**Customer Portal SDK StreamOne License Terms**

**PREAMBLE.**

This agreement (the “Agreement”) is entered into between Tech Data and Licensee as defined in the signature block at the end of this License term.

WHEREAS, Tech Data has developed the software based on MIT license in the attachment 1, defined below as “Tech Data Licensed Software” and Licensee desires to license the Tech Data Licensed Software;

WHEREAS, Tech Data is willing to license to Licensee the Tech Data Licensed Software according to the terms and conditions below; and

NOW THEREFORE, in consideration of the promises, the agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

**1. SCOPE.**

Tech Data’ license of the Tech Data Licensed Software for the Software License Fees if applicable will be governed by this Agreement, and any amendment, exhibit, addendum, or attachment thereto, which are incorporated into and form a part of this Agreement as if set forth at length herein. If there is any inconsistency between this Agreement and its Attachments, the order of precedence shall be:

1. the sections in the body of this Agreement; and
2. any Attachments.

# **2. DEFINITIONS.**

A. AFFILIATE.

“Affiliate” means any corporation, company or other legal entity which, directly or indirectly, controls, is controlled by or is under common control with a party. Notwithstanding the foregoing, an entity shall be deemed an Affiliate only for as long as the requisite control exists.

B. TECH DATA LICENSED SOFTWARE.

“Tech Data Licensed Software” or “Licensed Software” means Customer Portal SDK StreamOne software which is based on MIT License, including without limitation all copies, Documentation, Updates, and Modifications.

C. DOCUMENTATION.

“Documentation” means all manuals, materials, information, instructions, and other printed materials, whether in printed or electronic form, that Tech Data provides with the Licensed Software.

D. INTELLECTUAL PROPERTY RIGHTS.

“Intellectual Property Rights” means all present and future intellectual property rights, including without limitation patents (including patent applications, reissues, divisions, continuations and extensions), registered design, trademarks, service marks (whether registered or not), rights in the nature of unfair competition rights, copyrights, database rights, design rights and all similar property rights and the right to apply for protection for any of the above rights.

E. MODIFICATIONS.

“Modifications” means any and all changes, reconfigurations, improvements, derivative works or enhancements of the Licensed Software made by Tech Data or Licensee individually or jointly.

F. TECHNOLOGY.

“Technology” means any ideas, discoveries, inventions, articles of manufacture, processes, data, and works of authorship in any form (including without limitation, software, architecture, methodology, optimization technique, protocols, program codes and documentation related thereto), and any information in human or machine readable form which embodies any of the foregoing items.

G. UPDATE.

“Update” means any modification, enhancement, error correction, program temporary workaround and software programming changes or other release or revision to the Licensed Software, which may be provided by Tech Data, at Tech Data’s sole discretion.

# **3. OWNERSHIP.**

Licensee acknowledges and agrees that Tech Data is the sole and exclusive owner of all Intellectual Property Rights in the Tech Data Licensed Software, and Licensee shall acquire no right, title, or interest in the Tech Data Licensed Software, other than any rights expressly granted in this Agreement.

**4. LICENSE AND LICENSE RESTRICTIONS.**

A. GRANT OF LICENSE.

Tech Data grants to Licensee a limited, non-exclusive, worldwide, non-transferable right of use of the Tech Data Licensed Software under Tech Data’s relevant copyrights and any other Intellectual Property Rights.

B. OPEN SOURCE CODE.

Licensee will not perform any actions causing the Licensed Software or any Tech Data Technology to be considered subject to, licensable, transferable or distributable under any open source code license.

C. SECURITY.

Licensee will protect the Tech Data Licensed Software at all times from unauthorized access, use or damage by any party. Licensee shall immediately notify Tech Data of any unauthorized access, use or damage of the Tech Data Licensed Software and, if requested by Tech Data, report such loss to the local authorities.

D. INDEMNIFICATION FOR BREACH OF LICENSE.

Licensee will indemnify, defend and hold harmless Tech Data from any damages or costs, including but not limited to reasonable attorneys’ fees and costs, arising from or in connection with any violation or breach of this Section, or in the defense of any claim, demand, cause of action, suit or proceeding arising from or in connection with such violation or breach of this Section.

E. THIRD PARTY USE PROHIBITED.

Licensee will not permit any third party to copy or use the Tech Data Licensed Software.

F. LIMITS OF LICENSE.

Except for the limited license to use the Tech Data Licensed Software expressly granted in the “License to Use” Subsection, no other rights or licenses are granted by Tech Data under this Agreement, either directly or by implication, estoppel or otherwise, under any patents, copyrights, mask works, trade secrets or other Intellectual Property Rights of Tech Data, its licensors or its Affiliates or suppliers.

**5. WARRANTY.**

THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.

**6. THIRD-PARTY SOFTWARE.**

Tech Data provides third-party software that is not branded as Tech Data Licensed Software “AS IS” without warranties of any kind, although the original manufacturers or third party suppliers of such software may provide their own warranties.

**7. LIABILITY.**

A. LIMITATION OF LIABILITIES

NEITHER PARTY SHALL IN ANY EVENT BE ENTITLED TO OR LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, COSTS OR EXPENSES ASSOCIATED WITH WARRANTY OR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL TECH DATA’S LIABILITY FOR DIRECT DAMAGES EXCEED THE AMOUNT PAID BY LICENSEE TO TECH DATA UNDER THIS AGREEMENT.

B. PROHIBITED USES.

The TECH DATA Licensed Software IS not DESIGNED, AUTHORIZED OR WARRANTED TO BE SUITABLE FOR USE IN MEDICAL, MILITARY, AIRCRAFT, SPACE OR LIFE SUPPORT EQUIPMENT NOR IN APPLICATIONS WHERE FAILURE OR MALFUNCTION OF THE TECH DATA LICENSED Software can reasonably be expected to result in a personal INJURY, DEATH OR SEVERE PROPERTY OR ENVIRONMENTAL DAMAGE. INCLUSION OR USE OF TECH DATA LICENSED SOFTWARE IN SUCH EQUIPMENT OR APPLICATIONS, WITHOUT PRIOR AUTHORIZATION IN WRITING BY TECH DATA, IS NOT PERMITTED AND DONE AT LICENSEE’S OWN RISK. LICENSEE AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS TECH DATA FOR ANY DAMAGES RESULTING FROM SUCH INCLUSION OR USE.

**8. TERM AND TERMINATION.**

A. TERM.

## This Agreement takes effect on the Effective Date and will continue until terminated as specified in this Section.

## B. TERMINATION WITHOUT CAUSE.

Notwithstanding anything to the contrary in this Agreement, either party upon giving the other party at least thirty (30) days prior written notice may terminate this Agreement at any time, without cause.

C. TERMINATION FOR CAUSE.

Either party may terminate this Agreement immediately for cause by giving written notice to the other party in the event the other party:

1. becomes insolvent or unable to meet its obligations as they become due or files or has filed against it a petition under the bankruptcy laws;
2. ceases to function as a going concern or to conduct its operations in the normal course of business;
3. assigns or transfers, either voluntarily or by operation of law, any rights or obligations under this Agreement without consent of the party seeking to terminate; or
4. fails to perform any obligation under this Agreement within ten (10) days after written notice thereof.

D. EFFECT OF TERMINATION.

Upon termination of this Agreement for any reason, Licensee shall immediately return all Tech Data Licensed Software, Documentation and Confidential Information to Tech Data and Tech Data shall have no further obligations under this Agreement.

**9. CONFIDENTIAL INFORMATION.**

1. DEFINITION.

Licensee acknowledges and agrees that Tech Data Licensed Software and Tech Data Intellectual property include trade secrets and Confidential Information. As used herein, "Confidential Information" means:

1. the Tech Data Licensed Software and any supporting Technology and Documentation;
2. any materials provided to Licensee or Tech Data, whether or not identified as “Confidential” or “Proprietary”;
3. any other materials or information disclosed in tangible form by the parties to each other and clearly identified by stamp or legend as “Confidential” or “Proprietary”;
4. any other materials or information disclosed by the parties to each other verbally, visually, or in machine readable, electronic or non-tangible form and confirmed in writing as confidential or proprietary within ten (10) days of disclosure; and
5. any materials or information developed from any of the foregoing.
6. OBLIGATION OF CONFIDENTIALITY.

Each party agrees:

1. to keep Confidential Information of the disclosing party strictly confidential, which means that each party will use the same degree of care, but no less than a reasonable degree of care, in protecting Confidential Information of the other party from disclosure as it uses to protect its own confidential information from disclosure;
2. that it will not communicate or disclose Confidential Information of the other party other than to its own officers, directors, principals and employees to whom disclosure is necessary for the purpose of any dealings between the parties;
3. that it will advise those to whom the Confidential Information is disclosed of the requirement for strict confidentiality pursuant to this Agreement; and
4. that it will not use or permit the use of any Confidential Information of the other party for any purpose other than as specified herein.
5. CIRCUMSTANCES FOR DISCLOSING CONFIDENTIAL INFORMATION.

Confidential Information does not mean information or materials which are:

1. in the public domain by reason other than a disclosure in violation of this Agreement;
2. previously known to the recipient on a non-confidential basis as evidenced by the recipient's written records;
3. rightfully received by the recipient from a source other than the disclosing party, provided that source is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from transmitting the information by a legal, contractual or fiduciary obligation; or
4. required by law or legal process to be disclosed, provided that the recipient shall promptly provide written notice of any impending disclosure so that the disclosing party may object to such disclosure and seek an appropriate protective order to prohibit or restrict such disclosure.
5. OWNERSHIP RIGHTS TO CONFIDENTIAL INFORMATION.

For the purposes of this Agreement, all Confidential Information will remain the property of the disclosing party. No license or conveyance of any rights to any form of intellectual property is granted or implied by the disclosure of Confidential Information.

1. AUTHORIZED DISCLOSURE TO THIRD PARTIES.

Licensee acknowledges and agrees that Confidential Information will be disclosed by Tech Data to any third parties subject to a nondisclosure agreement between Tech Data and any such third party and that such disclosure is not prohibited by this Agreement.

1. RIGHT TO INJUNCTIVE RELIEF.

Each party acknowledges that use or disclosure of Confidential Information in violation of this Agreement can and will cause the disclosing party to suffer serious and irreparable harm and damage and that monetary damages would be inadequate to compensate the disclosing party for such breach and that, in addition to all other remedies at law or in equity, the disclosing party may be entitled to injunctive relief to enforce the terms of this Agreement.

**10. INDEMNIFICATION.**

Licensee shall indemnify, defend and hold harmless Tech Data and its affiliates, each of their directors, officers, employees and assignees, against any claim, suit, demand or action which arises out of Licensee’s breach or performance of any term of this Agreement, including any and all losses, liabilities, damages, awards of settlement (including court costs) and expenses (including all reasonable attorneys’ fees, whether or not legal proceedings are commenced) arising from any such claim, suit, demand or action. This indemnity shall survive the expiration or termination of this Agreement.

**11. AUDIT.**

During the term of this Agreement and for three years thereafter, Tech Data, or its designated representative, shall have the right, upon reasonable prior notice, to audit all relevant books and records of Licensee to ensure compliance with the terms and conditions of this Agreement. Licensee will provide reasonable assistance and cooperation in connection with the audit as Tech Data or its auditors may require. The audit will be conducted at Tech Data’s expense, unless the audit reveals that Licensee has breached the license terms under this Agreement. If a breach is discovered, then Licensee shall be responsible for all audit costs.

**12. EXPORT CONTROLS.**

Certain Tech Data Licensed Software and other related Technology and Documentation are subject to export control laws, regulations and orders of the United States, the European Union, and/or other countries (“Export Laws”).  Licensee shall comply with such Export Laws and obtain any license, permit, or authorization required to transfer, sell, export, re-export or import the Tech Data Licensed Software and related Technology and Documentation.  Licensee will not export or re-export any Tech Data Licensed Software to any country or entity to which such export or re-export is prohibited, including any country or entity under sanction or embargoes administered by the United Nations, U.S. Department of Treasury, U.S. Department of Commerce or U.S. Department of State.  Licensee will not use Tech Data Licensed Software in relation to nuclear, biological or chemical weapons or missile systems capable of delivering same, or in the development of any weapons of mass destruction.

**13. GENERAL.**

## A. GOVERNING LAW/JURISDICTION/ARBITRATION

## 

This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the substantive law of the country where Tech Data legal entity is registered. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply. All disputes, claims or controversies between the parties arising out of or in connection with this Agreement (including disputes concerning the validity, interpretation or application thereof or of any implementing agreement) which cannot be settled amicably shall be finally settled at the competent court in the governing country \_\_\_\_\_\_\_\_\_\_.

B. NOTICES.

Any notices given under this Agreement will be sent by certified or registered mail, return receipt requested, or by recognized delivery service providing traceability, to the party to be notified at its address set forth above. Notices to Tech Data will be sent to [*eu.tdcloud@techdata.com*](mailto:eu.tdcloud@techdata.com) via email.

C. ENTIRE AGREEMENT.

This Agreement contains the entire understanding of the parties and supersedes all prior agreements between the parties with respect to the subject matter hereof.

D. SURVIVAL OF OBLIGATIONS.

All obligations under this Agreement which by their nature extend beyond termination will survive termination and remain in effect, including without limitation all monetary obligations of either party to the other under this Agreement.

E. AGREEMENT TERMS CONFIDENTIAL.

The terms of this Agreement are proprietary and confidential. Neither party will disclose the terms of this Agreement except as required to perform its obligations hereunder.

F. NO ASSIGNMENT.

Neither party may assign this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Tech Data’s affiliated entities may perform its obligations hereunder. This Agreement is binding on successors and assigns.

G. MODIFICATIONS.

This Agreement can only be modified in writing signed by authorized representatives of the parties.

H. NO WAIVER.

Neither party’s failure to object to any document, communication, or act of the other will be deemed a waiver of any of the terms of this Agreement.

I. 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, anti-corruption laws (such as the U.S. Foreign Corrupt Practices Act) and regulations in respect of import or export of products.

J. UNENFORCEABILITY.

The unenforceability of any of these terms or conditions will not affect the remainder of the terms or conditions.

K. INDEPENDENT CONTRACTORS.

The relationship of the parties will be that of independent contractors and the parties agree that this Agreement does not establish a joint venture, agency relationship, or partnership. Nothing contained in this Agreement will be construed to establish a relationship that would allow a party to make representations or warranties on behalf of another except as expressly set forth herein.

L. FORCES BEYOND CONTROL.

Neither party shall be liable for failure to fulfill its obligations under this Agreement or for delays in delivery due to causes beyond its reasonable control (for example, acts of nature, acts or omission of the other party, operational disruptions, man-made or natural disasters, epidemic medical crises, materials shortages, strikes, criminal acts, delays in delivery or transportation, or inability to obtain labor or materials through its regular sources).

M. ELECTRONIC SIGNATURES.

This Agreement may be executed in counterparts. The parties agree to use electronic signatures and agree that any electronic signatures will be legally valid, effective and enforceable.

ACKNOWLEDGEMENT.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement effective as of the date first above set forth.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| By: |  |  | By: |  |
|  | Authorized Signature |  |  | Authorized Signature |
| Name |  |  | Name |  |
|  | Printed or Typed |  |  | Printed or Typed |
| Title |  |  | Title |  |
|  |  |  |  |  |
| Date |  |  | Date |  |

**Attachment 1: MIT License**

Copyright 2018, Tech Data Europe Services and Operations, S.L.

Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions:

The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.

THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.