

**OUTSOURCING CHANNEL MASTER LICENSE AGREEMENT**  
**General Terms and Conditions of SAP Deutschland SE & Co. KG**  
**("GTCs") enDE v.9-2018, September 2018**

**1. DEFINITIONS**

- "Add-on" means any development (coding) of Provider or a third Party on behalf of Provider using SAP API's to communicate with SAP Software, that adds new and independent functionality, but does not modify (see definition below) existing SAP functionality.
- "Agreement" means these General Terms and Conditions ("GTCs"), the Master Agreement, any Order Form, Exhibit, Schedule or Appendix referencing these GTCs and any Exhibit, Schedule or Appendix referenced by the foregoing. All such components are integral and essential to the agreement, and are collectively referred to herein as the "Agreement".
- "API" means SAP's application programming interfaces, as well as other SAP code that allow other software products to communicate with or call on SAP Software (for example, SAP Enterprise Services, BAPIs, IDocs, RFCs, and ABAP or other user exits) provided under this Agreement.
- "Authorized Services" shall have the meaning as defined in the Master Agreement.
- "Background Material" means any pre-existing works in which the Intellectual Property Rights are owned by either Party, which have been prepared by that Party outside the scope of this Agreement or which were licensed from a third party by that Party.
- "Business Partner" means a third party that requires access to the SAP Software solely in connection with the operation of the business of Customer or Customer Affiliate. Such third parties may include Customer's customers, distributors, dealers, vendors, manufacturers, independent sales representatives and suppliers.
- "Confidential Information" means information reasonably identifiable as the confidential and proprietary information of SAP or Provider including but not limited to information that is related to: (a) the operations of the Disclosing Party; (b) the research and development or investigations of the Disclosing Party; (c) the business of any customer or partner of the Disclosing Party; (d) Disclosing Party's properties, employees, finances, operations; (e) the following information regarding SAP Software and related documentation including, but not limited to, the Provider software used to provide the Authorized Services (for Provider), and the SAP Materials and SAP Interface (for SAP), (respectively, "Disclosing Party's Software"): discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, techniques and processes relating to Disclosing Party's Software; and (f) product offerings, content partners, product pricing, product availability, technical drawings, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, inventions (whether patentable or not), marketing plans, forecasts and strategies. Without limiting the meaning of the foregoing, the following information shall be deemed Confidential Information: (i) with respect to SAP and SAP SE (the licensor of the SAP Proprietary Information to SAP), the SAP Software and Documentation, any other third-party software licensed with or as part of the SAP Software, benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications; (ii) the business plans of the Disclosing Party and (iii) the algorithms, source codes and application software interface (including but not limited to SAP Interface) specifications algorithms, contained in Disclosing Party's Software as well as programming techniques and programming concepts, methods of processing and system designs embodied in Disclosing Party's software.
- "Contract Year" shall have the meaning as defined in the Master Agreement.
- "Customer" means the entity that enters into a Customer Service Agreement with the Provider.
- "Customer Affiliate(s)" shall have the meaning set forth in the Master Agreement.
- "Customer Service Agreement" shall have the meaning as defined in the Master Agreement.
- "Customer User" means an employee of Customer, a Customer Affiliate or Business Partner, accessing the SAP Software under a Customer Service Agreement.
- "Data Center(s)" means the site or sites at which the SAP Software will be hosted to provide the Authorized Services to Customers. Such site or sites shall at all times be owned by the Provider or under its unrestricted direct control.
- "Disclosing Party" means a Party to this Agreement disclosing confidential or proprietary information to the Receiving Party.
- "Documentation" means SAP's documentation which is delivered or made available to Provider with the SAP Software under this Agreement.
- "Excluded License" means an open source or other software license that requires, as a condition of license, use, modification, distribution or conveyance, that (a) the code be disclosed or distributed in source code form; (b) others have the right to modify or create derivative works of it; and/or (c) the code becomes redistributable at no charge.
- "Fees" means all fees to be paid by Provider under this Agreement, including but not limited to the Net License Fees, Subscription Fees, Support Fees and any Floor Commitments as delineated in the Master Agreement and any Exhibit, Annex, Schedule or Order Form thereof.
- "Floor Commitment" shall have the meaning as defined in the Master Agreement.
- "IP Rights" ("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.
- "Licensed Level" shall have the meaning as defined in the Use Terms.
- "Logo" shall have the meaning as defined in the Master Agreement.
- "Net License Fees" shall have the meaning as defined in the Master Agreement.
- "Marks" shall have the meaning set forth below in Section 5 of the GTC's.
- "Master Agreement" means a Partner Managed Cloud Agreement executed by the Parties that references and incorporates these GTCs.
- "Modification" means any reworking of SAP Software developed by Licensee or by a third party on Licensee's behalf within the meaning of the German Copyright Act (UrhG) section 69c Nr.2, e. g. changes to the delivered source code or metadata
- "Order Form" shall have the meaning as defined in the Master Agreement.
- "Order Form Term" means the duration, as defined in each Order Form, of the licenses granted under such Order Form.
- "Party" or "Parties" shall have the meaning as defined in the Master Agreement.
- "List of Prices and Conditions" ("LPC") shall have the meaning as defined in the Master Agreement.
- "Price List" shall have the meaning as defined in the Master Agreement.
- "Provider Affiliate" means any legal entity that is affiliated with another company within the meaning of the German Stock Corporation Act (AktG), section 15.

“Receiving Party” means a Party receiving confidential or proprietary information from the Disclosing Party.

“Redistributable Files” means the function modules and sample code files identified in the Documentation for inclusion and distribution with Provider created Add-ons.

“SAP Affiliate” means any legal entity that is affiliated with another company within the meaning of the German Stock Corporation Act (AktG), section 15.

“SAP Interface” means any application interface developed by or with SAP or any SAP Affiliate that resides on or in the SAP Software and which, when activated by the Provider’s software or tools, will give access to the SAP Software.

“SAP Materials” means any software, programs, tools, systems, data, or other materials made available by SAP to Provider in the course of the performance under this Agreement including, but not limited to, the SAP Software, Third Party Software and Documentation.

“SAP Support” shall have the meaning as defined in the Master Agreement.

“SAP Support Fees” shall mean those fees that are payable for SAP Support.

“SAP Trademarks” shall have the meaning set forth below in Section 5. of the GTC’s.

“Screen Access” means use of the SAP Software solely through remote access and solely for the purpose of entering and accessing data and requesting Provider to process such data. Screen Access does not include the SAP Software being installed on the hardware of the Customer.

“SAP Software” shall have the meaning as defined in the Master Agreement.

“Subscription Fees” means the annual license fees for the SAP Software licensed under an Order Form, which incorporate both the Net License Fee and the SAP Support Fee.

“Term” shall have the meaning as defined in the Master Agreement.

“Third Party Software” shall have the meaning as defined in the Master Agreement.

“Use Terms” shall have the meaning as defined in the Master Agreement.

“Wind Down” shall have the meaning as defined in the Master Agreement.

Other defined terms not included above shall have the meanings set forth herein.

## **2. SCOPE OF RELATIONSHIP**

- 2.1 No exclusivity. SAP and Provider agree to collaborate on a non-exclusive basis as detailed in this Agreement, to enable the provision of Authorized Services by Provider.
- 2.2 Provider offers its 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.
- 2.3 Provider shall advise Customer that SAP Support for the SAP Software licensed under the Master Agreement can only be delivered by SAP to the Provider and that SAP will not provide direct support to the Customer for the SAP Software utilized by the Provider to deliver any Authorized Services, even if the Customer is an existing SAP customer with a current SAP maintenance and support agreement for SAP Software. If the Customer is an existing SAP customer, then Provider shall advise Customer that the SAP Software utilized by the Provider to deliver any Authorized Services will not be covered by the Customer’s current SAP maintenance and support agreement for SAP Software.
- 2.4 Provider must take appropriate precautions against the possibility that the contractual SAP Software or any part thereof does not function properly (e.g. by performing data backups, error diagnosis and regular results monitoring). Except where otherwise expressly indicated in writing in individual cases, SAP employees are always entitled to act on the assumption that all data with which they come into contact is backed up.
- 2.5 Free of charge, Provider must provide all required collaboration. Provider bears all consequences and costs resulting from breach of its duties.

## **3. LICENSE GRANT**

### **3.1 Grant of License**

- 3.1.1 Subject to the terms and conditions of this Agreement and the specific limitations set forth in the Master Agreement and the Order Forms, SAP hereby grants Provider the non-exclusive right and license within the Agreed Program Scope to use SAP Software in the Data Center(s) solely as required for the provision of Authorized Services to its Customers for the duration of the applicable Order Form Term.
- 3.1.2 Sub-Licenses. Provider shall be entitled to grant non-perpetual, non-exclusive and non-transferable sub-licenses to Customer for the applicable Order Form Term, limited to providing Customer Users Screen Access to the SAP Software (the “Sub-Licenses”). Provider has to ensure in its Customer Agreement that Sub-License grants are restricted to the Customer specified in the Order Form and are non-transferrable.
- 3.1.3 No Provider internal use. Under the terms of this Agreement, Provider shall not be allowed to use SAP Software for its own internal operational needs or for internal operational needs of its Affiliates or to provide Authorized Services to Provider Affiliates.
- 3.1.4 As between Provider and SAP, all rights in SAP Software – especially without being limited to all copyright and other IP Rights – shall be the sole and exclusive property of SAP, SAP SE (SAP’s parent company) or their licensors. Provider’s only rights in respect of contractual SAP Software are the nonexclusive rights described in this Agreement.
- 3.1.5 The terms and conditions of this Agreement relative to SAP Software apply to Third Party Software provided under this Agreement except as otherwise stated in the LPC. Provider shall not make Modifications and/or Add-ons to Third Party Software or otherwise modify Third Party Software. Provider enjoys only those rights in contractual Third Party Software that are necessary to use it in association with the contractual SAP Software.
- 3.1.6 Provider has to license any SAP Software which is required to provide Authorized Services to Customers, including, but not limited to any prerequisite defined in the LPC. Authorized Services may be provided in conjunction with the SAP Software licensed to Customers by SAP or its affiliates or resellers pursuant to a Customer’s license agreement for the use of SAP Software. Any use by Provider, of such SAP Software licensed to Customer shall be in accordance with the Customers license obligations under the SAP license agreement for the use of such SAP Software and be subject to the respective Named User type and in accordance with the identified Licensed Level under that license agreement. Customer and Provider must comply with the provisions of the license terms of such SAP license agreement at all times. Provider must give SAP prior written notice of any use of the contractual SAP Software outside the contractually permitted use. It requires its own contract with SAP with regard to the additional license required. The additional license is subject to the provisions of the LPC in force at the time of the execution of the additional license. In this case SAP reserves the right not to give any agreed discount except the quantity

discount in the Price List. If it becomes apparent in an audit or otherwise that Provider has used the contractual SAP Software outside this Agreement, SAP and Provider will execute an additional license agreement. SAP reserves the right to claim damages and to claim late payment interest.

### **3.2 Third Party Access to the SAP Software**

- 3.2.1 An authorized third party acting on behalf of the Provider may access the SAP Software so far and as long as the following preconditions are fulfilled: (i) such third party is accessing the SAP Software solely on behalf of Provider to support Provider in its exercise of the rights set forth in Section 3.1 in conformance with the Agreement; (ii) such third party is subject to confidentiality obligations that are at least as restrictive as those set forth in Section 9; and (iii) Provider is responsible for any breach of this Agreement caused by such third party as Provider is responsible for its own breach (section 278 German Civil Code).
- 3.2.2 The Sub-Licenses may include the right to allow an authorized third party acting on behalf of the Customer to have Screen Access (see sec. 3.1.2) to the SAP Software so long as: (i) such third party is utilizing the Screen Access solely for the consumption of Authorized Services on behalf of Customer; (ii) such third party is accessing the SAP Software solely for the purpose to run Customer's internal business processes; (iii) such third party is subject to confidentiality obligations that are at least as restrictive as those set forth in Section 9; and Customer is responsible for any breach of the Customer Services Agreement caused by such third party (section 278 German Civil Code).

### **3.3 Reporting Obligations and Audit Rights**

- 3.3.1 Provider shall provide all information requested by SAP necessary to fulfill any obligations for payment of royalties to SAP's business partners arising as a result of licenses granted under this Agreement for Third Party Software or other software components.
- 3.3.2 Upon SAP's reasonable request, Provider shall deliver to SAP a report, as defined by SAP, evidencing Provider's use of the SAP Software licensed under this Agreement, which shall be in addition to any other reporting obligations of Provider as set out in this Agreement.
- 3.3.3 Subject to limitations under contract and law and without gathering or transmitting to SAP any content or other confidential information of Provider or Customer, SAP may implement the SAP Software so that each system generates and transmits to SAP information related to use of the SAP Software by Provider and/or the Customers. SAP is permitted to audit the usage of the contractual SAP Software (ordinarily once a year) in accordance with SAP standard procedures (described in the LPC) by system measurement. Provider will support SAP in accordance with SAP's reasonable instructions, including but not limited to preparing a measurement log within four (4) weeks of SAP's request. Ordinarily, Provider can conduct the measurement itself using the tools provided by SAP for that purpose. The result of the measurement is to be transmitted to SAP promptly in unaltered form.  
SAP is permitted to conduct the audit remotely if Provider refuses to conduct the measurement itself, or if the measurement does not produce meaningful results and there are reasonable grounds to suspect a breach or infringement by Provider.
- 3.3.4 Provider shall cooperate reasonably in the conduct of such audits remotely and at Licensee's installation and must, among other things, afford SAP insight into its systems to the required extent. SAP will give Provider reasonable prior notice of an audit to be conducted at Provider's installation. SAP will have reasonable regard to the interests of Provider's confidentiality and to the protection of Provider's business operations from compromise. If an audit reveals any breach by Provider, Provider must bear the reasonable expense to SAP of conducting the audit.
- 3.3.5 If it becomes apparent in an audit or otherwise that Provider has used the contractual SAP Software outside the Agreement, SAP and Provider will execute an additional Order Form for such excess usage based on the then current SAP List of Prices and Conditions for Software and Support and the Price List. SAP reserves the right to claim damages.
- 3.3.6 Use of the SAP Software licensed hereunder may require third party software or hardware (including but limited to databases, operating systems and servers). Unless specifically licensed in the Master Agreement, this Agreement does not contain a license to use such additional materials.

## **4. CUSTOMER SERVICE AGREEMENT**

- 4.1 To give effect to the obligations, limitations and liabilities contained in this Agreement, Provider agrees that prior to granting Customer access to the Authorized Services, Provider will enter into a Customer Service Agreement with Customer that includes at least (i) a grant of license to the Customer and its Customer Users which corresponds with and does not exceed Provider's rights as set out in Section 3 and (ii) a provision according to which SAP shall be entitled to claim damages or seek reimbursement of expenses as a third party beneficiary in case the Customer violates any of the license terms for SAP Software described in the license terms of the Customer Service Agreement and (iii) a declaration that SAP Software and Third Party Software are subject to IP rights and that SAP and SAP SE – or related to such Third Party Software SAP's Licensors are the owner of all exclusive titles and rights in such software.
- 4.2 If requested by SAP, Provider will represent and warrant to SAP that Provider has entered into such a Customer Service Agreement as set forth in Section 4.1 with Customer, except as expressly agreed otherwise.

## **5. TRADEMARK LICENSE**

- 5.1 To the extent usage is specifically allowed in the Master Agreement, SAP grants to Provider for the Term of the Agreement a revocable, nonexclusive, nontransferable license to use the Logo as set forth in the SAP Partner Logo Usage Guidelines in any countries allowed under the Agreed Program Scope. This license to use the Logo includes the right to use the SAP corporate logo as part of the Logo (together "SAP Trademarks"). Provider is not permitted to grant sublicenses to SAP Trademarks.
- 5.2 SAP will provide the most recent version of the SAP Partner Logo Usage Guidelines to Provider upon Provider's written request. SAP may, at its sole option, change the SAP Partner Logo Usage Guidelines but will provide the new version to Provider. Provider will conform its usage of the Logo to the new SAP Partner Logo Usage Guidelines immediately upon receipt. If Provider does not agree to the proposed changes, Provider has to inform SAP immediately in writing. In this case SAP shall be entitled to revoke Provider's right to use the Logo with immediate effect. Sec. 5.1 sentence 1 remains unaffected (revocable).
- 5.3 Provider shall not contest the validity of SAP Trademarks or support the contesting of its validity and shall not derive any right against SAP through its permitted use of SAP Trademarks. In its use of SAP Trademarks, Provider shall indicate that the SAP Trademark is registered by and for SAP. In this context Provider acknowledges that SAP is the sole owner of rights in the SAP Trademarks Provider is permitted to use. Provider undertakes to make all those declarations and provide all those documents for the benefit of SAP as SAP may require in the prosecution of its rights in the SAP Trademarks.
- 5.4 Provider shall provide samples of its advertising copy and sales literature for the Authorized Services, in their original language and in English, as applicable, to SAP on its request. SAP reserves the right to review and approve all uses of SAP's Trademarks, service marks, or trade names in Provider's advertising and promotion of the SAP Software and Authorized Services, prior to use if such use of advertising materials affect SAP's legitimate interests negatively.

- 5.5 SAP may use Provider's name in customer listings (reference listings) or to analyze details from the contract (e.g. to forecast demand), as well as – subject to mutual agreement – as part of SAP's other marketing efforts.
- 5.6 Except as stated above, no Party has the right to use or display the other Party's names, trademarks, trade names, logos, or service marks ("Marks") without prior written approval.
- 5.7 Provider will promptly notify SAP of any unauthorized use or infringement of SAP's Marks. SAP has the sole right and discretion to enforce any rights and claims regarding its Marks or proceedings related thereto. Provider agrees to provide SAP with its reasonable cooperation and assistance to the necessary extent.

## **6. REMUNERATION, PAYMENT TERMS, TAXES AND DELIVERY, SAP SUPPORT**

- 6.1 **Fees.** Provider shall pay to SAP the Fees on such terms and in the amount as set forth in the Master Agreement or any Order Forms, Schedules or Exhibits thereof. Additionally, Provider commits to pay the Floor Commitments set forth in the Master Agreement, if any, such amounts to be invoiced pursuant to the terms of the Master Agreement irrespective if the full volume of such Floor Commitment has been ordered.
- 6.2 **Taxes.** All taxes, including, without limitation, VAT, GST, sales, use, property, excise, service, or similar taxes or customs duties, except income or corporation taxes of SAP, will be borne by Provider. If any such tax or duty has to be withheld or deducted from any payment under this Agreement, Provider will increase payment under this Agreement by such amount as shall ensure that after such withholding or deduction SAP shall have received an amount equal to the payment otherwise required. Income or corporation taxes of SAP will be borne by SAP. If Provider is required to withhold income or corporation tax or a similar tax from any payment to SAP under this Agreement Provider shall be entitled to withhold or deduct such tax from the gross amount to be paid. However, Provider shall use all endeavors to 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. All fees are subject to the applicable value added tax.
- 6.3 **Delivery.** SAP will deliver the SAP Software and SAP Support by making it available for electronic download through the SAP Service Marketplace (<http://service.sap.com/swdc>) to Provider. Delivery dates are non-binding unless explicitly confirmed in writing by SAP. For the purpose of ascertaining whether delivery is timely, Electronic Delivery is deemed effected at the time SAP makes the contractual SAP Software available for download and informs Licensee accordingly, and risk passes at the time of such Electronic Delivery. Fees for SAP Software delivery include costs of transportation in case of physical delivery. In case of Electronic Delivery SAP makes SAP Software available on its own costs through the Internet; Provider has to bear the costs of downloading the SAP Software. Provider agrees not to request any physical delivery of SAP Software or SAP Support and should it occur any such delivery will be rejected by Provider. Provider agrees and understands that the calculation of Taxes may be affected by the delivery method and delivery location of the SAP Software and corresponding SAP Support.

### **6.4 Scope of SAP Support**

SAP may adapt the scope of the SAP Support services to reflect the continuing development of the SAP Software and technical advances. In the event that a change may negatively affect the justified interests of Provider, SAP will inform Provider in writing or by electronic means, at least three (3) months before the change is scheduled to take effect, drawing attention to the termination option as described below and to the consequences of non-termination. In this case, Provider is entitled to early termination of the or if there are more than one, of all SAP Support contracts / the rental contract as may be applicable, with effect from the time the change takes effect by giving two months' prior notice (extraordinary termination right). In the event Provider does not opt for early termination, the support contract(s) will be continued with the changed scope of services. This provision also includes SAP Software provided to Provider by third parties, for which SAP offers SAP Support. This extraordinary termination right applies to all of Provider's support contracts.

- 6.5 **Change of Support Fees.** By giving Provider a written two months' notice effective from January 01 of the following calendar year, SAP is entitled to amend the remuneration for Support at its discretion subject to the following guidelines:
  - 6.5.1 The change applied to the fee must not be greater than the change in the index at 6.5.2 below ("discretionary applicable change"). For the first fee adjustment, the discretionary applicable change is the change from the index published at the date of the execution of the Agreement to the index that has most recently been published when the fee adjustment notice is 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 has most recently been published when the new fee adjustment notice is given.
  - 6.5.2 The index used to determine the discretionary applicable change is the index of mean monthly salaries of fulltime employees in Germany in the information technology services sector ("Index der durchschnittlichen Bruttomonatsverdienste der vollzeitbeschäftigten Arbeitnehmer in Deutschland für den Wirtschaftszweig Erbringung von Dienstleistungen der Informationstechnologie", currently published by the German Federal Statistics Office in quarterly figures at "Fachserie 16, Reihe 2.4, Gruppe J 62"). If publication of that index is discontinued, the applicable index for determination of the discretionary applicable change will be the index published by the Federal Statistics Office that most closely reflects changes in the mean monthly salaries of the sector named above.
  - 6.5.3 The fee adjustment is deemed to be agreed by the Parties unless Provider, by giving notice within two weeks from receipt of the fee adjustment, terminates the SAP Support with effect from the end of the calendar year (extraordinary termination right). SAP will draw attention to this in the fee adjustment notice. The preconditions of sec. 6.4 (Termination only of all agreements) apply.

## **7. TERM AND TERMINATION**

- 7.1 **Term.** This Agreement is entered for the Term specified in the Master Agreement. For the avoidance of any doubt and subject to Wind-Down-Period, termination of the Agreement shall strictly apply to all licenses under the Agreement, Order Forms, Exhibits, its appendices, schedules, addenda and order documents and any partial termination of the Agreement by Provider shall not be permitted in respect of any part of the Agreement, its appendices, Exhibits, Annexes, schedules, addenda, or order documents, subject to sec. 7.3
- 7.2 **Termination by SAP.** This Agreement and the Order Forms may be terminated by SAP for just cause in accordance with the following: (a) where Provider 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 SAP has noticed Provider to fulfill its contractual obligations (Mahnung). ; (b) for just cause with immediate effect if Provider breaches any of its obligations under Sections 8, 9 and/or 12.1 [Intellectual Property Ownership, Confidentiality, Assignment].  
The right for termination for any other just cause remains unaffected.
- 7.3 **Termination by Provider.** This Agreement and Order Forms may be terminated by Provider only for just cause.
- 7.4 **Termination for change of control.** This Agreement may be terminated for just cause by SAP 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).

- 7.5 Duties upon termination and surviving terms. Upon effectiveness of any termination under this sec. 7. and subject to any Wind Down set forth in the Master Agreement, Provider and its Affiliates are obliged to (i) immediately cease acquiring new Customers and marketing the SAP Software as part of the Authorized Services under this Agreement; (ii) immediately cease use of all SAP Materials and Confidential Information, unless not allowed under any Wind Down period of an Order Form; (iii) ensure that each Customer ceases use of all SAP Materials and SAP Confidential Information, unless not allowed under any Wind Down period of an Order Form; and (iv) within thirty (30) days after any termination, irretrievably destroy or upon SAP's request deliver to SAP all copies of all SAP Materials 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/ Wind-Down. Provider agrees to certify in writing to SAP that it and each of its Affiliates has performed the foregoing. Notwithstanding the foregoing, Sections 1, 6, 7, 8.1, 8.3-8.8, 9, 10.2, 11, 12, 14.5, 14.6, 14.7 and 14.9 shall survive any termination.
- 7.6 Effect of Termination. In the event of any termination hereunder (i) Provider shall not be entitled to any refund of any payments made by Provider. Section 10 of the GTCs remains unaffected; (ii) any outstanding Fees (including any portion of the Floor Commitments) 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 7.3 by Provider, any Fees which are unpaid by the Provider (based on the Fees payable for the Term as set forth in the Master Agreement) will become immediately due and payable, including any unfulfilled Floor Commitments for any Contract Year completed or commenced prior to the effective date of the termination.

## 8. INTELLECTUAL PROPERTY OWNERSHIP

- 8.1 Software Ownership and Limited Rights. All Intellectual Property Rights to the SAP Software or Third Party Software shall be the sole and exclusive property of SAP, SAP SE or its SAP Affiliates, or its or their licensors, subject to any rights expressly granted to Provider in Section 8 hereof. Except for Modifications and Add-ons authorized under this Agreement or as expressly required by law, Provider is not permitted to create derivative works of the SAP Software or SAP Materials. Any such unauthorized works developed by Provider, and any Intellectual Property Rights embodied therein, shall be the sole and exclusive property of SAP, SAP SE or any of its SAP Affiliates, as applicable, and Provider hereby assigns all rights in them (including moral rights) to such SAP entity. To the extent Intellectual Property Rights are not eligible to be transferred by operation of the law, SAP, SAP SE or any of its SAP Affiliates shall be granted exclusive rights to use to the widest extent lawfully possible. All rights in and to the SAP Software and SAP Materials not expressly granted in this Agreement are reserved by SAP. Provider shall use commercially reasonable efforts to ensure that no Customer is violating the terms of its Customer Service Agreement, including without limitation ensuring that the use of the SAP Software by its Customers has not exceeded the agreed Licensed Level. In the event Provider becomes aware that any Customer is violating its Customer Service Agreement in relation to the SAP Software or any SAP Materials, Provider shall promptly notify SAP of such. Provider shall reasonably cooperate with SAP to enforce the terms of any such Customer Service Agreement with a Customer.
- 8.2 Modifications and Add-ons. Subject to the licensing of the required development rights under separate agreement, Provider shall be entitled to develop Modifications and Add-ons for the SAP Software and shall be permitted to use Modifications and Add-Ons with the SAP Software in accordance with the license grant to the Software set forth in Section 3.1 and subject to this Section 8. herein.

In addition, the following preconditions apply

- i) Modifications may only be made in relation to the contractual SAP Software delivered in source code to Provider by SAP.
- ii) Before making or using Modifications, Provider must comply with the registration procedure as currently set out by SAP at <http://service.sap.com/sscr>;
- iii) Modifications must not enable the bypassing or circumventing of any of the restrictions set forth in the Software Agreement or in any other agreement between Provider and SAP.
- iv) Modifications must not provide Provider with access to SAP Software to which Provider has not licensed.
- v) (e) Modifications must not impair, degrade, or reduce the performance or security of SAP Software.
- vi) Modifications must not render or provide any information concerning SAP Software license terms, SAP Software itself, or any other information related to SAP products.
- vii) Modifications must be used only together with the contractual SAP Software and only in accordance with the license grant in this Agreement.

The right in this section 8. to make and use Modifications is conditional on Provider having given a covenant not to assert against SAP or SAP Affiliates any Intellectual Property Right in any such Modification. Notably, SAP is entitled at any time to develop, use, or market Modifications with functions that are wholly or in any part identical with Modifications developed by or on behalf of Provider, but SAP is not entitled to copy Provider's software code. The foregoing provisions in this section 8.2 also apply accordingly to Intellectual Property Rights in Add-Ons and if applicable, to the right obtained from SAP to make Add-Ons and to use any software tool or API so contained or obtained with Add-Ons.

- 8.3 Modifications. In respect of any Modification, SAP is entitled to require from Provider for reasonable consideration the grant of an unrestricted and unencumbered exclusive perpetual universal license to use and exploit all of Provider's Intellectual Property Rights in the Modification concerned. That license includes, for example, the rights to copy, distribute, translate, process, arrange, and rework the Modification – with the exclusive right to use such reworking, and to publish and to grant sublicenses in the Modification, and to incorporate the Modification or any part of it into other software. If a license is granted accordingly, Provider must on demand give to SAP without delay all relevant information and documents relating to the Modification concerned, including but not limited to the source code. Provider must notify SAP promptly if it makes a Modification and must offer SAP a license in accordance with this section 8.3. In the event of a grant of rights as described above, Provider in any case keeps the non-exclusive right to use the Modification together with and to the same extent as the SAP Software. The foregoing provisions in this section 8.3 apply accordingly to Intellectual Property Rights in to any third-party materials incorporated in the Modification (if any) and the Provider Background Materials. To the extent Provider does not have sufficient rights to grant SAP a Full License to such third party materials, Provider covenants to use its best efforts to procure such rights for SAP in and to the third party materials incorporated in such Modification or Provider Background Material.
- 8.4 Add-ons. The provisions of Section 8.3 shall apply accordingly to Add-Ons. Provider may copy and may include Redistributable Files in Add-ons. Any Provider created Add-ons that contain Redistributable Files must not be made (directly or indirectly) subject to or part of an Excluded License. In the event Provider distributes or makes available Add-ons to third parties, Provider will indemnify SAP, SAP SE and SAP Affiliates against any and all claims brought against them (individually or jointly) arising from Licensee's development and distribution of such Provider Add-on.
- 8.5 Reverse Engineering, Source Code. Provider is entitled to decompile the SAP Software to the extent permitted in the German Copyright and Related Intellectual Property Rights Act (UrhG) section 69e only after SAP has failed to comply with such notice within the limited time period. Before involving a third party (e. g. pursuant to the UrhG section 69e (1) No.1 or (2) No.2), Provider must obtain for SAP's direct benefit the

third party's written undertaking to comply with the provisions in the Use Terms.

- 8.6 Except to the extent explicitly specified in this Section 8, nothing in this Agreement shall be construed, whether by implication or otherwise, to transfer ownership rights in, or grant license rights to Background Materials to the other Party.
- 8.7 **Feedback.** During the course of this Agreement, Provider agrees to provide and SAP will solicit Provider's input regarding SAP Software, products, services, business or technology plans, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of software, products and/or services, or input as to whether Provider believes SAP's development direction is consistent with their own business and IT needs, the technology marketplace in general, and the like (collectively "Feedback"). Provider acknowledges and agrees that any information disclosed by SAP during discussions related to Feedback shall be considered SAP Confidential Information and shall be protected from disclosure in accordance with the terms of this Agreement. In order for SAP to utilize such Feedback, Provider grants to SAP a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right 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. SAP shall be entitled to use Feedback for any purpose without restriction or remuneration of any kind with respect to Provider and/or its representatives. Provider acknowledges that the 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. CONFIDENTIALITY

- 9.1. **Use of Confidential Information.** Both parties undertake forever to treat as confidential all of the other party's Confidential Information acquired before and in connection with contract performance and to use such Confidential Information only in connection with contract performance. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other party shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party: (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its individuals whose access is necessary to enable it to perform the contract. As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. On Provider's side, this includes the careful safeguarding of the Confidential Information and the prevention of infringement. To the extent that Customers or third parties are provided access to SAP Confidential Information, such access shall be subject to confidentiality terms that are at least as restrictive as those set forth here.
- 9.2. **Exceptions.** The above restrictions in Sec. 9.1 on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without breach of this Agreement by the Receiving Party; (c) at the time of disclosure, was known to the Receiving Party free of restriction; or (d) the Disclosing Party agrees in writing is free of such restrictions.
- 9.3. **Confidential Terms and Conditions.** In addition to the foregoing limitations, neither Party shall disclose the terms or conditions of this Agreement without the prior written approval of the other Party (other than to those of the Party's Representatives who must know such information in order for the Party to perform under the Agreement or enforce its rights hereunder). As used herein, "Representatives" shall mean (i) employees of Receiving Party; (ii) attorneys, accountants, or other professional business advisors; and, additionally, (iii) employees of SAP and/or any of the SAP Affiliates, and (iv) employees of any entity who are directly involved in the performance of obligations under this Agreement. The Receiving Party shall be responsible for any breach of the terms of this Agreement caused by its Representatives.
- 9.4. In the event that the Receiving Party or any of its Representatives are requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt notice of such request or requirement in order to enable the Disclosing Party to seek an appropriate protective order, except if mandatory legal requirements prevent this. In the event that such protective order is not obtained in a timely manner, the Receiving Party or its Representative shall disclose only that portion of the Confidential Information which is legally required to be disclosed and to require that all Confidential Information that is so disclosed will be accorded confidential treatment.
- 9.5. **Publicity.** Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Provider agrees that SAP may use Provider's name in customer listings (reference listings) or to analyze details from the contract (e.g. to forecast demand), as well as – subject to mutual agreement – as part of SAP's other marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHIRE participation). This includes the provision for forecast analysis to and use by SAP Affiliates. Insofar as this includes the provision and use of contact information of Provider's contact persons, Provider will secure the appropriate permissions where necessary.
- 9.6. **Data Processing.** The Parties agree on the terms of the "Personal Data Processing Agreement for SAP Support and Professional Services", version 5-2018 ("DPA").

## 10. DEFECTS AS TO QUALITY, DEFECTS IN TITLE, OTHER FAULTS.

- 10.1 **Warranty.** SAP warrants the agreed qualities of the SAP Software a) in case of perpetual license grant in accordance with the law governing the sale of goods, and b) in case of term license grant or grant of a license that may be terminated in accordance with the law governing rental agreements; further, SAP warrants that the grant of the agreed rights to Provider does not infringe any third-party right.
- 10.2 To discharge its liability for shown quality defects, SAP will remedy the defects either by providing to Provider a new version of the SAP Software that is free of defects or, at its election, by eliminating the defects. SAP may also eliminate a defect by indicating to Provider a reasonable way to avoid the effect of the defect. To discharge its liability for shown defects in title, SAP will remedy the defects either by procuring for Provider the legally incontestable right under license to use the contractual SAP Software or, at SAP's election, providing equivalent replacement or altered SAP Software. Provider must accept a new version of the SAP Software that is functionally compliant unless it would be unreasonable to require Provider to do so. For defects in title Sec. 11 applies in addition.
- 10.3 If Provider sets a reasonable limited additional time period for SAP to remedy the defect and SAP finally fails to do so in that time, Provider has the right to rescind from the Order Form or terminate the Order Form or reduce the remuneration. Subject to the exclusions and limitations in section 12, SAP undertakes to compensate for loss or wasted anticipatory expenditure caused by a defect.
- 10.4 The time bar for claims under sections 10.1 a) comes into effect one year after delivery of the SAP Software. This also applies to rights arising

out of rescission or reduction of remuneration. The reduction in the time before the time bar comes into effect does not apply in cases of SAP's intent or gross negligence, of fraudulent concealment of a defect, of personal injury, or of defect in title to which the German Civil Code (BGB), section 438 (1) No.1 (a) applies.

- 10.5 The time bar for claims for defects in services to eliminate or avoid a defect provided in discharge of defect liability also comes into effect at the time specified in section 10.4). However, the time before the bar comes into effect is tolled while, with Provider's consent, SAP is checking the existence of a defect or is remedying a defect, until SAP informs Provider of the results of its check, gives notice that the remedy is complete, or refuses to remedy the defect. The time bar comes into effect no earlier than three months after the end of the toll.
- 10.6 If SAP provides defect identification or elimination works or services without being under obligation to do so, SAP is entitled to remuneration in accordance with SAP's price lists for such services. This applies in particular to any reported quality defect that is not reproducible or not imputable to SAP or in cases where the SAP Software is not used in compliance with its documentation. Without prejudice to the generality of the foregoing, SAP is entitled to remuneration for additional work it does to eliminate any defect that arises out of Provider's failure to properly discharge its duty to collaborate, inappropriate operation of the SAP Software, or failure to take the SAP services that SAP recommends.
- 10.7 If SAP fails to properly perform any of its duties herein that is not within the ambit of defect liability, or is otherwise in breach, Provider must give written notice of the failure or breach to SAP and fix a limited additional time period during which SAP has the opportunity to properly perform its duty or otherwise rectify the situation. SAP will compensate for loss or wasted anticipatory expenditure subject to the exclusions and limitations in section 11. and 12.
- 10.8 The provisions in this section 10. apply analogously to defects as to quality and defects in title in the SAP Software delivered in performance of support duties. The right to terminate the support contract for just cause replaces the right to rescind the contract. Any right to reduction of remuneration applies to remuneration under the support or rental contract. Provider shall notify SAP in writing of any nonconformance in sufficient detail for SAP to analyze the claimed nonconformance. Provider shall give commercially reasonable assistance to SAP in analyzing and remediating any nonconformity.

## 11. THIRD PARTY CLAIMS

If a third party claims that the exercise of the license granted under the contract infringes its rights, Provider must fully inform SAP in writing without delay. If Provider ceases to use the contractual SAP Software to mitigate loss or for other just reason, Licensee must notify the third party that such cessation does not imply any recognition of the claimed infringement. Provider will conduct the dispute with the third party both in court and out of court only in consultation and agreement with SAP or authorize SAP to assume sole conduct of the dispute.

## 12. EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 12.1 The Parties' liability in contract, tort, and otherwise for loss including but not limited to wasted anticipatory expenditure, is subject to the following provisions:
  - (a) In cases of intent, the Parties' liability extends to the full loss; in cases of gross negligence, the Parties' liability is limited to the amount of foreseeable loss that would have been prevented through the exercise of due care; in cases of absence of a guaranteed quality, the Parties' liability is limited to the amount of foreseeable loss that would have been prevented by the presence of the guaranteed quality.
  - (b) In other cases: the Parties are not liable except for breach of a major obligation (Kardinalpflicht) and only up to the limits in the following subsection. A breach of a major obligation in the meaning of this section 12.1 (b) is assumed where the duty itself is a necessary prerequisite for the contractual performance, or where the breach of the relevant duty jeopardizes the purpose of the contract and where the other Party could legitimately rely upon its fulfillment.  
Liability claims under section 12.1 (b) are limited to € 200.000 (two-hundred thousand Euro) per incident and limited in total to € 500.000 (five-hundred thousand Euro) for all claims under one Order Form.
- 12.2 Contributory fault and contributory negligence may be claimed. The limits of liability in section 12.1 do not apply to personal injury liability or liability under the German Product Liability Act (Produkthaftungsgesetz).
- 12.3 For all claims against SAP in contract, tort, or otherwise for loss or wasted anticipatory expenditure the time bar comes into effect after a period of one year. That period begins at the point in time specified in the German Civil Code (BGB), section 199 (1). The foregoing provisions in this section notwithstanding, the time bar comes into effect not later than five years after the claim arises. The provisions in sentences 1 to 3 in this section do not apply to liability for intent or gross negligence, liability for personal injury, or liability under the German Product Liability Act. The provisions in this section do not affect the other time bar for claims arising out of defects as to quality and defects in title (sections 10.4-10.5).

## 13. PROVIDER COMPLIANCE

- 13.1 Provider shall conduct its operations at all times in strict compliance with all applicable anticorruption laws including in particular the German Act Against Restraints of Competition ("GWB") and SAP's then current SAP Partner Code of Business Conduct to which Provider has access to under the SAP Partner Portal and with which SAP provides Provider with upon request. Provider will also oblige Provider's subcontractors, Affiliates, resellers and distributors accordingly. If Provider has in place or adopts policies which establish similar standards to the SAP Code of Business Conduct, Provider may comply with its own policies and require its subcontractors, Affiliates, resellers and distributors to comply with it and with that to fulfil the requirements of this Section 13.1.
- 13.2 Provider shall not obtain on SAP's behalf or provide to SAP any information which is not legally available or transferable in the Territory, or which is confidential information of third parties, where there is reason to believe that possession of such information is unauthorized, illegal, or unethical.
- 13.3 Provider shall not make, offer or promise any payments or gifts directly or indirectly to any employee of potential Customers or End Users. Any business entertainment offered to potential Customers must comply with the spirit and letter of the limits established in the relevant then current SAP Partner Code of Business Conduct.
- 13.4 Provider represents and warrants to SAP that Provider and any other person acting on the Provider's behalf have not directly or indirectly paid, offered or promised to pay, or authorized the payment of, and will not directly or indirectly pay, offer or promise to pay, or authorize the payment of any monies or gifts or anything of value to any employee or representative of a Customer or prospect, or government official or employee, political party official or candidate, or officer or employee of any public international organization (or an immediate family member of such persons) for the purpose of influencing their acts or decisions in order to secure or retain business on behalf of SAP.

- 13.5 Provider represents and warrants that it is not listed by any government agency as debarred, suspended, or proposed for suspension or debarment or otherwise ineligible for government procurement programs. Provider certifies that neither it nor its employees or subcontractors are members of management or in a position to influence decisions related to work performed under the Agreement with respect to any Customer.
- 13.6 SAP shall be entitled to require Provider to certify once per year that Provider is in compliance with the terms of this Section 13.

#### 14. GENERAL PROVISIONS

14.1 Offset/ Assignment. Provider may offset only claims or claim rights of retention that are uncontested or have been finally determined by the court. Subject to the provisions of the German Commercial Code (HGB), section 354a, Provider cannot assign its claims to a third party. SAP may assign this Agreement to an SAP Affiliate. Provider may not, without SAP's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the SAP Materials or SAP Confidential Information, to any party.

14.2 Severability. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

14.3 No Waiver. If either Party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

#### 14.4 Regulatory Matters.

Any software (including patches, fixes, updates, upgrades and new versions of software), documentation, services and/or materials (altogether referred to as "Items") delivered by SAP under this Agreement are subject to the export and import control laws of various countries, including, without limitation, the laws of the United States, the EU, Ireland and Germany.

Provider acknowledges that the delivery of any Items by SAP may be subject to the prior obtaining of export and/or import authorizations from the competent authorities and that this process may considerably delay or prevent the delivery and/or impact SAP's ability to provide maintenance and support.

Provider shall support SAP in obtaining any required authorization by providing information and/or declarations, e.g. End Use Certificates, as may be requested by SAP.

Provider shall be responsible for complying with all applicable governmental regulations of the country where Provider is registered, and any foreign countries with respect to the use of the Items by Provider and/or its Affiliates.

At Provider's request, SAP shall provide Provider

(a) with the export control classification numbers of any Items delivered under this Agreement, in accordance with the EU Dual Use Regulation 428/2009/EC, as amended by Regulation 388/2012/EU; and

(b) the US Export Administration Regulation; and

(c) technical information as may required by Provider for the purpose of export and import licensing procedures in other countries;

provided that SAP may refuse the provisioning of such information:

(i) where it is not readily available to SAP; and or

(ii) where SAP believes, in its sole discretion, that disclosure of such information may put SAP's or any of SAP's licensors' intellectual property and/or trade secrets at risk.

Provider agrees that it will not submit the Items to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Items to countries, persons or entities prohibited by the laws of Germany, the EU, the US and other applicable export laws, trade sanctions and embargoes.

14.5 Governing Law; Limitations Period. This Agreement and any claims in contract, in tort or otherwise arising out of or relating to this Agreement and its subject matter shall be governed by and construed exclusively under the laws of Germany. If Licensee is a merchant within the meaning of the German Commercial Code (HGB), section 1, or a public-law juristic person or special fund, the sole place of jurisdiction for all differences arising out of or in connection with the Agreement shall be Karlsruhe. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act as enacted shall not apply. Except in emergencies, a limited time fixed by Provider pursuant to the law or contract must not be less than ten (10) working days. Failure to comply with any fixed time limit entitles Provider to be released from the Order Form (e. g. by rescission, termination, or claim for damages in lieu of performance) or to a price reduction for breach only if this was threatened in writing in the notice fixing the limited time as a consequence of failure to comply with that time limit. After a limited time fixed in accordance with sentence 2 expires, SAP is entitled to give notice to Provider requiring that any rights arising out of the expiration be exercised within two weeks of receipt of the notice.

14.6 Notices. Amendments or additions and contractually relevant declarations as well as declarations directly influencing a legal relationship, 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, e-mail transmission with scanned signatures, or other agreed form of contract conclusion provided by or on behalf of SAP, such as SAP Store). Except in that respect, however, the provisions in the German Civil Code (BGB), sections 127 (2) and (3) do not apply.

14.7 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Provider. This Agreement does not create any partnership, joint venture or principal and agent relationship.