

PARTNER TERMS AND CONDITIONS

Partner Terms and Conditions: With enrollment into this PartnerConnect Program and Supplier's written notification of Partner's acceptance into the program, both parties accept these Partner Terms and Conditions to become an integral part of the SOFTWARE AG PARTNERCONNECT PROGRAM AGREEMENT, which can be downloaded at the time of enrollment into this program

1 DEFINITIONS

1.1 **Definitions:** Unless the context requires otherwise the following words and expressions shall bear the meanings set out below where used in this Agreement:

"Confidential Information"	means all information which is designated as being confidential or which may reasonably be assumed to be confidential (whether commercial, financial, technical or otherwise), trade secrets, data, copyright and other intellectual rights and know-how relating to or owned by Supplier, its parent company or other members of its corporate group, and their respective customers or Partner, its parent company or other members of its corporate group, and their respective customers.
"Party"	means either of the parties to this Agreement and "Parties" means the parties to this Agreement together.
"Partner"	means Applying Company, which becomes Partner status after Supplier's written notification of Partner's acceptance into the program.
"Supplier"	means an affiliate of Software AG, Umlandstrasse 12, 64297 Darmstadt-Eberstadt as allocated to Partner's premises pursuant to the table "Software AG Affiliates" which can be found at www.softwareag.com/partner-program-exhibits .
"Supplier Code of Conduct"	means the set of ethical principles that Supplier aims to follow when conducting its business dealings.
"Software AG Offerings"	means Software, maintenance and support services and cloud services made available by Supplier.
"Territory"	means the initial territory ("Activity Country") identified when the Partner registers to enter into the program. Unless the Partner does not indicate a particular territory in the registration process, the default territory will be the registered premises of Partner.
"Test & Demo Licenses"	means on premise licenses and cloud based licenses (access and use the Supplier's web-based products and services) for test & demonstration purposes only.

2 SCOPE OF THE AGREEMENT

2.1 **Scope of Appointment:** Supplier appoints and authorizes Partner on a non-exclusive basis to co-sell or resell Supplier Offerings in the Territory (only) in accordance with the terms&conditions, procedures and prerequisites set out in the supplements (e.g. Partner Program Guide) found at: www.softwareag.com/partner-program-exhibits which does form an integral part to this Agreement and Partner may not actively solicit business relating to the Supplier Offerings outside the Territory. Additional rights may be granted beyond the scope of the Agreement on a case by case basis by the mutual agreement of the parties.

2.2 **Test & Demo Licenses (License Grant):** Provided the prerequisites pursuant to the Partner Guide are met and Partner applies for Select+ and Premier Partner Level and in the event the Partner requests Test & Demo Licenses released for the Partner Connect Program, the Partner is entitled to use these Test&Demo Licenses if a) no statutory rights or rights of third parties conflict therewith and b) Partner will follow the instructions provided by Supplier to obtain the requested Software AG Offerings. Any use of these Test&Demo Licenses will be pursuant the applicable terms and conditions found at: www.softwareag.com/partner-program-exhibits. In the event that Partner would like cloud based licenses, Partner will contact their Partner Account Manager to receive a Cloud Test&Demo Order Form to be signed.

3 SUBSIDIARY OR AFFILIATE PARTICIPATION

3.1 **Participation:** In the event that a subsidiary of Partner wishes to participate in the Agreement the local subsidiary of Partner shall apply for the partnership via the online application or the Partner and the affiliate of the Supplier shall sign a Participation Agreement provided by local partner account manager for each region that wishes to participate in the Agreement.

4 TRADEMARK

4.1 **Trademark License:** Supplier grants to Partner a non-transferable, non-exclusive, non-sublicensable, and royalty-free license to use Supplier's name, trademarks, logos, and other identifying information ("**Supplier's Marks**") on marketing literature, advertising, and promotions. Partner shall comply with all of Supplier's policies regarding the use and display of Partner's name, trademarks, logos, and other identifying information that Supplier provides to Partner in writing.

5 PAYMENT

5.1 **Payment:** All payments are due and payable within 30 days of date of invoice and are non-refundable, non-cancelable, and irrevocable except as expressly stated in this Agreement. All payments shall be made without recoupment or set-off. Partner will pay all taxes and duties including, but not limited to, sales, use, rental, receipt, personal property, and other taxes (but excluding taxes based upon Supplier's income), which may be levied or assessed in connection with this Agreement. Any payment that is not paid in accordance with the terms of this Agreement will accrue interest at the rate of 1.5% per month, accruing daily from the date due (both before and after judgement) and Partner will pay all costs of collection, including reasonable legal fees and expenses.

6 RECORDS

6.1 **Records:** For three (3) years after termination of this Agreement, Partner and Software AG will maintain at its principal place of business records with respect to payments pursuant to this Agreement and all other data needed for verification of amounts that were paid or payable under this Agreement and, at the request of the other party, will provide reasonable access to the same.

7 CONFIDENTIALITY

7.1 **Confidential Information:** Each Party will have access to confidential or nonpublic information ("**Confidential Information**") of the other Party or third parties. Confidential Information disclosed is proprietary and will remain the sole property of the disclosing Party or such third parties. The Software and Documentation are Confidential Information of Supplier. Confidential Information will not include information that: (i) is or becomes publicly available or enters the public domain through no fault of the recipient; (ii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations; (iii) is already in the recipient's possession free of any confidentiality obligations at the time of disclosure; (iv) is independently developed by the recipient; or (v) is approved, in writing, for release or disclosure without restriction.

- 7.2 **Confidentiality Obligation:** Each Party agrees to: (i) use Confidential Information only for the purposes of this Agreement; (ii) hold Confidential Information in confidence and protect it from dissemination to, and use by, any third party; (iii) not to create any derivative work from Confidential Information; (iv) restrict access to Confidential Information to its personnel, affiliates, agents, and contractors who need access to such Confidential Information and who have agreed in writing to treat such Confidential Information in accordance with this Agreement; and (v) return or destroy all Confidential Information of the other Party upon termination or expiration of this Agreement. If the recipient is required by law or valid legal order to disclose Confidential Information, the recipient will, unless prohibited by law, give reasonable notice of such demand to allow the disclosing Party to seek a protective order or other remedy.
- 7.3 **Data Protection Obligations:** Both Parties understand that personal data processed under this Agreement, is defined under the EU General Data Protection Regulation (“GDPR”), and personal information, as defined under the California Consumer Protection Act (“CCPA”), may be provided by the other Party.
- (a) Each Party will comply with its obligations under all applicable data protection law, including but not limited to the GDPR and CCPA and Suppliers Privacy Policies guidelines which can be found at <https://www.softwareag.com/partner-program-exhibits>
- (b) Partner is responsible for collecting prospective end user personal data in accordance with all applicable data protection law including but not limited to the GDPR and CCPA and Suppliers Privacy Policies guidelines at <https://www.softwareag.com/partner-program-exhibits> for safeguarding the rights of such data subjects.
- 8 TERM**
- 8.1 **Term:** This Agreement shall commence on the Effective Date and shall extend for a period of one (1) year. This Agreement shall automatically renew for additional one (1) year terms after the expiration of the initial term.
- 9 TERMINATION**
- 9.1 **Termination:** Either Party may terminate this Agreement upon three (3) months’ prior written notice at any time.
- 10 BREACH**
- 10.1 **Breach:** If Partner:
- (a) breaches or threatens to breach its obligations under the Clause ‘Confidentiality’ and such breach shall remain uncured for a period of five (5) days after the receipt by Partner of written notice from Supplier of such breach; or
- (b) otherwise fails to comply in material respects with any or all covenants, agreements, or conditions herein and such failure continues for thirty (30) days after written notification from Supplier; or
- (c) undergoes a change in its direct or indirect ownership or control in a manner that, in Supplier’s judgement, may adversely affect Supplier’s rights; Supplier may then, at its sole discretion, terminate this Agreement immediately by serving notice in writing on the Partner.
- 11 EFFECT OF TERMINATION**
- 11.1 **Effect of Termination:** Termination or expiry shall be without prejudice to the rights of the parties accrued prior to the termination or expiry. Upon termination of this Agreement, each Party shall
- (a) immediately discontinue all use of the other Party’s Confidential Information, including the Software;
- (b) return to the other Party or, at the other Party’s option, delete, destroy, all copies of such other Party’s Confidential Information then in its possession including from its computer storage or any other media, including, but not limited to, online and off-line libraries;
- (c) provide written confirmation of such deletion on the other Party’s request.
- Partner must make reasonable effort to transfer Customers who pay Partner for Maintenance and Support Services provided by Supplier within 12 months after termination of this Agreement. Until Maintenance and Support Services are transferred from Partner to Supplier, Partner will continue to be obliged to pay the corresponding maintenance fees to Supplier. Termination or expiry of this Agreement for whatever reason will not affect any accrued rights or liabilities as at the date of termination, including the payment of any sums outstanding under this Agreement.
- 11.2 **Survival of Clauses:** The provisions of this Clause and Clauses Confidentiality, Limitation of Liability, Effect of Termination and Governing Law shall remain in full force and effect as between the parties notwithstanding any termination or expiry of this Agreement.
- 12 WARRANTIES**
- 12.1 **Supplier Warranties:** The Supplier represents and warrants that: it has the full right and power to enter into and perform this Agreement without the consent of, or any notice to, any third party.
- 12.2 **Partner Warranties:** The Partner represents and warrants that: it has the full right and power to enter into and perform this Agreement without the consent of, or any notice to, any third party.
- 13 IPR INDEMNITY**
- 13.1 **Indemnity:** Supplier will indemnify Partner from any third party action against Partner to the extent proximately based upon an allegation that the use of the Supplier Marks licensed under this Agreement infringes an intellectual property right or trade secret registered in the Territory, and pay those damages or costs (including reasonable attorneys’ fees) incurred by Partner related to the settlement of such action or awarded against Partner, provided that Partner:
- (a) promptly notifies Supplier of any such action;
- (b) gives Supplier full authority, information and assistance to defend such claim; and
- (c) gives Supplier sole control of the defense of such claim and all negotiations for the compromise or settlement of such claim.
- 13.2 **Indemnification by Partner:** Partner agrees to indemnify, hold harmless and, at Supplier’s option, defend Supplier from and against all losses, expenses (including reasonable attorneys’ fees), damages, and liabilities resulting from any claim by any third party arising from or in connection with:
- (a) Partner’s acts or omissions, fraud or misrepresentation by Partner in the performance under the terms of this Agreement;
- (b) misuse of the Supplier Marks.
- Supplier agrees to give Partner prompt written notice of such claim and, if Supplier elects to require Partner to provide defense, Supplier shall give Partner: (1) authority to control and direct the defense and/or settlement of such claim; and (2) such information and assistance as Partner may reasonably request, at Partner’s expense, in connection with such defense and/or settlement. Partner shall not settle any third-party claim against Supplier unless such settlement completely and forever releases Supplier with respect thereto or unless Supplier provides its prior written consent to such settlement.
- 14 LIMITATION OF LIABILITY**
- 14.1 **Limitation of Liability:** Limitation of liability shall apply to the respective regions as indicated below:
- (a) **DACH (Germany, Austria and Switzerland):** EACH PARTY SHALL BE FULLY LIABLE FOR INTENT AND GROSS NEGLIGENCE AS WELL AS FOR DAMAGES RESULTING FROM INJURY TO LIFE, BODY OR HEALTH OR WHERE LIABILITY CANNOT BE EXCLUDED OR LIMITED BY LAW. EXCEPT FOR DAMAGES ARISING FROM A BREACH OF INTELLECTUAL PROPERTY AND/OR THE CLAUSE LICENSE GRANT, CONFIDENTIALITY AND AMOUNTS PAYABLE UNDER THE CLAUSE IPR INDEMNITY IN NO EVENT SHALL EITHER PARTY’S TOTAL CUMULATIVE LIABILITY FOR ANY DAMAGES TO THE OTHER PARTY EVER EXCEED: A) THE AGGREGATE RESELL FEES EARNED BY PARTNER IN THE PREVIOUS YEAR FOR CLAIMS RELATED TO RESELL DEALS; OR B) THE AGGREGATE REFERRAL FEES OR SALES ASSIST FEES, AS APPLICABLE, PAID BY SUPPLIER TO PARTNER IN THE PREVIOUS YEAR FOR CLAIMS RELATED TO REFERRAL FEE OR SALES

ASSIST FEE TRANSACTIONS.

- (b) **Rest of the world:** EXCEPT FOR DAMAGES ARISING FROM A BREACH OF THE CLAUSES CONFIDENTIALITY AND EXPORT CONTROL OR AMOUNTS PAYABLE UNDER THE CLAUSE IPR INDEMNITY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, INCLUDING DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF DATA, LOSS OF PROFITS, OR LOSS OF GOODWILL. EXCEPT FOR DAMAGES ARISING FROM A BREACH OF THE CLAUSES CONFIDENTIALITY AND AMOUNTS PAYABLE UNDER THE CLAUSE IPR INDEMNITY IN NO EVENT SHALL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY FOR ANY DAMAGES TO THE OTHER PARTY EVER EXCEED: A) THE AGGREGATE RESELL FEES EARNED BY PARTNER IN THE PREVIOUS YEAR FOR CLAIMS RELATED TO RESELL DEALS; OR B) THE AGGREGATE REFERRAL FEES OR SALES ASSIST FEES, AS APPLICABLE, PAID BY SUPPLIER TO PARTNER IN THE PREVIOUS YEAR FOR CLAIMS RELATED TO REFERRAL FEE OR SALES ASSIST FEE TRANSACTIONS.

15 GENERAL

- 15.1 **Code of Conduct & Self-Assessment Form:** Partner hereby agrees to comply with the Supplier Code of Conduct. Partner shall fill in and submit a Self-Assessment Form provided by the Supplier's account manager. Partner must sign and return the Self-Assessment Form before the Partner can be accepted into the program. Supplier has no obligation to pay to Partner any commission or incentive payments until Supplier receives acceptance of the Supplier Code of Conduct and Partner has submitted the Self-Assessment Form. Supplier may carry out an audit in order to monitor the Partner's compliance during the term of the Contract, at its own cost and no more than once per year. Non-compliance by the Partner with the obligations set out in the Supplier Code of Conduct or in the Self-Assessment form may authorize Supplier to terminate this Agreement pursuant to Clause 'Breach' above.
- 15.2 **Anti-Corruption:** The Parties will comply with all laws, regulations and requirements (whether international, federal, state, local, or provincial) prohibiting bribery, money laundering, and anti-corruption, including the U.S. Foreign Corrupt Practices Act.
- 15.3 **Force Majeure:** Neither Party is liable for failing to perform an obligation under this Agreement if such failure is due to any act or condition beyond that Party's reasonable control.
- 15.4 **Assignment:** Partner may not assign, transfer, delegate, or sublicense any of Partner's rights or obligations under this Agreement without Supplier's prior written consent. Any assignment, transfer, delegation, or grant of sublicense without Supplier's consent is null and void.
- 15.5 **Independent Contractors:** The Parties are independent contractors and have no power to bind or incur obligations on the other Party's behalf.
- 15.6 **Dispute Resolution:** In the event of a dispute, each Party will appoint a senior management representative to negotiate in good faith to resolve the dispute before commencing formal proceedings. Formal proceedings may not commence until 30 days have passed since the initial request to negotiate the dispute; provided, however, that a Party may file for formal proceedings at any time to avoid the expiration of any limitations period, preserve a superior position with respect to other creditors, or apply for interim, injunctive, or equitable relief.
- 15.7 **Governing Law:** This Agreement is governed by the laws as stated by the table set forth below without giving effect to its conflicts-of-laws provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Uniform Commercial Code (UCC). The Parties consent to exclusive personal jurisdiction in courts located in the country or Commonwealth listed in the table below. In the event a dispute arising under this Agreement results in litigation, the non-prevailing Party will pay the court costs and reasonable attorneys' fees and expenses of the prevailing Party. EACH PARTY WAIVES ALL RIGHT TO A JURY TRIAL IN ANY PROCEEDING ARISING OUT THIS AGREEMENT.

Region of Supplier	Governing Law
Europe (except Germany, Austria and Switzerland=DACH)	United Kingdom
DACH	Germany
Middle East & Africa	United Kingdom
Asia Pacific	Australia
Japan	Japan
Latin America (except Mexico & Caribbean countries)	Brazil
North America (United States, Canada, Mexico & Caribbean countries)	Commonwealth of Virginia

- 15.8 **Prevailing Party:** In the event a dispute arising under this Agreement results in litigation, the non-prevailing party shall pay the court costs and reasonable attorneys' fees of the prevailing party.
- 15.9 **Notices:** All notices and demands relating to this Agreement must be in writing and sent to the other Party at the address set out in the applicable Order Form to the attention of such Party's legal department, unless a different address or recipient is designated by a Party. All notices and demands will be effective upon delivery when: (i) delivered in person with signed receipt; (ii) sent by registered mail (return receipt requested); or (iii) sent by nationally recognized trackable carrier service.
- 15.10 **Entire Agreement; Waiver; Priority; Severability:** This Agreement constitutes the entire agreement between the Parties, and supersedes all prior written and oral agreements and communications related to the subject matter of this Agreement. Any modifications to this Agreement must be in writing and signed by the duly authorized representatives of the Parties. Any waiver under this Agreement must be in writing and signed by the Party granting the waiver. A waiver granted under this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other provision of this Agreement. No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right. In the event of any conflict between any provision of this Agreement and any exhibits incorporated and made part of this Agreement, such conflict will be resolved by giving precedence to the Agreement. If any provision of this Agreement is held invalid or unenforceable, the provision will be limited to the minimum effect necessary and the remaining provisions of this Agreement will remain binding and enforceable. This Agreement may be executed in one or more counterparts, with the same effect as if the Parties had signed the same document.