

OEM LICENSE AGREEMENT FOR CLOUD SERVICES

GENERAL TERMS AND CONDITIONS

The parties agree that their contractual relationship shall consist of, and be governed by, the general terms and conditions set forth below, the applicable Order Form and any annexes, exhibits, appendices, schedules, amendments or addendum attached to, or incorporated by reference by, these general terms and conditions or any Order Form (collectively referred to herein as the "Agreement").

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

"Affiliate" means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights or controls or is under common control with that legal entity. "Control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through ownership, by contract or otherwise. Any such company shall be considered an Affiliate for only such time as such interest or control is maintained.

"Authorized User" means End User's and its Affiliates' employees, agents, contractors, consultants, suppliers or other individuals, including named users, who are authorized by End User to use the Cloud Service.

"Bundled Service" means the combined offering of SAP's Cloud Service and the OEM Services.

"Cloud Application Service" means the Cloud Services, excluding the Cloud Platform Service.

"Cloud GTC" means version of SAP's General Terms and Conditions for Cloud Services for the United Kingdom and the Supplemental Terms, and all documents attached to or incorporated by reference therein. The Cloud GTC is available at http://go.sap.com/about/agreements/general-terms-and-conditions.html?general_terms_and_conditions=cls, current as of the effective date of the Cloud Service Schedule, as applicable, except to the extent inconsistent with this Agreement.

"Cloud Materials" means any work product or tangible results produced by or with SAP pursuant to this Agreement, including in the course of providing support, training or configuration services to OEM or its End Users. Work Product includes works created for or in cooperation with OEM or its End Users, but does not include any Data, OEM Confidential Information, Custom Platform Applications or the Cloud Service. For clarity, some SAP services may be performed under a statement of work. If so, the statement of work will be governed by the terms and conditions of this Agreement.

"Cloud Platform Service" means the Cloud Services offered by SAP that includes the SAP HANA Cloud Platform or any other SAP hosted cloud platform where the Supplemental Terms for such Cloud Service permits OEM to create Custom Platform Applications and upload them to such Cloud Service.

"Cloud Platform Tools" means the development tools provided by SAP to OEM for development of the Custom Platform Application, including without limitation, the SAP HANA Cloud Platform software development kit ("SDK"), Eclipse Plugs Ins, SAP Web IDE, SAP HANA Web-Based Development Workbench APIs, SAP HANA Cloud Platform Tools for Java, documentation, plug-ins, templates, scripts and sample code to the extent set forth in the Supplemental Terms.

"Cloud Service" means SAP's hosted, on-demand Cloud Application Services and/or the Cloud Platform Service listed in an Exhibit A to the Order Form made available by SAP and ordered by OEM pursuant to a Cloud Service Schedule.

"Cloud Service Schedule" means a written service schedule in the format provide by SAP that references this Agreement and is executed by both parties for the applicable Cloud Service ordered by OEM.

"Confidential Information" means, with respect to SAP:

(a) the SAP Materials and all other information which SAP protects against unrestricted disclosure to others, including but not limited to, all (i) computer software (both object and source codes) and Documentation or specifications for the SAP Materials, (ii) techniques, concepts, methods, processes and designs embodied in or relating to the SAP Materials (iii) all application program interfaces, system infrastructure, system security and system architecture design relating to the SAP Materials; and

(b) SAP research and development, product offerings, pricing and availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies.

In addition to the foregoing, Confidential Information of OEM means the OEM Service and non-public marketing and business plans and financial information of OEM. Confidential Information of either SAP or OEM (the party disclosing such information being the "Disclosing Party") may also include other 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; including, without limitation, information about or concerning any third party that is disclosed to Receiving Party under this Agreement.

"CPPD Schedule" means SAP's then-current SAP OEM Cloud Service Schedule for Commissioned Processing of Personal Data, whether made available to OEM in writing or online at an SAP website to be identified by SAP. A copy of the current CPPD Schedule as of the date of this Agreement is attached hereto as Annex 1.

"Custom Platform Application" means an application, created by OEM using the Cloud Platform Tools to run on or with the Cloud Platform Services for access by End Users.

"Data" means any content, materials, data and information that is entered or transmitted into the Cloud Service.

"Documentation" means SAP's then-current technical and functional documentation for the Cloud Service and Cloud Platform Tools which is delivered or made available with the Cloud Service.

"End User" means OEM's customer that is licensing or using the OEM Services only for its own internal business purposes that has signed an End User Agreement. An End User shall not include OEM or its Affiliates.

"End User Agreement" means a written agreement entered into between OEM and any End User pursuant to which the End User purchases subscriptions to the Cloud Application Service or the Custom Platform Application.

"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.

"Modification" means (i) the creation of any new application program interfaces or alternative user interfaces to the Cloud Service; or (ii) any application, script, command or instruction that enhances, modifies, or resulting in a derivatives work of, the application programming interfaces provided for the Cloud Service to connect to the Cloud Service.

"OEM Cloud Support Schedule" means the SAP OEM Cloud Support Schedule found at <http://go.sap.com/about/agreements.partner-other-partnerships.html> as of the Effective Date of the Order Form. To the extent there is any inconsistency between the OEM Cloud Support Schedule and the support terms described in the Supplemental Terms, the support terms in the Supplemental Terms shall prevail.

"OEM Service" shall mean OEM's online services specified in Exhibit B of the Order Form that is provided by OEM to End Users located in the Territory through remote access via the Internet. The Custom Platform Application shall be considered the OEM Service, along with any associated services for the Custom Platform Application that OEM provides to End Users, except for the Cloud Platform Services.

"Order Form" means any order form provided by SAP for the purchase of Cloud Services that references this Agreement and is signed by SAP and OEM. The Order Form shall include information regarding specified Cloud Services, OEM Services, the Territory the subscription fees for each Cloud Service Schedule and other terms and conditions for the provision or purchase of the Cloud Service that the parties agree to include in the Order Form.

"SAP" means the SAP entity identified in the Order Form that is a party to this Agreement.

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

"Supplemental Terms" means the product use terms and conditions for the Cloud Service (a) current as of the effective date of the Order Form for access directly or indirectly to, and/or use of the Cloud Service by OEM in accordance with Section 2.1 of the Agreement, or (b) current as of the effective date of the Cloud Service Schedule for access directly or indirectly to, and/or use of the Cloud Service by, End Users. The Supplemental Terms are available at http://go.sap.com/about/agreements/product-use-and-support-terms.html?product_use_and_support_terms=cls&search=Supplement.

"Territory" means except as otherwise specified in the applicable Order Form, all the countries in the world, and subject to Section 10 of this Agreement (Import and Export Control).

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

Other defined terms shall have the meanings set forth herein or elsewhere in the Agreement. Exhibits referenced in the Agreement may be attached to this Agreement or any Order Form.

2. GRANT OF RIGHTS

2.1 Grant of Licenses.

- (a) Integration, Demonstration and Support Use Rights for Cloud Application Services. Subject to the terms of this Agreement, SAP grants OEM during the term of this Agreement (and solely with respect to this Section 2.1 (a)(i) and (a)(iii) below, during any Wind-Down Period) a nonexclusive, nontransferable, non-perpetual right to access and use in the Territory the Cloud Application Services solely to the extent necessary: (i) to develop an Integration between the Cloud Application Service and OEM Services; (ii) to demonstrate the Cloud Application Service to potential End Users as part of the Bundled Service; and (iii) to support the Cloud Application Service as part of providing the Bundled Services to End Users. OEM shall be responsible for any additional software, migration tools, or third party products needed to integrate and use the Cloud Services.
- (b) Integration, Development, Demonstration and Support Use Rights for Cloud Platform Services. Subject to the terms and conditions of this Agreement, SAP grants OEM during the term of this Agreement (and solely with respect to this Section 2.1 (b)(i) and (b)(iii) below, during any Wind-Down Period) a non-exclusive, non-transferable, non-sublicensable, non-perpetual, limited right in the Territory: (i) to use the Cloud Platform Tools to develop, test and support the Custom Platform Applications as permitted by the Cloud Platform Tools terms described in the Supplemental Terms, (ii) to demonstrate Custom Platform Applications to End Users as part of the Bundled Service; and (iii) to operate and support the Custom Platform Applications for End Users as part of the Bundled Service. Notwithstanding anything to the contrary in the Supplemental Terms, except as expressly permitted under this Agreement, OEM may not run any other applications (whether developed by OEM, SAP or its partners) on or with the Cloud Platform Services. Except for the Cloud Platform Tools, OEM shall be responsible for any additional software, migration tools, or third party products needed to develop the Custom Platform Application and use the Cloud Platform Services.

- (c) **Development Tools.** SAP may make available certain Cloud Platform Tools and such other development tools to Partner in connection with its use of the Cloud Service. Any use of the Cloud Platform Tools and/or other development tools shall be subject to the additional terms as specified in the Supplemental Terms and the terms that are made available upon download or access of such development tools.
- (d) **Cloud Services Subscription License.** Subject to the terms of this Agreement, SAP grants OEM during the term of the Agreement and any Wind-Down Period, a non-exclusive, limited, non-transferable, non-perpetual right in the Territory to market and resell subscriptions to the Cloud Services to End Users only as part of the Bundled Service. OEM shall provide the Cloud Service to End Users only in accordance with this Agreement, including without limitation, the restrictions listed in Section 2.2 below, the Minimum Terms, the Supplemental Terms, the applicable Order Form and the Cloud Service Schedule.
- (e) **Supplemental Terms.** In utilizing the Cloud Services in accordance with the licenses granted to OEM in this Section 2.1 of the Agreement, OEM agrees to be bound by the Supplemental Terms, except to the extent in conflict with this Agreement.
- (f) **Grant of License by Partner.** OEM hereby grants SAP a worldwide, royalty free, non-exclusive, limited license during the term of the Agreement (including any Wind-Down Period) to (i) use, copy, reproduce, transmit, adapt, modify, translate, publish, publicly perform, publicly display, distribute and access the Custom Platform Applications, or any software, or materials installed on or transmitted into the Cloud Platform Services by OEM or its End Users (collectively, "OEM Contents"); or (ii) access, use, copy, reproduce, transmit, display, and distribute Data, in each case, solely for purposes of exercising SAP's rights and obligations under the Agreement, including enabling SAP to provide OEM with the Cloud Services in accordance with the Agreement.

2.2 **Bundled Services.** OEM may market and resell the Cloud Application Services, and/or the Custom Platform Applications running on or with the Cloud Service, only as part of the Bundled Service in accordance with the licensing and use restrictions set forth in the Agreement.

- (a) The Cloud Service may only be used to access data created by the OEM Service or data processed by the OEM Service that is necessary to enable the functionalities of the OEM Service (referred to as a "Restricted License").
- (b) The Cloud Service shall not access, directly or indirectly, in any manner whatsoever, any third party runtime database acquired from SAP or its Affiliates or any of its respective resellers or distributors ("Database Restriction"), except that the Database Restriction does not restrict the Cloud Service from accessing any other SAP or third party software that is a business application licensed from SAP or its Affiliates or any of its respective resellers or distributors under a separate agreement, provided such access occurs on a business process layer via Application Programming Interfaces ("APIs").
- (c) This Agreement does not contain a license to use, directly or indirectly, any software or services of SAP, its Affiliates or any third party (including without limitation, third party runtime databases) not listed in Exhibit A of the Order Form ("Non-Licensed Products"). Any direct or indirect use of or access to the Non-Licensed Products is subject to the license or services agreement for the Non-Licensed Product.
- (d) OEM may resell the Cloud Application Services or the Custom Platform Applications only directly to its End Users. OEM is not permitted to appoint any resellers, distributors or other third parties to resell the Cloud Application Services or the Custom Platform Applications to its End Users.

2.3 **Third Party Service.** The Cloud Service may include technology or services licensed from third party suppliers ("Third Party Technology"). SAP is obligated to provide the Third Party Technology to OEM and End Users under the licenses granted in this Agreement only if and to the extent SAP continues to have rights from the third party provider to include the Third Party Technology in the applicable Cloud Service.

2.4 **Grant of License to Cloud Materials.** Subject to the terms of this Agreement, SAP hereby grants OEM during the term of the Agreement (including any Wind-Down Period), a royalty-free and fully paid-up, non-exclusive, limited, non-transferable, and non-perpetual right in the Territory during the term of the Agreement to use, copy, modify or distribute the Cloud Materials to the same scope and extent as that applied for the Cloud Service licensed under the terms of this Agreement.

3. GENERAL OBLIGATIONS OF AND LIMITATIONS TO OEM

3.1 OEM shall contract with its End Users directly for the Cloud Application Service and/or the Custom Platform Application running on or with the Cloud Platform Services. OEM shall secure the End User's consent to an End User Agreement with terms applicable to the Cloud Application Service and the Custom Platform Applications that are not materially less protective of SAP than the Cloud GTC current as of the commencement date of each Cloud Service Schedule and such other terms as required under this Section 3.1 ("Minimum Terms"). SAP shall be named as a third party beneficiary to each End User Agreement. The Minimum Terms shall also impose upon the End Users the restrictions on the Cloud Service set forth in the Agreement, including without limitation, Section 2.2 of this Agreement and the Supplemental Terms. OEM shall be liable to SAP for any breach of the terms of such End User Agreement to the same extent as OEM would be liable to SAP under this Agreement for such a breach by OEM.

3.2 OEM shall enforce the limitations and requirements imposed in Sections 2.2 and 3.1 on End Users, and shall reasonably cooperate with SAP in enforcing the same as and when necessary.

3.3 Pricing, billing and all other terms and conditions relating to End Users' use of the Cloud Application Service and the Custom Platform Application shall be solely between End Users and OEM. For clarity, pricing for the Cloud Service may not be itemized separately from the OEM Service, unless otherwise agreed to in writing by SAP in advance (such as for upsells for existing OEM customers).

3.4 OEM shall not make any representations or warranties regarding the functionality or performance of the Cloud Service that are in conflict with the Minimum Terms.

3.5 OEM shall be solely responsible for contracting directly with End Users for the Bundled Service, including for invoicing and collecting fees and providing implementation and configuration services. If OEM chooses to provide implementation and/or configuration services to its End Users for the Cloud Service, it must first complete SAP's implementation certification program (for which additional fees apply), and hire SAP's delivery assurance team (for which additional fees apply) for the first six End Users engagements. Alternatively, OEM may subcontract implementation and configuration services directly to SAP or SAP's certified implementation partners. For clarity, where OEM subcontracts such services, OEM will nonetheless project manage the implementation and configuration services for the End Users. SAP shall have no

liability for any defect or failure of the Cloud Service caused by such subcontracted services, and OEM shall not be entitled to any reduction in fees for the Cloud Service. SAP may deny access to the Cloud Service to any third party whom SAP determines in its sole discretion poses a security risk or other risk to SAP systems, data or intellectual property.

3.5 Usage Rights.

- (a) OEM shall not, and shall ensure that its End Users do not: (i) copy, translate, disassemble, decompile, reverse-engineer or otherwise modify any parts of the SAP Materials; (ii) create derivative works of, or based on, any parts of the SAP Materials, (iii) provide or make the any of the SAP Materials available to any third party, (iv) transmit or store any content, data or information that is unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy or right of publicity, hateful, or racially, ethnically or otherwise objectionable; (v) infringe the intellectual property rights of any entity or person; (vi) interfere with or disrupt the SAP software or SAP systems used to host the Cloud Service, or other equipment or networks connected to the Cloud Service; (vii) use the Cloud Service in the operation of a service bureau, outsourcing or time-sharing service except as expressly permitted under this Agreement; (viii) circumvent or disclose the user authentication or security of the Cloud Service or any host, network, or account related thereto; (ix) access the Cloud Service for the purpose of building a competitive product or service or copying its features or user interface; (x) permit access to the Cloud Service by a direct competitor of SAP; or (xi) make any use of the Cloud Service that violates any applicable local, state, national, international or foreign law or regulation. SAP may suspend access to the Cloud Service for violation of any of the foregoing prohibitions. If and to the extent circumstances permit, SAP shall provide OEM with reasonable prior written notice of the suspension.
- (b) The Cloud Service may contain links to external Web sites (including embedded widgets or other means of access) and information provided on such external websites by SAP partners and third-party service providers. SAP shall not be responsible for the contents of any linked Web site, or any changes or updates to such sites. OEM further agrees that SAP shall not be directly or indirectly responsible or liable for any damage or loss caused or alleged to be caused by or in connection with OEM's use of or reliance on any content, goods or services available on or through any such linked Web site. Any article, information, data, code, text, software, documentation, graphics, image, marketing material, video, photograph, message, or posting to any forum, wiki, or blog access through or in connection with the Cloud Service, whether publicly posted or privately transmitted (collectively, "Content"), is the sole responsibility of the person or entity providing the Content.
- (c) SAP shall provide, and End Users shall only have access only to, only the most current version of the Cloud Service made generally available by SAP to its customers. SAP may change or modify the Cloud Service at any time, but in doing so shall not materially diminish the Cloud Service during the term of the applicable Cloud Service Schedule, subject to Section 2.3.
- (d) SAP shall have the right to monitor any OEM and its End Users' usage of the Cloud Service to ensure compliance by OEM and its End Users with the Agreement including for excess use. In accordance with Section 4 of this Agreement, SAP shall invoice and OEM shall pay applicable fees for any usage in excess of the usage metrics set forth in the applicable Cloud Service Schedule, and OEM agrees to execute an addendum or additional schedule to such Cloud Service Schedule to reflect such excess. Such fees shall accrue from the date the excess use began.
- (e) Subject to SAP's confidentiality obligations under this Agreement, SAP may utilize the information concerning OEM or its End Users' usage of the Cloud Service to improve SAP products and services and to provide OEM with reports on its End Users' use of the Cloud Service.
- (f) If OEM is granted access under this Agreement to a free (no fee) version of the Cloud Service, to the extent permitted by applicable law, OEM agrees that SAP has no obligation to provide any particular service level or support services and (ii) SAP may cease providing the free Cloud Service at any time without notice. This Section 3.6(f) supersedes any conflicting term of the Agreement.
- (g) SAP may offer, and OEM may choose to accept, access to functionality for the Cloud Service that is not generally available and not validated and quality assured in accordance with SAP's standard processes ("Beta Functionality"). Beta Functionality is described as such in the Documentation. SAP may require OEM to accept additional terms to use Beta Functionality. Any production use of the Beta Functionality is at OEM's sole risk. SAP does not warrant the correctness and completeness of the Beta Functionality, and SAP shall not be liable for errors or damages caused by the usage of the Beta Functionality.
- (h) OEM and its End Users shall be responsible for entering its Data into the Cloud Service and OEM and the End Users shall be responsible for the content of the Data supplied by it, as the case may be. OEM agrees that it has collected and shall maintain and handle all Data whether originated by OEM or its End Users in compliance with all applicable data privacy and protection laws, rules and regulations. OEM shall maintain commercially reasonable security standards for its and its End Users' use of the Cloud Service.
- (i) Other than the Custom Platform Application, no other software may be uploaded into Cloud Platform Service or Custom Platform Applications unless approved by SAP in writing. SAP reserves the right to exclude any software from the Cloud Platform Service to the extent SAP has reason to believe it may harm SAP or any third party or infringe or violate any third party rights. SAP provides no support for Custom Platform Applications under this Agreement, nor shall SAP be responsible for upgrades to the Custom Platform Applications under this Agreement. OEM is responsible for maintaining compatibility between Custom Platform Applications and the Cloud Platform Service upon upgrades of either component.
- (j) OEM shall not license, resell, rent, lease or otherwise provides any access to the Cloud Platform Services, or use the Cloud Platform Services to provide benefits to third parties, except for the provision of Custom Platform Application to OEM's End Users. Use of the Cloud Platform Services is limited to communications and data exchange between the Custom Platform Application or any other Cloud Service, and the Cloud Platform Services via officially supported Cloud Platform Services interfaces.

3.6 OEM agrees that its use of the Cloud Services or the Custom Platform Applications, will not: (a) unreasonably impair, degrade or reduce the performance or security of any SAP software applications, services or related technology; (b) enable the bypassing or circumventing of SAP's license restrictions and/or provide users with access to the Cloud Services to which such users are not licensed; or (c) render or provide, without prior written consent from SAP, any information concerning SAP software license terms, the Cloud Services, or any other information related to SAP products or services.

3.7 If OEM or its End Users are located in mainland China ("China"), OEM and its End Users acknowledge and accept that the Cloud Service is provisioned at the location of SAP's data center outside China, by non-Chinese entities, and it is solely OEM's obligation to ensure use of the Cloud Service and OEM Service comply with Chinese laws. Notwithstanding anything else in this Agreement, (i) OEM and its End Users are solely responsible for obtaining Internet connection to the Cloud Service from within China and (ii) SAP is not providing any form of telecommunication service under the Agreement (and any representation or warranty to such effect is disclaimed).

- 3.8 Future Functionality. OEM agrees that entry into this Agreement or the purchasing subscription(s) for the Cloud Service is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by SAP, including any roadmaps, with respect to future functionality or features.

4. ORDERS, PAYMENT AND TAXES

- 4.1 OEM will independently establish prices and terms for the Bundled Services, provided such terms include those required by the Agreement.
- d4.2 The subscription term for a Cloud Service comes into effect as of the Cloud Service Schedule effective date, unless otherwise set forth in the Cloud Service Schedule, and runs until the last day of the subscription term for the relevant Cloud Service that Partner originally committed itself to as set out in the Cloud Service Schedule (“**Initial Term**”). After the Initial Term, the subscription term for the relevant Cloud Service is automatically extended for subsequent periods of equal length but in no event longer than one year, unless otherwise set forth in a Cloud Service Schedule (each a “**Renewal Term**”), except as terminated in accordance with this Agreement. OEM shall execute a Cloud Service Schedule with SAP for each subscription by OEM of a Cloud Service, whether the Cloud Service is used for production or non-production use. For the Cloud Application Service, a Cloud Service Schedule must be executed separately for each End User’s utilization of the Cloud Application Service. For the Cloud Platform Service, the Cloud Service Schedule may be executed, and the Cloud Platform Services utilized to run the Custom Platform Applications, for one or more End Users. In accordance with Section 12 of this Agreement, OEM shall promptly submit to SAP a CPPD Schedule executed by each End User ordering the Bundled Service. The Cloud Service Schedule shall include such information as required by SAP for Cloud Service subscriptions, including without limitation (i) the Cloud Services being ordered, (ii) the term of the subscription for the Cloud Services, (iii) the quantity of the applicable usage metric for each Cloud Service, and (iv) with respect to the Cloud Application Service ordered by OEM on behalf of an End User, the customer name (no abbreviations), customer address (street, city, postal code, country), group (if any) and the total number of Authorized Users (or such other pricing unit) for each Cloud Service. SAP reserves the right to reject a Cloud Service Schedule and/or the CPPD Schedule in its sole and reasonable discretion, if OEM is in violation of this Agreement, the prospective End User is a competitor of SAP, SAP reasonably believes that SAP’s intellectual property rights may not be respected by the End User, or the Cloud Service Schedule, or the CPPD, in form or content is not in compliance with the terms of this Agreement.
- 4.3 Except as otherwise agreed by the parties in an Order Form or Cloud Service Schedule, OEM shall pay to SAP the fees for the Cloud Service due under this Agreement, including the applicable Order Form and Cloud Service Schedule, within thirty (30) days of the date of invoice. OEM can offset claims only if they are uncontested or awarded by final and binding court or arbitration court order.
- 4.4 Subject to the increase in fees during the Renewal Term (as defined below) set forth below, the fees set forth in a Cloud Service Schedule will be fixed for the then-current committed subscription term, including fees for orders of additional Authorized Users of other applicable usage metrics pursuant to Section 4.5 of this Agreement. Fees for automatic Renewal Terms will be invoiced annually in advance prior to the start of each subscription year, unless otherwise set forth in the Cloud Service Schedule. SAP may apply an increase to the subscription fees for the Renewal Term, except such increase shall not exceed the percentage by which consumer prices have increased generally (calculated on a cumulative year-over-year basis) over the preceding term of the Cloud Service Schedule. Any pricing changes will be fixed for the entirety of such automatic Renewal Terms and will be reflected on the initial invoice for the Renewal Term. SAP or OEM may give the other party written notice (email acceptable) of non-renewal as follows: For OEM’s notice, at least thirty (30) days prior to the end of the then-current subscription term, and for SAP’s notice at least 90 days prior to the end of the then-current subscription term.
- 4.5 OEM may add additional Authorized Users or other applicable usage metrics for the same Cloud Services during the term of the Cloud Service Schedule by executing an addendum or additional schedule to such Cloud Service Schedule, which shall then become an integral part of the amended Cloud Service Schedule. The term of each addendum or schedule shall be co-terminus with the then-current term of the Cloud Service Schedule irrespective of the effective date of such addendum, and all fees shall be prorated accordingly. Termination of the initial Cloud Service Schedule shall also encompass termination of the addenda or additional schedule for additional Authorized Users associated with such initial Cloud Service Schedule.
- 4.6 OEM shall ensure that each End User is contractually obligated to monitor each End User’s use of the Cloud Service. OEM shall require End User to report to OEM any actual use in excess of the number of Authorized Users or the amount of any fee-based metric. OEM shall forward such information to SAP without undue delay. Based on such information, SAP will calculate the amount of fees payable under the respective Cloud Service Schedule. OEM agrees to execute an addendum and pay all requisite fees in accordance with the terms of this Agreement from the date the excess use began. For the avoidance of doubt, OEM shall not be entitled to claim any reduction of the fees payable under each Cloud Service Schedule or Order Form.
- 4.7 Except as expressly set forth in this Agreement, the Order Form or Cloud Service Schedule, all purchases of subscriptions hereunder are non-cancelable after submission of the Cloud Service Schedule to SAP and all fees are non-refundable. Unless otherwise specified herein, OEM may not reduce the Authorized Users or other fee-based metrics during the term of the Cloud Service Schedule regardless of any termination, nonpayment, nonuse or other conduct or inaction on the part of the corresponding End User. This shall also apply in case SAP suspends access to the Cloud Service for a particular End User for breach of the Minimum Terms. OEM shall have no right to withhold or reduce fees under this Agreement or set off any amount against fees owed for alleged defects in the Cloud Service.
- 4.8 All fees not paid when due shall accrue interest at the lesser of 1.5% per month or the maximum rate allowed under applicable law, and may result in suspension of OEM and its End Users’ ability to access the Cloud Service until payment is made.
- 4.9 Taxes. Fees and other charges described in this Agreement, Order Forms or Cloud Service Schedule do not include federal, state or local sales, VAT, GST, foreign withholding (including foreign income withholding), use, property, excise, service, or similar taxes (“Tax(es)”) now or hereafter levied, all of which shall be for OEM’s account. Any applicable direct pay permits or valid tax-exempt certificates must be provided to SAP prior to the execution of this Agreement. If SAP is required to pay Taxes, OEM shall reimburse SAP for such amounts. OEM hereby agrees to indemnify SAP for any Taxes and related costs, interest and penalties paid or payable by SAP.

5. AUDITS

- 5.1 Audits. During the term of this Agreement and for three (3) years thereafter, OEM will maintain relevant records regarding its use of Cloud Services and resale of subscriptions to the Cloud Service and Custom Platform Applications to End Users. Upon reasonable notice to OEM,

SAP may audit, at SAP's expense, the records of OEM and any other entities or persons acting on its behalf relating to OEM's activities under this Agreement to determine OEM's compliance hereunder, including the compliance with the Minimum Terms and the calculation of the fees due under this Agreement, applicable Order Forms and Cloud Service Schedules. In the event any audit reveals that OEM has underpaid SAP, then, in addition to immediately settling the outstanding amount OEM shall pay or reimburse to SAP the cost of the audit. SAP reserves any other remedies it has in this Agreement and under applicable law for underpayment of fees due SAP.

6. SUPPORT, SECURITY AND SERVICE LEVELS

- 6.1 OEM Support; End User Support by OEM. Support for the Cloud Service will be provided by SAP to OEM as described in the OEM Cloud Support Schedule. OEM's system administrator is required to be trained and certified for the Cloud Services to the extent such training and certification are made available by SAP to OEM in accordance with the OEM Cloud Support Schedule. OEM shall provide support to End Users for the Cloud Service, and SAP shall provide support to OEM as described in the OEM Cloud Support Schedule.
- 6.2 SAP will use commercially reasonable security technologies (such as encryption, password protection and firewall protection) in providing the Cloud Service.
- 6.3 Unless stated otherwise in the Supplement Terms for a particular Cloud Service, SAP system availability service levels for the Cloud Services are set forth in the service level agreement available at: http://go.sap.com/about/agreements/product-use-and-support-terms.html?product_use_and_support_terms=cls&search=Service%20Level%20Agreement that is in effect as of the date SAP and OEM enter into a Cloud Service Schedule for the applicable Cloud Services for a particular order (the "Service Level Agreement"). In the Service Level Agreement, for purposes of the Agreement references to the "customer" means OEM, references to "LoB Cloud Solutions" means the Cloud Services and references to "Managed Cloud Solutions" shall not apply.

7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 7.1 Intellectual Property Rights.
- (a) The SAP Materials, Trademarks, Modifications, and all Intellectual Property Rights embodied in the foregoing, including any improvements, design contributions or derivative works conceived or created by SAP in or to the foregoing (collectively, "SAP IP"), shall be the sole and exclusive property of SAP or its Affiliates, or its or their licensors. Except for the limited rights expressly granted to OEM herein, this Agreement does not transfer from SAP any proprietary right to, or interest in, any of the SAP IP. All rights to the SAP IP not expressly granted to OEM in this Agreement are reserved by SAP.
 - (b) Subject to SAP's underlying Intellectual Property Rights in any of the SAP Materials, SAP acknowledges that OEM asserts ownership of, and title in and to, the OEM Service and all Intellectual Property Rights embodied therein, including any improvements, design contributions or derivative works conceived or created by OEM in or to the OEM Service ("OEM IP"). Except for the limited rights expressly granted to SAP herein, this Agreement does not transfer from OEM any proprietary right to, or interest in, any of the OEM IP. All rights to the OEM IP not expressly granted to SAP in this Agreement are reserved by OEM.
 - (c) OEM grants SAP a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Cloud Service any suggestions, enhancement requests, recommendations or other feedback provided by OEM, including End Users, relating to the operation of the Cloud Services.
 - (d) Covenant: Non-Assertion of Rights. OEM covenants, on behalf of itself and its successors and assigns, not to assert against SAP or its Affiliates, or their licensors, any rights, or any claims of any rights, in the Modification.
- 7.2 Trademarks; Logos
- (a) Subject to OEM's in compliance with the terms of the Agreement, SAP grants to OEM during the term of the Agreement a revocable, nonexclusive, nontransferable license to use the appropriate SAP partner logo included with the SAP OEM Partner Branding and Communication Guidelines, a copy of which can be found at: <http://partner.sap.com/partnerlogo>, in accordance with the terms of this Section 7.2. This license to use the SAP partner logo that SAP makes available to OEM includes the right to use the SAP corporate logo as part of the SAP partner logo (both referred to as "SAP Logos"). OEM is not permitted to grant sublicenses to the SAP Logos.
 - (b) When using SAP Logos, OEM must adhere to all requirements and obligations of SAP Branding Guide, including, without limitation, observe SAP's directions concerning the colors and size of the SAP Logos. OEM shall not remove, delete or in any manner alter the Trademarks or any other Intellectual Property Rights notices of SAP, SAP SE, their respective Affiliates or licensors, if any, appearing on the SAP Materials as delivered or made available to OEM.
 - (c) OEM shall not contest the validity of the SAP Logos or support the contesting of its validity and shall not derive any right against SAP or any of its Affiliates through its use of SAP Logos. When using SAP Logos, OEM must indicate that the SAP Logos are registered trademarks of SAP SE or its Affiliates. In this context, OEM acknowledges that SAP SE is the sole owner of rights in the SAP Logos. OEM undertakes to make all those declarations and provide all those documents for the benefit of SAP, or any of its Affiliates as SAP or any of their respective Affiliates may require in the prosecution of its rights in the SAP Logos.
 - (d) SAP and their respective Affiliates have the sole and exclusive right to protect and defend the SAP Logos at its sole discretion, cost and expense. OEM will reasonably cooperate with SAP, at SAP's expense, in the defense and protection of the SAP Logos and will promptly notify SAP of the use of any mark infringing any of the SAP Logos of which it has knowledge.
 - (e) All advertising and sales material used by OEM for the Cloud Service must bear the notices prescribed by SAP or its Affiliates concerning Trademarks and other identifying marks. OEM must refrain from (i) registering SAP or SAP SE or any of their respective Affiliates' name (including, in both cases, any domain name or Trademarks) or SAP SE's logo or any logo of its Affiliates (including, in both cases, any names, logos, domain names or Trademarks which are confusingly similar to any of them) for itself or (ii) permitting third parties to use or otherwise exploit SAP's name, logo or trademark or any name, logo or Trademark of SAP, SAP SE or any of their respective Affiliates (including, in both cases, any name, logo, Trademark or domain name which are confusingly similar to any of them). OEM must, at

SAP's choice, either transfer any rights regarding such name, logos, Trademarks and domain names to SAP, SAP SE or their respective Affiliates as soon as they arise or permit SAP or their respective Affiliates to exploit them. OEM must afford SAP and any of its Affiliates such assistance as may be necessary for SAP or its Affiliates to obtain at SAP's expense the appropriate registrations for protection in any chosen country.

- (f) SAP and its respective Affiliates reserve the right to review the use of the SAP Logo in OEM's marketing, advertising and other promotional materials. OEM must make no representations regarding the Cloud Service except as consistent with the Documentation or as SAP may otherwise approve in writing.
- (g) OEM grants SAP a worldwide, nonexclusive, royalty-free limited license during the term of the Agreement (including any Wind-Down Period) to OEM's trademarks, service marks, trade names, service names, proprietary words, symbols and other logos, solely in connection with providing the Cloud Service under the Agreement.
- (h) OEM shall not rebrand the Cloud Service under its own trademarks, service marks, trade names, service names, or any other proprietary words, symbols and other logos without SAP's prior written consent.

7.3 Confidential Information.

- (a) Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. The receiving party shall: take all reasonable steps to keep Confidential Information strictly confidential; shall not disclose any Confidential Information to any person other than its Representatives who are involved in the performance of this Agreement; shall not use Confidential Information for any purpose other than in connection with the parties' performance of this Agreement; and shall not disclose to any person (other than its Representatives) any information about this Agreement. As used herein, "Representatives" shall mean: (i) employees of Receiving Party and its Affiliates; (ii) attorneys, accountants, or other professional business advisors; and, (iii) employees of any entity who are directly involved in the performance of obligations under this Agreement. The Receiving Party shall be responsible for any breach of the terms of this Agreement by it or its Representatives. The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (i) is independently developed by receiving party without reference to the disclosing party's Confidential Information, (ii) is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (iii) has become generally available to the public without breach of this Agreement; (iv) at the time of disclosure was known to the receiving party free of restriction; or (v) the disclosing party agrees in writing is free of such restrictions
- (b) In the event that the receiving party or any of its Representatives are requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Confidential Information, the receiving party shall provide the disclosing party with prompt notice of such request or requirement in order to enable the disclosing party (i) to seek an appropriate protective order or other remedy; (ii) to consult with the receiving party with respect to the disclosing party's taking steps to resist or narrow the scope of such request or legal process; or (iii) to waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the receiving party or its Representatives shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally required to be disclosed and to require that all Confidential Information that is so disclosed will be accorded confidential treatment. SAP and OEM's liability for any breach of the foregoing confidentiality undertakings shall not be subject to any liability limitation otherwise applicable under this Agreement
- (c) OEM shall not disclose the terms and conditions of this Agreement or the pricing contained herein to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that OEM agrees that SAP may use OEM's name in customer or partner listings or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHIRE participation). SAP will make reasonable efforts to avoid having the reference activities unreasonably interfere with OEM's business.
- (d) OEM may provide, or SAP may solicit, input regarding the Cloud Service, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of the Cloud Service, or any other SAP or SAP site, service or product, or input as to whether OEM believes SAP or its Affiliates' development direction is consistent with OEM or its End Users' business and IT needs, the technology marketplace in general, and the like (collectively "Feedback"). OEM acknowledges and agrees that any information disclosed by OEM during discussions related to Feedback shall be considered SAP Confidential Information and shall be protected from disclosure in accordance with the terms of this Agreement. In order for SAP to utilize such Feedback, OEM hereby grants to SAP and its Affiliates a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right to sublicense to SAP's licensees and customers, under OEM's relevant intellectual property rights, to use, publish, and disclose such Feedback in any manner SAP chooses and to display, perform, copy, make, have made, use, sell, and otherwise dispose of SAP's and its sublicensee's products or services embodying Feedback in any manner and via any media SAP chooses, without reference to the source. SAP shall be entitled to use Feedback for any purpose without restriction or remuneration of any kind with respect to OEM and/or OEM's representatives. OEM acknowledges that the information related to the and SAP Materials disclosed by SAP under this Agreement is only intended as possible strategies, developments, and functionalities of the Cloud Service and is not intended to be binding upon SAP to any particular course of business, product strategy, and/or development.

7.4 OEM shall promptly inform SAP if it is aware of any third party (including End Users that exceed licensed levels), that is accessing, using, marketing or, selling, the Cloud Service or SAP Materials without authorization. In that case: OEM: shall use reasonable efforts to assist SAP in the pursuance of SAP's rights to the Cloud Service, which includes taking prompt steps for the protection of those rights after consultation with SAP; and (ii) shall temporarily stop selling and marketing the Cloud Service to any such third party unless and until such unauthorized activity is resolved to OEM's and SAP's satisfaction.

7.5 The parties recognize that either party has the right to independently develop y software or services that would compete with the other party's Cloud Service, OEM Service or other software or services without use of, any Confidential Information disclosed by the Disclosing Party. Furthermore, either party shall be free to use for any purpose the residuals resulting from access to or work with the Disclosing Party's Confidential Information. The term "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. Neither party shall 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 shall be deemed to grant to either party a license under the other party's copyrights or patents.

7.6 If SAP is notified by third party or an owner of Intellectual Property Rights that the OEM Contents infringe its rights, SAP may investigate the allegation (including by consulting OEM) and determine in good faith and in its reasonable discretion whether the OEM Contents should be removed from the Cloud Service. SAP may remove the OEM Content after providing reasonable prior written notice to OEM in light of the circumstances. After such notice from SAP or when OEM becomes aware that the OEM Content is infringing, OEM shall promptly take down the offending OEM Content or promptly notify SAP to do so. In no event shall such take down or removal of the OEM Content give rise to any liability of SAP to OEM or its End Users for a refund or damages, or impose any obligation on SAP for continuing to provide the Cloud Service for used with such OEM Content.

8. INDEMNIFICATION

8.1 Third Party Rights.

- (a) SAP shall defend OEM against claims brought against OEM to the extent such claim (i) is brought by a third party owner of the intellectual property giving rise to the claim and (ii) alleges that the use of the Cloud Service in accordance with the terms and conditions of this Agreement and the applicable Order Forms, constitutes a direct infringement or misappropriation of a patent claim(s), copyright, or trade secret rights. SAP will pay damages finally awarded against OEM (or the amount of any settlement SAP enters into) with respect to such claim, provided that: (i) OEM notifies SAP in writing of any such alleged claim without undue delay, and (ii) OEM authorizes SAP to have sole control over the defense or settlement of any such claim, and (iii) OEM cooperates fully in the defense of such claim and provides SAP with all relevant information and reasonable support, and (iv) OEM does not undertake any action in response to any infringement, or alleged infringement, of the Cloud Service that is prejudicial to SAP's rights.
- (b) This obligation of SAP shall not apply if the alleged infringement or misappropriation results from use of the Cloud Service in conjunction with any other software or service (including OEM Service) if such claim could have been avoided without such use, or unlicensed activities or use of the Cloud Service in violation of this Agreement or to free (no fee) or trial licenses of the Cloud Service. This obligation of SAP also shall not apply if OEM fails to timely notify SAP in writing of any such claim, however OEM's failure to provide or delay in providing such notice shall not relieve SAP of its obligations under this Section except to the extent SAP is prejudiced by OEM's failure to provide or delay in providing such notice. SAP is permitted to fully control the defense and any settlement of any such claim as long as such settlement does not include a financial obligation on or admission of liability by OEM. In the event OEM declines SAP's proffered defense, or otherwise fails to cede full control of the defense to SAP's designated counsel, then OEM waives SAP's obligations under this Section 8.1. OEM shall reasonably cooperate in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to SAP. SAP expressly reserves the right to cease such defense of any claim(s) in the event the Cloud Service is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. SAP may settle any claim on a basis requiring SAP to substitute for the Cloud Service alternative substantially equivalent non-infringing services.
- (c) In the event a claim under Section 8.1 is made or alleged or in SAP's reasonable opinion is likely to be made or be alleged, SAP may, at its sole option and expense: (i) procure for OEM and its End Users the right to continue using the Cloud Service under the terms of this Agreement; or (ii) replace or modify the Cloud Service to be non-infringing without material decrease in functionality. If the foregoing options are not reasonably available, SAP may terminate this Agreement and refund to OEM all prepaid fees for the remainder of its term after the date of termination.
- (d) THE PROVISIONS OF THIS SECTION 8.1 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF SAP AND ITS AFFILIATES TO OEM, AND IS OEM'S SOLE REMEDY, WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. THE LIABILITY LIMITATIONS CONTAINED IN SECTION 15 SHALL APPLY TO ALL CLAIMS MADE UNDER SECTION 8.1. ANY LIMITATIONS TO THE LIABILITY AND OBLIGATIONS OF SAP ACCORDING TO SECTIONS 8.1 AND 15 SHALL ALSO APPLY FOR THE BENEFIT OF SAP'S AFFILIATES AND THEIR RESPECTIVE LICENSORS.

8.2 Indemnification by OEM. OEM shall defend SAP and its Affiliates against claims brought against SAP or its Affiliates by any third party arising from or related to (i) any use of the Cloud Service in violation of any applicable law or regulation; or (ii) an allegation that the OEM or the Data or OEM's or its End User's use of the Cloud Service in violation of this Agreement violates, infringes or misappropriates the rights of a third party, or (iii) OEM or its Affiliates' breach of this Agreement, including but not limited to, any breach or violation of applicable export laws or regulations, or action in excess of OEM's authority hereunder or OEM's failure to comply with the End User licensing requirements set forth in this Agreement, or (iv) any agreement between OEM and its End Users or any other third parties, or (v) a claim that OEM Service infringes, misappropriates or violates any patent, copyright or trademark of any third party or OEM's combining (or its authorizing others to combine) the Cloud Service with any products or service not provided by SAP, or (vi) a third party's assertion that OEM acted as SAP's agent or otherwise on its behalf End User. OEM will pay damages finally awarded against SAP and its Affiliates (or the amount of any settlement OEM enters into) with respect to such claims. The foregoing shall apply regardless of whether such damage is caused by the conduct of OEM, its resellers, distributors, agents or its End Users and/or their respective Authorized Users or by the conduct of a third party using OEM or End Users' access credentials. This obligation of OEM shall not apply if SAP fails to timely notify OEM in writing of any such claim, however SAP's failure to provide or delay in providing such notice shall not relieve OEM of its obligations under this Section except to the extent OEM is prejudiced by SAP's failure to provide or delay in providing such notice. OEM is permitted to fully control the defense and any settlement of any such claim as long as such settlement does not include a financial obligation on or admission of liability by SAP or otherwise obligates SAP to specific performance. In the event SAP declines OEM's proffered defense, or otherwise fails to cede full control of the defense to OEM's designated counsel, then SAP waives OEM's obligations under this Section 8.2. SAP shall reasonably cooperate in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to OEM.

9. TERM AND TERMINATION

- 9.1 This Agreement begins on the Effective Date of the first Order Form entered into between OEM and SAP and shall continue for a term as described in the Order Form, unless otherwise set forth in the Order Form or if earlier terminated as set forth herein. The Agreement may be extended only for a term mutually agreed to by the parties in writing.
- 9.2 This Agreement, any Order Form and Cloud Service Schedule may be terminated by either party for good cause upon written notice to the other in accordance with the following:

- (a) thirty days after a party gives the other party notice of material breach of any provision of the Agreement (other than the provisions specified in Section 9.2(b) below), Order Form or Cloud Service Schedule, unless the breaching party has cured such breach during such thirty day period;
- (b) immediately upon OEM's breach of its obligations under Sections 2.1-2.3, 7.1-7.7, 10, 11, 12 or 13.1, or if OEM does not pay any amount payable to SAP under this Agreement within 30 days of its due date;
- (c) immediately if a party (1) commences negotiations with one or more of its creditors with a view to rescheduling major parts of its indebtedness or (2) files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors.

9.3 If this Agreement is expired or terminated other than due to a termination by SAP in accordance with Section 9.2, those Cloud Service subscriptions that were still valid at the point in time of this Agreement is terminated will, unless OEM notifies SAP otherwise in writing, not automatically terminate but will remain in place and SAP will grant OEM a wind-down period of up to 3 years after the termination date ("Wind-Down Period"). During the Wind-Down period, the terms and conditions of this Agreement and any other part of this Agreement will apply analogously except as set out below:

- a) The subscription term for a Cloud Service will not be automatically extended if the Renewal Term for such Cloud Service would end later than the date falling three years after the date of the termination or expiration of this Agreement; and
- b) OEM may order an increase to a usage metric as set out in this Agreement for those Cloud Services that were still valid at the point in time this Agreement was terminated but may not execute any new Cloud Service Schedule for Cloud Services.

In the event the Agreement, Cloud Service Schedule or any Order Form is terminated due to OEM's material breach, then SAP may elect for the Agreement to continue as described in this Section 9.3 above or may terminate the Agreement (including all Order Form(s) and Cloud Service Schedule issued hereunder) or just the applicable Cloud Service Schedule and SAP may approach the End User and transfer such relationship to another SAP partner. Termination or expiration of this Agreement, an Order Form or Service Schedule shall not relieve OEM of its outstanding payment obligations existing at the time of such termination or expiration. In no event will termination of the Agreement, an Order Form or Service Schedule give rise to any liability of SAP to the End Users for a refund, damages or impose any obligation on SAP for continuing services of the SAP Cloud Service or the OEM Service except during the Wind-Down Period or for damages resulting from SAP's material breach of the Agreement. After the expiration of the Wind-down Period, OEM shall immediately (a) cease use of the Cloud Service, SAP Materials and Confidential Information, and (b) cease identifying itself as an authorized OEM for SAP or otherwise affiliated in any manner with SAP. Additionally, the parties hereto agree that communications to End Users and any publications/press releases regarding such termination shall be mutually agreed upon, in writing, prior to distribution.

9.4 Notwithstanding SAP's right to terminate as set forth in Article 9.2 above, in the event of: (i) any material breach by OEM of this Agreement, Cloud Service Schedule or any Order Form which is not cured within thirty (30) days after receipt of written notice from SAP; or (ii) a determination by SAP that continued use of the Cloud Service may result in harm to the Cloud Service (including the systems used to provide the Cloud Service) or other SAP customers, or result in a violation of law or regulations of the United States, E.U., Irish and other applicable jurisdictions or any applicable legal obligation or legal rights of another, in addition to any other remedies available at law or in equity, in SAP's sole discretion SAP will have the right immediately to remove any potentially offending Data or Content from the Cloud Service, deactivate End User's user name(s) and password(s) and/or suspend OEM's or the End Users, access to the Cloud Service.

9.5 OEM shall have the ability to access its Data at any time during a subscription term as specified under the applicable Cloud Service Schedule. Furthermore, upon reasonable request, OEM may export and retrieve its Data during a subscription term, which request will be subject to technical limitations caused by factors such as (i) the size of End User's instance of the Cloud Service; and (ii) the nature of End User's request, e.g., the frequency and/or timing of the export and retrieval.

9.6 Any terms of this Agreement which by their nature extend beyond the day this Agreement ends remain in effect until fulfilled, in particular any terms protecting the Intellectual Property Rights of SAP, an SAP Affiliate, and its respective licensors, and apply to the permitted respective successors and assignees of each party.

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

10. IMPORT AND EXPORT CONTROLS

10.1 OEM is responsible for complying with all applicable regulations restricting import, export, re-export, transfer or release to certain entities or destinations ("Export Regulations"). The Cloud Services and other SAP Materials are subject to the export control laws of various countries, including without limit the laws of Ireland, United States, the EU and Germany.

10.2 OEM agrees that it will not submit the Cloud Services and other SAP Materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP and will not export, re-export or import any SAP Materials to countries, persons or entities prohibited by any applicable export law. OEM will take all necessary actions and precautions to ensure that any permitted distributor, reseller and End User complies with the export regulations.

10.3 If SAP makes available any Cloud Services or other SAP Materials directly to OEM and/or End Users, OEM will support SAP in obtaining any required authorization and/or approval from the competent authorities by providing information and/or declarations (e.g., End User certificates) as may be requested by SAP. OEM acknowledges that the availability of the Cloud Services and other SAP Materials may be subject to the prior obtaining of export and/or import authorizations from the competent authorities and that this process may considerably delay or prevent the delivery of Cloud Services, Documentation or SAP Materials, and/or impact SAP's ability to provide support services.

10.4 For OEM provision of the Bundled Service or Custom Platform Application to any End User, it is OEM's sole responsibility to obtain any required authorization and/or approval from the competent authorities to comply with any applicable Export Regulations. SAP assumes no responsibility or liability for OEM's failure to obtain any such required authorization or approval. OEM acknowledges that in case SAP delivers any Cloud Service or SAP Materials directly to End Users, Section 10.3 above applies especially, without limitation, regarding the provision of support services. SAP will, upon OEM's reasonable request, provide any required export information regarding any Cloud Service or other SAP Materials originally provided by SAP to OEM.

10.5 This Section 10 shall survive the expiration or earlier termination of this Agreement.

11. OEM'S COMPLIANCE OBLIGATIONS

11.1 OEM shall 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. OEM shall comply with SAP's Partner Code of Conduct, or its own code of conduct if comparable standards are established. OEM 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.

11.2 In exercising rights and obligations under this Agreement, OEM and anyone acting on OEM's behalf shall 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:

- Employees, consultants, or representatives of the End User or prospective End User,
- Government officials or employees,
- Political party officials or candidates,
- Officers or employees of any public international organization,
- 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.

11.3 OEM shall only have rights to delegate its obligations under this Agreement to subcontractors if expressly permitted under this Agreement. OEM shall require all subcontractors to agree in writing to terms substantially similar to this Section 11. OEM must obtain Licensor'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 OEM's standard partner programs.

11.4 OEM shall 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.

12. DATA PROTECTION

12.1 OEM agrees to coordinate with the End Users for the execution of SAP's then-current CPPD Schedule, a current copy of which as of the date of this Agreement is attached hereto as Annex 1. SAP may, in its sole discretion, update the CPPD Schedule and/or make the most current version of the CPPD Schedule available to OEM online through an SAP-designated website. OEM shall use such current version of the CPPD Schedule only for the purposes described herein. For this purpose, OEM is hereby authorized to accept signed CPPD Schedules from its End Users; provided however that OEM is not authorized to negotiate and/or accept any amendments to any CPPD Schedule on behalf of SAP or any of its Affiliates.

12.2 OEM agrees to promptly notify SAP of any CPPD Schedule executed by an End User and any subsequent terminations or expiration thereof and/or the terminations or expiration of SAP or its Affiliates' obligation to provide Cloud Services to such End Users.

12.3 At SAP's request, OEM agrees to coordinate with the End User in the event SAP wishes to amend the CPPD Schedule or provide notice thereunder to the End User and to obtain the End Users' necessary consents or acceptance thereto on behalf of SAP. OEM shall otherwise support SAP in this regard as SAP may reasonably request.

12.4 OEM shall enter into appropriate data protection agreements with its End Users as required by applicable data protection laws.

13. MISCELLANEOUS

13.1 Assignment. This Agreement may be assigned by SAP to any entity which assumes its obligations or acquires ownership of or the right to use and license the Software. Neither this Agreement, nor any right or obligation hereunder, may be assigned, transferred, delegated or subcontracted, by operation of law or otherwise, in whole or in part, by OEM without SAP's prior written consent, such consent not to be unreasonably withheld. Due to the importance of OEM's ownership and management, a Change of Control of OEM shall be deemed an assignment of this Agreement. "Change of Control" of OEM shall mean a transaction or series of transactions (i) pursuant to which Control of OEM is acquired by persons or entities other than those who Control OEM on the Effective Date of the first Order Form under this Agreement, or (ii) resulting in the sale of all or substantially all of OEM's assets or all or substantially all of OEM's assets utilizing any Cloud Service or SAP Materials. Subject to the foregoing, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties, and their permitted successors and assigns. OEM shall 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.

13.2 Independent Contractors. The relationship of SAP and OEM established by this Agreement is that of independent contractors. This Agreement does not give either party the power to direct and control the day to day activities of the other. This Agreement does not make the parties partners, joint venturers, co-owners, principal-agent, or otherwise participants in a joint or common undertaking/ This Agreement does not permit either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. OEM has no actual, apparent, or ostensible authority to act on behalf of SAP, unless expressly stated in this Agreement. OEM must indemnify and hold harmless

SAP and its Affiliates for any third party claims against SAP and/or any of its Affiliates arising or relating to a third party's assertion that OEM acted as SAP's agent or otherwise on SAP's behalf.

- 13.3 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between SAP and OEM, all previous representations, discussions, and writings are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. Each party acknowledges that it is entering into this Agreement as a result of its own independent investigation and not as a result of any representation of the other party not contained herein. Any additional or different terms in OEM's documents (including any preprinted terms contained on purchase orders) are hereby deemed to be material alterations and notice of objection to, and rejection of, them is hereby given, and such additional or different terms shall be void. Signatures sent by electronic means (facsimile or scanned and sent via e-mail or signed by electronic signature service where legally permitted) shall be deemed original signatures.
- 13.4 Amendments; Waivers. This Agreement may not be modified or any term or condition waived, including these terms, except in a writing signed by a duly authorized representative of each party. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof.
- 13.5 Force Majeure. Except for a party's payment obligations, neither party shall be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by circumstances beyond its reasonable control, including, but not limited to, earthquake, fire, flood, war, embargo, strike, riot, inability to secure materials and transportation facilities, or the intervention of any governmental authority.
- 13.6 Publicity. The terms of this Agreement are confidential. Except as otherwise set forth in this Agreement, no press release or other similar publicity regarding this Agreement may be made without the other party's written approval.
- 13.7 Notices. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to OEM or SAP at the addresses first set forth in this Agreement or applicable Order Form. Notices provided by OEM to SAP shall be sent to the attention of: SAP Legal Department. Where in this Section 13.7 or elsewhere in this Agreement notices in written form are required, that requirement can be met by facsimile transmission, email or exchange of letters to the address, email address or facsimile number of the respective parties set forth in any Order Form.
- 13.8 Non-Exclusivity. This is a non-exclusive relationship. Each party may have similar agreements with others. Each party is responsible for its own costs, including all business, travel and living expenses incurred by the performance of this Agreement.
- 13.9 Hierarchy. The following order of precedence (in descending order of priority) shall be applied in the event of conflict or inconsistency between provisions of the components of this Agreement: (i) Cloud Service Schedule, (ii) the Order Form; (iii) the Exhibits to this Agreement or Order Form; (iv) this OEM License Agreement for Cloud Services (excluding applicable exhibits and schedules attached or referenced thereto) and (v) the Cloud GTC.

14. **WARRANTIES AND DISCLAIMER**

- 14.1 SAP warrants that the Cloud Service will substantially conform to the specifications stated in the Documentation during the applicable subscription term for such Cloud Service. The foregoing warranty shall not apply to the extent: (i) the Cloud Service is not used in accordance with this Agreement and/or any Documentation; or (ii) the non-conformity is caused by the OEM Service, third party services, content or products accessed through the Cloud Service that are identified as third party products, content or service, or any modifications, configurations, customizations or implementations to or for the Cloud Service performed by OEM or any other party other than SAP; or (iii) to free (no fee) or trial licenses of the Cloud Service.
- 14.2 Subject to Section 14.3, OEM's sole and exclusive remedy, and SAP's entire liability for breach of the limited warranty described in Section 14.1, shall be correction of the warranted non-conforming Cloud Service; or if SAP fails to correct the non-conformity after using reasonable commercial efforts, SAP may terminate access to the non-conforming Cloud Service for the affected Cloud Service Schedules and refund the subscription fees paid by OEM for such Cloud Service (as identified in affected Cloud Service Schedules) for the remainder of the subscription term starting on the date the non-conformity was reported to SAP.
- 14.3 OEM shall provide SAP with prompt written notice of any non-conformities with respect to Section 14.1 to SAP within ninety (90) days of the End User' discovery of such non-conformity.
- 14.4 Except as expressly provided in the Agreement, neither SAP nor its vendors make any representations, warranties, terms, conditions or statements, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with the Cloud Service or any information technology services, software, hardware or other materials provided under this Agreement, or that the operation of any such Cloud Service, information technology services, software, hardware or other material will be uninterrupted or error free.
- 14.5 OEM represents and warrants that within industry standards 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. Further, OEM represents and warrants that it will comply with all legal requirements applicable in the Territory and that it knows the essential functional characteristics of the Cloud Service and bears the risk that the Cloud Service does not meet OEM's or any End User's requirements.
- 14.6 OEM shall 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.

15. **LIMITATION OF LIABILITY**

- 15.1 Anything to the contrary herein notwithstanding, except for damages resulting from unauthorized use or disclosure of Confidential Information and SAP's right to collect unpaid fees, under no circumstances and regardless of the nature of any claim shall either SAP (or its Affiliates or SAP's licensors) be liable to OEM, End User or any other person or entity for an amount of damages in excess of the fees paid for the

applicable Cloud Service in the twelve (12) month period preceding the date of the incident giving rise to liability and under no circumstances in the aggregate for all claims to exceed an amount paid to SAP during the term of this Agreement. Under no circumstances shall SAP, its Affiliates or SAP's licensors be liable in any amount for special, incidental, consequential, or indirect damages, loss of goodwill or business profits, work stoppage, data loss, computer failure or malfunction, or exemplary or punitive damages, even if advised of the possibility thereof.

- 15.2 The provisions of this Agreement allocate the risks between SAP and OEM. The Cloud Service fees reflect this allocation of risk and limitations of liability herein. The aforementioned liability limitations shall include any claims against employees of, subcontractors of, or any other persons authorized by, SAP. Under no condition will SAP or its licensors be responsible under this Agreement for preparation or conversion of data into the form required for use with the Software.
- 15.3 It is expressly understood and agreed that each and every provision of the Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the parties to be severable and independent of any other provision and to be enforced as such.
- 15.4 OEM acknowledges that none of SAP or its licensors are engaged in the business of rendering legal, tax or other professional services and that the information provided by SAP relative to this Agreement or in response to OEM inquiries are not intended to provide legal, tax or other expert advice to OEM, or be a substitute for a lawyer, accountant, or other professional. If OEM needs legal or tax advice or other expert assistance, the services of a competent lawyer, accountant, or other professional licensed to practice in the applicable jurisdiction should be sought.
- 15.5 The foregoing limitation of liability does not apply to willful misconduct or fraud, personal injury or death caused by the negligence or any other liability which cannot be excluded or limited by applicable law.
- 15.6 Claims. Neither party will bring a legal action under this Agreement more than two more than two years after the cause of action arose.

16. **GOVERNING LAW**

This Agreement shall be construed, and the legal relations between the parties hereto shall 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 shall prevail and govern. The exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement is Ireland.

17. **SEVERABILITY; INJUNCTIVE RELIEF**

- 17.1 The terms of this Agreement are severable. If any term hereof is held invalid, illegal, or unenforceable for any reason whatsoever, such term shall be enforced to the fullest extent permitted by applicable law, and the validity, legality, and enforceability of the remaining terms shall not in any way be affected or impaired thereby.
- 17.2 Both parties acknowledge that remedies at law may be inadequate to provide SAP or OEM with full compensation in the event of OEM's material breach of Sections 7.2 with respect to SAP's Trademarks, or 7.3 with respect to SAP's Confidential Information, or SAP's material breach of Section 7.3 with respect to OEM's Confidential Information. For any such material breach, the non-breaching party shall be entitled to seek injunctive relief.

ANNEX 1
SAP OEM Cloud Service Schedule
for Commissioned Processing of Personal Data

SAP OEM Cloud Service Schedule
Data Privacy and Security-Data Controller to Data Processor

Effective [date] (“Effective Date”)

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

represented through:

OEM Named: _____ (“OEM”)

and

Customer Name: _____

Customer Address: _____
(hereinafter “Customer”)

Preamble:

WHEREAS, Customer has entered into an end user agreement (“**End User Agreement**”) with **OEM** for the supply of, and the right to use, the SAP Cloud Service as set out in the applicable Cloud Service Schedule (“**Service Schedule**”) submitted by OEM to SAP under the **OEM Agreement** (“**Service**” or “**Cloud Service**”) solely in conjunction with OEM’s own hosted, on-demand service (“**OEM Service**”);

WHEREAS, OEM has entered into an OEM license agreement and order form for the Cloud Service (collectively, “**OEM Agreement**”) with SAP whereby SAP grants to OEM the right to promote, market and resell the Cloud Service solely in conjunction with the OEM Service;

WHEREAS, Customer desires to grant consent to SAP for the processing of **Personal Data** by SAP on behalf of Customer, its **Affiliates** and their respective **Authorized Users**; and

WHEREAS, Customer understands and acknowledges that OEM, through which Customer has arranged for the procurement of the **Service** or from which Customer receives any other services related to the Service (such as the **OEM Service**), is not an agent of SAP.

NOW, THEREFORE, and in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

This document shall become an integral part of the **End User Agreement** (“**Exhibit**”). Any capitalized terms referenced in this **Exhibit** not defined herein shall have the meaning given to them in the **End User Agreement** if defined therein. SAP and Customer agree that this **Exhibit** serves as a written commissioned data processing agreement between SAP and each **Data Controller** providing **Personal Data** in connection with use of the **Service** by Customer and its **Affiliates**, and furthermore defines the applicable technical and organizational measures SAP implements and maintains to protect **Personal Data** of **Authorized Users** stored in the **Service** (excluding the **OEM Service**) pursuant to the **End User Agreement**. Capitalized terms in bold type that are not defined elsewhere in the **Exhibit** are defined at the end of this **Exhibit** before the attached **Appendices**.

Customer acts as the **Data Controller** concerning **Personal Data** of its own **Authorized Users** as well as on behalf of and in the name of its Affiliates or third parties in their capacity as **Data Controllers** of **Authorized Users** authorized by Customer to use the Service. Customer shall enter into data processing agreements with its **Data Controllers** that are required to allow SAP (as **Data Processor** or **Subprocessor**, as the case may be) and its **Subprocessors** to process any **Personal Data** as described in this Exhibit. Customer 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 other **Data Controllers** to SAP. SAP shall be discharged of its obligation to inform or notify a **Data Controller** when it has provided such information or notice to Customer. SAP is entitled to refuse any requests or instructions provided directly by a **Data Controller** that is not Customer.

If any provision of this Exhibit is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Exhibit, and all provisions not affected by such invalidity shall remain in full force and effect.

1. Data Processing Purposes

1.1 Customer and its Affiliates, as the respective **Data Controller(s)**, shall determine the purposes of collecting, processing, and otherwise using **Personal Data** stored in the Service. Unless provided otherwise in the Agreement, [Appendix 1](#) of the **Standard Contractual Clauses** and the Exhibit shall apply to such data processing.

1.2 The purposes for processing **Personal Data** by SAP and its **Subprocessors** under this Exhibit are limited to:

- a) Setting up, operating, monitoring and providing the Service, including the underlying infrastructure (hardware, software, secure data center facilities, connectivity), as a **Data Processor** or **Subprocessor** as set forth in the Agreement;
- b) Providing technical support as a main obligation of SAP under the Agreement;

- c) Providing Consulting Services as a main obligation of SAP, if and to the extent agreed by the parties;
- d) Communicating to **Authorized Users** and other administrative purposes as clarified in the terms associated with a particular Service and
- e) Executing instructions of the Customer in accordance with Sections 2.1 and 2.2 below.

2. SAP Obligations

- 2.1 SAP shall process **Personal Data** only in accordance with the **Data Controller's** instructions submitted by Customer. SAP shall use reasonable commercial efforts to follow and comply with the instructions received from Customer as long as they are legally required and technically feasible and do not require any material modifications to the functionality of the **Service** or underlying software. SAP shall notify Customer if SAP considers an instruction submitted by Customer to be in violation of the applicable **Data Protection Law**. SAP shall not be obligated to perform a comprehensive legal examination. If and to the extent SAP is unable to comply with an instruction it shall promptly notify (email permitted) Customer hereof.
- 2.2 SAP may, upon the instruction of Customer and with Customer's necessary cooperation, correct, erase and/or block any **Personal Data** if and to the extent the functionality of the Service does not allow the Customer, its **Data Controllers** or **Authorized Users** to do so. In the event that SAP needs to access any of Customer's systems or Customer's instance of the **Service** remotely to execute an instruction or provide technical support, e.g. via application sharing, Customer hereby grants to SAP the permission for such remote access. Further, Customer will name a contact person that – if necessary – can grant to SAP the required access rights.
- 2.3 For processing **Personal Data**, SAP and its **Subprocessors** shall only use personnel who are subject to a binding obligation to observe data secrecy or secrecy of telecommunications, to the extent applicable, pursuant to the applicable **Data Protection Law**. SAP shall itself and shall require that its **Subprocessors** regularly train individuals to whom they grant access to **Personal Data** in data security and data privacy.
- 2.4 SAP shall, as a minimum, implement and maintain appropriate technical and organizational measures as described in [Appendix 2](#) of the Exhibit to keep **Personal Data** secure and protect it against unauthorized or unlawful processing and accidental loss, destruction or damage. Since SAP provides the **Service** to all customers uniformly via a hosted, web-based application, all appropriate and then current technical and organizational measures apply to SAP's entire customer base hosted out of the same data center and subscribed to the same **Service**. Customer understands and agrees that the technical and organizational measures are subject to technical progress and development. In that regard, SAP is expressly allowed to implement adequate alternative measures as long as the security level of the measures is maintained. In the event of any detrimental change SAP shall provide a notification together with any necessary documentation to Customer by email or publication on a website easily accessible by Customer.
- 2.5 SAP shall regularly test the measures described in [Appendix 2](#). If a **Data Controller** believes that additional measures are required under the applicable **Data Protection Law** Customer shall submit an instruction according to Section 2.1 above.
- 2.6 SAP shall promptly inform Customer as soon as it becomes aware of serious disruptions of the processing operations, reasonable suspected or actual data protection violations or any **Security Breach** in connection with the processing of **Personal Data** which, in each case, may significantly harm the interest of the **Data Subjects** concerned.
- 2.7 At Customer's expense, SAP shall reasonably support Customer or other **Data Controllers** in dealing with requests from individual **Data Subjects** and/or a supervisory authority with respect to the processing of **Personal Data** hereunder.

3. Subprocessors

- 3.1 Customer (also on behalf of its **Data Controllers**) hereby authorizes SAP (also for the purpose of Clause 11 paragraph 1 of the **Standard Contractual Clauses**) to engage subcontractors for the processing of **Personal Data** (each a "**Subprocessor**") to the extent necessary for fulfilling its contractual obligations under the Agreement as long as SAP remains responsible for any acts or omissions of its **Subprocessors** in the same manner as for its own acts and omissions hereunder. SAP shall pass on to **Subprocessors** SAP's obligation as **Data Processor** (or **Subprocessor**) vis-à-vis Customer and the respective **Data Controllers** as set out in this Exhibit. SAP undertakes to have a selection process by which it evaluates the security, privacy and confidentiality practices of a **Subprocessor** in regard to data handling on a scheduled basis (alternatively, the **Subprocessor** shall possess a security certification that evidences appropriate security measures are in place with regard to the **Subprocessor's** services to be provided to SAP).
- 3.2 SAP will inform Customer upon its request by email about the name, address and role of each **Subprocessor** it uses to provide the **Service**. SAP may remove or appoint suitable and reliable other Subprocessors at its own discretion in accordance with this Section 3. SAP will inform Customer by email in advance (except for **Emergency Replacements** under Section 3.3) of any changes to the list of **Subprocessors**, which shall be deemed accepted as long as they comply with and are bound by applicable **Data Protection Law** or, if a **Subprocessor** is incorporated outside the **EEA**, the **Standard Contractual Clauses**). If Customer has a legitimate reason to object to SAP's use of a **Subprocessor** (e.g. if the **Subprocessor** is located in a country without an adequate level of data protection and Customer needs to complete additional formalities as a **Data Controller** prior to the use of such **Subprocessor**) Customer shall notify SAP thereof in writing within thirty (30) days after receipt of SAP's notice. If Customer does not object during such time period the new **Subprocessor(s)** shall be deemed accepted. If Customer objects to the use of the **Subprocessor** concerned SAP shall have the right to cure the objection through one of the following options (to be selected at SAP's sole discretion): (a) SAP will abort its plans to use the **Subprocessor** with regard to **Personal Data**; or (b) SAP will take the corrective steps requested by Customer in its objection (which remove Customer's objection) and proceed to use the **Subprocessor** with regard to **Personal Data**; or (c) SAP may cease to provide or Customer may agree not to use (temporarily or permanently) the particular aspect of the **Service** that would involve use of the **Subprocessor** with regard to **Personal Data**. If none of the above options are reasonably available and the objection has not been cured within thirty (30) days after SAP's receipt of Customer's objection, either party may terminate the affected **Service** with reasonable prior written notice.
- 3.3 "**Emergency Replacement**" refers to a sudden replacement of a **Subprocessor** where such change is outside of SAP's reasonable control (such as if the **Subprocessor** ceases business, abruptly discontinues services to SAP, or breaches its contractual duties owed to SAP). In such case, SAP will inform Customer of the replacement **Subprocessor** as soon as possible and the process to formally appoint such **Subprocessor** pursuant to

4. International Transfers and Country-Specific Deviations

- 4.1 **Personal Data** that SAP has received from any **Data Controller** hereunder shall only be exported by SAP or its **Subprocessors** from the **Data Center** to or accessed from a country or territory outside the **EEA** ("**International Transfer**") if (a) the recipient itself or the country or territory in which it operates (i.e. where or from where it processes or accesses **Personal Data**) has been found to ensure an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of **Personal Data** as determined by the European Commission and subject to the scope restrictions of any such determination, or (b) when a **Non-EU Entity** fulfills the requirements of Section 4.2 below. The same shall apply to SAP receiving **Personal Data** directly from a **Data Controller** in the **EEA**, via Internet access to a **Service** hosted in a **Data Center** outside the **EEA**.
- 4.2 SAP (through SAP SE) has entered into the **Standard Contractual Clauses** with each **Non-EU Entity** processing **Personal Data** hereunder by means of an **International Transfer**. Customer hereby accedes to the **Standard Contractual Clauses** and may then directly enforce them against the relevant **Non-EU Entity**. Customer furthermore will procure that each **Data Controller** will accede to such **Standard Contractual Clauses** entered into between SAP and Customer. In the event such direct right does not exist for the **Data Controller** or is successfully challenged by a **Subprocessor**, SAP shall enforce such **Standard Contractual Clauses** against the Subprocessor on behalf of the **Data Controller** in compliance with this Exhibit. Unless otherwise agreed by the parties, Appendices 1 and 2 of the **Standard Contractual Clauses** as attached shall apply. Nothing in the Agreement shall be construed to prevail over any conflicting Clause of the **Standard Contractual Clauses**. Customer acknowledges it has had the opportunity to review the **Standard Contractual Clauses** or to obtain a full copy from SAP.
- 4.3 The **Standard Contractual Clauses** shall be governed by the law of the Member State in which the **EEA** based **Data Exporter** is established.
- 4.4 **Switzerland**. To the extent a **Data Controller** in Switzerland or its **Authorized Users** intend to enter **Personal Data** of legal entities (also considered personal data under the Swiss Federal Act on Data Protection) into the **Service**, Customer agrees to first obtain the consent (in the sense of Art. 6 para. 2, lit. b. of the Swiss Federal Act on Data Protection) of such legal entity (**Data Subject**) before using the **Service**, as described herein, for such **Data Subject(s)**. SAP agrees to afford to such personal data a similar level of protection as set forth in Sections 1, 2 and 5 of this Exhibit.
- 4.5 **Austria**. To the extent a **Data Controller** in Austria or its **Authorized Users** intend to enter **Personal Data** of legal entities (also considered personal data under the Federal Act concerning the Protection of Personal Data (DSG 2000)) into the **Service**, Customer agrees to first obtain the consent (in the sense of § 12 para. 3 of the DSG 2000) of such legal entity (**Data Subject**) before using the **Service**, as described herein, for such **Data Subject(s)**. SAP agrees to afford to such **Personal Data** a similar level of protection as set forth in Sections 1, 2 and 5 of this Exhibit.
- 4.6 **Russian Federation**. Customer or Customer Affiliates as **Data Controllers** remain operators of **Personal Data** submitted for processing to SAP and are responsible for determining (i) if Customer will be able to comply with applicable Russian privacy law in use of **Services** which involve processing of Russian citizen's **Personal Data** and (ii) whether **Services** can be used inside or outside the Russian Federation.
- 4.7 **Turkey**. To the extent a **Data Controller** in Turkey or its **Authorized Users** intend to enter **Personal Data** into the **Service**, Customer agrees to first obtain the consent of each **Data Subject** to an **International Transfer** as contemplated under this Exhibit if and to the extent required under the applicable data protection law in Turkey. The Customer hereby confirms and commits that it has received the **Personal Data** and informed the related persons regarding the transfer/process of the **Personal Data** in accordance with the applicable law.
- 4.8 **United States**. Unless SAP and Customer have executed a "Business Associate" agreement for the exchange of protected health information ("**PHI**") as defined in the United States Health Insurance Portability and Accountability Act of 1996, as amended, in relation to the **Service**, Customer hereby represents that Customer will not submit **PHI** to the **Service** nor solicit such information from partners or customers as part of use of the **Service**.

5. Monitoring Rights of Customer

- 5.1 For the production systems which run the **Service** itself and during the term of the Agreement SAP shall maintain, at its own expense, applicable certifications or audit reports. Unless provided otherwise in the **Supplemental Terms**, SAP engages an internationally recognized independent third party auditor to review the measures in place in protection of the **Service**. Certifications may be based on ISO 27001 or other standards (scope as defined in certificate). For certain **Cloud Services**, SAP performs regular audits (at least annually) via certified auditors to provide a valid SOC 1 Type 2 (SSAE 16 or ISAE 3402) and/or SOC 2 Type 2 report. Audit reports are available through the third party auditor or SAP, as applicable. Upon Customer's request, SAP shall inform the Customer about the applicable certifications and audit standards available for the **Service** concerned.
- 5.2 If SAP fails to perform its audit obligations under Section 5.1 and has not provided sufficient evidence of its compliance after Customer's written request, Customer (or an independent third party auditor on its behalf that is subject to confidentiality obligations consistent with those in the **End User Agreement**) may audit SAP's control environment and security practices relevant to **Personal Data** processed hereunder for Customer once in any twelve (12)-month period, with reasonable prior written notice (at least 60 days unless a data protection authority requires Customer's earlier control under applicable **Data Protection Law**) and under reasonable time, place and manner conditions.
- 5.3 Furthermore, (i) following an event set out in Section 2.6 above, or (ii) if Customer or another **Data Controller** reasonably believes that SAP is not in compliance with its obligations under this Exhibit, or (iii) if a further audit is required by Customer's or another **Data Controller's** data protection authority, Customer (or an independent third party auditor on its behalf that is subject to confidentiality obligations consistent with those in the **End User Agreement**) may audit SAP's control environment and security practices relevant to **Personal Data** processed hereunder for Customer in accordance with applicable **Data Protection Law**.
- 5.4 SAP shall reasonably support Customer throughout these verification processes and provide Customer with the required information. Customer shall bear any costs (including SAP's internal resource based on then-current daily professional service rates per SAP's price list) for any efforts on SAP's side exceeding more than 4 hours per year.

Definitions

Any capitalized terms used herein that are not defined in this Exhibit, shall have the meaning given to them in the **End User Agreement** if defined therein.

“**Affiliate**” means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights or **Controls**, or is under common **Control** with, that legal entity. Any such company shall be considered an **Affiliate** for only such time as such interest or **Control** is maintained.

“**Authorized User**” Customer’s and its **Affiliates**’ employees, agents, contractors, consultants, suppliers or other individuals who are authorized by Customer to use the Service.

“**Control**” for purposes of the definition of **Affiliate** means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through ownership, by contract or otherwise.

“**Customer Data**” means any content, materials, data and information that Customer or **Authorized Users** enter into the **Service**.

“**Data Center**” means the location where the production instance of the Cloud Services is hosted for the Customer in its region, as published at: <http://www.sap.com/corporate-en/about/our-company/policies/data-privacy-and-security/location-of-data-center.html> or notified to Customer or otherwise agreed in an Order Form.

“**Data Controller**” has the meaning given to this term in the applicable **Data Protection Law**.

“**Data Exporter**” as used in the **Standard Contractual Clauses** means Customer as listed in an Order Form or its **Data Controller(s)**.

“**Data Importer**” as used in the **Standard Contractual Clauses** means the applicable **Non-EU Entity**.

“**Data Processor**” has the meaning given to this term in the applicable **Data Protection Law**.

“**Data Protection Law**” means the legislation protecting the fundamental rights and freedoms of persons and, in particular, their right to privacy, with regard to the processing of **Personal Data** by a data processor both in the **EEA** and, if different, such legislation of the country where the **Data Center** is located. SAP may agree in a **Service Schedule**, as reflected in the **End User Agreement**, to comply with other compelling local data protection laws applicable to SAP as the **Data Processor**, if and to the extent agreed.

“**Data Subject**” means and identified or identifiable individual or a legal entity (where so defined under the applicable **Data Protection Law**).

“**EEA**” means the European Economic Area.

“**Non-EU Entity**” means any SAP entity or **Subprocessor** incorporated in a country which does not provide an adequate level of data protection according to European Union (“**EU**”) laws and regulations.

“**Personal Data**” has the meaning given to that expression in the **Data Protection Law** and, for the purposes of this **Exhibit**, includes only such personal data entered by Customer or its **Authorized Users** into or derived from their use of the **Service** or supplied to or accessed by SAP or its **Subprocessors** in order to provide support in accordance with the Agreement. Personal Data is a sub-set of **Customer Data** and used herein when any **Data Protection Law** applies.

“**Security Breach**” means any acts or omissions by SAP or its **Subprocessors** that led to an unauthorized disclosure of **Personal Data** in breach of the measures set forth in [Appendix 2](#) or similar incident for which the **Data Controller** is legally required to provide notice to the **Data Subject** or the data protection authority concerned.

“**Standard Contractual Clauses**” means the (Standard Contractual Clauses (processors)) based on the Commission Decision of 5 February 2010, on standard contractual clauses for the transfer of **Personal Data** to processors established in third countries, under Directive 95/46/EC (notified under document number C(2010) 593), or any subsequent version thereof released by the Commission (which shall automatically apply), including Appendices 1 and 2 attached hereto.

“**Subprocessor**” as used in the **Standard Contractual Clauses** and this **Exhibit** means the SAP **Affiliates** and third party **Subprocessors** engaged by SAP or SAP’s **Affiliates** in accordance with Section 3.

“**Supplemental Terms**” means SAP’s product-specific terms and conditions for the applicable **Service** incorporated into the End User Agreement.

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES AND THE EXHIBIT

Further details may be provided for in the Service Schedule, as reflected in the End User Agreement, or the Supplemental Terms, if required, or adjusted in the description below by Customer.

Data Exporter

The **Data Exporter** is:

The **Data Exporter** subscribed to certain **Cloud Services** which allow its **Authorized Users** to enter, amend, use, delete or otherwise process **Personal Data** as contemplated under the Agreement.

Data Importer

The **Data Importer** is:

SAP and its **Subprocessors** provide certain **Cloud Services** which include the hosting of the **Service** and the provision of technical support to Customer, its **Affiliates** and their respective **Authorized Users** as contemplated under the **End User Agreement**.

Data subjects

The **Personal Data** transferred concern the following categories of data subjects:

Unless provided otherwise by **Data Exporter**, **Data Subjects** may include employees, contractors, business partners or other individuals whose **Personal Data** is stored in the **Service**.

Categories of data

The **Personal Data** transferred concern the following categories of data:

Customer determines the categories of data per **Service** subscribed. Customer's data fields can be configured as part of the implementation of the **Service** or as otherwise permitted in the **Service**. The **Personal Data** transferred usually concern (a subset of) the following categories of data: name, phone numbers, e-mail address, time zone, address data, system access / usage / authorization data, company name, contract data, invoice data, plus any application-specific data which Customers' **Authorized Users** enter into the **Service** including bank account data, credit or debit card data.

Special categories of data (if appropriate)

The **Personal Data** transferred concern the following special categories of data:

As notified by Customer.

Processing operations

The **Personal Data** transferred will be subject to the following basic processing activities:

- use of **Personal Data** to provide the **Service** and to provide assistance to technical support
- storage of **Personal Data** in dedicated **Data Centers** (multi-tenant architecture)
- upload any patch, update, upgrade / new releases to the **Service**
- back up of **Personal Data**
- computer processing of **Personal Data**, including data transmission, data retrieval, data access
- network access to allow **Personal Data** transfer, if required

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES AND THE EXHIBIT

Some Services are subject to different technical support terms, as set forth in the respective Supplemental Terms or the Service Schedule, as reflected in the End User Agreement.

In all other cases, the description of the technical and organizational security measures (TOMs) implemented by the Data Importer for Personal Data in accordance with Clauses 4(d) and 5(c) shall apply:

Technical and Organizational Measures

The following sections define the current security measures established by SAP. SAP may change these at any time without notice by keeping a comparable or better level of security. This may mean that individual measures are replaced by new measures that serve the same purpose without diminishing the security level.

Physical Access Control:

Unauthorized persons shall be prevented from gaining physical access to premises, buildings or rooms where data processing systems are located which process and/or use **Personal Data**.

Measures:

All **Data Centers** adhere to strict security procedures enforced by guards, surveillance cameras, motion detectors, access control mechanisms and other measures to prevent equipment and **Data Center** facilities from being compromised. Only authorized representatives have access to systems and infrastructure within the **Data Center** facilities. To ensure proper functionality, physical security equipment (e.g. motion sensors, cameras, etc.) are maintained on a regular basis. In detail, the following physical security measures are implemented at all **Data Centers**:

- SAP protects its assets and facilities using the appropriate means based on a security classification conducted by an internal security department.
- In general, buildings are secured through access control systems (smart card access system).
- As a minimum requirement, the outermost shell of the building must be fitted with a certified key system including modern, active key management.
- Depending on the security classification, buildings, individual areas and surrounding premises are further protected by additional measures. These include specific access profiles, video surveillance, intruder alarm systems and biometric access control systems.
- Access rights will be granted to authorized persons on an individual basis according to the System and Data Access Control measures (see Section 1.2 and 1.3 below). This also applies to visitor access. Guests and visitors to SAP buildings must register their names at reception and must be accompanied by authorized SAP personnel. SAP and all third party **Data Center** providers are logging the names and times of persons entering the private areas of SAP within the **Data Centers**.
- SAP employees and external personnel must wear their ID cards at all SAP locations.

System Access Control:

Data processing systems used to provide the **Cloud Service** must be prevented from being used without authorization.

Measures:

- Multiple authorization levels are used to grant access to sensitive systems including those storing and processing **Personal Data**. Processes are in place to ensure that authorized users have the appropriate authorization to add, delete, or modify users.
- All users access SAP's systems with a unique identifier (user ID).
- SAP has procedures in place to ensure that requested authorization changes are implemented only in accordance with the guidelines (for example, no rights are granted without authorization). If a user leaves the company, its access rights are revoked.
- SAP has established a password policy that prohibits the sharing of passwords, governs what to do if a password is disclosed, requires passwords to be changed on a regular basis and default passwords to be altered. Personalized user IDs are assigned for authentication. All passwords must fulfill defined minimum requirements and are stored in encrypted form. In case of domain passwords, the system forces a password change every six months complying with the requirements for complex passwords. Each computer has a password-protected screensaver.
- The company network is protected from the public network by firewalls.
- SAP uses up-to-date antivirus software at access points to the company network (for e-mail accounts) and on all file servers and all workstations.
- A security patch management is implemented to ensure deployment of relevant security updates.
- Full remote access to SAP's corporate network and critical infrastructure is protected by strong authentication.

Data Access Control:

Persons entitled to use data processing systems shall gain access only to the **Personal Data** that they have a right to access, and **Personal Data** must not be read, copied, modified or removed without authorization in the course of processing, use and storage.

Measures:

- Access to personal, confidential or sensitive information is granted on a need-to-know basis. In other words, employees or external third parties have access to the information that they require in order to complete their work. SAP uses authorization concepts that document how authorizations are assigned and which authorizations are assigned. All personal, confidential, or otherwise sensitive data is protected in accordance with the SAP security policies and standards.
- All production servers of any SAP Cloud Service are operated in the relevant **Data Centers**/server rooms. Security measures that protect applications processing personal, confidential or other sensitive information are regularly checked. To this end, SAP conducts internal and external security checks and penetration tests on the IT systems.
- SAP does not allow the installation of personal software or other software not approved by SAP to systems being used for any **Cloud Service**.
- A SAP security standard governs how data and data carriers are deleted or destroyed.

Data Transmission Control:

Personal Data must not be read, copied, modified or removed without authorization during transfer.

Measures:

Where data carriers are physically transported, adequate measures are implemented at SAP to ensure the agreed service levels (for example, encryption, and lead-lined containers).

Personal Data transfer over SAP internal networks are protected as any other confidential data according to SAP Security Policy.

When the data is being transferred between SAP and its customers, the protection measures for the transferred **Personal Data** are mutually agreed

upon and made part of the Agreement. This applies to both physical and network based data transfer. In any case the Customer assumes responsibility for any data transfer from SAP's Point of Demarcation (e.g. outgoing firewall of the SAP **Data Center** which hosts the Cloud Service).

Data Input Control:

It shall be possible to retrospectively examine and establish whether and by whom at SAP **Personal Data** have been entered, modified or removed from data processing systems used to provide the **Cloud Service**.

Measures:

SAP only allows authorized persons to access **Personal Data** as required in the course of their work. SAP implemented a logging system for input, modification and deletion, or blocking of **Personal Data** by SAP or its **Subprocessors** to the greatest extent supported by the **Cloud Service**.

Job Control:

Personal Data being processed on commission shall be processed solely in accordance with the Agreement and related instructions of the Customer.

Measures:

- SAP uses controls and processes to ensure compliance with contracts between SAP and its customers, **Subprocessors** or other service providers.
- As part of the SAP Security Policy, Customer Data requires at least the same protection level as "confidential" information according to the SAP Information Classification standard.
- All SAP employees and contractual partners are contractually bound to respect the confidentiality of all sensitive information including trade secrets of SAP customers and partners.

Availability Control:

Personal Data shall be protected against accidental or unauthorized destruction or loss.

Measures:

- SAP employs backup processes and other measures that ensure rapid restoration of business critical systems as and when necessary.
- SAP uses uninterrupted power supplies (for example: UPS, batteries, generators, etc.) to ensure power availability to the **Data Centers**.
- SAP has defined contingency plans as well as business and disaster recovery strategies for **Cloud Services**.
- Emergency processes and systems are regularly tested.

Data Separation Control

Personal Data collected for different purposes can be processed separately.

Measures:

- SAP uses the technical capabilities of the deployed software (for example: multi-tenancy or separate system landscapes) to achieve data separation between **Personal Data** from one and any other customer.
- SAP maintains dedicated instances for each Customer.
- Customers (including their Affiliates) have access only to own Customer instance(s).

Data Integrity Control

Ensures that **Personal Data** will remain intact, complete and current during processing activities:

Measures:

SAP has implemented a defense strategy in several layers as a protection against unauthorized modifications.

This refers to controls as stated in the control and measure sections as described above. In particular:

- Firewalls;
- Security Monitoring Center;
- Antivirus software;
- Backup and recovery;
- External and internal penetration testing;
- Regular external audits to prove security measures.