

SAP SERVICES GENERAL TERMS AND CONDITIONS (“GTCs”)

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 or SAP Software under the License Agreement.
- 1.4. **“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.
- 1.5. **“Cloud Service”** means any distinct, subscription-based, hosted, supported and on-demand solution provided by SAP, an SAP Affiliate or an authorized reseller of SAP under an Order Form for Cloud Services.
- 1.6. **“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.
- 1.7. **“Consultants”** means employees and third party contractors which SAP utilizes to provide Services to Customer.
- 1.8. **“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, Services, or SAP Materials. Customer Data and its derivatives will not include SAP's Confidential Information.
- 1.9. **“Deliverables”** means those specific Work Products which are explicitly identified as a “Deliverable” under the applicable Order Form.
- 1.10. **“Export Laws”** means all applicable import, export control and sanctions, including but without limitation, the laws of the United States, the EU, and Germany.
- 1.11. **“Feedback”** means input, comments or suggestions 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.
- 1.12. **“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. **“License Agreement”** means the agreement between SAP (or an SAP SE Affiliate, or an authorized reseller) under which Customer procured the rights to use SAP Software or a Cloud Service.
- 1.14. **“Order Form”** means the applicable ordering document for Services that references these GTCs.
- 1.15. **“Representatives”** means a party's Affiliates, employees, contractors, sub-contractors, legal representatives, accountants or other professional advisors.
- 1.16. **“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 Services to the Customer. SAP Materials do not include the Customer Data or Customer Confidential Information.
- 1.17. **“SAP SE”** means SAP SE, a parent company of SAP.

- 1.18. **"SAP Software"** means
- i. software products licensed and delivered to Customer as specified in software order forms between SAP (or an SAP SE Affiliate or an authorized reseller) and Customer;
 - ii. any new releases, updates or versions thereof made available under a License Agreement for SAP Software and Support; and
 - iii. any complete or partial copies of any of the foregoing.
- 1.19. **"Scope Document"** means the document (if any) that is provided with and becomes part of the Order Form and which defines sometimes in conjunction with a Service Description (as applicable) the Services to be provided.
- 1.20. **"Services"** mean those service(s) as further defined by the specific Service Descriptions and/or Scope Documents under an Order Form that references these GTCs.
- 1.21. **"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 (if any) defines the Services to be provided and becomes part of the Order Form.
- 1.22. **"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.
- 1.23. **"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 SERVICES

2.1. Performance

- 2.1.1. SAP will provide the Services in accordance with the Order Form and these GTCs.
- 2.1.2. If any 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 Service will be charged to Customer.

2.2. Time not of Essence

All dates with respect to performance of the 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 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 RESPONSIBILITIES

3.1. Access, System Security and Data Safeguards

- 3.1.1. Customer will make the necessary arrangements to allow SAP to perform the Services, including the availability of consistent, stable and fast remote connectivity and the necessary authorizations for remote access to Customer's systems.
- 3.1.2. If the 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.
- 3.1.3. 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, that the Customer has notified to SAP with reasonable prior written notice of. 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 Services under the Agreement. Customer shall not store any personal data in non-production environments. No breach of this provision shall be deemed to have occurred in the event of SAP's non-conformance with the aforementioned safeguard but where no personal information has been compromised.

3.2. Customer Cooperation

- 3.2.1. Customer shall provide and make available all Customer personnel as may be further addressed in an applicable Order Form or that SAP reasonably requires in connection with performance of the Services.
- 3.2.2. Customer shall appoint a contact person with the authority to make decisions and to supply SAP with any necessary or relevant information expeditiously.

3.3. Use Rights Prerequisites

- 3.3.1. Customer shall ensure to have all necessary use rights for the SAP Software or Cloud Service as well as any relevant third party license or use rights required to perform the Services.

4. CHANGE REQUEST PROCEDURES

4.1. Change Requests

- 4.1.1. Either party can request changes to the Service.
- 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

If at any time Customer or SAP is dissatisfied with the material performance of a Consultant or a Customer employee or contractor that is involved in SAP's performance of the Services, 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. FEES AND TAXES

6.1. Fees and Payment

Customer shall pay fees as stated in the Order Form. If Customer does not pay any fees (and Taxes) in accordance with the terms of the Agreement then, in addition to any other available remedies, SAP may suspend the provision of Services until payment is made. SAP shall provide Customer with prior written notice before any such suspension. Any fees (and Taxes) 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.

6.2. Taxes

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

7. TERM AND TERMINATION

7.1. Term of the Agreement

The Agreement becomes effective as of the Effective Date specified in the Order Form and shall remain in effect until the end of the term as specified in the Order Form or on completion of the Services in accordance with the Agreement, unless otherwise terminated earlier by either party in accordance with these GTCs.

7.2. Termination of Agreement

7.2.1. 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 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 9 of these GTCs.

7.2.2. SAP may terminate the Agreement immediately if Customer breaches Sections 8, 15.4 or 15.6 of the GTCs.

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

7.3. Effect of termination

7.3.1. 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 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.

7.3.2. The termination of any particular Service in accordance with this Section 7 shall not cause or result in termination of any other Services ordered under the same Order Form, nor shall termination of an Order Form or any particular Service under it result in termination of any separate Services Order Form between the parties.

7.4. Survival

Sections 1, 6, 7, 8, 9, 11, 13, 14 and 15 of these GTCs survive the expiry or termination of the Agreement.

8. INTELLECTUAL PROPERTY RIGHTS

8.1. SAP Ownership

8.1.1. 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) SAP Materials;
- b) any Services, Deliverables and Work Products (including any techniques, knowledge or processes of the Services or Deliverables) whether or not developed for the Customer.

8.1.2. 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.

8.2. Except for any rights expressly granted to Customer under the Agreement Customer shall not remove SAP's copyright and authorship notices.

8.3. Any 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 Services, Work Products and Deliverables must be returned or deleted and must not be used.

- 8.4. Provided all amounts due under an Order Form are paid in full in accordance with the terms of the Agreement, 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.
- 8.5. Customer may allow its third party service providers to access the Deliverables, Work Product and 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.

9. CONFIDENTIALITY

9.1. Use of Confidential Information

9.1.1. 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 9;
- 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.

9.1.2. 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 9.1.1 and 9.2.

9.1.3. Confidential Information of either party disclosed prior to execution of the Agreement will be subject to this Section 9.

9.2. 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.

9.3. Exceptions

9.3.1. 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 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.

9.4. Destruction and Return of Confidential Information

9.4.1. 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, that are not generally accessible, in accordance with general systems archiving or backup policies.

9.4.2. The obligation in this Section 9.4 shall not apply to Work Products provided by SAP to Customer, unless the Agreement is terminated by SAP in accordance with Section 7.2.1 or 7.2.2 above.

10. 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.

11. 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.

12. WARRANTY

12.1. Good industry practices

12.1.1. SAP warrants that:

- a) its Services will be performed in a professional workman-like manner by Consultants with the skills reasonably required for the Services; and
- b) for 90 days following provision of the 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 Services will in no event exceed the termination date of the subscription based Services.

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

12.2. Notification

Customer shall notify SAP within 90 days of provision of the 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.

12.3. Remedy

Provided Customer has notified SAP in accordance with Section 12.2 of a warranty breach and SAP validates the existence of such warranty breach, SAP will, at its option:

- a) re-perform the applicable Services or Deliverable; or

- b) refund the fee paid or reallocate quota for the specific non-conforming Service or Deliverable.

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

12.4. Exclusions

This warranty shall not apply:

- a) if the Services, Work Product or any 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.

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 Deliverables infringes or misappropriates a patent claim, copyright or trade secret right belonging to such third-party. 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 the Deliverables in conjunction with any other software, services or any product that SAP did not provide;
- b) use of the 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 Services; or
- f) any use of the Services not permitted under the Agreement.

13.2. If a third party makes a claim under Section 13.1 or in SAP's reasonable opinion is likely to make such claim, SAP may, at its sole option and expense:

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

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

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

13.5. Claims Brought Against SAP

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

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

13.6. Third Party Claim Procedure

All third party claims under Sections 13.1 and 13.5 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 13.6 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.

13.7. Exclusive Remedy

The provisions of this Section 13 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. LIMITATION OF LIABILITY

14.1. No Cap on Liability

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

- a) death or bodily injury arising from either party's gross negligence or wilful misconduct;
- b) breach of the obligations imposed by s.12 of the Irish Sales of Goods Act 1893 (as amended by the Sale of Goods Act and Supply of Services Act 1980); and/or
- c) any failure by Customer to pay any fees due under the Agreement;

14.2. Liability Cap for Services

Except as set forth in Section 14.1 above, and regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation or breach of statutory duty, breach of warranty, claims by third parties arising from any breach of this Agreement), the maximum aggregate liability of Customer (or its respective Affiliates) and SAP (or its Affiliates, licensors or subcontractors) arising out of or accruing under or in connection with the Agreement 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 Services under the relevant Order Form or in the case of Premium Engagement Services, 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.

14.3. Exclusions to Damages

In no case will:

- a) either party (or its respective Affiliates or SAP's subcontractors or licensors) be liable to the other party for any special, incidental, consequential, or indirect damages, loss of good will or business profits, work stoppage or for exemplary or punitive damages; and
- b) SAP be liable for any damages caused by any Services provided for no fee.

14.4. 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 Services.

15. MISCELLANEOUS

15.1. 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.

15.2. No Waiver

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

15.3. 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.

15.4. Trade Compliance

15.4.1. SAP and Customer shall comply with Export Laws in the performance of the Agreement. The Services, Work Products and Confidential Information are subject to Export Laws. Customer, its Affiliates and its Authorized Users shall not directly or indirectly export, re-export, release, or transfer the Services, Work Products 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 the Services, Work Products and Confidential Information. Customer must not use the Services or Work Products from Crimea/Sevastopol, Cuba, Iran, the People's Republic of Korea (North Korea) and Syria.

15.4.2. Upon SAP's request, Customer shall provide information and documents to support obtaining an export authorization. SAP may immediately terminate the affected 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 Services to Customer.

15.5. 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.

15.6. TUPE

- (a) The parties agree that it is not intended for there to be any transfer of employment of employees, contractors and workers from one party to the other in connection with the arrangements under the Agreement.
- (b) The parties agree that the entering into of the Agreement and the provision of any Services to be provided hereunder ("Entry") and the expiry or termination of the Agreement or of the provision of any Services provided hereunder ("Expiry") will not be a "transfer of an undertaking" nor a "service provision change" within the meaning of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations SI 131/2003 ("TUPE").
- (c) Each party therefore agrees that it will remain liable for the employment and all related costs of its employees, contractors and workers who are employed or engaged immediately before (in Customer's case) Entry and (in SAP's case) Expiry ("Employees"). In the event that by operation of law TUPE does operate (or is alleged to operate) on or before Entry or Expiry so as to transfer the contracts of employment ("TUPE Transfer") of either party's Employees to the other or (in the case of SAP Employees) to any new provider of services to Customer similar to the Services or any part thereof ("Replacement Supplier"), the relevant party (i.e. whoever the employer of the Employees is prior to the TUPE Transfer) agrees that it will indemnify the other and/or (in SAP's case as the indemnifying party) the applicable Replacement Supplier in respect of all costs, expenses, damages, awards, compensation and penalties arising from or connected with:
 - i. the employment (or alleged employment) prior to the TUPE Transfer; and/or
 - ii. the termination (or alleged termination) of employment of such Employees post TUPE Transfer, provided that such termination is made promptly upon becoming aware of such a TUPE Transfer occurring and the indemnified party (and the Replacement Supplier, if applicable) shall reasonably consult with the indemnifying party and reasonably co-operate with the same to minimise any costs, expenses, damages awards, compensation and penalties arising from or connected with such termination.
- (d) Where either party or the Replacement Supplier, if applicable, decides to employ or engage the services of the other's Employees following their TUPE Transfer then the above indemnity shall be limited to costs, expenses, damages, awards, compensation and penalties arising from or connected with the employment (or alleged employment) prior to the TUPE Transfer. Neither party will employ

(whether as an employee or contractor (directly or indirectly)) any Employee of the other, whose employment or engagement transferred to it under a TUPE Transfer and which was terminated and the subject of the above indemnity as to termination costs, at any time during the twelve (12) month period following such termination without the prior reasonable agreement of the other.

15.7. 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.

15.8. Subcontracting

15.8.1. SAP may use subcontractors to provide all or part of the applicable Services under the Agreement. SAP is responsible for the performance of any Services by a subcontractor to the same extent as it would be if performed by its own employees.

15.9. 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.

15.10. Non-Solicitation

Neither party shall knowingly solicit or hire, any of the other party's employees involved in the 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.

15.11. 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.

15.12. 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 the Republic of Ireland. 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.

15.13. Jurisdiction and Mandatory Venue

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

15.14. Statute of Limitation

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

15.15. Entire Agreement

The Agreement constitutes the complete and exclusive statement of the agreement between SAP and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. Each party acknowledges that (i) in entering into this Agreement it has not relied on any representation, discussion, collateral contract or other assurance except those set out in this Agreement and hereby waives all rights and remedies which, but for this section, might otherwise be available to it in respect of any such representation, discussion, collateral contract or other assurance and (ii) it shall have

no remedies in respect of any representation or warranty that is not expressly set out in this Agreement. 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. Nothing in this Agreement shall limited or exclude any liability for fraud.

15.16. Contracts 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.

15.17. Hierarchy

In the event of any inconsistencies between the following order of precedence shall apply:

- i. Order Form including Scope Document;
- ii. Service Description (if any);
- iii. DPA;
- iv. these GTCs.