

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

### 1. DEFINITIONS

Capitalized terms are defined in the Glossary.

### 2. PROGRAM REQUIREMENTS; USAGE RIGHTS AND RESTRICTIONS

**2.1 Program Requirements.** Subject to Partner’s compliance with all Program Requirements at all times during the term of the Agreement, SAP grants to Partner the rights set forth in Section 2.2 below.

#### 2.2 Grant of Rights.

**(a) Partner Use Rights for Cloud Service.** SAP grants to Partner a non-exclusive, non-transferable, right in the Territory to use the Cloud Service (including its implementation and configuration), Cloud Materials and Documentation solely to: (i) develop an integration between the Cloud Service and Partner Solution; (ii) demonstrate the Bundled Service to potential Customers; and (iii) provide support of the Bundled Service to Customers. Permitted uses and restrictions of the Cloud Service also apply to Cloud Materials and Documentation.

**(b) Cloud Service Subscription.** SAP grants to Partner, a non-exclusive, non-transferable, right in the Territory to market and resell (1) the Cloud Service (except for the Platform Cloud Service) only in connection with the Partner Solution; and/or (2) the Platform Application running on the Platform Cloud Service to Customers. Partner will provide access of the Cloud Service to Customers only in accordance with the Agreement, including, without limitation, the restrictions listed in Sections 2.3(a), 2.3(b) and 3.1 of this GTC.

**(c) License to SAP.** Partner grants SAP a worldwide, royalty free, non-exclusive license to (i) use, copy, reproduce, transmit, publish, publicly perform, publicly display, distribute and access the Platform Application and associated Data; and (ii) copy, reproduce, transmit, display, and distribute Data and Partner-provided marks, names, and logos, in each case, solely to provide and support the Cloud Service.

**(d) Affiliates and Resellers.** SAP grants to Partner a non-exclusive, non-transferable right to authorize Partner’s Affiliates and resellers to market and resell subscriptions of the Bundled Service to Customers to the same extent and scope as set forth in Section 2.2(b) above. Partner will ensure that any Affiliate or reseller it authorizes to resell subscription to the Bundled Service does so only in compliance with, and pursuant to written terms no less protective of SAP than the Minimum Terms.

**(e) SAP App Center.** Partner may apply to become a participant of the SAP App Center. Use of the SAP App Center is subject to the terms and conditions of a separate participation agreement.

**(f) Security.** Partner will maintain reasonable security standards for its Authorized Users’ use of the Cloud Service. Partner will not conduct or authorize penetration tests of the Cloud Service without advance approval from SAP.

**2.3 Bundled Service.** Partner may market and resell the Cloud Service only as follows.

**(a) Restricted License.** The Cloud Service may only be used to access data created by the Partner Solution or data processed by the Partner Solution that is necessary to enable the functionalities of the Partner Solution (referred to as a “Restricted License”).

**(b) Database Restriction.** Other than communication (including data transfers) via application level APIs between a Cloud Service and software applications running on any third party runtime database acquired from SAP or its Affiliates, or any of its respective resellers or distributors, the Cloud Service will not access, directly or indirectly, in any manner whatsoever, any third party runtime database(s).

**2.4 Authorized Users.** Cloud Service usage is limited to the Usage Metrics and volumes stated in the Order Form or Service Schedule. Access credentials for the Cloud Service may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service.

**2.5 Acceptable Use Policy.** With respect to the Cloud Service, SAP Materials and Documentation, Partner will not: (a) disassemble, decompile, reverse-engineer, modify, copy, translate or make derivative works, except to the extent such rights cannot be validly waived by law, (b) transmit any content or data that is unlawful or infringes any Intellectual Property Rights, (c) circumvent or endanger its operation or security, (d) access the Cloud Service for the purpose of building a competitive product or service or copying its features or user

interface; or (e) make any use of the Cloud Service that violates any applicable local, state, national, international or foreign law or regulation.

**2.6 Suspension of Cloud Service.** SAP may suspend or limit use of the Cloud Service if continued use may result in material harm to the Cloud Service or its users. SAP will promptly notify Partner of the suspension or limitation. SAP will limit suspension or limitation in time and scope as reasonably possible under the circumstances.

**2.7 Third Party Web Service.** The Cloud Service may include integrations with web services made available by third parties (other than SAP or its Affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third party web services are not part of the Cloud Service and the Agreement does not apply to them.

**2.8 Mobile Access to Cloud Service.** Authorized Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app store. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of the Agreement.

**2.9 On-Premise Components.**

The Cloud Service may include on-premise components that can be downloaded and installed (including updates) by Partner. The System Availability SLA does not apply to these components. In addition to the support policy referenced in the Order Form, specific SAP support and maintenance policies apply to the On-Premise Components and can be found in SAP Support Note 2658835.

**2.10 Platform Cloud Service.**

(a) Other than the Platform Application, no other software may be uploaded into Platform Cloud Service. Partner is responsible for maintaining compatibility between the Platform Application and the Platform Cloud Service upon upgrades of either component.

(b) Partner will not license, resell, rent, lease or otherwise provide any access to, or benefits of, the Platform Cloud Service to Customer or other third parties, except in connection with the provision of Platform Application to Customers. Use of the Platform Cloud Service by Customers is limited to communications and data exchange between the Platform Application and the Platform Cloud Service via officially supported Platform Cloud Service interfaces. Notwithstanding anything in the Supplement to the contrary, Partner will not grant any rights for Customers to create Platform Applications for use with the Platform Cloud Service.

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

**3. MINIMUM TERMS; ENFORCEMENT OF RIGHTS**

**3.1 Minimum Terms.** Each Customer having accessed to the Cloud Service must have executed an End User Agreement. The End User Agreement must be binding on Customers under applicable laws and regulations in the country in which Partner is providing access to the Bundled Service. The End User Agreement must contain terms not materially less protective of SAP than the Agreement including without limitation the terms required under this Section 3.1, the applicable Order Form, and the Supplement. The Minimum Terms will include Partner's rights to perform audits on Customer's usage of the SAP Materials. Partner will not make any representations or warranties regarding the functionality or performance of the SAP Service that conflict with the Agreement. The End User Agreement for Cloud Service will grant SAP and its Affiliates and subcontractors a non-exclusive right to process Data solely to provide the Cloud Service.

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

**4. MODIFICATIONS AND ANALYSES**

**4.1 Modifications.**

(a) The Cloud Service and SAP Policies may be modified by SAP. SAP will inform Partner of modifications by email, the support portal, release notes, Documentation or the Cloud Service. The information will be delivered by email if the modification is not solely an enhancement. Modifications may include

optional new features for the Cloud Service, which Partner and its Customer may use subject to the then-current Supplement.

- (b) If Partner establishes that a modification is not solely an enhancement and materially reduces the Cloud Service, Partner may terminate its subscriptions to the affected Cloud Service by providing written notice to SAP within thirty days after receipt of SAP's informational notice. In this case, Partner will be entitled to a refund of the unused subscription fee as set forth in Section 10.4 of this GTC.

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

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

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

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

**5.1 Independent Pricing.** Partner will independently establish the subscription price of the Bundled Service for its Customers.

**5.2 Order.** Partner will submit an Order Form or Service Schedule to order any subscription for a Cloud Service. The Order Form or Service Schedule will include such information as required by SAP for Cloud Service subscriptions. Partner will order Cloud Service from SAP using and filling out completely such forms and minimum order requirements as SAP may prescribe from time to time and must comply with any then-current order process for the specific Cloud Service. Where applicable, Partner agrees to use the electronic means provided by SAP for placing orders.

**5.3 Rejection or Suspension of Order.** SAP reserves the right to reject an Order Form or Service Schedule in its sole and reasonable discretion, if Partner is in violation of this GTC or the Agreement. If Partner fails to make its payment on the due date, SAP may suspend Partner's rights under the Agreement, until payment is made. Partner cannot withhold, reduce or set-off fees owed nor reduce Usage Metrics during the Subscription Term, regardless of any termination, nonpayment, or other conduct of its Customer. All orders under any Order Form or Service Schedule are non-cancellation and fees are non-refundable.

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

**5.5 Currency.** Partner will pay the currency as stated in the Order Form or Service Schedule. The exchange rate for currency conversion will be based on the official fixing of the European Central bank at the date of invoice.

## **6. AUDIT.**

**6.1 Audit.** SAP and Partner agree to the following audit terms:

- (a) SAP shall have the right to once annually conduct an audit to verify the compliance of (i) Partner, and/or (ii) any of its Affiliates involved in the performance of obligations under any part of the Agreement, with the terms of the Agreement, in particular Partner's compliance obligations as set

forth in Section 12 below. Notwithstanding foregoing, in the event SAP reasonably believes that a breach of the terms of this Agreement, in particular the compliance obligations set forth in Section 12 below, has occurred or will most likely occur, SAP shall have the right to perform an audit.

- (b)** The audit will be conducted by SAP or its nominated independent expert. By choosing the expert, SAP will take into account Partner's legitimate business interests. SAP will bear the costs of the audit unless the expert establishes a breach by the Partner in which case Partner must bear the costs.
- (c)** SAP will provide one (1) week advance notice of an audit unless a) SAP reasonably believes that evidence to be reviewed will be compromised or b) required by investigating authorities.
- (d)** The audit will take place during normal business hours and SAP will instruct its expert to conduct the audit in such a manner that it will not unreasonably interfere with Partner's business operations.
- (e)** Partner must make full disclosure to the expert, and ensure that (i) Partner and its Affiliates involved in the performance of obligations under any part of this Agreement and any of (ii) Partner's Representatives cooperate fully and provide information, grant viewing access to all necessary and useful documents and permit the making of copies of them. Financial records that relate to the subject matter of the audit must be readily available for inspection during audits by SAP or its expert. Partner also agrees to make its employees, officers, and directors involved in the performance of obligations under this Agreement available for meetings and interviews with SAP and/or its expert for the audit. Partner agrees to provide appropriate workspace for the expert.
- (f)** The expert will be bound in writing to confidentiality for the benefit of SAP and the Partner. The expert will undertake not to disclose information to SAP, except for the purpose of providing a report of the audit and, in case of a breach of any part of this Agreement, any information establishing such a breach.
- (g)** Partner's Confidential Information disclosed during the audit will not be used by SAP for any purpose other than to verify and prove if a breach of any part of this Agreement has occurred.
- (h)** Partner must include audit terms with its agreements with any third party used by Partner in connection with its sales and marketing activities under this Agreement (hereinafter "Intermediary/ies") which are materially as protective as the terms in this Section 6. Furthermore, Partner must make SAP a third-party beneficiary to such audit terms with the right to enforce such provisions directly against the Intermediary at SAP's sole discretion. Partner will use best commercially reasonable efforts to cooperate with SAP in enforcement of the audit terms in its agreements with any such third party.
- (i)** SAP reserves the right to suspend new business with the Partner in the event of a lack of reasonable and/or timely cooperation by Partner and its representatives in case of an audit. Furthermore, SAP may terminate the Agreement in accordance with Section 10.2(a) (Termination) below in case Partner does not cooperate with SAP during an audit as outlined in this Section 6.
- (j)** Partner will monitor Partner's and if applicable, its Customer's use and license or subscription of the SAP Product and report any use in excess of the permitted volume. SAP may monitor use to verify compliance with Usage Metrics, volume and the Agreement. Partner will pay applicable fees for any usage in excess of the Usage Metrics.

## **7. SUPPORT.**

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

## **8. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

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

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

**8.3 Non-Assertion of Rights.** Partner covenants, on behalf of itself and its successors and assigns, not to assert against SAP SE or its Affiliates or licensors, or their respective resellers, distributors, suppliers, commercial partners and customers, any rights, or any claims of any rights, in any SAP Solution or Consulting Services.

**8.4 SAP Partner Logo; Trademarks**

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

**8.5 Confidential Information.**

**(a) Use of Confidential Information.**

(i) The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in this Section 8.5. Partner will not disclose the Agreement or the pricing to any third party. (ii) Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 8.5. (iii) In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.

**(b) Exceptions.** The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

(i) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, (ii) is generally available to the public without breach of the Agreement by the receiving party, (iii) at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or (iv) the disclosing party agrees in writing is free of confidentiality restrictions.

**(c) Publicity.** Neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Partner agrees that SAP may use Partner's name in customer or partner listings or quarterly calls with its investors or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including reference calls and stories, press testimonials, site visits, SAPPHIRE participation). Partner agrees that SAP may share information on Partner with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Partner employee contact information with SAP SE and its Affiliates.

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

**8.6 Independent Development.** Either party has the right to independently develop software or services that would compete with the other party's software or services without the use of, the other party's Confidential Information. Either party will be free to use for any purpose the Residuals resulting from access to or work with the Disclosing Party's Confidential Information. Neither party will have any obligation to limit or restrict

the assignment of such persons or to pay fees or royalties for any work resulting from the use of Residuals. However, nothing in this subsection will be deemed to grant to either party a license under the other party's copyrights or patents.

## **9. THIRD PARTY CLAIMS**

### **9.1 Claims Brought Against Partner.**

- (a)** SAP will defend Partner against claims brought against Partner and its Affiliates by a third party owner of intellectual property alleging that Partner's use and resell of the Cloud Service in the Territory in accordance with the Documentation and the terms and conditions of the Agreement constitutes a direct infringement or misappropriation of a third party's patent claim, copyright, or trade secret right. SAP will pay Partner damages finally awarded against Partner (or the amount of any settlement SAP enters into) with respect to these claims.
- (b)** SAP's obligations under Section 9.1(a) will not apply if the claim results from (i) Partner's breach of the Agreement, (ii) use of the Cloud Service in combination with any product or service not provided by SAP, or (iii) use of the Cloud Service provided for no fee.
- (c)** In the event a claim is made or likely to be made, SAP may (i) procure for Partner the right to continue using the Cloud Service under the terms of the Agreement, or (ii) replace or modify the Cloud Service to be non-infringing without material decrease in functionality. If these options are not reasonably available, SAP or Partner may terminate Partner's subscription to the affected Cloud Service upon written notice to the other.

### **9.2 Claims Brought Against SAP.** Partner will defend SAP against claims brought against SAP, SAP SE, its Affiliates and subcontractors by any third party related to the items set forth in Sections 9.2(a) through (d). Partner will pay SAP damages finally awarded against SAP, SAP SE, its Affiliates and subcontractors (or the amount of any settlement Partner enters into) with respect to these claims.

- (a)** the Data;
- (b)** Taxes (other than its income and payroll taxes) and related costs paid or payable by SAP attributable to those Taxes;
- (c)** Partner or its Affiliates' breach of Sections 2.3, 3.1, 11, and 12 this GTC; and
- (d)** a claim that (i) Partner Solution infringes, misappropriates or violates any patent, copyright or trademark of any third party, (ii) Partner's combining (or its authorizing others to combine) the Cloud Service with any products or service not provided by SAP, or (iii) Partner's use or resell of the Cloud Service in violation of the Agreement, infringes, misappropriates or violates any patent, copyright or trade secrets of any third party.

### **9.3 Third Party Claim Procedure.**

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

### **9.4 Exclusive Remedy.**

The provisions of Section 9 state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third party Intellectual Property Rights.

## **10. TERM AND TERMINATION**

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

### **10.2 Termination.**

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

(b) SAP may terminate the Agreement with 30-day notice if Partner does not comply with the Program Requirements.

**10.3 Wind-Down.** If this Agreement is terminated other than due to a termination by SAP under Section 10.2 and so long as Partner continues to comply with the terms and conditions of the Agreement, those Cloud Service subscriptions that were still valid at the point in time when the Agreement is terminated will not automatically terminate but will remain in place and SAP will grant Partner a wind-down period of up to: (i) 1 year if the Subscription Period is six months or less; and (ii) 3 years if the Subscription Period is more than six months, each from the expiration date of the Agreement ("Wind-Down Period"). During the Wind-Down period, the Agreement will continue except as set out below:

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

**10.4 Refund and Payments.** For termination by Partner under Sections 4.1(b), 9.1(c) or 10.2(a), Partner will be entitled to:

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

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

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

- (a) Partner will cease marketing, selling or providing access to the Bundled Service or SAP Materials to any third party, including renewing any subscription-based service agreements with existing Customers;
- (b) Partner's right to use the Cloud Service and all Confidential Information, or identify itself as an SAP partner will end;
- (c) Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement; and
- (d) The parties agree that communications to Customers and any publications/press releases regarding such termination will be mutually agreed upon, in writing, prior to distribution.

**10.7 Survival.** Sections 1, 4.2, 5, 6, 8.1- 8.3, 8.4(c), 8.5-8.6, 9, 10.3-10.7, 11, 12, 14.6, 15.1-15.4 and 16-17 will survive the expiration or termination of the Agreement.

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

### **11.1 Export Compliance.**

- (a) SAP Confidential Information is subject to export control laws of various countries, including the laws of the United States and Germany ("Export Regulations"). Partner will not submit SAP Confidential Information to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export SAP Confidential Information to countries, persons or entities if prohibited by export laws. Partner will take all precautions to ensure that any permitted distributor, reseller and Customer complies with the Export Regulations.
- (b) Export Assistance. Partner will support SAP in obtaining any required export and import authorization and/or approval by providing such information as requested by SAP. The availability of the Cloud Service and Cloud Materials may require prior export and/or import authorizations and this process may delay or prevent the delivery of Cloud Service or Cloud Materials, including support services. This section also applies to any Cloud Service or support services that SAP delivers to the Customer directly.
- (c) Required Authorization. It is Partner's sole responsibility to obtain any required authorization and/or approval from the competent authorities to comply with any applicable Export Regulations with respect to the Bundled Service.

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

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

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

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

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

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

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

## **13. ACCESS TO DATA.**

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

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

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

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

## **14. WARRANTIES AND DISCLAIMER**

**14.1 Compliance with Law.** Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

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

**14.2 Good Industry Practices.** SAP warrants that it will provide the Cloud Service:

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

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

- (a)** the re-performance of the deficient Cloud Service, and



- (b) if SAP fails to re-perform, Partner may terminate its subscription for the affected Cloud Service. Any termination must occur within three months of SAP's failure to re-perform.  
The remedies set forth in this Section 14.3 is conditioned upon Partner notifying SAP in writing with a specific description of the Cloud Service's nonconformance within the warranty period and SAP validates the existence of such nonconformance.

#### **14.4 System Availability.**

- (a) SAP warrants to maintain an average monthly system availability for the production system of the Cloud Service as defined in the applicable service level agreement or Supplement ("SLA").
- (b) Partner's sole and exclusive remedy for SAP's breach of the SLA is the issuance of a credit in the amount described in the SLA. Partner will follow SAP's posted credit claim procedure. When the validity of the service credit is confirmed by SAP in writing (email permitted), Partner may apply the credit to a future invoice for the Cloud Service or request a refund for the amount of the credit if no future invoice is due.
- (c) In the event SAP fails to meet the SLA (i) for four consecutive months, or (ii) for five or more months during any twelve months period, or (iii) at a system availability level of least 95% for one calendar month, Partner may terminate its subscriptions for the affected Cloud Service by providing SAP with written notice within thirty days after the failure.

#### **14.5 Warranty Exclusions.** The warranties in Sections 14.2 and 14.4 will not apply if:

- (a) The Cloud Service is not used in accordance with the Agreement or Documentation,
- (b) any non-conformity is caused by Partner or its Customers, or by any product or service not provided by SAP, or
- (c) the Cloud Service was provided for no fee.

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

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

### **15. LIMITATION OF LIABILITY**

#### **15.1 Unlimited Liability.** The limitation of liability set forth in Section 15.2 will not exclude or limit a party's liability for damages resulting from:

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

- 15.2 Liability Cap.** Subject to Sections 15.1 and 15.3, and regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty, claims by third parties arising from any breach of this Agreement), the maximum aggregate liability of either party (or its parent, respective Affiliates or SAP's subcontractors) to the other or any other person or entity for all events (or series of connected events) arising in any twelve month period will not exceed the annual subscription fees paid for the applicable Cloud Service directly causing the damage for that twelve month period. Any "twelve-month period" commences on the Subscription Term start date or any of its yearly anniversaries.
- 15.3 Exclusion of Damages.** Subject to Section 15.1:
- (a)** regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty, claims by third parties arising from any breach of this Agreement), under no circumstances shall either party (or their respective Affiliates or SAP's subcontractors) be liable to the other party or any third party for any loss or damage (whether or not the other party had been advised of the possibility of such loss or damage) in any amount, to the extent that such loss or damage is (i) consequential, indirect, exemplary, special or punitive; or (ii) for any loss of profits, loss of business, loss of business opportunity, loss of goodwill, loss resulting from work stoppage, or loss of revenue or anticipated savings, whether any such loss or damage is direct or indirect, and
  - (b)** SAP will not be liable for any damages caused by any Cloud Service provided for no fee.
- 15.4 Risk Allocation.** The Agreement allocates the risks between SAP and Partner. The fees for the Cloud Service and Consulting Services reflect this allocation of risk and limitations of liability. It is expressly understood and agreed that each provision of this GTC which provides for a limitation of liability, disclaimer or warranties or exclusion of damage is intended by the parties to be severable and independent of any other provision and to be enforced as such.
- 16. MISCELLANEOUS**
- 16.1 Severability.** If any provision of the Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.
- 16.2 Waivers.** A waiver of any breach of the Agreement is not deemed a waiver of any other breach.
- 16.3 Electronic Signature.** Electronic signature that comply with applicable law are deemed original signatures.
- 16.4 Notices.** All notices will be in writing and given when delivered to the address set forth in an Order Form with copy to the legal department. Notices made by SAP relating to the operation or support of the Cloud Service and those under Sections 4.1 and 5.1 may be in the form of an electronic notice to Partner's authorized representative or administrator identified in the Order Form or Service Schedule.
- 16.5 Assignment.** Without SAP's prior written consent, Partner may not assign or transfer the Agreement (or any of its rights or obligations) to any party. A Change of Control of Partner will be deemed an assignment of this Agreement. Partner will provide to SAP written notice at least sixty (60) days prior to any proposed assignment or transfer. Any attempted assignment or transfer of this Agreement in violation of this Section is void. SAP may assign the Agreement to SAP SE or any of its Affiliates.
- 16.6 Subcontracting.** SAP may subcontract parts of the Cloud Service or Consulting Services to third parties. SAP is responsible for breaches of the Agreement caused by its subcontractors.
- 16.7 Relationship of the Parties.** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.
- 16.8 Force Majeure.** Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.
- 16.9 Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Partner in connection with the parties' business relationship related to the subject matter of the Agreement and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter. Each party acknowledges that in entering into the Agreement it has not relied on any representation, discussion, collateral contract or other assurance except those expressly set out in the Agreement. Each party waives all rights and remedies which, but for this section, might otherwise be available to it in respect of any such representation, discussion, collateral contract or other assurance. The Agreement may be modified solely in writing signed by both parties, except as permitted under Section 4.1. This

Agreement will prevail over terms and conditions of any Partner-issued purchase order, which will have no force and effect, even if SAP accepts or does not otherwise reject the purchase order.

- 16.10 Non-Exclusivity.** This is a non-exclusive relationship. Each party may have similar agreements with others.
- 16.11 Governing Law.** This Agreement will be construed, and the legal relations between the parties hereto will be determined, in accordance with the laws of the Commonwealth of Pennsylvania, without reference to its conflicts of law principles. All disputes will be subject to the exclusive jurisdiction of the courts located in Philadelphia, Pennsylvania. In the event of any conflicts between foreign law, rules, and regulations, and Commonwealth of Pennsylvania law, rules, and regulations, Commonwealth of Pennsylvania law, rules, and regulations will prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement. Either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).
- 16.12 Records.** Partner will maintain accurate and transparent books, records and accounts in accordance with record retention policies sufficient to accurately account for transactions and to demonstrate compliance with applicable laws and regulations. Financial books, records, and statements shall be kept in reasonable detail, accuracy and fairly reflect the disposition of assets and transactions. The contents of the books and records and related supporting documentation should be sufficient such that a third party could assess the business purpose of the transaction, including (as applicable) the identification of any third parties involved. Partner must accurately document all transactions related to this Agreement and prevent side agreements contradicting the terms of the Agreement and the commitments made by Partner towards SAP, whether oral or written. Where Partner becomes aware of any such side commitments, Partner must promptly notify SAP of such commitments in writing.

## **17. EXCEPTIONAL DISCOUNT.**

- 17.1** Partner understands that the pricing provided in the Order Form or Service Schedule may deviate from SAP standard partner discount and pricing and may therefore equivalent to an Exceptional Discount on SAP's standard pricing ("Exceptional Discount"). SAP's decision to offer an Exceptional Discount is based on the truth, accuracy and completeness of the information and documents provided by Partner such as Partner's solution, its business and commercial models (the "Exceptional Discount Information"). Partner confirms that it has provided accurate and truthful Exceptional Discount Information and documents to SAP.
- 17.2** SAP may audit the Exceptional Discount Information in accordance with the terms of Section 6 of the GTCs. Upon SAP's request, Partner will promptly provide SAP or the expert with all relevant documentation to enable SAP to verify that the Exceptional Discount Information was truthful and accurate. Such information may include but shall not be limited to the solution architecture and invoices, contracts, and purchase orders by and between Partner and Customer. The documentation shall enable SAP or the expert to determine the quantity of SAP licenses in the Bundled Solution licensed to the Customer.
- 17.3** In its contracts with Intermediary of the Bundled Service, Partner must require any Intermediary to adhere to the same obligations relevant to Exceptional Discounts as outlined in Sections 17.1 and 17.2 above. SAP must be named a third-party beneficiary to such terms in a contract between Partner and any Intermediaries with the right to enforce such terms itself and independently from Partner against an Intermediary.
- 17.4** In any case where Partner is unable to provide the requested documentation because of confidentiality obligations owed to a Customer or other applicable laws, including but not limited to relevant competition laws, whether arising by written contract or applicable law, Partner will promptly provide SAP with written evidence not subject to those obligations. In addition, Partner will promptly and in writing seek the Customer's consent to waive confidentiality restrictions to permit SAP to conduct its audit as intended. Should the Customer refuse to grant that consent, Partner will i) provide SAP with a copy of the waiver request and written proof of that refusal, and ii) identify appropriate contacts at the Customer with whom SAP may elect to discuss the refusal

## Glossary

- 1.1** **"Affiliate"** of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
- 1.2** **"Agreement"** means an Order Form, documents incorporated into an Order Form and Service Schedule(s).
- 1.3** **"APIs"** means SAP application programming interface and accompanying or related Documentation, source code, tools, executable applications, libraries, subroutines, widgets and other materials made available by SAP or through SAP tools or SAP Software Development Kit (and all derivative works or modifications thereof) to Partner that allow Partner to integrate the Partner Solution with the Cloud Service, including any access code, authentication keys or similar mechanisms to enable access of the APIs.
- 1.4** **"Authorized User"** means any individual to whom Partner or its Customer, as applicable, grant access authorization to use the Cloud Service that is an employee, agent, contractor, or representative of
- (a) Partner
  - (b) Customer
  - (c) Partner or Customer's Affiliates, and/or
  - (d) Customer's or Customer's Affiliates' Business Partners.
- 1.5** **"Bundled Service"** means the combined offering of the Cloud Service and the Partner Solution. Cloud Service cannot be used independent of the Partner Solution.
- 1.6** **"Business Partner"** means a legal entity that requires use of a Cloud Service in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer and its Affiliates.
- 1.7** **"Change of Control"** of a party means a transaction or series of transactions (i) where 50% or more of the entity's shares or voting rights of a party ("Control") is acquired by persons or entities other than those who Control such party on the Effective Date of the first Order Form signed under the Agreement, or (ii) resulting in the sale of all or substantially all of a party's assets or all or substantially all of a party's assets.
- 1.8** **"Cloud Service"** means any distinct, subscription-based, hosted, supported and operated on-demand solution provided by SAP under an Order Form and Service Schedule, including the Tools provided by SAP to Partner in connection with this Agreement.
- 1.9** **"Confidential Information"** means:
- (a) with respect to Partner: (i) the Partner Solution, (ii) Partner marketing and business requirements, (iii) Partner implementation plans, and/or (iv) Partner financial information, and
  - (b) with respect to SAP: (i) the Cloud Service, Documentation, Cloud Materials, and the analysis referenced under Section 4.2, and (ii) information regarding SAP research and development, product offerings, pricing and availability.
  - (c) Confidential Information of either SAP or Partner also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure; or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.
- 1.10** **"Consulting Services"** means professional services, such as implementation, configuration, custom development and training, performed by SAP's employees or subcontractors as described in any Order Form and which are governed by the Supplement for Consulting Services or similar agreement.
- 1.11** **"Customer"** means Partner's customer that is licensing or using the Partner Solution only for its own internal business operations that has signed an End User Agreement. A Customer will not include any Affiliates of Partner.
- 1.12** **"Data"** means any content, materials, data and information that Authorized Users entered into the production system of a Cloud Service or that Customer or Partner derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Data and its derivatives will not include SAP's Confidential Information.
- 1.13** **"Documentation"** means SAP's then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud Service which is made available to Partner with the Cloud Service.
- 1.14** **"End User Agreement"** means a written agreement entered into between Partner, or its resellers or distributors, if applicable, and any Customer pursuant to which Customer purchases subscriptions to the Bundled Service.
- 1.15** **"Intellectual Property Rights"** means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names

and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

- 1.16 "Minimum Terms"** means all of the minimum terms required to be included in an End User Agreement as set forth in Section 3.1 of this GTC.
- 1.17 "OEM Cloud Support Schedule"** means the SAP OEM Cloud Support Schedule that are incorporated in an Order Form. To the extent there is any inconsistency between the OEM Cloud Support Schedule and the support terms described in a Supplement, the support terms in the Supplement will prevail.
- 1.18 "Order Form"** means the OEM Order Form for Cloud Services entered into between Partner and SAP to form the Agreement and which references the GTC.
- 1.19 "Partner Platform Application"** means an application or a set of related functionality deployed on a Platform Cloud Service created by Partner using the Tools to run on or with the Platform Cloud Service for access and use by Customers.
- 1.20 "Partner Solution"** means Partner's subscription-based, hosted, supported, on-demand services specified in the Order Form that is provided by Partner to Customers. The Partner Platform Application will be considered a Partner Solution.
- 1.21 "Platform Applications"** means, notwithstanding anything to the contrary stated in the Supplement, an application or a set of related functionalities deployed on a Platform Cloud Service developed by Partner using the Tools, to run on or with the Platform Cloud Service for access or use by Customers. A Platform Application needs to be compatible with an SAP Material provided under the Agreement.
- 1.22 "Platform Cloud Service"** means those Cloud Service on which Platform Applications can be built and deployed, as identified in the Services Description Guide referenced in the Supplement.
- 1.23 "Program Requirements"** means that the Partner has to fulfill certain program entry requirements as well as ongoing program requirements, including, without limitation payment of the Program Fee(s) and meeting certain compliance requirements, as set out in detail in the PartnerEdge Program Guide and associated program documents.
- 1.24 "Representatives"** means:  
in case of Partner (i) employees, consultants and (sub)-contractors of Partner or any of its Affiliates and (ii) attorneys, accountants or other professional business advisors of Partner or any of its Affiliates; and  
in case of SAP (i) employees, consultants and (sub)-contractors of any member of the SAP and any of its Affiliates and (ii) attorneys, accountants or other professional business advisors of any member of the SAP and its Affiliates,  
who are in both cases actively and directly involved in the performance of obligations under any part of this Agreement or who otherwise need to know the Confidential Information for the purpose of party's performance under any part of this Agreement and are put under obligations of confidentiality substantially similar to those set forth in Section 8.5 of this GTC (Confidentiality).
- 1.25 "Residuals"** means information in non-tangible form, which may be retained inadvertently in the unaided memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained herein, so long as such persons have not studied the information for the purpose of replicating the same from memory.
- 1.26 "SAP"** means the SAP entity identified in the Order Form that is a party to this Agreement.
- 1.27 "SAP Partner Code of Conduct"** means SAP and its Affiliates' global policy document that provides a set of informative guidelines to enable partners to comply with good business practices which is published on SAP's partner-dedicated website.
- 1.28 "SAP Support"** means the SAP's then-current SAP support offering set forth in the SAP support schedule that is incorporated in the Order Form.
- 1.29 "SAP Materials"** means any materials, software and APIs provided or developed by SAP (independently or with Partner's cooperation) prior to or in the course of performance under the Agreement, including in the delivery of any support to Partner or its Customers and any information, materials or feedback provided by Partner to SAP relating to the Cloud Service or Documentation. SAP Materials do not include any Customer or Partner Data, Partner Confidential Information, or Cloud Service
- 1.30 "SAP Policies"** means the operational guidelines and policies applied by SAP to provide and support the Cloud Service as incorporated in an Order Form.
- 1.31 "SAP Solution"** means the SAP Materials, Cloud Service, and/or SAP Support.

- 1.32 "Service Schedule"** means a written service schedule provide by SAP that references the Agreement for the applicable Cloud Service ordered by Partner.
- 1.33 "Subscription Term"** means the term of a Cloud Service subscription identified in the applicable Order Form or Service Schedule, including all renewals.
- 1.34 "Supplement"** means the supplemental terms and conditions that apply to the Cloud Service and that are incorporated in an Order Form. As applied to Partner's authorized use of the Cloud Service, references to "Customer" in the Supplement will be replaced with "Partner".
- 1.35 "Territory"** means except as otherwise specified in the applicable Order Form, all the countries in the world (excluding Mainland China), subject to Section 11 of this Agreement (Import and Export Control).
- 1.36 "Tools"** is as defined in the Supplement.
- 1.37 "Trademarks"** means the trademarks, service marks, trade names, service names, proprietary words, symbols and other logos of SAP, SAP SE, and their respective Affiliates or licensors.
- 1.38 "Usage Metric"** means the standard of measurement for determining the permitted use and calculating the fees due for a Cloud Service as set forth in an Order Form or Service Schedule.