# GENERAL TERMS AND CONDITIONS FOR CLOUD SERVICES ("GTC")

## 1. DEFINITIONS

1.1. "**Affiliate**" means any legal entity in which SAP SE or Customer, directly or indirectly, holds more than 50% of the entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.

1.2. "**Agreement**" means the agreement as defined in the applicable Order Form.

1.3. "**Authorized User**" means any individual to whom Customer grants access authorization to use the Cloud Service that is an employee, contractor or representative of Customer, Customer's Affiliates, or Customer's and Customer's Affiliates' Business Partners.

1.4. "**Business Partner**" means a legal entity that requires use of a Cloud Service in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer and its Affiliates.

1.5. "**Cloud Service**" means any distinct, hosted, supported and operated on-demand solution provided by SAP under an Order Form.

1.6. "**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 and/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.

1.7. "**Customer Data**" means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service (including any stored derivatives of entered data such as Customer-specific reports). Customer Data does not include SAP's Confidential Information or SAP Materials.

1.8. "**Documentation**" means SAP's then-current technical and functional documentation relating to the Cloud Services located at https://help.sap.com or which SAP makes available to Customer as part of the Cloud Service, including technical and functional specifications as updated by SAP from time to time in accordance with the Agreement.

1.9. "**Export Laws**" means all applicable import, export control and sanctions laws, including without limitation, the laws of the United States, the EU, and Germany.

1.10. "**Feedback**" means input, comments or suggestions regarding SAP's business and technology direction, and the possible creation, modification, correction, improvement or enhancement of the Cloud Service.

1.11. "**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.

1.12. "**Order Form**" means the ordering document for a Cloud Service that references the GTC.

1.13. "**Professional Services**" means implementation services, consulting services or other related services provided under an Order Form and may also be referred to in the Agreement as "Consulting Services".

1.14. "**Representatives**" means a party's Affiliates, employees, contractors, sub-contractors, legal representatives, accountants, or other professional advisors.

1.15. "**SAP Materials**" or **"Cloud Materials"** means any materials or information provided, developed, derived, or made available by SAP (independently or with Customer's cooperation) in the course of performance under the Agreement, including in the delivery of any support or Professional Services to Customer. SAP Materials include but are not limited to the Documentation, statistical reports, usage measurements, and SAP content that describes, structures, or gives meaning to data in the Cloud Service such as data models, metadata, table descriptions, and similar materials and derivatives of the foregoing. SAP Materials do not include Customer Data, Customer Confidential Information, or the Cloud Service.

1.16. "**SAP SE**" means SAP SE, the parent company of SAP.

1.17. "**Subscription Term**" means the initial subscription term and if applicable any renewal subscription term of a Cloud Service identified in the Order Form.

1.18. "**Taxes**" means all transactional taxes, levies and similar charges (and any related interest and penalties) such as federal, state or local sales tax, value added tax, goods and services tax, use tax, property tax, excise tax, service tax or similar taxes.

1.19. "**Usage Metric**" means the standard of measurement for determining the permitted use and calculating the fees due for a Cloud Service as set forth in an Order Form.

## 2. USAGE RIGHTS AND RESTRICTIONS

2.1. Grant of Rights

SAP grants to Customer a non-exclusive and non-transferable right to use the Cloud Service (including its implementation and configuration), solely for Customer's and its Affiliates' internal business operations in accordance with the Agreement and Documentation. Customer may use the Cloud Service world-wide, except Customer shall not use the Cloud Service from countries where such use is prohibited by Export Laws. Permitted uses and restrictions of the Cloud Service also apply to SAP Materials and Documentation. Customer may reproduce and internally distribute Documentation solely to support permitted use of the Cloud Service.

2.2. Authorized Users

Customer may permit Authorized Users to use the Cloud Service. Usage is limited to the Usage Metrics and volumes stated in the Order Form. Access credentials for the Cloud Service may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer may allow individuals employed by its outsourced service providers to be Authorized Users solely to the extent such providers are required to access the Cloud Service in the course of providing outsourced services to Customer. Customer is responsible for breaches of the Agreement caused by Authorized Users.

2.3. Verification of Use

Customer will monitor its own use of the Cloud Service and report any use in excess of the Usage Metrics and volume. SAP may monitor use to verify compliance with Usage Metrics, volume and the Agreement.

2.4. Suspension of Cloud Service

SAP may suspend or limit use of the Cloud Service:

a) if continued use may result in material harm to the Cloud Service or its users; or

b) to comply with laws and regulations applicable to SAP, its Affiliates' or subcontractors.

SAP will promptly notify Customer of the suspension or limitation. SAP will limit a suspension or limitation in time and scope as reasonably possible under the circumstances.

2.5. Third Party Web Services

The Cloud Service may include integrations with web services made available by third parties (other than SAP SE or its Affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third party web services are not part of the Cloud Service and the Agreement does not apply to them. SAP is not responsible for the content of these third party web services.

2.6. Mobile Access to Cloud Service

Authorized Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app stores. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of the Agreement.

2.7. On-Premise Components

The Cloud Service may include on-premise components that can be downloaded and installed (including updates) by Customer. The System Availability SLA does not apply to these components. Customer may only use the on-premise components during the Subscription Term and solely to support permitted use of the Cloud Service.

## 3. SAP RESPONSIBILITIES

3.1. Provisioning

SAP provides access to the Cloud Service as described in the Agreement. SAP makes the Cloud Service available and is responsible for its operation for the duration of the applicable Subscription Term.

3.2. Support

SAP provides support for the Cloud Service as referenced in the Order Form.

3.3. Security

SAP will protect Customer Data in accordance with the Security Measures. "Security Measures" means the technical and organizational measures for the relevant Cloud Service published on https://www.sap.com/about/trust-center/agreements/SecurityMeasures.

3.4. Modifications

3.4.1. Scope

SAP may modify the Cloud Service (including support services, Maintenance Windows and Major Upgrade Windows), provided that SAP shall not materially degrade the core functionality of the Cloud Service during the Subscription Term.

3.4.2. Modification Notices

SAP shall provide Customer with reasonable advance notice of modifications to the functionality of the Cloud Service in accordance with Section 13.5, except for any change to a Maintenance Window or Major Upgrade Window which shall be in accordance with the Service Level Agreement.

3.4.3. Customer Termination

If the modification materially degrades the Cloud Service and SAP does not provide equivalent functionality, Customer may terminate its subscription to the affected Cloud Service by providing written notice to SAP within 1 month of SAP's notice. If SAP does not receive timely notice, Customer is deemed to have accepted the modification.

## 4. CUSTOMER AND PERSONAL DATA

4.1. Customer Ownership

As between the parties, Customer owns all right and interest in and to Customer Data. SAP may use Customer-provided trademarks solely to provide and support the Cloud Service.

4.2. Customer Data

Customer is responsible for the Customer Data and entering it into the Cloud Service. Customer grants to SAP (including SAP SE, its Affiliates and subcontractors) a non-exclusive right to process and use Customer Data to provide and support the Cloud Service and as set out in the Agreement.

4.3. Personal Data

Customer will collect and maintain all personal data contained in Customer Data in compliance with applicable data privacy and protection laws.

4.4. Security

4.4.1. Customer will maintain reasonable security standards for its Authorized Users' use of the Cloud Service. Customer is also responsible for the following security requirements:

a) monitoring technical details in applicable release notes, security notes, and Documentation;

b) maintaining proper security configurations, authentications, and authorizations for each Authorized User; and,

c) enabling and configuring certain security features applicable to Customer's use of the Cloud Service.

4.4.2. Customer will not conduct or authorize penetration tests of the Cloud Service without advance written approval from SAP.

4.5. Access to Customer Data

4.5.1. During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case SAP and Customer will find a reasonable method to allow Customer access to Customer Data.

4.5.2. Before the Subscription Term expires, Customer may use SAP's self-service export tools (as available) to perform a final export of Customer Data from the Cloud Service.

4.5.3. SAP will delete the Customer Data remaining on servers hosting the Cloud Service within 120 days from termination or expiration of the Agreement unless retention is permitted under the Agreement or required by applicable law. Retained data is subject to the confidentiality provisions of the Agreement.

4.5.4. SAP will provide limited access to the Cloud Service for no more than 1 month past termination of the Agreement strictly as needed for Customer to export Customer Data ("Retrieval Period"). The Retrieval Period is subject to the following:

a) Customer agrees that even if access is not technically limited to exporting Customer Data, Customer shall not utilize the Cloud Service for any other purpose during the Retrieval Period;

b) If Customer uses the Cloud Service for anything other than exporting Customer Data during the Retrieval Period, Customer agrees to pay SAP's then-current prorated price list rates for the entire Retrieval Period; and

c) Customer's access during the Retrieval Period shall continue to be governed by its obligations under the Agreement.

4.5.5. In the event of third party legal proceedings relating to the Customer Data, SAP will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

**5. FEES AND TAXES**

5.1. Fees, Invoices and Payment

Customer shall pay all fees due to SAP within 30 days' of invoice date. SAP will send invoices to the email address(es) provided by Customer. Invoices are deemed delivered when sent to the email address provided by Customer. Where available, Customer may view invoices on SAP For Me customer portal and is responsible for providing and maintaining complete and accurate billing and contact information. Failure to provide accurate information is not grounds for non-payment. Any fees not paid when due shall accrue interest at the maximum legal rate.

If Customer provides payment information permitting SAP to process payments, Customer authorizes SAP to charge for all Cloud Services and other services listed in the Order Form for both the initial subscription term and any renewal subscription terms.

Purchase orders are for administrative convenience only and not a condition of payment. SAP may issue an invoice and collect payment without a corresponding purchase order. All Customer payments must reference the applicable invoice number. If Customer does not have an invoice reference on its payment, SAP may apply payment to the oldest invoice.

Payment is not dependent upon completion of any implementation or other services. If applicable, fees for non-recurring services will be invoiced by SAP on a one-time basis and paid by Customer upon commencement of the first Product Start Date, indicated on the Order Form. Customer shall reimburse SAP for all appropriately documented travel and related expenses pre-approved by Customer and incurred by SAP in performing support for Cloud Services.

If Customer does not pay fees in accordance with the terms of the Agreement then, in addition to any other available remedies, SAP may suspend Customer's use of the applicable Cloud Service until payment is made. SAP shall provide Customer with prior written notice of suspension.

Customer may not withhold, reduce or set-off fees owed. Customer may not reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancellable. All fees are non-refundable except per Section 6.3.

5.2. Disputed Invoices

If Customer has reasonable grounds to dispute the amount due on the invoice, whether in whole or in part, Customer must notify SAP within 15 days of the date of the invoice by submitting a dispute with reference to that invoice and a description of the reasons for disputing the amount due.

Customer shall promptly pay the undisputed portion of the invoice. SAP shall not exercise its right to charge late payment interest charges or suspend use of the Cloud Service if Customer is disputing an invoice, or portion of an invoice, reasonably and is cooperating diligently to resolve the dispute.

5.3. Taxes

All fees and other charges are subject to applicable Taxes, which will be charged in addition to fees under the Agreement.

## 6. TERM AND TERMINATION

6.1. Term

The Subscription Term is as stated in the Order Form.

6.2. Termination

A party may terminate:

a) the Agreement (i) for cause upon 30 days' prior written notice of the other party's material breach of any provision of the Agreement (including Customer's failure to pay any money due hereunder within 30 days of the payment due date) unless the breaching party has remedied the breach during such 30 day period; and (ii) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 11 or 13.6; and

b) the affected Cloud Service as permitted under Sections 3.4.3, 7.2.4, 7.3.3, 8.1.4, or 13.4 (with termination effective 30 days after receipt of notice in each of these cases).

6.3. Refund and Payments

For termination by Customer (including but not limited to Sections 3.4.3, 6.2(a)(i), 7.2.4 or 7.3.3) or termination under Sections 8.1.4 or 13.9 Customer will be entitled to:

a) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination (unless such refund is prohibited by Export Laws); and

b) a release from the obligation to pay fees due for periods after the effective date of termination.

6.4. Effect of Expiration or Termination

Upon the effective date of expiration or termination of the Agreement:

a) Customer’s right to use the Cloud Service and all SAP Confidential Information will end;

b) Confidential Information of the disclosing party will be retained, returned, or destroyed as required by the Agreement or applicable law; and

c) termination or expiration of the Agreement does not affect other agreements between the parties.

6.5. Survival

Sections 1, 5, 6.3, 6.4, 6.5, 8, 9, 10, 11, 12 and 13 will survive the expiration or termination of the Agreement.

## 7. WARRANTIES

7.1. Compliance with Law

Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

a) in the case of SAP, the operation of SAP’s business as it relates to the Cloud Service; and

b) in the case of Customer, the Customer Data and Customer’s use of the Cloud Service.

7.2. SAP Warranties and Customer Remedies

7.2.1. Good Industry Warranty

SAP warrants that it will provide the Cloud Service:

a) in material conformance with the Documentation; and

b) with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services materially similar to the nature and complexity of the Cloud Service.

7.2.2. Authorization Warranty

Each party warrants that: (a) it is duly organized and validly existing under the laws of the state or country of its incorporation or formation and has full corporate power and authority to enter into and carry out its obligations in this Agreement; (b) this Agreement is enforceable; and (c) the execution, delivery and performance of this Agreement does not conflict with any written agreement to which a party may be bound.

7.2.3. Warranty Against Viruses

SAP warrants that it shall exercise commercially reasonable efforts to keep the Cloud Service, as provided by SAP, free of all viruses, trojan horses, and comparable malicious code intended to harm the Customer's systems, provided, however, SAP shall not be responsible for any malicious code placed on the Cloud Service by Customer, its Authorized Users, or any third party.

7.2.4. Remedy

Customer's sole and exclusive remedies and SAP's entire liability for breach of the warranty under Section 7.2 will be:

a) correction of the deficient Cloud Service; and

b) if SAP fails to correct the deficient Cloud Service, Customer may terminate its subscription for the affected Cloud Service. Any termination must occur within 3 months of SAP's failure to correct the deficient Cloud Service.

7.3. SAP System Availability Warranty and Customer Remedy

7.3.1. SAP warrants to maintain an average monthly system availability for the production system of the Cloud Service as defined in the applicable Service Level Agreement or Supplement ("SLA").

7.3.2. Customer's sole and exclusive remedy for SAP's breach of the SLA is the issuance of a credit in the amount described in the SLA. Customer will follow SAP's posted credit claim procedure. When the validity of the service credit is confirmed by SAP in writing (email permitted), Customer may apply the credit to a future invoice for the Cloud Service or request a refund for the amount of the credit if no future invoice is due.

7.3.3. In the event SAP fails to meet the SLA (i) for 4 consecutive months, or (ii) for 5 or more months during any 12 month period, or (iii) at a system availability level of at least 95% for 1 calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing SAP with written notice within 30 days after the failure.

7.4. Warranty Exclusions

The warranties in Sections 7.2 and 7.3 will not apply if:

a) the Cloud Service is not used in accordance with the Agreement or Documentation;

b) any non-conformity is caused by Customer, or by any product or service not provided by SAP; or

c) the Cloud Service was provided for no fee.

7.5. Disclaimer

Except as expressly provided in the Agreement, neither SAP nor its subcontractors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or 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 a subscription for any Cloud Service.

## 8. THIRD PARTY CLAIMS

8.1. Claims Brought Against Customer

8.1.1. SAP will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' use of the Cloud Service 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.

8.1.2. SAP's obligations under Section 8.1 will not apply if the claim results from:

a) use of the Cloud Service in conjunction with any product or service not provided by SAP;

b) use of the Cloud Service provided for no fee;

c) 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

d) any use of the Cloud Service not permitted under the Agreement.

8.1.3. If a third party makes a claim 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 Cloud Service under the terms of the Agreement; or

b) replace or modify the Cloud Service to be non-infringing without a material decrease in functionality.

8.1.4. If these options are not reasonably available, SAP or Customer may terminate Customer's subscription to the affected Cloud Service upon written notice to the other.

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

8.2. Claims Brought Against SAP

Customer will defend SAP against claims brought against SAP, SAP SE, its Affiliates and subcontractors by any third party related to Customer Data. Customer will indemnify SAP against all damages finally awarded against SAP, SAP SE, its Affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims.

8.3. Third Party Claim Procedure

All third party claims under Section 8 shall be conducted as follows:

a) The party against whom a third party claim is brought (the "**Named Party**") will timely notify the other party (the "**Defending Party**") in writing of any claim. The Named Party shall reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the Defending Party subject to Section 8.3b).

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.

8.4. Exclusive Remedy

The provisions of Section 8 state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third party intellectual property rights.

## 9. LIMITATION OF LIABILITY

9.1. No Cap on Liability

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

a) death or personal injury arising from either party's negligence;

b) Customer's unauthorized use of any Cloud Service and / or any failure by Customer to pay any fees due under the Agreement; or

c) any liability which cannot be excluded or limited by applicable law.

9.1.2. Subject to Section 9.3, neither party's liability is limited in connection with the parties' obligations under Section 8.1.1 and 8.2 (excluding SAP's obligation under Section 8.1.1 where the third party claim(s) relates to Cloud Services not developed by SAP).

9.2. Liability Cap

Except as set forth in Sections 9.1 and 9.3, under no circumstances and regardless of the nature of the claim (whether arising out of breach of contract, tort (including but not limited to negligence) misrepresentation, breach of statutory duty, breach of warranty, claims by third parties arising from any breach (however minor) of this Agreement, from wilful misconduct or otherwise) shall the maximum aggregate liability of either party (or its respective Affiliates or SAP's subcontractors) arising under or in relation to this Agreement to the other or to any other person or entity for all events (or series of connected events) in any 12 month period exceed the annual subscription fees paid for the applicable Cloud Service associated with the damages for that 12 month period. Any "12 month period" commences on the Subscription Term start date or any of its yearly anniversaries.

9.3. Exclusion of Damages

9.3.1 Except as set forth in Section 9.1.1, and regardless of the nature of the claim (whether arising out of breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty, claims by third parties from any breach (however minor) of this Agreement, from wilful misconduct or otherwise), under no circumstances shall either party (or their respective Affiliates or SAP's subcontractors) be liable to the other or any other person or entity for any loss or damage arising under or in relation to this Agreement (whether or not the other party had been advised of the possibility of such loss or damage) in any amount, to the extent that such loss or damage is:

(a) (i) loss of profits, (ii) loss of business, (iii) loss of business opportunity, (iv) loss of contracts, (v) loss of revenue, (vi) loss of goodwill, (vii) loss resulting from business disruption or work stoppage, (ix) loss of anticipated savings, (x) lost or wasted management time or time of other employees or contractors, or (xi) loss resulting from wasted expenditure (regardless of whether these types of loss or damage listed in this sub-section (a) are direct, indirect, special or consequential); or

(b) incidental, consequential, indirect, exemplary, special or punitive.

9.3.2 Except as set forth in Section 9.1.1, under no circumstances will SAP be liable for any damages caused by any Cloud Service provided for no fee.

**10. INTELLECTUAL PROPERTY RIGHTS**

10.1. SAP Ownership

10.1.1. 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:

a) the Cloud Service;

b) SAP Materials;

c) Documentation; and

d) any Professional Services, design contributions, related knowledge or processes, whether or not developed for Customer.

10.1.2. 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.

10.2. Acceptable Use Policy

Unless stated otherwise in the Agreement, Customer (or any third-party acting on its behalf) shall not:

a) copy, translate, disassemble, decompile, make derivative works, or reverse engineer the Cloud Service or SAP Materials (or attempt any of the foregoing);

b) enter, store, or transfer any content or data on or via the Cloud Service that is unlawful or infringes any Intellectual Property Rights;

c) use the Cloud Service or SAP Materials for training, developing, or enhancing machine learning, artificial intelligence models, or similar technologies, except where expressly permitted by SAP;

d) circumvent or endanger the operation or security of the Cloud Service;

e) remove SAP's copyright and authorship notices; or

f) use Cloud Services or SAP Materials in a manner that exceeds the rights granted under the Agreement, including for the purpose of developing, commercializing, or making available any product or service that replicates, simulates, or competes with the Cloud Service or any SAP Materials. For the avoidance of doubt, this shall not curtail Customer's or partners' right to independently develop their own products or services, provided such development does not rely on Cloud Service or SAP Materials.

**11. CONFIDENTIALITY**

11.1. Use of Confidential Information

11.1.1. 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 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 Section 11;

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, internal, or proprietary notices or legends which appear on the original and on any reproductions.

11.1.2. Customer shall not disclose any information about the Agreement, its terms and conditions, the pricing or any other related facts to any third party.

11.1.3. Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 11.

11.2. 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.

11.3. Exceptions

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

a) is independently developed by the receiving party without 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.

11.4. Destruction and Return of Confidential Information

Upon the disclosing party's request, the receiving party shall promptly destroy or return the disclosing party's Confidential Information, including copies and reproductions of it. The obligation to destroy or return Confidential Information shall not apply:

a) if legal proceedings related to the Confidential Information prohibit its return or destruction, until the proceedings are settled or a final judgment is rendered;

b) to Confidential Information held in archive or back-up systems under general systems archiving or backup policies; or

c) to Confidential Information the receiving party is legally entitled or required to retain.

**12. FEEDBACK**

12.1. Customer may at its sole discretion and option provide SAP with 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.

**13. MISCELLANEOUS**

13.1. Severability

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

13.2. No Waiver

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

13.3. Counterparts

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

13.4. Trade Compliance

13.4.1. Each Cloud Service, Documentation and SAP Materials are subject to Export Laws, SAP and Customer shall comply with Export Laws in the performance of the Agreement. Customer, its Affiliates, and Authorized Users shall not use, directly or indirectly export, re-export, release, or transfer the Cloud Service, Documentation or SAP Materials in violation of Export Laws. Customer may not permit the use of the Cloud Service, Documentation or SAP Materials to any end user with whom transactions are prohibited by Export Laws. Customer, its Affiliates, and Authorized Users shall not access nor use the Cloud Service, Documentation or SAP Materials in or from any country or region in which SAP products and services are not available for use, direct or indirect export, re-export, release or transfer, as listed on https://www.sap.com/about/agreements/export-statements.html.

13.4.2. Upon SAP's request, Customer shall provide information and documents necessary to support SAP in obtaining an export authorization for the provisioning of the Cloud Service, Documentation and/or SAP Materials. Upon written notice to Customer, SAP may terminate Customer's subscription to the affected Cloud Service if Export Laws prohibit SAP from providing the Cloud Service, Documentation and/or SAP Materials to Customer.

Customer is solely responsible for compliance with Export Laws related to Customer Data, including obtaining any required export authorizations for Customer Data.

13.5. Notices

All notices will be in writing and given when delivered to the address set forth in an Order Form. Notices from SAP to Customer may be in the form of an electronic notice to Customer's authorized representative or administrator. SAP may provide notice of modifications to the Cloud Service under Section 0 via Documentation, release notes or publication. System notifications and information from SAP relating to the operation, hosting or support of the Cloud Service can also be provided within the Cloud Service, or made available via the SAP Support Portal.

13.6. 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.

13.7. Subcontracting

SAP may subcontract parts of the Cloud Service to third parties. SAP is responsible for breaches of the Agreement caused by its subcontractors.

13.8. Relationship of the Parties

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

13.9. Force Majeure

Neither party shall be held responsible (other than for the payment of amounts due hereunder) if the fulfilment of any terms or provisions of this Agreement are delayed or prevented by revolutions or other disorders, wars, acts of enemies, strikes, fires, floods, acts of God, or without limiting the foregoing, by any other cause not within the control of the party whose performance is interfered with, and which exercise of reasonable diligence, the party is unable to prevent, whether of the class of causes herein enumerated or not.

In the event conditions beyond the performing party's reasonable control render the Cloud Service unavailable for more than 30 consecutive days, the other party may terminate the Agreement upon written notice to the performing party (in which case Customer will receive a refund of prepaid unused fees starting from the beginning of the period of unavailability due to such conditions).

13.10. Governing Law

The Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement and its subject matter will be governed by and construed under the laws of England and Wales. 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.

13.11. Jurisdiction and Mandatory Venue

13.11.1. Subject to this clause, any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (a "Dispute"), other than as to ownership or title to intellectual property rights, breach of the protections of the Confidential Information, shall be referred to and finally resolved by arbitration.

13.11.2. Except for the matters listed above, any dispute arising out of or in connection with this Agreement shall be resolved in accordance with the following escalation procedure:

(a) Notice and Initial Meeting: Either Party shall notify the other Party in writing of the dispute. The Parties shall promptly meet at operational level and use good faith efforts to resolve the dispute.

(b) Senior Management Escalation: If the dispute has not been resolved within thirty (30) days of such notice, either Party may escalate the dispute to senior management (Vice President level or equivalent).

(c) Executive Escalation: If the dispute remains unresolved, it shall be escalated to executive management (Executive Vice President level or equivalent).

13.11.3. No Party may initiate arbitration prior to completion of the escalation procedure set out above.

13.11.4. The seat (legal place) of arbitration shall be London, England, and the arbitration shall be conducted in accordance with the Arbitration Rules of the London Court of International Arbitration (LCIA) (the "Rules"), which are deemed to be incorporated by reference into this clause. The language of the arbitration shall be English.

13.11.5. Nothing in this clause shall prevent either Party from applying to any court of competent jurisdiction for interim, injunctive or conservatory relief, including asset preservation or enforcement of rights, whether before or after the constitution of the arbitral tribunal.

13.12. Arbitration

13.12.1. The Parties agree to conduct the arbitration in an efficient and expeditious manner. The arbitration shall be conducted by a panel of three members, SAP and Customer each selecting one member and the third member, who shall be the chairperson, selected by agreement between the other two members. The chairperson shall be an attorney-at-law, and the other members shall have a background or training in computer law, computer science, or marketing of computer products. If no chairman is appointed within 30 days of the appointment of the second arbitrators, the chairman will be appointed by the Arbitration Body, in accordance with the Rules. Where the dispute (including any counterclaim) relates solely to non-payment by Customer of amounts due under applicable order forms, the expedited procedure provisions of the LCIA Rules shall apply, including the appointment of a sole arbitrator and shortened timelines, where appropriate.

13.12.2. The Parties agree that no proceedings shall be commenced in any court other than as permitted under this clause.

13.12.3. Tribunal

(a) The arbitral tribunal shall have the authority to grant any remedy or relief that a court of competent jurisdiction could grant, including injunctive, equitable and declaratory relief.

(b) Any award rendered by the tribunal shall be final and binding on the Parties. Judgment upon the award may be entered and enforced in any court of competent jurisdiction. Each Party agrees to comply with any award without undue delay.

13.12.4. This clause shall survive termination, rescission or expiry of this Agreement.

13.13. Statute of Limitation

Except for claim(s) as to ownership or title to intellectual property rights, breach of the protections of the Confidential Information, the right of SAP to bring suit for payments due hereunder, or a party's failure to provide the indemnity obligations herein and its subject matter, either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within 1 year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

13.14. Entire Agreement

The 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 on them. Each party acknowledges that (i) in entering into this Agreement it has not relied on any representation, discussion, collateral contract or other assurance except those set out in this Agreement and hereby waives all rights and remedies which, but for this section, might otherwise be available to it in respect of any such representation, discussion, collateral contract or other assurance and (ii) it shall have no remedies in respect of any warranty, term, condition, representation or statement that is not expressly set out in this Agreement. Nothing in this Agreement shall limit or exclude any liability for fraudulent misrepresentation.

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.

13.15. Contracts (Rights of Third Parties) Act 1999.

Notwithstanding any other provision in this Agreement, nothing in this Agreement shall create or confer (whether expressly or by implication) any rights or other benefits whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise in favour of any person not a party hereto.