



SAP Cloud BPO General Terms and Conditions (“Cloud BPO GTCs”)

1. DEFINITIONS

- 1.1 **“Affiliate”** means any legal entity that is affiliated with another company through directly or indirectly holding an equity stake and voting rights of more than 50%.
- 1.2 **“Allocation”** means specifying each Price List Item of the subscribed SAP Cloud Service under a single Order Form that Provider allocates to a single Customer. For the avoidance of doubt, once allocated to a specific Customer the provision of the subscribed SAP Cloud Service for each Price List Item of the Order Form is limited to this specific Customer. The Allocation cannot be changed during the Term of that Order Form. For the avoidance of doubt, all subscribed SAP Cloud Service is allocated to the Customer and none to the Provider, except for the Initial Order Form. Authorized Users required by the Provider to operate the subscribed Cloud Service for the Customer are part of the Allocation to Customer, whereas the usage by Provider is on behalf of the Customer, except for the Initial Order Form.
- 1.3 **“Annual Contract Value”** or **“ACV”** means the net subscription fee for one (1) year as defined in the Order Form for a specific Customer.
- 1.4 **“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 Provider that allow Provider to integrate the Provider Service with the Cloud Service, including any access code, authentication keys or similar mechanisms to enable access of the APIs.
- 1.5 **“Authorized User”** means a person to whom Provider or its Customer, as applicable, grant access authorization to use the SAP Cloud Service that is an employee, agent, contractor, or representative of
- (a) Provider or Provider’s Affiliates using the Cloud Service on behalf of a Customer for provision of BPO Services as permitted in this Agreement.
 - (b) Customer or Customer’s Affiliates,
 - (c) Customer’s or Customer’s Affiliates’ Business Partners.
- 1.6 **“BPO Services”** means Provider’s business process outsourcing services described in the applicable Solution Exhibit, whereby Provider assumes responsibility for processing Customers’ business processes.
- 1.7 **“Business Partner”** means a legal entity that requires use of a SAP Cloud Service in connection with Customer’s and its Affiliates’ internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer.
- 1.8 **“Control”** means the power to direct or cause the direction of the affairs of a legal entity by means of direct or indirect ownership of more than fifty per cent (50%) of the equity stake and voting rights.
- 1.9 **“Change of Control”** means that a Party is no longer under Control by the same persons or entities that had Control on the Effective Date of this Agreement.
- 1.10 **“Cloud BPO Support”** means the then-current technical support services SAP provides to Provider for the SAP Cloud Services as described in the SAP BPO Cloud Support-Schedule.
- 1.11 **“Cloud Materials”** means any materials provided or developed by SAP (independently or with Provider’s cooperation) before or in the course of performance under the Agreement, including the materials produced in the delivery of any support or Consulting Services to Provider or its Customers. Cloud Materials do not include any Customer Data, Provider Confidential Information, or the SAP Cloud Service.
- 1.12 **“Cloud Service”** or **“SAP Cloud Service”** means any distinct on-demand solution provided and supported by SAP under an Order Form.
- 1.13 **“Confidential Information”** means all information which SAP or Provider protect against unrestricted disclosure to others or that are deemed confidential according to the circumstances of their disclosure or their content, including the Agreement. In any case, the following information is considered to be Confidential Information of Provider: the Customer Data, Customer marketing and business requirements, Provider financial information; and Confidential Information of SAP: the Cloud Service, Documentation, Cloud Materials and analyses under Section 4.5, and information regarding SAP research and development, product offerings, pricing and availability:
- 1.14 **“Contract Year”** means any twelve months period following (i) the effective date of this PMC BPO Cloud Agreement, or an Order Form, whatever relates to, in case of the first Contract Year or (ii) any anniversary of such effective date in case of any subsequent Contract Year.
- 1.15 **“Consulting Services”** means related professional services, such as implementation, configuration, custom development and training, agreed separately in any Order Form governed by separate Terms applicable for such services.
- 1.16 **“Customer”** means Provider’s or a Provider Affiliate’s customer that is licensing or using the BPO Services only for its own internal business purposes that has signed a Customer Agreement. A Customer must not be the Provider or its Affiliates.

- 1.17 **“Customer Agreement”** means a written agreement entered between Provider and any Customer pursuant to which a Customer orders BPO Services from Provider.
- 1.18 **“Data”** means any content, materials, data and information that Authorized Users entered into the production system of a SAP Cloud Service or that Customer or Provider derives from its use of and stores in the SAP Cloud Service (e.g. Customer-specific reports). Data and its derivatives will not include SAP's Confidential Information.
- 1.19 **“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 Provider with the Cloud Service.
- 1.20 **“DPA”** means SAP's then-current Data Processing Agreement for SAP Cloud Service incorporated in an Order Form.
- 1.21 **“Initial Order Form”** means the first and mandatory Order Form that is signed as outlined in the Solution Exhibit. The Initial Order Form is allocated to the Provider and not to a Customer.
- 1.22 **“Intellectual Property Rights”** means without limitation any patents and other rights to inventions, copyrights, trademarks, trade names, and service marks and any other intangible property rights and all related rights of use or commercialization.
- 1.23 **“Logo”** means the SAP Partner logo as detailed in the SAP Partner Logo Usage Guidelines.
- 1.24 **“Order Form”** means any order form that references this Agreement and mutually executed by SAP and Provider. The Order Form shall include information regarding the Provider's Customer, the specified SAP Cloud Services, the Territory, the Support terms, the pricing for the SAP Cloud Services and price related terms, and other terms and conditions for the provision or subscription of the SAP Cloud Service. The then current Order Form template will be made available by SAP either directly or via a Weblink.
- 1.25 **“Order Form Currency”** means the currency in which all calculations shall be made on an Initial Order Form or Order Form unless stipulated otherwise herein. The Order Form Currency is determined as the currency being applied in SAP Cloud pricing applicable to the country of residence of the Customer as defined in the Order Form (if not otherwise agreed therein) and may differ from the Payment Currency.
- 1.26 **“Order Form Term”** means the duration of an Order Form.
- 1.27 **"Ordering Information"** means (i) a reference to this Agreement; (ii) the Customer's name; (iii) the SAP Cloud Service for which Provider is ordering subscriptions for a specific Customer and the total number of Authorized Users (or other usage metric stated in the Order Form) for each product; (iv) the subscription fees due for the SAP Cloud Services and the length of the subscription term; the (v) Provider billing contact information and such other information as set forth in the form of the Order Form.
- 1.28 **“Payment Currency”** is the currency in which SAP will invoice Provider as defined in the Order Form.
- 1.29 **“Platform Cloud Service”** has the meaning defined in the Supplemental Terms.
- 1.30 **“Price List Item”** means those SAP Cloud Services that are identified in the Solution Exhibit of this Agreement. The Parties may include additional Price List Items by written agreement.
- 1.31 **“Provider Platform Application”** means an application or a set of related functionality deployed on a Platform Cloud Service, created by Provider using the Tools to run on or with the Platform Cloud Service for access by its Customers.
- 1.32 **“Provider Service”** shall mean a Provider's hosted online services (if any) as described in the Solution Exhibit which is provided by Provider to Customers located in the Territory through remote access via the Internet as part of the BPO Service. A Provider Platform Application shall be considered a Provider Service.
- 1.33 **“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.
- 1.34 **“SAP Policies”** means the operational guidelines and policies applied by SAP to provide and support the SAP Cloud Service as incorporated in an Order Form.
- 1.35 **“Territory”** means the countries as defined in the Solution Exhibit, subject to Section 11 of these SAP Cloud BPO GTCs (Import and Export Control).
- 1.36 **“Tools”** has the meaning as defined in the Supplemental Terms.
- 1.37 **"Trademarks"** means the trademarks, trade names, service marks, proprietary words, symbols and other logos of SAP, SAP SE and its Affiliates or licensors.
- 1.38 **“Usage Metric”** means the standard of measurement for determining the permitted use and calculating the fees due for a SAP Cloud Service as set forth in an Order Form.

2. USAGE RIGHTS AND RESTRICTIONS

2.1. GRANT OF RIGHTS

(a) Provider Use Rights for Cloud Service

SAP grants to Provider a nonexclusive, nontransferable right to use the SAP Cloud Service (including its implementation and configuration), Cloud Materials and Documentation in the Territory solely to: (i) develop an integration between the SAP Cloud Service and Provider Service; (ii) demonstrate the BPO Services to potential Customers subject to the terms & conditions described in the Initial Order Form; and (iii) provide support of the combined SAP Cloud Service and Provider Services to Customers. Permitted uses and restrictions of the SAP Cloud Service also apply to Cloud Materials and Documentation.

(b) Cloud Service Subscription

SAP grants to Provider, a non-exclusive, non-transferable, right in the Territory to use the SAP Cloud Service solely for Customers and their Affiliates' internal business operations in conjunction with the provision of BPO Services. Provider will provide the SAP Cloud Service to Customers only in accordance with this Agreement, including, without limitation, the restrictions listed in Section 2.2, the Minimum Terms in Section 3.1 and the Order Form.

(c) License to SAP

Provider grants SAP a worldwide, royalty free, non-exclusive license to (i) use, copy, reproduce, transmit, adapt, modify, translate, publish, publicly perform, publicly display, distribute and access the Provider Platform Application and associated Data; and (ii) access, use, copy, reproduce, transmit, display, and distribute Data and Provider provided marks logos, in each case, solely for purposes of exercising SAP's rights and obligations under the Agreement.

(d) Provider Affiliates

SAP grants to Provider a non-exclusive, non-transferable right to authorize Provider's Affiliates to market and resell subscriptions to the Cloud Service to Customers as part of the BPO Services. Provider will ensure that any Affiliates it authorizes to resell subscriptions to the Cloud Service does so only in compliance with, and pursuant to written terms no less protective of SAP than the terms of this Agreement. Provider shall be liable to SAP for any breach of the terms of such agreement with the Provider Affiliates to the same extent as Provider would be liable to SAP under this Agreement for such a breach by Provider. No entities other than Provider Affiliates may be used for marketing or reselling the BPO Services without SAP's express written consent.

2.2. BPO Services

Provider may use the SAP Cloud Service only for provision of the BPO Services as follows.

- (a) **Restricted License:** The SAP Cloud Service may only be used (i) to process data for the purpose of providing the BPO Services within the contractually agreed scope and (ii) to access data created by the Provider Service or data processed by the Provider Service that is necessary to enable the functionalities of the Provider Service (referred to as a "Restricted License").
- (b) **Database Restriction:** Other than communication (including data transfers) via application level APIs between a Cloud Service and software applications running on any third party runtime database acquired from SAP or its Affiliates, or any of their respective resellers or distributors, the Cloud Service will not access, directly or indirectly, in any manner whatsoever, any third party runtime database(s).

2.3 Authorized Users

Provider may permit Authorized Users to use the SAP Cloud Service solely for Customer's and its Affiliates' internal business operations in conjunction with the (prerequisites and limitations defined in the) BPO Services. Access credentials for the Cloud Service may not be shared or used by more than one individual at a time, but may be transferred from one individual to another if the original user is no longer permitted to use the SAP Cloud Service.

2.4 Acceptable Use Policy

When using the Cloud Service, Provider will not: (a) copy, translate, disassemble, decompile, reverse-engineer, or otherwise modify, in full or in part, or make any derivative works of the Cloud Service, the Documentation or Cloud Materials (except to the extent permitted by mandatory law); however the Documentation may be copied to the extent necessary for internal purposes; and (b) use the Cloud Service in breach of applicable law, in particular Customer will not transmit any content or data that is unlawful or infringes any intellectual property rights of third parties, (c) circumvent or endanger the operation or security of the Cloud Service, (d) access the Cloud Service for the purpose of building a competitive product or service or copying its features or user interface.

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

SAP and Provider agree to collaborate on a non-exclusive basis as detailed in this Agreement, to enable the provision of BPO Services by Provider.

2.5 Suspension of Cloud Service

SAP may temporarily suspend Provider's or Customer's access (in particular user names and passwords) to the Cloud Service to prevent damages, if it is sufficiently probable that the continued use of the Cloud Service in breach of contract by Provider or its Customer, the Authorized Users, or a third party using Provider's or Customer's access data may result in harm to the Cloud Service, other SAP customers, or the rights of third parties in such a way that immediate action is required to avoid damages. SAP will notify Provider of the suspension without undue delay. If circumstances allow, Provider shall be informed in advance in writing or by email. SAP will limit the suspension in time and scope as reasonably possible under the circumstances.

2.6 Web Services and Mobile Access to Cloud Service

The SAP Cloud Service may include integrations with web services made available by SAP-Partners or third parties on external websites that are accessed through the SAP Cloud Service and subject to terms and conditions with those third parties. SAP shall provide only technical access to the content of such integrated websites. The content of such websites is the sole responsibility of these third parties.

Authorized Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Google Play or Apple app store. The use of mobile applications as such is subject to the terms agreed upon download/access to the mobile application and is not subject to the of the Agreement.

3. GENERAL OBLIGATIONS OF AND LIMITATIONS TO PARTNER

- 3.1. Provider offers its BPO Services in its own name, at its own risk, and for its own account, to Customer. Provider conducts its own business with Customer and is not acting as an agent of SAP or in any other way representing SAP. Provider shall, in correspondence and otherwise in connection with the provision of services always clearly indicate that SAP is the copyright owner, author, and developer of the SAP Software.

Provider will directly enter into a Customer Agreement with terms that are not materially less protective of SAP than the Agreement including without limitation the terms required under this Section 2 and Section 3 of this Cloud BPO GTCs, and the Supplemental Terms (collectively, "Minimum Terms"). The Customer Agreement will grant SAP and its Affiliates and subcontractors a non-exclusive right to process Data solely to provide the Cloud Service. SAP shall be named as a third-party beneficiary to each Customer Agreement, so that SAP shall be entitled to claim damages or seek reimbursement of expenses in case the Customer violates any of the license terms for the SAP Cloud Service. Provider will not make any representations or warranties regarding the functionality or performance of the SAP Cloud Service that go beyond those of this Agreement. If requested by SAP, Provider will represent and warrant to SAP that Provider has entered into such a Customer Agreement as set forth in Section 3.1 with Customer, except as expressly agreed otherwise between SAP and Provider.

Pricing and billing relating to the BPO Services shall be solely between Customers and Provider. For clarity, pricing for the SAP Cloud Service shall not be itemized separately from the BPO Services.

Provider has to maintain sufficient facilities and adequate capital, resources, and personnel to market and support the BPO Services and to perform its obligations under this Agreement.

3.2. PLATFORM CLOUD SERVICE

- (a) Other than the Provider Platform Application, no other software may be uploaded into Platform Cloud Service. SAP provides no support for Provider Platform Applications under this Agreement. Provider is responsible for maintaining compatibility between the Provider Platform Application and the Platform Cloud Service upon upgrades of either component.
- (b) Provider 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 Provider Platform Application to Customers. Use of the Platform Cloud Service is limited to communications and data exchange between the Provider Platform Application and the Platform Cloud Service via officially supported Platform Cloud Service interfaces. Notwithstanding anything in the Supplemental Terms to the contrary, Provider will not grant any rights for Customers to create Platform Applications for use with the Platform Cloud Service.

4. SAP RESPONSIBILITIES AND OBLIGATIONS

- 4.1 SAP provides the Cloud Service agreed in the Order Form in accordance with Section 2 SAP provides support as agreed in the Order Form. The quality and functionality of the agreed performance that SAP is obliged to provide is conclusively agreed in the Order Form and the documents referred to therein. SAP is not obliged to perform additional services or provide additional service features. If Provider is provided with a free-of-charge Cloud Service, SAP shall provide no support for this Cloud Service and has no obligation to provide any particular service level. SAP may cease providing access to such free-of-charge Service at any time. This Section 4.1 supersedes any conflicting term in these Cloud BPO GTC.
- 4.2 Unless otherwise stipulated in the Supplement, SAP will maintain an average monthly system availability for the production system of the Cloud Service as defined in the Service Level Agreement referenced in the Order Form ("SLA"). In the event of SAP's breach of the SLA Provider may claim a service credit as detailed in the SLA in the form of a contractual penalty ("Vertragsstrafe", Article 160 et seqq. Swiss Code of Obligations). Provider will follow SAP's credit claim procedure. When the validity of the service credit is confirmed by SAP in writing or by email, Provider 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. Contractual penalties paid shall be offset against any Provider claims for damages. In the event SAP fails to meet the SLA (i) for four consecutive calendar months, or (ii) for five or more calendar months during any twelve months period, or (iii) at a system availability level of least 95% for one calendar month, Provider may terminate its subscriptions for the affected Cloud Service by providing SAP with written notice within thirty days after the failure. Termination will become effective at the end of the calendar month in which SAP has received the termination notice.
- 4.3 SAP will implement and maintain appropriate technical and organizational measures to protect the personal data processed by SAP as part of the Cloud Service as described in the Data Processing Agreement for SAP Cloud Services incorporated into the Order Form in compliance with applicable data protection law.
- 4.4 The features of the Cloud Service and the SAP Policies may be enhanced and may be adapted by SAP to reflect technical advances and to allow for the Cloud Service's continuing compliance with applicable mandatory law ("Continuous Modification"). SAP will provide information about Continuous Modifications within a reasonable period of notice (in general 3 months before the change is scheduled to take effect), in particular by email, on the Support Portal, through Release Notes, or within the Cloud Service.
In the event that a change may negatively affect the justified interests of Provider so that Provider can no longer reasonably be expected to adhere to the agreements in the Order Form, Provider can terminate the affected Cloud Service in writing with a notice period of one month before the announced change is scheduled to take effect. In case Provider does not terminate, the Continuous Modification will become effective on the date the announced change is scheduled to take effect. SAP will draw attention to this in the change notice.
- 4.5 SAP, SAP SE or SAP Affiliates may create analyses utilizing, in part, Provider and Customer Data and information derived from Provider's and Customer's use of the Cloud Service and Consulting Services. Analyses will anonymize and aggregate information, and will be treated as Cloud Materials. Examples of how analyses may be used include: optimizing resources and support; research and development; automated processes that enable continuous improvement, performance optimization and development of new SAP products and services; verification of Security

and data integrity; internal demand planning; and data products such as industry trends and developments, indices and anonymous benchmarking.

5. PRICES, FEES, PAYMENT, ORDERS AND TAXES

5.1 PRICES, FEES AND PAYMENT

Pricing for the SAP Cloud Service for Provider is set forth in the relevant Order Form in the Order Form Currency. All agreed fees are subject to statutory value-added tax.

Provider will pay fees as stated in the Order Form. Provider will pay to SAP all fees due within thirty (30) days of date of invoice in the Payment Currency. SAP will invoice Provider quarterly in arrears (unless determined otherwise in an Order Form and/or unless Provider is notified otherwise by SAP). Any fees not paid when due shall accrue interest at the applicable statutory interest rate. If Provider is still in default of payment after a reasonable extension period set by SAP has passed, SAP can deny full or partial access to the Cloud Service temporarily until payment has been received. Provider may offset only claims or claim rights of retention that are uncontested or have been finally determined by the court.

5.2 FEE INCREASES

The recurring fee agreed in the Order Form applies for the Initial Subscription Term agreed therein. The fee applicable for a Renewal Term corresponds to the fees for the preceding Initial or Renewal Term, unless SAP increases the fees as follows:

(a) Subject as is set out below, SAP may at its discretion adjust the recurring fees with effect from the start of a renewal term by giving two months' written notice of the fee adjustment to Customer:

(b) The change applied to the fees must not be greater than the change in the index under letter (c) below ("Discretionary Applicable Change"). For the first fee adjustment under the contract, the Discretionary Applicable Change is the change from the published index as it stood when the contract was concluded to the index as it had most recently been published when the fee adjustment notice was given. If the fee has already been adjusted in the past, the Discretionary Applicable Change is the change from the index that had been most recently published when the previous fee adjustment notice was given to the index that had most recently been published when the new fee adjustment notice is given.

(c) The index used to determine the discretionary Applicable Change is the index of monthly nominal salaries of fulltime employees in Switzerland in the information technology services sector ("Schweizerischer Nominallohnindex des Bundesamtes für Statistik der Löhne für den Wirtschaftszweig "Erbringung von Dienstleistungen der Informationstechnologie" (NOGA Lohnindex Gruppe JC 62-63")), currently published by the Swiss Federal Statistics Office (Bundesamt für Statistik, "BfS"). If that index is discontinued, the applicable index will be the index published by the BfS that most closely reflects changes in the average salaries in that sector.

(d) The fee change is deemed to be agreed by the parties if the Cloud Service is renewed automatically for the renewal period unless Provider, by giving written notice at least one month prior to the expiration date of the preceding contractual term, terminates the Order Form with effect from the expiration of the relevant contractual term (extraordinary termination right). SAP will draw attention to this in the fee adjustment notice.

SAP may increase fees if Provider elects to reduce the SAP Cloud Service, Usage Metrics or volume for any Order Form Renewal Term. Except for fee increases applied under this Section 5.2, SAP Cloud Service fees for Order Form Renewal Terms will be equal to the fees for the immediately preceding Order Form Term for the same SAP Cloud Service, Usage Metrics and volume.

5.3 ORDERS, ORDER FORM TERMS, ORDER FORM TERMINATION

(a) Prior to executing a Customer Agreement, Provider shall execute with SAP an Order Form for each Customer and shall submit the Order Form to SAP. The Order Form must include all Ordering Information. Only complete Order Forms will be processed by SAP.

(b) SAP reserves the right to reject an Order Form in its sole and reasonable discretion, if Provider is in violation of this Agreement, or if it is sufficiently probable that SAP's IP-rights may not be respected by the Provider or Customer.

(c) During the Subscription Term of the Order Form, Customer may agree on an increase of units of an agreed Usage Metric by executing an addendum to the relevant Order Form ("Extension Agreement"). The term of each Extension Agreement shall be co-terminous with the then-current term of the Order Form irrespective of the effective date of Extension Agreement and all fees shall be prorated accordingly. Upon renewal of the Order Form, the renewal term for all increases in Usage Metric added to the Order Form prior to renewal shall be the same as specified in the Order Form.

(d) A minimum Order Form Term of three (3) years is mandatory, unless agreed otherwise by Provider and SAP. Each Order Form initially runs for the Initial Subscription Term defined therein ("Initial Subscription Term"). At the end of the Initial Subscription Term, any renewals and extensions for a specific Order Form will automatically renew for terms equal in length to the immediately preceding Order Form Term (if such term is thirty-six (36) months or less) or for one (1) year (if such term is longer than thirty-six (36) months) ("**Order Form Renewal Term**"). Ordinary termination of the Order Form in full or partially is excluded during the Initial Subscription Term or during any Renewal Term. Provider may terminate any Order Form by written notice at least one month in advance of the expiration of the Initial Subscription Term or the current Renewal Term. SAP may terminate any Order Form by written notice at least six months prior to the expiration of the Initial Subscription Term or current Renewal Term. Extraordinary termination rights and the right to termination for just cause remain unaffected. Notice of termination must be given in written form. In the event of termination by Provider, Provider shall be entitled to a pro-rata refund of prepaid fees for the period of time of termination to the end of the original term for the relevant Cloud Service.

SAP reserves the right to terminate for just cause where Provider is repeatedly or seriously in breach of major contractual obligations (in particular in Sections 2 Usage Rights and Restrictions, 13 Data Protection, 8.5 Confidentiality)

At the end of the Order Form Term (i) Provider's access to the Cloud Service shall cease, (ii) Provider's right to use the Cloud Service and all SAP Confidential Information will end and (iii) Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement. Termination of individual Order Forms shall leave other Order Forms and the Agreement unaffected.

5.4 TAXES

Provider and SAP will comply with all applicable tax laws and regulations. All amounts payable by Provider to Licensor do not include, service, use, property, excise, service, customs duties, value added or similar transaction taxes ("Tax(es)") now or hereafter levied. Provider will bear such taxes with the exception of income or corporation taxes attributable to SAP. If Provider is required to withhold income or corporation tax or a similar tax from any payment to SAP under this Agreement, Provider will be entitled to withhold or deduct such tax from the gross amount to be paid. However, Provider will reduce any such withholding tax payable to the lowest possible rate subject to compliance with all applicable laws and double taxation treaties. Provider 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 Provider fail to furnish SAP such receipt within a reasonable period, Provider will be liable to pay SAP the amount so deducted upon demand.

6 VERIFICATION OF USE, AUDIT

- 6.1 During the term of this Agreement and for three (3) years thereafter, Provider will monitor Provider's and Customer's use and subscription of the Cloud Service and report any use in excess of the contractual use, especially the Usage Metrics and volume in writing to SAP. Provider will sign an Extension Agreement and pay applicable fees for any usage in excess of the Usage Metrics based on applicable pricing in the Order Form. Fees accrue from the date the excess use began. SAP may audit and monitor use of the Cloud Service to verify compliance with Usage Metrics, volume and the Agreement.
- 6.2 SAP shall have the right to audit at SAP's expense the activities and records of the Provider and any third party acting on its behalf relating to Provider's activities and compliance under the Agreement. In particular, in the event SAP has reason to believe that a breach of Provider's obligations under this agreement has occurred or may occur, SAP shall have the right perform an audit of the activities and records of the Provider in order to satisfy itself that no such breach has occurred. Upon the Provider's written request, SAP shall select an independent third party to conduct such audit. The Provider shall fully cooperate in any audit conducted by or on behalf of SAP.

7 SUPPORT

Support for the SAP Cloud Service will be provided by SAP to Provider as described in the SAP Cloud BPO Support Schedule and the Agreement. Provider shall provide support to Customers for the SAP Cloud Service.

8 INTELLECTUAL PROPERTY AND CONFIDENTIALITY

8.1 SAP OWNERSHIP

SAP, SAP SE and its Affiliates or their licensors own all intellectual property rights in and related to the SAP Cloud Service, Cloud Materials, Documentation, Consulting Services, design contributions, related knowledge or processes, and any derivative works of them conceived or created by SAP, SAP SE and its Affiliates (collectively, "SAP IP"). All rights to the SAP IP not expressly granted to Provider are reserved by SAP, SAP SE and its Affiliates or their respective licensors including without limitation if those were created to address a requirement of or in collaboration with Provider.

8.2 PROVIDER OWNERSHIP

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

8.3 NON-ASSERTION OF RIGHTS

The right to create and use Provider Platform Applications and an integration (see Section 2.1 a)) under this Agreement is conditional on Provider having given a covenant not to assert against SAP or SAP Affiliates any Intellectual Property Right in any such Provider Platform Applications and an integration. Notably, SAP is entitled at any time to develop, use, or market Platform Applications and integrations with functions that are wholly or in any part identical with those developed by or on behalf of Provider, but SAP is not entitled to copy Provider's software code.

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.

8.4 TRADEMARKS; LOGOS

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

8.5 CONFIDENTIALITY

(a) Use of Confidential Information

The receiving party will protect all Confidential Information of the disclosing party as strictly confidential as confidential to the same extent they protect their 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 set forth herein. Provider will not disclose the Agreement or the pricing to any third party. Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 8.5. In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party at disclosing party's expense.

(b) Exceptions

The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information; (b) is generally available to the public without a breach of the Agreement by the receiving party or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions; or (d) 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, advertising, or similar activity, without the prior written consent of the other Party. However, SAP may use Provider's name in customer listings (reference 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). SAP may share information on Provider with SAP SE and its Affiliates for marketing and other business purposes. Insofar as this includes the provision and use of contact information of Provider's contact persons, Provider will secure the appropriate permissions where necessary.

(d) Feedback

Provider may participate in evaluations or discussions (collectively, "Discussions") with SAP where Provider may provide suggestions or input regarding SAP's business or technology (collectively "Feedback"). Provider grants to SAP, SAP SE and its Affiliates a non-exclusive, perpetual, irrevocable, worldwide, non-transferable (except to SAP SE and its Affiliates), royalty-free license, with the right to sublicense, to sublicense to SAP's licensees and customers, under all relevant Provider 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 sublicensees' products or services embodying Feedback in any manner and via any media SAP chooses, without reference to the source and respecting Provider's IP. For clarification: Any information related to SAP Software or SAP, products, services, business or technology plans, disclosed to it under this Agreement, is only intended as possible strategies, developments, and functionalities of the SAP products or services and is not intended to be binding upon SAP to any particular course of business, product strategy, and/or development.

9 THIRD PARTY CLAIMS

If a third party claims that Provider's use of the Cloud Service or Cloud Materials in accordance with the terms and conditions of the Agreement infringes its intellectual property rights, Provider must fully inform SAP in writing without delay. If Provider ceases to use the contractual Cloud Service or Cloud Materials to mitigate loss or for other just reason, Provider must notify the third party that such cessation does not imply any recognition of the claimed infringement. Provider shall conduct court proceedings with the third party only with SAP's agreement or shall authorize SAP to assume sole conduct of the dispute. This applies mutatis mutandis in cases where a third party makes claims against SAP that are due to acts by Provider, the Authorized Users, or third-party provider access.

10 TERM, TERMINATION AND WIND-DOWN

- 10.1 This Agreement is entered for the Term specified in the Cloud BPO Agreement and shall continue for a term as described in the Cloud BPO Agreement, unless otherwise earlier terminated as set forth herein.
- Subject to the Wind-Down-Period described in Section 10.4, termination of the Cloud BPO Agreement shall also strictly apply to all Order Forms.
- 10.2 This Cloud BPO Agreement and any Order Form signed hereunder may be terminated by either Party for just cause in accordance with the following: (a) where a party is seriously in breach of major contractual obligations including its obligation to pay fees due hereunder and – if possible – did not cure such breach within thirty (30) days, after the respective other Party has noticed the breaching Party to fulfill its contractual obligations (Mahnung) ; (b) for just cause with immediate effect if any Party breaches any of its obligations under Sections 8. (Intellectual Property Ownership, Confidentiality). The right for termination for any other just cause remains unaffected.
- In addition, this Agreement may be terminated by SAP for just cause if the owner or shareholder of Provider change materially insofar as SAP's legitimate interests are materially affected (e.g. a direct competitor of SAP becomes directly or indirectly shareholder of Provider).
- 10.3 Ordinary terminations of Order Forms are governed by Section 5.3.
- 10.4 If this Agreement is terminated other than due to a termination by SAP under Section 10.1 or 10.2, those Order Forms that were still valid at the point in time of this Agreement is terminated remain in place for a wind-down period until the expiration of the then current Order Form Term but such wind-down period shall not exceed 3 years from the expiration date of the Agreement ("Wind-Down Period"). During the Wind-Down Period, the Agreement will continue except as set out below:
- (a) The Order Form Term will not automatically extend if the renewal term for such Order Form would commence after the termination date of the Agreement; and
 - (b) Provider may order an increase to a usage metric as set out in this Agreement for those Order Forms that were still valid at the point in time this Agreement was terminated but may not execute any new Order Form for Cloud Services for a new Customer. SAP may determine in its own discretion that the subscription for any Cloud Service supplied to SAP by a third party may not renew during the Wind-Down Period.
- 10.5 If SAP terminates the Agreement according to Section 10.2 due to Provider's breach, then SAP may elect for the Agreement to continue as described in Section 10.4 (Wind Down) above or may terminate the Agreement (including all Order Form(s) issued hereunder) or just the applicable Order Form and approach the Customer directly about commencing a direct relationship solely for the Cloud Service with SAP or

transfer the relationship to another SAP partner. Termination of the Agreement or any Order Form shall not relieve Provider of its outstanding payment obligations.

- 10.6 Upon effectiveness of any termination under this Section 10 and subject to any Wind Down, Provider and its Affiliates are obliged to (i) immediately cease use of all Cloud Materials, Cloud Services and Confidential Information, unless not allowed under any Wind Down period of an Order Form and ensure that each Customer complies with this obligations and (ii) within thirty (30) days after any termination, irretrievably destroy or upon SAP's request deliver to SAP all copies of all Cloud Materials, Cloud Services and Confidential Information in every form, except to the extent it is legally required to keep such materials for a longer period in which case such return or destruction shall occur at the end of such period. Provider agrees to certify in writing to SAP that it and each of its Affiliates has performed the foregoing.

In the event of any termination or the expiration of the Wind-down Period hereunder (i) Provider shall not be entitled to any refund of any payments made by Provider. Section 14 of the Cloud BPO GTCs remains unaffected; (ii) any outstanding Fees already invoiced or due prior to the termination of the Agreement remain or become immediately due and payable; (iii) except in case of a termination in accordance with Section 10.2 by Provider, any Fees which are unpaid by the Provider (based on the Fees payable as set forth in any Order Form) will become immediately due and payable.

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 Notwithstanding the foregoing Sections 1, 5, 6, 8.1- 8.3, 8.5, 9, 10.5-10.7, 11, 12, 14 and 15 will survive the expiration or termination of the Agreement.

11 IMPORT AND EXPORT CONTROLS

- 11.1 The Cloud Service, Cloud Materials, and Documentation are subject to the export control laws of various countries, in particularly the laws of the US, the Federal Republic of Germany and Switzerland. Provider shall not hand over the Cloud Service, Documentation, or Cloud Materials to governmental authorities for licensing considerations or other official approval without SAP's prior written consent, and shall not export the Cloud Service, Documentation, or Cloud Materials to countries or to natural or legal persons for which export bans apply according to the relevant export laws. Furthermore, Provider is responsible for complying with all applicable legal provisions of the country in which it is headquartered, and of other countries in respect of the use of the Cloud Service, Documentation, and Cloud Materials by Provider and its Authorized Users. SAP hereby gives express notice that, in accordance with the export control laws of various countries, in particular the laws of the US, the Federal Republic of Germany and Switzerland, and as a result of trade sanctions and embargos applicable to SAP, SAP may be obliged to restrict, temporarily withdraw, or terminate Provider's access to the Cloud Service, Cloud Materials, Documentation, and other SAP materials.
- 11.2 Export Assistance. Provider 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.

12 PROVIDER'S COMPLIANCE OBLIGATIONS

- 12.1 Provider shall conduct operations in compliance with applicable laws and regulations in exercising 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 of Switzerland. Provider shall comply with SAP's Partner Code of Conduct, which is online available in the SAP Partner Portal or that SAP provides upon written request. The Provider ensures that it is not listed by any government agency as debarred, suspended, proposed for suspension or debarment or otherwise determined to be ineligible for government procurement programs. Business entertainment conducted for the fulfillment of any part 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.
- 12.2 Provider and anyone acting on Provider'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 customer or prospect,
 - Government officials or employees,
 - Political party officials or candidates,
 - Officers or employees of any public organization or group,
 - Immediate family member of such persons (or any other person) for the benefit of such persons.
- 12.3 Provider shall only have rights to delegate its obligations under this Agreement to subcontractors where expressly permitted under this Agreement or where SAP has given its prior written consent. Provider shall require all subcontractors to agree to terms substantially similar to this Article 12 (Compliance Obligations) in writing. Provider 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, except pursuant to Provider's standard partner programs.
- 12.4 Provider shall not obtain on SAP's behalf or provide to SAP 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 or illegal.

13 DATA PROTECTION; ACCESS TO DATA

- 13.1 The Order Form includes a data processing agreement between Provider and SAP for the processing of personal data for the agreed Cloud Services. Both Parties use information technology to store and process data concerning their business relationships. They must observe applicable data protection laws.

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

Provider will indemnify SAP from any loss incurred by SAP out of any Customer's or Customer's individual's claim if Provider fails to obtain such required consent from a Customer's individual.

- 13.2 During the Order Form Term, Provider and Customer can access the Data at any time. Provider may export and retrieve the Data in a standard format. Export and retrieval may be subject to technical limitations and prerequisites (e. g. as described in the Documentation), in which case SAP and Provider will agree on a reasonable method to allow Provider and Customer access to the Data. Before the Order Form Term expires, Provider and Customer may use SAP's self-service export tools (as available) to perform a final export of Data from the SAP Cloud Service. At the end of the Order Form Term, SAP will delete the Data remaining on servers hosting the SAP Cloud Service unless applicable mandatory law requires retention. Retained data is subject to the confidentiality provisions of the Agreement. In the event of third party legal proceedings relating to the Data, SAP will cooperate at Provider's expense with Provider and Customer.

14 WARRANTIES

- 14.1 SAP warrants to Provider, for the term of the Order Form, that the Cloud Service meets the specifications defined in the Documentation and the contractually permitted use does not infringe any third-party right. SAP will remedy any defects as to quality and defects in title in the Cloud Service in accordance with Section 14.4. If SAP has failed to remedy the defect at the end of an additional time period of a reasonable length set in writing by Customer, and the suitability of the Cloud Service for use in accordance with the contract is consequently reduced to a significant degree, Customer has the right of termination, which must be communicated in writing. If the suitability of the Cloud Service for use in accordance with the contract is reduced to a more than just insignificant (but not significant) degree, Customer is (as the exclusive remedy) entitled to reduce the remuneration by an appropriate amount. Section 15 (Liability) applies for damage compensation due to defects.
- 14.2 For Services provided as works ("Werkleistung"), SAP warrants to Provider that the Service corresponds to the agreed service description by remedying defects in accordance with Section 14.4. If defects have not been remedied at the end of an additional time period of a reasonable length set by Provider in writing, Provider is entitled to reduce the payable remuneration in the Order Form for the Service concerned by an appropriate amount or to withdraw from the Order Form with respect to the Service. Section 15 (Liability) applies for damage compensation due to defects.
- 14.3 If SAP fails to properly provide Services which are not subject to acceptance, or if – with regard to Services or the Cloud Service – SAP is otherwise in breach in an area other than liability for defects as to quality and defects in title, Provider must give notice of this failure or breach to SAP in writing and set an additional time period of a reasonable length, during which SAP has the opportunity to properly perform its duty or otherwise remedy the situation. Section 15 (Liability) applies with regard to compensation for damages.
- 14.4 SAP shall remedy material defects in the Cloud Service and in Services that are subject to acceptance by providing either a new Cloud Service or Service that is free of defects or, at its election, by eliminating the defects. One of the ways SAP may eliminate a defect is to indicate to Provider a reasonable way to avoid the effect of the defect. In the event of defects in title, SAP shall elect to (i) procure for Provider the right to use the Cloud Service or Service in accordance with the contract, or (ii) replace the Cloud Service or Service or change it such that the accusation of breach no longer stands, whereby the contractual use is not unreasonably impacted, or (iii) terminate the Order Form to this extent and reimburse the Provider's remuneration paid in advance for the term remaining after the date of termination, and to pay damages subject to the limitations of Section 15 (Liability).
- 14.5 Provider must give notice of every breach to SAP in writing without delay and with a detailed description of the reason.
- 14.6 Warranty rights resulting from defects as to quality and defects in title in Services subject to acceptance expire sixty calendar days after acceptance. Warranties for the Cloud Service apply accordingly to Support.

15 LIMITATION OF LIABILITY

- 15.1 SAP is liable in contract, tort, or otherwise for loss or wasted expenditure in case of proven fault subject always as follows:
- (a) In cases of liability for personal injury or liability under the Product Liability Act, and for any type of damages caused by intent or gross negligence, SAP shall be fully liable to Customer.
 - (b) In all other cases, SAP's liability shall be limited according to Section 15.2 below.
- 15.2 Liability in cases under Section 15.1 (b) is limited to CHF 100,000 per incident, and to a total per contract year of the fee that was paid in the contract year for the particular Cloud Service (but at least CHF 300,000).
- 15.3 To the extent permitted by law, SAP excludes liability for indirect and consequential loss such as loss of profit, unachieved savings, interruptions to business or third-party claims. Contributory fault may be claimed.

16 MISCELLANEOUS

- 16.1 **PARTIAL INVALIDITY.** If any provision of this Agreement is or becomes wholly or in part illegal, invalid or unenforceable, the illegality, invalidity or unenforceability of such provision will not affect the other provisions of this Agreement, which will remain in full force and effect. The illegal, invalid or unenforceable provision will be replaced by a valid and enforceable provision which approximates as closely as possible the intent of the replaced provision. This will also apply in cases of contractual gaps.
- 16.2 **REMEDIES AND WAIVER.** No waiver will be valid against any Party hereto, unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

The waiver by either Party of a breach of, non-compliance with or default in any of the provisions of this Agreement by the other Party may not be construed as a waiver of any succeeding breach, non-compliance or default of the same or other provisions; nor will any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder be operated as a waiver thereof; nor will any single or partial exercise of any right, power or privilege prevent any further or other exercise thereof or the exercise of any other right, power or privilege.

16.3 **NOTICES.** Amendments and additions to the Agreement and any contractually relevant declarations as well as declarations influencing a legal relation, especially without being limited to termination notices, reminders, or notices to set time limits, require written form. The foregoing provision also applies to any waiver of the written-form requirement. The written-form requirement can also be met by exchange of letters or (except in the case of termination notices) with an electronically transmitted signature (facsimile transmission or other agreed form of electronic contract conclusion provided by or on behalf of SAP, such as the "SAP Store" or the DocuSign™ procedure).

16.4 **ASSIGNMENT, SUBCONTRACTORS.** Without SAP's prior written consent, Customer may not assign or transfer the Agreement or any of its rights or obligations to a third party. SAP may assign the Agreement to SAP SE or any of its Affiliates.

16.5 **FORCE MAJEURE**

If the performance of any part of this Agreement or any obligation under it (other than for the payment of amounts due hereunder) is prevented, restricted or interfered with by reason of any act of God, act of government, strike or labour dispute, failure of transportation, fire or flood or other casualty, or any other cause beyond the reasonable control of the affected Party, the affected Party will be excused from such performance for so long as and to the extent that such force prevents, restricts or interferes with that Party's performance provided the affected Party:

- a) provides prompt written notice of such interference, the nature of such interference and the expected duration of such interference to the other Party; and
- b) resumes performing its obligations hereunder promptly following the removal of such interfering condition.

The existence of any of the conditions described as Force Majeure above, does not mean that any part of this Agreement is terminated. If any of these conditions continues for a period of more than three consecutive months, either Party may terminate any Order Form concerning the affected SAP Cloud Service with one month's prior written notice to the other Party.

16.6 **ENTIRE AGREEMENT.**

This Agreement constitutes the complete and exclusive understanding of the Parties with respect to the subject matter hereof, and supersedes all prior sales proposals, negotiations, agreements and other representations, discussions or communications, whether oral or written, including but not limited to, any letters of understanding the Parties may have executed in contemplation of this Agreement.

16.7 **GOVERNING LAW**

Swiss law applies exclusively to all claims in contract, in tort, or otherwise, and the UN sales laws convention is excluded. The conflict-of-law rules shall not apply. The sole place of jurisdiction for all differences arising out of or in connection with the Agreement shall be **Zuerich-1, Switzerland.**