makes no warranty with respect to the accuracy, completeness or usefulness of any content found on the Community Forum, whether posted by Dimension Data or other clients. Client accordingly agrees that Dimension Data will not be held liable for any losses or damages Client may suffer resulting from:
- (a) any use or access by Dimension Data or other clients of any content posted to the Community Forum by Client; and
  - (b) any content posted to the Community Forum by Dimension Data or one or more other clients.

### Global Service Centre

- 8.5 In addition to using the Community Forum, Client may also obtain support via Dimension Data's 24-hour help desk ("**Global Service Centre**" or "**GSC**"). Dimension Data will provide Client with access to phone and email support from the GSC twenty-four (24) hours per day, seven (7) days per week. The contact details for GSC support are included in the Welcome Pack. When speaking with a GSC representative, Client will report all Incidents and make all Service Requests in sufficient detail to enable the GSC representative to:
- (a) classify the Incident or Service Request; and
  - (b) forward the Incident or Service Request to the appropriate technical support specialists. In the case of an Incident, Client will provide sufficient explanation of the circumstances under which the Incident occurred or is occurring.
- 8.6 Dimension Data will reasonably classify each call as an Emergency Incident, Other Incident or Service Request. If a call is misclassified initially, Dimension Data may reclassify it and respond accordingly. On each call, the GSC representative will assign a unique ticket number to Client, which Client can

use to track its request. Following receipt of Client's Incident report or Service Request, Dimension Data will contact Client via email or telephone to:

- (a) provide Client with information regarding the Incident or Service Request; and
- (b) collect any additional information from Client necessary or useful to facilitate Incident Correction or to respond to the Service Request.

## 9. Non-Solicitation

9.1 During the term of this Agreement and for a period of one (1) year thereafter, Client will not directly or indirectly solicit to hire any employee of Dimension Data who was involved in installing, implementing, supporting, or otherwise providing the Services, except with the prior written consent of Dimension Data. Notwithstanding the foregoing sentence, Client will not be prevented from:

- (a) soliciting to hire employees through classified advertising not specifically directed to Dimension Data employees; or
- (b) hiring any employee of Dimension Data so long as such hiring was not initially solicited, directly or indirectly, by Client.

## 10. Confidentiality

### Confidential Information

10.1 "**Confidential Information**" means all information (whether in written, oral, electronic, or other form) that is disclosed or otherwise made available by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") in connection with this Agreement that is identified herein or at the time of disclosure or observation as being confidential or proprietary. Confidential Information of Dimension Data includes the Software and Documentation, the Technical Specifications, all pricing information, and any other non-public portions of the Services. Confidential Information of Client includes all Client Content. Confidential Information does not include information that:

- (a) is or becomes publicly known other than as a result of any wrongful action or inaction of the Receiving Party;
- (b) was already known to the Receiving Party prior to receiving it from the Disclosing Party;
- (c) is obtained by the Receiving Party from an unrelated third person without a duty of confidentiality owed to the Disclosing Party; or
- (d) is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.

### Use and Disclosure Restrictions

10.2 The Receiving Party will not use Confidential Information of the Disclosing Party for any purpose other than to exercise its rights or perform its obligations under this Agreement. The Receiving Party will not disclose Confidential Information of the Disclosing Party to any third persons except to its employees, consultants or contractors who have a need to know such Confidential Information to exercise the Receiving Party's rights or to perform the Receiving Party's obligations under this Agreement and who are bound by confidentiality provisions (including provisions relating to non-use and nondisclosure) no less restrictive than those set forth in this Agreement. The Receiving Party will protect the Confidential Information of the Disclosing Party with at least the same degree of care it uses to protect its own information of a similar nature or sensitivity, but in any event with no less than reasonable care. The Receiving Party will advise the Disclosing Party in writing of any misappropriation or misuse of the Disclosing Party's Confidential Information of which the Receiving Party becomes aware.

### Exclusions

10.3 Notwithstanding the foregoing, this Agreement will not prevent the Receiving Party from disclosing Confidential Information of the Disclosing Party to the extent required by a judicial order or other legal obligation, but, to the fullest extent permitted by law, the Receiving Party will promptly notify the Disclosing Party of such a required disclosure to allow intervention by the Disclosing Party (and will cooperate with the Disclosing Party) to contest or minimise the scope of the disclosure (including application for a protective order).

### **Equitable Relief**

- 10.4 Each party acknowledges that monetary damages may not be a sufficient remedy for unauthorised disclosure or use of the other party's Confidential Information and that such other party will be entitled, without waiving any other rights or remedies, to seek such injunctive or other equitable relief as may be deemed proper by a court of competent jurisdiction to protect such Confidential Information and such other party's interest therein.

## **11. Client Content**

### **Ownership of Client Content**

- 11.1 As between the parties, Client is and will be the sole and exclusive owner of all right, title and interest in and to the Client Applications and other Client Content, including all intellectual property rights related thereto, and Dimension Data will have only the limited right to use and host the Client Applications and other Client Content in connection with providing the Services.

### **Logo**

- 11.2 Dimension Data may display the Logo in the user interface that Client views when accessing the Services.

### **Data Security**

- 11.3 The Services allow customisation by Client, including options to install third-party software, implement security controls, establish and enforce user access controls (if applicable), and select the Location(s) in which Client Content will be stored. Client acknowledges that it is responsible for using the Services properly and for taking its own steps to maintain appropriate security, protection, and backup of its Client Content, which may include the use of encryption technology to protect Client Content from unauthorised access, and routine archiving of Client Content. If Client receives Services through multiple MCPs, Client is responsible for selecting the Location(s) in which Client Content will be hosted. Client will comply with applicable laws with respect to its use of the Services. Dimension Data is not responsible for and assumes no liability related to the foregoing Client obligations.

### **Data Safeguards**

- 11.4 CaaS is designed to allow authorised access to Client Content only by Authorised Users granted access by Client. Client acknowledges that CaaS does not allow Dimension Data to access Client Content. Without limiting the foregoing, Client understands and agrees that, if Client requests support from Dimension Data that requires access to Client Content, Client may be required to issue temporary Credentials to Dimension Data to permit such access. To the extent Client grants Dimension Data access to Client Content in connection with CaaS, Dimension Data agrees to:
- (a) access and use the Client Content solely for the purpose of providing Services to Client;
  - (b) maintain physical, technical, and administrative safeguards to protect the Client Content against unauthorised access, use, or disclosure while it is accessible by Dimension Data; and
  - (c) not disclose the Client Content to any third party, except as provided in Section 10 above.

### **No Backup**

- 11.5 Client acknowledges and agrees that, unless backup services are included in the applicable Order as part of Tech Ops Services, Dimension Data will not be required to create, maintain or implement backups of any Client Content and that Client is solely responsible for such backup services.

## **12. Representations and Warranties**

### **Mutual Warranties**

- 12.1 Each party represents and warrants to the other that:
- (a) it has the full power and authority to enter into and perform this Agreement and that the execution and delivery of this Agreement has been duly authorised;
  - (b) it will comply with all applicable laws, rules, regulations and ordinances in the performance of this Agreement; and
  - (c) its performance hereunder does not breach any other agreement to which it is bound.

### Dimension Data Warranty

- 12.2 Dimension Data represents and warrants to Client that it will perform the Services materially in accordance with the applicable Service Description(s).

### Third Party Software

- 12.3 Dimension Data will flow down to Client the benefit of any warranties and indemnities provided under the Third Party Software Terms to the extent Dimension Data has the right to do so. Except as set forth in the preceding sentence:
- (a) Dimension Data makes no, and expressly disclaims all, representations and warranties with respect to Third Party Software; and
  - (b) Client's use of Third Party Software is at Client's sole risk.

### Disclaimer

- 12.4 EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH ABOVE AND, UNLESS ANY WARRANTIES ARE IMPLIED INTO THIS AGREEMENT BY A LAW WHICH CANNOT BE EXCLUDED, THE SERVICES AND ANY OTHER INFORMATION, TECHNOLOGY, CONTENT AND MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND DIMENSION DATA DOES NOT MAKE ANY, AND EXPRESSLY DISCLAIMS ALL, OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. WITHOUT LIMITATION OF THE FOREGOING, DIMENSION DATA DOES NOT REPRESENT OR WARRANT THAT ACCESS TO THE SERVICES WILL MEET CLIENT'S REQUIREMENTS OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. NO ADVICE, RESULTS OR INFORMATION OBTAINED BY CLIENT FROM DIMENSION DATA OR THROUGH ANY SERVICES, DOCUMENTATION, OR THE COMMUNITY FORUM, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. IN ADDITION, EXCEPT AS SET FORTH IN SECTION **Error! Reference source not found.**, DIMENSION DATA MAKES NO, AND EXPRESSLY DISCLAIMS ALL, REPRESENTATIONS AND WARRANTIES REGARDING THIRD PARTY SOFTWARE, AND THE ONLY REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THIRD PARTY SOFTWARE ARE THOSE THAT ARE MADE BY APPLICABLE THIRD PARTY LICENSORS AND SET FORTH IN THE THIRD PARTY SOFTWARE TERMS."

## 13. Indemnification

### Dimension Data Indemnification

- 13.1 Dimension Data will defend Client from any third party claim, suit, action or proceeding, and will pay all related damages, costs, expenses, judgments, settlement amounts, and other liabilities (including reasonable attorney's fees and costs) finally awarded against Client by a court or tribunal of competent jurisdiction arising from any allegation that the Services, when used as authorised hereunder in the form provided by Dimension Data, infringe, misappropriate or violate any copyright, patent, trade secret, trademark or other intellectual property right of a third party. If Client seeks indemnification under this Section, it must:
- (a) provide Dimension Data with prompt notice of the claim;
  - (b) give Dimension Data sole control of the defence and related settlement negotiations; and
  - (c) reasonably cooperate with Dimension Data, at Dimension Data's expense, in defending or settling the claim. Notwithstanding the foregoing, Client may participate with Dimension Data in (but not control) the claim using counsel of its choice at its own expense, and Dimension Data will not enter into any settlement or other compromise of the claim that materially affects Client without Client's written approval, which approval will not be unreasonably withheld, delayed, or conditioned.

### Client Indemnification

- 13.2 Client will defend Dimension Data from any third party claim, suit, action or proceeding, and will pay all related damages, costs, expenses, judgments, settlement amounts, and other liabilities (including reasonable attorney's fees and costs) finally awarded against Dimension Data by a court or tribunal of competent jurisdiction, to the extent arising from:
- (a) any violation (or alleged violation) of applicable law by Client or any Client Material or Client Community Content;

- (b) any allegation that any Client Material or Client Community Content infringes, misappropriates or violates any copyright, patent, trade secret, trademark or other intellectual property right of a third party;
- (c) any disputes with third party licensors or providers of any Client Material or Client Community Content;
- (d) any acts or omissions of Authorised Users or of Client's customers or their respective end-users, including any breach of the license restrictions set forth in Section 4.2; or
- (e) any personal injury or death of Dimension Data Personnel or damage to any Dimension Data Equipment.

### Exclusions

13.3 Dimension Data will have no obligation to Client under this Section 13 with respect to:

- (a) any modification of the Services by anyone other than Dimension Data;
- (b) any Third Party Software;
- (c) any combination of the Services with any Client Materials or other software, hardware or other materials not provided by Dimension Data if the claim would not have arisen but for such combination;
- (d) use of the Services other than as permitted by the Agreement or contrary to the applicable Service Description(s); or
- (e) Client's continued use of the Services after notice of the alleged or actual infringement.

### Additional remedies

13.4 If the Services are the subject of an infringement claim (or Dimension Data reasonably believes that such a claim is likely), then Dimension Data may at its option and expense:

- (a) procure for Client the right to continue to use the Services;
- (b) modify the Services to be non-infringing or provide non-infringing substitutes with substantially similar functionality; or
- (c) if Dimension Data cannot accomplish (a) or (b) using commercially reasonable efforts, terminate the Services and refund to Client the unused portion of any Fees paid in advance for the affected Services.

## 14. Fees and Payment

### Types of Fees

14.1 The following types of Fees apply to the Services:

- (a) **Set-up Fee:** A one-time Fee for the initial activation of the Services, as described in the applicable Order.
- (b) **Monthly Fees:** The fixed Fees payable by Client each month in advance, as described in the applicable Order.

### Service Level Credits

14.2 Service Level Credits will be applied towards Fees as described in this Section.

14.3 Service Level Credits must be requested in writing by email to [cloudcredits@dimensiondata.com](mailto:cloudcredits@dimensiondata.com) within thirty (30) days of the first event giving rise to the applicable Service Level Failure. Following the timely receipt of such a request, Dimension Data will review the request and determine whether Client is eligible for the applicable Service Level Credit. If Dimension Data determines that Client is eligible for such Service Level Credit, then Dimension Data will apply such Service Level Credit to Client's invoice for the calendar month following the calendar month during which Client requested the Service Level Credit. If Dimension Data determines that Client is not eligible for such Service Level Credit and Client disputes such determination, then if the dispute is resolved in Client's favour, Dimension Data will apply such Service Level Credit to Client's invoice for the calendar month following the calendar month during which such dispute is resolved. The invoice to which the Service Level Credit is applied by Dimension Data is deemed Service Level Credit Invoice.

- 14.4 Service Level Credits may only be redeemed against the applicable Service Level Credit Invoice, and will not be redeemable against any other invoices unless otherwise agreed by Dimension Data in its sole discretion. Following any expiration or termination of the applicable Order, each unused Service Level Credit (i.e. each Service Level Credit that has not been applied to a Client invoice) will be treated as follows:
- (a) if the Order expired in accordance with its terms, then Client will be entitled to apply such unused Service Level Credit against purchases of Services by Client during the twelve (12) months following the month during which the Service Level Credit was incurred;
  - (b) if Client terminated the Order for Dimension Data's breach in accordance with the Terms, then Dimension Data will pay the Service Level Credit to Client; and
  - (c) if Dimension Data terminated the Order for Client's breach, then upon such termination, the Service Level Credit will expire and will no longer be redeemable by Client. Any Service Level Credits not requested or not redeemed by Client as set forth herein shall automatically expire.
- 14.5 Except as expressly stated herein, in no event will Service Level Credits be redeemable for cash.
- 14.6 In order to be eligible for Service Level Credits, Client must be current on all outstanding invoices both at the time such Service Level Credits would otherwise have accrued and at the time such Service Level Credits would otherwise be payable hereunder.

### **Invoicing**

- 14.7 On or after the Effective Date of an Order, Dimension Data will deliver an invoice for the first calendar month's Monthly Fees (adjusted pro-rata for the remainder of the then-current calendar month), and the Set-Up Fee. Each subsequent month, Dimension Data will deliver an invoice for the Monthly Fees.

### **Payment and Taxes**

- 14.8 Any Client-specific terms, including currency, dates and manner of payment, interest rates on late payment, and taxes will be described in the applicable Order.

### **Additional Fees**

- 14.9 Dimension Data may charge Client additional Fees ("**Additional Fees**") on a time and materials basis at Dimension Data's then-current rates for any of the following:
- (a) re-establishment or other assistance requested by Client outside the scope of the applicable Order;
  - (b) provision of Support to Client if Dimension Data determines that Client's request was not related to an Incident;
  - (c) re-establishment of the Services following suspension pursuant to Section 16; and
  - (d) as required or requested for post-termination data retention and pre-termination assistance described in Sections 17.6 and 17.7.

These Fees will be invoiced to Client in the month following the month in which they accrue.

### **Unforeseen Fee Increase**

- 14.10 Notwithstanding anything to the contrary in this Agreement, Dimension Data may increase the Fees in an Order if the costs or charges incurred by Dimension Data for bandwidth or electricity materially increase. Dimension Data will promptly notify Client in the event of such an increase in the Fees in an Order, and such increased Fees will go into effect on the last day of the calendar month immediately following such notice. Notwithstanding anything to the contrary in this Agreement, if Client does not agree to such a price increase for a particular Order, Client may terminate such Order at any time prior to the effective date of such increase by providing Dimension Data with written notice of such termination. Failure to terminate in accordance with the foregoing will constitute acceptance of such Fee increase.

### **Other Payment Terms**

- 14.11 Dimension Data may apply any payment received from Client under any Order towards any amounts that Client owes to Dimension Data under this Agreement or under any agreement for public CaaS services. Client may not withhold payment of any amount due to Dimension Data for any reason. Client gives Dimension Data permission to provide any registered credit bureau with information about the payment of amounts Client makes under this Agreement.

## 15. Limitation of Liability

- 15.1 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT FOR:
- (a) ANY PARTY'S LIABILITY FOR PROPERTY DAMAGE, PERSONAL INJURY OR DEATH;
  - (b) CLIENT'S OBLIGATIONS UNDER SECTION 13 (INDEMNIFICATION); OR
  - (c) CLIENT'S BREACH OF SECTION 4.2, TO THE FULL EXTENT PERMITTED UNDER APPLICABLE LAW;
    - (i) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES OR THIS AGREEMENT, INCLUDING DAMAGES FOR INTERRUPTION OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL, OR LOSS OF DATA, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF THE PARTY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND
    - (ii) IN NO EVENT WILL EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY TO THE OTHER ARISING OUT OF OR RELATED TO THE SERVICES OR THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CLIENT HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. FOR AVOIDANCE OF DOUBT, THE FOREGOING LIMITATION OF LIABILITY DOES NOT APPLY TO CLIENT'S OBLIGATION TO PAY THE FEES OWED UNDER THE AGREEMENT.

## 16. Suspension

- 16.1 Dimension Data reserves the right to suspend or restrict Client's or any Authorised User's access to the Services if:
- (a) Client or any Authorised User breaches this Agreement, including by violating the AUP;
  - (b) Client or any Authorised User fails to cooperate with any reasonable investigation by Dimension Data of a suspected breach of this Agreement;
  - (c) Dimension Data reasonably determines that suspension is necessary to prevent or mitigate damage to Dimension Data's systems or networks caused by a denial of service attack or other event;
  - (d) Client fails to pay any Fees when due;
  - (e) there is an unusual spike or increase in Client's use of the Services that impacts Dimension Data's ability to deliver the Services; or
  - (f) as the result of any Excusing Event (collectively, "**Service Suspensions**").
- 16.2 Any Client Content stored in the Services may be unavailable during a Service Suspension, and all Fees payable under the applicable Order will continue to accrue. Dimension Data will use commercially reasonable efforts to provide notice of any Service Suspension to Client and to provide updates regarding resumption of Services following any Service Suspension. Without limitation of Section 15, Dimension Data will have no liability for any damages, liabilities, or losses resulting from any Service Suspension.

## 17. Term and Termination

### Term

- 17.1 The Agreement will commence on the Effective Date of the first Order and, unless sooner terminated as set forth herein, will continue until the expiration or termination of the last of Client's Orders. The term of each Order will be specified in such Order.

### Termination for Cause

- 17.2 Either party may terminate this Agreement or any or all Orders upon notice to the other party if the other party materially breaches any term or condition of this Agreement or any Order and fails to correct such breach within fifteen (15) days following notice specifying such breach. Without limitation, Client's failure to timely pay Fees under an Order and Client's (or any Authorised User's)

noncompliance with Section 4.2 will constitute material breaches. In addition, Dimension Data may terminate any Order or particular Services under an Order by notice to Client if continuing to provide the applicable Services to Client becomes impractical or infeasible as the result of an Excusing Event.

### **No Termination for Convenience**

- 17.3 Neither party may terminate this Agreement or any Order without cause, except to the extent otherwise specified in an Order.

### **Effect of Termination**

- 17.4 Upon expiration or termination of this Agreement or any Order:
- (a) Dimension Data will cease providing the applicable Services and Client's rights and licenses granted under this Agreement with respect to those Services will immediately terminate;
  - (b) all outstanding invoices will become immediately due and payable;
  - (c) Dimension Data will not be required to maintain or store, and may delete, Client Content hosted or stored in connection with the terminated Services, except as set forth in 17.5;
  - (d) except as set forth in the preceding subsection (iii), each party will within thirty (30) days return or destroy all tangible or retrievable materials containing or constituting Confidential Information of the other party, and will, at the other party's request, provide the other party with a written statement signed by an officer of the first party certifying that such return or destruction has occurred (except that Dimension Data will not be required to destroy or delete Confidential Information to the extent stored on back-up or archive media or similar storage made in the ordinary course of Dimension Data's business, except to the extent required by a judicial order or other legal obligation); and
  - (e) Client will return, and will provide access to the Data Centre Facility to allow Dimension Data to retrieve, all Dimension Data Equipment to Dimension Data in accordance with the On-Site Private MCP Terms.
- 17.5 Notwithstanding anything to the contrary in this Section 17.4, either party's termination of this Agreement or any Order will be without prejudice to any other remedies that it may have at law or otherwise, and will not relieve either party of breaches occurring prior to the effective date of termination. Neither party will be liable to the other for damages of any kind solely as a result of terminating this Agreement or any Order in accordance with its terms. The following Sections of these Terms will continue and survive after any expiration or termination: Sections 2, 4.2, 4.4, 4.5, 9, 10, 11, 12.4, 13, 14, 15, 17.4, 17.5 (in accordance with its terms), and 18.

### **Post-Termination Data Retention**

- 17.6 Unless Dimension Data terminates this Agreement for Client's breach, for a period of thirty (30) days after the effective date of termination:
- (a) Dimension Data will not take any action to intentionally erase any of the Client Content stored on the Services;
  - (b) Client may retrieve the Client Content stored on the Services, provided that Client has paid any Additional Fees required for post-termination Services and all other amounts due to Dimension Data; and
  - (c) Dimension Data will provide Client with the same post-termination data retrieval assistance that Dimension Data generally makes available to all clients. Except as provided in this Section 17.5.
- 17.7 Dimension Data will have no obligation to continue to store or permit Client to retrieve any Client Content following termination of this Agreement.

## **18. General**

### **Severability**

- 18.1 If the application of any provision of this Agreement to any particular facts or circumstances will be held to be invalid or unenforceable by a court or tribunal of competent jurisdiction, then:
- (a) the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement will not in any way be affected or impaired thereby; and



- (b) such provision will be enforced to the maximum extent possible so as to effect the intent of the parties and be deemed to have been amended without further action by the parties to the extent necessary to make such provision valid and enforceable.

### **Governing Law**

- 18.2 This Agreement will be governed by the laws of the state of New York, United States of America, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the state of New York, United States of America to the rights and duties of the parties.

### **Notices**

- 18.3 Any notice, request, demand or other communication required or permitted hereunder will:
  - (a) be in writing;
  - (b) reference this Agreement and the applicable Order; and
  - (c) be directed to the recipient's address or email address (or facsimile number if applicable) specified in the applicable Order by prepaid registered post, hand delivery, or facsimile, and will be deemed to be properly given when received. All legal notices must be sent to the legal manager. In addition, Dimension Data may provide general notices related to the Services via <http://www.dimensiondata.com/Services/CloudServices/Notices>, and the parties may communicate regarding support-related issues via the Community Forum and the Global Service Centre.

### **Assignment**

- 18.4 Neither party may assign, delegate or otherwise transfer, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party, except that:
  - (a) Dimension Data may assign this Agreement without the prior written consent of Client to an affiliate or in connection with a merger, consolidation, or sale of all or a portion of Dimension Data's assets or business; and
  - (b) Dimension Data may have any of the Services performed on its behalf by its affiliates or other third parties.

Subject to the foregoing, the rights and liabilities of the parties hereto are binding on, and will inure to the benefit of, the parties and their respective successors and permitted assigns. Any attempted assignment, delegation or other transfer except in accordance with this Section 18.4 will be null and void.

### **Dispute Resolution**

- 18.5 In the event of any dispute between the parties concerning interpretations or enforcement of this Agreement, except for requests for injunctive or other equitable relief, the parties agree to first attempt informal dispute resolution by selecting a joint resolution committee consisting of two (2) representatives from each party (the "**Committee**") to meet and attempt to resolve the dispute within thirty (30) days from the emailing of a notice of demand for such dispute resolution to [clouddisputes@dimensiondata.com](mailto:clouddisputes@dimensiondata.com) for Dimension Data and to Client's email address as indicated on the applicable Order, unless extended by mutual agreement of the parties. The Committee will determine its own procedures for the resolution of the dispute, and any decision of the Committee will be binding on the parties. Neither party will commence legal proceedings (including arbitration as set forth in Section 18.6) unless the parties have undertaken the process set out in this Section, and those processes have failed to resolve the dispute.

### **Arbitration**

- 18.6 Any controversy, claim or dispute arising out of or relating to this Agreement or the breach of this Agreement ("Dispute") that is not resolved by the dispute resolution process set forth in Section 18.5 (other than requests for injunctive or other equitable relief) will be settled by arbitration administered by the American Arbitration Association in accordance with its applicable procedures then in effect by a single arbitrator. The Arbitrator may not award punitive damages. The arbitration will be governed by the arbitral law of the State of New York, United States of America. Judgment on the award rendered may be entered in any court having jurisdiction thereof. The place of the arbitration will be New York, New York, United States of America. The language(s) of the arbitration will be English, in which all of the arbitrators will be fluent. For purposes of the Convention on the

Recognition and Enforcement of Foreign Arbitral Awards of 1958, known as the “New York Convention,” the award will be deemed an award in the State of New York, United States of America, which will be the place of the arbitration, the relationship between the parties is commercial in nature, and any disputes between the parties related to the contract will be deemed commercial. Nothing in Section 18.5 or this Section 18.6 will preclude any party from seeking interim or provisional relief concerning a Dispute, including a temporary restraining order, a preliminary injunction or an order of attachment, either prior to or during:

- (a) the dispute resolution process set forth in Section 18.5; or
- (b) arbitration pursuant to this Section 18.6.

### **Right to Reference**

18.7 Unless Client advises Dimension Data otherwise in writing, Client consents to Dimension Data using its name and Logo in any of Dimension Data’s marketing, sales materials, press releases, public announcements and case studies.

### **Waiver**

18.8 Any waiver by either party of a breach of or a default under any provision of this Agreement must be in writing and will not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor will any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

### **Feedback**

18.9 If Client provides suggestions for changes or improvements or other feedback to Dimension Data about the Services or any of Dimension Data’s other products or services, Dimension Data may use such suggestions and feedback for any purpose without obligation or payment of any consideration to Client.

### **Force Majeure**

18.10 Except for the payment of Fees, neither party will be liable to the other for failure or delay in performing its obligations under the Agreement if such failure or delay is due to circumstances beyond its reasonable control, including acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, interruption of or delay in telecommunications or third party services, unanticipated product development problems, or inability to obtain raw materials, supplies or power used in or equipment needed for provision of the Services.

### **Relationship of the Parties**

18.11 Nothing contained in this Agreement will be deemed or construed as creating a joint venture, partnership, agency, employment, or fiduciary relationship between the parties. Neither party, nor either party’s agents, have any authority of any kind to bind the other party in any respect whatsoever, and the relationship of the parties is, and at all times will continue to be, that of independent contractors.

### **No Third Party Beneficiaries**

18.12 Nothing in this Agreement, express or implied, is intended to confer, nor will anything herein confer on, any person other than the parties and the respective successors or permitted assigns of the parties, any rights, remedies, obligations or liabilities.

### **Modification**

18.13 Except as otherwise set forth in this Agreement, no modification of or amendment to this Agreement will be effective unless set forth in a writing referencing this Agreement and signed by a duly authorised representative of each Party.

### **Entire Agreement**

18.14 This Agreement, including any applicable Orders and Third Party Software Terms, the AUP, and the applicable Service Descriptions and Service Level Terms, constitutes the entire agreement between the parties concerning the subject matter hereof, and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, agreements, and communications, whether oral or written, between the parties relating to the subject matter of this Agreement, and all

past courses of dealing and industry custom. If there is any conflict or inconsistency between these Terms and an Order, then:

- (a) the Order will take precedence and will resolve such conflict or inconsistency solely with respect to the specific variable terms included in the Order concerning pricing, payment, term, or specific Services ordered; and
- (b) these Terms will take precedence with respect to all other matters.

### **Interpretation**

18.15 For purposes of interpreting this Agreement:

- (a) unless the context otherwise requires, the singular includes the plural, and the plural includes the singular;
- (b) unless otherwise specifically stated, the words “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section or paragraph;
- (c) the words “include” and “including” will not be construed as terms of limitation, and will therefore mean “including but not limited to” and “including without limitation”;
- (d) unless otherwise specifically stated, the words “writing” or “written” mean preserved or presented in retrievable or reproducible form, whether electronic (including email but excluding voice mail) or hard copy;
- (e) the references herein to the parties will refer to their permitted successors and assigns;
- (f) all headings are inserted for reference purposes only and do not affect the interpretation of the Agreement; and
- (g) unless otherwise expressly provided herein, any agreement, instrument or statute defined or referred to herein means such agreement, instrument or statute as it may be from time-to-time amended.

### **No Presumptions**

18.16 The parties have participated jointly in the negotiation and drafting of this Agreement and, in the event of an ambiguity or question of intent or interpretation arises, these Terms will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favouring or disfavouring either party by virtue of the authorship of any of the provisions of this Agreement. Client waives any claims or defences regarding the validity or enforceability of this Agreement arising from any electronic submission or presentation of the Agreement to Client.