

Appendix LB – Standard License and Support Terms of Datavard GmbH („Licensor“) for the delivery and support of Software to clients („Licensee“) according to license certificate

Effective as of: November 1, 2014

A. General Provisions

§ 1 Application, Exclusiveness

1. All obligations of the licensor with regards to the delivery and support of the Software as identified in the license certificate and the provision of advisory services to the licensee are exclusively made in accordance with these General Terms and Conditions (“Terms and Conditions”) and the regulations of the respective license certificate or the order form.
2. General Terms and Conditions of the Licensee do not apply.

§ 2 Delivery of the Software

1. Licensor provides to Licensee the licensed Software in the version defined in the license certificate in accordance with the provisions agreed upon in the license certificate by download.
2. Licensor provides to Licensee a User-Handbook in electronic format.
3. Licensee shall provide and maintain all software or hardware necessary in order to use the licensed Software.
4. If the parties have agreed that the Licensor shall also install the Software in the Licensee’s software environment, Licensee shall grant Licensor access to all systems and business premises and shall carry out any other assistance that is useful for the implementation of the Software.

§ 3 Defects to quality and defects of title

1. The Software shall be delivered as defined in the license certificate. Licensor owes a Software of average

kind and quality unless otherwise agreed.

2. Claims for damages and defects expire in one year from delivery of the Software. This does not apply to claims for damages due to intent or gross negligence, physical injury damage of life and health, due to the product liability act and bad faith or a guarantee.
3. Remedy is made by replacement or improvement. Remedy can also be made that the Licensor provides a workaround or a new User-Book as final correction of the defect when herewith the defect is bypassed and the functionality and is not any more affected or only insignificantly.
4. The Licensor is entitled to replace the delivered Software by a more current version than the original version insofar the agreed functionality and the function extent of the original version is sustained.
5. Should two attempts to remedy the defect fail the Licensee is entitled to withdraw from the contract or to reduce the remuneration unless the defect is insignificant. Compensation or replacement for useless efforts due to a defect is made within limits set forth in A. § 10.
6. If reported problems are not a defect of the Software but caused by the Licensee or another third party, in particular in case of use in contrary to the User-Book or the software environment of the Licensee, the Licensee has to reimburse the expenses incurred for the detection, analysis or remedy pursuant to the latest General Price List of the

Licensor. The Price List effective on conclusion of these Terms and Conditions is attached as **Appendix PL**.

7. Licensor is entitled to have third parties assist in making any improvements.
8. Rights of the Licensee to possible defects are excluded insofar the Licensee amended or let amend the Software without the Licensor’s consent.

§ 4 Granting of rights/use for own purposes/for the purposes of associated companies

1. Licensee acquires from Licensor the Software defined in the license certificate and the relevant User-Book in electronic format only for use for internal purposes. Licensee is not entitled to render services to third parties with this Software which are part of the use of the Software or the Software results. A use of the Software by the Licensee in terms of the above mentioned purpose in the meaning of § 15 ff Companies Act by associated companies is allowed.
2. The Licensor grants the Licensee step by step against payment of the agreed remuneration an unlimited right of use of the Software and the relevant User-Book. The right of use does not include the source code of the Software unless the use of the source code is absolutely necessary for the agreed use of the Software.
3. If Licensor provides Licensee with updates or support additions (for example patches, additions of the User-Book) which replace former

provided contract objects, these are subject to the conditions of these Terms and Conditions. As soon as the Licensee uses the new Software he is no longer authorized, also without explicit request of return, pursuant to these Terms and Conditions to use the prior Software.

§ 5 Obligation of examination and notification of defects

The Software is deemed as being in accordance with the agreement with regard to defects which could be detected on immediate and thorough examination unless within two weeks after delivery a written report of defects is submitted. With regard to other defects the Software is deemed as being in accordance with the agreement if the notice of defects is not submitted within two weeks after the defect was detected. If the Licensee misses to provide the notice of defect culpably the Licensor is not liable for the defect which was not reported in time.

§ 6 Copies

1. The Licensee may copy the Software only as necessary to use the Software on the Primary System. The operative use of the Software is only admissible on one operative hardware-system. The relevant hardware system is defined in the license certificate. Licensee shall notify in prior the Licensor of a change of the hardware system.
2. The Licensee may copy the Software to the Subsidiary System identified in the license certificate to the extent this is necessary (a) to ensure the future use of the Software, (b) test the Software; or (c) in order to backup data and for archiving purposes according to the Licensee's operational needs. The Licensee has to mark such copies clearly as "copy".

3. The Licensee shall inform Licensor immediately about the number, storage medium and storage location of all copies made.
4. The right of Licensee to copy program codes subject to § 69d sec. 1 copy right law remains unaffected. Other copies are permitted.

§ 7 Adaption

1. Except as provided in the following the right of use does not include the right to modify, alter, translate or change the Software in any way. The Licensee is not entitled to decompile or disassemble the Software or re-engineer the Software or to use or change the source code in any way unless this is necessary in order to use the Software in compliance with the agreement.
2. If necessary for the licensed purposes, Licensee may modify the Software. It is furthermore admissible to modify the Software by or on behalf of the Licensee, if and as far this is necessary in order to remove compatibility problems with other computer programs required by the Licensee and if Licensor is not willing or able to render these services against an adequate remuneration. Licensee shall request from Licensor to declare within an adequate period of time - not to fall short of three working days except Saturday - whether or not Licensor is able and willing to render these services
3. Licensee is not entitled to have the services referred to under the paragraph 2 performed by a competitor to Licensor, unless Licensee proves beforehand that there is no risk that the competitor takes knowledge of business and trade secrets of the Licensor (in particular functions and design of the Software including the source code). Licensee shall notify Licensor of any such third party services in advance.

4. Licensee shall ensure that the prominent display of all Licensor patent, trademark, serial number, and copyright markings on or included in the Licensed Software are not removed, amended or concealed by himself on his order.

§ 8 Exclusion of granting sublicenses

1. The Licensee is not entitled to provide the Software and/or the User-Book to third parties by way of a limited transfer of use against payment.
2. The Licensee is not entitled to assign Software rights to third parties.

§ 9 Duty to give notice and to take care of the Licensee

1. The Licensee shall notify defects in an understandable form indicating information necessary for the defect detection and analysis. In particular process steps which led to the defect, the kind of appearance and the effect of the defect.
2. The Licensee shall take appropriate action in order to protect the source code, Software and/or User-Book from unauthorized access.
3. The Licensee shall keep the original data mediums, the data mediums with the copies made in compliance with the agreement and the documentation safe at a safe place.

§10 Limitation of liability

1. The Licensor warrants within the legal provisions each time unlimited for claims of damages of the Licensee (a) on intent or gross negligence, (b) in case of culpable injury of life, body and health, (c) pursuant to the stipulations of the product liability law and (d) to the extent of an accepted guarantee.
2. The Licensor is liable limited to the replacement of the foreseeable damage typical for this type of contract for such damages which are

based on a slight negligent breach of essential duties by the Licensor or one of his authorized representatives. Essential duties are duties the fulfillment of which do in fact enable the fulfillment of the contract and on whose fulfillment the Licensee may rely (so-called cardinal obligation).

3. The Licensor is liable for loss of data due to simple negligence only for damages which had been incurred also on proper and regular data back-up appropriate to the importance of the data; this limitation does not apply if the back-up was prevented or made impossible by reasons for which the Licensor is liable.
4. The Licensor is liable for other cases of slightly negligent conduct limited to the license price.
5. The above limitation of liability is also applies to personal liability of employees, representatives and organs of the Licensor.

§ 11 Compensation

1. All prices are net plus value added tax at the then applicable rate. If the Licensee should be exempted from VAT tax liability for what reason ever, or a respective legal exception should apply, the Licensee has to provide without request the Licensor with all information necessary for examination of the facts before invoicing. If the Licensor does not receive the documents in time or they are incomplete, the Licensor it entitled to charge VAT and the Licensee has to pay the VAT.
2. The offsetting or assertion of rights of retention by the Licensee is only permitted with receivable which are undisputed or finally determined by law or acknowledged by the Licensor.
3. The Licensee is not entitled to assign his receivables to third parties.
4. Partial payments are not admissible.

§ 12 Reference details

1. Subject to the following provisions none of the parties shall use in public any trademarks or logos of the other party without prior written consent. This shall not apply if trademarks or logos are attached to or are in the Software or the Documentation.
2. Once the Licensed Software has been implemented, Licensor shall have the right to list Licensee as one of its customers and to provide information about the use of the Software by Licensee to third parties for the purpose of advertising and marketing. This disclosure shall be limited to information about the Licensee that is accessible to the public as well as information relating to the name, logos and address and the time and duration of use of the Software by Licensee and technical information on the system on which the Software is used by Licensee. Any further disclosure of information requires the prior consent of the Licensee. The Licensee may revoke or limit any consent for good cause. A good cause is i.a. the unravelling of this agreement.

§ 13 Confidentiality

1. Subject to possible provisions in this agreement the parties shall keep absolutely confidential, treat as confidential, maintain silence and prevent access to third parties to for a period of five years after conclusion and – if agreed – termination of the service agreement, all technical and financial information of or in connection with this agreement and its performance which was either marked by the referred party as confidential or whose confidentiality results out of the circumstances and which became known before conclusion or during the term of the agreement.

2. This obligation shall not apply to confidential information (a) that was known or becomes known to the public without the receiving party's breach of this confidentiality duty; (b) that the receiving party developed without any relation to the confidential information of the other party and independently of this Agreement; (c) that the receiving party is obliged to disclose under any statutory rule or order of any governmental authority or court, provided that the receiving party notifies the other party without undue delay after taking knowledge of the disclosure and allows and assists the other party to raise an objection with the governmental authority or court in order to reduce or avoid the disclosure; and (d) which the receiving party received from a third party without breach of a confidentiality duty running towards the other party.
3. The confidentiality obligation shall apply an unlimited time with regard to the source code of the Software.

§ 14 Data protection

If and as far as it cannot be excluded that the Licensor - when accessing the hardware environment of the Licensee in order to install, remove defects of or provide support services with the Licensed Software – has access to personal data, then the Licensee shall be regarded as the relevant data controller and the Licensor shall be regarded as a data processor. Licensor may have these services carried out by a subcontractor, provided that such have their registered place of business in the EU. Licensor shall in this case seek to ensure that such subcontractors have in place sufficient technical and organisational measures and shall seek to agree with the subcontractors on audit rights for the data controller with regard to the technical and organisational measures taken by the subcontractor. Licensor shall - and shall

ensure that subcontractors - collect, process and/or use the personal data exclusively with regards to the use of the Software and/or the provision of services under this Agreement. Licensor shall ensure that any such personal data, if stored, is deleted without undue delay after the relevant purpose of use has ceased to exist. Licensor will inform Licensee of any breach of applicable German data protection legislation or the terms of this Section without undue delay after becoming aware thereof. Licensee is at any time entitled to instruct the Licensor with regards to the collection, processing or use of personal data under the data processing arrangements in this Section. Licensee shall indemnify the Licensor for any expenses resulting from any such instruction.

§ 15 Miscellaneous

1. This agreement is subject to German law. The terms of the UN Sales Convention are excluded.
2. Place of jurisdiction for all disputes out of or in connection with this agreement is Mannheim whereas the Licensor is entitled to sue at the business place of the Licensee.

B. Special Terms and Conditions for Software Support

§ 1 Object and content of the Software Support

1. The Licensor renders in addition to his general warranty obligations Software Support pursuant to the license certificate as Standard Support or Premium Support. Standard Support includes defect analysis, removal of software malfunctions and the delivery of updates and new versions. Premium Support includes in comparison to Standard Support besides longer Support hours the provision of a personal contact person and other options to contact the Licensor and annual ERP- or BW- Fitness Test.

2. Support applies to the current version of the Software and the two preceding versions.
3. Support does not include delivery of new software releases (i.e. a new software version with substantially changed scopes of functions), the extension of or adaption of the Software to specific needs of Licensee, support of other products than the Software, installation or implementation of the Software in the hardware environment of the Licensee, a change in the hardware or the operating system, or initial instruction and training of Licensee employees.
4. Support will not be rendered if the Licensee uses the Software in breach of or contrary to Licensor's instructions on use or programming or if the Licensee modified the Software or had it modified by a third party in breach of this agreement, unless the Licensee proves that the modification or the use had no unreasonable effect on the analysis and removal of the defect.

§ 2 Support

1. Standard Support is provided by the basis support team of the Licensor Monday to Friday between 8 am and 6 pm (CET) except on national bank holidays in Germany.
2. Premium Support is provided by the Premium Support Team of the Licensor Monday to Friday from 0 am to 12 pm (CET), except on national bank holidays in Germany.
3. Standard Support is exclusively provided through SAP OSS by the Standard Support team of Licensor, Premium Support is also provided via telephone or email under the contact details of a personal contact person defined in the license certificate.

§ 3

Defects and Response Times

1. In case a defect is reported the parties shall determine the Defect Category of the Defect as follows:

Category 1. Critical Defect: a substantial loss of functionalities or performance of the Licensed Software so that the Licensed Software cannot be used.

Category 2. Essential Defect: a substantial loss of functionalities or performance of the Licensed Software, which can be circumvented by reasonable measures so that the Licensed Software can continue to be used.

Category 3. Other Defects: insignificant loss of functionalities, reliability, performance or quality of the Licensed Software.

2. The Licensor will provide the following support services for each Defect category:

Category 1: Defect analysis and commencement of troubleshooting work within 4 working hours after receipt of the Defect Report, if received during Support Hours. If the Defect Report is received after 2:00 p.m. (Central European Time) in case of Standard Support or Premium Support on a Friday or the day before a bank holiday in Germany after 20:00 hours, p.m. (Central European Time), only the time lapsed until expiration of the Support Hours is relevant; the remaining reaction time continues at the beginning of the next Support Hours.

Category 2: Defect analysis and commencement of troubleshooting work before the end of the business day following receipt of the Defect Report.

Category 3: Defect analysis and commencement of defect removal is not covered by the support.

3. The preceding periods applicable to the Defect analysis and the commencement of troubleshooting work begin with the next Support Hours, if the defect report is received outside of Support Hours.
4. Licensor shall continue to carry out the troubleshooting measures during the Support Hours agreed upon.
2. The Licensee shall provide all reasonable assistance to Licensor as far as this is useful for the performance of the support services. This includes, but is not limited to providing all information that is relevant in the Licensor's sole opinion for the provision of the support services by Licensor, the identification of qualified contacts within Licensee, and the provision of test data and test capacities.
2. If the Licensor in its discretion provides new versions or updates, Licensee will receive a supplement to the Documentation and any object code, if delivered and necessary.
3. Updates or new versions of the Licensed Software will be deemed as Licensed Software in the meaning of this Agreement.

§ 4 BW Fitness Test (Premium Support)

1. The Premium Support entitles the Licensor to carry out one ERP/BW Fitness Test per calendar year.
2. Licensee shall request the execution of the ERP-/BW Fitness Test with four weeks notice in writing.
3. Licensor, when carrying out the ERP/BW Fitness Test, automatically collects from the Licensee's system technical data regarding the use of the system and the data volumes processed by the Licensed Software. Licensor uses this data in order to draft the final report and in order to determine benchmark values.
4. Licensor is entitled to use the company data collected from the ERP/BW Fitness Test in an aggregated manner, which means by calculating an average of a larger number of licensees or other third parties as benchmark-data for third parties and to disclose such data to third parties, provided that, when doing so, it is not possible to identify the Licensee or any natural persons directly from the data.
3. Without undue delay after this Agreement becoming effective, Licensee will identify a contact person for its systems. Defect reports may still be submitted by persons other than this contact person.
4. If necessary in order to carry out the support services, Licensee shall grant Licensor physical access to Licensee's system environment.
5. Licensee will document any and all of the following changes to the configuration and the environment of the Licensed Software and inform Licensor in writing regarding:
 - System changes
 - Upgrades
 - Changes to the configuration
 - New installations
 - System-ID-changes.

§ 6

Delivery of Updates

1. Licensor shall provide and deliver to Licensee updated versions or updates to the Licensed Software to the Licensee at its sole discretion for the purpose of troubleshooting and adjustment to modified system requirements, however, normally at least twice a year. Any such update or new version may also contain minor functional improvements or enhancements (Minor Release), however, no new services or new software modules with new functions (Major Release).

§ 6

Support Fee

1. Licensee shall pay the Licensor the annual Support Fee for the support services as agreed in the General Information in four equal instalments payable not later than the end of each three calendar month period after commencement of the Support Service subject to receipt of the respective invoice. Applicable tax will be added to the invoiced amounts.
2. The Support Fee is fixed for a period of three years after conclusion of the Agreement. The parties will agree in good faith on any adjustment to the Support Fee as set forth in the General Information prior to the expiration of this period.

§ 8

Warranty and Limitation on Liability

1. Claims for damages expire after a year from service provision on. This does not apply to claim for damages due to intent or gross negligence, on injury of life, body and health, due to the product liability law or bad faith or another guarantee.
2. If the Support includes work services the Licensee may request improvement of the provided services in case of a defect. After final failure of the improvement the Licensee is entitled to reduce the support fee if the work services are defective. A work of an average kind and quality is owed.

3. Within the legal provisions the Licensor is unlimited liable for claims of damages (a) due to intent or gross negligence (b) culpable injury of life and health (c) pursuant to the product liability act (d) to the extent of an accepted guarantee.
 4. The Licensor is liable limited to the replacement of the foreseeable damage typical for this type of contract for such damages, which are based on a slight negligent breach of essential duties by the Licensor or one of his authorized representatives. Essential duties are duties the fulfillment of which do in fact enable the fulfillment of the contract and on whose fulfillment the Licensee may rely (so-called cardinal obligation).
 5. The Licensor is liable for other cases of slightly negligent conduct limited to six times of the monthly support fee per case of damage.
 6. The Licensor is liable for loss of data due to simple negligence only for damages which had been incurred also on proper and regular data back-up appropriate to the importance of the data; Appropriate is in case of doubt a data back-up every three days. This limitation does not apply if the back-up was prevented or made impossible by reasons for which the Licensor is liable.
- § 9 Term of the contract, termination**
1. The agreement on support services is entered into for an initial period of 12 months and shall automatically extend for additional consecutive extension periods of 12 months each unless it has been terminated by either party three months prior to the expiry of the term.
 2. The right to extraordinary termination shall remain unaffected.
 3. The termination has to be made in writing.

§ 10 Subcontractors

Licensor may use third parties to provide support services under this Agreement, provided that these have their registered place of business in the EU and render the services from the EU.