

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

**GENERAL TERMS**

The General Terms apply at all times to the Cloud Services and Professional Services. The General Terms supplement the applicable Model Specific Terms. In the event of any conflict between the General Terms and the applicable Model Specific Terms, the applicable Model Specific Terms shall prevail.

**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 share or voting rights. Any legal entity will be considered an Affiliate for only such time 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, agent, 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 or suppliers of Customer and its Affiliates.
- 1.5. **"Cloud Service"** means any distinct, hosted, supported and 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 Customer or its Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data does not include any component of the Cloud Services, Professional Services, or SAP Materials. Customer Data and its derivatives will not include SAP's Confidential Information.
- 1.8. **"Documentation"** means SAP's then current technical and functional documentation including any roles and responsibilities descriptions relating to the Cloud Service which SAP makes available to the Customer under the Agreement.
- 1.9. **"Export Laws"** means all applicable import, export control and sanctions including, but without limitation, the laws of the United States, the EU, and Germany.
- 1.10. **"Feedback"** means input, comments or suggestions regarding SAP's business and technology direction or the possible creation, modification, correction, improvement or enhancement of the Cloud Service or Professional Services (as applicable) purchased by the Customer under the Agreement.
- 1.11. **"General Terms"** means the terms and conditions contained in this GTC that have the title General Terms, as distinguished from the parts of this GTC that are the Model Specific Terms.
- 1.12. **"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.
- 1.13. **"Model Specific Terms"** means the applicable terms and conditions incorporated into the GTC, namely the Cloud Terms and Professional Service Terms.

- 1.14. **"Order Form"** means the applicable ordering document for Cloud Services or Professional Services that references these GTC.
- 1.15. **"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" or "Services".
- 1.16. **"Representatives"** means a party's Affiliates, employees, contractors, sub-contractors, legal representatives, accountants or other professional advisors.
- 1.17. **"SAP Materials"** means any materials (including statistical reports) provided, developed or made available by SAP (independently or with Customer's cooperation) in the course of performance under the Agreement. This includes but is not limited to Deliverables and the delivery of any Professional Services to the Customer. SAP Materials do not include the Customer Data, Customer Confidential Information or the Cloud Service. SAP Materials may also be referred to in the Agreement as "Cloud Materials".
- 1.18. **"SAP SE"** means SAP SE, a parent company of SAP.
- 1.19. **"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.

## **2. FEES AND TAXES**

### **2.1. Fees and Payment**

Customer shall pay fees as stated in the Order Form. If Customer does not pay any 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 or the provision of Professional Services until payment is made. SAP shall provide Customer with prior written notice before any such suspension. Any fees not paid when due shall accrue interest at the maximum legal rate. Purchase orders are for administrative convenience only. SAP may issue an invoice and collect payment without a corresponding purchase order.

### **2.2. Taxes**

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

## **3. TERM AND TERMINATION**

### **3.1. Term of the Agreement**

The term of the Agreement is specified in the applicable Order Form unless otherwise terminated earlier by either party in accordance with this Section 3.

### **3.2. Termination of the Agreement**

#### **3.2.1. Either party may terminate the applicable 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 such 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 Sections 7 or 9.6 of these General Terms.

#### **3.2.2. All other provisions relating to the parties' right to terminate an Agreement and the effect of such termination are specified in the applicable Model Specific Terms.**

#### **3.2.3. Termination of one Agreement in accordance with this Section 3 will not result in the termination of any other Agreement subject to these GTC.**

### **3.3. Survival**

The following Sections of this GTC survive the expiry or termination of the applicable Agreement:

- a) Sections 1, 2, 3.3, 4, 5, 5, 7, 8 and 9 of the General Terms;

- b) Sections 1, 5.2, 5.3, and 7 of the Cloud Terms (if applicable); and
- c) Sections 1, 6, 8, 9, and 11 of the Professional Service Terms (if applicable).

#### **4. THIRD PARTY CLAIMS**

##### **4.1. Claims brought against Customer**

4.1.1. 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 Services or Deliverables 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.

4.1.2. SAP's obligation under Section 4.1.1 will not apply if the alleged claim results from:

- a) use of the Cloud Service or Deliverables in conjunction with any other software, services or any product that SAP did not provide;
- b) use of the Cloud Service or Deliverable 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) modification of the Deliverable by Customer or by a third party on behalf of Customer;
- e) anything that Customer provides to SAP including configurations, instructions or specifications in relation to Professional Services; or
- f) any use of the Cloud Services or Deliverables not permitted under the Agreement.

4.1.3. If a third party makes a claim under Section 4.1.1 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 Cloud Service or Deliverable under the terms of the Agreement; or
- b) replace or modify the Cloud Services or Deliverable to be non-infringing without material decrease in functionality.

4.1.4. If these options are not reasonably available, SAP or Customer may terminate the affected Cloud Service or the Agreement relating to the affected Deliverable upon written notice to the other.

4.1.5. SAP expressly reserves the right to cease such defence of any claim(s) in the event the applicable Cloud Service or Deliverable is no longer alleged to infringe or misappropriate the third party's rights.

##### **4.2. Claims brought against SAP**

Customer shall defend SAP and its Affiliates as specified in and in accordance with the applicable Model Specific Terms.

##### **4.3. Third Party Claim Procedure**

All third party claims under Sections 4.1 and 4.2 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 4.3b) 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.

##### **4.4. Exclusive Remedy**

The provisions of this Section 4 state the sole, exclusive and entire liability of the Defending Party, its Affiliates, Business Partners 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.

## **5. LIMITATION OF LIABILITY**

### **5.1. No Cap on Liability**

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

- a) the parties' obligations under Section 4.1.1 and 4.2 above relating to the Cloud Service only (excluding SAP's obligation under Section 4.1.1 where the third party claim(s) relates to Cloud Services not developed by SAP);
- b) death or bodily injury arising from either party's gross negligence or willful misconduct; and / or
- c) Customer's unauthorized use of any Cloud Service and / or any failure by Customer to pay any fees due under the Agreement.

### **5.2. Liability Cap for Cloud Services**

Except as set forth in Section 5.1 above, the maximum aggregate liability of either party (or its respective Affiliates or SAP's subcontractors) to the other or to any other person or entity for all events (or series of connected events) arising in any 12 month period will not 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.

### **5.3. Liability Cap for Professional Services**

- 5.3.1. Except as set forth in Section 5.1 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) shall not exceed the fees paid for the applicable Professional Services under the relevant Order Form 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.

### **5.4. Exclusions to Damages**

#### **5.4.1. 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 or for exemplary or punitive damages; and
- b) SAP be liable for any damages caused by any Cloud Service or Professional Services provided for no fee.

### **5.5. 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 Cloud Service or Professional Services.

## **6. INTELLECTUAL PROPERTY RIGHTS**

### **6.1. SAP Ownership**

- 6.1.1. 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 any derivative works of:
  - a) the Cloud Service;
  - b) SAP Materials;
  - c) Documentation; and
  - d) any Professional Services, Deliverables and Work Products (including any techniques, knowledge or processes of the Professional Services or Deliverables) whether or not developed for the Customer.

6.1.2. 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.

## 6.2. Protection of Rights

6.2.1. 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 the Cloud Service or any 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) circumvent or endanger the operation or security of the Cloud Service; or
- d) remove SAP's copyright and authorship notices.

## 6.3. Model Specific Intellectual Property Rights provisions

All other provisions in relation to the parties' Intellectual Property Rights under the Agreement (if any) will be expressly specified in the applicable Model Specific Terms.

## 7. CONFIDENTIALITY

### 7.1. Use of Confidential Information

7.1.1. 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 7;
- 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.

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

7.1.3. Confidential Information of either party disclosed prior to execution of the Agreement will be subject to this Section 7.

### 7.2. 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.

### 7.3. Exceptions

7.3.1. 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 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.

#### 7.4. Destruction & Return of Confidential Information

7.4.1. 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 in accordance with general systems archiving or backup policies.

7.4.2. The obligation in this Section shall not apply to Work Products provided by SAP to Customer under any Professional Services (if applicable), unless the Agreement is terminated by SAP in accordance with Section 3.2.1 above.

### 8. FEEDBACK

8.1. 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.

### 9. MISCELLANEOUS

#### 9.1. 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. This will also apply in cases of contractual gaps.

#### 9.2. No Waiver

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

#### 9.3. 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.

#### 9.4. Trade Compliance

9.4.1. SAP and Customer shall comply with Export Laws in the performance of the Agreement. The Cloud Services, Professional Services 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 the Cloud Services, Professional Services, Work Products and Confidential Information in violation of Export Laws. Customer is solely responsible for compliance with Export Laws related to Customer Data, including obtaining any required export authorizations for Customer Data. Customer must not use the Cloud Service, Professional Services or Work Products from Crimea/Sevastopol, Cuba, Iran, the People's Republic of Korea (North Korea) and Syria.

9.4.2. Upon SAP's request, Customer shall provide information and documents to support obtaining an export authorization. SAP may immediately terminate Customer's subscription to the affected Cloud Service or Professional Services 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 Cloud Service to Customer.

9.5. 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 the Customer's authorized representative or administrator. SAP may provide notice of modifications to the Cloud Service under Section 3.4 of the Cloud Terms (if applicable) 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.

9.6. 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.

9.7. Subcontracting

9.7.1. SAP may use subcontractors to provide all or part of the applicable Cloud Service or Professional Services under the Agreement.

9.7.2. SAP is responsible for:

- a) breaches of the Agreement caused by its subcontractors in relation to the Cloud Service; and
- b) the performance of any Professional Services by a subcontractor to the same extent as it would be if performed by its own employees.

9.8. Relationship of the Parties

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

9.9. 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.

9.10. 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 Luxembourg. 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.

9.11. Jurisdiction and Mandatory Venue

The parties submit to the exclusive jurisdiction of the courts located in Luxembourg. The parties waive any objections to the venue or jurisdictions identified in this provision. The mandatory, sole and exclusive venue, place or forum for any disputes arising from the Agreement (including any dispute regarding the existence, validity or termination of the Agreement) shall be Luxembourg.

9.12. Waiver of Right to Jury Trial

Each party waives any right it may have to a jury trial for any claim or cause of action arising out of or in relation to the Agreement.

9.13. Statute of Limitation

Customer 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 Customer knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

9.14. 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.



## **CLOUD TERMS**

### **1. DEFINITIONS**

- 1.1. **“Subscription Term”** means the initial subscription term and, if applicable any renewal subscription term of a Cloud Service identified in the Order Form.
- 1.2. **“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

During the Subscription Term, SAP grants to Customer a non-exclusive and non-transferable right to use the Cloud Service (including its implementation and configuration), SAP Materials and Documentation solely for Customer's and its Affiliates' internal business operations and in accordance with the terms and conditions of the Agreement. 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 relating to 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 1 individual but may be transferred from 1 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. 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 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.

#### 2.5. 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 are 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 on-premise components. Customer may only use the on-premise components during the Subscription Term.

### **3. SAP RESPONSIBILITIES**

#### 3.1. Provisioning

SAP makes the Cloud Service available and is responsible for its operation.

### 3.2. Support

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

### 3.3. Security

SAP will implement and maintain appropriate technical and organizational measures to protect the personal data processed by SAP as part of the Cloud Service as described in the applicable Data Processing Agreement incorporated into the Order Form in compliance with applicable data protection law.

### 3.4. Modifications

#### 3.4.1. Scope

3.4.1.1. As the Cloud Service evolves, SAP may improve or modify the Cloud Service (including support services, Maintenance Windows and Major Upgrade Windows). This includes the option to remove functionality from the Cloud Service where SAP either provides a functional equivalent or where this does not materially reduce key functionality of the Cloud Service. Functionality beyond the initial scope of the Cloud Service may be subject to additional terms and Customer's use of such additional functionality shall be subject to those terms.

#### 3.4.2. Notice of Modifications

3.4.2.1. SAP shall inform Customer of modifications to the Cloud Service with an adequate period in advance. SAP shall provide Customer 1 month advance notice before changing its Maintenance and Major Upgrade Windows (unless such change is a reduction in the duration of the applicable Maintenance or Major Upgrade Windows) and support services.

3.4.2.2. Where in justified cases, SAP removes functionality from the Cloud Service without providing a functional equivalent, SAP shall provide Customer 6 months' advance notice.

#### 3.4.3. Customer Termination

If a modification materially degrades the overall functionality of the affected Cloud Service, Customer may terminate its subscription to the affected Cloud Service by providing written notice to SAP within 1 month of SAP's applicable 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 and responsibilities

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

4.1.2. 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.

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

4.1.4. 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.

### 4.2. Access to Customer Data

4.2.1. 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.

4.2.2. 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.

4.2.3. 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.

4.2.4. 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. TERMINATION**

### **5.1. Termination of Agreement for Cloud Services**

In addition to the party's right to terminate as specified in Section 3.2 of the General Terms, a party may terminate the Agreement as permitted under Sections 3.4.3, 6.3.b), and 6.4.3 of these Cloud Terms and Sections 4.1.4 and 9.4 of the General Terms with termination effective 30 days after receipt of notice in each of those cases.

### **5.2. Refund and Payments**

For termination by Customer or a termination in accordance with Section 4.1.4 or 9.4 of the General Terms, 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.

### **5.3. Effect of Expiration or Termination**

Upon the effective date of expiration of the Subscription Term or termination of the Agreement, Customer's right to use the Cloud Service will end.

## **6. WARRANTIES**

### **6.1. 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.

### **6.2. Good Industry Practices**

SAP warrants that it will provide the Cloud Service:

- a) in substantial conformance with the applicable 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.

### **6.3. Remedy**

Customer's sole and exclusive remedies and SAP's entire liability for breach of the warranty under Section 6.2 above 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.

### **6.4. System Availability**

6.4.1. 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**").

6.4.2. 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.

6.4.3. In the event SAP fails to meet the SLA:

- a) for 4 consecutive months; or
- b) for 5 or more months during any 12-month period; or
- c) 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.

6.5. Warranty Exclusions

The warranties in Sections 6.2 and 6.4 of this Section 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. THIRD PARTY CLAIMS**

7.1. 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.

## PROFESSIONAL SERVICES TERMS

### 1. DEFINITIONS

- 1.1. **"Change Request"** means a change request made in accordance with Section 4 below and in the form made available by SAP from time to time or included in the Order Form.
- 1.2. **"Consultants"** means employees and contractors which SAP utilizes to provide Professional Services to Customer.
- 1.3. **"Deliverables"** means those specific Work Products which are explicitly identified as a "Deliverable" under the applicable Order Form.
- 1.4. **"License Agreement"** means the agreement between Customer and SAP (or an SAP SE Affiliate, or an authorized reseller) under which Customer procured the rights to use a Cloud Service.
- 1.5. **"Material Defect"** means the Deliverable fails to substantially comply with the applicable and corresponding acceptance criteria for that Deliverable set forth in the Order Form.
- 1.6. **"Scope Document"** means the document that is provided with and becomes part of the Order Form and which defines sometimes in conjunction with a Service Description the Professional Services to be provided.
- 1.7. **"Service Description"** means pre-defined descriptions of services found at <http://www.sap.com/servicedescriptions> current as of the effective date of the Order Form which in conjunction with a Scope Document defines the Professional Services to be provided and becomes part of the Order Form.
- 1.8. **"Work Product"** means any work product or tangible results produced by or with SAP, including works created for or in cooperation with Customer.

### 2. PROVISION OF PROFESSIONAL SERVICES

#### 2.1. Performance

- 2.1.1. SAP will provide the Professional Services in accordance with the Order Form and these GTC.
- 2.1.2. If any Professional Service, in whole or in part, cannot be provided by SAP due to a Customer issue and Customer fails to provide SAP with reasonable advance notice, the time spent by the Consultants on such Professional Service will be charged to Customer.

#### 2.2. Time not of Essence

All dates with respect to performance of the Professional Services are estimated and time shall not be deemed of the essence.

#### 2.3. Acceptance

- 2.3.1. If the applicable Order Form expressly states that the Deliverables are subject to acceptance and does not otherwise specify an acceptance procedure, the following acceptance procedure applies:
  - a) Upon delivery by SAP of a completed Deliverable, Customer shall have 10 calendar days to accept or reject the Deliverable due to a Material Defect, based on the acceptance criteria set forth in the Order Form for that Deliverable ("**Acceptance Period**").
  - b) If the relevant Deliverable passes the acceptance criteria set forth in the Order Form, Customer shall accept the Deliverable. Acceptance will not be unreasonably withheld by Customer. If Customer notifies SAP that it has rejected the Deliverable due to a Material Defect, Customer shall provide written notice, within such 10-day period, specifying the basis of the Material Defect.
  - c) SAP shall have a reasonable period to cure and redeliver the Deliverable for an additional Acceptance Period. If Customer fails to reject any Deliverable within the Acceptance Period, in a written document specifying the Material Defect, Customer shall be deemed to have accepted such Deliverable as of the 10th day of the Acceptance Period.

- d) Upon acceptance of a Deliverable, all Professional Services associated with such Deliverable shall be deemed accepted and SAP shall have no further obligation with respect to an accepted Deliverable. Customer shall not make productive use of a Deliverable, unless it has been accepted by Customer (either expressly or by passage of time).
- e) If the applicable Order Form does not expressly specify acceptance criteria for a Deliverable, such Deliverable will be deemed accepted upon delivery.

### **3. CUSTOMER'S RESPONSIBILITIES**

#### **3.1. Responsibilities**

- 3.1.1. Customer will make the necessary arrangements to allow SAP to perform the Professional Services.
- 3.1.2. Customer shall provide and make available all Customer personnel that SAP reasonably requires in connection with performance of the Professional Services and as may be further addressed in an applicable Order Form.
- 3.1.3. If the Professional Services are performed at Customer's site, Customer agrees to provide necessary access to its site including appropriate access to Customer premises, computer systems and other facilities.
- 3.1.4. Customer shall appoint a contact person with the authority to make decisions and to supply SAP with any necessary or relevant information expeditiously.
- 3.1.5. Customer shall ensure to have all necessary license rights including third party license rights required to allow SAP to perform the Professional Services.

### **4. CHANGE REQUEST PROCEDURES**

#### **4.1. Change Requests**

- 4.1.1. Either party can request changes to the Professional Services.
- 4.1.2. SAP is not required to perform under a Change Request prior to the execution by the parties of the applicable Change Request.

### **5. SATISFACTION WITH PERSONNEL**

- 5.1. If at any time Customer or SAP is dissatisfied with the material performance of a Consultant or a Customer project team member, the dissatisfied party shall promptly report such dissatisfaction to the other party in writing and may request a replacement. The other party will use its reasonable discretion in accomplishing any such change (which also, in the case of SAP, shall be subject to staffing availability).

### **6. TERM AND TERMINATION**

#### **6.1. Term of Order Form for Professional Services**

Each Order Form shall remain in effect until end of term specified in the Order Form or on completion of the Professional Services in accordance with the Agreement unless terminated earlier by either party in accordance with this Section 6. For clarity, the termination of any particular Professional Service in accordance with this Section 6 shall not cause or result in termination of any other Professional Services ordered under the same Order Form nor reduce the Customer's liability for payments to SAP.

#### **6.2. Termination of Professional Services Order Form**

Either party may terminate a Professional Services Order Form (excluding fixed-price Professional Services, Premium Engagement Services and subscriptions or monthly reoccurring Professional Services) upon 30-days prior written notice to the other party, unless otherwise agreed in a Professional Services Order Form.

#### **6.3. Effect of termination**

- 6.3.1. Customer shall be liable for payment of all costs, fees and expenses up to the effective date of termination for:
  - a) any completed, partially completed or scheduled Professional Services from any phase or milestone;
  - b) any reasonable committed costs or expenses; and
  - c) any non-refundable travel costs including visa costs and related expenses.

- 6.3.2. The obligation to return or destroy Confidential Information does not apply to Work Products that are provided by SAP to Customer, unless the Order Form or Agreement is terminated by SAP in accordance with Section 3.2.1 of the General Terms.

## **7. WARRANTY**

### **7.1. Good industry practices**

#### **7.1.1. SAP warrants that:**

- a) its Professional Services will be performed in a professional workman-like manner by Consultants with the skills reasonably required for the Professional Services; and
- b) for 90 days following provision of the Professional Service, the Deliverables will materially conform with the applicable specifications for that Deliverable. For clarity, the warranty period for Deliverables (if any) resulting from any subscription based Professional Services will in no event exceed the termination date of the subscription based Professional Services.

- 7.1.2. SAP does not warrant error-free or uninterrupted operation of any Professional Service or Deliverable or that SAP will correct all non-conformities.

### **7.2. Notification**

- 7.2.1. Customer shall notify SAP within 90 days of provision of the Professional Service or Deliverable in writing of the alleged warranty breach and provide SAP with a precise description of the problem and all relevant information reasonably necessary for SAP in order to rectify such warranty breach.

### **7.3. Remedy**

Provided Customer has notified SAP in accordance with Section 7.2 of a warranty breach and SAP validates the existence of such warranty breach, SAP will, at its option:

- a) re-perform the applicable Professional Services or Deliverable; or
- b) refund the fee paid or reallocate quota for the specific non-conforming Professional Service or Deliverable.

This is Customer's sole and exclusive remedy for a warranty breach.

### **7.4. Exclusions**

This warranty shall not apply:

- a) if the Deliverables are not used in accordance with any applicable Documentation provided; or
- b) if the alleged warranty breach is caused by a modification to the Deliverable, Customer or third party software.

## **8. THIRD PARTY CLAIMS**

### **8.1. Claims Brought Against SAP**

- 8.1.1. 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 Professional Services in violation of any applicable law or regulation; and
- b) an allegation that the Customer Data, Customer's use of the Professional Services 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.

- 8.1.2. 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.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1. Any Professional Services, Deliverables and Work Products provided by SAP to Customer prior to the execution of an applicable Order Form or a Change Request are the sole property and Confidential Information of SAP and shall be governed by the terms of the Agreement. If no Order Form is completed, all Professional Services, Work Products and Deliverables must be returned or deleted and must not be used.

9.2. Once all amounts due under an Order Form are paid in full and all claims have been satisfied, Customer will be granted a non-exclusive, non-transferable license to use any Deliverables and Work Products provided to it by SAP under a relevant Order Form under the Agreement in order to run Customer's and its Affiliates' internal business operations. This license will be granted to the same extent and term as the License Agreement. The foregoing will be subject to Customer's compliance with the terms of the License Agreement and this Agreement. Customer may allow its third party service providers to access the Deliverables, Work Product and Professional Services of SAP solely for purposes of supporting the Customer or its Affiliates and provided that such third party service provider is obligated under substantially similar written terms to protect SAP Confidential Information. Customer shall be responsible for breaches of the Agreement caused by its third party service providers. Customer must immediately notify SAP in writing if any third party gains unauthorized access to SAP proprietary materials or Confidential Information. Customer shall take all reasonable steps to stop such unauthorized access.

#### **10. SYSTEM SECURITY AND DATA SAFEGUARDS**

10.1. When SAP is given access to Customer's systems and data, SAP shall comply with Customer's reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. In connection with such access, Customer shall be responsible for providing Consultants with user authorizations and passwords to access its systems and revoking such authorizations and terminating such access, as Customer deems appropriate from time to time. Customer shall not grant SAP access to Customer systems or personal information (of Customer or any third party) unless such access is essential for the performance of Professional Services under the Agreement. The parties agree that no breach of this provision shall be deemed to have occurred in the event of SAP non-conformance with the aforementioned safeguard but where no personal information has been compromised.

#### **11. NON-SOLICITATION**

11.1. Neither party shall knowingly solicit or hire, any of the other party's employees involved in the Professional Services during the term of the applicable Order Form and for a period of 6 months from the termination thereof, without the express written consent of the other party. This provision shall not restrict the right of either party to recruit generally in the media.

#### **12. PUBLICITY**

12.1. 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.