



**(SAP- CARAHSOFT 3-8-2012 FINAL)**  
**SOFTWARE LICENSE AND SUPPORT AGREEMENT**  
**General Terms and Conditions**  
**("GTC")**

1. DEFINITIONS.

1.1 "Add-on" means any development using SAP API's that adds new and independent functionality, but does not modify existing SAP functionality.

1.2 "Agreement" means these GTCs, any Order Form referencing these GTCs, and the Use Terms and Schedules referenced by these GTCs and/or such Order Forms. All such components are integral to the agreement, and collectively are referred to herein as the "Agreement".

1.3 "API" means SAP's application programming interfaces, as well as other SAP code that allow other software products to communicate with or call on SAP Software (for example, SAP Enterprise Services, BAPIs, Idocs, RFCs and ABAP or other user exits) provided under this Agreement.

1.4 "Affiliate" mean any legal entity in the Territory in which the Licensee, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights. Any such legal entity shall be considered an Affiliate for only such time as such equity interest is maintained.

1.5 "Business Partner" means a legal entity that requires access to the Software in connection with Licensee's internal business operations, such as customers, distributors and/or suppliers of Licensee.

1.6 "Confidential Information" means, with respect to SAP, all information which SAP protects against unrestricted disclosure to others, including but not limited to: (a) the Software and Documentation and other SAP Materials, including without limitation the following information regarding the Software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software; (b) the research and development or investigations of SAP; (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies; and (d) any information about or concerning any third party (which information was provided to SAP subject to an applicable confidentiality obligation to such third party). With respect to Licensee, "Confidential Information" means all information which Licensee protects against unrestricted disclosure to others and which (i) if in tangible form, Licensee clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Licensee identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary within thirty (30) calendar days of any such disclosure.

1.7 "Documentation" means SAP's documentation which is delivered or made available to Licensee with the Software under this Agreement.

1.8 "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

1.9 "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 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 Software (other than an Add-on) utilizing or incorporating any SAP Materials (defined below).

1.10 "Professional Services Schedule" means the terms and conditions governing SAP's delivery of professional services, attached hereto and made a part hereof.

1.11 "SAP Materials" means any software, programs, tools, systems, data, or other materials made available by SAP to Licensee in the course of the performance under this Agreement including, but not limited to, the Software and Documentation, as well as any information, materials or feedback provided by Licensee to SAP relating to the Software and Documentation.

1.12 "SAP Support" means SAP's then-current SAP support offering specified in the applicable Order Forms and made available to Licensee as stated in the applicable SAP Support Schedule incorporated into the Agreement (also available at [www.sap.com/company/legal/index.epx](http://www.sap.com/company/legal/index.epx)) as of the effective date of the first Software Order Form issued under these GTCs. Such SAP Support Schedule is incorporated herein by reference. For the avoidance of doubt, such SAP Support Schedule shall apply to all Order Forms issued under these GTCs unless otherwise agreed by the parties.

1.13 "Software" means (i) any and all software products licensed to Licensee under this Agreement as specified in Software Order Forms hereto, all as developed by or for SAP, SAP AG, Business Objects Software Limited and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective support agreement and (iii) any complete or partial copies of any of the foregoing.

1.14 "Software Order Form" means the order form for the Software and related SAP Support ordered by Licensee thereunder, including information on Software, SAP Support, fees, and other information necessary for the delivery of such items to Licensee. The Software Order Form does not include fees for professional services, which shall be billed under separate statements of work in accord with the Professional Services Schedule.

1.15 "Territory" means the world except for those countries prohibited by United States' export laws, and further subject to Section 12.4 of the GTC.

1.16 "Third Party Software" means (i) any and all software products and content licensed to Licensee under this Agreement as specified in Software Order Forms hereto, all as developed by companies other than SAP, SAP AG, Business Objects Software Limited and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective SAP Support Schedule and (iii) any complete or partial copies of any of the foregoing.

1.17 "Use" means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

1.18 "Use Terms" means, with regard to Software specified in a Software Order Form, metric definitions and product-specific terms described in the Agreement or applicable Order Form.

## 2. LICENSE GRANT.

### 2.1 License.

2.1.1 Subject to Licensee's compliance with all the terms and conditions of this Agreement, SAP grants to Licensee a non-exclusive, perpetual (except for subscription based or term licenses) license to Use the Software, Documentation, and other SAP Materials at specified site(s) within the Territory to run Licensee's and its Affiliates' internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations and as further set forth in the Software Order Form, unless terminated in accordance with Section 5 herein. This license does not permit Licensee (without being limited specifically to such restrictions) to: (i) use the SAP Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training) other than to Affiliates (subject to Section 2.2); (ii) lease, loan, resell, sublicense or otherwise distribute the SAP Materials, other than distribution to Affiliates (subject to Section 2.2); (iii) make any Use of or perform any acts with respect to the SAP Materials other than as expressly permitted in accordance with the terms of this Agreement; or (iv) use Software components other than those specifically identified in the Software Order Form, even if it is also technically possible for Licensee to access other Software components. Business Partners may Use the Software only through screen access and solely in conjunction with Licensee's Use and may not Use the Software to run any of Business Partners' business operations.

2.1.2 Licensee agrees to install the Software only on information technology devices (e.g., hard disks or central processing units) identified by Licensee pursuant to this Agreement and that has been previously approved by SAP in writing or otherwise officially made known to the public as appropriate for Use or interoperation with the Software (the "Designated Unit"). Licensee must hold the required licenses as stated herein and in the applicable Order Forms, for any individuals that Use the Software, including employees or agents of Affiliates and Business Partners. Use may occur by way of an interface delivered with or as a part of the Software, a Licensee or third-party interface, or another intermediary system.

2.1.3 The terms and conditions of this Agreement relative to "Software" apply to Third Party Software except as otherwise stated in the Software Use Rights Schedule, a Schedule, an Order Form, or an Amendment.

2.2 Affiliate Use. Affiliates' Use of the Software, Documentation and other SAP Materials to run their internal business operations as permitted under Section 2.1.1 is subject to the following: (i) the Affiliate agrees to be bound by the terms herein in the form of Schedule A ("Affiliate Use Agreement") attached hereto; and (ii) a breach of such Affiliate Use Agreement by Affiliate shall be considered a breach by Licensee hereunder. If Licensee has an affiliate or subsidiary with a separate agreement for SAP software licenses and/or support services with SAP AG, any SAP AG affiliate (including SAP) or any other distributor of SAP software, the Software shall not be Used to run such affiliate's or subsidiary's business operations and such affiliate or subsidiary shall not receive any support services under this Agreement even if such separate agreement has expired or is terminated, unless otherwise agreed to in writing by the parties.

2.3 Outsourcing Services. With SAP's prior written consent, Licensee may permit services providers to access the Software solely for the purpose of providing facility, implementation, systems, application management or disaster recovery services to Licensee in connection with the business of Licensee for which the Software is herein licensed provided: (i) Licensee and such services provider execute a written agreement that includes provisions requiring such services provider's compliance with the terms of this Agreement prior to such access, including without limitation non-disclosure of SAP Confidential Information; (ii) Licensee shall hold the required licenses as stated in the Use Terms for all employees of such services provider authorized to access the Software; (iii) such services provider shall be permitted to Use the Software solely to install and configure the Software in accordance with the business of Licensee as set forth herein (or in the case of a disaster recovery vendor, to provide disaster recovery services only); (iv) under no circumstances may such services provider Use the Software to operate or provide processing services to Licensee or any other party, or in connection with such services provider's own business operations; (v) Licensee shall be responsible for any additional Software, migration tools, or third party software needed to effect such transition. Upon SAP request, Licensee shall provide written confirmation to SAP that items (i)-(iv) are fulfilled.

3. VERIFICATION. SAP shall be permitted to audit (at least once annually and in accordance with SAP standard procedures, which may include on-site and/or remote audit) the usage of the SAP Materials, provided that SAP abides by applicable facility access and security requirements. Licensee shall cooperate reasonably in the conduct of such audits. In the event an audit reveals that (i) Licensee underpaid license fees and/or SAP Support fees to SAP and/or (ii) that Licensee has Used the Software in excess of the license quantities or levels stated in the Software Order Form, SAP may be entitled to to recover such underpaid fees and/or for such excess usage based on SAP List of Prices and Conditions Software and Support governing use in effect at the time of the audit. SAP reserves all rights at law with respect to both Licensee's underpayment of License fees or SAP Support fees and usage in excess of the license quantities or levels.

4. PRICE, PAYMENT, AND DELIVERY.

4.1 Fees. Licensee shall pay to the named reseller on behalf of SAP license fees for the Software and fees for SAP Support on the terms in Software Order Forms hereto. Fees for consulting services will be paid as set forth in the GSA Pricelist.

4.3 Delivery of the Software and SAP Support. SAP will deliver the Software and SAP Support by making it available for electronic download through the SAP ServiceMarketplace (<http://service.sap.com/swdc>) to Licensee. Risk of loss passes at the time of such electronic delivery. Licensee agrees not to request any physical delivery of Software or SAP Support and should it occur that any such delivery will be rejected by Licensee.

5. TERM.

5.1. Term. This Agreement and the license granted hereunder shall become effective as of the date first set forth in the first Software Order Form issued under these GTCs, and shall continue in effect thereafter unless this Agreement is terminated upon the earliest to occur of the following: (i) thirty days after Licensee gives SAP written notice of Licensee's direction to terminate this Agreement, for any reason, but only after payment of all license and SAP Support fees then due and owing; or (ii) immediately after SAP prevails on any FAR 52.233-1-related claim submitted to Licensee's Contracting Officer for Licensee's material breach of any provision of the Agreement. For the avoidance of any doubt, termination of the Agreement shall strictly apply to all licenses under the Agreement, its appendices, schedules, addenda and order documents and any partial termination of the Agreement by Licensee shall not be permitted in respect of any part of the Agreement, its appendices, schedules, addenda, order documents.

5.2 End of Term Duties. Upon any termination hereunder, Licensee and its Affiliates shall immediately cease Use of all SAP Materials and Confidential Information. Within thirty (30) days after any termination, Licensee shall irretrievably destroy or upon SAP's request deliver to SAP all copies of the SAP Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Licensee must certify to SAP in writing that it has satisfied its obligations under this Section 5.2. Licensee agrees to certify in writing to SAP that it and each of its Affiliates has performed the foregoing. Sections 3, 4, 5.2, 6, 7.2, 8, 9, 10, 12.4, 12.5, 12.6 and 12.8 shall survive such termination. In the event of any termination hereunder, Licensee shall not be entitled to any refund of any payments made by Licensee. Termination shall not relieve Licensee from its obligation to pay fees that remain unpaid.

6. INTELLECTUAL PROPERTY RIGHTS.

6.1 Reservation of Rights. The SAP Materials, and all Intellectual Property Rights embodied in the foregoing, shall be the sole and exclusive property of SAP, SAP AG (the parent company of SAP) or its or their licensors, subject to any rights expressly granted to Licensee in Section 2 and 6.3 herein. Except for the rights set forth in Section 6.3 herein, Licensee is not permitted to modify or otherwise make derivative works of the Software. Any such unauthorized works developed by Licensee, and any Intellectual Property Rights embodied therein, shall be the sole and exclusive property of SAP or SAP AG.

6.2 Protection of Rights. Licensee shall not copy, translate, disassemble, or decompile, nor create or attempt to create the source code from the object code of the Software in any manner. Reverse engineering of the Software and other SAP Materials is prohibited. Licensee is permitted to back up data in accordance with good information technology practice and for this purpose to create the necessary backup copies of the Software. Backup copies on transportable discs or other data media must be marked as backup copies and bear the same copyright and authorship notice as the original discs or other data media. Licensee must not change or remove SAP's copyright and authorship notices.

6.3 Modifications/Add-ons.

6.3.1 Conditioned on Licensee's compliance with the terms and conditions of this Agreement, Licensee may make Modifications and/or Add-ons to the Software in furtherance of its permitted Use under this Agreement, and shall be permitted to use Modifications and Add-ons with the Software in accordance with the License grant to the Software set forth in Section 2.1.1(a) herein. Licensee shall comply with SAP's registration procedure prior to making Modifications or Add-ons. All Modifications and all rights associated therewith shall be the exclusive property of SAP and SAP AG. All Add-ons developed by SAP (either independently or jointly with Licensee) and all rights associated therewith shall be the exclusive property of SAP and SAP AG. Licensee agrees to execute those documents reasonably necessary to secure SAP's rights in the foregoing. All Add-ons developed by or on behalf of Licensee without SAP's participation ("Licensee Add-on"), and all rights associated therewith, shall be the exclusive property of Licensee subject to SAP's rights in and to the Software; provided, Licensee shall not commercialize, market, distribute, license, sublicense, transfer, assign or otherwise alienate any such Licensee Add-ons. SAP retains the right to independently develop its own Modifications or Add-ons to the Software, and Licensee agrees not to take any action that would limit SAP's sale, assignment, licensing or use of its own Software or Modifications or Add-ons thereto.

6.3.2 Any Modification developed by or on behalf of Licensee without SAP's participation or Licensee Add-on must not (and subject to other limitations set forth herein): enable the bypassing or circumventing any of the restrictions set forth in this Agreement and/or provide Licensee with access to the Software to which Licensee is not directly licensed; nor permit mass data extraction from

Software to any non-SAP software, including use, modification saving or other processing of data in the non-SAP software; nor unreasonably impair, degrade or reduce the performance or security of the Software; nor render or provide any information concerning SAP software license terms, Software, or any other information related to SAP products.

6.3.3 Licensee covenants, on behalf of itself and its successors and assigns, not to assert against SAP or its affiliated companies, or their resellers, distributors, suppliers, commercial partners and customers, any rights in any Modifications developed by or on behalf of Licensee without SAP participation or Licensee Add-ons, or any other functionality of the SAP Software accessed by such Modification developed by or on behalf of Licensee without SAP participation or Licensee Add-on.

## 7. PERFORMANCE WARRANTY.

7.1 Warranty. SAP warrants that the Software will substantially conform to the specifications contained in the Documentation for six months following delivery. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by a Modification or Add-on (other than a Modification or Add-on made by SAP and which is provided through SAP Support or under warranty), Licensee or third-party software. SAP does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Licensee's business requirements. Provided Licensee notifies SAP in writing with a specific description of the Software's nonconformance within the warranty period and SAP validates the existence of such nonconformance, SAP will, at its option: a) repair or replace the nonconforming Software, or b) refund the license fees paid for the applicable nonconforming Software in exchange for a return of such nonconforming Software. This is Licensee's sole and exclusive remedy under this warranty.

7.2 Express Disclaimer. SAP AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED. This disclaimer does not apply to any warranties expressly provided in a SAP contract with the U.S. Government.

## 8. INDEMNIFICATION.

8.1 Infringement and Defense of Licensee. SAP shall defend Licensee against claims brought against Licensee in the Territory by any third party alleging that Licensee's Use of the Software, 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, and SAP will pay damages finally awarded against Licensee (or the amount of any settlement SAP enters into) with respect to such claims. This obligation of SAP shall not apply if the alleged infringement or misappropriation results from Use of the Software in conjunction with any other software, an apparatus other than a Designated Unit, failure to use an update promptly provided by SAP if such infringement or misappropriation could have been avoided by use of the update, or unlicensed activities. This obligation of SAP also shall not apply if Licensee fails to timely notify SAP in writing of any such claim and fails to cooperate in the defense and any settlement of any such claim. Licensee shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to SAP. SAP expressly reserves the right to cease such defense of any claim(s) in the event the Software is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. SAP may settle or mitigate damages arising from any claim or potential claim, by substituting alternative substantially equivalent non-infringing programs and supporting documentation for the Software. Licensee shall not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software that is prejudicial to SAP's rights.

8.2 THE PROVISIONS OF THIS SECTION 8 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF SAP AND ITS LICENSORS TO LICENSEE, AND IS LICENSEE'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. The provisions of this Section 8 shall not impair nor prejudice the rights of the United States in accordance with 28 U.S.C. 1498.

## 9. LIMITATIONS OF LIABILITY.

9.1 Not Responsible. SAP and its licensors will not be responsible under this Agreement (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect or liability is caused by Licensee, a Modification or Add-on (other than a Modification or Add-on made by SAP which is provided through SAP Support or under warranty), or third-party software. SAP AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM INHERENTLY DANGEROUS USE OF THE SOFTWARE AND/OR THIRD-PARTY SOFTWARE LICENSED HEREUNDER.

9.2 Exclusion of Damages: Limitation of Liability. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION OR DEATH OR PERSONAL INJURY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL SAP, ITS LICENSORS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE PAID LICENSE FEES FOR THE SOFTWARE DIRECTLY CAUSING THE DAMAGES OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ATTORNEYS' FEES, COURT COSTS, INTEREST OR EXEMPLARY OR PUNITIVE DAMAGES. The provisions of this Agreement allocate the risks between SAP and Licensee. The license fees reflect this allocation of risk and the limitations of liability herein.

9.3 The provisions of this Section 9 shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this contract under any federal fraud statute, including the False Claims Act (31 USC 3729 to 3733).

## 10. CONFIDENTIALITY.

10.1. Use of Confidential Information. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other 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 its bona fide individuals whose access is necessary to enable it to exercise its rights hereunder. 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.

10.2. Exceptions. 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; (d) the release is required under applicable law or Court order; or (e) the disclosing party agrees in writing is free of such restrictions.

10.3. Publicity. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that SAP may use Licensee's name in customer listings.

11. ASSIGNMENT. Neither party may, without the other party's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the 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.

## 12. GENERAL PROVISIONS.

12.1. Severability. 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. No Waiver. 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. Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

12.4. Regulatory Matters. The Software, Documentation and SAP Materials are subject to the export control laws of various countries, including without limit the laws of the United States and Germany. Licensee agrees that it will not submit the Software, 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 Software, Documentation and SAP Materials to countries, persons or entities prohibited by such laws. Licensee shall also be responsible for complying with all applicable governmental regulations of the country where Licensee is registered, and any foreign countries with respect to the use of the Software, Documentation or other SAP Materials by Licensee and/or its Affiliates.

12.5. Governing Law; Limitations Period. This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of the US federal government without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and United States law, rules, and regulations, United States law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply. Licensee 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 Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

12.6. Notices. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of SAP and Licensee at the addresses first set forth in any Software Order Form. Where in this section 12.6 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.

12.7. Force Majeure. 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. Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Licensee with respect to SAP software license and support, and all previous representations, discussions, and writings 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 shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to SAP. This Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear in any clickwrap end user agreement included in the Software. Signatures sent by electronic means (facsimile or scanned and sent via e-mail) shall be deemed original signatures. This Agreement does not create any partnership, joint venture or principal and agent relationship.

12.9 Hierarchy. The following order of precedence shall be applied in the event of conflict or inconsistency between provisions of the components of this Agreement, exclusive of the U.S. Government contract to which it may be included: (i) the Software Order Form; (ii) the Schedules; (iii) the Use Terms; and (iv) the GTC.

**Schedule A to the GTC  
"Affiliate Use Agreement"**

Pursuant to Section 2.2 of the GTCs, the below must be executed by an Affiliate prior to such Affiliate's Use of the Software Documentation and other SAP Materials.

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**AFFILIATE USE AGREEMENT**

This Affiliate Use Agreement is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_ between SAP \_\_\_\_\_, Inc., a Delaware Corporation, with offices at 3999 West Chester Pike, Newtown Square, PA 19073 ("SAP") and \_\_\_\_\_ a \_\_\_\_\_ corporation, with offices at \_\_\_\_\_ ("Affiliate").

1. Affiliate is entitled to have Named Users Use the Software on the Designated Unit(s) identified in the Software License and Support Agreement between SAP \_\_\_\_\_, Inc ("SAP"), and \_\_\_\_\_ ("Licensee") effective \_\_\_\_\_, 20\_\_ ("Agreement").
2. Affiliate agrees to abide by and be bound by all of the terms and conditions of the Agreement applicable to Affiliate and applicable to Licensee. SAP may directly enforce all such terms and conditions against it directly.
3. Affiliate agrees that its right to Use SAP Software and receive SAP Support services shall be governed solely by the Agreement. In the event that the Agreement is terminated, this Affiliate Use Agreement is terminated or if Affiliate ceases to meet the definition of "Affiliate" therein, Affiliate agrees that all of its rights to the Software will cease effective as of the termination date.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Affiliate Use Agreement.

SAP \_\_\_\_\_, Inc.  
(SAP)

\_\_\_\_\_  
(Affiliate)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Schedule B to the GTC**  
**"Professional Services Schedule"**

The parties agree that this Schedule is hereby annexed to and made a part of the GTC. In each instance in which provisions of this Schedule contradict or are inconsistent with the provisions of the GTC, the provisions of this Schedule shall prevail and govern.

WHEREAS, Licensee licensed from SAP the right to Use SAP Software pursuant to the Agreement and SAP provides, through its employees, affiliates, and third party contractors ("Consultants"), consulting and professional services ("Services") including support of installation and implementation of the licensed Software in the United States.

1. Services. Upon request by Licensee, SAP will provide a Consultant(s) to perform, at Licensee's direction, consulting and professional services including support of installation and implementation of the applicable SAP Software ("Services"). Any Statement(s) of Work ("SOW") more fully describing the project assumptions, scope, duration and fees for the Services shall reference this Schedule. All Services of the SAP Consultant(s) will be coordinated with the designated Licensee representative. Licensee is responsible for making the necessary internal arrangements for the carrying out of the Services on a non-interference basis.
2. Satisfaction with Performance. If at any time Licensee or SAP is dissatisfied with the material performance of an assigned Consultant or a Licensee project team member, the dissatisfied party shall immediately report such dissatisfaction to the other party in writing and may request a replacement. The other party shall use its reasonable discretion in accomplishing any such change.
3. Compensation of SAP. All Services will be provided by SAP on a time and expense basis at SAP's then current rates, unless otherwise agreed by the parties in a SOW.
- 4.
5. Work Product. Unless otherwise agreed to in writing by the parties in a SOW, SAP shall have the sole and exclusive right, title and ownership to any and all ideas, concepts, or other intellectual property rights related in any way to the techniques, knowledge or processes of the SAP Services and deliverables, whether or not developed for Licensee.
6. Warranty. SAP warrants that its Services shall be performed consistent with generally accepted industry standards. SAP MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN CONNECTION WITH THIS SCHEDULE AND THE SERVICES PROVIDED HEREUNDER.
7. Limitation of Liability. WITH RESPECT TO SERVICES, ANYTHING TO THE CONTRARY NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF THE PROPRIETARY INFORMATION AND SAP'S RIGHT TO COLLECT UNPAID FEES, UNDER NO CIRCUMSTANCES SHALL SAP, ITS CONSULTANTS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID FOR THE APPLICABLE SERVICES HEREUNDER OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES. The provisions of the Schedule allocate the risks between SAP and Licensee. The License Fees reflect this allocation of risk and the limitations of liability herein.
8. Termination. The terms of this Schedule shall be effective as of the Effective Date of the Agreement and shall remain in effect until terminated as set forth in Section 5 of the GTC. Licensee may be liable for payment to SAP for all Services provided prior to the effective date of any such termination, including any expenses incurred pursuant to the provision of such Services, in accord with the applicable SOW.
9. General Provisions.
  - 9.1 SAP may subcontract all or part of the Services to be performed to a qualified third party.
  - 9.2 With respect to the Services provided by SAP under this Schedule and any SOW hereto, the relationship of SAP and Licensee is that of an independent contractor.
  - 9.3 This Schedule, including any applicable SOWs, constitutes the entire agreement between the parties with respect to the subject matter hereof, namely Services, and supersedes all prior agreements between the parties, whether written or oral, relating to the same subject matter. In the event of any inconsistencies between this Schedule and a SOW, the SOW shall take precedence over the Schedule. Any purchase order or other document issued by Licensee is for administrative convenience only.
10. Survival. Sections 5 and 7 above shall survive any termination of this Schedule.



## 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.