



## General Terms and Conditions for SAP Cloud Services (for 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 Service Schedule 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 "Authorized User" means Customer's and its Affiliates' employees, agents, contractors, consultants, suppliers or other individuals who are authorized by Customer to use the Service.
- 1.4 "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.
- 1.5 "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, pricing and availability. In addition to the foregoing, Confidential Information of either SAP or Customer (the party disclosing such information being the "Disclosing Party") includes 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 under the Agreement.
- 1.6 "Consulting Services" means implementation, configuration, training, and other similar services related to the Service as set forth in the Service Schedule as Consulting Services.
- 1.7 "Customer Data" means any content, materials, data and information that Customer or its Authorized Users enter into the Service.
- 1.8 "Documentation" means SAP's then-current technical and/or 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 "Service Schedule" means the SAP cloud service schedule submitted by the SAP Reseller to SAP for the applicable Service that is signed by Customer and in which Customer agrees to be bound by the terms and conditions of the Agreement for the Service.
- 1.10 "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 Supplemental Terms or another supplement to the 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.

All capitalized terms used in these General Terms and Conditions that are not defined in this Article 1 shall have the meaning ascribed to them in the Service Schedule.

### Article 2 Usage Rights

- 2.1 Subject to subscription fees paid by SAP Reseller to SAP, SAP shall make the Service available to Customer in accordance with, and during the term stated, in the Order Form to permit Authorized 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 the 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 Authorized 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 Authorized Users as if they were the acts and omissions of Customer. Authorized 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 Authorized User's access rights may be transferred from one individual to another if the original Authorized 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 the Agreement. Except for the limited rights expressly granted herein, the 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 the Agreement are reserved by SAP and its licensors.
- 2.4 When using the Service, Customer shall not, and shall ensure that its Authorized 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 Customer is responsible for monitoring its use of the Service. Customer shall promptly report to SAP Reseller any actual use in excess of the number of Authorized 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 and Customer shall pay fees for any usage in excess of the applicable usage metrics. Customer agrees that such fees shall accrue from the date the excess use began. Subject to Article 10 of these General Terms and Conditions, 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. SAP may provide optional new features for the Service through its regular upgrades, which Customer may use, at its sole discretion, subject to the then-current applicable Supplemental Terms. Consulting Services required to implement and configure optional features are not included in the subscription fees.
- 2.8 If Customer is granted access under the 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 the 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 referenced in the applicable Service Schedule.
- 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 notifying SAP Reseller in writing within ten (10) business days after the end of the relevant period. Service levels for specific Service offerings that differ from the foregoing shall be set forth in the applicable Service Schedule.

### **Article 4 Customer Responsibilities and Obligations**

- 4.1 Subject to Article 10 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 the Service Schedule or the Supplemental Terms.
- 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 Customer. 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 Authorized Users use of the Service.

### **Article 5 Reseller Relationship, Prices and Payment**

- 5.1 Customer acknowledges and agrees that the SAP Reseller through which Customer has arranged for the procurement of the Services or from which Customer receives any services related to the Services is not an agent of SAP. The SAP Reseller is an independent company, person, or entity with no authority to bind SAP or to make representations or warranties on behalf of SAP. SAP makes no representations or warranties as to such authorized distributor or reseller, or any other third party, related to the performance of the products or services of such entities, and fully disclaims any such warranties in accordance with Article 7.
- 5.2 Customer expressly acknowledges and agrees that SAP is entitled to rely on written information from SAP Reseller in making any determination as to suspension of the Services or termination of the Agreement relative to Article 6.2, and SAP shall have no liability to Customer for any actions thereunder based on SAP's reasonable belief in the accuracy or reliability of such information.
- 5.3 Customer shall pay SAP Reseller (or successors in interest or assignee(s) of SAP Reseller) fees and any applicable taxes for the Services ordered from SAP Reseller, pursuant to the payment agreement between SAP Reseller and Customer. Provision of the Services is contingent upon SAP's receipt of payment for the Service from the SAP Reseller.
- 5.4 In the event of termination of the reseller agreement between SAP and SAP Reseller, or if for any other reason SAP Reseller is no longer entitled to receive fees from Customer for the Services, SAP may, at its option and upon notice to Customer, require continued payment of fees for the Services to either another SAP reseller or to SAP. Failure to pay such fees shall be considered a material breach of the Agreement.

### **Article 6 Term, Termination and Termination Support**

- 6.1 The term of the Agreement begins on the Effective Date set forth in the Order Form and shall continue in effect as described in the Order Form. Termination of an individual Order Form shall leave other Order Forms unaffected.
- 6.2 Notwithstanding the foregoing, a party may terminate the Agreement upon thirty (30) days written notice to the other party of such other party's material breach of any provision of the Agreement, unless the breaching party has cured such breach during such thirty (30) day period.. Except for termination in accordance with this Article 6.2 by Customer, termination will not relieve Customer from the obligation to pay fees that remain unpaid. For avoidance of doubt, Customer's failure to pay fees due for the Services (whether to SAP Reseller, successors in interest or assignee(s) of SAP Reseller) shall be considered a material breach of the Agreement.
- 6.3 Notwithstanding SAP's right to terminate as set forth in Article 6.2 above, SAP may deactivate Customer's user name(s) and password(s) and/or temporarily suspend access to the Service or a portion thereof: (i) if and to the extent SAP reasonably determines and 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), other SAP customers or the rights of third parties, upon prior written notice to Customer as the circumstances permit; (ii) thirty (30) days after SAP or SAP Reseller gives Customer notice of Customer's breach of any obligations under separate agreement with the SAP Reseller, including non-payment of any fees; or (iii) if SAP Reseller does not pay SAP the fees due for the Service within thirty (30) days.

- 6.4 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 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 Service, (ii) the size of Customer's instance of the Service; and (iii) the frequency and/or timing of the export and retrieval.
- 6.5 **Customer Data Access.** If Customer requires access to a Cloud Service to export and retrieve its Customer Data after the effective date of termination or expiration, Customer may extend the Subscription Term for up to ninety (90) days by notifying the SAP Reseller, who must then notify SAP within (30) days of termination or expiration of Customer's subscription and pay SAP additional subscription fees for such extension, if applicable.. Subject to the foregoing, SAP shall have no obligation to maintain or provide any Customer Data. At Customer's request upon termination or expiration of the Order Form, SAP shall, within a reasonable time period, remove, delete, purge, overwrite or otherwise render inaccessible all Customer Data still remaining on the servers used to host the Service (excluding any Customer Data in the Ariba Network) to the extent possible based on the then-current technology available within the Service, unless and to the extent applicable laws and regulations require further retention of such data.
- 6.5 Articles 5, 8, 9, 10, and 11 shall survive the expiration or termination of the Agreement.

#### **Article 7 Warranties by SAP**

- 7.1 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 the 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 7.2, 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
- 7.2 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 Service Schedule, statement of work or deployment descriptions, as applicable. Subject to Article 7.3, Customer's sole and exclusive remedy from SAP, and SAP's entire liability to Customer 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, SAP will refund to SAP Reseller the fees paid to SAP for such deficient Consulting Services.
- 7.3 Customer shall provide SAP with prompt written notice of any non-conformity described in this Article 7 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.
- 7.4 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 8 Third Party Claims**

- 8.1 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 the 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 not provided by SAP or to free (no fee) or trial licenses of the Service.
- 8.2 In the event a claim under Article 8.1 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 the 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 the Agreement and SAP shall refund to SAP Reseller all prepaid fees for the remainder of its term after the date of termination.
- 8.3 Customer shall defend (at its sole expense) SAP and its Affiliates and licensors against claims brought against SAP by any third party arising from or related to (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 the Agreement violates, infringes or misappropriates the rights of a third party. Customer will pay damages finally awarded against SAP (or the amount of any settlement Customer enters into) with respect to such claims, and will pay reasonable attorney's fees in connection with such defense. 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.
- 8.4 The obligations under this Article 8 are conditioned on (a) the party against whom a third party claim is brought timely notifying the other party in writing of any such claim, provided however that a party's failure to provide or delay in providing such notice shall not relieve a party of its obligations under this 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 fully control the defense of such claim; and (c) the party against whom a third party claim is brought reasonably cooperating in the defense of such claim. Any settlement of any claim shall not include a financial or specific performance obligation on or admission of liability by the party against whom the claim is brought, provided however that SAP may settle any claim on a basis requiring SAP to substitute for the Service any alternative substantially equivalent non-infringing services. The party against whom a third party claim is brought may appear, at its own expense, through counsel reasonably acceptable to the party obligated to defend claims hereunder. Neither party shall undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation, that is prejudicial to the other party's rights.
- 8.5 THE PROVISIONS OF THIS ARTICLE 8 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 9 Limitation of Liability**

- 9.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION 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: (A) FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE LESSER OF THE FOLLOWING: (i) 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 OR (ii) THE FEES FOR THE APPLICABLE SERVICE IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE INCIDENT GIVING RISE TO LIABILITY ACCORDING TO ANY APPLICABLE SAP PRICE LIST IN EFFECT AS OF THE EFFECTIVE DATE OF THE APPLICABLE SERVICE SCHEDULE; AND (B) FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE OR FOR EXEMPLARY OR PUNITIVE DAMAGES.
- 9.2 The provisions of the 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 10 Confidentiality**

- 10.1 Confidential Information shall not be used or reproduced in any form except as required to accomplish the intent of the 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 the 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.
- 10.2 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 the 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.
- 10.3 Customer shall not disclose the terms and conditions of the Agreement or the pricing contained herein to any third party. 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 Customer agrees that SAP may use Customer's name in customer listings or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHIRE participation). SAP will make reasonable efforts to avoid having the reference activities unreasonably interfere with Customer's business. Customer agrees that SAP may share information on Customer with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Customer employee contact information with SAP as needed.
- 10.4 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 the 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 sublicensees' 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 the 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 11 Miscellaneous**

- 11.1 It is the intent of the parties that in case any one or more of the provisions contained in the Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of the Agreement, and the Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.
- 11.2 If either party should waive any breach of any provision of the Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.
- 11.3 The Service Schedule may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Service Schedule. 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.
- 11.4 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 Authorized Users.
- 11.5 The Agreement and any claims arising out of or relating to the Agreement and its subject matter shall be governed by and construed under the laws of Commonwealth of Pennsylvania, without reference to its conflicts of law principles. All disputes hereunder shall be subject to the exclusive jurisdiction of the state or federal courts located in Philadelphia, Pennsylvania ("Selected Venue") and each party hereby irrevocably and unconditionally consents to personal jurisdiction of the Selected Venue. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the 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 the 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).

- 11.6 All notices pursuant to the Agreement shall be in writing and shall be deemed duly given when delivered (certified or registered mail or by an overnight courier service with delivery receipt) to the respective executive offices of SAP or Customer at the address first set forth in any Service Schedule 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 Service Schedule or as otherwise agreed by the parties. Where in this Article 11.6 or elsewhere in the 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.
- 11.7 Any delay or nonperformance of any provision of the 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 the 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.
- 11.8 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 the 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 one party to the other, and any additional terms and conditions in any such purchase order or other document shall have no force and effect, notwithstanding the non-furnishing party's acceptance or execution of the purchase order or other document.
- 11.9 Customer may not, without SAP's prior written consent, assign, delegate, pledge or otherwise transfer the Agreement, or any of its rights or obligations under the 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. SAP may assign the Agreement to any of its Affiliates. SAP may in its sole discretion sub-contract parts of the Service to third-parties.
- 11.10 The following order of precedence shall be applied in the event of conflict or inconsistency between the components of the Agreement: (i) the Service Schedule; (ii) the schedules, Supplemental Terms or other supplements, exhibits and appendices included with or referenced by the Service Schedule; (iii) and these General Terms and Conditions.
- 11.11 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 the Agreement.