

**SAP General Terms and Conditions for Software Integration and Hardware Solution Certification from  
SAP Integration and Certification Center (“ICC”) – US Law**

**1. SCOPE**

- 1.1. These General Terms and Conditions (“GTCs”) shall apply exclusively to all Service Offers under which SAP SE (herein “SAP”) provides any service through the SAP Integration and Certification Center to a software/hardware Vendor, whose software/hardware solutions run or integrate with SAP Software (herein: “Vendor”). These GTCs apply to all the Software Integration/Hardware Scenarios listed at <http://www.sap.com/icc>.
- 1.2. These GTCs, and any applicable executed Service Offer, represent the sole and exclusive understanding of the Parties. No conflicting or other provision, including but not limited to any general terms and conditions of Vendor, shall become part of the Certification Contract, even if such conditions are appended to a Vendor’s order and SAP performs the order without expressly rejecting such conditions.

**2. DEFINITIONS**

- 2.1. “**Affiliate**” means a legal entity that now, or in the future, directly or indirectly, is controlled with or by, or is under common control with, the Vendor. For purposes of the foregoing, “control” is defined as the ownership of 50% or more of the equity or beneficial interest of such legal entity or for purposes of foreign corporations, if less than 50%, the maximum amount allowed by applicable law. Any such entity shall be considered an Affiliate for only such time as Vendor continues to own such equity interest.
- 2.2. “**Certification Contract**” means the combination of these GTCs and any applicable Service Offer executed pursuant thereto between SAP and a given Vendor.
- 2.3. “**Certification Guide**” means the SAP Integration Guide - Technologies for the applicable Software integration certification as listed on the SAP ICC page at <http://www.sap.com/icc>.
- 2.4. “**Confidential Information**” means all information which the Parties protects against unrestricted disclosure to others, furnished by one party to the other or otherwise obtained by the Parties under the Certification Contract that:
  - a) is clearly identified as confidential, internal or proprietary at the time of disclosure; or
  - b) is by its nature recognizable as potentially confidential or is disclosed in a manner that it may be reasonably inferred to be confidential, internal, or proprietary at the time of disclosure.

In addition, information of SAP, including without limitation software, know-how, business models, processes, techniques and concepts, information on customers and partners, information on any third-party software used, flow charts, documentations and product specifications, as well as the conditions of the Service Offer and all agreements relating thereto, are understood to constitute Confidential Information of SAP without regard to the marking requirements above.

- 2.5. “**Export Laws**” means all applicable import, export control and sanctions laws, including but without limitation, the laws of the United States, the EU and Germany; e.g. the Export Administration Regulations, International Traffic in Arms Regulation, and economic sanctions programs implemented by the Office of Foreign Assets Control, the Regulation (EC) No. 428/2009 (EC Dual-use-Regulation), the regulations on restrictive measures (sanctions) implemented by the EU, the Foreign Trade and Payments Act (Außenwirtschaftsgesetz) and the Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung).
- 2.6. “**Integration Scenario**” means the relevant scenarios and specifications for a particular certification, as described in more detail in the Service Offer and in the applicable Certification Guide and/or the provided SAP documentation.
- 2.7. “**Intellectual Property Rights**” means all intellectual property and proprietary rights, including without limitation all rights of inventorship and authorship, inventions, patents of any type, design rights, utility models or other similar invention rights, copyrights and related rights, mask work rights, trade secret or confidentiality rights, know-how, trademark, moral rights, trade dress, service mark rights, computer software, proprietary information and data, databases, and any other intangible property rights, in each case whether registered or unregistered, including applications (or rights to apply), renewals, and extensions for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, which subsist or will subsist now or in the future.

- 2.8. **"SAP Interface"** means an/a SAP Software interface(s) released by SAP for certification purposes that allow data access or exchange between the Vendor Solution and the SAP Software via the Vendor's interface.
- 2.9. **"SAP Sample Code"** means the proprietary sample code provided to Vendor during the course of the Certification Contract solely for studying and testing purposes.
- 2.10. **"SAP Software"** means the proprietary SAP solution expressly named in the Service Offer. The SAP Software also includes the SAP interfaces, the structure, sequence, and organization of the SAP software.
- 2.11. **"Service Offer"** means an offer from SAP to Vendor for certification services through the SAP ICC.
- 2.12. **"Vendor Solution"** means Vendor's software solution or hardware solution as well as Vendor's products that are named in the Service Offer and that is able to operate and/or to integrate with the SAP Software in compliance with the SAP integration criteria and in accordance with the applicable Integration Scenario or respectively the current Certification Guide, and/or the appropriate SAP Documentation.

### **3. CONTRACTUAL OBLIGATIONS; LIMITED TIME FOR PERFORMANCE**

- 3.1. These GTCs shall also apply to any certification relationships between SAP and Vendor prior to execution of a Service Offer. All items provided by SAP to Vendor before execution of the Service Offer (examples: proposals, test programs, designs) are the property of SAP (see Section 8) and must not be copied or made accessible to third parties except as permitted under these GTCs. If no Service Offer is executed, they must be returned or deleted, and Vendor must, not later than the time the parties fail to conclude a Service Offer, cease and desist from using them.
- 3.2. The certification offered under the Service Offer does not refer to the quality of the Vendor Solution. The certification refers only to the respective Integration Scenario and to the verification of the compliance of the Vendor Solution with the Integration Scenario.
- 3.3. Except as otherwise provided in the Service Offer, Vendor may send a notice of acceptance within the Validity of Offer date stated in the Service Offer.
- 3.4. The execution of the Certification Contract, as well as any subsequent amendment, supplement notice of default, or deadline notices or termination notices are only valid if made in writing. The foregoing provision also applies to any waiver of the written-form requirement.
- 3.5. The requirement of a written form in Section 3.4 (or elsewhere in the Certification Contract) requires at least scanned signed copies emailed between the parties, or exchange of letters, or as otherwise expressly agreed in the Certification Contract.
- 3.6. Signatures sent by electronic means (facsimile, scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures.

### **4. PROVISION OF WORKS AND SERVICES**

- 4.1. The Certification Contract defines the scope of the works and services. SAP is responsible for:
- a) Providing to Vendor the appropriate documentation specific to the Integration Scenario and/or the relevant test plan/Certification Guide.
  - b) In the case of Hardware Certification: Providing the relevant technical SAP environment required to test the Vendor's interface at one of the regional SAP Integration and Certification Center.
  - c) Issuing a formal certificate in hard copy or electronic format for Vendor after successful conclusion of the certification process, provided Vendor has fulfilled the terms of the Certification Contract.
- 4.2. Vendor acknowledges that for specific integration scenarios as defined in Annex 2, Vendor must adhere to the special conditions and prerequisites described therein. The certificate is valid worldwide for the duration indicated on the certificate.
- 4.3. SAP will decide which employees to use and reserves the right to replace any employee at any time. SAP may use contractors or third parties to perform its duties in the Certification Contract as long as they are subject to confidentiality obligations. SAP shall be responsible for the actions of any contractors and third parties used by SAP under this Certification Contract.
- 4.4. Any trial or evaluation use of the SAP Software shall be provided pursuant to a separate SAP Trial Agreement to be entered into between the parties separate from the Certification Contract.

## **5. VENDOR'S CONTRIBUTIONS**

- 5.1. In all phases and for all actions under this Certification Contract, a reasonable cooperation of Vendor is required. Vendor must provide free of charge all reasonable contributions as required in connection with performance of its obligations under the Certification Contract, including but not limited to providing necessary personnel, workspace, hardware, software, data, and telecommunications facilities, answering questions, and evaluating SAP's deliverables. To the extent required for performance under the Certification Contract, Vendor shall grant SAP direct and remote access to Vendor's hardware and software.
- 5.2. Vendor must nominate in writing a suitable contact person for SAP (and qualified subproject leads, if beneficial for the collaboration), and provide SAP with the contact data (including but not limited to an e-mail address and telephone number) at which SAP can reach each such person or an authorized substitute at all times. The contact person must be in a position to make necessary decisions for Vendor or ensure that they are made without delay. Vendor must inform SAP of all changes to the contact details in writing without delay.
- 5.3. Vendor is responsible for adapting the Vendor Solution in accordance with the technical and functional requirements of the Integration Scenario and the underlying specific SAP documentation. Vendor must provide all information reasonably requested by SAP concerning the Vendor Solution and its technical usage scenario in connection with SAP Software and the corresponding SAP Interface.
- 5.4. SAP will determine the place and mode of the certification testing, which may be provided either by tests using online collaboration tools or on-site. Vendor shall ensure at its own expense that the Vendor Solution as well as all software, documentation, resources, and/or materials required for certification testing from Vendor are ready and accessible. Alternatively to conducting the certification testing at SAP's facilities, the test may be conducted at a location specified by the Vendor, if agreed to in advance by SAP in writing. In such a case, Vendor shall pay for all travel and subsistence costs and expenses for the SAP personnel involved. In case hardware and software of Vendor is shipped to SAP tests, it is the responsibility of the Vendor to remove the hardware from SAP at the certification location after certification. SAP will not be responsible for shipment and return of the hardware or the associated costs.
- 5.5. Certification services are not provided for custom-tailored or individual solutions, but only for standard solutions generally available in the market. Upon SAP's request, Vendor will provide evidence that the Vendor Solution is a generally available product and not a custom-tailored solution or developed for a specific customer.
- 5.6. Vendor must promptly notify SAP of any change in the circumstances on which the Certification Contract or the certification services are based on, including but not limited to the fact that:
  - a) the Vendor Solution is no longer generally available; or
  - b) the Vendor Solution is technically modified (in a way that impacts the Integration Scenario); or
  - c) the name of Vendor or of the Vendor Solution is changed; or
  - d) change of any software component and/or configuration of the Vendor Solution.In such cases the Vendor Solution may either be no longer eligible for certification or has to be re-certified according to Section 7.
- 5.7. With the successful certification as described under Section 6, Vendor hereby consents, that SAP may include Vendor's name, address and company logo, as well as information provided by the Vendor relating to the tested Vendor Solution in a reference list on the respective SAP Web site, as well as in collateral and advertising material relating to certification. All use of Vendor's name will be in accordance with Vendor's published trademark guidelines provided by Vendor directly to SAP at the time of certification. SAP may change the contents or restructure its Web site in its sole discretion, including but not limited to the materials on certification. In addition, SAP may provide any of its licensees and prospective customers that requests information about the Vendor Solution with the information provided by Vendor (for example, product description and contact details) for that purpose. Vendor may revoke SAP's right to use Vendor's data as provided under Section 5.7 upon 30 days prior written notice. In this case, SAP is entitled to terminate the Certification Contract with immediate effect.
- 5.8. Vendor must bear all costs and expenses arising out of its breach of its collaborative obligations under this Section 5 or elsewhere in the Certification Contract. Vendor is obligated to pay any agreed upon fees in case of SAP's non-performance pursuant to Vendor's failure to perform or properly perform its obligations under the Certification Contract.

## 6. INTEGRATION CERTIFICATION

- 6.1. The Integration Scenario applicable to the certification is described in the Certification Contract. The successfully concluded certification implies that the Vendor Solution meets the specifications defined in the documentation of the Integration Scenario and has been successfully tested by SAP against them. SAP's technical certification however does not guarantee fault-free operation of the Vendor Solution nor may Vendor make any statement whatsoever with respect to any connection of the legal compliance of the Vendor Solution with the certification provided hereunder. Vendor must not make any representation or declaration in that regard. The payment of the Estimated Service Fees under the applicable Service Offer does not guarantee the successful granting of the Certification of the Vendor Solution.
- 6.2. SAP reserves the right to determine the sequence of certification in the case of multiple applications of different Vendors.
- 6.3. Upon Vendor's successful completion of the certification, during the term of the Certification Contract, SAP will issue an acknowledgement in electronic format to Vendor in the form of a certificate. The certificate is valid worldwide and may be used for marketing as such also by Vendor's Affiliates, subject to Vendor ensuring the proper use of the certificate according to these GTCs by the Affiliate. SAP grants Vendor the right to use the certificate and the statement contained therein solely for the version of the Vendor Solution stated in the certificate. For Hardware certifications, SAP grants Vendor the right to use the certificate and the statement contained therein solely for the version of the Vendor Solution stated in the certificate in relation to the certified Integration Scenario for advertising and promotion purposes. For Software certifications, SAP grants Vendor the right to use the certificate and the statement contained therein solely for the version of the Vendor Solution stated in the certificate in relation to the certified Integration Scenario and solely in connection with the special version of the SAP Software for advertising and promotion purposes. The entitlement to use a specific certificate for Software and Hardware certification expires after the term stated on the certificate itself, or when any of the tested software components are no longer in maintenance by Vendor. Vendor may then no longer use the certificate in its communication with its clients or other third parties. The SAP tagline or SAP logo(s) described in the Certification Contract are to be used in accordance with Annex 1 to these GTCs and SAP's then current trademark license terms and any of the respective usage guidelines. SAP is entitled to terminate the Certification Contract with immediate effect if Vendor breaches this Section 6.3.
- 6.4. Without prior written consent from SAP, Vendor is not permitted to render or provide any information concerning SAP software license terms, SAP Software, SAP Interface or any other information related to SAP products, except as expressly stated in the Certification Contract. Vendor shall refer any customer requiring such information to SAP. Vendor agrees to obtain SAP's prior written consent of all statements regarding SAP itself, SAP software and SAP services in conjunction with the subject matter of the Certification Contract. Vendor is entitled to repeat its use of a statement after such statement has been initially approved by SAP. However, if the content of such an approved statement remains no longer true because of major changes, SAP may withdraw its approval.
- 6.5. Unless otherwise stated in the Certification Contract, Vendor must complete the certification process for the Vendor Solution within 9 months after effective date of the Certification Contract, and in case of annual subscriptions within each subsequent Renewal Term. If Vendor fails to do so, the certification fee shall not be refunded.

## 7. RE-CERTIFICATION

- 7.1. Vendor is entitled to use the certificate as well as the logo(s) and other rights granted in the Certification Contract only in connection with the version of the Vendor Solution tested during the certification process and the particular version of the SAP Interface and Integration Scenario respectively. To use the certification statement with further versions, a new certification process ("**Re-certification**") is required. In the following cases, Vendor must trigger a Re-certification to continue using the certification statement and other rights granted in the Certification Contract for an existing already certified Vendor Solution:
  - a) Modifications of the SAP Interface or change to an SAP Interface version;
  - b) Modifications or enhancements to the tested Vendor Solution that affect the Integration Scenario and/or impede an exchange of data with the SAP Interface;
  - c) Modifications of any software component and/or configuration as tested;
  - d) Change of the name or the labeling of the Vendor Solution;
  - e) Change to Vendor's company name;

- f) Expiration of the validity indicated on the certificate.
- 7.2. SAP will use commercially reasonable efforts to give notification of any modification to SAP Software affecting the Integration Scenario within a reasonable period soon after it is generally released to SAP customers, and to provide to Vendor the relevant documentation for any release changes of the SAP Software related to the Integration Scenario by the release date.
- 7.3. There is no obligation on the part of SAP to offer a Re-certification for any particular Integration Scenario. SAP provides consulting and certification test services for such a Re-certification at SAP's then current terms and conditions. Any additional effort required from SAP beyond these services will be invoiced at SAP's then current consulting rates. Necessary or agreed upon travel and subsistence expenses will also be charged on Vendor's account.

## **8. INTELLECTUAL PROPERTY**

- 8.1. Upon execution of the Service Offer, SAP grants to Vendor, for the term of the Certification Contract as set forth under Section 14.1, a non-exclusive, non-transferable, non-sublicensable right to use the technical SAP documentation, SAP Sample Code, or other SAP Confidential Information provided by SAP to Vendor under the Certification Contract solely for testing purposes and solely in connection with the certification process described in the Certification Contract.
- 8.2. Vendor acknowledges that all Intellectual Property Rights in the SAP Software, SAP Interface, the SAP Confidential Information, the SAP Sample Code, and any materials supplied hereunder including, but not limited to, all documentation relating to the Integration Scenario and/or the relevant test plan / Certification Guide, are and shall remain vested exclusively in SAP. Vendor is not permitted to copy, translate, edit, arrange, disassemble, decompile, create derivative works of, or otherwise change or adapt the SAP Software, SAP Sample Code, SAP documentation, literature, or other SAP-relevant material. All Intellectual Property Rights in any modifications, enhancements, or other derivative works of the SAP Software, documentation, literature, or other SAP-relevant material and/or the SAP Confidential Information belong exclusively to SAP.
- 8.3. SAP acknowledges that all Intellectual Property Rights in the Vendor Solution are and shall remain vested exclusively in Vendor. SAP shall not copy, translate, disassemble, decompile, edit, arrange, create derivative works of, or otherwise change or adapt the Vendor Solution. Vendor retains all Intellectual Property Rights in the Vendor Solution. All updates, replacements, revisions, improvements, enhancements or other adaptations of the Vendor Solution developed by Vendor under the Certification Contract, exclusive of any of SAP's proprietary materials and information specified in Sections 8.1 and 8.2 above, belong exclusively to Vendor.
- 8.4. The contracting parties acknowledge the high value of each other's trademarks and service marks, irrespective where those are used or registered. Neither party shall acquire any rights in the trademarks of the other party except if it is otherwise expressly provided under the Certification Contract. All use of SAP trademarks shall be in accordance with these GTCs and the applicable Annexes.

## **9. SUPPORT**

- 9.1. Vendor ensures that it can provide an adequate number of employees with the appropriate knowledge, trainings and background knowledge to provide appropriate consulting and consulting support. These may become necessary to enable the use of the Vendor Solution in conjunction with the SAP Software, including version management and the necessary support for a customer migration.
- 9.2. If there is an increasing number of requests for support and service from joint customers, SAP may require further special test of the Vendor Solution in conjunction with the SAP Software and the SAP Interface. These tests are performed at designated SAP's facilities, unless otherwise expressly agreed. Vendor will install the Vendor Solution as well as all related and necessary soft- and hardware components and will provide personnel necessary for the tests free of charge.

## **10. PAYMENTS**

- 10.1. All payment shall be made pursuant to the executed Service Offer. Until receipt of, SAP is under no obligation to provide certification services and is entitled to refuse to provide works and services until full and final payment. Except as provided for under the GTCs, all fees are non-refundable.
- 10.2. All prices are subject to statutory sales tax/VAT. SAP is entitled to submit invoices for partial performance. Payments are due net 30 days from the receipt of the applicable invoice. No cash discount will be granted. All payment shall be made in the currency identified in the applicable Service Offer.

10.3. All amounts under the Certification Contract are payable in advance. In general, the billing will be subject to the pricing set forth in the Service Offer. If no fixed price is agreed billing will be on a resource-related basis listing the provided works and services in the invoice.

## **11. LIMITED WARRANTY; INDEMNITY**

11.1. SAP warrants that its services will be performed in a professional and workmanlike manner. This warranty shall be in effect for 30 days from performance of the services. Any deficiencies in the services must be reported in writing within 30 days of completion of such services. Provided SAP validates the existence of such warranty breach, SAP will at its sole option either re-perform the services or refund the fees paid for the applicable services. This is Vendor's sole and exclusive remedy for a warranty breach. EXCEPT FOR THE FOREGOING EXPRESS LIMITED WARRANTY, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SAP AND ITS LICENSORS DO NOT MAKE, AND VENDOR DOES NOT RECEIVE, ANY WARRANTIES REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE RELATED TO OR ARISING IN ANY WAY OUT OF THE CERTIFICATION CONTRACT OR THE PROVISION OF SERVICES THEREUNDER. SAP SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. ANY CLAIM OF VENDOR FOR COMPENSATION OF COSTS OR DAMAGES IS EXPRESSLY EXCLUDED.

11.2. In case of any defects, Vendor shall immediately notify SAP in writing identifying any defects and giving a precise description of the problem and appropriate information for eliminating such defect.

11.3. Vendor shall be solely responsible for and will defend and indemnify SAP, SAP's affiliated companies and SAP's representatives, officers, employees, directors and agents ("**SAP Indemnitees**") against any third party claims based on:

- a) any negligence, misrepresentation, or errors or omissions on the part of Vendor or its representatives in their use of any Certification provided under this Certification Contract; and
- b) infringement of a third party's Intellectual property rights.

11.4. Vendor will indemnify SAP from a finally awarded judgment (including attorney's fees), against SAP Indemnitees for the third-party claim by a court of competent jurisdiction or pursuant to an authorized settlement agreement applicable to such third-party claim. Any such claim is contingent upon:

- a) SAP notifying Vendor of the claim writing and in full detail without delay; and
- b) SAP authorizing Vendor to conduct the dispute in and outside court against the third party. Vendor at its expense shall provide SAP with all reasonable assistance to defend against the claim.

11.5. Vendor warrants that all data uploaded by Vendor onto SAP's servers is free of viruses, Trojan horses, other malicious software and any PHI, personal data or individual financial information.

11.6. Vendor will be responsible and may be held liable for any non-compliance and breach of this Certification Contract by an Affiliate that is marketing the certification. Vendor must ensure that the Affiliate complies with all provisions of this Certification Contract that might be applicable for the marketing of the certification.

## **12. LIMITATION OF LIABILITY**

12.1. EXCEPT FOR THE OBLIGATIONS UNDER SECTIONS 11.3, 11.4 AND 11.5 AND BREACHES OF CONFIDENTIAL INFORMATION, AND ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, WHETHER IN CONTRACT, TORT, OR OTHERWISE, UNDER NO CIRCUMSTANCES SHALL SAP OR ITS LICENSORS OR VENDOR BE LIABLE TO THE OTHER PARTY OR ANY OF THEIR REPRESENTATIVES FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE PAID SERVICE FEES SET FORTH IN THE CONTRACT, OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S LIABILITY IS CUMULATIVE; WITH ALL OF THE CLAIMING PARTY'S LOSSES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT.

12.2. The provisions of the Certification Contract allocate risks between SAP and Vendor. The service fees reflect the allocation of risk and the limitations of liability herein.

### 13. CONFIDENTIALITY AND DATA PROTECTION

13.1. Each party of the Certification Contract agrees:

- a) to maintain the other party's Confidential Information in strict confidence, taking steps to protect the other party's Confidential Information substantially similar to those steps that the party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care;
- b) not to disclose or reveal any Confidential Information to any third party other than employees and contractors of either party who are under obligations of confidentiality substantially similar to those set forth herein and who are actively and directly participating in the services described in the Certification Contract or who otherwise need to know the Confidential Information for the purpose of the services described in the Certification Contract; and
- c) to retain any and all confidential or internal or proprietary notices or legends which appear on the original and on any reproductions.

In addition, except as expressly provided in this Certification Contract, Vendor does not have the right to use the Confidential Information in any manner for any purposes other than for the fulfilment of executed Service Offers, or as necessary for the Vendor to exercise its limited right to use the SAP Confidential Information pursuant to Section 8. The duties of confidentiality and non-use shall survive the expiration or termination of the Certification Contract. Notwithstanding the foregoing, SAP shall be permitted to internally use Vendor's Confidential Information disclosed under the Certification Contract as well as any certification results and data for SAP's business purposes including by SAP's support and maintenance organization(s) and contractors under an obligation of confidentiality as defined in Section 13.1.

13.2. Notwithstanding anything to the contrary, "Confidential Information" shall not include any information that:

- a) has become generally known or available to the public through no act or omission on the part of the receiving party;
- b) at the time of disclosure to the receiving party was known to the receiving party free of restriction;
- c) is lawfully acquired free of restriction by the receiving party from a third party having the right to furnish such Confidential Information;
- d) is independently developed by the receiving Party without use or reference of the Confidential Information; or
- e) Disclosing party agrees in writing is free of such restrictions.

13.3. The parties may disclose the other party's Confidential Information to the extent required by law, regulation, court order or regulatory agency, provided that the receiving party required to make such disclosure uses reasonable efforts to give the disclosing party reasonable prior notice of such required disclosure (to the extent legally permitted) and provides reasonable assistance in contesting the required disclosure, at the request and cost of the disclosing party. The receiving party shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally requested to be disclosed and shall request that all Confidential Information that is so disclosed is accorded confidential treatment.

13.4. Nothing in the Certification Contract shall prohibit or restrict either party's right to develop, make, use, market, license or distribute products or services similar to or competitive with those of the other party disclosed in the Confidential Information as long as it shall not thereby breach the Certification Contract. Each party acknowledges that the other may already possess or have developed products or services similar to or competitive with those of the other party disclosed in the Confidential Information.

13.5. Upon the disclosing party's request, and except to the extent it is legally entitled or required to retain the Confidential Information, the receiving party shall promptly destroy or return to the disclosing party, at the disclosing party's election, all materials containing the disclosing party's Confidential Information and all copies thereof, whether reproductions, summaries, or extracts thereof or based thereon (whether in hard-copy form or on intangible media), provided, however:

- a) that if a legal proceeding has been instituted to seek disclosure of the Confidential Information, such material shall not be destroyed until the proceeding is settled or a final judgment with respect thereto has been rendered; and
- b) that the receiving party shall not, in connection with the foregoing obligations, be required to identify or delete Confidential Information held in archive or back-up systems in accordance with general systems archiving or backup policies.

13.6. No personal data, protected health information or personal financial information shall be provided under these GTCs. Any transfer of such data will only take place under a separate agreement. In case a party grants the other part access to its personal data under a separate agreement, the parties shall comply with the applicable data protection legislation.

#### 14. TERM

14.1. Either party may terminate the Certification Contract by giving 60 days notice in writing. The Certification Contract ends at the latest after any of the following cases arises:

a) For Software Certifications the following applies:

i. for one-time Software Certification Contracts, after expiration of a contractual term of 3 years after successful initial certification, or after not successfully passing the certification tests within the 9 months period as set forth under Section 6.5;

ii. in case of Software Certification Contracts with an annual subscription, this Certification Contract comes into effect with its execution and shall be in effect for an initial 12-month term following contract execution ("**Initial Term**"). Thereafter it shall automatically renew for subsequent 12 month terms ("**Renewal Term**") unless terminated with 60 days' written notice before the end of the current term. The Certification Contract then ends once all certifications successfully completed under this Certification Contract are no longer valid as per the date noted on the certificate.

b) For Hardware Certifications the following applies:

i. for one-time Hardware Certification Contracts, after expiration of a contractual term of 3 years after successful initial certification, or after not successfully passing the certification tests within the 9 months period as set forth under Section 6.5;

ii. in case of Hardware Certification Contracts with an annual subscription, this Certification Contract comes into effect with its execution and shall be in effect for an initial one calendar year term following contract execution ("**Initial Term**"). Thereafter it shall automatically renew for subsequent calendar years ("**Renewal Term**") unless terminated with 60 days' written notice before the end of the current term. The Certification Contract then ends once all certifications successfully completed under this Certification Contract are no longer valid as per the date noted on the certificate.

c) For both, the following also applies:

iii. SAP withdraws the relevant SAP Interface(s) from official standard maintenance; or

iv. SAP no longer supports the Integration Scenario; or

v. termination of this Certification Contract as permitted under this Section 14.1, Section 14.2, Section 14.3, and Section 15.7.b). Ordinary (partial) termination of the Certification Contract is excluded during the Initial Term or any Renewal Term.

14.2. SAP or Vendor may terminate the Certification Contract in its entirety immediately for cause in the event of a material breach of any provision of the respective Certification Contract that is not cured within 30 days after the terminating party provides notice of such breach in writing.

14.3. Termination for cause by either party shall also apply in the following cases:

a) if either party becomes insolvent, insolvency proceedings have justifiably been applied for on the Party's assets, such application has been rejected for lack of assets, execution measures against the Party have been fruitless; or

b) execution measures have been issued against the Party and not been cancelled within 1 month (e.g. cancellation of seizure); or

c) any change of control of Vendor which SAP rejects with reasonable cause.

14.4. The notice of termination must be in written form.

14.5. In case of termination of the Certification Contract:

a) Each party shall promptly return to the other party all advertising materials and other property, including all Confidential Information, provided by the other party subject to the Certification Contract or, as specifically agreed, destroy such information. The Return or destruction shall be certified in writing;



- b) Both parties shall cease acting in a manner that would suggest any continuing relationship with regards to the certification. The parties shall immediately cease all marketing, logo use and advertising announced or conducted under the Certification Contract.
- 14.6. Upon termination of the executed Service Offer or the GTCs, any works and services that have already been provided or performed pursuant to the relevant executed Service Offer(s) will be invoiced in accordance with Section 10 of these GTCs. Any claims for damages subsequent to termination of the executed Service Offer that arise out of any works or services provided or performed prior to termination will be subject to Section 12 of these GTCs.
- 14.7. In addition to those rights outlined above, SAP shall be permitted to terminate this Agreement and all associated Service Offers if any other partnership agreement between Vendor and SAP is terminated.
- 15. MISCELLANEOUS**
- 15.1. This Certification Contract and any claims arising out of or relating to this Certification Contract and its subject matter shall be governed by and construed under the laws of Delaware, without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and Delaware law, rules, and regulations, Delaware law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Certification Contract. The Uniform Computer Information Transactions Act as enacted shall not apply.
- 15.2. If any provision in these GTCs is ineffective, the validity of the remaining provisions shall not be affected thereby.
- 15.3. The relationship of SAP and Vendor established by these GTCs is that of independent contractors. The Certification Contract 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 unless otherwise expressly stated in the Certification Contract.
- 15.4. Neither party is a distributor or an agent for the products and services of the other party. Any products and services of a party can be obtained by a prospective customer only through separate agreements with the respective party. Each of the parties independently develops and prices its own products and services offered to customers.
- 15.5. Neither party shall transfer, assign, or sublicense its rights or obligations under the Certification Contract in whole or in part, without the prior written consent of the other party. SAP may assign the Certification Contract in whole or in part to an affiliate. In case of any change of control with Vendor, Vendor agrees to provide SAP with written notice upon the signing the definitive acquisition agreements or the public announcement and SAP has the right to terminate this Certification Contract or consent to the assignment within 30 days of receipt of such notice. Sections 14.5 and 14.6 shall apply accordingly.
- 15.6. Any delay or nonperformance of any provision of these GTC or the Service Offer (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of the Certification Contract, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance. These GTCs and the Service Offer may be executed in 2 counterparts, each of which shall be deemed an original, but all of which together shall constitute only 1 and the same agreement. Facsimile or PDF signatures are deemed equivalent to original signatures for purposes of these GTCs and the Service Offer. These GTCs and the Service Offer may be executed through electronic signature.
- 15.7. The certification service delivered by SAP under this Certification Contract is subject to the Export Laws. Vendor agrees that it will not use in or make available the Vendor Solution's integration certification statement or integration certificate in the Restricted areas (see <https://www.sap.com/about/agreements/export-statements.html>) and to any other countries, persons, organizations or entities prohibited by applicable export control laws. Vendor acknowledges that the delivery of the certification service may be subject to export control restrictions and that these restrictions may:
- a) considerably delay or prevent the delivery of the certification service by SAP; or
  - b) lead to SAP having to limit, suspend or terminate without prior notice Vendor's access to the certification service. In case of termination Sections 14.4, 14.5 and 14.6 apply, if consistent with the applicable Export Laws.

SAP assumes no responsibility or liability for any delay caused in the delivery of the Service and/or if access to the Service must be limited, suspended or terminated by SAP due to applicable export restrictions.

- 15.8. The Certification Contract constitutes the complete and exclusive statement of the agreement between SAP and Vendor for the certification outlined under the Service Offer, and all previous representations, discussions, and writings are superseded by, the Certification Contract.

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**Annex 1**  
**Trademark License**

**1. ARTICLE 1 SUBJECT MATTER**

- 1.1. SAP will provide Vendor with the appropriate SAP taglines and logos for the respective Integration Scenario ("**SAP Logos**") once Vendor successfully passes the certification tests as set forth under the Certification Contract. SAP is the owner of the trademark SAP, registered for international classification numbers 09, 16, 18, 25, 28, 38, 41, and 42. The trademark appears as part of the appropriate SAP Logos.
- 1.2. SAP is willing to grant Vendor a license for the use of the said trademark as part of the appropriate SAP Logos subject to the provisions of this Trademark License and the respective current trademark usage guidelines.

**2. ARTICLE 2 GRANT**

- 2.1. Upon successful passing of the certification tests as set forth under the Certification Contract, SAP grants to Vendor a revocable, nonexclusive, non-transferable license to use SAP's trademarks as part of the appropriate SAP Logo solely for the version of the Vendor Solution, Integration Scenario, and the specific version of the SAP Software stated in the Service Offer. In addition, Vendor is only permitted to use the SAP Logos in accordance with the then current version of the SAP Trademark Usage Guidelines contained in the "SAP Partner Communication Guidelines" or other related SAP documents provided to Vendor by SAP. Vendor is not permitted to grant sublicenses.
- 2.2. In its use of the SAP Logos Vendor will observe SAP's directions concerning the colors and size of the SAP trademarks.

**3. ARTICLE 3 LICENSE FEES**

- 3.1. No fee is payable for permission to use the trademark in accordance with Article 2.

**4. ARTICLE 4 UPHOLDING OF SAP'S RIGHTS**

- 4.1. Vendor shall not contest the validity of the SAP trademarks or support the contesting of its validity and shall not derive any right against SAP through its use of the SAP trademarks. In its use of the trademarks Vendor shall indicate in a footnote that it is a registered trademark of SAP. In this context Vendor acknowledges that SAP is the sole owner of rights in the SAP trademarks and SAP Logos. Vendor undertakes to make all declarations and provide all documents for the benefit of SAP as SAP may require in the prosecution of its rights in such trademarks.
- 4.2. Vendor shall without delay inform SAP in writing of any contesting of SAP's rights in the SAP's trademarks and/or SAP Logos. It is SAP's exclusive right, but it is not SAP's duty to take steps or bring actions in respect of infringements. In this connection Vendor undertakes to accord every necessary support.
- 4.3. Vendor is not appointed SAP's agent. It shall therefore not represent or bind SAP or in any way hold itself out to be or allow the impression to arise that it is SAP's agent.
- 4.4. Except with the written agreement of SAP, Vendor shall not assign or transfer this Trademark License or any right or duty under this Annex. Breach of this provision shall entitle SAP to terminate this Trademark License for cause with immediate effect.

**5. ARTICLE 5 INDEMNIFICATION**

- 5.1. Vendor shall indemnify and hold harmless SAP in respect of any claim made or action brought against SAP and any loss and any expense incurred by SAP arising out of or related to Vendor's wrongful acts or omissions with respect to the use of the trademark and SAP Logos. Further, SAP assumes no liability to Vendor or to third parties with respect to the performance characteristics of the services or products rendered by Vendor under the SAP trademark and/or SAP Logos, and Vendor shall indemnify SAP against losses incurred from claims of third parties against SAP involving sale or provision of the Vendor's services or products (including but not limited to any certified interface), including Vendor's and its employees' and agents' acts or omissions in furtherance thereof.

**6. ARTICLE 6 TERM AND TERMINATION**

- 6.1. This Trademark License becomes effective when:

- a) the certification process has been successfully completed, and such successful completion has been acknowledged in writing by SAP in the form of SAP issuing Vendor an applicable certificate to Vendor; and
  - b) Vendor is in accordance with the terms of the GTCs.
- 6.2. SAP may terminate this Trademark License by giving 2 weeks' notice to the end of a calendar month.
- 6.3. Vendor shall cease using the SAP Logos and trademarks without delay when termination notice is given under this Trademark License or when the Certification Contract expires or is terminated according to its terms.

## **7. ARTICLE 7 MISCELLANEOUS PROVISIONS**

- 7.1. Amendments to this Trademark License must be made in writing. There are no oral collateral agreements. SAP may at its sole discretion change any terms and conditions of this Trademark License and the SAP Trademark Usage Guidelines upon notice. If Vendor does not agree to the proposed changes, Vendor shall be entitled to terminate this Trademark License within 30 days after such notice by SAP. In such case Article 6 Section 6.3 shall apply accordingly. If Vendor does not terminate, the changes shall become effective 30 days after notice of such change by SAP.
- 7.2. If any provision of this Trademark License is or shall become ineffective or void, this shall not affect the remaining provisions. The parties hereto shall replace the ineffective or void provision with an effective and lawful provision that achieves as nearly as possible the business purpose of the ineffective or void provision. The parties shall similarly fill any drafting gap with an appropriate provision.
- 7.3. The place of performance and place of exclusive jurisdiction is Karlsruhe, Germany. German law governs this Trademark License.

## **Annex 2 Special Conditions**

### **For all ABAP, BC-BAS-DES, BC-BAS-PV and HCM-LOC Certifications:**

Prerequisites for the integration certification of the ABAP Add-on:

- Vendor has concluded the “SAP ABAP Service Package provided by the SAP Integration and Certification Centers (“**SAP ICC**”)” service offer under which the Add-on Assembly Kit (“**AAK**”) is licensed to Vendor.
- Vendor has a valid license agreement in place concerning the usage of the ABAP workbench software development environment.

Trial/Evaluation Use:

If you intend to use the SAP NetWeaver Security Code Scanner as part of your ABAP Add-on Certification for one-time Trial/Evaluation purposes, please send an email to your ABAP Integration Consultant.

Upon successful approval of your request by SAP any use of the SAP NetWeaver Security Code Scanner for Trial/Evaluation purposes shall be governed under the terms and conditions of the SAP Trial License Order Form (US) made available on <http://www.sap.com/company/legal/index.epx> (the “**Trial Agreement**”). The trial period shall commence on the Effective Date outlined in the applicable Service Offer and terminate 90 days later, unless sooner terminated in accordance with the Trial Agreement.

### **For all BC-AL Certifications:**

Usage of SAPSECULIB in connection with the services under this offer:

The SAPSECULIB has the functionalities as described in the related documentation. SAP grants to Vendor for the term of this contract a non-exclusive, non-transferable, limited license to use the SAPSECULIB on an internal use basis in order to prepare for integration certification and only in conjunction with the Services of this contract. SAP will not provide any support for SAPSECULIB under this Certification Contract. In case this Certification Contract terminates, this license shall terminate immediately, and Vendor shall promptly cease all use of SAPSECULIB in accordance with this contract.

### **For BC-ILM Certifications:**

Vendor is not permitted to make any misleading statements concerning the scope of the integration certification provided hereunder, including but not limited to any statement whatsoever with respect to any connection of the legal compliance of the Vendor Solution with the integration certification provided hereunder, see also the GTCs’ Section 2.12 as well as Sections 6.1, 6.2 and 6.3.

### **For all SAP Business Technology Platform Extension and SAP BW/4HANA Content:**

Usage of the AAK in connection with the services under the offer:

The AAK has the functionalities as described in the related documentation and is only applicable if Vendor integrates into SAP business solutions solely via SAP Business Technology Platform extensions, or SAP Gateway, or builds SAP BW/4 HANA Content. In these cases and upon request by Vendor, SAP grants to Vendor for the Term of this contract a non-exclusive, non-transferable, limited license to use the AAK on an internal use basis in order to package the Vendor customized ABAP code and deploy on these SAP solutions, solely if needed to deploy SAP BW/4HANA business content or integrate a Vendor Solution app via SAP Gateway, SAP Business Technology Platform to SAP business solutions (allowed scenarios), and only in conjunction with the Services of this contract. In case this Agreement terminates, this license shall terminate immediately, and Vendor shall promptly cease all use of the AAK in accordance with this contract. Use of the AAK beyond the allowed scenarios is not permitted under this Agreement and requires a separate ABAP Service Package Agreement. In addition, Vendor acknowledges that development of customized ABAP code requires a separate SAP development license. If Vendor has not yet licensed the development license, Vendor shall contact [tdd@sap.com](mailto:tdd@sap.com).

### **For all Java Deployment of third-party Java solutions on SAP NetWeaver:**

Prerequisites for the integration certification of the Vendor Solution: Vendor has a valid license agreement in place concerning the usage of the SAP NetWeaver development environment.

**For all Premium Certifications:**

Prerequisites for Premium Certification of solutions with ABAP-Add-on component are that Vendor has an active ABAP SPA subscription.

Usage of the SAP NetWeaver Application Server Add-on for Code Vulnerability Analysis (material 7016581) in connection with the services under this offer for Premium Certification:

The SAP NetWeaver Application Server Add-on for Code Vulnerability Analysis (hereinafter "**CVA tool**") has the functionalities as described in the related documentation. SAP grants to Vendor for the term of this contract a non-exclusive, non-transferable, limited license to use the CVA tool on an internal use basis, to test the ABAP Add-On, and only in conjunction with the Services of this contract. In case this Agreement terminates, this license shall terminate immediately and Vendor shall promptly cease all use of the CVA tool in accordance with this contract.

The license granted hereunder shall commence once SAP activates the "Allow Security Checks" program (SLIN\_SEC) in the ABAP workbench ("**Effective Date**") and shall continue for 365 days (hereinafter the "**Trial Period**"), unless otherwise terminated in accordance with this Agreement.