

# NetVizura - Business Partner Agreement (BPA)

This Business Partner Agreement ("BPA" or "Agreement") is effective \_\_\_\_\_,

**BETWEEN: Soneco d.o.o.**, a company organized and existing under the laws of the Republic of Serbia, with its head office located at: Makenzijeva 24/VI, 11111 Belgrade, Serbia (Soneco).

**AND:** \_\_\_\_\_, a company organized and existing under the laws of the \_\_\_\_\_ of \_\_\_\_\_, with its head office located at: \_\_\_\_\_ (Partner).

The parties hereto agree as follows:

## DEFINITIONS

- **Products.** "Products" shall mean the object code copies of the software products and any subsequent updates and upgrades thereto, and all accompanying and associated documentation, which Partner shall market and distribute in the Territory stated in Article 1.
- **License.** "License" shall mean the permission to use the Product with respect to defined level of functionality, based on but not limited to time of usage, scope of data to be processed, performances, and ability to update and upgrade.
- **Evaluation License.** "Evaluation License" shall mean the License for trial and evaluation of the Product, for a limited period starting from the date of the installation, and with limited functionality.
- **License Key.** "License Key" shall mean the encrypted data with incorporated metrics and other parameters which define License, which and technically allows Product to execute properly, update and upgrade on the end-user computer.
- **Licensed Products.** "Licensed Products" shall mean the Product which is properly activated by the License Key, with respect to committed License.
- **Customer.** "Customer" shall mean an end-user of a Licensed Product sold by Partner in the Territory.
- **Customer Effective Date.** Customer Effective Date shall mean a date when the Licensed Product is sold by Partner to the Customer.
- **Documentation.** "Documentation" shall mean program documentation, user manuals, handbooks and other materials describing the use, design, installation, operation and maintenance of the Products.
- **Trademarks.** "Trademarks" shall mean the trademarks, service marks, trade names and logotypes authorized from time to time by Soneco.
- **Update.** "Update" shall mean the release of a version of the Product containing improvements, adjustments and bugfixes to the same module, however not including major structural changes and/or new important features. The change to an Update will be recognized by an increase in value of the secondary version number (e.g. version 5.7 to be replaced by version 5.8).
- **Upgrade.** "Upgrade" shall mean the release of a version of the Product containing major changes to the structure of the Product where important features may be added. The change to an Upgrade will be recognized by an increase in value of the primary version number (e.g. version 5.x to be replaced by version 6.x).
- **Deal.** "Deal" is potential end-user (customer, company, organisation) of Products.

**1. Partner Appointment.** Soneco hereby appoints Partner, and Partner hereby accepts appointment, as Soneco's non-exclusive, non-transferable reseller of the Products in the Territory of \_\_\_\_\_ during the term of this Agreement.

**2. Purpose of Appointment.** Soneco grants to Partner non-exclusive, non-transferable right and permission during the term of this agreement in the Territory:

- To use its best efforts to market, promote, advertise, demonstrate, sell and distribute the Product licenses directly to Customers, including taking the necessary actions to protect against improper copying;
- To perform support services related to the Products only under Partner's own name and not as a subcontractor of Soneco;

**3. Appointment Restrictions.** Partner shall not:

- Modify the Products or create derivative works thereof merge the Product with other software
- Reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Products;
- Modify or encrypt the License Key, or otherwise attempt to change the License limitations.
- Disclose to third parties the results of any bench tests performed on the Products without Soneco prior written consent or otherwise use, copy or distribute the Products except as expressly allowed hereunder.
- Partner shall in no way market, distribute, export, sell, lease or install Products outside the Territory without Soneco's prior written approval.
- Partner shall not, without Soneco's prior written approval, appoint sub-partners, resellers or agents ("Sub-partners") to market, sell, or lease the Products; Soneco shall not withhold such consent unreasonably if Partner provides evidence of Soneco approved training and certification of such partner or agent. Partner shall be liable for the acts and omissions of any such Sub-partners.

**4. Partner Obligations.** Partner shall be responsible for the promotion and marketing of the Products. Partner will use its best efforts to further Soneco interests and to maximize the markets for the Products in the Territory, including all local advertising. Furthermore, Partner shall use due diligence in safeguarding the interests of Soneco and shall keep Soneco informed of its activities as well as market conditions within the Territory.

Partner shall be responsible for providing first level support to its Customers and all communications with the Customers. Partner agrees to follow Soneco's customer support policies and procedures to resolve any customer support issues.

At all times, Partner shall comply with all laws, rules, ordinances, decrees and regulations applicable to its activities under this Agreement.

The Products are technically complex and require high-quality, individualized pre-marketing and post-marketing support. This support is necessary to achieve and maintain high Customer satisfaction. Partner agrees that high Customer satisfaction is a condition of its continued authorization by Soneco. In order to help ensure high Customer satisfaction, Partner agrees:

- To report to Soneco promptly and in writing all suspected and actual problems with any Product;
- To maintain a shipment report identifying the Customer, the module of Product and License sold, the date of sale, and the quantities of the Products and License sold;
- To retain all shipment reports for three (3) years after the date of sale, and assist Soneco, upon request, in tracing a product to a Customer in distributing critical product information, or in discovering unauthorized marketing or infringing acts;
- To conduct business in a manner that reflects favorably at all times on the Products, goodwill and reputation of Soneco;
- To avoid deceptive, misleading or unethical practices that are or might be detrimental to Soneco or the Soneco Products;
- To refrain from making any false or misleading representations with regard to Soneco or the Products;
- To refrain from making any representations, warranties or guarantees to customers with respect to the specifications, features or capabilities of the Products that are inconsistent with the documents distributed by Soneco,
- Not to market and sell the Products in geographical areas where it does not have the ability to support them.

**5. Soneco Obligations.** Soneco's products include software solutions for network monitoring and analysis under the common brand name NetVizura, which includes but is not limited to the following components and modules:

- NetFlow Analyzer
- EventLog Analyzer
- MIB Browser

Soneco shall endeavour to produce, maintain update and upgrade the Products to Partner in a timely manner. Soneco shall not be liable to Partner for any failure to supply the Products agreed upon with Partner. Soneco will keep Partner informed as to Soneco's schedule for new versions and releases of the Products.

Soneco will provide marketing support services to Partner on a case-by-case basis. Soneco agrees to provide, upon request, internally developed Product marketing and presentation materials via electronic media in the English language for translation and duplication, as appropriate, to Partner. Soneco hereby grants to Partner the non-exclusive, non-transferable right to reproduce and use any such materials during the term of this Agreement, but not to modify such materials without prior consultations and approval from Soneco. Soneco will provide consultations and assistance to Partner regarding translation of Product marketing and presentation materials to local language, provided so that Partner bears all translation expenses.

Soneco shall deliver one copy of the Licensed Product to Partner for educational purposes of its own employees and to provide demonstrations to prospective Customers, as long as such copy is at all times under the control of Partner and not left or copied with the prospective Customer. Evaluation License will be limited to the term of this Agreement.

Soneco reserves the right to make direct sales into the Territory, and Partner shall not be entitled to any compensation on any such sales. However, Soneco is obliged to first direct customers from the Territory to the Partner with suggestion of additional support benefits they would receive with local partnership (implementation, on-site support, call center, consultancy etc).

Soneco shall provide Partner with second and third level maintenance and support. Soneco will keep Partner informed of Soneco's customer support policies and procedures. If Partner offers to provide its Customers with support that exceeds Soneco's service level agreement (SLA) objectives, Soneco will not be obligated to support such service levels unless Soneco has agreed to do so in writing.

At all times, Soneco shall comply with all laws, rules, ordinances, decrees and regulations applicable to its activities under this Agreement.

**6. Maintenance Services.** Soneco will make Updates and Upgrades available to Partner when they become commercially available. Soneco is responsible for keeping Customers informed about new version available, and for distributing such Updates and Upgrades to Customers who subscribed to Maintenance and Support. At such time as an Update or Upgrade is made available, Partner will cease marketing and distributing the previous version of the Products.

**7. Support Services.** These services are provided in collaboration between Soneco and Partner.

Instead of Soneco, Partner has the option to provide:

- 1<sup>st</sup> level support, all communications with the Customers during Partner's local workdays and work time by email and phone;

Obligation of Soneco is to provide:

- 2<sup>nd</sup> level support to Partner, which assumes deep technical assistance and problem solving during Soneco's local workdays and local work time by email and phone;
- 3<sup>rd</sup> level support, which assumes bug-fix, software improvement, new features, release of new Updates

Soneco will be obliged to provide Standard Maintenance and Support to the Partner for the Customers who are subscribed to this service. Soneco's terms and conditions that regulate these services are available within separate document [NetVizura - Maintenance and Support Agreement \(MSA\)](#).

Partner is urged and obliged to remind his Customer about Service renewal (in written or in verbal) no later than 90 days prior Service Term expiry. If Customer terminates maintenance and support service, Soneco shall be under no obligation to resume providing such services to Partner for the Customer under any circumstances.

Partner may offer additional support to its Customers, such as onsite support, installation and implementation support, call-centre, training etc., where all revenue and responsibility from this additional support goes to Partner.

**8. Partner Training.** Partner shall ensure that each member of Partner's staff engaged in installing, configuring, implementing and supporting the Products, including sales representatives, is trained by Soneco within 90 days of the Effective Date, upon Partner provides prospective Customer for the Products.

Partner is granted specific amount of hours of free online distance training to unlimited number of its own staff, using web conference with voice, video, chat and desktop sharing ability. Free remote online training provided by Soneco to Partner's staff is given per Product as follows:

Training (max, in hours)	Technical		Business
Product	Admin	User	Sales & Marketing
General	1	1	1
NetFlow Analyzer	4	4	4
EventLog	2	2	2
MIB Browser	1	1	1
TOTAL	8	8	8

Soneco will provide to Reseller free of charge learning material for the Products in English, which includes user/administrator manuals, installation guide, and other written documents or video tutorials.

Additional training may be provided on Partner's request and will be charged separately according to the Soneco's additional pricing per commenced hour.

**9. Deal protection.** Partner is obligated to register a new potential Deal by sending an email to [sales@netvizura.com](mailto:sales@netvizura.com) containing company name, contact name/email and proof of potential Deal (such as customer requirement by email). Soneco will handle deals internally through CRM system and protect Partner's exclusivity for registered Deal for 3 months (Deal protection can be extended according to proof of potential Deal progress) - no other partner nor Soneco will be allowed to make that Deal.

**10. Ordering process.** The procedure for license ordering, delivering and payment needs to be done as follows:

1. Prospective Customer downloads and installs the Products using the trial License for 30 days, evaluates the Products and chooses a license level;
2. Partner sends order confirmation email to Soneco, stating the Products and chosen License level, and provides basic information about the Customer, including the Installation code generated by the installed Products;
3. Soneco issues an Invoice, and sends it to Partner;
4. Partner makes a payment to Soneco;
5. Soneco issues a Permanent License Key and delivers it to Partner.

All orders shall be subject to Soneco's acceptance, which shall not be unreasonably withheld.

**11. Fees.** Pricing of the Product Licenses and Standard Maintenance and Support service to Customers shall be at the discretion of Partner, in regard to recommended list price provided by Soneco in accordance with [NetVizura - Business Partner Offer](#). The price to be paid by Partner to Soneco will be the Discounted Price (then recommended/list price less the current discount that Partner is granted).

Partner is granted with the discount based on yearly Partner sales. Yearly Partner sales refer to the previous year starting from the anniversary of this agreement Effective Date. Specially, Yearly Revenue will refer to current year, if the total revenue in the current year exceeds the Yearly Revenue in previous year. Once a greater discount is achieved in current year, it is applied for the remaining income over the threshold for this discount level.

Provision of Additional Support (more incidents, custom installation, implementation, training, etc.) will be charged separately according to the Soneco's Additional Support pricing per commenced hour.

**12. Payment terms.** Soneco shall issue an invoice for ordered Licensed Products and maintaining and supporting services which shall be payable by Partner within thirty (30) days of receipt.

Payment by Partner is due regardless of when or whether Partner is paid by its Customer or not. Late payments shall accrue interest at the rate of 12% annually, and Partner shall reimburse Soneco for all costs of collection incurred.

**13. Taxes.** All payments are exclusive of all sales taxes, use taxes, value added taxes and any other similar taxes imposed by any federal, state, provincial or local governmental entity on the transactions contemplated by this Agreement.

In the event that any withholding taxes or any other taxes and /or dues are imposed by any federal, state, provincial or local governmental or judicial entity on any registrations and/or transactions contemplated by this Agreement, Partner shall pay such taxes/dues in such amounts as are necessary to ensure that Soneco receives the full amount of the fee required under the first paragraph of this Article.

**14. Term.** This Agreement shall take effect on the Effective Date and shall continue in force for two years (the "Initial Term"). Thereafter it will be automatically renewed for one (1) year renewal terms unless terminated by either party with 60-day notice prior to the end of the initial or any renewal term.

**15. Termination.** Notwithstanding the provisions of the foregoing, this Agreement may be terminated in accordance with the following provisions:

- Either party hereto may terminate this Agreement at any time by giving notice in writing to the other party. Notice shall be effective upon receipt, should the other party be in material breach of this Agreement and fail to cure such breach within thirty (30) days of written notice thereof, file a petition of any type as to its bankruptcy, be declared bankrupt, become insolvent, make an assignment for the benefit of creditors, or go into liquidation or receivership or otherwise lose control over all or substantially all of its business.
- Either party may terminate this Agreement for any reason only after the expiration of the Initial Term upon 90-day written notice to the other party.

Termination or expiration of this Agreement shall not release either party from the obligation to make payment of all amounts then or thereafter due and payable.

Upon termination or expiration of this Agreement, Partner shall: (1) immediately return to Soneco or destroy (i) all media containing the Products; (ii) all originals and copies of the Products, manuals, Documentation, product literature, fee schedules, and other written materials

provided by Soneco; or (iii) all Confidential Information and other property of Soneco, provided that such materials or information are in Partner's possession or under its control; (2) immediately discontinue holding itself out as a distributor of the Products, shall destroy all advertising and promotional materials in its possession or control bearing any Trademarks, and shall remove all signs bearing Trademarks or otherwise identifying Partner as a representative of Soneco; and (3) deliver to Soneco a document executed on behalf of Partner certifying Partner's compliance with this Section.

Termination or expiration of this Agreement does not affect any sublicenses granted by Partner to Customers in accordance with this Agreement. However, in the event of such termination or expiration, Soneco shall have the option of assuming first level support for all then-current Customers, and Partner shall in such event refund to Soneco a prorata share of all maintenance and support fees collected from such Customers, based on the time remaining in such Customers' then-current maintenance and support term.

**16. Trademarks.** Partner acknowledges that Soneco is the sole and exclusive owner of Soneco name and Product names and any abbreviations or variations thereof, and of any and all of Soneco's trademarks and trade names, service marks, trade logos and trade dress (collectively "Trademarks") as Soneco may unilaterally amend periodically (registered or not).

In connection with Partner's activities authorized pursuant to this Agreement, Partner is granted a non-exclusive, non-transferable, right to use the Trademarks in accordance with instructions given from time to time by Soneco. Partner shall not attach any additional trademarks, service marks, or trade names to any Products and shall not use Soneco's trademarks as part of Partner's trademarks, service marks or trade names or in any other manner that would tend to imply that Partner has an affiliation with Soneco other than as set forth in this Agreement.

**17. Warranty.** Soneco is the owner of licensee of all intellectual property rights in and to the Products and there is no pending litigation against Soneco which could materially impact upon its ability to perform its obligations under this Agreement,

Soneco has full power and right to license the Products and perform all other terms of this Agreement, and the use of the Products, or the exercise of the licenses granted hereunder, will not violate or interfere with the intellectual property or contractual rights of any third party, including without limitation, those rights arising under copyright, trademark, trade secret or patent law. However, Soneco shall not be liable for breach of representation and warranty if a violation or interference occurs by reason of software or content supplied by Partner, Customer, content owners, or other third parties.

Soneco warrants and represents that the Products shall be delivered with good title free of any rightful third party claim of infringement of any patent, copyright, trademark, trade secret or other intellectual property right and its possessions.

**18. Confidential Information.** The parties agree that any Confidential Information provided under this Agreement shall be held and maintained in strict confidence. Each party agrees to protect the confidentiality of such information in a manner consistent with the way a reasonable person would protect similar Confidential Information. "Confidential Information" means the information and materials noticed or marked by Soneco or Partner as confidential and proprietary, or which should reasonably be understood as confidential and proprietary given the nature of the information or materials. "Confidential Information" does not include information that:

- Is already known to the receiving party at the time it is disclosed and has not been obtained wrongfully;
- Becomes publicly known without fault of the receiving party;
- Is independently developed by the receiving party;
- Is approved for release in writing by the disclosing party;
- Is disclosed without restriction by disclosing party to a third party;
- Is disclosed pursuant to legal obligations beyond the control of the disclosing and receiving parties.

Soneco's oral and visual presentations describing the Products and plans, business and development plans, and any inspections thereof by Partner or its personnel shall all be deemed Confidential Information under this Agreement whether so marked or not.

**19. Limitation of Liability.** To the maximum extent by applicable law, in no event will Soneco and any of its directors, officers, agents, contractors and employees, be liable to Partner or any third party, whether in contract, tort (Including negligence) or otherwise, for any damages under this Agreement, for more than the amount of licence fee that Partner have paid to Soneco during the (12) twelve months period preceding the event giving rise to this claim. Partner's sole remedy against Soneco in any dispute concerning this Agreement shall be to seek recovery of that amount, upon payment of which Soneco shall be released from all further obligations and liability to Partner.

**20. Force majeure.** Soneco shall not be liable for any failure to perform due to causes beyond its control, including but not limited to fire, flood, earthquake, explosion, accident, acts of public enemy, war, rebellion, insurrection, sabotage, failure of telecommunication services, epidemic, quarantine, labour disputes or shortages, transportation embargoes, failures or delays, acts of government (including denials of or onerous restrictions on export licenses), any such event of force majeure affecting Soneco's third-party suppliers, or judicial action. Similar causes shall excuse Partner for failure to take the Products ordered by Partner other than those already in transit or specially fabricated or not readily saleable to other buyers.

**21. Governing law.** The parties agree that any dispute arising out of or in connection with this Agreement, and /or in connection with any other contractual document arising under or in connection with this Agreement, shall be finally settled by the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris, France. The applicable law shall be the laws of England and the language shall be English.

It is mutually agreed that for Demand Guarantees under this Agreement the Uniform Rules of the International Chamber of Commerce URDG 758 shall be settled by the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris, France. The applicable law shall be the laws of England and the language shall be English.

**21. Complete Agreement.** This Agreement contains the parties' entire Agreement and supersedes all previous communications, representations or agreements, oral or written, regarding its subject matter. No addition to or modification hereof shall bind either party unless reduced to writing and duly executed by the parties.

*Updated December 2016*

IN WITNESS WHEREOF, this Agreement has been executed by the parties' authorized representatives on the date first written above.

**SOFTWARE PROVIDER**

**PARTNER**

**Soneco d.o.o.**

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Company

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Company

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*Authorized signature*

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*Authorized signature*

Zoran Bolic, CEO

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*Representative name, title*

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*Representative name, title*