

**SAP PartnerEdge**  
**General Terms and Conditions for Distribution**  
**("Distribution GTCS")**

## Definitions and Interpretation

### 1. Definitions

**"Add-on"** means any development that adds new and independent functionality to the Software, but does not modify existing SAP functionality, and is developed using APIs.

**"API"** means SAP application programming interfaces or other SAP code that allow other software products to communicate with or call on the Software or Cloud Service (for example, SAP Enterprise Services, BAPIs, Idocs, RFCs and ABAP calls or other user exits).

**"Associated Company"** means any legal entity of which a person or company has direct or indirect Control and only as long as a person or company maintains direct or indirect Control.

**"Cloud Services"** means SAP's then-current cloud services offered under and described in detail in the applicable SAP Distribution Model.

**"Confidential Information"** means all information which the Disclosing Party (as defined below) protects against unrestricted disclosure to others, furnished by the Disclosing Party or its Representatives to the party receiving the information ("**Receiving Party**") or its Representatives under or in connection with any part of this Agreement that (i) the Disclosing Party or its Representatives identifies as confidential and/or proprietary at the time of disclosure and/or (ii) should reasonably be understood to be confidential given the nature of the information, the circumstances surrounding its disclosure or both, including but not limited to information that is related to:

- a) software, cloud services, maintenance services, other services and in each case other related documentation ("**Disclosing Party's Software**") including, without limitation, the following information regarding Disclosing Party's Software:
  - i. computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in Disclosing Party's Software;
  - ii. benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats relating to Disclosing Party's Software, and
  - iii. discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to Disclosing Party's Software;
- b) the research and development or investigations of the Disclosing Party;
- c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, inventions (whether patentable or not), marketing plans, forecasts and strategies, the business plans or operations of the Disclosing Party;
- d) the business of any customer or partner of the Disclosing Party;
- e) Disclosing Party's properties, employees, finances, operations;
- f) with respect to SAP, the SAP Products; and
- g) any information about or concerning any third party (which information was provided to the Disclosing Party subject to an applicable confidentiality obligation to the third party).

**"Control"** means the power to direct or cause the direction of the affairs of an entity whether by means of direct or indirect ownership of fifty per cent (50%) or more of the voting rights or similar rights of ownership or by means of having the power to direct the management or directors whether conferred by constitutional documents, shareholder agreement or other document regulating the affairs of an entity.

**"Change of Control"** means that a Party is no longer under Control by the same persons or entities that had Control on the Effective Date set out in the Master Distribution Agreement.

**"Distributor Group"** means any legal entity that has direct or indirect Control over the Distributor and only as long as that legal entity maintains direct or indirect Control ("**Parent Companies**") as well as all Associated Companies of the Parent Companies.

**"Documentation"** means SAP's then-current technical and/or functional documentation which is delivered or made available by SAP or any other member of the SAP Group to Distributor, to an Open Ecosystem Partner or to an End User (either directly or indirectly via Distributor and/or Open Ecosystem Partner) together with the Software, Cloud Services and/or Maintenance Services under any part of this Agreement.

**"End User"** means a person or entity to which Open Ecosystem Partner distributes, positions or provides access to a SAP Product in compliance with the applicable SAP Distribution Model and which has been or will be granted a license right by SAP to use a SAP Product but excluding any member of the Distributor Group.

**"Export Law"** 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.

**"Feedback"** means input regarding the SAP Products, services, business or technology plans, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of the SAP Products and/or services, or input as to whether Distributor believes SAP's development direction is consistent with their own business and IT needs.

**"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.

**"Maintenance Services"** means SAP's then-current maintenance and/or support services offered under and described in detail in the applicable SAP Distribution Model.

**"Modification"** means (i) a change to the delivered source code or metadata; or (ii) any development, other than a change to the delivered source code or metadata, that customizes, enhances, or changes existing functionality of the Software or Cloud Service including, but not limited to, the creation of any new application program interfaces, alternative user interfaces or the extension of SAP data structures; or (iii) any other change to the Software or Cloud Service (other than an Add-on) utilizing or incorporating any SAP Materials.

**"Open Ecosystem Partner"** means any person or entity to which Distributor is authorized to market, position and distribute certain SAP Products as further defined in the applicable SAP Distribution Model.

**"Price List"** means any price list(s) issued by SAP for the applicable SAP Distribution Model setting out the available software, services and the prices or fees as further defined in the in the applicable SAP Distribution Model.

**"Program Requirements"** means that Distributor has to fulfill certain program requirements as described in detail in the applicable SAP Distribution Model and the Distribution Program Guide.

**"Representatives"** means:

- a) in case of Distributor (i) employees, consultants and (sub)-contractors of any member of the Distributor Group and (ii) attorneys, accountants or other professional business advisors of any member of the Distributor Group, and
- b) in case of SAP (i) employees, consultants and (sub)-contractors of any member of the SAP Group and (ii) attorneys, accountants or other professional business advisors of any member of the SAP Group

who are in both cases actively and directly involved in the performance of obligations under any part of this Agreement or who otherwise need to know the Confidential Information for the purpose of Party's performance under any part of this Agreement and are put under obligations of confidentiality substantially similar to those set forth in Part 1 - Article 2 (Confidentiality).

**"SAP Group"** means SAP Parent and any of its Associated Companies.

**"SAP Group Software"** means (i) any and all software products listed on the Price List as well as any SAP SDK which are provided by SAP or any other member of the SAP Group to Distributor, to an Open Ecosystem Partner or to an End User (either directly or indirectly via Distributor and/or Open Ecosystem Partner) under any part of this Agreement all as developed by or for the SAP Group; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to Maintenance Services or warranty obligation by any member of the SAP Group; and (iii) any complete or partial copies or replacements of any of the foregoing.

**"SAP Materials"** means any software, programs, tools, systems, data, or other materials made available by SAP or any other member of the SAP Group to Distributor, to an Open Ecosystem Partner or to an End User (either directly or indirectly via Distributor and/or Open Ecosystem Partner) prior to or in the course of the performance under any part of this Agreement including, but not limited to, the other SAP Products.

**"SAP Parent"** means SAP SE, a European Company (Societas Europaea, SE) established under the laws of Germany and the European Union, registered with the commercial register of the local court of Mannheim, Germany, under HRB 719915, with registered office in Walldorf, Germany, and business address at Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany.

**"SAP Partner Code of Conduct"** means SAP Group's global policy document that provides a set of informative guidelines to enable partners to comply with good business practices which is published on SAP's partner-dedicated website.

**"SAP Product"** means Software, Documentation, SAP Materials, Cloud Services and Maintenance Services.

**"SAP SDK"** means SAP software development kit that includes tools such as APIs, source code, redistributable files and instructions.

**"Software"** means SAP Group Software as well as Third Party Software.

**"Taxes"** means all taxes (including, without limitation, IGV, GST, sales, use, property, excise, service, withholding or similar taxes), levies, custom duties and similar charges and any related interest and penalties now or hereafter levied.

**"Third Party Software"** means (i) any and all software products listed on the Price List which are provided by SAP or any other member of the SAP Group to Distributor, to an Open Ecosystem Partner or to an End User (either directly or indirectly via Distributor and/or Open Ecosystem Partner) under any part of this Agreement all as developed by or for companies other than the SAP Group; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to Maintenance Services or warranty obligation by any member of the SAP Group; and (iii) any complete or partial copies or replacements of any of the foregoing.

**"Use"** means to activate the processing capabilities of the Software, Cloud Services and/or Maintenance Services, load, execute, access, employ the Software, Cloud Services and/or Maintenance Services, or display information resulting from such capabilities.

2. Any terms not defined in these Distribution GTCS will have the meaning ascribed to them in other parts of the Agreement.
3. The headings in these Distribution GTCS are for convenience only and are to be ignored in construing these Distribution GTCS.
4. Any reference in these Distribution GTCS to a defined document is a reference to that defined document as amended, varied, novated or supplemented from time to time.
5. Where the context so admits, the singular includes the plural and vice versa.

## PART 1 – General Terms and Conditions

### Article 1 Non-Exclusivity; Freedom of Action

1. The Parties' obligations under any part of this Agreement are non-exclusive. SAP is not precluded from marketing, licensing, positioning, providing and distributing SAP Products through other 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.

2. Distributor 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. The Parties are therefore independent contractors and do not act as agents or representatives of each other. Neither Party is entitled to hold itself out as representing the other Party or to make any statement or give any undertaking on behalf of the other Party.

3. This Agreement must not be construed as creating a partnership, joint venture, agency relationship or granting a franchise under any applicable laws.

### Article 2 Confidentiality

1. Confidential Information must not be used or reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of a party disclosing the information ("**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.

2. The Receiving Party must (a) take all Reasonable Steps (as defined below) to keep all Confidential Information strictly confidential; (b) not disclose any Confidential Information to any person other than its Representatives; (c) not use Confidential Information for any purpose other than in connection with the Parties' performance under any part of this Agreement; and (d) not disclose to any person (other than its Representatives) any information about the Agreement, or the terms or conditions or any other facts relating thereto, including, without limitation, the fact that Confidential Information has been made available to the Receiving Party or its Representatives.

"**Reasonable Steps**" means those steps the Receiving Party takes to protect its own similar proprietary and confidential information, which must not be less than a reasonable standard of care.

3. The Receiving Party will be responsible for any breach of the terms of this Agreement by it or its Representatives.

4. Confidential Information of either Party disclosed prior to execution of the Agreement is subject to the protections afforded hereunder.

5. The above restrictions on the use and disclosure of the Confidential Information do not apply to any Confidential Information that:

- a) is independently developed by Receiving Party without reference to or use of the Disclosing Party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information;
- b) has become generally available to the public without breach of this Agreement by Receiving Party;
- c) at the time of disclosure was known to the Receiving Party free of restriction; or
- d) the Disclosing Party agrees in writing is free of such restrictions.

6. Neither Party will use the name of the other Party in publicity, advertising, or similar activity, without the prior written consent of the other Party. However, any member of the SAP Group may use Distributor's name in customer and partner listings (including, without limitation, showing Distributor's name, address, contact details, partner engagements, areas of expertise and/or offerings on SAP's websites or online marketplaces) or, at times mutually agreeable to the Parties, as part of the SAP Group's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHIRE participation). The SAP Group will make reasonable efforts to avoid having the reference activities unreasonably interfere with Distributor's business. Distributor agrees that SAP may share information on Distributor with any other member of the SAP Group for marketing and other business purposes and that Distributor has secured permission from its employees to allow SAP to share business contact information with any other member of the SAP Group.

7. In the event that the Receiving Party or any of its Representatives are requested pursuant to, or required by, applicable law, regulation, court order, regulatory agency or other legal process to disclose any Confidential Information or any other information concerning the Disclosing Party, this Agreement, or the Parties' performance hereunder, the Receiving Party must provide the Disclosing Party with prompt notice of such request or requirement in order to enable the Disclosing Party (i) to seek an appropriate protective order or other remedy; (ii) to consult with the Receiving Party with respect to the Disclosing Party's taking steps to resist or narrow the scope of such request or legal process; or (iii) to waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained in a timely manner, or the Disclosing Party waives compliance, in whole or in part, with the terms of this Agreement, the Receiving Party or its Representative will use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally required to be disclosed and to require that all Confidential Information that is so disclosed will be accorded confidential treatment.

8. Distributor may provide or SAP may solicit Distributor's Feedback. All Feedback is provided at the sole discretion of Distributor. Unless the Parties have entered into a separate agreement that includes a comparable license from Distributor to SAP regarding Feedback, Distributor grants to each member of the SAP Group a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right to sublicense to any licensee, customer and end user of the SAP Group, under all relevant Distributor intellectual property rights, to use, publish, and disclose such Feedback and to display, perform, copy, make, have made, use, sell and otherwise dispose of the SAP Group's and its sublicensees' products or services embodying Feedback in any manner and via any media any member of the SAP Group chooses, without reference to the source ("**Feedback License**"). Except for the license granted above to use Feedback provided by Distributor at its sole discretion, SAP acquires no title or interest in any pre-existing or independently developed data, information, or intellectual property of Distributor under this Feedback License. Distributor acknowledges that the Feedback is only provided for information purposes but is not intended to be binding upon SAP to any particular course of business, product strategy, service strategy and/or development. If Distributor's Feedback is based on Feedback of an End User, Distributor must ensure that the relevant End User grants to each member of the SAP Group a Feedback License.

9. The Receiving Party will not be in violation of this Agreement due to the use of any Residuals (defined below) resulting from authorized access to or work with Confidential Information of the Disclosing Party.

"**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 a reasonable person would know was Confidential Information of the Disclosing Party.

Nothing in this Article 2 (Confidentiality) no. 9 will be deemed to grant any right, title or interest in or to (i) the Disclosing Party's Confidential Information (except for Parties' performance under any part of this Agreement) and/or (ii) 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.

### **Article 3 Covenants**

1. Distributor must inform SAP without undue delay if Distributor becomes aware of any third party: (a) Using or otherwise having unauthorized access to any SAP Product including, without limitation, if Distributor becomes aware of any End User exceeding licensed levels; and/or (b) marketing, licensing, positioning, providing and distributing any SAP Product without authorization. In such case, Distributor must: (a) assist SAP and any other member of the SAP Group in every reasonable way in the pursuance of their respective rights and, upon consultation with the relevant member of the SAP Group, immediately take all steps for the protection of those rights; and (b) temporarily stop marketing, licensing, positioning, providing and distributing SAP Products to any such third party unless and until such ambiguity is resolved to Distributor's and SAP Group's satisfaction.

2. Distributor must inform SAP immediately (i) of any Change of Control regarding Distributor and (ii) in case of a material part of Distributor's assets or a material part of Distributor's assets utilizing any SAP Material or both being sold or otherwise transferred.

### **Article 4 Trademark License**

1. Upon Distributor meeting the Program Requirements for the first time and subject to Distributor's compliance with all Program Requirements at all times during the term of this Agreement, SAP grants to Distributor a revocable, non-exclusive, non-transferable license to use the SAP partner logo that SAP makes available to the Distributor in connection with this Agreement in the Territory in accordance with the terms of this Article 4 (Trademark License). This license to use the SAP partner logo that SAP makes available to the Distributor in connection with this Agreement includes the right to use the SAP corporate logo as part of the SAP partner logo (both referred to as "**SAP Logos**"). Distributor is not permitted to grant sublicenses to the SAP Logos.

2. When using SAP Logos, Distributor must adhere to all requirements and obligations of the PartnerEdge Branding Guide, including, without limitation, observe SAP's directions concerning the colors and size of the SAP Logos.

3. Distributor must not contest the validity of the SAP Logos or support the contesting of their validity and must not derive any right against SAP or any other member of the SAP Group through its use of the SAP Logos. When using SAP Logos, Distributor must indicate that the SAP Logos are registered trademarks of the SAP Group. In this context, Distributor acknowledges that SAP Parent is the sole owner of rights in the SAP Logos. Distributor undertakes to make all those declarations and provide all those documents for the benefit of SAP or any other member of the SAP Group as SAP, SAP Parent or any other member of the SAP Group may require in the prosecution of its rights in the SAP Logos.

4. SAP Group has the sole and exclusive right to protect and defend the SAP Logos at its sole discretion, cost and expense. Distributor will reasonably cooperate with SAP and any other member of the SAP Group, at SAP Group's expense, in the defense and protection of the SAP Logos and will promptly notify SAP of the use of any mark infringing any of the SAP Logos of which it has knowledge.

5. All advertising and sales material used by Distributor for a SAP Product must bear the notices prescribed by SAP or any member of the SAP Group concerning trademarks and other identifying marks. Distributor must refrain from (i) registering SAP's name, any name of any other member of the SAP Group (including, in both cases any domain name or trademarks), SAP Parent's logo and/or any logo of any other member of the SAP Group (including, in both cases, any names, logos, domain names or trademarks which are confusingly similar to any of them) for itself or (ii) permitting third parties to use or otherwise exploit SAP's name, logo or trademark and/or any name, logo or trademark of any other member of the SAP Group (including, in both cases, any name, logo, trademark or domain name which are confusingly similar to any of them). Distributor must, at SAP's choice, either transfer any rights regarding such name, logos, trademarks and domain names to SAP or any other member of the SAP Group as soon as they arise or permit SAP and any other member of the SAP Group to exploit them. Distributor must afford SAP and any other member of the SAP Group such assistance as may be necessary for SAP or any other member of the SAP Group to obtain at SAP Group's expense the appropriate registrations for protection in any chosen country.

6. SAP reserves the right to review the use of the SAP Logo in Distributor's marketing, advertising and other promotional materials. Distributor must make no representations regarding the SAP Products except as consistent with SAP's Documentation or as SAP may otherwise approve in writing.

### **Article 5 SAP's obligation to deliver**

1. SAP's obligations concerning the delivery of the SAP Products are outlined in the applicable SAP Distribution Model.

2. Notwithstanding SAP's acceptance of an order, SAP will be entitled to suspend the delivery of any or all SAP Products, the applicable license key or both where and for as long as any of the following adverse conditions is present:

- a) Distributor does not pay on the due date any amount payable to SAP under or in connection with the applicable SAP Distribution Model (including, without limitation, the Program Fee) at the place at and in the currency in which it is expressed to be payable;
- b) Distributor is in substantial breach of any part of this Agreement, including without limitation, the reasons set out in Part 1 - Article 9 no. 1b) and no. 2 (Termination for good cause);
- c) delivery is inappropriate or impossible due to technical problems not in SAP Group's responsibility (for example, unresolved defect notices, product liability risks, software production problems, provided these events are not attributable to the SAP Group);
- d) Distributor, Open Ecosystem Partner or End User or both cannot be relied upon to observe SAP's rights or the rights of any other member of the SAP Group in any or all SAP Products;
- e) export restrictions as set out in Part 1 - Article 13 (Export Regulations);
- f) SAP determines that the laws or policies or both of any country are or become insufficient to protect any Intellectual Property Rights in any SAP Product; or
- g) any other reason for suspension similar to those listed in subsection a) to f) above.

3. SAP must inform Distributor without undue delay if SAP suspends the delivery of any or all SAP Products or applicable license key or both due to the reasons set out in this Article 5 (SAP's obligation to deliver) no. 2.

4. SAP's right to suspend the delivery does not mean that any part of this Agreement is terminated. If in case of this Article 5 (SAP's obligation to deliver) no. 1c) and f) suspension of delivery continues for a period of more than three consecutive months, either Party may terminate any order concerning the affected SAP Product with one month's prior written notice to the other Party.

### **Article 6 Prices and Fees**

1. Price/Fee. The prices or fees for the Software and Cloud Services depend on the applicable SAP Distribution Model and are set forth therein.

2. Maintenance Fee. The fee for Maintenance Services depends on the applicable SAP Distribution Model and is, if applicable, set forth therein.

3. Program Fee. If applicable, Distributor agrees to pay to SAP the annual program fee(s) as set out in the Distributor Program Guide and the RSPi ("**Program Fee**"). With regard to the first invoice, the Program Fee will be calculated by SAP from the Effective Date of the relevant SAP Distribution Schedule to 31 December of the respective calendar year. Subsequent Program Fees will be calculated from 1st January to 31 December and must be paid by the Distributor annually in advance.

4. Net Prices. The prices of the Price List are net prices. Fees and other charges described in any part of this Agreement do not include federal, state or local sales, IGTV, GST, foreign withholding, use, property, excise, service, or similar taxes now or hereafter levied, all of which are for Distributor's account.

#### **Article 7 Invoices and Payment**

1. SAP is not obliged to issue an individual invoice for each individual order by Distributor but is entitled to issue collective invoices.
2. Distributor has to pay to SAP any fee as well as any other amount due to SAP under any part of this Agreement within the Payment Period as set out in Part 2 – Article 6 (Payment Period). All amounts due to SAP under any part of this Agreement have to be paid in the currency indicated in Part 2 - Article 7 (Currency).
3. Payment will be considered to have been made when the payment is received by SAP in the bank account designated by SAP for such payments.
4. Distributor may offset claims only if they are uncontested or finally and bindingly awarded by a court of law.
5. If Distributor fails to pay any fee or any other amount payable by it on its due date, interest will accrue at the Default Interest Rate set out in Part 2 - Article 8 (Default Interest Rate). However, the assertion of further damages is not excluded.
6. If Distributor fails to pay any fee or other amount payable by it on its due date, SAP may at its sole discretion:
  - a) suspend Distributor's rights to market, provide, position and distribute any or all SAP Products until such time as any outstanding amount has been received by SAP;
  - b) suspend Distributor's right to use the SAP Logo;
  - c) require full payment from Distributor for any amount due by Distributor to SAP; and
  - d) avail itself of any other rights or remedies existing under any part of this Agreement, in law or in equity.
7. Distributor acknowledges and agrees that all fees to be collected by it are for its own account. For avoidance of doubt, any fees due to SAP under any part of this Agreement are not contingent upon payments from third parties (including, without limitation, End Users).
8. SAP may require Distributor to settle any invoice in full prior to SAP's delivery under the respective order if:
  - a) Distributor is at that time in arrears with a substantial amount payable to SAP;
  - b) in the preceding twelve months, Distributor failed - several times or for a substantial amount - to settle invoices in full when due and owing;
  - c) there is no prior business relationship with Distributor;
  - d) Delivery is to be made outside of Territory; or
  - e) Distributor's registered office is outside of the Territory.
9. SAP may require all distributors in a country (including Distributor) to settle any invoice in full prior to SAP's delivery of an SAP Product if this is - in SAP's reasonable discretion - needed to safeguard SAP's justified financial interests.

#### **Article 8 Audit**

1. In the event SAP has justified reasons to believe that a breach of any part of this Agreement has occurred or will most likely occur, SAP has the right to perform an audit of such activities and records of (i) Distributor and/or (ii) any member of the Distributor Group involved in the performance of obligations under any part of this Agreement.
2. The audit will be conducted by an independent expert appointed by SAP. By choosing the expert, SAP will take into account Distributor's legitimate business interests. SAP will bear the costs of the audit unless the expert establishes a breach by the Distributor in which case Distributor has to bear the costs.
3. SAP will provide one week's advance notice of an audit unless SAP has reasons to believe that Distributor will use the time to eliminate proof for a breach.
4. The audit will take place during normal business hours and SAP will instruct its auditor to conduct the audit in such a manner that it will not unreasonably interfere with Distributor's business operations.
5. Distributor must make full disclosure to the expert, and ensure that (i) any member of the Distributor Group involved in the performance of obligations under any part of this Agreement and any of (ii) Distributor's Representatives cooperate fully and provide information, grant viewing access to all necessary and useful documents and permit the making of copies of them.
6. The expert will be bound in writing to confidentiality for the benefit of SAP and the Distributor. The expert will undertake not to disclose information to SAP, 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.
7. Distributor's Confidential Information disclosed during the audit will not be used by SAP for any purpose other than to verify and proof if a breach of any part of this Agreement has occurred.
8. Additional audit requirements are, if applicable, set out in the applicable SAP Distribution Model.

#### **Article 9 Termination for good cause**

1. The affected SAP Distribution Model may be terminated by either Party immediately upon written notice to the other Party in the following cases:
  - a) Non-Payment. Distributor does not pay on the due date any amount payable to SAP under or in connection with the applicable SAP Distribution Model (including, without limitation, the Program Fee) at the place at and in the currency in which it is expressed to be payable unless payment is made within thirty days of the due date.
  - b) Breach of other provisions. A Party does not comply with any provision of any part of this Agreement other than those referred to in this Article 9 no. 1a) (Non-Payment), 2a) (Repeated Non-Payment) and 2b) (Breach of material provisions) unless the non-compliance is capable of remedy and is remedied within thirty days of the other Party giving notice.
2. Any or all SAP Distribution Models may be terminated by either Party for good cause immediately upon written notice to the other Party. Such good cause exists in particular, without limitation, in each of the events or circumstances set out below:
  - a) Repeated Non-Payment. Distributor does repeatedly not pay on the due date any amount payable to SAP at the place and in the currency in which it is expressed to be payable.
  - b) Breach of material provisions. A Party does not comply with material provisions of any part of this Agreement. Material provisions are in particular the obligations under Part 1 - Article 2 (Confidentiality), Part 1 - Article 13 (Export Regulations), Part 1 - Article 15 (Compliance) and Part 2 - Article 4 (Reservation of title, rights and interest).

- c) Insolvency. The other Party (i) is unable, is deemed unable or admits its inability to pay its debts as they fall due, (ii) suspends or threatens to suspend making payments on any of its debt or, by reason of actual or anticipated financial difficulties, (iii) commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness or (iv) is over-indebted (value of assets is less than its liabilities taking into account contingent and prospective liabilities) ("**Insolvent**").
- d) Insolvency Proceedings. An application has been filed or any other step is taken for the initiation of insolvency, bankruptcy, composition or similar proceedings against the other Party, any such application has been rejected for lack of assets, any enforcement against the other Party could not be carried out or any execution measures have been initiated against the other Party which have not been set aside within one month (e.g. setting aside of a seizure or an attachment) ("**Insolvency Proceedings**").
- e) Cessation of business. The other Party suspends or ceases to carry on all or a material part of its business.
- f) Change of ownership. In the event of a Change of Control if the business interests of the other Party are materially affected (for example, if a direct competitor of a Party becomes a direct or indirect majority shareholder).

#### **Article 10 Effect of Termination**

1. Model-specific effects of termination are set out in each SAP Distribution Model.
2. If a SAP Distribution Model is terminated, rescinded or ended in any other way:
  - a) Distributor's right to:
    - i. hold itself out as distributor of SAP under or in connection with such SAP Distribution Model;
    - ii. use the SAP trademarks, including, without limitation, the SAP Logos which he was authorized to use as set out in Article 4 (Trademark License) under or in connection with such SAP Distribution Model; and
    - iii. use the Documentation and other marketing programs and other materials and all copies, reproductions, summaries, or extracts thereof or based thereon of any member of the SAP Group distributed under or in connection with such SAP Distribution Model, immediately ends.
  - b) Distributor must within thirty days irretrievably destroy or upon SAP's request deliver to SAP all copies of the:
    - i. Software products distributed under the relevant SAP Distribution Model;
    - ii. SAP Logos and other SAP trademarks which Distributor was authorized to use as set out in Article 4 (Trademark License) under or in connection with such SAP Distribution Model; 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 SAP Group distributed under or in connection with such SAP Distribution Model, that are in the possession of Distributor, any member of the Distributor Group and/or any of Distributor Group's Representatives, except to the extent Distributor 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;
  - c) a duly authorized representative of the Distributor must certify in writing to SAP within thirty days that Distributor has fulfilled its obligations under this Article 10 (Effect of Termination) no. 2b).
3. If a SAP Distribution Model is terminated, rescinded or ended in any other way:
  - a) the Receiving Party's right to use the Confidential Information immediately ends;
  - b) the Receiving Party must within thirty 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. 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
  - c) a duly authorized representative of the Receiving Party must certify in writing to the Disclosing Party within thirty days of Disclosing Party's written request that the Receiving Party has fulfilled its obligations under this Article 10 (Effect of Termination) no. 3b), unless the Receiving Party is permitted under any other SAP Distribution Model that has not been terminated, rescinded or ended in any other way to use the Confidential Information.
4. Termination does not relieve Distributor from its obligation to pay any fees that remain unpaid.

#### **Article 11 Tax**

All Taxes will be borne by the Distributor. If any Tax has to be withheld or deducted from any payment under or in connection with any part of this Agreement, Distributor must increase the payment to SAP to ensure that after the withholding or deduction SAP receives an amount equal to the payment SAP would have received if the Tax had not to be withheld or deducted.

Distributor shall communicate to SAP its VAT or GST identification number(s) attributed by (i) the country where Distributor has established its business, and/or (ii) any other country where Distributor has established a fixed establishment, to which any SAP Product under this Agreement is provided. SAP shall consider the SAP Products under this Agreement to be for Distributor's business use and provided to the location(s) of the Distributor in accordance with the provided VAT or GST identification number(s).

#### **Article 12 Changes to Terms**

1. Notwithstanding anything in this Agreement, SAP reserves the right to change the Price List without prior written notice. Any change to the Price List will become effective on the date indicated in the Price List or if no such date is indicated, upon the earliest of (i) it being published on SAP's partner-dedicated website or (ii) it otherwise being provided by a member of the SAP Group to the Distributor. With regard to any order for a SAP Product, the Price List that was effective on that point in time when Distributor places a completely and correctly filled-out order for the relevant SAP Product with SAP is decisive. Existing quotes provided by SAP to Distributor will be honored for the time that the quote is valid or in case the quote does not contain a validity date for the time during which the quote can reasonably be expected to be accepted.
2. SAP reserves the right to change any or all parts of this Agreement (in particular by replacing parts of it with an updated version), including, without limitation, any SAP Distribution Model, the Distribution GTCS, the Distributor Program Guide, the PartnerEdge Branding Guide, the RSPI and any other guide or agreement concluded under or in connection with any part of this Agreement as may be reasonably required and consistent with SAP's practices.

3. SAP will give Distributor at least:

- a) if Distributor is located in EMEA or APJ, three months; and
- b) if Distributor is located in North America or Latin America, sixty days,

prior notice in writing or in any other documented form of changes to any or all parts of this Agreement as set out in this Article 12 (Changes to Terms) no. 2. Unless otherwise stated in the notice, the notice will become effective:

- a) if Distributor is located in EMEA or APJ, after three months; and
- b) if Distributor is located in North America or Latin America, after sixty days (“Change Period”).

If the justified interests of Distributor are negatively affected by any of these changes, Distributor is entitled to terminate the affected part of this Agreement with effect to the expiration of the applicable Change Period. If Distributor does not terminate within the applicable Change Period, the changes are deemed to be accepted by Distributor.

4. Any change that SAP reasonably believes to be beneficial to Distributor may, at SAP's discretion, become effective upon notice by SAP. Such changes include, but are not limited to, increased discounts, promotions and program enhancements. Should Distributor believe a change not to be beneficial, Distributor must notify SAP in writing within five days of receipt of such notice that Distributor does not agree with SAP's assumption and state the reasons why the change would not be beneficial to Distributor. In such case, this Article 12 (Changes to Terms) no. 3 applies.

5. SAP may elect to discontinue the distribution of any or all components or functionality of any or all of the SAP Products and to cancel any or all orders for the discontinued SAP Product without liability to Distributor. However, SAP will return any fee prepaid by Distributor for the discontinued SAP Product, including, without limitation, prepaid license fees for discontinued Software, Maintenance Services and/or Cloud Services less an appropriate amount covering the period of actual use of the discontinued SAP Product by the End User.

#### **Article 13 Export Regulations**

1. SAP Products and parts of SAP Products (e.g. new versions, releases, updates, upgrades, patches, fixed or correction of a software product) are subject to Export Laws of various countries, including, without limitation, the laws of the United States, the EU, Ireland and Germany. Distributor agrees that it will not submit any SAP Product or parts thereof to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP and that it will not export, re-export or import any SAP Product or parts thereof to countries, persons or entities prohibited by any applicable Export Law. In that context, Distributor is responsible for complying with all applicable Export Laws. Distributor will take all necessary actions and precautions to ensure that any permitted distributor, reseller, end user and other customer complies with the Export Law.

2. If SAP or any other member of the SAP Group wants to deliver and/or grant access to any SAP Product or parts thereof to Distributor, Open Ecosystem Partner or directly to an End User, Distributor will support SAP and any other member of the SAP Group 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. End User certificates, as may be requested by SAP or any other member of the SAP Group. Distributor acknowledges that the delivery of and/or granting of access to any or all SAP Products or parts thereof may be subject to the prior obtaining of export or import authorizations or both from the competent authorities and that this process may (i) considerably delay or prevent the delivery of and/or granting of access to any or all SAP Products or parts thereof; (ii) impact SAP's ability or the ability of any other member of the SAP Group to provide Maintenance Services, Cloud Services Subscription Services, Services or other services and (iii) lead to SAP or any other member of the SAP Group having to limit, suspend or terminate Distributor's, Open Ecosystem Partner's and/or End User's access to Maintenance Services, Cloud Services Subscription Services, Services or other services.

3. If Distributor wants to deliver and/or grant access to any SAP Product or parts thereof directly to an Open Ecosystem Partner or an End User, it is Distributor's sole responsibility to obtain any required authorization, approval or other consent from the competent authorities to comply with any applicable Export Law. SAP assumes no responsibility or liability for Distributor's failure to obtain any such required authorization, approval or other consent. Distributor acknowledges, that in case SAP or any other member of the SAP Group delivers and/or grants access to any SAP Product or parts thereof directly to an Open Ecosystem Partner or an End User, this Article 13 (Export Regulations) no. 2 applies especially, without limitation, regarding the provision of Maintenance Services, Cloud Services, Subscription Services, Services or other services. SAP will, upon Distributor's reasonable request, provide any required information regarding a SAP Product or parts thereof originally provided by SAP or any other member of the SAP Group to Distributor. Distributor acknowledges that SAP or any other member of the SAP Group may not be able to deliver and/or grant access to a SAP Product or parts thereof to the Distributor in case the export, re-export or import of a SAP Product or parts thereof to Open Ecosystem Partner, End User or both is prohibited by any applicable Export Law.

4. Neither SAP nor any other member of the SAP Group assumes any responsibility or liability:

- a) for any delay caused in the delivery and/or granting of access to any or all SAP 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 SAP 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 SAP Products or parts thereof is prevented due to applicable Export Laws; and
- d) if access to Maintenance Services, Cloud Services Subscription Services, Services or other services has to be limited, suspended or terminated due to applicable Export Law.

5. SAP may terminate any or all part of this Agreement with one month's prior written notice if SAP or any relevant member of the SAP Group may not deliver or grant access to the SAP Products to Distributor due to an embargo, trade sanction or other comparable restrictive measure, which is expected to be in place for six months or longer.

#### **Article 14 Data Protection**

1. Both Parties use information technology to store and process data concerning their business relationships. They must observe any applicable data protection laws.

2. Both Parties are responsible for permitting the personal data to be processed and for protecting the rights of the data owner.

3. Distributor must ensure that each Open Ecosystem Partner consents to the processing of its personal data by SAP for the purposes of fulfilling SAP's obligations under this Agreement. Distributor will indemnify SAP from any loss incurred by SAP out of any Open Ecosystem Partner's claim if Distributor fails to obtain such consent from an Open Ecosystem Partner.

#### **Article 15 Compliance Obligations**

1. Distributor shall conduct operations in compliance with applicable laws, rules and regulations in exercising rights and obligations under any part of this Agreement. Laws may include but not be limited to the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and local anticorruption legislation that may apply. Distributor shall comply with SAP's Partner Code of Conduct, or Distributor may comply with its own code of conduct if

comparable standards are established. The Distributor is not listed by any government agency as debarred, suspended, proposed for suspension or debarment or otherwise determined to be ineligible for government procurement programs.

2. In exercising rights and obligations under any part of this Agreement, Distributor and anyone acting on Distributor's behalf shall not 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 the customer or prospect,
- b) Government officials or employees,
- c) Political party officials or candidates,
- d) Officers or employees of any public international organization,
- e) Immediate family member of such persons (or any other person) for the benefit of such persons.

Business entertainment conducted for the fulfillment of any part of this Agreement must be appropriate, transparent, compliant with policies of the guest's company, and absent of any appearance of an attempt to influence business decisions.

3. Distributor shall only have rights to delegate its obligations under this Agreement to subcontractors if expressly permitted under this Agreement. Distributor shall require all subcontractors to agree to terms substantially similar to this Article 15 (Compliance Obligations) in writing. Distributor must obtain SAP's prior written consent before paying any third party a commission, finder's fee, referral fee, success fee, or any similar payment for activities for purposes of securing business on behalf of SAP under any part of this Agreement, except pursuant to Distributor's standard partner programs.

4. Distributor shall not obtain on SAP's behalf or provide to SAP any information which is not legally available in the Territory (as defined in the relevant SAP Distribution Schedule), or which is procurement-sensitive, proprietary, or classified, where there is reason to believe that possession of such information is unauthorized, illegal, or unethical.

#### **Article 16 Transferability and Subcontracting**

1. Neither Party may without the other Party's prior written consent assign, novate, delegate, pledge, subcontract or otherwise transfer any part of this Agreement or any of its rights or obligations under any part of this Agreement to any third party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation, unless expressly otherwise agreed in the relevant SAP Distribution Schedule.

2. Notwithstanding this Article 16 (Transferability and Subcontracting) no. 1:

- a) SAP is free to assign, novate, pledge or otherwise transfer any part of this Agreement (in whole or in part) to any member of the SAP Group and in case of a Change of Control to the new persons or entities having Control over SAP. SAP will notify Distributor of such transfer or intention to transfer without undue delay. Upon such transfer being effective, SAP will no longer be party to the transferred part of the Agreement, but only the SAP entity acting as transferee.
- b) SAP may delegate, subcontract or otherwise transfer any of its rights or obligations under any part of this Agreement (in whole or in part) to any member of the SAP Group without notifying the Distributor of such transfer. SAP and any member of the SAP Group may use third parties as sub-contractors for fulfilling any of their rights or obligations under any part of this Agreement. SAP will continue to be liable for such obligations.

#### **Article 17 Miscellaneous**

1. Retention of data. With regard to business transactions covered by any part of this Agreement, Distributor must retain any records for a period of ten years starting on 1st of January of the year following the year during which the data were transmitted or otherwise transferred, or for the minimum period prescribed by applicable law, whichever is longer. In addition, Distributor must maintain during the term of any part of this Agreement and for three years thereafter current, complete and accurate reports on the number and location of all copies of the SAP Products it has distributed as well as on all of SAP's Confidential Information in its possession or in the possession of its Representatives.

2. Force Majeure. If the performance of any part of this Agreement or any obligation under it (other than for the payment of amounts due hereunder) is prevented, restricted or interfered with by reason of any act of God, act of government, strike or labour dispute, failure of transportation, fire or flood or other casualty, internet or telecommunications failure, or failure of subcontractors or suppliers arising from a like cause or from any other cause beyond the reasonable control of the affected Party, the affected Party will be excused from such performance for so long as and to the extent that such force prevents, restricts or interferes with that Party's performance provided the affected Party:

- a) provides prompt written notice of such interference, the nature of such interference and the expected duration of such interference to the other Party; and
- b) resumes performing its obligations hereunder promptly following the removal of such interfering condition.

The existence of any of the conditions described as Force Majeure above, does not mean that any part of this Agreement is terminated. If any of these conditions continues for a period of more than three consecutive months, either Party may terminate any order concerning the affected SAP Product with one month's prior written notice to the other Party.

3. Remedies and Waiver.

- a) No waiver will be valid against any Party hereto, unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.
- b) The waiver by either Party of a breach of, non-compliance with or default in any of the provisions of this Agreement by the other Party may not be construed as a waiver of any succeeding breach, non-compliance or default of the same or other provisions; nor will any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder be operated as a waiver thereof; nor will any single or partial exercise of any right, power or privilege prevent any further or other exercise thereof or the exercise of any other right, power or privilege.
- c) Where this Agreement expressly states that particular acts or omissions of SAP or Distributor pursuant to a particular term or condition of this Agreement are a "material breach," that designation is for purposes of specificity and clarity. Such designation is not a waiver by SAP or Distributor to claim that other acts or omissions under other terms or conditions of this Agreement are material breaches.

4. Partial Invalidity. If any provision of this Agreement is or becomes wholly or in part illegal, invalid or unenforceable, the illegality, invalidity or unenforceability of such provision will not affect the other provisions of this Agreement, which will remain in full force and effect. The illegal, invalid or unenforceable provision will be replaced by a valid and enforceable provision which approximates as closely as possible the intent of the invalid or unenforceable provision. This will also apply in cases of contractual gaps.

5. Entire Agreement. This Agreement constitutes the complete and exclusive understanding of the Parties with respect to the subject matter hereof, and supersedes all prior sales proposals, negotiations, agreements and other representations, discussions or communications, whether oral or written, including but not limited to, any letters of understanding the Parties may have executed in contemplation of this Agreement. Each Party



acknowledges that it is entering into the Agreement as a result of its own independent investigation and not as a result of any representation of the other Party not contained herein.

6. **Costs and Expenses.** Each Party will bear its own costs, charges, fees and expenses (including fees for legal or other advisers).

7. **Counterparts.** The Master Distribution Agreement, any SAP Distribution Schedule 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 Distribution Agreement, any SAP Distribution Schedule 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 SAP. Signatures sent by fax, pdf, email or other electronic means for which a process has been provided by SAP will be deemed original signatures.

8. **Effective Date.** If a Party signs a part of this Agreement but fails to date its signature, the date that the other Party receives the signing Party's signature will be deemed to be the date on that the signing Party signed that part of the Agreement.

9. **Amendments.** Any modification, amendment or supplement to this Agreement (including this Article 17 (Miscellaneous) no. 9 must be made in writing or in any other documented form for which a process has been provided by SAP.

10. **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.**

11. **Priority of Agreements.** The following descending order of precedence will apply, in the event of any conflict or inconsistency between parts of the Agreement: (a) the applicable SAP Distribution Schedule; (b) the applicable SAP Distribution Model; (c) the Master Distribution Agreement; (d) the Distribution GTCS; (e) the Distributor Program Guide; (f) the PartnerEdge Branding Guide; and (g) the RSPI.

12. **Partner Terms.** Any purchase order, shrink- or click-wrap or other document issued by Distributor is for administrative convenience only. In the event of any conflict between the provisions of this Agreement and any pre-printed terms contained in any purchase order, shrink- or click-wrap or other document issued by the Distributor, the provisions of this Agreement prevail and govern and any new additional, conflicting or inconsistent terms and conditions in the purchase order, shrink- or click-wrap or other document will be inapplicable.

13. **Survival.** Part 1 - Article 2 (Confidentiality), Part 1 - Article 8 (Audit), Part 1 - Article 10 (Effects of Termination), Part 1 - Article 17 no. 1 (Retention of data), Part 1 – Article 17 no. 4 (Partial Invalidity), Part 1 - Article 17 no. 10 (Waiver of Jury Trial), Part 2 - Article 1 (Limitation of Liability), Part 2 - Article 2 (Third Party Claims), Part 2 - Article 3 (Performance Warranty), Part 2 - Article 4 (Reservation of title, rights and interest), Part 2 - Article 12 (Governing Law and Jurisdiction) of will survive any termination of any part of this Agreement.

## **PART 2 – Country specific Terms and Conditions**

### **Article 1 Limitation of Liability**

1. **Not Responsible.** SAP and its licensors will not be responsible under any part of this Agreement (i) if a SAP Product is not used in accordance with the Documentation or (ii) if the defect or liability is caused by Distributor, Open Ecosystem Partner and/or End User, a Modification or Add-on (other than a Modification or Add-on made by a member of the SAP Group which is provided through Maintenance Services or under warranty) or third-party software. SAP AND ITS LICENSORS WILL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM INHERENTLY DANGEROUS USE OF ANY OF THE SAP PRODUCTS DISTRIBUTED, POSITIONED OR PROVIDED UNDER OR IN CONNECTION WITH ANY PART OF THIS AGREEMENT.

2. **Exclusion of Damages; Limitation of Liability.** ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR:

a) **DAMAGES RESULTING FROM (i) UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION; (ii) WILLFUL MISCONDUCT; AND (iii) DEATH OR PERSONAL INJURY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR ARISING FROM EITHER PARTY'S WILLFUL MISCONDUCT; OR**

b) **SAP'S RIGHT TO COLLECT FEES OWNED UNDER OR IN CONNECTION WITH ANY PART OF THIS AGREEMENT,**

**UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM WILL SAP, ITS LICENSORS OR DISTRIBUTOR BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT IN EXCESS OF:**

i. **IN CASE OF THE DISTRIBUTION OF SOFTWARE, THE LICENSE FEES PAID UNDER THE RELEVANT SAP DISTRIBUTION MODEL BY DISTRIBUTOR TO SAP FOR THE SOFTWARE DIRECTLY CAUSING THE DAMAGES; OR**

ii. **IN CASE OF THE DISTRIBUTION OF CLOUD SERVICES OR MAINTENANCE SERVICES, THE LICENSE FEES PAID UNDER THE RELEVANT SAP DISTRIBUTION MODEL BY DISTRIBUTOR TO SAP IN THE TWELVE MONTHS PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM FOR THE CLOUD SERVICES OR MAINTENANCE SERVICES DIRECTLY CAUSING THE DAMAGES,**

**OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ATTORNEYS' FEES, COURT COSTS, INTEREST OR EXEMPLARY OR PUNITIVE DAMAGES.**

**THE ABOVE MENTIONED LIMITATIONS OF LIABILITY WILL NOT APPLY REGARDING DISTRIBUTOR'S LIABILITY TOWARDS SAP OR ITS LICENSORS IF DISTRIBUTOR IS FOUND TO HAVE (i) MADE UNAUTHORIZED COPIES OF A SAP PRODUCT, (ii) MISAPPROPRIATED A SAP PRODUCT, OR (iii) DISTRIBUTED, POSITIONED OR PROVIDED A SAP PRODUCT TO A THIRD PARTY IN VIOLATION OF ANY PART OF THIS AGREEMENT.**

The provisions of this Agreement allocate the risks between SAP and Distributor. The license fees paid by Distributor reflect this allocation of risk and the limitations of liability herein. It is expressly understood and agreed that each and every provision of this Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the Parties to be severable and independent of any other provision and to be enforced as such.

3. **Exclusions and Limitations for Third Party Software.** SUBJECT TO THE EXCLUSION OF DAMAGES STATED IN Article 1 (LIMITATION OF LIABILITY) NO. 2 AND WITH RESPECT TO THIRD PARTY SOFTWARE, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM WILL SAP OR ITS LICENSORS BE LIABLE FOR AN AMOUNT IN EXCESS OF THE LICENSE FEES PAID UNDER THE RELEVANT SAP DISTRIBUTION MODEL BY DISTRIBUTOR TO SAP FOR THE THIRD PARTY SOFTWARE DIRECTLY CAUSING THE DAMAGES.

4. **Time bar.** Distributor 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 when Distributor knew, or should have known after reasonable investigations, of the facts given rise to the claim(s).

5. **Extension to group members.** Any limitations to the liability and obligations of SAP according to this Article 1 (Limitation of Liability) will also apply for the benefit of any member of the SAP Group and their respective licensors.

## Article 2 Third Party Claims

### 1. Infringement and Defense of Distributor

- a) SAP will, at its sole discretion, either defend Distributor against or settle any claim brought against Distributor in the Territory if such claim (i) is brought by any owner of the Intellectual Property Right specified below giving rise to the claim and (ii) alleges that the distribution of the Software, Cloud Services or both by the Distributor, in accordance with the terms and conditions of any part of this Agreement, constitutes a direct infringement or misappropriation of such owner's patent claim(s), copyright, trademark or trade secret right. SAP will pay damages finally awarded against Distributor (or the amount of any settlement SAP enters into) with respect to such claims.
- b) This obligation of SAP does not apply if the alleged infringement or misappropriation results from:
  - i. Use or distribution of the Software or Cloud Services in conjunction with any software or service other than the SAP Products;
  - ii. Use or distribution of the Software in conjunction with an apparatus other than a Designated Unit (defined as information technology devices (e.g. hard disks or central processing units) identified by Distributor pursuant to any part of this Agreement in the order for the Software placed for a specific End User that has been previously approved by SAP or otherwise officially made known to the public as appropriate for Use or interoperation with the Software);
  - iii. failure to promptly use an update provided by a member of the SAP Group if such infringement or misappropriation could have been avoided by use of the update; and/or
  - iv. unlicensed activities by Distributor, Open Ecosystem Partner, End User and/or a third party, including alterations of the Software, Cloud Services or both (other than alterations of the Software, Cloud Services or both made by a member of the SAP Group).
- c) This obligation of SAP will also not apply if Distributor fails to timely notify SAP in writing of any such claim; however Distributor's failure to provide or delay in providing such notice shall not relieve SAP of its obligations under this Article 2 (Third Party Claims) except to the extent SAP is prejudiced by Distributor's failure to provide or delay in providing such notice.
- d) SAP is permitted to control fully the defense and any settlement of any such claim as long as such settlement does not include a financial obligation on or admission of liability by the Distributor. In the event Distributor declines SAP's proffered defense or otherwise fails to give full control of the defense to SAP's designated counsel, then Distributor waives SAP's obligations under this Article 2 (Third Party Claims) no. 1. Distributor must reasonably cooperate in the defense of such claim and provide SAP with all relevant information and reasonable support. Distributor may appear in any proceedings concerning such claim or legal dispute, at its own expense, through counsel reasonably acceptable to SAP. SAP expressly reserves the right to cease such defense of any claim(s) in the event the relevant Software, Cloud Services or both is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. SAP may settle or mitigate damages from any claim or potential claim by (i) procuring for the Partner the right to continue distributing the Software, Cloud Services or both; or (ii) substituting alternative substantially equivalent non-infringing programs, services and supporting documentation for the Software, Cloud Services or both. Distributor must not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software, Cloud Services or both that is prejudicial to SAP's rights.
- e) The liability limitations contained in Article 1 (Limitation of Liability) apply to all claims made under this Article 2 (Third Party Claims) no. 1. Any limitations to the liability and obligations of SAP according to this Article 2 (Third Party Claims) no.1 will also apply for the benefit of any member of the SAP Group and their respective licensors.
- f) THE PROVISIONS OF THIS Article 2 (THIRD PARTY CLAIMS) NO. 1 STATE THE SOLE, EXCLUSIVE AND ENTIRE LIABILITY AND OBLIGATION OF SAP AND ITS LICENSORS TO DISTRIBUTOR, AND IS DISTRIBUTOR'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

### 2. Indemnification by Distributor. If an action is brought against any member of the SAP Group by a third party (including tax or other authorities) arising from or relating to:

- a) any Taxes that are levied against any member of the SAP Group even though they should, according to any part of this Agreement or applicable law, have been born by the Distributor in the first place;
- b) any member of the Distributor Group breaching Part 1 - Article 13 (Export Regulations) or Part 1 - Article 15 (Compliance Obligations) or both;
- c) any agreement between Distributor and its Open Ecosystem Partners, distributors, resellers or End Users;
- d) any claim that a product or service which is provided by any member of the Distributor Group other than the SAP Products infringes, misappropriates or violates any Intellectual Property Right of any third party;
- e) an allegation that the Distributor's, Open Ecosystem Partner's or End User's use of the SAP Products in violation of any part of this Agreement violates, infringes or misappropriates the rights of a third party; and
- f) a third party's assertion that the Distributor acted as agent, representative or otherwise on SAP's behalf,

Distributor will defend the affected member of the SAP Group, at Distributor's expense, and will pay any settlement amounts Distributor authorizes and all damages, costs and fees (including, without limitation, attorneys' fees and costs of litigation) finally awarded against such member of the SAP Group in the action.

## Article 3 Performance Warranty

### 1. In case of an Sell On Premise Distribution Model and any other SAP Distribution Model concerning the sale or distribution of Software that is not expressly mentioned in this Part 2 - Article 3 (Performance Warranty) the following warranty applies:

- a) SAP warrants that the Software will substantially conform to the specifications contained in the Documentation for six months following Delivery of the Software. The warranty does not apply: (i) if the Software is not used in accordance with the Documentation; (ii) if the nonconformance is caused by a Modification or Add-on (other than a Modification or Add-on made by a member of the SAP Group which is provided through Maintenance Services or under warranty), Distributor, Open Ecosystem Partner, End User, another third party, third-party software, third party database or any other software not distributed by SAP; or (iii) to any unlicensed activity of Distributor, Open Ecosystem Partner and/or End User. SAP does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance or that the applications contained in the Software are designed to meet all of Distributor's, Open Ecosystem Partner's and/or End User's business requirements.
- b) Provided Distributor notifies SAP in writing with a specific description of the Software's nonconformance within the warranty period and SAP validates the existence of such nonconformance, SAP will, at its option: (i) repair or replace the nonconforming Software, or (ii) refund the license fees paid for the applicable nonconforming Software in the two latter cases (replacement and refund) in exchange for a return of such nonconforming Software. This is Distributor's sole and exclusive remedy under this warranty. Distributor's written notification of any nonconformance must include sufficient detail for SAP to analyse the alleged nonconformance. Distributor must provide and ensure that End User also provides commercially reasonable assistance to SAP in analysing and remediating any nonconformance of the Software.

c) SAP may fulfill its warranty obligations directly vis-à-vis Distributor's affected End Users. In such case and to the extent that SAP fulfills its warranty obligations directly vis-à-vis Distributor's affected End Users, Distributor will not have any claim against SAP out of this Part 2 – Article 3 (Performance Warranty). If SAP refunds the license fees paid by Distributor to SAP or the license fees paid by End User to Distributor for the nonconforming Software directly to the End User, Distributor will have not claim against SAP regarding the refund of the license fees paid by it to SAP but in the latter case (refund of license fees paid by End User to Distributor) will have to repay to SAP the difference between the license fee paid by End User to Distributor to the license fee paid by Distributor to SAP (Distributor's margin).

d) Express Disclaimer. SAP AND ITS LICENSORS DISCLAIM ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES WITH RESPECT TO ANY SAP PRODUCT EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

2. In case of an Sell Cloud Distribution Model the following warranty applies:

SAP AND ITS LICENSORS DISCLAIM ALL REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES WITH RESPECT TO THE CLOUD SERVICES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

#### **Article 4 Reservation of title, rights and interest**

1. The SAP Products and SAP's Confidential Information and all title, rights and interest, especially, without limitation, any Intellectual Property Rights embodied in the SAP Products and SAP's Confidential Information are the sole and exclusive property of the SAP Group or their licensors, subject to any rights, title or interest expressly granted to Distributor in the applicable SAP Distribution Model. Unless Distributor is working under a valid SAP development license, Distributor is not permitted to modify or otherwise make derivative works of any SAP Product. Any such unauthorized works developed by Distributor, and any Intellectual Property Rights embodied therein, will be the sole and exclusive property of SAP or any other member of the SAP Group as requested by SAP.

2. Distributor is not entitled to copy, translate, disassemble, decompile, reproduce or reverse engineer any SAP Product nor create or attempt to create the source code from the object code of a SAP Product in any manner or take any other measure for the purposes of obtaining the source code of a SAP Product,

3. Distributor must not change or remove SAP's copyright and authorship notices attached to or relating to any SAP Product.

4. SAP retains:

a) any title, rights and/or interest expressly granted to Distributor in the applicable SAP Distribution Model; and

b) title in any disc or other data media on which a SAP Product is delivered to Distributor under or in connection with the applicable SAP Distribution Model,

(a) and b) together the "**Reserved Assets**")

until all of SAP's claims against Distributor in connection with the concerned business relationship with an Open Ecosystem Partner and End User under or in connection with the applicable SAP Distribution Model ("**Secured Claims**") are fully and finally satisfied and discharged.

5. As long as Distributor is not in breach of his contractual obligations under any part of this Agreement affecting the applicable SAP Distribution Model especially as long as Distributor's payment of any or all of the Secured Claims is not delayed, Distributor is entitled to pass on or ask SAP to pass on the Reserved Assets in the proper and ordinary course of business.

6. The creation of pledges, liens or other security interest over as well as the assignment as security of the Reserved Assets is not permitted.

7. Distributor undertakes to inform SAP immediately of any attachment of the Reserved Assets by any third party and will forward to SAP any documents (including, without limitation any attachment order) useful or necessary for a defense against the attachment. Distributor will immediately inform such attaching creditor about SAP's title, right or interest in the Reserved Assets.

8. Distributor hereby assigns to SAP any existing as well as any future, contractual as well as non-contractual claim against any Open Ecosystem Partner or any other third party that arises or will arise in connection with the distribution of the Reserved Assets ("**Assigned Claims**") and SAP accepts such assignment. Distributor will be entitled to collect the Assigned Claims and to exercise any ancillary rights and claims in connection with these in the ordinary course of business (but will by doing so act with the care of a prudent merchant). Such entitlement to collect the Assigned Claims and to exercise ancillary rights and claims in connection with these is immediately terminated if SAP gives notice to the contrary which SAP is entitled to do if Distributor is in breach of his contractual obligations under any part of this Agreement affecting the applicable SAP Distribution Model, in particular if Distributor's payment of any or all of the Secured Claims is delayed.

9. If Distributor is in breach of his contractual obligations under any part of this Agreement affecting the applicable SAP Distribution Model, in particular if Distributor's payment of any or all of the Secured Claims is delayed, SAP is entitled at Distributor's expense to rescind from any order for SAP Products concerning the affected SAP Distribution Model and to demand return of any or all of the Reserved Assets granted or delivered under or in connection with the affected SAP Distribution Model.

10. SAP will notify the Distributor of its intention to rescind from any order for SAP Products and to demand return of any or all of the Reserved Assets by giving one week's prior written notice. Such notice period is not necessary, if (i) Distributor has generally ceased to make payments, (ii) Distributor is Insolvent or is subject to Insolvency Proceedings or (iii) there is reason to believe that observance of such notice period would adversely affect the retention of title, right or interest constituted with regard any or all the Reserved Assets.

#### **Article 5 Insurance**

1. While performing any work or providing products or services related to any part of this Agreement, Distributor must maintain, at its own expense, for Distributor and its personnel, insurance coverage in accordance with any applicable statutory requirements. In addition, Distributor must maintain the following insurance with financially stable insurance companies permitted to do business in the jurisdictions where the work, products or services will be provided:

a) commercial general liability with a limit of \$1,000,000 per occurrence and \$2,000,000 in general aggregate including, but not limited to, coverage for bodily injury, property damage, products and completed operations, premises/operations, and contractual liabilities; and

b) professional liability (errors & omissions) with a limit of \$1,000,000\* per claim and in the aggregate covering claims arising out of errors or omissions in connection with products or services provided by Distributor. The policy shall have a retroactive date on or before the Effective Date of the Master Distribution Agreement or the date of Distributor's first delivery of products or professional service, whichever is earlier. Distributor shall use commercially reasonable efforts to maintain such coverage for at least two years following final delivery of products or services.

\*In the event that Distributor's gross annual revenues associated with the SAP partnership exceed \$1,000,000 (or equivalent in foreign currency), Distributor is required to increase its policy limits in the following way:

Revenue	Professional Liability Policy Limit
\$1,000,001 - \$5,000,000	\$3,000,000 per claim
\$5,000,001 - \$10,000,000	\$6,000,000 per claim
\$10,000,001 and above	\$10,000,000 per claim

2. Upon request, Distributor must provide SAP with a properly executed certificate of insurance evidencing existence of required coverages and will notify SAP no less than thirty days in advance, of any reduction or cancellation. SAP's failure to monitor compliance or to object to noncompliance or unsatisfactory compliance with any terms of the aforementioned requirements does not modify or waive Distributor's obligations in any way. Policies specified above may be maintained with limits listed in other foreign currencies, as long as they are equivalent to the amounts required herein. SAP reserves the right to review the insurance requirements at any point in time and make changes in order to address additional exposures, which may exist as a result of Distributor's provision of products or services related to any part of this Agreement.

3. None of the requirements contained herein as to types or limits are intended to, and shall not in any manner, limit, qualify or quantify the liabilities and obligations assumed by Distributor under any part of this Agreement.

**Article 6 Payment Period**

Payment period means thirty days of SAP's invoice date ("**Payment Period**"), unless expressly otherwise agreed on between Distributor and SAP in an order form or other order document.

**Article 7 Currency**

All payments under this Agreement must be made in US dollars, unless expressly otherwise agreed on between Distributor and SAP in an order form or other order document.

**Article 8 Interest Rate**

The default rate of interest per year is the maximum interest rate permitted by law ("**Default Interest Rate**").

**Article 9 Index**

Not applicable.

**Article 10 Intentionally Left Blank**

**Article 11 Notices**

1. Notice in writing. Any notice or other communication under or in connection with any part of this Agreement must be made in writing and, unless otherwise explicitly stated, may be made by fax or letter and must be addressed as set out in Article 5 (Contact Details) of the Master Distribution Agreement (or to such other changed address, fax number or addressee as a Party may designate e.g. by changing the details in the partner relationship management system).

2. Delivery. Any notice or other communication made or delivered by one Party to another under or in connection with any part of this Agreement will only be effective when received in legible form.

3. Change of address: Each Party must give the other prompt notice of any change of address, fax number or addressee.

4. Electronic communication. Any notice or other communication under or in connection with any part of this Agreement except for those notices and communications expressly mentioned in this Part 2 - Article 11 (Notices) no. 5 below may be made by email or other electronic means if and as long as the Parties:

- a) agree that this is to be an accepted form of communication;
- b) notify each other of their email address and/or any other information required to enable the sending and receipt of information by that means; and

c) notify each other promptly of any change to their email address or any other required information supplied by them.

5. Exceptions to electronic communication. The following notices or communications may not be made by email or other electronic means:

- a) any notice concerning termination of an order given due to (i) suspension of delivery as set out in Part 1 - Article 5 (SAP's obligation to deliver) no. 4 or (ii) Force Majeure as set out in Part 1 - Article 17 (Miscellaneous) no. 2;
- b) any notice under or in connection with Part 1 - Article 9 (Termination for good cause) and any other notice of termination for convenience or termination for good cause under or in connection with any part of this Agreement;
- c) any confirmation given regarding destruction of the SAP Products, other data and media, the SAP Logos as well as any other confirmation under or in connection with Part 1 - Article 10 (Effect of Termination);
- d) any notice by which Distributor notifies SAP of a claim brought against Distributor as set out in Part 2 - Article 2 (Third Party Claims) no. 1c); and
- e) any notice concerning the nonconformance of the Software as set out in with Part 2 - Article 3 (Performance Warranty) no. 1b).

6. Use of websites. Except with regard to those notices and communications expressly mentioned in Part 2 - Article 11 (Notices) no. 5 above, SAP may satisfy its obligation under any part of this Agreement to deliver any information to the Distributor who herewith accepts this method of communication by posting this information onto an electronic partner-dedicated website (e.g. the SAP PartnerEdge Portal). SAP will supply Distributor with the address of and any relevant password for the partner-dedicated website.

7. Language. Any notice given in connection with the Agreement must be in Spanish or English.

**Article 12 Governing Law and Jurisdiction**

1. This Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement and its subject matter are governed by the laws of the Republic of Peru to the exclusion of the international law of conflicts and the United Nations Convention on Contracts for the International Sale of Goods.

2. The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement (including any dispute regarding the existence, validity or termination of this Agreement) ("**Dispute**") is the jurisdiction of the judges and courts of Lima - Cercado. The Parties agree that the jurisdiction of the judges and courts of Lima - Cercado are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.