

**GENERAL TERMS AND CONDITIONS FOR SAP CLOUD SERVICES (for non-GSA Federal indirect sales)  
("Cloud GTC")**

**1. DEFINITIONS**

- 1.1. **"Affiliate"** means any legal entity in which SAP SE or Customer, directly or indirectly, holds more than (fifty percent) 50% of the entity's 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 legal entity will be considered an Affiliate as long as that interest is maintained.
- 1.2. **"Agreement"** means the agreement as defined in the applicable Cloud Order Form. 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.
- 1.3. **"Authorized User"** means any individual to whom Customer grants access authorization to use the Cloud Service that is an employee, agent, contractor or representative of Customer, Customer's Affiliates, or Customer's and Customer's Affiliates' Business Partners.
- 1.4. **"Business Partner"** means a legal entity that requires use of a Cloud Service in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers or suppliers of Customer and its Affiliates.
- 1.5. **"Cloud Order Form"** means the "Cloud Order Form for SAP Cloud Services" concluded between SAP and Reseller that references the Cloud GTC.
- 1.6. **"Cloud Service"** means any distinct, hosted, supported and operated on-demand solution provided by SAP to the Customer on behalf of the Reseller, under the Cloud Order Form.
- 1.7. **"Confidential Information"** means all information which the disclosing party protects against unrestricted disclosure to others that the disclosing party or its representatives designates as confidential, internal or proprietary at the time of disclosure, or should reasonably be understood to be confidential at the time of disclosure given the nature of the information and the circumstances surrounding its disclosure.
- 1.8. **"Customer"** means the entity or individual that has consented to this Agreement by execution of an agreement with Reseller that references this Cloud GTC or by any other legally binding method of acceptance of this Agreement.
- 1.9. **"Customer Data"** means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include SAP's Confidential Information.
- 1.10. **"Documentation"** means SAP's then-current technical and functional documentation, relating to the Cloud Services located at <https://help.sap.com> or which is made available to Customer as part of the Cloud Service, including technical and functional specifications as updated from time to time in accordance with the Agreement.
- 1.11. **"Export Laws"** means all applicable import, export control and sanctions laws, including without limitation, the laws of the United States, the EU, and Germany.
- 1.12. **"Feedback"** means input, comments or suggestions regarding SAP's business and technology direction, and the possible creation, modification, correction, improvement or enhancement of the Cloud Service.
- 1.13. **"Intellectual Property Rights"** means patents of any type, design rights, utility models or other similar invention rights, copyrights and related rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, whether registered or unregistered, including applications (or rights to apply) and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.
- 1.14. **"Reseller"** means the entity holding the Government Reseller Agreement contract and identified on the Cloud Order Form.

- 1.15. **"Representatives"** means a party's Affiliates, employees, contractors, sub-contractors, legal representatives, accountants, or other professional advisors.
- 1.16. **"SAP"** means the entity identified by the Cloud Order Form as providing the Cloud Service to Customer.
- 1.17. **"SAP Materials"** means any materials (including statistical reports) provided, developed or made available by SAP or via Reseller (independently or with Customer's or Reseller's cooperation) in the course of performance under the Agreement, including in the delivery of any support to Customer. SAP Materials do not include Customer Data, Customer Confidential Information or the Cloud Service. SAP Materials may also be referred to in the Agreement as "Cloud Materials".
- 1.18. **"SAP SE"** means SAP SE, the parent company of SAP.
- 1.19. **"Subscription Term"** means the initial subscription term and, if applicable, any renewal subscription term of a Cloud Service identified in the Cloud Order Form.
- 1.20. **"Usage Metric"** means the standard of measurement for determining the permitted use for a Cloud Service as set forth in a Cloud Order Form.

## **2. USAGE RIGHTS AND RESTRICTIONS**

### **2.1. Grant of Rights**

Subject to Reseller's payment of all fees due to SAP, SAP grants to Customer on behalf of Reseller, a non-exclusive and non-transferable right to use the Cloud Service (including its implementation and configuration), SAP Materials and Documentation solely for Customer's and its Affiliates' internal business operations. Customer may use the Cloud Service world-wide, except from countries where such use is prohibited by Export Laws. Permitted uses and restrictions of the Cloud Service also apply to SAP Materials and Documentation.

### **2.2. Authorized Users**

Customer may permit Authorized Users to use the Cloud Service. Usage is limited to the Usage Metrics and volumes stated in the Cloud Order Form. Access credentials for the Cloud Service may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer is responsible for breaches of the Agreement caused by Authorized Users.

### **2.3. Verification of Use**

Customer will monitor its own use of the Cloud Service and report any use in excess of the Usage Metrics and volume to Reseller. SAP may monitor use to verify compliance with Usage Metrics, volume and the Agreement. SAP will be permitted to forward any data regarding use in excess of the Usage Metrics, volume and the Agreement by Customer to Reseller. Further, such monitoring shall be contingent upon adherence to Customer's security requirements, including any requirement for personnel to be cleared prior to accessing sensitive IT systems or facilities. If Customer's security requirements are not met, then upon SAP's request, Customer will run a self-assessment with tools provided by, and at the direction of SAP to verify Customer's compliance with the terms of this Agreement.

### **2.4. Third Party Web Services**

The Cloud Service may include integrations with web services made available by third parties (other than SAP SE or its Affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third party web services are not part of the Cloud Service and the Agreement does not apply to them. SAP is not responsible for the content of these third party web services.

### **2.5. Mobile Access to Cloud Service**

Authorized Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app store. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of the Agreement.

2.6. On-Premise Components

The Cloud Service may include on-premise components that can be downloaded and installed (including updates) by Customer. The System Availability SLA does not apply to these components. Customer may only use the on-premise components during the Subscription Term.

**3. SAP RESPONSIBILITIES**

3.1. Provisioning

SAP provides access to the Cloud Service as described in the Agreement. SAP makes the Cloud Service available and is responsible for its operation.

3.2. Support

SAP provides support for the Cloud Service as referenced in the Cloud Order Form.

3.3. Security

SAP will implement and maintain appropriate technical and organizational measures to protect the personal data processed by SAP as part of the Cloud Service as described in the Data Processing Agreement incorporated in the Cloud Order Form in compliance with applicable data protection law.

3.4. Modifications

3.4.1. Scope

SAP may modify the Cloud Service (including support services, Maintenance Windows and Major Upgrade Windows), provided that SAP shall not materially degrade the core functionality of the Cloud Service during the Subscription Term. Any such modifications will not restrict or reduce the capabilities in existence at the time of execution of this Agreement without written concurrence from the Government Contracting Officer.

3.4.2. Modification Notices

SAP shall provide Customer with reasonable advance notice of modifications to the functionality of the Cloud Service in accordance with Section 13.4, except for any change to a Maintenance Window or Major Upgrade Window which shall be in accordance with the Service Level Agreement.

3.4.3. Customer Termination

If the modification materially degrades the Cloud Service and SAP does not provide equivalent functionality, Customer may terminate the Cloud Order Form for the affected Cloud Service by providing written notice to SAP and Reseller within 1 month of SAP's notice. If SAP does not receive timely notice, Customer is deemed to have accepted the modification.

**4. CUSTOMER AND PERSONAL DATA**

4.1. Customer Ownership

Customer retains all rights in and related to Customer Data. SAP may use Customer provided trademarks solely to provide and support the Cloud Service.

4.2. Customer Data

Customer is responsible for Customer Data and entering it into the Cloud Service. Customer grants to SAP (including SAP SE, its Affiliates and subcontractors) a non-exclusive right to process and use Customer Data to provide and support the Cloud Service and as set out in the Agreement.

4.3. Personal Data

Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws.

4.4. Security

Customer will maintain reasonable security standards for its Authorized Users' use of the Cloud Service. Customer will not conduct or authorize penetration tests of the Cloud Service without advance approval from SAP.

4.5. Access to Customer Data

4.5.1. During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case SAP and Customer will find a reasonable method to allow Customer access to Customer Data.

4.5.2. Before the Subscription Term expires, Customer may use SAP's self-service export tools (as available) to perform a final export of Customer Data from the Cloud Service.

4.5.3. At the end of the Agreement, SAP will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.

4.5.4. In the event of third party legal proceedings relating to Customer Data, SAP will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of Customer Data.

**5. RESELLER RELATIONSHIP, PRICES AND PAYMENT**

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5.3. Independence of Reseller

Reseller is not an agent of SAP. Reseller is an independent entity with no authority to bind SAP or to make representations or warranties on SAP's behalf. SAP will not be liable for reasonably relying on the accuracy and reliability of written information provided by Reseller. Customer acknowledges and agrees that the Reseller through which Customer has arranged for the procurement of the Cloud Services is not an agent of SAP.

5.4. No Representations or Warranties

SAP makes no representations or warranties as to Reseller, any authorized distributor or other reseller, or any other third party, or related to the performance of their products or services, and fully disclaims any such warranties in accordance with Section 7.

5.5. Payment

Customer shall pay to Reseller on behalf of SAP the fees for the Cloud Service provided hereunder, in the amount as set forth in the agreement between Reseller and Customer, in accordance with the terms of the Cloud Order Form.

5.6. Renewal Term

The fees set forth in the Cloud Order Form will be fixed for the committed subscription term. Following the subscription term of a Cloud Order Form, the subscription may be renewed for one (1) year subscription terms (each, as applicable, a "Renewal Term") subject to funding and only for the agreed-upon subscription period by executing a written order for the Renewal Term. 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.

5.7. Additions to Cloud Order Form

Customer may add additional Authorized Users or other applicable usage metrics during the term of the Cloud Order Form by executing an addendum or additional schedule with Reseller, as applicable, which shall then become an integral part of the amended Cloud Order Form. The term of each addendum or schedule shall be coterminous with the then-current term of the Cloud Order Form irrespective of the effective date of such addendum and all fees shall be prorated accordingly. Upon renewal of the Cloud Order Form, the term for all Authorized Users or other fee-based metric added to the Cloud Order Form prior to renewal shall be the same as specified in the Cloud Order Form.

5.8. Excess Use

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 Authorized Users (or other applicable usage metric authorized in the Cloud Order Form). SAP shall be entitled to monitor Customer's number of Authorized Users (or other applicable usage metric authorized in the Cloud Order Form) regarding usage of the Cloud Service to ensure Customer's compliance with the Agreement. SAP shall be permitted to forward such data to Reseller. SAP shall invoice Reseller and Customer shall have the opportunity to execute an agreement with Reseller to pay for any usage in excess of the usage metrics set forth in the applicable Cloud 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 Cloud Order Form or reduce the Authorized Users (or other applicable usage metric) during the term of a Cloud Order Form or renewal.

#### 5.9 No Cancellation

Except as expressly set forth in this Agreement, FAR 52.212-4(l), or the Cloud Order Form, all purchases of subscriptions hereunder are non-cancelable and all fees incurred prior to the termination date are non-refundable.

### 6. TERM AND TERMINATION

#### 6.1 Term

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

#### 6.2 Termination

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, 41 U.S.C. Chapter 71) as applicable. SAP shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Customer. The Agreement shall terminate immediately upon a final judgment obtained under the Contracts Disputes Act terminating the Agreement for Customer's material breach of any provision of the Agreement.

SAP may, in its reasonable determination, deactivate Customer's user name(s) and password(s) and/or temporarily suspend access to the Cloud Service or a portion thereof, if and to the extent SAP can substantiate that the continued use of the Cloud Service may result in harm to the Cloud Service (including the security of the systems used to provide the Cloud Service) or other SAP customers, or the rights of third parties, upon prior written notice to Customer as the circumstances permit.

#### 6.3 Effect of Expiration or Termination

Upon the effective date of termination, Customer's access to the Cloud 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 6. 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 Cloud Service, (ii) the size of Customer's instance of the Cloud Service; and (iii) the frequency and/or timing of the export and retrieval.

#### 6.4 Survival

Articles 5, 8, 9, 10, 11, 12 and 13 shall survive the expiration or termination of this Agreement.

### 7. WARRANTIES

#### 7.1. Compliance with Law

Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- (a) In the case of SAP, the operation of SAP's business as it relates to the Cloud Service; and
- (b) In the case of Customer, Customer Data and Customer's use of the Cloud Service.

## 7.2. Good Industry Practices

SAP warrants that it will provide the Cloud Service:

- (a) in substantial conformance with the Documentation; and
- (b) with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Cloud Service.

## 7.3. Remedy

7.3.1. Provided Customer (or Reseller on Customer's behalf) notifies SAP in writing with a specific description of the Cloud Service's non-conformance with the warranty in Section 7.2 without undue delay and SAP validates the existence of such non-conformance, SAP will, at its option and in accordance with Section 7.3.3:

- (a) correct or replace the non-conforming Cloud Service, or
- (b) if SAP fails to correct the non-conformance after using reasonable commercial efforts, terminate the access to the non-conforming Cloud Service.

7.3.2. The remedies in Section 7.3.1 do not apply to trivial or non-material cases of non-conformance and are Customer's sole and exclusive remedies and SAP's entire liability for breach of the warranty under Section 7.2. The written notification of any non-conformance by Customer (or Reseller on Customer's behalf) must include sufficient detail for SAP to analyze the alleged non-conformance. Customer must provide commercially reasonable assistance to SAP in analyzing and remediating any non-conformance of the Cloud Service.

7.3.3. SAP will consult with Reseller to define a reasonable amount:

- (a) by which Reseller may reduce the subscription fees for the non-conforming Cloud Services, in case Reseller has not already paid them, or
- (b) if Reseller has already paid the subscription fees for the non-conforming Cloud Services, which SAP will refund to Reseller to reflect the non-conformance (unless such refund is prohibited by Export Laws).

7.3.4. SAP may fulfill its warranty obligations with Customer or Reseller on Customer's behalf. To the extent that SAP fulfills its warranty obligations under Section 7.3.3 via Reseller, Customer will not have any claim against SAP for a breach of the warranty in Section 7.2.

## 7.4. System Availability

7.4.1. SAP warrants to maintain an average monthly system availability for the production system of the Cloud Service as defined in the applicable Service Level Agreement or Supplement ("SLA").

7.4.2. Customer's sole and exclusive remedy for SAP's breach of the SLA is the issuance of a credit as described in the SLA, whereby the service level credit will be calculated based on the non-discounted subscription fee set out in the order form agreed between SAP and Reseller. Customer must notify Reseller in writing (email permitted) within 21 business days after each calendar month in which SAP does not meet the SLA, so that Reseller can follow SAP's posted credit claim procedure. When the validity of the service credit is confirmed by SAP in writing (email permitted) to Reseller, SAP will issue the credit to Reseller to forward to Customer.

## 7.5. Warranty Exclusions

The warranties in Sections 7.2 and 7.4 will not apply if:

- (a) the Cloud Service is not used in accordance with the Agreement or Documentation;
- (b) any non-conformity is caused by Reseller, Customer, another third party, or by any product, database, content or service not provided by SAP; or
- (c) the Cloud Service was provided for no fee or is a trial license of the Cloud Service.

## 7.6. Disclaimer

Except as expressly provided in the Agreement, neither SAP nor its subcontractors 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 any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on

delivery of future functionality, public comments or advertising of SAP or product roadmaps in obtaining subscriptions for any Cloud Service.

## **8. THIRD PARTY CLAIMS**

### **8.1. Claims Brought Against Customer**

8.1.1. SAP will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' use of the Cloud Service infringes or misappropriates a patent claim, copyright or trade secret right. SAP will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement SAP enters into) with respect to these claims.

8.1.2. SAP's obligations under Section 8.1 will not apply if the claim results from:

- (a) use of the Cloud Service in conjunction with any product or service not provided by SAP;
- (b) use of the Cloud Service provided for no fee;
- (c) any use of the Cloud Service not permitted under the Agreement.

8.1.3. If a third party makes a claim or in SAP's reasonable opinion is likely to make such a claim, SAP may at its sole option and expense:

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

If these options are not reasonably available, SAP may terminate Customer's subscription to the affected Cloud Service upon written notice.

8.1.4. SAP expressly reserves the right to cease such defense of any claim(s) if the applicable Cloud Service is no longer alleged to infringe or misappropriate the third party's rights.

### **8.2. Customer Responsibilities**

Customer shall be responsible for (i) any use of the Cloud Service in violation of any applicable law or regulation; or (ii) an allegation that the Customer Data or Customer's use of the Cloud 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 Authorized Users or by the conduct of a third party using Customer's access credentials.

### **8.3. Conditions**

The obligations under this Article 8 are conditioned on (a) the 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 8 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 Cloud Service any alternative substantially equivalent non-infringing services. SAP will have the opportunity to intervene in any suit or claim filed against the 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.

### **8.4. Exclusive Remedy**

The provisions of Section 8 state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third party intellectual property rights.

## **9. LIMITATION OF LIABILITY**

### **9.1. No Liability**

9.1.1. SAP, its licensors or subcontractors will not be responsible or liable under the Agreement:

- (a) if a Cloud Service is not used in accordance with the Documentation;
- (b) if the defect or liability is caused by Reseller, Customer or any third party product or service;
- (c) if the Cloud Service is used in conjunction with any product or service not provided by SAP;
- (d) for any Customer activities not permitted under the Agreement; or
- (e) for any claims or damages arising from inherently dangerous use of any of the Cloud Services provided under or in connection with the Agreement.

### **9.2. No Cap on Liability**

Neither party's liability is capped for damages resulting from:

- (a) the parties' obligations under Sections 8.1.1 or 8.2 (excluding SAP's obligation under Section 8.1.1 where the third party claim(s) relates to Cloud Services not developed by SAP);
- (b) death or bodily injury arising from either party's gross negligence or willful misconduct; and/ or
- (c) Customer's unauthorized use of any Cloud Service or any failure by Customer to pay Reseller any fees due for the Cloud Services.

### **9.3. Liability Cap**

Except as set forth in Section 9.1, the maximum aggregate liability of either party (or its respective Affiliates or SAP's subcontractors) to the other or to any other person or entity for all events (or series of connected events) arising in any twelve (12)-month period will not exceed the annual subscription fees paid by Customer to Reseller for the applicable Cloud Service associated with the damages for that twelve (12)-month period. Any "twelve (12)-month period" commences on the Subscription Term start date or any of its yearly anniversaries. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION SHALL BE DEEMED TO IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. §§ 3729-3733.

### **9.4. Exclusion of Damages**

In no case will:

- (a) either party (or its respective Affiliates or SAP's subcontractors) be liable to the other party for any special, incidental, consequential, or indirect damages, loss of goodwill or business profits, work stoppage or for exemplary or punitive damages; and
- (b) SAP be liable for any damages caused by any Cloud Service provided for no fee.

### **9.5. Extension to group members**

Any limitations to the liability and obligations of SAP according to this Section 9 will also apply for the benefit of SAP SE and any of its Affiliates and their respective licensors.

9.6. SAP will not be obliged to provide an indemnity or damages where Customer has been fully compensated or indemnified for the same loss or damage under its agreement with Reseller.

## **10. INTELLECTUAL PROPERTY RIGHTS**

### **10.1. SAP Ownership**

10.1.1. Except for any rights expressly granted to Customer under the Agreement, SAP, SAP SE, their Affiliates or licensors own all Intellectual Property Rights in and any derivative works of:

- (a) the Cloud Service;
- (b) SAP Materials;
- (c) Documentation; and



- (d) any services, design contributions, related knowledge or processes, whether or not developed for Customer.

Customer shall execute such documentation and take such other steps as is reasonably necessary to secure SAP's or SAP SE's title over such rights.

#### 10.2. Acceptable Use Policy

With respect to the Cloud Service, Customer will not:

- (a) copy, translate, disassemble, decompile, make derivative works, or reverse-engineer the Cloud Service or SAP Materials (or attempt any of the foregoing);
- (b) enter, store, or transfer any content or data on or via the Cloud Service that is unlawful or infringes any Intellectual Property Rights;
- (c) circumvent or endanger its operation or security of the Cloud Service; or
- (d) remove SAP's copyright and authorship notices.

### 11. CONFIDENTIALITY

#### 11.1. Use of Confidential Information

##### 11.1.1. The receiving party shall:

- (a) maintain all Confidential Information of the disclosing party in strict confidence, taking steps to protect the disclosing party's Confidential Information substantially similar to those steps that the receiving party takes to protect its own Confidential Information, which shall not be less than a reasonable standard of care;
- (b) not disclose or reveal any Confidential Information of the disclosing party to any person other than its Representatives whose access is necessary to enable it to exercise its rights or perform its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in Section 11;
- (c) not use or reproduce any Confidential Information of the disclosing party for any purpose outside the scope of the Agreement; and
- (d) retain any and all confidential, internal, or proprietary notices or legends which appear on the original and on any reproductions.

##### 11.1.2. Customer shall not disclose any information about the Agreement, its terms and conditions, the pricing or any other related facts to any third party.

##### 11.1.3. Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 11.

#### 11.2. Compelled Disclosure

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

#### 11.3. Exceptions

The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

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

11.4. Destruction and Return of Confidential Information

Upon the disclosing party's request, the receiving party shall promptly destroy or return the disclosing party's Confidential Information, including copies and reproductions of it. The obligation to destroy or return Confidential Information shall not apply:

- (a) if legal proceedings related to the Confidential Information prohibit its return or destruction, until the proceedings are settled or a final judgment is rendered;
- (b) to Confidential Information held in archive or back-up systems under general systems archiving or backup policies; or
- (c) to Confidential Information the receiving party is legally entitled or required to retain.

**12. FEEDBACK**

Customer may at its sole discretion and option provide SAP with Feedback. In such instance, SAP, SAP SE and its Affiliates may in their sole discretion retain and freely use, incorporate or otherwise exploit such Feedback without restriction, compensation or attribution to the source of the Feedback.

**13. MISCELLANEOUS**

13.1. Severability

If any provision of the Agreement is held to be wholly or in part invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement. No Waiver

A waiver of any breach of the Agreement is not deemed a waiver of any other breach.

13.2. Electronic Signature

Electronic signatures that comply with applicable law are deemed original signatures.

13.3. Trade Compliance

13.3.1. SAP and Customer shall comply with Export Laws in the performance of this Agreement. SAP Confidential Information is subject to Export Laws. Customer, its Affiliates, and Authorized Users shall not directly or indirectly export, re-export, release, or transfer Confidential Information in violation of Export Laws. Customer is solely responsible for compliance with Export Laws related to Customer Data, including obtaining any required export authorizations for Customer Data. Customer shall not use the Cloud Service from Crimea/Sevastopol, Cuba, Iran, the People's Republic of Korea (North Korea), the so-called Luhansk Peoples Republic (LNR) and Donetsk Peoples Republic (DNR) or Syria.

13.3.2. Upon SAP's request, Customer shall provide information and documents to support obtaining an export authorization. Upon written notice to Customer SAP may immediately terminate Customer's subscription to the affected Cloud Service if:

- (a) the competent authority does not grant such export authorization within 18 months; or
- (b) Export Laws prohibit SAP from providing the Cloud Service to Customer.

13.4. Notices

All notices will be in writing and given when delivered to the address set forth in a Cloud Order Form. Notices from SAP to Customer may be in the form of an electronic notice to Customer's authorized representative or administrator. SAP may provide notice of modifications to the Cloud Service under Section 3.4.2 via Documentation, release notes or publication. System notifications and information from SAP relating to the

operation, hosting or support of the Cloud Service can also be provided within the Cloud Service, or made available via the SAP Support Portal.

13.5. Assignment

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."

13.6. Subcontracting

SAP may subcontract parts of the Cloud Service to third parties. SAP is responsible for breaches of the Agreement caused by its subcontractors.

13.7. Relationship of the Parties

The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

13.8. Force Majeure

In accordance with FAR 552.212-4(f), any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

13.9. Governing Law

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 shall be established by applicable Federal law. The United Nations Convention on Contracts for the International Sale of Goods and any conflicts of law principles and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement.

13.10. Waiver of Right to Jury Trial

Each party waives any right it may have to a jury trial for any claim or cause of action arising out of or in relation to the Agreement.

13.11. Entire Agreement

The 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 of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both parties, except as permitted under Section 3.4. This Agreement, however, shall not take precedence over any specific, negotiated terms contained in a Cloud Order Form. Terms and conditions of any Customer-issued purchase order shall have no force and effect, even if SAP accepts or does not otherwise reject the purchase order.