

## BLUE YONDER PARTNER ADVANTAGE PROGRAM GENERAL TERMS AND CONDITIONS

### 1. INTRODUCTION; PARTICIPATION IN PROGRAM.

1.1 By its execution of a Blue Yonder Partner Advantage Program Master Agreement (“**Master Agreement**”) with Blue Yonder, Inc., formerly known as JDA Software, Inc., a Delaware corporation, or one of its Affiliates (such entity, “**BY**”), governing Partner’s participation in the Blue Yonder Partner Advantage Program (the “**Program**”), which specifically incorporate these general terms and conditions by reference (these “**General Terms and Conditions**”), Partner has agreed to be bound by, and to comply with, these General Terms and Conditions. BY and Partner are collectively referred to herein as the “**Parties**” and each a “**Party**”.

1.2 BY will provide Partner and its designated Representatives with access to the Blue Yonder Partner Advantage Portal (the “**Partner Portal**”) subject to, and conditioned upon, Partner’s compliance with, the terms of the Agreement. Such access will include BY’s issuance of unique login identifiers for each such Representative.

1.3 The Blue Yonder Partner Advantage Program Guide, available at <https://blueyonder.com/legal/partner-program-guide>, and any guidelines, agreements, or other documents or information incorporated therein by reference (collectively, the “**Program Guide**”), are incorporated by reference in, and constitutes part of, these General Terms and Conditions (and, in turn, the Master Agreement). Partner acknowledges and agrees that the Program Guide may be modified from time to time by BY, in its discretion, in accordance with **Section 11**.

**2. DEFINITIONS.** Any Capitalized term not defined in this **Section 2** or in these General Terms and Conditions will have the meaning assigned to such term in other parts of the Agreement.

2.1 “**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or internal or external investigation of any nature, civil, criminal, administrative, regulatory or other, whether at Law, in equity or otherwise.

2.2 “**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common Control with, such Person.

2.3 “**Agreement**” means the Master Agreement into which these General Terms and Conditions are incorporated by reference, including the Program Guide, and any amendments thereto and hereto.

2.4 “**Anti-Corruption Laws**” means all applicable laws, rules, and regulations of any jurisdiction concerning or relating to bribery or corruption including (without limitation) the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and local anti-corruption and anti-bribery legislation.

2.5 “**APIs**” means BY application programming interfaces or other BY code that allow other software products to communicate with or call on the Software.

2.6 “**Change of Control**” means that a Party is no longer under Control by the same Person(s) that had Control on the Effective Date set out in this Agreement.

2.7 “**Confidential Information**” means information in any form or medium (whether oral, written, electronic or other) that a Party or its Affiliates (each as the “**Disclosing Party**”) may disclose or make available to the other Party or such other Party’s Affiliates (each as the “**Receiving Party**”) which the Disclosing Party considers confidential or proprietary, including, without limitation, information consisting of or relating to the Disclosing Party’s technology (including, without limitation, computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in Disclosing Party’s software), trade secrets, know-how, business operations, plans, strategies, discoveries, inventions, concepts, designs, flow charts, documentation, prototypes, products, APIs, techniques, processes, customers, Personal Data, business partners, Affiliates, properties, employees, finances, operations, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated or otherwise identified as “confidential”. Without limiting the foregoing, (a) all Documentation, non-public Marketing Materials, and Customer Information are and will remain the Confidential Information of BY, and (b) the terms (but not the existence) of this Agreement are and will remain the Confidential Information of both Parties and both Parties shall be subject to the restrictions on the use and disclosure thereof as set forth in **Section 5**.

2.8 “**Control**” (including the terms “controlled by” and “under common control with”) means, with respect to any person, entity, or enterprise, having the power, directly or indirectly, either to direct or cause the direction of the management and policies of such person, entity, or enterprise, whether through the ownership of voting securities, by contract, or otherwise.

2.9 “**Customer**” means a Person that purchases licenses to use BY Products, either directly from BY or indirectly through a Partner for its own use and not for transfer or resale, and shall be deemed to include any End User.

2.10 “**Customer Information**” means any and all information collected, received, processed or maintained from or relating to any Customer in connection with this Agreement.

2.11 “**Data Controller**” shall have the meaning set forth in the Data Protection Laws.

2.12 “**Data Processor**” shall have the meaning set forth in the Data Protection Laws.

2.13 “**Data Protection Laws**” means as applicable, the EU Data Protection Laws and the data protection or privacy laws, rules, and regulations of any other state, province, country, region, or jurisdiction, including, but not limited to, the Gramm-Leach-Bliley Act and the Health and Insurance Portability and Accountability Act of 1996; and all successor laws and regulations which amend, replace or supersede any of the foregoing.

2.14 “**Documentation**” means any and all manuals, instructions, specifications and other documents and materials in any form or medium that BY generally makes available to Customers of the Software and that describe the Software’s operation, use, support, maintenance or other features.

2.15 “**EEA**” means the European Economic Area.

2.16 “**EU Data Protection Laws**” means any law, statute, declaration, decree, directive, legislative enactment, order,

ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to privacy and the Processing of Personal Data to which a party is subject, including, but not limited to, the Data Protection Act 1998; the EU Directive 95/46/EC (up to and including 24 May 2018); the Regulation of Investigatory Powers Act 2000; the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699); the Electronic Communications Data Protection Directive (2002/58/EC); the Privacy and Electronic Communications Regulations 2003 (SI 2426/2003); the EU General Data Protection Regulation (“**GDPR**”) (on and from 25 May 2018), including, without limitation, the GDPR and the laws, rules, regulations, and guidelines implementing or supplementing the GDPR; any other laws, rules and regulations of the European Union, the EEA, and each European Union or EEA member state in respect of privacy and the protection of Personal Data; in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of privacy and the protection of Personal Data; and all other applicable laws and regulations relating to the processing of Personal Data and privacy; and all successor laws and regulations which amend, replace or supersede any of the foregoing.

2.17 “**End User**” means a Person authorized to use one or more BY Products for or on behalf of a Customer.

2.18 “**Export Laws**” means all constitutions, laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, restrictive measures, trade sanctions, embargos and other legally binding requirements of all federal, country, international, state and local governmental authorities relating to export, re-export or import. Export Laws include (without limitation) economic and financial sanctions and trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury and the U.S. Department of State, and (b) the United Nations Security Council, Her Majesty’s Treasury and the European Union.

2.19 “**Intellectual Property Rights**” means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

2.20 “**BY Companies**” or “**BY Company**” means Blue Yonder Group, Inc., Blue Yonder, Inc. and their respective controlled Affiliates.

2.21 “**BY Mark**” any Mark which is proprietary to any member of the BY Companies.

2.22 “**BY Products**” means (a) any and all software, programs, tools, systems, products, technologies or other materials (including any Documentation) made available or provided by any member of the BY Companies to (i) Partner, (ii) any of Partner’s Affiliates, or (iii) a Customer (either directly or indirectly via Partner or Partner’s Affiliates), pursuant to the Master Agreement, which are proprietary to any member of the

BY Companies; (b) any Maintenance Release; and (c) any complete or partial copies of any of the foregoing.

2.23 “**Law**” means any statute, law, Export Law, Data Protection Laws, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

2.24 “**Loss**” or “**Losses**” means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, enforcement actions, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing and pursuing any right to indemnification hereunder and the cost of pursuing any insurance providers.

2.25 “**Maintenance and Support**” means the levels of support services and/or maintenance services provided under and described in detail in the Program Guide, the Master Agreement or any statement of work or order document issued thereunder.

2.26 “**Maintenance Release**” means any update, new release, enhancement or other adaptation or modification of a BY Product, including any updated Documentation, that BY generally makes available free of charge to its Customers from time to time during the Term, which may contain, without limitation, error corrections, bug fixes, patches, workarounds or minor enhancements, but does not include any New Version.

2.27 “**Mark**” means any trademark, service mark, trade name, logo, domain name or other indicator of source, affiliation or sponsorship, whether registered or unregistered.

2.28 “**Marketing Materials**” means any advertising, promotional or marketing materials for or relating to the BY Products that BY may make available to Partner from time to time during the Term.

2.29 “**Minimum Program Entry Requirements**” means those minimum requirements, obligations, and accreditations which Partner is required to meet, fulfill, and/or obtain as a condition to its acceptance into the Program.

2.30 “**New Version**” means any new version of the BY Product that BY may from time to time during the Term introduce and market generally as a distinct licensed product at such prices and under such version numbers as may be designated by BY.

2.31 “**Partner**” subject to **Section 17.18**, that certain individual or entity identified as “Partner” in the Master Agreement between such individual or entity and BY.

2.32 “**Partner Group**” means Partner and any of its Affiliates.

2.33 “**Program Tier**” means the applicable Program benefit tier awarded by BY to Partner based on Partner’s achievement of certain requirements as further described and set forth in the Program Guide.

2.34 “**Person**” means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association or any other entity.

2.35 “**Personal Data**” means any information that, individually or in combination, does or can identify a specific

individual or device or by or from which a specific individual or device may be identified, contacted or located. Personal Data includes all “nonpublic personal information” as defined under the Gramm-Leach-Bliley Act; “protected health information” as defined under the Health and Insurance Portability and Accountability Act of 1996; “Personal Data” as defined in the EU Data Protection Directive (Directive 95/46/EEC); and all applicable Laws which replace any of the foregoing from the date that such Laws are adopted.

2.36 **“Process” or “Processing”** means to perform any operation or set of operations on any data, information, material, work, expression, or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, (c) block, erase, or destroy; or (d) take any other action which constitutes “processing” as defined in the EU Data Protection Directive (Directive 95/46/EEC) and all applicable Laws which replace it, such as the General Data Protection Regulation from the date that such Laws are adopted and “Process” and “Processed” shall have correlative meanings.

2.37 **“Program Requirements”** means those certain Program requirements, obligations, and accreditations as described in the Program Guide, including the Minimum Program Entry Requirements, which Partner is required to meet fulfill, and/or obtain in order to maintain its membership in the Program and compliance with this Agreement.

2.38 **“Representatives”** means, with respect to a Party, such Party’s Affiliates and such Party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors and legal advisors.

2.39 **“Residuals”** means information in non-tangible form which may be incidentally retained in the unaided memory of Representatives of the Receiving Party who have had access to the Confidential Information, so long as such Persons have not studied the information for the purpose of replicating the same from memory; provided, however, that in no event will Residuals include any information that is Confidential Information of the Disclosing Party.

2.40 **“Software”** means any BY Products as well as any Third Party Products.

2.41 **“Term”** means the term identified on the signature page to the Master Agreement.

2.42 **“Territory”** means the territory identified on the signature page to the Master Agreement, if any, the scope of which is limited by and subject to Partner’s compliance with **Section 12**.

2.43 **“Third Party Products”** means (a) any and all software, programs, tools, systems, products, technologies or other materials (including any Documentation) made available or provided by any member of the BY Companies to (i) Partner, (ii) any of Partner’s Affiliates, or (iii) a Customer (either directly or indirectly via Partner or Partner’s Affiliates), pursuant to the Master Agreement, which are proprietary to a third party; and (b) any complete or partial copies of any of the foregoing.

**3. INTERPRETATION.** For purposes of this Agreement: (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto”, and “hereunder” refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (i) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, referenced website addresses, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein. Any consent required or requested from BY may be withheld in BY’s sole discretion unless otherwise specified.

**4. APPOINTMENT OF PARTNER; RELATIONSHIP OF PARTIES.**

4.1 Subject to and conditioned on Partner’s compliance with the terms and conditions of this Agreement, including, but not limited to, the applicable Program Requirements, BY hereby authorizes Partner, during the Term, to describe and hold itself out in promotional, advertising, and marketing materials as a Partner in the Blue Yonder Partner Advantage Program at the applicable Program Tier solely in connection with the exercise and performance of its rights and obligations under the Master Agreement.

4.2 The Parties’ obligations under any part of this Agreement are non-exclusive. BY is not precluded from marketing, licensing, positioning, providing, and distributing BY Products and/or Software through other channels, programs or partners. Nothing in this Agreement prohibits or restricts either Party’s right to develop, make, use, market, license, position, provide, and distribute software, cloud services, maintenance services, subscription services or other services, documents, materials or other products similar to or competitive with those of the other Party as long as it does not thereby breach its confidentiality obligations or any other part of this Agreement.

4.3 The Parties are independent contractors. Neither this Agreement nor any exhibit, schedule or order form signed by either or both Parties shall make either Party the agent, legal representative, joint venture, franchisee or partner of the other Party. Neither Party is, nor will either Party represent itself as being, an employee, agent, or representative of the other Party for any purpose. Neither Party has the right or authority to assume or create any obligation on behalf of or in the name of the other Party, or to otherwise act on behalf of the other Party, and any purported attempt to do so shall be deemed null and void at the outset. Without limiting the generality of the foregoing, Partner acts in its own name, at its own risk and for its own account for the performance of any activities arising under any part of this

Agreement. If any provision of this Agreement is deemed to create a franchise relationship, or Partner alleges such a relationship with BY arising out of or in connection with this Agreement, BY may immediately terminate this Agreement. Without prejudice to the foregoing or any other provision of this Agreement, Partner hereby waives and relinquishes to the full extent permissible under applicable Law any rights or claims under franchise or similar Laws arising out of or in connection with this Agreement.

## 5. CONFIDENTIALITY.

5.1 Confidential Information must not be used or reproduced by the Receiving Party in any form except as required to accomplish the intent of this Agreement in accordance with its terms. Any reproduction of any Confidential Information of a Disclosing Party remains the property of the Disclosing Party and must contain any and all confidential or proprietary notices or legends which appear on the original.

5.2 The Receiving Party must (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) except as may be permitted by and subject to its compliance with this Agreement, not disclose or permit access to Confidential Information other than to its Representatives who (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement, (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations hereunder, and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth herein; (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and (d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **Section 5**.

5.3 The above restrictions on the use and disclosure of the Confidential Information do not apply to any Confidential Information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement or any other written agreement between the Parties then in effect; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

5.4 If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information, or if the Receiving Party must disclose any Confidential Information in order to enforce its rights under this Agreement, then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under this **Section 5**; and (b) provide reasonable assistance to the Disclosing Party, at Disclosing

Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 5.4**, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and shall cooperate with any attempts by the Disclosing Party to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

5.5 The Receiving Party will not be in violation of this Agreement due to the use of any Residuals resulting from authorized access to or work with Confidential Information of the Disclosing Party. Nothing in this **Section 5.5** will be deemed to grant to the Receiving Party any right, title or interest in or to (a) the Disclosing Party's Confidential Information (except for Parties' performance under any part of this Agreement) and/or (b) any Intellectual Property Right of the Disclosing Party. Neither Party will have any obligation to limit or restrict the assignment of such Persons or to pay royalties for any work resulting from the use of Residuals.

**6. DATA PROTECTION.** In connection with the exercise and performance of its rights and obligations under this Agreement, Partner and the other members of the Partner Group and their respective Representatives may have access to Personal Data in respect of which a member of the BY Companies is a Data Controller. As such, Partner shall, and shall cause its Affiliates and other Representatives to:

6.1 comply with its obligations under all applicable Laws relating to the protection of Personal Data, and agree, in writing, to such additional terms and conditions as BY may deem necessary for the Parties to meet their respective obligations under such Laws; and

6.2 where Partner or any of Partner Affiliate Processes such Personal Data in its capacity as Data Processor, (a) only Process such Personal Data in accordance with BY's instructions, (b) take and maintain appropriate technical and organizational measures against unauthorized or unlawful processing of such Personal Data and against accidental loss or destruction of, or damage to, such Personal Data, (c) not transfer such Personal Data to any third party or permit any third party to Process such Personal Data without BY's prior written consent, (d) ensure that access to such Personal Data is limited to those Representatives who need to access such Personal Data to meet Partner's obligations under the Agreement and that all Representatives are informed of the confidential nature of such Personal Data, (e) promptly and fully notify BY in writing of any notices Partner receives in connection with Partner's Processing of any of such Personal Data, including, without limitation, subject access requests or enquiries from any applicable data protection regulator, and provide such information and assistance as BY may reasonably require, (f) not retain any Personal Data for longer than is reasonably necessary to exercise and perform of its rights and obligations under this Agreement, and upon the written request of the Person to which such Personal Data is applicable, Partner will, unless otherwise prohibited by applicable Law, securely destroy or return such Personal Data, and (g) promptly and fully notify BY in writing if any such Personal Data has been disclosed in non-compliance with this **Section 6**.

6.3 In the event of any inconsistency between the obligations on Partner under **Section 6.1** and those under **Section 6.2**, the obligations under **Section 6.1** shall control, but only to the extent necessary to resolve the conflict.

## 7. TRADEMARK LICENSE.

7.1 Subject to and conditioned on Partner's compliance with the terms and conditions of this Agreement, BY hereby grants Partner a limited, non-exclusive, non-transferable and non-sublicensable, royalty-free license in the Territory (if applicable) during the Term to use the BY Marks and reproduce and distribute Marketing Materials solely in connection with exercising its rights and obligations under the Master Agreement in accordance with the terms of the Master Agreement, the Program Guide and BY's then current quality control, usage, and other BY Mark guidelines as the same may be updated by BY from time to time. All uses of the BY Marks, and all goodwill associated therewith, shall inure solely to the benefit of BY, and Partner acknowledges that the BY Companies are the sole and exclusive owner of all rights, title and interest in and to the BY Marks.

7.2 Partner shall not advertise, promote, market or distribute BY Products using any Marks other than the BY Marks without BY's prior written approval.

7.3 Partner shall not use any BY Marks (whether individually or in combination or in whole or in confusingly similar part): (a) in or in connection with the advertising, promotion, marketing or distribution of any goods, services or technologies other than the BY Products; (b) as part of Partner's corporate or trade name or any domain name; (c) in any way that may cause confusion, mistake or deception; or (d) in any way that may dilute, tarnish or otherwise diminish the BY Marks' distinctiveness, or jeopardize the reputation of or goodwill associated with the BY Marks, BY Products or BY or the validity or BY's ownership of the BY Marks or the registrations therein.

7.4 Other than such use of the BY Marks as are expressly permitted under this **Section 7**, Partner shall not use, register or attempt to register in any jurisdiction in the world any Mark that is identical to or confusingly similar to any of the BY Marks or that incorporates any of the BY Marks in whole or in confusingly similar part. If Partner acquires any rights in any Mark that is identical or confusingly similar to any of the BY Marks, by operation of Law or otherwise, Partner shall and does hereby assign, at no additional cost, all such rights to BY and its successors, together with all associated goodwill in and applications and registrations for such Mark.

7.5 Partner shall not at any time during or after the Term (a) challenge, or cause, induce, authorize, or assist any Person to challenge, the validity of the BY Marks or BY's ownership, use or registration of or rights in any of the BY Marks, or (b) take any action in derogation of BY's rights in the BY Marks, including by using, licensing or applying to register any Mark that is identical or confusingly similar to any of the BY Marks.

7.6 The BY Companies have the sole and exclusive right to protect and defend the BY Marks in its sole discretion, cost and expense. Partner will reasonably cooperate with BY and any other member of the BY Companies, at BY's expense, in the defense and protection of the BY Marks and will promptly notify BY of any potential infringement of the BY Marks of which it has knowledge.

## 8. PUBLICITY.

8.1 Except as otherwise set forth in **Section 7.1** and **Section 8.2**, neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other Party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, each Party may truthfully and in a non-misleading manner disclose to third parties its relationship to the other Party under this Agreement.

8.2 Notwithstanding the foregoing, (a) Partner may, without BY's consent, identify itself as a participant in the Blue Yonder Partner Advantage Program (at the applicable Program Tier), and (b) any member of the BY Companies is hereby authorized to, without Partner's consent, (i) include Partner's name(s), Marks, and/or other indicia in its promotional and marketing materials relating to the Blue Yonder Partner Advantage Program; (ii) use Partner's name in customer and partner listings (including, without limitation, showing Partner's name, address, contact details, partner engagements, areas of expertise and/or offerings on BY's websites or online marketplaces); and (iii) at times mutually agreeable to the Parties, as part of the BY Companies' marketing efforts (including, without limitation, reference calls and stories, press testimonials, site visits, etc.). The BY Companies will make reasonable efforts to avoid having the reference activities unreasonably interfere with Partner's business. Additionally, Partner agrees that BY may share information on Partner with any other member of the BY Companies or any other Program partners for marketing and other business purposes and that Partner has secured permission from its employees to allow BY to share their individual business contact information with any other member of the BY Companies and other Program partners.

8.3 Marketing Materials will be provided by BY to Partner upon Partner's request, and charged to Partner, unless the Parties agree otherwise.

## 9. RECORDKEEPING; AUDIT.

9.1 Partner shall, during the Term and for at least five years thereafter, maintain books, records and accounts of all transactions and activities covered by this Agreement and permit examination thereof by BY and its Representatives in accordance with this Agreement. BY has the right to perform an audit of such activities and records of (a) Partner, and/or (b) any member of the Partner Group involved in the performance of obligations under any part of this Agreement no more than twice during any consecutive 12-month period.

9.2 The audit will be conducted, at BY's discretion, by either BY or an independent expert (the "**Independent Expert**") appointed by BY. By choosing the Independent Expert, BY will take into account Partner's legitimate business interests. The Independent Expert will be bound in writing to confidentiality for the benefit of BY and the Partner. The Independent Expert will undertake not to disclose information to BY, except for the purpose of providing a report of the audit and, in case of a breach of any part of this Agreement, any information establishing such a breach.

9.3 BY will provide at least 15 days' advance notice of an audit. The audit will take place during Partner's normal business hours and BY will instruct its auditor to conduct the audit in such

a manner that it will not unreasonably interfere with Partner's business operations.

9.4 Partner shall cooperate with BY and the Independent Expert, if applicable, in connection with its audit process, and ensure that (a) any member of the Partner Group involved in the performance of obligations under any part of this Agreement, and (b) any of Partner's Representatives cooperate and provide such information as BY or the Independent Expert may reasonably request in connection with the audit.

9.5 BY will bear the costs of the audit unless the audit reveals a shortfall in payments made by Partner to BY greater than 10% of the payment(s) audited, in which case Partner shall bear the costs of the audit.

## 10. TERMINATION; EFFECT OF TERMINATION.

10.1 The Master Agreement between BY and Partner may be terminated by:

(a) BY, immediately upon written notice to Partner, in the event Partner does not pay when due any amount payable to BY under or in connection with the Master Agreement at the place and in the currency in which it is expressed to be payable, unless payment is made within 15 days of the due date;

(b) Partner, immediately upon written notice to BY, in the event BY does not pay when due any amount payable to Partner under or in connection with the Master Agreement at the place and in the currency in which it is expressed to be payable, unless payment is made within 15 days of the due date;

(c) either Party, immediately upon written notice to the other Party, in the event such other Party fails to comply with any material provision of this Agreement, unless the non-compliance is capable of being cured and is cured within 30 days of such other Party's receipt of notice of such non-compliance;

(d) either Party, immediately upon written notice to the other Party, in the event an application has been filed or any other step is taken for the initiation of insolvency, bankruptcy, composition or similar proceedings against such other Party, any such application has been rejected for lack of assets, any enforcement against such other Party could not be carried out or any execution measures have been initiated against such other Party which have not been set aside within one month (e.g., setting aside of a seizure or an attachment);

(e) either Party, immediately upon written notice to the other Party, in the event such other Party suspends or ceases to carry on all or a material part of its business;

(f) Partner, in accordance with **Section 11.2**;

(g) BY, in accordance with **Section 4.3**;

(h) BY, immediately upon written notice to Partner, in the event of a Change of Control of Partner if the business interests of Partner are materially affected (by way of example only and without limitation, if a direct competitor of BY becomes a direct or indirect majority shareholder of Partner or Partner is merged into a direct competitor of BY);

(i) BY, immediately upon written notice to Partner, in the event a member of the Partner Group fails to comply with any material provision of any other Blue Yonder Partner Advantage Program Master Agreement entered into with a member of the BY Companies, unless the non-compliance is

capable of being cured and is cured within the applicable cure period set forth in such Blue Yonder Partner Advantage Program Master Agreement ; or

(j) either Party, in accordance with **Section 17.12** below.

10.2 Upon the termination of the Master Agreement:

(a) Partner's right to: (i) hold itself out as partner of BY under or in connection with the Master Agreement; (ii) use any BY Marks, BY Products and Third Party Products under or in connection with the Master Agreement; and (iii) use the Documentation, Partner Portal, and other marketing programs and other materials and all copies, reproductions, summaries, or extracts thereof or based thereon of any member of the BY Companies distributed under or in connection with the Master Agreement, shall end immediately;

(b) BY's right to: (i) identify Partner as a participant in the Program under or in connection with the Master Agreement, and (ii) use the Partner Marks under or in connection with the Master Agreement, shall end immediately;

(c) Partner must within 30 days irretrievably destroy or upon BY's request deliver to BY all copies of the: (i) Software products distributed under the Master Agreement, (ii) BY Marks which Partner was authorized to use under or in connection with the Master Agreement, and (iii) all Documentation and other marketing programs and materials and all copies, reproductions, summaries, or extracts thereof or based thereon of any member of the BY Companies distributed under or in connection with the Master Agreement, that are in the possession of Partner, any member of the Partner Group and/or any of Partner Group's Representatives, except to the extent Partner is legally required to keep a copy for a longer period, in which case such return or destruction shall occur at the end of such period;

(d) the Receiving Party's right to use the Confidential Information shall end immediately (unless the Receiving Party is permitted under any other Master Agreement that has not been terminated to use the Confidential Information);

(e) the Receiving Party must within 30 days irretrievably destroy or upon Disclosing Party's request deliver to Disclosing Party all Confidential Information of the Disclosing Party and all copies, reproductions, summaries, or extracts thereof or based thereon in the Receiving Party's possession, custody or control or in the possession, custody or control of any Representative of the Receiving Party, except to the extent Receiving Party is legally required to keep a copy for a longer period in which case such return or destruction shall occur at the end of such period, provided, however, (i) if a legal proceeding has been instituted to seek disclosure of the Confidential Information, such material shall not be destroyed until the proceeding is settled or a final judgment with respect thereto has been rendered, and (ii) the Receiving Party shall not, in connection with the foregoing obligations, be required to identify or delete Confidential Information held in archive or back-up systems in accordance with general systems archiving or backup policies; and

(f) a duly authorized representative of Partner and the Receiving Party, as applicable, must certify in writing to BY and the Disclosing Party, respectively, within 30 days that such party has fulfilled its obligations under this **Section 10.2**, unless the Receiving Party is permitted under any other Master

Agreement that has not been terminated to use the Confidential Information.

10.3 Termination does not relieve either Party from its obligation to pay any unpaid fees to the other Party subject to and in accordance with the terms of this Agreement.

## 11. CHANGES TO TERMS AND CONDITIONS.

11.1 Subject to **Section 11.2**, BY reserves the right to change any or all parts of these General Terms and Conditions (in particular by replacing parts of it with an updated version), including, without limitation, the Program Guide, and any other guides or guidelines referenced hereunder or thereunder (collectively, the "**Program Documents**"). The terms of the Master Agreement shall automatically be changed, modified or amended to incorporate such changes to the Program Documents.

11.2 BY will give Partner at least 60 days' prior written notice of any changes it makes to any or all parts of the Program Documents as set out in this **Section 11** ("**Change Notice**"). For the sake of clarity, BY shall be permitted to give such Change Notice by email or other electronic communication made to Partner via the Partner Portal. If Partner reasonably believes that any such changes to the Program Documents are adverse to Partner's interests, Partner shall be entitled to terminate the Master Agreement by notifying BY of its intent to do so in writing within 60 days of the date of the Change Notice. If Partner does not exercise its right to terminate the Master Agreement within such 60-day period, the changes described in the Change Notice will be deemed to be accepted by and binding upon Partner.

11.3 Without limiting **Section 11.1**, Partner acknowledges that BY will, without limitation, update the Program Documents as necessary to ensure compliance with applicable Laws (including, but not limited to, undertakings to govern both Party's compliance with the GDPR). Partner agrees that any such changes shall not be considered adverse to Partner's interests.

## 12. COMPLIANCE WITH LAWS.

12.1 Partner and all other members of the Partner Group shall conduct operations in compliance with applicable Laws, rules and regulations in exercising rights and obligations under any part of this Agreement. Such Laws include (without limitation) Anti-Corruption Laws and Export Laws. Partner represents and warrants that it and all members of the Partner Group have implemented and maintain policies and procedures designed to ensure compliance with Anti-Corruption Laws and Export Laws. Such policies and procedures shall include (without limitation): procedures and controls related to the screening of counterparties against restricted and blocked party lists and designations published and maintained pursuant to Export Laws; the establishment of a reporting hotline available to all employees of the Partner and all members of the Partner Group to report any alleged violations of Law or established policies and procedures; and a mandatory notification process that would inform BY of any allegations, material or otherwise, of any potential violation of any Anti-Corruption Law or Export Law. Partner represents and warrants that neither it nor any of the other members of the Partner Group are listed by any government agency as debarred, suspended, proposed for suspension or debarment or otherwise determined to be ineligible for government procurement programs. From time to time, Partner agrees to promptly provide BY with such information and certifications as reasonably

requested by BY in writing to confirm Partner's compliance with this **Section 12**.

12.2 Partner and all members of the Partner Group shall cooperate, provide all information, and take all actions as requested by BY that may be necessary to respond to any government investigation or inquiry regarding any purported violation of any Law in connection with any Party's exercise of its rights or performance of its obligations under this Agreement.

12.3 In exercising rights and obligations under any part of this Agreement, neither Partner nor any other member of the Partner Group nor anyone acting on their behalf shall make, offer, promise or authorize payment of anything of value directly or indirectly to any of the following prohibited parties for the purpose of unlawfully influencing their acts or decisions: (a) employees, consultants or Representatives of any Customer or prospect; (b) government officials or employees; (c) political party officials or candidates; (d) officers or employees of any public international organization; or (e) any immediate family member of such Persons (or any other Person) for the benefit of such Persons.

12.4 BY Products and parts thereof (e.g., New Versions, releases, updates, upgrades, patches, fixed or correction of a Software product) as well as the Third Party Products and any parts thereof are subject to Export Laws of various countries, including, without limitation, the Laws of the United States, the EU, Ireland and Germany. Partner agrees that it will not submit any BY Product, Third Party Products, or parts thereof to any government agency for licensing consideration or other regulatory approval without the prior written consent of BY and that it will not export, re-export or import any BY Product, Third Party Product, or parts thereof to countries or Persons prohibited by any applicable Export Law. In that context, Partner is responsible for complying with all applicable Export Laws.

12.5 If BY or any other member of the BY Companies is required or has the option under the Master Agreement to deliver and/or grant access to any BY Product, Third Party Products or parts thereof to Partner or directly to a Customer, Partner will support BY and any other member of the BY Companies in obtaining any required authorization, approval or other consent from the competent authorities by providing any necessary or useful declarations or other necessary or useful information, e.g., Customer certificates, as may be requested by BY or any other member of the BY Companies. Partner acknowledges, that in the event BY or any other member of the BY Companies delivers and/or grants access to any BY Product, Third Party Product, or parts thereof directly to a Customer in accordance with the Master Agreement, this **Section 12.5** applies especially, without limitation, to the provision of Maintenance and Support or other services to the extent contemplated by the Master Agreement.

12.6 If Partner is authorized and/or required under the Master Agreement to deliver and/or grant access to any BY Product, Third Party Product, or parts thereof directly to a Customer, it is Partner's sole responsibility to obtain any required authorization, approval or other consent from the competent authorities to comply with any applicable Export Law in connection with such activity. BY assumes no responsibility or liability for Partner's failure to obtain any such required authorization, approval or other consent. Partner acknowledges, that in case Partner or any other member of the Partner Group delivers and/or grants access to any BY Product, Third Party Product, or parts thereof directly to a Customer in accordance with the Master Agreement, this **Section 12.6** applies especially,

without limitation, to the provision of Maintenance and Support or other services to the extent contemplated by the Master Agreement.

12.7 Neither BY nor any other member of the BY Companies assumes any responsibility or liability: (a) for any delay caused in the delivery and/or granting of access to any or all BY Products, Third Party Products, or parts thereof due to export or import authorizations or both having to be obtained from the competent authorities; (b) if any required authorization, approval or other consent for the delivery of and/or granting of access to any or all BY Products, Third Party Products, or parts thereof cannot be obtained from the competent authorities; (c) if the delivery of and/or granting of access to any or all BY Products, Third Party Products, or parts thereof is prevented due to applicable Export Laws; and (d) if access to Maintenance and Support or other services has to be limited, suspended or terminated due to applicable Export Law.

### **13. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS.**

13.1 **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b) the execution of this Agreement by its Representative whose signature is set forth at the end hereof has been duly authorized by all necessary action of the Party; and

(c) when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

13.2 **Disclaimer of Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN OR IN THE MASTER AGREEMENT, ALL SOFTWARE, BY PRODUCTS AND ANY OTHER INFORMATION, MATERIALS (INCLUDING ANY MARKETING MATERIALS) OR WORK PRODUCT PROVIDED BY BY ARE PROVIDED "AS IS" AND BY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND BY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, BY MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND THAT ANY SOFTWARE OR BY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL (A) MEET PARTNER'S OR OTHER PERSONS' REQUIREMENTS; (B) OPERATE WITHOUT INTERRUPTION; (C) ACHIEVE ANY INTENDED RESULT; (D) BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN SPECIFICATIONS AGREED UPON BY THE PARTIES IN WRITING, OR (E) BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN OR IN THE MASTER AGREEMENT, ALL THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" AND ANY

REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY PRODUCTS IS STRICTLY BETWEEN PARTNER AND THE THIRD PARTY OWNER OR DISTRIBUTOR OF THE THIRD PARTY MATERIALS.

### **14. EXCLUSION OF DAMAGES; LIMITATION OF LIABILITY.**

14.1 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN OR IN THE MASTER AGREEMENT, IN NO EVENT WILL PARTNER OR THE BY COMPANIES UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (A) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR (B) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.2 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN OR IN THE MASTER AGREEMENT, AND SUBJECT TO **SECTION 14.1**, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF PARTNER OR THE BY COMPANIES UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE GREATER OF (I) THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE TO BY UNDER THIS AGREEMENT IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM, (II) THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE TO PARTNER UNDER THIS AGREEMENT IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM, OR (III) \$200,000.

14.3 The exclusions and limitations set forth in **Sections 14.1** and **14.2** do not apply to: (a) Losses arising out of or relating to Partner's breach of its obligations under **Sections 5, 6, or 16**; (b) Partner's indemnification obligations under **Section 15**; (c) Losses arising out of or relating to a Party's gross negligence or more culpable conduct, including any willful misconduct or intentionally wrongful acts; (d) Losses for death, bodily injury or damage to real or tangible personal property; (e) a Party's obligation to pay attorneys' fees and court costs in accordance with **Section 17.14**, (f) fraud or fraudulent misrepresentation, or (g) any other Losses which cannot be excluded by applicable Law.

14.4 Partner must initiate a cause of action for any claim(s) arising out of or relating to any part of this Agreement and its subject matter within one year from the date of the event first giving the rise to the claim.

### **15. INDEMNIFICATION.**

15.1 **Partner Indemnification.** Partner shall indemnify, defend and hold harmless each member of the BY Companies and each of their respective officers, directors, employees, agents, successors and permitted assigns (each, a "**BY Indemnitee**") from and against any and all Losses incurred by a BY Indemnitee in connection with any Action by a third party



(other than an Affiliate of a BY Indemnitee) to the extent such Losses arise from any allegation in such Action of or relating to:

(a) any facts that, if true, would constitute Partner's breach of any of its representations, warranties, covenants, or obligations under this Agreement, including any action or failure to act by any Partner Representative or other member of the Partner Group that, if taken or not taken by Partner, would constitute such a breach by Partner;

(b) access to or use of any of the BY Products and/or Third Party Products that is expressly prohibited by this Agreement or otherwise outside the scope of access or manner or purpose of use described or contemplated anywhere in this Agreement or the Documentation;

(c) any alteration or modification of any of the BY Products and/or Third Party Products by or on behalf of Partner, any Partner Representative, or other member of the Partner Group without BY's authorization; and

(d) (i) any data, information, software or other materials provided or otherwise made available to BY by Partner, or (ii) BY's compliance with Partner's specifications or directions, including, but not limited to, the incorporation of any software or other materials or processes provided by or requested by Partner.

**15.2 Indemnification Procedure.** BY shall promptly notify Partner in writing of any Action for which BY believes it is entitled to be indemnified pursuant to **Section 15.1**. BY shall cooperate with Partner at Partner's sole cost and expense. Partner shall immediately take control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the BY Indemnitee to handle and defend the same, at Partner's sole cost and expense. BY's failure to perform any obligations under this **Section 15.2** will not relieve Partner of its obligations under this **Section 15** except to the extent that Partner can demonstrate that it has been materially prejudiced as a result of such failure. BY may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. Partner may not, without BY's prior written consent, settle or compromise any claim or consent to the entry of any judgment regarding which indemnification is being sought hereunder unless such settlement, compromise, or consent (a) includes an unconditional release of BY from all liability arising out of such claim; (b) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of BY; and (c) does not contain any equitable order, judgment or term (other than the fact of payment or the amount of such payment) that in any manner affects, restrains, or interferes with the business of BY.

## **16. OWNERSHIP OF INTELLECTUAL PROPERTY.**

**16.1** All right, title and interest in and to the BY Products and Third Party Products, including all Intellectual Property Rights therein, are and will remain, respectively, with the applicable BY Companies and the respective rights holders in the Third Party Products. Partner has no right or license with respect to any BY Products or Third Party Products except as expressly licensed hereunder, or the applicable third-party license, in each case subject to the requirements and restrictions set forth in this Agreement. All other rights in and to the BY Products and Third Party Products are expressly reserved by BY and the respective third parties. Partner hereby unconditionally and irrevocably assigns to BY or BY's designee, its entire right, title and interest in and to any Intellectual Property Rights that Partner may acquire

in any of the BY Products (including any rights in derivative works or patent improvements relating thereto), whether acquired by operation of Law, contract, assignment or otherwise.

**16.2** Partner shall, during the Term: (a) take all commercially reasonable measures to safeguard the BY Products (including all copies thereof) and BY's ownership of the Intellectual Property Rights in the BY Products from infringement, misappropriation, theft, misuse and unauthorized access; (b) at BY's expense, take all such steps as BY may reasonably require to assist BY in maintaining the validity, enforceability, and BY's ownership of the Intellectual Property Rights in the BY Products; (c) promptly notify BY in writing if Partner becomes aware of (i) any actual or suspected infringement, misappropriation or other violation of BY's Intellectual Property Rights in or relating to any of the BY Products, or (ii) any claim that any BY Products, including any production, marketing, distribution, licensing, sale, use, or other disposition of any BY Product or the BY Marks, infringes, misappropriates, or otherwise violates the rights of any third party; and (d) at BY's expense, cooperate with and provide commercially reasonable assistance to BY in the conduct of any Action described in **Section 16.4**, including having Partner's employees testify when requested and making available for discovery or trial relevant records, papers, information, samples, specimens, and the like.

**16.3** Partner shall not disassemble, reverse engineer, decrypt, decompile, or translate the BY Products, the Third Party Products, or any portion thereof, or recreate or attempt to recreate the BY Products or the Third Party Products, in whole or in part by reference to the BY Products or the Third Party Products, or perform any process intended to determine the source code for the BY Products or the Third Party Products except to the extent that the foregoing restrictions are prohibited by applicable Law. Partner shall not use the BY Products or the Third Party Products except as expressly authorized in this Agreement. Partner will not do (and will not grant permission to any Customer or any other third party to do) any of the following: (a) attempt to gain unauthorized access to, or disrupt the integrity or performance of the BY Products, the Third Party Products, or the data contained therein; (b) remove any trademarks, or copyright or other notices from any portion of the BY Products or the Third Party Products; (c) access or use the BY Products or the Third Party Products for the purpose of either building a competitive product or copying any ideas, features, functions, graphics or user interfaces of the BY Products; or (d) access or use the BY Products, or permit them to be accessed or used, for purposes of product or functionality evaluation, availability or performance monitoring, or any other benchmarking or comparative or analysis purposes, without BY's prior written consent.

**16.4** BY shall at all times have the right, but not the obligation, to address third-party infringement of BY's or any of its Affiliate's rights in the BY Products by instigation of Action or otherwise.

## **17. MISCELLANEOUS.**

**17.1 Amendment and Modification; Waiver.** Except as otherwise set forth in this Agreement, no amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the

Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**17.2 Severability.** If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**17.3 Entire Agreement.** This Agreement, together with the exhibits and schedules attached hereto and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. Further, the terms of this Agreement expressly exclude any of Partner's general terms and conditions contained in any purchase order or other document issued by Partner. In the event of an inconsistency between these General Terms and Conditions and the Master Agreement (including any exhibit or schedule attached thereto), the provisions of the Master Agreement (or applicable exhibit or schedule thereto) shall control, but only to the extent necessary to resolve the conflict.

**17.4 Further Assurances.** Upon a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

**17.5 Assignment.** Neither Party may assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of Law or otherwise, without the other Party's prior written consent; provided, however, that BY may assign this Agreement to any other BY Companies or in connection with a sale of substantially all of its assets or a transaction involving a Change of Control with respect to BY; and BY may allow any of its Affiliates to perform its obligations hereunder. For the sake of clarity, subject to the foregoing proviso, any merger, consolidation, assumption in bankruptcy or reorganization involving a Party (regardless of whether such Party is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which the other Party's prior written consent is required, even if it is not deemed an assignment or transfer under applicable Law. No delegation or other transfer will relieve either Party of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this **Section 17.5** is void at the outset. This

Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

**17.6 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

**17.7 U.S. Government Restricted Rights.** The BY Products, Third Party Products, the Software, Documentation, any other deliverables, and any copies, translations, derivations, adaptations or modifications of or to the foregoing, in whole or in part, licensed under this Agreement are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as these terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4. All U.S. Government Customers acquire the Software and Documentation with only those rights set forth herein. Owner and licensor is Blue Yonder, Inc., 15059, Suite 400, N. Scottsdale Rd., Scottsdale, Arizona 85254 U.S.A.

**17.8 Government Contractor.** BY is an equal opportunity employer and federal contractor or subcontractor. Consequently, the Parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The Parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

**17.9 Subcontractors.** Notwithstanding anything to the contrary herein, Partner may not sublicense any of the rights granted to it under this Agreement or subcontract the performance of any of its duties or obligations under this Agreement to any Person without the prior written consent of BY.

**17.10 Taxes.** All fees and other amounts payable by Partner under this Agreement are exclusive of taxes and similar assessments. Partner is responsible for paying all applicable sales or use taxes, value added tax (VAT), goods and services tax (GST) or any and all similar taxes or legally imposed fees, duties or charges of any kind, imposed by any foreign, federal, state or local governmental or regulatory authority on any amounts payable by Partner hereunder, other than any taxes imposed on BY's income. If Partner is required to withhold income tax on any payments due under this Agreement, it shall notify BY in writing so that BY may provide Partner with the required documents, such as a government issued tax residency certificate, so as to reduce or eliminate the requirement to withhold tax. If after consideration of local law and any applicable tax treaty withholding tax is still applicable, Partner will gross up payments due to BY and remit (a) the withholding tax to the appropriate government authority and (b) a net amount of cash to

BY equal to the relevant fees due pursuant to this Agreement. Partner will provide a tax certificate to BY in reference to the payment of the withheld tax within 30 days of reporting the remittance of such tax. Otherwise, Partner shall immediately remit full payment of the amount of taxes withheld, or required to be withheld if required taxes are more than the amount actually withheld, to BY, plus interest calculated from the payment due date to the date of payment.

#### 17.11 Governing Law; Remedies; Waiver of Jury Trial.

(a) *Governing Law.* This Agreement and the rights and obligations of the Parties with respect to their relationship under this Agreement are governed by the applicable laws and dispute resolution provisions set forth on **Appendix A: Country Unique Terms**, as determined according to Partner's principal place of business, and are incorporated herein by reference. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are expressly excluded from this Agreement.

(b) *Equitable Relief.* Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its duties or obligations under this Agreement with respect to the other Party's Confidential Information or Intellectual Property Rights would cause the other Party irreparable harm for which monetary damages would not be an adequate. Notwithstanding anything to the contrary contained in **Section 17.11(a)**, each Party agrees that in the event of a breach or threatened breach by such Party of any of its duties or obligations under this Agreement with respect to the other Party's Confidential Information or Intellectual Property Rights that such other Party may immediately seek equitable relief (without the necessity of posting a bond), including, without limitation, temporary injunctive relief, in any court of competent jurisdiction. Such remedies are not exclusive and are in addition to all other remedies that may be available at Law, in equity or otherwise.

(c) *Waiver of Jury Trial.* EACH PARTY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION COMMENCED UNDER OR IN CONNECTION TO ANY PART OF THIS AGREEMENT.

17.12 **Force Majeure.** In no event will either Party be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either Party may terminate this Agreement if a Force Majeure Event affecting the other Party continues substantially uninterrupted for a period of 30 days or more. In the event of any failure or delay caused by a Force Majeure Event, the affected Party shall give prompt written notice to the other Party stating the period of time the occurrence is expected to

continue and use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

17.13 **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

17.14 **Costs and Expenses.** Each Party will bear its own costs, charges, fees and expenses (including fees for legal or other advisors). Notwithstanding the foregoing, in the event that any Action is instituted or commenced by either Party hereto against the other Party arising out of or related to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party.

17.15 **Notices.** All notices, requests, consents, claims, demands, waivers, and other communication under this Agreement will have legal effect only if in writing and, if addressed sent (a) with respect to BY, to 15059 N. Scottsdale Road, Suite 400, Scottsdale, Arizona 85254, Attn: Chief Legal Officer, Telephone: 1.480.308.3000, Fax: 1.480.308.4268, Email [General.Counsel@blueyonder.com](mailto:General.Counsel@blueyonder.com); or (b) with respect to Partner, to the address specified on the signature page to the Master Agreement. Notices sent in accordance with this **Section 17.15** will be deemed effectively given: (i) when received, if delivered by hand, with signed confirmation of receipt; (ii) when received, if sent by an internationally recognized overnight courier, signature required; (iii) when sent, if by facsimile or e-mail, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (iv) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid. Either Party may update its address for notices from time to time upon written notice to the other Party, delivered in accordance with this **Section 17.15**. Notwithstanding anything to the contrary in the foregoing, all notices of breach, dispute, or demands for indemnification must be (A) in writing and in English; and (B) sent by either certified or registered mail, return receipt requested, postage prepaid, or internationally recognized courier.

17.16 **Survival.** The provisions set forth in the following **Sections**, and any other right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Sections 5** (Confidentiality), **6** (Data Protection), **9** (Recordkeeping; Audit), **10** (Termination; Effect of Termination), **13.2** (Disclaimer of Warranties); **14** (Exclusion of Damages; Limitation of Liability); **15** (Indemnification); **16** (Ownership of Intellectual Property); and **17** (Miscellaneous).

17.17 **Non-Solicitation.** To the maximum extent permitted by applicable Law, during the term of this Agreement and for a period of 6 months thereafter, neither Party shall, directly or indirectly, solicit, or recruit any employees of the other Party that have in any way been associated with the performance of this Agreement; except, that nothing in this **Section 17.17** prevents either Party from engaging in general recruiting directed to the public that do not target the personnel of the other Party or hiring the employees of the other Party as a result of such general recruiting efforts.

17.18 **Application to Affiliated Companies.** In the event any BY Affiliate executes a statement of work, order, or similar document for the provision of products to a member of the Partner

Group, then this Agreement shall be deemed a two-party agreement between such BY Affiliate and such member of the Partner Group with respect to such statement of work, order, or similar document. Such BY Affiliate shall be deemed to be "BY" and such member of the Partner Group shall be deemed to be "Partner" for such purposes.

17.19 **Counterparts.** The Master Agreement, any schedules or exhibits attached thereto and any other part of this Agreement may be signed in one or more counterparts, each of which will be considered an original but all of which together form one and the same instrument and will be treated as if the signatures on the counterparts were on a single copy. The Master Agreement, any schedules or exhibits attached thereto and any other part of this Agreement may be validly executed by means of transmission of signed facsimile, pdf or any other documented form for which a process has been provided by BY. Signatures sent by fax, pdf, email or other electronic means for which a process has been provided by BY will be deemed original signatures.

**APPENDIX A**  
**COUNTRY UNIQUE TERMS**

***If Partner's principle place of business is located in the United States, the following terms apply to this Agreement:***

**Governing Law; Jurisdiction and Venue.** This Agreement and the rights and obligations of the parties with respect to their relationship under this Agreement are governed by and must be construed and enforced in accordance with the laws of the state of Delaware, without reference to its choice of law rules. All disputes arising under this Agreement must be brought exclusively in the state and federal courts located in Maricopa County, Arizona, and Customer hereby submits to the personal jurisdiction of such state and federal courts. In the event that any dispute is commenced by either Party against the other Party arising out of or related to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' and experts' fees and court costs from the non-prevailing Party.

***If Partner's principle place of business is located in Europe, Middle East, or Africa, the following terms apply to this Agreement:***

**Governing Law; Disputes.** This Agreement and the rights and obligations of the parties with respect to their relationship under this Agreement are governed by and must be construed and enforced in accordance with the laws of England and Wales.

All disputes arising out of or relating to this Agreement will be settled by arbitration before a panel of three arbitrators of different nationalities under the commercial arbitration rules of the International Chamber of Commerce in effect at the time such claim is submitted to arbitration. The seat or place of arbitration shall be London, England. The arbitrators will be persons having experience with and knowledge of the computer software business and the language of the arbitration will be English. The arbitrators will not have any authority to make any ruling, finding, or award that does not conform to this Agreement. The arbitration award will be final and binding on all parties and may be entered as a judgment and enforceable by any court of competent jurisdiction.

***If Partner's principle place of business is located in India or any Asia Pacific Countries, except the People's Republic of China, the following terms apply to this Agreement:***

**Governing Law; Disputes.** This Agreement and the rights and obligations of the parties with respect to their relationship under this Agreement are governed by and must be construed and enforced in accordance with laws of Singapore, without reference to its choice of law rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are expressly excluded from this Agreement.

All disputes arising out of or relating to this Agreement will be settled by arbitration before a panel of three arbitrators of different nationalities under the commercial arbitration rules of the International Chamber of Commerce in effect at the time such claim is submitted to arbitration. The seat of the arbitration will be Singapore. The arbitrators will be persons having experience with and knowledge of the computer software business and the language of the arbitration will be English. The arbitrators will not have any authority to make any ruling, finding, or award that does not conform to this Agreement. The arbitration award will be final and binding on all parties and may be entered as a judgment and enforceable by any court of competent jurisdiction.

***If Partner's principle place of business located in the People's Republic of China, the following terms apply to this Agreement:***

**Governing Law; Disputes.** This Agreement and the rights and obligations of the parties with respect to their relationship under this Agreement are governed by and must be construed and enforced in accordance with the laws of Hong Kong, without reference to its choice of law rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are expressly excluded from this Agreement.

All disputes arising out of or relating to this Agreement will be settled by arbitration before a panel of three arbitrators of different nationalities under the commercial arbitration rules of the Hong Kong International Arbitration Centre (HKIAC) Administered Arbitration Rules in force when the Notice of Arbitration is submitted. The seat of arbitration shall be Hong Kong. The arbitrators will be persons having experience with and knowledge of the computer software business and the language of the arbitration will be English. The arbitrators will not have any authority to make any ruling, finding, or award that does not conform to this Agreement. The arbitration award will be final and binding on all parties and may be entered as a judgment and enforceable by any court of competent jurisdiction.

***If Partner's principle place of business is located in Canada, the following terms apply to this Agreement:***

**Governing Law; Disputes.** This Agreement and the rights and obligations of the parties with respect to their relationship under this Agreement are governed by and must be construed and enforced in accordance with laws of the Province of Ontario and the laws of Canada applicable therein, without reference to its choice of law rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are expressly excluded from this Agreement

All disputes arising out of or relating to this Agreement will be settled by arbitration in that country before a panel of three arbitrators of different nationalities under the commercial arbitration rules of the International Chamber of Commerce in effect at the time such claim is submitted to arbitration. The seat of the arbitration shall be Toronto, Canada. The arbitrators will be persons having experience with and knowledge of the computer software business and the language of the arbitration will be English. The arbitrators will not have any authority to make any ruling, finding, or award that does not conform to this Agreement. The arbitration award will be final and binding on all parties and may be entered as a judgment and enforceable by any court of competent jurisdiction.

***If Partner's principle place of business is located in Latin America or South America, the following terms apply to this Agreement:***

**Governing Law; Dispute.** This Agreement and the rights and obligations of the parties with respect to their relationship under this Agreement are governed by and must be construed and enforced in accordance with the laws of the state of Delaware, without reference to its choice of law rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are expressly excluded from this Agreement

All disputes arising out of or relating to this Agreement will be settled by arbitration in that country before a panel of three arbitrators of different nationalities under the commercial arbitration rules of the Commercial Arbitration Rules of the American Arbitration Association in effect at the time such claim is submitted to arbitration. The seat or place of arbitration shall Phoenix, Arizona. The arbitrators will be persons having experience with and knowledge of the computer software business and the language of the arbitration will be English. The arbitrators will not have any authority to make any ruling, finding, or award that does not conform to this Agreement. The arbitration award will be final and binding on all parties and may be entered as a judgment and enforceable by any court of competent jurisdiction.

***If Partner's principle place of business not located in any of the countries or regions identified above, the following terms apply to this Agreement:***

**Governing Law; Disputes.** This Agreement and the rights and obligations of the parties with respect to their relationship under this Agreement are governed by and must be construed and enforced in accordance with the laws of the state of Delaware, without reference to its choice of law rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are expressly excluded from this Agreement

All disputes arising out of or relating to this Agreement will be settled by arbitration in that country before a panel of three arbitrators of different nationalities under the commercial arbitration rules of the Commercial Arbitration Rules of the American Arbitration Association in effect at the time such claim is submitted to arbitration. The seat or place of arbitration shall Phoenix, Arizona. The arbitrators will be persons having experience with and knowledge of the computer software business and the language of the arbitration will be English. The arbitrators will not have any authority to make any ruling, finding, or award that does not conform to this Agreement. The arbitration award will be final and binding on all parties and may be entered as a judgment and enforceable by any court of competent jurisdiction.