

**Order Form for SAP NS2 Cloud Services
(SAP NS2 Internal Reference #)**

Between

**SAP National Security Services
3809 West Chester Pike
Suite 200
Newtown Square, PA 19073
("SAP NS2")**

And

**Carahsoft Technology Corp.
11493 Sunset Hills Road
Reston, VA 20190
("Reseller")**

On Behalf of

**Department of Health and Human Services
123 First Street
Anywhere, DE 19072
("Customer")**

This Reseller Order Form ("Order Form") with SAP NS2 shall evidence the licenses granted and services provided to the Reseller identified above for sublicense and delivery to Reseller's Customer named above, and the applicable fees that are due from Reseller to SAP NS2, pursuant to the terms and conditions contained in this Order Form and in the Government Reseller Agreement between SAP National Security Services, Inc. ("SAP NS2") and Carahsoft Technology Corporation ("Reseller") dated December 2, 2008, the terms of which are hereby incorporated by reference. Only the documents provided herein are applicable to the SAP NS2 Cloud Services. Notwithstanding anything to the contrary, no additional terms and conditions are applicable to SAP NS2 unless mutually agreed to in a contractual writing by the parties. To the extent that the terms of Reseller's order with End Customer are in conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control. Wherever necessary in this Order Form to make the context of the clauses applicable to the Reseller, the term "Customer" shall mean "Reseller" except when a right, obligation or authorization can be granted or performed only by the Customer. This Agreement must be included in any resultant award between the Reseller and Customer.

1. ORDER FORM AND TABLE OF AGREEMENT

This Order Form as issued by SAP NS2 is an offer by SAP NS2. When signed and returned to SAP NS2 by Customer on or prior to the offer expiration date, it becomes a binding agreement for the SAP NS2 Cloud Service(s) listed in this Order Form and is effective on the date signed by Customer.

Offer Expiration Date: **December 15, 2020**

This Order Form is governed by and incorporates the following documents in effect as of the effective date. All documents are listed in order of precedence, and collectively referred to as the **"Agreement"**:

Agreement	Location
Order Form for SAP NS2 Cloud Services	
SAP NS2 Addendum	Attached to the Order Form
Schedule A of this Order Form: SAP Analytics Cloud, SAP Analytics Cloud, embedded edition, and SAP Digital Boardroom Supplemental Terms and Conditions v. 11-2020; RISE with S/4HANA, private cloud Supplemental Terms and Conditions v.4-2021 ("Supplement")	Attached to the Order Form
Schedule B of this Order Form: Support Policy for SAP Cloud Services, v.2-2019	Attached to the Order Form
Schedule C of this Order Form: Service Level Agreement for SAP Cloud Services v.7-2020 (applicable to SAC); Service Level Agreement for SAP HANA ENTERPRISE CLOUD, SAP S/4HANA, PRIVATE CLOUD EDITION AND SAP S/4HANA CLOUD, EXTENDED EDITION SERVICES v.2-2021 (applicable to PCE) ("SLA")	Attached to the Order Form
Schedule D of this Order Form: Personal Data Processing Agreement for SAP NS2 Cloud Services	Attached to the Order Form
Schedule E of this Order Form: General Terms and Conditions for SAP Cloud Services ("GTC")	Attached to the Order Form

Customer has had the opportunity to review the GTC and the incorporated documents prior to executing this Order Form. All defined terms in the GTC used in this Order Form have the meaning stated in the GTC. All references in the Supplements to "Service" mean "Cloud Service", and to "Named Users" mean "Authorized Users."

2. CLOUD SERVICE

2.1 Cloud Service Order.

The table shows the purchased Cloud Service, Usage Metrics and volume, initial Subscription Term and fees.

Period 1 From 06/30/2019 To 06/29/2020 ("Subscription Term")

SAP NS2 Cloud Service	Usage Metric	Usage Metric Limitation **	Annual Fee	Product Start Date	Product End Date	Total Fee in USD
Sample SaaS Material Codes						

Total Fee in USD (*)	
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(*) plus applicable taxes

(**) Usage Metric Limitations stated above represent the maximum annual quantity of Usage Metrics over a 12-month period, except where the period between Product Start Date and Product End Date is less than one year. In that case the stated Usage Metric Limitation is the actual prorated amount.

2.2 Provisioning Environment

Customer will be provisioned in the TBD.

2.3 Subscription Term

- (a) Customer's initial Subscription Term will begin on the Product Start Date and will be effective until the Product End Date, unless Customer is otherwise notified by SAP NS2's provisioning team.
- (b) The following Option Periods are also included and shall be exercised by Change Order prior to the applicable option period start date:

TBD

2.4 Excess Use.

Customer's use of the Cloud Service is subject to the Agreement, including the Usage Metrics and their volume stated in Section 2.1. Any use of the Cloud Service that exceeds this scope will be subject to additional fees. Fees accrue from the date the excess use began. Customer will execute a Change Order to document subscriptions for additional Usage Metrics and their volume. SAP NS2 may invoice and Customer will pay for excess use based on SAP NS2's prices on the date the excess use began.

3. PAYMENT AND INVOICES

3.1 Fees and Invoicing.

Unless the Supplement states otherwise, fees for the Cloud Service(s) will be invoiced by SAP NS2 and paid by Reseller annually in advance. SAP NS2 may provide invoices to an email address provided by Reseller. Fees for non-recurring services will be invoiced by SAP NS2 on a one-time basis and paid by Reseller upon commencement of the Subscription Term. Reseller will reimburse SAP NS2 for all pre-approved (by Customer) and appropriately documented travel and related expenses incurred by SAP NS2 in performing any support for the Cloud Service.

3.2 Payment.

Reseller will pay to SAP NS2 all fees due within thirty (30) days of date of invoice. Unpaid fees will accrue interest at the maximum legal rate. Reseller purchase orders are for administrative convenience and not a condition of payment. Payment is not dependent upon completion of any implementation or other services.

4. AUTHORIZED ADMINISTRATORS

Customer confirms the names assigned to the authorized roles are accurate and that the contacts below have been informed of the responsibility. Inaccuracy can result in delays outside of SAP NS2 control.

Reseller Main Contact: @Carahsoft.com

Main Customer Contact: Claire CIO; CIO@SampleCo.com

The Main Customer Contact is the Customer contact for onboarding, who receives the confirmation that the order has been processed (which includes the confirmed Start Date).

Customer Technical Administrator: Anna SysAdmin; Anna@SampleCo.com

The Technical Administrator is the main contact for technical and system related communications.

Please provide a Financial Contact - The Financial Contact acts as the main Customer contact for finance related communication including invoicing.

Reseller Financial Contact: @Carahsoft

5. CUSTOMER LOCATION

Customer has provided the following primary access location:

Department of Health and Human Services
123 First Street
Anywhere, DE 19072

This is the primary (but not the only) location from which Customer will access the Cloud Service. Customer's failure to provide SAP NS2 with its VAT and/or GST number may have sales tax implications. If Customer does not provide a primary access location, SAP NS2 will incorporate a default primary access location to Customer's sold-to address.

6. TERMINATION OF OTHER SAP LICENSES

TBD

Accepted By:

SAP NATIONAL SECURITY SERVICES, INC.
("SAP NS2")

CARAHSOFT TECHNOLOGY CORPORATION
("Reseller")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SAP NS2 Cloud Order Form Addendum

1. USE OF THE CLOUD SERVICE

1.1. SAP Analytics Cloud (SAC)

- (a) SAP Analytics Cloud is available in the following editions: SAP Analytics Cloud for planning, professional edition; SAP Analytics Cloud for planning, standard edition; and SAP Analytics Cloud for Business Intelligence (BI). The offering can also include SAP Digital Boardroom and SAP Analytics Hub. The functions included in each of these editions are described in the feature scope description found in the Documentation. SAP NS2 will control what functionality is made available in the cloud service to the customer. Each edition must be ordered separately on an Order Form. For purposes of this Supplement, the Cloud Service shall mean those editions specified in an Order Form.
- (b) Customer is responsible for connecting from SAC to any customer owned systems and associated interconnection documentation (e.g. NIST SP 800-47 ISA). SAP NS2 is not responsible for any Customer owned systems interfacing with SAC. This includes any information that is being used in the SAC application from the Customer landscape.
- (c) SAP NS2 will provision the necessary amount of HANA database memory that does not exceed the SAP limits identified in the Supplemental Terms and Conditions. Adjustments may be required because of hyperscaler limitations.
- (d) SAP NS2 will provide virtual and/or physical servers and other computing equipment in AWS GovCloud (US). SAP NS2 reserves the right to change or substitute server models of equivalent or better performance ratings dependent upon changes in scope and availability of hardware.
- (e) Customer is responsible for the connection to the SAP NS2 Cloud application, including the internet connection. The Cloud Services are accessible through secure encrypted communication.
- (f) The Cloud Services are supported by employees who are U.S. persons on U.S. soil.
- (g) Subject to the provisions of the Agreement, SAP NS2 will implement reasonable and appropriate measures for the Cloud Services (as determined by SAP NS2) referenced in NIST Special Publication 800-53 rev4. SAP NS2 will maintain physical and logical access controls to limit access by SAP NS2 or Subprocessor personnel to U.S. persons, as defined by 22 CFR part 120.15 ("U.S. Persons").
- (h) Customer specific controls/policies are not incorporated into this Agreement. SAP NS2's Software as a Service (SaaS) Cloud Service Offerings (CSO) will be implemented and operated in adherence to the FedRAMP Moderate security control baseline. SAP NS2 considers the FedRAMP Moderate security control baseline to be the overarching policy and process providing governance to SAP NS2's CSO rather than a specific Federal Agency's policy or procedures. It is incumbent upon the Customer to identify any gaps between Customer's controls/policies and the SAP NS2 System Security Policy (SSP) and related FedRAMP documentation. SAP NS2 will make commercially reasonable efforts through the Authority to Operate (ATO) process to address any control/policy gaps identified by Customer.
- (i) SAP is committed to delivering software solutions that are accessible to individuals with disabilities. This includes addressing Section 508 standards and W3C WAI WCAG 2.0 (Level A and AA) guidelines, both of which are incorporated into the SAP accessibility standard, which is used for developing SAP products. While the solutions proposed implement a number of accessibility features, they are currently not fully optimized for accessibility. Supported accessibility features are provided by SAP solutions in combination with third-party assistive technologies such as the screen reader JAWS. JAWS and most other assistive technologies may require SAP and or customer furnished client-side software. A detailed VPAT addressing Section 508 of the Workforce Rehabilitation Act requirements for the requested SAP application is available upon request.

1.2. **S/4HANA Private Cloud (PCE) – Single Tenant**

- (a) SAP NS2 reserves the right to change or substitute server models of equivalent or better performance ratings dependent upon changes in scope and availability of hardware.
- (b) SAP NS2 will provide virtual and/or physical servers and other computing equipment in AWS GovCloud (US). SAP NS2 reserves the right to change or substitute server models of equivalent or better performance ratings dependent upon changes in scope and availability of hardware.
- (c) SAP NS2 will support Site to Site VPN and/or a DirectConnect connection to the AWS GovCloud site to support the S4 Single Tenant application. This will represent the AWS Endpoint for accessing the Computing Environment. Customer is responsible for connection from its on premise network to the DirectConnect Point of Presence. The Cloud Services assume a 1 TB per month for inbound and outbound traffic that will leverage Direct Connect from the Customer's data center. The Cloud Services assume an outbound data transfer of 1 TB for Inter Region Data Transfer Out and 1 TB for Data Transfer Out. The Customer will incur additional charges by their service providers to enable connectivity to the DirectConnect. Any additional changes from the requirements above will require a Change Order. The NS2 Cloud will setup and configure the cloud virtual private clouds (VPCs). The Customer is responsible for providing the VLAN designation, IP addresses, and identifying the transit routes across the VPCs and any additional sub-netting.
- (d) The NS2 Cloud will host the applications in AWS GovCloud (US). AWS GovCloud (US) is an isolated region that allows customers to host sensitive Controlled Unclassified Information (CUI) and all types of regulated workloads.
- (e) The Cloud Services are supported by employees who are U.S. persons on U.S. soil.
- (f) The Customer is not authorized to install any additional software outside of what is contracted in the S/4HANA Private Cloud solution landscape. Customizations to the operating system are not permitted in this offering. The Customer does not have access to the file system or operating system for any purpose.
- (g) SAP NS2 will have access to the Customer provided IP addresses within a 5 day window after contract award to establish an IPSEC connection between customer data center and the NS2 Cloud. If this information is not provided within the 5 day window, the provisioning schedule will be delayed.
- (h) Configuration of SAP online help (local installation) is not included in scope for this agreement.
- (i) All DNS and Windows Active Directory management is the responsibility of the Customer. The Customer is responsible for all user / role / access management and creation of new users. The Customer must provide the SAP NS2 cloud team with Customer user IDs with the appropriate access to stand up and support the cloud landscape within 5 days after contract award.
- (j) SAP NS2 will provide, apply, and enforce operating systems security configurations based off SAP NS2 defined security hardening guidelines. SAP NS2 will leverage automated mechanisms to enforce the use of Defense Information Systems Agency (DISA) Security Technical Implementation Guidelines (STIGs) only. The Customer does not have access to the SAP NS2 STIGs nor are the specific STIGs applied subject to customer specific requirements.
- (k) SAP NS2 has defined patch and upgrade cycles for the operating systems which are routinely updated to ensure compliance with security requirements. Operating system release locked images are not permitted beyond a six month vendor supported grace period. Customer landscapes are rebooted on a predefined schedule to ensure that security patches are applied. The Customer is not permitted to halt the upgrade of the underlying operating system or applications beyond two maintenance windows.
- (l) All encryption and other cryptographic keys are managed maintain by SAP NS2 and

Customer will not be provided any key access and Customers can not bring their own cryptographic keys.

- (m) Insecure protocols and technologies are not available e.g., CIFS. SAP NS2 reserves the right to adjust the approved protocols and ports at will. The Customer is responsible for configuration and enforcement of secure protocols e.g., HTTPS within the S/4 HANA PCE solution 15 days prior to go-live. Continued use of insecure protocols (e.g., unencrypted SAP GUI or Fiori over HTTP) will place the Customer in violation of security requirements and are subject to risk acceptance.
- (n) All Managed Cloud Delivery (MCD) are provided remotely by SAP NS2. No software developments will be made by the SAP NS2 cloud team.
- (o) Any data cleansing or data cleanup is wholly the responsibility of the Customer. Data loading into the NS2 Cloud is not included in the scope of this Agreement.
- (p) SAP NS2 is responsible for provisioning and installing of the application listed in the S/4HANA Private Cloud Packages listed in the Order Form for SAP NS2 Cloud Services. The service levels and upgrades are specifically designed to accommodate the installation that is setup and maintained by SAP NS2. The underlying technologies selected by SAP NS2 are not subject to modification.
- (q) The Customer is responsible for purchasing and configuring single-sign-on with their own identity provider. Continued use of local application accounts for day-to-day use post go-live is not permitted.
- (r) The Customer is not permitted to dictate the use of a specific domain for the backend servers and services.
- (s) The Application System Availability Service Level will not apply when Customer's failure to meet Customer's responsibilities (including remaining current on maintenance for the Licensed Software, using a version or release of the Licensed Software and/or Subscription Software on current maintenance) as set forth in the Agreement.
- (t) Downtime caused from Customer activity shall be omitted from the service level calculation and no penalties are required to be credited by SAP NS2 to Customer.
- (u) All references to RISE with SAP S/4HANA PCE in the RISE with SAP S/4HANA, private cloud edition Supplement will only be relevant to the S/4HANA application deployments. The SAP NS2 S/4HANA PCE cloud offering does not include the Ariba and SCP Cloud Platform Enterprise Agreement (CPEA) credits.
- (v) During the term of this Agreement for Cloud Services, SAP NS2 shall supply, at its own expense an audit report by a nationally recognized outside audit firm conforming with the American Institute of Certified Public Accountants' Service Organization Control (SOC) Reports, or its equivalent, and shall provide or make available to Customer, at Customer's request, a copy of applicable SOC reports, which shall be updated at least annually. After a period of six (6) months after go-live, if a SOC report is not available, upon Customer's 120 day prior written request to confirm SAP NS2's compliance with this Agreement, as well as any applicable laws and regulations, SAP NS2 grants Customer or, upon written agreement by the Customer and SAP NS2, a third party on Customer's behalf, permission to perform an assessment, audit, examination or review of the controls in SAP NS2's physical and/or technical environment in relation to Customer Data being handled and/or services being provided to Customer pursuant to this Agreement. To the extent allowed by applicable regulations, SAP NS2 shall fully cooperate with such assessment by providing access to knowledgeable personnel, the SAP NS2 physical premises, documentation, infrastructure and application software that processes, stores or transports Customer Data for Customer pursuant to this Agreement.
- (w) SAP NS2 shall provide S/4HANA Private Cloud Services, to include an underlying FedRAMP High with DoD Impact Level 4 authorized IaaS (Infrastructure as a Service), under this Agreement exclusively from the SAP NS2 FedRAMP IaaS certified environment. SAP NS2 shall inherit the security controls to meet the in-scope Federal Risk and Authorization Management Program ("**FedRAMP**") High and IL4 controls. SAP NS2 will maintain logical access controls to limit access by SAP NS2 or sub-processor personnel to U.S. persons, as defined by 22 CFR part 120.15, located within the United States. Physical access to the physical data center is governed by the terms

of access allowed by the Subprocessors' policies and their FedRAMP authorization package. Should the SAP NS2 FedRAMP certified IaaS Subprocessor issue a notice of discontinuance of its commercially available Service, SAP NS2 may discontinue the Cloud Services as described herein and shall negotiate a mutually agreeable alternative.

- (x) The customer is responsible for licensing and managing their own security tooling. This includes antivirus, malware, scanning and security information and event management. SAP NS2 will install the agents in the systems for these tools. If the security tooling impacts system performance, the downtime that resulted from these tools will be removed from the service level calculation and no penalties are required to be credited by SAP NS2 to Customer
- (y) The OpenText cloud solutions are not included in the NS2 cloud services.

2. ADDITIONS TO SUPPORT POLICY FOR SAP CLOUD SERVICE

Customers subscribing to SAP NS2 SaaS solutions will be provided support in accordance with the SAP Support Policy which is attached to the Order Form.

Additions to the Support Policy for SAP Cloud Services are as follows:

- (a) **Customer Responsibilities.** It is the Customer's responsibility to grant access to their tenants and Support Systems, as needed, for the performance and delivery of the Support Services.
- (b) **SAP Enterprise Support, cloud editions.** In addition to SAP Enterprise Support, cloud editions, the following secure support services, provided by SAP NS2 in English, apply:
 - i. Some support services may be delivered by SAP personnel or available via the SAP Launchpad.
 - ii. Note: SAP Chat feature provided by SAP Global Support Organization, and therefore is not a secure feature.
 - iii. Secure support services performed by U.S. Persons on U.S. Soil
 - iv. Access to named point of contact
 - v. Secure Back Office
 - vi. Secure Remote Connection. A US person-staffed secure backoffice located in a US facility shall be provided during the standard hours of 9:00AM to 6:00PM United States Eastern time, Monday through Friday, excluding holidays observed by SAP NS2 ("Standard Hours") for the Customer site(s).
 - vii. Secure Cloud Support Setup. Customer and SAP NS2 agree to jointly conduct an initial Secure Support Setup as part of Secure Support. The Secure Support Setup includes: (i) securing remote connectivity between Customer and SAP NS2; (ii) reviewing best practices for collaboration with SAP NS2 and SAP Digital Business Services; (iii) reviewing Customer solution landscape; and (iv) review of Customer project roadmap.
 - viii. Contacting Support. Beginning on the effective date of a customer's agreement for SAP NS2 SaaS Cloud Solutions, that customer may contact SAP NS2's support organization as primary point of contact for support services. The available contact channels are:
 - Support Backoffice email distribution – details provided during support kick-off
 - Support Phone Number: 1-(844)-NS2-SUPP or 1-(844)-672-7877
 - Support Backoffice (After hours) phone number: 1-(610)-492-3040

- ix. SAP NS2 Contact Details. SAP NS2 Customer shall update the Customer Contacts for the SAP NS2 Cloud.
- x. SAP NS2 may, from time to time, confirm with Customer the correctness of information Customer provides as required herein.

3. ADDITIONS TO THE SERVICE LEVEL AGREEMENT FOR SAP CLOUD SERVICE

The Application System Availability ("ASA SLA") Service Level for Cloud Service sets forth the System Availability applicable to the Computing Environment. The SLA shall be effective 3 months after system handover to Customer. The SLA will be calculated solely upon the uptime of the application and will not pertain to any applications running cloud infrastructure. The SLA will be immediately not applicable if a Customer installs any other applications on the cloud infrastructure supporting SAP Cloud services.

Excluded Downtime	<p>Total Minutes in the Month attributable to:</p> <ul style="list-style-type: none"> (i) Excluded Downtime as defined in Schedule C of the Order Form (ii) Scheduled Downtime as set forth below (iii) Agreed Downtime (iv) Emergency Downtime (v) Downtime caused by factors outside of SAP NS2's reasonable control such as unpredictable and unforeseeable events that could not have been avoided even if reasonable care had been exercised (see examples below this table)
Scheduled Downtime	Scheduled at a mutually agreed time, not to exceed twelve (12) hours per month per system, excluding functional updates.

In addition to the conditions listed in Excluded Downtime in the preceding table, the following examples include, but are not limited to, what is beyond SAP NS2's reasonable control for the ASA SLA:

- (a) Customer's failure to meet Customer's responsibilities (including remaining current on maintenance for the Licensed Software, using a version or release of the Licensed Software and/or Subscription Software on current maintenance) as set forth in the Agreement
- (b) Downtime caused by Customer and/or the customer source systems
- (c) Interruptions as a result of requirements stipulated by a third party manufacturer of the Licensed Software
- (d) Interruptions or shutdowns of the Computing Environment, or portions thereof (or Servers for Server Provisioning) resulting from the quality of the Licensed Software provided by the Customer and/or Customer's customizations or modifications of the Licensed Software, Subscription Software or Computing Environment (or Servers for Server Provisioning), unless the customizations or modifications are the responsibility of SAP NS2 as stated in this Agreement.
- (e) Restore times of user data (recovery of database data from a media backup) where SAP NS2 was not the root cause for the required restoration.
- (f) Emergency downtime includes downtime due to the Customer requesting an immediate change in their landscape. It also includes any downtime that is due to SAP NS2 requiring an immediate change to the Customer landscape in order to safeguard the landscape.
- (g) Downtime due to a database connection in the customer landscape

- (h) If it was discovered from the Root Cause Analysis (RCA) that an outage occurred from custom code and/or large automated jobs that was designed and written by the customer, the downtime from the system will be omitted from the application level SLA calculation.
- (i) Any downtime that results from hardware failure from the Hyperscaler will be omitted from the application level SLA. Any potential timeframe required for a system restart will also be omitted if it was due to hardware failure.
- (j) Any downtime that occurs from any acts of omissions from the Customer such as time waiting on instructions from Customer in order to prevent an outage.

4. CUSTOMER DATA ACCESS

SAP NS2 will not disclose Customer Data to any government or third party or access or use Customer Data; except in each case as necessary to maintain the Cloud Services or to provide the Cloud Services to Customer in accordance with this Agreement, or as necessary to comply with the law or a valid and binding order of a governmental or regulatory body (such as a subpoena or court order). Unless it would be in violation of a court order or other legal requirement, SAP NS2 will give Customer reasonable notice of any such legal requirement or order, to allow Customer to seek a protective order or other appropriate remedy.

5. EXPORT CONTROLS

Customer may disclose to SAP NS2 as part of any authorized remote access data which may be subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 - 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 - 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Provided Customer identifies the data as being subject to such controls, SAP NS2 shall comply with any and all Export Laws and Regulations and any license(s) issued thereunder in handling any such data. Customer remains responsible for its own handling of export-controlled data. SAP NS2 will maintain physical and logical access controls to limit access by SAP NS2 or Subprocessor personnel to U.S. persons, as defined by 22 CFR part 120.15 ("U.S. Persons") on U.S. soil.

6. ADDITIONAL TERMS

- (a) In addition to the provisions provided in the General Terms and Conditions, SAP NS2 may immediately upon notice to Customer suspend Customer's right to access or use any portion of the Cloud Services if SAP NS2 reasonably concludes that Customer's continued use of the Cloud Service (i) poses a security risk to the Cloud Service or any third party, (ii) risks adversely impacting the SAP NS2 or its Subprocessor's systems or the systems or data of any other customer of SAP NS2 or its Subprocessors, (iii) risks subjecting SAP NS2 or its Subprocessors or their Affiliates to liability, or (iv) is not in compliance with the Acceptable Use Policy. If SAP NS2 temporarily suspends Customer's right to access or use the any portion of the Cloud Services in accordance with the terms of this Agreement, Customer remains responsible for all fees and charges Customer incurs during the period of suspension and Customer will not be entitled to any service credits under the Service Level Agreements for any period of suspension. SAP NS2 will use commercially reasonable efforts to restore Customer's rights to use and access those portions of the Cloud Services or accounts that gave rise to the suspension promptly after the problem giving rise to the suspension has been resolved.
- (b) SAP NS2 may discontinue the Cloud Service if the discontinuation is necessary to address an emergency or threat to the security or integrity of SAP NS2 or its Subprocessor, respond to claims, litigation, or loss of license rights related to third-party intellectual property rights, or comply with the law or requests of a government entity.
- (c) Customer shall be responsible for properly handling and processing notices that are sent to Customer regarding Customer Data, such as, but not limited to, any person claiming

that Customer Data violate such person's rights, and notices pursuant to the Digital Millennium Copyright Act. SAP NS2 shall notify Customer if SAP NS2 considers an instruction submitted by Customer to be in violation of any applicable Data Protection Law or any policy or regulation referenced in the Agreement. SAP NS2 shall not be obligated to perform a comprehensive legal examination. If and to the extent SAP NS2 is unable to comply with an instruction it shall promptly notify (email permitted) Customer hereof.

- (d) Customer is responsible for verifying that all Named Users are eligible to gain access to Customer Data. The Cloud Services may not be used to process or store classified data. If Customer introduces classified data into the network, Customer will be responsible for all sanitization costs incurred by SAP NS2 or its Subprocessor. Additionally, Customer shall be responsible for any other ramifications resulting from the introduction of classified data into the network. Upon notification to SAP NS2 by Customer of a spillage or upon discovery by SAP NS2 of a spillage, SAP NS2 will apply commercially reasonable measures to ensure that no further access to the spilled data occurs to include measures such as deletion of Customer Data and restoration to pre-incident data. If additional measures are required, SAP NS2 will reasonably cooperate with Customer to address the spillage to the extent it does not adversely affect the delivery of Cloud Services or SAP NS2 Customers' operations. Customer will be responsible for all sanitization costs incurred by SAP NS2 resulting from Customer's spillage and from the direction of the Customer regarding the treatment of the spillage.
- (e) SAP Co-Pilot is not available in the NS2 Cloud Services.
- (f) The initial month of the contract will be used for infrastructure setup activities and no provisioning will occur during the first 30 days.

7. RESERVED

8. SECURITY AND OPERATIONAL ACKNOWLEDGEMENT

Customer acknowledges that the SAP NS2 security control baseline as specified in the SAP NS2 Cloud Services Order Form meets the information security requirements of Customer.

RISE with SAP S/4HANA Cloud, private edition

Supplemental Terms and Conditions

This Supplement is part of an Agreement for SAP Cloud Services between SAP and Customer and applies only to RISE with SAP S/4HANA Cloud, private edition and its optional add-ons to which Customer is subscribed. Any documents referenced in this Supplement are available upon request.

1. CLOUD SERVICE

- 1.1. The Usage Metrics and additional terms of each of RISE with SAP S/4HANA Cloud, private edition and its optional add-ons ("RISE with SAP S/4HANA Cloud, PE") are described in the RISE with SAP S/4HANA Cloud, private edition Service Description Guide document found at <https://www.sap.com/about/agreements/policies/service-specifications.html> ("Service Description Guide").
- 1.2. Certain features integrated in the RISE with SAP S/4HANA Cloud, PE Cloud Service may be provisioned on the SAP Cloud Platform, a multi-tenant cloud platform ("Cloud Features"). Such Cloud Features, and any additional terms applicable to the Cloud Features, are set forth in the Service Description Guide.
- 1.3. Cloud Service Software may only be accessed and used as a part of the RISE with SAP S/4HANA Cloud, PE Cloud Service subscribed to by Customer. "Cloud Service Software" means the software included in the RISE with SAP S/4HANA Cloud, PE Cloud Service as part of the Cloud Service.
- 1.4. If Customer subscribes to the RISE with SAP S/4HANA Cloud, private edition Cloud Service, Customer will receive access to the following additional Cloud Services for no additional fee and subject to the limitations indicated herein (collectively, "Bundled Cloud Services"):
 - (i) each of the following Cloud Services for which Customer does not have an existing subscription: SAP Digital Supplier Network (Ariba Network); SAP Logistics Business Network, freight collaboration option ("SAP LBN"); and SAP Asset Intelligence Network ("SAP AIN"); and
 - (ii) if specified in the Order Form, Cloud Platform (CPEA) Free Voucher.

Use of each Bundled Cloud Service is subject to the supplemental terms located at <http://www.sap.com/agreements-cloud-supplement> and the following limitations:

- (i) for SAP Digital Supplier Network (Ariba Network), access does not include Supplier enablement or deployment and is limited to 2,000 Documents;
 - (ii) for SAP LBN, access is limited to 1,000 Documents and to either (a) one Logistics Service Provider and access to one digital forwarder (for the U.S., UberFreight and for Europe, InstaFreight) or (b) two Logistics Service Providers;
 - (iii) for SAP AIN, access is limited to 200 Devices, 2 Connections, and 10 partner Portal Invitees; and
 - (iv) for Cloud Platform CPEA Free Voucher, as indicated in the Order Form.
- 1.4.1 At Customer's option and with a subscription to the RISE with SAP S/4HANA Cloud, private edition Cloud Service, Customer may access the following additional services made available at the following web links:
 - (i) For SAP Custom Code Migration App (formerly, "Custom Code Analyzer"), access is made available at <https://blogs.sap.com/abap-custom-code-analysis-using-sap-cloud-platform>;
 - (ii) For Process Discovery by SAP, access is made available at <http://www.s4hana.com>; and
 - (iii) For SAP Readiness Check, access is made available at <http://www.sap.com/readinesscheck>.

These additional services may be subject to additional legal terms and conditions. Where there is a conflict between the additional legal terms and conditions and the Agreement, the additional legal terms and conditions shall control.

2. ADDITIONAL TERMS

2.1. System Maintenance.

- 2.1.1. SAP performs regular, scheduled maintenance activities to maintain OS security patch levels, database and application patches, infrastructure (network, compute, storage) maintenance and other scheduled proactive activities. Such maintenance activities will be reasonably scheduled for date, time and duration as mutually agreed in advance between SAP and Customer ("Scheduled Downtime") based on requirements and resources. If Customer fails to cooperate with the scheduling and/or performance of such maintenance activities in a timely manner as recommended by SAP, Customer shall be solely responsible for any resulting issues in the Cloud Service, including unexpected downtime.
- 2.1.2. Notwithstanding the foregoing, SAP reserves the right to perform Emergency Maintenance activities at any time without Customer's prior consent. SAP will use reasonable efforts to provide Customer with forty-eight (48) hours advance notice regarding performance of Emergency Maintenance. In case of Cloud Service downtime during such Emergency Maintenance, such downtime will be considered to be "Emergency Downtime" as defined in the SLA (defined in Section 2.3 below). "Emergency Maintenance" are maintenance activities required to address any unforeseeable circumstances aiming to prevent significant impact to the Cloud Service. Such situations include application of critical application patches and operating system security patches (security patches with priority "very high") and/or performing critical operating system activities (urgent upgrades and/or refresh of shared components).
- 2.1.3. Customer is responsible for requesting and coordinating with SAP the application of non-critical security patches (all security patches with priorities "high", "medium", or "low") by way of a service request ticket. Such patches will be applied during Scheduled Downtime or other Agreed Downtime, as defined in the SLA.
- 2.2. **Support.** Support for the Cloud Service will be provided by SAP as described in the Support Policy for SAP Cloud Services referenced in the Order Form, as supplemented by the description in Attachment 1 to this Supplement. The support services described in the Agreement may only be used to support Cloud Services to which this Agreement applies, as specified in the Order Form, and may not be used to support any other SAP products or third-party solutions.
- 2.3. **Service Level Agreement.** The Service Level Agreement applicable to the RISE with SAP S/4HANA Cloud, PE Cloud Services is the Service Level Agreement for SAP HANA Enterprise Cloud; RISE with SAP S/4HANA Cloud, private edition; SAP ERP, private cloud edition; and SAP S/4HANA, extended edition ("SLA"), except the 99.5% System Availability service level in the SLA is replaced with 99.7%. The Service Level Agreement for SAP Cloud Services applies to the Bundled Cloud Services, except the System Availability service level of 99.5% is replaced with 99.7%.
- 2.4. **Modifications and Add-Ons.** Customer has the right to develop and use Modifications and/or Customer Add-ons and use Additional Add-ons to the SAP Cloud Service Software in furtherance of its permitted use of the Cloud Service under this Agreement.

Customer is responsible for all installation, management and support for any Add-ons (excluding Add-ons made available as a RISE with SAP S/4HANA Cloud, PE Cloud Service). Customer is responsible for testing and resolving source code, compatibility issues, security vulnerabilities or other conflicts that may arise from Modifications and Add-ons permitted under this Agreement and any patches or workarounds or other changes provided by SAP for the Cloud Service Software, in a timely manner. Customer will promptly inform SAP about any such Modifications, Customer Add-ons or Additional Add-ons. Modifications and Add-Ons must not enable the circumventing of any restrictions set forth in the Agreement, nor impair or degrade the performance, system availability, operability or security of the Cloud Service. For the avoidance of doubt, SAP reserves the right to restrict or require the removal any Add-ons that it determines may pose any such risk to the Cloud Service.

Customer Add-ons and all rights associated therewith, shall be the exclusive property of Customer subject to SAP's rights in and to the Cloud Service and Cloud Materials as indicated in this Agreement; provided Customer shall not commercialize any such Customer Add-ons developed under this Agreement. In exchange for the right to develop Customer Add-ons under the Agreement, Customer covenants, on behalf of itself, successors and assigns, not to assert against SAP SE, their Affiliates or licensors, any rights in Customer Add-on, or any claims of any rights, against any SAP product, service or future SAP development.

“Add-on” means any development that adds new and independent functionality to the SAP Cloud Service Software, but does not modify existing SAP functionality, and is developed using SAP application programming interfaces or other SAP code that allows other software products to communicate with or call on SAP Cloud Service Software. All Add-ons developed by SAP, independently or jointly with Customer, shall be considered Cloud Material and as such, all intellectual property rights in and related to the Add-ons developed by SAP (independently or jointly with Customer) including any derivatives thereof are owned by SAP, SAP SE, their Affiliates or licensors.

“Additional Add-on” means any Add-on that is not a Customer Add-on and is published by SAP as an SAP certified Add-on on the SAP Certified Solutions Directory, an ABAP-only Add-on within the ABAP stack, or an Add-on made available as a RISE with SAP S/4HANA Cloud, PE Cloud Service.

“Customer Add-on” means an Add-on developed by or on behalf of Customer without SAP’s participation.

“Modification” means (i) a change to the delivered source code or metadata; or (ii) any development, other than a change to the delivered source code or metadata, that customizes, enhances or changes existing functionality of the SAP Cloud Service Software including, but not limited to, the creation of any new application program interfaces, alternative user interfaces or the extension of SAP data structures; or (iii) any other change to the SAP Cloud Service Software (other than an Add-on) utilizing or incorporating any Cloud Materials. For purposes of this Cloud Service, Cloud Materials include any and all Modifications. For the avoidance of doubt, all intellectual property rights in and related to the Modifications and derivatives thereof are owned by SAP, SAP SE, their Affiliates or licensors.

- 2.5. **Other Customer-Provided Software.** Except as set forth in Section 2.4 above in connection with Add-ons, Customer may not use any other Customer-provided software in the Cloud Service, including on the operating system. In the event that SAP, on an exceptional basis, permits Customer to use any such Customer-provided software, each of the requirements and restrictions applicable to Add-Ons set forth in Section 2.4 above shall apply to such Customer provided software. Additionally, Customer acknowledges that additional fees may apply in connection with management and support of such Customer-provided software in the Cloud Service.
- 2.6. **Customer Data Return.** Prior to termination or expiration of the Subscription Term, at Customer’s request, SAP shall provide to Customer, within a reasonable time period in a reasonable backup media format utilized by SAP, a final export of the Customer Data stored in the RISE with SAP S/4HANA Cloud, PE System. Customer must verify the usability of this export within two weeks of receipt. In the event Customer does not provide verification within the two-week period, the exported Customer Data shall be deemed usable.
- 2.7. **EU Access.** The EU Access option is not available for the Cloud Service.
- 2.8. **Additional Services.** Customer may request Additional Services, (or the SAP Services Team may request such services on Customer’s behalf) through a service request on the SAP Service Request Platform. SAP will inform Customer (or Partner, if applicable) of the fees that will apply to the requested Additional Service, and Customer (or Partner, if applicable) shall confirm the purchase of such service. Any Additional Services completed by SAP will be invoiced monthly in arrears. “Additional Services” are specific tasks related to the Cloud Service systems identified in the RISE with SAP S/4HANA Cloud, private edition Roles and Responsibilities Documentation as “Additional Service.”

3. CUSTOMER RESPONSIBILITIES

- 3.1. SAP’s provision, operation and support of the Cloud Service is subject to Customer’s reasonable cooperation and providing necessary information, authorizations and qualified resources for such activities. Customer authorizes SAP to set up and use an administrative user in the business client of the Cloud Service systems as needed to provision and confirm Customer’s subscribed usage and technical compliance of the Cloud Service. SAP shall be permitted to audit (at least once annually and in accordance with SAP standard procedures, which may include an on-site and/or remote audit) the Customer’s use of the Cloud Service to verify compliance with Usage Metrics, volume, and the Agreement. Customer shall cooperate reasonably in the conduct of such audits.
- 3.2. In connection with Customer’s obligations related to Customer Data under the Agreement, Customer Data includes all Customer-provided Software used in the Cloud Service environment.
- 3.3. Customer is responsible for the definition, documentation and execution of its business processes in the context of the Cloud Service, including, but not limited to, configuration of systems management and application and

data security policies, batch processing requirements, and compliance with other governmental or regulatory requirements applicable to Customer. Customer is responsible for providing SAP necessary and sufficient documentation of its applicable processes and Customer Add-ons in order for SAP to perform its responsibilities under the Agreement.

- 3.4. Customer is responsible for having upgrades and new releases of the Cloud Service Software installed. Technical installation of such upgrades and new releases is performed by SAP on request. Customer must only use a version or release of the Cloud Service Software for which software maintenance and support are current, as provided by SAP. For purposes of this provision, “current” means it is covered by Mainstream Maintenance. Unless otherwise indicated herein, Customer may not use the Cloud Service Software on any other maintenance phases, including but not limited to Extended Maintenance. Such support is provided according to the current maintenance phases of SAP software releases as described in the SAP Release and Maintenance Strategy, available at <https://support.sap.com/releasestrategy> (“Release Strategy”). Notwithstanding the foregoing, certain optional add-ons may be made available through the Extended Maintenance phase as identified and described in the Service Description Guide and the Release Strategy.

All Customer Add-ons, simplification and incompatibility checks must be executed by Customer. Customer is responsible for evaluating the results of such checks to ensure that implemented business processes, backend and frontend applications and integrations are running after changes to the Cloud Service Software.

If SAP is not able to perform such upgrades due to the lack of Customer’s cooperation, (i) SAP’s ability to provide support may be limited and SAP assumes no responsibilities for such limitations and (ii) the System Availability Service Levels in the SLA shall not apply.

- 3.5. Customer is responsible for the connection to the Cloud Service, including the Internet connection to the Point of Demarcation. SAP’s responsibility shall not extend beyond the Point of Demarcation. Point of Demarcation means the outbound firewall (or, in case of a VPN for access, the point of connection of the SAP network to the VPN) of SAP’s computing environment used to provide the Cloud Service.
- 3.6. Customer is responsible for obtaining all necessary rights from third parties required for SAP to run and host any Customer-provided software in the Cloud Service environment. Customer will, at SAP’s request, provide written verification of such rights. Customer grants to SAP the nonexclusive right to use the Customer-provided software for the sole purpose of and only to the extent necessary for SAP to provide the Cloud Service.
- 3.7. If Customer fails to fulfil any Customer obligations set forth in this Supplement, Customer agrees that such failure may result in delays and additional fees.

Attachment 1 to
RISE with SAP S/4HANA Cloud, private edition Supplemental Terms and Conditions
Support Services

This Attachment sets forth the support services provided in addition to the support services of SAP Enterprise Support, cloud editions in the Support Policy for SAP Cloud Services under the Agreement. This Attachment does not apply to Cloud Features.

1. SCOPE OF ADDITIONAL SUPPORT SERVICES.

SAP additional support services apply to the Enterprise Support Solutions, and such additional support services currently include the items set forth in this Section 1.

1.1. Continuous Improvement and Innovation

1.1.1. SAP may make available ABAP source code for SAP software applications included in Enterprise Support Solutions (excluding third-party software) and additionally released and supported function modules.

1.1.2. Software change management, such as changed configuration settings or Enterprise Support Solutions software upgrades, is supported, for example, with content, tools and information material.

1.2. Global Support Backbone

1.2.1. SAP Notes on SAP's Customer Support Website document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may contain coding corrections. SAP Notes also document related issues, customer questions, and recommended solutions (e.g. customizing settings).

1.2.2. SAP Note Assistant, a tool to install specific corrections and improvements to SAP components, is included.

1.3. Mission Critical Support

For Customer custom code built with the SAP development workbench, SAP provides mission-critical support root-cause analysis (Root Cause Analysis for Custom Code), according to the Global Incident Handling process and response levels for priority "very high" and priority "high" incidents as set forth in section 4 (Customer Response Levels) of the Support Policy for SAP Cloud Services. If the Customer custom code is documented according to SAP's then-current standards (for details see <http://support.sap.com/supportstandards>), SAP may provide guidance to assist Customer in issue resolution.

1.4. SAP Application Lifecycle Management

1.4.1. Subject to Customer's purchase of one of the SAP Solution Manager for SAP S/4HANA Cloud, private edition add-ons, Customer may access and use SAP Solution Manager Enterprise Edition (and any successor to SAP Solution Manager Enterprise Edition provided hereunder) during the Subscription Term solely for the following purposes under SAP Enterprise Support, cloud editions: (i) delivery of SAP Enterprise Support, cloud editions, and (ii) application lifecycle management for Enterprise Support Solutions and other SAP cloud or on-premise solutions for which Customer has a current support agreement with SAP. Such application lifecycle management is limited solely to the following purposes:

- i. implementation, configuration, testing, operations, continuous improvement and diagnostics;
- ii. incident management (service desk), problem management and change request management as enabled using SAP CRM technology integrated in SAP Solution Manager Enterprise Edition (Customer does not require a separate package license to SAP CRM);
- iii. mobile application lifecycle management scenarios using SAP NetWeaver Gateway (or equivalent technology) integrated in SAP Solution Manager Enterprise Edition;
- iv. management of application lifecycle management projects for Customer IT Solutions using the project management functionality of SAP Project and Portfolio Management integrated in SAP Solution Manager Enterprise Edition. (However, the portfolio management functionality of SAP Project and Portfolio Management is not in scope of SAP Solution Manager Enterprise Edition and will need to be licensed separately by Customer); and

- v. administration, monitoring, reporting and business intelligence as enabled using SAP NetWeaver technology integrated in SAP Solution Manager Enterprise Edition. Business intelligence may also be performed provided the appropriate SAP BI software is licensed by Customer as part of the Enterprise Support Solutions.
- 1.4.2. SAP Solution Manager Enterprise Edition may not be used for purposes other than those stated above. Without limiting the foregoing restriction, Customer shall especially without limitation not use SAP Solution Manager Enterprise Edition for:
- i. CRM scenarios such as opportunity management, lead management, or trade promotion management except as CRM scenarios are expressly stated in Section 1.4.1;
 - ii. SAP NetWeaver usage types other than those stated above;
 - iii. application lifecycle management and in particular incident management (service desk) except for Customer IT Solutions;
 - iv. non-IT shared services capabilities, including without limitation HR, Finance or Procurement;
 - v. SAP Project and Portfolio Management including but not limited to portfolio management or project management other than management of application lifecycle management projects as described above in Section 1.4.1; or
 - vi. SAP NetWeaver Gateway, except for the mobile application lifecycle management scenarios within the scope described above in Section 1.4.1.
- 1.4.3. SAP in its sole discretion may update from time to time on SAP's Customer Support Website under <http://support.sap.com/solutionmanager> the use cases for SAP Solution Manager Enterprise Edition under this Section 1.4.
- 1.4.4. SAP Solution Manager Enterprise Edition shall only be used during the term of the Agreement subject to the rights set forth herein and exclusively for Customer's SAP-related support purposes in support of Customer's internal business operations. The right to use any SAP Solution Manager Enterprise Edition capabilities under this Attachment 1 other than those listed above is subject to a separate written agreement with SAP, even if such capabilities are accessible through or related to SAP Solution Manager Enterprise Edition. Customer shall be entitled to allow any of its employees to use web self-services in the SAP Solution Manager Enterprise Edition during the term of the Agreement such as creating support tickets, requesting support ticket status, ticket confirmation and change approvals directly related to Customer IT Solutions.
- 1.4.5. Use of SAP Solution Manager Enterprise Edition may not be offered by Customer as a service to third parties; provided, third parties authorized to access Cloud Services under the Agreement may have access to SAP Solution Manager Enterprise Edition solely for SAP-related support purposes in support of Customer's internal business operations under and in accordance with the terms of the Agreement and this Attachment 1.
- 1.5. **Other Components, Methodologies, and Content.** Support as described in this Appendix also includes:
- 1.5.1. Process descriptions and process content that may be used as pre-configured test templates and test cases via the SAP Solution Manager Enterprise Edition. In addition, the SAP Solution Manager Enterprise Edition assists Customer's testing activities.
- 1.5.2. Tools and content for SAP Application Lifecycle Management (shipped via SAP Solution Manager Enterprise Edition and/or the Enterprise Support Solutions and/or the applicable Documentation for Enterprise Support Solutions and/or SAP's Customer Support Website) to help increase efficiency:
- i. Tools for implementation, configuration, testing, operations and system administration.
 - ii. Best practices, guidelines, methodologies, process descriptions and process content. This content supports the usage of the tools for SAP Application Lifecycle Management.

2. CAPITALIZED TERMS.

Below are further explanations of the capitalized terms used above complementing section 6 (Capitalized Terms) of the Support Policy for SAP Cloud Services:

“Customer Solution(s)”	shall mean Enterprise Support Solutions and any other software subscribed or licensed by Customer from third parties and included in the Customer’s RISE with SAP S/4HANA Cloud, PE environment.
“Customer IT Solution(s)”	shall mean Customer Solution(s) and hardware systems supported by Customer’s IT team.
“Enterprise Support Solutions”	shall mean all Cloud Service Software excluding software to which special support agreements apply exclusively.
“SAP’s Customer Support Website”	shall mean SAP Support Portal at https://support.sap.com

3. **NON-COMPLIANT USE.** For avoidance of doubt, support services and Mainstream Maintenance (or where applicable, Extended Maintenance) elements provided under this Agreement are solely for the Cloud Service Software and must not be used to support any other SAP products or third-party solutions. Customer acknowledges that if Customer uses any such elements for other SAP products or third-party solutions without a separate valid SAP support agreement for such products, SAP will invoice Customer the applicable accrued fees associated with such time period of use plus a reinstatement fee for support for such products.

SAP Analytics Cloud, SAP Analytics Cloud, embedded edition, and SAP Digital Boardroom Supplemental Terms and Conditions

This Supplement is part of an Agreement for SAP Cloud Services between SAP and Customer and applies only to SAP Analytics Cloud, SAP Analytics Cloud, embedded edition, and SAP Digital Boardroom ("**Cloud Service**"). Any documents referenced in this Supplement are available upon request.

1. CLOUD SERVICE

- 1.1** SAP Analytics Cloud is available in the following editions: SAP Analytics Cloud for planning, professional edition; SAP Analytics Cloud for planning, standard edition; and SAP Analytics Cloud for business intelligence. The functions included in each of these editions and for specific data center locations are described in the feature scope description found in the Documentation. Each edition must be ordered separately on an Order Form. For purposes of this Supplement, the Cloud Service shall mean those editions specified in an Order Form.
- 1.2** Customer may subscribe to private and public test tenants (each a "**Test Tenant**") for SAP Analytics Cloud. Test Tenants may only be used for non-productive testing purposes and may not be used with personal data.
- 1.3** SAP Analytics Cloud, embedded edition is made available to Customer under the Cloud Enterprise Agreement model, subject to a separate agreement and fee, and is an Eligible Cloud Service. References to Cloud Service(s) or SAP Analytics Cloud in this Supplement do not include SAP Analytics Cloud, embedded edition unless expressly mentioned.

2. FEES

- 2.1** The Usage Metric for SAP Analytics Cloud is Users. "Users" are individuals authorized to access the Cloud Service. In addition, for SAP Analytics Cloud for business intelligence, an additional Usage Metric of Concurrent Sessions is available, in blocks of 10 Concurrent Sessions per month. "Concurrent Sessions" are the aggregated number of sessions accessing the Cloud Service at any one time. A "session" refers to the time between logon and logoff or time out where a unique User, application or platform accesses the Cloud Service either directly, or indirectly via a custom application.
- 2.2** The Usage Metric for SAP Digital Boardroom is Installations per Tenant. "Installations" are sets of one or more multi-touch screens designed for multiple viewers and installed at a Customer site, facilitating interaction with the Cloud Service. Unlimited Installations are available for a flat fee per month.
- 2.3** The Usage Metric for an SAP Analytics Cloud Test Tenant is Users or Tenant. A "Tenant" means a customer-specific instance of the Cloud Service. Under the Tenant metric, no more than fifty (50) Users may access each Test Tenant. Test Tenants can only be used for non-production testing and evaluation activities.
- 2.4** The Usage Metric for SAP Analytics Cloud, embedded edition is Tenant with a limit of one hundred and fifty (150) Concurrent Sessions per Tenant.

3. ADDITIONAL TERMS

- 3.1** If Customer subscribes to a private option of the Cloud Service, the default instance of SAP Analytics Cloud includes 128 GB HANA memory, 1280 GB disk space and 512 GB outbound bandwidth.
- 3.2** Customer may upgrade the default private instance by subscribing to HANA upgrades for additional CPU, HANA memory, disk space, and bandwidth. The Usage Metric of the HANA upgrades is GB of Memory, in blocks of Memory per month (e.g., 128 GB, 256 GB, 512GB, etc.) indicated in the tables below for the respective deployment environments.

SAP Cloud Platform, Neo environment

Size	128GB	256GB	512GB	1TB
Cores	24	32	40	80
HANA Memory	128GB	256GB	512GB	1TB
Disk Space	1280GB	2560GB	5120GB	10240GB
Bandwidth	512GB	1TB	1TB	1TB

AWS

Size	128GB	256GB	512GB	1TB	2TB
Cores	16	32	64	64	128
HANA Memory	122GB	244GB	488GB	976GB	1952GB
Disk Space	1425GB	1425GB	1425GB	1425GB	1425GB
Bandwidth	512GB	1TB	1TB	1TB	1TB

AliCloud

Size	128GB	256GB	512GB	1TB	2TB
Cores	16	32	64	80	160
HANA Memory	128GB	256GB	512GB	960GB	1920GB
Disk Space	1032GB	1032GB	1032GB	1032GB	1032GB
Bandwidth	512GB	1TB	1TB	1TB	1TB

3.3 In addition to the hosted portion of the Cloud Service, SAP makes available for download by Customer certain on-premise components (the “**On-Premise Components**”). The On-Premise Components may only be used to work with or connect to the Cloud Service. The On-Premise Components may not be modified or altered in any way except by SAP. The On-Premise Components are part of the Cloud Service. Customer is responsible for the physical security of the On-Premise Components and the System Availability SLA does not apply. Customer is responsible for the installation and operation of the On-Premise Components, including any updates made available by SAP. In addition to the support policy referenced in the Order Form, specific SAP support and maintenance policies apply to the On-Premise Components and can be found at <https://launchpad.support.sap.com/#/notes/2658835>.

3.4 Preview Features

- (a) If Customer has a current subscription to a private Test Tenant as part of its Cloud Service subscription, Customer may elect to enable the Test Tenant to be provisioned with preview, beta or other pre-release features of the Cloud Service (“**Preview Features**”). Preview Features are provided under the Agreement free of charge and not as part of the Test Tenant subscription. In order to enable Preview Features, Customer must submit a support ticket via SAP’s support interface requesting that its Test Tenant be provisioned with Preview Features. Any features enabled in the Test Tenant and not listed in the Cloud Service Documentation are Preview Features.
- (b) Customer may use the Preview Features solely for testing and evaluation within the Test Tenant. Customer may not use the Preview Features for productive business purposes or development activities.
- (c) SAP does not warrant or guarantee the correctness and completeness of the Preview Features, and Customer uses Preview Features at its own risk. SAP may discontinue providing the Preview Features at any time and is not obligated to include Preview Features in any generally available version of its products or services. Service level agreements and support obligations do not apply to Preview Features. No personal data may be transmitted, processed or stored using Preview Features and Preview Features are not made available subject to the Personal Data Processing Agreement for SAP Cloud Service.
- (d) If Customer submits input, suggestions or other feedback respecting the Preview Features, (collectively, “**Feedback**”), such Feedback is considered SAP Materials and Customer grants to SAP a perpetual, irrevocable, nonexclusive, worldwide, fully paid up and royalty

free license to use such Feedback without restrictions of any kind and without any payment or other consideration of any kind, or permission or notification to Customer or any third party.

3.5 User Data. The Cloud Service (including SAP Analytics Cloud, embedded edition) has features which collect certain usage information directly from users only for purposes of personalized search results and recommendations, and to help SAP to plan and prioritize features, improve product design, and improve documentation and resources. By default, these features are disabled but will be offered to each user, who upon initial sign-on can choose to opt-in to these features. These features can be turned off at any time by the user, or by the Tenant administrator. The Tenant administrator settings will affect all users.

3.6 If Customer has an active subscription to SAP Data Warehouse Cloud (separate from the Cloud Service subscription), Customer Data created or uploaded to the Cloud Service under the Agreement by the five SAP Analytics for Cloud for business intelligence Users included in the SAP Data Warehouse Cloud subscription will be co-mingled in a single Tenant with data created or uploaded by Customer's Cloud Service users. Upon termination of the Agreement, such data will remain in the SAP Data Warehouse Cloud Tenant and will not be deleted until the expiration or termination of the SAP Data Warehouse Cloud subscription agreement.

SUPPORT POLICY FOR SAP CLOUD SERVICES

This Support Policy for SAP Cloud Services is part of an Agreement for certain SAP Cloud Services ("Agreement") between SAP and Customer.

SUPPORT AND SUCCESS PLAN SERVICES

As part of SAP's ONE Support approach, which provides a consistent support experience for Cloud Services and on-premise solutions, SAP offers the following support levels; SAP Enterprise Support, cloud editions, SAP Preferred Success and SAP Preferred Care. SAP Enterprise Support, cloud editions is included in the subscription fees for SAP Cloud Services stated in the Order Form unless alternative support terms are specified in the Supplemental Terms for the Cloud Service. SAP Preferred Success and SAP Preferred Care is offered for an additional fee, as an add-on to SAP Enterprise Support, cloud editions, for certain SAP Cloud Solutions listed under <https://support.sap.com/preferredsuccessproductlist>. SAP Preferred Success and SAP Preferred Care are not available, and are not provided, for any third-party cloud services purchased through SAP.

1. SCOPE OF THE SUPPORT AND SUCCESS PLAN SERVICES

Capitalized Terms are further defined in the table below. The support services are available in English language, unless stated otherwise.

- 1.1 Enterprise Support, cloud editions:** Foundational engagement support with focus on customer interaction and issue resolution.

SAP Enterprise Support, cloud editions	
Mission Critical Support	
24x7 Mission Critical Support for P1 and P2 issues (English only)	✓
Non-Mission Critical Support for P3 and P4 issues during business hours (English only)	Monday to Friday 8 am to 6 pm (Local Time Zone), excluding local holidays
Customer Interaction Center 24x7	✓ (as stated below)
Global Support Backbone	✓
End-to-end Supportability	✓
Learning and Empowerment	
Access to remote SAP support content and services, e.g., Meet-the-Expert Sessions	✓
Release Update Information	Self-service through web and community
Collaboration	
SAP Support Advisory Services	✓
Support via web and platform for social business collaboration	✓
Support via chat during business hours in English language for non-Mission Critical Support issues	Currently available for SAP SuccessFactors, SAP Concur, SAP Ariba, SAP Business by Design, SAP Cloud for Customer and SAP S/4HANA Cloud Services
SAP Enterprise Support Reporting	✓
Innovation and Value Realization	
Proactive Checks proposed by SAP	✓
Product Roadmap Update Information	Self-service through web
Refresh of test instance	Self-service or request through web for initiating the refresh as offered and required by respective solution

1.2 SAP Preferred Success: An add-on to SAP Enterprise Support, cloud editions that includes strategic guidance, solution-specific best practices and Success Programs to help drive consumption and value realization (Representation below includes SAP Enterprise Support, cloud editions).

Mission Critical Support	
24x7 Mission Critical Support for P1 and P2 issues (English only)	24x7 prioritized issue handling
Non-Mission Critical Support for P3 and P4 issues during business hours (English only)	Monday to Friday 8 am to 6 pm (Local Time Zone), excluding local holidays
Customer Interaction Center 24x7	✓ (as stated below)
Global Support Backbone	✓
End-to-end Supportability	✓
Learning and Empowerment	
Access to remote SAP support content and services, e.g., Meet-the-Expert Sessions	Access to SAP Preferred Success specific learning content. Customer can have up to 5 Key Users access SAP Learning Hub, solution edition specific to the cloud service
Release Update Information	Solution-specific Release Update Information
Collaboration	
SAP Support Advisory Services	✓
SAP Cloud Service and process-related guidance	Access to Success Resources for full customer lifecycle from onboarding to consumption, including technical and product usage advice, best practices and operational excellence, may include in-person delivery, at SAP's discretion
Regular checkpoint	Access to Success Resources to answer questions related to critical issues, reporting and best practices, may include in-person delivery, at SAP's discretion
Support via web and platform for social business collaboration	Exclusive access to SAP Preferred Success Community
Support via chat during business hours in English language for non-Mission Critical Support issues	Currently available for SAP SuccessFactors, SAP Cloud for Customer and SAP S/4HANA Cloud Services
SAP Enterprise Support Reporting	Enhanced Success Reporting
Innovation and Value Realization	
Access to Success Programs	✓
Proactive Checks proposed by SAP	Automated or self-service Proactive Checks for the specific solution in use
Product Roadmap Update Information	Solution-specific Product Roadmap Update Information
Periodic Cloud Service Review and Planning	Access to Success Resources for checkpoints, cycle planning, challenges and consumption planning, may include in-person delivery, at SAP's discretion
Refresh of test instance	Access to SAP assistance with managing the refreshing of test instances up to two times per year, where applicable

1.3 SAP Preferred Care: An add-on to SAP Enterprise Support, cloud editions that includes strategic guidance and customer-specific best practices to help drive user adoption and value realization (Representation below includes SAP Enterprise Support, cloud editions).

Mission Critical Support	
24x7 Mission Critical Support for P1 and P2 issues (English only)	24x7 prioritized issue handling
Non-Mission Critical Support for P3 and P4 issues during business hours (English only)	Monday to Friday 8 am to 6 pm (Local Time Zone), excluding local holidays
Customer Interaction Center 24x7	✓ (as stated below)
Global Support Backbone	✓
End-to-end Supportability	✓
Learning and Empowerment	
Access to remote SAP support content and services, e.g., Meet-the-Expert Sessions	✓
Release Update Information	Customer-specific Release Update Information
Collaboration	
SAP Support Advisory Services	✓
SAP Cloud Service and process-related guidance	Access to Support Expert for technical and product usage advice, best practices and operational excellence (within customer's region)
Regular Checkpoint	Meeting with Support Expert to review critical issues, reporting and best practices
Support via web and platform for social business collaboration	✓
Support via chat during business hours in English language for non-Mission Critical Support issues	Currently available for SAP SuccessFactors, SAP Concur, SAP Ariba, SAP Business by Design and SAP S/4HANA Cloud Services
SAP Enterprise Support Reporting	✓
Innovation and Value Realization	
Proactive Checks proposed by SAP	Customer-specific Proactive Checks
Product Roadmap Update Information	Customer-specific Product Roadmap Update Information
Periodic Cloud Service Review And Planning	Meeting with Support Expert to discuss checkpoint, cycle planning, challenges and adoption plan
Refresh of test instance	Access to SAP assistance with managing the refreshing of test instances up to two times per year, where applicable.

1.4 Access to Empowerment and Innovation and Value Realization Services.

Empowerment content and session schedules are stated at the SAP Support Portal in the [SAP Enterprise Support Academy](#) section. Scheduling, availability and delivery methodology is at SAP's discretion.

Support services related to Empowerment and Innovation and Value Realization as stated above require a customer request and are provided remotely. For example, remote support services may include assisting customers in evaluating the innovation capabilities of the latest updates and technology innovation and how they may be deployed for a customer's business process requirements, or giving a customer guidance in the form of knowledge transfer sessions. Scheduling, availability and delivery methodology are at SAP's discretion.

2. CUSTOMER INTERACTION CENTER LANGUAGES

SAP Support provides initial telephone contact for Customer Contacts through the SAP one support phone number "CALL-1-SAP" (as stated at the CALL-1-SAP page: <https://support.sap.com/contactus>) and/or via other solution specific hotlines in the following languages: English (available 24 hours all weekdays) and, depending on local office hours and availability, in German, French, Italian, Spanish, Polish, Russian (during European office hours); Japanese, Chinese, Korean, Bahasa (during Asia/Pacific office hours); Portuguese and Spanish (during Latin America office hours). Issues which lead to a support case which is processed by specialized technical support engineers around the world or any support by a third party are in English only.

3. CONTACTING SUPPORT

Beginning on the effective date of a customer's agreement for Cloud Services, that customer may contact SAP's support organization as the primary point of contact for support services.

For contacting SAP's support organization, the current preferred contact channel for SAP Enterprise Support, cloud editions is the SAP Support Portal at <https://support.sap.com>, unless otherwise set forth in the table below.

SAP Cloud Service	Contact Channels
SAP Concur SAP Ariba SAP Fieldglass	https://concursolutions.com https://connect.ariba.com https://www.fieldglass.com/customer-support or embedded in the application help menu https://community.sapmobileservices.com/support (integrated scenarios use SAP Support Portal)
SAP Digital Interconnect	
SAP Business ByDesign SAP Cloud for Customer SAP Learning Hub	Embedded in the applicable SAP Cloud Service: <ul style="list-style-type: none">• For end-users: The "Help Center", accessible from every screen,• For Key Users: The "Application & User Management Work Center".

Customers that have an assigned Support Expert may contact them directly for solution expertise support.

4. CUSTOMER RESPONSE LEVELS

SAP responds to submitted support cases (also referred to as "case", "incident", or "issue") as described in the table below.

Priority	Definition	Response Level
P1	Very High: An incident should be categorized with the priority "very high" if the problem has very serious consequences for normal business processes or IT processes related to core business processes. Urgent work cannot be performed.	Initial Response: Within one hour of case submission. Ongoing Communication: Unless otherwise communicated by SAP Support, once every hour. Resolution Target: SAP to provide for issues either a (i) resolution, or (ii) workaround or (iii) action plan within four hours.

This is generally caused by the following circumstances:

- A productive service is completely down.
- The imminent system Go-Live or upgrade of a production system cannot be completed.
- The customer's core business processes are seriously affected.

A workaround is not available for each circumstance. The incident requires immediate processing because the malfunction may cause serious losses.

P2	High: An incident should be categorized with the priority "high" if normal business processes are seriously affected. Necessary tasks cannot be performed. This is caused by incorrect or inoperable functions in the SAP service that are required immediately. The incident is to be processed as quickly as possible because a continuing malfunction can seriously disrupt the entire productive business flow.	Initial Response: Within four hours of case submission for SAP Enterprise Support, cloud edition customers and within two hours of case submission for SAP Preferred Success and SAP Preferred Care customers. Ongoing Communication: Unless otherwise communicated by SAP Support, once every six hours. Resolution Target: SAP to provide for issues either a (i) resolution, or (ii) workaround or (iii) action plan within three business days for SAP Preferred Success and SAP Preferred Care customers only.
P3	Medium: An incident should be categorized with the priority "medium" if normal business processes are affected. The problem is caused by incorrect or inoperable functions in the SAP service.	Initial Response: Within one business day of case submission for SAP Enterprise Support, cloud edition customers, and within four business hours of case being received for SAP Preferred Success and SAP Preferred Care customers. Ongoing Communication: Unless otherwise communicated by SAP Support, once every three business days for Non-Defect Issues and ten business days for product defect issues.
P4	Low: An incident should be categorized with the priority "low" if the problem has little or no effect on normal business processes. The problem is caused by incorrect or inoperable functions in the SAP service that are not required daily, or are rarely used.	Initial Response: Within two business days of case submission for SAP Enterprise Support, cloud editions customers and within one business day of case submission for SAP Preferred Success and SAP Preferred Care customers. Ongoing Communication: Unless otherwise communicated by SAP Support, once every week.

The following types of incidents are excluded from customer response levels as described above: (i) incidents regarding a release, version and/or functionalities of SAP Cloud Services developed specifically for customer (including those developed by SAP Custom Development and/or by SAP subsidiaries, or individual content services); (ii) the root cause behind the incident is not a malfunction, but missing functionality ("development request") or the incident is ascribed to a consulting request ("how-to").

5. CUSTOMER'S RESPONSIBILITIES

5.1 Customer Contact. In order to receive support hereunder, Customer will designate at least two and up to five qualified English speaking contact persons (each a "Customer Contact", "Designated Support Contact", "Authorized Support Contact", "Key User" or "Application Administrator" – system administrator roles within specific Cloud Services) who are authorized to contact or access the Customer Interaction Center, SAP Support Advisory Services and

Mission Critical Support services. The Customer Contact is responsible for managing all business-related tasks of the Cloud Service related to Customer's business, such as:

- (i) Support end users and manage their incidents. This includes searching for known solutions in available documentation and liaising with SAP support in the event of new problems;
- (ii) Manage background jobs and the distribution of business tasks across users (if available);
- (iii) Manage and monitor connections to Customer's third-party systems (if available);
- (iv) Support the adoption of the Cloud Service.

5.2 Contact Details. Customer will provide contact details (in particular, e-mail address and telephone number) through which the Customer Contact or the authorized representative of the Customer Contact can be contacted at any time. Customer will update its Customer Contacts for an SAP Cloud Service through the SAP Support Portal at <https://support.sap.com> or the respective contact channel mentioned in section "Contacting Support" above. Only authorized Customer Contacts may contact SAP's support organization.

5.3 Cooperation. To receive support services, Customer will reasonably cooperate with SAP to resolve support incidents, and will have adequate technical expertise and knowledge of its configuration of the SAP Cloud Services to provide relevant information to enable SAP to reproduce, troubleshoot and resolve the experienced error such as e.g. reference ID, issue examples, screenshots.

6. CAPITALIZED TERMS

Below are further explanations of the capitalized terms used above:

Customer Interaction Center 24x7	Units within SAP's support organization that customers may contact for general support related inquiries through the described contact channels.
End-to-end Supportability	Support for incidents that occur in integrated business scenarios consisting of SAP Cloud Services and / or both SAP Cloud Services and other SAP products with a valid support agreement.
Enhanced Success Reporting	Enhanced Success Reporting means access to reports, dashboards, or other reporting components and capabilities regarding the overall engagement, full customer lifecycle, and productive use of the solution, including product consumption, technical and product usage, status of support services, and the achievements hereunder.
Global Support Backbone	SAP's knowledge database and SAP's extranet for knowledge transfer on which SAP makes available content and services to customers and partners of SAP only. The Global Support Backbone also includes the SAP Support Portal at https://support.sap.com .
Go-Live	Go-Live marks the point in time from when, after set-up of the SAP Cloud Services for a customer, the SAP Cloud Services can be used by that customer for processing real data in live operation mode and for running that customer's internal business operations in accordance with its agreement for such SAP Cloud Services.
Local Time Zone	A customer's local time zone, depending on where the customer is headquartered.
Meet-the-Expert Sessions (MTE)	Live webinars focusing on SAP Enterprise Support services and the support aspects of the latest SAP technologies. Recorded sessions are available in the replay library in the SAP Enterprise Support Academy for self-paced consumption.
Mission Critical Support	Global incident handling by SAP for issues related to support hereunder with P1 and P2, including Service Level Agreements for Initial Response, Ongoing

	Communications and Resolution Targets (as set forth in the above table for Response Levels).
Non-Defect Issue	A reported support case that does not involve a defect in the applicable SAP Cloud Service and does not require engineering / development or operations personnel to resolve.
Periodic Cloud Service Review and Planning	Periodic review of key business milestones and objectives for solutions covered under SAP Preferred Care and/or SAP Preferred Success.
SAP Preferred Success Communities	Social media-based empowerment and collaboration, aligning access to peers and SAP experts.
Proactive Checks	Support-services, providing recommendations for the specific customer situation.
Product Roadmap Update Information	Product roadmaps SAP makes generally available to customers as part of customer support. Product Roadmap Update Information is provided for informational purposes only, and SAP does not commit to providing any future products, features or functionality as described in the Product Roadmap Update Information.
Release Update Information	Generally available documented summaries, webinars and videos provided by SAP to inform and instruct customers on new product release changes.
SAP Cloud Service	Any SAP Cloud Service set forth in an applicable Order Form.
SAP Enterprise Support Academy	Content and services in several formats, supporting different learning styles and needs, from ad hoc problem solving to structured, long-term knowledge acquisition.
SAP Enterprise Support Reporting	A report or dashboard analyzing and documenting the status of support services and achievements hereunder (e.g., based on solution monitoring capabilities and support case status).
SAP Support Advisory Services	Access to experts who help customers on support-related requests and advice on the right support deliverables and assets.
Support Expert	A specific SAP customer representative (often referred to as Customer Success Manager) that is assigned to Customers as the primary contact for ongoing management, to provide support case oversight, technical guidance and mentorship, customer-specific information on release updates and guidance on adoption and usage.
Success Resources	Access to automated, guided or direct analysis, reporting, expertise, and knowledge components to drive operational excellence throughout the full customer lifecycle including onboarding, consumption, utilization and operations, as well as technical and product usage. At SAP's discretion, this may include a Support Expert.
Success Programs	A combination or integration of various Success Resources, learning content and platforms (e.g. webinars, chat sessions, etc.), and social business collaboration channels (e.g. communities) delivered in a programmatic or prescriptive approach that support successful deployment, consumption and ongoing value realization.

SERVICE LEVEL AGREEMENT FOR SAP CLOUD SERVICES

1. DEFINITIONS

- 1.1. **“Credit”** means 2% of Monthly Subscription Fees for each 1% below the System Availability SLA, not to exceed 100% of Monthly Subscription Fees.
- 1.2. **“Downtime”** means the Total Minutes in the Month during which the production version of the Cloud Service is not available, except for Excluded Downtimes.
- 1.3. **“Excluded Downtime”** means the Total Minutes in the Month attributable to a Maintenance Window; or any Major Upgrade Window for which the Customer has been notified at least five (5) business days in advance; or unavailability caused by factors outside of SAP's reasonable control, such as unpredictable and unforeseeable events that could not have been avoided even if reasonable care had been exercised.
- 1.4. **“Maintenance Window”** means the weekly maintenance windows for the Cloud Service identified in <https://support.sap.com/maintenance-windows>. SAP may update the Maintenance Window from time to time in accordance with the Agreement.
- 1.5. **“Major Upgrade Window”** means the extended upgrade maintenance windows for the Cloud Service identified in <https://support.sap.com/maintenance-windows>. SAP may update the Major Upgrade Window from time to time in accordance with the Agreement.
- 1.6. **“Month”** means a calendar month.
- 1.7. **“Monthly Subscription Fees”** means the monthly (or 1/12 of the annual fee) subscription fees paid for the applicable Cloud Service which did not meet the System Availability SLA.
- 1.8. **“System Availability Percentage”** is calculated and defined as follows:
$$\left(\frac{\text{Total Minutes in the Month} - \text{Excluded Downtime} - \text{Downtime}}{\text{Total Minutes in the Month} - \text{Excluded Downtime}} \right) * 100$$
- 1.9. **“System Availability SLA”** means a 99.5% System Availability Percentage during each Month for the production version of the Cloud Service.
- 1.10. **“Total Minutes in the Month”** are measured 24 hours at 7 days a week during a Month.
- 1.11. **“UTC”** means Coordinated Universal Time standard being the start time for the applicable Maintenance Window and Major Upgrade Window.

2. SYSTEM AVAILABILITY SLA AND CREDITS

2.1. Credit

If SAP fails to meet the System Availability SLA for a particular Month, Customer may claim a Credit, which Customer may apply to a future invoice relating to the Cloud Service that did not meet the System Availability SLA (subject to Sections 2.1.1 and 2.1.2 below).

- 2.1.1. Claims for a Credit must be made in good faith and through a documented submission of a support case within thirty (30) business days after the end of the relevant Month in which SAP did not meet the System Availability SLA for the Cloud Service.
- 2.1.2. Customers who have not subscribed to the Cloud Service directly from SAP must claim the Credit from their applicable SAP partner.
- 2.2. System Availability Report

SAP will provide Customer with a monthly report describing the System Availability Percentage for the Cloud Service either by email following a request to Customer's assigned SAP account manager; through the Cloud Service; or through an online portal made available to Customer, if and when such online portal becomes available.

3. CHANGES TO WINDOWS

- 3.1. If Customer wishes to be notified of changes to Maintenance Windows and Major Upgrade Windows, it must subscribe to receive notifications at <https://support.sap.com/maintenance-windows>.

**SERVICE LEVEL AGREEMENT FOR
SAP HANA ENTERPRISE CLOUD; RISE WITH SAP S/4HANA CLOUD, PRIVATE EDITION;
SAP ERP, PRIVATE CLOUD EDITION; AND
SAP S/4HANA CLOUD, EXTENDED EDITION**

This Service Level Agreement for SAP HANA Enterprise Cloud services ("**HEC Services**"); RISE with SAP S/4HANA Cloud, private edition; SAP S/4HANA, private cloud edition; SAP ERP, private cloud edition (collectively, "**Private Cloud Edition Services**"); and SAP S/4HANA Cloud, extended edition which was previously known as S/4HANA Cloud, single tenant edition ("**EX Services**") (each, a "**Cloud Service**") sets forth the applicable Service Levels for the HEC Services, Private Cloud Edition Services, EX Services and Server Provisioning to which Customer has subscribed in an Order Form with SAP.

1. DEFINITIONS

Capitalized terms used in this document but not defined herein are defined in the Agreement.

- 1.1. "**Agreed Downtime**" means any Downtime requested by SAP or Customer and mutually agreed by the parties.
- 1.2. "**Business Day**" means any days from Monday to Friday with the exception of the public holidays observed at Customer's primary access location designated in the Order Form.
- 1.3. "**Computing Environment**" means the SAP provided data center facilities, servers, networking equipment, operating systems, and data storage mechanisms selected and used by SAP to provide the Cloud Service for the Customer, and includes the Production Computing Environment ("**PRD**"), and any other Computing Environment used for non-production purposes ("**NON-PRD**"), as agreed in the Order Form.
- 1.4. "**Downtime**" means the Total Minutes in the Month during which the Cloud Service (or Servers for Server Provisioning) does not respond to a request from SAP's Point of Demarcation for the data center providing the Cloud Service (or Server for Server Provisioning), excluding Excluded Downtime.
- 1.5. "**Emergency Downtime**" means downtime during critical patch deployment and critical operating system upgrades as described in the Supplement.
- 1.6. "**Excluded Downtime**" has the meaning set forth in Section 2 below.
- 1.7. "**Incident**" means unplanned interruptions or material reduction in service quality reported by Authorized Users.
- 1.8. "**Incident Reaction Time**" means the amount of time (e.g. in hours or minutes) between the time that the SAP Support Level 1 organization is notified of the Customer-reported Incident and the first action taken by an SAP support person, familiar with the Customer's environment, to repair the Incident.
- 1.9. "**Licensed Software**" means the applications, databases, software, tools and components owned or licensed by Customer (other than any Subscription Software) which Customer provides to SAP to be hosted in the Cloud Service.
- 1.10. "**Local Time**" means the time zone in Customer's primary access location identified in the Order Form.
- 1.11. "**Month**" means a calendar month.
- 1.12. "**Monthly Service Fees**" means the monthly (or 1/12 of the annual fee) subscription fees paid for the affected Cloud Service which did not meet the SA SLA.
- 1.13. "**Scheduled Downtime**" has the meaning set forth in Section 2 below.
- 1.14. "**Service Credit**" means a credit calculated as described in Section 2 and Section 5.1 of this Service Level Agreement.
- 1.15. "**Subscription Software**" for HEC Services shall have the meaning set forth in the Supplement, and for EX Services and Private Cloud Edition means Cloud Services Software as set forth in its respective Supplement.
- 1.16. "**System**" means one or more interrelated and interdependent components such as databases, servers, networks, loadbalancers, webdispatchers, tenants, etc. which when taken as a whole are used to operate a tier. Each combination of components used within each tier is equivalent to one System. System Availability is measured at the tier level. For HEC Services, each System is identified by the Tier No. column in the System

Setup Table in the Order Form, and for Private Cloud Edition Services and EX Services, each System is identified by the system tier type as set forth in the Service Description Guide and Service Use Description respectively of the Supplement. For Server Provisioning, System as used herein means Server, as defined in the Order Form.

1.17. **"Total Minutes in the Month"** are measured 24 hours at 7 days a week during a Month.

2. SYSTEM AVAILABILITY

2.1. System Availability Service Level

The System Availability Service Level for the Cloud Services ("**SA SLA**") sets forth the System Availability applicable to the Computing Environment (and Server for Server Provisioning). The SA SLA shall apply after System handover to Customer.

2.2. Calculation

2.2.1. The SA SLA shall not apply to Licensed Software licensed by Customer from a third party unless otherwise expressly set forth in the Order Form.

2.2.2. **"System Availability"** for each System is calculated as follows:

$$\text{System Availability Percentage} = \left(\frac{\text{Total Minutes in the Month} - \text{Downtime}}{\text{Total Minutes in the Month}} \right) * 100$$

Service Level	Service Credit ²
PRD: 99.5% ¹ System Availability NON-PRD: 95.0% System Availability	HEC Subscription, Private Cloud Edition Services and EX Services: ³ 2% of Monthly Service Fees for each 1% below the SA SLA HEC Cloud Start and HEC BYOL: ⁴ 2% of Monthly Service Fees for each 0.1% below the SA SLA
Server Provisioning: 99.5% System Availability	Server Provisioning (IaaS Basic): €1,500 per Month in aggregate for any and all instances below the SA SLA

¹ 99.7% System Availability or 99.9% System Availability for PRD applies if purchased by Customer and identified in the Order Form.

²Subject to the monthly maximum Service Credit amounts set forth in Section 5 below.

³Also applies to S/4HANA CPO and S/4HANA CPE.

⁴HEC Cloud Start was previously known as HEC Project, and HEC BYOL was previously known as HEC Production.

Excluded Downtime	Total Minutes in the Month attributable to: <ul style="list-style-type: none"> a) Scheduled Downtime b) Agreed Downtime c) Emergency Downtime d) Downtime caused by factors outside of SAP's reasonable control such as unpredictable and unforeseeable events that could not have been avoided even if reasonable care had been exercised (see examples below this table) e) Downtime of a NON-PRD system caused by using the NON-PRD for failover/to repair to a PRD system
Scheduled Downtime	Scheduled at a mutually agreed time, as listed in the Order Form or as described in the Supplement.

2.3. Exclusions

The following examples include but are not limited to what is beyond SAP's reasonable control:

- a) Customer's failure to meet Customer's responsibilities (including ordering maintenance for the Licensed Software, using a version or release of the Licensed Software and/or Subscription Software on current maintenance) as set forth in the Agreement.
- b) Downtime caused by Customer.
- c) Interruptions as a result of requirements stipulated by a third party manufacturer of the Licensed Software.
- d) Interruptions or shutdowns of the Computing Environment, or portions thereof (or Servers for Server Provisioning) resulting from the quality of the Licensed Software provided by the Customer and/or Customer's customizations or modifications of the Licensed Software, Subscription Software or Computing Environment (or Servers for Server Provisioning), unless this is the responsibility of SAP under this Agreement.
- e) Restore times of user data (recovery of database data from a media backup) where SAP was not the root cause for the required restoration.

3. BACKUP AND COMPUTING ENVIRONMENT INCIDENT REACTION TIME

(not applicable to Server Provisioning)

Description	Computer Environment segment to which Service Level applies	Service Levels
Backup Frequency and retention period for Databases	PRD	Daily full backup and log file backup per SAP product standard. 30 days retention time. Backup of the PRD will be replicated to an alternate data center or location.
	NON-PRD	Weekly full backup and log file backup per SAP product standard. 14 days retention time. Backup of the NON-PRD will be replicated to an alternate data center or location.
Long Term Backup*	PRD and/or NON-PRD	Monthly full back up – 6 months retention time Monthly full back up – 1 year retention time Quarterly full back up – 1 year retention time Yearly full back up – up to 5 years retention time
Backup Frequency and retention period for File systems	PRD	Monthly full backup and daily incremental. Two months retention time. Backup of the PRD will be replicated to an alternate data center or location.
	NON-PRD	Monthly full backup and daily incremental. Two months retention time. Backup of the NON-PRD will be replicated to an alternate data center or location.
Incident Reaction Time for Incident Management	Incident Priority Very High	20 minutes (7x24) and problem determination action plan within 4hrs for PRD
	Incident Priority High	2 hours (7x24) for PRD 4 hours [Local Time on Business Days] for NON-PRD
	Incident Priority Medium	4 hours [Local Time on Business Days] for PRD and NON-PRD
	Incident Priority Low	1 Business Day for PRD and NON-PRD

*Applies if this optional service is purchased in an Order Form. The retention periods for Long Term Backup will end at the earlier of the retention time set forth herein or the end of Customer's Cloud Service subscription term.

3.1. Incident Priorities

The following priority levels apply to all Incidents (such priority to be assigned by Customer, and which may be re-assigned by SAP based on the criteria below and acting reasonably):

a) **Very High:** An Incident should be categorized with the priority "Very High" if the incident reported has very serious consequences for normal business processes or IT processes related to core business processes, and urgent work cannot be performed. This is generally caused by the following circumstances:

- A PRD system is completely down.
- The imminent go-live or upgrade is jeopardized.
- The core business processes of Customer are seriously affected.
- A workaround is not available.

The Incident requires immediate processing because the malfunction may cause serious losses.

b) **High:** An Incident should be categorized with the priority "High" if normal business processes are seriously affected. Necessary tasks cannot be performed. This is caused by incorrect or inoperable functions in the Computing Environment that are required immediately. The Incident is to be processed as quickly as possible because a continuing malfunction can seriously disrupt the entire productive business flow.

c) **Medium:** An Incident should be categorized with the priority "Medium" if normal business processes are affected. The problem is caused by incorrect or inoperable functions in the Computing Environment. A message should be categorized with the priority "Medium" if normal business transactions are affected.

d) **Low:** An Incident should be categorized with the priority "Low" if the problem has little or no effect on normal business processes. The problem is caused by incorrect or inoperable functions in the Computing Environment that are not required daily or are rarely used.

4. SERVICE LEVEL REPORTING

4.1. Track and Report

SAP shall track and report to Customer the Service Levels set forth herein in a monthly summary report.

4.2. Notice

4.2.1. Customer must notify SAP of any claims for any Service Credits within 1 month after receipt of the monthly System Availability report by filing a support ticket with SAP.

4.2.2. In the event that one or more of the Services Levels set forth herein are not met, Customer may notify the SAP Account Manager and request to analyze Service Levels metric statistics based on the monthly summary report provided by SAP.

4.3. Remedy

SAP will then promptly:

- a) determine the root cause or possible root cause of the failure (if known) to meet the Service Level; and
- b) unless failure is excused, develop a corrective action plan, and submit such plan to Customer for written approval (which will not be unreasonably withheld or delayed) and, following Customer's written approval implement the plan in a reasonable period of time (and in accordance with any agreed timescales).

4.4. Service Credit

If applicable, SAP will provide the specific Service Credit as described in Section 5 below.

4.5. Excluded Downtime

SAP will be relieved of its obligation to pay applicable Service Credits and will not be in breach of the Service Level where the root cause analysis (as reasonably performed by SAP) indicates the failure to meet the

relevant Service Level was caused by the Customer and shall therefore be treated as Excluded Downtime. In the event that Customer disagrees with the root cause analysis, the parties will discuss the root cause analysis.

5. SERVICE LEVEL FAILURES

5.1. Service Credits

5.1.1. Subject to Section 2 above, if and to the extent SAP fails to meet the System Availability Service Level set forth in Section 2, Customer is entitled to a Service Credit which is calculated as the sum of the Service Credits for NON-PRD, PRD and Server Provisioning, for SAP's failure to meet the respective System Availability Service Level. Under no circumstances will the total maximum Service Credits:

- a) for any 1 month, exceed an aggregate of 20% of the Monthly Service Fee for that month across all the Systems at 99.9% SA SLA, and an aggregate of 100% of the Monthly Service Fee for that month across all SA SLAs; and
- b) for any given contract year, exceed in the aggregate an amount equal to 1/3 of the annual subscription fees paid for the affected Cloud Service for the contract year (or 1/3 of the total subscription fees paid for the affected Cloud Service if the term as defined in the applicable Order Form is less than 1 year).

5.1.2. Customer acknowledges that the Service Credits are the sole and exclusive remedy for SAP's failure to meet the specified Service Level, except to the extent prohibited by applicable law.

5.1.3. When Customer's entitlement of the Service Credit is confirmed by SAP in writing (email permitted), SAP will apply such credit to a future invoice relating to the Cloud Service or provide a refund if no future invoice is due under the Agreement.

5.1.4. Customers who have not subscribed to the Cloud Service directly from SAP must claim the Service Credit from their applicable SAP partner.

5.2. Termination

5.2.1. In the event of SAP fails to meet the SA SLA for PRD Computing Environment as specified in Section 2 above for 3 consecutive months, Customer may terminate the applicable Order Form by providing SAP with written notice within 30 days of Customer's receipt of the respective Service Level report. Termination shall become effective 1 month after SAP's receipt of such notice (or any later date set out by Customer in its notice). For the avoidance of doubt, this termination right shall supersede any and all other termination provision in the GTC for failure to meet an SLA, and such termination right from the GTC shall not apply.

PERSONAL DATA PROCESSING AGREEMENT FOR SAP NS2 CLOUD SERVICES

1. BACKGROUND

- 1.1 Purpose and Application.** This document ("DPA") is incorporated into the Agreement and forms part of a written (including in electronic form) contract between SAP NS2 and Customer. This DPA applies to Personal Data processed by SAP NS2 and its Subprocessors in connection with its provision of the Cloud Service. This DPA does not apply to non-production environments of the Cloud Service if such environments are made available by SAP NS2, and Customer shall not store Personal Data in such environments.
- 1.2 Structure. Appendices 1 and 2** are incorporated into and form part of this DPA. They set out the agreed subject-matter, the nature and purpose of the processing, the type of Personal Data, categories of data subjects and the applicable technical and organizational measures.
- 1.3 GDPR.** SAP NS2 and Customer agree that it is each party's responsibility to review and adopt requirements imposed on Controllers and Processors by the General Data Protection Regulation 2016/679 ("GDPR"), in particular with regards to Articles 28 and 32 to 36 of the GDPR, if and to the extent applicable to Personal Data of Customer/Controllers that is processed under the DPA. For illustration purposes, **Appendix 3** lists the relevant GDPR requirements and the corresponding sections in this DPA.
- 1.4 Governance.** SAP NS2 acts as a Processor and Customer and those entities that it permits to use the Cloud Service act as Controllers under the DPA. SAP NS2's Customer acts as a single point of contact and is solely responsible for obtaining any relevant authorizations, consents and permissions for the processing of Personal Data in accordance with this DPA, including, where applicable approval by Controllers to use SAP NS2 as a Processor. Where authorizations, consent, instructions or permissions are provided by Customer these are provided not only on behalf of the Customer but also on behalf of any other Controller using the Cloud Service. Where SAP NS2 informs or gives notice to Customer, such information or notice is deemed received by those Controllers permitted by Customer to use the Cloud Service and it is Customer's responsibility to forward such information and notices to the relevant Controllers.

2. SECURITY OF PROCESSING

- 2.1 Appropriate Technical and Organizational Measures.** SAP NS2 has implemented and will apply the technical and organizational measures set forth in **Appendix 2**. Customer has reviewed such measures and agrees that as to the Cloud Service selected by Customer in the Order Form the measures are appropriate taking into account the state of the art, the costs of implementation, nature, scope, context and purposes of the processing of Personal Data.
- 2.2 Changes.** SAP NS2 applies the technical and organizational measures set forth in **Appendix 2** to SAP NS2's entire customer base hosted out of the same Data Center and receiving the same Cloud Service. SAP NS2 may change the measures set out in **Appendix 2** at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.

3. SAP NS2 OBLIGATIONS

- 3.1 Instructions from Customer.** SAP NS2 will process Personal Data only in accordance with documented instructions from Customer. The Agreement (including this DPA) constitutes such documented initial instructions and each use of the Cloud Service then constitutes further instructions. SAP NS2 will use reasonable efforts to follow any other Customer instructions, as long as they are required by Data Protection Law, technically feasible and do not require changes to the Cloud Service. If any of the before-mentioned exceptions apply, or SAP NS2 otherwise cannot comply with an instruction or is of the opinion that an instruction infringes Data Protection Law, SAP NS2 will immediately notify Customer (email permitted).
- 3.2 Processing on Legal Requirement.** SAP NS2 may also process Personal Data where required to

do so by applicable law. In such a case, SAP NS2 shall inform Customer of that legal requirement before processing unless that law prohibits such information on important grounds of public interest.

- 3.3 Personnel.** To process Personal Data, SAP NS2 and its Subprocessors shall only grant access to authorized personnel who have committed themselves to confidentiality. SAP NS2 and its Subprocessors will regularly train personnel having access to Personal Data in applicable data security and data privacy measures.
- 3.4 Cooperation.** At Customer's request, SAP NS2 will reasonably cooperate with Customer and Controllers in dealing with requests from Data Subjects or regulatory authorities regarding SAP NS2's processing of Personal Data or any Personal Data Breach. SAP NS2 shall notify the Customer as soon as reasonably practical about any request it has received from a Data Subject in relation to the Personal Data processing, without itself responding to such request without Customer's further instructions, if applicable. SAP NS2 shall provide functionality that supports Customer's ability to correct or remove Personal Data from the Cloud Service, or restrict its processing in line with Data Protection Law. Where such functionality is not provided, SAP NS2 will correct or remove any Personal Data, or restrict its processing, in accordance with the Customer's instruction and Data Protection Law.
- 3.5 Personal Data Breach Notification.** SAP NS2 will notify Customer without undue delay after becoming aware of any Personal Data Breach and provide reasonable information in its possession to assist Customer to meet Customer's obligations to report a Personal Data Breach as required under Data Protection Law. SAP NS2 may provide such information in phases as it becomes available. Such notification shall not be interpreted or construed as an admission of fault or liability by SAP NS2.
- 3.6 Data Protection Impact Assessment.** If, pursuant to Data Protection Law, Customer (or its Controllers) are required to perform a data protection impact assessment or prior consultation with a regulator, at Customer's request, SAP NS2 will provide such documents as are generally available for the Cloud Service (for example, this DPA, the Agreement, audit reports or certifications). Any additional assistance shall be mutually agreed between the Parties.

4. DATA EXPORT AND DELETION

- 4.1 Export and Retrieval by Customer.** During the Subscription Term and subject to the Agreement, Customer can access its Personal Data at any time. Customer may export and retrieve its Personal Data in a standard format. Export and retrieval may be subject to technical limitations, in which case SAP NS2 and Customer will find a reasonable method to allow Customer access to Personal Data.
- 4.2 Deletion.** Before the Subscription Term expires, Customer may use SAP NS2's self-service export tools (as available) to perform a final export of Personal Data from the Cloud Service (which shall constitute a "return" of Personal Data). At the end of the Subscription Term, Customer hereby instructs SAP NS2 to delete the Personal Data remaining on servers hosting the Cloud Service within a reasonable time period in line with Data Protection Law (not to exceed six months) unless applicable law requires retention.

5. SECURITY ASSESSMENTS (NOT APPLICABLE TO PCE Cloud Services)

SAP NS2's information security policies provide for (i) regular assessment (at least annually) by independent third party security assessors to verify the adequacy of its security measures outlined in Attachment 1, including (a) identification of internal and external threats that could result in a breach or unauthorized disclosure of such data, (b) assessment of the likelihood and potential damage of such threats, taking into account the sensitivity of such data and systems, and (c) assessment of the sufficiency of policies, procedures, and information systems of SAP NS2 and its agents and contractors, and other safeguards in place to control such risks, and (ii) protection against all such risks. This assessment will result in an annual Security Assessment Report (SAR) which will be SAP NS2's Confidential Information. If requested by Customer in writing and subject to the Confidentiality provisions of the Agreement, SAP NS2 shall provide an Executive Summary Report containing the results of its annual SAR. Such annual Executive

Summary Report will be available after Customer is live in a production environment in the SAP NS2 environment.

6. SUBPROCESSORS

6.1 Permitted Use. SAP NS2 is granted a general authorization to subcontract the processing of Personal Data to Subprocessors, provided that:

- (a) SAP NS2 on its behalf shall engage Subprocessors under a written (including in electronic form) contract consistent with the terms of this DPA in relation to the Subprocessor's processing of Personal Data. SAP NS2 shall be liable for any breaches by the Subprocessor in accordance with the terms of this Agreement;
- (b) SAP NS2 will evaluate the security, privacy and confidentiality practices of a Subprocessor prior to selection to establish that it is capable of providing the level of protection of Personal Data required by this DPA; and
- (c) SAP NS2's list of Subprocessors in place on the effective date of the Agreement will be made available to Customer upon request, including the name, address and role of each Subprocessor SAP NS2 uses to provide the Cloud Service.

6.2 New Subprocessors. SAP NS2's use of Subprocessors is at its discretion, provided that:

- (a) SAP NS2 will inform Customer in advance by email of any intended additions or replacements to the list of Subprocessors including name, address and role of the new Subprocessor; and
- (b) Customer may object to such changes as set out in Section 6.3.

6.3 Objections to New Subprocessors.

- (a) If Customer has a legitimate reason under Data Protection Law to object to the new Subprocessors' processing of Personal Data, Customer may terminate the Agreement (limited to the Cloud Service for which the new Subprocessor is intended to be used) on written notice to SAP NS2. Such termination shall take effect at the time determined by the Customer which shall be no later than thirty days from the date of SAP NS2's notice to Customer informing Customer of the new Subprocessor. If Customer does not terminate within this thirty day period, Customer is deemed to have accepted the new Subprocessor.
- (b) Within the thirty day period from the date of SAP NS2's notice to Customer informing Customer of the new Subprocessor, Customer may request that the parties come together in good faith to discuss a resolution to the objection. Such discussions shall not extend the period for termination and do not affect SAP NS2's right to use the new Subprocessor(s) after the thirty day period.
- (c) Any termination under this Section 6.3 shall be deemed to be without fault by either party and shall be subject to the terms of the Agreement.

6.4 Emergency Replacement. SAP NS2 may replace a Subprocessor without advance notice where the reason for the change is outside of SAP NS2's reasonable control and prompt replacement is required for security or other urgent reasons. In this case, SAP NS2 will inform Customer of the replacement Subprocessor as soon as possible following its appointment. Section 6.3 applies accordingly.

7. PRIVACY

7.1 Data Protection. SAP NS2 and its Subprocessors shall rely upon Customer and Data Controllers to identify and communicate to SAP NS2 all relevant requirements under Data Protection Law, including under the European Union General Data Protection Regulation, Regulation (EU) 2016/679, effective as of May 25, 2018.

7.2 Standard Contractual Clauses. Where (i) Personal Data of an EEA or Swiss based Controller is processed in a country outside the EEA, Switzerland and any country, organization or territory acknowledged by the European Union as safe country with an adequate level of data protection under Art. 45 GDPR, or where (ii) Personal Data of another Controller is processed internationally and such international processing requires an adequacy means under the laws of the country of the Controller and the required adequacy means can be met by entering into Standard Contractual Clauses, then:

- (a) SAP NS2 and Customer enter into the Standard Contractual Clauses;
- (b) Customer enters into the Standard Contractual Clauses with each relevant Subprocessor as follows, either (i) Customer joins the Standard Contractual Clauses entered into by SAP NS2, SAP America or SAP SE and the Subprocessor as an independent owner of rights and obligations ("Accession Model") or, (ii) the Subprocessor (represented by SAP NS2) enters into the Standard Contractual Clauses with Customer ("Power of Attorney Model"). The Power of Attorney Model shall apply if and when SAP NS2 has expressly confirmed that a Subprocessor is eligible for it through the Subprocessor list provided under Section 6.1(c), or a notice to Customer; and/or
- (c) Other Controllers whose use of the Cloud Services has been authorized by Customer under the Agreement may also enter into Standard Contractual Clauses with SAP NS2 and/or the relevant Subprocessors in the same manner as Customer in accordance with Sections 7.2 (a) and (b) above. In such case, Customer will enter into the Standard Contractual Clauses on behalf of the other Controllers.

7.3 Relation of the Standard Contractual Clauses to the Agreement. Nothing in the Agreement shall be construed to prevail over any conflicting clause of the Standard Contractual Clauses. For the avoidance of doubt, where this DPA further specifies audit and subprocessor rules in sections 5 and 6, such specifications also apply in relation to the Standard Contractual Clauses.

7.4 Governing Law of the Standard Contractual Clauses. The Standard Contractual Clauses shall be governed by the law of the country in which the relevant Controller is incorporated.

8. DOCUMENTATION; RECORDS OF PROCESSING

Each party is responsible for its compliance with its documentation requirements, in particular maintaining records of processing where required under Data Protection Law. Each party shall reasonably assist the other party in its documentation requirements, including providing the information the other party needs from it in a manner reasonably requested by the other party (such as using an electronic system), in order to enable the other party to comply with any obligations relating to maintaining records of processing.

9. DEFINITIONS

Capitalized terms not defined herein will have the meanings given to them in the Agreement.

- 9.1 "Controller"** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; for the purposes of this DPA, where Customer acts as processor for another controller, it shall in relation to SAP NS2 be deemed as additional and independent Controller with the respective controller rights and obligations under this DPA.
- 9.2 "Data Center"** means the location where the production instance of the Cloud Service is hosted for the Customer.
- 9.3 "Data Protection Law"** means the applicable legislation protecting the fundamental rights and freedoms of persons and their right to privacy with regard to the processing of Personal Data under the Agreement (and includes, as far as it concerns the relationship between the parties regarding the processing of Personal Data by SAP NS2 on behalf of Customer, the GDPR as a minimum standard, irrespective of whether the Personal Data is subject to GDPR or not).
- 9.4 "Data Subject"** means an identified or identifiable natural person as defined by Data Protection Law.
- 9.5 "EEA"** means the European Economic Area, namely the European Union Member States along with Iceland, Liechtenstein and Norway.
- 9.6 "Personal Data"** means any information relating to a Data Subject which is protected under Data Protection Law. For the purposes of the DPA, it includes only personal data which is (i) entered by Customer or its Named Users into or derived from their use of the Cloud Service, or (ii) supplied to or accessed by SAP NS2 or its Subprocessors in order to provide support under the Agreement. Personal Data is a sub-set of Customer Data (as defined under the Agreement).
- 9.7 "Personal Data Breach"** means a confirmed (1) accidental or unlawful destruction, loss,

alteration, unauthorized disclosure of or unauthorized third-party access to Personal Data or (2) similar incident involving Personal Data, in each case for which a Controller is required under Data Protection Law to provide notice to competent data protection authorities or Data Subjects.

- 9.8 "Processor"** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller, be it directly as processor of a controller or indirectly as subprocessor of a processor which processes personal data on behalf of the controller.
- 9.9 "Standard Contractual Clauses"** or sometimes also referred to the "EU Model Clauses" means the (Standard Contractual Clauses (processors)) or any subsequent version thereof published by the European Commission (which will automatically apply). The Standard Contractual Clauses *current as of the effective date of the Agreement* are attached hereto as **Appendix 4**.
- 9.10 "Subprocessor"** means third parties engaged by SAP NS2 in connection with the Cloud Service and which process Personal Data in accordance with this DPA.

Appendix 1 to the DPA and, if applicable, the Standard Contractual Clauses

Data Exporter

The Data Exporter is the Customer who subscribed to a Cloud Service that allows Named Users to enter, amend, use, delete or otherwise process Personal Data. Where the Customer allows other Controllers to also use the Cloud Service, these other Controllers are also Data Exporters.

Data Importer

The Data Importer is SAP NS2 and its Subprocessors that provide the Cloud Service.

The data center(s) where SAP NS2 provides the Cloud Service are located within the United States. SAP NS2 supports the infrastructure remotely with SAP NS2 personnel or subcontractors in the Operations/Cloud delivery function by providing support that includes:

- Monitoring the Cloud Service
- Backup & restoration of Customer Data stored in the Cloud Service
- Release and development of fixes and upgrades to the Cloud Service
- Monitoring, troubleshooting and administering the underlying Cloud Service infrastructure and database
- Security monitoring, network-based intrusion detection support, penetration testing

Data Subjects

Unless provided otherwise by the Data Exporter, transferred Personal Data relates to the following categories of Data Subjects: employees, contractors, business partners or other individuals having Personal Data stored in the Cloud Service.

Data Categories

The transferred Personal Data concerns the following categories of data:

Customer determines the categories of data per Cloud Service subscribed. Customer can configure the data fields during implementation of the Cloud Service or as otherwise provided by the Cloud Service. The transferred Personal Data typically relates to the following categories of data: name, phone numbers, e-mail address, time zone, address data, system access / usage / authorization data, company name, contract data, invoice data, plus any application-specific data that Named Users enter into the Cloud Service and may include bank account data, credit or debit card data.

Special Data Categories (if appropriate)

The transferred Personal Data concerns the following special categories of data: As set out in the Agreement (including the Order Form) if any.

Processing Operations / Purposes

The transferred Personal Data is subject to the following basic processing activities:

- use of Personal Data to set up, operate, monitor and provide the Cloud Service (including Operational and Technical Support)
- communication to Named Users
- storage of Personal Data in dedicated Data Centers (multi-tenant architecture)
- upload any fixes or upgrades to the Cloud Service
- back up of Personal Data
- computer processing of Personal Data, including data transmission, data retrieval, data access
- network access to allow Personal Data transfer
- execution of instructions of Customer in accordance with the Agreement
- support only by U.S. Persons as defined by 22 CFR part 120.15
- processing in data centers located solely within the U.S. and its territories

Appendix 2 to the DPA and, if applicable, the Standard Contractual Clauses – Technical and Organizational Measures

1. TECHNICAL AND ORGANIZATIONAL MEASURES

The following sections define SAP NS2's current technical and organizational measures. SAP NS2 may change these at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.

1.1 Physical Access Control. Unauthorized persons are prevented from gaining physical access to premises, buildings or rooms where data processing systems that process and/or use Personal Data are located.

Measures:

- SAP NS2 protects its assets and facilities using the appropriate means.
- In general, buildings are secured through access control systems (e.g., smart card access system).
- As a minimum requirement, the outermost entrance points of the building must be fitted with a certified key system including modern, active key management.
- Depending on the security classification, buildings, individual areas and surrounding premises may be further protected by additional measures. These include specific access profiles, video surveillance, intruder alarm systems and biometric access control systems.
- Access rights are granted to authorized persons on an individual basis according to the System and Data Access Control measures (see Section 1.2 and 1.3 below). This also applies to visitor access. Guests and visitors to SAP NS2 buildings must register their names at reception and must be accompanied by authorized SAP NS2 personnel.
- SAP NS2 employees and external personnel must wear their ID cards at all SAP NS2 locations.

Additional measures for Data Centers:

- All Data Centers adhere to strict security procedures enforced by guards, surveillance cameras, motion detectors, access control mechanisms and other measures to prevent equipment and Data Center facilities from being compromised. Only authorized representatives have access to systems and infrastructure within the Data Center facilities. To protect proper functionality, physical security equipment (e.g., motion sensors, cameras, etc.) undergo maintenance on a regular basis.
- SAP NS2 and all third-party Data Center providers log the names and times of authorized personnel entering SAP NS2's private areas within the Data Centers.

1.2 System Access Control. Data processing systems used to provide the Cloud Service must be prevented from being used without authorization.

Measures:

- Multiple authorization levels are used when granting access to sensitive systems, including those storing and processing Personal Data. Authorizations are managed via defined processes.
- All personnel access SAP NS2's systems with a unique identifier (user ID).
- SAP NS2 has procedures in place so that requested authorization changes are implemented (for example, no rights are granted without authorization). In case personnel leaves the company, their access rights are revoked.
- SAP NS2 has established a password policy that prohibits the sharing of passwords, governs responses to password disclosure, and requires passwords to be changed on a regular basis and default passwords to be altered. Personalized user IDs are assigned for authentication. All passwords must fulfill defined minimum requirements and are stored in encrypted form. In case of domain passwords, the system forces a password change every six months in compliance with the requirements for complex passwords. Each computer has a password-protected

screensaver.

- The company network is protected from the public network by firewalls.
- SAP NS2 uses up-to-date antivirus software at access points to the company network (for e-mail accounts), as well as on all file servers and all workstations.
- Security patch management is implemented to provide regular and periodic deployment of relevant security updates.

1.3 Data Access Control. Persons entitled to use data processing systems gain access only to the Personal Data that they have a right to access, and Personal Data must not be read, copied, modified or removed without authorization in the course of processing, use and storage.

Measures:

- Personal Data requires at least the same protection level as “business confidential” information according to the SAP NS2 Information Classification standard.
- Access to Personal Data is granted on a need-to-know basis. Personnel have access to the information that they require in order to fulfill their duty. SAP NS2 uses authorization concepts that document grant processes and assigned roles per account (user ID). All Customer Data is protected in same manner as Personal Data.
- All production servers are operated in the Data Centers or in secure server rooms. Security measures that protect applications processing Personal Data are regularly checked. To this end, SAP NS2 conducts internal and external security checks and penetration tests on its IT systems.
- SAP NS2 does not allow the installation of software that has not been approved by SAP NS2.
- An SAP NS2 security standard governs how Customer Data is deleted or destroyed once it is no longer required.

1.4 Data Transmission Control. Except as necessary for the provision of the Cloud Services in accordance with the Agreement, Personal Data must not be read, copied, modified or removed without authorization during transfer. Where data carriers are physically transported, adequate measures are implemented at SAP NS2 to provide the agreed-upon service levels (for example, encryption).

Measures:

- Personal Data in transfer over SAP NS2 internal networks is protected.
- When data is transferred between SAP NS2 and its customers, the protection measures for the transferred Personal Data are mutually agreed upon and made part of the relevant agreement. This applies to both physical and network based data transfer. In any case, the Customer assumes responsibility for any data transfer once it is outside of SAP NS2-controlled systems (e.g. data being transmitted outside the firewall of the SAP NS2 Data Center).

1.5 Data Input Control. It will be possible to retrospectively examine and establish whether and by whom Personal Data have been entered, modified or removed from SAP NS2 data processing systems.

Measures:

- SAP NS2 only allows authorized personnel to access Personal Data as required in the course of their duty.
- SAP NS2 has implemented a logging system for input, modification and deletion, or blocking of Personal Data by SAP NS2 or its subprocessors within the Cloud Service to the extent technically possible.

1.6 Job Control. Personal Data being processed on commission (i.e., Personal Data processed on a customer’s behalf) is processed solely in accordance with the Agreement and related instructions of the Customer.

Measures:

- SAP NS2 uses controls and processes to monitor compliance with contracts between SAP NS2 and its customers, subprocessors or other service providers.
- Personal Data requires at least the same protection level as “business confidential” information according to the SAP Information Classification standard.
- All SAP NS2 employees and contractual subprocessors or other service providers are contractually bound to respect the confidentiality of all sensitive information including trade secrets of SAP NS2 customers and partners.

1.7 Availability Control. Personal Data will be protected against accidental or unauthorized destruction or loss.

Measures:

- SAP NS2 employs regular backup processes to provide restoration of business-critical systems as and when necessary.
- SAP NS2 has defined business contingency plans for business-critical processes and may offer disaster recovery strategies for business critical Services as further set out in the Documentation or incorporated into the Order Form for the relevant Cloud Service.
- Emergency processes and systems are regularly tested.

1.8 Data Separation Control. Personal Data collected for different purposes can be processed separately.

Measures:

- SAP NS2 uses the technical capabilities of the deployed software (for example: multi-tenancy, or separate system landscapes) to achieve data separation among Personal Data originating from multiple customers.
- Customer (including its Controllers) has access only to its own data.
- If Personal Data is required to handle a support incident from Customer, the data is assigned to that particular message and used only to process that message; it is not accessed to process any other messages. This data is stored in dedicated support systems.

1.9 Data Integrity Control. Personal Data will remain intact, complete and current during processing activities.

Measures:

- SAP NS2 has implemented a multi-layered defense strategy as a protection against unauthorized modifications.

Appendix 3 to the DPA and, if applicable, the Standard Contractual Clauses

The following table sets out the relevant Articles of GDPR and corresponding terms of the DPA for illustration purposes only.

Article of GDPR	Section of DPA	Click on link to see Section
28(1)	2 and Appendix 2	Security of Processing and Appendix 2, Technical and Organizational Measures.
28(2), 28(3) (d) and 28 (4)	6	SUBPROCESSORS
28 (3) sentence 1	1.1 and Appendix 1, 1.2	Purpose and Application. Structure.
28(3) (a) and 29	3.1 and 3.2	Instructions from Customer. Processing on Legal Requirement.
28(3) (b)	3.3	Personnel.
28(3) (c) and 32	2 and Appendix 2	Security of Processing and Appendix 2, Technical and Organizational Measures.
28(3) (e)	3.4	Cooperation.
28(3) (f) and 32-36	2 and Appendix 2, 3.5, 3.6	Security of Processing and Appendix 2, Technical and Organizational Measures.
28(3) (g)	4	Data export and Deletion
28(3) (h)	5	SECURITY ASSESSMENTS
28 (4)	6	SUBPROCESSORS
30	8	Documentation; Records of processing
46(2) (c)	7.2	Standard Contractual Clauses

Appendix 4 STANDARD CONTRACTUAL CLAUSES (PROCESSORS)¹

For the purposes of Article 26(2) of Directive 95/46/EC (or, after 25 May 2018, Article 44 et seq. of Regulation 2016/79) for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Customer also on behalf of the other Controllers

(in the Clauses hereinafter referred to as the '**data exporter**')
and

SAP

(in the Clauses hereinafter referred to as the '**data importer**')
each a 'party'; together 'the parties',

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

Definitions

For the purposes of the Clauses:

- (a) 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) 'the data exporter' means the controller who transfers the personal data;
- (c) 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) 'the sub-processor' means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) 'the applicable data protection law' means the legislation protecting the fundamental

¹ Pursuant to Commission Decision of 5 February 2010 (2010/87/EU)

rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data

protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data

exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d) that it will promptly notify the data exporter about:

(i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;

(ii) any accidental or unauthorised access; and

(iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f) at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;

(i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;

(j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

Clause 9

Governing law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Sub-processing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfill its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such

third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data-processing services

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

SAP Cloud General Terms and Conditions (For GSA Indirect Sales)

Article 1 Definitions

- 1.1 "Affiliate" of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights or controls or is under common control with that legal entity. "Control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through ownership, by contract or otherwise. Any such company shall be considered an Affiliate for only such time as such interest or control is maintained.
- 1.2 "Agreement" means these General Terms and Conditions and any Order Form referencing these General Terms and Conditions, and any other schedules, supplements, statements of work, exhibits or appendices thereto, whether attached or incorporated by reference.
- 1.3 "Cloud Materials" mean any materials produced by or with SAP pursuant to this Agreement, including in the course of providing any support or Consulting Services to Customer. Cloud Materials include materials created for or in cooperation with Customer, but do not include any Customer Data, Customer Confidential Information or the Service. For clarity, some services may be performed under a statement of work, which statement of work will be governed by the terms and conditions of this Agreement.
- 1.4 "Confidential Information" means, with respect to Customer, the Customer Data, marketing and business plans and/or Customer financial information, and with respect to SAP: (a) the Service, including, without limitation, all (i) computer software (both object and source codes) and related Service documentation or specifications; (ii) techniques, concepts, methods, processes and designs embodied in or relating to the Service; and (iii) all application program interfaces, system security and system architecture design relating to the Service; and (b) SAP research and development, product offerings, and availability. In addition to the foregoing, Confidential Information of either SAP or Customer (the party disclosing such information being the "Disclosing Party") may also include 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; including, without limitation, information about or concerning any third party that is disclosed to Receiving Party under this Agreement.
- 1.5 "Consulting Services" means implementation, configuration, training, and other similar services related to the Service.
- 1.6 "Customer" means the entity or individual that has consented to this Agreement by execution of an agreement with SAP Reseller that references these General Terms and Conditions or by any other legally binding method of acceptance of this Agreement.
- 1.7 "Customer Data" means any content, materials, data and information that Customer or its Named Users enter into the Service.
- 1.8 "Documentation" means SAP's then-current technical and functional documentation for the Service which is made available to Customer with the Service, including, but not limited to, configuration workbooks or release notes, as applicable.
- 1.9 "Named User" means Customer's and its Affiliates' employees, agents, contractors, consultants, suppliers or other individuals who are authorized by Customer to use the Service.
- 1.10 "Order Form" means all written order forms or other ordering documentation (including, if Customer is ordering the Service online, a registration Webpage or Website) entered into by SAP and SAP Reseller containing the pricing, subscription term and other specific terms and conditions applicable to the Service.
- 1.11 "SAP" means the entity identified by the Order Form as providing the Service to Customer.
- 1.12 "SAP Reseller" means Carahsoft Technology Corporation.
- 1.13 "Service" means the hosted, on demand service described in the Order Form, including upgrades and updates thereto made generally available by SAP to its customers.
- 1.14 "System Availability" means the average percentage of total time during which the production version of the Service is available to Customer during a calendar month, excluding (i) any maintenance windows (including any maintenance windows defined in a supplement to this Agreement); (ii) delays due to conditions beyond the reasonable control of SAP; (iii) delays caused by systems outside of the Service, including, but not limited to, Customer's network, equipment and systems; (iv) micro outages (meaning an inaccessibility that lasts less than fifteen (15) minutes, provided that there are no more than three (3) micro outages within a calendar month); and (v) inaccessibility due to Customer's requests or where Customer approved the same in advance.

Article 2 Usage Rights

- 2.1 SAP shall make the Service available to Customer in accordance with and during the term stated in the Order Form to permit Named Users to remotely access and use the Service solely for Customer's own internal business purposes as permitted by and subject to the terms of this Agreement (including usage metrics stated in the Order Form) and the Documentation.
- 2.2 Customer shall not sublicense, license, sell, lease, rent or otherwise make the Service available to third parties (other than Named Users who are using the Service in accordance with Customer's authorized use of the Service). Customer shall be responsible for the acts and omissions of its Named Users as if they were the acts and omissions of Customer. Named User access credentials issued to access or utilize the Service cannot be shared or used by more than one individual at a time, provided however, a Named User's access rights may be transferred from one individual to another if the original Named User is removed from the Service, no longer requires, or is no longer permitted access to or use of the Service.
- 2.3 SAP or its licensors own all right, title and interest in any and all copyrights, trademark rights, patent rights and other intellectual property or other rights in the Service, any Cloud Materials, and any improvements, design contributions or derivative works thereto. Except as otherwise agreed in writing, Customer is granted the nonexclusive right to use the Cloud Materials in connection with its use of the Service and subject to the terms of this Agreement. Except for the limited rights expressly granted herein, this Agreement does not transfer from SAP any proprietary right or interest in the Service or the Cloud Materials. All rights not expressly granted to Customer in this Agreement are reserved by SAP and its licensors.
- 2.4 When using the Service, Customer shall not, and shall ensure that its Named Users do not: (a) copy, translate, disassemble, decompile, reverse-engineer or otherwise modify any parts of the Service; (b) transmit any content, data or information that is unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libelous invasive of another's privacy right or right of publicity, or racially or ethnically objectionable; (c) infringe the intellectual property rights of any entity or person; (d) interfere with or disrupt the SAP software or SAP systems used to host the Service, or other equipment or networks connected to the Service; (e) use the Service in the operation of a service bureau, outsourcing or time-sharing service; (f) circumvent or disclose the user authentication or security of the Service or any host, network, or account related thereto; (g) access the Service for the purpose of building a competitive product or service or copying its features or user interface; (h) permit access to the Service by a direct competitor of SAP; or (i) make any use of the Service that violates any applicable local, state, national, international or foreign law or regulation.
- 2.5 The Service may contain links to external Web sites (including embedded widgets or other means of access) and information provided on such external websites by SAP partners and third-party service providers. SAP shall not be responsible for the contents of any linked Web site.

- 2.6 SAP shall be entitled to monitor Customer's number of Named Users (or other applicable usage metric stated in the Order Form) regarding usage of the Service to ensure Customer's compliance with this Agreement and, subject to Article 11 of this Agreement, SAP may utilize the information concerning Customer's use of the Service to improve SAP products and services and to provide Customer with reports on its use of the Service.
- 2.7 SAP may change or modify the Service at any time. SAP shall not materially diminish the functionality of the Service during the term of the Order Form.
- 2.8 If Customer is granted access under this Agreement to a free (no fee) version of the Service, to the extent permitted by applicable law, Customer agrees that (i) SAP has no obligation to provide any particular service level or support services; and (ii) SAP may cease providing the Service at any time without notice. This Article 2.8 supersedes any conflicting term of this Agreement.
- 2.9 SAP may offer and Customer may choose to accept access to functionality that is not generally available and not validated and quality assured in accordance with SAP's standard processes ("**Beta Functionality**"). Beta Functionality is described as such in the Documentation. SAP may require Customer to accept additional terms to use Beta Functionality. Any production use of the Beta Functionality is at Customer's sole risk. SAP does not warrant the correctness and completeness of the Beta Functionality, and SAP shall not be liable for errors or damages caused by the usage of the Beta Functionality.
- 2.10 Customer agrees that its purchase of subscription(s) for the Service is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by SAP, including any roadmaps, with respect to future functionality or features.

Article 3 Support, Set up and Security

- 3.1 A description of the support SAP will provide for the Service will be set forth in the applicable Order Form.
- 3.2 SAP will use commercially reasonable security technologies (such as encryption, password protection and firewall protection) in providing the Service.
- 3.3 SAP warrants at least ninety-nine percent (99%) System Availability over any calendar month. Should SAP fail to achieve ninety-nine percent (99%) System Availability over a calendar month, Customer shall have the right to receive from SAP Reseller a credit equal to two percent (2%) of its subscription fees for the Service for that month, for each one percent (1%) (or portion thereof) by which SAP fails to achieve such level, up to one hundred percent (100%) of the fees for such month based on the undiscounted SAP applicable list price for the Service. This is Customer's sole and exclusive remedy for any breach of this service level warranty. Where Customer is entitled to receive credits under this Article 3.3, SAP will issue such credits to SAP Reseller who will forward to Customer. Claims under this service level warranty must be made in good faith and by submitting a support case within ten (10) business days after the end of the relevant period.

Article 4 Customer Responsibilities and Obligations

- 4.1 Subject to Article 11 below, Customer grants to SAP the nonexclusive right to use Customer Data for the sole purpose of and only to the extent necessary for SAP to provide the Service, unless otherwise set forth in a product supplement or Order Form.
- 4.2 Customer shall be responsible for entering its Customer Data into the Service and Customer shall be responsible for the content of the Customer Data supplied by it. Customer agrees that it has collected and shall maintain and handle all Customer Data in compliance with all applicable data privacy and protection laws, rules and regulations. Further, Customer is solely responsible for determining the suitability of the Service for Customer's business and complying with any regulations, laws, or conventions applicable to the Customer Data and Customer's use of the Service(s).
- 4.3 Customer shall maintain commercially reasonable security standards for its and its Named Users use of the Service.

Article 5 Reserved.

Article 6 Reseller Relationship, Prices and Payment

- 6.1 Customer shall pay to the SAP Reseller on behalf of SAP the fees for the Service provided hereunder, in the amount as set forth in the agreement between SAP Reseller and Customer, in accordance with the terms of the Order Form. Provision of the Services is contingent upon SAP's receipt of payment for the Service from the SAP Reseller. Customer acknowledges and agrees that the SAP Reseller through which Customer has arranged for the procurement of the Services not an agent of SAP.
- 6.2 The fees set forth in the Order Form will be fixed for the committed subscription term. Following the subscription term of an Order Form, the subscription shall automatically renew for one (1) year subscription terms (each, as applicable, a "Renewal Term") subject to funding and only for the agreed-upon subscription period. Fees for automatic Renewal Terms will be invoiced annually in advance approximately sixty (60) days prior to the start of each subscription year, unless otherwise set forth in the Order Form. Pricing is established based upon the GSA Schedule Price List in effect at the time the Renewal Term is entered into. Either party may give the other party written notice (email acceptable) of non-renewal at least thirty (30) days prior to the end of the relevant subscription term.
- 6.3 Customer may add additional Named Users or other applicable usage metrics during the term of the Order Form by executing an addendum or additional schedule with SAP Reseller, as applicable, which shall then become an integral part of the amended Order Form. The term of each addendum or schedule shall be coterminous with the then-current term of the Order Form irrespective of the effective date of such addendum and all fees shall be prorated accordingly. Upon renewal of the Order Form, the term for all Named Users or other fee-based metric added to the Order Form prior to renewal shall be the same as specified in the Order Form.
- 6.4 Customer is responsible for monitoring its use of the Service. Customer shall promptly report to SAP any actual use in excess of the number of Named Users (or other applicable usage metric authorized in the Order Form). SAP shall be entitled to monitor Customer's number of Authorized Users (or other applicable usage metric authorized in the Order Form) regarding usage of the Service to ensure Customer's compliance with the Agreement. SAP shall be permitted to forward such data to SAP Reseller. SAP shall invoice SAP Reseller and Customer shall have the opportunity to execute an agreement with SAP Reseller pay for any usage in excess of the usage metrics set forth in the applicable Order Form. Such fees shall accrue from the date the excess use began. For the avoidance of doubt, Customer shall not be entitled to claim any reduction of the fees payable under the Order Form or reduce the Named Users (or other applicable usage metric) during the term of an Order Form or renewal.
- 6.5 Except as expressly set forth in this Agreement, FAR 52.212-4(l), or the Order Form, all purchases of subscriptions hereunder are non-cancelable and all fees are non-refundable.
- 6.6 Reserved.
- 6.7 Reserved.
- 6.8 Reserved.

Article 7 Term, Termination and Termination Support

- 7.1 The term of this Agreement begins on the Effective Date set forth in the applicable Order Form and shall continue in effect as described in the Order Form. Termination of individual Order Forms shall leave other Order Forms unaffected.

- 7.2 Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. The Agreement shall terminate immediately upon a final judgment obtained under the Contracts Disputes Act (41 USC chapter 71) terminating the Agreement for Customer's material breach of any provision of the Agreement
- 7.3 SAP may, in its reasonable determination, deactivate Customer's user name(s) and password(s) and/or temporarily suspend access to the Service or a portion thereof, if and to the extent SAP can substantiate that the continued use of the Service may result in harm to the Service (including the security of the systems used to provide the Service) or other SAP customers, or the rights of third parties, upon prior written notice to Customer as the circumstances permit.
- 7.4 Upon the effective date of termination, Customer's access to the Service will be terminated. Customer shall have the ability to access its Customer Data at any time during the subscription term set forth in the applicable Order Form, unless earlier terminated pursuant to this Article 7. Customer may export and retrieve its Customer Data during a subscription term, which will be subject to technical limitations caused by factors such as (i) the availability of self-service extraction tools compatible with the Service, (ii) the size of Customer's instance of the Service; and (iii) the frequency and/or timing of the export and retrieval.
- 7.5 Articles 6 (other than 6.2), 9, 10, 11, and 12 shall survive the expiration or termination of this Agreement.

Article 8 Warranties by SAP

- 8.1 SAP warrants that the Service will substantially conform to the specifications stated in the Documentation. The foregoing warranty shall not apply to the extent: (i) the Service is not being used in accordance with this Agreement and/or any Documentation; or (ii) any non-conformity is caused by third party products, content or service being accessed through the Service that are identified as third party products, content or service; or (iii) the Service being used was provided for no fee or is a trial license of the Service. Subject to Article 8.3, Customer's sole and exclusive remedy, and SAP's entire liability for breach of the limited warranty in this Article 8.1, shall be correction of the warranted non-conformity or, if SAP fails to correct the warranted non-conformity after using reasonable commercial efforts, SAP may terminate access to the non-conforming Service and refund the subscription fees paid by Customer for such Service (as identified in the applicable Order Form) for the remainder of the subscription term (starting on the date Customer reported the non-conformity).
- 8.2 SAP warrants that (i) it will perform any Consulting Services in a workmanlike and professional manner consistent with generally accepted industry practices, and (ii) the Consulting Services and Cloud Materials will conform in all material respects with the descriptions set forth in the applicable Order Form, statement of work or deployment descriptions, as applicable. Subject to Article 8.3, Customer's sole and exclusive remedy, and SAP's entire liability for breach of the limited warranty in this Article 8.2, shall be the re-performance of such deficient Consulting Services; and if SAP fails to re-perform such Consulting Services as warranted, Customer shall be entitled to recover the fees paid to SAP for such deficient Consulting Services.
- 8.3 Customer shall provide SAP with prompt written notice of any non-conformity described in this Article 8 as follows: (i) for any non-conformity of the Service, within ninety (90) days of Customer's discovery of such non-conformity, and (ii) for any non-conformity of any Consulting Service, within ninety (90) days of completion of the applicable Consulting Service.
- 8.4 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER SAP NOR ITS VENDORS MAKE ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING THE MERCHANTABILITY, SUITABILITY, ORIGINALITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE, NON-INFRINGEMENT OR RESULTS TO BE DERIVED FROM THE USE OF OR INTEGRATION WITH THE SERVICE, OR ANY CONSULTING SERVICES, SOFTWARE, HARDWARE OR OTHER MATERIALS PROVIDED UNDER THIS AGREEMENT, OR THAT THE OPERATION OF ANY SUCH SERVICE, SOFTWARE, HARDWARE OR OTHER MATERIAL WILL BE SECURE, UNINTERRUPTED OR ERROR FREE.

Article 9 Third Party Claims

- 9.1 SAP shall defend (at its sole expense) Customer and its Affiliates against claims brought against Customer by any third party alleging that Customer's use of the Service, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of a patent claim(s), copyright, or trade secret rights. SAP will pay damages finally awarded against Customer (or the amount of any settlement SAP enters into) with respect to such claims, and will pay reasonable attorney's fees in connection with such defense. This obligation of SAP shall not apply if the alleged infringement or misappropriation results from use of the Service in conjunction with any other software or service or to free (no fee) or trial licenses of the Service. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.
- 9.2 In the event a claim under Article 9.1 is made or in SAP's reasonable opinion is likely to be made, SAP may, at its sole option and expense: (i) procure for Customer the right to continue using the Service under the terms of this Agreement; or (ii) replace or modify the Service to be non-infringing without material decrease in functionality. If SAP provides written notice to Customer that the foregoing options are not reasonably available, SAP or Customer may terminate this Agreement and SAP shall refund to Customer all prepaid fees for the remainder of its term after the date of termination.
- 9.3 Customer shall be responsible for (i) any use of the Service in violation of any applicable law or regulation; or (ii) an allegation that the Customer Data or Customer's use of the Service in violation of this Agreement 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.
- 9.4 The obligations under this Article 9 are conditioned on (a) the GSA Customer timely notifying SAP 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 Article 9 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 control the defense of such claim to the extent permitted by 28 U.S.C. §516; 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 Service any alternative substantially equivalent non-infringing services. SAP will have the opportunity to intervene in the in any suit or claim filed against the GSA customer, at its own expense, through counsel of its own choosing. 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. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.
- 9.5 THE PROVISIONS OF THIS ARTICLE 9 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.

Article 10 Limitation of Liability

- 10.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EXCEPT FOR THE PARTIES' OBLIGATIONS UNDER ARTICLE 9, DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION, AND SAP'S RIGHT TO COLLECT UNPAID FEES DUE HEREUNDER, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL EITHER PARTY (OR THEIR RESPECTIVE AFFILIATES OR SAP'S LICENSORS) BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY UNDER THIS AGREEMENT (I) FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES FOR THE APPLICABLE SERVICE PAID TO SAP RESELLER BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE INCIDENT GIVING RISE TO LIABILITY; AND (II) FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE OR FOR EXEMPLARY OR PUNITIVE DAMAGES. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM SAP'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE LIMITED BY LAW.
- 10.2 The provisions of this Agreement allocate the risks between SAP and Customer. The Service fees reflect this allocation of risk and limitations of liability herein. The aforementioned liability limitations shall include any claims against employees of, subcontractors of, or any other persons authorized by, either party.

Article 11 Confidentiality

- 11.1 Confidential Information shall not be used or reproduced in any form except as required to accomplish the intent of this 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 Information 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 this Agreement shall be subject to the protections afforded hereunder. If the receiving party is compelled by law or legal process to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prompt prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party wishes to contest the disclosure. Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. § 552, which requires that information that does not fall under certain exceptions must be released when requested and, therefore, some information may be released despite being characterized as "confidential" by the vendor.
- 11.2 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 this 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.
- 11.3 Reserved.
- 11.4 Customer may provide, or SAP may solicit, input regarding the Service, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of the Service or any other SAP site, service or product, or input as to whether Customer believes SAP's development direction is consistent with Customer's business and IT needs, the technology marketplace in general, and the like (collectively "Feedback"). Customer acknowledges and agrees that any information disclosed by SAP during discussions related to Feedback shall be considered SAP Confidential Information and shall be protected from disclosure in accordance with the terms of this Agreement. In order for SAP to utilize such Feedback, Customer hereby grants to SAP a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right to sublicense to SAP's licensees and customers, under Customer's relevant intellectual property rights, to use, publish, and disclose such Feedback in any manner SAP chooses and to display, perform, copy, make, have made, use, sell, and otherwise dispose of SAP's and its sublicensee's products or services embodying Feedback in any manner and via any media SAP chooses, without reference to the source. SAP shall be entitled to use Feedback for any purpose without restriction or remuneration of any kind with respect to Customer and/or Customer's representatives. Customer acknowledges that the information related to the Service disclosed by SAP under this Agreement is only intended as possible strategies, developments, and functionalities of the Service and is not intended to be binding upon SAP to any particular course of business, product strategy, and/or development.

Article 12 Miscellaneous

- 12.1 It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.
- 12.2 If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.
- 12.3 The Order Form may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Order Form. Signatures sent by electronic means (facsimile or scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures.
- 12.4 The Service, Documentation and other SAP materials are subject to the export control laws of various countries, including without limitation the laws of the United States and Germany. Customer agrees that it will not submit the Service, Documentation or other SAP materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Service, Documentation and SAP materials to countries, persons or entities prohibited by such laws. Customer shall also be responsible for complying with all applicable governmental regulations of the country where Customer is registered, and any foreign countries with respect to the use of the Service, Documentation or other SAP materials by Customer and its Named Users.
- 12.5 This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under United States Federal law. Venue and statute of limitations are established by applicable Federal law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply. Either party must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when such party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).
- 12.6 All notices pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered (certified or registered mail or by an overnight courier services with delivery receipt) to the respective executive offices of SAP or Customer at the address first set forth in any Order Form directed to the General Counsel, or in the case of notices by SAP relating to the operation of the Service, such notices, may, at SAP's option, be in the form of an electronic notice delivered by SAP to the authorized administrator identified by Customer in the applicable Order Form or as otherwise agreed by the parties. Where in this Article 12.6 or elsewhere in this Agreement, a written form is required, except for notification of any notice of termination or notice of a material breach, that requirement can be met by facsimile transmission, exchange of letters or other written form, including email.

- 12.7 Any delay or nonperformance of any provision of this Agreement (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 this Agreement, 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.
- 12.8 This Agreement, constitutes the complete and exclusive statement of the agreement between SAP and Customer in connection with the parties' business relationship related to the subject matter hereof, and all previous representations, discussions, and writings (including any confidentiality agreements) are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. This Agreement may be modified only by a writing signed by both parties. This Agreement, however, shall not take precedence over any specific, negotiated terms contained in a GSA Customer Order Form. This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order furnished by one party to the other, and any additional terms and conditions in any such purchase order shall have no force and effect, notwithstanding the non-furnishing party's acceptance or execution of such purchase order.
- 12.9 Customer may not, without SAP's prior written consent, assign, delegate, pledge or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or any SAP materials or SAP Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. Assignment by SAP is subject to FAR 52.232-23 "Assignment of Claims" (May 2014) and FAR subpart 42.12 "Novation and Change-of-Name Agreements." SAP may in its sole discretion sub-contract parts of the Service to third-parties.
- 12.10 The following order of precedence shall be applied in the event of conflict or inconsistency between the components of the Agreement between the parties (i) the Order Form; (ii) the schedules, product supplements, exhibits and appendices included with or referenced by the Order Form; (iii) and these General Terms and Conditions.
- 12.11 The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.