

**END USER LICENSE AGREEMENT (FOR SAP ON PREMISE INDIRECT SALES)**  
**(“EULA”)**

**1. DEFINITIONS**

- 1.1. **“Add-on”** means any development that adds new and independent functionality, but does not modify existing SAP functionality, and is developed using SAP application programming interfaces or other SAP code that allows other software products to communicate with or call on SAP Software.
- 1.2. **“Affiliate”** means any legal entity in which SAP SE or Customer, directly or indirectly, holds more than 50% of the entity's share or voting rights. Any legal entity will be considered an Affiliate for only such time as that interest is maintained.
- 1.3. **“Agreement”** means the agreement as defined in the applicable EULA Acceptance Form.
- 1.4. **“Business Partner”** means a legal entity that requires access to the Software in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers or suppliers of Customer and its Affiliates.
- 1.5. **“Confidential Information”** means all information which the disclosing party protects against unrestricted disclosure to others that the disclosing party or its Representatives designates as confidential, internal or proprietary at the time of disclosure or should reasonably be understood to be confidential at the time of disclosure given the nature of the information and the circumstances surrounding its disclosure; including, without limitation, information from, about or concerning any third party that is disclosed under this Agreement.
- In addition, Confidential Information means, with respect to Customer, Customer's marketing and business plans and/or financial information, and with respect to SAP:
- (a) the Software, Documentation and other SAP Materials, including without limitation the following information regarding the Software:
- i. computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software;
  - ii. benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and
  - iii. discoveries, inventions, concepts, designs, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software;
- (b) the research and development or investigations of SAP; and
- (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies.
- 1.6. **“Customer”** means the end user who is further identified in the EULA Acceptance Form as “Customer” or “End User”.
- 1.7. **“Designated Unit”** means information technology devices (e.g. hard disks or central processing units) identified by Customer or Partner pursuant to or in connection with the Agreement that have been previously approved by SAP or otherwise officially made known to the public as appropriate for Use or interoperation with the Software.
- 1.8. **“Documentation”** means SAP's then-current technical and functional documentation, relating to the licensed Software located at <https://help.sap.com> or which is made available by SAP either indirectly via Partner or directly to Customer as part of the Software.
- 1.9. **“EULA Acceptance Form”** means the “Acceptance Form for End User License Agreement (for SAP On Premise indirect sales)” concluded between SAP and Customer that references the EULA.
- 1.10. **“EUMA”** means the “SAP Delivered Support Agreement (for SAP On Premise indirect sales)” which sets out the terms and conditions under which SAP provides support to customers.
- 1.11. **“Export Laws”** means all applicable import, export control and sanctions laws, including without limitation, the laws of the United States, the EU, and Germany.

- 1.12. **"Feedback"** means input, comments or suggestions regarding SAP's business and technology direction or the possible creation, modification, correction, improvement or enhancement of the Software or SAP Delivered Support.
- 1.13. **"Intellectual Property Rights"** means patents of any type, design rights, utility models or other similar invention rights, copyrights and related rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, whether registered or unregistered, including applications (or rights to apply) 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.
- 1.14. **"Modification"** means:
- (a) a change to the delivered source code or metadata;
  - (b) any development, other than a change to the delivered source code or metadata, that customizes, enhances, or changes existing functionality of the Software including, but not limited to, the creation of any new application program interfaces alternative user interfaces or the extension of SAP data structures; or
  - (c) any other change to the Software (other than an Add-on) utilizing or incorporating any SAP Materials.
- 1.15. **"Partner"** is defined in the EULA Acceptance Form.
- 1.16. **"Representatives"** means a party's Affiliates, employees, contractors, sub-contractors, legal representatives, accountants or other professional advisors.
- 1.17. **"SAP Delivered Support"** means SAP's support offering to directly provide support to customers subject to the terms and conditions set out in the EUMA.
- 1.18. **"SAP Materials"** means any software, programs, tools, systems, data or other materials (including statistical reports) provided, developed or made available directly by SAP or via Partner (independently or with Customer's or Partner's cooperation) in the course of performance under the Agreement. This includes but is not limited to, the Software and Documentation delivered to Customer. SAP Materials do not include Customer Confidential Information.
- 1.19. **"SAP SE"** means SAP SE, the parent company of SAP.
- 1.20. **"Software"** means:
- (a) any and all software products licensed and delivered to Customer under the EULA Acceptance Form;
  - (b) any new releases, updates or versions thereof, made available under the Agreement; and
  - (c) any complete or partial copies of any of the foregoing.
- 1.21. **"Third Party Software"** means:
- (a) any and all software products licensed and delivered to Customer under the Agreement identified as a third party product in the EULA Acceptance Form;
  - (b) any new releases, updates or versions thereof, made available; and
  - (c) any complete or partial copies of any of the foregoing.
- 1.22. **"Use"** means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

## **2. USE RIGHTS AND RESTRICTIONS**

### **2.1. Grant of Rights**

- 2.1.1. SAP grants to Customer a non-exclusive, non-transferable, perpetual (except for subscription based licenses) license to Use the Software, and other SAP Materials at specified site(s) solely for Customer's and its Affiliates' internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations, unless terminated in accordance with the terms of the Agreement. Customer may Use the Software and other SAP Materials world-wide, except from countries where such use is prohibited by Export laws.

- 2.1.2. Customer may permit Business Partners to Use Software through screen access only, solely in conjunction with Customer's Use, and may not Use Software to run any of Business Partners' business operations. Customer is responsible for breaches of the Agreement caused by Business Partners.
- 2.1.3. Customer shall not:
- (a) use SAP Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training) other than to Affiliates (subject to Section 2.2);
  - (b) lease, loan, resell, sublicense or otherwise distribute the SAP Materials, other than distribution to Affiliates (subject to Section 2.2);
  - (c) distribute or publish keycode(s);
  - (d) make any Use of or perform any acts with respect to the SAP Materials other than as expressly permitted in accordance with the terms of the Agreement;
  - (e) use Software components other than those specifically identified in the EULA Acceptance Form, even if it is also technically possible for Customer to access such components.
- 2.1.4. Customer agrees to install the Software only on Designated Units located at Customer's facilities and in Customer's direct possession. With advance written notice to SAP, the information technology devices may also be located in the facilities of an Affiliate and be in the Affiliate's direct possession. Customer must be appropriately licensed as stated in the Use Terms for any individuals that Use the Software, including employees or agents of Affiliates and Business Partners. Use may occur by way of an interface delivered with or as a part of the Software, a Customer or third party interface, or another intermediary system. If Customer receives licensed Software that replaces previously licensed Software, its rights under the Agreement with regard to the previously licensed Software end when it deploys the replacement Software for Use on productive systems following a reasonable testing period. At the date the rights to the previously licensed Software end, Customer shall comply with Section 5.2 of the EULA with respect to such previously licensed Software.

## 2.2. Affiliate Use

- 2.2.1. Affiliates' Use of the Software and other SAP Materials (applicable to the Software) to run their internal business operations as permitted under Section 2.1.1 is subject to the following:
- (a) Customer ensures that the Affiliate agrees in writing to comply with the terms of the Agreement; and
  - (b) a breach of the terms of the Agreement by Affiliate shall be considered a breach by Customer.
- 2.2.2. If Customer has an Affiliate with a separate software license or SAP support agreement with SAP SE, any SAP SE Affiliate (including SAP) or any partner of SAP ("**Separate Agreement**"), the Software must not be Used to run such Affiliate's business operations even if the Separate Agreement has expired or is terminated.

## 2.3. Verification

- 2.3.1. SAP may audit (at least once annually) Customer's usage of the SAP Materials. Audits may be at Customer's site or remote. Customer shall cooperate reasonably with audits. Customer can conduct the measurement itself using the unaltered tools and self-declaration forms provided by SAP for that purpose. The self-declaration form is to be completed independently of technical measurement. The result of the measurement is to be transmitted online via the interfaces from Customer's system(s) to SAP, or in a machine-readable format according to instruction provided by SAP.
- 2.3.2. If an audit reveals that:
- (a) Customer underpaid license fees or SAP support fees; or
  - (b) Customer has Used the Software in excess of the license quantities or levels stated in the EULA Acceptance Form;

then Customer shall pay such underpaid fees or for such excess usage based on the SAP price list in effect at the time of the audit. Customer shall order the Software license quantities or levels used in excess from the Partner or SAP and execute an additional EULA Acceptance Form to affect the required licensing of any additional quantities or levels.

- 2.3.3. If the audit results indicate usage in excess of the licensed quantities or levels, then reasonable costs of SAP's audit shall be paid by Customer, if any. SAP reserves all rights at law and equity with respect to both Customer's underpayment of license fees or SAP support fees and usage in excess of the license quantities or levels. SAP may delegate to Partner or request Partner to perform any of the rights listed under Section 2.3.

### **3. MODIFICATIONS AND ADD-ONS**

#### **3.1. Rules and Requirements for Modifications and Add-ons**

- 3.1.1. Customer may make Modifications and Add-ons to the Software (excluding Third Party Software) and shall be permitted to use Modifications and Add-ons with the Software (excluding Third Party Software) in accordance with Section 2.1 and this Section 3.

- 3.1.2. Customer shall comply with SAP's registration procedure prior to making Modifications or Add-ons. All Modifications and all rights associated therewith shall be the exclusive property of SAP, SAP SE or its or their licensors. All Add-ons developed by SAP (either independently or jointly with Customer) and all rights associated therewith shall be the exclusive property of SAP, SAP SE or its or their licensors. Customer agrees to execute those documents reasonably necessary to secure SAP's rights in the foregoing Modifications and Add-ons. All Add-ons developed by or on behalf of Customer without SAP's participation ("**Customer Add-on**"), and all rights associated therewith, shall be the exclusive property of Customer subject to SAP's rights in and to the Software and other SAP Materials; provided, Customer shall not commercialize, market, distribute, license, sublicense, transfer, assign or otherwise alienate any such Customer Add-ons. SAP retains the right to independently develop its own Modifications or Add-ons to the Software, and Customer agrees not to take any action that would limit SAP's sale, assignment, licensing or use of its own Software or Modifications or Add-ons thereto.

- 3.1.3. Any Modification developed by or on behalf of Customer without SAP's participation or Customer Add-on must not (and subject to other limitations in the EULA):

- (a) enable bypassing or circumventing any of the restrictions set forth in the Agreement or provide Customer with access to the Software to which Customer is not directly licensed;
- (b) nor unreasonably impair, degrade or reduce the performance or security of the Software; or
- (c) nor render or provide any information concerning SAP software license terms, Software, or any other information related to SAP Materials.

#### **3.2. Customer covenant**

Customer covenants, on behalf of itself and its successors and assigns, not to assert against SAP or its Affiliates, or their resellers, distributors, suppliers, commercial partners and customers, any rights in any:

- (a) Customer Add-ons or Modifications; or
- (b) other functionality of the SAP Software accessed by such Customer Add-ons or Modifications.

### **4. DELIVERY**

SAP makes the Software available for download from a network at its own cost and Customer is responsible for the cost of downloading the Software.

### **5. TERM AND TERMINATION**

#### **5.1. Term**

This Agreement and the license granted hereunder become effective on the Effective Date specified in the EULA Acceptance Form and shall remain in effect thereafter unless terminated in accordance with the EULA.

#### **5.2. Termination of the Agreement**

##### **5.2.1. The Agreement may be terminated:**

- (a) 30 days after Customer gives SAP written notice of Customer's direction to terminate this Agreement, for any reason;
- (b) 30 days after SAP gives Customer written notice of Customer's material breach of any provision of the Agreement unless Customer has cured such breach during such 30-day period;

- (c) immediately if Customer files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or a petition for the opening of insolvency proceedings or similar proceedings if filed against the Customer.

5.2.2. SAP may terminate the Agreement immediately if Customer breaches Sections 9, 10, 12.5 or 12.7.

5.2.3. For the avoidance of any doubt, termination of this Agreement shall strictly apply to all Software licensed under the Agreement, its appendices, schedules, addenda and order documents and any partial termination of the Agreement by Customer shall not be permitted in respect of any part of the Agreement, its appendices, schedules, addenda, order documents.

5.3. Effect of Termination

Upon any termination hereunder, Customer and its Affiliates shall immediately cease Use of all SAP Materials and Confidential Information. Within 30 days after any termination, Customer shall irretrievably destroy or upon SAP's request deliver to SAP all copies of the SAP Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Customer must certify to SAP in writing that it has satisfied its obligations under Section 5.3. Customer agrees to certify in writing to SAP that it and each of its Affiliates has performed the foregoing. In the event of any termination hereunder, Customer shall not be entitled to any refund from SAP of any payments made by Customer under the Agreement. Termination shall not relieve Customer from its obligation to pay fees that remain unpaid.

5.4. Survival

Sections 1, 2.3, 5.3, 5.4, 6, 7, 8, 9, 10, 11, and 12 will survive the expiry or termination of the Agreement.

## 6. WARRANTY

6.1. SAP warrants that the Software will substantially conform to the specifications contained in the Documentation for 6 months following delivery of the Software. The warranty shall not apply:

- (a) if the Software is not used in accordance with the Documentation;
- (b) if the defect is caused by a Modification or Add-on (other than a Modification or Add-on made by SAP and which is provided through SAP support or under warranty), Partner, Customer, another third party, third party software, third party database or any other software not distributed by SAP; or
- (c) to any Customer unlicensed activities.

6.2. 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 Customer's business requirements.

6.3. Provided Customer 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:

- (a) repair or replace the nonconforming Software, or
- (b) refund the license fees paid by Customer to Partner for the applicable nonconforming Software to Customer in exchange for a return of such nonconforming Software.

This is Customer's sole and exclusive remedy under this warranty. Customer's written notification of any nonconformance must include sufficient detail for SAP to analyze the alleged nonconformance. Customer must provide commercially reasonable assistance to SAP in analyzing and remediating any nonconformance of the Software.

## 7. THIRD PARTY CLAIMS

7.1. SAP will defend Customer against any claim brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' Use of the Software, infringes or misappropriates a patent claim, copyright or trade secret right. SAP will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement SAP enters into) with respect to these claims.

- 7.2. SAP's obligation under Section 7.1 will not apply if the alleged claim results from:
- (a) use of the Software in conjunction with any other software, services or products not provided by SAP;
  - (b) use of the Software with an apparatus other than a Designated Unit;
  - (c) use of Software provided for no fee;
  - (d) Customer's failure to promptly use an update provided by SAP if such infringement or misappropriation could have been avoided by use of the update;
  - (e) Customer's failure to timely notify SAP in writing of any such claim if SAP is prejudiced by Customer's failure to provide or delay in providing such notice; or
  - (f) any use not permitted under the Agreement.

7.3. If a third party makes a claim under Section 7.1 or in SAP's reasonable opinion is likely to make such a claim, SAP may at its sole option and expense:

- (a) procure for Customer the right to continue using the Software under the terms of the Agreement; or
- (b) replace or modify the Software to be non-infringing without material decrease in functionality.

If these options are not reasonably available, SAP may terminate Customer's license relating to the affected Software upon written notice.

7.4. SAP expressly reserves the right to cease such defense of any claim(s) if the Software is no longer alleged to infringe or misappropriate the third party's rights.

#### 7.5. Third Party Claim Procedure

All third party claims under Section 7 shall be conducted as follows:

- (a) The party against whom a third party claim is brought ("**Named Party**") will timely notify the other party ("**Defending Party**") in writing of any claim. The Named Party will reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the Defending Party, subject to Section 7.5 (b) below;
- (b) The Defending Party will have the right to fully control the defense;
- (c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by the Named Party.

7.6. Any limitations to the liability and obligations of SAP according to this Section 7 will also apply for the benefit of any SAP Affiliates and their respective licensors.

#### 7.7. Exclusive Remedy

The provisions of Section 7 state the sole, exclusive, and entire liability and obligation of SAP, its Affiliates and its subcontractors to Customer, and is Customer's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third party intellectual property rights.

### 8. LIMITATION OF LIABILITY

#### 8.1. No Liability

SAP, its licensors or subcontractors will not be responsible or liable under the Agreement:

- (a) if the Software is not used in accordance with the Documentation;
- (b) if the defect or liability is caused by Customer or Partner, a Modification or Add-on (other than a Modification or Add-on made by SAP which is provided through SAP support or under warranty), or third party software;
- (c) if the Software is used in conjunction with any third party software for which the Customer lacks sufficient rights from the third party vendor for such use;
- (d) for any Customer activities not permitted under the Agreement, or
- (e) for any claims or damages arising from inherently dangerous use of the Software.

## 8.2. No Cap on Liability

Neither party's liability is capped for damages resulting from:

- (a) SAP's obligations under Section 7.1 (excluding SAP's obligations under Section 7.1 respective to Third Party Software);
- (b) death or bodily injury arising from either party's gross negligence or willful misconduct;
- (c) Customer's unlicensed use of the Software; or
- (d) any failure by Customer to pay Partner any fees due for the Software.

## 8.3. Liability Cap

Except as set forth in Section 8.2, the maximum liability of either party (or its respective Affiliates, SAP's licensors or SAP's subcontractors) to the other or any other person or entity for all events (or series of connected events) shall not exceed the license fees paid by Customer to Partner for the Software directly causing the damages.

## 8.4. Exclusions of Damages

In no case will:

- (a) either party (or its respective Affiliates, SAP's licensors or SAP's subcontractors) be liable to the other party for any special, incidental, consequential, or indirect damages, loss of goodwill or business profits, work stoppage, data loss, computer failure or malfunction, attorney's fees, court costs, interest or exemplary or punitive damages; and
- (b) SAP be liable for any damages caused by any Software provided for no fee.

## 8.5. Disclaimer

Except as expressly provided in the Agreement, neither SAP or its subcontractors or licensors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter including the merchantability, suitability, originality, or fitness for a particular purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error-free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of SAP or product roadmaps in obtaining the Software.

## 8.6. Extension to group members

Any limitations to the liability and obligations of SAP according to this Section 8 will also apply for the benefit of SAP SE and its Affiliates and their respective licensors.

8.7. SAP will not be obliged to provide an indemnity or damages where Customer has been fully compensated or indemnified for the same loss or damage under its agreement with Partner.

## 9. INTELLECTUAL PROPERTY RIGHTS

### 9.1. SAP Ownership

Except for any rights expressly granted to Customer under the Agreement, SAP, SAP SE, their Affiliates or licensors own all Intellectual Property Rights in and derivative works of Software, Documentation and any other SAP Materials. Customer shall execute such documentation and take such other steps as is reasonably necessary to secure SAP's or SAP SE's title over such rights.

### 9.2. Protection of Rights

Except for any rights expressly granted to Customer under the Agreement, Customer shall not:

- (a) copy, translate, disassemble, decompile, make derivative works, or reverse engineer or be permitted to modify the Software or SAP Materials (or attempt any of the foregoing);
- (b) circumvent or endanger the operation or security of the Software; or
- (c) remove SAP's copyright and authorship notices.

Customer may back up data in accordance with good information technology practice and for this purpose to create the necessary backup copies of the Software. Backup copies on transportable discs or other data media must be marked as backup copies and bear the same copyright and authorship notice as the original discs or other data media, unless technically infeasible.

## **10. CONFIDENTIALITY**

### 10.1. Use of Confidential Information

#### 10.1.1. The receiving party shall:

- (a) maintain all Confidential Information of the disclosing party in strict confidence, taking steps to protect the disclosing party's Confidential Information substantially similar to those steps that the receiving party takes to protect its own similar Confidential Information, which shall not be less than a reasonable standard of care;
- (b) not disclose or reveal any Confidential Information of the disclosing party to any person other than its Representatives whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in this Section 10;
- (c) not use or reproduce any Confidential Information of the disclosing party for any purpose outside the scope of the Agreement; and
- (d) retain any and all confidential or proprietary notices or legends which appear on the original and on any reproductions.

#### 10.1.2. Customer shall not disclose any information about the Agreement, its terms and conditions, the pricing or any other facts relating thereto to any third party.

#### 10.1.3. Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 10.

### 10.2. Compelled Disclosure

The receiving party may disclose the disclosing party's Confidential Information to the extent required by law, regulation, court order or regulatory agency; provided that the receiving party required to make such a disclosure uses reasonable efforts to give the disclosing party reasonable prior notice of such required disclosure (to the extent legally permitted) and provides reasonable assistance in contesting the required disclosure, at the request and cost of the disclosing party. The receiving party and its Representatives shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally requested to be disclosed and shall request that all Confidential Information that is so disclosed is accorded confidential treatment.

### 10.3. Exceptions

The restrictions on the use or disclosure of the Confidential Information will not apply to any Confidential Information that:

- (a) is independently developed by the receiving party without use or reference to the disclosing party's Confidential Information;
- (b) has become generally known or available to the public through no act or omission by the receiving party;
- (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions;
- (d) is lawfully acquired free of restriction by the receiving party from a third party having the right to furnish such Confidential Information; or
- (e) the disclosing party agrees in writing is free of confidentiality restrictions.

### 10.4. Destruction and Return of Confidential Information

Upon the disclosing party's request or the effective date of expiration or termination of Agreement, except to the extent it is legally entitled or required to retain the Confidential Information, the receiving party shall promptly destroy or return to the disclosing party, at the disclosing party's election, all materials containing the disclosing party's Confidential Information and all copies thereof, whether reproductions, summaries, or extracts thereof or based thereon (whether in hard-copy form or on intangible media), provided however that:



- (a) 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
- (b) 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.

## **11. FEEDBACK**

Customer may at its sole discretion and option provide Feedback. In such instance, SAP, SAP SE and its Affiliates may in their sole discretion retain and freely use, incorporate or otherwise exploit such Feedback without restriction, compensation or attribution to the source of the Feedback.

## **12. MISCELLANEOUS**

### **12.1. Retention of data**

With regard to business transactions covered by the Agreement, Customer must retain any records for a period of 10 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, Customer must maintain current, complete, and accurate reports on all of SAP's Confidential Information in its possession or in the possession of its Representatives.

### **12.2. Severability**

If any provision of the Agreement is held to be wholly or in part illegal, invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of this Agreement. The 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 the case of contractual gaps.

### **12.3. No Waiver**

A waiver of any breach or obligation of the Agreement is not deemed a waiver of any other breach or obligation.

### **12.4. Counterparts**

The Agreement may be signed in counterparts, each of which will be deemed an original and which shall together constitute one Agreement. Electronic signatures via DocuSign or any other form as determined by SAP are deemed original signatures.

### **12.5. Trade Compliance**

12.5.1. SAP and Customer shall comply with Export Laws in the performance of the Agreement. Software, SAP Delivered Support, SAP Materials and Confidential Information are subject to Export Laws. Customer and its Affiliates shall not directly or indirectly use, export, re-export, release, or transfer the Software, SAP Delivered Support, SAP Materials and Confidential Information in violation of Export Laws. Customer is solely responsible for compliance with Export Laws including obtaining any required export authorizations if Customer exports or re-exports Software and SAP Materials. Customer must not use the Software or SAP Support from Crimea/Sevastopol, Cuba, Iran, the People's Republic of Korea (North Korea), the so-called Luhansk Peoples Republic (LNR) and Donetsk Peoples Republic (DNR) or Syria.

12.5.2. Upon SAP's request, Customer shall provide information and documents to support obtaining an export authorization. SAP may immediately terminate Customer's license to the affected Software upon written notice to Customer if:

- (a) the competent authority does not grant such export authorization within 18 months; or
- (b) Export Laws prohibit SAP from providing the Software and SAP Delivered Support to Customer.

### **12.6. Notices**

All notices will be in writing and given when delivered to the address set forth in the EULA Acceptance Form. Notices from SAP to Customer may be in the form of an electronic notice to the Customer's authorized representative or administrator.

12.7. Assignment

Without SAP's prior written consent, Customer may not assign, delegate, or otherwise transfer the Agreement (or any of its rights or obligations) to any party. SAP may assign the Agreement to SAP SE or any of its Affiliates.

12.8. Relationship of the Parties

The parties to the Agreement are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

12.9. Force Majeure

Any delay in performance caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

12.10. Governing Law

The Agreement and any claims (including any non-contractual claims) arising out of or in connection with the Agreement and its subject matter will be governed by and construed under the laws of Spain. The United Nations Convention on Contracts for the International Sale of Goods and any conflicts of law principles and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement.

12.11. Jurisdiction

The parties submit to the exclusive jurisdiction of the courts located in Madrid, Spain. The parties waive any objections to the jurisdiction identified in this provision.

12.12. Entire Agreement

This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance thereon. The Agreement may be modified solely in writing signed by both parties, except as permitted under the Agreement. Terms and conditions of any Customer issued purchase order shall have no force and effect, even if SAP accepts or does not otherwise reject the purchase order.