

AVG PARTNER AGREEMENT

GENERAL CONDITIONS

1. CERTAIN DEFINITIONS

In the Agreement:

Agreement has the meaning given by the Special Conditions.

Affiliate means a company controlled by, controlling, or under common control, directly or indirectly, through one or more intermediaries, with one of the Parties to this Agreement.

AVG Portal means the website administered by AVG and dedicated to its existing and future resellers and distributors of Software and AVG Services, protected by Password and accessible through www.avg.com/partner or such other Web site as AVG provides by Notice to Company. The AVG Portal contains important information about benefits to which Company may be eligible, and commercial terms of purchasing Software.

AVG Service means any service that AVG has agreed in an Order to supply to Company for resale to End Users.

Brand Features means the trade names, trademarks, service marks, logos and other distinctive brand features of AVG relating to the Software, as updated by AVG from time to time.

Brand Guidelines means AVG brand guidelines accessible through the AVG Portal and any replacement or supplemental brand guidelines issued from time to time by AVG.

Clause refers to a provision of these General Conditions.

Company Portal means a web site or other online property or facility owned by Company or its Affiliates from which End Users within the Territory can download Software.

Confidential Information has the meaning stated in Clause 9.1.

Device means a computer, server, tablet or other device suitable to be used with, or managed by, Software.

Effective Date means the Effective Date established by the Special Conditions.

End User means an individual or entity purchasing Software licenses and/or AVG Services for its own internal business use and not for resale, in each case only to the extent that Company pays or arranges payment to AVG for such Software licenses or Services. For the avoidance of doubt, Company will be deemed an End User to the extent it employs Software for its own internal business purposes.

EULA means an end user license agreement between AVG (or, if applicable, AVG's Third Party supplier) and an End User in respect of the applicable Solution.

Fees means fees specified in each Order which are to be paid by Company to AVG pursuant to this Agreement.

General Conditions means these AVG 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/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: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, semiconductor topography rights and mask works; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) domain names, URLs and websites; (f) 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 (g) 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 clauses (a) through (f) above.

Law means any federal, state, provincial or other local 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.

License Number means a unique license number for each End User provided by AVG that is necessary for any copy of AVG Software to be activated upon installation.

Notice means an email notice, if from Company sent to, or if from AVG sent from, bpnotices@avg.com (and “**Notification**,” “**Notify**” and “**Notifies**” shall be construed accordingly). Unless otherwise specified, Notice (and other forms of the term) shall mean Notification from AVG.

Order means the orders Company submits and AVG accepts as contemplated by Clause 2.2.

Password means a secret and individualized authentication data used by AVG resellers and distributors in order to have access to and to effect operations on the AVG Portal.

Personally Identifiable Information means information that can be used to uniquely identify, contact, or locate a single individual or can be used with other sources to uniquely identify a single individual including, as applicable under applicable Law, personal data (as the term is used by the EU Data Protection Directive 95/46/EC).

Personally Identifiable Information Policy means the policy regarding personally identifiable information transfer and processing located on the AVG Portal.

Party means AVG or Company as the context requires.

Privacy Policy means AVG’s privacy policy available at <http://www.avg.com/privacy>, as updated or amended from time to time.

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

Software means the software product or products identified on the AVG Portal, and as AVG may modify the same from time to time.

Solution means Software and/or AVG Services as the context requires.

Special Conditions means the Special Conditions executed by the Parties, which identifies the Parties, specifies payment instructions and establishes additional terms and conditions governing the Parties’ relationship.

Subscription Period, with respect to each End User or group of End Users, means the period for which Company has paid or agreed to pay AVG to use the applicable Software and/or receive AVG Services.

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 terminated by either Party on at least 30 days’ prior Notice.

Territory will have the meaning stated in the Special Conditions.

Third Party means a person or entity other than AVG and Company and their respective Affiliates.

2. ORDERS; RELATED TERMS

2.1. Company’s authority to deliver Solutions requiring Solutions as contemplated by the Special Conditions is limited to the quantities of Solutions Company has purchased and paid for under then-currently effective Orders.

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

2.3. In order to activate any copy of AVG Software, Company or the End User may be required to obtain a License Number from AVG in accordance with the procedures then currently effective and established on the AVG Portal. Where applicable, Company shall be solely responsible for distributing License Numbers to its End Users. Company agrees to comply at all times with all AVG’s policies available from the AVG Portal.

3. AVG OBLIGATIONS

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

3.1. Within 5 business days of the Effective Date, provide or make available to Company with the then-current versions of the Software. Thereafter, AVG will provide or make available to Company with each updated and upgraded version of the Software as AVG makes the same generally commercially available. In both of the foregoing cases, the provision of such Software may be through the AVG 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 AVG Portal. At its discretion, AVG will co-operate with Company to develop from time to time joint marketing initiatives. All costs of the joint marketing initiatives will be allocated between AVG and Company as agreed in writing.

4. COMPANY'S OBLIGATIONS

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

4.1. Make the Solutions available in the Territory, using the marketing materials AVG supplies and such modified materials and additional materials as AVG has approved in advance (such approval not unreasonably to be delayed or withheld).

4.2. Ensure at all times that it has in effect Orders sufficient to cover the then-current use of the Software and Services by End Users (including itself, as applicable) and, at AVG's reasonable request from time to time, certify to AVG that it has fulfilled and continues to fulfill its obligations under this Clause 4.2.

4.3. Require that each End User (including Company, to the extent applicable) receiving Software to execute or otherwise bind itself to the then-current version of the applicable EULA or EULAs.

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

4.5. As between AVG and Company, be solely responsible for delivering Software to the applicable End Users.

4.6. Share feedback regarding the Solutions with AVG on an ongoing basis. AVG accepts no obligation to respond or act on any such comments or suggestions and this invitation to comment does not constitute any admission of liability or product failure of a Solution, but Company grants AVG 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 comments and suggestions in any Solution and other products and services.

4.7. Not (i) use any Brand Feature or Software name, or permit use of the same, in conjunction with a product or service other than the applicable Software or AVG Services, (ii) make any representation, warranty, claim or promise to any Third Party, End User or potential End User, in relation to any Software or AVG Services not contained in documentation, specifications or marketing materials provided to Company by AVG, (iii) remove or otherwise interfere with the EULA provided with the Software or accept the EULA on the End User's behalf, (iv) actively market or promote Solutions outside of the Territory, or permit any Third Party to do so, without AVG's written consent, provided, that no consent is required for Company to accept unsolicited orders from outside the Territory, and (v) except as expressly contemplated by this Agreement, not supply Software to any Third Party for resale or redistribution.

4.8. Not, and will not authorize or assist any End User, or potential End User or other Third Party to, (i) use any license or other authorization number supplied by AVG in connection with any Solution on more than the authorized number of Devices or End Users, if any, specified by then-current Orders, (ii) disclose any license or authorization number to any party other than the applicable End User, AVG or AVG 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 without limitation any related malware signatures and malware detection routines), or (B) change, modify or otherwise alter any Software (including without limitation any related malware signatures and malware detection routines), (iv) publish, resell, distribute, broadcast, transmit, communicate, transfer, pledge, rent, share or sublicense any Software, (v) grant any Third Party access to or use of any Solution on a service bureau, timesharing, or application service provider or other similar basis, (vi) test or benchmark, or disclose or publish testing or benchmark results, for any Solution without AVG's prior written consent (which Company may request at <http://www.avg.com/benchmarking>), or (vii) 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 Software.

5. UPDATES; MONITORING

5.1. From time to time during the Extended Term and, without separate permission or consent from Company or End User, AVG may deploy updates for any Software, and the Software or the applicable Device (or certain functions of the Device) may be unavailable until the update is fully installed. Updates will be deemed a part of the Software for all purposes under this Agreement. Updates may include both additions to and removals of particular functionality offered by the Software, and the content and functionality of such updates is at the sole discretion of AVG. AVG or the Device may offer the option to decline or delay updates, but all available downloads must be permitted and installed to obtain maximum benefit from the Software. AVG may stop providing Support for Software until the updates have been accepted and installed. AVG will determine when and if updates are appropriate and has no obligation to make any updates available. AVG in its sole discretion may stop providing updates for any version of Software other than the most current version, or updates supporting use of the Software in connection with any versions of operating systems, email programs, browser programs and other software with which the Software is designed to operate.

5.2. AVG MAY MONITOR USE OF A SOLUTION TO CONFIRM THAT IT COMPLIES WITH THE TERMS OF THIS AGREEMENT AND THE APPLICABLE EULA. SHOULD AVG DETERMINE THAT COMPANY OR ANY RESELLER OR END USER IS CONTRIBUTING TO OR CAUSING COMPANY TO BE IN BREACH OF THIS AGREEMENT OR THE APPLICABLE EULA, AVG, 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 THE SOLUTIONS. IN SUCH CASE, AVG SHALL HAVE NO LIABILITY TO COMPANY FOR ANY CLAIMS BROUGHT AGAINST COMPANY BY END USERS WHO WERE PREVENTED FROM USING THE AFFECTED SOLUTIONS.

6. FEES AND TAXES

6.1. Fees; Payment. Company, in exchange for the Solutions AVG provides pursuant to this Agreement, will pay Fees in accordance with the Special Conditions. Except as otherwise specified in this Agreement or in an Order, (i) payment obligations are non-cancelable and Fees paid are non-refundable, and (ii) quantities purchased cannot be decreased during the relevant Subscription Period. Company will pay AVG the Fees under each Order in accordance with the payment terms and instructions set forth in the Order or, in the absence of such payment terms, within 30 days of the date of AVG's invoice.

6.2. Collection Agent. At AVG's option, any Fees may be invoiced and collected by an AVG Affiliate or a Third Party acting for and on behalf of AVG as its invoicing and payment collection agent, provided, that the AVG Affiliate and/or the Third Party (as applicable) will provide such letters of authorization, certifications or other documentation that Company may reasonably require.

6.3. 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, where applicable, in the relevant jurisdiction at the rate in force (which may change from time to time).

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

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

6.6. Reporting; Recordkeeping; Audits.

6.6.1. Company, within ten (10) days of AVG's request, will provide AVG with a report in the form specified by AVG 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.

6.6.2. Company, during the Term and for three years thereafter, will maintain complete and accurate records concerning its calculation of Fees owed to AVG pursuant to this Agreement. No more than once in any twelve-month period, AVG or its representative may audit Company's records for the sole purpose of confirming the Fee calculations. Any such audit will be conducted during regular business hours at Company's offices and shall not interfere unreasonably with Company's business activities. Should such audit reveal unlicensed usage in excess of 10% of the purchased licenses, AVG may charge Company for all such unlicensed usage at the rate of 120% of AVG's then-current pricing.

7. TERMINATION

7.1. Without prejudice to its other rights or remedies, either Party may terminate this Agreement, and/or the applicable Order or all Orders, immediately by Notice to the other Party, in circumstances where the other Party:

7.1.1. 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

7.1.2. 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.

7.2. Without prejudice to its other rights or remedies, AVG may terminate this Agreement and/or the applicable Order or all Orders, immediately by Notice to Company if Company violates its obligations in Clause 8.1, or if AVG becomes aware of information suggesting that Company has distributed or used the Software for any unauthorized purpose or for any purpose other than in accordance with the purpose and terms of this Agreement.

7.3. Notwithstanding any other provision of this Agreement, neither the expiration nor termination of this Agreement will affect Orders taking effect during the Term, and the parties' payment and other obligations under each Order will survive for the Subscription Period (including any extensions), unless and until the Order is expressly terminated under Clause 7.1 or 7.2. Subject always to the preceding sentence, on expiration or termination of this Agreement, the licenses granted to Company by the Special Conditions to distribute, resell or deploy Solutions will terminate, and Company shall (i) within 15 days following termination, deliver to AVG all Software including code, the unused License Numbers and documentation covered by this Agreement, or destroy or erase any versions of such material which cannot be returned to AVG.

7.4. Any termination of this Agreement shall not affect any rights or liabilities of either Party which have accrued up to the date of termination or expiration, nor shall 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, AVG (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 to provide AVG Services, provided, that, except in the event AVG terminates this Agreement pursuant to Clause 7.1 or 7.2, nothing in this sentence will be construed as authorizing AVG to contract directly with Company's Resellers, if any, or its Resellers' End Users. Neither the expiration nor termination of this Agreement will affect End Users' licenses under the applicable EULA to use Software properly distributed in accordance with the terms of this Agreement.

7.5. Neither the expiration nor termination of this Agreement by either party for any reason will entitle Company to any termination or severance compensation, or to any payment in respect of any goodwill created by Company during the Term or Extended Term. Company waives any right to receive such compensation.

8. INTELLECTUAL PROPERTY RIGHTS; IP AND OTHER INDEMNIFICATION

8.1. Company hereby agrees and undertakes as follows:

8.1.1. to honor the Intellectual Property and Brand Features of AVG, not to challenge the validity of AVG's Intellectual Property Rights and not impede in any way AVG's ability to secure Intellectual Property Rights in any Solution;

8.1.2. not to embody any portion of, or file any application claiming Intellectual Property Rights in, including, or relating to, any Software or Confidential Information (even if it is released to the public at a later stage), including without limitation any patent or copyright applications;

8.1.3. not to include any Brand Feature or any variation thereon in Company's corporate name, fictitious name, or Internet domain name (and if at any point Company gains ownership or other control over an Internet domain name which contains or uses any Brand Feature, to immediately assign and transfer the same to AVG);

8.1.4. to acknowledge (and not to take any actions in contravention of the same) that AVG, as between Company and AVG, owns and shall 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 and its other products and solutions; and (ii) all Intellectual Property, results and/or experiences developed, conceived and/or reduced to practice during distribution under this Agreement.

8.2. Company agrees that this Agreement grants Company a limited license pursuant to the license terms set forth in the Special Conditions and does not contemplate any transfer to Company of any AVG Intellectual Property or Intellectual Property Rights. Without limiting the foregoing, all goodwill associated with the use of the Brand Features inures to AVG, 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.

8.3. Company shall 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 AVG to Company) on each Software that Company reproduces or distributes pursuant to this Agreement.

8.4. Company shall implement and maintain security measures that safeguard all copies of Software in its possession or control from access or use by any unauthorized party.

8.5. The indemnity obligations in Clauses 8.6 and 8.7 below shall only be applicable where the Party seeking indemnification (“**Indemnitee**”):

8.5.1. Notifies the indemnifying Party (“**Indemnitor**”) promptly upon becoming aware of any claim;

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

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

8.5.4. 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;

8.5.5. 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

8.5.6. 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).

8.6. Subject to Clause 8.7, AVG will defend, indemnify and hold harmless Company from and against all liabilities, costs, damages and expenses (including settlement costs pre-approved by AVG and reasonable attorneys’ fees) finally awarded by a court of competent jurisdiction to any Third Party arising from such Third Party claim that any Software or the distribution of any Software pursuant to this Agreement infringes any patent, copyright, trade secret or trademark of such Third Party. Notwithstanding the foregoing, in no event shall AVG have any obligations or liability under this Clause 8.6 to the extent that the Third Party claim relates to any:

8.6.1. modification of the Software;

8.6.2. combination of the Software with any other software or products (unless such combination was expressly permitted by AVG); or

8.6.3. content, information or data provided by Company or provided to Company by End Users or any Third Party.

THE INDEMNITY PROVISIONS OF THIS CLAUSE 8.6 STATE AVG’S ENTIRE LIABILITY AND EXCLUSIVE REMEDY WITH RESPECT TO INFRINGEMENT OF ANY THIRD PARTY’S INTELLECTUAL PROPERTY RIGHTS.

8.7. Company will defend, indemnify and hold harmless AVG 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 relate to (i) allegations that a Device, Company Portal or Company service (other than an AVG 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, Software, (ii) any representation, warranty or commitment Company makes concerning a Solution except as AVG supplies or pre-approves the representation or warranty for disclosure to such Third Party, (iii) Company’s performance or failure to perform its obligations under any agreement between Company and the End User (including, without limitation, to the extent caused by AVG’s suspension or termination of AVG Services pursuant to this Agreement), (iv) any violation of Company’s obligations pursuant to Clause 4.7, or (v) if applicable, the failure of any Reseller to comply with any provision of this Agreement, or any assertion of any Claim by a Reseller against AVG relating to any Solution or AVG’s performance or failure to perform this Agreement.

9. CONFIDENTIALITY

9.1. “**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 hereto (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 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, and (ii) analyses, compilations and other material prepared by the Recipient which contain, reflect or are generated from the information described in (i) above; (iii) the existence and content of this Agreement; provided always that Confidential Information shall not include information which (1) 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; (2) was known to the Recipient prior to Recipient receiving the same pursuant to this Agreement and not otherwise restricted by contract or Law; (3) becomes available to the Recipient on a non-confidential basis from a third person or source not restricted by contract or Law regarding such information; or (4) Recipient can demonstrate through documentary evidence was independently developed by Recipient without use of or reference to the Confidential Information. For the avoidance of doubt, the Fees are AVG Confidential Information.

9.2. The Recipient shall 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 shall in no event directly or indirectly use the Owner's Confidential Information in the design, development, production, marketing, sale or use of products or services competitive with those of the Owner.

9.3. The Recipient, without the Owner's prior written consent, shall 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 shall 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 court, administrative agency, or other governmental body; provided, however, that the Recipient shall 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 information.

9.4. Each Party shall promptly Notify the other Party of any breach of this Clause 9 committed by the first Party or any of its employees.

10. REPRESENTATIONS AND WARRANTIES

10.1. 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) this Agreement, when signed by its duly authorized representative, constitutes 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.

10.2. AVG or the applicable Third Party may extend a warranty to End Users in respect of the Software pursuant to the terms of the EULA or other end user agreement.

10.3. EXCEPT AS SET FORTH IN CLAUSE 10.1 AND 10.2, AVG EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL OTHER TERMS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION (i) ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SUITABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY SOLUTION; (ii) ANY WARRANTY THAT COMPANY WILL RECEIVE ANY MINIMUM AMOUNT OF REVENUE AS A RESULT OF THE DISTRIBUTION OF ANY SOLUTIONS UNDER THIS AGREEMENT AND (iii) ALL WARRANTIES OR CONDITIONS THAT ANY SOLUTION WILL MEET THE REQUIREMENTS OF COMPANY, ANY END USER OR THIRD PARTY, OR OPERATE IN ANY COMBINATION WITH ANY DEVICE, COMPANY PORTAL, OPERATING SYSTEM OR SOFTWARE. NO WARRANTY IS GIVEN BY AVG THAT ANY SOLUTION WILL BE BUG-FREE OR WILL OPERATE WITHOUT INTERRUPTIONS.

11. LIMITATION OF LIABILITY

11.1. Nothing in this Agreement shall limit or exclude either Party's liability for:

11.1.1. fraud;

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

11.1.3. payment of the Fees;

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

11.2. AVG shall only be liable for direct damages arising in relation to this Agreement. In no event will AVG 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:

11.2.1. indirect, incidental, consequential or special losses;

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

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

even if AVG has been advised of the possibility of any such damage or loss.

11.3. Subject to Clause 11.1, AVG's total aggregate liability 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 per calendar month to date during the Term multiplied by twelve.

11.4. Neither Party may bring a claim or action against the other Party, 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 more than 1 year after the Party knows, or should reasonably have known, of any event giving rise to the claim or cause of action.

11.5. Each Party shall 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.

11.6. The Parties agree that the limitations and exclusions set out in this Clause 11 are reasonable, having regard to all the relevant circumstances and the levels of risk associated with each Party's obligations under this Agreement.

12. COMPLIANCE WITH LAWS AND POLICIES

12.1. Company shall, at its own expense, comply with all Laws which apply to, or result from, its obligations under this Agreement, including without limitation applicable Laws relating to data privacy and security.

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

12.3. Company hereby confirms, acknowledges and agrees that its owners, directors, officers, employees and agents 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 or 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.

12.4. Company agrees to be responsible for exporting the Devices and Solutions in accordance with all applicable export Laws. Company shall not make the Software available to any Third Party other than as permitted by this Agreement.

12.5. Company shall not export or re-export, directly or indirectly, any technical data (including Software) acquired from AVG pursuant to this Agreement or any products utilizing any such data, for which the U.S. Government or any agency of the U.S. Government requires (at the time of export) an export license or other Governmental Authority approval, without first obtaining such export license or Governmental Authority approval. Without derogating from the generality of the foregoing, no offers to End Users, export or re-export of software, services or technology will be made to destinations, companies or individuals subject to U.S. and E.U. embargos or trade sanctions, including without limitation, to Cuba, Iran, North Korea, Sudan or Syria.

13. PRIVACY AND SECURITY

13.1. General.

13.1.1. Privacy Policy. AVG's Privacy Policy describes (and limits) AVG's collection and use of Personally Identifiable Information and other information from Company, the Devices to which a Solution may be deployed, and the users of those Devices.

13.1.2. Registration Information. In order to activate any Solution, Company or the End User may be required to register with AVG over the Internet or by telephone. As a material condition for AVG to provide the Software and AVG Services contemplated by this Agreement, Company represents that, to the best of its knowledge, the registration information it or its End Users provide to AVG (including each e-mail address in particular) is accurate and complete as of the date registered and will keep it up to date when and if any changes are made and, NOTWITHSTANDING ANY PROVISION OF THE AVG PRIVACY POLICY, COMPANY CONSENTS DURING THE TERM OF THIS AGREEMENT AND FOR 1 YEAR THEREAFTER (OR FOR AS LONG AS PERMITTED BY APPLICABLE LAW) TO (i) AVG'S SHARING USER CONTACT INFORMATION WITH ITS AFFILIATES, AGENTS, LICENSORS, REPRESENTATIVES, SUPPLIERS, DISTRIBUTORS, RESELLERS AND OTHER BUSINESS PARTNERS, AND (ii) USE OF THAT CONTACT INFORMATION BY AVG, ITS AFFILIATES, AGENTS, LICENSORS, REPRESENTATIVES, SUPPLIERS, DISTRIBUTORS, RESELLERS AND OTHER BUSINESS PARTNERS TO PRESENT COMPANY AND END USERS WITH INFORMATION THAT MIGHT BE RELEVANT, INCLUDING OFFERS OF SOFTWARE, SERVICES AND OTHER PRODUCTS. For more details on registration information, please visit our Privacy Policy.

13.2. Data Protection. Each Party, to the extent it obtains or receives Personally Identifiable Information in the performance of this Agreement, will comply with the Personally Identifiable Information Policy.

14. MISCELLANEOUS

14.1. Communications, Notices and Contract Changes.

14.1.1. Normal account management communications between the Parties shall be the responsibility of the representatives of the Parties advised by each Party from time to time in writing. Contact details of the representatives may be changed by Notice.

14.1.2. All notices, requests, demands, approvals and other communications under this Agreement shall be in writing (which term shall include Notices and/or approvals, as the context requires) and shall (unless stated otherwise herein), be deemed to have been duly given to a Party (i) when delivered in person to the address specified in the most recent Order; (ii) if given by post or courier, when mailed by the appropriate postal service postage prepaid, or delivered by courier, to the other Party at the address specified in the most recent Order; or (iii) when emailed (a) if to Company, when sent to the email address stated in the most recent Order or (b) if to AVG, when sent to bnotices@avg.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 AVG at an address other than bnotices@avg.com or any other address mentioned in the applicable Order shall not constitute Notice. Changes to address details for Notices shall be given by Notice in accordance with this Clause. Notices claiming breach of AVG's obligations, or giving Notice of termination of this Agreement, shall be sent as above and also copied to legalnotice@avg.com.

14.1.3. AVG may revise the terms and conditions of this Agreement from time to time and such revised and updated Agreement shall acquire effect and contractual force between AVG and Company, and will supersede and replace the contractual terms and conditions then in operation. AVG will publish or otherwise provide Company notification of the revised and updated terms and conditions of this Agreement. Company's submission of an Order after the publication or receipt of the revised terms and conditions will constitute Company's acceptance of the same.

14.1.4. Unless otherwise stated in this Agreement, amendments to this Agreement shall only be valid if in writing and signed by the authorized representative of each Party.

14.2. Binding Arbitration Agreement and Class Action Waiver.

14.2.1. This Binding Arbitration Agreement and Class Action Waiver applies to any Dispute arising from or related to a Solution or this Agreement or any Order and involving Company and AVG and/or its Affiliates. "*Dispute*," for purposes of this provision, means any dispute, action, or other controversy regardless of the particular cause of action(s) 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 allowable under Law.

14.2.2. In the event of a Dispute, Company must provide AVG with a Notice of Dispute, which is 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. Company must send any Notice of Dispute by email to AVG at legalnotice@avg.com (stating Subject: Section 14.2 Notice of Dispute Under Partner Agreement).

14.2.3. If Company and AVG do not resolve any Dispute by informal negotiation, including any question regarding the Agreement's or an Order's existence, validity or termination, shall 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 and shall control to the extent they do not conflict with this Clause 14.2. The seat, or legal place, shall be New York, New York, United States of America and the official language of the Arbitration shall be English. The governing Law of this Agreement shall be the substantive Law of the State of New York.

14.2.4. For Disputes in which the total claim, including counterclaims but not including attorney's fees or interest, exceeds \$250,000, the arbitration shall be adjudicated by a panel of three arbitrators. The parties will each appoint an arbitrator and the chair shall be appointed by JAMS pursuant to the procedures set forth in the JAMS International Arbitration Rules. The parties agree that the Tribunal shall 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.

14.2.5. For Disputes in which the total claim, including counterclaims but not including attorney's fees or interest, is \$250,000 or less, the Arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules in effect at the time the Arbitration is initiated, the Arbitration shall be adjudicated by one arbitrator, who shall 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 shall 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 14.2 may be entered in any court having jurisdiction thereof.

14.2.6. Nothing in this Clause 14.2 shall 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.

14.2.7. No proceeding to resolve or litigate any Dispute in any forum will be combined with another 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.

14.2.8. Each party shall bear its own costs related to the dispute resolution procedure, including attorney's fees.

14.3. Except as otherwise stated herein, this Agreement sets out all terms agreed between the Parties and supersedes all previous or contemporaneous agreements between the Parties relating to its subject matter. 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 shall 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 either Party.

14.4. The relationship between the Parties is that of independent contractors and shall 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 shall act as an independent contractor buying for itself, selling in its own name and at its own risk.

14.5. 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.

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

14.7. Neither party shall be liable for any failure or delay in performance due in whole or in part to any cause beyond the reasonable control of such Party or its contractors, agents or suppliers, including but not limited to utility or transmission failures, failure of phone lines or phone equipment, power failure, strikes or other labor disturbances (including without limitation a strike or other labor disturbance arising in respect of the affected Party's work force), Acts of God, acts of war or terror, floods, sabotage, fire, natural or other disasters.

14.8. 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.

14.9. Company may not assign its rights or obligations under this Agreement or subcontract any portion of its performance under this Agreement without AVG's prior Notification of consent. AVG may assign or otherwise transfer its rights or delegate its obligations under this Agreement (in whole or in part) without Company's consent to any AVG Affiliate, purchaser of any AVG shares or business unit or all or part of AVG's business, or to a distributor appointed by AVG for any Territory, and may subcontract the performance of any of its obligations to Third Parties. Company, subject to the applicable provisions of the Personally Identifiable Information Policy, hereby consents to AVG's export of Personally Identifiable Information. Nothing in this Agreement, express or implied, is intended to or will confer upon any person (other than the Parties) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

14.10. Neither Party shall, 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.

14.11. 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. In the event that an ambiguity or question of intent or interpretation arises, in any judicial proceeding or otherwise, the terms of this Agreement shall be construed as having been drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

14.12. Any costs and expenses incurred by a Party in performing this Agreement shall be met by that Party.

14.13. Orders may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. A Party's electronic signature or transmission of any document by electronic means shall be deemed to bind such Party as if signed and transmitted in physical form.