Reseller Agreement

This Agreement is made on _____ 2023.

between

Exergenics Pty Ltd (ABN XXX)

and

[Reseller]

Customer	means a retail customer of Reseller which purchases or orders the Product.
Customer Contract	means a binding written contract between Reseller and Customer for the Customer's purchase of a Product subscription.
Customer Contract Price	means the total fees the Customer is obliged or becomes obliged to pay to Reseller under a Customer Contract, excluding any applicable GST.
Details	means the details set out in Annexure A (Details).
Distribution Rights	has the meaning given in clause 3.1.
Documentation	means all standard product documentation for the Product, and all training, sales and marketing documentation in relation to the Product as may be made generally available from time to time by Exergenics.
Fees	means the fees payable to Exergenics in respect of each Customer Contract and Order, calculated in accordance with clause 9.
IP Rights	means intellectual property rights and includes copyright, trade mark, design, patents (whether registered or not), trade, business or company names, domain names, or other proprietary rights, Confidential Information or any rights to registration of such rights existing in any country and whether created before, on or after the Start Date.
KPIs	means the key performance indicators for Reseller's performance of this Agreement, if any, set out in Annexure D (KPIs and Reporting Requirements).
Order	means an order submitted by Reseller and accepted by Exergenics for the supply of the Product to a Customer, in accordance with clause 5.1, which comprises its terms and the relevant terms of this Agreement.
Product	means the Exergenics cloud-based software subscription product made available to subscribing customers by Exergenics.
Related Services	has the meaning given in clause 3.1.
Reporting Period	means each calendar quarter.
Reports	means any reports or documents Reseller provides or is required to provide Exergenics pursuant to this Agreement, including under clause 8.

SLAs	means the service levels applicable to the Product as set out in Annexure C (SLAs and Service Obligations) and updated from time to time by Exergenics on written notice (email being sufficient).
Start Date	means the date this Agreement is executed by the last party.
Term	means the term of this Agreement, determined in accordance with clause 2.1.
Territory	means Australia unless otherwise specified in the Details.
Exergenics IP	means all IP Rights owned by or licensed to Exergenics, whether in existence at the Start Date or developed subsequently, and includes all IP in the Product and Documentation, and all modifications and enhancements of them.

1. Term

Subject to this clause 2, this Agreement starts on the Start Date and continues for one year. Nine months following the Start Date, and on each anniversary following, the parties will commence good faith discussions and use their best efforts to agree in writing on an updated form of Annexure E (Pricing) to apply during the following year (**Updated Pricing**). One year following the Start Date, and on each anniversary following, provided the parties have by then agreed in writing on Updating Pricing, this Agreement automatically renews and extends for a further period of 1 year on the same terms and conditions except for Annexure E (Pricing) which is replaced with the Updated Pricing. A party may cancel the automatic renewal of this Agreement by giving written notice to the other party at least 30 days prior to the end of the then-current Term.

2. Distribution rights

2.1 Exergenics grants to Reseller the right to market, advertise and resell the Product and to provide related professional services for the set-up, installation, integration and configuration of the Product and post-implementation Product support services (**Related Services**) to Customers, solely within the Territory and subject to this Agreement (**Distribution Rights**).

2.2 Except to the extent otherwise specified in the Details:

(a) Reseller's Distribution Rights in the Territory are non-exclusive rights; and

(b) Exergenics may itself exercise, and may appoint such other parties as it sees fit to exercise Distribution Rights in and outside the Territory, without restriction.

2.3 Reseller must not exercise Distribution Rights outside the Territory or to or for a person who it knows or ought reasonably know has its principal place of business or intended use of the Product outside the Territory, without Exergenics' prior written approval.

3. Orders and Customer Contracts

3.1 Reseller may from time to time request subscriptions to the Product to fulfil proposed Customer Contracts. Each request must be in accordance with Annexure F (Order Form), unless Exergenics has approved a request being made in a different format or with different information, for a particular transaction. On acceptance by Exergenics, the request becomes an Order which is binding on both parties and governed by this Agreement. Exergenics is taken to have accepted an Order if it does not reject a request within ten (10) business days. Reseller may not cancel an Order without the written approval of Exergenics.

3.2 Reseller may from time to time enter into Customer Contracts under which it sells Product subscriptions (and any Related Services), provided that Exergenics has first accepted the associated Order. Reseller must ensure that each Customer Contract executed is in writing and enforceable, and:

(a) is consistent with this Agreement and the applicable Order;

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(b) contains a right for Reseller to assign and novate the Customer Contract to Exergenics or its nominee without requiring further consent from the Customer (as required for the purposes of clauses 15.3(f)–(h);

(c) permits Reseller to disclose the Customer Contract, including all terms and pricing, to Exergenics for use in accordance with this Agreement;

(d) contains the minimum terms and conditions set out in Annexure G (Required Minimum Terms) (unless adjusted with the prior written approval of Exergenics);

(e) contains all other terms and conditions necessary to facilitate the transaction contemplated;

(f) complies in all respects with, and contains at least all minimum required terms to ensure compliance with applicable laws concerning, without limitation, competition law, consumer protection and privacy and data protection; and

(g) does not impose obligations on, create liabilities or potential liabilities for, or bind Exergenics in any way except to the extent expressly authorised in writing by Exergenics.

3.3 Exergenics may from time to time advise Reseller of recommended retail prices for the Product, but the Customer Contract Price is solely determined by Reseller. The price Reseller must pay Exergenics for Product sales under each Customer Contract is determined in accordance with Annexure E (Pricing), unless otherwise agreed by Exergenics in writing for a particular Order. Reseller may determine prices in its discretion for any Related Services and other supplies it makes under the Customer Contract.

3.4 Exergenics licences and authorises Reseller to grant (in writing in the Customer Contract) non-exclusive and revocable access rights for each Customer to use the Product strictly in accordance with the details and restrictions set out in the applicable Order, Annexure G (Required Minimum Terms) and this Agreement.

3.5 Exergenics agrees only to supply access to the Product pursuant to Orders, and does not agree to supply any Related Services, development work or other services. Reseller must not offer or agree to supply any such services to Customers if they are required to be performed by Exergenics, without Exergenics' prior written approval (which will require the parties to agree separate terms).

3.6 Reseller must provide a copy of each Customer Contract to Exergenics within a reasonable time after execution, which Exergenics may use for its internal business purposes including to administer and perform this Agreement, verify Reseller's performance of this Agreement, fulfil Orders, calculate Fees, verify the contents of Reports, assess performance against KPIs and for its records. Exergenics is not required to fulfil any Order and Reseller is not entitled to retain any revenue received in respect of a Product subscription for which a Customer Contract has not been provided.

4. Customer engagement and Customer Contract performance

4.1 Reseller is responsible for managing all Customer relationships and all communications, correspondence, engagement and Customer Contracts, including (without limitation) Customer enquiries or complaints, Customer invoicing, payment (collection) and Customer credit risk, Customer training, Customer Contract renewal, post-sales Customer support, and Related Services including support services and support request triage. Reseller must pass onto Exergenics any Product-related feedback, comments or suggestions provided by Customers.

4.2 For each Order, Exergenics will provide access to the Product in accordance with the Order and this Agreement, including the applicable SLAs. Exergenics is responsible for hosting sufficient instances of the Product and regularly maintaining it. Reseller is responsible for the performance of all Related Services required by the Customer or Customer Contract. Exergenics will provide standard Product support to Reseller to support Reseller's provision of Related Services to Customers, but Reseller will remain responsible for all direct communications with the Customer concerning support unless Exergenics otherwise agrees in writing. Each party will comply with its service, support, notification and communication obligations in Annexure C (SLAs and Service Obligations) with respect to each Customer Contract.

4.3 Reseller must perform and comply with each Customer Contract.

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4.4 Each party will immediately notify the other party in writing if it becomes aware that the Product is or may be defective or if it or any Customer Contract breaches any applicable law in the Territory. Reseller will promptly notify Exergenics if the Product or a Customer Contract becomes the subject of any claim or dispute.

4.5 Reseller will provide all assistance reasonably required by Exergenics and comply with all reasonable and lawful directions of Exergenics (including any direction to suspend its exercise of Distribution Rights), if: (a) the Product is found to contain a material defect; or (b) the distribution of the Product may breach or infringe third party rights or any applicable laws.

4.6 Exergenics offers standard warranty and indemnity coverage for the Product (subject to applicable conditions and exclusions) as set out in Annexure G (Required Minimum Terms) for each Customer. To the maximum extent permitted by law, Exergenics accepts no other liability and offers no other remedy for claimed defects in the Product or other disputes concerning a Customer Contract. Reseller is solely responsible and liable for any promises, warranties, guarantees, representations, indemnities or other liabilities it assumes in or under any Customer Contract which is in addition to or beyond that offered by Exergenics, or to the extent relating to products or services other than the Product.

4.7 Reseller must immediately notify Exergenics of any claim by a Customer alleging the breach of an obligation or warranty or the application of an indemnity under a Customer Contract. Such notification must be in writing and in accordance with any format or information requirements from time to time specified by Exergenics, and Reseller must provide all reasonable information required by Exergenics in connection with such claim. Reseller will, unless otherwise advised by Exergenics, handle and manage all Customer claims concerning the Product in consultation with, and in accordance with the directions of, Exergenics. At the request of Exergenics, Reseller must assign all rights and obligations concerning any Customer claim, including all rights to control, defend and engage in communications concerning the claim, to Exergenics, to the extent it relates to the Product.

4.8 Reseller may request in writing at any time that Exergenics suspend or terminate access to the Product for a specific Customer in the event of Customer non-payment or other material Customer default, in order to facilitate Reseller's exercise of rights under a Customer Contract. Reseller indemnifies Exergenics from and against any claim or loss suffered in connection with Exergenics' compliance with such a request.

4.9 Reseller will promptly (and in any event, within 2 business days) notify Exergenics of any Customer's termination of a Customer Contract or cancellation of its renewal, and provide all reasonable details requested by Exergenics in relation to such termination or cancellation.

5. Sales & marketing

5.1 Exergenics will provide reasonable marketing and pre-sales assistance to Reseller at no additional charge.

5.2 During the Term, Exergenics may make available to Reseller login credentials to enable Reseller to access and use a "demo" page or version of the Product (**Demo Version**), at no charge. Reseller must only use its access to the Demo Version for the sole purpose of demonstrating and marketing the Product to Customers and potential Customers, and otherwise for the purpose of exercising its Distribution Rights. In using the Demo Version, Reseller must comply with Annexure G (Required Minimum Terms) and any other restrictions or conditions as may be notified by Exergenics in a separate licence agreement or other communication from Exergenics.

5.3 Reseller must:

(a) perform any obligations and comply with any restrictions in Annexure B (Marketing) concerning its marketing, advertising and sales of the Product, including any restrictions or conditions on Reseller's use of names, logos, trade marks or other branding concerning Exergenics or the Product in any marketing or advertising material;

(b) not make any representations, statements, claims or promises about the Product or Exergenics, or any representations or promises on behalf of Exergenics, other than those authorised in writing by Exergenics or expressly stated in the Documentation for that purpose;

(c) comply with all applicable laws in its marketing, advertising, promotion and resale of the Product (including without limitation, applicable data privacy laws, competition laws and consumer protection laws);

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(d) not engage in any misleading or deceptive conduct or make any statements which are false, misleading or deceptive with respect to the Product or Exergenics; and

(e) use its best efforts to preserve, enhance, protect and promote the reputation and goodwill of Exergenics and the Product in the Territory.

6. KPIs, sales and reporting

6.1 Reseller must meet the KPIs (if any) during the Term.

6.2 Reseller must provide, within the first week following each Reporting Period, written Reports in the format and containing the information set out in Annexure D (KPIs and Reporting Requirements). Reseller must also provide such other Reports as may be specified in Annexure D (KPIs and Reporting Requirements).

6.3 Reseller must promptly provide all additional information, explanation and records as are reasonably requested by Exergenics from time to time for the purpose of Exergenics verifying the contents of Reports. Reseller warrants that all Reports provided are accurate, complete and not misleading.

7. Intellectual Property

7.1 Exergenics reserves and retains all rights, including IP Rights, in the Product and Documentation (including any enhancements, amendments, developments or modifications). Exergenics only allows Reseller and its Customers access to the Product subject to the conditions set out in this Agreement, the Order and Annexure G (Required Minimum Terms). Exergenics grants Reseller the right to permit and redistribute access to the Product and Documentation to Customers in accordance with each Order and this Agreement.

7.2 Exergenics grants to Reseller the limited and non-exclusive right during the Term to use the Documentation and redistribute it to Customers solely for the purposes of performing its obligations under this Agreement and each Customer Contract.

7.3 Subject to Annexure B (Marketing), a party may use the logo or trade mark of the other party, as supplied by that other party, on its website, social media and marketing materials for the purpose of identifying the Reseller as an authorised reseller of the Product in the Territory, and as otherwise may be permitted by the other party, during the Term. Each party will comply with the brand, logo and trade mark usage guidelines or restrictions issued by the other from time to time. If requested by a party, the other party must promptly remove the use of the party's business names, logos, trade marks or other branding from websites, social media and marketing materials.

7.4 Reseller grants to Exergenics a non-exclusive licence to use, reproduce, modify, adapt and disclose the Reports and other information Reseller provides to Exergenics pursuant this Agreement for its administration of this Agreement and for its general business purposes, subject to clause 11.

7.5 Any marketing and advertising materials concerning the Product including (without limitation) case studies, presentations, pitch decks, digital and print media and other documents developed pursuant to this Agreement whether by one party or jointly (**Marketing Material**), will be owned by (and assigned to) Exergenics on creation. Reseller must do and execute (and procure to be done and executed) all things reasonably necessary to give effect to this clause. Exergenics grants Reseller a non-exclusive licence to use the Marketing Material in accordance with and for the purpose of performing this Agreement during the Term.

8. Fees and payment

8.1 Reseller is solely responsible for invoicing and collecting payments from Customers under Customer Contracts.

8.2 For each Customer Contract:

(a) Exergenics will be entitled to payment from Reseller calculated in accordance with Annexure E (Pricing); and

(b) Reseller will be entitled to retain the remainder of the Customer Contract Price.

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8.3 Exergenics is entitled to the Fees irrespective of any early termination of the Customer Contract for any reason, and such Fees are non-refundable to the extent permitted by law, except to the extent otherwise stated in this Agreement or agreed in the Order.

8.4 For clarity, the Customer Contract Price includes both the one-time set-up or "calibration" fee for the Product (payable in advance on commencement of the Customer Contract), as well as the Product subscription fees which are payable by the Customer in advance on commencement of the Customer Contract and then annually in advance for each renewal of the subscription under the Customer Contract (unless otherwise agreed in the Order). Exergenics becomes entitled to payment for the purposes of clause 9.2(a) as and when the relevant portion of the Customer Contract Price becomes payable by the Customer.

8.5 Following the end of each Reporting Period, Exergenics may invoice Reseller for its Fees (including applicable GST) with respect to all Customer Contracts entered or renewed during the preceding Reporting Period. Reseller must pay the invoiced amount within 30 days.

8.6 If Reseller fails to pay any invoice from Exergenics when due or fails to provide sufficient Reports to enable Exergenics to issue an invoice, then without limiting its other rights, Exergenics may: (a) charge 10% p.a. interest on late payments, calculated daily; (b) vary Reseller's payment terms for future Orders; (c) suspend any or all Orders under this Agreement or the supply of the Product to Customers; and/or (d) recover from Reseller as a debt due and payable, its reasonable costs and expenses (including legal fees) incurred by Exergenics in pursuing payment.

8.7 All GST and all other taxes or duties which are or become applicable to the transactions contemplated by this Agreement, are the sole responsibility of Reseller, and if required to be paid or withheld by Exergenics, are recoverable from Reseller by invoice from Exergenics. Each party agrees to do all things, including providing invoices or other documentation as necessary to enable the other party to claim or verify any input tax credit, set off, rebate or refund in relation to any applicable tax or duty relating to this Agreement.

9. Mutual obligations and warranties

9.1 Each party represents and warrants that:

(a) it will comply with all applicable laws in the performance of this Agreement and that it holds all applicable licences, authorisations and permissions required by law to perform this Agreement; and

(b) it has the right to grant the rights it grants to the other party under this Agreement.

10. Confidentiality and privacy

10.1 Where a party (**recipient**) receives Confidential Information from the other party (**discloser**) in the course of performing this Agreement, the recipient must: (a) keep it confidential; (b) not use or reproduce it for any purpose other than performing this Agreement; (c) only disclose it as expressly permitted by this Agreement (including to perform a Customer Contract) or authorised by the discloser; and (d) ensure that its employees, agents and representatives do not do, or omit to do anything, which if done or omitted to be done by it, would breach this clause.

10.2 Reseller must treat all pricing information concerning the Product (including recommended retail prices for the Product, Annexure E (Pricing), Fees, Customer Contract Prices concerning Products, and all amounts payable pursuant to this Agreement) as Confidential Information of Exergenics, save that Reseller is not prohibited from discussing a Customer Contract Price with the relevant Customer.

10.3 Notwithstanding clause 11.1, the recipient may use or disclose Confidential Information to the extent necessary to comply with any applicable law or the requirements of a regulatory body (including a stock exchange), or to obtain professional legal or accounting advice, or for use in legal proceedings regarding this Agreement.

10.4 Clause 11.1 does not apply to Confidential Information which: (a) is in or becomes part of the public domain other than through breach of an obligation of confidence; (b) was known to the recipient at the time of

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disclosure, unless such knowledge arose through breach of an obligation of confidence; (c) was independently developed by the recipient; or (c) is acquired from a third party who was entitled to disclose it.

10.5 Subject to its obligations at law, the recipient must immediately on demand by the discloser, either (at the option of the discloser) return to the discloser or destroy any documents and materials in its possession, power or control containing Confidential Information of the discloser and certify in writing that it has done the same.

10.6 Each party will comply with the laws applicable to it concerning privacy and the handling of personal data and personal information, including the *Privacy Act 1988* (Cth).

11. Liability, indemnity and insurance

11.1 Exergenics is only liable to Reseller for claims arising from or relating to the Product or any Customer Contract where such liability is expressly assumed under clauses 5.6–5.7.

11.2 Reseller indemnifies Exergenics from and against any claims, actions, suits, proceedings, investigations, enforcement action or judgment (including its legal fees and all related expenses on a full indemnity basis) arising from or in connection with any Customer Contract, except to the extent Exergenics has: (a) expressly assumed such liability under this Agreement or an Order; or (b) caused the relevant liability as the result of Exergenics' breach of this Agreement or an Order.

11.3 Exergenics indemnifies Reseller from and against claims by Customers which are within the scope of the indemnity given by Exergenics under Annexure G (Required Minimum Terms), subject to the same conditions and exclusions set out there, except to the extent that the claim or liability the subject of the indemnity was caused or contributed to by an act or omission of Reseller.

11.4 In no event will Exergenics be liable under or in connection with this Agreement for any indirect or consequential loss or damage of any kind, or for any loss of actual or anticipated profits, sales, business, savings or revenue, for any loss of opportunity or contracts, loss of or damage to reputation or goodwill, loss of use or loss of data.

11.5 Each party's liability under or in connection with this Agreement shall be reduced proportionately to the extent that the other party's acts or omissions caused or contributed to, directly or indirectly, the loss or damage for which the first party is liable.

11.6 Nothing in this Agreement modifies, displaces or excludes any provision of applicable law (including in relation to competition law or consumer protection) which cannot by law be modified, displaced or excluded.

11.7 Each party must have in place and maintain during the Term public and products liability insurance for the amount of no less than $10 million and will provide to the other party on request from time to time, a copy of its certificate of currency. Each party must maintain any industry-specific insurance or other insurance required by applicable laws in connection with the performance of its obligations.

12. Force Majeure

Neither party will be liable for any failure to perform, or delay in performing, an obligation under this Agreement (except an obligation to pay money) if the failure or delay arose from an unforeseen cause beyond its reasonable control which may include an act of God, war or military action, terrorism, civil unrest, lightning, storm, flood, fire, earthquake, explosion, embargo or strike, or the failure, fault or unavailability of any third party IT infrastructure or network. The party so affected must give the other party written notice of the nature and extent of the cause as soon as practicable after becoming aware of it and must take all reasonable steps to promptly mitigate the consequences of the failure or the duration of the delay.

13. Non-compete

13.1 Reseller (itself and, jointly and severally, as agent for each of its directors and affiliates) must not do or attempt to do any of the following during the Term and for 6 months following the end of the Term:

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(a) use the Product, its knowledge of or about the Product, or any Customer feedback about the Product for the purpose of developing any goods or services which are similar to, compete with or could reasonably be seen to compete with the Product; or

(b) canvass, solicit, offer to sell to or promote to any person who is or has been a Customer, goods or services which are similar to, compete with or could reasonably be seen to compete with the Product.

13.2 Reseller acknowledges that the restrictions in clause 14.1 are necessary to protect the goodwill and IP Rights of Exergenics, and go no further than is reasonably necessary to protect Exergenics' legitimate interests.

14. Termination

14.1 During the Term, by notice in writing:

(a) Exergenics may terminate this Agreement and/or any Orders if Reseller fails to meet its Customer support obligations or other material obligations under a Customer Contract; and

(b) Reseller may terminate this Agreement and/or any Orders if Exergenics materially fails to meet the SLAs or KPIs; and

(c) either party may terminate this Agreement and/or any Orders if the other party commits a material breach of this Agreement,

provided that in each case, if the breach is able to be cured or remedied, the defaulting party has failed to cure or remedy it within 14 days of being required to do so by notice in writing.

14.2 Subject to applicable laws, either party may terminate this Agreement and cancel any Order(s) by notice in writing if the other party becomes bankrupt or subject to an event of insolvency, or if steps are taken to appoint an administrator, receiver or liquidator to it.

14.3 At the termination or expiry of this Agreement (for any reason):

(a) all existing Orders remain in full force and effect until expired or terminated in accordance with their terms;

(b) Reseller must cease exercising all Distribution Rights and other rights (including rights to market the Product or represent itself as a Reseller of the Product) except to the extent otherwise directed by Exergenics;

(c) Reseller must return to Exergenics (or destroy, if directed by Exergenics) all Documentation and other materials provided by Exergenics in its possession or control;

(d) Reseller must provide a final Report concerning the relevant Reporting Period (or part thereof) and pay Exergenics all amounts calculated in accordance with clause 9.3 concerning Customer Contracts for which Exergenics has not already been paid, within 2 weeks;

(e) Reseller must continue to provide support to Customers and administer Customer Contracts in accordance with clause 6, this Agreement, and each Customer Contract, for the remaining term of each Customer Contract, unless otherwise directed by Exergenics;

(f) Exergenics may elect to (but is not obliged to) assume the rights and obligations of Reseller under each or any Customer Contract;

(g) Reseller must provide all reasonable information and assistance to Exergenics or its nominee to facilitate Exergenics assuming Customer Contracts (including Customer lists, billing and payment history and any other Customer Contract details requested);

(h) Reseller must, within one month of Exergenics' written request, assign to Exergenics (or its third party nominee) any or all Customer Contract(s) required by Exergenics; and

(i) clauses which by their nature or terms are intended to survive, will survive, including (without limitation), clauses 5, 7.3, 8, 9, 11, 12, 14, 15.3 and 16.

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14.4 If Exergenics terminates an Order or Orders under clause 15.1, then clauses 15.3(f)–(h) will apply with respect to the affected Customer Contracts.

15. Disputes

15.1 The parties will use reasonable commercial efforts to resolve any disputes arising under this Agreement through good faith discussions referred to appropriately senior representatives of each party. The parties agree to refer any disputes to the chief executive or general manger level (or equivalent) within each party, and for such representatives to participate in at least two discussions together in an attempt to resolve the dispute in good faith, prior to either party issuing proceedings (other than for injunctive or urgent interlocutory relief).

15.2 This Agreement is governed by the laws of Victoria, Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria (and courts entitled to hear appeals from them).

16. Subcontracting and assignment

16.1 In the event that Exergenics' business or any part of it is acquired or purchased or otherwise undergoes a change in control, Exergenics may assign or novate this Agreement to its new controlling entity or any related body corporate. Reseller may not assign or novate this Agreement without the prior written consent of Exergenics.

16.2 Reseller shall not appoint any agent or subcontractor to undertake any of its activities or obligations under this Agreement without Exergenics' prior written approval. Appointment of an agent or subcontractor (whether or not approved by Exergenics) will not relieve Reseller of its obligations under this Agreement and Reseller is liable for all acts and omissions of such agent or subcontractor as if they were its own.

17. General

17.1 Notices: Notices, approvals and other communications may be given by email, post or courier to the email, postal and/or physical address(es) specified on the front page of this Agreement or if a party notifies the other party of a change to such details, those new addresses. Email communications are effective unless required to be served otherwise by applicable law. Notices given to a party in accordance with this clause shall be deemed to have been received by the other party: (i) if given by hand delivery, at the time of delivery; (ii) if given by email, one (1) business day after sending provided that the sender has not, within that time frame, received any automated message or other communication stating that the email was not successfully delivered; and (iii) if given by prepaid mail, three (3) business days after posting.

17.2 Entire Agreement: This Agreement and all Orders contain everything the parties have agreed in relation to their subject matter, and supersede any earlier document, agreement or understanding which may have existed before this Agreement was executed.

17.3 Independent contractors: This Agreement does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties.

17.4 Execution: This Agreement can be executed in counterparts and may be executed electronically.

17.5 Waiver: Each waiver of a right, power or remedy must be signed by the party giving it and cannot be implied by conduct, delay or failure to act.

17.6 Severability: If any clause of this Agreement is void, voidable or unenforceable, it will be read down to the extent possible or if not possible, severed from the other clauses of this Agreement which will remain in effect unless a party determines that severance undermines the fundamental commercial intent of the Agreement, in which case that party may terminate the Agreement with immediate effect.

17.7 Interpretation: In this Agreement:

1. headings are used for convenience only and do not affect interpretation;
2. obligations, liabilities, rights and benefits arising under this Agreement are binding upon and inure in favour of each party's successors and permitted assigns; and

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3. any obligation falling due on a day that is a Saturday, Sunday or public holiday in the place where it is to be performed, will be deemed to fall due on the next day.

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Executed on day of , 2023:

Executed by Exergenics Pty Ltd (ABN XXX):

x.....	x.....
Witness	Authorised Representative
Name:	Name: XXX

Executed by [Reseller]:

x.....	x.....
Witness	Authorised Representative
Name:	Name: .....

Annexure A

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Territory	N/A [*DELETE THIS COMMENT BEFORE SHARING – The default "territory" is Australia. You only need to complete this section if the territory is being limited to a particular State (or States) within Australia. Note that for overseas distribution, this agreement requires further legal review (adjustments for tax, currency etc.).*]
Exclusivity arrangements	N/A [*DELETE THIS COMMENT BEFORE SHARING – The default position is for the VAD to have non-exclusive distribution rights. This section only needs to be completed if the VAD will have exclusivity. In that case, we need to define the scope of the exclusivity here, but also include some additional clauses – eg. to address conditions on exclusivity and when it might be lost, and/or the extent to which Exergenics retains the right to sell direct.*]

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Annexure B Marketing

Use of branding

Reseller may use names, business names, logos, trade marks and other branding collateral provided by Exergenics for the purposes of exercising its Distribution Rights as follows:

(a) in confidential communications between Reseller and a Customer (or a potential Customer), for the purposes of pre-sales and marketing of the Product;
(b) in publicly available communications, or communications between Reseller and multiple parties, for the purposes of pre-sales and marketing of the Product, with the prior written approval of Exergenics (which Exergenics will not unreasonably withhold or delay); and
(c) in accordance with any other branding guidelines or policies issued by Exergenics from time to time.

Reseller Marketing Obligations – Customer Marketing Collateral

Reseller must work with Customers and Exergenics to develop marketing collateral including Customer case studies for the Product. The case studies will be in the format reasonably directed by Exergenics, which may include digital and print media, in-person industry events and other formats. Case studies and marketing collateral may be used by either party (but in the case of the Reseller, only during the term of this Agreement). Both Exergenics and Reseller may nominate Customers for this purpose. The creation of marketing collateral will be at the cost of the party nominating the Customer, or if jointly nominated, costs will be shared equally between the parties.

General Marketing Obligations

1. Both Exergenics and the Reseller agree to work actively and collaboratively to develop mutually beneficial marketing collateral to the betterment of the shared interests of both parties and effective promotion of the Product.
2. Reseller grants permission for Exergenics to use the appropriate entity name and logo associated with any mention of Reseller partnerships on the Exergenics website, short form social media posts, pitch decks and other short form marketing activities across various marketing channels (Short Form Marketing Collateral) as reasonably required to undertake the business of Exergenics and promote the parties' relationship.
3. Exergenics grants permission for the Reseller to use the Exergenics name and logo in Short Form Marketing Collateral to promote the parties' relationship.
4. A party may (acting reasonably) object to any Short Form Marketing Collateral containing its name and/or logo which is published or used by the other party, in which case the other party will correct the short form collateral as reasonably directed by the first party or delete and cease further use of the collateral as directed by the first party, within two business days.
5. Reseller agrees to develop longer form case studies, video content, articles, reports and the like with Exergenics. Exergenics acknowledges the potential internal permission processes for marketing approval and requires the Reseller to gain internal approvals within a time period of ten days, unless otherwise agreed.
6. Reseller agrees to use best efforts to gain and manage the active involvement of Customers as suggested by Exergenics in the development of long form marketing collateral, including case studies, video content, articles and reports.
7. Reseller agrees to share and promote both long and short form marketing collateral via the appropriate marketing channels.
8. Exergenics agrees to share and promote both the long and short form marketing collateral created by the Reseller via the appropriate marketing channels.

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Annexure C SLAs and Service Obligations

1. *For Exergenics* –

[Review and amend for each VAD arrangement.]

- Delivery of the agreed Scope of Works by the date agreed as per the Customer Order Form, noting that the commencement of the delivery period is upon receipt of a confirmed useable data set
- Provide appropriate support for the collection of data from the Customer in correct format
- Reseller training for portal use for key point person and appropriate backup for a maximum of four employees in per eighteen months per jurisdiction.
- Reseller account manager for onboarding and implementation support and training
- Data Collection and Audit
    - Audit of the completeness and usability of the data received provided by the customer within [5] days. Customer data will be audited against the parameters defined within the Energenics Data Request.
    - Confirmation within [5] days of receipt of customer data set that the data set is complete. In the absence of confirmation, it will be assumed that the data set has been accepted unless an Additional Data Request has not been received. In the instance where an incomplete data set is received, Exergenics will send a request for additional data in order to have a complete and usable data set. Exergenics will confirm in writing when a usable data set is received in order to generate an effective optimisation model.
- Additional SLAs which Exergenics agrees to meet in supplying the Product

2. *For Reseller* –

[Review and amend for each VAD arrangement.]

- Continuous trained account manager equivalent for single point of contact for the purpose of portfolio management. Provision for an appropriately trained back-up account manager to ensure Customer continuity in the instance where the single point of contact becomes unavailable.
- A data set from the Customer that enables the completion of the Scope of Works, namely
    - Data in a format that can used to run the model
    - Data of a quality that can be used and relied upon (suitable data)
    - Data within timeframe agreed in Order form
- Verification data returned within the agreed timeframe as per the Order form, usually preliminary results within one month, and then one year post implementation
- Situations where it is appropriate (or not) for the VAD to escalate support queries to Exergenics for help / support:
    - Absence of any information from the Customer as to the specific site and operational constraints of the equipment subject to the scope of works
- General absence of understanding of the Exergenics product from the Customer
- Reseller is responsible for the cost of data extraction

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Annexure D KPIs and Reporting Requirements

Reporting:

- Reports for each Reporting Period must specify:
    - Standard Details of Customer Contracts executed or renewed during the period;
    - Standard Details of Customer Contracts where the renewal is cancelled;
    - Standard Details of Customer Contracts terminated (including details and basis of the termination, any amounts owing to the Customer in relation to the termination, amounts paid by Customer prior to termination);
    - Reseller's performance against the KPIs if applicable;
    - Reseller's performance against the SLAs;

  "Standard Details" means the date, Customer Contract term, Customer entity details, Customer Contract Price and applicable Fees, Product licence type, Chiller and equipment type / specification and applicable Order details.

- Other required Reports:
    - Summary of suggested Product improvements and feedback from Customers;
    - Details of marketing and sales efforts, investments, pipeline; including details on types of plant and systems for each;
    - Summary of any non-standard requests and operational variables from potential customers;
    - Other matters reasonably specified by Exergenics from time to time;
    - Status of marketing material instigation and creation, as required

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Annexure E Pricing

The below tables stipulate the fees payable to Exergenics. The corresponding discount rates appliable, if any, are noted below each table. The individual Customer Pricing is to be calculated and included within the Customer Order form as required in Annexure F.

Applicable Calibration Fees

Calibration Fees are one off costs for initial plant modelling and are charged per building.

Chiller Size	Chiller Type: Air-cooled	Chiller Type: Water-cooled
<1MW	AUD$1,875	AUD$3,105
1 – 2 MW	AUD$2,925	AUD$4,425
2 – 3 MW	AUD$3,855	AUD$5,775
>3 MW	N/A	AUD$7,305

Subscription Pricing for Chiller Optimisation

Subscription Pricing for Chiller Optimisation are charged for each chiller in the plant system.

Chiller Size	Chiller Type: Air-cooled	Chiller Type: Water-cooled
<1MW	AUD$1,250	AUD$2,070
1 – 2 MW	AUD$1,950	AUD$2,950
2 – 3 MW	AUD$2,570	AUD$3,850
>3 MW	N/A	AUD$4,870

Subscription Fee discount pricing

Subscription Fee discount pricing is applicable upon the completion of minimum chiller optimisation numbers as noted below.

[Drafting note: Delete which ever column is not applicable Value added reseller or Value Added Distributor]

	Value Added Reseller	Value Added Distributor
Minimum Volume (Chillers per annum)	25	50
Calibration fee discount	25%	50%
Number of Chillers	Subscription fee discount	Subscription fee discount
25-50	0%	0%
51-100	5%	0%
101-200	10%	10%
201-500	20%	20%
501-2500	30%	30%

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Annexure F Order Form

Reseller must submit (in a form and format directed by Exergenics from time to time) the following details:

CUSTOMER ORDER FORM

Customer	[Entity]	
A.B.N or A.C.N		
Customer address		
Customer contact name		
Customer contact number		
Customer contact email		
Customer Contract Term	[time period]	
Billing Agreement	[standard clauses]	
Customer contract price	Calibration Fee – Building n	
	Optimisation Fee – Building n	
	Other – Building n	
	Total Customer Contract Price	AUD$
Agreed timeframe for the Customer to collect data	[X] weeks	
Agreed maximum time period to deliver Optimisation Scope of works post the confirmed receipt of usable data set (ie. At the completion of the Data Collection and Audit stage)	[X] weeks	
Agreed marketing activities	1. Sharing of Customer Logo on short form social media posts 2. [List any long form Marketing Activities]	
Exergenics Data Request	[comments on standard Data Request?]	
Scope of Works		
[Building n]	Equipment Types 1. Chillers: 2. [X]: 3. [X]:	
	Scope of Works 1. Data Collection and Audit 2. Optimisation 3. Implementation (not by Exergenics) 4. Remote witnessing 5. Measurement and Verification 6. [Tuning] Not a standard inclusion	
	Confirmation of receipt of Standard Exergenics Data Request requirements: Y / N	
	API integration available for building data extraction: [Yes or No]	

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	Onsite Constraints: 1. [any staging constraints] 2. [any plant restrictions] OR 3. Confirmation no onsite constraints provided Additional Site Notes: Building management team to include any notes and observations on the idiosyncrasies of the plant and how it operates
	Any upcoming planning plant upgrades or replacements: 1. [e.g. cooling tower replacements]
	Operational and Maintenance Manuals and Technical Data sheets provided: 1. [Document 1] 2. [Document 2] 3. [Document 3] 4. [Document 4]
	As-built Schematics: 1. [Drawing 1] 2. [Drawing 2] 3. [Drawing 3]
	Customer Portal Access: 1. Included/Excluded
Agreed Changes to Required Minimum Terms	Nil.

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Annexure G Required Minimum Terms

Reseller must ensure all Customer Contracts contain terms which reflect and are consistent with the position set out below, and are not modified, limited or displaced by other terms unless specified in the applicable Order and approved in writing by Exergenics. Minor changes to drafting, expression and terminology are permitted.

The terms of the Customer Contract must be consistent with, and incorporate the details agreed in, the Order.

Capitalised terms used below have the meaning given under the Reseller Agreement unless defined otherwise in this Annexure G, and references to "the parties" or a "party" is a reference to the parties or a party under the Customer Contract (being Reseller and Customer).

1 Subscription Term: The Product subscription will continue for the initial subscription term specified in the Customer Contract, and automatically renews immediately before expiry for additional periods of 1 year on the same terms and conditions, unless either party gives the other notice of non-renewal no later than 30 days before the renewal (**Subscription Term**).

2 Fees: All Fees with respect to the initial subscription term are payable by the Customer in advance, including the one-time set-up or "calibration" fee and the subscription fees. Fees for each renewal of the Product subscription are payable annually in advance. Payment obligations are non-cancellable and, subject to any express rights under this Customer Contract, Fees are non-refundable. Fees are subject to increase by Reseller on notice from time to time, with such increase applying to any renewal of the Customer Contract (but will not affect any Fees already invoiced or paid).

3 Services: The Product subscription will be provided for the Subscription Term in accordance with the SLA which may be updated from time to time by Reseller (or Exergenics), provided that such updates will not materially reduce the level of service. Customer agrees that its purchase of a Product subscription is not contingent on the delivery of any future functionality or features, or any comments made about future functionality or features by Exergenics or Reseller.

4 Rights: (a) Subject to this clause, Reseller grants to Customer a non-exclusive and non-transferable right for the Subscription Term to: (i) access and use the Product (via Customer's authorised users) in accordance with the conditions and restrictions in this Customer Contract, for Customer's own internal business purposes, in compliance with all applicable laws and the Documentation; and (ii) use the Documentation for the purpose of exercising its rights in paragraph (i). **(b)** Reseller grants Customer a non-exclusive right to use and reproduce the outputs of the Product in accordance with the Documentation and only in connection with the equipment, devices and buildings in respect of which the Product has produced the output. Outputs are non-transferable and should not be used in connection with other devices, equipment or buildings, whether similar or not. **(c)** Exergenics reserves all rights concerning the Product and its outputs not expressly granted to Customer under this Customer Contract. **(d)** Unless otherwise expressly permitted, Customer must not do or attempt any of the following: (i) permit any third party access to the Product; (ii) licence, sublicence, sell, resell, transfer or distribute the Product; (iii) use the Product in contravention of any acceptable use policy notified by Exergenics or Reseller to the Customer (as such policy may be updated by Exergenics or Reseller from time to time); (iv) create derivative works of, reverse engineer, modify, disassemble or decompile the whole or any part of the Product; (v) make copes of the Product; (vi) remove any trade marks, labels or logos from the Product.

5 Responsibilities and Customer Content: The Product processes certain data concerning Customer's devices, equipment and buildings which includes telemetry data and information such as equipment size and geographical location. No personal or sensitive data or information is required or requested by Exergenics. **(a)** Customer is responsible for all Customer Content, including obtaining all necessary licences and consents required to provide it to Exergenics and to enable Exergenics to process Customer Content as contemplated by this Customer Contract. **(b)** Customer must ensure and warrants that Customer Content does not: (i) contain any unlawful material or any virus, Trojan, worm, logic bomb or other malicious code that could infect, manipulate, modify, deny, corrupt or inhibit the operation of the Product; (ii) interfere with or disrupt the integrity or performance of the Product; (iii) contain any material that attempts to gain unauthorised access to the Product or Exergenics' networks and data; and (iv) contain any

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personal information, or any sensitive or confidential information of any kind. **(c)** Customer must use commercially reasonable efforts to prevent unauthorised access to, or use of, the Product, and will notify Reseller promptly of any unauthorised access or use. **(d)** Exergenics and Reseller may: (i) monitor Customer's use of the Product to identify or resolve any technical problems or respond to complaints, monitor bandwidth usage or to determine if Customer is complying with its obligations under this Customer Contract; and (ii) remove, or request the Customer remove, any Customer Content uploaded to the Product in breach of this Customer Contract. **(e)** Customer is responsible for obtaining all computer hardware, software, network and any other necessary equipment required to access and use the Product. Exergenics may use and retain Customer Content for its own business purposes including without limitation for analysis, comparison, aggregation, product improvement and marketing purposes (during and after the Subscription Term) provided that any communication or disclosure of such data to a third party must be in aggregated form and not capable of identifying the Customer.

6 Intellectual Property Rights: Exergenics will retain ownership of all Intellectual Property Rights in the Product, the Documentation, Exergenics' Confidential Information (including all modifications and enhancements) and all other material or data provided or made available to the Customer in connection with the Product. The Customer: (i) retains ownership of any Intellectual Property Rights in the Customer Content, and (ii) grants to Exergenics and Reseller a perpetual, non-exclusive, royalty-free, worldwide right and licence to use, copy, modify and adapt the Customer Content for the purposes contemplated in this Customer Contract. Data generated by Exergenics arising out of Customer's use of the Product and any suggestions, requests, recommendations or other feedback provided by the Customer to Exergenics or Reseller in relation to the Product including any material, data and information provided pursuant to clause 12 (Customer logo) below, and all Intellectual Property Rights subsisting in any such materials, will be owned by Exergenics and may be used by Exergenics for the purpose of further improving the Product or Exergenics' business and other offerings, marketing purposes and otherwise to conduct Exergenics' business, without notice, restriction, attribution or compensation of any kind.

7 Indemnities: Subject to this section 7 and section 9 below, Exergenics will defend and indemnify the Customer against any loss, damage, liability, costs or expenses directly incurred by the Customer as the result of a third party claim against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of its use of the Product in accordance with the Customer Contract. This section sets out Exergenics' sole liability and the Customer's sole and exclusive remedy for any claim of Intellectual Property Rights infringement. The Customer will have no claim under this indemnity to the extent the infringement arises from: (i) Customer Content; (ii) any modification of the Product other than by Exergenics; (iii) compliance with the Customer's specifications or instructions; or (iv) use of the Product other than in accordance with the Customer Contract. The Customer must defend and indemnify Exergenics and Reseller against any loss, damage, liability, costs or expenses directly incurred as the result of a third party claim brought against either of them arising out of their use of Customer Content or the Customer's use of the Product in breach of this Customer Contract. If either party (**Indemnifying Party**) is required to indemnify another party (**Indemnified Party**) under this clause, the Indemnified Party must: (i) promptly notify the Indemnifying Party in writing of any claim against it, for which it wishes to rely on the indemnity (**Claim**); (ii) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the Claim, provided that the Indemnifying Party obtains the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld or delayed; and (iii) provide the Indemnifying Party with all reasonable assistance required by the Indemnifying Party regarding the Claim.

8 Privacy: Each party will comply with applicable privacy laws. The Customer will obtain all necessary consents from individuals whose Personal Information is disclosed to Reseller and/or Exergenics to enable Reseller and/or Exergenics to lawfully use the Personal Information and perform their obligations in accordance with this Customer Contract and for Reseller to perform its obligations pursuant to its reseller agreement with Exergenics.

9 Limitation of Liability: (a) Exergenics and Reseller exclude any liability to the Customer, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss, loss of profits, loss of sales or business, loss of production, loss of agreements or contracts, loss of business opportunity, loss of anticipated savings, loss of or damage to goodwill, loss of reputation, loss of use or corruption of software, data or information arising under

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or in connection with this Customer Contract. **(b)** Subject to paragraph (a) and (c), Exergenics' and Reseller's aggregate liability in respect of any claims arising out of or in connection with the Customer Contract as it relates to the Product, whether in contract or tort (including negligence) or otherwise, will in no circumstances exceed the total charges paid by the Customer to Reseller for the Products in the 12 months immediately preceding the claim. **(c)** Paragraph (b) does not apply to a liability: (i) for death or personal injury caused by its negligence or wilful misconduct; (ii) for fraud or fraudulent misrepresentation; or (ii) where liability cannot be limited or excluded by applicable laws.

10 Product warranties and warranty exclusions: **(a)** Reseller warrants that the Product will be made available substantially in accordance with the Documentation during the Subscription Term. **(b)** Any representation, warranty, condition or undertaking that would be implied in this Customer Contract by legislation, common law, equity, trade, custom or usage is excluded, and Exergenics disclaims all warranties and conditions (whether express, implied or statutory), unless expressly stated in this Customer Contract, to the maximum extent permitted by law. **(c)** Nothing in this Customer Contract excludes, restricts or modifies any condition, warranty, right or remedy conferred by the *Australian Consumer Law* (as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) or any other applicable law that cannot be excluded, restricted or modified by agreement. **(d)** To the fullest extent permitted by law, the liability of Exergenics for a breach of a non-excludable condition or warranty is limited at Exergenics' option (where permitted by the Australian Consumer Law) to: (i) in the case of goods, any one or more of the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; or (ii) in the case of services, the supplying of the services again or the payment of the cost of having the services supplied again.

11 Force Majeure: Exergenics or Reseller will not be in breach of this Customer Contract or liable to the Customer for any loss incurred by the Customer as a result of Exergenics failing or being prevented, hindered or delayed by events or circumstances including, without limitation, acts of God, natural disaster, epidemic or pandemic, strikes or other labour disturbance, war, conflict, terrorism or civil unrest, sabotage, or any other cause, whether or not similar to those specified, which cannot reasonably be controlled by Exergenics.

12 Customer logo: Exergenics may include and make reference to the Customer's name or logo on its website, social media posts, and other short form marketing collateral for the purpose of communicating the fact that the Customer is a customer of Exergenics, Reseller and the Product. Exergenics, Reseller and the Customer agree to work in good faith to collaboratively develop long form marketing collateral such as case studies, interviews, articles and the like as appropriate for use by Exergenics and Reseller for marketing purposes.

13 Administration: Reseller may assign or novate this Customer Contract at any time in its absolute discretion (without the need to obtain consent) to Exergenics or its nominee, allow Exergenics (or its nominee) to assume any of Reseller's obligations, and/or allow Exergenics (or its nominee) to exercise any of Reseller's rights or obtain or enforce any benefit or remedy to which Reseller is entitled under this Customer Contract. Customer authorises Reseller to disclose the Customer Contract, including all terms and pricing, to Exergenics in its entirety and without notice.

14 Definitions:

Customer Content means all content, data and information provided by Customer to Exergenics or Reseller in connection with the Product which is input into the Product by or on behalf of Customer, including telemetry data received in relation to Customer devices and equipment;

Fees means the fees payable by the Customer for the Product for the Subscription Term in accordance with the Customer Contract;

Intellectual Property Rights means all intellectual property rights including copyright, trade mark, designs and patents (whether or not registered or registrable), trade, business or company names, domain names, other proprietary rights, know-how, Confidential Information, trade secrets and any rights to register such rights, existing in any country and whether created before, on or after the date of the Customer Contract;

Order Form means the order form contained within the applicable Customer Contract;

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SLA means the Product SLAs, if any, in Annexure C (SLAs and Service Obligations) of the Reseller Agreement.

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