

App Composition Platform - General Terms and Conditions (Partners)

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1. Introduction

1.1 Spryker is a provider of cloud based enterprise commerce technologies and offers various cloud products for temporary use for B2B, D2C, Enterprise Marketplace and B2C around its main platform, the "Spryker Cloud Commerce OS" ("**Spryker Software**"). Customers who use the Spryker Software and additional services to build a digital commerce platform and experience are called "**Customers**".

1.2 In this context, Spryker also offers Customers the opportunity to use third party technology services that are connected to the Spryker Software with a software connector ("**App**") via Spryker's App Composition Platform (the "**App Composition Platform**"). The providers or vendors of such third party services (each a "**Partner**") and Spryker each also are referred to herein as a "**Party**" and together the "**Parties**".

1.3 Partner is already contractually bound to Spryker by a Reseller Agreement or Referral Agreement and agrees by way of concluding an App Composition Platform Agreement (the "**Agreement**") with Spryker to connect a pre-defined and agreed part or the full portfolio of its services and products (each a "**Partner Service**") via an App to the Spryker Software and accordingly offer its Partner Services to Customers.

1.4 Customers' usage of the Partner Services will be based on a separate agreement with Partner, unless these Partner Services are sold by Spryker directly to Customers via Reselling, in which case it will be based on such separate agreement with Spryker.

1.5 Spryker intends to establish the App as a connection between the Spryker Software via the App Composition Platform and the respective Partner Service, maintain the App during the term of the Agreement, and subsequently make the Partner Services available to Customers for use via the App Composition Platform. Partner will remain solely responsible for the provision of its Partner Services.

1.6 The purpose of these General Terms between Partner and Spryker is to specify and supplement the Agreement, in particular to regulate the initial development of the App and its maintenance as well as the connection of the App to the Spryker Software and to describe the project flow necessary for this. For the avoidance of doubt, neither the Agreement nor these General Terms grant Partner any rights to use the Spryker Software.

1.7 Capitalized terms used herein have the meaning defined in **Annex 1** of these General Terms.

2. Subject matter of these General Terms

The subject matter of these General Terms is the complementation of the Agreement and to set out the details of the initial development of the App connecting the Partner Services to the Spryker Software ("**Project**") by way of agile project management and the maintenance of the App throughout the term of the Agreement. Agile project management means that the Parties, in particular during the initial development of the App, always work together collaboratively. In a number of manageable development steps, the App, the initial scope of which is explicitly defined at the beginning of the Project, is developed in the course of the Project in agreement between the Parties. Both Parties are obliged to contribute and, in particular, to provide participatory actions. Depending on the Parties' agreement in that regard, either Spryker (or an agency on Spryker's behalf) or Partner (or an agency on Partner's behalf) will perform the initial development of the App.

3. Contractual Services

3.1 The main Contractual Services of both Parties will be agreed upon in the Agreement. This includes the obligation of one of the Parties to initially develop the App.

3.2 As agreed in the Agreement, during and after the successful initial development of the App, Spryker will conduct the following assessments and reviews for all Apps (to be) listed on the App Composition Platform's customer app catalog ("**App Catalog**"):

- (a) Branding Review
- (b) Business/Compliance Review
- (c) Technical Review (Architecture)
- (d) Security Review (Security Practices)

3.3 Spryker will perform the Security Review for the App as an assessment using its own resources or by a commissioned third party provider. Spryker will charge Partner a fee for the Security Review that will be 2,500.00 EUR. The Security Review consists of the following:

- (e) Pen-Testing following the OWASP Top 10 and Spryker defined standards - Mandatory

- (f) Threat Modeling for the App - Optional/Add-on with additional cost of 2,500.00 EUR

Though Threat Modeling is optional, it is highly recommended. If during a Customer sales cycle, a Customer requests Threat Modeling of the App, Partner will agree to get it completed at that time. If the cost is different at that time, the Partner will bear that cost.

3.4 Spryker is entitled to use third party providers (including Affiliates) to fulfill its obligations under the Agreement and/or these General Terms.

3.5 In order to enable the release of the App in the App Catalog, Partner is obligated to provide any reasonable and appropriate cooperative action requested by Spryker.

3.6 In addition, Partner is obliged to provide and release all necessary marketing information such as descriptions, screenshots of services, branding material, logos, videos, etc.

3.7 The Parties are entitled to publish public relations materials and social media campaigns (announcements regarding the collaboration and in particular the release of the App) via various social media channels and professional networks (e.g., but not conclusively, via LinkedIn, Twitter, etc.) at the latest at the time of the release of the App and hereby grant each other all rights required for this purpose.

4. Release of the App

The Parties acknowledge that the release of an App requires the performance of the following steps.

In case of development of the App by Spryker

4.1 The prerequisite for release of the App is that Spryker notifies Partner of readiness for release.

4.2 Partner will assess the App immediately after receipt of notification with the support of Spryker by way of suitable and thorough tests for faultlessness and usability in connection with the App Composition Platform (acceptance test). Partner will take appropriate precautions in the event that the App does not function properly (e.g. by fault diagnoses, test runs, regular checking of the results). Partner's entire acceptance test and inspection obligation must not exceed the length of ten (10) Business Days.

4.3 If such acceptance test reveals an Error, Partner will notify Spryker immediately and without undue delay in writing (email is deemed sufficient) or via the Partner Portal (the use of which will be subject to separate terms and conditions and requires separate agreement). Partner will provide Spryker with a list of all Errors hindering the release. Such list of Errors will contain at least the following information:

- a) essential information about the Error, including a detailed description of the Error, together with logs and screenshots,
- b) steps required to reproduce the Error, including screenshots, if applicable,
- c) current Error behavior, and
- d) expected behavior.

4.4 If Partner fails to notify Spryker of any Error in time, the App will be deemed approved and will be released.

4.5 If an Error that was not identifiable during the test described in Clause 4.2, appears later, notification must be made in writing (email is deemed sufficient) or via the Partner Portal (if separately agreed) within a period of two (2) weeks after discovery. Otherwise, Partner bears the costs of fixing this Error. In any case, Spryker is entitled to remove the App from the App Catalog for as long as the Error has not been fixed. Spryker's right to claim fault-based damage compensation in this context remains unaffected.

4.6 In case of notified Errors hindering release, Spryker will remove them within a reasonable period of time. If there are only slight or insignificant Errors that only slightly or insignificantly impair the proper use of the App, Partner will be deemed to have approved and the App will be released.

4.7 If the release still fails after Spryker's remedial action, Partner will provide an additional reasonable grace period to Spryker to remove the Errors. Only the recorded Errors are inspected as part of the subsequent inspection, insofar as they can be the subject of an isolated inspection in terms of their function.

4.8 Spryker will only release the App and make it available on the App Catalog if the Partner has not refused release as part of the above described steps.

In case of development of the App by Partner

4.7 Partner notifies Spryker after it has completed initial development of the App.

4.8 Spryker will examine the App and carry out thorough tests for faultlessness and usability in connection with the App Composition Platform (acceptance test).

4.9 If such examination reveals incompatibilities or Errors in connection with the App Composition Platform, Spryker will notify Partner thereof and provide a list of what is hindering next steps, including release. This list will contain at least the following information:

- e) essential information about the Error or incompatibility, including a detailed description of the Error or incompatibility,
- f) steps required to reproduce the Error,
- g) current Error behavior, and
- h) expected behavior.

4.10 In case of notified Errors, Partner will remove such Errors within a reasonable period of time and notify Spryker accordingly. If Spryker still detects Errors during further tests, Spryker will notify Partner accordingly and set a binding deadline for removal of the Errors.

4.11 Spryker will only release and make the App available in the App Catalog if tests do not reveal incompatibilities with the App Composition Platform or other Errors.

5. Activation and publication of the App on App Composition Platform

5.1 The activation and publication of an App as well as the related obligations of the Parties are governed by the following provisions:

- a) The Agreement and these General Terms offer an opportunity for Partner to have an App connecting its Partner Services to the Spryker Software listed in the App Catalog. Spryker will approve listing of such App connecting a Partner Service to the Spryker Software in the App Catalog if Spryker decides, in its reasonable discretion, that the respective Partner Service (i) is of potentially significant benefit to its Customers, (ii) sufficiently protects Customers' users' data, (iii) has achieved a minimum adoption level among Customers, (iv) complies with any relevant Spryker Policies and (v) meets any interoperability, support, usage and other minimum requirements agreed between the Parties.
- b) Subject to these General Terms, Partner hereby grants Spryker a non-transferable, non-exclusive, royalty-free license to internally use its Partner Services, solely for (i) testing interoperability between the Partner Services and the Spryker Software, and/or (ii) providing maintenance support to Customers as set forth in the Agreement. Unless otherwise agreed in writing (electronic form will be deemed sufficient) between the Parties, in no event will Spryker (a) modify, enhance, translate, supplement, create derivative works from or reverse engineer, reverse compile or otherwise reduce Partner Services to human readable form, (b) sell, lease, transfer or sublicense Partner Services to any third party, (c) disclose or otherwise provide all or any portion of the Partner Services to any person, (d) use the Partner Services or any component thereof in a business production mode. Title to and ownership of the Partner Services, and all patents, copyrights and property rights applicable thereto, will at all times remain solely and exclusively with Partner.
- c) Partner agrees to comply with all Spryker Policies at all times, in effect from time to time and as applicable, which are incorporated herein by reference. Spryker Policies may include requirements that Partner must complete in order to qualify for the App Composition Platform benefits.
- d) Spryker may ask Partner to assist Spryker in determining Partner's compliance with the Agreement, these General Terms and any relevant Spryker Policy. Partner will use all reasonable efforts to help Spryker in this effort, including, but not limited to, allowing Spryker to review the Partner Services, Partner's access logs, Partner's systems, or appointing an independent party to conduct an audit.
- e) During the term of the Agreement, Partner agrees that it will (i) make its Partner Services commercially available to Customers, (ii) provide Customers with qualified support and service for use of these Partner Services in conjunction with the Spryker Software, (iii) give Customers a service level agreement according to what has been agreed in **Annex 3** of the Agreement (iv) promptly give Spryker all reasonably requested information regarding the use of the Partner Services in conjunction with the Spryker Software, including appropriate documentation on the setup and configuration of the Partner Services in conjunction with the Spryker Software.
- f) Information to be provided by Partner to be published in the App Catalog include (i) an overview and/or a description of the Partner Services; (ii) technical specifications of the Partner Services; (iii) quality reports, as applicable; (iv) release notes; (v) support; (vi) Q & As; (viii) logo, pricing, screenshots and/or videos.
- g) Partner will comply with all applicable laws and regulations, and give Spryker a written (electronic form is deemed sufficient) notification describing any technical issues that may impact the performance of the Partner Services when used with the Spryker Software via the App within twenty-four (24) hours of having identified a problem.
- h) Partner will not: (i) willfully tamper with the security of the Spryker Software or tamper with Customers' accounts, (ii) access data on the Spryker Software not intended for Partner's access, (iii) log into a server or account on the Spryker Software that Partner is not authorized to access, (iv) attempt to probe, scan or test the vulnerability of any

Spryker Software or to breach the security or authentication measures without proper authorization, (v) willfully render any part of the Spryker Software unusable, (vi) unless agreed in writing, distribute, license, sell or otherwise commercially exploit the Spryker Software or make the Spryker Software available to a third party.

5.2 Activating and publishing the App in the App Catalog should take place according to the following scheme, once the App Composition Platform is fully live and can support the listing process:

- a) Until the App Composition Platform supports self-service listing, Spryker will create a listing for the Partner Services on the App Catalog based on the listing-related information provided by Partner as per Section 5.1 (f). After Spryker has enabled self-service listing, Partners will be able to create and maintain listings on their own.
- b) Spryker will conduct reviews (the Business/Compliance, Technical and Security Review) for the Partner Services.
- c) Once these assessments are completed, the App can be made available for Customers in the App Catalog.
- d) Customers can connect to an App in the App Catalog provided they have a contractual relationship with Partner covering the respective Partner Service, including one that only allows for a Trial Phase for their App.
- e) If Partner's systems support direct activation or a Trial Phase, Customers can start using it right away.
- f) If manual intervention is needed, Spryker or Partner (as agreed in the individual case) will complete the necessary configuration steps to enable the Partner Services for Customers via the App.
- g) Upon completion of a Trial Phase, Customers can buy the respective Partner Service via Partner directly or via Spryker, depending on whether Spryker is entitled to Reselling of these Partner Services. Partner will enable its Partner Services or features that a Customer has purchased from Partner directly or from Spryker through a Reseller Agreement. If there are additional or newer features that a Customer is interested in, Partner should work with Spryker in getting them added through the App by way of a change request.
- h) Again, depending on the automation available, some steps may or may not be needed on Partner's side.
- i) Once activated, Customers can start/continue using the Partner Services through the App.
- j) For clarity: If a Customer doesn't want to use the Partner Services via the App after the Trial Phase, no further action will be required from that Customer.

5.3 In order to ensure the Availability of all Apps in the App Composition Platform and ensure full functioning and operability, Spryker may, at its reasonable discretion, remove any App of any Partner and therefore the connection to any Partner Service at any time from the App Catalog.

6. Trial Phase

6.1 Spryker intends to offer Customers a free trial phase ("**Trial Phase**") for all Apps in the App Catalog. Partner's agreement to allow for a Trial Phase is subject to what is agreed in the Agreement.

6.2 If Partner already has (or has had in the past) a pre-existing contractual relationship with a Customer covering the use of the respective Partner Service, no Trial Period will be available via the App Composition Platform for such Customer.

6.3 If Partner has no pre-existing contractual relationship with the respective Customer covering the use of the respective Partner Service, Partner agrees to allow for free Trial Phases for such respective Partner Services accordingly, unless explicitly agreed otherwise in the Agreement. If Partner does not allow for a Trial Phase Partner had agreed to provide for in the Agreement vis-à-vis a Customer, Partner will pay a contractual penalty to Spryker, the amount of which will be determined by Spryker in each single case and be reviewed by the competent court in the event of a dispute.

6.4 Unless otherwise agreed in the Agreement, the period of the Trial Phase for an App and the related Partner Service will be determined by Spryker in its reasonable discretion and may cover a period of a minimum of one (1) day or up to several weeks.

6.5 For the avoidance of doubt, a Customer's use of the App and/or the related Partner Service during such Trial Phase will not trigger Partner's obligation to pay a Referral Fee, Revenue Share or other type of agreed commission.

6.6 Any Referral Fee, Revenue Share or other type of agreed commission will not apply or be invoiced unless and until the respective Customer chooses to use the App and the related Partner Service beyond the period of the initial Trial Phase.

7. Remuneration

7.1 Unless otherwise agreed, the remuneration for any Contractual Services will be agreed in the Agreement. Unless explicitly agreed otherwise, the remuneration agreed in a pre-existing Reseller Agreements or Referral Agreements between the Parties will remain unaffected.

7.2 If the Parties have not agreed on the remuneration for a further service of Spryker beyond the Contractual Services, Partner will pay the customary remuneration for the services, which Partner reasonably could only expect to be provided against remuneration. Unless Partner can prove otherwise, the then-current remuneration rates charged by Spryker for its services will be deemed customary. Spryker will inform Partner of the then-current rates upon Partner's request.

7.3 Spryker's rates are exclusive of VAT.

8. Support and Maintenance Services

The support and maintenance services to be provided by Spryker with regard to the App are described in detail in **Annex 2** to the Agreement ("**Spryker App Support SLA**").

9. Change request procedure

9.1 The change request procedure described in the following is used to restrict, change, or extend the agreed Initial App Scope set out in **Annex 1** of the Agreement.

9.2 Each Party can initiate the change request procedure with a corresponding change request. The change request must be made in writing (email is deemed sufficient) or via the Partner Portal (if separately agreed) and must contain sufficient information to enable the other Party to evaluate the change request. Each change request must contain at least the following information:

- i) Description and purpose of the requested change,
- j) Meaning and goal of the desired change request,
- k) Urgency of the desired change, and
- l) Requested time of the implementation of the requested change.

9.3 Upon receipt of a change request from the other Party, the receiving Party will always assess the change request within a reasonable period of time.

9.4 In the event that the receiving Party assumes that a change request requires a detailed analysis of more than one (1) person-day (larger change request analysis), it will first provide a non-binding rough estimate (maximum price estimate with an accuracy of -20% / +20%) together with an estimate of the analysis costs, if applicable. The other Party can then decide whether it wants a (chargeable) larger change request analysis. The chargeable analysis will be remunerated as to be agreed between the Parties.

10. Rights of Use

10.1 Partner grants Spryker all necessary rights to enable the Apps connecting the Partner Services to the Spryker Software and publish them on the App Catalog.

10.2 To the extent that Errors in an App have an impact on Spryker's or Customers' business and Partner is unwilling and/or unable to fix such Error, Partner grants Spryker (or any third party provider assigned by Spryker with the task) the right to use the code in an App, irrespective of having been developed by Spryker or Partner, for the sole purpose of fixing such Errors.

10.3 For informational purposes: Spryker grants Customers a simple, non-exclusive and non-transferable right to use the App in order to allow for the connection of the respective Partner Services and the Spryker Software via the App Composition Platform.

10.4 For the avoidance of doubt, all intellectual property rights referring to the App remain with the Party having initially developed the App or, in the case of the development work being done by an agency on behalf of either Party, with the Party having commissioned the agency with that task accordingly.

11. Liability

11.1 Each Party will be liable without limitation for

- a) willful intent and gross negligence of that Party, including of its legal representatives or vicarious agents;
- b) damage due to injury to life, body or health caused by that Party, including damage caused by its legal representatives or vicarious agents;
- c) intent to deceive / fraudulent conduct by a Party, including by its legal representatives or vicarious agents;
- d) the quality it has guaranteed;
- e) any other liability that cannot be legally excluded or limited, including under applicable product liability law;

11.2 Unless Clause 11.1 applies, if one of the Parties or one of its legal representatives or vicarious agents breaches an obligation due to slight negligence, the fulfillment of which is a prerequisite for the proper performance of the Agreement or these General Terms (cardinal obligation), the liability of the Parties will be limited to the amount reasonable to compensate for the foreseeable damage. In any event, however, such amount will not exceed the total amount paid to Spryker under these conditions in the last twelve (12) months prior to the harmful event. The aggregate liability of the Parties arising out of or in connection with the Agreement and/or these General Terms or any of the additional terms applicable to the contractual relationship between the Parties is therefore limited.

11.3 Unless Clause 11.1 applies, none of the Parties will be liable to the other for indirect damages, punitive damages, consequential damages or incidental damages, or for claims for lost or expected profits, even if advised of the possibility of

such damages.

11.4 Liability for damage above and beyond what is stipulated in Clause 11.1 is excluded; in particular, any strict liability is excluded.

11.5 The limitation period for claims for damages will be one (1) year, except in the cases of Clause 11.1.

11.6 For the avoidance of doubt, Spryker will in no event be liable for any damages arising from or in connection with Partner's operation of the Partner Services or the use of the Partner Services by Customers. Spryker will only be liable vis-a-vis Partner to the aforementioned extent for such damages that occur in connection with Spryker's provision of the Contractual Services. The Agreement and/or these General Terms will not be construed in a way that determines any liability of Spryker towards Customers as users of any Partner Services.

12. Indemnification

12.1 Subject to Clause 12.3, Partner (as Indemnitor) will defend and indemnify Spryker and its officers, employees, directors, agents and Affiliates (each as an Indemnitee) from and against any and all claims, losses, damages, judgments, costs, and expenses (including reasonable attorneys' fees) which Spryker may suffer or incur arising out of or in connection with (a) any action by a third party against Spryker that is based on a claim that any Partner Service or Customers' use thereof, infringe or misappropriate such third party's intellectual property rights; (b) any action by a third party (including a Customer) against Spryker relating to (i) a representation or warranty made by Partner to such third party (unless such representation or warranty was authorized in writing by Spryker) or (ii) any claim of unfair or deceptive business practices not arising directly from a statement expressly authorized by Spryker; (c) a breach of Partner's representations or warranties in the Agreement and/or these General Terms; or (d) any claim specified to subject to indemnity in an applicable addendum.

12.2 Subject to Clause 12.3, Spryker (as Indemnitor) will defend and indemnify Partner and its officers, employees, directors, agents and Affiliates (each as an Indemnitee) from and against any and all claims, losses, damages, judgments, costs, and expenses (including reasonable attorneys' fees) which Partner may suffer or incur arising out of or in connection with any action by a third party against Partner arising directly from a claim by such third party that the App Composition Platform infringe or misappropriate such third party's intellectual property right. The foregoing defense and indemnification obligations do not apply to the extent any infringement or misappropriation claim of any kind arises from: (i) the combination, operation or use of the App Composition Platform with equipment, devices, software (including a Partner Service) or data (including without limitation Partner's Confidential Information) not supplied by Spryker, if a claim would not have occurred but for such combination, operation or use; or (ii) use of the App Composition Platform other than in accordance with the Agreement, these General Terms and/or any relevant Spryker Policy.

12.3 As a condition to an Indemnitor's obligations under this Clause, an Indemnitee will: (i) promptly notify the Indemnitor of the claim for which the Indemnitee is seeking indemnification; (ii) grant the Indemnitor sole control of the defense and settlement of the claim; (iii) provide the Indemnitor, at the Indemnitor's expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim; (iv) preserve and will not waive legal, professional or any other privilege attaching to any of the records, documents, or other information in relation to such claim without prior notification of consent by the Indemnitor. The Indemnitor will not settle any claim that involves a remedy other than payment without the Indemnitee's prior written consent, which may not be unreasonably withheld or delayed. An Indemnitee has the right to retain counsel, at the Indemnitee's expense, to participate in the defense or settlement of any claim. The Indemnitor will not be liable for any settlement or compromise that an Indemnitee enters into without the Indemnitor's prior written consent.

13. Force Majeure

13.1 The Parties will not be liable for losses, damage, non-fulfillment or delayed fulfillment of all or individual obligations under the Agreement and/or these General Terms 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 will 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.

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

14. Non-Solicitation

14.1 Partner will not entice away, or attempt to entice away, any employees, consultants or subcontractors of Spryker during the term of the Agreement and for a period of twenty-four (24) months after the Agreement ends without the prior written consent of Spryker (“**Prohibition on Solicitation**”). A violation of this Prohibition on Solicitation will also exist if 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 Partner. The Prohibition on Solicitation will not relate to nationwide job advertisements that are open to any prospective employees and are not aimed specifically at the afore-mentioned persons. The Prohibition on Solicitation will also apply to Partner’s Affiliates.

14.2 Other offers and agreements under which the employee’s labor no longer benefits Spryker (or Spryker’s Affiliates), but wholly or partly Partner (or Partner’s Affiliates) will be tantamount to establishment of an employment relationship within the meaning of Clause 14.1.

15. Non-Disclosure of Confidential Information

15.1 “**Confidential Information**” of a Party within the meaning of this Clause 15 will denote all trade secrets of that Party in accordance with applicable trade secret protection laws and its know-how, bases of costing and calculation, concepts, business plans, product and program specifications, strategies, Partner’s 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 becomes 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 involving a violation of an obligation to maintain confidentiality by the third party.

15.2 Each Party is obligated:

- a) to treat confidential all Confidential Information of the other Party it receives in connection with the App Composition Platform;
- b) not to copy or reproduce Confidential Information without prior written consent of the other Party, unless that is absolutely necessary to fulfill its obligations under the Agreement and/or these General Terms,
- 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 Agreement and/or these General Terms,
- e) subject to Clause 15.3 not to disclose such Confidential Information to third parties 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 herein; and (iii) obtaining the prior written consent of the other Party (for the avoidance of doubt, such consent is deemed to be granted in relation to Partner’s Affiliates); and
- f) upon request, and when the Agreement 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.

15.3 Subject to prior notification of the other Party (unless prohibited by applicable law), either Party will 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, including a data protection authority or another competent authority, to do so (but only to the extent absolutely necessary to comply with such an obligation or order).

15.4 The obligations under this Clause 15 will survive for a period of three (3) years after expiry of the term of the Agreement.

16. Term and Notice

16.1 Unless otherwise agreed, the Agreement is concluded for an indefinite period. The Parties are free to terminate the Agreement in writing (email is deemed sufficient) or via the Partner Portal (if separately agreed) with three months’ notice to the end of the month. Notices to Spryker are to be sent to legal@spryker.com or with certified mail to the following address:

Spryker Systems GmbH
z.Hd. LEGAL
Spitalerstraße 3
20095 Hamburg
Germany

16.2 The Parties also can dissolve the Agreement by mutual agreement. In this case, however, the Parties will continue to

provide their Contractual Services until the end of the respective term agreed upon by a Customer with Spryker or Partner regarding the Services. Only upon expiry of a minimum contract term agreed between a Customer and Spryker or Partner the respective obligations of the Parties to provide services will actually end.

16.3 After termination of the Agreement and after expiry of the respective contractual term of a Customer, neither Partner nor Spryker will have any further obligations under this Agreement, with the exception of the payment of already determined remuneration/claims for damages as well as the non-disclosure obligations under Clause 15 or the non-solicitation obligations in Clause 14.

16.4 Consequently, in case of termination, the App will no longer connect the Partner Service to the Spryker Software and the App will be deleted from the App Catalog accordingly.

17. Marketing Measures

17.1 Partner will undertake to publish a press release and social media (incl. but not limited to LinkedIn) about the partnership and release in coordination with Spryker each time the contract is signed and the App is released, and to distribute the same through Partner's own press networks or contacts.

17.2 Partner and Spryker agree to communicate with each other about Partner status. The other Party's application is submitted at regular intervals via the social media channels available (Facebook, Xing, LinkedIn, Twitter) and the company's own blogs or newsletters. Partner agrees to support Spryker's campaigns to promote the App Composition Platform by own promotion on available social media channels, podcast formats, newsletters, blogs and webinars.

17.3 Partner and Spryker agree to display at least the other Party's company name and logo on their own website in order to name the other Party as a reference Partner for any online and offline marketing. The Parties grant each other a non-exclusive, non-transferable, royalty-free right to use and display the other Party's trademarks, service marks and logos in connection with the App Composition Platform for the duration of the collaboration. A Party will not acquire any interest, right, or title in any of the other Party's trademarks, copyrights, or content, and all associated goodwill will reside with the respective Party. During the term of the Agreement, the Parties may use the other Party's trademark as long as each Party follows the usage requirements in this Section 17. Each Party must: (i) only use the images of the other Party's trademark that the Party makes available, without altering them in any way, (ii) only use the Party's trademarks in connection with the Spryker App Composition Platform and these General Terms, and (iii) immediately comply if one Party request that the other Party discontinue use. Each Party must not: (i) use the other Party's trademark in a misleading way, (ii) use the other Party's trademark in a way that implies that a Party endorse, sponsor or approve of the other Party's services or products, or (iii) use the Party's trademark in violation of applicable law or in connection with an obscene, indecent, or unlawful topic or material. Further, each Party will not make any express or implied statement or suggestion, or use the other Party's trademark in a manner that dilutes, tarnishes, degrades, disparages or otherwise reflects adversely on the other Party, or its business, products or services.

17.4 Spryker offers Partner the chance to participate as co-exhibitor or as part of a co-branding at events according to availability, whereby the general conditions and any costs incurred will be agreed separately prior to each event.

17.5 Depending on availability, Spryker also offers to Partner the opportunity to participate in Spryker roadshows or similar events. Costs and schedules are also determined separately for each individual case. Conversely, Partner will also provide Spryker with the opportunity to participate in various Partner's events.

17.6 The Parties agree to inform each other (electronically, e.g. via email is sufficient) prior to one of the aforementioned advertising measures. Each of the Parties reserves the right to object to the specific use within two Business Days. If there is no objection, the advertising measure will be deemed approved. The Parties will send the notifications of use to the email address of Spryker info@spryker.com and for Partner to the email to be notified by Partner to Spryker.

18. Assignment, Right of Retention and Offsetting

18.1 The assignment of claims which are not monetary claims is only permitted upon prior written consent of the other Party. Such consent will not be unreasonably withheld.

18.2 A right of retention can only be asserted due to counterclaims from the respective contractual relationship.

18.3 The Parties to the may only set off claims that have been legally established or are undisputed.

19. Non-Impediment

19.1 The Agreement is signed on a non-exclusive basis and, therefore, the Parties are free to enter into similar agreements with third parties or any other type of agreement with the same purpose and object similar.

19.2 Nothing in the Agreement will be construed as precluding or limiting in any way the right of Spryker to provide services of any kind to any individual or entity, including without limitation performing services or developing materials which are similar to and/or competitive with the Contractual Services hereunder.

20. Conciliation Proceedings, Applicable Law and Place of Jurisdiction

20.1 In the event of differences of opinion on the contents of the Agreement, Contractual Services or these General Terms (“Dispute”), the Parties will endeavor to find an amicable solution through the named contact persons before taking litigation. If no solution is reached at that level, the matter will be escalated to the top management level. If an amicable solution can also not be reached at the top management level, the Parties will hold conciliation proceedings before an officially approved conciliation office in Berlin, Germany, in accordance with the Hamburg Arbitration Board's arbitration rules for IT disputes in the version applicable at the time of initiating arbitration proceedings, with the aim of settling legal disputes out of court. If the conciliation proceedings fail, the Parties can resort to the competent court of law in Hamburg/Berlin, which will have exclusive jurisdiction with regard to any Disputes under, arising from or in connection with the Agreement or these General Terms. The right of the Parties to seek interim relief remains unaffected.

20.2 The law of the Federal Republic of Germany applies to the Agreement and these General Terms, excluding its conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (CISG).

21. Relationship to other agreements

Unless expressly agreed, any previously concluded agreement between the Parties generally will continue to apply and will not automatically be replaced by the Agreement.

22. General Provisions

22.1 In these General Terms as well as in the Agreement, unless the context requires otherwise the following interpretations apply:

- a) Where a person is referred to, that includes legal entities (such as a limited liability company) and natural persons.
- b) Where these General Terms and/or the Agreement are referred to, that includes all **Annexes** and other documents that are attached to or are part of the respective document 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 Clause.
- d) The word “including” and similar terms relate only to examples and do not confine the interpretation of the preceding passages in these General Terms to the Agreement.
- 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.

22.2 All arrangements modifying, supplementing or specifying the Agreement and/or these General Terms, and any warranties or understandings, must be agreed in writing. For the avoidance of doubt, text form is considered written form. Such agreements as stated above can be made by the Parties using the DocuSign application, in which case the requirements specified in Sentence 1 of this Clause 22.2 are considered satisfied.

22.3 If a provision in this Agreement and/or these General Terms is or becomes invalid, this will not affect the validity of the other provisions. In such a case, the Parties undertake to agree a valid arrangement that reflects as closely as possible to the intended economic purpose of the invalid provision. The same applies mutatis mutandis to any gaps in the Agreement and/or in these General Terms.

22.4 The Agreement can be concluded in any number of copies, which all together constitute one and the same contractual system. Each Party can conclude the Agreement by signing such a counterpart. The agreement can be made by the Parties using the DocuSign application.

22.5 General terms and conditions of Partner do not apply. Differing and/or conflicting or additional general terms and conditions of Partner will become part of the Agreement only and insofar as Spryker has explicitly agreed in writing (electronic form, e.g. via DocuSign will be sufficient) that they apply. For the avoidance of doubt, Spryker's acceptance of Partner's payments without reservation in awareness of Partner's general terms and conditions will not be deemed Spryker's acceptance of Partner's general terms and conditions.

22.6 Spryker reserves the right to change these General Terms, including all rules and Spryker Policies, in its sole discretion, if unforeseeable changes occur after the conclusion of the Agreement and/or gaps are discovered and the relationship between performance and consideration is thereby disturbed, by publishing a notice of such changes on the Spryker website at <https://spryker.com/en/legacy-terms/>. Affiliates are responsible for reviewing and familiarizing themselves with all additional terms, changes (including new terms, updates, revisions, amendments, modifications, and additional rules, policies, terms and conditions) communicated to it or posted by Spryker and expressly agreeing to them in text form (via email is sufficient) within 14 calendar days. Any additional terms are hereby incorporated into these General Terms by this reference.

Annex 1 - Definitions and interpretation

In the Agreement and these General Terms, the following terms have the following meanings, to the extent visible from the context, in alphabetical order:

Agreement	has the meaning ascribed to it in Clause 1.3 of these General Terms;
Affiliate	is a legal entity that directly or indirectly controls, is controlled by, or is under common control with another legal entity, where control means the direct or indirect ownership of 50% or more of the voting power or equity in a legal entity or de facto control by a legal entity of another legal entity's decision making;
App	has the meaning ascribed to it in Clause 1.2 of these General Terms;
App Catalog	has the meaning ascribed to it in Clause 3.2 of these General Terms;
App Composition Platform	has the meaning ascribed to it in Clause 1.2 of these General Terms;
ARR	means the annual recurring revenue;
Availability	means that, within the responsibility of either Spryker or Partner, a respective App is operational and able to be accessed and used by Customers over the internet in full compliance with its agreed scope. The App is considered as not available if there is a full or partial deterioration in its performance or the App is fully or partially inoperable or an agreed Exception applies;
Branding Review	means Spryker's assessment based on the branding guidelines (logos, color schemes, fonts, etc.) for Apps defined by Spryker;
Bugfix	means a correction of an Error in an App version, which can be provided by way of a Patch or a Minor Release. The obligation to remedy security-related Errors in previous versions remains unaffected;
Business/Compliance Review	includes compliance checks for areas like denied party lists, business relations with sanctioned entities, etc.;
Business Days	means Monday to Friday, with the exception of public holidays in Berlin, Germany;
Business Impact	means the classification of the business impact from priority 1 to priority 3 in Annex 2 of the Agreement;
Confidential Information	has the meaning ascribed to it in Clause 15.1 of these General Terms as well as those individually agreed between Partner and Spryker in their respective Agreement;
Contractual Services	means the services referred to in Clause 3.1 of these General Terms;
Customer(s)	has the meaning ascribed to it in Clause 1.1 of these General Terms;
Customer License Agreement	means any agreement concluded between a Customer and Partner on that Partner's respective Partner Services;

Dedicated Communication Channel	means the communication channel agreed between Partner and Spryker;
Dispute	has the meaning ascribed to it in Clause 20.1 of these General Terms;
Error	means the deviation between the actual state and the intended state at the time it is reported, including defects;
Exception	means the following agreed exemptions from the Availability: <ol style="list-style-type: none"> 1. Misuse of the App by the affected Customer; 2. Outages in the affected Customer's Internet connectivity; 3. Internet or other network traffic problems not attributable to problems occurring in or from networks that have to be provided or controlled by Spryker itself or on behalf of Spryker; 4. Scheduled Downtime; 5. During the time when there is an incident of Force Majeure; or 6. Unavailability of the Partner Services or the App due to problems originating in or from the Partner Services or Partner's sphere itself and which must be provided or controlled by Partner itself, e.g. if the Partner Service or the App is not available due to changes or extensions of the Partner Services made by Partner without having notified and informed Spryker sufficiently;
First Level Support	means the support process described in the Spryker App SLA;
First Response	means the initial response to be provided by Spryker under the Spryker App SLA after having received an Error report;
Force Majeure	has the meaning ascribed to it in Clause 13.1 of these General Terms;
General Terms	means these App Composition Platform - General Terms and Conditions (Partners), which supplement and specify the Agreement;
Indemnitee	means the Party being indemnified and held harmless by the other Party;
Indemnitor	means the Party indemnifying and holding the other Party harmless;
Initial App Scope	means the scope of the App defined by the Parties as Annex 1 to the Agreement;
Minor Release	means a release where the App internal API (exclude existing facades signatures) has been changed (for example, if the signature of internal models or constructors is changed, classes are renamed);
Party/Parties	has the meaning ascribed to it in Clause 1.2 of these General Terms;
Patch	is a superficial fixing of an Error (which also can trigger an improvement of a function or performance) where the code of an App is not necessarily being changed and therefore the App's behavior does not change;
Partner	has the meaning ascribed to it in Clause 1.2 of these General Terms;
Partner Portal	means a dedicated portal provided or yet to be provided by Spryker for communication and reporting purposes of Partner;
Partner Services	has the meaning ascribed to it in Clause 1.3 of these General Terms;

Partner's Services SLA	means Partner's SLA in Annex 3 of the Agreement covering its Partner Services;
Prohibition on Solicitation	has the meaning ascribed to it in Section 14.1 of these General Terms;
Project	has the meaning ascribed to it in Section 2 of these General Terms;
Provisional Solution	has the meaning ascribed to it in Section 13.2 of these General Terms;
QRR	means the quarterly recurring revenue;
Referral	means the situation where a Customer has concluded an agreement with either Party upon a qualified lead generated by the other Party General Terms;
Referral Agreement	means any agreement between the Parties setting out the provisions governing a Referral;
Reselling	means where Spryker directly sells Partner Services to Customers under a Reseller Agreement;
Reseller Agreement	means any agreement between the Parties setting out the provisions governing Spryker's Reselling of Partner's products or services;
Response Time	means the time period from receipt of the Error report by Spryker until Spryker's First Response.
Revenue Share	means the revenue share agreed to be paid for each Customer using particular Partner Services via the App Composition Platform;
Scheduled Downtime	means any scheduled outages of the App of which Spryker has notified Partner at least three (3) calendar days in advance;
SDK	means the SDK provided by Spryker for Partner to develop the App itself;
Second Level Support	means the support provided to Customers by Partner because of Partner's responsibility for the code of its own Partner Services;
Security Review (Security Practices)	means the assessment based on OWASP Top 10 (standard awareness document for developers and web application security) and Spryker defined security guidelines;
Spryker	means Spryker Systems GmbH, Heidestraße 9-10, 10557 Berlin, Germany;
Spryker App SLA	means the maintenance of the App and the support as per what has been outlined in Annex 2 of the Agreement.
Spryker Policies	means all policies listed here: https://spryker.com/en/legacy-terms ;
Spryker Software	has the meaning ascribed in the the Introduction of these General Terms;
Solicitation	has the meaning ascribed to it in Section 14.1 of these General Terms;
Support Portal	means the portal provided by Spryker at https://support.spryker.com/ ;
Technical Review (Architecture)	means the architecture review of a Partner Service to ensure it follows best practices;

Ticket System

means the communication channel dedicated by Spryker to receive, confirm, classify and handle requests relating to Errors and cases via the Support Portal;

Trial Phase

has the meaning ascribed to it in Section 8.1 of these General Terms;

Update

means changes to the App which extend its functionality, which can be included in all versions.