

**SAP PartnerEdge Build Integrate  
Specific Terms and Conditions  
("SAP PartnerEdge Model")**

**1. DEFINITIONS**

Commonly used capitalized terms are defined in the Glossary at the end of the document. All capitalized terms not defined in this SAP PartnerEdge Model will have the meaning ascribed in the Agreement, including the Build Master Partner Agreement, any applicable SAP PartnerEdge Schedule, other applicable document, exhibit, appendix, annex, and/or Order Form included in, attached to, or referenced to in the Agreement. With respect to the SAP PartnerEdge Model, references to the "GTC" in this SAP PartnerEdge Model, the Build Master Partner Agreement or elsewhere in the Agreement means the SAP PartnerEdge Build General Terms and Conditions.

**2. ENGAGEMENT MODEL**

**2.1 Program Requirements.**

(a) Subject to Partner's compliance with all Program Requirements at all times during the term of this SAP PartnerEdge Model, SAP grants to Partner the rights set forth in this SAP PartnerEdge Model. Partner may hold itself out as an SAP PartnerEdge Partner in the Territory (as defined in the applicable SAP PartnerEdge Schedule that references this SAP PartnerEdge Model).

**2.2 Engagement Options.** There are two engagement options under this SAP PartnerEdge Model ("Engagement Options):

(a) **SAP PartnerEdge Build Integrate.** Partner provides to its Customers a Partner Solution that includes an Authorization enabling Customer Data to be passed between Partner Solution and an SAP cloud service or software that is subscribed to or licensed directly by Customer from SAP. Customers' use of the SAP cloud service and/or software is governed by the customer cloud service or software license agreement entered into between SAP, its Affiliates, or resellers and the Customer. Part A attached provides for the additional terms and conditions applicable to this Engagement Option.

(b) **SAP PartnerEdge Build Cloud.** Partner resells a Bundled Solution consisting of the Partner Solution and the Cloud Service to its Customers. Part B attached provides for the additional terms and conditions applicable to this Engagement Option.

**2.3 Partner Development.** This SAP PartnerEdge Model provides no license, subscription or support to any Development License to use or access any SAP Cloud Service or Software. Any use of the Cloud Service or Software by Partner for testing, development and demonstration purposes is subject to the terms and conditions of a separate Development Agreement.

**2.4 Partner Solution Review.** The Partner Solution (including any Authorization) must be a Partner Solution that is reviewed and approved by SAP in advance in accordance with SAP's standard practices before Partner may promote or make it available to its Customers or third parties for use in conjunction with any SAP cloud service or software ("Authorized Scope"). Partner agrees to provide such information about the Partner Solution and/or any Authorization as reasonably requested by SAP. SAP may deny or withhold approval in its sole discretion. SAP's approval of the Partner Solution and/or associated Authorization is not, and will not be construed or represented by Partner to any third party to be a verification of the Partner Solution and/or associated Authorization functionality or any support, preference, warranty or endorsement of such by SAP in any way.

**2.5 SAP App Center.** Partner's use of the SAP App Center is subject to the terms and conditions of a separate SAP App Center agreement.

**2.6 Delegation.** Partner may delegate the performance of the Partner's duties to suitably qualified personnel of an Affiliate. Notwithstanding such delegation by the Partner of its duties, Partner will remain directly accountable to SAP. Partner's Affiliate will not be entitled to hold itself out to be an authorized SAP partner or having any other direct relationship to SAP.

**3. GRANT OF RIGHTS.**

**3.1 Authorization.** Subject to the terms and conditions of this Agreement, SAP hereby grants to Partner the limited right in the Territory to use the Authorization to enable Customers to exchange Data between the Partner Solution and SAP cloud service or software, as applicable only in accordance with the Authorized Scope and during the term of this SAP PartnerEdge Model. Partner is only permitted to and shall only use the Authorization in accordance with the Engagement Option subscribed by Partner and approved by SAP under Section 2.2.

**3.2 Application Interface Register.** Notwithstanding anything contrary in the Agreement and except as provided in the Application Interface Register Adoption Guide, Partner shall not use (or permit use of) an Authorization to communicate with, or access, a Cloud Service unless Partner utilizes the Application Interface Register, and has been granted access,

in accordance with the then current Application Interface Register Adoption Guide, a copy of which is published on the SAP PartnerEdge partner dedicated website (the "AIR Guide") as may be modified by SAP from time to time. SAP has the right to suspend Partner's rights under this SAP PartnerEdge Model if Partner fails, to comply with this Section or any part of the Agreement.

#### **4. PAYMENT; REVENUE SHARE**

**4.1 Fees.** Partner agrees to pay for the applicable fees in accordance with the Price List for Engagement Option(s) selected by Partner and approved by SAP.

**4.2 Revenue Share.** Revenue Share Reporting and Payments. If the Price List indicates that a Cloud Service is charged on a revenue share basis, Partner agrees to pay SAP the Revenue Share as stated on the Price List. Partner will deliver to SAP a revenue report of Net Revenue for each reporting period. Partner will provide the report as required by SAP in electronic form or via any then current electronic reporting tool made available by SAP to Partner, including without limitation, reporting through a tool made available by SAP to Partner in the SAP App Center. SAP will inform Partner in case of changes of the reporting format or tool and Partner shall submit its revenue report under such new reporting format or tools for all future reporting periods. 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 the Revenue Share in the currency as stated in the Price List.

#### **5. TERM AND TERMINATION OF THIS SAP PARTNEREDGE MODEL**

**5.1 Term.** The term of this SAP PartnerEdge Model is as stated in the applicable SAP PartnerEdge Schedule. This SAP PartnerEdge Model may be terminated in accordance with the SAP PartnerEdge Build GTC.

**5.2 Termination for convenience.** Either Party may terminate this SAP PartnerEdge Model for convenience with three months' written notice prior (email acceptable) to the end of the initial term set forth in the applicable SAP PartnerEdge Schedule or the then current renewal term.

**5.3 Termination for non-compliance with Program Requirements.** SAP may terminate this SAP PartnerEdge Model with three month prior written notice (email acceptable) if Partner does not comply with any of the Program Requirements excluding the Program Fee.

**5.4 Consequences of Termination.** If this SAP PartnerEdge Model is terminated or expired:

(a) Partner will cease marketing, selling or providing access to the Bundled Solution, Authorization or SAP Materials to any third party, including renewing any subscription-based service agreements with existing customers; and

(b) Partner's right to receive benefits under the SAP PartnerEdge Program immediately ends.

**6. PARTNER REPRESENTATION.** Partner will not make any representations or warranties as to the performance of the SAP Solution or other services on behalf of SAP or otherwise make commitments on behalf of SAP. Partner represents and warrants that it has and will maintain sufficient facilities and adequate capital, resources, and personnel to market and support the Bundled Solution and to perform its obligations under this Agreement.

**7. SURVIVAL.** Sections 1, 4.1-4.2 and 5.4, Part A Sections 2, 3, and 4(a), and Part B Sections 1.2, 5.2, 6.1, 6.5, 8, 9, 10.3-10.4, 12.1-12.4, and 13.5 will survive the expiration or termination of the Agreement.

## PART A

### ADDITIONAL TERMS AND CONDITIONS FOR SAP PARTNEREDGE BUILD INTEGRATE

These additional terms and conditions apply when Partner provides an Authorization to its Customers to pass data or contents between Partner Solution and an SAP cloud service or software, but Partner does not grant any rights of use to SAP cloud service or software. Customers acquire rights to use SAP cloud service or software under a separate agreement directly from SAP, its affiliates or resellers.

1. **Resell Right.** If Partner wishes to resell any Cloud Service to its Customers pursuant to the SAP PartnerEdge Build Model, Partner agrees to comply with the terms and conditions of the Agreement, including this SAP PartnerEdge Build Model and the additional terms set forth in Part B attached.
2. **Payment.**  
Partner will pay the fees as stated in the Price List for the applicable Engagement Option and the Authorized Scope approved by SAP.
3. **Data Privacy.** Partner will ensure that if the Partner Solution and associated Authorization access, collect, or transmit any Customer data from SAP Solution, Partner is responsible for collecting and maintaining all such data in compliance with applicable data privacy and protection laws. Partner must enter into appropriate data protection agreements with Customer as required by applicable laws and regulation, including without limitation, data protection laws. Unauthorized Use of Customers' data will be subject to immediate termination of this SAP PartnerEdge Model and the Development Agreement.
4. **Disclaimer.**
  - (a) **Warranty Disclaimer.** Neither SAP nor its subcontractors make any representation or warranties and SAP and its subcontractors disclaim all representations, warranties, terms, conditions or statements, which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded to the fullest extent permitted by law including the implied conditions, warranties or other terms as to merchantability, suitability, originality, or fitness for a particular use or purpose. Further, except as expressly provided in the Agreement, neither SAP nor its subcontractors make any representations, warranties, terms, conditions or statements of non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Partner agrees that it is not relying on delivery of future functionality, public comments or advertising of SAP or product roadmaps.

## PART B

### ADDITIONAL TERMS AND CONDITIONS FOR SAP PARTNEREDGE BUILD CLOUD

These additional terms and conditions apply when Partner is reselling Cloud Service in conjunction with Partner Solution to its Customers (“SAP PartnerEdge Build Cloud”):

In addition to the Agreement described in the SAP PartnerEdge Build Integrate Schedule, any Order Form issued where Partner purchases SAP Cloud Service for resell with Partner Solution is also governed by and incorporates the following documents, including all exhibits, appendices, schedules, annexes, amendments, addenda and any other documents attached to, or incorporated by reference into the following documents.

Partner confirms that it had access to all parts of and read the agreements listed in the table below and will comply with the terms and conditions of these agreements. Partner further confirms that he has signed the Build Master Partner Agreement. SAP recommends Partner prints copies of the agreements referred to below for its own records. Upon written request by Partner, SAP will send copies of these documents to Partner.

Agreement	Location
Schedule A of this SAP PartnerEdge Model is applicable for Cloud Service subscribed under this SAP PartnerEdge Model: <b>Cloud Service Supplemental Terms and Conditions (“Supplement”)</b>	<a href="http://go.sap.com/about/agreements/cloud-services.html?search=Supplement">http://go.sap.com/about/agreements/cloud-services.html?search=Supplement</a>
Schedule B of this SAP PartnerEdge Model: <b>Build Cloud Support Schedule (“Cloud Support Schedule”)</b>	<a href="https://www.sap.com/about/agreements/leveled-partner-agreements.html">https://www.sap.com/about/agreements/leveled-partner-agreements.html</a>
Schedule C of this SAP PartnerEdge Model: <b>Service Level Agreement for SAP Cloud Services (“SLA”)</b>	<a href="http://go.sap.com/about/agreements/cloud-services.html?search=Service%20Level%20Agreement">http://go.sap.com/about/agreements/cloud-services.html?search=Service%20Level%20Agreement</a>
Schedule D of this SAP PartnerEdge Model: <b>Partner Supplement to Data Processing Agreement (“DPA Partner Supplement”)</b>	Attached to this SAP PartnerEdge Model.
Schedule E of this SAP PartnerEdge Model: <b>Data Processing Agreement for SAP Cloud Services (“DPA”)</b> . Schedule D will serve as a commissioned written data processing agreement.	<a href="http://go.sap.com/about/agreements/cloud-services.html?search=Data%20Processing">http://go.sap.com/about/agreements/cloud-services.html?search=Data%20Processing</a>

#### 1. Grant of Rights.

- 1.1 **Cloud Service Subscription.** SAP grants to Partner, a non-exclusive, non-transferable, right in the Territory to market and resell the Cloud Service only in connection with the Partner Solution, including the Authorization, in accordance with the terms and conditions of this Agreement to Customers. Partner will provide access of the Cloud Service to Customers only in accordance with this SAP PartnerEdge Model and the SAP PartnerEdge Build GTC, including, without limitation, the restrictions listed in Part B, Sections 2(a) and (b) and 3 of this SAP PartnerEdge Model. Any use (or permitting use by Customers) of the Authorizations for accessing Customer Data is subject to the limitations set forth in this Agreement.
- 1.2 **License to SAP.** Partner grants SAP a worldwide, royalty free, non-exclusive license to (i) use, copy, reproduce, transmit, publish, publicly perform, publicly display, distribute and access the Platform Application and associated Data; and (ii) copy, reproduce, transmit, display, and distribute Data and Partner-provided marks, names, and logos, in each case, solely to provide and support the Cloud Service.
- 1.3 **Affiliates and Resellers.** Except as otherwise provided in the SAP PartnerEdge Schedule, SAP grants to Partner a non-exclusive, non-transferable right to authorize Partner’s Affiliates and resellers to market and resell subscriptions of the Bundled Solution to Customers to the same extent and scope as set forth in Part B, Section 1.1 above. Partner will ensure that any Affiliate or reseller it authorizes to resell subscription to the Bundled Solution does so only in compliance with, and pursuant to written terms no less protective of SAP than the Minimum Terms.
- 1.4 **Security.** Partner will maintain reasonable security standards for its Authorized Users’ use of the Cloud Service. Partner will not conduct or authorize penetration tests of the Cloud Service without advance approval from SAP.

2. **Bundled Solution.** The Use of the Cloud Service is subject to the following additional restrictions.
  - a. **Restricted License.** The Cloud Service may only be used to access data created by the Partner Solution or data processed by the Partner Solution that is necessary to enable the functionalities of the Partner Solution (referred to as a “Restricted License”).
  - b. **Database Restriction.** Other than communication (including data transfers) via application level APIs between a Cloud Service and software applications running on any third-party runtime database acquired from SAP or its Affiliates, or any of its respective resellers or distributors, the Cloud Service will not access, directly or indirectly, any third-party runtime database(s).
3. **Minimum Terms.** Each Customer having access to the Cloud Service must have executed an End User Agreement. The End User Agreement must be binding on Customers under applicable laws and regulations in the country in which Partner is providing access to the Bundled Solution. The End User Agreement must contain terms not materially less protective of SAP than the Agreement including without limitation the terms required under this Section 3, the applicable SAP PartnerEdge Schedule, and the Supplement. The Minimum Terms will include Partner’s rights to perform audits on Customer’s usage of the SAP Materials. Partner will not make any representations or warranties regarding the functionality or performance of the SAP Solution that conflict with the Agreement. The End User Agreement for Cloud Service will grant SAP and its Affiliates and subcontractors a non-exclusive right to process Data solely to provide the Cloud Service.
4. **ADDITIONAL TERMS FOR CLOUD SERVICE.**
  - 4.1 **Authorized Users.** Cloud Service usage is limited to the Usage Metrics and volumes stated in the SAP PartnerEdge Build Cloud Schedule (“Build Cloud Schedule”) and/or Order Form. Access credentials for the Cloud Service may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service.
  - 4.2 **Acceptable Use Policy.** With respect to the Cloud Service, SAP Materials and Documentation, Partner will not: (a) disassemble, decompile, reverse-engineer, modify, copy, translate or make derivative works, except to the extent such rights cannot be validly waived by law, (b) transmit any content or data that is unlawful or infringes any Intellectual Property Rights, (c) circumvent or endanger its operation or security, (d) access the Cloud Service for the purpose of building a competitive product or service or copying its features or user interface; or (e) make any use of the Cloud Service that violates any applicable local, state, national, international or foreign law or regulation.
  - 4.3 **Suspension of Cloud Service.** SAP may suspend or limit use of the Cloud Service if continued use may result in material harm to the Cloud Service or its users. SAP will promptly notify Partner of the suspension or limitation. SAP will limit suspension or limitation in time and scope as reasonably possible under the circumstances.
  - 4.4 **Third Party Web Service.** The Cloud Service may include integrations with web services made available by third parties (other than SAP or its Affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third party web services are not part of the Cloud Service and the Agreement does not apply to them.
  - 4.5 **Mobile Access to Cloud Service.** Authorized Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app store. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of the Agreement.
  - 4.6 **On-Premise Components.**

The Cloud Service may include on-premise components that can be downloaded and installed (including updates) by Partner. The System Availability SLA does not apply to these components. In addition to the support policy referenced in the SAP PartnerEdge Schedule, specific SAP support and maintenance policies apply to the On-Premise Components and can be found in SAP Support Note 2658835.
  - 4.7 **Platform Cloud Service.**
    - (a) Other than the Platform Application, no other software may be uploaded into Platform Cloud Service. Partner is responsible for maintaining compatibility between the Platform Application and the Platform Cloud Service upon upgrades of either component.
    - (b) Partner will not license, resell, rent, lease or otherwise provide any access to, or benefits of, the Platform Cloud Service to Customer or other third parties, except in connection with the provision of Platform Application to Customers. Use of the Platform Cloud Service by Customers is limited to communications and data exchange between the Platform Application and the Platform Cloud Service via officially supported Platform Cloud Service

interfaces. Notwithstanding anything in the Supplement to the contrary, Partner will not grant any rights for Customers to create Platform Applications for use with the Platform Cloud Service.

## **5. MODIFICATIONS AND ANALYSES**

### **5.1 Modifications.**

- (a) The Cloud Service and SAP Policies may be modified by SAP. SAP will inform Partner of modifications by email, the support portal, release notes, Documentation or the Cloud Service. The information will be delivered by email if the modification is not solely an enhancement. Modifications may include optional new features for the Cloud Service, which Partner and its Customer may use subject to the then-current Supplement.
- (b) If Partner establishes that a modification is not solely an enhancement and materially reduces the Cloud Service, Partner may terminate its subscriptions to the affected Cloud Service by providing written notice to SAP within thirty days after receipt of SAP's informational notice. In this case, Partner will be entitled to a refund of the unused subscription fee as set forth in Section 9 of this SAP PartnerEdge Model.

### **5.2 Analyses.** SAP and its Affiliates may create analyses utilizing, in part, Data and information derived from Partner and Customer's use of the Cloud Service and Consulting Services, as set forth below ("Analyses"). Analyses will anonymize and aggregate information, and will be treated as SAP Materials.

Unless otherwise agreed, personal data contained in Data is only used to provide the Cloud Service and Consulting Services. Analyses may be used for the following purposes:

- (a) product improvement (in particular, product features and functionality, workflows and user interfaces) and development of new SAP products and services,
- (b) improving resource allocation and support,
- (c) internal demand planning,
- (d) training and developing machine learning algorithms,
- (e) improving product performance,
- (f) verification of security and data integrity, and
- (g) identification of industry trends and developments, creation of indices and anonymous benchmarking.

## **6 ORDERS; OFFSET.**

**6.1** Subscription fee (including any fees charged on a revenue share basis) for the Cloud Service is as stated in the Price List. Partner shall pay the subscription fee during the Subscription Term of the Cloud Service in amount and currency as set forth in the SAP PartnerEdge Schedule and/or Order Form.

**6.2** Partner will independently establish the subscription price of the Bundled Solution for its Customers.

**6.3** Partner will submit an Order Form to order any subscription for a Cloud Service. The Order Form will include such information as required by SAP for Cloud Service subscriptions. Partner will order Cloud Services from SAP using and filling out completely such forms and minimum order requirements as SAP may prescribe from time to time and must comply with any then-current order process for the specific Cloud Service, including without limitation, ordering through a tool made available by SAP to Partner in the SAP App Center. Where applicable, Partner agrees to use the electronic means provided by SAP for placing orders.

**6.4** SAP reserves the right to reject an Order Form in its sole and reasonable discretion, if Partner is in violation of the Build Master Partner Agreement, SAP PartnerEdge Model, or the SAP PartnerEdge Build GTC.

**6.5** If Partner fails to make its payment on the due date, SAP may suspend Partner's rights to use the Cloud Service by Partner or any third party that Partner authorizes to access such Cloud Service, until payment is made. Partner cannot withhold, reduce or set-off fees owed nor reduce Usage Metrics during the Subscription Term, regardless of any termination, nonpayment, or other conduct of its Customer.

## **7 SYSTEM AVAILABILITY; SUPPORT.**

**7.1** Support for the Cloud Service will be provided by SAP to Partner as described in the Cloud Support Schedule that is incorporated into the applicable SAP PartnerEdge Schedule. Partner will provide support to Customers and resellers of the Cloud Service.

### **7.2 System Availability.**

- (a) SAP warrants to maintain an average monthly system availability for the production system of the Cloud Service as defined in the applicable service level agreement or Supplement ("SLA").
- (b) Partner's sole and exclusive remedy for SAP's breach of the SLA is the issuance of a credit in the amount described in the SLA. Partner will follow SAP's posted credit claim procedure. When the validity of the service

credit is confirmed by SAP in writing (email permitted), Partner may apply the credit to a future invoice for the Cloud Service or request a refund for the amount of the credit if no future invoice is due.

- (c) In the event SAP fails to meet the SLA (i) for four consecutive months, or (ii) for five or more months during any twelve months period, or (iii) at a system availability level of at least 95% for one calendar month, Partner may terminate its subscriptions for the affected Cloud Service by providing SAP with written notice within thirty days after the failure.

**8 WIND-DOWN.** If this SAP PartnerEdge Model is terminated other than due to a termination by SAP for breach or non-compliance pursuant to the Agreement and for so long as Partner continues to comply with the terms and conditions of the Agreement, those Cloud Service subscriptions that were still valid at the point in time when the SAP PartnerEdge Model is terminated will not automatically terminate but will remain in place and SAP will grant Partner a wind-down period of up to one year from the expiration date of the SAP PartnerEdge Model (“Wind-Down Period”). During the Wind-Down period, the terms and conditions of the SAP PartnerEdge Model and the Agreement will continue to apply except as set out below:

- (a) The Subscription Term of a Cloud Service will not extend automatically if the renewal term for such Cloud Service would end later than Wind-Down Period; and
- (b) Partner may order an increase to a Usage Metric for those Cloud Services that were still valid upon the termination date of the SAP PartnerEdge Model but may not execute any new Order Form for Cloud Service.

**9 REFUND AND PAYMENTS.** For termination by Partner under Sections 12.1(c) or 13.3(b), or by SAP permitted under the Agreement, Partner will be entitled to:

- (a) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination, and
- (b) a release from the obligation to pay fees due for periods after the effective date of termination.

## **10 ACCESS TO DATA**

**10.1** During the Subscription Term, Partner can access the Data at any time. Partner may export and retrieve the Data in a standard format. Export and retrieval may be subject to technical limitations, in which case SAP will find a reasonable method to allow Partner access to the Data.

**10.2** Before the Subscription Term expires, Partner may use SAP’s self-service export tools (as available) to perform a final export of Data from the Cloud Service.

**10.3** At the end of the SAP PartnerEdge Model, SAP will delete the Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.

**10.4** In the event of third-party legal proceedings relating to the Data, SAP will cooperate with Partner and its Customers and comply with applicable law (both at Partner’s expense) with respect to handling of the Data.

## **11 SUBSCRIPTION TERM; EXCESS USE AND PAYMENT; VERIFICATION**

**11.1 Subscription Term.** The initial Subscription Term for a Cloud Service is set forth in the Order Form. Unless the Supplement states otherwise, the initial Subscription Term and any renewals and extensions will automatically renew for terms equal in length to the immediately preceding term but in no event longer than one year. Auto-renewal will not occur if Partner notifies SAP of its intention not to renew subscriptions under a specific Order Form at least one month in advance of the expiration of the current term, or SAP notifies Partner of its intention not to renew at least six months prior to the expiration of the current term.

**11.2 Excess Use.** Use of the Cloud Service by Partner and its Customers is subject to the Agreement, including the Usage Metrics and their volume limitation stated in the Order Form. Partner will monitor Partner and Customer’s use and subscription of the Cloud Service and report any use in excess of the Usage Metrics and volume. SAP may monitor use to verify compliance with Usage Metrics, volume and the Agreement. Any use of the Cloud Service that exceeds this scope will be subject to additional fees. Fees accrue from the date the excess use began. Partner will execute an additional Order Form to document subscriptions for additional Usage Metrics and their volume. SAP may invoice and Partner will pay for excess use based on applicable pricing in the Order Form.

**11.3 Invoicing.** Except for fee increases applied in Part B, Section 11.4 below, subscription fee for renewal terms will be equal to the fee for the immediately preceding term for the same Cloud Service, Usage Metrics and volume limitation. Partner will reimburse SAP for all pre-approved (by Partner) and appropriately documented travel and related expenses incurred by SAP in performing any support for the Cloud Service.

**11.4 Fee Increases.** At the beginning of each renewal of a Subscription Term, SAP may increase fees to reflect annual increases in consumer prices or costs. This increase will not exceed the greater of the percentage stated in the most

recent consumer price index published by the Central Statistics Office of Ireland or 3.3% per annum. The increase is applied on a cumulative, year-over-year basis beginning on either the start of the preceding Subscription Term or date of last increase, whichever is later. Not raising fees is not a waiver of SAP's right to do so. SAP may increase fees if Partner elects to reduce the Cloud Service, Usage Metrics or volume/limitation for any renewal of a Subscription Term.

## **12 THIRD PARTY CLAIMS**

### **12.1 Claims Brought Against Partner.**

- (a) SAP will defend Partner against claims brought against Partner and its Affiliates by a third party owner of intellectual property alleging that Partner's use and resale of the Cloud Service in the Territory in accordance with the Documentation and the terms and conditions of the Agreement constitutes a direct infringement or misappropriation of a third party's patent claim, copyright, or trade secret right. SAP will pay Partner damages finally awarded against Partner (or the amount of any settlement SAP enters into) with respect to these claims.
- (b) SAP's obligations under Part B, Section 12.1(a) of this SAP PartnerEdge Model will not apply if the claim results from (i) Partner's breach of the Agreement, (ii) use of the Cloud Service in combination with any product or service not provided by SAP, or (iii) use of the Cloud Service provided for no fee.
- (c) In the event a claim is made or likely to be made, SAP may (i) procure for Partner the right to continue using the Cloud Service under the terms of the Agreement, or (ii) replace or modify the Cloud Service to be non-infringing without material decrease in functionality. If these options are not reasonably available, SAP or Partner may terminate Partner's subscription to the affected Cloud Service upon written notice to the other.

### **12.2 Claims Brought Against SAP.**

Partner will defend SAP against claims brought against SAP, SAP SE, its Affiliates and subcontractors by any third party related to the items set forth in Part B, Sections 12.2(a) through (d) of this SAP PartnerEdge Model. Partner will indemnify SAP against all damages finally awarded against SAP, SAP SE, its Affiliates and subcontractors (or the amount of any settlement Partner enters into) with respect to these claims.

- (a) the Data;
- (b) Taxes (other than its income and payroll taxes) and related costs paid or payable by SAP attributable to those Taxes in connection with the SAP PartnerEdge Model;
- (c) Partner or its Affiliates' breach of the terms set forth in Part B, Sections 2 and 3 of this SAP PartnerEdge Model and Sections 7 and 8 of the GTC; and
- (d) a claim that (i) the Partner Solution infringes, misappropriates or violates any patent, copyright or trade secrets of any third party, (ii) Partner's combining (or its authorizing others to combine) the Cloud Service with any products or service not provided by SAP, or (iii) Partner's use or resell of the Cloud Service in violation of the Agreement, infringes, misappropriates or violates any patent, copyright or trade secrets of any third party.

### **12.3 Third Party Claim Procedure.**

- (a) The party against whom a third-party claim is brought will timely notify the other party in writing of any claim, reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the party providing the defense.
- (b) The party that is obligated to defend a claim will have the right to fully control the defense.
- (c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

### **12.4 Exclusive Remedy.**

The provisions of Part B, Section 12 of this SAP PartnerEdge Model state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third party Intellectual Property Rights.

## **13 WARRANTY AND DISCLAIMER.**

### **13.1 Compliance with Law.**

Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- (a) in case of SAP, the operation of SAP's business as it relates to the Cloud Service, and
- (b) in case of Partner and its Customers, the Data and its use of the Cloud Service.

### **13.2 Good Industry Practices.**

SAP warrants that it will provide the Cloud Service:

- (a) in substantial conformance with the Documentation; and

- (b) with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Cloud Service.

### **13.3 Remedy.**

Partner's sole and exclusive remedies and SAP's entire liability for breach of the warranty under this SAP PartnerEdge Model will be:

- (a) re-performance of the deficient Cloud Service, and
- (b) if SAP fails to repair, replace or re-perform within a reasonable time, Partner may terminate its subscription for the affected Cloud Service. Any termination must occur within three months of SAP's failure to repair, replace or re-perform.

The remedies set forth in this Section is conditioned upon Partner notifying SAP in writing with a specific description of the Cloud Service's nonconformance within the warranty period and SAP validates the existence of such nonconformance.

### **13.4 Warranty Exclusions.**

The warranties in this SAP PartnerEdge Model will not apply if:

- (a) The Cloud Service is not used in accordance with the Agreement or Documentation,
- (b) any non-conformity is caused by Partner or its Customers, or by any product or service not provided by SAP,
- (c) Cloud Service was provided for no fee, or
- (d) Partner has not subscribed to any Cloud Service under any SAP PartnerEdge Model, SAP PartnerEdge Schedule, or Order Form.

### **13.5 Disclaimer.**

Except as expressly provided in the Agreement, neither SAP nor its subcontractors make any representation or warranties and SAP and its subcontractors disclaim all representations, warranties, terms, conditions or statements, which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded to the fullest extent permitted by law including the implied conditions, warranties or other terms as to merchantability, suitability, originality, or fitness for a particular use or purpose. Further, except as expressly provided in the Agreement, neither SAP nor its subcontractors make any representations, warranties, terms, conditions or statements of non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Partner agrees that it is not relying on delivery of future functionality, public comments or advertising of SAP or product roadmaps in obtaining subscriptions for any SAP Solution.

## Glossary

- 1.1 **“Application Readiness Check”** means SAP’s standard procedure to review the Partner Solution and associated Authorization, if applicable, to confirm compliance with Program Requirements and the AIR Guide based on a separate agreement.
- 1.2 **“Authorization”** means a managed software component or software-as-a-service component, scripts, functional calls, code, token, authorization, tracking or permissions for passing data between a Platform Application of Partner with a Platform Cloud Service in accordance with the terms and under the restrictions of this Agreement.
- 1.3 **“Development License”** means a subscription or license for cloud service or software only for testing and/or development purposes pursuant to a separate SAP Development Agreement.
- 1.4 **“Authorized Scope”** is as defined in Section 2.4 of this SAP PartnerEdge Model.
- 1.5 **“Content”** means any business logic, code, data models, configurations, Data, or other electronic materials created or updated by Partner.
- 1.6 **“Data”** is as defined in the GTC.
- 1.7 **“Development Agreement”** means an SAP development and/or testing agreement that provides for the terms and conditions of development and/or testing use of the Cloud Service or Software.
- 1.8 **“DPA”** means SAP’s then-current Data Processing Agreement that is incorporated in the SAP PartnerEdge Schedule.
- 1.9 **“DPA Partner Supplement”** means the Partner supplement to the DPA incorporated into the SAP PartnerEdge Schedule.
- 1.10 **“Minimum Terms”** means all of the minimum terms required to be included in an End User Agreement as set forth in Part B, Section 3 of this SAP PartnerEdge Build Model.
- 1.11 **“Minimum Royalty”** means, with respect to the revenue share pricing model indicated in the Price List, the minimum subscription fee, as stipulated by SAP in the Price List.
- 1.12 **“Net Revenue”** means the applicable cloud subscription revenue due for (1) Partner Solution associated with the Authorization in case of the SAP PartnerEdge Build Integrate Engagement Option, and/or the (2) the Bundled Solutions in case of the SAP PartnerEdge Build Cloud Engagement Option, each as made available by Partner to Customer, directly or indirectly through its Affiliates, resellers or distributors, received and/or payable, on a consolidated basis for the period being reported. Partner must calculate the subscription revenue in accordance with the generally accepted accounting principles in the country where Partner is located on a consistent basis. Applicable subscription revenue will include the entire compensation to Partner, by Customer, directly or indirectly through its Affiliates, resellers or distributors, for providing Partner Solution and the associated Authorization, or Bundled Solution, as the case may be, to Customer. Subscription will include, but is not limited to, compensation for usage rights of Partner Solution and the associated Authorization and/or Bundled Solution as applicable and all associated support, service and maintenance services. Applicable subscription revenue excludes one-time implementation or other consulting service fees. Net Revenue also excludes 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).
- 1.13 **“Partner Solution”** means, (1) with respect to the SAP PartnerEdge Build Integrate Engagement Option, a proprietary Partner solution, Content and/or service which integrates with and which can be used with a Cloud Service or Software, as applicable, and (2) with respect to the SAP PartnerEdge Build Cloud Engagement Option, Partner’s products, software or subscription-based, hosted, supported, or on-demand services that integrates and bundles with the Cloud Service to form a packaged solution, and add new and independent functionality beyond that provided by the Cloud Service, including any new functional components for business processes not provided by the Cloud Service.
- 1.14 **“Platform Application”** means, notwithstanding anything to the contrary stated in the Supplement, an application or a set of related functionality deployed on a Platform Cloud Service developed by Partner under the Development License using the Tools, to run on or with the Platform Cloud Service for access or use by Customers. A Platform Application needs to be compatible with an SAP Material provided under the Agreement.
- 1.15 **“Platform Cloud Service”** those Cloud Services on which Platform Applications can be built and deployed, as identified in the in the SAP Cloud Platform Supplement).
- 1.16 **“Program Requirements”** means that the Partner has to fulfill certain program entry requirements as well as ongoing program requirements, some of which are general PartnerEdge requirements, some of which are specific for the SAP PartnerEdge Build partners, including, without limitation payment of the Program Fee(s), and other requirements as set out in detail in the SAP PartnerEdge Program Guide.
- 1.17 **“Revenue Share”** is equivalent to the greater of (i) a percentage of the Net Revenue; and (ii) the Minimum Royalty, each as stated in the Price List.

## Schedule D

### PARTNER SUPPLEMENT TO DATA PROCESSING AGREEMENT ("DPA Partner Supplement")

#### 1. PREAMBLE

WHEREAS, Partner and SAP enter into the Agreement whereby SAP grants to Partner the right to sell a subscription to the SAP Cloud Service (the "**Relevant Service**") to its own direct customers and/or indirect customers (such direct customers and indirect 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 indirectly through the 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) if applicable, (a) a data processing agreement between Partner as a data processor and Partner's direct customer as the data controller; or (b) data processing agreement between Partner as a data processor and its resellers or channel partner (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 DPA and Partner Supplement) between Partner as data processor and SAP as Partner's data sub-processor is required.

WHEREAS, the DPA includes the general principles of data processing in connection with Cloud Services by SAP. The terms of the DPA were initially intended to apply only between SAP and its direct customers; however, now the DPA shall also serve as the basis for the data protection obligations of the parties in this sub-processing situation. The DPA 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 the DPA.

#### 3. END CUSTOMER DPA

Partner shall enter into data processing agreements with its End Customers ("End-Customer-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 the DPA back-to-back to its End Customers and, if applicable, shall contractually require anyone it authorizes to resell subscription to the Relevant Services to pass on such terms back to back to their 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 ensure that such End Customers accede to the Standard Contractual Clauses between SAP and the relevant Subprocessor located outside of the EEA. 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.
- (c) Partner agrees to promptly notify SAP of any executed End-Customer-DPA and any subsequent terminations.

#### 4. PROCESSING OF PERSONAL DATA

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

- (a) Where the DPA refers to "Customer", it shall read "Partner" for the purpose of this 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.
- (c) Both Partner and End Customers may request audit reports or may audit SAP as further detailed in the DPA.