

OEM PARTNER AGREEMENT General Terms and Conditions

A. General Terms And Conditions

The parties agree that their contractual relationship shall be governed by the terms and conditions of the Agreement (as defined below). The agreement consists of (1) this Partner Agreement General Terms and Conditions ("GTCs"), (2) applicable Program Schedule(s), (3) applicable Order Form(s), (4) the Software Use Rights, and (5) all other applicable exhibits or schedules referenced by these GTCs, any applicable Program Schedules or Order Forms. Each Program Schedule, together with the terms and conditions of this GTC, applicable Order Forms and all applicable exhibits or schedules incorporated by reference or referenced therein shall constitute and construed as a separate agreement (the "Agreement").

1. DEFINITIONS

As used in the Agreement, the following terms shall have the following meanings:

"Affiliate" means any person, partnership, joint venture, corporation, company or other form of enterprise, domestic or foreign (collectively, "Legal Entity"), including but not limited to subsidiaries, located in the Territory, and in which Partner, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights. Any such Legal Entity shall be considered an Affiliate for only such time as such equity interest is maintained.

"API" means SAP's application programming interfaces, as well as other SAP code that allow other software products to communicate with or call on the Software (for example, SAP Enterprise Services, BAPIs, Idocs, RFCs and ABAP calls or other user exits) provided under the Agreement. APIs are made available to Partner through either (or both) the Software or SAP SDKs.

"Confidential Information" means, with respect to SAP, all information which SAP protects against unrestricted disclosure to others, including but not limited to: (a) the Software and Documentation and other SAP Materials, including without limitation the following information regarding the Software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software; (b) the research and development or investigations of SAP; (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies; and (d) any information about or concerning any third party (which information was provided to SAP subject to an applicable confidentiality obligation to such third party). With respect to Partner, "Confidential Information" means all information which Partner protects against unrestricted disclosure to others and which (i) if in tangible form, Partner clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Partner identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary within thirty (30) calendar days of any such disclosure.

"Control" means the power of a person to direct or cause the direction of the affairs of another, directly or indirectly, in accordance with the wishes of that person (or persons acting in concert) whether by means of: (i) in the case of a company, being the beneficial owner of more than fifty percent (50%) of the voting rights in that company, or having the right to appoint or remove a majority of the directors or otherwise control the votes at board meetings of that company by virtue of any powers conferred by the articles of association, shareholders' agreement or any other document regulating the affairs of that company; (ii) in the case of a partnership, being the beneficial owner of more than fifty percent (50%) of the voting rights in the partnership, or having the right to control the composition of or the votes to the majority of the management of that partnership by virtue of any powers conferred by the partnership agreement or any other document regulating the affairs of that partnership. For these purposes "persons acting in concert", in relation to a person, are persons which actively cooperate, pursuant to an agreement or understanding (whether formal or informal) with a view to obtaining or consolidating Control of that person.

"Documentation" means SAP's documentation which is delivered or made available to Partner or the End User with the Software under the Agreement.

"End User" means a person or Legal Entity to which Partner distributes, license or provides access to the Software pursuant to the terms of the Agreement.

"End User License Agreement" or "EULA" means a license agreement between Partner and any End User to which Partner resell, license, distribute or otherwise provide access to the Software in accordance with the Agreement.

"Group Company" means any person, partnership, joint venture, corporation, company or other form of enterprise, domestic or foreign, located in the Territory, who (i) is under the Control of Licensor or (ii) has Control over Licensor.

"Integration" means applications, scripts, commands or instructions that use the API to connect to the Software.

"Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

"Licensor" means the entity identified by the Program Schedules or the Order Form that is a party to the Agreement.

"Licensor Materials" means any software, programs, tools, systems, data, or other materials made available by SAP to Partner in the course of the performance under the Agreement including, but not limited to, the Software, Documentation and Subscription Services, as well as any information, materials or feedback provided by Partner to SAP relating to the Software, Documentation and Subscription Services.

"Modification" means (i) a change to the delivered source code or metadata; or (ii) any development, other than a change to the delivered source code or metadata, that customizes, enhances, or changes existing functionality of the Software including, but not limited to, the creation of any

new application program interfaces, alternative user interfaces or the extension of the SAP data structures; (iii) any other change to the Software utilizing or incorporating any Licensor Materials, or (iv) any modification, enhancement or customization of the Software using SAP SDK, as well as any modification, enhancement or customization of such SAP SDK.

"Order Form" means any order form mutually executed by SAP and Partner for the Software or Subscription Services ordered by Partner hereunder, including information on Software or Subscription Services, support or maintenance fees, other information necessary for the delivery of such items to Partner and such other terms and conditions as mutually agreed upon by the parties in writing. All Exhibits or schedules referenced in the GTCs or Partner Schedule may be attached to an Order Form in lieu thereof. Order Form does not include fees for professional services, which shall be billed under separate statements of work and professional services agreement.

"Program Schedules" means the applicable Program Schedules made available at: <http://www.sap.com/agreements/western-europe> referenced in the Order Form and current as of the effective date of such Order Form. The Program Schedules provides certain rights and obligations with respect to the Software, Subscription Services and/or SAP Support applicable to the specific SAP partner program, that are in addition to or different from those set forth herein.

"SAP" means the SAP entity identified by this GTCs or the Order Form that is a party to this Agreement.

"SAP SDK" means SAP software development kit that includes tools such as APIs, source code, redistributable files and instructions. SAP SDKs are also Software within the meaning of the Agreement.

"Software" means, collectively, (i) any and all software products licensed to Partner as identified in any Order Form referencing the GTCs and applicable Program Schedules, all as developed by or for SAP AG, Business Objects Software Limited, Sybase, Inc, iAnywhere Solutions, Inc, and/or any of their Group Companies and delivered to Partner thereunder; (ii) any New Releases thereof subject to unrestricted shipment that are made generally available by Licensor to its Partners as part of SAP Support as specified in the applicable Program Schedule and Order Form and (iii) any complete or partial copies of any of the foregoing.

"Software Use Rights" means, with regard to Software or other Subscription Services specified in an Order Form, the SAP Software Use Rights Schedule current as of the effective date of the applicable Order Form, a copy of which are found at: <http://www.sap.com/agreements/western-europe> (please select "Software Use Rights Agreements" => "English" => "SAP Software Use Rights (English)"). The Software Use Rights provide additional or supplemental terms and conditions in connection with the Use of the Software as specified in the Program Schedule or Order Form. Such Software Use Rights are incorporated herein by reference. SAP recommends Partner and End User print a copy of the Software Use Rights for their respective records.

"Third Party Products" means any and all software products and content (including, without limitation, Address Directories) licensed to Partner under the Agreement or Order Form, all as developed by companies other than SAP AG, Business Objects Software Limited, Sybase, Inc., iAnywhere Solutions, Inc. or their Group Companies.

"Territory" means the territory as specified in the Program Schedule.

"Trademarks" means the trademarks, service marks, trade names, service names, proprietary words, symbols and other logos of SAP or any of its Group Companies.

"Use" means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

Other defined terms shall have the meanings set forth herein. References to "Exhibits" shall include all sub-exhibits of such Exhibit (i.e. references to Exhibit A will include Exhibits A-1, A-2 and A-3 etc) and such Exhibits may be attached to this GTCs, Program Schedule or any Order Form.

2. GRANT OF RIGHTS

2.1 Program Schedules. The Agreement provides Partner certain rights and obligations with respect to specific SAP partner programs, all as specified in the Program Schedule(s). The parties may, but are under no obligation to, execute multiple Program Schedules, or Order Forms each referencing different Program Schedules, in order for Partner to join different SAP partner programs.

2.2 Grant of Licenses. Subject to the terms of the Agreement and if specified in the applicable Program Schedule, Licensor grants to Partner the non-exclusive, non-transferable right to use, license, offer for license, resell and/or otherwise distribute the Software solely in accordance with the license grant specified in the applicable Program Schedule.

2.2 Database and Third Party Products. Partner and its End Users shall be responsible for any additional software, migration tool, or third party product not licensed hereunder that is needed to Use or Integrate with the Software.

2.3 **Support.** Each party's obligations regarding support and maintenance shall be as set forth in the applicable Program Schedule or Order Form.

3. GENERAL OBLIGATIONS OF AND LIMITATIONS TO PARTNER

3.1 To the extent the Program Schedule grants Partner the right to contract directly with the End user for the license of the Software, Partner shall secure the End User's consent to an End User License Agreement with terms not less protective of Licensor than the SAP Software General Terms and Conditions current as of the effective date of the license for Software licensed to each End User, a copy of which may be found at: <http://www.sap.com/agreements/western-europe> (please select "SAP Software Agreements" => "SAP Software General Terms and Conditions (US)"), the Software Use Rights and such other special terms as required by the applicable Program Schedule and Order Form to be included in such End User License Agreement. Where Partner decides to use the SAP Software General Terms and Conditions for its own purposes, Partner shall replace the references to SAP therein with Partner's name. Licensor shall be made a third party beneficiary under the End User License Agreement. Partner shall ensure that the terms of the End User License Agreement are fully effective and binding as required under applicable laws and regulations in the country, territory or jurisdiction in which Partner is distributing the Software, whether directly or indirectly. For clarity, Partner is not required to use the SAP Software General Terms and Conditions in verbatim provided that the requirements of this Section 3.1 are met. End User agrees to enable Licensor or Partner to perform audits with regards to the usage of the Software at the End User's sites. A specific reference to Licensor is not required.

- 3.2 Delegation of Partner Duties. Partner may delegate the performance of the Partner's duties to suitably qualified personnel of an Affiliate. Notwithstanding such delegation by the Partner of its duties, Partner shall remain directly accountable to Licensor. Under no circumstances shall the Partner's Affiliate be entitled to hold itself out to be an Authorized SAP partner or having any other direct relationship to Licensor.

4. PAYMENT, TAXES AND DELIVERY

- 4.1 Orders, Fees and Payment terms. Partner agrees to pay all fees as set forth in the applicable Program Schedules and Order Forms. All amounts due to Licensor under the Agreement shall be paid in the currency indicated in the applicable Program Schedule or Order Form. Partner will independently establish prices and terms for the Software, provided such terms include those required by the Agreement.
- 4.2 Partner shall order the Software and services according to Licensor's standard procedures. Any amounts payable under the Agreement and invoiced by Licensor shall be due within thirty (30) days of the invoice date. All payments made hereunder are non-refundable.
- 4.3 Partner agrees that all fees due to Licensor shall not be used to reduce, offset, or make contingent any payments due to Licensor. Partner can offset claims only if they are uncontested or awarded by final and binding court or arbitration court order. For avoidance of doubt, but without limiting the applicability of the foregoing, any fees due to Licensor under the Agreement are not contingent upon payments from third parties (including without limitation payment by Partner's resellers, distributors and/or End Users).
- 4.4 Payments made under this Agreement after their due date will incur interest at the applicable statutory interest rate.
- 4.5 Fees and other charges described in the Agreement, Program Schedules, Order Forms, or in any SAP Price List(s) referenced in the Program Schedules, do not include federal, state or local sales, VAT, GST, foreign withholding (including foreign income withholding), use, property, excise, service, or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Partner's account. Partner shall collect and pay (or furnish Licensor with appropriate proof of exemption from) all sales, use and other applicable taxes, customs duties and fees, export taxes and fees, and other charges (with the exception of the income taxes of Licensor) applicable to Licensor's delivery of the Software and Documentation to Partner or End User, or any services to Partner or an End User. Partner shall provide to Licensor copies of all valid resale certificates upon the effective date of the Agreement, shall keep current all resale certificates, and shall notify Licensor immediately in the event any such resale certificate is no longer valid. Partner hereby agrees to indemnify Licensor for any Taxes and related costs, interest and penalties paid or payable by Licensor.
- 4.6 Licensor may require all partners in a country (including Partner) to settle any invoice in full prior to Licensor's delivery of Software if this is, in Licensor's reasonable discretion, needed to safeguard Licensor's justified financial interests.
- 4.5 Delivery. Subject to the terms and conditions of the Agreement and to the extent the Program Schedule grants Partner the right to resell, license or otherwise distribute the Software, Licensor will deliver the Software and SAP Support by making it available for electronic download through the SAP ServiceMarketPlace (<http://service.sap.com/swdc>) or such other network to Partner or its End User as the case may be. The Software is deemed delivered (including but not limited for purpose of fixed delivery dates) and the risk of loss passes at the time of such electronic delivery and has informed the Partner or the End User, as the case may be, of such download availability. Partner agrees not to request any physical delivery of Software or SAP Support and should it occur that any such delivery will be rejected by Partner. Partner agrees and understands that the calculation of Taxes may be affected by the delivery method and delivery location of the Software and corresponding SAP Support.

5. AUDITS.

- 5.1 During the term of the Agreement and for three (3) years thereafter, Partner will maintain relevant and accurate records regarding its distribution and sublicensing of the Software or Licensor Materials, directly or indirectly, to each of its End Users. Upon reasonable notice to Partner, Licensor may audit or have audited by an external expert appointed by Licensor ("Nominated Auditor"), at Licensor's expense, the records of Partner and its employees, associates, agents, subcontractors or any other person acting on its behalf relating to Partner's activities under the Agreement to determine Partner's compliance hereunder, including the compliance with the license terms applying to Software, the calculation of the fees due under the Agreement, and the accurateness and completeness of the payment or reports submitted to Licensor under the Agreement. All such records will be subject to Section 7.5 (Confidential Information). If the audit is performed by Licensor, Partner shall ensure that the audit can be performed on an anonymous basis and does not provide any End User name and/or contact information to Licensor during the audit procedure. If the audit is performed by the Nominated Auditor, then such Nominated Auditor shall not provide any End User names and contact information to Licensor. In the event any such audit reveals that Partner has underpaid Licensor, then, in addition to immediately settling the outstanding amount and such other remedies as Licensor may have, Partner shall pay or reimburse to Licensor the cost of the audit. In the event Partner or Licensor discovers that the use of Software by any End User has exceeded the licensed level, Partner shall be obligated to pay Licensor the applicable fees as if the additional licenses were licensed immediately prior to the date the licenses were first used.
- 5.2 Partner undertakes to carry out system measurements of its End Users' systems at Licensor's request in order to measure the utilization of the Software by the End User and to make the logs available to Licensor. The parties shall cooperate in good faith to implement any necessary auditing tools and enable the effective auditing of the End Users by Partner. In addition, Partner shall use reasonable efforts to obtain the approval of the End User to enable Licensor or any third party authorized by Licensor to carry out system measurements at the systems of the Partner's End Users directly.

6. LOGOS

- 6.1 To the extent the applicable Program Schedule grants Partner the right to resell, license or otherwise distribute the Software, Licensor grants to Partner during the term of the applicable Program Schedule a revocable, nonexclusive, nontransferable license to use the appropriate SAP partner logo included with the SAP Branding Guide in the Territory in accordance with the terms of this Section 6. This license to use the SAP partner logo includes the right to use the SAP corporate logo as part of the SAP partner logo (hereinafter "**SAP Logo Trademarks**"). Partner is not permitted to grant sublicenses to SAP Logo Trademarks.
- 6.2 When using SAP Logo Trademarks, Partner must adhere to all requirements and obligations of SAP Branding Guide.
- 6.3 Partner shall not contest the validity of the SAP Trademarks or support the contesting of its validity and shall not derive any right against Licensor through its permitted use of SAP Logo Trademarks. In its use of SAP Logo Trademarks, Partner shall indicate that the SAP Logo Trademarks are registered by and for SAP. In this context Partner acknowledges that SAP AG is the sole owner of rights in the SAP Trademarks. Partner undertakes to make all those declarations and provide all those documents for the benefit of SAP as SAP or SAP AG

may require in the prosecution of its rights in the SAP Trademarks. All advertising and sales material used by Partner for the Software must bear the notices prescribed by Licensor or its Group Companies concerning trademarks and other identifying marks. Partner must refrain from registering SAP's and/or SAP AG's name (or any domain name or trademark) or SAP AG's logo (or any names, logos, domain names or trademarks which are confusingly similar to any of them) for itself or permitting third parties to using or otherwise exploiting SAP's and/or SAP AG's name, domain name, logo or trademark (or any name, logo, trademark or domain name which are confusingly similar to any of them). Partner must, at SAP's choice, either transfer any rights regarding such name, logos, trademarks and domain names to SAP as soon as they arise or permit SAP to exploit them.

- 6.4 Partner shall provide samples of its advertising copy and sales literature, in their original language and in English, as applicable, upon Licensor's request. Licensor reserves the right to review and approve all uses of SAP's Trademarks in Partner's advertising and promotion of the Software, prior to use. Such approval will not limit Partner's obligation to comply with all applicable laws and will not be deemed an endorsement or approval of any advertising content. Partner shall make no representations regarding the Software except as consistent with SAP's own promotional and technical materials or as Licensor may otherwise provide or approve in writing.

7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 7.1 Intellectual Property Rights. The Software, Licensor Materials, Integration, and all Intellectual Property Rights embodied in the foregoing, shall be the sole and exclusive property of Licensor or its Group Companies, or its or their licensors. All rights in and to the Software, Integration and Licensor Materials not expressly granted in the Agreement or Program Schedules are reserved by Licensor.
- 7.2 Trademarks. Except as expressly provided in Section 6, nothing in the Agreement grants Partner the right to use or display any Licensor or Group Company's names, trademarks, trade names, logos or service marks. Partner shall not remove, delete or in any manner alter the Trademarks or other Intellectual Property Rights notices of Licensor, Group Companies and Licensor's suppliers, if any, appearing on the Software or Licensor Materials as delivered to Partner. Licensor shall have the sole and exclusive right to protect and defend the Trademarks, at its sole cost and expense. Partner shall reasonably cooperate with Licensor, at Licensor's expense, in the defense and protection of the Trademarks, and shall promptly advise Licensor of the use of any mark infringing any of the Trademarks of which it has knowledge.
- 7.3 Modifications. Except as permitted under the applicable Program Schedule, Partner shall not modify, adapt, enhance, localize, translate or make derivatives of the Software and Licensor Materials. Any and all Modifications, adaptations, enhancements, localizations, translations and derivative works shall be deemed to be the sole property of Licensor or its designated Group Company, and Partner hereby assigns all rights in them (including moral rights) to Licensor or its designated Group Company. Partner agrees to execute those documents reasonably necessary to secure Licensor or its Group Company's rights in the foregoing. In no event shall Partner remove or alter any electronic registration capture screen which may appear when any End User first installs or accesses the Software.
- 7.4 Reverse Engineering, Source Code. Partner shall not disassemble, reverse engineer or decompile, nor otherwise create or attempt to create the source code from the object code of the Software or Licensor Materials in any manner, unless such action is indispensable in order to obtain information necessary to achieve interoperability of the Software with an independently created computer program and Partner has not been provided such information, despite a written request, within a reasonable period of time. Information obtained through such action may not be used for purposes other than to achieve interoperability, and may not be given to third parties, unless this is necessary to establish interoperability, in particular is not to be used for the development, creation or marketing of programs similar to the Software. If Partner wishes to exercise any right to reverse engineer to ensure interoperability in accordance with applicable law, Partner shall first provide written notice to Licensor and permit Licensor, at its option, to make an offer to provide information and assistance reasonably required to ensure interoperability of the Software with other products for a fee to be mutually agreed upon (if any). Partner shall have no right to the source code of any Software.
- 7.5 Confidential Information.
- (a) Confidential Information shall not be used or reproduced in any form except as required to accomplish the intent of the Agreement. Any reproduction of any Confidential Information of the other party shall remain the property of the Disclosing Party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than individuals whose access is necessary to enable it to exercise its rights and/or perform its obligations hereunder and who are under obligations of confidentiality substantially similar to those set forth herein. As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either party disclosed prior to execution of the Agreement shall be subject to the protections afforded hereunder.
- (b) The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the Disclosing Party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without breach of the Agreement by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; or (d) the Disclosing Party agrees in writing is free of such restrictions.
- (c) Partner shall not disclose the terms and conditions of the Agreement or the pricing contained herein to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Partner agrees that Licensor may use Partner's name in customer or partner listings or, at times mutually agreeable to the parties, as part of Licensor's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPHIRE participation). Licensor will make reasonable efforts to avoid having the reference activities unreasonably interfere with Partner's business.
- 7.6 Partner shall inform Licensor as soon as practicable if it is aware of any third party that has unauthorized access to the Software or Licensor Materials (including End Users that exceed licensed levels) or markets, sells, or uses the Software or Licensor Materials without authorization. Moreover, Partner must also assist Licensor in every reasonable way in the pursuance of Licensor's rights and, upon consultation with Licensor, must immediately take all steps for the protection of those rights. Partner must temporarily stop selling and marketing the Software to any such third party unless and until such ambiguity is resolved to Partner's and Licensor's satisfaction.

- 7.7 The parties recognize that either party has the right to develop independently software or services that would compete with the other party's software or services without use of any Confidential Information disclosed by such other party hereunder. Further, either party shall be free to use for any purpose the residuals resulting from access to or work with Confidential Information disclosed hereunder. The term "residuals" means information in non-tangible form, which may be retained inadvertently in the unaided memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained herein, so long as such persons have not studied the information for the purpose of replicating the same from memory. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay fees or royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either party a license under the other party's copyrights or patents.
- 7.8 Licensor's and Partner's liability for any breach of the foregoing confidentiality undertakings shall not be subject to any liability limitation as otherwise may be applicable under the Agreement.

8. INDEMNIFICATION

8.1 Third Party Rights.

- (a) Licensor shall defend Partner against claims brought against Partner by any third party alleging that Partner's distribution or its End User's use of the Software, in accordance with the terms and conditions of the Agreement, the Program Schedules and the applicable Order Forms, constitutes a direct infringement or misappropriation of a patent claim(s), copyright or trade secret rights, and Licensor will pay damages finally awarded against Partner (or the amount of any settlement Licensor enters into) with respect to such claims. This obligation of Licensor shall not apply if the alleged infringement or misappropriation results from use of the Software in conjunction with any other software or service if such claim could have been avoided without such Combination Use, or unlicensed activities or use of the Software in violation of the Agreement or to free (no fee) or trial licenses of the Software. This obligation of Licensor also shall not apply if Partner fails to timely notify Licensor in writing of any such claim, however Partner's failure to provide or delay in providing such notice shall not relieve Licensor of its obligations under this Section except to the extent Licensor is prejudiced by Partner's failure to provide or delay in providing such notice. Licensor is permitted to fully control the defense and any settlement of any such claim as long as such settlement does not include a financial obligation on or admission of liability by Partner. In the event Partner declines Licensor's proffered defense, or otherwise fails to cede full control of the defense to Licensor's designated counsel, then Partner waives Licensor's obligations under this Section 8.1. Partner shall reasonably cooperate in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Licensor. Licensor expressly reserves the right to cease such defense of any claim(s) in the event the Software is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. Licensor may settle any claim on a basis requiring Licensor to substitute for the Software alternative substantially equivalent non-infringing services. Partner shall not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software that is prejudicial to Licensor's rights.
- (b) In the event a claim under Section 8.1 is made or alleged or in Licensor's reasonable opinion is likely to be made or be alleged, Licensor may, at its sole option and expense: (i) procure for Partner and its End Users the right to continue using the Software under the terms of the Agreement; or (ii) replace or modify the Software to be non-infringing without material decrease in functionality. If the foregoing options are not reasonably available, Licensor may terminate the Agreement and refund the license fees paid for the infringing Software by Partner less an appropriate amount covering the period of actual use of the Software by the Partner or End Users.
- (c) THE PROVISIONS OF THIS SECTION 8.1 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF LICENSOR AND ITS GROUP COMPANIES TO PARTNER, AND IS PARTNER'S SOLE REMEDY, WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. The liability limitations contained in Section 14 below shall apply to all claims made under Section 8.1. Any limitations to the liability and obligations of Licensor according to Sections 8.1 and 14 shall also apply for the benefit of Group Companies and their respective licensors.

- 8.2 Indemnification by Partner. Partner shall defend Licensor and its Group Companies against claims brought against Licensor or its Group Companies by any third party arising from or related to (i) any taxes and related costs, interest and penalties paid or payable by Licensor and/or any Group Company, (ii) an allegation that the Partner or End User's use of the Software in violation of the Agreement violates, infringes or misappropriates the rights of a third party, (iii) Partner's representations not authorized by Licensor, or (iv) Partner or its Affiliates' breach of the Agreement, including but not limited to, any breach or violation of applicable export laws or regulations, or action in excess of Partner's authority under the Agreement or Partner's failure to comply with the End User licensing requirements set forth in the Agreement, or (v) any agreement between Partner and its distributors, resellers or End Users, or (vi) a claim that any third party products or services not licensed by Licensor that are provided by Partner to End User infringes, misappropriates or violates any patent, copyright or trademark of any third party or Partner's combining (or its authorizing others to combine) the Software with any products or service not provided by Licensor, or (vii) a third party's assertion that Partner acted as Licensor's agent or otherwise on its behalf End User. Partner will pay damages finally awarded against Licensor and its Group Companies (or the amount of any settlement Partner enters into) with respect to such claims. The foregoing shall apply regardless of whether such damage is caused by the conduct of Partner, its resellers, distributors, agents or its End Users. This obligation of Partner shall not apply if Licensor fails to timely notify Partner in writing of any such claim, however Licensor's failure to provide or delay in providing such notice shall not relieve Partner of its obligations under this Section except to the extent Partner is prejudiced by Licensor's failure to provide or delay in providing such notice. Partner is permitted to fully control the defense and any settlement of any such claim as long as such settlement does not include a financial obligation on or admission of liability by Licensor or otherwise obligates Licensor to specific performance. In the event Licensor declines Partner's proffered defense, or otherwise fails to cede full control of the defense to Partner's designated counsel, then Licensor waives Partner's obligations under this Section 8.2. Licensor shall reasonably cooperate in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Partner.

9. TERM AND TERMINATION

- 9.1 The Agreement is entered for an initial term as described in the Program Schedule or applicable Order Form ("Initial Term"), unless earlier terminated as set forth herein. The Agreement may be extended by a term to be defined upon mutual written agreement of the parties only.
- 9.2 In addition to such other termination rights that may be provided in the Program Schedule, the Agreement and the license granted under the Agreement may be terminated by either party for good cause upon written notice to the other in accordance with the following:

- (a) thirty days after Licensor gives Partner notice of Partner's breach of any provision of the Agreement (other than Partner's breach of its obligations under Sections 2.2, 7.1 – 7.7, 10, 11 or 12.1, which breach shall give right to immediate termination), unless Partner has cured such breach during such thirty day period;
- (b) immediately if Partner does not pay on the due date any amount payable to Licensor unless payment is made within 30 days of its due date;
- (c) immediately if (1) Partner commences negotiations with one or more of its creditors with a view to rescheduling major parts of its indebtedness or (2) Partner files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors.

9.3 Obligations on Termination.

- (a) Any terms of the Agreement which by their nature extend beyond the day the Agreement ends remain in effect until fulfilled, in particular any terms protecting the Intellectual Property Rights of an SAP Group Company, and apply to respective successors and assignees.
- (b) To the extent the Program Schedule grants Partner the right to resell, license or otherwise distribute the Software, upon termination or expiration of the Agreement for any reason:
 - (i) Partner shall immediately cease distributing or sublicensing the Software (including any licensed Address Directories) licensed under the applicable Program Schedule to any End Users, including renewing any subscription based license agreements with existing customers, or marketing the Software under the Agreement;
 - (ii) Partner shall immediately cease (a) use of all Licensor Materials and Confidential Information, and (b) to identify itself as an authorized partner for Licensor or its Group Companies or otherwise affiliated in any manner with Licensor;
 - (iii) Partner may use the Test and Demonstration licenses of the Software granted under any applicable Program Schedule to provide support to its End Users and for archival purposes subject to Partner continuing compliance with the terms of the Agreement and provided that Partner is not in breach with the terms of the Agreement;
 - (iv) any fees previously paid by Partner are non-refundable except as otherwise expressly set forth in the Agreement;
 - (v) any paid-up perpetual license to the Software previously distributed to an End User on an on-premise basis shall survive according to the terms of such license;

- 9.4 Within 30 days after any termination or expiration of the Agreement, Partner shall irretrievably destroy or upon Licensor's request deliver to Licensor all copies of the Licensor Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Partner must certify to Licensor in writing that it has satisfied its obligations under this Section. Termination shall not relieve Partner from its obligation to pay fees that remain unpaid. Additionally, the parties hereto agree that communications to End Users and any publications/press releases regarding such termination shall be mutually agreed upon, in writing, prior to distribution.

10. IMPORT AND EXPORT CONTROLS

- 10.1 The Software, Documentation and Licensor Materials are subject to the export control laws of various countries, including without limit the laws of Ireland, United States and Germany. Partner agrees that it will not submit the Software, Documentation or other Licensor Materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of Licensor. Partner agrees to comply with the laws and regulations restricting import, export, re-export, transfer or release to certain entities or destinations of the United States, E.U., Irish and other applicable jurisdictions ("Export Regulations"). With respect to any export, re-export, transfer, or release otherwise permitted under the Agreement to persons within Partner or its Affiliates or to unrelated third parties of: (i) such technology, software, services or commodities; or (ii) the direct product of any such technology; or (iii) any product that Partner creates with content that is supplied by Licensor; or (iv) any technology that Partner creates that is based upon or commingled with technology provided by Licensor, Partner will comply with the Export Regulations.
- 10.2 Any import into and/or operation in countries where the import and/or operation is subject to authorization by the authorities of such country shall be in the sole responsibility of Partner. Licensor assumes no responsibility or liability for Partner's failure to obtain any necessary export approvals. Partner shall take all necessary actions and precautions to ensure that any permitted distributors, resellers and other customers do not contravene the Export Regulations. Licensor will reasonably cooperate with Partner to identify the export status and requirements of the Software or other Licensor Materials. Notwithstanding anything to the contrary, Licensor may refuse the fulfillment of its obligations under the Agreement if and for as long as such fulfillment violates the Export Regulations. The parties shall then consult each other if and how compliance with the Export Regulations may be achieved with commercially reasonable efforts. For the avoidance of doubt: Licensor may request money for any modification of its Software that the parties may agree to, in their sole discretion, in order to make the item compliant. This Section 10 shall survive the expiration or earlier termination of the Agreement.
- 10.3 With respect to any delivery of Software, Documentation and Licensor Materials to be made by Licensor to Partner and/or any other party under the Agreement, Partner acknowledges that the delivery of the Software (including New Releases), Documentation and Licensor Materials may be subject to the prior obtaining of export and/or import authorizations from the competent authorities and that this process may considerably delay or prevent the delivery and/or impact Licensor's ability to provide maintenance and support. Partner shall support Licensor in obtaining any required authorization by providing information and/or declarations, e.g. End Use Certificates, as may be requested by Licensor.

11. PARTNER'S COMPLIANCE OBLIGATIONS; DATA PROTECTION

- 11.1 Partner shall conduct its operations at all times in strict compliance with all applicable anticorruption laws including the US Foreign Corrupt Practices Act (FCPA), the U.K Bribery Act 2010, and Licensor's then current local SAP Code of Business Conduct. Such obligation shall also apply to the Partner's subcontractors, Affiliates, resellers and distributors. If Partner has in place or adopts policies which establish similar standards to the SAP Code of Business Conduct, Partner may comply with its own policies to fulfil the requirements of this Section.
- 11.2 Partner shall not obtain on Licensor's behalf or provide to Licensor any information which is not legally available in the Territory, or which is procurement-sensitive, proprietary, or classified, where there is reason to believe that possession of such information is unauthorized, illegal, or unethical.

- 11.3 Partner shall not make, offer or promise any payments or gifts directly or indirectly to any employee of potential End Users. Any business entertainment offered to potential End Users must comply with the spirit and letter of the limits established in the relevant then current local SAP Code of Business Conduct.
- 11.4 Partner represents and warrants to Licensor that Partner and any other person acting on the Partner's behalf have not directly or indirectly paid, offered or promised to pay, or authorized the payment of, and will not directly or indirectly pay, offer or promise to pay, or authorize the payment of any monies or gifts or anything of value to any employee or representative of an End User or prospect, or government official or employee, political party official or candidate, or officer or employee of any public international organization (or an immediate family member of such persons) for the purpose of influencing their acts or decisions in order to secure or retain business on behalf of Licensor.
- 11.5 Partner represents and warrants that it is not listed by any government agency as debarred, suspended, or proposed for suspension or debarment or otherwise ineligible for government procurement programs. Partner certifies that neither it nor its employees or subcontractors are members of management or in a position to influence decisions related to work performed under the Agreement with respect to any End User.
- 11.6 Licensor shall be entitled to require Partner to certify once per year that Partner is in compliance with the terms of this Section 11.
- 11.7 It is not the intention under the Agreement for Licensor to process personal data of Partners or End Users. Rather, processing of Partner or End User personal data will take place only in exceptional circumstances as an incidental effect of Licensor's performing its contractual duties. To the extent Licensor does process personal data of Partner or End User and such processing constitutes commissioned data processing by Licensor under EU Directive 95/46/EC (hereinafter referred to as the "Data Protection Directive") and/or applicable national data protection laws of the EU/EEA Member States, Annex 1 attached hereto shall apply.

12. MISCELLANEOUS

- 12.1 Assignment. The Agreement may be assigned by Licensor to any entity which assumes its obligations or acquires ownership of or the right to use and license the Software. Neither the Agreement, nor any right or obligation hereunder, may be assigned, transferred, delegated or subcontracted, by operation of law or otherwise, in whole or in part, by Partner without Licensor's prior written consent, such consent not to be unreasonably withheld. A Change of Control of Partner shall be deemed an assignment of the Agreement. "Change of Control" of Partner shall mean a transaction or series of transactions (i) pursuant to which Control of Partner is acquired by persons or entities other than those who Control Partner on the Effective Date of the Agreement, or (ii) resulting in the sale of all or substantially all of Partner's assets or all or substantially all of Partner's assets utilizing any Software or Licensor Materials. Subject to the foregoing, the provisions of the Agreement shall be binding upon and inure to the benefit of the parties, and their permitted successors and assigns. Any attempted assignment or transfer of the Agreement is in violation of this Section is void.
- 12.2 Independent Contractors. The relationship of Licensor and Partner established by the Agreement is that of independent contractors. The Agreement does not give either party the power to direct and control the day to day activities of the other, constitute the parties as partners, joint venturers, co-owners, principal-agent, or otherwise participants in a joint or common undertaking, or allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. Partner has no actual, apparent, or ostensible authority to act on behalf of Licensor unless expressly stated in the Agreement. Partner must indemnify and hold harmless Licensor and its Group Companies in respect of any third party claims against Licensor and/or any of its Group Companies arising or relating to a third party's assertion that the Partner acted as Licensor's agent or otherwise on this behalf.
- 12.3 Entire Agreement. The Agreement constitutes the complete and exclusive statement of the agreement between Licensor and Partner, and all previous representations, discussions, and writings are merged in, and superseded by the Agreement and the parties disclaim any reliance on any such representations, discussions and writings. Each party acknowledges that it is entering into the Agreement as a result of its own independent investigation and not as a result of any representation of the other party not contained herein. Any additional or different terms in Partner's documents (including any preprinted terms contained on purchase orders) are hereby deemed to be material alterations and notice of objection to, and rejection of, them is hereby given, and such additional or different terms shall be void. Signatures sent by electronic means (facsimile or scanned and sent via e-mail) shall be deemed original signatures.
- 12.4 Amendments; Waivers. The Agreement may not be modified or any term or condition waived except in a writing signed by a duly authorized representative of each party. This shall also apply to a possible waiver of the written form requirement established in the foregoing sentence. No waiver of any breach of any provision of the Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof.
- 12.5 Force Majeure. Except for a party's payment obligations, neither party shall be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, earthquake, fire, flood, war, embargo, strike, riot, inability to secure materials and transportation facilities, or the intervention of any governmental authority.
- 12.6 Publicity. The terms of the Agreement are confidential.
- 12.7 Notices. All notices or reports which are required or may be given pursuant to the Agreement shall be in writing and shall be deemed duly given when delivered by a party to another at the addresses first set forth in the Agreement or applicable Order Form. A copy of the notice provided by Partner to Licensor shall be sent to Licensor's address to the attention of: SAP Legal Department. Where in this Section 12.7 or elsewhere in the Agreement notices in written form are required, that requirement can be met by facsimile transmission, email or exchange of letters to the address, email address or facsimile number of the respective parties set forth in any Order Form.
- 12.8 Non-Exclusivity. This is a non-exclusive relationship. Each party may have similar agreements with others and may independently develop, acquire, and market materials, equipment, or programs that may be competitive with (despite any similarity to) the other party's products or services. Each party is responsible for its own costs, including all business, travel and living expenses incurred by the performance of the Agreement.
- 12.9 Hierarchy. The following order of precedence (in descending order of priority) shall be applied in the event of conflict or inconsistency between provisions of the components of the Agreement: (i) the Order Form (including applicable exhibits and schedules attached thereto); (ii) Program Schedule (including exhibits and schedules attached thereto), and (iii) this general terms and conditions.

13. WARRANTIES AND DISCLAIMER

- 13.1 Licensor warrants that the Software will substantially conform to the specifications contained in the Documentation for six months following delivery. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; (ii) to any third party software, including the third party database; or (iii) if the Software has been subjected to any modification; or (v) to the extent that the defect is caused by or is contributed to by Partner or End User; or (vi) if Partner or End User does not provide access, including remote access, to the Software to Licensor's support personnel; or (vii) if the defect is caused by any third party software, Partner or third party products. Licensor does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Partner or End Users' business requirements. To the extent the problem is reported by an End User, Partner shall cause its End Users to provide Licensor with sufficient test time and support to duplicate the problem, to verify that the problem is with the Software, and to confirm that the problem has been corrected. Provided Partner notifies Licensor in writing with a specific description of the Software's nonconformance within the warranty period and Licensor validate the existence of such nonconformance, Licensor will, at its option: a) repair or replace the nonconforming Software, or b) refund the license fees paid for the applicable nonconforming Software in exchange for a return of such nonconforming Software. This is Partner's sole and exclusive remedy under this warranty.
- 13.2 Express Disclaimer. To the maximum extent permitted by applicable law, Licensor and its licensors disclaim all other warranties express or implied, including without limitation, any implied warranties or merchantability or fitness for a particular purpose, and non-infringement, except to the extent that any warranties implied by law cannot be validly waived.
- 13.3 Partner represents and warrants that within industry standards it has and will maintain sufficient facilities and adequate capital, resources, and personnel to market and support the Software and to perform its obligations under the Agreement. Further, Partner represents and warrants that it will comply with all legal requirements applicable in the Territory and that it knows the essential functional characteristics of the Software and bears the risk that the Software does not meet Partner's or any End User's wishes and requirements.
- 13.4 Partner shall not make any representations or warranties as to the performance of the Software, Support or other services on behalf of Licensor or otherwise make commitments on behalf of Licensor.

14. LIMITATION OF LIABILITY

- 14.1 Anything to the contrary herein notwithstanding, except for damages resulting from unauthorized use or disclosure of confidential information and Licensor's right to collect unpaid fees, under no circumstances shall Licensor (or its Group Companies or Licensors) be liable to Partner, any End User, or any other person or entity for an amount of damages in excess of the total amount paid by Partner to Licensor for the Software, Third Party Products or Services directly causing the liability during the twelve month period immediately preceding the event giving rise to other claim, and under no circumstances in the aggregate for all claims to exceed an amount paid to Licensor during the term of the Agreement. Under no circumstances shall Licensor or its licensors be liable for special, incidental, consequential or indirect damages, loss of goodwill or business profits, work stoppage, data loss, computer failure or malfunction, any and all other commercial damages or loss, or exemplary or punitive damages, even if advised of the possibility thereof.
- 14.2 It is expressly understood and agreed that each and every provision of the Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the parties to be severable and independent of any other provision and to be enforced as such.
- 14.3 Partner acknowledges that none of Licensor or its licensors are engaged in the business of rendering legal, tax, or other professional services and that the information provided by Licensor relative to the Agreement or in response to Partner inquiries are not intended to provide legal, tax or other expert advice to Partner, or be a substitute for a lawyer, accountant, or other professional. If Partner needs legal or tax advice or other expert assistance, the services of a competent lawyer, accountant or other professional licensed to practice in the applicable jurisdiction should be sought.
- 14.4 The foregoing limitation of liability does not apply to willful misconduct or fraud, personal injury or death caused by the negligence or any other liability which cannot be excluded or limited by applicable law.
- 14.5 Claims. Neither party will bring a legal action under the Agreement more than two more than two years after the cause of action arose.

15. GOVERNING LAW

This Agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the laws of Ireland. In the event of any conflicts between foreign law, rules, and regulations, and Irish law, rules, and regulations, Irish law, rules, and regulations shall prevail and govern. The exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement is Ireland.

16. SEVERABILITY; INJUNCTIVE RELIEF

- 16.1 The terms of the Agreement are severable. If any term hereof is held invalid, illegal, or unenforceable for any reason whatsoever, such term shall be enforced to the fullest extent permitted by applicable law, and the validity, legality, and enforceability of the remaining terms shall not in any way be affected or impaired thereby.
- 16.2 Both parties acknowledge that remedies at law may be inadequate to provide Licensor or Partner with full compensation in the event of Partner's material breach of Sections 7.2 or 7.5 with respect to Licensor's Confidential Information and its Trademarks or Licensor's material breach of Section 7.5 with respect to Partner's Confidential Information, and that the non-breaching party shall therefore be entitled to seek injunctive relief in the event of any such material breach.

ANNEX 1
Data Protection

It is not the intention under this Agreement for Licensor to process personal data of Partners or End Users. Rather, processing of Partner or End User personal data will take place only in exceptional circumstances as an incidental effect of Licensor's performing its contractual duties. To the extent Licensor does process personal data of Partner or End User and such processing constitutes commissioned data processing by Licensor under EU Directive 95/46/EC (hereinafter referred to as the "Data Protection Directive") and/or applicable national data protection laws of the EU/EEA Member States, this Annex 1 shall apply.

Commissioned Processing of Personal Data

This Exhibit stipulates the rights and obligations of Partner and Licensor in connection with personal data processed by Licensor on behalf of Partner under the Agreement. This exhibit shall be an integral part of the Agreement.

1. Obligations of Partner

- 1.1 As between Licensor and Partner, Partner shall be solely responsible for the permissibility of the processing of personal data as well as for safeguarding the rights of the data subjects. Partner shall enter into appropriate data protection agreements with End Users that procure that Partner is authorized to engage Licensor as a sub-processor of personal data controlled by End User, in accordance with the terms of this Annex 1.
- 1.2 Partner shall give commissions related to the processing of personal data and parts thereof to Licensor in writing, by facsimile or via e-mail or implied by making use of the Software.
- 1.3 Partner shall make available the personal data for processing to Licensor and the results of the processing shall be transferred back by Licensor to Partner by using a defined transfer procedure or in accordance with the functionality implemented in the Licensor Software.
- 1.4 Partner shall inform Licensor without delay, if Partner detects errors or irregularities when examining the results of the processing of personal data.

2. Obligations of LICENSOR

- 2.1 Licensor shall process the personal data and other operating data of Partner exclusively in accordance with Partner's instructions and/or End User's instructions relayed to Licensor by Partner which may include (without limitation) the correction, erasure and/or the blocking of such data. The personal data shall not be used by Licensor for any other purpose. Licensor shall not preserve such personal data longer than instructed by Partner. The statutory preservation periods remain unaffected.
 - 2.2 For processing personal data, Licensor shall only use personnel which demonstrably committed themselves to observe data secrecy and secrecy of telecommunications pursuant to applicable data protection laws, including without limitation, sec 5 German Federal Data Protection Act [*Bundesdatenschutzgesetz*] and sec 88 German Act on Telecommunication [*Telekommunikationsgesetz*]. Licensor may discharge this obligation by utilizing one standard template for all its customers.
 - 2.3 Licensor shall implement all technical and organisational measures to comply with the requirements pursuant to applicable data protection laws, including sec 9 German Federal Data Protection Act. Licensor undertakes to Partner that it has taken and will, on a continuing basis, take appropriate technical and organizational measures to keep personal data secure and protect it against unauthorized or unlawful processing and accidental loss, destruction or damage. In particular, Licensor shall take and regularly check the following protection measures:
 - *Physical access control*: Licensor shall install an access control system.
 - *Access control*: Licensor shall control and log access to data processing systems.
 - *Access limitation control*: Licensor shall define, implement and monitor a concept for user rights, rules for passwords and login procedures.
 - *Transmission control*: Licensor shall ensure personal data transmission in encrypted form or by a secure alternative procedure. Transmissions must be logged and guidelines for personal data transmissions must be laid down in writing.
 - *Input control*: Licensor shall implement a detailed logging system for input, modification and deletion of personal data.
 - *Job control*: Licensor shall define in writing and establish control mechanisms to ensure that data are processed strictly in accordance with the instructions of the Provider.
 - *Availability control*: Licensor shall run a state of the art backup system and define a restore operation procedure to protect personal data from accidental destruction or loss.
 - *Data separation*: Licensor shall ensure by technical means and defined organisational procedures that personal data collected for different purposes (e.g. different Providers) can be processed separately. Technical means can be separated computer systems or demonstrably logical separation. Access by one Partner to the data of any other Partner must be prevented.
 - 2.4 If the security measures implemented by Licensor do not meet the legal requirements, Licensor shall notify Partner without delay.
 - 2.5 Licensor shall notify Partner, if Licensor considers an instruction given by Partner to be in violation of data protection regulations. Licensor shall not be obliged to perform a comprehensive legal examination.
 - 2.6 Licensor shall inform Partner immediately in case of serious disruptions of the operating process, suspected data protection violations or other irregularities in connection with the processing of Partner's Data.
 - 2.7 At Partner's written request and at Partner's expense, Licensor shall reasonably support Partner in dealing with requests from individual data subjects and/or a supervisory authority with respect to the processing of personal data controlled by Partner. Licensor shall notify Partner about inspections and measures of a supervisory or any other competent authority.
 - 2.8 Upon expiry or termination of the Agreement, Licensor shall in accordance with the terms of the Agreement and Partner's instructions, either (i) return to Partner or all personal data controlled by Partner and all of Partner's media under Licensor's power of disposal and any copies or reproductions thereof; or (ii) erase and/or destroy such personal data and media and confirm the erasure and/or destruction to Partner in writing.
- 3. Subcontractors**
- 3.1 Licensor is authorized to engage subcontractors for the processing of personal data (each a "Subprocessor") so long as Licensor remains responsible for any acts or omissions of its Subprocessors in the same manner as for its own acts and omissions. Licensor shall pass on to subprocessors Licensor's obligations as data processor vis-à-vis Partner as set out in this document and obligate Subprocessors to obey all relevant data protection rules. Licensor will inform Partner upon its request by email or otherwise about the name, address and role of each Subprocessor concerned. Licensor shall ensure that each Subprocessor adheres to an adequate level of data protection by law or contract with Licensor not materially less protective than the obligations applicable to Licensor under the Agreement.

- 3.2 Licensor may engage sub-contractors that may provide support, including access to personal data, in connection with performing its contractual obligations under the Agreement and which are not to be regarded as Subprocessors of personal data. Such support may be provided by sub-contractors engaged by Licensor. In such cases Licensor shall be obliged to provide in the sub-contracting agreement with such support provider for appropriate contractual provisions in accordance with applicable data protection laws and to take the appropriate control measures, in order to ensure the protection and security of the personal data processed hereunder.
- 4. Monitoring Rights of Partner**
- 4.1 Partner shall have all necessary right to verify that Licensor processes the personal data duly in accordance with the Agreement. These monitoring rights shall be carried out in coordination with Licensor. After notifying Licensor the monitoring can be carried out, in particular, during Licensor's usual business hours on Licensor's premises where the personal data processing is performed. To the extent that any personal data controlled by End User is processed by Licensor, the End User shall have the same monitoring rights as Partner under this Exhibit F.
- 4.2 Licensor shall ensure that Partner has the monitoring rights set forth in Section 4.1 also vis-à-vis sub-commissioned processors of personal data (Unter-Auftragsdatenverarbeiter) retained by Licensor.
- 4.3 Licensor shall reasonably support Partner throughout these verification processes and provide Partner with the required information.
- 4.4 Licensor shall contractually safeguard Partner's powers of disposal and monitoring rights under this Agreement vis-à-vis Licensor's Subprocessors who may come into contact with the personal data. Where applicable data protection law requires the Partner to enter into a direct contractual relationship with Licensor's subcontractors, Partner hereby authorizes and empowers Licensor to enter into the necessary agreements with Licensor's subcontractors on Partner's behalf.
- 4.5 Services rendered by Licensor in connection with Partner's monitoring rights shall be at Partner's expense.
- 5. Special Confidentiality Obligation; Obligation to Observe Data Secrecy**
- 5.1 Licensor undertakes to treat the personal data, which have become known to Licensor, confidential and to use such data exclusively for the commissioned data processing.
- 5.2 Any data media provided and any copies or reproductions made thereof shall remain property of Partner. Licensor shall store these with due care, ensuring that they are not accessible to third parties. Licensor may not make copies or reproductions thereof without Partner's consent, unless this is necessary to achieve the purposes pursued with the commissioned data processing. On Partner's request, Licensor must immediately return to Partner all data media of Partner under Licensor's power of disposal and any copies or reproductions thereof or destroy them in accordance with the laws on data protection and confirm the destruction to Partner in writing.
- 5.3 Licensor undertakes to impose on its employees, who may obtain knowledge of personal data, the same obligations as entered into above by Licensor.
- 6. Applicable Law**
- For each instance where personal data are processed under this Annex 1, the provisions of this data protection exhibit shall be governed by the law of the EU / EEA Member State in which the respective controller of the personal data (Partner and/or End User) is established.