

TD SYNnex MASTER SERVICES TERMS AND CONDITIONS

THESE MASTER SERVICES TERMS AND CONDITIONS (“**Agreement**”) between TD SYNnex Corporation, on behalf of itself and the TD SYNnex Corporation subsidiary located in the United States or Canada that executes the applicable SOW (together, “**Provider**”) and the entity purchasing services from Provider (“**Customer**”) govern the sale of Provider services (“**Services**”). Provider will not accept any other terms or conditions, unless Customer and Provider have executed a written agreement which specifically modifies, supersedes, or replaces this Agreement.

1. **SERVICES.** Provider will provide the Services as described in the applicable Statement of Work (“**SOW**”) to Customer or Customer’s end users (“**End User**”). If Services include deliverables, “**Deliverables**” means any tangible or intangible goods or services developed by Provider specifically for Customer as part of the Services to be performed under this Agreement and as specifically stated in the applicable SOW. If Services include third party product, “**Third-Party Products**” means hardware or software developed or manufactured by a third party and sold to Customer. Provider’s sale of Third-Party Products to Customer shall be governed by the Provider Terms and Conditions of Sale available at <https://www.tdsynnex.com/us/en/terms-and-conditions.html>.
2. **PAYMENT AND FEES.** Customer shall pay the fees as agreed to in the applicable SOW (“**Fees**”). Customer shall make payment to Provider net thirty (30) days from the date of invoice or as indicated in the applicable SOW. Customer shall pay the entire net amount of each invoice from Provider pursuant to the terms of each such invoice without offset or deduction. Customer shall pay to Provider, as a late fee on any amounts more than thirty (30) days past due, the lesser of one and one-half percent (1.5%) per month or the maximum interest rate allowed by applicable law. Customer shall pay all costs and expenses, including a reasonable attorneys’ fee and collection costs, incurred by Provider in an effort to collect past due amounts from Customer, whether or not resulting in litigation. If Customer has any dispute with respect to any invoice, Customer must raise such issue within seven (7) days from the receipt of the invoice or such dispute is waived and the amounts stated on the invoice shall be presumed payable. Disputes related to any items contained on an invoice shall not affect the payment of undisputed charges and expenses. If Customer defaults on any payment under this Agreement or any associated SOW, Provider will provide notice to Customer and give Customer a reasonable time to cure. If Customer fails to cure within that time period, Provider may postpone or cancel any pending or current Services and declare all outstanding invoices due and payable immediately. At any time, Provider may change the terms of Customer’s credit. Provider may apply payments to any of Customer’s accounts.
3. **ACCEPTANCE OF SERVICES.** Final acceptance of Services will be as specified in the SOW. Customer shall perform acceptance tests within the timeframe specified in the SOW. If the Customer fails to perform the acceptance test within the applicable timeframe, the Services shall be deemed accepted by the Customer. If acceptance of Services is not specified in the applicable SOW, then final acceptance of Services shall be deemed to have occurred after five (5) business days after delivery of the Deliverables or completion of the Services.
4. **MATERIAL CHANGE IN ASSUMPTIONS.** Fees are determined based on assumptions regarding the scope of the Services (e.g. volume, completion time, etc.) generated from information provided by Customer (“**Assumptions**”). If there is a material change in the Assumptions (as solely determined by Provider), Provider reserves the right to modify the Fees upon written notice to Customer.
5. **ACCESS.** To the extent applicable, Customer shall ensure that Provider has unrestricted access to the necessary resources and facilities to perform the Services.
6. **INTELLECTUAL PROPERTY.** Customer retains all ownership rights to its own information, data (including but not limited to End User data), resources, patent, trade secret, copyright, trademark, service mark, trade name or other intellectual property right or proprietary information (“**Pre-Existing IP**”). Provider retains all right, title and interest in any Provider Pre-Existing IP, including but not limited to any enhancements, modifications or improvements made to Provider Pre-Existing IP during or as a result of the Services to be performed under this Agreement. Third Party Product intellectual property or proprietary information shall at all times be owned by the applicable third party. Upon payment in full of all amounts due to Provider, Customer will own all applicable Deliverables and such Deliverables will be deemed to be “work made for hire” (as defined in applicable copyright laws). Provider will grant to Customer a perpetual, royalty-free, world-wide license to use solely for its own benefit, and for internal purposes only, that portion of the Provider Pre-Existing IP (including any enhancements, modifications or improvements as part of the Services and/or Deliverables) as it exists at the time of the engagement that is necessary for Customer to make use of the Deliverable. Nothing in this Agreement should be construed to prevent Provider from: (i) independently developing materials irrespective of their similarity to the Services; (ii) utilizing the know-how, principles, or experience gained during the performance of Services; or (iii) providing comparable services for third parties, and using ideas, expressions, skills, and experiences acquired while providing the Services.
7. **LIMITED WARRANTY.**
 - a. **Services Warranty.** Provider warrants that the Services shall be performed in a reasonable and workmanlike manner and that any applicable Deliverables shall substantially conform to the specifications set forth in the applicable SOW for thirty (30) days from delivery of the Deliverables or as otherwise stated in the applicable SOW (“**Services Warranty**”). The Services Warranty shall not apply in the event of (i) improper or abnormal use or operation; (ii) electrical problems, accidents, use in dusty atmospheres, static electricity or inadequate environment; (iii) any repair or maintenance, alteration or modification of the Deliverables not performed by Provider or its authorized personnel; (iv) any non-suitable infrastructure of the Customer or the irregular operation of infrastructure; (v) damage caused by the unauthorized modification by Customer or any third party not performed under the direction of Provider; (vi) any abuse or misuse by Customer or any third party not performed under the direction of Provider; or (vii) damages resulting from the use of a modified or old version of the Deliverables if those damages could have been prevented by using the unmodified or most recent version made available by Provider. For breach of the Services Warranty, Customer’s sole remedies for breach of the warranty are, at Provider’s sole discretion, to: (i) re-perform the Services, or (ii) refund the portion of the fees paid by Customer that relate to the non-conforming Services.

- b. **Exclusive Remedy.** THIS SECTION STATES PROVIDER'S ENTIRE LIABILITY FOR WARRANTY CLAIMS. CUSTOMER MUST NOTIFY PROVIDER IN WRITING OF ANY ALLEGED BREACH OF WARRANTY WITHIN THE APPLICABLE SERVICES WARRANTY PERIOD. TO THE EXTENT PERMITTED BY LAW, PROVIDER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SUCH AS WARRANTY OF MERCHANTABILITY, FITNESS OR PURPOSE OR NON-INFRINGEMENT. PROVIDER DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, STATUTORY OR OTHERWISE. IN PARTICULAR, PROVIDER DOES NOT WARRANT THAT SOFTWARE PROVIDED BY PROVIDER IS UNINTERRUPTED OR ERROR-FREE.

8. INDEMNIFICATION.

- a. **Mutual.** Each party shall indemnify, defend, and hold the other harmless from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including reasonable attorneys' fees) (collectively, "Losses") resulting from or arising out of (i) its negligence or willful misconduct in its performance under this Agreement or (ii) its breach of Section 10 (a) or Section 10(d) below.
- b. **By Customer.** Customer shall indemnify, defend and hold harmless Provider, its affiliates and their respective officers, directors, employees, agents, successors and assigns from any and all Losses arising from or related to (i) Provider's compliance with Customer's directions, specifications or instructions as provided in the applicable SOW or (ii) Customer's breach of Section 10(b) below.
- c. **By Provider.** Provider agrees to indemnify, defend and hold harmless Customer from any and all Losses arising from or in connection with any claims of infringement ("**Claim**") made against Customer alleging that a Deliverable created or Services created solely by Provider with no input or direction or instruction from Customer, directly infringes any patent, trade secret, copyright, trademark, service mark, trade name or other intellectual property right registered in the country in which Provider is providing Services ("**IP Rights**"). If the Services include a Deliverable and if one or more of the Deliverables, or portion thereof, are determined to, or are believed by Provider to, infringe the IP Rights of a third party, Provider may, at its sole option and expense: (i) modify the Deliverable, or portion thereof, so that it is non-infringing; (ii) replace the Deliverable, or portion thereof, with a non-infringing Deliverable, or portion thereof, that is functionally equivalent in performance; (iii) obtain a license for Customer to continue to use the Deliverable, or portion thereof, from the allegedly infringed third party; or (iv) accept return of the infringing portion of the Deliverable and give Customer a refund of the fees paid by Customer for such infringing portion of the Deliverable. If any Claim relates to any Deliverable Customer has distributed to an End User, Customer is responsible for requiring End User to return the Deliverable back for Customer to fulfill the obligations set forth in this section, if applicable. Notwithstanding the foregoing, Provider shall have no liability or obligation for any Claim based on: (i) use of a combination of a Deliverable with other materials not provided by Provider, where such combination causes such infringement; (ii) use of the Deliverable not in accordance with this Agreement, the applicable SOW or for purposes not intended by Provider; (iii) any modification of the Deliverable by any person other than Provider; (iv) a Deliverable created in accordance with the applicable SOW, containing Customer's IP, or at Customer's direction; or (v) Customer's and/or its End User's continuing use of the Deliverable after receiving notice from Provider to discontinue use. THIS SECTION STATES THE ENTIRE LIABILITY OF PROVIDER WITH RESPECT TO CLAIMS OF INFRINGEMENT BY THE DELIVERABLES, DOCUMENTATION, SERVICES, OR ANY OTHER MATERIALS SUPPLIED BY PROVIDER OR USE THEREOF, AND PROVIDER SHALL HAVE NO ADDITIONAL LIABILITY WITH RESPECT TO ANY ALLEGED OR PROVEN INFRINGEMENT.
- d. **Indemnification Process.** A party seeking indemnification under this Agreement must provide prompt written notice to the other party of any claim, demand, or potential liability that could give rise to an indemnification obligation, including details of the claim and the relevant circumstances.

- 9. **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PURSUANT TO THIS AGREEMENT FOR AMOUNTS REPRESENTING INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER'S TOTAL RECOVERY FROM PROVIDER FOR ANY DIRECT DAMAGES WILL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER FOR PROVIDER SERVICES PERFORMED UNDER THE APPLICABLE SOW DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. PROVIDER WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING OUT OF SIGNIFICANT CHANGES TO, OR ERRORS, OMISSIONS OR INACCURACIES IN THE INFORMATION AND/OR DIRECTION PROVIDED BY CUSTOMER. PROVIDER IS NOT LIABLE FOR ANY CLAIMS BASED ON PROVIDER'S COMPLIANCE WITH CUSTOMER'S DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS.

10. COMPLIANCE.

- a. **Compliance with Laws.** The parties shall observe and comply with all applicable laws, rules and regulations applicable to the performance of their respective obligations under this Agreement including, but not limited to, all applicable anti-bribery and anti-corruption laws. Neither party will use its own money or monies/consideration paid to it for any unlawful purposes, and/or directly or indirectly offer, promise, give, solicit or accept anything of value to or from a government official, government-controlled enterprise or company, political party or any other person or company to gain an improper advantage or improperly influence any act or decision.
- b. **Export.** Customer acknowledges and agrees that any Deliverables and Third-Party 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. Customer shall not, without prior U.S. government authorization, export, reexport, or transfer any Deliverables, 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, Customer may not export, re-export, or transfer Deliverables 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: (i) nuclear materials, nuclear facilities, or nuclear weapons; (ii) missiles or support of missiles projects; (ii) chemical

or biological weapons; and (iv) life support systems, human implantation, or any other application where Deliverable failure could lead to loss of life or property damage.

- c. **Government Contracts.** Provider is a distributor of “Commercial Items” as defined in FAR 2.101 which includes installation services, maintenance services, repair services, training services and other services procured from Provider for support of a commercial item or services sold in the commercial marketplace. Therefore, Provider agrees only to the clauses in the Federal Acquisition Regulation (“FAR”) and Defense Federal Acquisition Regulation (“DFAR”) that are required to be inserted in subcontracts for commercial items as set forth in FAR 52.244-6(c)(1), FAR 52.212-5(e)(1), and DFAR 252.244-7000 if it is a subcontract under a Department of Defense prime contract. In accordance with FAR 12.211, Customer will receive only those rights in technical data customarily provided to Provider by the manufacturers or provided by Provider to other commercial customers. By no means will this be interpreted as providing to Customer unlimited rights in data, software, or IP Rights provided by the manufacturers or any other third party or for Provider’s commercial software. Provider specifically rejects the flow down of any federal requirements which are inapplicable to the Services.
- d. **Privacy and Security.** To the extent a party obtains personal data of the other party or a third party, each party shall process and hold personal data in the strictest of confidence, and will process and protect such information, in accordance with applicable data protection laws. Each party will maintain industry standard security controls for personal data that will, among other things, protect against unauthorized access, use, modification, or disclosure via either electronic or physical means. If Customer provides any third-party or End User personal data to Provider, then Customer warrants: (i) that it has obtained or shall obtain all necessary consents and approvals for Provider to process personal data per the terms of this Agreement and the applicable SOW and (ii) that the use and processing of any such data by Provider is not illegal and does not infringe any rights of third parties or any statutory or regulatory provisions. If Provider is given access to Customer’s or the End User’s systems, Customer shall ensure that Provider has the minimum access necessary to provide the Services and shall ensure that Provider’s access is terminated once the Services are complete
- 11. **Confidential Information.** Each party shall keep the other party’s Confidential Information in strict confidence and shall not disclose it without the prior written consent of the disclosing party. “Confidential Information” means information of a proprietary or confidential nature that is provided in writing and marked “Confidential” or that is disclosed under circumstances which reasonably indicate that such information is “Confidential.” These confidentiality restrictions do not apply to: (i) information in the public domain prior to disclosure or that becomes publicly known through no fault of recipient; (ii) information that recipient had knowledge of prior to its disclosure by discloser; (iii) information disclosed to recipient by a third party not in violation of a confidentiality agreement with discloser; or (iv) information required to be disclosed by law, provided recipient notifies discloser prior to such disclosure so as to afford discloser a reasonable opportunity to object or seek an appropriate protective order with respect to such disclosure. Upon termination or expiration of this Agreement and upon the discloser’s request, the recipient shall destroy or return (at the discloser’s discretion) the discloser’s Confidential Information.

12. GENERAL.

- a. **Governing Law.** This Agreement shall be governed by and construed in accordance with the state or providence where the TD SYNnex entity providing the Services is incorporated, without reference to choice of laws. The parties agree to venue in the applicable federal and state courts of the state or providence where the TD SYNnex entity providing the Services is incorporated. THIS AGREEMENT EXCLUDES THE APPLICATION OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG).
- b. **Entire Agreement.** This Agreement, including any SOW’s referred to in this Agreement, constitutes the entire and exclusive statement of agreement between the parties with respect to its subject matter and supersedes all prior oral or written agreements between the parties with respect to the subject matter of this Agreement. The parties agree that unless otherwise agreed to in writing by the parties, the terms and conditions of this Agreement shall prevail over any contrary terms in any purchase order or sales acknowledgment. All remedies herein shall be cumulative and in addition to any other remedies available to either party at law, in equity or otherwise, and may be enforced concurrently or from time to time. A waiver by either of the parties shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.
- c. **Relationship of the Parties.** Provider is an independent contractor. Neither party is an agent, fiduciary, partner, servant, or employee of the other party, and neither party has the authority to contract for, or to bind or obligate, the other party in any manner.
- d. **Subcontractors.** Provider reserves the right to select and assign personnel for Services under the applicable SOW based on the skill classifications required and available personnel resources. Provider has the right to subcontract all or any part of the Services to be provided under the applicable SOW to independent contractors selected by Provider provided that Provider shall be responsible to Customer for the performance of such subcontractors and such subcontract shall not relieve Provider of any of its obligations under this Agreement.
- e. **Survival.** Any provision of this Agreement that imposes or contemplates continuing obligations or effects on a party will survive the expiration or termination of the applicable SOW.
- f. **Force Majeure.** Neither party shall be liable to the other for any failure to perform or delay resulting from causes beyond its reasonable control.
- g. **Assignment.** Neither party may, directly or indirectly, assign or otherwise transfer this Agreement or any of the rights that it grants without the prior written consent of the other party. This Agreement will be binding upon the parties’ respective successors and permitted assigns. Provider may provide Services through its direct and indirect subsidiaries.