

# PARTNER AGREEMENT

## General Conditions

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### 1. CERTAIN DEFINITIONS

1.1. In the Agreement:

“**Activation Code**” means a unique license or authorization number or activation code necessary for any Solution to be enabled or activated for use.

“**Affiliate**” means a company controlled by, controlling, or under common control with the entity, directly or indirectly, through one or more intermediaries.

“**Agent**” has the meaning given by Clause 2.2.

“**Agreement**” has the meaning given by the Special Conditions.

“**Brand Features**” means the media materials, trade names, trademarks, service marks, registered design, logos and other distinctive brand features of Vendor or its Affiliates relating to a Solution, as updated or amended, replaced or supplemented from time to time by Vendor.

“**Brand Guidelines**” means the Vendor brand guidelines, media materials, policies and other similar policies (if any) accessible through the Vendor Portal, as updated or amended, replaced or supplemented from time to time by Vendor.

“**Business Partner and Public Relations Privacy Notice**” means the Vendor privacy notice available at [www.avast.com/partner](http://www.avast.com/partner) as updated or amended, replaced or supplemented from time to time by Vendor.

“**Cancellation Policy**” has the meaning stated in the Special Conditions or, in the absence of such a definition, means an applicable cancellation policy (if any) listed on the Vendor Portal, as Vendor may update, amend, replace or supplement it from time to time.

“**Clause**” means a provision of these General Conditions.

“**Company**” has the meaning given by the Special Conditions.

“**Company Portal**” means a website or other online property or facility owned or operated by Company or its Affiliates from which End Users within the Territory can download or enable Solutions.

“**Confidential Information**” has the meaning stated in Clause 10.1.

“**Data Protection Terms**” means the Data Protection Terms located at [www.avast.com/partner](http://www.avast.com/partner) as updated or amended, replaced or supplemented from time to time by Vendor.

“**Device**” means a computer, tablet, smart phone, server, router or other device suitable to be used with, or managed by, a Solution.

“**Dispute**” has the meaning stated in Clause 15.5.1.

“**Effective Date**” has the meaning given by the Special Conditions.

“**End User**” means an individual or entity purchasing a Solution for its own use and not for resale, in each case only to the extent that Company pays or arranges payment for such Solution pursuant to this Agreement. For the avoidance of doubt, Company will be deemed an End User to the extent it employs a Solution for its own internal business purposes.

“**EULA**” means an end user license agreement between Vendor (or, if applicable, its Affiliate or Third Party supplier) and an End User in respect of the applicable Solution.

“**Exclusive Territories**” means the countries listed as such (if any) on the Vendor Portal, as Vendor may update it from time to time, for which Vendor may have appointed an exclusive distributor or reserved to itself.

“**Extended Term**” means the Term together with the period thereafter, if any, before the expiration or termination of the last-to-expire Subscription Term.

“**Fees**” means fees specified in each Order which are to be paid by Company for Solutions pursuant to this Agreement.

“**Fulfill**” means delivery or performance of any element of an Order or a Solution (which for the avoidance of doubt, may include the delivery of an Activation Code) (and “**Fulfilled**,” “**Fulfilling**” and “**Fulfillment**” will be construed accordingly).

“**General Conditions**” means these Partner Agreement General Conditions.

“**Governmental Authority**” means any federal, national, provincial, state or local government or other political subdivision thereof, any entity, authority, agency or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision, and any super-national organization of sovereign states exercising such functions for such sovereign states.

“**Intellectual Property**” or “**Intellectual Property Rights**” means any and all registered or unregistered, past, present, and future rights of the following types, which may exist or be created under the Laws of any jurisdiction in the world: (i) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, semiconductor topography rights and mask works; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patent and industrial property rights; (v) domain names, URLs and websites; any and all other proprietary rights in software, software code (in any form, including source code and executable or object code), user interfaces, and other forms of technology (whether or not embodied in any tangible form); and (vii) rights in or relating to registrations, renewals, extensions, combinations, divisions, continuations, continuations in part, reexaminations, continued prosecution applications, requests for continued examination, and reissues of, and applications for, any of the rights referred to in subclauses (i) through (vi) above.

“**Law**” means any federal, national, provincial, state or local government (or other political subdivision thereof) laws, rules, regulations, ordinances or judicial decisions enacted or issued by a court or other Governmental Authority of any country, state, province, county, city or other municipality.

“**Level 3 Support**” means the purpose, resources and actions described as Level 3 in the support definitions (if any) listed on the Vendor Portal, as Vendor may update it from time to time.

“**MSP License**” means a license purchased under an Order authorizing the Company as End User, to use a Solution to provide managed services for the benefit of Third Parties.

“**Notice**” means notice given in accordance with Clause 15.2.2 (and “**Notification**,” “**Notify**” and “**Notifies**” will be construed accordingly).

“**Notice of Dispute**” has the meaning stated in Clause 15.5.2.

“**Order**” has the meaning stated in the Special Conditions or, in the absence of such a definition, the meaning stated in Clause 0.

“**Paragraph**” means a provision of the Special Conditions.

“**Party**” means the Company or Vendor individually (and “**Parties**” will be construed to mean the Company and Vendor collectively), except where the context otherwise requires.

“**Password**” means a secret and individualized form of authentication data provided by Vendor (or, if applicable, its Affiliate or Third Party supplier) to Company in order for Company to have access to, and to effect operations on, the Vendor Portal.

“**Personal Data**” means any information relating to an identified or identifiable single natural living individual person, and as defined by the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, the General Data Protection Regulation.

“**Privacy Policy**” means the Vendor privacy policy available at [www.avast.com](http://www.avast.com) for Solutions branded “Avast”, [www.avg.com](http://www.avg.com) for Solutions branded “AVG”, [www.hidemypass.com](http://www.hidemypass.com) for Solutions branded “Hide My Ass!” or [www.piriform.com/about/privacy-policy](http://www.piriform.com/about/privacy-policy) for Solutions branded “Piriform”, in each case as updated or amended, replaced or supplemented from time to time by Vendor.

“**Registration Information**” has the meaning stated in Clause 14.2.

“**Reseller**” means a Third Party through whom Company or its Affiliates, if and to the extent authorized by this Agreement, has agreed to sell Solutions to End Users.

“**Service**” with respect to each End User, means the support or any other service (including a Vendor Service) that Company has agreed to provide to such End User.

“**Service Level Agreement**” means the Service Level Agreement available at [www.avast.com/partner](http://www.avast.com/partner) as updated or amended, replaced or supplemented from time to time by Vendor.

“**Software**” means any software product or products of Vendor (or, if applicable, its Affiliate or Third Party supplier) made available under this Agreement for purchase and resale, and as Vendor (or, if applicable, its Affiliate or Third Party supplier) may modify the same from time to time.

“**Solution**” means Software and/or Vendor Services as the context requires.

“**Special Conditions**” means the Special Conditions that the Parties have executed, accepted or otherwise bound themselves to, which identifies the Parties, and establishes certain terms and conditions governing the Parties’ relationship.

“**Subscription Term**” with respect to each End User or group of End Users, means the period for which Company has paid or agreed to pay for use of the applicable Solution.

“**Taxes**” means any present or future tax imposed by the Laws of any country in the Territory and the countries in which the Parties and their Affiliates are located and shall include (but shall not be limited to) value added tax, sales tax, customs duties, governmental charges, withholding taxes, taxes incurred on transactions between a Party and its Affiliates or Third Party contractors, and any other similar levies that are required to be collected, withheld or paid with respect to such collected amounts including (but not limited to) back-end taxes, social contributions, and/or taxes imposed on the international remittance of money (except taxes on net income).

“**Term**” means the period beginning on the Effective Date and continuing until the Agreement is terminated by either Party on at least 30 days’ prior Notice.

“**Territory**” has the meaning given by the Special Conditions or, in the absence of a definition in the Special Conditions, means the country in which Company’s principal place of business is located and such other geographic areas as Vendor may specify in this Agreement, provided always that “Territory” excludes in all circumstances: (i) any territory or country which may cause Company to be in breach of Clause 13.5 at any time during the Extended Term; and (ii) the Exclusive Territories.

“**Third Party**” means a person or entity other than Vendor and Company and Company’s Affiliates.

“**Update**” has the meaning given by Clause 5.1.

“**Vendor**” has the meaning given by the Special Conditions and Clause 2.2.

“**Vendor Domain**” has the meaning given by Clause 9.2.

“**Vendor Mark**” has the meaning given by Clause 9.2.

“**Vendor Portal**” means a website or other online property or facility owned or operated by Vendor (or, if applicable, its Affiliate or Third Party supplier), for use by Vendor’s existing and future resellers and distributors of Solutions, accessible at [www.avast.com/partner](http://www.avast.com/partner) and/or such other website or other online property or facility as Vendor provides by Notice to Company. The Vendor Portal contains important information about terms and conditions of this Agreement and other relevant commercial terms and conditions, policies and requirements for purchasing Solutions.

“**Vendor Service**” means any service of Vendor (or, if applicable, its Affiliate or Third Party supplier) made available under this Agreement for purchase and resale by Company, and as Vendor (or, if applicable, its Affiliate or Third Party supplier) may modify the same from time to time.

1.2. Capitalized terms not defined by these General Conditions have the meanings given by the Special Conditions or the Order.

## **2. ORDERS; RELATED TERMS**

Except as provided by the Special Conditions:

2.1. Company, from time to time during the Term, may agree to purchase Solutions by submitting to Vendor one or more orders or similar requests for Solutions in the manner Vendor specifies from time to time, each of which will become effective when Vendor either: (i) Notifies Company that it has accepted the order or request; or (ii) accepts the order or request by Fulfilling the order or request; each such accepted order or request being referred to in this Agreement as an “**Order**”. Vendor will make commercially reasonable efforts to accept or reject each order or request within 7 days of receiving the same. Vendor’s failure to accept or reject an order or request within such 7 day period will be deemed a rejection of the order or request. Nothing in this Agreement will be construed to require Vendor to accept an order or request for any Solution that Vendor in its sole discretion has discontinued or notified Company of its intention to discontinue.

2.2. Vendor, at Vendor’s sole option, may appoint one or more Third Parties (each, an “**Agent**”) to perform any duties or exercise any rights of Vendor under this Agreement, via any contact center, website or other online property, facility or service, or other means of communication, including offering, receiving, accepting or Fulfilling Orders, acting as seller of record and/or merchant of record in respect of any Order, conducting credit checks, issuing and processing invoices for Fees, processing and collecting payment of Fees (together with any interest that may accrue) and communicating with Company in respect of any such matters. Provided, that Vendor or the Agent provides Company with such letters of authorization, certifications or other documentation that Company may reasonably require, Company will honor the appointment of the Agent and the Agent’s full scope of authority. All references to “Vendor” in this Agreement will, as the context requires, be deemed to include an Agent to the extent only that such reference, matter or activity is within the Agent’s scope of authority.

## **3. VENDOR OBLIGATIONS**

Vendor, subject to the terms and conditions of this Agreement, will:

3.1. Provide or make available to Company the then-current versions of the Solutions purchased by Company under this Agreement. Thereafter, Vendor will provide or make available to Company each updated version of such Solutions as Vendor makes the same generally commercially available. Provision of such Solutions and any updates may be either directly to Company or through the Vendor Portal.

3.2. Provide or make available to Company electronic copies of brochures, specification sheets, logotypes, graphics, web templates, copywriting and other marketing materials regarding Solutions either directly or through the Vendor Portal.

## **4. COMPANY’S RESPONSIBILITIES**

4.1. Company’s authority to deliver Solutions, as contemplated by the Special Conditions, is limited to the quantities of Solutions that Company has purchased under then-currently effective Orders.

4.2. To enable or activate any Solution, Company or the End User may be required to obtain an Activation Code in accordance with Vendor’s then-current procedures. Where applicable, Company will be solely responsible for obtaining and distributing Activation Codes to its End Users.

4.3. Company, subject to the terms and conditions of this Agreement, will:

4.3.1. Make the Solutions available in the Territory, using the marketing materials Vendor supplies and such modified materials and additional materials as Vendor has approved in advance.

4.3.2. comply at all times with all Vendor terms and conditions, policies and requirements available to Company under this Agreement or otherwise available on the Vendor Portal.

4.3.3. Pay all Fees and other amounts owing by Company in respect of this Agreement.

4.3.4. Ensure that it has in effect Orders sufficient at all times to cover the then-current use of the Solutions by End Users (including Company, to the extent applicable) and, at Vendor's reasonable request from time to time, certify to Vendor that it has fulfilled and continues to fulfill its obligations under this Clause 4.3.4.

4.3.5. Require that each End User (including Company, to the extent applicable) receiving a Solution executes, accepts or otherwise binds itself to the then-current version of the applicable EULA or EULAs. Without limiting the foregoing, Company may accept the EULA or EULAs on an End User's behalf only to the extent the End User has expressly authorized Company to do so in writing. To the extent Company is an End User, conflicts between the terms of the EULA and this Agreement will be resolved in favor of this Agreement.

4.3.6. Access the Vendor Portal from time to time, but in any event at least once in every 15 calendar days, using an individualized user name and the Password provided by Vendor, protect its user name and Password from unauthorized use, and promptly Notify Vendor if it has reason to believe or suspect that the security or confidentiality of the user name or Password has been or may be compromised. Company will be responsible for any loss, damage, costs and inconvenience suffered or incurred by Vendor in consequence of any loss or misuse of the user name or Password by any person connected with Company or by any Third Party, whether or not known to Company.

4.3.7. Share feedback, comments or suggestions regarding the Solutions with Vendor on a regular ongoing basis. Vendor accepts no obligation to respond or act on any such feedback, comments or suggestions, and this invitation to comment does not constitute any admission of liability for product failure in respect of a Solution. Company grants Vendor a perpetual, irrevocable, transferrable, sublicensable, fully paid-up, royalty-free, worldwide right and license under Company's Intellectual Property Rights (if any) to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), modify, display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise exploit in any manner whatsoever Company's feedback, comments and suggestions in respect of any Solution and other products and services.

4.3.8. Not: (i) use any Brand Feature or Solution name, or permit use of the same, in conjunction with a product or service other than the applicable Solution; (ii) make any representation, warranty, claim or promise to any Third Party (including a Reseller), End User or potential End User, in relation to any Solution, that is not contained in documentation, specifications or marketing materials provided to Company by Vendor; (iii) remove or otherwise interfere with the EULA provided with the Solution or accept the EULA on the End User's behalf (except as specified in Clause 4.3.5); (iv) actively market or promote Solutions outside of the Territory, or permit any Third Party (including a Reseller) to do so, without Vendor's written consent, provided, that no consent is required for Company to accept unsolicited orders from outside the Territory (provided that the order is not from a Reseller in the Exclusive Territories); or (v) accept orders from a Reseller in the Exclusive Territories.

4.3.9. Not, and will not authorize or assist any Affiliate, End User, or potential End User or other Third Party (including a Reseller) to: (i) use any Activation Code supplied by Vendor in connection with any Solution on more than the authorized number of Devices or End Users, specified by then-current Orders; (ii) disclose any Activation Code to any party other than the applicable Reseller, End User, Vendor or Vendor designated representatives; (iii) except as expressly authorized by Law, (A) reverse engineer, disassemble, decompile, translate, reconstruct, transform or extract any Software or any portion of the Software (including any related malware signatures and malware detection routines), or (B) change, modify or otherwise alter any Software (including any related malware signatures and malware detection routines); (iv) publish, broadcast, transmit, communicate, transfer, pledge, rent, share or sublicense any Solution; (v) grant any Third Party access to or use of any Solution on a service bureau, timesharing, or application service provider basis or other similar basis; (vi) test or benchmark, enable or allow any Third Party to test or benchmark, or disclose or publish testing or benchmark results, for any Solution without Vendor's prior written consent (which Company may request by email to [legal@avast.com](mailto:legal@avast.com)); or defeat or circumvent, attempt to defeat or circumvent, or authorize or assist any Third Party in defeating or circumventing controls on the installation or use of any Solution.

## 5. UPDATES; MONITORING

5.1. From time to time during the Extended Term, and without separate permission or consent from Company or its Affiliates, or their Resellers and End Users or any other Third Party, Vendor may deploy updates or upgrades of, or replacements for, any Solution (“**Update**”), and as a result of such deployment the Solution or the applicable Device (or certain functions of the Device) may be unavailable until the Update is fully installed or activated. Each Update will be deemed to form a part of the Solution for all purposes under this Agreement. Updates may include additions to, and/or removals of, particular features or functionality offered by the Solution, or may replace the Solution entirely, and the content, features and functionality of such Updates are at the sole discretion of Vendor. Vendor is not required to offer Company or its Affiliates, or their Resellers or End Users (or any other Third Party) the option to decline or delay Updates (whether on the Device or otherwise). Company or the End User will need to download and permit installation or activation of all available Updates to obtain maximum benefit from the Solution. Vendor may stop providing support for Solutions until all Updates have been accepted and fully installed or activated. Vendor in its sole discretion will determine when and if Updates are appropriate and has no obligation to make any Updates available. Vendor in its sole discretion may stop: (i) providing Updates for any version of a Solution other than the most current version; and/or (ii) providing Updates supporting use of a Solution in connection with any versions of operating systems, email programs, browser programs and other software with which the Solution is designed to operate.

5.2. VENDOR MAY MONITOR USE OF A SOLUTION TO CONFIRM THAT IT COMPLIES WITH THE TERMS OF THIS AGREEMENT AND THE APPLICABLE EULA, AND TO ENSURE THAT THE USE DOES NOT PRESENT A THREAT TO THE NETWORK OF VENDOR OR ITS AFFILIATES, OR THEIR LICENSORS AND SUPPLIERS. SHOULD VENDOR DETERMINE THAT COMPANY OR ITS AFFILIATE, OR THEIR RESELLER OR END USER IS CONTRIBUTING TO OR CAUSING COMPANY TO BE IN BREACH OF THIS AGREEMENT OR THE APPLICABLE EULA OR CAUSING AN IMMINENT THREAT TO SUCH NETWORK, VENDOR, IN ADDITION TO SUCH OTHER RIGHTS THAT MAY BE AVAILABLE AT LAW, EQUITY OR OTHERWISE, MAY SUSPEND THE OFFENDING PARTIES’ ACCESS TO OR USE OF THE AFFECTED SOLUTIONS, AND/OR TERMINATE FOR CAUSE THE AGREEMENT UNDER WHICH THE OFFENDING PARTY RECEIVED, OR IS LICENSED TO USE, THE SOLUTIONS. IN SUCH CASE, VENDOR AND ITS AFFILIATES AND THEIR LICENSORS AND SUPPLIERS WILL HAVE NO LIABILITY TO COMPANY OR ITS AFFILIATES FOR ANY CLAIMS BROUGHT AGAINST COMPANY OR ITS AFFILIATES BY COMPANY OR IS AFFILIATES, OR THEIR RESELLERS OR END USERS WHO WERE PREVENTED FROM RESELLING OR USING THE AFFECTED SOLUTIONS.

## 6. FEES AND TAXES

Except as provided by the Special Conditions:

6.1. Fees; Payment. Company will pay Vendor the Fees established by each Order in accordance with this Agreement. Except as otherwise specified in the Special Conditions or an Order: (i) all payment obligations are non-cancelable and Fees paid are non-refundable; and (ii) quantities of Solutions ordered cannot be cancelled or decreased during the relevant Subscription Term.

6.2. Taxes. All Fees and any other amounts payable under this Agreement are stated exclusive of, and subject to, applicable Taxes which shall be charged in addition to the Fees, where applicable, in the relevant jurisdiction at the rate in force (which may change from time to time).

6.3. Late Payment. If Company fails to pay any amounts when due under this Agreement, Vendor will be entitled to assess interest on the overdue amount at an annual rate equal to 8% above the prevailing base rate of Vendor’s principal bankers which interest shall accrue on a daily basis from the date the payment is due until Vendor has received full payment of the overdue amount together with all interest that has been accrued. Vendor shall also be entitled to claim its reasonable costs incurred in recovering any such overdue amounts.

6.4. No Deductions. All Fees and other amounts payable by Company under this Agreement shall be paid to Vendor without any deduction or withholding unless a deduction or withholding is required by Law.

## **7. REPORTING; RECORDKEEPING; AUDITS.**

7.1. Company, within 10 days of Vendor's request, will provide Vendor with a report in the form specified by Vendor detailing Company's then-current sales, deployment and/or use (as applicable) of Solutions under this Agreement, which report will be certified accurate and complete by an officer of Company.

7.2. Company, during the Extended Term and for 3 years thereafter, will maintain complete and accurate records concerning its use, resale or distribution of Solutions. No more than once in any 12 month period, Vendor or its representative may audit Company's records for the sole purpose of confirming Company has purchased and paid for (under then-currently effective Orders) all its use, resale or distribution of Solutions. Any such audit will be conducted during regular business hours at Company's offices and will not interfere unreasonably with Company's business activities. Should such audit reveal any use, resale or distribution of Solutions in excess of what has been purchased and paid for under then-currently effective Orders, Company may be charged for all such non-purchased and non-paid for usage, resale or distribution at the rate of 120% of the Vendor's then-current list price for such Solutions.

## **8. TERMINATION**

8.1. Without prejudice to its other rights or remedies, either Party may terminate this Agreement immediately by Notice to the other Party, in circumstances where the other Party:

8.1.1. commits a material breach of any of its obligations under this Agreement, and either that breach is incapable of remedy or the other Party has failed to remedy that breach within 15 days after receipt of Notice requiring it to remedy that breach; or

8.1.2. is unable to pay its debts when they fall due, becomes insolvent, enters into or proposes to enter into any composition or arrangement with its creditors generally, an order is made or a resolution is passed for the administration, winding-up or dissolution of the other Party, or anything analogous to the foregoing occurs in any applicable jurisdiction.

8.2. Without prejudice to its other rights or remedies, Vendor may (a) terminate this Agreement immediately by Notice to Company, and/or (b) suspend or terminate its performance of any affected Orders, immediately by Notice to Company and/or (c) deactivate the affected Solutions without notice to Company if: (i) Company violates its obligations in Clause 9.1 and/or 9.2; (ii) Vendor becomes aware of information suggesting that Company has distributed or used any Solution for any unauthorized purpose or other than in accordance with the terms of this Agreement or the EULA; or (iii) Company fails to make timely payment of any Fees and any other amounts owing under this Agreement.

8.3. Neither the expiration nor termination of this Agreement will affect any Orders accepted or Fulfilled during the Term and the Parties' payment and other obligations under each such Order will survive for the Subscription Term (including any extensions), unless and until Vendor terminates the Order in accordance with this Agreement. Subject always to the preceding sentence, on expiration or termination of this Agreement, the licenses granted to Company by this Agreement will terminate, and Company will within 15 days following termination, deliver to Vendor all Solutions, Activation Codes and documentation covered by this Agreement, or destroy or erase any versions of such material which cannot be returned to Vendor.

8.4. Any termination or expiration of this Agreement will not affect any rights or liabilities of either Party which have accrued up to the date of termination or expiration, nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after the date of termination or expiration. On the expiration or termination of this Agreement, Vendor (in addition to such other remedies as may be available at Law or equity) may, at its option, contract directly, or assign to another distributor or reseller, the right to contract directly with Company's End Users in order to provide Solutions to such End Users, provided that, except in circumstances where Vendor terminates this Agreement pursuant to Clause 8.1 or 8.2, nothing in this sentence will be construed as authorizing Vendor to contract directly with Company's End Users. Neither the expiration nor termination of this Agreement will affect End Users' licenses



(under the applicable EULA) to use any Solution properly distributed by Company to such End User in accordance with the terms of this Agreement.

8.5. Neither the expiration of this Agreement or the termination of this Agreement by either Party for any reason will entitle Company to any termination compensation, or any payment in respect of any goodwill created by Company during the Term or Extended Term. Company agrees to waive any right to receive any such compensation or payment under this Agreement and any applicable Laws.

## 9. INTELLECTUAL PROPERTY RIGHTS; IP AND OTHER INDEMNIFICATION

9.1. Company hereby agrees and undertakes as follows:

9.1.1. to honor the Intellectual Property and Brand Features of Vendor, comply with the applicable Brand Guidelines, not to challenge the validity of Vendor's Intellectual Property Rights and not impede in any way Vendor's ability to secure Intellectual Property Rights in any Solution;

9.1.2. not to embody any portion of, or file any application claiming Intellectual Property Rights in, including, or relating to, any Solution or Confidential Information of Vendor (even if it is released to the public at a later stage), including any patent or copyright applications;

9.1.3. not to include and procure that none of its Affiliates include any Brand Feature or any variation thereof in Company's or its Affiliate's corporate name, fictitious name, trademark, tradename, registered design, logos or Internet domain name (and if at any point Company or its Affiliate gain ownership or other control over an Internet domain name which contains or uses any Brand Feature or any variation thereof, to immediately assign and transfer the Internet domain name or trademark to Vendor for no additional consideration with no delay upon Vendor's request);

9.1.4. to acknowledge (and not to take any actions in contravention of the same) that Vendor, as between Company and Vendor, owns and will at all times exclusively own and retain: (i) all Intellectual Property and Intellectual Property Rights in and to the technology and know-how related to Software, Vendor Services and its other products and Solutions; and (ii) all Intellectual Property, results and/or experiences developed, conceived and/or reduced to practice in connection with the performance of this Agreement.

9.2. Company represents and warrants that (i) neither Company nor any of its Affiliates owns any domain names that contain any Brand Feature or any words similar to a Brand Feature (such as "ccleaner", "avg", "avast" or any similar text) ("Vendor Domains") and (ii) neither Company nor any of its Affiliates owns or , except as expressly authorized by this Agreement, uses any trademark, tradename or registered design identical or similar to any of the Brand Features (including "AVAST," "AVG" and "CCLEANER") (each, a "Vendor Mark"). Company, promptly on Vendor's request and for no additional consideration, will transfer to Vendor or the Vendor Affiliate specified by Vendor any Vendor Domain or Vendor Mark registered or used in breach of the foregoing warranty.

9.3. Company agrees that this Agreement grants Company a limited license pursuant to the license terms set forth in the Agreement and does not contemplate any transfer to Company of any Vendor Intellectual Property or Intellectual Property Rights. Without limiting the foregoing, all goodwill associated with the use of the Brand Features inures to Vendor, and Company does not obtain any ownership or other right to any Brand Features, other than the limited right to use the Brand Features as authorized by this Agreement.

9.4. Company will reproduce all notices and attributions, including copyright notices, confidential and proprietary legends, and trademarks (in the same manner as they exist on copies of Software provided by Vendor to Company) on each Solution that Company reproduces or distributes pursuant to this Agreement.

9.5. Company will implement and maintain adequate security measures that safeguard all access to and copies of any Solutions in its possession or control, from any use or access by any unauthorized party.

9.6. The indemnity obligations in Clauses 9.7 and 9.8 below will only be applicable where the Party seeking indemnification ("**Indemnitee**"):

9.6.1. Notifies the indemnifying Party ("**Indemnitor**") promptly upon becoming aware of any claim;



9.6.2. makes no admissions or statements without prior Notification of consent by the Indemnitor (such consent not to be unreasonably withheld or delayed);

9.6.3. gives the Indemnitor (at the Indemnitor's cost) such assistance as may be reasonably required;

9.6.4. reserves for the Indemnitor the right if it chooses to take exclusive control of the litigation and to conduct/settle litigation and negotiations as the Indemnitor sees fit (subject to keeping the Indemnitee reasonably informed), provided that the Indemnitor's actions in this regard do not result in any expenses for the Indemnitee which it has not previously authorized;

9.6.5. preserves and does not waive legal, professional or any other privilege attaching to any of the records, documents, or other information in relation to such claim without prior Notification of consent by the Indemnitor; and

9.6.6. does not enter into any binding agreement or arrangement to settle such claim without the prior Notification of consent by the Indemnitor (such consent not to be unreasonably withheld or delayed).

9.7. Subject to Clause 9.8, Vendor will defend, indemnify and hold harmless Company from and against all liabilities, costs, damages and expenses (including settlement costs pre-approved by Vendor and reasonable attorneys' fees) finally awarded by a court of competent jurisdiction to any Third Party arising from such Third Party claim that any Solution or the distribution of any Solution pursuant to this Agreement infringes any patent, copyright, trade secret or trademark of such Third Party. Notwithstanding the foregoing, in no event will Vendor have any obligations or liability under this Clause 9.7 to the extent that the Third Party claim relates to any:

9.7.1. modification of the Solution;

9.7.2. combination of the Solution with any other software, services or products (unless such combination was expressly permitted by Vendor); or

9.7.3. content, information or data provided by or originating from Company or its Affiliates, or their Resellers or End Users, or any Third Party.

**SUBJECT TO CLAUSE 12, THE INDEMNITY PROVISIONS OF THIS CLAUSE 9.7 STATE VENDOR'S ENTIRE LIABILITY AND EXCLUSIVE REMEDY WITH RESPECT TO INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.**

9.8. Company will defend, indemnify and hold harmless Vendor and its Affiliates from and against all liabilities, costs, damages and expenses (including settlement costs pre-approved by Company and reasonable attorneys' fees) finally awarded by a court of competent jurisdiction to any Third Party arising from such Third Party's claim which arises from or relates to: (i) allegations that a Device, Company Portal or Service (other than a Vendor Service) violates or infringes any Intellectual Property Rights of any Third Party, unless such claim would not exist but for the Intellectual Property included in, or delivered through, a Solution; (ii) any representation, warranty or commitment Company makes concerning a Solution except as Vendor supplies or pre-approves the representation, warranty or commitment for disclosure to such Third Party; (iii) Company's performance or failure to perform its obligations under any agreement between Company or its Affiliates, and their Reseller or End User (including to the extent caused by Vendor's suspension or termination of Solutions pursuant to the terms of this Agreement); (iv) any violation of Company's obligations pursuant to Clause 4.3.8 or 4.3.9; or (v) the failure of any Reseller to comply with any provision of this Agreement, or any assertion of any claim by a Reseller against Vendor or its Affiliates relating to any Solution or Vendor or its Affiliates performance or failure to perform this Agreement.

## **10. CONFIDENTIALITY**

10.1. "**Confidential Information**" means all information and know-how (whether or not patentable and whether or not copyrightable), in any form whatsoever (and whether or not the information is expressly stated to be confidential or marked as such either before or after the Effective Date), which is owned, possessed or used by one Party (the "**Owner**") that the Owner discloses or has disclosed to the other Party (the "**Recipient**") or to which the Recipient gains or has gained access by virtue of the Parties' relationship and the purposes of this Agreement, in each case prior to, on or after the Effective Date, including (but not limited to) any: (i) business, commercial,

operational, management or financial information, customer lists, price lists, data, processes, models, personnel data and any other data or know how; (ii) analyses, compilations and other material prepared by the Recipient which contain, reflect or are generated from the information described in item (i) above; and (iii) the existence and content of this Agreement; provided always that Confidential Information will not include information which: (A) is or becomes available to the public other than as a result of disclosure by the Recipient or its employees in violation of this Agreement; (B) was known to the Recipient prior to Recipient receiving the same pursuant to this Agreement and not otherwise restricted by contract or Law; (C) becomes available to the Recipient on a non-confidential basis from a Third Party or source not restricted by contract or Law regarding such information; or (D) Recipient can demonstrate through documentary evidence was independently developed by Recipient without use of, or reference to, the Confidential Information.

10.2. The Recipient will use the Owner's Confidential Information solely for the purposes contemplated by this Agreement and such other purposes as the Parties may expressly agree in writing, and for no other purposes whatsoever. Without limiting the foregoing, the Recipient will in no event directly or indirectly use the Owner's Confidential Information in the design, development, production, marketing, sale or use of software, services or products competitive with those of the Owner.

10.3. The Recipient, without the Owner's prior written consent, will not disclose the Owner's Confidential Information to any Third Party, provided, however, the Recipient may disclose such Confidential Information to those Affiliates and employees of, and advisors to, the Recipient and/or its Affiliates who need to know such information for the purposes contemplated by this Agreement and only if such Affiliates and such employees and advisors have a legal duty to Recipient to maintain the confidentiality of the Confidential Information; and Recipient will be responsible for a breach of this Agreement by any such persons. In addition, Recipient may disclose Owner's Confidential Information as required by the order or requirement of a Governmental Authority; provided, however, that the Recipient will provide prompt Notice thereof to the Owner and, at Owner's reasonable request and expense, assist Owner in obtaining a protective order or otherwise prevent public disclosure of such Confidential Information.

10.4. Each Party will promptly Notify the other Party of any breach of this Clause 10 committed by the first Party, its Affiliates or any of its employees.

## **11. REPRESENTATIONS AND WARRANTIES**

11.1. Each Party represents and warrants to the other Party that: (i) if applicable, it is a duly organized and validly existing corporation, limited liability company, limited partnership or other entity in good standing under the Laws of the jurisdiction in which it was formed, and that it has the right and capacity to enter into this Agreement; (ii) it has full power and authority to grant the rights granted by it under this Agreement and that there are no outstanding obligations or agreements that conflict with this Agreement; (iii) when its duly authorized representative execute, accept or otherwise bind such Party to this Agreement, this Agreement will constitute a valid and legally binding obligation on that Party that is enforceable in accordance with the terms of this Agreement; and (iv) it is solvent and that no insolvency or bankruptcy decision, nor any decision to wind-up its affairs, has been filed, no petition has been filed to initiate proceedings to issue such decision, no resolution has been adopted by a competent body regarding the winding up of its affairs which petition or resolution has not been withdrawn, and that as of the date of execution of this Agreement, no legal grounds exist for such a decision, petition or resolution.

11.2. Vendor (or, if applicable, its Affiliate or Third Party supplier) may extend a warranty to End Users in respect of the Solution pursuant to the terms of the EULA or other end user agreement entered into directly by Vendor (or, if applicable, its Affiliate or Third Party supplier) with that End User.

11.3. EXCEPT AS SET FORTH IN CLAUSE 11.1 AND 11.2, VENDOR PROVIDES THE SOLUTIONS TO COMPANY "AS IS", AND VENDOR, ITS AFFILIATES AND THEIR LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM AND EXCLUDE ANY AND ALL OTHER TERMS, WARRANTIES AND CONDITIONS WHETHER EXPRESS OR IMPLIED, INCLUDING: (i) ALL WARRANTIES AND CONDITIONS IMPLIED BY STATUTE, COMMON LAW, JURISPRUDENCE OR OTHER THEORIES OF LAW, INCLUDING IMPLIED WARRANTIES OR CONDITIONS OF NONINFRINGEMENT OF THIRD PARTY RIGHTS, TITLE, MERCHANTABILITY, SUITABILITY AND FITNESS FOR ANY PARTICULAR

PURPOSE WITH RESPECT TO ANY SOLUTION; (ii) ANY WARRANTY THAT COMPANY WILL RECEIVE ANY MINIMUM AMOUNT OF REVENUE AS A RESULT OF THE RESALE OR DISTRIBUTION OF ANY SOLUTIONS UNDER THIS AGREEMENT; AND (iii) ALL WARRANTIES OR CONDITIONS THAT ANY SOLUTION WILL MEET THE REQUIREMENTS OF COMPANY, ITS AFFILIATES, OR ANY RESELLER, END USER, OR THIRD PARTY, OR OPERATE IN ANY COMBINATION WITH ANY DEVICE, COMPANY PORTAL, OR ANY OPERATING SYSTEM OR SOFTWARE. NO WARRANTY IS GIVEN BY VENDOR OR ITS AFFILIATES, OR THEIR LICENSORS AND SUPPLIERS, THAT ANY SOLUTION WILL BE BUG-FREE OR WILL OPERATE WITHOUT INTERRUPTIONS.

## **12. LIMITATION OF LIABILITY**

12.1. Nothing in this Agreement will limit or exclude Vendor and its Affiliates or Company and its Affiliates liability for:

12.1.1. fraud;

12.1.2. death or personal injury caused by its (or its agents') gross negligence;

12.1.3. any obligation to pay Fees under this Agreement; or

12.1.4. any matter that may not otherwise be limited or excluded by Law.

12.2. Vendor and its Affiliates will only be liable for direct damages arising in relation to this Agreement. In no event will Vendor and its Affiliates be liable (whether based on a claim in contract, tort (including negligence), under an indemnity, breach of statutory duty or otherwise) under or in connection with this Agreement, for:

12.2.1. indirect, incidental, consequential or special losses;

12.2.2. any loss of profit, revenue, goodwill, opportunity, business or contracts (whether direct or indirect); and

12.2.3. any wasted expenditure, work stoppage, Device failure or malfunction, loss of data, loss of work product or breach of data security (whether direct or indirect);

even if Vendor and its Affiliates have been advised of the possibility of any such damage or loss.

12.3. Subject to Clause 12.1, the total aggregate liability of Vendor and its Affiliates to Company and all of its Affiliates in respect of all claims, losses or damages, whether based on an action or claim in contract, tort (including negligence), breach of statutory duty, under an indemnity or otherwise, arising out of, or in connection with, this Agreement, will be limited in aggregate to the average Fees that Company pays under this Agreement for the affected Solutions per calendar month to date during the Term, multiplied by twelve.

12.4. Neither Party or its Affiliates may bring a claim or action against the other Party or its Affiliates, whether based in contract, tort (including negligence), breach of statutory duty, under an indemnity or otherwise, arising out of, or in connection with, this Agreement, other than a claim or action by Vendor in respect of any obligation to pay Fees under this Agreement, more than 1 year after the Party or its Affiliates knows, or should reasonably have known, of any event giving rise to the claim or cause of action.

12.5. Each Party and its Affiliates will take all reasonable steps to mitigate any loss and damage it incurs in relation to any claim or action (whether based on an action or claim in contract, tort (including negligence), breach of statutory duty, under an indemnity or otherwise) which it brings against the other Party and its Affiliates.

12.6. Each Party and its Affiliates agree that the limitations and exclusions set out in this Clause 12 are reasonable, having regard to all the relevant circumstances and the levels of risk associated with each Party's obligations under this Agreement.

## **13. COMPLIANCE WITH LAWS AND POLICIES**

13.1. Company will, at its own expense, comply with all Laws which apply to, or result from, its obligations under this Agreement.

13.2. Company authorizes Vendor and its Agent to conduct such credit checks regarding Company as they determine appropriate in their sole discretion.

13.3. Company and its Affiliates will exercise due diligence in selecting its employees, agents, officers, contractors and Resellers and will provide appropriate training for them and will monitor their activities to ensure compliance with this Agreement and all applicable Laws.

13.4. Company and its Affiliates hereby confirm, acknowledge and agree that its owners, directors, officers, employees, agents, contractors, Resellers and End Users have not, and will not, make or promise to make payments of money or provide anything of value, directly or indirectly, to any Governmental Authority, public officials, political parties or candidates for political office, for the purpose of obtaining or retaining business or securing any improper advantage, or to any other person or entity if such payment would violate applicable Laws.

13.5. Company and its Affiliates, and their Resellers and End Users will at their own expense comply with all applicable U.S. and international Laws governing export and re-export of the Solutions, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and E.U. Without derogating from the generality of the foregoing, Company represents, warrants and undertakes that (i) Company and its Affiliates, and their Resellers and End Users are not included in any denied person list, unverified list, entity list, specially designated nationals list, debarred list or any other lists published by the U.S. Government; and (ii) Company and its Affiliates, and their Resellers and End Users will not use, export or re-export the Solution to territories, destinations, companies, entities or individuals in violation of U.S. and E.U. embargoes or trade sanctions, including in violation of the U.S. or E.U. embargoes and sanctions relating to the following countries: Cuba, Iran, North Korea, Sudan and Syria. Company will indemnify, defend and hold Vendor harmless from and against any claim, demand, suit or proceeding, and all damages, liabilities, costs and expenses arising from Company and its Affiliates, and their Resellers or End Users failing to comply with any of the requirements in this Clause 13.5.

#### **14. DATA PRIVACY**

14.1. Privacy Policy. Vendor's Privacy Policy describes Vendor's processing of Personal Data from End Users, including service data connected to such Personal Data. The Vendor's Business Partner and Public Relations Privacy Notice describes the processing of Personal Data of representatives and/or employees of the Company, Company's Affiliates and the Resellers, over the performance hereof. As regards the cooperation among Vendor, Company, Affiliates and Resellers based on these General Conditions, Special Conditions and Order(s), Vendor and Company act in compliance with Data Protection Terms, which form a binding part hereof, or data protection agreement if such has been concluded between Vendor and Company.

14.2. Registration Information. In order to register, enable or activate and/or continue to use any Solution, Company and its Affiliates, and their Resellers and End Users may be required to provide certain Personal Data and other information over the Internet (including through an online property, the Vendor Portal or other portal) or by telephone ("**Registration Information**"). As a material condition for Vendor to provide the Solutions contemplated by this Agreement, Company represents, warrants and undertakes that: (i) to the best of its knowledge, the Registration Information that Company, its Affiliates, and their Resellers and End Users provide to Vendor (including any contact information and e-mail address) is accurate and complete in all respects as of the date provided; (ii) Company, its Affiliates, and their Resellers and End Users will, on an ongoing basis (including for the avoidance of doubt, during the Extended Term), advise Vendor of any corrections or changes to such Registration Information in order that Vendor may correct such Registration Information and keep it up to date; and (iii) Company, its Affiliates, and their Resellers and End Users will not otherwise modify, delete or interfere with any Registration Information at any time during or after the Extended Term, except for situation when the modification, deletion or other interference has been requested by the End User, including in situations pursuant to Clause 15.4. Company hereby agrees that during and after the Extended Term: (a) Vendor may use and share such Registration Information with its agents, licensors, representatives, suppliers, distributors, resellers, payment processors, assignees, successors in interest and other business participants for the purposes of registration, enablement, activation, provision and support of the Solution, including providing Company, its Affiliates and their Resellers and End Users with information about price changes and Updates in relation to the Solution or about the expiration,

renewal or extension of the applicable Subscription Term or subscription in relation to the Solution, or for other purposes as described in the Vendor's Privacy Policy and/or Vendor's Business Partner and Public Relations Privacy Notice; and (b) such Registration Information may be used by Vendor and its agents, licensors, representatives, suppliers, distributors, resellers, payment processors, assignees, successors in interest and other business participants in order to present Company, its Affiliates and their Resellers and, only after the Extended Term expires or the Agreement is terminated, the End Users with information that might be relevant, including offers of software, services, products and other Solutions, or for marketing communications (subject to any right of the recipient to opt out or unsubscribe). Company and/or its Affiliates, as the case may be, will inform their Resellers and End Users about the use and sharing of the Registration Information, and to the extent required by applicable Law, will obtain valid legal title including consent, where required by the applicable Law, from their Resellers and End Users for such use and sharing of the Registration Information.

14.3. Data Protection. Each Party and its Affiliates, to the extent they obtain or receive Personal Data in the performance of this Agreement, will comply with any applicable Laws relating to data privacy and data protection and will ensure that their employees having access to and/or responsibility for such Personal Data are instructed and trained to act in compliance with any applicable Laws relating to data privacy and data protection. Further rights and obligations of the Parties concerning the processing of Personal Data within the Solutions are set out in the Data Protection Terms, which form a part hereof. Data Protection Terms are applicable, unless Vendor and Company have concluded a data protection agreement.

## 15. MISCELLANEOUS

15.1. Service Level Agreement. In relation to End Users of Avast Secure Web Gateway and Avast Secure Internet Gateway, the Service Level Agreement shall be deemed to form part of the Applicable Conditions (as defined in the EULA). The Service Level Agreement and the EULA, to the greatest extent practicable, will be construed to be consistent with each other, but in the event of a conflict they will govern in the following order of precedence: (i) Service Level Agreement; and (ii) EULA. Vendor may amend the Service Level Agreement from time to time by posting an updated version of the Service Level Agreement at [www.avast.com/partner](http://www.avast.com/partner).

15.2. Communications, Notices and Contract Changes.

15.2.1. Normal account management communications between the Parties will be the responsibility of the respective representatives of the Parties, as advised by each Party to the other from time to time in writing.

15.2.2. All notices, requests, demands, approvals, acceptance and other communications under this Agreement will be deemed to have been duly given if delivered as follows: (a) if to Company, when delivered or displayed to Company on the Vendor Portal or when sent to any email address provided by Company in the course of either accepting this Agreement or subsequently administering its rights and obligations under this Agreement; or (b) if to Vendor, when sent to [legal@avast.com](mailto:legal@avast.com) (provided in each case that no failure or out of office email is returned). Notwithstanding anything to the contrary in this Agreement (including any Order), Notices sent by Company to Vendor at an address other than [legal@avast.com](mailto:legal@avast.com) will not constitute Notice. Changes to email address details for Notices will be given by Notice in accordance with this Clause 15.2.2.

15.3. Amendments. Company agrees that Vendor may amend the terms and conditions of this Agreement from time to time and such amended and updated Agreement will acquire full effect and contractual force between Vendor and Company, and will amend, supersede and replace the contractual terms and conditions then in operation between Vendor and Company with respect to Orders submitted after the effective date of the amendment. Company accepts that Vendor will from time to time publish on the Vendor Portal or provide Company with Notification of any such amended and updated terms and conditions of this Agreement. Company accepts that Company's submission of an Order after such publication on the Vendor Portal or Notification of the amended and updated terms and conditions of this Agreement will constitute Company's acceptance of such amended terms and conditions. Unless otherwise provided by this Clause 15.3, amendments to this Agreement will only be valid if in writing and signed by the authorized representative of each Party.

15.4. Service Administration Changes. The Company acknowledges that the Vendor Portal allows for, upon End User's request, a change in the administration of the Solution(s) they purchased to another Reseller. This change in

administration of the Solution is carried out by means of the End User who has purchased license(s) to the Solutions contacting a Reseller other than the Reseller through which the End User originally purchased the Solution, whereupon the End User provides to that new-administrator Reseller with the necessary license information or Activation Code. On the basis of this information, the new-administrator Reseller will gain administration of the respective End User's Solution(s), whereupon a new customer record is created with respect to the affected Solution(s) with the new-administrator Reseller and a new license number is generated with respect to the affected Solution(s) as at the next license operation. For the avoidance of doubt, it is stated that this change of administration does not affect (i) the original Activation Code or the use thereof, nor (ii) any Fees or payment obligations pursuant to Clause 6. The Company enters into the Agreement being aware of this fact and expressly warrants and represents that it shall honor such End User's request for a change of administration of the Solution(s). At the same time, the Company acknowledges that in such case, the Vendor carries no responsibility, influence or control over such End User's decisions to have the administration of their Solution(s) changed, and that it has no liability for any such End User request for a change in administration of their Solution(s). As part of such change of administration of an End User's Solution(s), the respective Personal Data of the End User, including Registration Information, may be obtained and processed by the new-administrator Reseller. In such case, the terms of Clause 14 and the Data Protection Terms shall apply.

15.5. Binding Arbitration Agreement and Class Action Waiver.

15.5.1. This Binding Arbitration Agreement and Class Action Waiver applies to any Dispute arising from or related to a Solution or this Agreement and involving Company or its Affiliates and Vendor or its Affiliates. "**Dispute**" for purposes of this provision, means any dispute, action, or other controversy regardless of the particular cause(s) of action asserted (i.e., it encompasses, among any other potential cause of action or legal basis, claims for breach of contract, fraud, violation of statute or regulation, or any other claim under Law). The foregoing definition of "Dispute" will be given the broadest possible meaning permitted under Law.

15.5.2. In the event of a Dispute, the Party raising the Dispute must provide the other Party with a "**Notice of Dispute**", which shall mean a written statement of the name, address and contact information of the Party giving it, the facts giving rise to the Dispute, and the relief requested. The Party raising the Dispute must provide the Notice of Dispute to the other Party as a Notice in accordance with Clause 15.2.2 (stating Subject: Clause 15.4 Notice of Dispute Under Partner Agreement).

15.5.3. If Company and Vendor do not resolve any Dispute by informal negotiation, including any question regarding the Agreement's existence, validity or termination, the Dispute will be resolved exclusively by binding arbitration pursuant to the JAMS International Arbitration Rules in effect at the time the arbitration is initiated, which Rules are deemed to be incorporated by reference into this Clause 15.4 and will control to the extent they do not conflict with this Clause 15.4. The seat, or legal place, will be New York, New York, U.S. and the official language of the arbitration will be English.

15.5.4. For Disputes in which the total claim, including counterclaims but not including attorney's fees or interest, exceeds \$250,000, the arbitration will be adjudicated by a panel of three arbitrators. The Parties will each appoint an arbitrator and the chair will be appointed by JAMS pursuant to the procedures set forth in the JAMS International Arbitration Rules. The Parties agree that the tribunal will be selected within 30 calendar days from the giving of Notice by the initiating Party of its intention to arbitrate. The award rendered must be a reasoned award.

15.5.5. For Disputes in which the total claim, including counterclaims but not including attorney's fees or interest, is \$250,000 or less, the arbitration will be administered by JAMS pursuant to its Streamlined Arbitration Rules in effect at the time the arbitration is initiated, and the arbitration will be adjudicated by one arbitrator who will be appointed by the JAMS pursuant to its Streamlined Arbitration Rules and must be selected within 10 calendar days from the giving of Notice by the initiating Party of its intention to arbitrate. The arbitrator must complete the arbitrator proceedings and make an award within 60 calendar days from the giving of Notice by the initiating Party of its intention to arbitrate, there will be no discovery that is not agreed-to by the Parties, and the award need not be a reasoned award. Judgment upon the award rendered by the arbitrator(s) in any arbitration initiated pursuant to this Clause 15.4 may be entered in any court having jurisdiction thereof.

15.5.6. Nothing in this Clause 15.4 will prevent either Party from: (i) seeking from a court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act; (ii) taking any action which is necessary to preserve a legal or equitable right or remedy which would otherwise be lost; or (iii) taking any action which is necessary or desirable to secure a preferential position with respect to other creditors.

15.5.7. No proceeding to resolve or litigate any Dispute in any forum will be combined with another proceeding without the prior written consent of all Parties to all affected arbitration proceedings. Company will not seek to have any Dispute heard as a class action, private attorney general action, or in any other proceeding in which either Party acts or proposes to act in a representative capacity.

15.5.8. Each Party will bear its own attorneys' fees and other costs related to the Dispute resolution procedure set out in this Clause 15.4, except that, in any Dispute arising from Company's failure to pay Fees when due and payable, Company shall reimburse Vendor of all Vendor's attorneys' fees and other costs incurred in recovering any such overdue amounts.

15.6. Entire Agreement. Except as otherwise stated herein, this Agreement sets out all terms agreed between the Parties and supersedes and replaces all previous or contemporaneous agreements between the Parties relating to the Solutions or Orders. In entering into this Agreement, neither Party has relied on, and neither Party will have any right or remedy based on, any statement, representation or warranty (whether made negligently or innocently), except those expressly set out in this Agreement. This Agreement will not be amended or supplemented by the terms or conditions of any Company Portal or the pre-printed terms or conditions on any purchase order, invoice, acknowledgement or other business form employed by the Company.

15.7. Independent Contractors. The relationship between the Parties is that of independent contractors and will not be deemed to be a relationship of agency, joint venture, partnership or otherwise. Neither Party is authorized to act on behalf of the other Party and each Party will act as an independent contractor buying for itself, selling in its own name and at its own risk.

15.8. Interpretation. The headings in this Agreement do not affect its interpretation. The use of any gender includes all genders. The singular includes the plural and vice-versa. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning. This Agreement was originally prepared in the English language. The words "includes" and "including" will be construed as followed by the words "without limitation." This Agreement was originally prepared in the English language. Although Vendor may provide one or more translated versions of this Agreement for the Parties' convenience, the English language version of this Agreement will be the governing version of this Agreement in the case of any conflict or discrepancy. In the event that an ambiguity or question of intent or interpretation arises, in any judicial proceeding or otherwise, the terms of this Agreement will be construed as having been drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

15.9. Severability. Should any provisions of this Agreement be deemed illegal, invalid or unenforceable under any applicable Laws, all other provisions of this Agreement will remain in full force and effect.

15.10. Impossibility. Vendor will not be liable for any failure or delay in performance, due in whole or in part, to utility failures (including power), failure of the Internet, failure of telecommunications or information technology services, failure of telecommunications or information technology equipment, strikes or other labor disturbances (including without limitation a strike or other labor disturbance arising in respect of Vendor or its agents, licensors, representatives, suppliers, distributors, resellers, payment processors and other business partners), acts of war or terror, acts of sabotage, denial of service attacks or other information technology attacks or security breaches affecting Vendor or its suppliers, floods, fire or other disasters of nature, Acts of God, or any other cause of any failure or delay that is beyond Vendor's reasonable control.

15.11. Waiver. The failure of either Party to insist upon the strict performance of any of the terms, conditions and provisions of this Agreement shall not be construed as a waiver or relinquishment of future compliance with this Agreement, and the terms, conditions and provisions of this Agreement shall remain in full force and effect. No waiver of any term or condition of this Agreement on the part of either Party shall be effective for any purpose



whatsoever unless such waiver is in writing and signed by such Party. The waiver by either Party of a breach of any provision of this Agreement by the other Party shall not be construed as a continuing waiver of such breach or as a waiver of other breaches of the same or of other provisions of this Agreement.

15.12. Assignment. Company may not assign its rights or obligations under this Agreement or subcontract any portion of its performance under this Agreement without Vendor's prior Notification of consent. Vendor may without any consent from or Notice to Company, assign or otherwise transfer its rights or delegate its obligations under this Agreement (in whole or in part) from one Vendor Affiliate to another Vendor Affiliate, or to a purchaser of any of Vendor's or any Vendor Affiliate's shares or business units or all or part of Vendor's or any Vendor Affiliate's business, or to a distributor appointed by Vendor or any Vendor Affiliate for any territory, and Vendor may subcontract the performance of any of its obligations to its Affiliate, an Agent or any Third Party.

15.13. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or will confer upon any person (other than the Parties and their Affiliates) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

15.14. Publicity. Neither Party will, without first obtaining prior Notification of consent from the other Party (such consent not to be unreasonably withheld or delayed), announce the existence or terms of this Agreement, or the Parties' relationship, in a press release or other promotional material.

15.15. Governing Law. The governing Law of this Agreement will be the substantive Law of the State of New York, U.S. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sales of Goods, the application of which is expressly excluded.

15.16. U.S. Government Restricted Rights. All Solutions qualify as "commercial items," as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire such Solutions and related documentation with only those rights set forth herein that apply to non-governmental customers. Use of such Solutions and related documentation constitutes agreement by the government entity that the computer software and computer software documentation is commercial, and constitutes acceptance of the rights and restrictions herein.

15.17. Expenses. Any costs and expenses incurred by a Party and its Affiliates in performing this Agreement will be met by that Party and its Affiliates.