# General Terms and Conditions for SAP Business ByDesign Solutions

## 1. Applicability

These General Terms and Conditions for SAP Business ByDesign ("BYD") Solutions ("GTC") apply to all SAP BYD Solutions and all SAP BYD Services provided by SAP under a SAP BYD Solution Agreement. Any capitalized terms referenced herein shall have the meaning given to them in the relevant part of the SAP BYD Solution Agreement.

## 2. Special Provisions for SAP BYD Services

#### 2.1 SAP BYD Services

SAP will provide the SAP BYD Services agreed in a Statement of Work. SAP BYD Services can consist of providing documentation, configurations, training materials, software or services directed at the bringing about of a specific work result ("Deliverable" – such services referred to hereinafter as "Services with Deliverable") and other services.

2.1.1 SAP will operate for Customer add-ons for BYD Solutions which Customer has licensed from authorized SAP partners ("Partner Add-on"). SAP will activate, respectively deactivate a Partner Add-on upon notification by the respective authorized SAP partner. However, SAP reserves the right to reject such activation where SAP reasonable believes that such Partner Add-on may have a negative impact on Customer's SAP BYD system. Use of a Partner Add-on is subject to the license agreement between Customers and the authorized SAP partner. SAP shall not be responsible for correctness or for the functionality of a Partner Add-on. As SAP operates Partner Add-ons for Customer without charge, SAP does not provide any warranties with regards to such service. In particular, SAP does not warrant that a Partner Add-on is available permanently or without interruption. The service levels applicable to SAP BYD Solutions to not apply to operation of Partner Add-ons. However the standard maintenance windows for SAP BYD Solutions also apply to Partner Add-ons. Such service is provided by SAP "as is" and without warranty of any kind. SAP reserves the right to temporarily or permanently deactivate any Partner Add-on provided that a Partner Add-on negatively impacts the contractually agreed performance of SAP BYD Solutions. Furthermore, SAP reserves the right to deactivate a Partner Add-on if such Partner Add-on does not fulfill the quality standards agreed between SAP and the authorized partner or in case the authorized partner is in default of its contractual obligations towards SAP.

## 2.2 Rights

Except as otherwise agreed in writing, Customer is granted the nonexclusive right to use the work results subject to the terms of the SAP BYD Solution Agreement. In all other aspects, Section 3.10 shall apply.

## 2.3 Change Request Procedure

2.3.1 During the term of a Statement of Work either party may at any time propose changes to the agreed SAP BYD Services including but not limited to the agreed methods and timelines (a "Change").

If Customer requests a Change it shall submit a written request for Change which shall contain any information relevant to the request ("Change Request"). On receipt of the Change Request, SAP shall communicate within ten (10) Business Days (being any day on which banks are generally open for business in the City of London, United Kingdom other than Saturdays, Sundays or bank holidays) whether the Change is possible and what impact it would have on the relevant Statement of Work, notably in respect of timelines and remuneration. Customer shall then inform SAP in writing within five (5) Business Days whether Customer accepts the revised provisions as proposed by SAP or whether Customer wishes to maintain the Statement of Work as previously agreed. If SAP determines that a requested Change is not possible the Statement of Work shall continue to apply as previously agreed.

2.3.3 If the review of a Change Request involves significant work, SAP may separately invoice the amount of such work required for the review. SAP will inform Customer without undue delay as soon as SAP determines that significant work will be involved in responding to the Change Request.

2.3.4 If as a result of the negotiations on a Change Request the performance of the SAP BYD Services agreed in the Statement of Work has to be suspended in order to facilitate a Change requested by Customer, the timelines for performance of the agreed SAP BYD Services shall be extended accordingly. Should SAP during such suspension not be able to assign any employees involved in the performance of the SAP BYD Services in any other way, SAP shall notify Customer thereof. In this case, SAP may, from the second Business Day after such notification, charge Customer for SAP employees concerned at a daily rate on the basis of SAP's then applicable price list.

2.3.5 As long as no agreement has been reached on the Change, or SAP has not responded, the SAP BYD Services shall be rendered according to the existing Statement of Work. Customer may instead require that the SAP BYD Services or the relevant part(s) thereof shall temporarily be suspended or cease by providing reasonable prior written notice to SAP.

2.3.6 In the event of a suspension at the Customer's request pursuant to Section 2.3.5, the timelines for performing the relevant SAP BYD Services shall be extended accordingly. Moreover, Customer shall be obliged to pay the remuneration agreed for the SAP BYD Services not performed as a result of such suspension, even if such SAP BYD Services are rendered against further remuneration after the end of the suspension. In the event of a complete cessation of the SAP BYD Services pursuant to Section 2.3.5, Customer shall also be obliged to pay the agreed remuneration after cessation of the relevant SAP BYD Services. In case the SAP BYD Services concerned by the cessation had been agreed on a recurrent basis for an indefinite term, the obligation to pay will continue to apply for a period of three months. In

case of suspension and of cessation, SAP must, however, set off against such remuneration any amounts it saved as a result of suspension or early cessation, or what SAP earns or maliciously refrains from earning by otherwise assigning the employees and working material intended for the performance of the Statement of Work.

#### 2.4 Acceptance

To the extent that a Statement of Work expressly provides for the supply of Services with Deliverable and such Deliverable is not a tangible item to be produced or manufactured by SAP, the following shall apply:

- 2.4.1 Customer, on receipt of notification from SAP that the Deliverable is ready for acceptance, shall provide written notification within fifteen (15) Business Days to SAP that the Deliverable has either been accepted or that it has failed to comply in all material respects with the applicable specifications in a Statement of Work and is therefore rejected.
- 2.4.2 Whenever Customer rejects a Deliverable, Customer shall provide a detailed description the reason for such rejection or, if this is not possible, of the symptoms of the problem. Immaterial defects shall be recorded by Customer in the acceptance declaration and will be remedied by SAP in accordance with Section 3.3
- 2.4.3 Where Customer rejects a Deliverable on the basis of material defects in accordance with Section 2.4.1, SAP shall rectify such defects within a period commensurate with their severity. After notification of defect rectification, the Customer shall within five (5) Business Days re-test the Deliverable and follow the procedure in Section 2.4.1. Should the Deliverable still display material deviations from the agreed specifications set out in the applicable Statement of Work also after such acceptance test, SAP shall be treated as being in material breach of the applicable SOW.
- 2.4.4 In the event that Customer does not serve notice of acceptance in accordance with Section 2.4.1 within the period specified in Section 2.4.1 and does not indicate a rejection of the Deliverable, then Customer will be deemed to have accepted the Deliverable. A Deliverable shall also be deemed accepted if Customer uses the Deliverable in live operation for a period in excess of five (5) days.
- 2.4.5 If the agreed Deliverable comprises components, or separate modules by contractual agreement that can be used individually by Customer, such components or separate modules shall be accepted separately.
- 2.4.6 If the parties have agreed on a final overall acceptance in addition to acceptance of separate modules or components, only the correct interaction of the separate modules or components accepted at an earlier date with the other separate modules or components shall be subject of the final overall acceptance.
- 2.4.7 Notwithstanding the foregoing, SAP may request acceptance of other SAP BYD Services with respect to which no acceptance pursuant to this Section 2.4 was stipulated. In this case, Sections 2.4.1 to 2.4.6 shall apply accordingly.

## 3. General Provisions

## 3.1 Country Specifics / Regulatory Requirements

- 3.1.1 SAP only supports BYD in those countries explicitly named as BYD supported countries in the Documentation. These are the only valid, localized/language versions of BYD that the Customer can use in BYD. Any Named Users from outside these countries need to access a valid, localized/language version of BYD and will be subject to the localization/language provided.
- 3.1.2 Customer shall be solely responsible (i) for verifying that BYD meets Customer's compliance requirements and (ii) for adapting existing functionality to legal and regulatory requirements relevant for Customer. Statutory and tax reporting functionalities in an unsupported country will not be provided by BYD. In addition, BYD will not support local taxes for sales orders, purchase orders or financial posting outside the supported countries.
- 3.1.3 Access and use of BYD by any Named Users from an unsupported country as well as by Named Users incountry but offsite will by subject to scope and functionality restrictions.

#### 3.2 Dates and Timelines

- 3.2.1 Dates and timelines shall be non-binding and time will not be of the essence unless expressly agreed by the parties. In case of non-observance of non-binding dates or timelines, SAP shall be treated as being in default if it has still not complied with the relevant obligation following receipt of Customer's written reminder which may only be issued after the non-binding date or timeline has elapsed. In such reminder, Customer must grant a reasonable grace period. In the absence of any particular circumstances that indicate otherwise, a grace period of at least four weeks shall be deemed reasonable. Any further-reaching claims shall be subject to the limitations set forth in Section 3.6.
- 3.2.2 SAP shall not be in breach of any of its duties under this Agreement due to events beyond its reasonable control, including failure of Customer to perform timely any of its obligations under this Agreement. Dates shall be postponed and timelines extended by a reasonable period after the end of the hindrance.

## 3.3 Rights in the Event of Defects

- 3.3.1 Customer shall only have rights under this Section 3.3 if Deliverables or items or rights which are provided to Customer show defects.
- 3.3.2 Customer shall report any defects to SAP in writing without undue delay, submitting a detailed description of the defect or, if this is not possible, of the symptoms of the problem, and any information useful for rectification of the defect and available to Customer.
- 3.3.3 In the case of defects of Deliverables, the following shall apply:
- a) If Customer proves a defect other than a defect in title, SAP shall render subsequent performance at its option either by providing Customer with a new, defect-free Deliverable, or by rectifying the defect. The rectification of defects may also consist in SAP showing Customer reasonable possibilities of preventing the occurrence of the defect in the future.
- b) Should subsequent performance finally fail, Customer may reduce the remuneration or rescind the part of the

SAP BYD Solution Agreement affected by the defect. SAP shall pay damages or reimburse expenses incurred in vain due to a defect within the limits as defined in Section 3.6.

- c) Defects in title shall be handled in accordance with Section 3.4.
- d) The limitation period for claims under this Section 3.3.3 shall be 1 year from acceptance or —as applicable provision of the Service. This shall not apply for claims for damages based on defects in case of personal injury or in case of damage caused by willful intent or by gross negligence of on the part of SAP's officers or executive staff.
- e) Except for the rights stipulated in this Section 3.3.3, other rights based on defects are excluded.
- 3.3.4 In case of defects of an item or a right that are temporarily provided to Customer, the following shall apply:
- a) If Customer proves a defect other than a defect in title, such defect shall be rectified by SAP within a reasonable period of time.
- b) If SAP fails to rectify a defect that is not immaterial and has been proven by Customer, Customer may reduce the remuneration. Termination of the part of the SAP BYD Solutions Agreement affected by the defect for failure to grant the contractual use shall only be possible after the fruitless expiry of a reasonable grace period. SAP shall pay damages and reimburse expenditure due to a defect within the limits as defined in Section 3.6.
- c) Defects in title shall be handled in accordance with Section 3.4
- d) Strict liability of SAP as the lessor for defects existing at the time of execution of the Order Form shall be excluded.
  e) Except for the rights stipulated in this Section 3.3.4, other rights based on defects are excluded.
- 3.3.5 Should SAP perform any services with respect to trouble shooting or defect rectification without being obliged to do so, SAP may invoice any additional expenditure. This particularly applies if an alleged defect cannot be proven, or if a defect is attributable to the fact that Customer has not duly fulfilled its co-operation obligations, that Customer uses SAP BYD Solutions or SAP BYD Services inappropriately, or that Customer does not use the free services offered by SAP, if he can reasonably be expected to do so.
- 3.3.6 Notwithstanding anything to the contrary herein, Customer shall have no claims under this Section 3.3 in case of defects which arises as a result of the fact that SAP BYD Solutions or SAP BYD Services (i) were used contrary to the provisions of the SAP BYD Solution Agreement or any documentation, (ii) were neglected, misused or mistreated, including improper installation, operation, use, maintenance or testing, (iii) were used in fields of application and environmental conditions other than those expressly specified by SAP, (iv) were used in combination with other products, accessories, software or data not supplied or approved by SAP, or (v) were modified by Customer or third parties.

#### 3.4 Indemnification by SAP

3.4.1 Subject to Section 3.6, in case a third party asserts claims against Customer alleging that any SAP BYD Solution, any BYD Material and/or any SAP BYD

Service infringe intellectual property rights (e.g. patent, copyright, trademark) of such third party. SAP shall, at its expense, either defend against or settle such claims and assume all damages awarded by a court in connection with such claims. The foregoing, however, is conditional upon (i) Customer notifying SAP of such a claim in writing and in detail without undue delay; (ii) Customer authorizing SAP to have exclusive conduct of any judicial and extrajudicial proceedings with such third party; (iii) Customer providing SAP at the expense of SAP with any reasonable assistance so that SAP can defend against the (iv) Customer not conceding any infringement of intellectual property rights vis-à-vis third parties or agreeing any settlement or compromise of a claim without the prior written consent of SAP; and (v) SAP being liable for the infringement of third-party intellectual property rights pursuant to this Section 3.4.1. If Customer discontinues the use of SAP BYD Solutions, BYD Materials and/or SAP BYD Services for mitigation of damages or other important reasons, Customer is obligated to point out to the third party claimant that the discontinuation of use does not constitute acknowledgement of the alleged infringement.

Subject to Section 3.6, to the extent that an injunction, restraining order or judgment exists against the use of any SAP BYD Solution, any BYD Material and/or any SAP BYD Service by Customer, and such decision is final and cannot be appealed against, or a settlement has been concluded with the obligation to cease and desist from using any SAP BYD Solution, any BYD Material and/or any SAP BYD Service, SAP shall at its discretion and at its own expense either (i) procure for Customer the further right to use such SAP BYD Solution, BYD Material and/or SAP BYD Service, or (ii) replace or modify such SAP BYD Solution, BYD Material and/or SAP BYD Service in such a way that no further third party intellectual property rights are infringed while still maintaining the contractual properties. To the extent that none of the foregoing alternatives are reasonably practicable in the view of SAP, SAP may terminate the SAP BYD Solution Agreement or the relevant part thereof and reimburse a portion of the remuneration paid for the period that the SAP BYD Solution, the BYD Material and/or the SAP BYD Service were unavailable due to such injunction, restraining order, judgment or settlement and Customer shall return to SAP the BYD Materials and any materials provided with the SAP BYD Services, if such return is possible.

3.4.3 Notwithstanding anything to the contrary set forth herein, Customer shall have no claims under this Section 3.4 in case of infringements of intellectual property which stem from the fact that: (i) SAP BYD Solutions, BYD Materials and/or SAP BYD Services were used contrary to the provisions of the SAP BYD Solution Agreement or any documentation; (ii) SAP BYD Solutions, BYD Materials and/or SAP BYD Services were used in combination with other products, accessories, software or data not supplied or approved by SAP; (iii) SAP BYD Solutions, BYD Materials and/or SAP BYD Services were modified by Customer or third parties; and/or (iv) Customer continues to use SAP BYD Solutions, BYD Materials and/or SAP BYD Services after a modified version not infringing these

intellectual property rights has been made available to Customer by SAP.

3.4.4 Further claims in connection with the infringement of third party intellectual property rights of any kind whatsoever are excluded, without prejudice to any claims for damages restricted according to Section 3.6.

## 3.5 Customer Obligations

Customer shall be liable to SAP for any damage incurred by SAP because of any use of SAP BYD Solutions, BYD Materials and/or SAP BYD Services in breach of (i) the SAP BYD Solution Agreement, (ii) any requirements, procedures, policies or regulations of networks connected to SAP BYD Solutions and (iii) any applicable law. The foregoing shall apply regardless of whether such damage is caused by the conduct of Customer and/or its employees or by the conduct of a third party using the Customer's password. The foregoing shall not apply when and to the extent that Customer submits proof that it is not responsible for such damage.

#### 3.6 Limitations of Liability

- 3.6.1 Except as referred to in Section 3.6.2 and subject to Section 3.6.3, the liability of SAP arising under or in connection with the SAP BYD Solution Agreement or the legal relationship established by the SAP BYD Solution Agreement (whether in contract, tort or otherwise) shall be limited to €200,000 per incident and limited in total to €500,000 for all claims arising out of the SAP BYD Solution Agreement per Initial and each Renewal Term.
- 3.6.2 SAP shall not in any circumstance (other than those referred to in Section 3.6.3) be liable for any loss of profits (actual or anticipated), loss of revenue, loss of anticipated savings, loss of goodwill, loss or corruption of or damage to data or for any indirect, incidental, consequential or special loss or damage or be liable under any claim which is made more than 2 years after the date that the Customer became aware of the claim or more than 3 years after the cause of the claim arose.
- 3.6.3 Nothing in the SAP BYD Solutions Agreement shall exclude or limit SAP's liability for death or personal injury resulting from negligence or in relation to any claim based on fraud, criminal act or a breach of the obligations imposed by s.12, Sale of Goods Act 1979 or s.2, Supply of Goods and Services Act 1982.
- 3.6.4 The aforementioned liability limitations shall include any claims against employees of, subcontractors of, or any other persons authorized by, SAP.

# 3.7 Prices and Terms of Payment

3.7.1 Customer shall pay to SAP the fees stipulated in the Order Form(s) and the Statement(s) of Work, in the amount as set forth therein within thirty (30) days of the date of invoice (the "Payment Due Date").

#### 3.7.2

SAP may increase the fees for SAP BYD Solutions provided under the SAP BYD Solution Agreement upon ninety (90) days notice to Customer and with effect to the beginning of the immediately following Renewal Term. The first fee increase shall not exceed the percentage by which the Consumer Price Index ("Index") has increased

(calculated on a cumulative year-over-year basis) compared to the value of the Index as of the effective date of the SAP BYD Solution Agreement as outlined in Section 5.1 of the Order Form. Any subsequent fee increase shall be limited to the percentage by which the Index has increased (calculated on a cumulative year-over-year basis) compared to the value of the Index that was used as the basis for the then-prior fee increase. In case SAP increases the fees for SAP BYD Solutions under this Section 3.7.2, Customer may terminate the SAP BYD Solution Agreement by giving thirty (30) days notice with effect to end of the Initial Term or the then current Renewal Term.

- 3.7.3 Customer may only set-off or withhold sums due if Customer's claims have either been accepted in writing by SAP or confirmed by a court without further means of appeal (res judicata).
- 3.7.4 The Customer agrees that late payments shall be treated as qualifying debts under the Late Payment of Commercial Debts (Interest) Act 1998 and, as such, attract simple interest if not paid on time.
- 3.7.5 All taxes or customs duties except income or corporation taxes will be borne by Customer. If any such tax or duty has to be withheld or deducted from any payment under the SAP BYD Solution Agreement, Customer will increase payment under the SAP BYD Solution Agreement by such amount as shall ensure that after such withholding or deduction SAP shall have received an amount equal to the payment otherwise required.
- 3.7.6 Income taxes will be borne by SAP. If Customer is required to withhold income or corporation tax or a similar tax according to local law and respective double taxation treaties for royalties from payment to SAP Customer shall be entitled to withhold or deduct such tax from the gross amount to be paid. However, Customer shall use all endeavors to reduce any such withholding tax payable to the lowest possible rate subject to compliance with all applicable laws and double taxation treaties. Customer will in the case of any withholding of tax provide to SAP a receipt from the relevant tax authority to which such withholding tax has been paid and co-operate with SAP in order to enable SAP to claim refunds and/or reduce the tax withholdings.

#### 3.8 Term; Termination

- 3.8.1 The term of the SAP BYD Solution Agreement shall be set out in the Order Form. The term of any Statement of Work shall be as set out therein.
- 3.8.2 Notwithstanding the foregoing, any of the agreements that form part of the SAP BYD Solution Agreement may be terminated by either party immediately on giving notice to the other where the respective other party has committed a material breach of any term of the respective agreement which is not capable of remedy or, in the case of a breach which is capable of being remedied (including, in the case of a breach by Customer, more than thirty (30) days failure by Customer to pay any fees due hereunder), shall have failed to remedy that breach within 30 days after receiving a respective notice from the other party. In case of termination by the

Customer in accordance with this Section 3.8.2, Customer shall be entitled to a pro-rata refund of prepaid remuneration.

- 3.8.3 Termination under Section 3.8.2 of individual Order Form and/or Statements of Work shall leave the SAP BYD Solution Agreement, other Order Forms and/or other Statements of Work unaffected.
- 3.8.4 Notwithstanding SAP's right to terminate under Section 3.8.2, in the event of any material breach of the SAP BYD Solution Agreement, which is not cured within thirty (30) days after receipt of written notice thereof from SAP, in addition to any other remedies available and notwithstanding any other rights of SAP set forth in the SAP BYD Solution Agreement, SAP will have the right to immediately, at SAP' sole discretion, (i) deactivate Customer's user name(s) and password(s) and/or (ii) suspend access to SAP BYD Solutions, BYD Materials and as applicable SAP BYD Services for a maximum period of two (2) weeks and in any case no longer than the breach remains uncured.
- 3.8.5 Upon the effective date of termination (i) Customer's access to SAP BYD Solutions, SAP Materials and as applicable SAP BYD Services will be suspended, and (ii) Customer shall return all BYD Materials in its possession and upon SAP's request allow SAP to remove all BYD Materials from the Customers premises and grant SAP access to the Customers premises during regular business hours (at the location where the BYD Materials are located) for such purpose.
- 3.8.6 After termination of the SAP BYD Solution Agreement and prior to the effective date of such termination, SAP will make available mechanisms which enable Customer to extract the Customer Data from SAP servers. Customer will be able to download to and store the Customer Data on its own hardware. Tax-related Customer Data can be extracted and stored in a common format for auditing and reconciliation purposes. Details which business objects and business relevant Customer Data may be extracted and detailed instructions on data extraction are made available by SAP via the Business Center. Data still remaining on the servers after the effective date of termination, including but not limited to Customer Data, may be permanently and irrevocably removed unless and to the extent applicable laws and regulations require further retention of such data by SAP. Customer is entitled to request from SAP a written declaration that SAP will not withhold any Customer Data if Customer confirms that Customer will not bring any claims against SAP or its subcontractors for the defense against which such data might be required. Customer shall be responsible to verify whether the data retention offered by SAP is sufficient for Customer to comply with any regulation or laws applicable to Customer.

### 3.9 Confidentiality and Privacy

3.9.1 Each party undertakes to treat as confidential all confidential information and trade secrets of the other party acquired in connection with the performance of the SAP BYD Solution Agreement that are expressly identified as confidential or proprietary or that are reasonably

- identifiable as confidential or proprietary based on the circumstances of their disclosure or by their nature ("Proprietary Information") and to use such Proprietary Information only to perform the SAP BYD Solution Agreement. SAP's Proprietary Information includes all of, but is not limited to:
- Expertise, software (in object and source code), programming techniques and concepts, processing methods, system designs embedded in SAP BYD Solutions, SAP Materials and/or SAP BYD Services;
- Discoveries, inventions, techniques, concepts, designs, flow charts, documentation, product specifications, application programming interface specifications, and techniques and processes that relate to SAP BYD Solutions, SAP Materials and/or SAP BYD Services:
- Details of customers and business partners, information about deployed third-party software;
- The terms and conditions of the SAP BYD Solution Agreement, of any amendments thereto and of all contracts in any system of contracts of which the SAP BYD Solution Agreement is part.
- 3.9.2 Each party shall keep secret all Proprietary Information of the other party, provided that, as far as this is necessary to enjoy the rights granted or perform the obligations imposed under the SAP BYD Solution Agreement, the recipient is entitled to disclose to employees and third parties Proprietary Information. The parties shall also procure that all employees or third parties entrusted by the parties with Proprietary Information in the performance of the SAP BYD Solution Agreement enter into the same or similar confidentiality undertakings.
- 3.9.3 Either party shall carefully safeguard the other party's Proprietary Information to avoid use in violation of the SAP BYD Solution Agreement.
- 3.9.4 The preceding undertakings shall not apply to information in respect of which the receiving party ("Recipient") can show that it (i) has been public knowledge at the time it was disclosed to the Recipient and had not become public knowledge through an act or omission by Recipient or Recipient's employee or agent in breach of contract, or (ii) has been in the possession of or known to Recipient before Recipient received it from the disclosing party, or (iii) had been lawfully disclosed to Recipient by another person entitled to do so, or (iv) had been independently developed by Recipient without reference to the disclosing party's information.
- 3.9.5 Customer must prevent all unauthorized access to SAP BYD Solutions, SAP Materials and SAP BYD Services. If Customer suspects misuse, Customer must notify SAP without undue delay.
- 3.9.6 Any data processing by SAP shall only be conducted on behalf of Customer as described in the Annex to the Order Form.
- 3.9.7 Additionally, SAP may process personal data of Customer and its Named Users for its own business purposes, as far as this is required for fulfillment of SAP's contractual obligations (invoicing, support or other services), or for analysis of such data for statistical purposes or purposes of enhancement of SAP products, support or other services provided hereunder (also by

subcontractors). For the latter purposes, SAP shall use the data in an anonymized format only. Customer shall inform its employees and/or End Users hereof. Customer shall inform its employees hereof and shall ensure that only employees who agree to this access SAP BYD Solutions. 3.9.8 Where SAP collects personal data outside the contractual purpose of the SAP BYD Solution Agreement for its own purposes, SAP shall obtain the consent the respective individual.

## 3.10 Intellectual Property Rights and Notices

3.10.1 Customer shall not remove notices and notations in the SAP BYD Solution that refer to copyrights, trademark rights, patent rights and other intellectual property rights. Unless expressly agreed otherwise herein, any and all patent rights, copyrights, trademark rights and other rights in the SAP BYD Solution, as well as any improvements, design contributions or derivative works conceived or created by either party in or to the SAP BYD Solution, shall remain the exclusive property of SAP and/or its licensors. Except for the limited license rights expressly granted in the applicable Order Form or Statement of Work, the SAP BYD Solution Agreement does not transfer any proprietary right or interest in the SAP BYD Solution to Customer. Between Customer and SAP all title to and rights in the SAP BYD Solution, Deliverables, operational know-how and business secrets related thereto vest in SAP and/or its licensors exclusively. notably copyright and rights of authorship, rights to inventions, and other industrial property rights, and including without limitation works created by SAP or SAP's agents and subcontractors to the specification of or in cooperation with Customer. All license rights not expressly granted to Customer in this Agreement are reserved by SAP and its licensors.

3.10.2 Other than the rights granted under Section 3.10.1 and except for the software products explicitly provided by SAP for installation and use at Customers' site, Customer shall not be granted a separate license to any software products utilized by SAP for the provision of the SAP BYD Solution. In particular, such software products (i) shall not be installed on any computer, server or other device of Customer and (ii) Customer has no claim to being provided with such software products in physical form.

3.10.3 The following shall remain the sole and exclusive property of Customer: (a) all data owned by Customer when inputted into or extracted from the SAP BYD Solutions and SAP BYD Services by Customer or a party authorized by Customer ("Customer Data"), and (b) Customer's proprietary business processes to the extent such processes are independent of the BYD Solutions, BYD Services and BYD Materials: and (c) all copyrights. trademarks, patents, trade secrets and any other intellectual property and proprietary rights in and to the foregoing (subsections (a), (b), and (c) are collectively referred to as the "Customer Materials"). SAP shall have no right, title, or interest in or to the Customer Materials. SAP shall use the Customer Data and Customer Materials solely for the purpose of carrying out its obligations under the SAP BYD Solution Agreement. Any other use is strictly prohibited. Notwithstanding the foregoing, nothing in this

Section 3.10.3 shall be construed to transfer any rights to Deliverables. SAP Customer in any proprietary information, feedback or derivative works based in whole or in part on the BYD Solutions, the SAP BYD Services or the Documentation. SAP shall retain all rights to independently develop any new or improved functionalities. products, means, systems and/or processes related to any of the SAP proprietary software including but not limited to the BYD Solutions, BYD Services, BYD Materials and the Documentation, regardless of whether such improved functionalities, products, means, systems and/or processes are, in whole or in parts congruent, similar and/or comparable to any of the Customer's proprietary business processes. Customer agrees not to take any action that would limit SAP's sale. assignment, licensing or use of its own services and software or modification or enhancements thereto.

### 3.11 Audit/Inspections

To ensure compliance with the terms of this Agreement in respect to any BYD Materials used by Customer at the Customer's site, SAP, a third party auditor assigned by SAP and/or a third party software vendor of SAP shall be entitled to conduct an inspection of the Customer's premises where the BYD Materials are located. Any inspection will be conducted during regular business hours (at the location where the BYD Materials are located) with at least ten (10) days prior notice, and in such a manner as not to interfere unreasonably with the operations of the Customer.

## 3.12 Pilot Functionality and Interface Usage

3.12.1 SAP may offer and Customer may choose to accept access to functionality that is not generally available and not validated and quality assured in accordance with SAP's standard processes ("Pilot Functionality"). The purpose of such access is to allow Customer to test the functionality with its standard business operation and to provide feedback on such testing to SAP. Pilot Functionality is described as such in the Documentation. Any usage of Pilot Functionality is subject to a separate agreement between Customer and SAP. Any productive use of the Pilot Functionality is at Customer's sole risk. SAP does not warrant the correctness and completeness of the Pilot Functionality. Subject to the provisions of Section 3.6.3 above, SAP shall not be liable for errors or damages caused by usage of the Pilot Functionality (including but not limited to any loss of profits (actual or anticipated), loss of revenue, loss of anticipated savings, loss of goodwill, loss or corruption of or damage to data or for any indirect, incidental, consequential or special loss or damage).

3.12.2 Use of BYD interfaces by Customer is subject to a separate agreement between Customer and SAP and subject to additional fees.

#### 3.13 Miscellaneous

3.13.1 SAP shall be entitled to make or authorise any public or private announcement that the parties have entered into a SAP BYD Solution Agreement and to name Customer in SAP's marketing material, collaterals and press releases as a reference for the provision of SAP BYD Solutions, SAP Materials and/or SAP BYD Services,

provided that SAP has informed Customer hereof in writing and Customer has not declared his disagreement within two (2) weeks of being notified. This shall include, but not be limited to, the right to use Customer's trade marks or logos for such purpose.

- 3.13.2 Customer is only entitled to assign its rights under the SAP BYD Solution Agreement with SAP's prior written approval.
- 3.13.3 Any amendments to the SAP BYD Solution Agreement will not be binding on the parties unless set out in writing, expressed to amend the SAP BYD Solution Agreement. This also applies to the cancellation of this requirement.
- 3.13.4 The SAP BYD Solution Agreement shall be governed by and construed in accordance with the laws of England. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with this Agreement (whether in contract, tort or otherwise) or the legal relationship established by the SAP BYD Solution Agreement.
- 3.13.5 Should any of the provisions of the SAP BYD Solution Agreement be or become invalid, the validity of the remaining provisions shall not be affected thereby. In lieu thereof, a provision as similar in terms to such invalid provision as may be possible and be legal, valid and enforceable shall be added.

The same shall apply if and to the extent that the SAP BYD Solution Agreement is found to contain any gaps or omissions. The parties agree to find a provision that closes such gap or remedies such omission in a way closest to what the parties would have agreed upon, in the spirit of the entire SAP BYD Solution Agreement, had they considered the respective issue in advance.

- 3.13.6 SAP BYD Solutions, SAP Materials and SAP BYD Services are subject, in particular, to German, European Community and/or US export control laws and regulations. Customer acknowledges its obligation to ensure that its exports related to Customers' use of SAP BYD Solutions, SAP Materials and/or SAP BYD Services comply with all applicable local, state, national and foreign laws and regulations and are in accordance with the terms of the SAP BYD Solution Agreement.
- 3.13.7 All notices or reports pursuant to the SAP BYD Solution Agreement shall either be provided in writing or by using the Electronic Process made available by SAP and shall be deemed duly given when delivered to the respective addresses set forth in the SAP BYD Solution Agreement or by following the Electronic Process.
- 3.13.8 The SAP BYD Solution Agreement constitutes the complete and exclusive statement of the agreement between SAP and Customer, and all previous representations, discussions, and writings are superseded by, the SAP BYD Solution Agreement. The SAP BYD Solution Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Customer to SAP.