

## SAP LEARNING GENERAL TERMS AND CONDITIONS (“GTC”)

### 1. DEFINITIONS

- 1.1. **"Affiliate"** means of SAP means SAP SE and any legal entity which is, directly or indirectly, (i) a subsidiary of SAP SE as defined under article L.233-1 of the French Commercial Code, or (ii) controlled by SAP SE as defined under article L.233-3 of the French Commercial Code. "Affiliate" of Customer means any legal entity which is, directly or indirectly, (i) a subsidiary of Customer as defined under article L.233-1 of the French Commercial Code, or (ii) controlled by Customer as defined under article L.233-3 of the French Commercial Code. Any legal entity will be considered an Affiliate as long as it complies with these definitions of subsidiary or controlled company.
- 1.2. **"Agreement"** means collectively, in order of precedence, the Order, these GTC and any documents incorporated within.
- 1.3. **"Certification"** means an online exam to ascertain a certain level of knowledge and proficiency in SAP subject areas.
- 1.4. **"Confidential Information"** means all information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its Representatives designates as confidential, internal and/or proprietary at the time of disclosure; or (ii) should reasonably be understood to be confidential at the time of disclosure given the nature of the information and the circumstances surrounding its disclosure.
- 1.5. **"Course"** means classroom training delivered live either physically in person or virtually via the Internet.
- 1.6. **"Customer"** means the individual or company submitting an Order to SAP.
- 1.7. **"Export Laws"** means all applicable import, export control and sanctions, including but without limitation, the laws of the United States, the EU, and Germany.
- 1.8. **"Feedback"** means input, comments or from or on behalf of the Customer or any of its Affiliates to SAP, SAP SE or any other SAP Affiliate, or any reseller or representative thereof regarding SAP's business and technology direction or the possible creation, modification, correction, improvement or enhancement of the Cloud Services, SAP Software or Services (as applicable) purchased by the Customer.
- 1.9. **"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.
- 1.10. **"Online Training"** means prerecorded training delivered virtually, e.g. SAP e-learning.
- 1.11. **"Order"** means either the SAP Learning order form, or the shopping cart on the SAP Learning web shop on <https://training.sap.com/>, which the Customer submits to SAP to procure the Training Event or Certification.
- 1.12. **"Representatives"** means a party's Affiliates, employees, contractors, sub-contractors, legal representatives, accountants or other professional advisors.
- 1.13. **"SAP"** means the SAP entity that has entered into this Agreement.
- 1.14. **"SAP Materials"** means any materials (including statistical reports) provided, developed or made available to Customer by SAP (independently or with Customer's cooperation) in the course of performance under the Agreement. This includes but is not limited to the documentation and the delivery of any Training Event or Certification to the Customer. SAP Materials do not include Customer Confidential Information.
- 1.15. **"SAP SE"** means SAP SE, a parent company of SAP.
- 1.16. **"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.
- 1.17. **"Training Event"** means either a Course or Online Training, or both.

## **2. BASIS OF ORDER**

- 2.1. SAP grants to Customer a non-exclusive, non-transferable right to use the Training Event(s) or/and Certification(s).
- 2.2. An Order, once finalized and submitted to SAP, constitutes an offer by Customer to participate in the Training Events or Certifications specified in the Order, subject to these terms and conditions. Such offer becomes a binding agreement by SAP expressly confirming its acceptance (rather than an acknowledgment of receipt of Order) in writing to the Customer identified in the Order.

## **3. REGISTRATION AND DATES**

- 3.1. Customer shall ensure that the Order is delivered to SAP at least 1 week before the start date of any Training Event or Certification.
- 3.2. SAP shall be entitled to refuse the provision of any Training Event or Certification where:
  - a) such Training Event or Certification is fully booked; or
  - b) such Training Event or Certification is cancelled.
- 3.3. In the above cases, SAP shall advise Customer as soon as practicable, offering Customer a suitable alternative date or alternative Training Event or Certification, as appropriate. Where no suitable alternative date for Training Event can be found, SAP shall return to Customer any payment it has made for the Training Event. The provisions of this Section are the Customer's sole and exclusive remedy.

## **4. DOWNLOAD AND ACCESS TO ONLINE TRAINING**

- 4.1. Customer requires internet access. Access to Online Training, virtual Courses and Certification is only available online via an internet connection. Online Training and Certification participants must have an appropriate user identification to gain access and all names must be provided to SAP as needed.
- 4.2. Certain Online Training, but not all, may provide a restricted download capability. As soon as Customer opens the file through the Customer's computer, the copy protection key is validated through the Internet, and Customer can access the Online Training. Customer acknowledges that once the key is validated, the file cannot be copied to another computer.
- 4.3. Once access is established, an access notification will be provided to the contact identified in the Order or to the registrant via e-mail. Delivery shall be considered to be complete when SAP provides the Customer confirmation of access by e-mail.
- 4.4. Access to Online Training will be provided approximately 10 calendar days following the receipt of full payment for the Online Training. Access duration will start from the date the original access is established and last for the agreed duration detailed in the product description, Order or SAP Materials (as applicable).
- 4.5. Customer shall check the Online Training for completeness and notify SAP immediately in the event the Online Training is incomplete.

## **5. PRICE AND PAYMENT**

- 5.1. Customer shall pay the price of the Training Event(s) or Certification(s) as stated in the then current SAP training catalogue and the Order. Unless otherwise so stated, all fees and other charges are subject to applicable Taxes, which will be charged in addition to fees under the Agreement. Any fees not paid when due shall be subject, the day following the payment date stated on the invoice, to (i) a late payment interest equal to the interest rate applied by the European Central Bank to its most recent main refinancing operation, plus ten (10) percentage points, which shall not be less than three (3) times the current statutory interest rate in France, and to (ii) a fixed sum to cover recovery costs of forty (40) euros per affected invoice
- 5.2. Purchase orders are for administrative convenience only. SAP may issue an invoice and collect payment without a corresponding purchase order. The payment method must be established at the time of Order for Online Training and Certification or at the time of registration or scheduling for Courses.
- 5.3. SAP reserves the right in addition to pass on any charges:
  - a) relating to credit or charge card charge backs; and

b) for any handling fees incurred by SAP in relation to bookings made by credit or charge card.

SAP will notify Customer of the relevant charges prior to issue of a confirmation invoice.

- 5.4. All standard published Training Event or Certification fees are on a per student basis. For Courses, these fees include the price for instruction and training documentation.
- 5.5. Parking fees, if any, are not included in the Course price.
- 5.6. Provided that the full Course material has been covered there will be no refund of the price of the Course, either in whole or in part, should the Course finish earlier than originally scheduled.
- 5.7. Customer shall pay the full amount due prior to the start date of the Training Event or Certification. For Courses, payment must be received by SAP at least 14 calendar days prior to the start date of the Course(s) specified in the Order, or immediately upon placing the Order if placed less than 14 days prior to the start date of the Course.

## **6. TRAVEL COSTS AND EXPENSES**

- 6.1. Course participants must make their own arrangements for accommodations. A list of hotels can be provided for most locations. Any information is provided solely for convenience. Please be advised that SAP does not control, promote, endorse, or assume any liability of any kind for or relating to any aspect of the services provided by any hotels, including, without limitation, their shuttle bus or other transportation services or the acts or omissions of their officers, employees, contractors, or other agents. Any use of hotel services including, without limitation, their shuttle bus or other transportation is at the discretion of the Customer and solely a relationship between the Customer and the hotel or transportation provider. In no event, including where Courses are cancelled, will SAP be liable for any accommodation costs.

## **7. PREREQUISITES AND CUSTOMER RESPONSIBILITIES**

- 7.1. Customer shall ensure that all Course or Certification participants fulfil any and all of the Course or Certification prerequisites as communicated by SAP. SAP reserves the right to exclude a participant from attending any Course or Certification due to disruptive conduct, failure to observe any of SAP's rules of participation or failure to attend the prerequisite class or classes for a particular Course or Certification. No refund of fees shall be paid to Customer in such circumstances.
- 7.2. If special physical access is required for people with disabilities during the Course, SAP Learning must be notified at least 14 calendar days in advance of the Course in order to allow SAP to assess the requirements.
- 7.3. All SAP facilities are non-smoking environments. If non-smoking restrictions are violated, the offending participant may be excluded from attending the Course. No refund of fees shall be paid to Customer in such circumstance.

## **8. CANCELLATION**

- 8.1. SAP reserves the right to cancel any Training Event or Certification at any time for any reason. SAP shall inform Customer of such cancellation and offer Customer an alternative Online Training or Certification option or, for Courses, an alternative Course date or a full refund of the price paid, at SAP's sole discretion.
- 8.2. Customer may not cancel Orders for Online Training or Certification. Once such Order is confirmed there are no refunds or cancellations.
- 8.3. Customer may cancel its registration for any Course subject to the following cancellation fees:
  - a) no charge shall be made where notice of cancellation is received by SAP at least 15 calendar days prior to the start date of the Course;
  - b) 50% of the price shall be charged where notice of cancellation is received by SAP between 7 and 14 calendar days prior to the start date of the Course;
  - c) the full price of the Course shall be charged where notice of cancellation is received within 6 calendar days or less prior to the start date of the Course.

- 8.4. SAP will confirm all Course cancellations or rescheduling requests by e-mail. If the Customer does not receive a confirmation of cancellation or rescheduling within 5 calendar days of the request, the Customer should call SAP Learning services to reconfirm. Financial responsibility remains with the Customer for all fees unless a proper cancellation or rescheduling request is received and confirmed by SAP prior to the start of the Course.
- 8.5. All cancellation and rescheduling fees will be charged to the same payment method used to procure the Course. In the event that any payment details have changed, it is the Customer's responsibility to provide SAP with updated details. Please note that cancellation charges applied to the SAP Preferred Card will be based on the price as agreed by SAP for the Course.
- 8.6. In case a participant is extremely dissatisfied with a Training Event or Certification, it shall provide SAP with written notice (in a form other than the post-course survey) of any details regarding such dissatisfaction, within 30 calendar days of completion of the applicable Training Event or Certification. Correspondence shall be addressed to the email address set forth in the Order Form.. After receiving such notice, SAP may, in its sole discretion, determine if any remedy (such as a credit) is appropriate. SAP will not consider a possible remedy if such notice is not received within the 30 calendar days set forth above.

## **9. AMENDMENT AND SUPPORT OF CONTENT**

- 9.1. SAP reserves the right to amend the content of any Training Event or Certification without notice to Customer to correct errors or where, at the sole discretion of SAP, such amendment is deemed not to fundamentally change the content of such Training Event or Certification. Online Training may be updated with new products or new solution releases. Customer's license is provided for Online Training in effect at the time of Order placement. Customer is not entitled to any future product releases but can elect to repurchase the new product for an additional fee.
- 9.2. Support is available per the access confirmation in the event an Online Training participant is having difficulty with accessing the content only, but not for questions about the SAP software or other consulting or training type advice. Coaching, training, or ask-the-expert type support on SAP solutions or solution releases is available from SAP separately and may be offered under a separate agreement.
- 9.3. Online Training does not include access to development or sandbox systems.

## **10. ADDITIONAL TERMS AND CONDITIONS**

### **10.1. Learning Hub and Learning System Access**

Orders of Learning Hub and Learning System Access services are governed by the General Terms and Conditions for SAP Cloud Services and the SAP Learning Hub and SAP Learning System Access Supplement, copies of which can be found at <http://www.sap.com/agreements> (SAP Cloud Services Customers > Find General Terms and Conditions; or SAP Cloud Services Customers > Find Product Supplement).

### **10.2. Certification**

Orders for Certification are also governed by the SAP Learning Conditions for Participation Certification Program and SAP Service Description for Certification in the Cloud Volume Package which can be found at <http://www.sap.com/agreements> (SAP Services Agreements > SAP Learning – Certification or Certification in the Cloud, Volume Package).

### **10.3. Health and Safety**

For Courses that are delivered on site, health and safety measures may be applicable to that site. If SAP requires special health and safety measures it will inform Customer in advance of the Course via email. Non-compliance with any health and safety measures will be considered a cancellation by Customer. Similarly, if Customer requires special health and safety measures to be complied with at its site, it will notify SAP at the time of booking.

## **11. TERM AND TERMINATION**

### **11.1. Term**

The Agreement becomes effective as of the date of the express Order confirmation by SAP ("**Effective date**") in accordance with Section 2.2 and shall continue until all services under the Order are completed unless terminated earlier in accordance with these GTCs ("**Term**").

### **11.2. Termination of Agreement**

#### **11.2.1. Either party may terminate the Agreement:**

- a) 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 cured such breach during the 30 day period
- b) immediately if the other party files for bankruptcy, becomes insolvent, makes an assignment for the benefit of creditors, or otherwise materially breaches Section 16 of these GTCs.

#### **11.2.2. SAP may terminate the Agreement immediately if Customer breaches 19.5. or 19.7.**

### **11.3. Effect of Termination**

Upon any termination hereunder, Customer and its Affiliates shall immediately cease all use of SAP Materials and Confidential Information. In the event of any termination hereunder, Customer shall not be entitled to any refund of any payments made by Customer. Termination shall not relieve Customer from its obligation to pay fees that remain unpaid.

### **11.4. Survival**

Sections 1, 5, 8, 11, 13, 14,15, 16,18, 19 will survive the expiry or termination of the Agreement.

## **12. WARRANTY**

12.1. SAP does not warrant the accuracy or completeness of Training Events or Certification, nor any links or the information, text, graphics, links, or other items contained within SAP Materials.

12.2. SAP assumes no responsibility for errors or omissions in the information provided by the Customer in relation to Training Events or Certification. It is the Customer's duty to verify such information.

12.3. With respect to material defects in the Online Training, and as Customer's sole remedy for any material defect in the Online Training, SAP in its sole judgment, may:

- a) decide to eliminate such material defects; or
- b) make a replacement delivery; or
- c) indicate a reasonably acceptable way to avoid the impact of such material defect.

12.4. In the case of Course being delivered remotely using the Customer's network infrastructure and the Citrix Secure Gateway to access SAP's standard training systems located at an SAP site, SAP will support Customer in testing Customer's network infrastructure prior to delivery of the Course. Customer shall be solely responsible for any resulting adverse effects on Course delivery due to network and/or access issues during the Course.

## **13. THIRD PARTY CLAIMS**

### **13.1. Claims brought against Customer**

13.1.1. 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 Training Event or Certification 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.

13.1.2. SAP's obligation under Section 13.1.1 will not apply if the alleged claim results from:

- a) use of Training Event or Certification in conjunction with any other software, services or any product that SAP did not provide;

- b) use of Training Event or Certification 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;
  - d) any use of Training Event or Certification not permitted under the Agreement.
- 13.1.3. If a third party makes a claim under Section 13.1.1 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 Training Event or Certification under the terms of the Agreement; or
  - b) replace or modify the Training Event or Certification to be non-infringing without material decrease in functionality. Customer agrees to promptly use any update to Software provided by SAP.
- 13.1.4. If one of these options are not reasonably available, SAP or Customer may terminate the right of use relating to the affected Training Event or Certification upon written notice to the other.
- 13.1.5. SAP expressly reserves the right to cease such defense of any claim(s) in the event the applicable Training Event or Certification is no longer alleged to infringe or misappropriate the third party's rights.

#### 13.2. Claims Brought Against SAP

Customer shall defend SAP and its Affiliates against claims brought against SAP by any third party arising from or related to:

- a) any Customer use of the Training Event or Certification in violation of any applicable law or regulation; and
- b) an allegation that the Customer's use of the Training Event or Certification or anything Customer has provided to SAP including access to third party software or proprietary information violates, infringes or misappropriates the rights of a third party.

The foregoing shall apply regardless of whether such damage is caused by the conduct of Customer and/or its named users or by the conduct of a third party using Customer's access credentials.

#### 13.3. Third Party Claim Procedure

All third party claims under Sections 13.1 and 13.2 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 will reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the Defending Party, subject to section 13.3 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.

#### 13.4. Exclusive Remedy

The provisions of this Section state the sole, exclusive and entire liability of the Defending Party, its Affiliates, and subcontractors to the Named Party, and is the Named Party's sole remedy, with respect to covered third party claims and to the infringement and misappropriation of third party intellectual property rights.

### 14. LIMITATIONS OF LIABILITY

#### 14.1. No liability

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

- a) if the Training Event or Certification is not used in accordance with the documentation;
- b) if the defect or liability is caused by Customer modification or third party software;
- c) if the Training Event or Certification 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;

- e) for any claims or damages arising from inherently dangerous use of the Training Event or Certification; or
- f) for any damages caused by any services provided for no fee.

14.2. No Cap on Liability

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

- a) the parties' obligations under Section 13.1.1 and 13.2 above (excluding SAP's obligation under Section 13.1.113.1.1 where the third party claim(s) relates to services not developed by SAP);
- b) gross negligence or willful misconduct;
- c) Customer's unauthorized use of any Training Event or Certification; or
- d) any failure by Customer to pay any fees due under the Agreement.

14.3. Liability Cap

Except as set forth in Section 14.1 above the maximum aggregate liability of either party (or its respective Affiliates, SAP's licensors or SAP subcontractors) to the other or any other person or entity for all events or series of connected events (including, without limitation, resulting from the performance or cancellation of Training Events or Certifications) shall not exceed the fees paid for the applicable Training Event or Certification under the relevant Order or in the case of subscription based services or services with monthly reoccurring fees, the fees paid in the 12 month period preceding the date of the incident giving rise to the liability. Where SAP's liability is excluded or limited, this also applies to the personal liability of SAP's employees, Representatives, and people performing duties on SAP's behalf.

14.4. Exclusions to Damages

In no case will:

- a) either party (or its respective Affiliates or SAP's subcontractors or SAP's licensors) 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 for exemplary or punitive damages; and
- b) SAP be liable for any damages caused by any Training Events or Certification provided for no fee.

14.5. 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 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 the Training Event or Certification.

**15. INTELLECTUAL PROPERTY RIGHTS**

15.1. SAP Ownership

15.1.1. Customer only receives a right to use Training Events and/or Certification pursuant to the terms hereof.

15.1.2. 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 any derivative works of the Training Event(s) or Certification(s) and other SAP Materials

15.1.3. 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.

15.2. 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, reverse engineer or be permitted to modify Training Event(s) or Certification(s) or any SAP Materials (or attempt any of the foregoing);

- b) circumvent or endanger the operation or security of Training Event(s) or Certification(s); or
- c) remove SAP's copyright and authorship notices.

### 15.3. Use of SAP Materials

Every person using SAP Materials must be licensed under these terms and conditions for accessing, downloading, or using the SAP Materials. Employees and others who have access to the SAP Materials must be informed of SAP's intellectual property and rights of authorship and their duty to conform to laws governing intellectual property rights. Customer shall carefully safeguard the SAP Materials that have been made available to the Customer or Training Event or Certification participants, to prevent their misuse. Customer is permitted to use the SAP Materials only for its own internal training purposes and only for those who have registered for the relevant Training Event or Certification under this Agreement. SAP Materials are confidential and proprietary information of SAP and Customer agrees not to disclose this information to any third party or use such information except as expressly permitted herein.

### 15.4. Consequences of Breach

- 15.4.1. Customer acknowledges that it is illegal and a violation of this Agreement to copy or distribute SAP Materials download online products, links, S-Users, or passwords among non-licensed persons.
- 15.4.2. Customer acknowledges that SAP shall be entitled to seek injunctive relief for any breach of this agreement by Customer from which irreparable harm would ensue.
- 15.4.3. In the event Customer breaches any provision of this Agreement and fails to cure such breach within a reasonable time (in any case no more than 10 days) after receipt of written notice from SAP, SAP shall have the right to immediately terminate this Agreement and Customer's right to use the products licensed hereunder. Upon any such termination, Customer shall immediately cease use of such products, delete and destroy any tangible or electronic embodiments of such information in its possession, and certify in writing to SAP that the foregoing has been completed.

## 16. CONFIDENTIALITY

### 16.1. Use of Confidential Information

#### 16.1.1. 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;
- 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.

16.1.2. Customer shall treat all information about the Agreement, its terms and conditions, the pricing or any other facts relating thereto as Confidential Information of SAP and protect the same from disclosure to third parties in accordance with Sections 16.1.1 and 16.2.

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

### 16.2. 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.

#### 16.3. 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 use or reference to the disclosing party's Confidential Information;
- b) has become generally known or available to the public through no breach 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.

#### 16.4. Destruction and Return of Confidential Information

Upon the disclosing party's request or the effective date of expiration or termination of the 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 that are not generally accessible, in accordance with general systems archiving or backup policies.

#### 16.5. 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, SAPPHIRE 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.

### 17. DATA PROTECTION AND PRIVACY

17.1. Information as to how SAP is using personal data where it acts as a data controller (e.g. of the Customer's representative who executes the Order or where participants have to directly register themselves with SAP) can be found in the SAP Learning Privacy Statement at <https://training.sap.com/about/legal/privacy>.

17.2. Where SAP is processing personal data on behalf of the Customer (e.g. where SAP is registering participants for a Training Event or Certification on behalf of the Customer), the terms of SAP's Data Processing Agreement available at <https://www.sap.com/about/trust-center/agreements/services.html> shall apply and which is made part of this Agreement and executed by the Customer and SAP by entering into the Order.

### 18. FEEDBACK

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

## **19. MISCELLANEOUS**

### **19.1. 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.

### **19.2. Third Party Beneficiaries**

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 in favor of any person not a party hereto.

### **19.3. No Waiver**

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

### **19.4. Counterparts**

The Agreement may be signed in counterparts, each of which shall 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.

### **19.5. Trade Compliance**

19.5.1. SAP and Customer shall comply with Export Laws in the performance of this Agreement. SAP Materials and Confidential Information are subject to Export Laws. Customer, its Affiliates and authorized users shall not directly or indirectly export, re-export, release, or transfer 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 SAP Materials. Customer must not use the Software or SAP Support from Crimea/Sevastopol, Cuba, Iran, the People's Republic of Korea (North Korea) and Syria.

19.5.2. Upon SAP's request, Customer shall provide information and documents to support obtaining an export authorization. SAP may immediately terminate Customer's rights in relation to the affected Training Event or Certification 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 Training Event or Certification to Customer.

### **19.6. Notices**

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

### **19.7. 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.

### **19.8. Subcontracting**

SAP may use subcontractors to provide all or part of Training Event(s) or Certification(s) under the Agreement. SAP is responsible for breaches of the Agreement caused by its subcontractors in relation to SAP Learning services and the performance of any subcontractor to the same extent as if it would be performed by SAP.

### **19.9. 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.

19.10. 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.

19.11. 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 France. 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.

19.12. Jurisdiction and Mandatory Venue

The parties submit to the exclusive jurisdiction of the courts located in Commercial Courts of Paris. The parties waive any objections to the venue or jurisdictions identified in this provision.

19.13. Statute of Limitation

Either party must initiate a cause of action for any claim(s) relating to or arising from the Agreement 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).

19.14. 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. 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.