



SAP SERVICES GENERAL TERMS AND CONDITIONS

These SAP Services General Terms and Conditions ("GTC") are effective as of the Effective Date of the relevant Order Form and are entered into by and between SAP New Zealand Limited with offices at Level 15, 151 Queen Street, Auckland, New Zealand, (hereinafter "SAP") and Licensee.

RECITALS

WHEREAS, Licensee (or Licensee's parent company) licensed from SAP (or an SAP SE Affiliate, or an authorized reseller of SAP), the right to use SAP Software or SAP Cloud Services pursuant to a License Agreement. Licensee under this Agreement for Services may be an authorized Affiliate or subsidiary that has a right to use the SAP Software or SAP Cloud Services under a License Agreement or order form between SAP (or an SAP Affiliate, or an authorized reseller of SAP SE or an SAP Affiliate) and Licensee's parent company. Some versions of SAP agreements use the term "Customer" in place of "Licensee". For purposes of this GTC, references to "Customer" shall mean "Licensee" and vice versa.

WHEREAS, SAP provides certain Services in New Zealand which Licensee desires to obtain on the basis of certain Service Descriptions as referred to herein. Such Services will be set forth in an Order Form referencing and incorporating these GTC (each an "Order Form").

NOW, THEREFORE, the parties agree as follows:

1. Definitions

- 1.1 "Agreement" means an Order Form for Services governed by these GTC, including any documents attached to and/or referred to in the Order Form and/or GTC.
- 1.2 "Affiliate" of a party means any legal entity in which and as long as a party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights. Any such legal entity shall be considered an Affiliate for only such time as such interest is maintained.
- 1.3 "Cloud Service" means any subscription based, hosted, supported and operated on demand solution provided by SAP, or a SAP SE Affiliate or a reseller of SAP SE or an SAP SE Affiliate, under a Cloud Service Order Form.
- 1.4 "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 Licensee.
- 1.5 "Confidential Information" means, with respect to SAP, all information which SAP protects against unrestricted disclosure to others, including but not limited to: (a) the SAP Software, documentation, Work Product and other SAP materials, including without limitation the following information regarding the SAP software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the software or SAP hosted or on demand services; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the software; (b) the research and development or investigations of SAP; (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies; and (d) any information about or concerning any third party (which information was provided to SAP subject to an applicable confidentiality obligation to such third party). With respect to Licensee, "Confidential Information" means all information which Licensee protects against unrestricted disclosure to others and which (i) if in tangible form, Licensee clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Licensee identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary within thirty (30) calendar days of any such disclosure, (iii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.
- 1.6 "Consultants" means employees and third party contractors which SAP utilizes to provide Services to Licensee.
- 1.7 "Deliverables" means those specific Work Products which are explicitly identified as a deliverable under the applicable Order Form for delivery to Licensee.
- 1.8 "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.
- 1.9 "License Agreement" means the agreement between SAP (or an SAP SE Affiliate, or an authorized reseller of the SAP software) under which Licensee (or Licensee's parent company) procured the license rights to use SAP software or SAP hosted or on demand service.
- 1.10 "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.
- 1.11 "Order Form" means all written order forms for Services entered into by SAP and Licensee containing the pricing and other specific terms and conditions applicable for each of the Services under an applicable Order Form.
- 1.12 "SAP SE" means SAP Societas Europaea, a German corporation, with offices located in Walldorf, Germany.
- 1.13 "SAP Software" means (i) any and all software products and Cloud Services licensed to Licensee under the License Agreement as specified in software order forms or Cloud Service Order Forms (or other order forms, schedules or appendices as

applicable) thereto; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to the respective support agreement or warranty obligation and (iii) any complete or partial copies of any of the foregoing.

- 1.14 "Scope Document" means the document that is provided with and becomes part of the Order Form which further defines the scope of Services to be provided and other engagement specifics
- 1.15 "Services" mean those service(s) as further defined by those specific Service Descriptions and Scope Documents provided to Licensee under an Order Form that references this GTC.
- 1.16 "Service Description" means pre-defined descriptions of services found at <http://www.sap.com/servicedescriptions> in effect as of the Order Form effective date.
- 1.17 "Taxes" means federal, state or local sales, VAT, GST, foreign withholding, use, property, excise, service or similar taxes now or hereafter levied all of which shall be for Licensee's account.
- 1.18 "Work Product" means any work product or tangible results produced by or with SAP pursuant to this Agreement, including, but not limited to, works created for or in cooperation with Licensee.

2. Provision of Services.

- 2.1. SAP will provide the Services in accordance with the Order Form.
- 2.2. SAP may utilize third party contractors to perform SAP's duties. SAP shall be responsible for the performance of the Services of such third party contractors to the same extent as SAP is liable for its own Consultants.
- 2.3. If any Service, in whole or in part, cannot be provided by SAP due to a Licensee issue and Licensee fails to provide SAP with reasonable advance notice, the time agreed to be spent by SAP resources on such Service will be charged to Licensee.
- 2.4. The selection of Consultants assigned or deployed to deliver Services 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 Licensee 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. Acceptance
 - a) The parties may agree in an Order Form that specific Deliverables (if any) be subject to acceptance procedures.
 - b) If the Order Form expressly states that such Deliverables are subject to acceptance procedures, the following acceptance procedures will apply:
 - i. Upon delivery by SAP of a completed Deliverable, Licensee shall have 10 calendar days to accept or reject ("**Acceptance Period**") the Deliverable, due to a Material Defect. If the relevant Deliverable passes the agreed acceptance criteria set forth in the Order Form, Licensee shall accept the Deliverable. Acceptance will not be unreasonably withheld by Licensee.
 - ii. If Licensee notifies SAP that it has rejected the Deliverable due to a Material Defect, Licensee shall provide written notice, within such 10 day period ("**Rejection**"), specifying the basis of the Material Defect. SAP shall have a reasonable period to cure and redeliver the Deliverable for an additional Acceptance Period. If Licensee fails to Reject any Deliverable within the Acceptance Period Licensee shall be deemed to have accepted such Deliverable as of the 10th day of the Acceptance Period.
 - iii. 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. A Deliverable shall not be made available for Licensee's productive use, unless it has been accepted by Licensee (either expressly or by passage of time). Where acceptance criteria is not specified in the Order Form for a Deliverable, such Deliverable will be deemed complete and accepted by Licensee the day after SAP performs it or delivers it.

3. Licensee's General Responsibilities.

- 3.1. Licensee is responsible for making the necessary arrangements to allow SAP to perform the Services.
- 3.2. Licensee shall provide and make available all Licensee 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 Licensee's site, Licensee agrees to provide necessary access to its site including, but not limited to, appropriate access to Licensee premises, computer systems and other facilities.
- 3.4. Licensee shall appoint a contact person to supply SAP with any necessary or relevant information and who shall have the authority to make decisions or obtain decisions from others expeditiously.
- 3.5. Licensee shall ensure it has obtained all necessary license rights including third party license rights required for the Services.

4 Change Request Procedures.

- 4.1 Either party can request changes to the Service in accordance with the change request form made available by SAP from time to time or included in the applicable Service Description ("**Change Request**").
- 4.2 SAP is not required to perform under a Change Request until agreed to and signed by the parties.

5. Satisfaction with Personnel.

If at any time Licensee or SAP is dissatisfied with the material performance of an assigned Consultant or a Licensee 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 shall 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.
- 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, Licensee shall reimburse SAP for such amounts. Licensee hereby agrees to indemnify SAP for any Taxes and related costs (including those related to the long term assignment of SAP employees), 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 GTC. These GTC shall remain in effect for three (3) years from the Effective Date, unless terminated earlier by either party in accordance with this Section 7.
- 7.2 Termination of the GTC for Convenience. Either party may terminate this GTC for convenience upon thirty (30) days' prior written notice to the other party. If these GTC are terminated for convenience prior to the completion of one or more Order Forms, such termination will not affect the continuation of any such Order Form as governed by these GTC.
- 7.3 Term of an Order Form or Service. Each Order Form and Service shall be effective on the effective date set forth in that Order Form, and shall remain in effect until end of term or completion of the Services in accordance with the Order Form, the respective Service Description or Scope Document, or terminated earlier by either party in accordance with this Section 7. For the avoidance of doubt, the termination of any particular Service 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 Licensee'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 excluding subscription based Services) may be terminated by either party upon thirty (30) days' prior written notice to the other party.
- 7.5 Termination of Agreement and/or an Order Form for cause.

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

 - 7.5.1 upon thirty (30) days prior written notice of the other party's material breach of any provision (including more than thirty (30) days delinquency in Licensee'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
 - 7.5.2 immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise breaches materially its obligations in Confidential Information or assignment.
- 7.6 Effect of Termination. Licensee shall be liable for all payments to SAP, including all fees and expenses for all Services incurred in the performance of such Services up to the date on which any termination takes effect. 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 Licensee, unless the Order Form or Agreement is terminated by SAP in accordance with section 7.5 herein.

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 Licensee), shall be the sole and exclusively property of SAP and SAP SE. Licensee 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, Licensee is granted a non-exclusive, non-transferable license for the duration of the license granted under the License Agreement, so long as Licensee 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 under this Agreement in order to run Licensee's and its Affiliates' internal business operations, and otherwise to the same extent as Licensee is granted a license to use the SAP Software, documentation and SAP Confidential Information in the License Agreement. Licensee shall not (i) use the SAP Deliverables or Work Products to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training) other than to Licensee Affiliates; nor (ii) lease, loan, resell, sublicense or otherwise distribute the SAP Deliverables or Work Products other than to Licensee Affiliates.

- 8.3 Licensee must immediately notify SAP in writing if any third party gains unauthorized access to SAP proprietary materials or Confidential Information. Licensee shall take all reasonable steps to stop such unauthorized access.

9 Confidentiality.

- 9.1 **Use of Confidential Information.** Confidential Information shall not be reproduced in any form except as required by the receiving party to perform its obligations under this Agreement. Any reproduction of any Confidential Information of the other shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party: (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its bona fide individuals whose access is necessary to enable it to exercise its rights hereunder. As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.
- 9.2 **Exceptions.** The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without breach of this Agreement by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; or (d) the disclosing party agrees in writing is free of such restrictions.
- 9.3 **Confidential Terms and Conditions; Publicity.** Licensee shall not disclose the terms and conditions of this Agreement including the pricing contained in an Order Form to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that SAP may use Licensee's name in customer listings and to analyze and leverage details from this Agreement (e.g., to forecast product demand), as part of SAP's marketing efforts (including without limitation reference calls and site visits at times mutually agreeable to the parties, press testimonials, site visits, SAPPHIRE participation). SAP will make reasonable efforts to avoid having the reference activities unreasonably interfere with Licensee's business. Licensee agrees that SAP may share information on Licensee with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Licensee employee contact information with SAP as needed.

10 Feedback.

Licensee may be invited to participate in certain evaluations, presentations, meetings, surveys or discussions (collectively, "Discussions") for the purpose of informing Licensee of SAP's business and technology direction, and to allow Licensee (or as used herein includes Licensee's affiliates), at its sole discretion, to provide SAP (or as used herein SAP SE or other SAP entity) with input, comments or suggestions from Licensee, 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**"). Licensee grants to SAP SE a non-exclusive, perpetual, irrevocable, worldwide, transferable, royalty-free license, with the right to sublicense through multiple tiers, under all relevant Licensee Intellectual Property Rights, 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. Content of Discussions may include areas outside the scope of Services and may relate to any SAP software, products, solutions and/or services. Confidential Information disclosed or made available by SAP, or Licensee during Discussions may only be used for the purpose of the Discussions and shall be protected from unauthorized use and disclosure in accordance with Section 9 of this these GTC. Licensee acknowledges that the information related to software, products, services, business or technology plans of SAP, disclosed during the Discussions, is only intended as possible strategies, developments, and functionalities and is not intended to bind SAP to any particular course of business, product strategy, and/or development.

11 Warranty.

- 11.1 SAP warrants that its Services shall be performed in a professional workman-like manner by Consultants with the skills reasonably required for the Services.
- 11.2 SAP warrants that for thirty (30) days following provision of the Deliverables will materially conform with the specifications for that Deliverable in accordance with the respective Service Description or Scope Document. 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.
- 11.3 SAP does not warrant error-free or uninterrupted operation of any Service or Deliverable or that SAP will correct all non-conformities. The warranty shall not apply if the alleged warranty breach is caused by a modification to the Deliverable, Licensee or third-party software.
- 11.4 Licensee shall notify SAP within thirty (30) 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.

11.5 Provided Licensee has notified SAP in accordance with section 11.1 of a warranty breach and SAP validates the existence of such warranty breach, SAP will, at its option:

11.5.1 re-perform the applicable Services or Deliverable

11.5.2 refund the fee paid or reallocate quota for the specific non-conforming Service or Deliverable

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

11.6 SAP and its licensors disclaim all warranties 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) Licensee against claims brought against Licensee by any third party alleging that Licensee'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 Licensee (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 Licensee provides including configurations, instructions or specifications; (c) a modification of the Deliverable by Licensee or by a third party on behalf of Licensee 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: (i) procure for Licensee the right to continue using the Deliverable under the terms of the Agreement; or (ii) replace or modify the Deliverable to be non-infringing without material decrease in functionality. If SAP provides written notice to Licensee that the foregoing options are not reasonably available, SAP or Licensee may terminate the Agreement

12.3 Licensee shall defend SAP and its affiliated companies against claims brought against SAP by any third party arising from or related to (i) any Licensee use of the Services in violation of any applicable law or regulation; (ii) an allegation that the Customer Data, Licensee's use of the Services or anything Licensee 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 Licensee and/or its named users or by the conduct of a third party using Licensee'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 defense; (b) the party who is obligated hereunder to defend a claim having the right to fully control the defense of such claim; and (c) the party against whom a third party claim is brought reasonably cooperating in the defense 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 Liabilities.

13.1 Notwithstanding anything herein to the contrary, except for damages resulting from (i) unauthorized use or disclosure of Confidential Information, or (ii) damages resulting from death or bodily injury arising from either party's gross negligence or willful misconduct, or (iii) SAP's right to collect unpaid fees, under no circumstances and regardless of the nature of the claim shall either party (or their respective Affiliates or SAP's licensor's) be liable to each other to or any other person or entity under the Agreement for an amount of damages in excess of the fees paid for the applicable Services under the relevant Order Form or in the case of subscription based Services including managed services, the fees paid in the twelve (12) month period preceding the date of the incident giving rise to the liability, or, any special, incidental, consequential, or indirect damages, loss of good will or business profits, work stoppage or for exemplary or punitive damages.

14 Assignment.

Licensee 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. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this

Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

- 15.2 **No Waiver.** If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.
- 15.3 **Electronic signature.** Signatures sent by electronic means (facsimile, scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures.
- 15.4 **Notice.** All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed to be duly given when delivered to the respective executive offices of SAP and Licensee at the addresses first set forth in the applicable Order Form. Where in this Section 15.3 or elsewhere in this Agreement written form is required, that requirement can be met by email, facsimile transmission, exchange of letters or other written form.
- 15.5 **Independent Contractor.** The relationship of SAP and Licensee established by this Agreement is that of an independent contractor and no employment, agency, trust, partnership or fiduciary relationship is created by this Agreement.
- 15.6 **Force Majeure.** Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.
- 15.7 **Governing Law.** This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of New Zealand, without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and New Zealand law, rules, and regulations, New Zealand law, rules, and regulations shall prevail and govern. All disputes hereunder shall be subject to the exclusive jurisdiction of the courts located in New Zealand. 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. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).
- 15.8 **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.
- 15.9 **Entire Agreement: Written Form.** Each Agreement, as defined in an applicable Order Form constitutes the complete and exclusive statement of the agreement between SAP and Licensee with respect to the subject matter hereof and all previous representations, discussions and writings are merged in, and superseded by each such Agreement and the parties disclaim any reliance on any such representations, discussions and writings. An Agreement may be modified only by a writing signed by both parties. An Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to SAP.
- 15.10 **Hierarchy.** In the event of any inconsistencies between the GTC and an Order Form, the Order Form shall take precedence over the GTC. The GTC and the Order Form prevail over any Service Description. The Scope Document prevails over any Service Description.
- 15.11 **Regulatory Matters.**
The SAP Confidential Information inclusive of all Services, Work Product and Deliverables and other SAP Materials are subject to the export control laws of various countries, including without limit the laws of the United States, Germany and New Zealand. Licensee agrees that it will not submit the SAP Services, Work Product, Deliverables, other SAP Materials or 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 prohibited by such laws. Licensee shall also be responsible for complying with all applicable governmental regulations and laws of the country where Licensee is registered, and any foreign countries with respect to the use of the Confidential Information and provision of Customer Data by Licensee and/or its subsidiaries or authorized users.
- 15.12 **Survival.**
Sections 7 (Term and Termination), 8 (Intellectual Property Rights), 9 (Confidentiality), 13 (Limitation of Liabilities), 15.7 (Governing Law), and 15.8 (Non-Solicitation) shall survive any termination of this Agreement.

16 **System Security and Data Safeguards.**

When SAP is given access to Licensee's systems and data, SAP shall comply with Licensee's reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. In connection with such access, Licensee shall be responsible for providing SAP Consultants with user authorizations and passwords to access its systems and revoking such authorizations and terminating such access, as Licensee deems appropriate from time to time. Licensee shall not grant SAP access to Licensee systems or personal information (of Licensee 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.

IN WITNESS WHEREOF, the parties have so agreed.