

**SAP PartnerEdge**  
**General Terms and Conditions for Open Ecosystem**  
**("Open Ecosystem GTCS")**

## **APPLICABILITY**

The following terms and conditions of these Open Ecosystem GTCs apply – except as otherwise agreed – in any contractual relationship in which SAP Deutschland SE & Co KG (herein "SAP") enters into an SAP Open Ecosystem Master Partner Agreement with Open Ecosystem Partner. They apply to precontractual relationships accordingly.

## **Definitions and Interpretation**

### **1. Definitions**

**"API"** means any development that adds new and independent functionality to the Software, but is not a Modification (defined below), and that uses APIs.

**"Associated Company"** means any legal entity of which a person or company has direct or indirect Control and only as long as the person or company maintains direct or indirect Control.

**"Cloud Services"** means SAP's then-current cloud services offered under and described in detail in the applicable SAP Open Ecosystem Model.

**"Confidential Information"** means all information which the Disclosing Party (as defined below) protects against unrestricted disclosure to others, furnished by the Disclosing Party or its Representatives to the party receiving the information ("**Receiving Party**") or its Representatives under or in connection with any part of this Agreement that (i) the Disclosing Party or its Representatives identifies as confidential and/or proprietary at the time of disclosure and/or (ii) should reasonably be understood to be confidential given the nature of the information, the circumstances surrounding its disclosure or both, including but not limited to information that is related to:

- a) software, cloud services, maintenance services, other services and in each case other related documentation ("**Disclosing Party's Software**") including, without limitation, the following information regarding Disclosing Party's Software:
  - i. computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in Disclosing Party's Software;
  - ii. benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats relating to Disclosing Party's Software, and
  - iii. discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to Disclosing Party's Software;
- b) the research and development or investigations of the Disclosing Party;
- c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, inventions (whether patentable or not), marketing plans, forecasts and strategies. the business plans or operations of the Disclosing Party;
- d) the business of any customer or partner of the Disclosing Party;
- e) Disclosing Party's properties, employees, finances, operations;
- f) with respect to SAP, the SAP Materials; and
- g) any information about or concerning any third party (which information was provided to the Disclosing Party subject to an applicable confidentiality obligation to the third party).

**"Control"** means the power to direct or cause the direction of the affairs of a legal entity whether by means of direct or indirect ownership of more than fifty per cent (50%) of the voting rights or similar rights of ownership or by means of having the power to direct the management or directors whether conferred by constitutional documents, shareholder agreement or other document regulating the affairs of an entity, all as further detailed in sections 15 et seq. of the German Stock Corporation Act (AktG).

**"Change of Control"** means that a Party is no longer under Control by the same persons or entities that had Control on the Effective Date set out in the Master Partner Agreement.

**"Documentation"** means SAP's then-current technical and/or functional documentation which is delivered or made available by SAP or any other member of the SAP Group to a Distributor, to Open Ecosystem Partner or to an End User (either directly or indirectly via Distributor and/or Open Ecosystem Partner) together with the Software, Cloud Services and/or Maintenance Services under any part of this Agreement.

**"End User"** or **"End Customer"** means a legal entity to which Open Ecosystem Partner distributes, positions or provides access to a SAP Product in compliance with the applicable SAP Open Ecosystem Model and which has been or will be granted a license right by SAP or Open Ecosystem Partner to use an SAP Product but excluding any member of the OE Partner Group.

**"Export Law"** means all constitutions, laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits restrictive measures, trade sanctions, embargos and other legally binding requirements of all federal, country, international, state and local governmental authorities relating to export, re-export or import.

**"Feedback"** means input regarding the SAP Products, services, business or technology plans, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of the SAP Products and/or services, or input as to whether Open Ecosystem Partner believes SAP's development direction is consistent with their own business and IT needs.

**"Intellectual Property Rights"** or **"IP Rights"** means without any limitation patents and other rights to inventions, copyrights, trademarks, trade names and service marks and any other intangible property rights and all related rights of use or commercialization.

**"Maintenance Services"** means SAP's then-current maintenance and/or support services offered under and described in detail in the applicable SAP Open Ecosystem Model.

**"OE Partner Group"** means any legal entity that has direct or indirect Control over the Open Ecosystem Partner and only as long as that legal entity maintains direct or indirect Control ("**Parent Companies**") as well as all Associated Companies of the Parent Companies.

**"OE Partner Product List"** means any product list(s) issued by SAP for the applicable SAP Open Ecosystem Model setting out the available software as further defined in the in the applicable SAP Open Ecosystem Model.

**"Program Requirements"** means certain program requirements that are described in detail in the applicable SAP Open Ecosystem Model and the Open Ecosystem Program Guide and that the Open Ecosystem Partner has to fulfill.

**"Representatives"** means within the meaning of section 278 of the German Civil Code (BGB)::

- a) in case of Open Ecosystem Partner (i) employees, consultants and (sub)-contractors of any member of the OE Partner Group and (ii) attorneys, accountants or other professional business advisors of any member of the OE Partner Group, and
- b) in case of SAP (i) employees, consultants and (sub)-contractors of any member of the SAP Group and (ii) attorneys, accountants or other professional business advisors of any member of the SAP Group

who are in both cases actively and directly involved in the performance of obligations under any part of this Agreement or who otherwise need to know the Confidential Information for the purpose of Party's performance under any part of this Agreement and are put under obligations of confidentiality substantially similar to those set forth in Part 1 - Article 2 (Confidentiality).

**"SAP Group"** means SAP Parent and any of its Associated Companies.

**"SAP Group Software"** means (i) any and all software products listed on the OE Partner Product List as well as any SAP SDK, all as developed by or for the SAP Group and offered under and described in detail in the applicable SAP Open Ecosystem Model; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to Maintenance Services or warranty obligation by any member of the SAP Group; and (iii) any complete or partial copies or replacements of any of the foregoing.

**"SAP Materials"** means any SAP Products or other materials (as further described in the applicable SAP Open Ecosystem Model) made available by SAP or any other member of the SAP Group to a Distributor, to Open Ecosystem Partner or to an End User (either directly or indirectly via Distributor and/or Open Ecosystem Partner) prior to or in the course of the performance under any part of this Agreement.

**"SAP Parent"** means SAP SE, a European Company (Societas Europaea, SE) established under the laws of Germany and the European Union, registered with the commercial register of the local court of Mannheim, Germany, under HRB 719915, with registered office in Walldorf, Germany, and business address at Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany.

**"SAP Partner Code of Conduct"** means SAP Group's global policy document that provides a set of compliance guidelines containing good business practices which is published on SAP's partner-dedicated website.

**"SAP Products"** means Software, Documentation, Cloud Services and Maintenance Services.

**"SAP SDK"** means SAP software development kit that includes tools such as APIs, source code, redistributable files and instructions.

**"Software"** means SAP Group Software as well as Third Party Software.

**"Third Party Software"** means (i) any and all software products listed on the OE Partner Product List all as developed by or for companies other than the SAP Group; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to Maintenance Services or warranty obligation by any member of the SAP Group; and (iii) any complete or partial copies or replacements of any of the foregoing.

**"Use"** means to activate the processing capabilities of the Software, Cloud Services and/or Maintenance Services, load, execute, access, employ the Software, Cloud Services and/or Maintenance Services, or display information resulting from such capabilities.

2. Any terms not defined in these Open Ecosystem GTCS will have the meaning ascribed to them in other parts of the Agreement (as defined in the Master Open Ecosystem Agreement). Insofar as other parts of the Agreement pertaining to a specific SAP Open Ecosystem Model contain definitions that differ from these definitions, the definitions in the SAP Open Ecosystem Model specific documents prevail with regard to the SAP Open Ecosystem Model.

3. The headings in these Open Ecosystem GTCS are for convenience only and are to be ignored in construing these Open Ecosystem GTCS.

4. Any reference in these Open Ecosystem GTCS to a defined document is a reference to that defined document as amended, varied, novated or supplemented from time to time, in line with Article 12 (Change to Terms) of Part 1 of the SAP Open Ecosystem GTCS.

5. Where the context so admits, the singular includes the plural and vice versa.

6. All defined documents referred to herein will be provided by SAP upon request.

## **PART 1 – General Terms and Conditions**

### **Article 1 Non-Exclusivity; Freedom of Action**

1. The Parties' obligations under any part of this Agreement are non-exclusive. SAP is not precluded from marketing, licensing, positioning, providing and distributing SAP Products through other partners. Nothing in this Agreement prohibits or restricts either Party's right to develop, make, use, market, license, position, provide and distribute software, cloud services, maintenance services, subscription services or other services, documents, materials or other products similar to or competitive with those of the other Party as long as it does not thereby breach its confidentiality obligations or any other part of this Agreement.

2. Open Ecosystem Partner acts in its own name, at its own risk and for its own account for the performance of any activities arising under any part of this Agreement. The Parties are therefore independent contractors and do not act as agents or representatives of each other. Neither Party is entitled to hold itself out as representing the other Party or to make any statement or give any undertaking on behalf of the other Party. Open Ecosystem Partner indemnifies SAP and any other member of the SAP Group in respect of any third-party claims against SAP arising from or relating to a third party's assertion that the Open Ecosystem Partner acted as agent, representative or otherwise on SAP's behalf.

3. This Agreement must not be construed as creating a partnership, joint venture, agency relationship or granting a franchise under any applicable laws.

### **Article 2 Confidentiality**

1. Confidential Information must not be used or reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of a party disclosing the information ("**Disclosing Party**") remains the property of the Disclosing Party and must contain any and all confidential or proprietary notices or legends which appear on the original.

2. The Receiving Party must (a) take all Reasonable Steps (as defined below) to keep all Confidential Information strictly confidential; (b) not disclose any Confidential Information to any person other than its Representatives; (c) not use Confidential Information for any purpose other than in connection with the Parties' performance under any part of this Agreement; and (d) not disclose to any person (other than its Representatives) any information about the Agreement, or the terms or conditions or any other facts relating thereto, including, without limitation, the fact that Confidential Information has been made available to the Receiving Party or its Representatives.

**"Reasonable Steps"** means those steps the Receiving Party takes to protect its own similar proprietary and confidential information, which must not be less than a reasonable standard of care.

3. The Receiving Party will be responsible for any breach of the terms of this Agreement by it or its Representatives.
4. Confidential Information of either Party disclosed prior to execution of the Agreement is subject to the protections afforded hereunder.
5. The above restrictions on the use and disclosure of the Confidential Information do not apply to any Confidential Information that:
  - a) is independently developed by Receiving Party without reference to or use of 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 this Agreement by 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.
6. Neither Party will use the name of the other Party in publicity, advertising, or similar activity, without the prior written consent of the other Party. However, any member of the SAP Group may use Open Ecosystem Partner's name in customer and partner listings (including, without limitation, showing Open Ecosystem Partner's name, address, contact details, partner engagements, areas of expertise and/or offerings on SAP's websites or online marketplaces) or, at times mutually agreeable to the Parties, as part of the SAP Group's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHIRE participation). The reference activities must not unreasonably interfere with Open Ecosystem Partner's business. Open Ecosystem Partner agrees that SAP may share information on Open Ecosystem Partner with any other member of the SAP Group for marketing and other business purposes and that Open Ecosystem Partner has secured permission from its employees to allow SAP to share business contact information with any other member of the SAP Group.
7. In the event that the Receiving Party or any of its Representatives are requested pursuant to, or required by, applicable law, regulation, court order, regulatory agency or other legal process to disclose any Confidential Information or any other information concerning the Disclosing Party, this Agreement, or the Parties' performance hereunder, the Receiving Party must provide the Disclosing Party with prompt notice of such request or requirement in order to enable the Disclosing Party (i) to seek an appropriate protective order or other remedy; (ii) to consult with the Receiving Party with respect to the Disclosing Party's taking steps to resist or narrow the scope of such request or legal process; or (iii) to waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained in a timely manner, or the Disclosing Party waives compliance, in whole or in part, with the terms of this Agreement, the Receiving Party or its Representative will use reasonable efforts to disclose only that portion of the Confidential Information which is legally required to be disclosed and to require that all Confidential Information that is so disclosed will be accorded confidential treatment.
8. Open Ecosystem Partner may provide or SAP may solicit Open Ecosystem Partner's Feedback. All Feedback is provided at the sole discretion of Open Ecosystem Partner. Unless the Parties have entered into a separate agreement that includes a comparable license from Open Ecosystem Partner to SAP regarding Feedback, Open Ecosystem Partner grants to each member of the SAP Group a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right to sublicense to any licensee, customer and end user of the SAP Group, under all relevant Open Ecosystem Partner intellectual property rights, to use, publish, and disclose such Feedback and to display, perform, copy, make, have made, use, sell and otherwise dispose of the SAP Group's and its sublicensees' products or services embodying Feedback in any manner and via any media any member of the SAP Group chooses, without reference to the source ("**Feedback License**"). Except for the license granted above to use Feedback provided by Open Ecosystem Partner at its sole discretion, SAP acquires no title or interest in any pre-existing or independently developed data, information, or intellectual property of Open Ecosystem Partner under this Feedback License. Open Ecosystem Partner acknowledges that the Feedback is only provided for information purposes but is not intended to be binding upon SAP to any particular course of business, product strategy, service strategy and/or development. If Open Ecosystem Partner's Feedback is based on Feedback of an End User, Open Ecosystem Partner must ensure that the relevant End User grants to each member of the SAP Group a Feedback License.
9. The Receiving Party will not be in violation of this Agreement due to the use of any Residuals (defined below) resulting from authorized access to or work with Confidential Information of the Disclosing Party.

**"Residuals"** means information in non-tangible form which may be incidentally retained in the unaided memory of Representatives of the Receiving Party who have had access to the Confidential Information, so long as such persons have not studied the information for the purpose of replicating the same from memory; provided, however, that in no event will Residuals include any information that a reasonable person would know was Confidential Information of the Disclosing Party.

Nothing in this Article 2 (Confidentiality) no. 9 will be deemed to grant any right, title or interest in or to (i) the Disclosing Party's Confidential Information (except for Parties' performance under any part of this Agreement) and/or (ii) any Intellectual Property Right of the Disclosing Party. Neither Party will have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of Residuals.

### **Article 3 Covenants**

1. Open Ecosystem Partner must inform SAP without undue delay if Open Ecosystem Partner becomes aware of any third party: (a) Using or otherwise having unauthorized access to any SAP Product including, without limitation, if Open Ecosystem Partner becomes aware of any End User exceeding licensed levels; and/or (b) marketing, licensing, positioning, providing and distributing any SAP Product without authorization. In such case, Open Ecosystem Partner must: (a) assist SAP and any other member of the SAP Group in every reasonable way in the pursuit of their respective rights and, upon consultation with the relevant member of the SAP Group, immediately take all steps for the protection of those rights; and (b) temporarily stop marketing, licensing, positioning, providing and distributing SAP Products to any such third party unless and until such ambiguity is resolved to Open Ecosystem Partner's and SAP Group's satisfaction.
2. Open Ecosystem Partner must inform SAP immediately (i) of any Change of Control regarding Open Ecosystem Partner and (ii) in case of a material part of Open Ecosystem Partner's assets or a material part of Open Ecosystem Partner's assets utilizing any SAP Material or both being sold or otherwise transferred.

### **Article 4 Trademark License**

1. Upon Open Ecosystem Partner meeting the Program Requirements for the first time and subject to Open Ecosystem Partner's compliance with all Program Requirements at all times during the term of this Agreement, SAP grants to Open Ecosystem Partner a revocable, non-exclusive, non-transferable license to use the SAP partner logo that SAP makes available to the Open Ecosystem Partner in connection with this Agreement in the Territory (as defined in the respective SAP Open Ecosystem Model) in accordance with the terms of this Article 4 (Trademark License). This license to use the SAP partner logo that SAP makes available to the Open Ecosystem Partner in connection with this Agreement includes the right to use the SAP corporate logo as part of the SAP partner logo (both referred to as "**SAP Logos**"). Open Ecosystem Partner is not permitted to grant sublicenses to the SAP Logos.
2. When using SAP Logos, Open Ecosystem Partner must adhere to all requirements and obligations of the PartnerEdge Branding Guide, including, without limitation, observe SAP's directions concerning the colors and size of the SAP Logos.
3. Open Ecosystem Partner must not contest the validity of the SAP Logos or support the contesting of their validity and must not derive any right against SAP or any other member of the SAP Group through its use of the SAP Logos. When using SAP Logos, Open Ecosystem Partner must indicate that the SAP Logos are registered trademarks of the SAP Group. In this context, SAP Parent is the sole owner of rights in the SAP Logos.

Open Ecosystem Partner undertakes to make all those declarations and provide all those documents for the benefit of SAP or any other member of the SAP Group as SAP, SAP Parent or any other member of the SAP Group may require in the prosecution of its rights in the SAP Logos.

4. SAP Group has the sole and exclusive right to protect and defend the SAP Logos at its sole discretion, cost and expense. Open Ecosystem Partner will reasonably cooperate with SAP and any other member of the SAP Group, at SAP Group's expense, in the defense and protection of the SAP Logos and will promptly notify SAP of the use of any mark infringing any of the SAP Logos of which it has knowledge.

5. All advertising and sales material used by Open Ecosystem Partner for an SAP Product must bear the notices prescribed by SAP or any member of the SAP Group concerning trademarks and other identifying marks. Open Ecosystem Partner must refrain from (i) registering SAP's name, any name of any other member of the SAP Group (including, in both cases any domain name or trademarks), SAP Parent's logo and/or any logo of any other member of the SAP Group (including, in both cases, any names, logos, domain names or trademarks which are confusingly similar to any of them) for itself or (ii) permitting third parties to use or otherwise exploit SAP's name, logo or trademark and/or any name, logo or trademark of any other member of the SAP Group (including, in both cases, any name, logo, trademark or domain name which are confusingly similar to any of them). Open Ecosystem Partner must, at SAP's choice, either transfer any rights regarding such name, logos, trademarks and domain names to SAP or any other member of the SAP Group as soon as they arise or permit SAP and any other member of the SAP Group to exploit them. Open Ecosystem Partner must afford SAP and any other member of the SAP Group such assistance as may be necessary for SAP or any other member of the SAP Group to obtain at SAP Group's expense the appropriate registrations for protection in any chosen country.

6. SAP reserves the right to review the use of the SAP Logo in Open Ecosystem Partner's marketing, advertising and other promotional materials. Open Ecosystem Partner must make no representations regarding the SAP Products except as consistent with SAP's Documentation or as SAP may otherwise approve in writing.

#### **Article 5 SAP's obligation to deliver**

1. SAP's obligations concerning the delivery of the SAP Materials are outlined in the applicable SAP Open Ecosystem Model.
2. Notwithstanding SAP's acceptance of an order, SAP will be entitled to suspend the delivery of any or all SAP Materials, the applicable license key or both where and for as long as any of the following adverse conditions is present:
  - a) Open Ecosystem Partner is in substantial breach of any part of this Agreement, including without limitation, the reasons set out in Part 1 – Article 7 (Termination for good cause);
  - b) delivery is inappropriate or impossible due to technical problems not in SAP Group's responsibility (for example, unresolved defect notices, product liability risks, software production problems, provided these events are not attributable to the SAP Group);
  - c) SAP has knowledge of circumstances that reasonably imply that Distributor, Open Ecosystem Partner or End User or all three cannot be relied upon to observe SAP's rights or the rights of any other member of the SAP Group in any or all SAP Products;
  - d) export restrictions as set out in Part 1 - Article 10 (Export Regulations);
  - e) SAP determines that the laws or policies or both of any country in the Territory are or become insufficient to protect any Intellectual Property Rights in any SAP Product; or
  - f) any other reason for suspension similar to those listed in subsections a) to e) above.
3. SAP must inform Open Ecosystem Partner without undue delay if SAP suspends the delivery of any or all SAP Products or applicable license key or both due to the reasons set out in this Article 5 (SAP's obligation to deliver) no. 2.
4. SAP's right to suspend the delivery does not mean that any part of this Agreement is terminated. If in case of this Article 5 (SAP's obligation to deliver) no. 1b) and e) suspension of delivery continues for a period of more than three consecutive months, either Party may terminate any order concerning the affected SAP Product with one month's prior written notice to the other Party.

#### **Article 6 Audit**

1. In the event SAP has justified reasons to believe that a breach of any part of this Agreement has occurred or will most likely occur, SAP will request Open Ecosystem Partner to comment and – where applicable – provide sufficient evidence to show that such a breach has not occurred. SAP is permitted to conduct the audit remotely if Open Ecosystem Partner refuses to comment or provide sufficient evidence itself and there are reasonable grounds to suspect a breach or infringement by Open Ecosystem Partner. In exceptional cases, SAP is permitted to conduct the audit at Open Ecosystem Partner's site if Open Ecosystem Partner refuses to allow the remote audit or if the remote audit does not provide sufficient evidence itself and there are reasonable grounds to suspect a breach or infringement. In this case SAP has the right to perform an audit of such activities and records of (i) Open Ecosystem Partner and/or (ii) any member of the OE Partner Group involved in the performance of obligations under any part of this Agreement.
2. The audit will be conducted by an independent expert appointed by SAP. By choosing the expert, SAP will take into account Open Ecosystem Partner's legitimate business interests. SAP will bear the costs of the audit unless the expert establishes a breach by the Open Ecosystem Partner in which case Open Ecosystem Partner has to bear the costs.
3. SAP will provide one week's advance notice of an audit unless circumstances require a shorter or no notice period.
4. The audit will take place during normal business hours and SAP will instruct its auditor to conduct the audit in such a manner that it will not unreasonably interfere with Open Ecosystem Partner's business operations.
5. Open Ecosystem Partner must make full disclosure of any relevant information to the expert, and ensure that (i) any member of the OE Partner Group involved in the performance of obligations under any part of this Agreement and any of (ii) Open Ecosystem Partner's Representatives cooperate fully and provide information, grant viewing access to all necessary and useful documents and permit the making of copies of them.
6. The expert will be bound in writing to confidentiality for the benefit of SAP and the Open Ecosystem Partner. The expert will undertake not to disclose information to SAP, except for the purpose of providing a report of the audit and, in case of a breach of any part of this Agreement, any information establishing such a breach.
7. Open Ecosystem Partner's Confidential Information disclosed during the audit will not be used by SAP for any purpose other than to verify and proof if a breach of any part of this Agreement has occurred.
8. Additional audit provisions are, if applicable, set out in the applicable SAP Open Ecosystem Model.

#### **Article 7 Termination for good cause**

1. The affected SAP Open Ecosystem Model may be terminated by either Party immediately upon written notice to the other Party if a Party does not comply with any provision of any part of this Agreement other than those referred to in this Article 7 no. 2a) (Breach of material provisions) unless the non-compliance is capable of remedy and is remedied within thirty days of the other Party giving notice.
2. Any or all SAP Open Ecosystem Models may be terminated by either Party for good cause immediately upon written notice to the other Party. Such good cause exists in particular, without limitation, in each of the events or circumstances set out below:

- a) Breach of material provisions. A Party does not comply with material provisions of any part of this Agreement. Material provisions are in particular the obligations under Part 1 - Article 2 (Confidentiality), Part 1 - Article 10 (Export Regulations), Part 1 - Article 12 (Compliance) and Part 2 - Article 3 (Reservation of title, rights and interest).
- b) intentionally left blank
- c) intentionally left blank
- d) Cessation of business. The other Party suspends or ceases to carry on all or a material part of its business.
- e) Change of ownership. In the event of a Change of Control if the business interests of the other Party are materially affected (for example, if a direct competitor of a Party becomes a direct or indirect majority shareholder).
- f) Extraordinary termination rights and the right to termination for just cause remain unaffected.

#### **Article 8 Effect of Termination**

1. Further model-specific effects of termination are set out in each SAP Open Ecosystem Model.
2. In general, if an SAP Open Ecosystem Model is terminated, rescinded or ended in any other way:
  - a) Open Ecosystem Partner right to:
    - i. hold itself out as partner of SAP under or in connection with such SAP Open Ecosystem Model; and
    - ii. use the SAP trademarks, including, without limitation, the SAP Logos which he was authorized to use as set out in Article 4 (Trademark License) under or in connection with such SAP Open Ecosystem Model, immediately ends.
  - b) Open Ecosystem Partner must within thirty days irretrievably destroy or upon SAP's request deliver to SAP all copies of the materials bearing any SAP Logos and other SAP trademarks which Open Ecosystem Partner was authorized to use as set out in Article 4 (Trademark License) under or in connection with such SAP Open Ecosystem Model that are in the possession of Open Ecosystem Partner, any member of the OE Partner Group and/or any of Open Partner Group's Representatives, except to the extent Open Ecosystem Partner is legally required to keep a copy for a longer period in which case such return or destruction shall occur at the end of such period;
  - c) a duly authorized representative of the Open Ecosystem Partner must certify in writing to SAP within thirty days that Open Ecosystem Partner has fulfilled its obligations under this Article 8 (Effect of Termination) no. 2b).
3. If a SAP Open Ecosystem Model is terminated, rescinded or ended in any other way:
  - a) the Receiving Party's right to use the Confidential Information immediately ends however without prejudice to the confidentiality obligations in Article 2 (Confidentiality), which shall survive termination for a period of 5 years;
  - b) the Receiving Party must within thirty days irretrievably destroy or upon Disclosing Party's request deliver to Disclosing Party all Confidential Information of the Disclosing Party and all copies, reproductions, summaries, or extracts thereof or based thereon in the Receiving Party's possession, custody or control or in the possession, custody or control of any Representative of the Receiving Party, except to the extent Receiving Party is legally required to keep a copy for a longer period in which case such return or destruction shall occur at the end of such period. However, (i) if a legal proceeding has been instituted to seek disclosure of the Confidential Information, such material shall not be destroyed until the proceeding is settled or a final judgment with respect thereto has been rendered and (ii) the Receiving Party shall not, in connection with the foregoing obligations, be required to identify or delete Confidential Information held in archive or back-up systems in accordance with general systems archiving or backup policies; and
  - c) a duly authorized representative of the Receiving Party must certify in writing to the Disclosing Party within thirty days of Disclosing Party's written request that the Receiving Party has fulfilled its obligations under this Article 8 (Effect of Termination) no. 3b).

unless the Receiving Party is permitted under any other SAP Open Ecosystem Model that has not been terminated, rescinded or ended in any other way to use the Confidential Information.

#### **Article 9 Changes to Terms**

1. Notwithstanding anything in subsection 2 below, SAP reserves the right to change the OE Partner Product List and any agreement document that – under a specific SAP Open Ecosystem Model – is considered to be a Price List document without prior written notice. Any change to the OE Partner Product List will become effective on the date indicated in the document itself or if no such date is indicated, upon the earliest of (i) it being published on SAP's partner-dedicated website or (ii) it otherwise being provided by a member of the SAP Group to the Open Ecosystem Partner.
2. SAP reserves the right to implement programmatic changes (applicable to all Open Ecosystem Partners or – in the event of model-specific changes – to all affected Open Ecosystem Partners) by changing any or all parts of this Agreement (in particular by replacing parts of it with an updated version), including, without limitation, any SAP Open Ecosystem Model (in particular its Specific Terms and Conditions), the Open Ecosystem GTCS, the Open Ecosystem Program Guide, the PartnerEdge Branding Guide and any other guide or agreement concluded under or in connection with any part of this Agreement as may be reasonably required and consistent with SAP's practices.
3. SAP will give Open Ecosystem Partner at least:
 

three months' prior notice in writing or in any other documented form of changes to any or all parts of this Agreement as set out in this Article 12 (Changes to Terms) no. 2. Unless otherwise stated in the notice, the notice will become effective after three months ("Change Period").:

If the justified interests of Open Ecosystem Partner are negatively affected by any of these changes, Open Ecosystem Partner is entitled to terminate the affected part of this Agreement with effect to the expiration of the applicable Change Period. If Open Ecosystem Partner does not terminate within the applicable Change Period, the changes are deemed to be accepted by Open Ecosystem Partner. SAP will draw attention to this consequence in the change notice.
4. Any change that SAP reasonably believes to be beneficial to Open Ecosystem Partner may, at SAP's discretion, become effective upon notice by SAP. Such changes include, but are not limited to, program enhancements. Should Open Ecosystem Partner believe a change not to be beneficial, Open Ecosystem Partner must notify SAP in writing within five days of receipt of such notice that Open Ecosystem Partner does not agree with SAP's assumption and state the reasons why the change would not be beneficial to Open Ecosystem Partner. In such case, this Article 9 (Changes to Terms) no. 3 applies.
5. SAP may elect to discontinue the distribution of any or all components or functionality of any or all of the SAP Products and SAP reserves the right to cancel any or all orders for the discontinued SAP Product without liability to Open Ecosystem Partner.

#### **Article 10 Export Regulations**

1. SAP Products and parts of SAP Products (e.g. new versions, releases, updates, upgrades, patches, fixed or correction of a software product) are subject to Export Laws of various countries, including, without limitation, the laws of the United States, the EU, Ireland and Germany. Open Ecosystem Partner agrees that it will not submit any SAP Product or parts thereof to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP and that it will not export, re-export or import any SAP Product or parts thereof to countries, persons

or entities prohibited by any applicable Export Law. In that context, Open Ecosystem Partner is responsible for complying with all applicable Export Laws. Open Ecosystem Partner will take all necessary actions and precautions to ensure that any permitted distributor, reseller, end user and other customer complies with the Export Law.

2. If SAP or any other member of the SAP Group wants to deliver and/or grant access to any SAP Product or parts thereof to Open Ecosystem Partner or directly to an End User, Open Ecosystem Partner will support SAP and any other member of the SAP Group in obtaining any required authorization, approval or other consent from the competent authorities by providing any necessary or useful declarations or other necessary or useful information, e.g. End User certificates, as may be requested by SAP or any other member of the SAP Group. Note: The delivery of and/or granting of access to any or all SAP Products or parts thereof may be subject to the prior obtaining of export or import authorizations or both from the competent authorities and that this process may (i) considerably delay or prevent the delivery of and/or granting of access to any or all SAP Products or parts thereof; (ii) impact SAP's ability or the ability of any other member of the SAP Group to provide Maintenance Services, Cloud Services Subscription Services, Services or other services and (iii) lead to SAP or any other member of the SAP Group having to limit, suspend or terminate Open Ecosystem Partner's and/or End User's access to Maintenance Services, Cloud Services Subscription Services, Services or other services.

3. If Open Ecosystem Partner wants to deliver and/or grant access to any SAP Product or parts thereof directly to an End User, it is Open Ecosystem Partner's sole responsibility to obtain any required authorization, approval or other consent from the competent authorities to comply with any applicable Export Law. SAP assumes no responsibility or liability for Open Ecosystem Partner's failure to obtain any such required authorization, approval or other consent. In case SAP or any other member of the SAP Group delivers and/or grants access to any SAP Product or parts thereof directly to an End User, this Article 10 (Export Regulations) no. 2 applies especially, without limitation, regarding the provision of Maintenance Services, Cloud Services, Subscription Services, Services or other services. SAP will, upon Open Ecosystem Partner's reasonable request, provide any required information regarding a SAP Product or parts thereof originally provided by SAP or any other member of the SAP Group to Distributor or Open Ecosystem Partner. SAP or any other member of the SAP Group may not be able to deliver and/or grant access to a SAP Product or parts thereof to the Open Ecosystem Partner in case the export, re-export or import of a SAP Product or parts thereof to Distributor, End User or both is prohibited by any applicable Export Law.

4. Neither SAP nor any other member of the SAP Group assumes any responsibility or liability:

- a) for any delay caused in the delivery and/or granting of access to any or all SAP Products or parts thereof due to export or import authorizations or both having to be obtained from the competent authorities;
- b) if any required authorization, approval or other consent for the delivery of and/or granting of access to any or all SAP Products or parts thereof cannot be obtained from the competent authorities;
- c) if the delivery of and/or granting of access to any or all SAP Products or parts thereof is prevented due to applicable Export Laws; and
- d) if access to Maintenance Services, Cloud Services Subscription Services, Services or other services has to be limited, suspended or terminated due to applicable Export Law.

5. SAP may terminate any or all part of this Agreement with one month's prior written notice if SAP or any relevant member of the SAP Group may not deliver or grant access to the SAP Products to Open Ecosystem Partner due to an embargo, trade sanction or other comparable restrictive measure, which is expected to be in place for six months or longer.

#### **Article 11 Data Protection**

1. Both Parties use information technology to store and process data concerning their business relationships. They must observe any applicable data protection laws.

2. Both Parties are responsible for permitting the personal data to be processed and for protecting the rights of the data owner.

3. Open Ecosystem Partner must ensure that each End User's individual concerned consents to the processing of its personal data by SAP for the purposes of fulfilling SAP's obligations under this Agreement. Open Ecosystem Partner will indemnify SAP from any loss incurred by SAP out of any End User's or End User's individual's claim if Open Ecosystem Partner fails to obtain such consent from an End User's individual.

#### **Article 12 Compliance Obligations**

1. Open Ecosystem Partner shall conduct operations in compliance with applicable laws, rules and regulations in exercising rights and obligations under any part of this Agreement. Laws may include but not be limited to the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and local anticorruption legislation that may apply. Open Ecosystem Partner shall comply with SAP's Partner Code of Conduct. The Open Ecosystem Partner is not listed by any government agency as debarred, suspended, proposed for suspension or debarment or otherwise determined to be ineligible for government procurement programs.

2. In exercising rights and obligations under any part of this Agreement, Open Ecosystem Partner and anyone acting on Open Ecosystem Partner's behalf shall not make, offer, promise or authorize payment of anything of value directly or indirectly to any of the following Prohibited Parties for the purpose of unlawfully influencing their acts or decisions:

- a) Employees, consultants, or representatives of the customer or prospect,
- b) Government officials or employees,
- c) Political party officials or candidates,
- d) Officers or employees of any public international organization,
- e) Immediate family member of such persons (or any other person) for the benefit of such persons.

Business entertainment conducted for the fulfillment of any part of this Agreement must be appropriate, transparent, compliant with policies of the guest's company, and absent of any appearance of an attempt to influence business decisions.

3. Open Ecosystem Partner shall only have rights to delegate its obligations under this Agreement to subcontractors if expressly permitted under this Agreement. Open Ecosystem Partner shall require all subcontractors to agree to terms substantially similar to this Article 12 (Compliance Obligations) in writing. Open Ecosystem Partner must obtain SAP's prior written consent before paying any third party a commission, finder's fee, referral fee, success fee, or any similar payment for activities for purposes of securing business on behalf of SAP under any part of this Agreement, except pursuant to Open Ecosystem Partner's standard partner programs.

4. Open Ecosystem Partner shall not obtain on SAP's behalf or provide to SAP any information which is not legally available in the Territory (as defined in the relevant SAP Open Ecosystem Schedule), or which is procurement-sensitive, proprietary, or classified, where there is reason to believe that possession of such information is unauthorized, illegal, or unethical.

#### **Article 13 Transferability and Subcontracting**

1. Open Ecosystem Partner may not assign, novate, delegate, pledge, subcontract or otherwise transfer any part of this Agreement or any of its rights or obligations under any part of this Agreement to any third party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation, unless expressly otherwise agreed in the relevant SAP Open Ecosystem Schedule or where SAP has given its prior written consent.

SAP is free to assign, novate, pledge or otherwise transfer any part of this Agreement (in whole or in part) to any member of the SAP Group and in case of a Change of Control to the new persons or entities having Control over SAP. SAP will notify Open Ecosystem Partner of such transfer or intention to transfer without undue delay. Upon such transfer being effective, SAP will no longer be party to the transferred part of the Agreement, but only the SAP entity acting as transferee.

2. SAP may delegate, subcontract or otherwise transfer any of its rights or obligations under any part of this Agreement (in whole or in part) to any member of the SAP Group. SAP and any member of the SAP Group may use third parties as sub-contractors for fulfilling any of their rights or obligations under any part of this Agreement. SAP will continue to be liable for such obligations.

#### **Article 14 Miscellaneous**

1. Retention of data. With regard to business transactions covered by any part of this Agreement, Open Ecosystem Partner must retain any records for a period of ten years starting on 1st of January of the year following the year during which the data were transmitted or otherwise transferred, or for the minimum period prescribed by applicable law, whichever is longer. In addition, Open Ecosystem Partner must maintain during the term of any part of this Agreement and for three years thereafter current, complete and accurate reports on the number and location of all copies of the SAP Products it has distributed as well as on all of SAP's Confidential Information in its possession or in the possession of its Representatives.

2. Force Majeure. If the performance of any part of this Agreement or any obligation under it is prevented, restricted or interfered with by reason of any act of God, act of government, strike or labour dispute, failure of transportation, fire or flood or other casualty or from any other cause beyond the reasonable control of the affected Party, the affected Party will be excused from such performance for so long as and to the extent that such force prevents, restricts or interferes with that Party's performance provided the affected Party:

- a) provides prompt written notice of such interference, the nature of such interference and the expected duration of such interference to the other Party; and
- b) resumes performing its obligations hereunder promptly following the removal of such interfering condition.

The existence of any of the conditions described as Force Majeure above, does not mean that any part of this Agreement is terminated. If any of these conditions continues for a period of more than three consecutive months, either Party may terminate any order concerning the affected SAP Product with one month's prior written notice to the other Party.

3. Remedies and Waiver.

- a) No waiver will be valid against any Party hereto, unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.
- b) The waiver by either Party of a breach of, non-compliance with or default in any of the provisions of this Agreement by the other Party may not be construed as a waiver of any succeeding breach, non-compliance or default of the same or other provisions; nor will any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder be operated as a waiver thereof; nor will any single or partial exercise of any right, power or privilege prevent any further or other exercise thereof or the exercise of any other right, power or privilege.
- c) Where this Agreement expressly states that particular acts or omissions of SAP or Open Ecosystem Partner pursuant to a particular term or condition of this Agreement are a "material breach," that designation is for purposes of specificity and clarity. Such designation is not a waiver by SAP or Open Ecosystem Partner to claim that other acts or omissions under other terms or conditions of this Agreement are material breaches.

4. Partial Invalidity. If any provision of this Agreement is or becomes wholly or in part illegal, invalid or unenforceable, the illegality, invalidity or unenforceability of such provision will not affect the other provisions of this Agreement, which will remain in full force and effect. The illegal, invalid or unenforceable provision will be replaced by a valid and enforceable provision which approximates as closely as possible the intent of the replaced provision. This will also apply in cases of contractual gaps.

5. Entire Agreement. This Agreement constitutes the complete and exclusive understanding of the Parties with respect to the subject matter hereof, and supersedes all prior sales proposals, negotiations, agreements and other representations, discussions or communications, whether oral or written, including but not limited to, any letters of understanding the Parties may have executed in contemplation of this Agreement. 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.

6. Costs and Expenses. Each Party will bear its own costs, charges, fees and expenses (including fees for legal or other advisers).

7. Counterparts. The Master Open Ecosystem Agreement, any SAP Open Ecosystem Schedule and any other part of this Agreement may be signed in one or more counterparts, each of which will be considered an original but all of which together form one and the same instrument and will be treated as if the signatures on the counterparts were on a single copy. The Master Open Ecosystem Agreement, any SAP Open Ecosystem Schedule and any other part of this Agreement may be validly executed by means of transmission of signed facsimile, pdf or any other documented form for which a process has been provided by SAP, such as the SAP Store or the DocuSign™ Procedure. Signatures sent by fax, pdf, email or other electronic means for which a process has been provided by SAP will be deemed original signatures.

8. Effective Date. If a Party signs a part of this Agreement but fails to date its signature, the date that the other Party receives the signing Party's signature will be deemed to be the date on that the signing Party signed that part of the Agreement.

9. Amendments. Any modification, amendment or supplement to this Agreement (including this Article 14 (Miscellaneous) no. 9 must be made in writing or in any other documented form for which a process has been provided by SAP, such as the SAP Store or the DocuSign™ Procedure.

10. intentionally left blank

11. Priority of Agreements. The following descending order of precedence will apply, in the event of any conflict or inconsistency between parts of the Agreement: (a) the applicable SAP Open Ecosystem Schedule; (b) the applicable SAP Open Ecosystem Model; (c) the Master Open Ecosystem Agreement; (d) the Open Ecosystem GTCS; (e) the Open Ecosystem Program Guide; and (f) the PartnerEdge Branding Guide.

12. Partner Terms. Any purchase order, shrink- or click-wrap or other document issued by Open Ecosystem Partner is for administrative convenience only. In the event of any conflict between the provisions of this Agreement and any pre-printed terms contained in any purchase order, shrink- or click-wrap or other document issued by the Open Ecosystem Partner, the provisions of this Agreement prevail and govern and any new additional, conflicting or inconsistent terms and conditions in the purchase order, shrink- or click-wrap or other document will be inapplicable.

13. Survival. Part 1 - Article 2 (Confidentiality), Part 1 - Article 6 (Audit), Part 1 - Article 8 (Effects of Termination), Part 1 - Article 14 no. 1 (Retention of data), Part 1 - Article 14 no. 4 (Partial Invalidity), Part 2 - Article 1 (Limitation of Liability), Part 2 - Article 2 (Performance Warranty), Part 2 - Article 3 (Reservation of title, rights and interest), Part 2 - Article 7 (Governing Law and Jurisdiction) of will survive any termination of any part of this Agreement.

### **PART 2 – Country specific Terms and Conditions**

**Article 1 Limitation of Liability – provisions are included in the respective SAP Open Ecosystem Partner Model**

**Article 2 Performance Warranty and Third Party Claims – provisions are included in the respective SAP Open Ecosystem Partner Model**

**Article 3 Reservation of title, rights and interest**

1. All SAP Materials, especially the SAP Products 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 Open Ecosystem Partner in the applicable SAP Open Ecosystem Model. Unless Open Ecosystem Partner is working under a valid SAP development license, Open Ecosystem Partner is not permitted to modify or otherwise make derivative works of any SAP Product.
2. Open Ecosystem Partner is not entitled to copy, translate, disassemble, decompile, reproduce or reverse engineer any SAP Product nor create or attempt to create the source code from the object code of a SAP Product in any manner or take any other measure for the purposes of obtaining the source code of a SAP Product, unless this right is explicitly granted to Open Ecosystem Partner in the respective SAP Open Ecosystem Model.
3. Intentionally left blank
4. Open Ecosystem Partner must not change or remove SAP's copyright and authorship notices attached to or relating to any SAP Product.

**Article 4 Insurance**

1. While performing any work or providing products or services related to any part of this Agreement, Open Ecosystem Partner must maintain, at its own expense, for the entire Open Ecosystem Partner Group and its personnel, insurance coverage in accordance with any applicable statutory requirements. In addition, Open Ecosystem Partner must maintain the following insurance with financially stable insurance companies permitted to do business in the jurisdictions where the work, products or services will be provided:

- a) commercial general liability with a limit of EUR 1,000,000 per occurrence and EUR 2,000,000 in general aggregate including, but not limited to, coverage for bodily injury, property damage, products and completed operations, premises/operations, and contractual liabilities; and
- b) professional liability (errors & omissions) with a limit of EUR 1,000,000\* per claim and in the aggregate covering claims arising out of errors or omissions in connection with products or services provided by Open Ecosystem Partner. The policy shall have a retroactive date on or before the Effective Date of the Master Open Ecosystem Agreement or the date of Open Ecosystem Partner's first delivery of products or professional service, whichever is earlier. Open Ecosystem Partner shall use commercially reasonable efforts to maintain such coverage for at least two years following final delivery of products or services.

\*In the event that Open Ecosystem Partner's gross annual revenues associated with the SAP partnership exceed \$1,000,000 (or equivalent in foreign currency), Open Ecosystem Partner is required to increase its policy limits in the following way:

Revenue (in EUR)	Professional Liability Policy Limit (in EUR)
1,000,001 - 5,000,000	3,000,000 per claim
5,000,001 - 10,000,000	6,000,000 per claim
10,000,001 and above	10,000,000 per claim

2. Upon request, Open Ecosystem Partner must provide SAP with a properly executed certificate of insurance evidencing existence of required coverages and will notify SAP no less than thirty days in advance, of any reduction or cancellation. SAP's failure to monitor compliance or to object to noncompliance or unsatisfactory compliance with any terms of the aforementioned requirements does not modify or waive Open Ecosystem Partner's obligations in any way. Policies specified above may be maintained with limits listed in other foreign currencies, as long as they are equivalent to the amounts required herein. SAP reserves the right to review the insurance requirements at any point in time and make changes in order to address additional exposures, which may exist as a result of Open Ecosystem Partner's provision of products or services related to any part of this Agreement.

3. None of the requirements contained herein as to types or limits are intended to, and shall not in any manner, limit, qualify or quantify the liabilities and obligations assumed by Open Ecosystem Partner under any part of this Agreement.

**Article 5 Other Mandatory Local Terms – are included in the respective Open Ecosystem Partner Model.**

**Article 6 Notices**

1. Notice in writing. Any notice or other communication under or in connection with any part of this Agreement must be made in writing and, unless otherwise explicitly stated, may be made by fax or letter and must be addressed as set out in Article 5 (Contact Details) of the Master Open Ecosystem Agreement (or to such other changed address, fax number or addressee as a Party may designate e.g. by changing the details in the partner relationship management system).

2. Delivery. Any notice or other communication made or delivered by one Party to another under or in connection with any part of this Agreement will only be effective when received in legible form.

3. Change of address: Each Party must give the other prompt notice of any change of address, fax number or addressee.

4. Electronic communication. Any notice or other communication under or in connection with any part of this Agreement except for those notices and communications expressly mentioned in this Part 2 - Article 6 (Notices) no. 5 below may be made by email or other electronic means if and as long as the Parties:

- a) agree that this is to be an accepted form of communication;
- b) notify each other of their email address and/or any other information required to enable the sending and receipt of information by that means; and
- c) notify each other promptly of any change to their email address or any other required information supplied by them.

System notifications and information from SAP relating to the operation or support of SAP Products can also be provided electronically in writing to the contact person named in the order or can be made available via the SAP Support Portal or other electronic means that SAP makes available to its Distributors.

Except in that respect, however, the provisions in the German Civil Code, Section 127 (2) and (3) do not apply.

5. Exceptions to electronic communication. The following notices or communications may not be made by email or other electronic means:

- a) any notice concerning termination of an order given due to (i) suspension of delivery as set out in Part 1 - Article 5 (SAP's obligation to deliver) no. 4 or (ii) Force Majeure as set out in Part 1 - Article 14 (Miscellaneous) no. 2;
- b) any notice under or in connection with Part 1 - Article 7 (Termination for good cause) and any other notice of termination for convenience or termination for good cause under or in connection with any part of this Agreement;
- c) any confirmation given regarding destruction of the SAP Logos as well as any other confirmation under or in connection with Part 1 - Article 8 (Effect of Termination); and



6. Use of websites. Except with regard to those notices and communications expressly mentioned in Part 2 - Article 6 (Notices) no. 5 above, SAP may satisfy its obligation under any part of this Agreement to deliver any information to the Open Ecosystem Partner who herewith accepts this method of communication by posting this information onto an electronic partner-dedicated website (e.g. the SAP PartnerEdge Portal). SAP will supply Open Ecosystem Partner with the address of and any relevant password for the partner-dedicated website.

7. Language. Any notice given in connection with the Agreement must be in German or English.

**Article 7 Governing Law and Jurisdiction**

1. This Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement and its subject matter are governed by the laws of Germany to the exclusion of the international law of conflicts and the United Nations Convention on Contracts for the International Sale of Goods.

2. The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement (including any dispute regarding the existence, validity or termination of this Agreement) ("**Dispute**") is Karlsruhe.