

## SAP SERVICES GENERAL TERMS AND CONDITIONS

These SAP Services General Terms and Conditions (“GTCs”) are effective as of the Effective Date of the relevant Order Form and are entered into by and between SAP and Customer.

### RECITALS

WHEREAS, Customer (or Customer’s parent company) licensed from SAP (or an SAP SE Affiliate, or an authorised reseller of SAP), the right to use SAP Software or a SAP Cloud Service. Customer under an Agreement for Services may be an authorised Affiliate or subsidiary that has a right to use the SAP Software or SAP Cloud Services. Some versions of SAP agreements use the term “Customer” in place of “Licensee”. For purposes of these GTCs, references to “Customer” shall mean “Licensee” and vice versa.

WHEREAS, SAP provides certain Services which Customer desires to obtain as set forth in an Order Form referencing and incorporating these GTCs (each an “Order Form”).

NOW, THEREFORE, the parties agree as follows:

### 1. DEFINITIONS

**1.1 “Affiliate”** of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the entity’s shares or voting rights. Any legal entity shall be considered an Affiliate as long as that interest is maintained.

**1.2 “Agreement”** means an Order Form and documents incorporated into an Order Form.

**1.3 “Change Request”** means a change request made in accordance with Section 4 (Change Request Procedures) of these GTCs and in the form made available by SAP from time to time or included in the Order Form.

**1.4 “Cloud Service”** means any distinct subscription based, hosted, supported and operated on demand solution provided by SAP under a Cloud Service Order Form.

**1.5 “Cloud Service Order Form”** means all written order forms or other ordering documentation for Cloud Services entered into by SAP, or a SAP SE Affiliate or a reseller of SAP SE or an SAP SE Affiliate, and Customer.

**1.6 “Confidential Information”** means:

(a) with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, and/or (iii) Customer financial information; and

(b) with respect to SAP: (i) the Services, documentation, SAP materials, Work Product and Deliverables, and (ii) information regarding SAP research and development, product or services offerings, pricing and availability.

Confidential Information of either SAP or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.

**1.7 “Consultants”** means employees and third-party contractors which SAP utilises to provide Services to Customer.

**1.8 “Customer Data”** means any content, materials, data and information that Customer or its authorised users enter into managed services or Customer-specific data that is derived from Customer’s use of the managed services (e.g. Customer-specific reports) as long as such derivative work is not a component of the managed services itself or furnished by SAP under the Agreement. Customer Data shall not include any component of the Services or material provided by or on behalf of SAP.

- 1.9 **“Deliverables”** means those specific Work Products which are explicitly identified as a “Deliverable” under the applicable Order Form.
- 1.10 **“Intellectual Property Rights”** means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications 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.
- 1.11 **“License Agreement”** means the agreement between SAP (or an SAP SE Affiliate, or an authorised reseller of the SAP Software) under which Customer procured the license rights to use SAP Software or SAP hosted or on demand service.
- 1.12 **“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.
- 1.13 **“Order Form”** means the ordering document for Services that references the GTCs.
- 1.14 **“Premium Engagement Support Services”** means the support services as specified in an Order Form that are in addition to the services delivered under the support schedule to the License Agreement. Premium Engagement Support Services, currently includes SAP MaxAttention Support Services and SAP ActiveEmbedded Support Services as per an applicable Order Form. SAP may add or make changes to its Premium Engagement Support Service offerings from time to time.
- 1.15 **“SAP SE”** means SAP Societas Europaea, a German corporation, with offices located in Walldorf, Germany.
- 1.16 **“SAP SE Affiliate”** means a subsidiary of SAP SE.
- 1.17 **“SAP Software”** means (i) software products licensed to Customer as specified in software order forms all as developed by or for SAP, SAP SE and/or any of their affiliated companies and delivered to Customer; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to the respective SAP support agreement or warranty obligation and (iii) any complete or partial copies of any of the foregoing.
- 1.18 **“Scope Document”** means the document that is provided with and becomes part of the Order Form.
- 1.19 **“Services”** mean those service(s) as further defined by the specific Scope Documents and Service Descriptions (where applicable) under an Order Form.
- 1.20 **“Service Description”** means pre-defined descriptions of services found at <http://www.sap.com/service-descriptions> current as of the effective date of the Order Form which in conjunction with a Scope Document defines the Services to be provided and becomes part of the Order Form.
- 1.21 **“Taxes”** means, VAT, foreign withholding, use, property, excise, service or similar taxes now or hereafter levied all of which shall be for Customer’s account.
- 1.22 **“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 SAP will provide the Services in accordance with the Order Form and these GTCs.
- 2.2 SAP may use third party contractors to perform SAP’s duties. SAP will be responsible for the performance of the Services of such third-party contractors to the same extent as for its own employees.

- 2.3** 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 the Customer.
- 2.4** The selection of Consultants assigned or deployed to deliver the Services under an applicable Order Form is at SAP's sole discretion and SAP reserves the right to replace any Consultant at any time at its sole discretion with a Consultant with equivalent skills.
- 2.5** 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 this Agreement. If no Order Form is completed, all Services, Work Products and Deliverables must be returned or deleted and must not be used.
- 2.6** All dates with respect to performance of the Services are estimated and time shall not be deemed of the essence.
- 2.7 Acceptance**
- (a) In a time and materials Order Form or where acceptance criteria are not specified in an Order Form all Deliverables shall be deemed accepted by the Customer on the day which SAP performs and / or delivers the Deliverable(s).
- (b) 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:
- i. Upon delivery by SAP of a completed Deliverable, Customer shall have ten (10) calendar days to accept or reject ("**Acceptance Period**") the Deliverable, due to a Material Defect based on the acceptance criteria set forth in the Order Form for that Deliverable.
  - ii. 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 the Acceptance Period, specifying the basis of the Material Defect.
  - iii. 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 tenth (10<sup>th</sup>) day of the Acceptance Period.
  - iv. 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) and in the event that it does make productive use of a Deliverable without acceptance, the Customer shall be deemed to have accepted such Deliverable as of the tenth (10<sup>th</sup>) day of the Acceptance Period.
  - v. If acceptance criteria are not specified in the Order Form, such Deliverable will be deemed accepted upon delivery.

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

- 3.1** Customer will make the necessary arrangements to allow SAP to perform the Services.
- 3.2** Customer shall provide and make available all Customer personnel that SAP reasonably requires in connection with performance of the Services and as may be further addressed in an applicable Order Form.
- 3.3** 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.

- 3.4** Customer shall appoint a contact person with the authority to make decisions and to supply SAP with any necessary or relevant information expeditiously.
- 3.5** Customer shall ensure it has necessary license rights including third party license rights required to allow SAP to perform the Services.
- 3.6** Before commencing live operation with any provided Service and / or Deliverable (including any Services provided to remedy a defect) Customer should test the provided Service and / or Deliverable thoroughly for freedom from defects and for suitability in the situation. Customer is responsible for appropriate precautions against the possibility that the works may have or cause faults and take precautions including, for example, data backups, error diagnosis, and regular results monitoring (including data quality). Except where otherwise expressly stated in writing in each individual case, SAP Consultants are always entitled to act on the assumption that all data with which they come into contact has met these precautions.

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

- 4.1** Either party can request changes to the Service.
- 4.2** SAP is not required to perform under a Change Request prior to the execution by the parties of the applicable Change Request document.

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

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. COMPENSATION OF SAP**

- 6.1** SAP will provide an invoice specifying the fees for each of the Services in accordance with the terms of the Order Form. Payment is due thirty (30) days after the invoice is issued. SAP reserves the right to apply late-payment interest in accordance with applicable law. After written notice, SAP may suspend the provision of Services until payment is made.
- 6.2** Fees and other charges described in the Agreement do not include Taxes. Any applicable direct pay permits or valid tax-exempt certificates must be provided to SAP prior to the execution of the Agreement. If SAP is required to pay Taxes, Customer shall reimburse SAP for such amounts. Customer hereby agrees to indemnify SAP for any Taxes and related costs (including those related to the long-term assignment of Consultants), interest and penalties paid or payable by SAP. This Section shall not apply to taxes based on SAP's income.

#### **7. TERM AND TERMINATION**

##### **7.1 Term of the GTCs**

These GTCs shall commence on the Effective Date and remain in effect for three (3) years unless terminated earlier by either party in accordance with this Section 7.

##### **7.2 Termination of the GTCs for Convenience**

Either party may terminate these GTCs for convenience upon thirty (30) days prior written notice to the other party. If these GTCs are terminated for convenience prior to the completion of one (1) or more Order Forms, such termination will not affect the continuation of any such Order Form as governed by these GTCs.

##### **7.3 Term of an Order Form or Services pertaining to an applicable Scope Document**

Each Order Form and Services pertaining to an applicable Scope Document shall be effective on the effective date set forth in that Order Form, and shall remain in effect until either (i) the end of the term of the Order Form; (ii) completion of the Services in accordance with the Order Form and the respective Scope Document; or (iii) terminated earlier by either party in accordance with this Section 7. For clarity, the

termination of any particular Service pertaining to an applicable Scope Document in accordance with this Section 7 shall not cause or result in the termination of any other Services ordered under the same Order Form nor reduce Customer's liability for payments to SAP.

#### **7.4 Termination of an Order Form for Convenience**

Except as otherwise agreed in an Order Form, each Order Form (excluding fixed-price Services and subscription or monthly reoccurring Services) may be terminated by either party upon thirty (30) days prior written notice to the other party.

#### **7.5 Termination of GTCs and/or an Order Form for cause**

Either party may terminate these GTCs and/or an Order Form for cause:

- (a) upon thirty (30) days prior written notice of the other party's material breach of any provision (including a delay of more than thirty (30) days in Customer's payment of any money due hereunder or any Order Form) of the Agreement unless such party has cured such breach during such thirty (30) day period; or
- (b) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment or novation for the benefit of creditors, or otherwise materially breaches Sections 9 (Confidentiality) or 14 (Assignment).

#### **7.6 Effect of Termination**

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

All Confidential Information of the other party provided in connection with this Agreement in the possession of such party shall, subject to any legal retention rights and upon request of the other party be returned to the disclosing party or destroyed with certification of such destruction from an individual of authority to bind the respective party. The obligation to return or destroy Confidential Information does not apply to Work Products that are provided by SAP to Customer, unless the Agreement is terminated by SAP in accordance with Section 7.5 (Termination of GTCs and/or an Order Form for cause).

### **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1** All title to and rights in the Services, Deliverables and Work Products, and all Intellectual Property Rights embodied therein, including techniques, knowledge or processes of the Services and/or Deliverables (whether or not developed for Customer), shall be the sole and exclusive property of SAP and SAP SE. Customer agrees to execute and to ensure its third parties execute such documentation as reasonably necessary to secure SAP's or SAP SE's title over such rights.
- 8.2** Once all amounts due under an Order Form are paid in full and all claims have been satisfied, Customer is granted a non-exclusive, non-transferable license for the duration of the license granted under the License Agreement, (so long as Customer complies with the terms of the License Agreement and this Agreement) to use any Deliverables and Work Products provided to it by SAP under a relevant Order Form in order to run Customer's and its Affiliates' internal business operations, and otherwise to the same extent as Customer is granted a license to use the SAP Software, documentation and SAP Confidential Information in the License Agreement. 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 Affiliates and provided that such third-party service provider is obligated under substantially similar written terms to protect SAP Confidential Information and Customer shall be responsible for any breach as if by Customer.
- 8.3** Customer must immediately notify SAP in writing if any third-party gains unauthorised access to SAP proprietary materials or Confidential Information. Customer shall take all reasonable steps to stop such unauthorised access.

## 9. CONFIDENTIALITY

### 9.1 Use of Confidential Information

- (a) The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. The Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorised Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under written obligations of confidentiality substantially equivalent to those herein. Customer will not disclose the Agreement or the pricing to any third party. Notwithstanding this Section 9, a receiving party may use in its business activities the ideas, concepts and know-how related to the technology contained in the other party's Confidential Information and retained in the unaided memories of the other party's employees who have access to such Confidential Information in connection with the Services.
- (b) In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.

### 9.2 Exceptions

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

- (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information;
- (b) is generally available to the public without breach of the Agreement by the receiving party;
- (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions; or
- (d) the disclosing party agrees in writing is free of confidentiality restrictions.

### 9.3 Publicity

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

## 10. FEEDBACK

Customer may at its sole discretion, provide SAP (or as used herein SAP SE or other SAP entity) with input, comments or suggestions from Customer, regarding SAP's business and technology direction and/or the possible creation, modification, correction, improvement or enhancement of the software, products and/or services of SAP, (collectively "**Feedback**"). Customer grants to SAP SE a non-exclusive, perpetual, irrevocable, worldwide, transferable, royalty-free license, with the right to sublicense through multiple tiers, to use, publish, disclose, perform, copy, make, have made, use, modify, create derivative works, distribute, sell, offer for sale and otherwise benefit from Feedback in any manner and via any media.

## 11. WARRANTY

### 11.1 Good industry practices

- (a) SAP warrants that its Services will be performed in a professional workman-like manner by Consultants with the skills reasonably required for the Services.

- (b) SAP does not warrant (i) error-free or uninterrupted operation of any Service; (ii) that SAP will correct all non-conformities; (iii) or that any Service or Deliverable is designed to meet the Customer's business requirements.

#### **11.2 Notification**

Customer shall notify SAP within ninety (90) days of provision of the Service 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.

#### **11.3 Remedy**

Provided Customer has notified SAP in accordance with Section 11.2 (Notification) 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
- (b) refund the fee paid or reallocate quota for the specific non-conforming Service.

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

#### **11.4 Disclaimer**

SAP and its licensors disclaim all other warranties, any representations or statements whether express or implied or statutory, including without limitation, any implied warranties of merchantability or fitness for a particular purpose except to the extent that any warranties implied by law cannot be validly waived.

### **12. THIRD PARTY CLAIMS**

**12.1** SAP shall defend (at its sole expense) Customer against claims brought against Customer by any third party alleging that Customer's use of the Deliverables, in accordance with the terms and conditions of the Agreement, constitutes an infringement or misappropriation of a patent claim(s), copyright, or trade secret rights. SAP will pay damages finally awarded against Customer (or the amount of any settlement SAP enters into) with respect to such claims. This obligation of SAP shall not apply if the alleged infringement or misappropriation results from: (a) use of the Deliverables in conjunction with any other software, services, or any product, data or apparatus that SAP did not provide; or (b) anything Customer provides including configurations, instructions or specifications; (c) a modification of the Deliverable by Customer or by a third party on behalf of Customer; or (d) any use not permitted by the Agreement.

**12.2** In the event a claim under Section 12.1 is made or in SAP's reasonable opinion is likely to be made, 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.

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

**12.3** Customer shall defend SAP and its affiliated companies 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. 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.

**12.4** The obligations under this Section 12 are conditioned on (a) the party against whom a third-party claim is brought timely notifying the other party in writing of any such claim, provided however that a party's failure to provide or delay in providing such notice shall not relieve a party of its obligations under this Section 12 except to the extent such failure or delay prejudices the defence; (b) the party who is obligated hereunder

to defend a claim having the right to fully control the defence of such claim; and (c) the party against whom a third-party claim is brought reasonably cooperating in the defence of such claim. Any settlement of any claim shall not include a financial or specific performance obligation on or admission of liability by the party against whom the claim is brought, provided however that SAP may settle any claim on a basis requiring SAP to substitute for the Services any alternative substantially equivalent non-infringing services. The party against whom a third-party claim is brought may appear, at its own expense, through counsel reasonably acceptable to the party obligated to defend claims hereunder. Neither party shall undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation that is prejudicial to the other party's rights.

**12.5** The provisions of this Section 12 state the sole, exclusive, and entire liability of the parties, their Affiliates and their licensors to the other party, and is the other party's sole remedy, with respect to third party claims covered hereunder and to the infringement or misappropriation of third-party intellectual property rights.

### **13. LIMITATION OF LIABILITY**

#### **13.1 Unlimited Liability**

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

- (a) death or personal injury arising from either party's negligence or willful misconduct;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the obligations imposed by s.10 Sale of Goods and Supply of Services Act 1980;
- (d) either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data;
- (e) any failure by Customer to pay any fees due under the Agreement;
- (f) unauthorised use or disclosure of Confidential Information;
- (g) any breach or misuse or infringement of SAP's Intellectual Property Rights; or
- (h) any liability that cannot be excluded or limited by applicable law.

#### **13.2 Liability Cap**

Subject to Sections 13.1 and 13.3 and regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty or claims by third parties arising from any breach of this Agreement) the aggregate liability of each party to the other or any other party for any loss or damage arising under or in relation to this Agreement shall not exceed: (i) the fees paid for the applicable Services under the relevant Order Form; or (ii) in the case of subscription or recurring Services, the fees paid in the twelve (12) month period preceding the date of the incident giving rise to the liability; or (iii) in the case of Premium Engagement Support Services, the fees paid for the then current applicable quota period (as specified in the applicable Order Form).

#### **13.3 Exclusion of Damages**

Subject to Sections 13.1 and regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty, claims by third parties arising from any breach of this Agreement) neither SAP or Customer shall be liable to the other or any other party for any loss or damage arising under or in relation to this Agreement to the extent that such loss or damage is: (i) loss of profits or revenue; (ii) loss of business; (iii) loss of or damage to data; (iv) loss of goodwill; (v) losses from computer failure or malfunction; (vi) legal fees; or (vii) loss of anticipated savings; and regardless of whether any such loss or damage listed in this Sub-Section 13.3: (a) is direct, indirect, special, incidental or consequential; and / or (b) had been advised to the other party.

### **14. ASSIGNMENT**

Customer may not, without SAP's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the Work Products and Deliverables or SAP Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. SAP may (i) assign this Agreement to any of the SAP SE Affiliates or (ii) subcontract all or part of the work to be performed under this Agreement to a qualified third party.



## 15. GENERAL PROVISIONS

### 15.1 Severability

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

### 15.2 No Waiver

A waiver or non-enforcement against any breach of the Agreement or obligation under the Agreement is not deemed a waiver of any other breach or obligation.

### 15.3 Electronic signature

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

### 15.4 Notice

All notices will be in writing and given when delivered to the respective offices of SAP and Customer at the addresses set out in the Order Form with copy to the legal department.

### 15.5 Independent Contractor

The relationship of SAP and Customer established by the Agreement is that of an independent contractor and no employment, agency, trust, partnership or fiduciary relationship is created by the Agreement.

### 15.6 System Security and Data Safeguards

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 unauthorised access. In connection with such access, Customer shall be responsible for providing Consultants with user authorisations and passwords to access its systems and revoking such authorisations 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. 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.

### 15.7 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.

#### **15.8 Force Majeure**

Any delay in performance (other than for the payment of amounts due hereunder) 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.

#### **15.9 Governing Law**

The Agreement and any claims relating to its subject matter shall be governed by and construed under the laws of the Republic of Ireland, without reference to its conflicts of law principles. All disputes will be subject to the exclusive jurisdiction of the courts located in the Republic of Ireland. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply. Either party must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

#### **15.10 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 six (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 solicit or recruit generally in the media.

#### **15.11 Entire Agreement; Written Form**

The Agreement constitutes the complete and exclusive statement of the agreement between SAP and Customer with respect to the subject matter hereof. 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 only in writing signed by both parties. The Agreement will prevail over terms and conditions of any Customer issued purchase order which will have no force and effect, even if SAP accepts or does not otherwise reject the purchase order.

#### **15.12 Hierarchy**

In the event of any inconsistencies between the GTCs and an Order Form, the Order Form shall take precedence over the GTCs. The Scope Document prevails over any Service Description.

#### **15.13 Regulatory Matters**

The SAP Confidential Information is subject to the export control laws of various countries, including the laws of the United States, Germany and the Republic of Ireland. Customer will not submit SAP Confidential Information to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Confidential Information to countries, persons or entities if prohibited by export laws.

#### **15.14 Survival**

Sections 7 (Term and Termination), 8 (Intellectual Property Rights), 9 (Confidentiality), 13 (Limitation of Liabilities), 15.9 (Governing Law), and 15.10 (Non-Solicitation) shall survive any termination of this Agreement.

**15.15 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 or otherwise in favour of any person not a party hereto.