

MyD3 Terms of Sale



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MyD3 is Data#3's business to business eCommerce portal. Data#3 acts as reseller of the Products and Packaged Services made available through MyD3. These MyD3 Terms of Sale apply to purchases Your organisation makes through MyD3. A reference in these MyD3 Terms of Sale to You and/or Your organisation, is a reference to the organisation on whose behalf You transact.

Data#3 may update the MyD3 Terms of Sale at any time to reflect, for example, changes in Third Party requirements or when additional Products or Packaged Services are made available in the Catalogue. The MyD3 Terms of Sale presented at the time of purchase will be the terms that apply to a particular transaction.

Capitalised terms in these MyD3 Terms of Sale are defined in the section titled "Definitions".

If You do not agree to these MyD3 Terms of Sale, do not place an order through MyD3. Please contact our Support Team to discuss alternatives.

1 Transacting through MyD3

- 1.1 **MyD3 Terms of Use:** the [MyD3 Terms of Use](#) apply to and are incorporated as part of the MyD3 Terms of Sale.
- 1.2 **Accuracy of Information:** You must ensure that all information You provide in MyD3 is complete, up to date and accurate at all times.
- 1.3 **Acceptance of an Order:** When You are ready to make an offer to purchase, You will be asked to "Complete Order" or "Make a Commitment" or "Update Subscription" (or like wording). By proceeding with the order at that point, You are making an irrevocable offer to purchase the selected Products and/or Packaged Services. An offer is not accepted by Data#3 until the earlier of:
 - (1) Data#3 provides electronic confirmation in MyD3; or
 - (2) Your Product subscription status in MyD3 is updated to Active and is not showing as "Locked" or "Pending"; or
 - (3) You receive a confirmation email from Data#3.

Data#3 is not obliged to accept an offer. If Your Offer cannot be accepted for any reason, Your subscription will show as 'Locked' or 'Pending' until acceptance. Data#3 may contact you to discuss completion of the transaction. You may be asked to resubmit your Order for reasons including but not limited to a change in Third Party pricing following submission.
- 1.4 **Requesting a Quotation:** You may contact our Support Team for a quotation where You prefer to transact outside MyD3. Pricing in Your Cart is only valid at the time it is viewed online and quotations provided by the Support Team may differ to prices in MyD3. Transactions that take place outside of MyD3 are subject to the price and terms agreed at the time an agreement is formed. Where no reference to terms is made when the agreement is formed, Data#3's [Terms of Trade](#) will apply. If Your organisation has a Punch Out process, a separate written agreement will apply.

- 1.5 **Changes to an Order:** Cancellation or changes to an Order are not permitted, unless approved by the Third Party and Data#3 in writing. Cancellation and/or changes cannot be requested through MyD3. To request a cancellation or change, You must contact Data#3's Support Team within Business Hours.
- 1.6 **Good Faith:** each party will cooperate and act reasonably and in good faith to ensure the timely progress and fulfillment of our respective obligations under these MyD3 Terms of Sale.
- 2 **The MyD3 Catalogue**
 - 2.1 **Products and Packaged Services:** Data#3 has made a selection of Products and Packaged Services available for purchase through MyD3. Data#3 may update the Catalogue at its discretion from time to time.
 - 2.2 **Third Party T&Cs:** Products offered on MyD3 are offered subject to the relevant terms and conditions published by the Product manufacturer, licensor, host, services or support and maintenance provider ("Third Party"). These Third Party T&Cs will describe the Product specifications and govern Your Organisation's use rights and obligations in the Product. By placing an Order, You accept the Third Party T&Cs relevant to a Product and agree to comply with them, regardless of whether they have been provided to You by Data#3. Third Party T&Cs are typically published on the third party's website. You may contact our Support Team for assistance in locating the applicable Third Party T&Cs and Data#3 will use reasonable endeavours to provide You with assistance. A Third Party may purport to hold Data#3 liable for your breaches of the Third Party T&Cs. You indemnify Data#3 for any loss we incur in connection with your failure to comply with the Third Party T&Cs.
 - 2.3 **Microsoft T&Cs:** when You purchase Microsoft Products You must comply with the relevant Microsoft agreement. Importantly, the Microsoft Customer Agreement accessible via <https://aka.ms/customeragreement> will apply to Microsoft Cloud Solution Provider (CSP) Products ("Microsoft Cloud Asset Products"). You must not purchase Microsoft Cloud Asset Products if you do not accept these terms. Microsoft may hold Data#3 liable for your failure to comply with its Third Party T&Cs. For example, Data#3 will be liable to Data#3 for your Microsoft Cloud Asset consumption, notwithstanding any failure by you to make payment to Data#3. You indemnify Data#3 for any loss we incur in connection with your failure to comply with the Microsoft Customer Agreement.
 - 2.4 **Products:** Hardware, Software, 'as a Service' offerings, associated Support and Maintenance and Third Party Services ("Products"), are manufactured, developed or delivered by third parties and resold through MyD3 by Data#3. Data#3 will ensure You are entitled to the benefit of the Product or service warranty, 'as a Service' service levels, and any Support or maintenance You purchase. Unless agreed otherwise in writing, You are responsible for the implementation or deployment of Products. Data#3 is not responsible for the delivery or enforcement of the warranty, service levels or support and maintenance. If you become entitled to a remedy as a result of a Third Party's failure to meet its service level agreement, Data#3 will only be liable for such remedy to the extent the Third Party makes the remedy available to Data#3. Data#3 will have no liability if the Third Party makes the remedy available to You directly. For the avoidance of doubt, Data#3 does not subcontract any Third Party services.
 - 2.5 **Product Security and Cloud Hosting:** Where a Product is deployed in Your IT environment or requires hosting or storage of information by a Third Party on your behalf, You

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acknowledge the Third Party's privacy and security measures will apply as specified in the Third Party T&Cs. Data#3 is not responsible for the secure development, deployment or operation of Products. You indemnify Data#3 for any loss or damage You incur in connection with an information security incident caused or contributed to by a Product. Unless specified otherwise by the Third Party, You are responsible for back up of Your data hosted or stored by a Third Party.

2.6 **Packaged Services:** Data#3 may make its own professional, support or managed services available for sale through MyD3 (each a "**Packaged Service**"). Packaged Services will be delivered in accordance with a standardised Service Description and are sold subject to these MyD3 Terms of Sale. Where a Packaged Service involves the resale of a Third Party Service, the Third Party T&Cs are included in the Service Description and form part of the MyD3 Terms of Sale for that Packaged Service. The Third Party T&Cs will take precedence to the extent of any inconsistency with a term in these MyD3 Terms of Sale.

2.7 **Cloud View:** Within MyD3, you may be given access to tools to assist you to monitor and manage your usage of Third Party Cloud Assets ("**Cloud View**"). Cloud View processes information received from the Third Party Cloud Asset Product provider. The information provided is for your internal business use only. Data#3 does not make any warranty that the information aggregated by Cloud View will be complete and error free at all times. You should refer to invoicing information provided by Data#3 as the source of truth for information on Your actual Product usage. You must promptly raise any actual or suspected errors or omissions in your Cloud View data to Data#3. Data#3 does not warrant the availability of Cloud View. Data#3 may perform maintenance or changes to Cloud View at any time and will use reasonable endeavours to maintain continuity.

2.8 You are the owner of data in Your Cloud View reports, but Data#3 retains all background intellectual property in the Cloud View tool. Cloud View is made available to you subject to the MyD3 Terms of Use referenced at clause 1.1.

3 Customer's General Obligations

3.1 **Selection of Products:** You are responsible for ensuring that the Products You purchase through MyD3 are fit for Your intended purpose and that You purchase an adequate quantity for Your organisation. Products can only be returned, cancelled or suspended in accordance with the Third Party T&Cs. Data#3 is not responsible for Your or the Third Party's compliance with the Third Party T&Cs.

3.2 **Business Use:** Products made available through MyD3 are for Your own business use, in the country to which Data#3 delivers the Products or for Software and Cloud Assets, the country in which Your organisation is registered. Products may not be on-sold, exported or used offshore without written consent from Data#3. Compliance with this clause is important to ensure availability of warranty and support from the Third Party and for compliance with Sanctions Law. You indemnify Data#3 for any Damage arising from Your breach of this clause. This clause is not intended to restrict the use of personal devices for periods of travel.

3.3 **Customer Responsibilities:** The Service Description for Packaged Services may outline customer responsibilities that are essential for the successful delivery of the services. You are required to perform all customer responsibilities or dependencies stated in the Service Description or otherwise agreed in writing. To enable Data#3 to deliver Products or Packaged Services, You will ensure that:

- (1) any information requested of You is provided in a

timely manner and is current, accurate and complete;

- (2) You do not unreasonably withhold or delay the provision of any agreement, acceptance, approval, assistance or other resource required by Data#3;
- (3) Data#3 is provided with necessary access to your systems and premises and that you securely manage Data#3's offboarding once access is no longer required

3.4 **Privacy Consents:** You must ensure appropriate consent is obtained to enable Data#3 to share Personal Information and other relevant data with a Third Party for the purpose of making the Product or Packaged Service available to Your organisation and its personnel. Data#3 collects and uses information provided to it in accordance with its Privacy and Information Policy available via <https://www.data3.com.au/privacy>. Data#3 will obtain a copy of any Third Party privacy and/or security policy for your review, on request. Where Data#3 is required to share Personal Information to Microsoft for the delivery of Microsoft Products, Microsoft will handle your data in accordance with its [Privacy Statement](#). Data#3 is not responsible for any of your data that is accessed or stored by a Third Party.

3.5 **Site Preparation:** You will be responsible for all site preparation as required to enable efficient delivery and implementation of the Products and Packaged Services, as the context admits.

3.6 **Policies and Procedures:** You are responsible to ensure that Data#3 is specifically and sufficiently informed of Your relevant policies and procedures (including in relation to information security management) that You request Data#3 to comply with during delivery of Packaged Services.

4 Termination of Products and Packaged Services

4.1 **Minimum Term and Auto-Renewal:** the minimum term for delivery of Cloud Asset Products or Packaged Services will be agreed in MyD3 and will be subject to Third Party T&Cs. Third Party T&Cs may specify that Products automatically renew on expiry of the initial term.

4.2 **Minimum Commitment:** on acceptance of an Order for Cloud Asset Products and/or Packaged Services, You commit to paying all future amounts relevant to that Order as referenced in MyD3 at any time, during the agreed minimum term. Amounts referenced in MyD3 may change if, for example, You add Products to your Cloud Asset subscription during the minimum term.

4.3 **Early Termination - Products:** early termination and/or cancellation of auto-renewing of Cloud Asset Products is only permitted in accordance with the Third Party T&Cs. You are responsible for managing required notice periods and for payment of Early Termination Costs imposed by the Third Party or Data#3. If you choose to transfer your Cloud Asset Product to an alternate reseller, You must provide Data#3 with 30 days' advanced written notice. You will be responsible for all costs invoiced by Data#3 until the Third Party Cloud Asset Provider ceases invoicing Data#3. You must therefore follow all reasonable directions given by Data#3 and comply with any Third Party process to give effect to Your transfer.

4.4 **Early Termination - Packaged Services:** unless specified otherwise in the Service Description, Data#3 requires a minimum of 90 days' advanced notice for early termination of any Packaged Service. You may also incur Early Termination Costs if specified in the Service Description. If:

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- (1) Products have been sold with the inclusion of Packaged Services ("**Bundle**"), then Early Termination Costs may include the amounts that would have become due during the minimum term, for all or any component of that Bundle, but for the early termination;
- (2) Your Packaged Service requires deployment of Products, the cost of which is included in payments to be made by instalment (either expressly or as a Bundled charge), all charges for Products that would have become due, but for the early termination will become due and payable on the date of termination. The Service Description will specify whether the Early Termination Costs will include some or all of the service or transition costs.

5 Data#3's General Obligations

5.1 Resale of Products: Products are resold by Data#3 in accordance with the following:

- (1) Any delivery dates are estimates only, and are subject to change at any time, without prior notice. Data#3 is not responsible for delays in delivery caused by a Third Party or for other reasons beyond the reasonable control of Data#3;
- (2) Data#3 is not responsible for an inability to supply Products as a result of changes related to the supply of Products by the relevant Third Party;
- (3) Risk of loss or damage to Products will pass to You when the Products are delivered to You;
- (4) Except for software, title in Products will remain with Data#3 until the Products have been paid for by You in full. The Third Party will retain title in software.
- (5) Warranties for the Products are limited to the Warranties referenced at clause 2.2. Data#3 will provide you with reasonable assistance in obtaining the benefit of such warranty. For purchases of Products under \$100,000 (or the relevant monetary value prescribed by law to reflect the definition of a consumer), You are entitled to the consumer guarantees under the Australian Consumer Law, which cannot be excluded by Data#3.

5.2 Access Credential Management: in order to perform Product delivery and Packaged Service functions, Data#3 may require remote access to Your Products. Access may be required for functions such as responding to billing enquiries, provisioning licence or warranty entitlements and delivering support. Data#3 employs Roles Based Access Control on a Just Enough, Just in Time basis. For example, when providing Cloud Asset services for Microsoft Products, as a minimum, Data#3 must be provided with the following Entra ID Roles on an ongoing basis: Billing Administrator, Directory Readers, Licence Administrator, Service Support Administrator and Usage Summary Reports Reader. Data#3 may require higher level privileges to provide Microsoft Product support or Packaged Services. All access credentials remain Your property. Data#3 will use appropriate technical and organisational controls to preserve the security of the access credentials. You acknowledge that Data#3 cannot provide the Cloud Asset services, support or related Packaged Services via MyD3 without the minimum access levels listed above. You indemnify Data#3 for any loss or damage you incur in connection with your restriction of our access.

5.3 Compliance with Laws and Policies: Data#3 agrees to

operate and perform its obligations in accordance with any applicable Australian laws. Data#3 will require its personnel to comply with Your specific policies and procedures that they are trained in and made aware of in accordance with clause 3.6 above.

6 Prices and Payment

- 6.1 **Cart Pricing:** Unless You are informed otherwise prior to acceptance of your Order, the Price for Products and Packaged Services is the price presented in Your Cart at the time You place an Order. Your Cart may be refreshed by MyD3 at any time prior to Order placement.
- 6.2 **Price Amendments:** Data#3 reserves the right to requote at any time prior to Order acceptance, if its costs change for reasons outside of its control (e.g. vendor price changes or currency fluctuations). Prices are exclusive of GST.
- 6.3 **Currency Fluctuations:** Prices are in local currency unless specified otherwise. Prices may be based on a foreign currency to local dollar exchange rate. Amounts invoiced for later instalments under subscription or consumption agreements may vary in accordance with changes in the exchange rate and you agree to pay such amounts.
- 6.4 **Payment Terms:** You must have a Credit Application approved by Data#3 in order to make purchases in MyD3. Unless the Products being purchased are Cloud Assets or Packaged Services, and unless you pay by credit card, You will be invoiced for all Products following delivery to Your site. Payment is due within 14 days of receipt of invoice, unless alternate terms are agreed in your Credit Application ("**Due Date**"). Payment must be made to the bank account nominated on Data#3's invoice. You may elect to make Payment at the time of purchase using a credit card in MyD3. If any sum is not paid by the Due Date, then (without prejudice to Data#3's other rights and remedies), Data#3 reserves the right to charge interest on such sum on a day to day basis (as well as before any judgement from the Due Date to the date of payment) at the rate of 2% per annum above the prime lending rate of Data#3's principal banker.
- 6.5 **Instalment Payments:** Certain Products (including Cloud Asset Products) and Packaged Services will be charged by instalment in accordance with an agreed billing cycle ("**Billing Cycle**"). You agree to pay all fees and charges for instalments at the time they fall due. The date for each payment due in a Billing Cycle will be displayed in MyD3 ("**Billing Date**"). Without prejudice to the Billing Date or minimum commitment made in accordance with clause 4.2, Data#3 may provide an invoice for each Billing Cycle and Your payment will be due no later than the payment terms agreed in Your Credit Application. For Products based on consumption, ingestion or usage, the amount displayed in MyD3 and on your invoice, will be based on the consumption, ingestion or usage measured by the Third Party. Amounts paid are non-refundable unless approved by the Third Party. You must pay all amounts due in a Billing Cycle, even if there are consumption, ingestion or usage charges that you dispute. This is because Data#3 is liable to make payment to the Third Party. If you dispute all or part of a charge raised in a Billing Cycle you must provide written notice to Data#3 within 5 business days of the Billing Date, irrespective of whether You have received an invoice. Unless Data#3 at its sole discretion, confirms that it has made an invoicing error, Data#3 will use commercially reasonable efforts to assist you to obtain a resolution from the Third Party, and You accept that the Third Party's decision is final.
- 6.6 **Failure to make Payment:** Data#3 may suspend or terminate Cloud Assets and Packaged Services if You

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- (1) fail to make payment within 10 Business Days of the due date; or
- (2) You commit an act of insolvency or come under any form of insolvency administration, liquidation or assignment of rights.

You acknowledge that this is fair and reasonable action for Data#3 to mitigate its actual and potential loss caused by your failure to pay on time. Unless the Third Party provider accepts the suspension or termination of payments for Your Cloud Asset, You will remain liable to Data#3 for all current and future invoices under the agreed minimum term, notwithstanding Data#3's suspension or termination of your Cloud Asset subscription.

7 Adding Products to a suite

- 7.1 **Existing CSP Customer transferring to MyD3:** if You are an existing CSP Customer, management of Your CSP will be transferred to MyD3. Any existing licence entitlements will be reflected in MyD3 and You may make changes to Your Product suite in accordance with clause 7.3. The terms of Your existing CSP reseller agreement will continue to apply for the initial term, except that you may use MyD3 to add Products to your CSP subscription in accordance with these MyD3 Terms of Sale.
- 7.2 **New CSP Agreements:** A new CSP Agreement is formed when You place an initial order for Microsoft Cloud Asset Products through MyD3 and nominate Data#3 as Your CSP for a new period.
- 7.3 **Cloud Asset Product Management – CSP:** Once You have established a CSP Agreement in MyD3, You may use MyD3 to add CSP Products to Your CSP Agreement. These MyD3 Terms of Sale will apply to any amendments You make to your CSP Product suite. Payment for CSP Products added to Your CSP Agreement will be invoiced with the next Billing Cycle, and will continue to be billed until termination of Your CSP Agreement. Termination of a CSP Agreement must only occur as permitted in the Microsoft Third Party T&Cs, or otherwise with the written agreement of Microsoft and Data#3.

8 Packaged Service Specific Conditions

- 8.1 **Packaged Service SLAs:** during the agreed term, Packaged Services will be delivered in accordance with the relevant Service Description, including any service levels it sets out. Service Level failures will be managed in accordance with the regime provided in the relevant Service Description. Your rights and Data#3's obligations in the event of service level failures are limited to the described Service Level failure regime. Where no regime is specified, Data#3 offers to meet service level agreements on a best efforts basis.
- 8.2 **Third Party Tooling:** You acknowledge and agree that a Packaged Service may be dependent on incorporated third party tools ("Third Party Tools"). Third Party Tools may require:
 - (1) the resale or sublicense of SIEM or other monitoring software ("**Monitoring Software**") by Data#3 to conduct functions specified in a Service Description; or
 - (2) access to or the resale by Data#3 of certain products, services and solutions provided by Third Parties, to enable Data#3 to meet its obligations under a Service Description.
- 8.3 **Use of Third Party Tools:** Your use of Third Party Tools must not breach the Third Party T&Cs which may be referenced in the Service Description. Data#3 reserves the right, without liability and in its sole discretion to suspend or

terminate the provision of the applicable Packaged Service in response to your breach of any applicable Third Party T&Cs.

- 8.4 **Reliance on Third Party Tools:** While Data#3 takes care to select reliable Third Party Tools, Data#3 makes no representations and provides no warranties as to the availability, functionality or performance of the Third Party Tools other than those set out in the Service Description or in documentation published by the Third Party provider.
- 8.5 **Limited Liability where Third Party Tools fail:** Data#3's liability to You for any loss or damage caused or contributed to by the performance or non-performance of a Third Party Tool shall in no circumstances exceed \$5,000. This clause sets out Your sole remedy and Data#3's entire liability arising out of the availability, functionality or performance of the Third Party Tools.
- 8.6 **Telecommunications and the Internet:** Data#3 is not responsible for any delays, delivery failures, or any other loss or damage resulting from third party communications networks and facilities, including the internet, and irrespective of whether provided by Data#3, Your organisation or third parties. You acknowledge that the Packaged Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities and such delays will not constitute a breach of these Terms by Data#3. You remain responsible for data transferred over third party communications networks and facilities and must ensure transfer is in accordance with applicable local laws.
- 8.7 **Packaged Service Limited Warranty:** You acknowledge that the use of the Packaged Services may not be without interruption and may not be free of errors and that the existence of errors or interruptions shall not constitute a breach of these MyD3 Terms of Sale. Except for those warranties that cannot be excluded by Australian law, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these MyD3 Terms of Sale or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including any implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 8.8 **High Risk Applications:** You acknowledge and agree that the Packaged Services have been designed and tested by Data#3 or its Third Parties for use in ordinary business environments and not for use in any high-risk applications, including the operation of nuclear facilities, aircraft navigation, air traffic control, emergency communications systems, life support machines, weapons systems, or any other application where the failure, interruption, inadequacy or malfunction of any Packaged Service can reasonably be expected to result in death, personal injury, severe property damage or severe environmental harm (**High Risk Applications**).
- 9 **Confidentiality**
- 9.1 Except as expressly provided elsewhere under the MyD3 Terms of Sale, each party shall maintain in confidence the Confidential Information disclosed by the other party and apply security measures no less stringent than the measures which that party applies to protect its own like information (but in any event not less than a reasonable degree of care) to prevent unauthorised disclosure and use of the Confidential Information.
- 10 **Risk Apportionment**
- 10.1 **Exclusion of Consequential Loss:** Notwithstanding anything to the contrary contained in these MyD3 Terms of Sale, neither party will be liable to the other or a third party

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for any indirect, special, incidental, punitive, exemplary or consequential Damage whether such Damages are alleged as a result of tortious conduct (including negligence) or breach of contract or a liability arising under an indemnity or otherwise even if the other party has been advised of the possibility of such Damages and regardless of whether any remedy herein shall have proven ineffective. Such Damages shall include but not be limited to cost of removal and reinstallation of the Products, claims by third parties, loss of goodwill, loss of profits, loss of use of data or software, interruption of business or other economic loss. Nothing in this clause shall operate to exclude liability for death or personal injury resulting from either party's negligence.

- 10.2 **Limitation of Liability:** Data#3's maximum liability to You in aggregate for all claims for Damages made against Data#3 in contract, tort, pursuant to an indemnity or for any other common law or statutory cause of action or any wilful, unlawful or negligent act or omission of Data#3 or its employees, agents or subcontractors, under or in connection with:
- (1) Damage arising from the sale of the Product or Packaged Service that gave rise to the Damage:
 - a. In respect of Products the Price paid by You to Data#3 for the Product;
 - b. In respect of Packaged Services, the lesser of \$500,000 and the Price paid by You to Data#3 for the Packaged Service in the 12 months preceding the date the cause of action arose.
 - (2) In no event will Data#3's liability to You exceed \$1,000,000 in relation to a single claim or series of related claims.
- 10.3 **Your Liability to Data#3:** Your maximum liability to Data#3 will not exceed 150% of the total Price paid or payable over the term of an agreement and all related agreements formed under these MyD3 Terms of Sale. For example where Data#3 incurs a loss because of a failure to comply with Third Party T&Cs relating to a Product that has been added to a Suite in accordance with clause 7, your liability to Data#3 will be capped at 150% of all Price paid or payable for all Products resold to You by Data#3 under that Suite.
- 10.4 **Related Body Corporate ("RBC") losses:** In respect of any Products and/or Packaged Services provided for the benefit of any RBC, Data#3 will have the benefit of the limitations and exclusions of liability available to it under these MyD3 Terms of Sale as if Data#3 was supplying those Products and/or Packaged Services to You and You agree to indemnify Data#3 in respect of any liability to each RBC to the extent the liability would not have arisen had those Products and/or Bundled Services been provided to You.
- 10.5 **Proportionate Liability:** Subject to the limitations and exclusions of liability in this clause, if a party ('Claimant') makes a claim or commences proceedings against the other party ('Recipient') seeking indemnification against, compensation for or recovery of any liabilities, losses, damages, costs or expenses suffered or incurred by the Claimant in connection with these MyD3 Terms of Sale, the Recipient's liability for that claim or those proceedings will be reduced proportionately to the extent that any act or omission of the Claimant or any of its officers, agents, employees or contractors causes or contributed to those liabilities, losses, damages, cost or expenses.

11 Term

- 11.1 Each transaction taking place in MyD3 creates an individual and independent contract that will commence on acceptance of the Order and continue in force for the term set out therein or until each party has fulfilled its obligations under that

Individual Contract (or it is terminated in accordance with the individual contract).

12 Disputes

- 12.1 **Dispute Resolution Process:** In the event of a dispute arising, You must first contact the Support Team or a Manager within Data#3. The parties will work to resolve the dispute through negotiation before lodging any formal claim.

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Definitions

Cart means any section in MyD3 which shows the Products or Packaged Services You have selected and provides the then current price for that selection. The Cart will also provide an option for you to make an offer to purchase the Products.

Catalogue means the Products and Packaged Services made available by Data#3 for purchase in MyD3, regardless of how they are displayed.

Cloud Assets means any subscription or consumption based product that is made available to MyD3 users under the Cloud Asset tab in MyD3. Cloud Assets typically comprise Products 'as a service' such as Software as a Service or Infrastructure as a Service. Cloud Assets are typically paid for by instalment and the Price is subject to Your consumption, ingestion or usage of the Product.

Cloud View means Data#3's proprietary tool that provides Cloud Asset users with information on their consumption, ingestion or usage of a Product.

Confidential Information: means (i) any trade secrets embodied in any information relating to, but not limited to, the commercial activities, product pricing, technologies (including the MyD3 platform and Cloud View), business processes, technical methodologies, client relationships, strategic information, personal information, Price, and any other information related to the conduct of each parties' businesses; (ii) any information designated in writing by either party, by appropriate legend, as confidential, in-confidence or sensitive; (iii) any information which if first disclosed orally is identified as confidential at the time of disclosure; (iv) any information that a party or a third party acting reasonably knows, or ought to know is confidential information of the other party; (v) these MyD3 Terms of Sale.

Credit Application: means an application to Data#3 for the right to deferred payment terms. The Credit Application is also used to obtain information about Your Organisation to meet Data#3's onboarding requirements. In the absence of an approved Credit Application, you may not be registered to use MyD3 and payment for Products and Packaged Services will be required in advance of delivery.

CSP Agreement: means an agreement between You and Data#3 for the resale of Microsoft Cloud Asset Products. The CSP Agreement is comprised of these MyD3 Terms of Sale and annotations and any information provided in the Cloud Asset section of MyD3 and the MyD3 Terms of Use.

Damage means any loss, cost, expense, claim or liability suffered or incurred by a party as a result of the other party's breach of these MyD3 Terms, negligence, or other wrongful act or omission.

Early Termination Costs means the costs specified in the relevant Third Party T&Cs or Service Description, and where no costs are specified, the costs incurred by Data#3 as a result of early termination of a Minimum Commitment or failure to provide requisite notice of cancellation prior to auto-renewal.

Entra ID Role: means the relevant level of access as defined under Microsoft's cloud-based identity and access management solution.

Hardware: means any physical product manufactured by a third party, including any associated third party maintenance service contracts and includes each individual item, unit or component of such product

Managed Services means services delivered by Data#3 for the management of particular technologies over an agreed term, as further specified in a Service Description.

Professional Services means the delivery of IT outcomes or deliverables that are performed by Data#3 subject to a Service Description.

Punch Out Process is an agreement between Your organisation and Data#3 that enables You to access MyD3 from Your organisation's Enterprise Resource Platform.

Third Party means an original equipment manufacturer, cloud service provider, support and maintenance provider that has appointed Data#3 as a reseller of its Products or made its Products available to Data#3 for resale through a distributor.

Third Party Service means services to implement or deploy a Product. Third Party Services are typically delivered by the Third Party manufacturer or licensor. Data#3 resells these Services on an 'as is' basis.

Sanctions Law means laws in Australia or elsewhere, that prevent the export of Products to identified countries. Sanctions Laws are typically enacted to combat terrorist or other sanctioned activity

Service Description means documentation published by Data#3 in MyD3 to describe among other things, the scope of a Packaged Service and the obligations of each party.

Software means any licensed, packaged, developed or supported Third Party software that is licenced on the terms of the Third Party's end user licence agreement.

Support means services delivered by Data#3 to augment or coordinate Support & Maintenance and as further specified in a Service Description.

Support & Maintenance means a contract for the support of Third Party Products, delivered by the Third Party and subject to the Third Party T&Cs.

Support Team means Data#3 personnel available through email or phone contact details provided in MyD3 or otherwise, your Data#3 account representative.