

**SAP CONSULTING SERVICES SUPPLEMENTAL TERMS AND CONDITIONS ("SUPPLEMENT")
to the GENERAL TERMS AND CONDITIONS FOR SAP CLOUD SERVICES**

SAP and Customer have agreed that SAP will provide to Customer certain Consulting Services. These supplemental terms and conditions ("**Supplement**") to the General Terms and Conditions for SAP Cloud Services ("**GTC**") apply solely to Consulting Services and not to any other SAP product or service. In case of conflict the terms of the Scope Document shall prevail over any Service Description.

1. DEFINITIONS

- 1.1 "Change Request"** means a change request made in accordance with section 4 of this Supplement and in the form made available by SAP from time to time or included in the Order Form.
- 1.2 "Confidential Information"** means,
with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, and/or (iii) Customer financial information, and
with respect to SAP: (i) the Consulting Services, documentation, SAP materials and Work Product and Deliverables, and (ii) information regarding SAP research and development, product or services offerings, pricing and availability.
Confidential Information of either SAP or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.
- 1.3 "Consultants"** means employees and third party contractors which SAP utilizes to provide Consulting Services to Customer.
- 1.4 "Consulting Services"** means Consulting Services as defined in the GTC in conjunction with the applicable Service Descriptions and/or Scope Documents.
- 1.5 "Deliverables"** means those specific Work Products which are explicitly identified as a "Deliverable" under the applicable Order Form.
- 1.6 "Intellectual Property Rights"** means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.
- 1.7 "Material Defect"** means the Deliverable fails to substantially comply with the applicable and corresponding acceptance criteria for that Deliverable set forth in the Order Form.
- 1.8 "SAP SE"** means SAP Societas Europaea, a German corporation, with offices located in Walldorf, Germany.
- 1.9 "Scope Document"** means the document that is provided with and becomes part of the Order Form and which defines sometimes in conjunction with a Service Description the Consulting Services to be provided.
- 1.10 "Service Description"** means pre-defined descriptions of services found at <http://www.sap.com/servicedescriptions> current as of the effective date of the Order Form which in conjunction with a Scope Document defines the Consulting Services to be provided and becomes part of the Order Form.
- 1.11 "Taxes"** means local sales, value added tax, withholding, use, property, excise, service or similar taxes.
- 1.12 "Work Product"** means any work product or tangible results produced by or with SAP, including works created for or in cooperation with Customer.

2. PROVISION OF SERVICES

2.1 Personnel.

SAP will, at its sole discretion (i) select the Consultants to be deployed to deliver Consulting Services; and (ii) reserves the right to replace any Consultant at any time with a Consultant having equivalent skills.

2.2 Replacement.

If at any time Customer or SAP is dissatisfied with the material performance of a Consultant or a Customer project team member, the dissatisfied party shall promptly report such dissatisfaction to the other party in writing and may request a replacement. The other party shall use its reasonable discretion in accomplishing any such change (which also, in the case of SAP, shall be subject to staffing availability).

2.3 Estimates.

All dates with respect to performance of the Consulting Services are estimated and time shall not be deemed of the essence.

2.4 Delays.

If any Consulting Service, in whole or in part, cannot be provided by SAP due to a Customer issue and Customer fails to provide SAP with reasonable advance notice, the time spent by SAP resources on such Consulting Service will be charged to Customer.

2.5 Rights.

Customer shall ensure to have all necessary license rights including third party license rights required to allow SAP to perform the Consulting Services.

3. ACCEPTANCE

If the applicable Order Form expressly states that the Deliverables are subject to acceptance and does not otherwise specify an acceptance procedure, the following acceptance procedure applies:

- (a) Upon delivery by SAP of a completed Deliverable, Customer shall have then (10) calendar days to accept or reject ("**Acceptance Period**") the Deliverable, due to a Material Defect based on the acceptance criteria set forth in the Order Form for that Deliverable.
- (b) If the relevant Deliverable passes the acceptance criteria set forth in the Order Form, Customer shall accept the Deliverable. Acceptance will not be unreasonably withheld by Customer. If Customer notifies SAP that it has rejected the Deliverable due to a Material Defect, Customer shall provide written notice, within such ten (10) day-period, specifying the basis of the Material Defect.
- (c) SAP shall have a reasonable period to cure and redeliver the Deliverable for an additional Acceptance Period. If Customer fails to reject any Deliverable within the Acceptance Period, in a written document specifying the Material Defect, Customer shall be deemed to have accepted such Deliverable as of the 10th day of the Acceptance Period.
- (d) Upon acceptance of a Deliverable, all Consulting Services associated with such Deliverable shall be deemed accepted and SAP shall have no further obligation with respect to an accepted Deliverable. Customer shall not make productive use of a Deliverable, unless it has been accepted by Customer (either expressly or by passage of time).
- (e) If acceptance criteria are not specified in the Order Form, such Deliverable will be deemed accepted upon delivery.

4. CHANGE REQUEST PROCEDURES

Either party can request changes to the Consulting Services. SAP is not required to perform under a Change Request prior to the execution by the parties of the applicable Change Request. If Customer makes a change request to SAP, SAP will inform Customer within ten (10) working days (which excludes weekends and applicable public holidays) whether the change is possible or not and what impact the change would have on the Agreement with particular reference to the timeline and remuneration. Customer must thereupon inform SAP in writing within five (5) working days whether the change request is to apply or whether the contract is to be continued on the existing terms. If the investigation of a change request itself requires substantial work, SAP is entitled to bill separately for that work.

If SAP submits a change request, Customer must notify SAP in writing within ten (10) working days whether it accepts the change or not.

Until there is agreement about the change, work will continue in accordance with the existing Order Form.

5. COMPENSATION OF SAP

- 5.1** SAP will provide an invoice specifying the fees for each of the Consulting Services in accordance with the terms of the Order Form. Payment is due thirty (30) days after the invoice is issued.

SAP reserves the right to apply late payment interest in accordance with applicable law. After written notice, SAP may suspend the provision of Consulting Services until payment is made.

- 5.2** Fees and other charges described in the Agreement do not include Taxes, now or hereinafter levied all of which shall be for Customer's account with the exception of income or corporation taxes attributable to SAP. SAP and Customer agree to comply with the applicable Tax law in force for the duration of the Agreement. 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, Customer shall reimburse SAP for such amounts.
- 5.3** Notwithstanding the above, if the Customer is legally required to deduct withholding/any other type of taxes from any payment which is due to SAP, the Customer must promptly notify SAP at time of receiving invoice or when it becomes aware of such requirement, whichever is earlier and provide SAP with evidence of receipt by the relevant tax authority of any sum that the Customer has deducted as withholding tax/any other type of taxes and such other information or documents as SAP may reasonably require for purposes of obtaining any available tax credit. Should the Customer, notwithstanding formal written demand to it by SAP, fail to furnish to SAP such receipt within a reasonable period for any reason other than the obvious delay of the issuing authority, then Customer shall be liable to pay to SAP the amount so deducted upon demand.
- 5.4** Customer hereby agrees to reimburse SAP for any taxes and tax related costs, administrative fees and penalties paid or payable by SAP as a result of Customer's non-compliance in regard to this Section or delay with its responsibilities herein.

6. TERM AND TERMINATION

6.1 Term.

Each Consulting Service shall be effective as of the Effective Date set forth in an applicable Order Form and shall remain in effect until end of term or completion of the Consulting Services or terminated earlier by either party in accordance with the applicable GTC.

6.2 Termination for Convenience.

Consulting Services (excluding fixed-price Consulting Services) may be terminated by either party upon thirty (30) days' prior written notice.

6.3 Effect of Termination.

Customer shall be liable for payment of all costs, fees and expenses up to the effective date of termination for (i) any completed, partially completed or scheduled Consulting Services from any phase or milestone (ii) any reasonable committed costs or expenses; (iii) any non-refundable travel costs including visa costs and related expenses.

All Confidential Information (excluding Consulting Services Deliverables) of the other party shall upon request of the other party be returned to the Disclosing Party or destroyed with certification of such destruction from an authorized individual.

7. INTELLECTUAL PROPERTY RIGHTS

All title to and rights in the Consulting Services, Deliverables and Work Products, and all Intellectual Property Rights embodied therein, including techniques, knowledge or processes of the Consulting Services and/or Deliverables (whether or not developed for Customer), shall be the sole and exclusively property of SAP and SAP SE. Customer agrees to execute and to ensure its third parties execute such documentation as reasonably necessary to secure SAP's or SAP SE's title over such rights.

8. FEEDBACK

Customer may at its sole discretion, provide SAP (or as used herein SAP SE or other SAP entity) with input, comments or suggestions from Customer, regarding SAP's business and technology direction and/or the possible creation, modification, correction, improvement or enhancement of the software, products and/or services of SAP, (collectively "**Feedback**"). Customer grants to SAP SE a non-exclusive, perpetual, irrevocable, worldwide, transferable, royalty-free license, with the right to sublicense through multiple tiers, to use, publish, disclose, perform, copy, make, have made, use, modify, create derivative works, distribute, sell, offer for sale and otherwise benefit from Feedback in any manner and via any media.

9. CONSULTING SERVICES WARRANTY

9.1 Good industry practices.

SAP warrants that:

- (a) its Services will be performed in a professional workman-like manner by Consultants with the skills reasonably required for the Services; and
- (b) for forty-five (45) days following provision of the Service, the Deliverables will materially conform with the applicable specifications for that Deliverable. For clarity, the warranty period for Deliverables (if any) resulting from any subscription based Services will in no event exceed the termination date of the subscription based Services.

SAP does not warrant error-free or uninterrupted operation of any Service or Deliverable or that SAP will correct all non-conformities.

9.2 Notification.

Customer shall notify SAP within forty-five (45) days of provision of the Service or Deliverable in writing of the alleged warranty breach and provide SAP with a precise description of the problem and all relevant information reasonably necessary for SAP in order to rectify such warranty breach.

9.3 Remedy.

Provided Customer has notified SAP in accordance with section 9.2 of a warranty breach and SAP validates the existence of such warranty breach, SAP will, at its option:

- (a) re-perform the applicable Services or Deliverable;
- (b) refund the fee paid or reallocate quota for the specific non-conforming Service or Deliverable.

This is Customer's sole and exclusive remedy for a warranty breach.

9.4 Exclusions.

This warranty shall not apply

- (a) if the Deliverables are not used in accordance with any applicable documentation provided or
- (b) if the alleged warranty breach is caused by a modification to the Deliverable, Customer or third-party software.

9.5 Disclaimer.

SAP and its licensors disclaim all warranties express or implied or statutory, including without limitation, any implied warranties of merchantability or fitness for a particular purpose except to the extent that any warranties implied by law cannot be validly waived.

10 THIRD PARTY CLAIMS

10.1 Claims Brought Against Customer.

SAP shall defend (at its sole expense) Customer against claims brought against Customer by any third party alleging that Customer's use of the Deliverables, in accordance with the terms and conditions of the Agreement, constitutes an infringement or misappropriation of a patent claim(s), copyright, or trade secret rights. SAP will indemnify Customer from all damages finally awarded against Customer by a court of competent jurisdiction (or the amount of any settlement SAP enters into) with respect to such claims. This obligation of SAP shall not apply if the alleged infringement or misappropriation results from

- (a) use of the Deliverables in conjunction with any other software, services, or any product, data or apparatus that SAP did not provide, or
- (b) anything Customer provides including configurations, instructions or specifications, or
- (c) a modification of the Deliverable by Customer or by a third party on behalf of Customer, or
- (d) any use not permitted by the Agreement.

10.2 Remedies.

In the event a claim under Section 10.1 is made or in SAP's reasonable opinion is likely to be made, SAP may, at its sole option and expense

- (a) procure for Customer the right to continue using the applicable Deliverable under the terms of the Agreement, or
- (b) replace or modify the Deliverable to be non-infringing without material decrease in functionality.

If these options are not reasonably available, SAP or Customer may terminate the Agreement to the affected Deliverable upon written notice to the other.

10.3 Claims Brought Against SAP.

Customer shall defend SAP and its affiliated companies against claims brought against SAP by any third party arising from or related to

- (a) any Customer use of the Consulting Services in violation of any applicable law or regulation,
- (b) an allegation that the Customer Data, Customer's use of the Consulting Services or anything Customer has provided to SAP including access to third party software or proprietary information.

The foregoing shall apply regardless of whether such damage is caused by the conduct of Customer and/or its named users or by the conduct of a third party using Customer's access credentials.

10.4 Procedure.

The obligations under this Section 10 are conditioned on

- (a) the party against whom a third-party claim is brought timely notifying the other party in writing of any such claim, provided however that a party's failure to provide or delay in providing such notice shall not relieve a party of its obligations under this Section 7 except to the extent such failure or delay prejudices the defense,
- (b) the party who is obligated hereunder to defend a claim having the right to fully control the defense of such claim, and
- (c) the party against whom a third-party claim is brought reasonably cooperating in the defense of such claim. Any settlement of any claim shall not include a financial or specific performance obligation on or admission of liability by the party against whom the claim is brought, provided however that SAP may settle any claim on a basis requiring SAP to substitute for the Consulting Services any alternative substantially equivalent non-infringing Consulting Services. The party against whom a third-party claim is brought may appear, at its own expense, through counsel reasonably acceptable to the party obligated to defend claims hereunder. Neither party shall undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation, that is prejudicial to the other party's rights.

10.5 Exclusive Remedy.

The provisions of this Section 10 state the sole, exclusive, and entire liability of the parties, their Affiliates and their licensors to the other party, and is the other party's sole remedy, with respect to third party claims covered hereunder and to the infringement or misappropriation of third-party intellectual property rights.

11. LIMITATION OF LIABILITY, LIABILITY CAP FOR CONSULTING SERVICES

Consulting Services shall be subject to the limitation of liability provision as set forth in the GTC, except that the following shall replace and supersede the section with respect to the liability cap as set forth in the GTC: For any Consulting Services provided under the Agreement, under no circumstances and regardless of the nature of any claim shall the maximum aggregate liability of either party (or their respective Affiliates or SAP's subcontractors) to the other or any other person or entity under or in connection with the Agreement, exceed the total fees paid for the applicable Consulting Service under the relevant Order Form or, in the case of Consulting Services which are subscription based or billed on a monthly or annual basis, the fees paid in the twelve (12) month period preceding the date of the incident giving rise to the liability.

12. NON-SOLICITATION

Neither party shall knowingly solicit or hire, the other party's employees involved in the Consulting Services during the term or for a period of six (6) months from the termination of the applicable Order Form, without the express written consent of the other party. This provision shall not restrict the right of either party to solicit or recruit generally in the media.