



**Partner Test and Demonstration License Agreement
for SAP Cloud Services (“Test and Demonstration License”),**

effective 00/00/2019 (“Effective Date”)

between **SAP SE**
 Dietmar-Hopp-Allee 16
 69190 Walldorf/Germany
 (hereinafter “SAP”)

and **Happy Partner, Ltd.**
 1234 East Chester Pike
 Old Town Square, PA 00000

 (hereinafter “Partner”)

SAP Partner Number: 123456

This Test and Demonstration License defines Partner’s access and use of Cloud Services available on the then current SAP Partner Price List for test and demonstration purposes. Based on this Agreement, Partner is permitted to order Cloud Services from SAP.

1. Definitions

- 1.1** “Order” or “Order Form” means the ordering document for a Cloud Service available under this Agreement.
- 1.2** “End-User” means a customer of Partner who has licensed use of or access to the Content created by Partner.

2. Contract Documents

- 2.1** Any Order for Cloud Services under this Test and Demonstration License shall be governed by and incorporates the following documents in effect as of effective date of this Test and Demonstration License. All Documents are listed in order of precedence, and collectively referred to as the “Agreement”

Agreement	Locations
Order Form	
The SAP Partner Price List	
This Test and Demonstration License	
Product-Specific Supplemental Terms (“Supplements”) for the Cloud Service ordered	http://www.sap.com/agreements-cloud-supplement
Data Processing Agreement for SAP Cloud Services	http://www.sap.com/agreements-cloud-data-processing
Support Policy for SAP Cloud Services	http://www.sap.com/agreements-cloud-support
Service Level Agreement for SAP Cloud Services	http://www.sap.com/agreements-cloud-service-level-agreement
General Terms and Conditions for SAP Cloud Services (Direct) (“GTC”) US version / German version in English	http://sap.com/agreements/cloud-services-gtc



For clarification: in case of inconsistencies between the documents listed above and the GTC, the terms of such other documents shall prevail over the terms of the GTC. Partner confirms that it has reviewed these documents prior to executing an Order.

Partner agrees that each electronic Order Form represents a binding contract between SAP and Partner.

- 2.2** Unless defined in other documents in this Agreement, all capitalized terms shall have the meaning as set forth in the GTC. All references in the contract documents above to "SAP Cloud Services" shall mean Cloud Services, and all references to "Customer" in other parts of the Agreement shall be references to Partner.
- 2.3** The Data Processor Agreement shall serve as a commissioned written data processing agreement.
- 2.4** SAP intends to meet the SLA referenced in the Product-Specific Supplements and the Service Level Agreement for SAP Cloud Services, however such service levels shall not be binding upon SAP and Partner shall have no claims against SAP under this Agreement.
- 2.5** SAP will provide to Partners a monthly report describing the System Availability percentage for the applicable Cloud Service only through an online portal made available to Partner, only if and when such online portal becomes available.

3. License Grant

- 3.1** Subject to the terms and conditions of the Supplements, Partner is entitled to access and use the relevant Cloud Service only for testing and demonstration purposes.
- 3.2** Partner is entitled to access and use the Cloud Service only for i) non-productive testing and evaluation purposes and ii) demonstration to prospects of Partner. The Cloud Service may only be used for test, evaluation and demonstration purposes with sample data and not for execution of productive transactions. Furthermore, Partner may not use the Cloud Service for preparation of productive use by a prospect of Partner. In no event may a Partner process the data of any third party.
- 3.3** Subject to payment of the fees outlined in the then current SAP Partner Price List and the use limitation described therein, SAP shall provide Partner with access to the requested number of SAP Cloud Service tenants and (if available) additional use metrics for the specific Cloud Service set forth therein.

4. Fees and Fee increases

- 4.1** The fees for the Cloud Services available under this Agreement are outlined in the then current Partner Price List. Fees for Cloud Services under this Agreement shall be invoiced by SAP and paid by Partner annually in advance. All payments hereunder are non-refundable. Payments are due thirty (30) calendar days from the date of the invoice. **Unpaid fees will accrue interest at the maximum legal rate. (If US version, regulated in 4.1)**
- 4.2** **Any fees not paid when due shall accrue interest at the applicable statutory interest rate. (If DE version, regulated in 4.2)**

(US version regulated in 4.2 / (DE version regulated in 4.3) The fee applicable for a renewal subscription term corresponds to the fees for the preceding subscription term of an Order Form, provided SAP may amend the remuneration for Cloud Service subscriptions over the preceding term of an Order Form at its discretion with effect from the start of a renewal subscription term as follow:

- (a) The change applied to the total fees of the Cloud Service subscribed to under this Agreement must not be greater than the change in the index under section (b) below ("Discretionary Applicable Change") unless such increase is reasonably justified by a material enhancement of the Cloud Service.
- (b) The index used to determine the Discretionary Applicable Change is the index of mean gross monthly salaries of fulltime employees in Germany in the information technology services sector (currently published in the quarterly figures by the German Federal Statistics Office at "Fachserie 16, Reihe 2.4, Gruppe J 62"). If that index is discontinued, the applicable index will be the index published by the



Federal Statistical Office that most closely reflects changes in average gross monthly earnings in that sector.

(US version regulated in 4.3 / DE version regulated in 4.4.) For the first fee adjustment for an Order Form, the Discretionary Applicable Change is the change from the published index as it stood when the Order Form was concluded to the index as it had most recently been published when the new Fee adjustment is made. 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 was made to the index that had most recently been published when the new Fee adjustment is made.

5. Term and Termination

5.1 The term of this Agreement shall run from the Agreement Effective Date, for a twelve (12) month term (the "Initial Term"). Thereafter, the Agreement shall automatically renew for additional twelve (12) month terms (each a "Renewal Term") unless terminated by either party by giving ninety (90) days notice to the to the end of the then current term. This Agreement may be terminated for cause in accordance with the GTC.

5.2 The term of an Order Form for Core Cloud Services shall run from the Order Form Effective Date for a twelve (12) month term (the "Initial Term Core"). Thereafter, the Order Form shall automatically renew for additional twelve (12) month terms (each a "Renewal Term Core") unless terminated in accordance with this Section 5.

5.2.1 The term of an Order Form for Additional Cloud Services shall run from the Order Form Effective Date in accordance with the Initial Term of the above mentioned Order Form (the "Initial Term Add On"). Thereafter the Order Form for Additional Cloud Services shall automatically renew for additional twelve (12) month terms (each a "Renewal Term Add On") unless terminated in accordance with this Section 5. Fees for the Initial Term will be adjusted accordingly if applicable.

5.3 The minimum subscription period for an additional SAP Cloud Service is three (3) months. This Agreement is only valid in combination with at least one (1) valid SAP partnership agreement. This Agreement and all Order Forms under this T+D License shall terminate automatically upon termination or expiration of its SAP Partner status. In this case Partner, shall not be entitled to any refund of any fees paid to SAP prior to such termination.

5.4 This Agreement shall remain effective until the termination effective date of any order form associated with this Agreement and shall cease automatically with the termination effective date of the last active order form

5.5 This Agreement shall be terminated automatically, when no order is made within six (6) month after the Effective Date.

5.6 Termination of respective subscriptions to the Cloud Service shall not relieve Partner of its outstanding payment obligations existing at the time of such termination. Any fees previously paid by Partner are non-refundable.

For clarification: Partner may only export and retrieve Partner Data until the effective date of termination of an Order Form or this Agreement. As only sample data may be used by Partner in connection with this Agreement, SAP is not obliged to maintain or return any Partner Data after the effective date of termination of an Order Form or this Agreement. SAP will delete any Partner Data without delay after termination of an Order Form or this Agreement.

6. Tax

Respectively all taxes based on income that are imposed, or may be imposed during the Term of the Agreement, by any federal, state or local government entities for payments received under the Agreement will be borne by the recipient of the payment (the Recipient).

If the party making such payments (the "Payer") is required by law to withhold income or corporation tax or a similar tax ("Withholding Tax") from any gross payment to the Recipient under the Agreement, Payer shall be entitled to withhold or deduct such tax from the gross amount to be paid if and to the extent that the Recipient may offset the withholding income according to the Recipient's law the country of residence against its income or corporate tax liabilities. If Recipient cannot offset the withholding tax against its corporate tax liability, Payer agrees to gross up payments actually made such that Recipient shall receive sums due hereunder in full and free of any deduction for any such withholding tax, charge or levy. However, Payer shall use all efforts to reduce any such withholding payable to the lowest possible rate subject to compliance with all applicable laws and double taxation treaties. Recipient will cooperate with Payer to the extent that is necessary to apply for such reduction, especially by, but not limited to, providing necessary forms to Payer or the relevant tax authority. Otherwise, Payer is entitled to withhold tax at standard rates according to the relevant laws. The Payer will in the case of any withholding of any Withholding Tax provide to the Recipient a receipt from the relevant tax authority to which such Withholding Tax has been paid.

All other taxes or charges of any kind (including but not limited to, customs duties, tariffs, excise, gross receipts, sales and use and value added tax) except income tax or corporation tax (or similar taxes) will be borne by the Payer. If any such tax or duty has to be withheld or deducted from any payment under the Agreement, Payer shall increase payment under the Agreement by such amount as shall ensure that after such withholding or deduction, Recipient shall have received an amount equal to the payment otherwise required.

(US version regulated in 7 / DE version regulated in 8). Limitations

- 7.1 Notwithstanding the Support Policy for SAP Cloud Services, Preferred Care is not available for the Cloud Service made available under this Agreement.
- 7.2. No services, including without limitation, set-up, implementation, on-boarding and integration services, are provided in conjunction with the Cloud Service available under this Agreement

Liability Cap (If DE version, this section applies and is regulated in 7)

- 8.1 **SAP is liable in contract, tort, or otherwise for loss or wasted expenditure subject always as follows: (a) In cases of intent, SAP's liability extends to the full loss; in cases of gross negligence, 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, liability is limited to the amount of foreseeable loss that would have been prevented by the presence of the guaranteed quality.**
- 8.2 **In other cases, SAP is not liable except for breach of a major obligation (Kardinalspflicht) and only up to the limits in the following subsection. A breach of a major obligation in the meaning of this Section 8.2 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 Partner could legitimately rely upon its fulfilment.**
- 8.3 **For Cloud Services invoiced on an annual basis, liability in cases under Section 8.2 is limited to a total per contract year of the fee that was paid in the contract year for the Cloud Service concerned. For Cloud Services invoiced on quarterly basis, liability in cases under Section 8.2 is limited to a total per calendar quarter of the fee that was paid in the relevant calendar quarter for the Cloud Service concerned.**

(US version regulated in 8 / DE version regulated in 9). Previous Agreements

As of the Effective Date, Partner agrees to cease exercising its use rights to Cloud Services under any existing test and demonstration license agreements and/or partner agreement schedules/exhibits

SAMPLE AGREEMENT – NOT FOR SIGNATURE



entered into with SAP subsidiaries and to this extent declares the willingness to terminate such other existing test and demonstration license agreements and/or partner agreement schedules/exhibits if requested by the respective local SAP subsidiary. Partner acknowledges that such SAP subsidiaries will either a) terminate such Cloud Services test and demonstration license agreements and/or partner agreement schedules/exhibits to the end of their then current term or b) approach Partner to terminate such contracts by mutual agreement.

(US version regulated in 9 / DE version regulated in 10). Electronic Signature

Signatures sent by electronic means (facsimile, scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures.

Accepted By:
SAP SE (SAP)

Accepted By:
Happy Partner, Ltd

NOT FOR SIGNATURE

Name:

Title:

Date:

NOT FOR SIGNATURE

Name:

Title:

Date:

NOT FOR SIGNATURE

Name:

Title:

Date:
