

**- Commercial Terms and GTC Schedule -  
to the Platform Application Development Cooperation Agreement**

This Schedule consists of the Exhibits B – 5, D – 1 and Annex 1 and is hereby annexed to and made a part of the Platform Application Development Cooperation Agreement.

**Exhibit B – 5  
- Commercial Terms -  
to the Platform Application Development Cooperation Agreement**

This Exhibit B - 5 to the Agreement between Partner and SAP stipulates the commercial terms for Base Services, Innovation Pack Fees and SAP Royalties for SAP Store between Partner and SAP under the Agreement.

## **1. Definitions**

All capitalized terms shall have the meaning ascribed in this Agreement, including the Definitions Schedule, other applicable Schedules, or set forth herein.

## **2. Obligations**

### **2.1 SAP Obligations**

- 2.1.1 SAP will nominate a contact person who will coordinate any revenue related topics between the Parties under this Exhibit. This person shall be the SPOC for the Partner who is authorized to make or accept required declarations on behalf of SAP. SAP will publish applicable fees on SAP price list or any other pricing document, currently the Main Agreement's pricing sheet, Exhibit C – 3 (Runtime License – Pricing Sheet) and Exhibit E – 3 (Embedded License - Pricing Sheet) made available to Partner for the purposes the Agreement.
- 2.1.2 SAP will provide Partner access to the development licenses for the purposes of this Agreement as described in Exhibit A – 1 (Development Licenses).
- 2.1.3 SAP agrees to provide Partner access to the SAP Store subject to the terms and conditions outlined in Exhibit B – 3 (SAP Store).
- 2.1.4 SAP agrees to provide to Partner a SAP Platform Partner Base Service which currently encompasses the following: Access to partner service advisors with the necessary details including telephone and e-mail information. The partner service advisor may provide Partner with an enablement plan for partner organization, may facilitate technical knowledge related to SAP products and solutions, new features, and may orchestrate access to other SAP Services ("**SAP Services**"), such as:
- Business enablement services
  - Access to SAP community forums
  - Technical enablement services:
    - Access to product documentation, online tutorials and other learning material
    - Online (remote) enablement sessions regarding SAP Platform components & tools
    - Access to SAP technology and application roadmaps

- Marketing and sales enablement services:
  - Partner reference letter
  - Listing in SAP Platform Partner Directory
  - Best practices for SAP Store listings

SAP reserves the right to reassign an advisor without notice. SAP may adjust the description of the advisor's role, tasks and change add or stop SAP Services or elements thereof upon prior written notice to the partner, e.g. via web-based publication of an applicable SAP PartnerEdge program guide which will be incorporated herein by reference. Access to SAP Services which are Innovation Pack-specific require that Partner has subscribed to the corresponding Innovation Pack.

#### 2.1.5 Subcontracting

SAP shall be entitled to subcontract SAP's rights and obligations defined in this Agreement to third parties, including, but not limited to SAP AG and such companies affiliated with SAP AG within the meaning of §§ 15 et seqq. German Stock Corporation Act (Aktiengesetz, AktG).

Where SAP engages subcontractors, SAP shall be obliged to pass on SAP's contractual obligations hereunder to such subcontractors; in particular, but not limited to, the contractual requirements for confidentiality, data protection and data security stipulated between the parties of the Main Agreement. SAP shall be obliged to secure audit and inspection rights as defined in this Agreement for Partner's benefit. Partner shall also be entitled, upon written request, to information about the essential content of the subcontract and the implementation of the data protection obligations by the subcontractor, and shall further be entitled to reasonably inspect the relevant contract documentation.

## 2.2. Partner Obligations

- 2.2.1 Partner will nominate a contact person who will coordinate any revenue related topics under this Appendix between the Parties. This person shall be the SPOC for SAP who is authorized to make or accept needed declaration on behalf of the Partner.
- 2.2.2 The Partner will be responsible for all End Users' billing and collection functions with respect to the Packaged Platform Applications and services.
- 2.2.3 Partner is responsible for remitting any revenues due to SAP under this Agreement.
- 2.2.4 Without prior written consent from SAP, Partner is not permitted to render any information concerning SAP HANA Cloud Platform license terms, SAP services or any other issues related to SAP products and services to End Users. Partner shall refer any End User requiring such information to SAP.
- 2.2.5 Partner shall develop the Platform Applications in accordance with Documentation and Application Review criteria published by SAP and as defined in Exhibit B – 2 (Application Review).
- 2.2.6 Partner will be responsible for providing SAP with all necessary information on the Platform Applications required for SAP to enable Application Review, listing of the solution on SAP Store, calculation of SAP Royalties and to fulfill its obligations under this Agreement or towards its End Users.
- 2.2.7 Partner will actively sell a Packaged Platform Application as generally available product once it fulfills all requirements described in Exhibit B – 2 (Application Review). For distribution, Partner must publish a Packaged Platform Application at the SAP Store as described in Exhibit B – 3 (SAP Store). If and as long as published on the SAP Store, Partner is entitled to also publish and sell Platform Applications through other distribution channels.

- 2.2.8 Partner will ensure that Partner's contracts with End Users are compatible and not in conflict with the termination modalities specified in this Agreement. In particular, Partner shall include express regulations in its End User License Agreements which state that: a) the contract is not between SAP and End User, but only between Partner and End Users, b) SAP shall be a third party beneficiary of the contract with the right to enforce its regulations against End User, c) End User may use electronic means (email or SAP infrastructures like SAP Store which are used by both Partner and End User) to terminate the End User contract with regards to the Platform Application, d) availability of the Platform Application is subject to Partner fulfilling all (ongoing) requirements stipulated in Exhibit B – 3 (SAP Store).
- 2.2.9 Partner acknowledges that it is responsible towards its End Users that the Platform Application(s) fulfills all applicable data protection and data privacy laws. Partner shall ensure that the Platform Application(s) adheres to all applicable data protection and privacy laws.
- 2.2.10 Partner agrees to pay to SAP the fees and royalties stipulated in the Main Agreement's pricing sheet, Exhibit C – 3 (Runtime License – Pricing Sheet) and Exhibit E – 3 (Embedded License - Pricing Sheet).
- 2.2.11 Partner shall use commercially reasonable efforts to ensure that each End User has the required SAP End-User Software license in place to run Partner's Platform Applications.

### **2.3. Joint Obligations**

- 2.3.1 Each Party agrees to cooperate reasonably with the other Party under this Agreement and to fulfill properly its obligations.
- 2.3.2 The Parties may agree on trainings of the resources dedicated to this collaboration if the Parties see a need to up-skill such resources.
- 2.3.3 For support of joint End Users, the Parties agree to cooperate as outlined in Exhibit A – 1b (Support Cooperation).
- 2.3.4 Any communication or announcement of this Agreement or any collaboration under this Agreement is subject to mutual consent of the Parties.
- 2.3.5 Any use of a Party's Promotional Materials or any joint marketing and communication activities are subject to such Party's prior written approval. Notwithstanding the foregoing, if required by law, each Party may issue press releases concerning the Platform Application or the cooperation hereunder and other disclosures without the consent of the other Party.
- 2.3.6 Each Party shall solicit and reasonably consider the views of the other Party in designing and publishing such Promotional Materials. Once approved by the respective other Party, the Promotional Materials may be used and re-used by a Party for the purpose of promoting the Platform Applications referenced therein until such approval is withdrawn by the other Party with reasonable prior written notice. In the event such approval is withdrawn, existing Promotional Materials shall be returned or deleted within a reasonable period of time, as outlined in the withdrawal notice.
- 2.3.7 For the term of this Agreement and for the purposes of this Agreement, but only if and as long as Partner offers at least one (1) Packaged Platform Application via the SAP Store, Partner is entitled to use the SAP trademark according to the terms set forth in Exhibit B - 1 (Trademark License) when promoting the Platform Application. For the term of this Agreement, SAP is entitled to use the Partner's product and/or company logo and/or trademarks for inclusion on the website dedicated to the

SAP Store and/or for marketing materials related to the SAP Store and/or the SAP Solution. Partner will provide such logos and trademarks to SAP. Any such use is subject to the trademark usage guidelines of the respective Party.

- 2.3.8 Subject to the regulations of this section 4, SAP is entitled to publish information about the Platform Application(s) on the SAP Store or other SAP web pages including product descriptions and price points.

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### 4. Base Services, Innovation Pack Fees and SAP Royalties for SAP Store

- 4.1 Partner shall pay to SAP the SAP Platform Partner Base Service fee per rolling twelve (12) months periods as stipulated in the Main Agreement's pricing sheet (SAP Platform Partner Base Service).
- 4.2 Partner shall pay to SAP the Innovation Pack fees per rolling twelve (12) months periods following order per Innovation Pack as stipulated in the Main Agreement's pricing sheet. The end date of the subscription to an Innovation Pack must equal the end date of this Agreement. The subscription will continue to remain in effect for successive twelve (12) months periods until either Party terminates the subscription as described in 4.2 below. The subscription to an Innovation Pack can be terminated by either Party at the end of each rolling twelve (12) months periods following effective Agreement date or Innovation Pack order date with thirty (30) days advance notice. Partner is obliged to have subscribed to a minimum of one (1) Innovation Pack throughout the term of the Agreement.
- 4.3 Requests for additional licenses are subject to the then current and applicable SAP price list (or any other pricing document made available to Partner for the purposes of the Agreement) and SAP standard terms and conditions. Requests for additional SAP Cloud Services require an effective subscription to the Innovation pack for SAP HANA Cloud Platform and are subject to the then current and applicable SAP price list (or any other pricing document made available to Partner for the purposes of the Agreement). The end date of the subscription to SAP Cloud Services for the purposes of this Agreement cannot exceed the end date of the subscription to the Innovation pack for SAP HANA Cloud Platform. In general, the subscription period for additional SAP Cloud Services or SAP Jam services is a minimum of twelve (12) months with automatic renewal in twelve (12) months periods. Partner can terminate such subscriptions to SAP Cloud Services or SAP Jam services with thirty (30) days advance notice. The subscription period for additional SAP HANA dedicated instance (32 GB) and for additional SAP HANA dedicated instance (64 GB) is a minimum of three (3) months with automated renewal in three (3) months periods. Partner can terminate such subscriptions to SAP HANA Cloud Platform, partner edition (32 GB) and (64GB) services with thirty (30) days advance notice.
- 4.4 In consideration of the collaboration with SAP under the Agreement, Partner shall pay SAP a percentage of the Net Revenue for SAP Store ("**SAP Royalties**"). This percentage is stipulated by the Main Agreement's pricing sheet.
- 4.5 SAP shall not be entitled to receive SAP Royalties for a Packaged Platform Application which is licensed on a one-time fee basis where an End User has terminated/rescinded its contract with Partner within thirty (30) days after purchase of the Packaged Platform Application. After expiration of the aforementioned period and provided that the contract between Partner and End User has not been terminated, SAP shall receive the SAP Royalties outlined herein.
- 4.6 SAP shall not be entitled to receive SAP Royalties for a Packaged Platform Application which is licensed on a recurring fee basis where an End User has terminated its contract with Partner within thirty (30) days after activation of the Packaged Platform Application and with effect to the end of such thirty (30) day period. In case the contract between Partner and End User is not terminated as described above,

SAP Royalties shall be based on all Net Revenue for SAP Store as of the sales date of the Packaged Platform Application.

## 5. Reporting & Payments for SAP Royalties, for Runtime License, and for Embedded License Fees

SAP shall be eligible for SAP Royalties after a Packaged Platform Application has been licensed/ sold to an End User by Partner via the electronic ordering mechanism of the SAP Store.

- 5.1 Based on the information stored in the SAP Store, SAP may provide to Partner a SAP Royalties report on the tenth (10<sup>th</sup>) working day of each calendar month, but only if the criteria set out in this section below are met. Each report provided by SAP under this Exhibit will include the following information per End User for which SAP Royalties are due:
- Name of Packaged Platform Application
  - Net value (excluding taxes or tariffs) of the transactions
  - Quantities licensed
  - Date of sales
  - Name/ address of End User

In case of (a) Packaged Platform Application connecting to external, billable services or solutions which are separately invoiced to End User by Partner or (b) SAP does not deliver the monthly reporting, SAP requests from Partner a report on the 10th working day of the quarter following the date on which Partner invoices the Net Revenue for SAP Store to End User or Reseller. The report shall contain detailed information on the individual End User including End User name (no abbreviations), End User address (street, city, postal code, country), SAP Business Partner number, SAP Account Executive (if available), accounting period, invoiced amounts per End User in local invoicing currency, a certificate evidencing the calculation of Net Revenue for SAP Store detailed by each individual End User and sub-totals by country of such End User.

- 5.2 SAP will invoice Partner on a quarterly basis in the agreed currency according to the report on the SAP Royalties according to section 5.1. Partner shall pay any invoiced amounts latest thirty (30) calendar days following the date of the invoice by SAP.  
SAP will only invoice Partner as described herein if fees exceed or are equal to an amount of 500 € to avoid invoicing of small amounts. SAP reserves the right to change the threshold to avoid invoicing of small amounts and to communicate such changes to Partner. Nevertheless, SAP will always send an invoice at the end of each contract year per calendar year and reserves the right to additionally send an invoice at the calendar year date of December 31<sup>st</sup>.
- 5.3 SAP reserves the right to audit Partner's internal records with regards to sales of the Platform Applications in order to verify the consistency between Partner's internal records and reports created by SAP in accordance with section 5. The audit right may be executed by SAP or a mutually agreed independent auditor and may be exercised one (1) time in any twelve (12) month period provided that the auditing Party signs customary assurances of confidentiality and the audit is performed in such a manner that will not disrupt Partner's business. Partner is only required to disclose information that consists of business records reflecting amounts due to SAP. SAP will be responsible for the costs of such audit.
- 5.4 SAP reserves the right to also verify that the Packaged Platform Application list price and actual selling prices ("**Platform Application Pricing**") reflect the fair value of the Packaged Platform Application in the market for business applications. Where SAP is of the opinion that planned or actual pricing does not reflect fair value, SAP has the right to ask Partner to provide a Fair Value Substitute or to assign an independent auditor to verify whether Packaged Platform Application Pricing deviates from fair value. The Parties agree to be bound to such auditing result and SAP reserves the right to calculate Net Revenue for SAP Store, for Runtime License, and for Embedded License based on this identified fair value or on the respective Fair Value Substitute and not based on the Platform Application Pricing. Reasonable

costs of SAP's audit shall be paid by Partner if the audit results indicate Platform Application Pricing deviates from identified fair value.

- 5.5 If the audit discloses an underpayment, then Partner will promptly, but no later than within one (1) calendar month, correct this underpayment by paying to SAP the amount of the underpayment. If the underpayment is greater than ten percent (10%) of the total amount payable during the period under audit, then Partner will, in addition to paying the amount of the underpayment, reimburse SAP for the reasonable costs of the audit. In case an audit discloses discrepancies between actual Net Revenue for SAP Store, for Runtime License, or for Embedded License, or SAP Royalties and the amounts reported to SAP in two (2) or more reports, SAP may terminate the Agreement for breach in accordance with the terms of the Agreement.
- 5.6 All payments hereunder are non-refundable.
- 5.7 In general, all fees in the SAP price list are subject to statutory sales tax / VAT. SAP is entitled to submit invoices for partial performance. Payments to SAP are due within thirty (30) days after receipt of invoice. No cash discount shall be granted. SAP charges interest at the statutory rate of default interest beginning thirty (30) days after the due date for such payment. Without receiving the payment, SAP is entitled to delist the Packaged Platform Application from SAP Store respectively SAP reserves the right not to list the Packaged Platform Application until full and final payment. Partner is entitled to offset only claims that are uncontested or have been finally determined by the court. Partner cannot assign its claims to a third party.

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## 7. Currency and Exchange Rates

- 7.1 SAP will invoice Partner all fees as stipulated in applicable pricing sheets and as agreed upon in the Main Agreement. In case of a Two-Tier Partner assigned to manage Partner, SAP reserves the right to also offer invoicing in other currencies ("**Local Two-Tier Partner Currency**"). Such local currency will be defined by Two-Tier-Partner handling the invoice. Partner has to follow Local Two-Tier Partner Currency setup communicated by Two-Tier Partner to Partner as long as Partner is managed by such Two-Tier Partner.
- 7.2 Where SAP and Partner have agreed that SAP will invoice Partner in USD or Local Two-Tier Partner Currency under the Agreement, the EURO/USD or EURO/ Local Two-Tier Partner Currency exchange rate shall be based on the official fixing of the European Central Bank on the last business day of the month immediately preceding the month in which SAP or Two-Tier-Partner invoices Partner.
- 7.3 For reporting reasons, e.g. according to section 5.1, Partner shall apply currency exchange rates based on the official fixing of the European Central Bank on the last business day of the month preceding the month in which Partner sends report to SAP.

## 8. SAP Base Service, SAP Store, and Innovation Pack Description

	<b>Description</b>
<b>SAP Platform Partner Base Service</b>	<ul style="list-style-type: none"> <li>• Includes SAP Services as set forth Exhibit B – 5 and grants access to Innovation Packs and SAP Store participation</li> <li>• Needs to be combined with at least one Innovation Pack (stated below)</li> <li>• Payment mandatory for Partner</li> </ul>
<b>SAP Store Participation</b>	<ul style="list-style-type: none"> <li>• Publication of Packaged Platform Applications on SAP Store</li> <li>• Online sale of Packaged Platform Applications on SAP Store</li> </ul>
<b>Innovation Pack for mobile</b>	<ul style="list-style-type: none"> <li>• 25 Named User term licenses for SAP Mobile Platform Developer User for Partners</li> <li>• Includes SAP Enterprise Support for term licenses named above</li> </ul>
<b>Innovation Pack for SAP HANA and databases</b>	<ul style="list-style-type: none"> <li>• 25 Named User term licenses for SAP HANA Developer User for Partners</li> <li>• 25 SAP Database Developer User for Partners</li> <li>• Includes SAP Enterprise Support for term licenses named above</li> </ul>
<b>Innovation Pack for application integration</b>	<ul style="list-style-type: none"> <li>• 25 Named User term licenses for SAP Application Developer User for Partners</li> <li>• 25 Named User term licenses for SAP NetWeaver Developer User for Partners</li> <li>• Includes SAP Enterprise Support for term licenses named above</li> </ul>
<b>Innovation pack for Business Intelligence</b>	<ul style="list-style-type: none"> <li>• 25 Named User term licenses to develop Platform Applications (“Business Intelligence Developer User for Partners”), with the following Licensor Material:               <ul style="list-style-type: none"> <li>• BA&amp;T SAP BusinessObjects Business Intelligence Suite</li> <li>• Author/Designer Licenses: SAP Application Business Analytics Professional User</li> <li>• SAP InfiniteInsight</li> </ul> </li> <li>• SAP Enterprise Support for term licenses named above</li> </ul>
<b>Innovation pack for SAP Business One</b>	<ul style="list-style-type: none"> <li>• 25 Named User term licenses for SAP Business One Developer User for Partners</li> <li>• SAP Business One Analytics Engine term license for one (1) block (equating 64 Gigabytes)</li> <li>• Unlimited number of instances of the Integration Framework of SAP Business One term license to allow 25 Named Users to develop B1 Extensions and Integration Add-Ons</li> <li>• Includes SAP support services applicable to term licenses named above</li> </ul>
<b>Innovation Pack for SAP HANA Cloud Platform</b>	<ul style="list-style-type: none"> <li>• Right to use SAP HANA Cloud SDK, SAP HANA Cloud Tools for Java, and SAP Web IDE Tools</li> <li>• 2 compute units “Lite Edition”</li> <li>• 1 GB of structured Hana-database storage for development and testing</li> <li>• 10GB bandwidth for development and testing (egress - data transfer out)</li> <li>• 10GB of unstructured storage volume tier for development and testing, including 50 million transactions per month</li> <li>• SAP HANA App Services, 2 Cloud Portal Administrators</li> <li>• SAP HANA App Services, Cloud Portal, 4000 Site Visits</li> </ul>

**Exhibit D – 1**  
**- General Terms and Conditions for Partners -**  
**to the Platform Application Development Cooperation Agreement**

## **A. General Terms And Conditions**

The parties agree that their contractual relationship shall be governed by the terms and conditions of the Agreement.

### **1. DEFINITIONS**

All capitalized terms shall have the meaning ascribed in this Agreement, including the Definitions Schedule, other applicable Schedules, or set forth herein.

### **2. GRANT OF RIGHTS**

- 2.1 Exhibits. The Agreement provides Partner certain rights and obligations with respect to specific SAP partner offerings, all as specified in the Contractual Documents. The parties may, but are under no obligation to, execute multiple Schedules/Exhibits, or Order Forms.
- 2.2 Grant of Licenses. Subject to the terms of the Agreement and if specified in the applicable Contractual Documents, Licensor grants to Partner the non-exclusive, non-transferable right to use, license, offer for license, resell and/or otherwise distribute the Software solely in accordance with the license grant specified in the applicable Contractual Documents.
- 2.3 Database and Third Party Products. Partner and its End Users shall be responsible for any additional software, migration tool, or third party product not licensed hereunder that is needed to Use or Integrate with the Software.
- 2.4 Support. Each party's obligations regarding support and maintenance shall be as set forth in the applicable Contractual Documents.

### **3. GENERAL OBLIGATIONS AND LIMITATIONS**

- 3.1 To the extent the Contractual Documents grants Partner the right to contract directly with the End User for the license of the Software or Bundled Cloud Service, Partner shall secure the End User's consent to an End User License Agreement with terms not less protective of Licensor than the SAP Software General Terms and Conditions for Software or SAP's Cloud GTC and applicable Supplemental Terms and Conditions for Bundled Cloud Service current as of the effective date of the license for Software licensed to each End User ("Minimum Terms"), a copy of which may be found at:  
<http://www.sap.com/corporate-en/our-company/agreements/western-europe/agreements.epx?SearchText=&Filter1=&Filter2=&Filter3=AGMT001&Filter4=>  
(please select "SAP Software Agreements" => "SAP Software General Terms and Conditions, ("Western Europe)" for Software, or "Cloud General Terms and Conditions ("Western Europe)" for Bundled Cloud Service, the Software Use Rights and such other special terms as required by the applicable Order Form to be included in such End User License Agreement. Where Partner decides to use the SAP Software General Terms and Conditions for its own purposes, Partner shall replace the references to SAP therein with Partner's name. For clarity, Partner is not required to use the SAP Software General Terms and Conditions in verbatim provided that the requirements of this section 3.1 are met. Licensor shall be made a third party beneficiary under the End User License Agreement. Partner shall ensure that the terms of the End User License Agreement are fully effective and binding as required under applicable laws and regulations in the country, territory or jurisdiction in which Partner is distributing the Software as part of the Bundled Products, whether directly or indirectly. Partner shall be liable to SAP for any breach of the terms of such End User Agreement to the same extent as Partner would be liable to SAP under this



Agreement for such a breach by Partner. End User agrees to enable Licensor or Partner to perform audits with regards to the usage of the Software at the End User's sites. A specific reference to Licensor is not required. Partner shall reasonably cooperate with SAP to enforce the limitations and requirements imposed according to Sections 3.1 to the fullest extent possible

- 3.2 Delegation of Partner Duties. Partner may delegate the performance of the Partner's duties to suitably qualified personnel of an Affiliate. Notwithstanding such delegation by the Partner of its duties, Partner shall remain directly accountable to Licensor. Under no circumstances shall the Partner's Affiliate be entitled to hold itself out to be an Authorized SAP partner or having any other direct relationship to Licensor.

#### **4. PAYMENT, TAXES AND DELIVERY**

- 4.1 Orders, Fees and Payment terms. Partner agrees to pay all fees as set forth in the applicable Contractual Documents. All amounts due to Licensor under the Agreement shall be paid in the currency indicated in the applicable Contractual Documents. Partner will independently establish prices and terms for the Software or Bundled Cloud Service, provided such terms include those required by the Agreement.
- 4.2 Partner shall order the Software, SAP Cloud Services, and services according to Licensor's standard procedures. Any amounts payable under the Agreement and invoiced by Licensor shall be due within thirty (30) days of the invoice date. All payments made hereunder are non-refundable, and all amounts due hereunder are non-cancellable.
- 4.3 Partner agrees that all fees due to Licensor shall not be used to reduce, offset, or make contingent any payments due to Licensor. Partner can offset claims only if they are uncontested or awarded by final and binding court or arbitration court order. For avoidance of doubt, but without limiting the applicability of the foregoing, any fees due to Licensor under the Agreement are not contingent upon payments from third parties (including without limitation payment by Partner's resellers, distributors and/or End Users).
- 4.4 Payments made under the Agreement after their due date will incur interest at a rate equal to one and one-half per cent (1.5%) per month (i.e., 18% per annum) or the highest rate permitted by applicable law, whichever is less. In addition, Licensor may require accelerated payment terms.
- 4.5 Each Party shall be responsible for the payment of its own taxes.
- 4.6 Respectively all taxes based on income that are imposed, or may be imposed during the Term of this Agreement, by any federal, state or local government entities for payments received under this agreement will be borne by the recipient of the payment (the Recipient).
- 4.7 Fees and other charges described in the Contractual Documents or in any SAP Price List(s) referenced in the Contractual Documents, do not include federal, state or local sales, VAT, GST, foreign withholding (including foreign income withholding), use, property, excise, service, or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Partner's account. Partner shall collect and pay (or furnish Licensor with appropriate proof of exemption from) all sales, use and other applicable taxes, customs duties and fees, export taxes and fees, and other charges (with the exception of the income taxes of Licensor) applicable to Licensor's delivery of the Software and Documentation to Partner or End User, or any services to Partner or an End User. Partner hereby agrees to indemnify Licensor for any Taxes and related costs, interest and penalties paid or payable by Licensor.
- 4.8 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 this 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 and corporate tax liabilities according to the law the country of residence of the Recipient against its income or corporate tax liabilities. 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. Any applicable direct pay permits or valid tax-exempt certificates must be provided to SAP prior to the execution of this Agreement. If SAP is required to pay Taxes, Partner shall reimburse SAP for such amounts. Partner hereby agrees to indemnify SAP for any Taxes and related costs, interest and penalties paid or payable by SAP.

- 4.9 Partner's obligations under sections 4.5 to 4.9 shall survive the termination or expiration of this Agreement.
- 4.10 Licensor may require all partners in a country (including Partner) to settle any invoice in full prior to Licensor's delivery of Software if this is, in Licensor's reasonable discretion, needed to safeguard Licensor's justified financial interests.
- 4.11 Delivery. Subject to the terms and conditions of the Agreement and to the extent the Contractual Documents grants Partner the right to resell, license or otherwise distribute the Software, Licensor will deliver the Software and SAP Support by making it available for electronic download through the SAP Service Marketplace (<http://service.sap.com/swdc>) or such other network to Partner or its End User as the case may be. The Software is deemed delivered (including but not limited for purpose of fixed delivery dates) and the risk of loss passes at the time of such electronic delivery and has informed the Partner or the End User, as the case may be, of such download availability. Partner agrees not to request any physical delivery of Software or SAP Support and should it occur that any such delivery will be rejected by Partner. Partner agrees and understands that the calculation of Taxes may be affected by the delivery method and delivery location of the Software and corresponding SAP Support.

## 5. AUDITS.

- 5.1 During the term of the Agreement and for three (3) years thereafter, Partner will maintain relevant and accurate records regarding its distribution and sublicensing of the Software, SAP Cloud Services, or Licensor Materials, directly or indirectly, to each of its End Users. Upon reasonable notice to Partner, Licensor may audit or have audited by an external expert appointed by Licensor ("Nominated Auditor"), at Licensor's expense, the records of Partner and its employees, associates, agents, subcontractors or any other person acting on its behalf relating to Partner's activities under the Agreement to determine Partner's compliance hereunder, including the compliance with the license terms applying to Software, SAP Cloud Services, the calculation of the fees due under the Agreement, and the accurateness and completeness of the payment or reports submitted to Licensor under the Agreement. All such records will be subject to section 7.5 (Confidential Information). If the audit is performed by Licensor, Partner shall ensure that the audit can be performed on an anonymous basis and does not provide any End User name and/or contact information to Licensor during the audit procedure. If the audit is performed by the Nominated Auditor, then such Nominated Auditor shall not provide any End User names and contact information to Licensor. In the event any such audit reveals that Partner has underpaid Licensor, then, in addition to immediately settling the outstanding amount and such other remedies as Licensor may have, Partner shall pay or reimburse to Licensor the cost of the audit. In the event Partner or Licensor discovers that the use of Software or SAP Cloud Services by any End User has exceeded the licensed level, Partner shall be obligated to pay Licensor the applicable fees as if the additional licenses were licensed immediately prior to the date the licenses were first used.
- 5.2 Partner undertakes to carry out system measurements of its End Users' systems at Licensor's request in order to measure the utilization of the Software by the End User and to make the logs available to Licensor. The parties shall cooperate in good faith to implement any necessary auditing tools and enable the effective auditing of the End Users by Partner. In addition, Partner shall use reasonable efforts to obtain the approval of the End User to enable Licensor or any third party authorized by Licensor to carry out system measurements at the systems of the Partner's End Users directly.

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## 7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 7.1 Intellectual Property Rights. The Software, SAP Cloud Services, Documentation, Licensor Materials, Trademarks, Integration, Work Product, and all Intellectual Property Rights embodied in the foregoing, shall be the sole and exclusive property of Licensor or its Group Companies, or its or their licensors. All rights in and to the Software, SAP Cloud Service, Documentation, Integration, Work Product, and Licensor Materials and Trademarks not expressly granted in the Agreement or Contractual Documents are reserved by Licensor.
- 7.2 Trademarks. Except as expressly provided in Exhibit B-1 (Trademark License), nothing in the Agreement grants Partner the right to use or display any Licensor or Group Company's names, trademarks, trade names, logos or service marks. Partner shall not remove, delete or in any manner alter the Trademarks or other Intellectual Property Rights notices of Licensor, Group Companies and Licensor's suppliers, if any, appearing on the Software, SAP Cloud Service, Documentation, Work Product, sales, marketing or training materials, Licensor Materials, or any other materials as delivered to Partner by SAP. Licensor shall have the sole and exclusive right to protect and defend the Trademarks, at its sole cost and expense. Partner shall reasonably cooperate with Licensor, at Licensor's expense, in the defense and protection of the Trademarks, and shall promptly advise Licensor of the use of any mark infringing any of the Trademarks of which it has knowledge.
- 7.3 Modifications. Except as permitted under the applicable Contractual Documents, Partner shall not modify, adapt, enhance, localize, translate or make derivatives of the Software and Licensor Materials. Any and all Modifications, adaptations, enhancements, localizations, translations and derivative works shall be deemed to be the sole property of Licensor or its designated Group Company, and Partner hereby assigns all rights in them (including moral rights) to Licensor or its designated Group Company. Partner agrees to execute those documents reasonably necessary to secure Licensor or its Group Company's rights in the foregoing. In no event shall Partner remove or alter any electronic registration capture screen which may appear when any End User first installs or accesses the Software.
- 7.4 Reverse Engineering, Source Code. Partner shall not disassemble, reverse engineer or decompile, nor otherwise create or attempt to create the source code from the object code of the Software or Licensor Materials in any manner, unless such action is indispensable in order to obtain information necessary to achieve interoperability of the Software with an independently created computer program and Partner has not been provided such information, despite a written request, within a reasonable period of time. Information obtained through such action may not be used for purposes other than to achieve interoperability, and may not be given to third parties, unless this is necessary to establish interoperability, in particular is not to be used for the development, creation or marketing of programs similar to the Software. If Partner wishes to exercise any right to reverse engineer to ensure interoperability in accordance with applicable law, Partner shall first provide written notice to Licensor and permit Licensor, at its option, to make an offer to provide information and assistance reasonably required to ensure interoperability of the Software with other products for a fee to be mutually agreed upon (if any). Partner shall have no right to the source code of any Software.
- 7.5 Confidential Information.
- (a) Confidential Information shall not be used or reproduced in any form except as required to accomplish the intent of the Agreement. Any reproduction of any Confidential Information of the other party shall remain the property of the Disclosing Party and 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 Infor-

mation of the other to any person other than individuals whose access is necessary to enable it to exercise its rights and/or perform its obligations hereunder and who are under obligations of confidentiality substantially similar to those set forth herein. 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. Confidential Information of either party disclosed prior to execution of the Agreement shall be subject to the protections afforded hereunder.

- (b) The above restrictions 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 the 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.
- (c) Partner shall not disclose the terms and conditions of the Agreement or the pricing contained herein to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Partner agrees that Licensor may use Partner's name in customer or partner listings or, at times mutually agreeable to the parties, as part of Licensor's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHIRE participation). Licensor will make reasonable efforts to avoid having the reference activities unreasonably interfere with Partner's business.

7.6 Partner shall inform Licensor as soon as practicable if it is aware of any third party that has unauthorized access to the Software, SAP Cloud Service, or Licensor Materials (including End Users that exceed licensed levels) or markets, sells, or uses the Software, SAP Cloud Service, or Licensor Materials without authorization. Moreover, Partner must also assist Licensor in every reasonable way in the pursuance of Licensor's rights and, upon consultation with Licensor, must immediately take all steps for the protection of those rights. Partner must temporarily stop selling and marketing the Software or SAP Cloud Service to any such third party unless and until such ambiguity is resolved to Partner's and Licensor's satisfaction.

7.7 The parties recognize that either party has the right to develop independently software or services that would compete with the other party's software or services without use of any Confidential Information disclosed by such other party hereunder. Further, either party shall be free to use for any purpose the residuals resulting from access to or work with Confidential Information disclosed hereunder. The term "residuals" means information in non-tangible form, which may be retained inadvertently in the unaided memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained herein, so long as such persons have not studied the information for the purpose of replicating the same from memory. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay fees or royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either party a license under the other party's copyrights or patents.

7.8 Licensor's and Partner's liability for any breach of the foregoing confidentiality undertakings shall not be subject to any liability limitation as otherwise may be applicable under the Agreement.

## **8. INDEMNIFICATION**

### **8.1 Third Party Rights.**

- (a) Licensor shall defend Partner against claims brought against Partner by any third party alleging that the Software infringes intellectual property rights (e.g. patent, copyright, trademark) of such third party or that Partner's distribution or its End User's use of the Software or SAP Cloud Service, in accordance with the terms and conditions of the Contractual Documents, constitutes a direct infringement or misappropriation of a patent claim(s), copyright or trade secret rights, and Licensor will pay damages finally awarded against Partner (or the amount of any settlement Licensor enters into) with respect to such claims. This obligation of Licensor shall not apply if the alleged infringement or misappropriation results from use of the Software or SAP Cloud Service in conjunction with any other software or service (including Cloud Application) if such claim could have been avoided without such Combination Use, or unlicensed activities or use of the Software or SAP Cloud Service in violation of the Agreement or to free (no fee) or trial licenses of the Software or SAP Cloud Service. This obligation of Licensor also shall not apply if Partner fails to timely notify Licensor in writing of any such claim, however Partner's failure to provide or delay in providing such notice shall not relieve Licensor of its obligations under this section except to the extent Licensor is prejudiced by Partner's failure to provide or delay in providing such notice. Licensor is permitted to fully control the defense and any settlement of any such claim as long as such settlement does not include a financial obligation on or admission of liability by Partner. In the event Partner declines Licensor's proffered defense, or otherwise fails to cede full control of the defense to Licensor's designated counsel, then Partner waives Licensor's obligations under this section 8.1. Partner shall reasonably cooperate in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Licensor. Licensor expressly reserves the right to cease such defense of any claim(s) in the event the Software or SAP Cloud Service is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. Licensor may settle any claim on a basis requiring Licensor to substitute for the Software or SAP Cloud Service alternative substantially equivalent non-infringing services. Partner shall not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software or SAP Cloud Service that is prejudicial to Licensor's rights.
- (b) In the event a claim under section 8.1 is made or alleged or in Licensor's reasonable opinion is likely to be made or be alleged, Licensor may, at its sole option and expense: (i) procure for Partner and its End Users the right to continue using the Software or SAP Cloud Service under the terms of the Agreement; or (ii) replace or modify the Software or SAP Cloud Service to be non-infringing without material decrease in functionality. If the foregoing options are not reasonably available, Licensor may terminate the Agreement and refund to Partner (i) the license fees paid for the infringing Software or SAP Cloud Service by Partner less an appropriate amount covering the period of actual use of the Software by the Partner or End Users, or (ii) all prepaid fees for the remainder of its term after the date of termination.
- (c) THE PROVISIONS OF THIS SECTION 8.1 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF LICENSOR AND ITS GROUP COMPANIES TO PARTNER, AND IS PARTNER'S SOLE REMEDY, WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. The liability limitations contained in section 14 (LIMITATION OF LIABILITY) below shall apply to all claims made under section 8.1. Any limitations to the liability and obligations of Licensor according to sections 8.1 and 14 shall also apply for the benefit of Group Companies and their respective licensors.

8.2 Indemnification by Partner. Partner shall defend Licensor and its Group Companies against claims brought against Licensor or its Group Companies by any third party arising from or related to (i) any taxes and related costs, interest and penalties paid or payable by Licensor and/or any Group Company, (ii) an allegation that the Partner or End User's use of the Software or SAP Cloud Service in violation of the Agreement violates, infringes or misappropriates the rights of a third party, (iii) Partner's representations not authorized by Licensor, or (iv) Partner or its Affiliates' breach of the Agreement, including but

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

## 9. TERM AND TERMINATION

9.1 In addition to other termination rights that may be provided in the Contractual Documents the license granted under the Agreement may be terminated by either party for good cause upon written notice to the other immediately if Partner does not pay on the due date any amount payable to Licensor unless payment is made within 30 days of its due date.

9.2 Obligations on Termination.

- (a) Any terms of the Agreement which by their nature extend beyond the day the Agreement ends remain in effect until fulfilled, in particular any terms protecting the Intellectual Property Rights of an SAP Group Company, and apply to respective successors and assignees.
- (b) To the extent the Contractual Documents grant Partner the right to resell, license or otherwise distribute the Software, upon termination or expiration of the Agreement for any reason:
  - (i) Partner shall immediately cease distributing or sublicensing the Software (including any licensed Address Directories) licensed under the applicable Contractual Documents to any End Users, including renewing any subscription based license agreements with existing customers, or marketing the Software under the Agreement;
  - (ii) Partner shall immediately cease (a) use of all Licensor Materials and Confidential Information, and (b) to identify itself as an authorized partner for Licensor or its Group Companies or otherwise affiliated in any manner with Licensor;
  - (iii) Partner may use the Test and Development licenses of the Software granted under any applicable Contractual Documents to provide support to its End Users for the then applicable term of the respective End User support or subscription agreement, but no longer than three years upon termination of this Agreement, and for archival purposes subject to Partner continuing compliance with the terms of the Agreement and provided that Partner is not in breach with the terms of the Agreement;
  - (iv) Any fees previously paid by Partner are non-refundable except as otherwise expressly set forth in the Agreement;

- (v) Any paid-up perpetual license to the Software previously distributed to an End User on an on-premise basis shall survive according to the terms of such license;

9.3 Within 30 days after any termination or expiration of the Agreement, Partner shall irretrievably destroy or upon Licensor's request deliver to Licensor all copies of the Licensor Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Partner must certify to Licensor in writing that it has satisfied its obligations under this section. Termination shall not relieve Partner from its obligation to pay fees that remain unpaid. Additionally, the parties hereto agree that communications to End Users and any publications/press releases regarding such termination shall be mutually agreed upon, in writing, prior to distribution.

## **10. IMPORT AND EXPORT CONTROLS**

10.1 The Software or SAP Cloud Service, Documentation and Licensor Materials are subject to the export control laws of various countries, including without limit the laws of Ireland, United States and Germany. Partner agrees that it will not submit the Software or SAP Cloud Software, Documentation or other Licensor Materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of Licensor. Partner agrees to comply with the laws and regulations restricting import, export, re-export, transfer or release to certain entities or destinations of the United States, E.U., Irish and other applicable jurisdictions ("Export Regulations"). With respect to any export, re-export, transfer, or release otherwise permitted under the Agreement to persons within Partner or its Affiliates or to unrelated third parties of: (i) such technology, software, services or commodities; or (ii) the direct product of any such technology; or (iii) any product that Partner creates with content that is supplied by Licensor; or (iv) any technology that Partner creates that is based upon or commingled with technology provided by Licensor, Partner will comply with the Export Regulations.

10.2 Any import into and/or operation in countries where the import and/or operation is subject to authorization by the authorities of such country shall be in the sole responsibility of Partner. Licensor assumes no responsibility or liability for Partner's failure to obtain any necessary export approvals. Partner shall take all necessary actions and precautions to ensure that any permitted distributors, resellers and other customers do not contravene the Export Regulations. Licensor will reasonably cooperate with Partner to identify the export status and requirements of the Software, SAP Cloud Service, or other Licensor Materials. Notwithstanding anything to the contrary, Licensor may refuse the fulfillment of its obligations under the Agreement if and for as long as such fulfillment violates the Export Regulations. The parties shall then consult each other if and how compliance with the Export Regulations may be achieved with commercially reasonable efforts. For the avoidance of doubt: Licensor may request money for any modification of its Software or SAP Cloud Service that the parties may agree to, in their sole discretion, in order to make the item compliant. This section 10 shall survive the expiration or earlier termination of the Agreement.

10.3 With respect to any delivery of Software, Documentation and Licensor Materials, or any provision of SAP Cloud Service to be made by Licensor to Partner and/or any other party under the Agreement, Partner acknowledges that the delivery of the Software (including New Releases), Documentation and Licensor Materials, or provision of the SAP Cloud Service 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 Licensor's ability to provide maintenance and support. Partner shall support Licensor in obtaining any required authorization by providing information and/or declarations, e.g. End Use Certificates, as may be requested by Licensor.

## **11. COMPLIANCE OBLIGATIONS; DATA PROTECTION**

- 11.1 Partner shall conduct its operations at all times in strict compliance with all applicable anticorruption laws including the US Foreign Corrupt Practices Act (FCPA), the U.K Bribery Act 2010, and Licensor's then current local SAP Code of Business Conduct. Such obligation shall also apply to the Partner's sub-contractors, Affiliates, resellers and distributors. If Partner has in place or adopts policies which establish similar standards to the SAP Code of Business Conduct, Partner may comply with its own policies to fulfill the requirements of this section.
- 11.2 Partner shall not obtain on Licensor's behalf or provide to Licensor any information which is not legally available in the Territory, or which is procurement-sensitive, proprietary, or classified, where there is reason to believe that possession of such information is unauthorized, illegal, or unethical.
- 11.3 Partner shall not make, offer or promise any payments or gifts directly or indirectly to any employee of potential End Users. Any business entertainment offered to potential End Users must comply with the spirit and letter of the limits established in the relevant then current local SAP Code of Business Conduct.
- 11.4 Partner represents and warrants to Licensor that Partner and any other person acting on the Partner'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 an End User 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 Licensor.
- 11.5 Partner 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. Partner 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 End User.
- 11.6 Licensor shall be entitled to require Partner to certify – once per year – that Partner is in compliance with the terms of this section 11.
- 11.7 It is not the intention under the Agreement for Licensor to process personal data of Partners or End Users. Rather, processing of Partner or End User personal data will take place only in exceptional circumstances as an incidental effect of Licensor's performing its contractual duties. To the extent Licensor does process personal data of Partner or End User and such processing constitutes commissioned data processing by Licensor under EU Directive 95/46/EC (hereinafter referred to as the "Data Protection Directive") and/or applicable national data protection laws of the EU/EEA Member States, Annex 1 attached hereto shall apply.

## 12. MISCELLANEOUS

- 12.1 Assignment. The Agreement may be assigned by Licensor to any entity which assumes its obligations or acquires ownership of or the right to use and license the Software. Neither the Agreement, nor any right or obligation hereunder, may be assigned, transferred, delegated or subcontracted, by operation of law or otherwise, in whole or in part, by Partner without Licensor's prior written consent, such consent not to be unreasonably withheld. Denial of subcontracting shall not relieve Partner of its obligations to fulfill its requirements under this Agreement or any statement of work. Partner shall ensure that any approved subcontractor shall comply with all terms and conditions of this Agreement and any relevant statement of work prior to such subcontractor performing services. Partner must ensure and shall be solely responsible that such third parties adhere to the terms of the Agreement. A Change of Control of Partner shall be deemed an assignment of the Agreement. "Change of Control" of Partner shall mean a transaction or series of transactions (i) pursuant to which Control of Partner is acquired by persons or entities other than those who Control Partner on the Effective Date of the Agreement, or (ii) resulting in the sale of all or substantially all of Partner's assets or all or substantially all of Partner's assets utilizing



any Software or Licensor Materials. Subject to the foregoing, the provisions of the Agreement shall be binding upon and inure to the benefit of the parties, and their permitted successors and assigns. Any attempted assignment or transfer of the Agreement is in violation of this section is void.

- 12.2 Independent Contractors. The relationship of Licensor and Partner established by the Agreement is that of independent contractors. The Agreement does not give either party the power to direct and control the day to day activities of the other, constitute the parties as partners, joint ventures, co-owners, principal-agent, or otherwise participants in a joint or common undertaking, or allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. Partner has no actual, apparent, or ostensible authority to act on behalf of Licensor unless expressly stated in the Agreement. Partner must indemnify and hold harmless Licensor and its Group Companies in respect of any third party claims against Licensor and/or any of its Group Companies arising or relating to a third party's assertion that the Partner acted as Licensor's agent or otherwise on this behalf.
- 12.3 Entire Agreement. The Agreement constitutes the complete and exclusive statement of the agreement between Licensor and Partner, and all previous representations, discussions, and writings are merged in, and superseded by the Agreement and the parties disclaim any reliance on any such representations, discussions and writings. Each party acknowledges that it is entering into the Agreement as a result of its own independent investigation and not as a result of any representation of the other party not contained herein. Any additional or different terms in Partner's documents (including any preprinted terms contained on purchase orders) are hereby deemed to be material alterations and notice of objection to, and rejection of, them is hereby given, and such additional or different terms shall be void.
- 12.4 Amendments; Waivers. The Agreement may not be modified or any term or condition waived except in a writing signed by a duly authorized representative of each party. This shall also apply to a possible waiver of the written form requirement established in the foregoing sentence. No waiver of any breach of any provision of the Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof. Partner may order Innovation Packs, other services or licenses under this Agreement via an electronic contracting process, if and when made available by SAP in its sole discretion on the SAP Store. Notwithstanding the foregoing, this Agreement may be executed electronically using the electronic signature or advanced electronic signature of a duly authorized officer of each party. If this Agreement is executed electronically, each party hereby irrevocably consents to this Agreement being communicated, presented and retained wholly or partly in electronic form. This Agreement may be executed in any number of counterparts, including electronic counterparts, but shall not be effective until each party has executed at least one such counterpart. Each counterpart, including electronic counterparts, when executed, shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.
- 12.5 Force Majeure. Except for a party's payment obligations, neither party shall be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, earthquake, fire, flood, war, embargo, strike, riot, inability to secure materials and transportation facilities, or the intervention of any governmental authority.
- 12.6 Publicity. The terms of the Agreement are confidential. Except as otherwise set forth in this Agreement, no press release or other like publicity regarding this Agreement may be made without the other party's approval.
- 12.7 Notices and Terminations. All notices or reports which are required or may be given pursuant to the Agreement shall be in writing and shall be deemed duly given when delivered by a party to another at the addresses first set forth in the Agreement or applicable Order Form. A copy of the notice provided by Partner to Licensor shall be sent to Licensor's address to the attention of: SAP Legal Department. Where in this section 12.7 or elsewhere in the Agreement notices in written form are required, that requirement can be met by facsimile transmission, email or exchange of letters to the address, email address or facsimile number of the respective parties set forth in any Order Form. Notwithstanding the foregoing, any terminations notices shall not be communicated by email.

12.8 **Non-Exclusivity.** This is a non-exclusive relationship. Each party may have similar agreements with others and may independently develop, acquire, and market materials, equipment, or programs that may be competitive with (despite any similarity to) the other party's products or services. Each party is responsible for its own costs, including all business, travel and living expenses incurred by the performance of the Agreement.

### 13. WARRANTIES AND DISCLAIMER

13.1 Licensor warrants that the Software will substantially conform to the specifications contained in the Documentation for six months following delivery. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; (ii) to any third party software, including the third party database; or (iii) if the Software has been subjected to any modification; or (v) to the extent that the defect is caused by or is contributed to by Partner or End User; or (vi) if Partner or End User does not provide access, including remote access, to the Software to Licensor's support personnel; or (vii) if the defect is caused by any third party software, Partner or third party products. Licensor does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Partner or End Users' business requirements. To the extent the problem is reported by an End User, Partner shall cause its End Users to provide Licensor with sufficient test time and support to duplicate the problem, to verify that the problem is with the Software, and to confirm that the problem has been corrected. Provided Partner notifies Licensor in writing with a specific description of the Software's nonconformance within the warranty period and Licensor validates the existence of such nonconformance, Licensor will, at its option: a) repair or replace the nonconforming Software, or b) refund the license fees paid for the applicable nonconforming Software in exchange for a return of such nonconforming Software. This is Partner's sole and exclusive remedy under this warranty.

13.2 **Express Disclaimer.** To the maximum extent permitted by applicable law, Licensor and its licensors disclaim all other warranties express or implied, including without limitation, any implied warranties or merchantability or fitness for a particular purpose, and non-infringement, except to the extent that any warranties implied by law cannot be validly waived.

13.3 Partner represents and warrants that within industry standards it has and will maintain sufficient facilities and adequate capital, resources, and personnel to market and support the Software or Bundled Cloud Service and to perform its obligations under the Agreement. Further, Partner represents and warrants that it will comply with all legal requirements applicable in the Territory and that it knows the essential functional characteristics of the Software or SAP Cloud Service and bears the risk that the Software or SAP Cloud Service does not meet Partner's or any End User's wishes and requirements.

13.4 Partner shall not make any representations or warranties as to the performance of the Software, SAP Cloud Service, Support or other services on behalf of Licensor or otherwise make commitments on behalf of Licensor.

### 14. LIMITATION OF LIABILITY

14.1 Anything to the contrary herein notwithstanding, except for (i) damages resulting from unauthorized use or disclosure of confidential information, (ii) indemnification of any intellectual property right infringement subject to section 8.2 of this Agreement, (iii) Partner's rights and obligations under Exhibit C 1 to 3 (Runtime Licensing)(iv) Partner's rights and obligations under Exhibit E 1 to 3 (Embedded Licensing) and (v) Licensor's right to collect unpaid fees, under no circumstances shall either party (or its Group Companies or Licensors) be liable to the other party, any End User, or any other person or entity up to the amount of five hundred thousand Euros (€500,000) per incident and limited in total to one million Euros (€1,000,000) for all claims arising out of this Agreement. Neither Party shall be liable for indi-

rect and / or consequential damages whatsoever such as but not limited to loss of production, loss of profit etc. caused to the other resulting from undertaking its obligations.

- 14.2 It is expressly understood and agreed that each and every provision of the Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the parties to be severable and independent of any other provision and to be enforced as such.
- 14.3 Partner acknowledges that none of Licensor or its licensors are engaged in the business of rendering legal, tax, or other professional services and that the information provided by Licensor relative to the Agreement or in response to Partner inquiries are not intended to provide legal, tax or other expert advice to Partner, or be a substitute for a lawyer, accountant, or other professional. If Partner needs legal or tax advice or other expert assistance, the services of a competent lawyer, accountant or other professional licensed to practice in the applicable jurisdiction should be sought.
- 14.4 The foregoing limitation of liability does not apply to willful misconduct or fraud, personal injury or death caused by the negligence or any other liability which cannot be excluded or limited by applicable law.
- 14.5 Claims. Neither party will bring a legal action under the Agreement more than two years after the cause of action arose.

## **15. GOVERNING LAW**

This Agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the laws of Ireland. In the event of any conflicts between foreign law, rules, and regulations, and Irish law, rules, and regulations, Irish law, rules, and regulations shall prevail and govern. The exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement is Ireland.

## **16. SEVERABILITY; INJUNCTIVE RELIEF**

- 16.1 The terms of the Agreement are severable. If any term hereof is held invalid, illegal, or unenforceable for any reason whatsoever, such term shall be enforced to the fullest extent permitted by applicable law, and the validity, legality, and enforceability of the remaining terms shall not in any way be affected or impaired thereby.
- 16.2 Both parties acknowledge that remedies at law may be inadequate to provide Licensor or OEM with full compensation in the event of OEM's material breach of sections 7.2 (Trademarks) or 7.5 (Reverse Engineering, Source Code) with respect to Licensor's Confidential Information and its Trademarks or Licensor's material breach of section 7.5 with respect to OEM's Confidential Information, and that the non-breaching party shall therefore be entitled to seek injunctive relief in the event of any such material breach.

**Annex - 1**  
**- Data Protection -**  
**to the Platform Application Development Cooperation Agreement**

It is not the intention under this Agreement for Licensor to process personal data of Partners or End Users (except for the usage of the SAP HANA Cloud Platform as set forth in the respective Exhibit). Rather, processing of Partner or End User personal data will take place only in exceptional circumstances as an incidental effect of Licensor's performing its contractual duties. To the extent Licensor does process personal data of Partner or End User and such processing constitutes commissioned data processing by Licensor under EU Directive 95/46/EC (hereinafter referred to as the "Data Protection Directive") and/or applicable national data protection laws of the EU/EEA Member States, this Annex 1 shall apply.

**Commissioned Processing of Personal Data**

This Exhibit stipulates the rights and obligations of Partner and Licensor in connection with personal data processed by Licensor on behalf of Partner under the Agreement. This Exhibit shall be an integral part of the Agreement.

**1. Obligations of Partner**

- 1.1 As between Licensor and Partner, Partner shall be solely responsible for the permissibility of the processing of personal data as well as for safeguarding the rights of the data subjects. Partner shall enter into appropriate data protection agreements with End Users that procure that Partner is authorized to engage Licensor as a sub-processor of personal data controlled by End User, in accordance with the terms of this Annex 1.
- 1.2 Partner shall give commissions related to the processing of personal data and parts thereof to Licensor in writing, by facsimile or via e-mail or implied by making use of the Software.
- 1.3 Partner shall make available the personal data for processing to Licensor and the results of the processing shall be transferred back by Licensor to Partner by using a defined transfer procedure or in accordance with the functionality implemented in the Licensor Software.
- 1.4 Partner shall inform Licensor without delay, if Partner detects errors or irregularities when examining the results of the processing of personal data.
- 1.5 Partner hereby acknowledges that the use of SAP HANA Cloud Platform represents a commissioned processing of personal data of Named Users.
- 1.6 Partner acknowledges that only Partner and its respective Affiliates (each a data controller) shall be responsible for the permissibility of the processing of personal data as well as for safeguarding the rights of the data subjects.
- 1.7 Partner shall ensure that its Affiliates, where legally required, shall give their commissions to Partner in writing, by facsimile or via e-mail to authorize SAP and its Affiliates to process personal data as contemplated under the Agreement.
- 1.8 Partner shall ensure that its Affiliates authorize Partner to authorize SAP as its subcontractor for the processing of personal data. SAP shall only adhere to the obligations set out in this Annex when processing personal data of Named Users.

**2. Obligations of LICENSOR**

- 2.1 Licensor shall process the personal data and other operating data of Partner exclusively in accordance with Partner's instructions and/or End User's instructions relayed to Licensor by Partner which may include (without limitation) the correction, erasure and/or the blocking of such data. The personal data shall not be used by Licensor for any other purpose. Licensor shall not preserve such personal data longer than instructed by Partner. The statutory preservation periods remain unaffected.

- 2.2 For processing personal data, Licensor shall only use personnel which demonstrably committed themselves to observe data secrecy and secrecy of telecommunications pursuant to applicable data protection laws, including without limitation, sec 5 German Federal Data Protection Act [*Bundesdatenschutzgesetz*] and sec 88 German Act on Telecommunication [*Telekommunikationsgesetz*]. Licensor may discharge this obligation by utilizing one standard template for all its customers.
- 2.3 Licensor shall implement all technical and organisational measures to comply with the requirements pursuant to applicable data protection laws, including sec 9 German Federal Data Protection Act. Licensor undertakes to Partner that it has taken and will, on a continuing basis, take appropriate technical and organizational measures to keep personal data secure and protect it against unauthorized or unlawful processing and accidental loss, destruction or damage. In particular, Licensor shall take and regularly check the following protection measures:
- *Physical access control*: Licensor shall install an access control system.
  - *Access control*: Licensor shall control and log access to data processing systems.
  - *Access limitation control*: Licensor shall define, implement and monitor a concept for user rights, rules for passwords and login procedures.
  - *Transmission control*: Licensor shall ensure personal data transmission in encrypted form or by a secure alternative procedure. Transmissions must be logged and guidelines for personal data transmissions must be laid down in writing.
  - *Input control*: Licensor shall implement a detailed logging system for input, modification and deletion of personal data.
  - *Job control*: Licensor shall define in writing and establish control mechanisms to ensure that data are processed strictly in accordance with the instructions of the Provider.
  - *Availability control*: Licensor shall run a state of the art backup system and define a restore operation procedure to protect personal data from accidental destruction or loss.
  - *Data separation*: Licensor shall ensure by technical means and defined organisational procedures that personal data collected for different purposes (e.g. different Providers) can be processed separately. Technical means can be separated computer systems or demonstrably logical separation. Access by one Partner to the data of any other Partner must be prevented.
- 2.4 If the security measures implemented by Licensor do not meet the legal requirements, Licensor shall notify Partner without delay.
- 2.5 Licensor shall notify Partner, if Licensor considers an instruction given by Partner to be in violation of data protection regulations. Licensor shall not be obliged to perform a comprehensive legal examination.
- 2.6 Licensor shall inform Partner immediately in case of serious disruptions of the operating process, suspected data protection violations or other irregularities in connection with the processing of Partner's Data.
- 2.7 At Partner's written request and at Partner's expense, Licensor shall reasonably support Partner in dealing with requests from individual data subjects and/or a supervisory authority with respect to the processing of personal data controlled by Partner. Licensor shall notify Partner about inspections and measures of a supervisory or any other competent authority.
- 2.8 Upon expiry or termination of the Agreement, Licensor shall in accordance with the terms of the Agreement and Partner's instructions, either (i) return to Partner or all personal data controlled by Partner and all of Partner's media under Licensor's power of disposal and any copies or reproductions thereof; or (ii) erase and/or destroy such personal data and media and confirm the erasure and/or destruction to Partner in writing.

### **3. Intentionally left blank**

### **4. Monitoring Rights of Partner**

- 4.1 Partner shall have all necessary right to verify that Licensor processes the personal data duly in accordance with the Agreement. These monitoring rights shall be carried out in coordination with Licensor. After notifying Licensor the monitoring can be carried out, in particular, during Licensor's usual business

hours on Licensor's premises where the personal data processing is performed. To the extent that any personal data controlled by End User is processed by Licensor, the End User shall have the same monitoring rights as Partner under this Exhibit.

- 4.2 Licensor shall ensure that Partner has the monitoring rights set forth in section 4.1 also vis-à-vis sub-commissioned processors of personal data (Unter-Auftragsdatenverarbeiter) retained by Licensor.
- 4.3 Licensor shall reasonably support Partner throughout these verification processes and provide Partner with the required information.
- 4.4 Licensor shall contractually safeguard Partner's powers of disposal and monitoring rights under this Agreement vis-à-vis Licensor's Subprocessors who may come into contact with the personal data. Where applicable data protection law requires the Partner to enter into a direct contractual relationship with Licensor's subcontractors, Partner hereby authorizes and empowers Licensor to enter into the necessary agreements with Licensor's subcontractors on Partner's behalf.
- 4.5 Services rendered by Licensor in connection with Partner's monitoring rights shall be at Partner's expense.

## **5. Special Confidentiality Obligation; Obligation to Observe Data Secrecy**

- 5.1 Licensor undertakes to treat the personal data, which have become known to Licensor, confidential and to use such data exclusively for the commissioned data processing.
- 5.2 Any data media provided and any copies or reproductions made thereof shall remain property of Partner. Licensor shall store these with due care, ensuring that they are not accessible to third parties. Licensor may not make copies or reproductions thereof without Partner's consent, unless this is necessary to achieve the purposes pursued with the commissioned data processing. On Partner's request, Licensor must immediately return to Partner all data media of Partner under Licensor's power of disposal and any copies or reproductions thereof or destroy them in accordance with the laws on data protection and confirm the destruction to Partner in writing.
- 5.3 Licensor undertakes to impose on its employees, who may obtain knowledge of personal data, the same obligations as entered into above by Licensor.

## **6. Applicable Law**

For each instance where personal data are processed under this Annex 1, the provisions of this data protection Exhibit shall be governed by the law of the EU / EEA Member State in which the respective controller of the personal data (Partner and/or End User) is established.