

**EXHIBIT K**  
**- EPAAS LICENSING OF SAP CLOUD SERVICE -**  
**FOR SAP PARTNERS**

This Exhibit K consists of the Exhibits K-1, K-2, K-3, K-4, K-5, K-6 and Annex 1, and is hereby annexed to and made a part of the agreement between SAP and Partner on developing Cloud Application on SAP Cloud Platform.

The SAP Cloud Service is provided under the terms and conditions of the Agreement supplemented with the following terms and conditions. All capitalized terms not defined in this Exhibit shall have the meaning ascribed in the Agreement, including any applicable Master Partner Agreement, SAP PartnerEdge Schedule, SAP PartnerEdge Model, other applicable document, exhibit, appendix, annex, order form, and/or purchase order included in, attached to, or referenced to in the Agreement. In case of conflicting terms, the terms of this Exhibit shall prevail.

**EXHIBIT K-1**  
**- EPAAS LICENSING OF SAP CLOUD SERVICE -**  
**FOR SAP PARTNERS**

This Exhibit K-1 to the Agreement between Partner and SAP stipulates the terms of licensing SAP Cloud Service available to Partner for sublicensing to End User as part of a Bundled Cloud Service.

Partner is entitled to use the SAP Cloud Service as outlined in this Exhibit, and according to licensing and use restrictions as set forth in the Agreement. SAP will make available to Partner an Order Form which must be filled out and submitted to SAP for using the SAP Cloud Service as Bundled Cloud Service.

**1 DEFINITIONS**

- 1.1** "Bundled Cloud Service" ("BCS") means the combined offering of SAP Cloud Service and one (1) or more Cloud Applications.
- 1.2** "Data" means any content, materials, data and information that is entered into the SAP Cloud Service.
- 1.3** "End User Agreement" means a written agreement entered into between Partner and any End User pursuant to which the End User purchases cloud subscriptions to the Bundled Cloud Service.
- 1.4** "Public Software" means any software, documentation or other material that contains, or is derived (in whole or in part) from, any software, documentation or other material that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models, including, but not limited to software, documentation or other material licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following:
  - (a)** the GNU General Public License (GPL), Lesser/Library GPL (LGPL), or Free Documentation License,
  - (b)** the Artistic License (e.g., PERL),
  - (c)** the Mozilla Public License,
  - (d)** the Netscape Public License,
  - (e)** the Sun Community Source License (SCSL),
  - (f)** the Sun Industry Standards License (SISL), and
  - (g)** the BSD License.
- 1.5** "SAP Cloud Service" means, for the purpose of this Exhibit, SAP Cloud Service made available by SAP under this Exhibit, signed-up to by Partner, to operate one (1) or more Cloud Applications only for use in conjunction with, and for purposes of provision and support of, Cloud Application to End User.

**1.6** "SAP Materials" means any software, programs, tools, systems, data, or other materials made available by SAP to Partner prior to or in the course of the performance under this Agreement including, but not limited to, the SAP Cloud Service and Documentation, as well as any information, materials or feedback provided by Partner to SAP relating to the SAP Cloud Service and Documentation.

## **2 GRANT OF RIGHTS**

**2.1** Grant of SAP Cloud Service subscription license. Subject to the terms of this Agreement, SAP grants Partner during the term of the Agreement (and during any Wind-Down Period) a worldwide, non-exclusive, limited, non-transferable, non-sublicensable, non-perpetual right to use the SAP Cloud Service to operate Cloud Application only for use in conjunction with, and for purposes of provision and support of, Cloud Application to End User, only available to Partner if

- (a)** Partner has subscribed to the Innovation Pack for SAP Cloud Platform as well as the respective additional SAP Cloud Service subscription for developing and supporting Cloud Application under the Agreement, if
- (b)** Partner is exclusively offering its BCS to End User as a cloud subscription offering under the Agreement, and if
- (c)** Cloud Application of the BCS has successfully passed the Application Readiness Check. Partner shall not license, resell, rent, lease or otherwise provide any access or benefits to the SAP Cloud Service except for the provision of Partner's Cloud Application to End Users as a BCS.

**2.2** BCS. Partner shall impose on the End Users the following restrictions: the End User Agreement shall permit the End User's use of the BCS, with data access limited to data created by Cloud Application or necessary to enable the functionalities of Cloud Application (referred to as a "Restricted License"). The SAP Cloud Service shall not access, directly or indirectly, in any manner whatsoever, any third party runtime database acquired from SAP or its Associated Companies or any of its respective resellers or distributions. The BCS may access any other Licensor software, and/or third party software licensed from Licensor or Group Companies or any of its respective resellers or distributors, on a business process layer, e.g. via APIs, SAP Cloud Platform Integration, etc. Partner shall promptly notify SAP of any violations of this Section 2.2 by any End Users or other third parties.

**2.3** Third Party Service. Partner may operate the BCS, which may include the use of third party technology or services from third party suppliers, in accordance with the Agreement only to the extent SAP continues to have rights to operate the technology or service of such third-party supplier.

## **3 USE OF THE SAP CLOUD SERVICE**

### **3.1 GENERAL USE RIGHTS**

**3.1.1** Notwithstanding anything to the contrary provided in the Agreement, Partner and End Users shall have access only to the most current version of the SAP Cloud Service made generally available by SAP to its customers, and SAP may change or modify the SAP Cloud Service at any time. SAP shall not materially diminish the functionality of the SAP Cloud Service Subscription during the term of the respective Purchase Order.

**3.1.2** If the BCS is integrated with any SAP solution, End User must have the proper licenses for such SAP solution in order to access the SAP solution through the BCS. Fees for such licenses are not included in the fees for the SAP Cloud Service under the Agreement.

- 3.1.3 Partner will protect the privacy and legal rights of End Users under all applicable laws and regulations, which includes a legally adequate privacy notice communicated from Partner (or to the extent applicable, obtain necessary consent according to data protection laws). Partner may have the ability to access, monitor, use, or disclose content, data and materials submitted by End Users through Cloud Application. Partner will obtain and maintain any required consents from End Users to allow Partner's access, monitoring, use or disclosure of such content, data and materials. Further, Partner will notify End Users that any information provided as part of Cloud Application will be made available to SAP as part of SAP providing the SAP Cloud Service.
- 3.1.4 If SAP is notified by an End User or an owner of User Content that the User Content allegedly infringes its rights, SAP may investigate the allegation (including by consulting with Partner) and determine in good faith and in its reasonable discretion whether to remove the User Content, which it may do after providing Partner with prior notice regarding such removal within a reasonable time in light of the circumstances. SAP has no obligation to monitor User Content and interactions between End Users or Partner and End Users. Partner shall take down any and all User Content of which it becomes aware that is infringing in a prompt manner or promptly notify SAP to do so.
- 3.1.5 Partner may not use the SAP Cloud Service, BCS, or any Cloud Application to generate, distribute, publish or facilitate unsolicited mass email, promotions, advertisements or other solicitations ("spam").
- 3.1.6 Partner shall not license, resell, rent, lease or otherwise provide any access to, or benefits to any third parties of the SAP Cloud Service except for the provision of Partner's Cloud Application to End Users. Neither Partner nor any End User may run any third party application (other than Partner's Cloud Application) on the SAP Cloud Service, including without limitations, any application made available and published by SAP or its Associated Companies on designated SAP digital properties. Use of SAP Cloud Service by End Users is limited to communications and data exchange between Cloud Application or any other SAP Cloud Service, and the SAP Cloud Service via officially supported SAP Cloud Service interfaces. All data loading, modeling, reporting and distribution, creation and extension of tables used in SAP Cloud Service must be performed via Cloud Application.
- 3.1.7 Partner shall not, and shall ensure that End Users do not:
- (a)** copy, translate, disassemble, decompile, reverse-engineer or otherwise modify any parts of the SAP Cloud Service;
  - (b)** transmit any content, data or information that is unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy or right of publicity, hateful, or racially, ethnically or otherwise objectionable;
  - (c)** infringe the intellectual property rights of any entity or person;
  - (d)** interfere with or disrupt the SAP software or SAP systems used to host the SAP Cloud Service, or other equipment or networks connected to the SAP Cloud Service;
  - (e)** use the SAP Cloud Service in the operation of a service bureau, outsourcing or time-sharing service except as expressly permitted under this Agreement;
  - (f)** circumvent or disclose the user authentication or security of the SAP Cloud Service or any host, network, or account related thereto;
  - (g)** make any use of the SAP Cloud Service that violates any applicable local, state, national, international or foreign law or regulation.
- 3.1.8 SAP shall have the right to monitor any Partner and End Users' usage of the SAP Cloud Service to ensure compliance by Partner and End Users of the Agreement. Subject to SAP's confidentiality obligations under this Agreement, SAP may utilize the information concerning Partner or End Users' usage of the SAP Cloud Service to improve SAP products and services and to provide Partner with reports on End Users' use of the SAP Cloud Service.

- 3.1.9 Partner and End Users shall be responsible for entering its Data into the SAP Cloud Service and Partner and the End Users shall be responsible for the content of the Data supplied by it, as the case may be. Partner agrees that it has collected and shall maintain and handle all Data whether originated by Partner or End Users in compliance with all applicable data privacy and protection laws, rules and regulations. Partner shall maintain commercially reasonable security standards for its and End Users' use of the SAP Cloud Service.
- 3.1.10 SAP may offer and Partner may choose to accept access to functionality that is not generally available and not validated and quality assured in accordance with SAP's standard processes ("Beta Functionality"). Beta Functionality is described as such in the Documentation. SAP may require Partner to accept additional terms to use Beta Functionality. Any production use of the Beta Functionality is at Partner's sole risk. SAP does not warrant the correctness and completeness of the Beta Functionality, and SAP shall not be liable for errors or damages caused by the usage of the Beta Functionality.
- 3.1.11 The SAP Cloud Service may contain links to external Web sites (including embedded widgets or other means of access) and information provided on such external websites by SAP partners and third-party service providers. SAP shall not be responsible for the contents of any linked Web site, or any changes or updates to such sites. Partner further agrees that SAP shall not be directly or indirectly responsible or liable for any damage or loss caused or alleged to be caused by or in connection with Partner's use of or reliance on any content, goods or services available on or through any such linked Web site. Any article, information, data, code, text, software, documentation, graphics, image, marketing material, video, photograph, message, or posting to any forum, wiki, or blog access through or in connection with the SAP Cloud Service, whether publicly posted or privately transmitted (collectively, "Content"), is the sole responsibility of the person or entity providing the content.
- 3.1.12 SAP will release updates to SAP Cloud Service as required for the security and stability of the system. Partner should support these updates in order to prevent the possibility of loss of data or the instability of the platform. If Partner does not support these upgrades in the recommended time frame as communicated by SAP, Partner agrees that SAP shall have no liability for the security or integrity of End User Data to the extent any loss or harm could have been prevented by supporting any upgrade as and when recommended by SAP.
- 3.1.13 Each SAP Cloud Service subscription ordered by Partner utilized to run one (1) Cloud Application under this Agreement may be used for one (1) or more End User Agreements. In case an SAP Cloud Service subscription ordered by Partner is utilized to run more than one (1) Cloud Application under this Agreement, such SAP Cloud Service subscription may be used for one (1) End User Agreement, only.
- 3.1.14 Partner agrees that its use of the SAP Cloud Service, or Cloud Application it operates under this Agreement, will not:
- (a)** unreasonably impair, degrade or reduce the performance or security of any SAP software applications, services or related technology;
  - (b)** enable the bypassing or circumventing of SAP's license restrictions and/or provide users with access to the SAP Cloud Service to which such users are not licensed;
  - (c)** render or provide, without prior written consent from SAP, any information concerning SAP software license terms, the SAP Cloud Service or any other information related to SAP products or services. Cloud Application will comply with all terms of this Agreement.
- 3.1.15 Partner may not use, and may not authorize any other person or third party to use, any Public Software in connection with the SAP Cloud Service in any manner that requires, pursuant to the license applicable to such Public Software, that any SAP software applications or other materials be
- (a)** disclosed or distributed in source code form,
  - (b)** made available free of charge to recipients, or
  - (c)** modifiable without restriction by recipients.

- 3.1.16 Partner acknowledges and agrees that SAP or its licensors retain all ownership of and title in and to (including, without limitation, all Intellectual Property Rights) the SAP Materials, including, without limitation, the SAP Cloud Service. Partner does not acquire any ownership rights or title in or to the SAP Materials (including, without limitation, the SAP Cloud Service) and that of SAP's licensors. Partner may not:
- (a) remove or modify any marks or proprietary notices of SAP,
  - (b) provide or make the SAP Cloud Service or SAP Materials available to any third party,
  - (c) assign this Agreement or give or transfer the SAP Cloud Service, or SAP Materials or an interest in them to another individual or entity,
  - (d) decompile, disassemble or reverse engineer (except to the extent permitted by applicable law) the SAP Cloud Service or any SAP Materials,
  - (e) create derivative works of or based on the SAP Cloud Service or SAP Materials,
  - (f) use the Tools to modify existing SAP software or other SAP product functionality or to access the software or other SAP products' source code or metadata.
- 3.1.17 If Partner or End Users are located in mainland China ("China"), Partner and End Users acknowledge and accept that the SAP Cloud Service is provisioned at the location of SAP's data center outside China, by non-Chinese entities, and it is solely Partner's obligation to ensure use of the SAP Cloud Service and Cloud Application comply with Chinese laws. Notwithstanding anything else in this Agreement,
- (a) Partner and End Users are solely responsible for obtaining Internet connection to the SAP Cloud Service from within China and
  - (b) SAP is not providing any form of telecommunication service under the Agreement (and any representation or warranty to such effect is disclaimed).
- 3.1.18 Data Manipulation. Data Manipulation by End Users or Partner may be performed on the SAP Cloud Platform via SQL Access. However, business intelligence or other analytics functionalities, including, without limitation to, data loading, modeling, reporting and distribution, creation and extension of tables, must be performed via Cloud Application. SQL Access is limited to runtime use with the SAP Cloud Service only.
- 3.1.19 Annex 2 (Collaboration for Productive Environment for SAP Cloud Service) to Exhibit L (SAP Cloud Service Development General Terms and Conditions (GTC) Exhibit) of the Agreement shall not be applicable for BCS.
- 3.2 PRODUCT-SPECIFIC USE RIGHTS
- 3.2.1 Service Description Guide. Each of the SAP Cloud Services, provided by SAP to Partner under this Exhibit, is subject to the terms of the SAP Cloud Platform – Service Description Guide (the "Service Description Guide"). The terms of which are incorporated in this Exhibit by reference and available at the following link: <https://cloudplatform.sap.com/capabilities/service-description.html> or from SAP upon Partner's request. Such terms include system availability, service level agreements, maintenance windows, and support. SAP may from time to time modify the Service Description Guide, subject to the General Terms and Conditions of the Agreement. Any deviation from the Service Description Guide as applicable under the Agreement is set forth in Exhibit K-4 hereto.
- 3.2.2 SAP Cloud Connector. In order to support interaction between an on-premise SAP system along with the SAP Cloud Service, Partner may install the SAP Cloud Connector component on-premise. SAP Cloud Connector is available for download via the SAP Cloud Platform Tools download site at <https://tools.hana.ondemand.com>. If the SAP Cloud Connector is used to connect to SAP systems additional licenses to such SAP systems must be obtained via a separate contract. The use of the SAP Cloud Connector is limited to use with the Bundled Cloud Service and Partner may not use the SAP Cloud Connector for any other purpose. The SAP Cloud Connector is part of the SAP Cloud Service. The SAP Cloud Connector may not be modified or altered in any way except by SAP. Any such modifications will negate SAP's obligation to provide Support and void SAP's warranty obligations under this Agreement. Partner is solely responsible for the security of the SAP Cloud Connector and is responsible for maintaining adequate security measures,

including firewalls, to prevent unauthorized access to the SAP Cloud Connector. Upon termination or expiration of the subscription to the SAP Cloud Service, Partner's right to use the SAP Cloud Connector shall cease.

When accessing the SAP Cloud Connector via <https://tools.hana.ondemand.com>, separate terms of use governing use of the SAP Cloud Connector must be accepted by Partner when downloading the SAP Cloud Connector. However, the terms of this Agreement are exclusively applicable and supersede such accepted separate terms of use.

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#### **5 GENERAL OBLIGATIONS OF AND LIMITATIONS TO PARTNER**

**5.1** Partner shall reasonably cooperate with SAP to enforce the limitations and requirements imposed according to Sections 2.2 (BCS) to the fullest extent possible.

**5.2** To the extent the Contractual Documents grant Partner the right to contract directly with the End User for the license of BCS, Partner shall secure the End User's consent to an End User Agreement with terms not less protective of Licensor than SAP's Cloud GTC and applicable Supplemental Terms and Conditions for SAP Cloud Service current as of the effective date of the license for BCS licensed to each End User ("Minimum Terms"). A copy of which may be found at: <http://go.sap.com/about/agreements.sap-cloud-services-customers.html>, "General Terms & Conditions", "General Terms and Conditions for SAP Cloud Services (Direct) (United Kingdom, English)", as well as the respective "Supplemental Terms and Conditions" for the respective SAP Cloud Service, to be included in such End User Agreement at <http://go.sap.com/about/agreements.sap-cloud-services-customers.html>, "Cloud Service Description".

Where Partner decides to use the SAP's Cloud GTC and Supplement Terms and Conditions for its own purposes, Partner shall replace the references to SAP therein with Partner's name. For clarity, Partner is not required to use SAP's Cloud GTC and/or Supplement Terms and Conditions in verbatim provided that the requirements of this section 5.2 are met. Licensor shall be made a third party beneficiary under the End User Agreement. Partner shall ensure that the terms of the End User Agreement are fully effective and binding as required under applicable laws and regulations in the country, territory or jurisdiction in which Partner is distributing the SAP Cloud Service as part of the BCS, whether directly or indirectly. Partner shall be liable to SAP for any breach of the terms of such End User Agreement to the same extent as Partner would be liable to SAP under this Agreement for such a breach by Partner. Partner shall reasonably cooperate with SAP to enforce the limitations and requirements imposed according to Sections 5.2 to the fullest extent possible.

**5.3** Pricing for the SAP Cloud Service must be incorporated into the BCS pricing and may not be itemized separately. Partner will independently establish prices and terms for the BCS, provided such terms include those required by the Agreement.

**5.4** Partner may not withhold or reduce applicable fees during the term of the SAP Cloud Service subscription regardless of any termination, non-payment, non-use or other conduct or inaction on the part of the corresponding End User. This shall also apply in case SAP suspends access to the SAP Cloud Service for a particular End User for breach of the Minimum Terms.

**5.5** Partner shall not make any representations or warranties regarding the functionality or performance of the SAP Cloud Service other than in accordance with the Agreement.

**5.6** Partner is responsible for ensuring that its Cloud Application is capable of automatic restart without manual operator intervention in the event of hardware or system failure occurring within the SAP Cloud Service. This includes ensuring that Cloud Application connection to on-premise enterprise systems will be automatically restored upon system restart. SAP shall have no liability to Partner for failure of Cloud Application to be built in a manner that it is fail safe and can restore its running state once Cloud Application is started by the Platform, including failure to achieve any SLA.

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## **7 SUPPORT**

**7.1** End User Support by Partner. Partner shall provide Tier 1 and Tier 2 support to End Users for the SAP Cloud Service. For purposes of this Agreement, Tier 1 support includes responding to calls and inquiries from End Users or its Named Users. Tier 2 support includes:

- (a)** verification that an inquiry is received from a valid End User;
- (b)** acknowledgment to the End User of receipt of such inquiry;
- (c)** checking lists of known issues and solutions/workarounds;
- (d)** leveraging Partner training, experience or other appropriate internal resources to find a resolution; and
- (e)** if the reported issue is known or found, providing the resolution to the End User and assisting with its implementation. In the event Partner is unable to resolve the issue after exhausting its own internal resources, Partner may escalate the issue to SAP for Tier 3 support. Escalation to SAP for Tier 3 support shall include:
  - (i)** isolation, identification and reproduction of the unresolved issue reported by an End User;
  - (ii)** documentation and submission of the unresolved issue to SAP as directed by SAP; and
  - (iii)** communication back through Partner to End User regarding any updates and assistance in implementing any resolutions received from SAP. Partner will appoint at least two system administrators ("**System Administrators**") who may contact SAP directly for escalations. In addition, Partner will designate:
    - a) one account manager per End User, and
    - b) up to five (5) named contacts per End User, who may access the online support portal. In general, Partner is expected to resolve the majority of the inquiries received by Partner from End Users directly, which may include, but are not limited to, "how to", feature questions, or "Service not working" issues.

**7.2** Partner Support. SAP shall provide support services for the SAP Cloud Service to Partner as described in Exhibit K-2 (OEM Cloud Support). SAP shall be responsible for responding to issues escalated and submitted by Partner that contain the required information as directed by SAP. SAP will respond directly to Partner as outlined in SAP's then-current support policy for the applicable SAP Cloud Service, which SAP may change in its sole discretion and make available to Partner in writing or online at an SAP website as SAP may designate. SAP shall have no obligation to support

- (a)** the combination, operation or use of the SAP Cloud Service with any third party service or otherwise contemplated in the Documentation, if the problem cannot be reproduced in the SAP Cloud Service without such combination or use with such third party service; or
- (b)** problems due to causes external to the Cloud Service or otherwise beyond the reasonable control of SAP.

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## **9 TERM AND TERMINATION**

**9.1** This Agreement, any Order Form and Exhibits may be terminated by either party for good cause upon written notice to the other in accordance with the following:

- (a)** thirty (30) days after a party gives the other party notice of breach of any provision of the Agreement (other than Partner's breach of its obligations under Sections 2 (Grant of Rights) or 12 (Data Protection), which breach shall give right to immediate termination),

Order Form or Exhibits, unless the breaching party has cured such breach during such thirty (30) day period;

- (b)** immediately if Partner does not pay on the due date any amount payable to SAP unless payment is made within thirty (30) days of its due date;
- (c)** immediately if a party (i) commences negotiations with one or more of its creditors with a view to rescheduling major parts of its indebtedness or (ii) files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors.
- (d)** thirty (30) days after SAP gives Partner written notice to terminate, if Partner objects to the use of a Subprocessor by SAP for legitimate reason.

**9.2** In the event of expiration or termination of SAP Cloud Service Subscription for any reason other than Partner's material breach and subject to Partner's continuing compliance with the terms and conditions of the Agreement: Respective SAP Cloud Service Subscription shall continue in full force and effect for a maximum of one (1) year after the effective date of expiration or termination to the extent necessary, and inquired by Partner thirty (30) days prior to expiration or termination, to support existing End Users that have executed an End User Agreement for the remainder of their then current SAP Cloud Service Subscription terms as set forth in this Exhibit (the "Wind-Down Period"). During the Wind-Down Period, Partner shall remain authorized to continue business for such existing End Users, to be co-terminus with the then-current SAP Cloud Service Subscription term for such existing End Users until expiration of this Exhibit. Termination or expiration of SAP Cloud Service Subscription shall not relieve Partner of its outstanding payment obligations existing at the time of such termination or expiration. Any fees previously paid by Partner are non-refundable. Additionally, the parties hereto agree that communications to End Users and any publications/press releases regarding such termination and mentioning of SAP shall be mutually agreed upon, in writing, prior to distribution.

For clarification purposes: In case Partner does not inquire the Wind-Down Period thirty (30) days prior to expiration or termination, the SAP Cloud Service of the respective SAP Cloud Service Subscription will be decommissioned on the effective date of expiration or termination. It will neither be possible to access the respective SAP Cloud Service nor to re-instate the respective SAP Cloud Service, or retrieve data from the respective SAP Cloud Service after the effective date of expiration or termination.

**9.3** Notwithstanding SAP's right to terminate as set forth in Article 9.1 above, in the event of

- (a)** any material breach of this Agreement, Exhibits or any Order Form which is not cured within thirty (30) days after receipt of written notice from SAP; or
- (b)** a determination by SAP that continued use of the SAP Cloud Service may result in harm to the SAP Cloud Service (including the systems used to provide the SAP Cloud Service) or other SAP customers, or result in a violation of law or regulations of the United States, E.U., Irish, and other applicable jurisdictions or any applicable legal obligation or legal rights of another, in addition to any other remedies available at law or in equity, SAP will have the right immediately, in SAP's sole discretion, to remove any potentially offending End User and/or Partner Data from the SAP Cloud Service, deactivate user name(s), password(s) and/or otherwise suspend access to the SAP Cloud Service for End User and/or Partner.

**9.4** End User and/or Partner shall have the ability to access End User and/or Partner Data at any time during a subscription term as specified under the applicable Exhibit. Furthermore, upon reasonable request, End User and/or Partner may export and retrieve End User and/or Partner Data during a subscription term, which request will be subject to technical limitations caused by factors such as

- (a)** the size of respective instance of the SAP Cloud Service; and
- (b)** the nature of End User's and/or Partner's request, e.g., the frequency and/or timing of the export and retrieval. End User and/or Partner shall have the ability to export and retrieve End User and/or Partner Data within thirty (30) days after the effective date of termination.



Thirty (30) days after the effective date of termination, SAP shall have no obligation to maintain or provide any End User and/or Partner Data. Except when such End User and/or Partner Data has been removed in accordance with Section 9.4, or exported by End User and/or Partner, upon termination of the Agreement, SAP shall use commercially reasonable efforts to permanently and irrevocably remove, purge or overwrite all data still remaining on the servers used to host the SAP Cloud Service, including, but not limited to, End User and/or Partner Data, unless and to the extent applicable laws and regulations require further retention of such data.

**9.5** Any terms of this Agreement which by their nature extend beyond the day this Agreement ends remain in effect until fulfilled, in particular any terms protecting the Intellectual Property Rights of an SAP Group Company, and apply to respective successors and assignees.

**9.6** After the expiration of the Wind-Down Period, Partner shall irretrievably destroy or upon SAP's request deliver to SAP all copies of the SAP Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Partner must certify to SAP in writing that it has satisfied its obligations under this Section.

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## **12 DATA PROTECTION**

**12.1** Partner agrees to always stay compliant with SAP's most current Data Processing Agreement ("Indirect-DPA"), a current copy of which as of the date of the SAP Cloud Service Subscription is attached hereto as Annex 1. SAP may, in its sole discretion, update the DPA and/or make the most current version of the DPA available to Partner online through an SAP-designated website [www.sap.com/company/legal](http://www.sap.com/company/legal) (please select "PartnerEdge Partner and Partner's Customer" >> "Leveled Partner Agreements (Silver, Gold, Platinum): Build Partner"), and Partner shall use such current version of the DPA for the purposes described herein. For this purpose, Partner hereby shall secure the End User's consent to an End User Agreement with terms not less protective of Licensor than the DPA current as of the effective date of the SAP Cloud Service Subscription. Partner is not authorized to negotiate and/or accept any amendments to the DPA on behalf of SAP or any of its Group Companies.

**12.2** Partner agrees to coordinate with the End User in the event SAP amends the DPA Schedule.

**12.3** Partner shall enter into appropriate data protection agreements with End Users as required by applicable data protection laws.

## **13 MISCELLANEOUS**

**13.1** Infringement Notice. If SAP is notified by third party or an owner of Intellectual Property Rights that the Partner Contents infringe its rights, SAP may investigate the allegation (including by consulting the Partner) and determine in good faith and in its reasonable discretion whether to remove Partner Contents, which it may do after providing Partner with prior notice regarding such removal within a reasonable time in light of the circumstances. Partner shall take down any and all Partner Contents of which Partner becomes aware is infringing promptly or promptly notify SAP to do so. In no event such take down or removal of the Partner Contents give rise to any liability of SAP to Partner or End Users for a refund, damages or impose any obligation on SAP for continuing services of the SAP Cloud Service.

## **14 WARRANTIES AND DISCLAIMER**

**14.1** SAP warrants that the SAP Cloud Service (excluding any third party products, content or services accessed through the SAP Cloud Service) will substantially conform to the specifications stated in the Documentation during the applicable subscription term for such SAP Cloud Service. The foregoing warranty shall not apply:

- (a) if the SAP Cloud Service is not used in accordance with this Agreement, the Order Form, Exhibits and/or any Documentation; or
  - (b) if the non-conformity is caused by third party services, content or products or any modifications, configurations or customizations to the SAP Cloud Service; or
  - (c) to free (no fee) or trial licenses of the SAP Cloud Service.
- 14.2** Partner shall report any non-conformities with respect to Section 14.1 to SAP in writing without undue delay through an SAP approved support channel, submitting a detailed description of the problem and any information useful for rectification of the non-conformity.
- 14.3** Provided Partner complies with Section 14.2 such that existence of non-conformity is validated, SAP will, at its option:
  - (a) repair the non-conforming SAP Cloud Service; or
  - (b) return an appropriate portion of any payment made by Partner with respect to the affected portion of the applicable SAP Cloud Service. This is Partner's sole and exclusive remedy under this warranty.
- 14.4** To the maximum extent permitted by applicable law, except as expressly provided in Section 14.1, neither SAP nor its licensors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of the SAP Cloud Service or any information technology services, software, hardware or other materials provided under this Agreement, or that the operation of any such services, software, hardware or other material will be uninterrupted or error free.

## **15 LIMITATION OF LIABILITY**

- 15.1** Anything to the contrary herein notwithstanding, except for damages resulting from unauthorized use or disclosure of Confidential Information and SAP's right to collect unpaid fees, under no circumstances and regardless of the nature of any claim shall either SAP (or its Group Companies or SAP's licensors) be liable to Partner, End User or any other person or entity with regards to SAP Cloud Service for an amount of damages in excess of the fees paid for the applicable SAP Cloud Service Subscription in the twelve (12) month period preceding the date of the incident giving rise to liability and under no circumstances in the aggregate for all claims to exceed the amount paid to SAP during the term of this Agreement. Under no circumstances shall SAP, its Group Companies or SAP's licensors be liable in any amount for special, incidental, consequential, or indirect damages, loss of goodwill or business profits, work stoppage, data loss, computer failure or malfunction, or exemplary or punitive damages, even if advised of the possibility thereof.
- 15.2** The provisions of this Agreement allocate the risks between SAP and Partner. The SAP Cloud Service fees reflect this allocation of risk and limitations of liability herein. The aforementioned liability limitations shall include any claims against employees of, subcontractors of, or any other persons authorized by, SAP. Under no condition will SAP or its licensors be responsible under this Agreement for preparation or conversion of data into the form required for use with the SAP Cloud Service.
- 15.3** It is expressly understood and agreed that each and every provision of the Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the parties to be severable and independent of any other provision and to be enforced as such.
- 15.4** Partner acknowledges that none of SAP or its licensors are engaged in the business of rendering legal, tax or other professional services and that the information provided by SAP relative to this Agreement or in response to Partner inquiries are not intended to provide legal, tax or other expert advice to Partner, or be a substitute for a lawyer, accountant, or other professional. If Partner needs legal or tax advice or other expert assistance, the services of a competent lawyer, accountant, or other professional licensed to practice in the applicable jurisdiction should be sought.

- 15.5** The foregoing limitation of liability does not apply to willful misconduct or fraud, personal injury or death caused by the negligence or any other liability which cannot be excluded or limited by applicable law.
- 15.6** Claims. Neither party will bring a legal action under this Agreement more than one year after the cause of action arose.

**EXHIBIT K-2**  
**- EPAAS LICENSING OF SAP CLOUD SERVICE - OEM CLOUD SUPPORT -**  
**FOR SAP PARTNERS**

This Exhibit K-2 to the Agreement between Partner and SAP stipulates the terms of OEM Cloud Support available to Partner with regards to using SAP Cloud Service as part of a BCS.

The support services provided by SAP to Partner for the SAP Cloud Service will apply as specified in the Service Description Guide (see Exhibit K-1, Product-Specific Use Rights).

**EXHIBIT K-3**  
**- EPAAS LICENSING OF SAP CLOUD SERVICE - COMMERCIAL TERMS -**  
**FOR SAP PARTNERS**

**1. DEFINITIONS**

- 1.1 "BCS Subscription Price" means the actual subscription price for BCS to End User, including discounts granted by Partner to End User.
- 1.2 "BCS Subscription Revenue" means the applicable cloud subscription revenues due for all BCSs delivered by Partner to End User, received and/or payable, in accordance with the generally accepted accounting principles in the country where Partner is located on a consistent basis. Applicable subscription revenues shall include the entire compensation to Partner, by End User for providing BCS to End User as a comprehensive cloud offering. Subscription shall include, but is not limited to, compensation for usage rights of Partner's, SAP's, and any third-party intellectual property and all support, service and maintenance services associated with BCS. Applicable subscription revenues shall exclude one-time implementation or other consulting service fees. BCS Subscription Revenue shall exclude any taxes or tax charges of any kind (including but not limited to, income tax, corporation tax, customs duties, tariffs, excise, gross receipts, sales and use and value added tax). BCS Subscription Revenue shall be based on the BCS Subscription Price or, if applicable, on the Fair Value Substitute of BCS, whatever is greater.
- 1.3 "Fair Value Substitute of BCS" means a substitute pricing for BCS used for calculation of BCS Subscription Revenue resp. BCS Royalties, which shall reflect the fair value of the offering. Partner can propose a Fair Value Substitute of BCS to SAP at any time or shall provide a Fair Value Substitute of BCS if requested by SAP, when SAP is of the opinion that the planned or actual BCS Subscription Price does not reflect fair value. SAP has the right to reject proposed Fair Value Substitute of BCS as being non-adequate. In case SAP has rejected a Fair Value Substitute of BCS requested from Partner, SAP has the right to assign an independent auditor who verifies whether the suggested Fair Value Substitute of BCS reflects fair value and, if applicable, suggest a new Fair Value Substitute of BCS to Parties. The Parties agree to be bound to such auditing results. Reasonable costs of SAP's audit shall be paid by Partner if the Fair Value Substitute of BCS determined by independent auditor is higher than the BCS Subscription Price. Earliest six (6) months after a Fair Value Substitute of BCS has been agreed, both Parties can request a review of the Fair Value Substitute of BCS based upon clear evidence that the fair value of BCS has materially changed. For clarification purposes: Once a Fair Value Substitute of BCS has been agreed, it is also applicable to all subsequent End User licensing of BCS by Partner.
- 1.4 "Governor Limits" means the then current maximum amount of SAP Cloud Service Subscription resources provided by SAP to Partner for use of BCS.

**2. BCS ROYALTIES – SAP CLOUD SERVICE SUBSCRIPTION**

- 2.1 As of the effective date of each subscription to SAP Cloud Service for End User licensing of BCS ("SAP Cloud Service Subscription") until termination, Partner shall pay SAP a percentage of the BCS Subscription Revenue ("BCS Royalties"), stipulated by SAP's then current and applicable Pricing Information on BCS Royalties as referenced in section 4.
- 2.2 Notwithstanding the foregoing, Partner shall pay to SAP fixed minimum BCS Royalties for each SAP Cloud Service Subscription ("BCS Minimum Royalties"), stipulated by SAP's then current and applicable Pricing Information on BCS Minimum Royalties as referenced in section 4. Each BCS Minimum Royalties shall be credited towards the BCS Royalties of its SAP Cloud Service Subscription.
- 2.3 The SAP Cloud Service Subscription will continue to remain in effect for successive subscription periods of three (3) months, with an initial subscription period of three (3) months, following the

effective date of the SAP Cloud Service Subscription, until Partner terminates the SAP Cloud Service Subscription with thirty (30) days advance notice.

### **3. REVENUE SHARE REPORTING & PAYMENTS**

- 3.1 At the end of each calendar quarter, SAP will invoice Partner BCS Minimum Royalties in the agreed currency and at the agreed rate under the Agreement on a prorated basis for that quarter
- 3.2 Within twenty (20) days after the close of each calendar quarter, Partner will deliver to SAP a revenue report of BCS Subscription Revenues for the prior calendar quarter. Partner will provide the report in electronic form according to a template provided by SAP. SAP will inform Partner in writing in case of changes of the reporting format. Any changes or corrections to a submitted report can only be made within thirty (30) calendar days after receipt by SAP. SAP will invoice Partner BCS Royalties in the agreed currency under the Agreement according to the final revenue report and section 3.2.
- 3.3 Partner will pay to SAP all invoices due for SAP Cloud Service Subscription even after termination of the Agreement or Wind-Down Period.
- 3.4 Any amounts payable and invoiced by SAP shall be due within thirty (30) days of the invoice date, independent of End User being in default.
- 3.5 SAP will only invoice Partner as described herein if any amounts due exceed an amount of 500 € to avoid invoicing of small amounts. SAP reserves the right to change the threshold to avoid invoicing of small amounts and to communicate such changes to Partner. Notwithstanding the foregoing, SAP will always invoice all due fees before the end of each calendar year.
- 3.6 Where SAP and Partner have agreed that SAP will invoice Partner in EURO under the Agreement, the EURO/local currency exchange rate shall be based on the official fixing of the European Central Bank on the last business day of the month immediately preceding the month in which SAP invoices Partner. Where SAP and Partner have agreed that SAP will invoice Partner in USD under the Agreement, the USD/local currency exchange rate shall be based on the official fixing of the Federal Reserve System of the United States of America on the last business day of the month immediately preceding the month in which SAP invoices Partner.
- 3.7 SAP reserves the right to audit Partner's internal records with regards to BCS Subscription Revenues in order to verify the consistency between Partner's internal records and reports created by Partner and provided to SAP in accordance with Section 3. The audit right may be executed by SAP or a mutually agreed independent auditor and may be exercised one (1) time in any twelve (12) month period provided that the auditing Party signs customary assurances of confidentiality and the audit is performed in such a manner that it will not disrupt Partner's business. Partner is only required to disclose information that consists of business records reflecting amounts due to SAP or other information proving compliance with the commercial terms under the Agreement. SAP will be responsible for the costs of any audit.
- 3.8 If the audit discloses an underpayment, then Partner will promptly, but no later than within one (1) calendar month, correct this underpayment by paying to SAP the amount of the underpayment. If the underpayment is greater than ten percent (10%) of the total amount payable during the period under audit, then Partner will, in addition to paying the amount of the underpayment, reimburse SAP for the reasonable costs of the audit. In case an audit discloses discrepancies between actual BCS Subscription Revenues and the final amounts reported to SAP in two (2) or more revenue reports, SAP may terminate the Agreement for breach in accordance with the terms of the Agreement.
- 3.9 All payments hereunder are non-refundable. Partner shall have no right to withhold or reduce fees under this Agreement or set off any amount against fees owed for alleged defects in the SAP Cloud Service. Fees not paid when due may result in suspension of Partner and End Users' ability to access the SAP Cloud Service until payment is made.

#### **4. PRICING INFORMATION ON BCS ROYALTIES**

- 4.1 The current percentage of the BCS Royalties can be found in the pricing information which are published on SAP's partner-dedicated website at [https://partneredge.sap.com/en/library/assets/partnership/manage/op-rsrcs/app-dev/pl\\_lg\\_pricing\\_epaas\\_hcp\\_for\\_partners.html](https://partneredge.sap.com/en/library/assets/partnership/manage/op-rsrcs/app-dev/pl_lg_pricing_epaas_hcp_for_partners.html) ("Pricing Information").
- 4.2 The current BCS Minimum Royalties can be found in the Pricing Information according to the respective BCS category.
- 4.3 BCS Minimum Royalties per month permanently increase as outlined in the Pricing Information in case
- (a) used for more than one (1) End User Agreement per SAP Cloud Service Subscription ("Multi-Tenancy") or
  - (b) used for more than one (1) Cloud Application per SAP Cloud Service Subscription ("Multi-App").
- Partner shall not combine Multi-Tenancy and Multi-App, unless indicated otherwise in the Pricing Information.
- 4.4 SAP reserves the right to verify that Cloud Application of a BCS meets the technical requirements to be operated in a Multi-Tenancy mode as described in the Multi-Tenancy verification guidelines at <https://www.sapadpc.com>, and refuse Multi-Tenancy operation of BCS in case it does not meet such requirements. Partner must provide all information reasonably requested by SAP concerning Cloud Application of such BCS and its technical Multi-Tenancy usage scenario. The verification service offered by SAP may be subject to a separate agreement and incur additional fees.
- 4.5 SAP monitors the consumption of SAP Cloud Service Subscription resources caused by BCS. SAP reserves the right to permanently increase the Governor Limits and corresponding BCS Minimum Royalties in case of excess resource consumption of the SAP Cloud Service Subscription. Governor Limits and BCS Minimum Royalties will be increased in increments, or multiples thereof, as outlined in the Pricing Information, to the degree necessary to cover the detected excess resource consumption. Such permanent increase of Governor Limits and BCS Minimum Royalties takes effect no earlier than at the beginning of the calendar quarter, in which the excess resource consumption of the SAP Cloud Service Subscription has been detected and communicated to Partner by SAP. Partner agrees to pay all requisite fees in accordance with the terms of this Agreement from the effective date SAP has determined and communicated to Partner about the increase of BCS Minimum Royalties.
- 4.6 Notwithstanding the foregoing, Partner may request a permanent increase of Governor Limits, subject to the Pricing Information and in accordance with the terms of this Agreement. Such permanent increase of Governor Limits and the respective BCS Minimum Royalties can only take effect at the beginning of a calendar quarter.
- 4.7 Once per year, Partner may request and SAP may choose to accept to reduce permanent increases of BCS Minimum Royalties, if
- (a) number of End User Agreements reduces to one (1) End User Agreement per SAP Cloud Service Subscription, if
  - (b) number of Cloud Applications reduces to one (1) Cloud Application per BCS, or if
  - (c) the increase of Governor Limits is no longer required. Reductions of Governor Limits and BCS Minimum Royalties will be effective at the beginning of the calendar quarter following the decision on such reduction. SAP reserves the right to incur an additional fee for executing such a reduction of the permanent increases of BCS Minimum Royalties as outlined in the Pricing Information.

#### **5. CHANGE TERMS FOR EPAAS LICENSING OF SAP CLOUD SERVICE**

- 5.1 SAP reserves the right to change, add, or remove Exhibits and/or its terms, or fees, or elements of the ePaaS licensing of SAP Cloud Service offering stipulated in the Agreement. SAP communicates such changes to Partner with at least ninety (90) days prior notice, unless a change does not materially diminish SAP's offering to Partner hereunder. Such changes are not effective

retroactively and only apply as of the effective date which SAP specifies in the notice. Partner acknowledges its agreement to have these changes apply by either (i) requesting the change if such change request is made available by SAP in its sole discretion (ii) placing new orders or registrations, or (iii) failing to request within the ninety (90) days' notice period that the change effective date shall be deferred until the start of the new renewal period. Renewal of this Agreement shall be subject to SAP's then applicable and communicated terms and fees in effect at such time. Upon renewal, each Party may terminate the Agreement by giving the other Party three (3) months prior written notice to the end of the Initial Term or any Renewal Term.



**EXHIBIT K-4**  
**- EPAAS LICENSING OF SAP CLOUD SERVICE –**  
**FOR SAP PARTNERS**

This Exhibit K-4 stipulates any deviation from the Service Description Guide, available at <https://cloudplatform.sap.com/capabilities/service-description.html>, as applicable under this Exhibit to the Agreement.

**1. Definitions in the Service Description Guide for purposes of the Agreement**

- 1.1 "Customer" in the Service Description Guide shall mean "Partner".
- 1.2 "Cloud Service" in the Service Description Guide shall mean "SAP Cloud Service".
- 1.3 "User" in the Service Description Guide shall mean "Named User".
- 1.4 "Affiliates" in the Service Description Guide shall mean "Associated Companies".
- 1.5 "Monthly Subscription Fee" in the referenced Service Level Agreement for SAP Cloud Services document shall mean the "BCS Minimum Royalties"

**2. General deviating Terms and Conditions**

- 2.1 The Usage Metrics in the Service Description Guide, including the definition of piece sizes, shall not apply for SAP Cloud Services provided via the Order Form for the SAP Cloud Service Subscription under this Agreement. Instead, Governor Limits for SAP Cloud Service Subscriptions shall apply.
- 2.2 SAP will provide to Partners a monthly report describing the System Availability percentage for the applicable Cloud Service only through an online portal made available to Partner, if and when such online portal becomes available.

**3. SAP Cloud Platform service-specific Terms and Conditions**

- 3.1 SAP Cloud Platform, Identity Authentication. The Additional Terms & Conditions of the Service Description Guide for SAP Cloud Platform, Identity Authentication shall not apply to SAP Cloud Service provided under this Exhibit.
- 3.2 SAP Cloud Platform Portal, consumer edition. The Additional Terms of the Service Description Guide for SAP Cloud Platform Portal, consumer edition shall not apply to SAP Cloud Service provided under this Exhibit.
- 3.3 SAP Cloud Platform, SAP HANA service, platform edition. SAP Cloud Platform, SAP HANA service, platform edition provided under this Exhibit does not include the bandwidth (out) as stated in the Service Description Guide.
- 3.4 SAP Cloud Platform, SAP ASE service. SAP Cloud Platform, SAP ASE service provided under this Exhibit does not include the bandwidth (out) as stated in the Service Description Guide.
- 3.5 SAP Cloud Platform, mobile service for development and operations.
  - (a) "Mobile User" in the Service Description Guide shall mean "concurrent Mobile User", who is an individual who uses the BCS. Concurrent Mobile Users are the aggregated numbers of Mobile Users using the SAP Cloud Service through the respectively licensed BCS by Partner to End User at any one time.
  - (b) Only the terms and conditions of the use of Google Cloud Messaging ("GCM") and Apple Push Notifications ("APN"), in the Additional Terms & Conditions section of the Service Description Guide for SAP Cloud Platform Identity Authentication as a SAP Cloud Service provided under this Exhibit, shall apply.
  - (c) The Data Processing Agreement (Exhibit A of Annex 1) referenced in and attached to this Exhibit is modified as follows: Back up of End User Data and network access to allow End User Data transfer are not included in the Processing Operations of the SAP Cloud Service. In all other respects, the Data Processing Agreement applies to the SAP Cloud Service unchanged.

**Exhibit K-5**  
**- ePaaS Licensing of SAP Cloud Service -**  
**SAP Cloud Platform Integration service**  
**for SAP partners**

This Exhibit K-5 to the Agreement between Partner and SAP stipulates the specific terms of licensing SAP Cloud Platform Integration ("CPI"), as an SAP Cloud Service, available to Partner for sublicensing to End User as part of a Bundled Cloud Service.

Partner is entitled to use CPI as outlined in this Exhibit, and according to licensing and use restrictions as set forth in the Agreement. As this offering is still in pilot phase, SAP, at its sole discretion, will make available to Partner a dedicated Order Form, which must be filled out and submitted to SAP for using CPI as part of Bundled Cloud Service. In such case, following terms and conditions shall supersede the respective terms and conditions in Exhibit K-1 to Exhibit K-4

**1 PRE-REQUISITE**

Notwithstanding anything to the contrary in Exhibit K, CPI as part of Bundled Cloud Service is only available to Partner under the following conditions:

- 1.1** Partner has a valid subscription to the Innovation Pack for SAP Cloud Platform or multi-cloud starter pack for SAP Cloud Platform, the Innovation Pack for SAP Cloud Platform Integration, as well as any respective additional SAP Cloud Service subscription for developing and supporting Cloud Application under the Agreement,
- 1.2** CPI enriches Bundled Cloud Service, assigned to one of the BCS categories, as outlined in the current and applicable Pricing Information on BCS Royalties.
- 1.3** Cloud Application of Bundled Cloud Service enriched by CPI has a valid SAP Certification, under a separate certification agreement.

**2 USE OF THE SAP CLOUD SERVICE**

- 2.1** CPI shall only be used in conjunction with Cloud Application of BCS, assigned to one of the BCS categories as outlined in the current and applicable Pricing Information on BCS Royalties, to enable integration of BCS with End User systems or any third party services.
- 2.2** CPI may enrich one (1) or multiple BCSs for one (1) or multiple End User Agreements.
- 2.3** Cloud Application, as part of BCS, must add significant new and independent business functionality, and must not replicate any CPI functionality.
- 2.4** End User must not access SAP Cloud Services directly, neither to monitor integration or to create custom Integration Content, nor to establish integration of multiple End User systems.

**3 COMMERCIALS**

Partner shall pay BCS Royalties according to SAP's then current and applicable Pricing Information on BCS Royalties.

**Exhibit K-6**  
**- ePaaS Licensing of SAP Cloud Service -**  
**Distribution through BCS Reseller**  
**for SAP partners**

This Exhibit K-6 to the Agreement between Partner and SAP stipulates the specific terms of licensing SAP Cloud Service available to Partner for sublicensing to End User as part of a Bundled Cloud Service via BCS Reseller.

Partner is entitled to use the SAP Cloud Service as outlined in this Exhibit, and according to licensing and use restrictions as set forth in the Agreement. As this offering is still in pilot phase, SAP, at its sole discretion, will make available to Partner a dedicated BCS Reseller registration form, which must be filled out and submitted to SAP for distributing the SAP Cloud Service as Bundled Cloud Service via BCS Reseller. In such case, following terms and conditions shall supersede the respective terms and conditions in Exhibit K-1 to Exhibit K-5

**1 DEFINITIONS**

- 1.1** "BCS Reseller" means a Legal Entity which Partner registers with SAP via a registration form provided by SAP to Partner, in order to allow Partner to distribute the SAP Cloud Service as Bundled Cloud Service via such BCS Reseller.
- 1.2** "BCS Subscription Price" means the actual subscription price for BCS to End User, including discounts granted by BCS Reseller to End User.
- 1.3** "End User" means a person or Legal Entity to which BCS Reseller distributes licenses or provides access to Bundled Cloud Services pursuant to the terms of the Agreement.
- 1.4** "End User Agreement" means a written agreement entered into between BCS Reseller and any End User pursuant to which the End User purchases cloud subscriptions to the Bundled Cloud Service.

**2 GRANT OF RIGHTS**

- 2.1** Distribution through BCS Resellers. Subject to the terms specified in Exhibit K ("ePaaS Licensing of SAP Cloud Service"), section 2.2 to the Agreement, Licensor grants Partner the non-exclusive right during the term of this Exhibit to authorize its BCS Resellers to resell the Bundled Cloud Service to End Users, provided that Partner will ensure that anyone it authorizes to resell the Bundled Cloud Service does so only in compliance with, and pursuant to written terms at least as protective of Licensor as the terms of the Agreement, in particular Exhibit K-1, section 2.2 to the Agreement. Partner shall be liable to Licensor for any breach of the terms by such BCS Reseller to the same extent as Partner would be liable to Licensor under the Agreement for such a breach by Partner. Neither the Agreement nor this Schedule grant any further rights to Partner and/or BCS Resellers to resell or sublicense the Bundled Cloud Service in a multi-tier distribution system other than set forth hereunder.
- 2.2** Prior to granting BCS Reseller the right to distribute the Bundled Cloud Service to End Users, Partner has to register such BCS Reseller with SAP. SAP reserves to right to reject any such BCS Reseller registration, or changes to such BCS Reseller registration, at its sole discretion. Furthermore, SAP reserves the right to annually review and withdraw the then current BCS Reseller registrations, effective on the next renewal date of the SAP Cloud Service Subscription under the Agreement, with thirty (30) days prior notice.
- 2.3** In the BCS Reseller registration process, Partner has to firmly state if Partner grants SAP the right to audit its BCS Reseller and BCS Reseller has confirmed such audit rights. Audit rights apply to BCS Reseller's internal records with regards to BCS Subscription Revenues in order to verify the consistency between Partner's and BCS Reseller's internal records and reports created by Partner as provided to SAP in accordance with Exhibit K to the Agreement. The audit right may be executed by SAP or a mutually agreed independent auditor and may be exercised one (1) time in any twelve (12) month period provided that the auditing Party signs customary

assurances of confidentiality and the audit is performed in such a manner that it will not disrupt BCS Reseller's business. BCS Reseller is only required to disclose information that consists of business records reflecting amounts due to Partner or other information proving compliance with the commercial terms under the Agreement. SAP will be responsible for the costs of any audit.

**2.4** Partner shall report cloud subscription revenue of BCS Reseller to SAP in accordance with Exhibit K to the Agreement. Notwithstanding the foregoing, SAP reserves the right to withdraw the right to distribute the Bundled Cloud Service to End Users via BCS Reseller with immediate effect, in case Partner is not compliant with the payment terms as outlined in the Exhibit K to the Agreement. This includes, but is not limited to, Partner's obligation to deliver to SAP a revenue report of BCS Subscription Revenue for the prior calendar quarter within twenty (20) days after the close of each calendar quarter. Withdrawal of distribution rights via BCS Reseller will not suspend the obligations of Partner to report and pay royalties for any previous business of BCS Reseller governed by the Agreement.

**2.5** Partner and/or BCS Reseller will independently establish prices and terms for the BCS, provided such terms include those required by the Agreement.

### **3 COMMERCIALS**

#### **3.1 BCS ROYALTIES BASED ON BCS RESELLER'S CLOUD SUBSCRIPTION REVENUES**

**3.1.1** In case Partner has authorized SAP to audit registered BCS Reseller and has included such SAP audit rights in its reselling agreement with BCS Reseller in order to be compliant with Partner's obligation, "BCS Subscription Revenue" shall mean the applicable cloud subscription revenues due for all BCSs delivered by Partner to End User via BCS Reseller, received and/or payable, in accordance with the generally accepted accounting principles in the country where BCS Reseller is located on a consistent basis. Applicable subscription revenues shall include the entire compensation to BCS Reseller for providing BCS to End User as a comprehensive cloud offering.

**3.1.2** Partner shall pay BCS Royalties stipulated by SAP's then current and applicable Pricing Information on BCS Royalties.

#### **3.2 BCS ROYALTIES BASED ON PARTNER'S CLOUD SUBSCRIPTION REVENUES**

**3.2.1** In case Partner does not grant SAP the right to audit its registered BCS Reseller, "BCS Subscription Revenue" shall mean the applicable cloud subscription revenues due for all BCSs delivered by Partner to End User via BCS Reseller, received and/or payable, in accordance with the generally accepted accounting principles in the country where Partner is located on a consistent basis. Applicable subscription revenues shall include the entire compensation to Partner by BCS Reseller for providing BCS to End User as a comprehensive cloud offering.

**3.2.2** Partner shall pay BCS Royalties stipulated by SAP's then current and applicable Pricing Information on BCS Royalties with regards to BCS being sold to End User via BCS Reseller without auditing rights of BCS Reseller by SAP.

**3.3** Subscription revenues shall generally include, but are not limited to, compensation for usage rights of Partner's, SAP's, and any third-party intellectual property and all support, service and maintenance services associated with BCS. Applicable subscription revenues shall exclude one-time implementation or other consulting service fees. BCS Subscription Revenue shall exclude any taxes or tax charges of any kind (including but not limited to, income tax, corporation tax, customs duties, tariffs, excise, gross receipts, sales and use and value added tax). BCS Subscription Revenue shall be based on the BCS Subscription Price or, if applicable, on the Fair Value Substitute of BCS, whatever is greater.

**ANNEX 1**  
**Indirect Data Processing Agreement (“Indirect-DPA”)**

Effective [ **date** ] (“Effective DPA Date”)

**Business Objects Software Limited**  
**1012 - 1014 Kingswood Avenue**  
**City West Business Campus**  
**Dublin 24, Ireland**  
**(hereinafter “SAP”)**

and:

**Partner Name:** \_\_\_\_\_

**Partner Address:** \_\_\_\_\_  
**(hereinafter “Partner”)**

SAP and Partner are herein individually referred to as a “**Party**” and “jointly referred to as the “**Parties**”.

**I. GENERAL TERMS**

**1. PREAMBLE**

WHEREAS, Partner and SAP enter into the Agreement whereby SAP grants to Partner the right to use SAP Cloud Services (the “**Relevant Service**”) to operate Cloud Application only for use in conjunction with, and for purposes of, Cloud Application for its own customers (such own customers of the Partner together with any of their affiliates which are entitled to use the Relevant Service are hereinafter together referred to as the “**End Customers**”).

WHEREAS, in accordance with the Agreement, SAP will provide certain hosting and support services on behalf of Partner to End Customers in conjunction with the Relevant Service, which may include the processing of, and/or access to, Personal Data controlled by End Customers.

WHEREAS, any such processing of Personal Data requires the prior entry into a data processing agreement between all parties of the data processing chain: i.e. (i) a data processing agreement between Partner’s customer (who in turn has to enter into data processing agreements with its End Customers as required to allow the order processing of personal data contemplated hereunder) as the data controller and Partner as customer’s data processor and (ii) another data processing agreement (i.e. this Indirect-DPA) between Partner as data processor and SAP as Partner’s data sub-processor is required.

WHEREAS, Exhibit A (as attached hereto) includes the general principles of data processing in connection with cloud services provided by SAP. The terms of Exhibit A were initially intended to apply only between SAP and its direct customers, however, now the Exhibit A shall also serve as the basis for the data protection obligations of the parties in this sub-processing situation. Exhibit A is adjusted and clarified as further stated in section 3 below, in order to reflect that the Partner is not the data controller of the End Customer data.

**2. DEFINITIONS**

Capitalized terms used but not defined herein shall have the same meaning as defined in Exhibit A and the Agreement.

**3. END USER DPA**

Partner shall enter into data processing agreements with its customers (“**End-User-DPA**”) which allow Partner to use SAP as a sub-processor of Personal Data:

- a. To the extent Personal Data controlled by End Customers established within or outside of the EEA is processed by SAP and its Subprocessors within the territory of the EEA, Partner shall pass on the terms of Exhibits A back-to-back to its customers and shall contractually require its customers to pass on such terms back-to-back to their other End Customers.
- b. If Personal Data controlled by End Customers established within the EEA is processed by SAP and its Subprocessors outside of the EEA, Partner will beyond a) above ensure that such End Customers accede to the Standard Contractual Clauses between SAP and the relevant Non-EU Entity (as stated in Exhibits A). For the avoidance of doubt, Partner acknowledges that an accession as set out in the previous sentence is the only way to establish the Standard Contractual Clauses between End Customers and SAP and its Subprocessors.

#### **4. PROCESSING OF PERSONAL DATA**

SAP will process Personal Data entered into the Relevant Service by the End Customers of the Partner in accordance with the terms included in Exhibits A, subject to the following adjustments:

- a. Where Exhibit A refers to "Customer", it shall read "Partner" for the purpose of this Indirect-DPA.
- b. Partner shall serve as a single point of contact for SAP and is solely responsible for the internal coordination, review and submission of instructions or requests of all End Customers to SAP. SAP shall be discharged of its obligation to inform or notify an End Customer when it has provided such information or notice to Partner. SAP is entitled to refuse any requests or instructions provided directly by an End Customer unless otherwise required by applicable data protection law.
- c. Both Partner and End Customers may request audit reports or may audit SAP as further detailed in the Exhibit A.

## **II. EXHIBIT A**

### **Data Processing Agreement for SAP Cloud Services**

SAP's current version of the Data Processing Agreement for SAP Cloud Services can be found at: [www.sap.com/about/agreements.html](http://www.sap.com/about/agreements.html) >> SAP Cloud Services Customers >> Find Data Processing Agreement >> Data Processing Agreement for SAP Cloud Services