SAP General Terms and Conditions for 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 incorporate into Customer´s BYD Solutions environment add-ons for BYD Solutions ("Add-on(s)") which Customer has licensed from authorized SAP partners, or which Customer has developed, or which have been developed by an authorized SAP partner specifically for use by Customer only (the latter two called "Customer-specific Add-on(s)").

SAP shall not be responsible for the support of any Add-on.

SAP will activate or de-activate a partner Add-on upon notification by the respective authorized SAP partner. SAP is not responsible for uploading a Customer-specific Add-on into Customer´s SAP BYD Solutions environment.

SAP reserves the right to refuse to incorporate an Add-On into Customer´s BYD Solution system, or to temporarily or permanently deactivate an Add-On at any time if (i) SAP reasonably believes such Add-On may have a negative impact on Customer´s SAP BYD system (ii), such Add-On fails to meet SAP quality standards for Add-ons made available by SAP, or (iii) Customer is in breach of any term or condition of its Agreement with SAP.

Use of an Add-On is at Customer's sole risk and SAP shall not be responsible for any changes or modifications of Customer Data by or through an Add-on. SAP incorporates Add-ons into Customer´s BYD Solutions environment "AS IS" and without any warranty, express or implied. SAP does not warrant that an Add-on is or will be available without interruption, including, without limitation, during any standard maintenance windows for SAP BYD Solutions. However, SAP will use commercially reasonable efforts to make an Add-on available based on the SAP BYD Solutions service level agreement described in the Order Form.

SAP shall not be responsible for any negative impact of an Add-on on the availability, functionality or performance of Customer´s SAP BYD system.

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").

2.3.2 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 México 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.

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 3.2.

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, the Customer may rescind the Statement of Work concerned.

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/Weblinks/Content

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 (i.e. US localization, English language).

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 in-country but offsite will by subject to scope and functionality restrictions.

3.1.4 SAP BYD Solutions may contain links to external Web sites and information provided on such external websites by SAP partners and third-party service providers. SAP shall not be responsible for the contents of any linked Web site, or any changes or updates to such sites. Customer further agrees that SAP shall not be directly or indirectly responsible or liable for any damage or loss caused or alleged to be caused by or in connection with Customer's use of or reliance on any content, goods or services available on or through any such linked Web site. Any article, information, data, code, text, software, documentation, graphics, image, marketing material, video, photograph, message, or posting to any forum, wiki, or blog on the Site, whether publicly posted or privately transmitted, is the sole responsibility of the person or entity providing the content.

3.1.5 SAP BYD Solutions or SAP BYD Services may include Content. This Content is provided "as is", and SAP makes no warranty as to the accuracy or completeness of such Content. Customer uses such Content at its own risk, and SAP shall have no liability to Customer or any third party based on Customer's use of or reliance on such Content. "Content" means visual, audio, numeric, graphical, text or other data or content supplied by third parties and made available through SAP BYD Solutions or SAP BYD Services or otherwise by SAP for use in conjunction with SAP BYD Solutions or SAP BYD Services.

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 only come into default by 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 3.3.

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 relevant 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 stem from 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 claim; (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 3.6.1. 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 an acknowledgement of the alleged infringement.

3.4.2 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 The parties shall only be liable in contract, tort, or otherwise for loss including but not limited to wasted expenditure as follows:

a) for the full amount (i) in case of willful intent, and (ii) in a case of gross negligence on the part of officers or executive staff;

b) not at all in case of slightly negligent breaches that do not result in (i) a material breach which endangers the achievement of the objective of the SAP BYD Solution Agreement; or (ii) in the breach of an obligation the very discharge of which is an essential prerequisite for the proper performance of the SAP BYD Solution Agreement;

c) in all other cases for typically foreseeable limited to USD $200,000 per incident and limited in total to USD $500,000 for all claims arising out of the SAP BYD Solution Agreement per Initial and each Renewal Term.

3.6.2 All claims asserted against SAP for damages or reimbursement of wasted expenditures shall fall under the statute of limitations two years from the date on which Customer obtains knowledge of the damage; irrespective of this knowledge, claims for damages shall fall under the statute of limitations three years from the damaging event.

3.6.4 The liability limitations pursuant to Sections 3.6.1 and 3.6.2 above shall not apply in the event of personal injury, fraudulent concealment of defects and in the event of liability pursuant to the Civil Code.

3.6.5 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 US 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, Partner 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 For the avoidance of doubt, statutory interest rates shall apply.

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 or any amendment thereto. 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 for just cause of any Statement of Work shall leave other Statements of Work and/or the SAP BYD Solution Agreement 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, in 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

Between termination of the SAP BYD Solution Agreement and the effective date of such termination, SAP will support Customer Data return from Customers productive SAP BYD Solutions environment to enable Customer to perform a standard data migration (covering master data and all transactional data related to open business processes, but no historical data) to Customer's new IT system. Customer Data return also includes return of tax-related Customer Data required for auditing and reconciliation purposes. Such tax-related Customer Data will be provided in a common format.

Details which business objects and business relevant Customer Data may be extracted and detailed instructions on data extraction process are available on the Business Center. Data still remaining on the servers after the effective date of termination of the SAP BYD Solution Agreement, including but not limited to Customer Data, will be permanently and irrevocably removed by SAP unless and to the extent applicable laws and regulations require SAP to further retain of such data. 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 sub-contractors 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 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 Customer in any Deliverables, SAP 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, Interface Usage and SAP Add-on Licensing

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, and SAP shall not be liable for errors or damages caused by the usage of the pilot functionality, except if such damages were caused by SAP intentionally or grossly negligent.

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

3.12.3 SAP may provide Customer additional functionality for SAP BYD Solutions by offering SAP Add-ons made available through a dedicated webpage. Customer acknowledges and agrees that SAP Add-ons may only be licensed through an electronic contracting process and Customer expressly accepts the validity and enforceability of any contract accepted by Customer and SAP through such electronic contracting process.

3.13 Miscellaneous

3.13.1 SAP shall be entitled to make or authorize 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 Exclusive place of jurisdiction for any disputes arising from or in connection with the SAP BYD Solution Agreement shall be Mexico City. However, SAP retains the right to sue the Customer at its registered office.

3.13.5 The SAP BYD Solution Agreement shall be governed by and construed under the laws of Mexico City without reference to the UN Convention on the International Sale of Goods (CISG).

3.13.6 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.

3.13.7 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.

3.13.8 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.

3.13.9 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.

Annex to GTC:
SUPPORT SERVICES SCHEDULE FOR SAP BUSINESS BYDESIGN SOLUTIONS

This Support Services Schedule for SAP Business ByDesign Solutions ("**Support Schedule**") describes the support services provided by SAP for SAP Business ByDesign ("**BYD**") Solutions **under and in accordance with the terms and conditions of the SAP Business ByDesign Solution Agreement including any document referred to therein.**

1. Applicability

This Support Schedule governs the provision of support and maintenance services by SAP to Customers of SAP who have entered into a valid SAP Business ByDesign Solution Agreement for SAP BYD.

2. Support Services

Support for SAP BYD Solutions Malfunctions SAP will offer support for all malfunctions related to the SAP BYD Solution (each an "**Incident**"). Incidents have to be reported by Customer via the help functionality made available by SAP as part of the SAP BYD Solution (or any other support channel introduced by SAP). The following service levels shall apply:

Incident Priorities	Definition	Support Availability	Support Language	Initial Response Time
Very High	The problem has very serious consequences for major business transactions and urgent work cannot be performed. The Incident requires immediate attention because the malfunction can cause serious losses.	24 hours x 7 days a week	English, except for: Monday to Friday 9.00 am to 5.00 pm Local Time: local language	SAP initial response within 4 hours of confirmation.* SAP will attempt to contact Customer within the initial response time to clarify business impact and initiate resolution process.
High	A business transaction does not work and necessary tasks cannot be performed. The Incident requires prompt attention because the malfunction can disrupt the entire productive business flow.	Monday to Friday from 9:00 am – 5:00 pm Local Time (as defined in the applicable Order Form)	local language (applicable to Customer's location)	SAP initial response within 3 days of confirmation.* SAP will attempt to contact Customer within the initial response time to clarify business impact and initiate resolution process.
Medium	A business transaction does not work as expected with minor consequences for the productive operation.			Reasonable response time based on the incident (usually within 4 days).* SAP will attempt to contact Customer to clarify business impact and evaluate Incident.
Low	The malfunction has only few or no effects on business transactions.			Reasonable response time based on the Incident.*
* Incident receipt at SAP will be confirmed via email response for all online submitted incidents (email response sent within 15 minutes of Incident receipt by SAP).				

In case Customer has opted for a Private Edition, the following SLA apply:

Incident Priorities	Definition	Support Availability	Support Language	Initial Response Time
Very High	The problem has very serious consequences for major business transactions and urgent work cannot be performed. The Incident requires immediate attention because the malfunction can cause serious losses.	24 hours x 7 days a week	English, except for: Monday to Friday 9.00 am to 5.00 pm Local Time: local language	SAP initial response within 1 hour of confirmation.* SAP will attempt to contact Customer within the initial response time to clarify business impact and initiate resolution process.
High	A business transaction does not work and necessary tasks cannot be performed. The Incident requires prompt attention because the malfunction can disrupt the entire productive business flow.			SAP initial response within 4 hours of confirmation.* SAP will attempt to contact Customer within the initial response time to clarify business impact and initiate resolution process.
Medium	A business transaction does not work as	Monday to	local language	Reasonable response time

	expected with minor consequences for the productive operation.	Friday from 9:00 am – 5:00 pm Local Time (as defined in the applicable Order Form)	(applicable to Customer's location)	based on the incident (usually within 4 days).* SAP will attempt to contact Customer to clarify business impact and evaluate Incident.
Low	The malfunction has only few or no effects on business transactions.			Reasonable response time based on the Incident.*
For Incidents with priority Very High corrective action (issue resolution or action plan) will be provided within four (4) hours. *Incident receipt at SAP will be confirmed via email response for all online submitted incidents (email response sent within 15 minutes of incident receipt by SAP).				

Software Changes SAP will proactively apply software updates, upgrades, new releases and patches during the defined maintenance windows. Customer hereby grants to SAP the permission to make copies of the Customer's system(s) to test the aforementioned software changes and the processes required to implement such software changes. After the end of such testing, SAP shall immediately delete any such Customer system copies. In case a software change needs to be applied outside a maintenance window, SAP will notify Customer in advance.

3. Customer Obligations/Preconditions

As a precondition to receive the support services as described in Section 2 above, Customer shall fulfill the following obligations:

Key Users Customer shall identify at least one Named User as a "Key User" responsible for managing all tasks of the SAP BYD Solution related to Customer's business. A detailed description of the Key User tasks is provided in the Business Center.

Completion of Go-Live Activities All Go-Live activities described in the Order Form for SAP Business ByDesign Solutions are completed by Customer. In particular, all Incidents with priority Very High and High have to be closed.

Exploration of Built-in Help and ByD Forums

In case of Incidents, Customer shall make reasonable effort to explore built-in help, the SAP support knowledge database and the ByD forums to find already documented solutions.

English-speaking Contact Person For all Incident priorities where the support language is English Customer shall ensure that an English-speaking contact person for SAP is available.

Remote Support In the event that SAP needs to access any of Customer's systems remotely, e.g. via application sharing, Customer hereby grants to SAP the permission for such remote access. Further, Customer names a contact person that – if necessary – grants to SAP the required access rights.