

SAP PartnerEdge

Sell On Premise Specific Terms and Conditions

(together with the Sell On Premise Schedule and all documents referenced therein
"Sell On Premise Model")

Article 1 Definitions and Interpretation

1. Definitions

"**Discount Letter**" with regard to this Sell On Premise Model means the "SAP PartnerEdge Sell On Premise – Discount Letter" for this Sell On Premise Model applicable to the country in which End User is located which current version as updated from time to time in line with the Change Provisions of this Agreement is / will be published on SAP's partner-dedicated website or directly provided to Partner by SAP upon request.

"**End User Maintenance Agreement (EUMA)**" means the "SAP Delivered Support Agreement" which sets out the terms and conditions under which SAP provides support to End Users and which will be provided by SAP on a deal by deal basis.

"**Maintenance Services**" with regard to this Sell On Premise Model means SAP Delivered Support, VAR Delivered Support and VAR Delivered Support For Business One as further set out in Article 9 (Maintenance Services).

"**Price List**" with regard to this Sell On Premise Model means the "SAP List of Prices and Conditions (indirect sales)" consisting of the "SAP Pricing & Licensing Principles", "SUR" and "SAP Price List for PartnerEdge Channel Partners" for this Sell On Premise Model applicable to the country in which End User is located which is published on SAP's partner-dedicated website or directly provided to Partner by SAP.

"**Product Family**" means an SAP product family which may comprise one or several SAP software products or services as further set out in the applicable RSPI.

"**Program Requirements**" means certain minimum program entry requirements as well as ongoing program requirements to be fulfilled by Partner, some of which are general PartnerEdge requirements, some of which are specific for the "Sell Engagement" and some of which are specific for the different "On Premise" Product Families, including, without limitation, payment of the Program Fee(s), meeting certain minimum annual revenue requirements, upholding a Sell Authorization for at least one "On Premise" Product Family and other requirements as set out in detail in the PartnerEdge Program Guide and the RSPI.

"**SAP Delivered Support**" means SAP's support offering to directly provide support to End Users subject to the terms and conditions set out in the EUMA.

"**SAP GTCs**" means then-current version of the document GENERAL TERMS AND CONDITIONS OF SAP SLOVENSKO S.R.O. FOR STANDARD SOFTWARE LICENSE AND SUPPORT, as used by SAP for "On Premise Software" which is made available on www.sap.com/company/legal (however excluding the application of its data protection provisions, especially its Annex Data Protection as well as its Exhibit [TOM] and any provisions for support). The SAP GTCs may be updated by SAP from time to time in the sense of a programmatic change within the meaning of Article 12 (Changes to Terms) Nr.2 of Part 1 of the PartnerEdge GTCs. The version current at the time of the execution of the Sell On Premise Model is incorporated herein as Exhibit 1).

"**Sell Authorization**" means the specific training and qualification requirements for the products included in an "On Premise" Product Family that Partner wants to resell as set out in detail in the PartnerEdge Program Guide and the applicable RSPI, to be fulfilled by Partner.

"**SUR**" means the then-current List of Prices and Conditions SAP Software and Support used by SAP which includes additional or supplemental terms and conditions under which Software is licensed and which is made available on www.sap.com/company/legal. The SUR document is considered a Price List document in the meaning of Article 12 (Change to Terms) Nr.1 in Part 1 of the PartnerEdge GTCs.

"**VAR Delivered Support**" means the support that Partner can provide directly to End Users subject to the terms and conditions set out in the VAR Delivered Support Model which SAP and Partner can agree on by signing the VAR Delivered Support Schedule.

"**VAR Delivered Support For Business One**" means the support that Partner can provide directly to End Users for SAP Business One subject to the "Terms and Conditions for VAR Delivered Support for SAP Business One" which SAP and Partner can agree on by signing the Business One VAR Delivered Support Schedule .

2. Any terms not defined in this Sell On Premise Model will have the meaning ascribed to them in any other part of the Agreement (as defined in the Master Partner Agreement).

3. The headings in this Sell On Premise Model are for convenience only and are to be ignored in construing this Sell On Premise Model.
4. For clarification: Any reference in this Sell On Premise Model to a defined document is a reference to that defined document as amended, varied, novated or supplemented from time to time, in line with Part 1 Article 12 "Change to Terms" of the SAP PartnerEdge GTCs.
5. Where the context so admits, the singular includes the plural and vice versa.
6. Any defined document referenced in this SAP PartnerEdge Sell On Premise Model will be provided by SAP upon request.

Article 2 Engagement Model

1. Upon Partner meeting the Program Requirements for the first time and subject to Partner's compliance with all Program Requirements at all times during the term of this Sell On Premise Model, SAP hereby grants to Partner and Partner hereby accepts from SAP the right to:
 - a) market and distribute those Software products for which Partner achieved and continues to uphold a successful Sell Authorization in its own name, at its own risk and for its own account; and
 - b) position SAP Delivered Support for the Software purchased from SAP (excluding SAP Business One for which SAP Delivered Support is not available), if available for the respective Software product, and (for the Software distributed under this Sell On Premise Model) market, sell and provide VAR Delivered Support subject to the respective authorization under the applicable SAP VAR Delivered Support Schedule and/or market, sell and provide VAR Delivered Support For Business One subject to the provisions set forth in the Business One VAR Delivered Support Schedule.

to End Users located in the Territory (as defined in the Sell On Premise Schedule / the VAR Delivered Support Schedule / Business One VAR Delivered Support Schedule).

2. Partner will use its best efforts to market and position SAP Delivered Support or to market, sell and provide VAR Delivered Support, if Partner is authorized to provide VAR Delivered Support, or VAR Delivered Support For Business One for the Software distributed under this Sell On Premise Model.
3. Partner is solely responsible for accurately and completely representing the Software and the Maintenance Services. Partner assumes all financial and legal liability for the quality, reliability and accuracy of all representations and warranties made by Partner, its employees, agents and consultants beyond what is contained in the Documentation. Partner will give the SAP Group and its licensors appropriate credit for the ownership of the Software, Documentation and other SAP Materials.
4. Partner must not deliver or recommend any software or other products that are incompatible with the Software.
5. Partner will be solely responsible for setting its own prices vis-à-vis the End User for the distribution of the Software.

Article 3 Specific Order Processes and Requirements

1. Partner and SAP will enter into End User specific Order Forms for the Software, covering the license and (where applicable and authorized) Maintenance Services under the VAR Delivered Support Model. To this respect, Partner will send its order for Software and (where applicable and authorized) Maintenance Services from SAP using and filling out completely such forms and minimum order requirements as SAP may prescribe from time to time and must comply with any then-current order process for the specific Software product. Where applicable, Partner will use the electronic means provided by SAP for placing orders and for executing Order Forms.
2. With regard to each Software order for an End User, Partner must provide SAP with:
 - a) the name and address of the End User for whom the Software was ordered;
 - b) details of the Software ordered for the End User, including, without limitation, the product and country version as well as the number of users for each Software product;
 - c) details of any SAP Delivered Support agreement concerning the specific End User;
 - d) Partner's contact and billing information; and
 - e) any other data required by SAP in any then-current order process for the specific Software, Maintenance Services or both.

3. SAP is free to accept the order and issue an Order Form offering to Partner. In particular, SAP reserves the right to decline the order if the Software is intended to be used on computers, operating and database management systems that SAP considers to be not suitable for use with the Software.

Article 4 Delivery of Software

1. SAP will deliver the Software as described in the Documentation and the Price List and will also provide the appropriate license keys. With regard to the features, quality and functionality of the Software the product description in the Documentation and the Price List is solely decisive. SAP does not own any additional features, quality or functionality. Partner can, in particular, not assert any additional feature, quality or functionality from any public statements, publications or advertisements by SAP except to the extent SAP has expressly confirmed such additional feature, quality or functionality in writing. Any representation, warranty, undertaking or guarantee regarding additional features, quality or functionality is effective only if expressly confirmed by SAP's management in writing.
2. After execution of an Order Form, SAP will deliver to Partner one copy of the relevant Software:
 - a) on discs or other data media ("**Physical Shipment**"); or
 - b) by making it available for download through the internet (usually on the SAP ServiceMarket Place (<http://service.sap.com/swdc>)) ("**Electronic Delivery**") or its successor website as published by SAP.
3. The relevant Software and Documentation will be deemed delivered (including but not limited for the purpose of fixed delivery dates or timely delivery) and the risk passes to Partner:
 - a) in case of Physical Shipment, when the relevant disc or other data media is handed over to the freight carrier; or
 - b) in case of Electronic Delivery, when SAP has made an electronic copy thereof available for download and has informed Partner accordingly ("**Delivery**").
4. Upon Partner's request or if stipulated in the Order Form, SAP may agree to provide Software and the appropriate license key directly to the relevant End User instead ("**End User Delivery**"). In case of End User Delivery, the provisions set out in this Article 4 (Delivery of Software) will apply analogously; delivery to Partner will be deemed to occur upon Delivery to the End User.
5. SAP might be entitled to suspend the delivery of any or all SAP Products as well as applicable license keys to Partner or End User or both as further set out in this Sell On Premise Model as well as the PartnerEdge GTCs.
6. If Partner receives a new copy of the Software, Documentation and/or other SAP Materials that replaces previously provided Software, Documentation and/or other SAP Materials, Partner must distribute such newest copy provided and either destroy or upon SAP's request return previous copies.
7. Partner must not make the Software, Documentation and/or other SAP Materials available to the End User by any means other than by delivering the Software, Documentation and/or other SAP Materials as originally provided by SAP. Partner's right to pass on the Software, Documentation and/or other SAP Materials is subject to the provisions of this Agreement.

Article 5 Resale Software Fee

1. The general calculation basis for the Software is stipulated in the Price List and the applicable Discount Letter and will be specified in each Software order.
2. Partner will pay to SAP the fee for the Software ordered for any End User as set out in the corresponding Software Order Form.
3. In case of Physical Shipment, Partner will have to pay the costs of delivery and packaging.
4. In case of Electronic Delivery, SAP will make the relevant Software available for download at its own cost; Partner will bear the costs for downloading the Software and Documentation.
5. The fee for the Software ordered for an End User will be invoiced after Delivery of the relevant Software.

Article 6 Tax

1. Each Party will be responsible for the payment of its own taxes.

2. All taxes based on income that are imposed, or may be imposed, by any federal, state or local government entities for payments received under or in connection with any part of this Agreement will be borne by the recipient of the payment ("**Recipient**").
3. All taxes or charges of any kind such required by law will be borne by the the Party making such payments ("Payer"). Partner must communicate to SAP its VAT or GST identification number(s) attributed by the country where Partner has established its business. SAP shall consider the Software distributed or provided under or in connection with this Agreement to be for Partner's business operations and provided to the location(s) of the Partner in accordance with the provided VAT or GST identification number(s). If any such tax or duty has to be withheld or deducted from any payment under or in connection with any part of this Agreement, Payer must increase payment under or in connection with any part of this Agreement by such amount to ensure that after such withholding or deduction, Recipient has received an amount equal to the payment otherwise required. Any applicable direct pay permits or valid tax-exempt certificates must be provided to SAP prior to the execution of the Sell On Premise Schedule.

Article 7 Protection of Rights

On basis of this Sell On Premise Model Partner is not entitled to:

- a) Use the Software (except as necessary to perform VAR Delivered Support and/or VAR Delivered Support for Business One);
- b) make any Modifications, Add-Ons or other derivative work to the Software; and
- c) copy or otherwise reproduce temporarily or permanently in whole or in part the Software, not even for back-up purposes.

Article 8 License (Indirect Model)

1. Use rights for the Software that Partner agrees with SAP for a specific End User will be granted from SAP to Partner on the basis of an End User specific Order Form and then granted by Partner to an End User on the basis of an individual license agreement entered into between Partner and End User ("**Indirect License**"), as further described in this Article 8.
2. Partner must comply with the following provisions:
 - a) SAP sells the Software to Partner for a specific End User subject to the Order Form and the then current SAP GTCs and SUR in consideration of the stipulations in this Sell On Premise Model ("**SAP Terms**"), in particular this Article 8, Partner must grant Use rights for the Software to an End User subject to terms in an Indirect License that are not less protective for SAP than the ones set out in the SAP Terms (but excluding any commercial terms therein), in particular this Article 8 ("**Indirect License Model**"). The SAP GTCs current at the time of the execution of this Sell On Premise Model are attached hereto as Schedule 1. The Indirect License must in any case include clauses reflecting the content of the then-current Software Use Rights and the content of the provisions of the then-current SAP GTC (as well as the respective definitions of terms used therein) on the following matters but excluding any commercial terms therein:
 - i. DELIVERY, MATTER TO BE DELIVERED, LICENSE GRANT, IP RIGHTS, END OF LICENSE End User may only be granted a non-exclusive, perpetual (except for subscription based licenses) license to Use the Software, Documentation, and other SAP Materials at specified site(s) within the Territory (as defined in the Sell On Premise Schedule) to run End User's and its Affiliates (as further defined and described in the SAP GTCs) internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations, all as further described in the SAP GTCs. End User shall not: (i) use the SAP Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or training) other than to Affiliates (subject to the terms set out in the SAP GTCs); (ii) lease, loan, resell, sublicense or otherwise distribute the SAP Materials, other than distribution to Affiliates (subject to the terms set out in the SAP GTCs); (iii) distribute or publish keycode(s); (iv) make any Use of or perform any acts with respect to the SAP Materials other than as expressly permitted in accordance with this Article 8 no.2; (v) use Software components other than those specifically identified in the Software Order Form agreed between SAP and Partner for the relevant End User, even if it is also technically possible for End User to access other Software components or (vi) transfer Software to third parties except as stated in the SAP GTCs.;
 - ii. intentionally left blank

- iii. RESERVATION OF RIGHTS. End User must accept that the SAP Materials and SAP's Confidential Information and all title, rights and interest, especially, without limitation, any Intellectual Property Rights embodied therein are the sole and exclusive property of the SAP Group or their licensors, subject to any rights, title or interest expressly granted to End User as set out in this Article 8 no. 2 a) i. and the provisions concerning Modifications/Add-ons below. Except for the rights set forth in this Article 8 no. 2 a) i. and the provisions concerning Modifications/Add-ons below, End User is not permitted to modify, create Add-Ons or otherwise make derivative works of the Software or other SAP Materials;

End User may Use any API or tools contained in the contractual Software or otherwise obtained from SAP (via Partner) in order to develop or use Modifications or Add-Ons, subject to End User fulfilling its obligations set forth in this Article 8 no. 2 a) iii in relation to Modifications and/or Add-Ons. For clarification: Any Modifications or Add-Ons developed by SAP or any of the SAP Group members on behalf of End User or as a product are exclusively subject to the provisions of the respective agreement and not subject to the provisions of Article 8 no. 2 a) iii a to d below.

- a. Except as otherwise agreed and except as expressly required by law or expressly permitted in this Article 8 no. 2 a) iii, End User shall not create, use, or make available to any third party any Modification of or Add-On to the contractual Software. Modifications may only be made in relation to contractual Software delivered by SAP in source code.
- b. End User is responsible for any deficiencies in the running, security or performance of the contractual Software and other programs, and in communications between the contractual Software and other programs ("Deficiencies") caused by Modifications or Add-Ons to the contractual Software. SAP points out that Add-Ons to and even minor Modification of the contractual Software may lead to unpredictable and significant Deficiencies. Such Deficiencies may also arise because of an Add-On or Modification not being compatible with later or otherwise revised versions of contractual Software. SAP is entitled to change the Software, APIs, or both without care for the compatibility of any Modification or Add-On that End User uses with any later version of the Software.
- c. In addition, SAP is neither responsible for Deficiencies caused by Modifications or Add-Ons to the contractual Software nor obliged to provide remedies under warranty or other obligations in relation to Deficiencies caused by Modifications or Add-Ons to the contractual Software. SAP is not obliged to provide any contractually agreed Maintenance Services if and to the extent the provision of such Maintenance Services is aggravated because of Modifications or Add-Ons to the contractual Software. SAP recommends that End User registers via SAP's registration procedure at <http://support.sap.com/sscr> such Modifications or Add-Ons in order to help SAP to identify the reason for possible support issues.
- d. Modifications and Add-Ons that are / have been developed by or on behalf of End User must be used only together with the contractual Software and only in accordance with the license to use the Software granted under Article 8 no. 2 a). SAP retains the right to develop its own Modifications or Add-ons to the Software but SAP is not entitled to copy End User's software code. Modifications or Add-Ons must not (and subject to other limitations set forth herein): enable the bypassing or circumventing of any of the restrictions set forth in this Agreement and/or provide End User with access to the Software in excess of End User's access rights duly obtained nor render or provide any information concerning the Software. End User covenants, on behalf of itself and its successors and assigns, not to assert against SAP or any member of the SAP Group any rights in any (i) Modifications or Add-Ons, or (ii) other functionality of the Software accessed by such Modifications or Add-Ons.

These provision prevail over any provision in the SAP GTCs relating to Modifications or Add-Ons.

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- v. CONFIDENTIALITY. End User must treat SAP's Confidential Information in a manner that is at least as protective to SAP as the rights and restrictions set forth in this Agreement; and
- vi. SYSTEM AUDIT AND MEASUREMENT / ADDITIONAL LICENSES. End User must agree to permit SAP to directly audit (at least once annually and in accordance with SAP standard procedures as described in the SAP GTCs, which may include on-site and/or remote audit) the usage of the Software and other SAP Materials. In case the consent of the End User is required Partner ensures that such consent has been granted by the End User.

- b) In addition to the above, SAP proposes for the Partner the appropriate application of the contractual conditions of the then-current SAP GTC's in its end-user agreements to be concluded by the Partner. The current GTC is incorporated herein as Exhibit 1. The Partner is

liable for any possible claim or demand arising from non-applying of the above contractual conditions in its end-user agreements.

- c) Partner must use its best endeavors to shield all members of the SAP Group from any liability arising out of or in connection with an Indirect License. Furthermore, Partner must include express provisions in each Indirect License agreement to ensure that any claim relating out of or in connection with an Indirect License will be brought against the Partner and not a member of the SAP Group unless such claim exists by virtue of compelling law.
- d) Partner must ensure that all Software ordered for an End User is captured under a valid Indirect License with such End User.
- e) To this extent Partner must – in particular – ensure that:
 - i. each End User executes an Indirect License before ordering Software from a Partner; and
 - ii. the person signing an Indirect License is duly authorized to represent and has the full legal capacity to legally bind the End User.
- f) Partner must ensure that each Indirect License is legal, valid, binding and enforceable and that the obligations assumed by the Parties thereunder constitute legal, valid, binding and enforceable obligations.
- g) Partner must inform each End User that SAP will not accept the corresponding Software order for such End User and will, thus, neither deliver any Software nor the applicable license keys if SAP has not received from the Partner the confirmation that an Indirect License was duly signed by the End User for the Software agreed in the Order Form.
- h) Upon SAP's request, Partner must provide a copy of the signed Indirect License agreement to SAP (whereby blackening any references to commercial terms, especially prices). Partner must ensure that End User has given its consent for SAP to review each Indirect License.
- i) Partner bears all consequences and costs resulting from breach of its duties set forth in the Agreement, especially if Partner did not conclude an Indirect License, if the terms of an Indirect License are less protective than the ones set out in the then current SAP GTCs or the then-current SUR, if an Indirect License is not legal, valid, binding or enforceable or if the obligations assumed by the Parties thereunder do not constitute legal, valid, binding and enforceable obligations.
- j) Partner must inform SAP immediately if Partner or an End User terminated an Indirect License as well as about the reasons for such termination.
- k) Partner is obliged to enforce the terms of the Indirect License if the Partner becomes aware that the End User does not comply with the SAP Terms incorporated therein. If Partner becomes aware of circumstances indicating a breach, Partner is obliged to thoroughly investigate and take required actions to enforce the SAP Terms. Partner must inform SAP as soon as the Partner becomes aware of a breach or circumstances that indicate a potential breach. If it becomes apparent in an audit or otherwise that End User has used the Software outside the SAP Terms with regard to the agreed license volume and Metrics, SAP and Partner will execute an amendment reflecting the required additional license. SAP reserves the right to claim damages and to claim late payment interest in accordance with the Agreement.

Article 9 Maintenance Services

- 1. SAP Delivered Support
 - a) If an End User wants to order SAP Delivered Support and provided SAP offers SAP Delivered Support for the relevant Software products, the End User will need to conclude a EUMA directly with SAP.
 - b) Partner must inform the End User that:
 - i. SAP will not deliver any SAP Delivered Support until SAP received End User's duly signed EUMA; and
 - ii. SAP has the right not to provide SAP Delivered Support as long as any of the adverse conditions as set out in this Article 9 (Maintenance Services) no. 1e) to f) is present.
 - c) Partner must ensure that the person signing the EUMA is duly authorized to represent and has the full legal capacity to legally bind the End User.
 - d) When Partner submits a Software order, Partner must also submit a copy of the EUMA signed by the End User for whom the Software is ordered if the relevant End User wants to order SAP Delivered Support. SAP will provide the means to attach, upload or otherwise submit a signed

copy of the EUMA together with the Software order in the order process. If required in the country of the relevant End User, SAP will provide an address to which an originally signed copy of the EUMA by the End User must be sent.

- e) Partner is prohibited from making any changes to the EUMA but may have to insert certain additionally required information into the EUMA. Partner must further ensure that End User does not change the EUMA.
- f) If the relevant End User has not duly signed the EUMA or if the content of the EUMA was unduly changed or is incomplete, SAP will not accept the corresponding SAP Delivered Support order for such End User and will, thus, not provide SAP Delivered Support. Partner bears all consequences and costs resulting from breach of its duties set forth in the Agreement, especially if the EUMA was unduly changed or is incomplete.

2. VAR Delivered Support

- a) VAR Delivered Support. If Partner wants to provide VAR Delivered Support, the Parties will, as a first step, have to agree on and sign the VAR Delivered Support Schedule which refers to the VAR Delivered Support Model. Further requirements for the provision of VAR Delivered Support are set out in the VAR Delivered Support Model.
- b) VAR Delivered Support for SAP Business One. Every Partner authorized to market and distribute SAP Business One is authorized to market, sell and provide support to End Users located in the Territory (as defined in the Sell On Premise Schedule) for the SAP Business One products sold hereunder by Partner subject to the provisions of the SAP PartnerEdge Business One VAR Delivered Support Schedule as agreed between the Parties. SAP Delivered Support is not available for SAP Business One. VAR Delivered Support For Business One is the sole support delivery model for SAP Business One.

Article 10 Term and Termination for convenience

- 1. Term. This Sell On Premise Model comes into effect as of the Effective Date defined in the Sell On Premise Schedule and remains in full force and effect until and including 31 December of the same year. Thereafter its term is automatically extended for subsequent periods of one year.
- 2. Termination for convenience. Either Party may terminate this Sell On Premise Model for convenience with three months' prior written notice to 31 December of each year.
- 3. Termination for non-compliance with Program Requirements. SAP may terminate this Sell On Premise Model with three months' prior written notice if Partner:
 - a) did not meet all of the Program Requirements for the first time within six months after the Effective Date defined in the Sell On Premise Schedule; or
 - b) does not comply with any of the Program Requirements excluding the Program Fee for which the termination periods set out in Article 10 (Termination for good cause) no. 1 a) and no. 2 a) of Part 1 of the PartnerEdge GTCs apply.
- 4. Extraordinary termination rights and the right to termination for just cause remain unaffected.

Article 11 Model-specific Effect of Termination

- 1. If this Sell On Premise Model is terminated, or ends in any other way, Partner's right to:
 - a) market and distribute the Software; and
 - b) position SAP Delivered Support,to End Users located in the Territory under this Sell On Premise Model as set out in Article 2 (Engagement Model) immediately ends.
- 2. However, Partner will be allowed to distribute each Software product ordered from SAP for a specific End User for which SAP and Partner executed an Order Form before this Sell On Premise Model was terminated, or ended in any other way ("**Accepted Software**") without undue delay to the End User for whom the Software product was ordered. Obligations existing or arising under subsisting individual Order Forms remain unaffected. SAP is entitled to refuse to accept orders if SAP has reasonable grounds to believe that the End User cannot go live with the Software during the term of this Sell On Premise Model.
- 3. Notwithstanding anything in Article 11 (Effect of Termination) of Part 1 of the PartnerEdge GTCs, Partner will be allowed to use the Documentation as well as the SAP Logo and other SAP trademarks which he was authorized to use as set out in Article 4 (Trademark License) of Part 1 of the PartnerEdge GTCs solely in connection with the Documentation in order to distribute the

Accepted Software without undue delay to the specific End User for whom the Accepted Software was agreed under the executed Order Form.

Article 12 Defects as to Quality, Defects in Title, Other Faults

1. SAP warrants the agreed qualities of the Software purchased in each Order Form (with the exclusion of Software that was provided for no fee and / or under a trial license), in accordance with the law governing the sale of goods and warrants that the grant of the distribution rights as agreed herein to Partner does not infringe any third-party right. The following provisions in this Article 12 no. 2 to 8 apply with regard to each Order Form:
2. To discharge its liability for shown quality defects, SAP will remedy the defects either by providing to Partner a new Software version that is free of defects or, at its election, by eliminating the defects. SAP may also eliminate a defect by indicating to Partner a reasonable way to avoid the effect of the defect. To discharge its liability for shown defects in title, SAP will remedy the defects either by procuring for Partner the legally incontestable agreed rights with regard to the respective Software or, at SAP's election, providing equivalent replacement or altered Software. Partner must accept a new Software version that is functionally compliant unless it would be unreasonable to require Partner to do so.
3. If Partner sets a reasonable limited additional time period for SAP to remedy the defect and SAP finally fails to do so in that time, Partner has the right to terminate the Order Form or reduce the remuneration. Subject to the exclusions and limitations in Article 13 (Liability), SAP undertakes to compensate for loss or wasted anticipatory expenditure caused by a defect.
4. Intentionally left blank.
5. Intentionally left blank.
6. If SAP provides defect identification or elimination works or services without being under obligation to do so, SAP is entitled to a specific remuneration. This applies in particular to any reported quality defect that is not reproducible or not imputable to SAP or in cases where the Software is not used in compliance with its Documentation. Without prejudice to the generality of the foregoing, SAP is entitled to remuneration for additional work it does to eliminate any defect that arises out of Partner's failure to properly discharge its duty to collaborate, inappropriate operation of the Software, or failure to take the SAP services that SAP recommends.
7. If a third party claims that the exercise of the rights granted to Partner under the SAP PartnerEdge Sell On Premise Model infringes its rights, must fully inform SAP in writing without delay. If Partner ceases to exercise its rights granted hereunder to mitigate loss or for other just reason, Partner must notify the third party that such cessation does not imply any recognition of the claimed infringement. Partner will conduct the dispute with the third party both in court and out of court only in consultation and agreement with SAP or authorize SAP to assume sole conduct of the dispute.
8. If SAP fails to properly perform any of its duties herein that is not within the ambit of defect liability, or is otherwise in breach, Partner must give written notice of the failure or breach to SAP and fix a limited additional time period during which SAP has the opportunity to properly perform its duty or otherwise rectify the situation. SAP will compensate for loss or wasted anticipatory expenditure subject to the exclusions and limitations in Article 13 (Liability).
9. Partner duty to collaborate includes the obligation to give notice of all defects including sufficient detail for SAP to analyse the alleged defect and to ensure that End User also provides commercially reasonable assistance to SAP in any defect identification or elimination works or services. SAP may fulfill its warranty obligations directly vis-à-vis Partner's affected End Users.

Article 13 Liability

SAP's liability in contract, tort, and otherwise for loss including but not limited to wasted anticipatory expenditure, under this Sell On Premise Model is subject to the following:

- a) In cases of intent, SAP's liability extends to the full loss; in cases of gross negligence, SAP's liability is limited to the amount of foreseeable loss that would have been prevented through the exercise of due care; in cases of absence of a guaranteed quality, SAP's liability is limited to the amount of foreseeable loss that would have been prevented by the presence of the guaranteed quality.
- b) In other cases: SAP is not liable except for breach of a major obligation and only up to the limits in Article 13 no. 1 c). A breach of a major obligation in the meaning of this is assumed where the duty itself is a necessary prerequisite for the contractual performance, or where the breach of the

relevant duty jeopardizes the purpose of the contract and where Licensee could legitimately rely upon its fulfillment.

- c) Liability in cases under Article 13 no. 1 b) is limited to € 200,000 per incident and limited in total to €500,00 for all claims arising out of this Sell On Premise Model.

Article 14 Audit

1. As part of an audit as described in the GTCs and for compliance purposes only, SAP may audit any documentation that identifies the dates of sale and delivery of SAP Products, such as invoices, delivery orders, contracts and purchase orders by and between Partner and Customer or Partner and an Intermediary. In connection to such audit, Partner shall provide on request to the SAP's Legal Compliance and Integrity Office information about margins anticipated on open opportunities or earned on closed opportunities.

2. In any case where Partner is unable to provide the requested documentation because of confidentiality obligations owed to a Customer or other applicable laws, including but not limited to relevant competition laws, whether arising by written contract or applicable law, Partner will promptly provide SAP with written evidence not subject to those obligations. In addition, Partner will promptly and in writing seek the Customer's consent to waive confidentiality restrictions to permit SAP to conduct its audit as intended. Should the Customer refuse to grant that consent, Partner will i) provide SAP with a copy of the waiver request and written proof of that refusal and ii) identify appropriate contacts at the Customer with whom SAP may elect to discuss the refusal.

Article 15 Special Discounts

1. If Partner requests discounts or pricing deviating from SAP standard partner discount and pricing ("Special Discount"), Partner must provide accurate and truthful information relating to such request, as well as any available documents evidencing the need for the Special Discount request. SAP's decision to offer any Special Discount will be assessed on an individual basis, and will be based upon the truth, accuracy, and completeness of the documentation provided. SAP may decide at any point, in its sole discretion, to reject the request for a Special Discount. Both before and after any Special Discount is granted, Partner must inform SAP immediately if any information relating to or underlying the Special Discount request changes. By accepting a Special Discount, Partner must extend the full Special Discount to the customer in accordance with the Special Discount request as approved by SAP.

2. SAP may audit any Special Discount transactions in accordance with the terms of Article 9 of the GTCs. Upon SAP's request, Partner will promptly provide SAP or the expert with all relevant documentation to enable SAP to verify that all information provided in support of a Special Discount request was truthful and accurate. Such information may include but shall not be limited to invoices, delivery orders, contracts and purchase orders by and between Partner and Customer, or Partner and an Intermediary ("the Special Discount Documentation"). Subject to applicable laws, including but not limited to relevant competition laws, Partner hereby waives any objection to i) SAP sharing Special Discount Documentation directly with the Customer, notwithstanding the terms of any agreement that would prohibit SAP from doing so, and otherwise communicating (both orally and in writing) with the Customer, as SAP deems necessary and appropriate to complete its desired audit relevant to Special Discounts and ii) the Customer sharing information on the Special Discount directly with SAP. SAP may invalidate a Special Discount if in respect of such Special Discount, Partner fails to comply with the requirements of this Section 2.

3. In its contracts with Intermediaries, Partner must require any Intermediary to adhere to the same obligations relevant to Special Discounts as outlined in Section 2 and 3 above. SAP must be named a third-party beneficiary to such terms in a contract between Partner and any Intermediaries with the right to enforce such terms itself and independently from Partner against an Intermediary.

Article 16 Survival

Article 14 (Audit) and Article 15 (Special Discounts) will survive termination of this Sell On Premise Model.



SAP PartnerEdge
Sell On Premise Specific Terms and Conditions

Exhibit 1