



Spryker Solution Partner Program – General Terms and Conditions

PREAMBLE

- (A) These Spryker Solution Partner Program – General Terms and Conditions (“**T&C**”) by Spryker Systems GmbH (“**Spryker**”) apply to the Spryker Solution Partner Program as well as supplement and enhance
- (a) the SP Program Agreement along with its annexes (if applicable) individually agreed between Solution Partner and Spryker;
 - (b) the Spryker Academy Terms and Conditions (the then-current version can be called here: <https://academy.spryker.com/learn>);
 - (c) other written arrangements concluded between the Parties.
- (referred to jointly as the “**Parts of Arrangement**”)
- (B) The then-current version of the T&C can be called here: <https://spryker.com/en/terms-of-service/>.

ARRANGEMENTS CONCLUDED

1. Definitions and Interpretation

1.1 *Definitions*

The following words and expressions, where visible from the context, have the following meaning for the purpose of this Spryker SP Program:

ACV	means average contract value;
Add-On	extends the Software with optional modules developed by the Solution Partner, whereby it is installed on top of the Software and can be uninstalled at any time without affecting it;
Affiliated Company	means an entity that directly or indirectly controls, is, controlled by, or is under common control with another entity, where control means the direct or indirect ownership of 50% or more of the voting power or equity in an entity or de facto control by an entity of another entity’s decision making;
Bug Fix	means a change to the Software designed to handle a programming bug/glitch and is also known as temporary fix;
Business Hours	a working day of nine (9) hours on Business Days: Mondays to Fridays, 9 a.m. to 6 p.m. CET (Central European Time, GMT +1);
Beneficiary	means the member of the Spryker SP Program entitled to an SSC Scheme Incentive;

Cardinal Obligation	are all duties whose breach would jeopardize the achievement of the purpose the Parts of Arrangement as well as all duties whose fulfillment enables the Parties' proper performance under the Parts of Arrangement in the first place and on compliance with which the Parties can generally rely;
Confidential Information	has the meaning ascribed in Clause 12.1;
Data Subjects	has the meaning ascribed in Clause 14.1;
Dispute	has the meaning ascribed in Clause 13.1;
Effective Date	denotes the date as of which the Spryker SP Program applies as specified on page 1 of the SP Program Agreement;
Event Activity	has the meaning ascribed in the SP Program Agreement;
Expert Services	are standard consulting services, strategic consulting services, staging of workshops, or support in implementation provided by Spryker with regard to its products and services;
Extension	of the Software by the Spryker Customer, or by a third party on behalf of the Customer, denotes the extension of modules beyond the documented APIs, such as by overwriting internal classes or manipulating the database schema used by the core code;
Focus Territory	means a geographically defined area by Spryker the Solution Partner is going to focus its sales related activities within the framework of the Spryker SP Program on;
Focus Vertical	means an industry, a sector or business area defined by Spryker the Solution Partner is going to focus its sales related activities within the framework of the Spryker SP Program on;
Force Majeure	has the meaning ascribed in Clause 15.1;
FOSS Components	has the meaning ascribed in Clause 4.4;
General Terms and Conditions for Participation in the Spryker Solution Partner Program	has the meaning ascribed in the SP Program Agreement;
Insolvency Event	is such in accordance with the provisions of the German Insolvency Code (<i>InsO</i>) or such in a comparable form according to the statutory provisions of any foreign jurisdiction;
Lead	means a person or legal entity who/which may potentially become a Spryker Customer;
Lead Conversion Conditions	has the meaning ascribed in the SP Program Agreement;

Marketing Activities	has the meaning ascribed in the SP Program Agreement;
MDF	means the marketing development fund set up by Spyker for the purpose the Spyker SP Program;
MDF Account	has the meaning ascribed in the SP Program Agreement;
MDF Reimbursement	has the meaning ascribed in the SP Program Agreement;
Non-Converted Lead	has the meaning ascribed in the SP Program Agreement;
Parts of Arrangement	has the meaning ascribed on page 1;
Patch	A patch release by Spyker is a patch if the internal API of a module is not changed – therefore, all internal method signatures are not affected, and there is no change in the call history or behavior of a method. A Patch Release can also trigger an improvement of a function (e.g. an increase in performance);
Prohibition on Solicitation	has the meaning ascribed in Clause 10.1;
Provisional Solution	has the meaning ascribed in Clause 15.2;
QBR Meeting	means quarterly business review meetings held jointly by the Parties;
Registered Opportunity Form	means an input mask on the Portal’s website (https://spyker.force.com/partner/s/register-your-deal), which can be used to submit a Lead;
SAL	means a sales accepted lead;
SCOS Upgrade	has the meaning ascribed in the SP Program Agreement;
Software	has the meaning ascribed in the SP Program Agreement;
Solicitation	has the meaning ascribed in Clause 10.1;
Solution Partner	has the meaning ascribed on page 1;
SP Program Agreement	has the meaning ascribed in the SP Program Agreement;
Spyker	has the meaning ascribed on page 1;
Spyker Academy Terms and Conditions	has the meaning ascribed in the Preamble;
Spyker BDR	means a business development representative at Spyker;
Spyker Cloud Commerce OS	has the meaning ascribed in the Preamble;

Spryker Customer	has the meaning ascribed in the SP Program Agreement;
Spryker Partner Badge	has the meaning ascribed in the SP Program Agreement;
Spryker Partner Manager	means a representative at Spryker responsible for Solution Partner related activities;
Spryker Sales Manager	means a representative at Spryker responsible for sales related activities;
Spryker SP Program	has the meaning ascribed in the SP Program Agreement;
SSC Scheme Incentive Entitlement	has the meaning ascribed in the SP Program Agreement;
SQL	means a sales qualified lead;
Strategic Solution Partner	means a Solution Partner, which, at Spryker's election, assumes a strategically important role with respect to certain rights, benefits and obligations attributed as a member of the Spryker SP Program;
Successful Converted Lead	has the meaning ascribed in the SP Program Agreement;
T&C	has the meaning ascribed on page 1;
TDF	means the training development fund set up by Spryker for the purpose the Spryker SP Program;
TDF Account	has the meaning ascribed in the SP Program Agreement;
TDF Reimbursement	has the meaning ascribed in the SP Program Agreement;
Term	has the meaning ascribed in the SP Program Agreement;
Total SSC Scheme Incentive Entitlement Split	has the meaning ascribed in the SP Program Agreement;
Training & Enablement Program	has the meaning ascribed in the SP Program Agreement;
Update	means changes to the Software and its modules which extend their functionality, which can be included in all of versions, i.e. Patches and Minor and Major Releases;
Usage of MDF Allocation	has the meaning ascribed in the SP Program Agreement;
Usage of TDF Allocation	has the meaning ascribed in the SP Program Agreement.

1.2 *Interpretation*

In these T&C, the following words and expressions shall have the following meanings, to the extent evident from the context:

- (a) where a person is referred to, that includes legal entities (such as a limited liability company) and natural persons;
- (b) where these T&C are referred to, that includes other documents that are attached or are part in any Part of Arrangement by way of reference (in their valid version, if applicable as modified, supplemented or replaced from time to time);
- (c) headings are provided only for the purpose of greater clarity and do not have an effect on the content of the provisions in the respective section;
- (d) the word “including” and similar terms in any Part of Arrangement relate only to examples and do not confine the interpretation of the preceding passages; and
- (e) references to legal provisions relate to the legal provisions in their valid version at the time, if applicable as modified, extended or reenacted, and to all secondary provisions enacted as part of these legal provisions.

1.3 *Scope of Application*

- (a) General terms and conditions of the Solution Partner which deviate from these T&C or other deviating or supplementary agreements are only valid if expressly agreed on in writing between the Parties.
- (b) If Spryker amends the T&C, such changes shall also apply to existing business relationships, unless the Solution Partner objects to the change in writing within a period of one (1) month after becoming aware of and receiving an express notification by Spryker. In the event of an objection, Spryker reserves the right to extraordinarily terminate any or all Parts of Arrangement and consequently the Solution Partner's participation in the Spryker SP Program without notice.

2. Purpose

The purpose of applying these T&C is to provide a uniform framework for the Parties' cooperation as detailed in the SP Program Agreement, on which the Parties are individually agree, and to any Part of Arrangement.

3. Spryker Training & Enablement Program

- 3.1 The Spryker Academy Terms and Conditions shall apply to the Spryker Training & Enablement Program.
- 3.2 During the Term of the SP Program Agreement, the Solution Partner is required to undertake an annual re-certification of its certified staff to maintain its certification status. The Solution Partner is entitled to directly enroll its staff for certification exams for re-certification without having the staff taking part in training courses for such purpose again.
- 3.3 Spryker reserves the right to continuously change the content and services available under the Spryker Training & Enablement Program. The Solution Partner can therefore not derive any claim of receiving certain content or services in this regard. If such content and services are not provided as part of the Spryker Training &

Enablement Program, whereby Spryker is not responsible for such non-provision, the Solution Partner is not entitled to a refund of its Total Annual Budget.

- 3.4 Spryker will not reimburse the Solution Partner for any travel and accommodation costs incurred in connection with the provisions of content or services under the Spryker Training & Enablement Program. Any such costs are to be borne by the Solution Partner directly.

4. Provisions on Usage of Software

- 4.1 Spryker shall provide the Solution Partner free of charge with the Software's object and source code together with a technical explanation for download and technical documentation. as required during the Term of the SP Program Agreement. The Solution Partner shall be responsible for installation, implementation or setup of the Software and shall bear any costs incurred in this connection.
- 4.2 The Solution Partner may only use the Software internally for training, development, demonstration purposes within the scope of jointly implementing and applying sales related, Event and Marketing Activities. For such purpose only, Spryker grants the Solutions Partner a simple, non-exclusive, non-transferable right to use the Software during the Term of the SP Program Agreement. The Solution Partner may not pass on (also not to an Affiliated Company), sublicense, sell or make the Software available to a third party. The Solution Partner is not entitled to edit or rework the object and source code of the Software.
- 4.3 The Solution Partner is prohibited from using i) the Software during the execution of an implementation project for a Spryker Customer intending to use or already uses the Software under a license agreement; or ii) on behalf of a Spryker Customer.
- 4.4 So as to use Software, the Solution Partner must among other things accept FOSS Components that Spryker uses and give its prior consent to the licensing terms for them. These FOSS Components are not part of the Software and are each governed by their own licensing terms. The FOSS Components can be seen in the overview "FOSS Components" at www.spryker.com/foss/. The FOSS Components can be updated by Spryker at any time. The Solution Partner can keep track of each such update at www.spryker.com/foss/ and gives its prior consent to such updates.
- 4.5 Spryker shall inform the Solution Partner at its sole discretion and choice about any Update, Patch and/or Bug Fixes of the Software and makes them available to the Solution Partner for download during the Term of the SP Program Agreement.
- 4.6 The Solution Partner shall inform Spryker immediately as soon as it enters into a contractual relation with a Spryker Customer. The Solution Partner guarantees that any access to the Software shall be used exclusively for the respective Spryker Customer in execution of the associated execution of the implementation project. If any other implementation project is carried out by the Solution Partner for a different Spryker Customer, separate access is required. The Solution Partner assures Spryker that the access to the Software provided forms the basis of a lawful contractual relationship between Spryker and the Spryker Customer. If the Solution Partner becomes aware that the Spryker Customer uses the Software beyond the licensed scope, unlawfully sublicenses it to a third party and/or uses it unlawfully for in any other way, the Solution Partner shall inform Spryker immediately in writing and shall perform all necessary measures required to assert Spryker's claims against the Spryker Customer.
- 4.7 During the Term of the SP Program Agreement, the Solution Partner is entitled to develop Extensions and/or Add-Ons of the Software, sell them to and implement them for a third party. The development, sale and implementation of Extensions and/or Add-ons is exclusively at the risk and expense of the Solution Partner. Spryker is not liable and does not assume any warranty in this regard. The Solution Partner

is entitled to advertise that Extensions and/or Add-Ons developed are compatible with the Software if developed in line with the technical documentation provided by Spryker. The Solution Partner is, however, not allowed to use official Spryker trademarks or logos in this context. Such Extensions and/or Add-Ons developed by the Solution Partner may be certified by Spryker in exchange of consideration to be agreed on by the Parties. Certified Extensions and/or Add-On may be advertised by the Parties using the official trademarks or logos of the Parties on a mutual basis. Further details of such certification procedure need to be agreed between the Parties.

5. SCC Scheme

5.1 Process and Conditions

- (a) The process and any of the Lead Conversion Conditions can be changed at Spryker's discretion and choice without giving reasons to the member of the Spryker SP Program, provided that sixty (60) calendar days' notice is given to the member of the Spryker SP Program in text form (e-mail sufficient). In such case, the provisions on extraordinary termination shall apply in favour of the member of the Spryker SP Program.
- (b) Spryker will keep records of each Lead received from the Solution Partner and its conversion status in Spryker's CRM application. The Successful Converted Lead will be stored as SQL and consolidated in a report that will be updated on an ongoing basis by Spryker.

5.2 Entitlement to SSC Scheme Incentive

- (a) An SSC Scheme Incentive Entitlement can only be built up during the Term. Upon expiry of the Term of the SP Program Agreement, building up the SSC Scheme Incentive Entitlement by member of the Spryker SP Program is excluded.
- (b) In case of i) a Non-Converted Lead is present; or ii) or it does not meet the definition of a Spryker Customer, the Solution Partner shall not be entitled to an SSC Scheme Incentive Entitlement.

5.3 Structure of SSC Scheme Incentive Entitlement

- (a) Crediting of an SSC Scheme Incentive Entitlement to any extension periods upon expiry of the initial period of the license agreement concluded between the Spryker and the Spryker Customer is excluded.
- (b) Further SSC Scheme Incentive Entitlements do not exist and are not granted to the members of the Spryker SP Program. SSC Scheme Incentive Entitlements can be assigned to multiple members of the Spryker SP Program as Beneficiaries but are limited to the member of the Spryker SP Program i) responsible for sourcing of the Spryker Customer; and/or ii) responsible for project implementation for the Spryker Customer.

5.4 Conversion Split of Total SSC Scheme Incentive Entitlement

A deviating Total SSC Scheme Incentive Entitlement Split may be concluded between the Parties upon prior agreement.

5.5 Provisions on Direct Cash Payments Allocations

- (a) Still upon expiry of the Term of the SP Program Agreement, any Direct Cash Payment as part of an existing SSC Scheme Incentive Entitlement shall still be

made by Spryker to the Beneficiary provided it has been successfully built up before such expiry.

- (b) The Beneficiary will bear any possible currency risks related to Direct Cash Payments.
- (c) Conversion of a Direct Cash Payment into vouchers, crediting against royalties, non-settled payments or similar is generally excluded.
- (d) Any Direct Cash Payment by Spryker shall be deemed to have been successfully made once the Beneficiary can dispose of the amount payable without restriction.

5.6 *Provisions on Marketing Development Fund and Training Development Fund Allocations*

- (a) Deposit of the MDF / TDF allocation into the MDF / TDF Account will be visible within fourteen (14) calendar days from the moment of the full and valid existence of the Total SSC Scheme Incentive Entitlement.
- (b) If the Parties are uncertain or in doubt as to the proper Usage of MDF / TDF allocation in accordance with the provisions of this SP Program Agreement, Beneficiary shall give Spryker notice of the intended Usage of MDF / TDF allocation at least fourteen (14) calendar days prior to the envisaged commencement of the MDF / TDF Activity in text form (e-mail sufficient) to the responsible Spryker Partner Manager. Spryker shall then without undue delay assess and confirm whether the intended MDF / TDF Activity is covered by the before mentioned provisions. Any information and documents required must be submitted to Spryker by the Beneficiary prior to such assessment.
- (c) If the Beneficiary has incurred costs for an MDF / TDF Activity to be settled through an MDF / TDF Reimbursement, which, however, cannot be used due to insufficient balance of the MDF / TDF Account, Beneficiary cannot oblige Spryker to sufficiently balance the MDF / TDF Account in order to issue an MDF / TDF Reimbursement. A pro-rata payment of the MDF / TDF Reimbursement from the MDF / TDF Account by Spryker to Beneficiary, insofar as balance of the MDF / TDF Account is sufficient for such purpose, shall remain unaffected.
- (d) Beneficiary undertakes to retain relevant documents, receipts and other records relevant and related to the MDF / TDF Activity and for which an MDF / TDF Reimbursement was received for by Spryker, in accordance with the applicable statutory provisions for retention periods. Spryker reserves the right to conduct random reviews and audits of such documents, receipts and other records itself or through an independent auditor professionally bound to confidentiality, subject to prior notice to Beneficiary. The costs incurred for such a review or audit shall be borne by Spryker. In such event, Beneficiary agrees to provide appropriate access and disclosure to such documents, receipts and records.
- (e) Spryker reserves the right to allocate to Beneficiary a specific territorial area for the Usage of the MDF / TDF allocation in order to appropriately emphasize and strengthen Beneficiary's business focus for its activities under the SP Program, whereupon the Usage of the MDF / TDF allocation in other territorial area is excluded.
- (f) Spryker reserves the right to demand repayment of an MDF / TDF Reimbursement if it is subsequently found that the MDF / TDF reimbursement

was made by Spryker on a non-justified basis due to facts and/or documents, receipts and other records presented by the Beneficiary. In such case, the burden of proof lies with the Beneficiary that the MDF / TDF Reimbursement – contrary to the original assumption – was issued on a justified basis.

- (g) Each MDF / TDF allocation deposited in the MDF / TDF Account for which Usage of MDF / TDF allocation was not made within twelve (12) calendar months upon moment in time of depositing the MDF / TDF allocation by Spryker in the MDF / TDF Account shall expire without replacement and afterwards be deleted from the respective MDF / TDF Account. Upon expiry of the Term of the SP Program Agreement at the latest, any MDF / TDF Reimbursement by Spryker to the Beneficiary is excluded.

6. Warranty and Liability

- 6.1 Spryker provides the Solution Partner with the Software under exclusion of any warranty. In particular, Spryker does not warrant the compatibility of the Software with the Solution Partner's systems. In case of a defect of the Software, the Solution Partner may notify Spryker of such. Spryker shall decide at its own discretion and choice whether to remedy such but shall not be obliged to do so.
- 6.2 The Parties shall be liable without limitation for
 - (a) willful intent and gross negligence (including on the part of their legal representatives or vicarious agents);
 - (b) damage due to injury to life, body or health (including damage caused by their legal representatives or vicarious agents);
 - (c) intent to deceive (including on the part of their legal representatives or vicarious agents);
 - (d) a quality they have warranted;
 - (e) any other liability that cannot be legally excluded or limited, including under the German Product Liability Law (*Produkthaftungsgesetz*).
- 6.3 Any strict liability of Spryker is excluded.

7. Violation of Third Party Rights

If a third party asserts a claim against Spryker, a legal representative of Spryker and/or an employee of Spryker in connection with the illegal use of the Software by the Solution Partner for which Spryker is not responsible, or due to any other conduct or behavior of the Solution Partner which is contrary to any Part of Arrangement or illegal, in particular due to the infringement of intellectual property rights (including, but not limited to, to Extension and/or Add-Ony developed by the Solution Partner), the Solution Partner is obliged to indemnify Spryker, Spryker's legal representative and/or Spryker's employees against any liability and also reimburses Spryker for the costs incurred as a result of the claim, including reasonable costs of legal defense.

8. Terms of Payment

- 8.1 The Solution Partner undertakes to pay any remuneration (such as for the Total Annual Budget for the Training & Enablement Program) in accordance with the terms of the SP Program Agreement.

8.2 All invoices shall be paid by the Solution Partner without deduction when they are received. No cash discount shall be granted by Spryker. If the Solution Partner is in delay in paying, interest on arrears at the statutory rate shall be incurred. Payments by the Solution Partner shall be deemed to have been made once Spryker can dispose of the amount payable without restriction. All payments by the Solution Partner shall be made without any deduction or offsetting, at no charge and without any deduction for or due to taxes, fiscal charges, import duties, customs duties, fees and retained amounts that are levied now or in the future by a government, internal revenue or other authority, except where that is prescribed by law. If the Solution Partner is compelled to make such a deduction, it shall pay Spryker the additional amounts required to ensure that Spryker receives the full remuneration Spryker would have received without the deduction. If the Solution Partner is not located in Germany, all foreign remittances must be handled as an OUR transfer, i.e. all bank charges (for the sender and recipient) shall be paid by the Solution Partner as the sender.

9. Term

9.1 Both Parties have a right to terminate any Part of Arrangement for good cause. Notice of termination for good cause must be given in writing. Good cause shall exist in particular:

- (a) on the part of Spryker if (i) the Solution Partner is in delay in paying any remuneration specified or a not insignificant part of that remuneration for more than two (2) successive months; or (ii) the Solution Partner is in delay in paying the remuneration specified to an amount equaling or exceeding the remuneration for two (2) months in a period extending over more than two (2) months;
- (b) if the other Party breaches a Cardinal Obligation under the Parts of Arrangement and the breach cannot be remedied;
- (c) if the other Party breaches a Cardinal Obligation under the Parts of Arrangement and the breach can be remedied, but the Party does not comply with a request to do so in text form within thirty (30) calendar days; and/or
- (d) an Insolvency Event occurs at the other Party.

9.2 Upon expiry of the Term of the SP Program Agreement, the Solution Partner shall return the Software (including object code and source code) and other materials provided by Spryker and/or irreversibly delete all installations of the Software and confirm this deletion upon request by Spryker.

9.3 Upon expiry of the Term of the SP Program Agreement, the Solution Partner may no longer publicly present itself as a Solution Partner of Spryker.

10. Non-Solicitation Clause

10.1 The Solution Partner shall not entice away, or attempt to entice away, any employees, consultants or subcontractors (used for development support) of Spryker during the Term of the SP Program Agreement and for a period of twenty-four (24) months after the SP Program Agreement ends without the prior written consent of Spryker (“**Prohibition on Solicitation**”). A violation of this Prohibition on Solicitation shall also exist if the Solution Partner induces another natural or legal person to entice employees away from Spryker. “**Solicitation**” of an employee of Spryker denotes actively inducing the person to end his or her employment relationship with Spryker and establish an employment relationship with the Solution Partner. The

Prohibition on Solicitation shall not relate to nationwide job advertisements that are open to any prospective employees and are not aimed specifically at the aforementioned persons. The Prohibition on Solicitation shall also apply any Affiliated Company of the Solution Partner.

- 10.2 Other offers and agreements under which the employee's labor no longer benefits Spryker (or the Affiliated Company of Spryker), but wholly or partly the Solution Partner (or the Affiliated Company of the Solution Partner) shall be tantamount to establishment of an employment relationship.

11. **Anti-Corruption Clause**

- 11.1 The Parties undertake to take all reasonable and necessary measures to prevent corruption. In particular, the Parties undertake not to offer, promise or grant – whether directly or indirectly, themselves or through third parties – business courtesies or other benefits (such as money, gifts of a monetary value or invitations that are not predominantly of a business nature, such as to sports events, concerts, cultural events) to employees and top management of the other Party, including their relatives, and of all the other Party's group companies, and pledge that they have not done so in connection with conclusion of any Part of Arrangement.
- 11.2 In the event of violation against the aforementioned provisions, either Party reserves the right to extraordinarily terminate any or all Parts of Arrangement

12. **Non-Disclosure Agreement**

- 12.1 “**Confidential Information**” of a Party shall denote all trade secrets of that Party in accordance with Section 2 No. 1 of the German Trade Secrets Act (*GeschGehG*) and its know-how, bases of costing and calculation, concepts, business plans, product and program specifications, strategies, Solution Partner and Spryker Customer data, and sales and marketing data the Party communicates or has communicated, or otherwise makes or has made available, to the other Party in writing, orally or in another way, or of which the other Party otherwise gains or has gained knowledge, unless the following demonstrably applies in full or in part to the information in question:
- (a) the information was already known to the Party receiving it before it was communicated to it;
 - (b) the information was already public domain before the Party receiving it gained knowledge of it;
 - (c) the information was already public domain after being communicated without the involvement of, and regardless of any omissions by, the Party receiving the information; or
 - (d) the information has been made known by a third party without that involving a violation of an obligation to maintain confidentiality by the third party.
- 12.2 Each Party shall be obligated:
- (a) to treat all Confidential Information of the other Party it receives in connection with the Parts of Arrangement with confidentiality;
 - (b) not to copy or reproduce it without the prior written consent of the other Party, unless that is absolutely necessary for it to fulfill its obligations under the Parts of Arrangement;

- (c) to apply no less stringent security measures and no lesser degree of care to such Confidential Information than it applies to protect its own confidential information and than, at least, a reasonable person or reasonable company would apply to protect its own confidential information;
 - (d) to use such Confidential Information only insofar as it is absolutely necessary to fulfill its obligations or exercise its rights under the Parts of Arrangement;
 - (e) not to disclose such Confidential Information to a third party without: (i) informing the recipient that the information is confidential; (ii) ensuring that the recipient concludes, and complies with, an agreement with the other Party in which it undertakes to protect the Confidential Information subject to conditions that are at least equivalent to those specified in this non-disclosure agreement; and (iii) obtaining the prior written consent of the other Party (such consent has been granted in relation to an Affiliated Company of the Solution Partner); and
 - (f) upon request, and when any Part of Arrangement ends (for whatever reason), to return all materials (in whatever form) in which such Confidential Information is contained, embodied or recorded, and which are in its possession or under its control, to the other Party without undue delay and, upon request, to give the other Party written confirmation that it has done so.
- 12.3 Either Party shall be authorized to disclose the Confidential Information of the other Party if it is obligated by law, or ordered by a court of law, a public authority, a supervisory authority or another competent authority, to do so (but only to the extent absolutely necessary to comply with such an obligation or order).
- 12.4 The Parties shall not make Confidential Information of the other Party available to a third party, and shall not use it for purposes other than as part of the cooperation between the Parties, for a period of three (3) years after expiry of any Part of Arrangement.
- 13. Conciliation Proceedings, Applicable Law and Place of Jurisdiction**
- 13.1 In the event of differences of opinion on the contents of any Part of Arrangement. (“**Dispute**”), the Parties shall endeavor to find an amicable solution through the named contact persons before taking litigation. If no solution is reached at that level, the matter shall be escalated to the top management level. If an amicable solution can also not be reached at the top management level, the Parties shall hold conciliation proceedings before an officially approved conciliation office in Berlin, Germany, with the aim of settling legal disputes out of court. If the conciliation proceedings fail, the Parties can resort to the courts of law.
- 13.2 The law of the Federal Republic of Germany shall apply to the Parts of Arrangement to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (CISG). If the Solution Partner is a merchant within the meaning of the German Commercial Code (*HGB*), a legal entity under public law or a special fund under public law, any Disputes arising in connection with the Parts of Arrangement shall be settled solely before a competent court of law in Hamburg, Germany. The right of the Parties to seek interim judicial relief shall remain unaffected.
- 14. Data Protection**
- 14.1 Both Parties shall be obligated to comply with the principles of proper data processing and monitor compliance with them. Solution Partner’s employees and vicarious agents (“**Data Subjects**”) shall have the right

- (a) to obtain access to and information on the personal data stored at Spryker;
 - (b) to demand rectification of inaccurate data or completion of accurate data;
 - (c) to demand erasure of the stored data if there are no statutory or contractual retention periods or other statutory obligations or rights to keep it stored;
 - (d) to demand restriction of processing of the data; and
 - (e) to demand data portability.
- 14.2 Data Subjects shall also have the right to lodge a complaint with a Supervisory Authority and the right to object, on grounds relating to their particular situation, at any time to processing of personal data concerning them which is based on Article 6 (1) point (e) or (f) GDPR, including profiling based on those provisions.
- 14.3 Spryker shall collect, process, and use the data of the Solution Partner or Data Subjects required to conclude, perform or end a contract with the Solution Partner as part of its business activities. In general, this data is the contact details of the Data Subjects (such as first name and surname of the contact person, address, e-mail address, fax number and payment data). The legal basis for that is Article 6 (1) point (b) GDPR. The data collected to perform contracts shall be stored until the warranty and guarantee rights under the law and, possibly, under the contract expire. When this period ends, Spryker shall retain the information on the contractual relationship required by commercial and fiscal law for the statutory retention periods of time. The data shall be processed again in this period (usually ten (10) years as of conclusion of a contract) solely in the event of an audit or examination by the fiscal authorities.
- 14.4 If the Solution Partner is in delay in paying, Spryker shall transmit the necessary data to a company engaged to enforce the claim, provided the other statutory requirements are met. The legal basis for that is Article 6 (1) point (b) and Article 6 (1) point (f) GDPR. Enforcing a contractual claim may be considered a legitimate interest within the meaning of Article 6 (1) point (f) GDPR. The Solution Partner shall be given written notification that a debt collection agency or third party has been engaged to recover the claim.
- 14.5 Spryker discloses personal data of Data Subjects within Spryker exclusively to the departments and persons who need this data to fulfil contractual and legal obligations or to implement our legitimate interest. Spryker may transfer the personal data concerned to any Affiliated Company, insofar as this is permissible within the scope of the purposes of the data processing and legal bases. The personal data of Data Subjects are transferred on Spryker's behalf based on data processing agreements in accordance with Data Protection Laws. Categories of recipients can be suppliers like hosting providers, communication tool providers, customer relationship system providers, contract lifecycle management providers, data protection management software providers, sales cloud providers as well as to external consultants and, if legally obliged to do so, to authorities.

15. Force Majeure

- 15.1 The Parties shall not be liable for losses, damage, non-fulfillment or delayed fulfillment of all or individual obligations under the Parts of Arrangement due to fire, flooding, pandemics, earthquake, strike (by their own employees or those of third parties), labor unrest, war (declared or undeclared), embargoes, blockades, statutory prohibitions, insurrection, public disorder, rioting or other unavoidable and serious events that were not foreseeable by the Party not fulfilling its obligation and that mean that fulfillment of the obligation in question is hampered or rendered

impossible (“**Force Majeure**”). In such a case, the Party not fulfilling its obligation shall notify the other Party as soon as the incident of Force Majeure occurs and confirm said notification in text form, accompanied by a description of the causes of why the obligation cannot be fulfilled, within five (5) Business Days.

- 15.2 Both Parties shall be discharged from their performance obligations toward each other for as long as such an incident of Force Majeure lasts. Both Parties shall work jointly to enable the interruption in performance of their obligations caused by Force Majeure to be remedied as soon as possible or shall at least agree on a temporary, provisional solution (“**Provisional Solution**”). If a Provisional Solution is created, the Solution Partner shall pay Spryker the agreed remuneration or otherwise the customary local remuneration for the respective Provisional Solution. When the incident of Force Majeure is over, the Parties shall provide the original services again within a reasonable period of time. The Parts of Arrangement shall continue to apply as of that time. The Parties shall still be obligated to fulfill the Parts of Arrangement, with the exception of the performance obligations that were affected by an incident of Force Majeure and do not have to be fulfilled.

16. Final Provisions

- 16.1 All arrangements modifying, supplementing or concretizing the Parts of Arrangement, and any warranties or understandings, must be agreed in writing. Text form shall not satisfy this requirement for written form. Such agreements as stated above can be made by the Parties using the *DocuSign* application, in which case they shall satisfy the requirements specified in Sentence 1 of this Clause.
- 16.2 If a provision of any Part of Arrangement is or becomes invalid, this shall not affect the validity of the other provisions. In such a case, the Parties undertake to agree a valid arrangement that corresponds as closely as possible to the intended economic purpose of the invalid provision. The same shall apply *mutatis mutandis* to any gaps in the Parts of Arrangement.
- 16.3 The Parts of Arrangement can be concluded in any number of copies, which all together constitute one and the same contractual system. Each Party can conclude the Parts of Arrangement by signing such a counterpart.
- 16.4 The Parts of Arrangement comprises all arrangements between the Parties relating to the content and shall supersede all earlier agreements on the subject matter.
- 16.5 The Solution Partner may not assign rights or obligations under the Parts of Arrangement to a third party without Spryker's written consent.
- 16.6 General terms and conditions of the Solution Partner shall not apply. Differing, conflicting or additional general terms and conditions of the Solution Partner shall become part of the Parts of Arrangement only and insofar as Spryker has explicitly agreed in writing that they are to apply. This requirement for Spryker's consent shall also apply if Spryker accepts the Solution Partner's payments without reservation in awareness of the Solution Partner's general terms and conditions.