

## SAP CONSULTING SERVICES SUPPLEMENTAL TERMS AND CONDITIONS ("SUPPLEMENT")

SAP and Customer have agreed that SAP delivers to Customer certain Consulting Services. These supplemental terms and conditions (the "**Supplement**") and any modifications to the Agreement made herein apply solely to Consulting Services and not to any other SAP product or service or the Cloud Service itself. In case of conflict the terms of the Scope Document shall prevail over any Service Description and the provisions of this Supplement.

### 1. DEFINITIONS

- 1.1 "**Consultant**" means any employee or third party contractor which SAP utilizes to provide Consulting Services to Customer.
- 1.2 "**Deliverables**" means those specific work products or tangible results which are explicitly identified as "Deliverable" under the applicable Order Form.
- 1.3 "**Scope Document**" means the document that is provided with and becomes part of the applicable Order Form which further defines the scope of Consulting Services to be provided and other engagement specifics.
- 1.4 "**Service Description**" means pre-defined descriptions of services found at <http://www.sap.com/corporate-en/about/resources/service-descriptions/index.html> in effect as of the Order Form Effective Date.

### 2. TERM AND TERMINATION

- 2.1 **Term.** Each Consulting Service shall be effective as of the Effective Date set forth in that 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.
- 2.2 **Termination for Convenience.** Consulting Services (excluding fixed-price Consulting Services) may be terminated by either party upon thirty (30) days' prior written notice.
- 2.3 **Effect of Termination.** Customer shall be liable for all payments to SAP, including all fees and expenses up to the effective date of termination. 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.

### 3. CONSULTING SERVICES WARRANTY

- 3.1 **General.** SAP warrants that it will perform any Consulting Services in a professional workmanlike manner using resources with the skills reasonably required to perform such services.
- 3.2 **Conformance.** SAP warrants that for thirty (30) days following provision of the Consulting Services the Deliverables will materially conform with the specifications for that Deliverable in accordance with the respective Service Description or Scope Document provided that the warranty period for Deliverables (if any) resulting from any subscription based Consulting or Cloud Services will in no event exceed the termination date of the subscription based Consulting or Cloud Services.
- 3.3 **Exclusion.** SAP does not warrant error-free or uninterrupted operation of any Consulting Services or Deliverable or that SAP will correct all non-conformities.
- 3.4 **Claims.** Customer shall notify SAP within thirty (30) days of provision of the Consulting Services 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. Provided Customer has notified SAP in accordance with this Section of a warranty breach and SAP validates the existence of such warranty breach, SAP will, at its option re-perform the applicable Consulting Services or Deliverable, or refund the fee paid or reallocate quota for the specific non-conforming Consulting Service or Deliverable. This is Customer's sole and exclusive remedy for a warranty breach.

### 4. ACCEPTANCE

If there is an Order Form with Deliverables and the Order Form expressly states that such Deliverables are subject to acceptance procedures, the following language applies, unless otherwise agreed upon in an Order Form:

Deliverable Acceptance Period. Upon delivery by SAP of a completed Deliverable, Customer shall have 10 calendar days to accept or reject ("Acceptance Period") the Deliverable, due to a defect using reasonable discretion, based on the acceptance criteria set forth in the Order Form for that Deliverable. A "defect" means the Deliverable fails to substantially comply with the applicable and corresponding acceptance criteria for that Deliverable set forth in the Order Form. If the relevant Deliverable passes the agreed acceptance criteria set forth in the Order Form, Customer will accept the Deliverable. Acceptance will not be unreasonably withheld by Customer. If Customer notifies SAP that it has rejected the Deliverable due to a defect, Customer shall provide written notice, within such 10 day period, specifying the basis of the deficiency. SAP shall have a reasonable period to cure such deficiency 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 deficiency, Customer shall be deemed to have accepted such Deliverable as of the 10th day of the Acceptance Period. 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. A Deliverable shall not be made available for Customer's productive use, unless it has been accepted by Customer (either expressly or by passage of time). Where acceptance criteria is not specified in the Order Form for a Deliverable, such Deliverable will be deemed complete and accepted by Customer the day after SAP performs it or delivers it.

## **5. CHANGE REQUEST PROCEDURE**

Either party can request changes to the Consulting Services in accordance with the form made available by SAP from time to time or included in the applicable Service Description ("**Change Request**"). SAP is not required to perform under a Change Request until agreed to and signed by the parties.

## **6. PROVISION OF SERVICES**

**6.1 Personnel.** The selection, assignment or replacement of Consultants is at SAP's sole discretion and SAP reserves the right to replace any Consultant at any time at its sole discretion with resource Consultant with equivalent skills.

**6.2 Replacement.** If at any time Customer or SAP is dissatisfied with the material performance of an assigned 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).

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

**6.4 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 agreed to be spent by SAP resources on such Consulting Service will be charged to Customer.

**6.5 Rights.** Customer ensures to have all necessary license rights including third party license rights required for the Consulting Services.

## **7. THIRD PARTY CLAIMS**

**7.1 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.

**7.2 Remedies.** In the event a claim under Section 7.1 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.
- (c) If SAP provides written notice to Customer that the foregoing options are not reasonably available, Customer shall be entitled to a refund for the infringing portion of the Deliverable subject to return or cessation of use of the refunded Deliverable.

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

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.

**7.4 Procedure.** The obligations under this Section 7 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 Services any alternative substantially equivalent non-infringing 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.

**7.5 Exclusive Remedy.** The provisions of this Section 7 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.

**8. LIMITATION OF LIABILITY, LIABILITY CAP FOR CONSULTING SERVICES**

Consulting Services shall be subject to Section 9.3 of the GTC, except that the following shall replace and supersede Section 9.2 of the GTC: For any Consulting Services provided under the Agreement, notwithstanding anything herein to the contrary, except for damages resulting from (i) unauthorized use or disclosure of Confidential Information, or (ii) damages resulting from death or bodily injury arising from either party's gross negligence or willful misconduct, or (iii) SAP's right to collect unpaid fees, 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.

**9. FEEDBACK**

Customer may be invited to participate in certain evaluations, presentations, meetings, surveys or discussions (collectively, "**Discussions**") for the purpose of informing Customer of SAP's business and technology direction, and to allow Customer, at its sole discretion, to provide SAP, SAP Affiliates or SAP SE 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, non-transferable (except to SAP Affiliates), royalty-free license, with the right to sublicense through multiple tiers, under applicable laws to use, publish, modify, and otherwise benefit from Feedback in any manner and via any media. Content of Discussions may include areas outside the scope of Consulting Services and may relate to any SAP software, products, solutions and/or services. Confidential Information disclosed or made available by SAP, or Customer during Discussions may only be used for the purpose of the Discussions and shall be protected from unauthorized use and disclosure in accordance with the GTC. Customer acknowledges that the information related to software, products, services, business or technology plans of SAP, disclosed during the Discussions, is only intended as possible strategies, developments, and functionalities and is not intended to bind SAP to any particular course of business, product strategy, and/or development.

**10. 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.

## **11. COMPENSATION OF SAP**

- 11.1 SAP will provide an invoice specifying the fees for each of the 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.
- 11.2 Fees and other charges described in the Agreement do not include Taxes. Any applicable direct pay permits or valid tax-exempt certificates must be provided to SAP prior to the execution of the Agreement. If SAP is required to pay Taxes, Licensee shall reimburse SAP for such amounts. Licensee hereby agrees to indemnify SAP for any Taxes and related costs (including those related to the long term assignment of SAP employees), interest and penalties paid or payable by SAP. This Section shall not apply to taxes based on SAP's income.