

## OEM GENERAL TERMS AND CONDITIONS FOR SAP CLOUD SERVICES ("GTC")

### 1. DEFINITIONS

Capitalized terms are defined in the Glossary.

### 2. USAGE RIGHTS AND RESTRICTIONS

#### 2.1 Grant of Rights.

- (a) **Partner Use Rights for Cloud Service.** SAP grants to Partner a non-exclusive, non-transferable, right in the Territory to use the Cloud Service (including its implementation and configuration), Cloud Materials and Documentation solely to: (i) develop an integration between the Cloud Service and Partner Service; (ii) demonstrate the Bundled Service to potential Customers; and (iii) provide support of the Bundled Service to Customers. Permitted uses and restrictions of the Cloud Service also apply to Cloud Materials and Documentation.
- (b) **Cloud Service Subscription.** SAP grants to Partner, a non-exclusive, non-transferable, right in the Territory to market and resell subscriptions to the Cloud Service to Customers only as part of the Bundled Service. Partner will provide the Cloud Service to Customers only in accordance with this Agreement, including the restrictions listed in Section 2.2, the Minimum Terms in Section 3.1 and the Order Form.
- (c) **License to SAP.** Partner grants SAP a worldwide, royalty free, non-exclusive license to (i) use, copy, reproduce, transmit, adapt, modify, translate, publish, publicly perform, publicly display, distribute and access the Partner Platform Application and associated Data; and (ii) access, use, copy, reproduce, transmit, display, and distribute Data and Partner-provided marks, names, and logos, in each case, solely for purposes of exercising SAP's rights and obligations under the Agreement.
- (d) **Resellers.** SAP grants to Partner a non-exclusive, non-transferable right to authorize Partner's resellers to market and resell subscriptions to the Cloud Service to Customers. Partner will ensure that any resellers it authorizes to resell subscriptions to the Cloud Service does so only in compliance with, and pursuant to written terms no less protective of SAP than the terms of this Agreement.

#### 2.2 Bundled Service. Partner may market and resell the Cloud Service only as follows.

- (a) **Restricted License.** The Cloud Service may only be used to access data created by the Partner Service or data processed by the Partner Service that is necessary to enable the functionalities of the Partner Service (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, in any manner whatsoever, any third party runtime database(s).

**2.3 Authorized Users.** Cloud Service usage is limited to the Usage Metrics and volumes stated in the Order Form and Service Schedule. 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.

**2.4 Acceptable Use Policy.** With respect to the Cloud Service, Cloud 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.

**2.5 Suspension of Cloud Service.** SAP may suspend 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. SAP will limit the suspension in time and scope as reasonably possible under the circumstances.

**2.6 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.

**2.7 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.

### **3. GENERAL OBLIGATIONS OF AND LIMITATIONS TO PARTNER**

**3.1 Minimum Terms.** Partner will contract with its Customers directly for the Bundled Service. Partner will secure the Customer's consent to an End User Agreement with terms that are not materially less protective of SAP than the Agreement including without limitation the terms required under this Section 3.1 and Section 2.2 of this GTC, and the Supplement (collectively, "Minimum Terms"). The End User Agreement will grant SAP and its Affiliates and subcontractors a non-exclusive right to process Data solely to provide the Cloud Service. At SAP's request, Partner will enforce those terms on behalf of and for the benefit of SAP. Partner will not make any representations or warranties regarding the functionality or performance of the Cloud Service that are in conflict with the Agreement.

**3.2 Enforcement of Rights.** If any third party is accessing, marketing or, selling, the Cloud Service without authorization, Partner will cooperate with SAP in enforcement and protection of SAP's rights. At the request of SAP, Partner will temporarily stop selling the Cloud Service to any such third party unless and until such unauthorized activity is resolved to SAP's satisfaction.

**3.3 Platform Cloud Service.**

- (a) Other than the Partner Platform Application, no other software may be uploaded into Platform Cloud Service. SAP provides no support for Partner Platform Applications under this Agreement. Partner is responsible for maintaining compatibility between the Partner 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 Partner Platform Application to Customers. Use of the Platform Cloud Service is limited to communications and data exchange between the Partner 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.

**3.4 China.** Partner acknowledges and accepts that the Cloud Service is provisioned at the location outside of mainland China, by non-Chinese entities, and it is solely Partner's obligation to ensure use of the Bundled Service complies with Chinese laws. Partner and its Customers are solely responsible for obtaining Internet connection to the Cloud Service from within China and SAP is not providing any form of telecommunication service under the Agreement (and any representation or warranty to such effect is disclaimed).

#### **4. MODIFICATIONS AND ANALYSES**

##### **4.1 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.

**4.2 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. Analyses will anonymize and aggregate information, and will be treated as Cloud Materials. Examples of how analyses may be used include: optimizing resources and support; research and development; automated processes that enable continuous improvement, performance optimization and development of new SAP products and services; verification of security and data integrity; internal demand planning; and data products such as industry trends and developments, indices and anonymous benchmarking.

#### **5. ORDERS, PAYMENT AND TAXES**

**5.1 Fees and Payment.** Partner will pay fees as stated in the Order Form and the Service Schedule. After prior written notice, SAP may suspend Partner's and its Customers' use of the 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 the Customer. This also applies in case SAP suspends access to the Cloud Service for a particular Customer for breach of the Minimum Terms. All Order Forms and Service Schedules are non-cancellable and fees are non-refundable.

**5.2 Orders.** Partner will submit a Service Schedule to order any subscription for a Cloud Service, and any applicable Customer DPA in accordance with Section 13 of this GTC. The Service Schedule will include such information as required by SAP for Cloud Service subscriptions. SAP reserves the right to reject a Service Schedule and/or Customer DPA in its sole and reasonable discretion, if Partner is in violation of this Agreement.

**5.3 Taxes.** Partner and SAP will comply with all applicable tax laws and regulations. All amounts payable by Partner to Licensor do not include, service, use, property, excise, service, customs duties, value added or similar transaction taxes ("Tax(es)") now or hereafter levied. Partner will bear such taxes with the exception of income or corporation taxes attributable to SAP. If Partner is required to withhold income or corporation tax or a similar tax from any payment to SAP under this Agreement, Partner will be entitled to withhold or deduct such tax from the gross amount to be paid. However, Partner will reduce any such withholding tax payable to the lowest possible rate subject to compliance with all applicable laws and double taxation treaties. Partner will in the case of any withholding of tax provide SAP a receipt from the relevant authority to which such withholding tax has been paid and all other information and documents in order to enable SAP to apply for a tax credit against its income tax. Should the Partner fail to furnish SAP such receipt within a reasonable period, Partner will be liable to pay SAP the amount so deducted upon demand.

**6. VERIFICATION OF USE.**

During the term of this Agreement and for three (3) years thereafter, 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. SAP may audit, at SAP's expense, the records of Partner and any other entities or persons acting on its behalf relating to Partner's activities and compliance under the Agreement. Partner will pay applicable fees for any usage in excess of the Usage Metrics plus the cost of audit.

**7. SUPPORT.**

Support for the Cloud Service will be provided by SAP to Partner as described in the OEM Cloud Support Schedule. Partner will provide support to Customers and resellers of the Cloud Service.

**8. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

**8.1 SAP Ownership.** SAP and its Affiliates, or licensors own all Intellectual Property Rights in and related to the Cloud Service, Cloud Materials, Documentation, Consulting Services, design contributions, related knowledge or processes, and any derivative works of them conceived or created by SAP (collectively, "SAP IP"). All rights to the SAP IP not expressly granted to Partner are reserved by SAP, its Affiliates and its licensors. Partner will not remove, delete or alter any Intellectual Property Rights notices appearing on the Cloud Materials.

**8.2 Partner Ownership.** Subject to SAP's underlying Intellectual Property Rights as described in Section 8.1, Partner owns all Intellectual Property Rights in and related to the Partner Service, design contributions, related knowledge or processes, and any derivative works of them conceived or created by Partner ("Partner IP"). All rights to the Partner IP not expressly granted to SAP are reserved by Partner.

**8.3 Non-Assertion of Rights.** Partner covenants, on behalf of itself and its successors and assigns, not to assert against SAP or its Affiliates or licensors, any rights, or any claims of any rights, in any Cloud Service, Cloud Materials, Documentation or Consulting Services.

#### 8.4 SAP Partner Logo; Trademarks

- (a) SAP grants to Partner a revocable, nonexclusive, non-sublicensable, non-transferable license to use the SAP partner logo ("**SAP Partner Logo**") as set forth in the SAP OEM Partner Marketing Enablement Kit (the "Guidelines"). No other license to any other Trademark is provided by SAP under this Agreement. Upon SAP's request, Partner will provide sample uses of the SAP Partner Logo.
- (b) Use of the Trademarks must conform to the Guidelines or such other SAP trademark use requirements that SAP may provide. Partner will not use any Trademark, in whole or in part, as part of any Partner mark, name, logo, and/or domain name.
- (c) Partner agrees not to register any Trademark (in whole or in part), or any mark confusingly similar to a Trademark. Partner will not contest the validity of the SAP Partner Logo. Partner will reasonably cooperate with SAP, at SAP's expense, in the defense and protection of the SAP Partner Logo. Partner acknowledges the value of the goodwill in the Trademarks, including the SAP Partner Logo, and that SAP is the exclusive beneficiary of such goodwill.
- (d) Partner will not rebrand the Cloud Service under its own marks, names or logos without SAP's prior written consent.

#### 8.5 Confidential Information.

- (a) Use of Confidential Information.
  - (i) The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in this Section 8.5. Partner will not disclose the Agreement or the pricing to any third party.
  - (ii) Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 8.5.
  - (iii) In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.
- (b) **Exceptions.** The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:
  - (i) is independently developed by the receiving party without reference to the disclosing party's Confidential Information,
  - (ii) is generally available to the public without breach of the Agreement by the receiving party,
  - (iii) at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or
  - (iv) the disclosing party agrees in writing is free of confidentiality restrictions.
- (c) **Publicity.** Neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Partner agrees that SAP may use Partner's name in customer or partner listings or quarterly calls with its investors or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including reference calls and stories, press testimonials, site visits, SAPHIRE participation). Partner agrees that SAP may share information on Partner with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Partner employee contact information with SAP.

**(d) Feedback.** Partner may participate in evaluations or discussions (collectively, "Discussions") with SAP where Partner may provide suggestions or input regarding SAP's business or technology (collectively "Feedback"). Partner grants to SAP and its Affiliates a non-exclusive, perpetual, irrevocable, worldwide, non-transferable (except to SAP Affiliates), royalty-free license, with the right to sublicense, use, publish, modify, and otherwise benefit from Feedback in any manner.

**8.6 Independent Development.** Either party has the right to independently develop software or services that would compete with the other party's software or services without the use of, the other party's Confidential Information. Either party will be free to use for any purpose the Residuals resulting from access to or work with the Disclosing Party's Confidential Information. Neither party will have any obligation to limit or restrict the assignment of such persons or to pay fees or royalties for any work resulting from the use of Residuals. However, nothing in this subsection will be deemed to grant to either party a license under the other party's copyrights or patents.

## **9. THIRD PARTY CLAIMS**

### **9.1 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 infringes or misappropriates a patent claim, copyright, or trade secret right. SAP will indemnify Partner against all damages finally awarded against Partner (or the amount of any settlement SAP enters into) with respect to these claims.

**(b)** SAP's obligations under Section 9.1 will not apply if the claim results from (i) Partner's breach of this Agreement, (ii) use of the Cloud Service in conjunction 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.

**9.2 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 Sections 9.2(a) through (f). Partner will indemnify SAP against all damages finally awarded against SAP, SAP SE, its Affiliates and subcontractors (or the amount of any settlement Customer 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;
- (c) Partner or its Affiliates' breach of Sections 2.1(d), 3.1, 11 through 13 this GTC;
- (d) action in excess of Partner's authority hereunder,
- (e) any agreement between Partner and its Customers or any other third parties, and
- (f) a claim that Partner Service infringes, misappropriates or violates any patent, copyright or trademark of any third party or Partner's combining (or its authorizing others to combine) the Cloud Service with any products or service not provided by SAP.

**9.3 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.

**9.4 Exclusive Remedy.** The provisions of Section 9 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.

**10. TERM AND TERMINATION**

**10.1 Term.** The term of the Agreement is as stated in the Order Form. The Agreement may be extended only upon mutual agreement of the parties in writing.

**10.2 Termination.** A party may terminate the Agreement:

- (a) upon thirty days written notice of the other party's material breach of the Agreement, unless the breach is cured during such thirty day period;
- (b) as permitted under Section 4.1(b), 9.1(c), 14.3(b) or 14.4(c) (with termination effective thirty days after receipt of notice in each of these cases), or
- (c) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 8.5 or 16.5.

**10.3 Wind-Down.** If this Agreement is terminated other than due to a termination by SAP under Section 10.2, those Cloud Service subscriptions that were still valid at the point in time when the Agreement is terminated will not automatically terminate but will remain in place and SAP will grant Partner a wind-down period of up to 3 years from the expiration date of the Agreement (“Wind-Down Period”). During the Wind-Down period, the Agreement will continue 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 three years after the termination date of the Agreement; 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 Agreement but may not execute any new Cloud Service Schedule for Cloud Services.

**10.4 Refund and Payments.** For termination by Partner under Sections 9.1(c) or 10.2, 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.

**10.5 Termination for Breach.** If the Agreement is terminated due to Partner’s breach, then SAP may elect for the Agreement to continue as described in Section 10.3 above or may terminate the Agreement without any Wind-Down Period, or just the applicable Service Schedule. Termination of the Agreement or any applicable Service Schedule will not relieve Partner of its outstanding payment obligations.

**10.6 Effect of Expiration or Termination.** Upon termination of the Agreement or, if applicable, after the expiration of the Wind-down Period,

- (a) Partner’s right to use the Cloud Service and all Confidential Information, or identify itself as an SAP partner will end;
- (b) Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement; and
- (c) The parties agree that communications to Customers and any publications/press releases regarding such termination will be mutually agreed upon, in writing, prior to distribution.

**10.7 Survival.** Sections 1, 5, 6, 8.1- 8.3, 8.5-8.6, 9, 10.3-10.7, 11, 12, 15 and 16 will survive the expiration or termination of the Agreement.

## **11. IMPORT AND EXPORT CONTROLS**

### **11.1 Export Compliance.**

- (a) SAP Confidential Information is subject to export control laws of various countries, including the laws of the United States and Germany (“Export Regulations”). Partner will not submit SAP Confidential Information to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export SAP Confidential Information to countries, persons or entities if prohibited by export laws. Partner will take all precautions to ensure that any permitted distributor, reseller and Customer complies with the Export Regulations.

- (b) Export Assistance. Partner will support SAP in obtaining any required export and import authorization and/or approval by providing such information as requested by SAP. The availability of the Cloud Service and Cloud Materials may require prior export and/or import authorizations and this process may delay or prevent the delivery of Cloud Service or Cloud Materials, including support services. This section also applies to any Cloud Service or support services that SAP delivers to the Customer directly.
- (c) Required Authorization. It is Partner's sole responsibility to obtain any required authorization and/or approval from the competent authorities to comply with any applicable Export Regulations with respect to the Bundled Service.

## **12. PARTNER'S COMPLIANCE OBLIGATIONS**

**12.1 Compliance Obligations.** Partner will conduct operations in compliance with applicable laws, rules and regulations in exercising its rights and obligations under this Agreement. Laws may include but not be limited to the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and local anticorruption legislation that may apply. Partner will comply with SAP's Partner Code of Conduct, or its own code of conduct if comparable standards are established. Partner confirms that it is not listed by any government agency as debarred, suspended, or proposed for suspension or debarment or otherwise determined to be ineligible for government procurement programs.

**12.2 Prohibited Parties.** In exercising rights and obligations under this Agreement, Partner and anyone acting on Partner's behalf will not make, offer, promise or authorize payment of anything of value directly or indirectly to any of the following Prohibited Parties for the purpose of unlawfully influencing their acts or decisions:

- (a) Employees, consultants, or representatives of the Customer or prospective Customer,
- (b) Government officials or employees,
- (c) Political party officials or candidates,
- (d) Officers or employees of any public international organization,
- (e) Immediate family member of such persons (or any other person) for the benefit of such persons

Business entertainment conducted for the fulfilment of this Agreement must be appropriate, transparent, compliant with policies of the guest's company, and absent of any appearance of an attempt to influence business decisions.

**12.3 Delegation.** Partner will only have rights to delegate its obligations under this Agreement to subcontractors if expressly permitted under this Agreement. Partner will require all subcontractors to agree in writing to terms substantially similar to this Section 12. Partner must obtain SAP's prior written consent before paying any third party a commission, finder's fee, referral fee, success fee, or any similar payment for activities for purposes of securing business on behalf of SAP under this Agreement, except pursuant to Partner's standard partner programs.

**12.4 Information.** Partner will not obtain on SAP's behalf or provide to SAP or its Affiliates any information which is not legally available in the Territory, or which is procurement-sensitive, proprietary, or classified, where there is reason to believe that possession of such information is unauthorized, illegal, or unethical.

## **13. DATA PROTECTION; ACCESS TO DATA**

**13.1 Data Protection.** Partner will, and will ensure that its Customers, collect and maintain all personal data contained in the Data in compliance with applicable data privacy and protection laws. Partner will enter into appropriate data protection agreements with its Customers as required by applicable data protection laws. Partner will, and will require that its Customers, maintain reasonable security standards for its Authorized Users' use of the Cloud Service.

### **13.2 Access to Data.**

- (a) During the Subscription Term, Customer can access the Data at any time. Customer may export and retrieve the Data in a standard format. Export and retrieval may be subject to technical limitations, in which case SAP and Partner will find a reasonable method to allow Customer access to the Data.
- (b) Before the Subscription Term expires, Customer may use SAP's self-service export tools (as available) to perform a final export of Data from the Cloud Service.
- (c) At the end of the Agreement, 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.
- (d) 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.

## **14. WARRANTIES AND DISCLAIMER**

**14.1 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.

**14.2 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.

**14.3 Remedy.** Partner's sole and exclusive remedies and SAP's entire liability for breach of the warranty under Section 14.2 will be:

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

**14.4 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") referred to in the Order Form.
- (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 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.

**14.5 Warranty Exclusions.** The warranties in Sections 14.2 and 14.4 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, or
- (c) the Cloud Service was provided for no fee.

**14.6 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 this 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 this 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 Cloud Service.

**14.7 Partner Representation.** Partner will not make any representations or warranties as to the performance of the Cloud Services 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 Service and to perform its obligations under this Agreement.

## **15. LIMITATION OF LIABILITY**

**15.1 Unlimited Liability.** Neither party will exclude or limit its liability for damages resulting from:

- (a) unauthorized use or disclosure of Confidential Information,
- (b) breach or violation of SAP and its Affiliates' Intellectual Property Rights,
- (c) Partner's obligations under Section 9.2 of this GTC
- (d) each party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data,
- (e) death or bodily injury arising from either party's negligence or willful misconduct,
- (f) any failure by Partner to pay any fees due under the Agreement;
- (g) Partner's breach of the Customer and resellers' licensing requirements set forth in this Agreement, including the Minimum Terms;
- (h) breach of the obligations imposed by s.12, Sale of Goods Act 1893, as amended by the Sale of Goods and Supply of Services Act 1980; and
- (i) any other liability which cannot be excluded or limited by applicable law.

**15.2 Liability Cap.** Subject to Sections 15.1 and 15.3, and regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty, claims by third parties arising from any breach of this Agreement), the maximum aggregate liability of either party (or its respective Affiliates or SAP's subcontractors) arising out of this Agreement to the other or any other person or entity for all events (or series of connected events) arising in any twelve month period will not exceed the annual subscription or prepayment fees paid for the applicable Cloud Service directly causing the damage for that twelve month period. Any "twelve month period" commences on the Subscription Term start date or any of its yearly anniversaries.

**15.3 Exclusion of Damages.** Subject to Section 15.1:

(a) regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty, claims by third parties arising from any breach of this Agreement), under no circumstances shall either party (or their respective Affiliates or SAP's subcontractors) be liable to the other party or any third party for any loss or damage (whether or not the other party had been advised of the possibility of such loss or damage) in any amount, to the extent that such loss or damage is (i) consequential, indirect, special or punitive; or (ii) for any loss of profits, loss of business, loss of business opportunity, loss of goodwill, loss resulting from work stoppage or loss of revenue or anticipated savings, whether any such loss or damage is direct or indirect, and

(b) SAP will not be liable for any damages caused by any Cloud Service provided for no fee.

**15.4 Risk Allocation.** The Agreement allocates the risks between SAP and Partner. The fees for the Cloud Service and Consulting Services reflect this allocation of risk and limitations of liability.

**16. MISCELLANEOUS**

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

**16.2 Waivers.** A waiver of any breach of the Agreement is not deemed a waiver of any other breach.

**16.3 Electronic Signature.** Electronic signature that comply with applicable law are deemed original signatures.

**16.4 Notices.** All notices will be in writing and given when delivered to the address set forth in an Order Form with copy to the legal department. Notices by SAP relating to the operation or support of the Cloud Service and those under Sections 4.1 and 5.1 may be in the form of an electronic notice to Partner's authorized representative or administrator identified in the Order Form. .

**16.5 Assignment.** Without SAP's prior written consent, Partner may not assign or transfer the Agreement (or any of its rights or obligations) to any party. A Change of Control of Partner will be deemed an assignment of this Agreement. Partner will provide to SAP written notice at least sixty (60) days prior to any proposed assignment or transfer. Any attempted assignment or transfer of this Agreement in violation of this Section is void. SAP may assign the Agreement to SAP SE or any of its Affiliates.

**16.6 Subcontracting.** SAP may subcontract parts of the Cloud Service or Consulting Services to third parties. SAP is responsible for breaches of the Agreement caused by its subcontractors.

**16.7 Relationship of the Parties.** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

**16.8 Force Majeure.** Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

**16.9 Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Partner in connection with the parties' business relationship related to the subject matter of the Agreement and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter. Each party acknowledges that in entering into the Agreement it has not relied on any representation, discussion, collateral contract or other assurance except those expressly set out in the Agreement. Each party waives all rights and remedies which, but for this section, might otherwise be available to it in respect of any such representation, discussion, collateral contract or other assurance. The Agreement may be modified solely in writing signed by both parties, except as permitted under Section 4.1. This Agreement will prevail over terms and conditions of any Partner-issued purchase order, which will have no force and effect, even if SAP accepts or does not otherwise reject the purchase order.

**16.10 Non-Exclusivity.** This is a non-exclusive relationship. Each party may have similar agreements with others.

**16.11 Governing Law.** This Agreement will be construed, and the legal relations between the parties hereto will be determined, in accordance with the laws of Ireland. In the event of any conflicts between foreign law, rules, and regulations, and Irish law, rules, and regulations, Irish law, rules, and regulations will prevail and govern. The exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement is Ireland. Either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

## Glossary

- 1.1 "Affiliate"** of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
- 1.2 "Agreement"** means an Order Form, documents incorporated into an Order Form and Service Schedule(s).
- 1.3 "APIs"** means SAP application programming interface and accompanying or related Documentation, source code, tools, executable applications, libraries, subroutines, widgets and other materials made available by SAP or through SAP tools or SAP Software Development Kit (and all derivative works or modifications thereof) to Partner that allow Partner to integrate the Partner Service with the Cloud Service, including any access code, authentication keys or similar mechanisms to enable access of the APIs.
- 1.4 "Authorized User"** means any individual to whom Partner or its Customer, as applicable, grant access authorization to use the Cloud Service that is an employee, agent, contractor, or representative of
- (a) Partner
  - (b) Customer
  - (c) Partner or Customer's Affiliates, and/or
  - (d) Customer's or Customer's Affiliates' Business Partners.
- 1.5 "Bundled Service"** means the combined offering of the Cloud Service and the Partner Service.
- 1.6 "Business Partner"** means a legal entity that requires use of a Cloud Service in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer.
- 1.7 "Change of Control"** of a party means a transaction or series of transactions (i) where 50% or more of the entity's shares or voting rights of a party ("Control") is acquired by persons or entities other than those who Control such party on the Effective Date of the first Order Form signed under the Agreement, or (ii) resulting in the sale of all or substantially all of a party's assets.
- 1.8 "Cloud Materials"** means any software, APIs or other materials provided or developed by SAP (independently or with Partner's cooperation) in the course of performance under the Agreement, including in the delivery of any support or Consulting Services to Partner or its Customers. Cloud Materials do not include any Customer Data, Partner Confidential Information, or the Cloud Service.
- 1.9 "Cloud Service"** means any distinct, subscription-based, hosted, supported and operated on-demand solution provided by SAP under an Order Form and Service Schedule, including the Tools provided by SAP to Partner in connection with this Agreement.
- 1.10 "Confidential Information"** means:
- (a) with respect to Partner: (i) the Partner Service, (ii) Partner marketing and business requirements, (iii) Partner implementation plans, and/or (iv) Partner financial information, and
  - (b) with respect to SAP: (i) the Cloud Service, Documentation, Cloud Materials, and the analysis referenced under Section 4.2, and (ii) information regarding SAP research and development, product offerings, pricing and availability.
  - (c) Confidential Information of either SAP or Partner also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure; or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.
- 1.11 "DPA"** means SAP's then-current Data Processing Agreement for SAP Cloud Service that are incorporated in an Order Form.

- 1.12 "Consulting Services"** means professional services, such as implementation, configuration, custom development and training, performed by SAP's employees or subcontractors as described in any Order Form and which are governed by the Supplement for Consulting Services or similar agreement.
- 1.13 "Customer"** means Partner's customer that is licensing or using the Partner Service only for its own internal business operations that has signed an End User Agreement. A Customer will not include any Affiliates of Partner.
- 1.14 "Data"** means any content, materials, data and information that Authorized Users entered into the production system of a Cloud Service or that Customer or Partner derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Data and its derivatives will not include SAP's Confidential Information.
- 1.15 "Documentation"** means SAP's then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud Service which is made available to Partner with the Cloud Service.
- 1.16 "End User Agreement"** means a written agreement entered into between Partner and any Customer pursuant to which Customer purchases subscriptions to the Bundled Service.
- 1.17 "Intellectual Property Rights"** means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.
- 1.18 "OEM Cloud Support Schedule"** means the SAP OEM Cloud Support Schedule that are incorporated in an Order Form. To the extent there is any inconsistency between the OEM Cloud Support Schedule and the support terms described in a Supplement, the support terms in the Supplement will prevail.
- 1.19 "Partner Service"** means Partner's subscription-based, hosted, supported, on-demand services specified in Exhibit B of the Order Form that is provided by Partner to Customers. The Partner Platform Application will be considered a Partner Service.
- 1.20 "Platform Cloud Service"** is as defined in the Supplement.
- 1.21 "Partner Platform Application"** means an application or a set of related functionality deployed on a Platform Cloud Service created by Partner using the Tools to run on or with the Platform Cloud Service for access and use by Customers.
- 1.22 "Order Form"** means the OEM Order Form for Cloud Services entered into between Partner and SAP to form the Agreement and which references the GTC.
- 1.23 "Residuals"** means information in non-tangible form, which may be retained inadvertently in the unaided memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained herein, so long as such persons have not studied the information for the purpose of replicating the same from memory.
- 1.24 "SAP"** means the SAP entity identified in the Order Form that is a party to this Agreement.
- 1.25 "SAP Policies"** means the operational guidelines and policies applied by SAP to provide and support the Cloud Service as incorporated in an Order Form.
- 1.26 "Subscription Term"** means the term of a Cloud Service subscription identified in the applicable Order Form or Service Schedule, including all renewals.
- 1.27 "Service Schedule"** means a written service schedule provide by SAP that references the Agreement for the applicable Cloud Service ordered by Partner.
- 1.28 "Supplement"** means the supplemental terms and conditions that apply to the Cloud Service and that are incorporated in an Order Form. As applied to Partner's authorized use of the Cloud Service, references to "Customer" in the Supplement will be replaced with "Partner".
- 1.29 "Territory"** means except as otherwise specified in the applicable Order Form, all the countries in the world, subject to Section 11 of this Agreement (Import and Export Control).

**1.30 "Tools"** is as defined in the Supplement.

**1.31 "Trademarks"** means the trademarks, service marks, trade names, service names, proprietary words, symbols and other logos of SAP, SAP SE, and their respective Affiliates or licensors.

**1.32 "Usage Metric"** means the standard of measurement for determining the permitted use and calculating the fees due for a Cloud Service as set forth in an Order Form or Service Schedule.