**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 EGYPT LLC,** with offices at Building no.47, Unit 601, New Cairo, 5th Settlement, Cairo, Egypt, (hereinafter "**SAP**") and Prime Contractor.

**RECITALS**

WHEREAS, Prime Contractor has obtained or may obtain contracts to provide professional services to Customers who have acquired from SAP (or an SAP SE Affiliate, or an authorized SAP reseller) a license to use certain SAP Software or SAP Cloud Services.

WHEREAS, SAP provides certain services in Middle East and North Africa which Prime Contractor desires to obtain on the basis of certain Scope Documents as provided under an Order Form referencing and incorporating these GTC (each an "Order Form").

WHEREAS, Prime Contractor as the prime contractor to the Customer wishes to involve SAP as a subcontractor for such services.

NOW, THEREFORE, the parties agree as follows:

1. <u>**Definitions.**</u>

    1.1 "<u>Agreement</u>" 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 "<u>Affiliate</u>" 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 shares or voting rights or such legal entity is Controlled by such party. Any such legal entity shall be considered an Affiliate for only such time as such interest or Control is maintained. "Control", means in reference to a legal entity is defined as either (i) holding, directly or indirectly, more than fifty percent (50%) of the shares or voting rights of such legal entity or (ii) the ability to solely direct the management of such legal entity and the right to appoint or remove the majority of the board of directors. For the avoidance of doubt, in no event may a third party have a veto right or any other right or ability to circumvent the sole control of a party towards the Affiliate.

    1.3 "<u>Cloud Materials</u>" means any materials produced by SAP in the course of providing Cloud Services.

    1.4 "<u>Cloud Service</u>" 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.

    1.5 "<u>Cloud Service Order Form</u>" 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 Prime Contractor.

    1.6 "<u>Confidential Information</u>" means, with respect to SAP, all information which SAP protects against unrestricted disclosure to others, including but not limited to: (a) the SAP Software, Cloud Service, documentation, Work Product, Cloud Materials, SAP hosted or on-demand solution 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 Prime Contractor, "Confidential Information" means all information which Prime Contractor or Customer protects against unrestricted disclosure to others and which: (i) if in tangible form, Prime Contractor or Customer clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Prime Contractor or Customer identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary to SAP within thirty (30) calendar days of any such disclosure.

    1.7 "<u>Consultants</u>" means employees and third party contractors which SAP utilizes to provide Services to Prime Contractor.

    1.8 "<u>Customer</u>" means the end customer of the Prime Contractor, with such Customer to be identified in the relevant Order Form.

    1.9 "<u>Customer Data</u>" means any content, materials, data and information that Prime Contractor or its authorized users enter into managed services or Customer-specific data that is derived from Prime Contractor'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.

    1.10 "<u>Deliverables</u>" means those specific Work Products which are explicitly identified as a deliverable under the applicable Order Form for delivery to Prime Contractor.

    1.11 "<u>Intellectual Property Rights</u>" 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.

1.12 "License Agreement" means the agreement between SAP (or an SAP SE Affiliate, or an authorized reseller of the SAP Software) and the Customer under which Customer procured or will procure the license rights to use SAP Software or SAP Cloud Services.

1.13 "Order Form" means all written order forms for Services entered into by SAP and Prime Contractor containing the pricing and other specific terms and conditions applicable for each of the Services under an applicable Order Form.

1.14 "Residuals" means information in non-tangible form which may be retained in the unaided memory by persons who have had access to the Confidential Information so long as such persons have not studied the information for the purpose of replicating the same from memory.

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) any and all software products and Cloud Services licensed to Customer 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.

1.18 "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.

1.19 "Services" mean those service(s) as further defined by those specific Scope Documents provided to Prime Contractor under an Order Form that references this GTC.

1.20 "Taxes" means sales, VAT, use, property, excise, service, or similar taxes now or hereafter levied all of which shall be for Prime Contractor's account.

1.21 "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 Prime Contractor or Customer.

## 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 Prime Contractor issue or a Customer issue and Prime Contractor fails to provide SAP with reasonable advance notice, the time agreed to be spent by SAP resources on such Service will be billable to Prime Contractor.

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 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

Acceptance of a Deliverable.

In an Order Form, where there are Deliverables, the parties may agree in such Order Form that such specific Deliverables can be subject to acceptance procedures.

Acceptance. If there is an Order Form with Deliverables and the Order Form expressly states that such Deliverables are subject to acceptance procedures, the following language applies, unless otherwise agreed upon in an Order Form:

Deliverable Acceptance Procedure. Upon delivery by SAP of a completed Deliverable, Prime Contractor shall have 10 calendar days to accept or reject ("Acceptance Period") the Deliverable, due to a material defect using reasonable discretion, based on the acceptance criteria set forth in the Order Form for that Deliverable. A "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. If the relevant Deliverable passes the agreed acceptance criteria set forth in the Order Form, Prime Contractor shall accept the Deliverable. Acceptance will not be unreasonably withheld by Prime Contractor. If Prime Contractor notifies SAP that it has rejected the Deliverable due to a material defect, Prime Contractor shall provide written notice, within such 10 day period, specifying the basis of the defect. SAP shall have a reasonable period to cure and redeliver the Deliverable for an additional Acceptance Period. If Prime Contractor fails to reject any Deliverable within the Acceptance Period, in a written document specifying the defect, Prime Contractor shall be deemed to have accepted such Deliverable as of the 10th day of the Acceptance Period. 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

Customer's productive use, unless it has been accepted by Prime Contractor (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 Prime Contractor the day after SAP performs it or delivers it.

3. **Prime Contractor's General Responsibilities.**

3.1.    Prime Contractor is responsible for making the necessary arrangements to allow SAP to perform the Services.

3.2.    Prime Contractor shall provide and make available all Prime Contractor personnel that SAP reasonably requires in connection with performance of the Services and as may be further addressed in an applicable Order Form. Prime Contractor shall procure the availability of any Customer personnel that SAP reasonably requires in connection with performance of the Services.

3.3.    If the Services are performed at Prime Contractor's site or remotely on Prime Contractor's resources, Prime Contractor agrees to provide necessary access including, but not limited to, appropriate access to Prime Contractor premises, computer systems and other facilities. If the Services are performed at Customer's site or remotely on Customer's resources, Prime Contractor agrees to procure necessary access including, but not limited to, appropriate access to Customer premises, computer systems and other facilities.

3.4.    Prime Contractor 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. Prime Contractor may instead appoint an employee of the Customer, however subject always to the condition that the employee of the Customer shall be given full authority to make decisions on behalf of the Prime Contractor in relation to this Agreement and as required by this section. In such a case, SAP shall be entitled to fully rely on the decisions of the employee of the Customer as an authorized representative of the Prime Contractor.

3.5.    Prime Contractor ensures to have all necessary license rights including third party license rights required for the Services. Prime Contractor agrees to ensure that Customer has all necessary license rights including third party license rights required for SAP's performance of the Services.

Before commencing live operation with any provided Service and/or Deliverable (including any Services provided to remedy a defect) Prime Contractor – who shall have a use right for test purposes only - should test the provided Services and Deliverables thoroughly for defect resolution and for suitability in the situation.

Prime Contractor 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.

Contractual collaboration requires a high level of trust, interaction and willingness to agree. Except in emergencies, a limited time fixed by Prime Contractor pursuant to the law or this Agreement and/or an Order Form must not be less than 10 working days. If, from a failure to comply with any fixed time limit, a right accrues to Prime Contractor to be released from the Agreement and/or an Order Form (e. g. by rescission, termination, or claim for damages in lieu of performance) or to a price reduction for breach, SAP is entitled, after the expiration of the time limit, to give notice requiring Prime Contractor to exercise that right not later than two weeks after receiving the notice.

4. **Change Request Procedures.**

4.1.    Either party can request changes to the Service in accordance with the change request form attached to the Order Form or provided by SAP from time to time ("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 Prime Contractor or SAP is dissatisfied with the material performance of an assigned Consultant or a Prime Contractor project team member, the dissatisfied party shall promptly report such dissatisfaction to the other party in writing and may request a replacement. In the case of SAP dissatisfaction with a Customer project team member, SAP shall report such dissatisfaction to the Prime Contractor. 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 charge interest at 12% per annum from time to time of SAP's then current banking institution on such sum from the due date for payment to the date of actual payment, both before and after any judgment (if applicable).

6.2    Fees and other charges described in the Agreement do not include Taxes. SAP and Prime Contractor agree to comply with the applicable tax law applicable in the country where the parties are registered now or hereinafter during the term of the Agreement.   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, Prime Contractor shall reimburse SAP for such amounts. Prime Contractor hereby agrees to indemnify SAP for any Taxes and related costs, interest and penalties paid or payable by SAP. This Section shall not apply to taxes based on SAP's income.

6.3 SAP's remuneration (or SAP's receipt of such remuneration) shall not in any way be conditioned upon the Prime Contractor receiving payment from the Customer.

6.4 In the event the Prime Contractor is legally required to deduct withholding tax from any payment which is due to SAP, the Prime Contractor must use its best efforts to reduce that tax to the lowest level possible. SAP will cooperate to that end. Prime Contractor must promptly provide SAP with evidence of receipt by the relevant tax authority of any sum that Prime Contractor has deducted as withholding tax. SAP will notify the Prime Contractor if SAP is unable to recover the full amount of the deduction from the local tax authorities. In this circumstance, the Prime Contractor must make an additional payment to SAP so that the total amount SAP receives is the same as it would have been if the Prime Contractor had not been required to deduct withholding tax. Any additional payment of this nature must be received by SAP within thirty (30) days of SAP notifying the Prime Contractor that SAP was unable to make a full recovery.

7. **Term and Termination.**

7.1 Term of the GTC. These GTC shall remain in effect 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 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 Prime Contractor'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 (except for customer development projects which can only be terminated by SAP), 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 Prime Contractor'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. Prime Contractor 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 Prime Contractor, 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 Prime Contractor'), shall be the sole and exclusively property of SAP and SAP SE. Prime Contractor 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, Prime Contractor is granted a non-exclusive, non-transferable license in SAP Deliverables and Work Product solely to permit Prime Contractor to sub-license such SAP Deliverables and Work Product to the Customer for the duration of the license granted to Customer under the License Agreement to run Customer's and its Affiliates' internal business operations to the same extent as Customer is granted a license to use the SAP Software, documentation and SAP Confidential Information in the License Agreement, so long as: (i) Prime Contractor complies with the terms of this Agreement; and (ii) Customer complies with the terms of the License Agreement.

8.3 Prime Contractor must immediately notify SAP in writing if any third party gains unauthorized access to SAP proprietary materials or Confidential Information. Prime Contractor shall take all reasonable steps to stop such unauthorized access. Prime Contractor shall also undertake such notification and informing duties on behalf of the Customer and shall ensure that the Customer takes all necessary steps to stop such unauthorized access.

## 9. Confidentiality.

9.1 <u>Use of Confidential Information</u>. 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 <u>Exceptions</u>. 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 <u>Confidential Terms and Conditions; Publicity</u>. Prime Contractor shall not disclose the terms and conditions of this Agreement including the pricing contained in an Order Form to any third party including the Customer (save for any practical, non-commercial terms required by SAP to be passed through to the Customer by the Prime Contractor). 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 Prime Contractor agrees that SAP may use Prime Contractor'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 to reference activities that unreasonably interfere with Prime Contractor's business. Prime Contractor will take reasonable steps to procure similar rights for SAP in relation to the use of Customer's name and Customer information if required. Prime Contractor agrees that SAP may share such information with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Prime Contractor and Customer employee contact information with SAP as needed.

## 10. Feedback.

Prime Contractor may be invited to participate in certain evaluations, presentations, meetings, surveys or discussions (collectively, "Discussions") for the purpose of informing Prime Contractor of SAP's business and technology direction, and to allow Prime Contractor (or as used herein includes Prime Contractor'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 Prime Contractor, 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"). Prime Contractor 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 Prime Contractor 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 Prime Contractor 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 these GTC. Prime Contractor 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. In the event that Customer may be invited to participate in such Discussions and to provide Feedback, Prime Contractor shall make all reasonable efforts to assist SAP in acquiring Customer's written agreement to substantially similar terms, as a pre-requisite to Customer participation.  For clarity, Customer shall not participate in such Discussions unless such agreement is provided in writing.

## 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.

SAP warrants that for ninety (90) days following provision of the Service the Deliverables will materially conform with the specifications for that Deliverable in accordance with the respective 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.

SAP does not warrant error-free or uninterrupted operation of any Service or Deliverable or that SAP will correct all non-conformities.  SAP does not warrant that the Deliverables are designed to meet all of Customer's business requirements.

Prime Contractor shall notify SAP within ninety (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.

11.2 Provided Prime Contractor 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:

i.      re-perform the applicable Services or Deliverable;

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

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

The warranty shall not apply:

a.     if the Deliverables are not used in accordance with the Documentation; or

b.     if the alleged warranty breach is caused by a modification to the Deliverable, Prime Contractor or third-party software.

11.3    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 except to the extent that any warranties implied by law cannot be validly waived.

## 12.   Third Party Claims.

12.1    <u>Claims Brought Against Prime Contractor</u>. SAP shall defend (at its sole expense) Prime Contractor against claims brought against Prime Contractor by any third party alleging that Prime Contractor's pass-on of the Deliverable, 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 Prime Contractor all damages finally awarded by a court of competent jurisdiction against Prime Contractor (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 Deliverable in conjunction with any other software, services, or any product, data or apparatus that SAP did not provide; or (b) anything Prime Contractor or Customer provides including configurations, instructions or specifications; (c) a modification of the Deliverable by Prime Contractor or Customer or by a third party on behalf of Prime Contractor or (d) any use not permitted by the Agreement.

12.2    <u>Remedies</u>. In the event of 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 Prime Contractor 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 Prime Contractor that the foregoing options are not reasonably available, Prime Contractor shall be entitled to a refund for the infringing portion of the Deliverable subject to return or cessation of use of the refunded Deliverable.

12.3    <u>Claims Brought Against SAP</u>. Prime Contractor shall defend SAP and its affiliated companies against claims brought against SAP by any third party arising from or related to: (i) any Prime Contractor or Customer use of the Services in violation of any applicable law or regulation; (ii) an allegation that the Customer Data, Prime Contractor's use of the Services, Customer's use of the Services or anything Prime Contractor 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 Prime Contractor, Customer, and/or its named users or by the conduct of a third party using Prime Contractor's or Customer's access credentials.

12.4    <u>Procedure</u>. 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    <u>Exclusive Remedy</u>. 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    <u>Not liable</u>. SAP will not be liable for any Prime Contractor activities not permitted under this Agreement including without limitation to the extent that any liability arises from any Service provided for no fee.

13.2    <u>Exclusion of Damages</u>;

13.2.1  Subject to sections 13.2.2, 13.2.3 and 13.2.4 below and regardless of the basis of liability (whether arising out of breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty or claims by third parties, wilful misconduct or otherwise) neither SAP or Prime Contractor shall be liable to the other or any other party for any of the following types of loss or damage arising under or in relation to this Agreement:

(a) 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; (vii) interest or exemplary or punitive damages, or (viii) loss of anticipated savings; and regardless of whether any such loss or damage listed in this sub-section (a) is direct, indirect, special, incidental or consequential;

(b) indirect, special, incidental or consequential loss or damages and whether or not the other party had been advised of the possibility of such loss or damage; or

13.2.2  Subject to sections 13.2.1, 13.2.3 and 13.2.4 and regardless of the basis of liability (whether arising out of breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty or claims by third parties, wilful misconduct or otherwise) the maximum aggregate liability of each party (or its respective Affiliates or SAP's licensors) to the other or any other party, will not exceed, (i) the fees paid for the applicable Services under the relevant Order Form; or (ii) 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.

13.2.3  Nothing in this Agreement shall exclude or limit either party's liability for death or personal injury caused by negligence, for fraudulent misrepresentation or for any other liability which cannot be excluded or limited by applicable law.

13.2.4  Nothing in this Agreement shall exclude or limit either party's liability for damages resulting from unauthorized use or disclosure of Confidential Information or Prime Contractor's liability for any failure to pay any fees due under or in relation to this Agreement or either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data.

13.3    The parties agree that the provisions of this Agreement appropriately allocate the risks between SAP and Prime Contractor and the Services reflect this allocation of risk and the limitations of liability herein.

## 14. Assignment.

Prime Contractor 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 Prime Contractor at the addresses first set forth in the applicable Order Form. Where in this Section 15.4 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 Prime Contractor 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 England and Wales, without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and England and Wales law, rules, and regulations, England and Wales rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Prime Contractor 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 Prime Contractor knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

15.8    Arbitration

15.8.1  Except for the right of either Party to apply to a court of competent jurisdiction for injunctive, or other equitable relief, any dispute or claim arising out of or relating to this Agreement, shall be settled by arbitration in Dubai International Financial Center in United Arab Emirates in accordance with the laws of England and rules of arbitration of the DIFC-London Court of International Arbitration (DIFC-LCIA). The language to be used in the arbitration shall be English.

15.8.2 One or more arbitrators appointed in accordance with the following: (i) Arbitration by One Arbitrator: If the parties agree to a one-arbitrator, the parties shall agree upon and appoint an arbitrator, after first ascertaining that the appointee consents to act, within thirty (30) days from the date on which written notice of referral to arbitration by one party is received by the other party (the "Notice Date") or (ii) Arbitration by three arbitrators: if the parties are unable to agree on a one-arbitrator, or, having so agreed, are unable to agree on the arbitrator within thirty (30) days from the Notice Date, then the arbitration shall be conducted by and before three (3) arbitrators, who shall be appointed as follows. Each party shall appoint one arbitrator, after first ascertaining that the appointee consents to act, and notify the other party in writing of the appointment within sixty (60) days from the Notice Date. The appointed arbitrators shall agree upon and appoint the third arbitrator, who shall be the chairman, after first ascertaining that the appointee consents to act, and notify the parties in writing of the appointment within ninety (90) days from the Notice Date.

The chairman shall be a qualified lawyer, and the other arbitrators shall have a background or training in computer law, computer science, or marketing of computer products. The arbitrators shall have the authority to grant injunctive relief, in a form substantially similar to that which would otherwise be granted by a court of law. The parties irrevocably agree to submit to arbitration and the parties each agree that any award made by the arbitrators shall be enforceable in any country, without further inquiry into the disputed matters which are the subject of the award. The provisions of this section shall survive termination of this Agreement.

15.9   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.

15.10   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 Prime Contractor 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 Prime Contractor to SAP.

15.11   Hierarchy. In the event of any inconsistencies between these GTC and an Order Form, the Order Form shall take precedence over the GTC. The Scope Document prevails over any Order Form and GTC.

15.12   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 applicable laws in the Middle East and North Africa. Prime Contractor agrees that it will not, and will ensure that Customer agrees that it will also 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. Prime Contractor shall also be responsible for complying with all applicable governmental regulations and laws of the country where Prime Contractor is registered, and any foreign countries with respect to the use of the Confidential Information and provision of Customer Data by Prime Contractor and/or its subsidiaries, Customer and/or its subsidiaries, or authorized users.

15.13   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 Prime Contractor or Customer's systems and data, SAP shall comply with Prime Contractor or Customer's (as applicable) reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. In connection with such access, Prime Contractor 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 Prime Contractor deems appropriate from time to time. Prime Contractor shall ensure that Customer will be responsible for providing SAP 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. Prime Contractor shall not grant SAP access to Prime Contractor systems or personal information (of Prime Contractor or any third party) unless such access is essential for the performance of Services under the Agreement and Prime Contractor shall ensure that Customer agrees to the same in relation to Customer systems or personal information (of Customer or any third party). 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.