

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

### **1. DEFINITIONS**

Capitalized terms used in this document are defined in the Glossary.

### **2. USAGE RIGHTS AND RESTRICTIONS**

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

SAP grants to Customer a non-exclusive, non-transferable and world-wide right to use the Cloud Service (including its implementation and configuration), Cloud Materials and Documentation solely for Customer's and its Affiliates' internal business operations. Permitted uses and restrictions of the Cloud Service also apply to Cloud Materials and Documentation.

#### **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 is responsible for breaches of the Agreement caused by Authorized Users.

#### **2.3 Acceptable Use Policy.**

With respect to the Cloud Service, Customer will not:

- (a) disassemble, decompile, reverse-engineer, copy, translate or make derivative works,
- (b) transmit any content or data that is unlawful or infringes any intellectual property rights, or
- (c) circumvent or endanger its operation or security.

#### **2.4 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.

#### **2.5 Suspension of Cloud Service.**

SAP may suspend or limit use of the Cloud Service if continued use may result in material harm to the Cloud Service or its users. 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.

#### **2.6 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.

#### **2.7 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 store. 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.

#### **2.8 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. In addition to the support policy referenced in the Order Form, specific SAP support and maintenance policies apply to the On-Premise Components and can be found in SAP Support Note 2658835.

### **3. SAP RESPONSIBILITIES**

#### **3.1 Provisioning.**

SAP provides access to the Cloud Service as described in the Agreement.

#### **3.2 Support.**

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

### **3.3 Security.**

SAP uses reasonable security technologies in providing the Cloud Service. As a data processor, SAP will implement technical and organizational measures referenced in the Order Form to secure personal data processed in the Cloud Service in accordance with applicable data protection law.

### **3.4 Modifications.**

- (a) The Cloud Service and SAP Policies may be modified by SAP. SAP will inform Customer of modifications by email, the support portal, release notes, Documentation or the Cloud Service. The information will be delivered by email if the modification is not solely an enhancement. Modifications may include optional new features for the Cloud Service, which Customer may use subject to the then-current Supplement and Documentation.
- (b) If Customer establishes that a modification is not solely an enhancement and materially reduces the Cloud Service, Customer may terminate its subscriptions to the affected Cloud Service by providing written notice to SAP within thirty days after receipt of SAP's informational notice.

### **3.5 Analyses.**

SAP, SAP SE or SAP Affiliates may create analyses utilizing, in part, Customer Data and information derived from Customer's use of the Cloud Service and Consulting Services, as set forth below ("**Analyses**"). Analyses will anonymize and aggregate information and will be treated as Cloud Materials.

Unless otherwise agreed, personal data contained in Customer Data is only used to provide the Cloud Service and Consulting Services. Analyses may be used for the following purposes:

- a) product improvement (in particular, product features and functionality, workflows and user interfaces) and development of new SAP products and services,
- b) improving resource allocation and support,
- c) internal demand planning,
- d) training and developing machine learning algorithms,
- e) improving product performance,
- f) verification of security and data integrity,
- g) identification of industry trends and developments, creation of indices and anonymous benchmarking.

## **4. CUSTOMER AND PERSONAL DATA**

### **4.1 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 nonexclusive right to process Customer Data solely to provide and support the Cloud Service.

### **4.2 Personal Data.**

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

### **4.3 Security.**

Customer will maintain reasonable security standards for its Authorized Users' use of the Cloud Service. Customer will not conduct or authorize penetration tests of the Cloud Service without advance approval from SAP.

### **4.4 Access to Customer Data.**

- (a) 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.
- (b) 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.
- (c) At the end of the Agreement, SAP will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.

- (d) 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 and Payment.**

Customer will pay fees as stated in the Order Form. After prior written notice, SAP may suspend Customer's use of the Cloud Service until payment is made. Customer cannot withhold, reduce or set-off fees owed nor reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancellable and fees non-refundable.

### **5.2 Taxes.**

Fees and other charges described in this Agreement do not include Taxes, now or hereinafter levied all of which shall be for Customer's account with the exception of income or corporation taxes attributable to SAP. SAP and Customer agree to comply with the applicable Tax law in force for the duration of the Agreement. Any applicable direct pay permits or valid tax-exempt certificates must be provided to SAP prior to the execution of this Agreement. If SAP is required to pay Taxes, Customer shall reimburse SAP for such amounts.

Notwithstanding the above, if Customer is legally required to deduct withholding/any other type of taxes from any payment which is due to SAP, Customer must promptly notify SAP at time of receiving invoice or when it becomes aware of such requirement, whichever is earlier and provide SAP with evidence of receipt by the relevant tax authority of any sum that Customer has deducted as withholding tax/ any other type of taxes and such other information or documents as SAP may reasonably require for purposes of obtaining any available tax credit. Should Customer, notwithstanding formal written demand to it by SAP, fail to furnish to SAP such receipt within a reasonable period for any reason other than the obvious delay of the issuing authority, then Customer shall be liable to pay SAP the amount so deducted upon demand.

Customer hereby agrees to reimburse SAP for any taxes and tax related costs, administrative fees and penalties paid or payable by SAP as a result of Customer's non-compliance in regard to this Section or delay with its responsibilities herein.

## **6. TERM AND TERMINATION**

### **6.1 Term.**

The Subscription Term is as stated in the Order Form.

### **6.2 Termination.**

A party may terminate the Agreement:

- (a) upon thirty days written notice of the other party's material breach unless the breach is cured during that thirty day period,
- (b) as permitted under Sections 3.4(b), 7.3(b), 7.4(c), or 8.1(c) (with termination effective thirty days after receipt of notice in each of these cases), or
- (c) 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 12.6.

For the avoidance of doubt there is no requirement to obtain a court order to exercise the rights of termination under this Section.

### **6.3 Refund and Payments.**

For termination by Customer or an 8.1(c) termination, 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, 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 returned or destroyed as required by the Agreement, 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, and 12 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 Good Industry Practices.**

SAP warrants that it will provide the Cloud Service:

- (a) in substantial conformance with the Documentation; and
- (b) with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Cloud Service.

### **7.3 Remedy.**

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

- (a) the re-performance of the deficient Cloud Service, and
- (b) if SAP fails to re-perform, Customer may terminate its subscription for the affected Cloud Service. Any termination must occur within three months of SAP's failure to re-perform.

### **7.4 System Availability.**

- (a) 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").
- (b) Customer's 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.
- (c) In the event SAP fails to meet the SLA (i) for four consecutive months, or (ii) for five or more months during any twelve months period, or (iii) at a system availability level of at least 95% for one calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing SAP with written notice within thirty days after the failure.

### **7.5 Warranty Exclusions.**

The warranties in Sections 7.2 and 7.4 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.

### **7.6 Disclaimer.**

Except for the warranties, terms, conditions, representations or statements expressly set out in this Agreement, all other warranties, terms, conditions, representations or statements which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law, custom or otherwise, are hereby excluded to the fullest extent permitted by law, including any implied conditions, warranties or other terms as to quality or fitness for purpose or non-infringement of any third party's rights 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 subscriptions for any Cloud Service.

## **8. THIRD PARTY CLAIMS**

### **8.1 Claims Brought Against Customer.**

- (a) 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.
- (b) SAP's obligations under Section 8.1 will not apply if the claim results from (i) Customer's breach of Section 2, (ii) use of the Cloud Service in conjunction with any product or service not provided by SAP, or (iii) use of the Cloud Service provided for no fee.
- (c) In the event a claim is made or likely to be made, SAP may (i) procure for Customer the right to continue using the Cloud Service under the terms of the Agreement, or (ii) replace or modify the Cloud Service to be non-infringing without a material decrease in functionality. 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.

### **8.2 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.**

- (a) The party against whom a third party claim is brought will timely notify the other party in writing of any claim, reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the party providing the defense.
- (b) The party that is obligated to defend a claim 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 party against whom the claim is brought.

### **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 Unlimited Liability.**

Neither party will exclude or limit its liability for damages resulting from:

- (a) the parties' obligations under section 8.1(a) and 8.2,
- (b) unauthorized use or disclosure of Confidential Information,
- (c) either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data,
- (d) fraud or fraudulent misrepresentation,
- (e) death or bodily injury arising from either party's negligence or willful misconduct, or
- (f) any failure by Customer to pay any fees due under the Agreement.
- (g) any liability that cannot be excluded or limited by applicable law.

### **9.2 Liability Cap.**

Subject to Sections 9.1 and 9.3, and regardless of the basis of liability (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, willful misconduct or otherwise) 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 any other party for all events (or series of connected events) in any twelve month period will not exceed the annual subscription fees paid for the applicable Cloud Service directly causing the damage for that twelve month period. Any "twelve-month period" commences on the Subscription Term start date or any of its yearly anniversaries.

### **9.3 Exclusion of Damages.**

Subject to Section 9.1:

(a) Regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, willful misconduct, breach of statutory duty, breach of warranty, claims by third parties arising from any breach of this Agreement), under no circumstances shall either party (or their respective Affiliates or SAP's subcontractors) be liable to the other party or any third party 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 (i) consequential, indirect, exemplary, special or punitive; or (ii) for any loss of profits, loss of business, loss of business opportunity, loss of goodwill, loss resulting from work stoppage, or loss of revenue or anticipated savings, whether any such loss or damage is direct or indirect, and

(b) SAP will not be liable for any damages caused by any Cloud Service provided for no fee.

### **9.4 Risk Allocation.**

The parties agree that the provisions of this Agreement appropriately allocate the risks between SAP and Customer. The fees for the Cloud Service and Consulting Services reflect this allocation of risk and the limitations of liability.

## **10. INTELLECTUAL PROPERTY RIGHTS**

### **10.1 SAP Ownership.**

SAP, SAP SE, their Affiliates or licensors own all intellectual property rights in and related to the Cloud Service, Cloud Materials, Documentation, Consulting Services, design contributions, related knowledge or processes, and any derivative works of them. All rights not expressly granted to Customer are reserved to SAP, SAP SE and its licensors.

### **10.2 Customer Ownership.**

Customer retains all rights in and related to the Customer Data. SAP may use Customer-provided trademarks solely to provide and support the Cloud Service.

### **10.3 Non-Assertion of Rights.**

Customer covenants, on behalf of itself and its successors and assigns, not to assert against SAP, SAP SE, their Affiliates or licensors, any rights, or any claims of any rights, in any Cloud Service, Cloud Materials, Documentation, or Consulting Services.

## **11. CONFIDENTIALITY**

### **11.1 Use of Confidential Information.**

(a) The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users 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. Customer will not disclose the Agreement or the pricing to any third party.

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

(c) In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.

### **11.2 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) is generally available to the public without breach of the Agreement by the receiving party,
- (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or
- (d) the disclosing party agrees in writing is free of confidentiality restrictions.

### **11.3 Publicity.**

Neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Customer agrees that SAP may use Customer's name in customer listings or quarterly calls with its investors or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including reference calls and stories, press testimonials, site visits, SAPPHERE participation). Customer agrees that SAP may share information on Customer with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Customer employee contact information with SAP.

## **12. MISCELLANEOUS**

### **12.1 Severability.**

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

### **12.2 No Waiver.**

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

### **12.3 Electronic Signature.**

Electronic signatures that comply with applicable law are deemed original signatures.

### **12.4 Regulatory Matters.**

SAP Confidential Information is subject to export control laws of various countries, including the laws of the United States and Germany. Customer will not submit SAP Confidential Information to any government agency for licensing consideration or other regulatory approval, and will not export SAP Confidential Information to countries, persons or entities if prohibited by export laws.

### **12.5 Notices.**

All notices will be in writing and given when delivered to the address set forth in an Order Form with copy to the legal department. Notices by SAP relating to the operation or support of the Cloud Service and those under Sections 3.4 and 5.1 may be in the form of an electronic notice to Customer's authorized representative or administrator identified in the Order Form.

### **12.6 Assignment.**

Without SAP's prior written consent, Customer may not assign or 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.

### **12.7 Subcontracting.**

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

### **12.8 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.

### **12.9 Force Majeure.**

Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not 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 relating to its subject matter will be governed by and construed under the laws of England. Except for the right of either Party to apply to a court of competent jurisdiction for injunctive, or other equitable relief, any dispute or claim arising out of or relating to this Agreement, shall be settled by arbitration in Dubai International Financial Center in United Arab Emirates in accordance with the rules of arbitration of the London Court of International Arbitration (LCIA). The language to be used in the arbitration shall be English. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform

Computer Information Transactions Act (where enacted) will not apply to the Agreement. The Customer must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the Customer knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

#### **12.11 Arbitration.**

One or more arbitrators appointed in accordance with the following: (i) Arbitration by One Arbitrator: If the Parties agree to a one-arbitrator, the parties shall agree upon and appoint an arbitrator, after first ascertaining that the appointee consents to act, within thirty (30) days from the date on which written notice of referral to arbitration by one party is received by the other party (the "Notice Date") or (ii) Arbitration by Three Arbitrators: If the Parties are unable to agree on a one-arbitrator, or, having so agreed, are unable to agree on the arbitrator within thirty (30) days from the Notice Date, then the arbitration shall be conducted by and before three (3) arbitrators, who shall be appointed as follows. Each Party shall appoint one arbitrator, after first ascertaining that the appointee consents to act, and notify the other Party in writing of the appointment within sixty (60) days from the Notice Date. The appointed arbitrators shall agree upon and appoint the third arbitrator, who shall be the chairman, after first ascertaining that the appointee consents to act, and notify the Parties in writing of the appointment within ninety (90) days from the Notice Date.

The chairman shall be a qualified lawyer, and the other arbitrators shall have a background or training in computer law, computer science, or marketing of computer products. The arbitrators shall have the authority to grant injunctive relief, in a form substantially similar to that which would otherwise be granted by a court of law. The Parties irrevocably agree to submit to arbitration and the Parties each agree that any award made by the arbitrators shall be enforceable in any country, without further inquiry into the disputed matters which are the subject of the award. The provisions of this section shall survive termination of this Agreement.

#### **12.12 Entire Agreement.**

This Agreement constitutes the complete and exclusive statement of the agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, communications, arrangements, promises, assurances, warranties, representations and understandings between the parties (both oral and written) relating to that subject matter and no agreement, communication, arrangement, promise, assurance, warranty, representation, discussion, collateral contract or understanding of any kind, oral or written, shall be binding upon the parties unless incorporated herein. Each party acknowledges and agrees that in entering into this Agreement it has not relied on and shall have no remedy in respect of any agreement, communication, arrangement, promise, assurance, warranty, representation, discussion, collateral contract or understanding (whether negligently or innocently made) except those expressly set out in this Agreement. Each party agrees that it shall have no rights or remedies which, but for this section, might otherwise be available to it in respect of any such agreement, communication, arrangement, promise, assurance, warranty, representation, understanding, discussion, collateral contract or understanding; in any such case whether made innocently or negligently or otherwise. Nothing in this Agreement shall limit or exclude the liabilities or the rights or remedies of either party that cannot be limited or excluded by law. This Agreement may be modified only by a writing signed by both parties.

This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to SAP. This Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear in any clickwrap end user agreement included in the Software. Signatures sent by electronic means (facsimile or scanned and sent via e-mail) shall be deemed original signatures. This Agreement does not create any partnership, joint venture or principal-and-agent relationship.

#### **12.13 Contract Rights of Third Parties**

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.

## Glossary

- 1.1 "Affiliate"** means any legal entity in which the Customer, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights or such legal entity is Controlled by the Customer. Any such legal entity shall be considered an Affiliate for only such time as such interest or Control is maintained. "Control" means in reference to a legal entity is defined as the ability to solely direct the management of such legal entity and the right to appoint or remove the majority of the board of directors. For the avoidance of doubt, in no event may a third party have a veto right or any other right or ability to circumvent the sole control of Customer towards the Affiliate.
- 1.2 "Agreement"** means an Order Form and documents incorporated into an Order Form.
- 1.3 "Authorized User"** means any individual to whom Customer grants access authorization to use the Cloud Service that is an employee, agent, contractor or representative of
- (a) Customer,
  - (b) Customer's Affiliates, and/or
  - (c) 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.
- 1.5 "Cloud Service"** means any distinct, subscription-based, hosted, supported and operated on-demand solution provided by SAP under an Order Form.
- 1.6 "Cloud Materials"** mean any materials provided or developed by SAP (independently or with Customer's cooperation) in the course of performance under the Agreement, including in the delivery of any support or Consulting Services to Customer. Cloud Materials do not include the Customer Data, Customer Confidential Information or the Cloud Service.
- 1.7 "Confidential Information"** means
- (a) with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, (iii) Customer implementation plans, and/or (iv) Customer financial information, and
  - (b) with respect to SAP: (i) the Cloud Service, Documentation, Cloud Materials and analyses under Section 3.5, and (ii) information regarding SAP research and development, product offerings, pricing and availability.
  - (c) Confidential Information of either SAP or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.
- 1.8 "Consulting Services"** means professional services, such as implementation, configuration, custom development and training, performed by SAP's employees or subcontractors as described in any Order Form and which are governed by the Supplement for Consulting Services or similar agreement.
- 1.9 "Customer Data"** means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include SAP's Confidential Information.
- 1.10 "Documentation"** means SAP's then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud Service which is made available to Customer with the Cloud Service.
- 1.11 "Order Form"** means the ordering document for a Cloud Service that references the GTC.
- 1.12 "SAP SE"** means SAP SE, the parent company of SAP.
- 1.13 "SAP Policies"** means the operational guidelines and policies applied by SAP to provide and support the Cloud Service as incorporated in an Order Form.
- 1.14 "Subscription Term"** means the term of a Cloud Service subscription identified in the applicable Order Form, including all renewals.

- 1.15 "Supplement"** means the supplemental terms and conditions that apply to the Cloud Service and that are incorporated in an Order Form.
- 1.16 "Taxes"** means the local sales, value added tax, withholding, use, property, excise, service or similar taxes.
- 1.17 "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.