

**Order Form  
for SAP Cloud Services  
SAP Reference No. 123456**

**Between** **SAP America, Inc.**  
**3999 West Chester Pike**  
**Newtown Square, PA 19073**  
**("SAP")**

**And** **Sample Co.**  
**123 First Street**  
**Anywhere, DE 19072**  
**("Customer")**

**1. ORDER FORM AND TABLE OF AGREEMENT**

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

Offer Expiration Date: June 15, 2019

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

<b>Agreement</b>	<b>Location</b>
<b>Order Form</b>	
Schedule A of this Order Form: <b>Cloud Service Supplemental Terms and Conditions ("Supplement");</b>	<a href="http://www.sap.com/agreements-cloud-supplement">http://www.sap.com/agreements-cloud-supplement</a>
Schedule B of this Order Form: <b>Support Policy for SAP Cloud Services</b>	<a href="http://www.sap.com/agreements-cloud-support">http://www.sap.com/agreements-cloud-support</a>
Schedule C of this Order Form: <b>Service Level Agreement for SAP Cloud Services ("SLA")</b>	<a href="http://www.sap.com/agreements-cloud-service-level-agreement">http://www.sap.com/agreements-cloud-service-level-agreement</a>
Schedule D of this Order Form: <b>Data Processing Agreement for SAP Cloud Services</b> Schedule D will serve as a commissioned written data processing agreement.	<a href="http://www.sap.com/agreements-cloud-data-processing">http://www.sap.com/agreements-cloud-data-processing</a>
Schedule E of this Order Form: <b>General Terms and Conditions for SAP Cloud Services ("GTC")</b>	<a href="https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?search=General%20Terms%20and%20Conditions">https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?search=General%20Terms%20and%20Conditions</a>

Customer has had the opportunity to review the GTC and the incorporated documents prior to executing this Order Form. SAP recommends that Customer prints copies of these documents for Customer's records. All defined terms in the GTC used in this Order Form have the meaning stated in the GTC. All references in the Supplements to "Service" mean "Cloud Service", and to "Named Users" mean "Authorized Users."

## 2. CLOUD SERVICE

### 2.1 Cloud Service Order.

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

Period 1 From 06/30/2019 To 06/29/2020

SAP Cloud Service	Usage Metric	Usage Metric Limitation **	Annual Fee	Product Start Date	Product End Date	Total Fee in USD
ARIBA BUYER ENABLEMENT SERVICES	Employees	5,000	107,120.00	06/30/2019	06/29/2020	107,120.00

Total Fee in USD	107,120.00
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(\*) plus applicable taxes

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

### 2.2 Subscription Term

- (a) Customer's initial Subscription Term will begin on the start date and will be effective until the end date, unless Customer is otherwise notified by SAP's provisioning team.
- (b) Unless the Supplement states otherwise, the initial Subscription Term and any renewals and extensions will automatically renew for terms equal in length to the immediately preceding term (if that term is thirty-six months or less) or for one year (if that term is longer than thirty-six months). Auto-renewal will not occur if Customer notifies SAP of its intention not to renew at least one month in advance of the expiration of the current term, or SAP notifies Customer of its intention not to renew at least six months prior to the expiration of the current term.

### 2.3 Excess Use.

Customer's use of the Cloud Service is subject to the Agreement, including the Usage Metrics and their volume stated in Section 2. Any use of the Cloud Service that exceeds this scope will be subject to additional fees. Fees accrue from the date the excess use began. Customer will execute an additional Order Form to document subscriptions for additional Usage Metrics and their volume. SAP may invoice and Customer will pay for excess use based on SAP's prices on the date the excess use began.

## 3. PAYMENT AND INVOICES

### 3.1 Fees and Invoicing.

Unless the Supplement states otherwise, fees for the Cloud Service(s) will be invoiced by SAP and paid by Customer annually in advance. SAP may provide invoices to an email address provided by Customer. Fees for non-recurring services will be invoiced by SAP on a one-time basis and paid by Customer upon commencement of the Subscription Term. Except for fee increases applied for Excess Use or as described below, Cloud Service(s) fees for renewal terms will be equal to the fees for the immediately preceding term for the same Cloud Service, Usage Metrics and volume. Customer will reimburse SAP for all pre-approved (by Customer) and appropriately documented travel and related expenses incurred by SAP in performing any support for the Cloud Service.

### 3.2 Fee Increases.

SAP may increase fees at the beginning of each renewal term. This increase will not exceed 3.3%. Not raising fees is not a waiver of SAP's right to do so. SAP may increase fees if Customer elects to reduce the Cloud Service, Usage Metrics or volume for any renewal term.

### 3.3 Payment.

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

### 4. AUTHORIZED ADMINISTRATORS

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

**Main Contact:** Claire CIO  
CIO@SampleCo.com

The Main Contact is the Customer contact for onboarding, who receives the confirmation that the order has been processed (which includes the confirmed Start Date). If current contact is inaccurate, please correct here:

Main Contact corrected name: \_\_\_\_\_  
Main Contact corrected email: \_\_\_\_\_

**Technical Administrator:** Anna SysAdmin  
Anna@SampleCo.com

The Technical Administrator is the main contact for technical and system related communications. If current contact is inaccurate, please correct here:

Technical Administrator corrected name: \_\_\_\_\_  
Technical Administrator corrected email: \_\_\_\_\_

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

**Customer Financial Contact name:** Alex Accountant  
**Customer Financial Contact email:** Alex@SampleCo.com

### 5. CUSTOMER LOCATION

Customer has provided the following primary access location:

**Sample Co.**  
**123 First Street**  
**Anywhere, DE 19072**

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

Accepted By:

**Sample Co.**

(Customer)

Not for Signature

Name:

Title:

Date:

## **SAP Ariba and Fieldglass Cloud Services Supplemental Terms and Conditions**

This Supplement is part of an Agreement for SAP products and services between SAP and Customer and applies to the SAP Ariba and Fieldglass Cloud Services for which Customer is subscribed as set forth herein (the “**Cloud Service**”). Capitalized terms used in this Supplement but not defined herein have the meanings assigned to them in the applicable Order Form or Documentation. Unless an alternate Supplemental Terms and Conditions document is referenced in the applicable Cloud Service Order Form, this Supplement applies to all SAP Ariba and Fieldglass Cloud Services as set forth herein whether or not referred to specifically in this Supplement.

### **PART 1 – SUPPLEMENTAL TERMS APPLICABLE TO Ariba and Fieldglass Cloud Services**

#### **1. CONSULTING SERVICES**

Customer’s initial subscription to each Cloud Service includes a standard Consulting Service package for the initial deployment of the Cloud Service, as applicable<sup>1</sup>. Such Consulting Service packages are not included with any additional, replacement, or renewal order of a Cloud Service to which Customer is already subscribed unless otherwise provided in the Order Form.

Standard Consulting Services for the initial deployment of applicable Cloud Services subscribed to in an Order Form between SAP and Customer referencing this Supplement are described in the deployment descriptions made available online by SAP, or as provided by SAP upon request. SAP provides these deployment services for the period stated in the deployment descriptions or applicable exhibit(s) or, if no period is stated, then for the initial Subscription Term. Any included deployment services, or other Consulting Services included in a Cloud Service Order Form between SAP and Customer referencing this Supplement, shall be deemed part of the Cloud Service for the purposes of the Cloud Service conformity and skill warranty in the GTC. The standard Consulting Service package included in Customer’s initial subscription to each applicable Cloud Services expressly excludes any custom integration services or other custom development effort. Customer may purchase additional Consulting Services beyond the scope identified in the deployment description(s) for the initial deployment subscribed to Cloud Services by entering into a separate mutually agreeable written services order form or statement of work with SAP. Customer will reimburse SAP for all appropriately documented travel and related expenses incurred by SAP in performing any Consulting Services.

#### **2. DATA**

Customer may not, and shall ensure its Authorized Users do not, submit the following types of information to the Cloud Service or solicit this information from trading partners: (i) non-public government identification numbers or financial account numbers associated with individual persons (e.g. U.S. Social Security numbers, national insurance numbers, driver’s license numbers, or personal credit card or banking account numbers), (ii) medical records or health care claim information associated with individuals, including claims for payment or reimbursement for any type of medical care for an individual, (iii) information regulated under the International Traffic in Arms Regulations, (iv) without the express written consent of SAP, technical data restricted under U.S. or German law for export purposes, and (v) data designated as “Sensitive” or “Special Category” or the like requiring extra protective measures under the applicable Data Protection Law (as defined in the Data Processing Agreement). All Customer Data shall be considered Customer Confidential Information, provided, nothing in this Agreement shall restrict SAP from freely using, reproducing, sharing, incorporating, exploiting and/or otherwise commercializing any feedback shared by Customer in any form for any purpose.

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<sup>1</sup> The following Cloud Service subscriptions do not include a standard Consulting Service package for the initial deployment of the Cloud Service: SAP Ariba Buying, additional site add on; SAP Ariba Buying and Invoicing, additional site add on; Buyer Membership (open adapter); Invoice Conversion Services; Ariba Network, tax invoicing for Mexico; SAP Ariba Strategic Sourcing, supplemental site add-on; SAP Ariba Procurement, supplemental site add-on; SAP Signature Management by DocuSign; SAP Signature Management by DocuSign, Fieldglass; SAP Fieldglass Contingent Workforce Management, partner edition; SAP Fieldglass Services Procurement, partner edition; SAP Fieldglass Contingent Workforce Management, partner edition (PAYG); SAP Fieldglass Services Procurement, partner edition (PAYG)

### 3. AGGREGATED USAGE

Where any Cloud Service is identified or marked in the Order Form as an 'aggregated' Usage Metric Limit over the Subscription Term (or 2 or more years thereof), SAP has agreed to an aggregated Usage Metric for the particular Cloud Service over the initial Subscription Term only. There is no discount, reduction, refund or credit if the Usage Metric Limit is not utilized in any year or over the Subscription Term. For any 12 month renewal, the applicable Usage Metric Limit for the Cloud Service shall be annualized (subject always to excess use as provided in the Order Form) for the Renewal Term, unless otherwise agreed in a signed writing with SAP. The Annualized Usage Metric Limits may be set out in the Order Form as a reference.

### 4. LIMITED AVAILABILITY OF SELECT FEATURES

From time to time, subject to the requirements presented by SAP at the time, Customer may elect to participate in a limited availability program enabling use of a new feature for the Cloud Service prior to general production availability. SAP may elect at its own discretion to remove any limited availability feature from use and/or not release it into the Cloud Service.

## PART 2 – SUPPLEMENTAL TERMS APPLICABLE TO FIELDGLASS CLOUD SERVICES ONLY

### 1. USAGE METRICS

**Usage Metrics for the SAP Fieldglass Cloud Services, to the extent referenced in the Order Form, are defined as follows:**

- 1.1. **“Spend”** means the total monetary amount processed by the Cloud Service.
- 1.2. **“Monitored Individuals”** means unique individuals being managed by the Cloud Service or who use the reporting console of the Cloud Service. This metric may also be referred to as “Worker Profile”. For purposes of clarity, this Usage Metric is a monthly allotment, unless otherwise specified in the Order Form.

### 2. CLOUD SERVICE DESCRIPTION

Customer has subscribed to one or more of the Cloud Services described below in an Order Form referencing this Supplement.

- 2.1. **SAP Fieldglass Contingent Workforce Management.** SAP Fieldglass Contingent Workforce Management provides functionality for the procurement, engagement, and payment of contingent labor (e.g. job postings, approvals, candidate submissions, onboarding, off-boarding, invoices, and worker evaluations).
- 2.2. **SAP Fieldglass Assignment Management.** SAP Fieldglass Assignment Management provide functionality to track external resources for assignment to one or multiple projects, collect and process a resource's time, and allocate time to cost objects to support invoicing.
- 2.3. **SAP Fieldglass Services Procurement.** SAP Fieldglass Services Procurement provides functionality for the procurement, engagement, and payment of services providers (e.g. project requisitions, vendor responses, on-boarding, off-boarding, invoicing, and project evaluation).
- 2.4. **SAP Fieldglass Worker Profile Management.** SAP Fieldglass Worker Profile Management allows Customers to track and manage all non-traditional workers who have no time sheet activity and are not otherwise tied to a job posting or SOW in the Cloud Service for headcount, reporting and onboarding/offboarding tasks.
- 2.5. **SAP Fieldglass SOW Worker and Documentation Tracking.** SAP Fieldglass SOW Worker and Documentation Tracking allows Customers to track and manage all nontraditional workers who have no time sheet activity and are not otherwise tied to a job posting or SOW in the Cloud Service for headcount, reporting and onboarding/offboarding and document tracking. It does not provide customers with the ability to track the financial management of services procurement such deliverables, fees, time sheets, expense sheets, or invoices.

### 3. SUPPORT

Support for the Cloud Service is provided in accordance with the Support Policy for SAP Cloud Services referenced in the Order Form. The support levels available for SAP Fieldglass are SAP Enterprise Support or Preferred Success. Preferred Care is not available. SAP Fieldglass Enterprise Support (see <https://support.fieldglass.com>) provides support for general questions, system navigation inquiries, general

troubleshooting issues and P1 escalation management. In addition, SAP Fieldglass Enterprise Support provides release updates, high level program consultation, standard release notes and general product roadmap updates.

#### 4. SUPPLIER TERMS

Prior to accessing the Cloud Service, Suppliers will be required to: (i) register through the Cloud Service; (ii) enter an agreement with SAP; and, if applicable, (iii) become enabled, subject to the applicable terms of use, on the regional network designated by SAP for routing documents between Customer and Suppliers. "Supplier" means a worker or agency engaged by Customer through the Cloud Service.

#### PART 3 – SUPPLEMENTAL TERMS APPLICABLE TO ARIBA CLOUD SERVICES ONLY

##### 1. ARIBA SOLUTION DESCRIPTION GUIDE

The technology features included in each SAP Ariba Cloud Service are listed in the SAP Ariba Solution Description Guide (as updated from time to time).

##### 2. SAP ARIBA PAYABLES

The SAP Ariba Payables (including the payment, supply chain finance, and discounting services) Cloud Service have regional limitations, may require agreements with third party service providers, and are subject additionally to the SAP Ariba Payables Supplemental Terms and Conditions found here: [www.sap.com/agreements-cloud-supplement-ariba-payables](http://www.sap.com/agreements-cloud-supplement-ariba-payables) (as updated from time to time).

##### 3. ARIBA USAGE METRICS.

**USAGE METRICS FOR THE SAP ARIBA CLOUD SERVICES, TO THE EXTENT REFERENCED IN THE ORDER FORM, ARE DEFINED AS FOLLOWS:**

- 3.1. **"Document(s)"** mean uniquely identified objects processed by the Cloud Service in a contract year.
- 3.2. **"Spend"** means the total monetary amount processed by the Cloud Service.
  - 3.2.1. For SAP Ariba Spend Analysis, the Usage Metric is Spend and means each twelve (12) month set of accounts payable, travel & expense, and/or purchasing card data from Customer provided to SAP for data enrichment processing through the Cloud Service, including transaction data and data identifying Customer's suppliers.
  - 3.2.2. For experience management bundle for supply chain collaboration, the Usage Metric is Spend in blocks of \$10 million USD converted to local currency using SAP standard exchange rates, which will be made available to Customer upon request.
  - 3.2.3. For SAP Digital Supplier Network for Supply Chain, the Usage Metric is Spend in blocks of \$250 million USD converted to local currency using SAP standard exchange rates, which will be made available to Customer upon request.
- 3.3. **"Supplier"** means a vendor from which Customer acquires goods or services for its own account using the Cloud Service.
- 3.4. **"Tenant"** means a Customer-specific instance of the Cloud Service.
- 3.5. **"User"** means individuals authorized to access the Cloud Service, excluding individuals who are only Team Members. The User Usage Metric is not measured as an aggregate number over a Subscription Period but rather as a limit that may not be exceeded at any time during the Subscription Period without being considered an excess usage. **"Team Member"** means an individual who is allowed to access the Cloud Service but is only granted membership in groups associated with "Team Member" permissions for the Cloud Service.<sup>2</sup>

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<sup>2</sup> These permissions are found in the group licensing Reference table in the SAP Ariba *Strategic Sourcing and Supplier Management* portfolios descriptions found in the SAP Ariba Documentation.

#### 4. **ADDITIONAL ARIBA TERMS.**

- 4.1. **Quote Automation.** Customer's use of the Ariba Network and the Ariba Discovery Cloud Service as provisioned by the Quote Automation feature (if available via Customer's subscription) is limited to the use necessary to fully utilize the feature and as further described in the Documentation. In order to utilize the Quote Automation feature, Customer must register on the Ariba Discovery network and accept the Terms of Use (Buyers) – Ariba Discovery in regards to functions of Quote Automation performed on the Ariba Discovery site.
- 4.2. **Ariba e-Archiving.** Ariba e-Archiving, an optional feature within the SAP Ariba Commerce Automation Cloud Service involves archiving of invoices originating from any one of the supported countries listed in the Documentation (each a "Supported Country") during the specified retention period for such Supported Country ("Mandatory Retention Period") and within Customer's Subscription Term.
- 4.3. **SAP Ariba Spot Buy Catalog Cloud Service and Feature.** In utilizing the SAP Ariba Spot Buy Catalog Cloud Service or using the SAP Ariba Spot Buy feature, Customer agrees to participate in the SAP Ariba Spot Buy Program in accordance with the terms for buyers found on the SAP Ariba Spot Buy program Site, as updated from time to time, (currently at <https://connect.ariba.com/AribaSpotBuy>).
- 4.4. **Supply Chain Collaboration for Buyers Cloud Service ("SCC for Buyers").** During the then-current Subscription Term for SCC for Buyers, SAP shall not charge any Customer suppliers transaction fees or annual membership fees related to Ariba Network Fulfill: Orders and Invoices service on the Ariba Network arising from their relationship or transactions between Customer and such suppliers originating through the SCC for Buyers. Suppliers will still be charged for use of Ariba Discovery if they elect to use that service or other optional services SAP makes available to them.
- 4.5. **SAP Ariba APIs, extension tools and Integration Software.** Some of the Cloud Services include the ability to use application programming interfaces, integration adapter software, extension capabilities and system authorization codes (together referred to as "**APIs**") made available by SAP for the creation of applications for integration with the Cloud Services by Customer (a "**Customer Application**").
- i. Use of APIs is subject to restrictions stated in the Documentation and access to and testing of some APIs utilizes the regional SAP Ariba Developer Portal applicable to the SAP Ariba data center that Customer elects to use (See <https://developer.ariba.com/api>). Customer must accept any separate terms and conditions presented upon download or access to the regional platform to use the portal and APIs.
  - ii. The APIs are SAP proprietary and Confidential Information and may not be modified by Customer.
  - iii. SAP may require certification, security assurances or other reasonable validation steps regarding the Customer Application(s) developed with the API prior to enabling Customer to utilize such application in a production capacity to exchange information with the Cloud Services.
  - iv. Customer is fully responsible for ensuring that the Customer Application remains compatible and interoperable with the Cloud Service and does not unreasonably impair, degrade or reduce the performance or security of the Cloud Service.
  - v. Customer will defend SAP against claims brought against SAP, SAP SE, its Affiliates and subcontractors by any third party arising from the Customer Application by virtue of its integration with the Cloud Service. Customer will indemnify SAP against all damages finally awarded against SAP, SAP SE, its Affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims. If Customer licensed the Cloud Services in the United Kingdom or is governed by the law of the United Kingdom, this Section v. of this Supplement is replaced in its entirety with the following v:  
  
"v. Customer will defend SAP, any Affiliate of SAP, SAP SE, any Affiliate of SAP SE and any subcontractor of any of the foregoing against any claim brought by a third party in relation to the Customer Application. Customer will indemnify SAP, any Affiliate of SAP, SAP SE, any Affiliate of SAP SE and any subcontractor of any of the foregoing against all damages finally awarded (or the amount of any settlement entered into by any of the same) in relation to any claim brought by a third party related to the Customer Application. SAP shall be entitled to recover losses on behalf of any party afforded protection or indemnity under this section, however, Affiliates of SAP, SAP SE, Affiliates of SAP SE and subcontractors of any of the foregoing shall have the right to directly enforce the provisions of this section v for their own benefit under the Contracts (Rights of Third Parties) Act 1999 (provided there shall be no double recovery of losses permitted)."



- vi. The System Availability SLA will apply to API's, unless specified otherwise in the Documentation for a specific API.
  - vii. For the avoidance of doubt, data submitted to the Cloud Services via an API or a data feed from an authorized third-party service that either originates with Customer or is provided subject to an agreement between Customer and a third-party database provider, shall be considered Customer Data under the Agreement.
- 4.6. **Data-as-a-Service Elements.** The following terms apply to SAP Ariba Spend Analysis Cloud Service, SAP Ariba Contract Management, SAP Ariba Sourcing and SAP Ariba Supplier Risk Cloud Service related to the information provided to Customer by SAP, which may include news articles, supplier corporate information, ("**Database Information**"). All Database Information provided to Customer is proprietary information of SAP or its third-party information providers, may not be relicensed or resold and is subject to further restrictions set forth in the Documentation. The Database Information is provided "as is" without warranty of any kind, including but not limited to warranties as to the accuracy, completeness or timeliness of the Database Information, and SAP advises Customer to independently verify such Database Information. SAP and its providers shall not be liable for any loss arising out of or in any way relating to the Database Information. SAP's Providers are third party beneficiaries of these terms. SAP and its Providers (i) shall not be liable to Customer for any loss or injury arising out of or in any way relating to the Database Information and (ii) will not be liable for consequential, incidental, special, punitive or other indirect damages.
- 4.7. **Optional Add-on Services.** Customer may subscribe to certain optional add-on services or programs, such as "Ariba Network, add-on for buyer-paid supplier fees for orders and invoices" and Ariba Discovery Advantage Block Purchase. If so, any Usage Metrics or terms not stated in this Supplement will be stated in the Order Form or Documentation.
- 4.8. **Data Retention – Ariba Network.** Customer Data processed on the Ariba Network may be retained on the Ariba Network subject to SAP's policies, provided that SAP Ariba will delete, or render unreadable, the Customer Data stored in the Ariba Network after expiration or termination of Customer's subscription upon Customer's written request. Retained data is subject to the confidentiality provisions of the Agreement and the obligations under the Data Processing Agreement.
- 4.9. **Processing Services for Payment and Supply Chain Finance.**
- 4.9.1. **Separate Provider.** If Customer enables one or more of the below defined payment capabilities in the Ariba Network (excluding AribaPay), such payment services are provided by third party payment processors under separate agreements between Customer and those third parties. SAP does not perform and is not responsible for the payment processing services, nor acts or omissions of the third-party payment processors under the separate agreements. Customer agrees that any third-party payment processor's use of Customer Data is governed by the separate agreement and the third-party payment processor's data use and data privacy policies. By enabling the payment services provided by third-party payment processors, Customer instructs SAP to transfer Customer Data (including personal data) to the third-party payment processor. SAP's obligations for the Cloud Service, exclusive of the payment processing services, are in accordance with the Agreement. SAP and the third-party payment processors are under no obligation to assist with or resolve disputes between Customer and Customer's suppliers, with respect to payment transactions.
- 4.9.2. **Payment Processing Services.** For payment processing services other than AribaPay:
- If Customer enables the payment capability, then the "processing services" consist of payment processing services to settle payments between Customer and Customer's suppliers, including every function of the payment capability related to the processing or transmission of payments or funds, the provision of any payment intermediary-related services, the debiting or crediting of bank accounts, holding funds, processing payments, issuing checks, holding account numbers, and/or otherwise acting as a payment processor.
  - Customer is responsible for providing accurate information in any payment instruction.
  - Once enabled, SAP's role for the payment capability is to forward payment information from Customer to the payment processor and return status information to the Customer regarding the payments.

- 4.9.3. **Tax Treatment.** With respect to the fees payable by Customer to SAP for use of the payment capability, Customer will be treated as the payor with respect to SAP for tax purposes, notwithstanding the payment processing services provided by the payment processor or supply chain finance processor. This will not include features which are agreed to by Customer under its agreement with the payment processor payment and that are paid directly to the payment processor.
- 4.10. **Packaged Cloud Service.** Where the Cloud Service is included with SAP Qualtrics for Supplier XM for a single fee (collectively, the “**Packaged SAP Qualtrics Cloud Service**”), the following additional terms apply to such Packaged SAP Qualtrics Cloud Service:
- 4.10.1. **Usage Metric and Limitations for SAP Ariba Strategic Sourcing Suite.** Subscriptions to the Packaged SAP Qualtrics Cloud Service which includes SAP Ariba Strategic Sourcing Suite are measured by Users and include 50 Suppliers per User in blocks of 25 Suppliers.
- 4.10.2. **Usage Metric and Limitations for SAP Ariba Commerce Automation Membership.** Subscriptions to the Packaged SAP Qualtrics Cloud Service which includes SAP Ariba Commerce Automation Membership include 1,000 Suppliers in blocks of 25 Suppliers (for a total of 40 blocks of 25 Suppliers).
- 4.10.3. **Usage Metric and Limitations for SAP Ariba Supply Chain Collaboration for Buyers.** Subscriptions to the Packaged SAP Qualtrics Cloud Service which includes SAP Ariba Supply Chain Collaboration for Buyers are measured in blocks of \$10M in Spend and include 25 Suppliers for each block of \$10M in Spend.
- 4.10.4. **EU Access.** The EU Access option is not available for the Packaged SAP Qualtrics Cloud Service.
- 4.10.5. **Customer Data Deletion.** Customer is responsible for deleting all Customer Data for SAP Qualtrics for Supplier XM upon termination. SAP will provide Customer a means to accomplish such deletion.
- 4.10.6. **Support.** The Contact Channel for support for SAP Qualtrics for Supplier XM is <https://www.qualtrics.com/support/>. If SAP changes the Contact Channel, SAP will provide notice via <https://www.qualtrics.com/support/>. All other aspects of support are provided in accordance with SAP's Support Policy for Cloud Services.

## SERVICE LEVEL AGREEMENT FOR SAP CLOUD SERVICES

### 1. DEFINITIONS

- 1.1. **“Credit”** means 2% of: the Monthly Subscription Fees for the applicable Cloud Service or the list price of the monthly consumed Cloud Service for each 1% below the System Availability SLA, not to exceed 100% of the fees paid by the Customer for the relevant Month for the applicable Cloud Service.
- 1.2. **“Downtime”** means the Total Minutes in the Month during which the production version of the Cloud Service is not available, except for Excluded Downtimes.
- 1.3. **“Excluded Downtime”** means the Total Minutes in the Month attributable to a Maintenance Window; or any Major Upgrade Window for which the Customer has been notified at least five (5) business days in advance; or unavailability caused by factors outside of SAP's reasonable control, such as unpredictable and unforeseeable events that could not have been avoided even if reasonable care had been exercised.
- 1.4. **“Maintenance Window”** means the weekly maintenance windows for the Cloud Service identified in <https://support.sap.com/maintenance-windows>. SAP may update the Maintenance Window from time to time in accordance with the Agreement.
- 1.5. **“Major Upgrade Window”** means the extended upgrade maintenance windows for the Cloud Service identified in <https://support.sap.com/maintenance-windows>. SAP may update the Major Upgrade Window from time to time in accordance with the Agreement.
- 1.6. **“Month”** means a calendar month.
- 1.7. **“Monthly Subscription Fees”** means the monthly (or 1/12 of the annual fee) subscription fees paid for the applicable Cloud Service which did not meet the System Availability SLA.
- 1.8. **“System Availability Percentage”** is calculated and defined as follows:
- $$\left( \frac{\text{Total Minutes in the Month} - \text{Excluded Downtime} - \text{Downtime}}{\text{Total Minutes in the Month} - \text{Excluded Downtime}} \right) * 100$$
- 1.9. **“System Availability SLA”** means a 99.7% System Availability Percentage during each Month for the production version of the Cloud Service.
- 1.10. **“Total Minutes in the Month”** are measured 24 hours at 7 days a week during a Month.
- 1.11. **“UTC”** means Coordinated Universal Time standard being the start time for the applicable Maintenance Window and Major Upgrade Window.

### 2. SYSTEM AVAILABILITY SLA AND CREDITS

#### 2.1. Credit

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

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

#### 2.2. System Availability Report

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

### 3. CHANGES TO WINDOWS

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

## DATA PROCESSING AGREEMENT FOR SAP SERVICES ("DPA")

### 1. DEFINITIONS

- 1.1. **"Audit Reports and Certifications"** mean documents available under: <https://www.sap.com/about/trust-center/certification-compliance/compliance-finder.html> or any subsequent website notified to Customer.
- 1.2. **"Cloud Service"** means any distinct, subscription-based, hosted, supported and operated on-demand solution as defined in the Agreement.
- 1.3. **"Controller"** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; for the purposes of this DPA, where Customer acts as processor for another controller, it shall in relation to SAP be deemed as additional and independent Controller with the respective controller rights and obligations under this DPA.
- 1.4. **"Data Protection Law"** means the applicable legislation protecting the fundamental rights and freedoms of natural persons and their right to privacy with regard to the processing of Personal Data under the Agreement.
- 1.5. **"Data Subject"** means an identified or identifiable natural person as defined by Data Protection Law.
- 1.6. **"EEA"** means the European Economic Area, namely the European Union Member States along with Iceland, Liechtenstein and Norway.
- 1.7. **"GDPR"** means the General Data Protection Regulation 2016/679.
- 1.8. **"List of Subprocessors"** means a compilation of the name, address and role of each Subprocessor SAP uses to provide SAP Services which is in general published under: <https://support.sap.com/en/my-support/trust-center/subprocessors.html> or any subsequent website notified to Customer.
- 1.9. **"My Trust Center"** means information available on the SAP support portal (see: <https://support.sap.com/en/my-support/trust-center.html>) or the SAP agreements website (see: <https://www.sap.com/about/trust-center/agreements.html>) or any subsequent website(s) made available by SAP to Customer.
- 1.10. **"New SCC Relevant Transfer"** means a transfer (or an onward transfer) to a Third Country of Personal Data that is either subject to GDPR or to applicable Data Protection Law and where any required adequacy means under GDPR or applicable Data Protection Law can be met by entering into the New Standard Contractual Clauses.
- 1.11. **"New Standard Contractual Clauses"** means the unchanged standard contractual clauses, published by the European Commission, reference 2021/914 or any subsequent final version thereof as adopted by SAP. To avoid doubt Modules 2 and 3 shall apply as set out in Section 8.3.
- 1.12. **"Personal Data"** means any information relating to a Data Subject. For the purposes of the DPA, it includes only personal data which is:
  - a) processed by SAP as part of the Cloud Service; or
  - b) supplied to or accessed by SAP or its Subprocessors in order to provide support under the applicable Agreement or in connection with SAP Services.
- 1.13. **"Personal Data Breach"** means cases of a confirmed:
  - a) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or unauthorized third-party access to Personal Data; or
  - b) similar incident involving Personal Data, in each case for which a Controller is required under Data Protection Law to provide notice to competent data protection authorities or Data Subjects.
- 1.14. **"Processor"** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller, be it directly as processor of a controller or indirectly as subprocessor of a processor which processes personal data on behalf of the controller.
- 1.15. **"SAP Support"** means support services as defined in the applicable Agreement.

- 1.16. **"Schedule"** means the numbered Appendix with respect to the Standard Contractual Clauses (2010) and the numbered Annex with respect to the New Standard Contractual Clauses.
- 1.17. **"Services"** means implementation services, consulting services and/or other related services as defined in the Agreement and may also be referred to in the Agreement as **"Consulting Services"** or **"Professional Services"**.
- 1.18. **"Standard Contractual Clauses (2010)"** means the Standard Contractual Clauses (processors) published by the European Commission, reference 2010/87/EU.
- 1.19. **"Subprocessor"** or **"sub-processor"** means SAP Affiliates, SAP SE, SAP SE Affiliates and third parties engaged by SAP, SAP SE or SAP SE's Affiliates in connection with the SAP Services which process Personal Data in accordance with this DPA.
- 1.20. **"Technical and Organizational Measures"** means the technical and organizational measures for the relevant SAP Service published on the My Trust Center (see: <https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?search=Technical%20Organizational%20Measures>).
- 1.21. **"Third Country"** means any country, organization or territory not acknowledged by the European Union under Article 45 of GDPR as a safe country with an adequate level of data protection.

## **2. BACKGROUND**

### **2.1. Application**

- 2.1.1. This document (**"DPA"**) is incorporated into and forms part of an Agreement between SAP and Customer about SAP Services. For the purpose of this DPA, SAP Services are defined as Cloud Service, Services or SAP Support in the Agreement and are subject to its terms.
- 2.1.2. This DPA sets forth the terms and conditions related to the processing of Personal Data by SAP and its Subprocessors in connection with delivering SAP Services.
- 2.1.3. This DPA does not apply to non-production environments of the SAP Services made available by SAP. Customer shall not store Personal Data in such environments.

### **2.2. Structure**

Schedules 1 and 2 are incorporated into this DPA. They set out the agreed subject-matter, the nature and purpose of the processing, the type of Personal Data, categories of data subjects and the applicable technical and organizational measures.

### **2.3. Governance**

- 2.3.1. SAP acts as a Processor and Customer and those entities that Customer permits to use the SAP Services act as Controllers under the DPA.
- 2.3.2. Customer acts as a single point of contact and shall obtain any relevant authorizations, consents and permissions for the processing of Personal Data in accordance with this DPA, including, where applicable approval by Controllers to use SAP as a Processor. Where authorizations, consent, instructions or permissions are provided by Customer these are provided not only on behalf of the Customer but also on behalf of any other Controller. Where SAP informs or gives notice to Customer, such information or notice is deemed received by those Controllers permitted by Customer to use the SAP Services or furnish Personal Data. Customer shall forward such information and notices to the relevant Controllers.

## **3. SECURITY OF PROCESSING**

### **3.1. Applicability of the Technical and Organizational Measures**

SAP has implemented and will apply the Technical and Organizational Measures. Customer has reviewed the appropriateness of such measures before it executes an Agreement that incorporates this DPA.

### 3.2. Changes

- 3.2.1. SAP applies the Technical and Organizational Measures to SAP's entire customer base hosted out of the same data center or receiving the same SAP Services. SAP will review the Technical and Organizational Measures as necessary and may change the Technical and Organizational Measures at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.
- 3.2.2. SAP will publish updated versions of the Technical and Organizational Measures on My Trust Center and where available Customer may subscribe to receive e-mail notification of such updated versions.

## 4. OBLIGATIONS

### 4.1. Instructions from Customer

SAP will process Personal Data only in accordance with documented instructions from Customer. The Agreement (including this DPA) constitutes such documented instructions. SAP will use reasonable efforts to follow any additional reasonable Customer instructions, as long as technically feasible. If SAP will not comply with an instruction or is of the opinion that an instruction infringes Data Protection Law, SAP will immediately notify Customer (e-mail permitted).

### 4.2. Processing on Legal Requirement

SAP may also process Personal Data where required to do so by applicable law. In such a case, SAP shall inform Customer of that legal requirement before processing unless that law prohibits such information on important grounds of public interest.

### 4.3. Personnel

To process Personal Data, SAP and its Subprocessors shall only grant access to authorized personnel who have committed themselves to confidentiality. SAP and its Subprocessors will regularly train personnel having access to Personal Data in applicable data security and data privacy measures.

### 4.4. Cooperation

- 4.4.1. At Customer's request, SAP will reasonably cooperate with Customer and Controllers in dealing with requests from Data Subjects or regulatory authorities regarding SAP's processing of Personal Data or any Personal Data Breach. If SAP receives a request from a Data Subject in relation to the Personal Data processing hereunder, SAP will promptly notify Customer (where the Data Subject has provided information to identify the Customer) via e-mail and shall not respond to such request itself but instead ask the Data Subject to redirect its request to Customer.

- 4.4.2. In the event of a dispute with a Data Subject as it relates to SAP's processing of Personal Data under this DPA, the Parties shall keep each other informed and, where appropriate, reasonably co-operate with the aim of resolving the dispute amicably with the Data Subject.

- 4.4.3. SAP shall provide functionality for production systems that supports Customer's ability to correct, delete or anonymize Personal Data from a Cloud Service, or restrict its processing in line with Data Protection Law. Where such functionality is not provided, SAP will correct, delete or anonymize any Personal Data, or restrict its processing, in accordance with the Customer's instruction and Data Protection Law.

### 4.5. Personal Data Breach Notification

SAP will notify Customer without undue delay after becoming aware of any Personal Data Breach and provide reasonable information in its possession to assist Customer to meet Customer's obligations to report a Personal Data Breach as required under Data Protection Law. SAP may provide such information in phases as it becomes available. Such notification shall not be interpreted or construed as an admission of fault or liability by SAP.

### 4.6. Data Protection Impact Assessment

If, pursuant to Data Protection Law, Customer (or its Controllers) are required to perform a data protection impact assessment or prior consultation with a regulator, at Customer's request, SAP will provide such

documents as are generally available for the SAP Services (for example, this DPA, the Agreement, Audit Reports and Certifications). Any additional assistance shall be mutually agreed between the Parties.

## **5. DATA EXPORT AND DELETION**

### **5.1. Export and Retrieval**

If and to the extent SAP hosts Personal Data in a Cloud Service, during the Subscription Term of such Cloud Service and subject to the Agreement, Customer can access its Personal Data at any time. Customer may use SAP's self-service export tools and retrieve its Personal Data in a structured, commonly used and machine-readable format.

### **5.2. Deletion**

5.2.1. Before the Subscription Term of the Cloud Service expires, Customer shall perform one final data export which constitutes a final return of Personal Data from the Cloud Service.

5.2.2. At the end of the Agreement, Customer hereby instructs SAP to delete the Personal Data remaining with SAP (if any) within a reasonable time period in line with Data Protection Law (not to exceed 6 months), unless applicable law requires retention.

## **6. CERTIFICATIONS AND AUDITS**

### **6.1. SAP Resources**

SAP provides Audit Reports and Certifications free of charge, online or upon request. Additional verifications that require SAP resources are limited and subject to the following Sections.

### **6.2. Limitations**

6.2.1. Customer or its independent third party auditor (reasonably acceptable to SAP excluding any third party auditor who is either a competitor of SAP or not suitably qualified) may be permitted to conduct an audit under Sections 6.3 and 6.4. Customer shall provide at least 60 days advance notice of any audit unless mandatory Data Protection Law or a competent data protection authority requires shorter notice.

6.2.2. The frequency (not to exceed once every 12 months), timeframe and scope of any audit shall be mutually agreed between the parties acting reasonably and in good faith. Customer audits shall be limited to remote audits where possible. Customer shall provide the results of any audit to SAP. Customer shall bear the costs of any Customer initiated audit unless such audit reveals a material breach by SAP of this DPA, then SAP shall bear its own expenses of an audit. If an audit determines that SAP has breached its obligations under the DPA, SAP will promptly remedy the breach at its own cost.

### **6.3. Cloud Services Customer Audit**

6.3.1. Customer may audit SAP's control environment and IT security practices relevant to Personal Data processed by SAP, that require SAP resources equivalent to a maximum of 3 business days if:

- a) SAP has not provided sufficient evidence of its compliance with the Technical and Organizational Measures through providing a certification as to compliance with ISO 27001 or other standards (scope as defined in the certificate), such as a valid SSAE18/ISAE3402 and/or ISAE3000 (e.g. SOC2 or C5) or an equally accepted regional or local certification or attestation; or
- b) a Personal Data Breach has occurred; or
- c) an audit is formally requested by Customer's data protection authority or provided under mandatory Data Protection Law.

### **6.4. SAP Support and Services Customer Audit**

Customer may audit SAP's service and support delivery centers and IT security practices relevant to Personal Data processed by SAP that require SAP resources equivalent to a maximum of 1 business day if:

- a) SAP has not provided sufficient evidence of its compliance with the Technical and Organizational Measures through providing a certification as to compliance with ISO 27001 or other standards (scope as defined in the certificate); or
- b) a Personal Data Breach has occurred; or
- c) an audit is formally requested by Customer's data protection authority or provided under mandatory Data Protection Law.

#### 6.5. Other Controller Audit

Any other Controller may assume Customer's rights under this Section 6 only if it applies directly to the Controller and such audit is permitted and coordinated by Customer. Customer shall use all reasonable means to combine audits of multiple other Controllers to avoid multiple audits.

### 7. SUBPROCESSORS

#### 7.1. Permitted Use

SAP is granted a general authorization to subcontract the processing of Personal Data to Subprocessors, provided that:

- a) SAP or SAP SE on its behalf shall engage Subprocessors under a written (including in electronic form) contract consistent with the terms of this DPA in relation to the Subprocessor's processing of Personal Data. SAP shall be liable for any breaches by the Subprocessor in accordance with the terms of the Agreement;
- b) SAP will evaluate the security, privacy and confidentiality practices of a Subprocessor prior to its selection in order to establish that it is capable of providing the level of protection of Personal Data required by this DPA; and
- c) SAP provides to Customer the List of Subprocessors by publishing it on My Trust Center or by making it available to Customer in writing (email permitted) upon Customer's written request.

#### 7.2. New Subprocessors

SAP's use of Subprocessors is at its discretion, provided that:

- a) SAP will inform Customer in advance (by email or posting on My Trust Center) of any intended additions or replacements to the list of Subprocessors including name, address and role of the new Subprocessor. Customer agrees to register on the My Trust Center and subscribe to its applicable and available List of Subprocessors. If Customer does not object, Customer is deemed to have accepted the new Subprocessor.
- b) Customer may object to a new Subprocessor by notifying SAP in writing within 5 business days of SAP's information for Services and in case of SAP Support and Cloud Services within 30 calendar days and explaining the reasonable ground(s) for its objection.
- c) If Customer objects SAP may choose: (i) not to use the Subprocessor; or (ii) to take reasonable measures to remedy Customer's grounds for its objection and use the Subprocessor or (iii) if this is not possible, use the Subprocessor. If Customer continues to have a legitimate objection, Customer may only terminate the affected SAP Service using the new Subprocessor, however termination of SAP Support shall also comply with the termination provision of the respective SAP Support agreement. Such termination shall take effect at the time determined by the Customer in its written termination notice provided Customer accepts the use of the proposed Subprocessor during the remainder of the Agreement until the effective termination date.
- d) If Customer objects but neither of the options under 7.2.(c) (i) or (ii) are pursued and SAP has not received any notice of termination, Customer is deemed to have accepted the new Subprocessor.
- e) Any termination under this Section shall be deemed to be without fault by either party and shall be subject to the terms of the Agreement.



### 7.3. Emergency Replacement

SAP may replace a Subprocessor without advance notice where the reason for the change is outside of SAP's reasonable control and prompt replacement is required for security or other urgent reasons. In this case, SAP will inform Customer of the replacement Subprocessor as soon as possible following its appointment. Section 7.2 applies accordingly.

## 8. INTERNATIONAL PROCESSING

### 8.1. Conditions for International Processing

SAP shall be entitled to process Personal Data, including by using Subprocessors, in accordance with this DPA outside the country in which the Customer is located as permitted under Data Protection Law.

### 8.2. Applicability of the Standard Contractual Clauses (2010)

8.2.1. Where for the period up to and including 26 September 2021, Personal Data of a Controller that is subject to GDPR is processed in a Third Country, or where Personal Data of a Swiss or United Kingdom based Controller or another Controller is processed in a Third Country and such international processing requires an adequacy means under the laws of the country of the Controller and the required adequacy means can be met by entering into the Standard Contractual Clauses (2010), then:

- a) if applicable, SAP and Customer enter into the Standard Contractual Clauses (2010);
- b) Customer joins the Standard Contractual Clauses (2010) entered into by SAP or SAP SE and the Subprocessor as an independent owner of rights and obligations; or
- c) other Controllers whose use of the SAP Services have been authorized by Customer under the applicable Agreement may also enter into Standard Contractual Clauses (2010) with SAP or the relevant Subprocessors in the same manner as Customer in accordance with Sections 8.2.1 (a) and (b) above.

8.2.2. The Standard Contractual Clauses (2010) shall be governed by the law of the country in which the relevant Controller is established.

8.2.3. Where applicable Data Protection Law adopts the New Standard Contractual Clauses as meeting any required adequacy means as an alternative or update to the Standard Contractual Clauses (2010) then the New Standard Contractual Clauses shall apply in accordance with Section 8.3.

### 8.3. Applicability of New Standard Contractual Clauses

8.3.1. The following shall apply with effect from 27 September 2021 and shall solely apply in respect of New SCC Relevant Transfers:

8.3.1.1. Where SAP is not located in a Third Country and acts as a data exporter, SAP (or SAP SE on its behalf) has entered into the New Standard Contractual Clauses with each Subprocessor as the data importer. Module 3 (Processor to Processor) of the New Standard Contractual Clauses shall apply to such New SCC Relevant Transfers.

8.3.1.2. Where SAP is located in a Third Country:

SAP and Customer hereby enter into the New Standard Contractual Clauses with Customer as the data exporter and SAP as the data importer which shall apply as follows:

- a) Module 2 (Controller to Processor) shall apply where Customer is a Controller; and
- b) Module 3 (Processor to Processor) shall apply where Customer is a Processor. Where Customer act as Processor under Module 3 (Processor to Processor) of the New Standard Contractual Clauses, SAP acknowledges that Customer acts as Processor under the instructions of its Controller(s).

Other Controllers or Processors whose use of the Cloud Services has been authorized by Customer under the Agreement may also enter into the New Standard Contractual Clauses with SAP in the same manner as Customer in accordance with Section (b) above. In such case, Customer enters into the New Standard Contractual Clauses on behalf of the other Controllers or Processors.

- 8.3.2. With respect to a New SCC Relevant Transfer, on request from a Data Subject to the Customer, Customer may make a copy of Module 2 or 3 of the New Standard Contractual Clauses entered into between Customer and SAP (including the relevant Schedules), available to Data Subjects.
- 8.3.3. The governing law of the New Standard Contractual Clauses shall be the law of Germany.
- 8.4. Relation of the Standard Contractual Clauses to the Agreement

Nothing in the Agreement shall be construed to prevail over any conflicting clause of the Standard Contractual Clauses (2010) or the New Standard Contractual Clauses. For the avoidance of doubt, where this DPA further specifies audit and Subprocessor rules, such specifications also apply in relation to the Standard Contractual Clauses (2010) and the New Standard Contractual Clauses.
- 8.5. Third Party Beneficiary Right under the New Standard Contractual Clauses
  - 8.5.1. Where Customer is located in a Third Country and acting as a data importer under Module 2 or Module 3 of the New Standard Contractual Clauses and SAP is acting as Customer's sub-processor under the applicable Module, the respective data exporter shall have the following third party beneficiary right:
  - 8.5.2. In the event that Customer has factually disappeared, ceased to exist in law or has become insolvent (in all cases without as successor entity that has assumed the legal obligations of the Customer by contract or by operation of law), the respective data exporter shall have the right to terminate the affected SAP Service solely to the extent that the data exporter's Personal Data is processed. In such event, the respective data exporter also instructs SAP to erase or return the Personal Data.

## **9. DOCUMENTATION; RECORDS OF PROCESSING**

Each party is responsible for its compliance with its documentation requirements, in particular maintaining records of processing where required under Data Protection Law. Each party shall reasonably assist the other party in its documentation requirements. Customer shall provide and maintain information on all Controllers (e.g. legal name and address) using the SAP Services in electronic format (e.g. in the Order Form) as reasonably requested by SAP, in order to enable SAP to comply with any obligations relating to maintaining records of processing.

### **Schedule 1 Description of the Processing**

This Schedule 1 applies to describe the Processing of Personal Data for the purposes of the Standard Contractual Clauses (2010), New Standard Contractual Clauses and applicable Data Protection Law.

#### **1. A. LIST OF PARTIES**

##### **1.1. Under the Standard Contractual Clauses (2010)**

###### **1.1.1. Data Exporter**

The data exporter is the Customer who has concluded the Agreement with SAP for the provision of SAP Services as further described under the relevant Agreement. The data exporter allows other Controllers to also use the SAP Service, these other Controllers are also data exporters.

###### **1.1.2. Data Importer**

###### **1.1.2.1. In respect of Cloud Services**

SAP and its Subprocessors that provide and support the Cloud Service are data importers under the Standard Contractual Clauses (2010).

###### **1.1.2.2. In respect of other SAP Services**

SAP and its Subprocessors provide the SAP Service as defined under the relevant Agreement concluded by the data exporter that includes Standard Contractual Clauses (2010) are data importers.

1.2. Under the New Standard Contractual Clauses

1.2.1. Module 2: Transfer Controller to Processor

Where SAP is located in a Third Country, Customer is the Controller and SAP is the Processor, then Customer is the data exporter and SAP is the data importer.

1.2.2. Module 3: Transfer Processor to Processor

Where SAP is located in a Third Country, Customer is a Processor and SAP is a Processor, then Customer is the data exporter and SAP is the data importer.

**2. B. DESCRIPTION OF TRANSFER**

2.1. Data Subjects

Unless provided otherwise by the data exporter, transferred Personal Data relates to the following categories of Data Subjects: employees, contractors, Business Partners or other individuals having Personal Data stored, transmitted to, made available to, accessed or otherwise processed by the data importer.

2.2. Data Categories

The transferred Personal Data concerns the following categories of data:

Customer determines the categories of data and/or data fields which could be transferred per SAP Service as stated in the relevant Agreement. For Cloud Services, Customer can configure the data fields during implementation of the Cloud Service or as otherwise provided by the Cloud Service. The transferred Personal Data typically relates to the following categories of data: name, phone numbers, e-mail address, address data, system access / usage / authorization data, company name, contract data, invoice data, plus any application-specific data transferred or entered into the SAP Service by Authorized Users and may include financial data such as bank account data, credit or debit card data.

2.3. Special Data Categories (if agreed)

2.3.1. The transferred Personal Data may comprise special categories of personal data set out in the Agreement ("**Sensitive Data**"). SAP has taken Technical and Organizational Measures as set out in Schedule 2 to ensure a level of security appropriate to protect also Sensitive Data.

2.3.2. The transfer of Sensitive Data may trigger the application of the following additional restrictions or safeguards if necessary to take into consideration the nature of the data and the risk of varying likelihood and severity for the rights and freedoms of natural persons (if applicable):

- a) training of personnel;
- b) encryption of data in transit and at rest ;
- c) system access logging and general data access logging.

2.3.3. In addition, the Cloud Services provide measures for handling of Sensitive Data as described in the Documentation.

2.4. Purposes of the data transfer and further processing; Nature of the processing

2.4.1. For Cloud Services

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

- a) use of Personal Data to set up, operate, monitor and provide the Cloud Service (including operational and technical Support);
- b) continuous improvement of service features and functionalities provided as part of the Cloud Service including automation, transaction processing and machine learning;
- c) provision of Consulting Services;
- d) communication to Authorized Users;
- e) storage of Personal Data in dedicated Data Centers (multi-tenant architecture);

- f) release, development and upload of any fixes or upgrades to the Cloud Service;
  - g) back up and restoration of Personal Data stored in the Cloud Service;
  - h) computer processing of Personal Data, including data transmission, data retrieval, data access;
  - i) network access to allow Personal Data transfer;
  - j) monitoring, troubleshooting and administering the underlying Cloud Service infrastructure and database;
  - k) security monitoring, network-based intrusion detection support, penetration testing; and
  - l) execution of instructions of Customer in accordance with the Agreement.
- 2.4.1.2. The purpose of the transfer is to provide and support the Cloud Service. SAP and its Subprocessors may support the Cloud Service data centers remotely. SAP and its Subprocessors provide support when a Customer submits a support ticket as further set out in the Agreement.
- 2.4.2. For other SAP Services
- The transferred Personal Data is subject to the basic processing activities as set out in the Agreement which may include:
- a) accessing systems containing Personal Data in order to provide SAP Support and Services;
  - b) use of Personal Data to provide the SAP Service;
  - c) continuous improvement of service features and functionalities provided as part of the SAP Service including automation, transaction processing and machine learning;
  - d) storage of Personal Data;
  - e) computer processing of Personal Data for data transmission;
  - f) execution of instructions of Customer in accordance with the Agreement;
- 2.4.3. For SAP Support: SAP or its Subprocessors provide support when a Customer submits a support ticket because the Software is not available or not working as expected. They answer phone calls and perform basic troubleshooting, and handle support tickets in a tracking system.
- 2.4.4. For Services: SAP or its Subprocessors provide Services subject to the Order Form Services and the applicable Scope Document.
- 2.5. The purpose of the transfer is to provide and support the relevant SAP Service. SAP and its Subprocessors may provide or support the SAP Service remotely.
- 2.6. The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis):
- Personal Data will be transferred on an ongoing basis for the duration of the Agreement.
- 2.7. The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period:
- Personal Data will be retained by SAP as set out in Section 5 above.
- 2.8. For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing:
- SAP will transfer Personal Data to Subprocessors as stated in the applicable List of Subprocessors for the duration of the Agreement.
- 3. C. COMPETENT SUPERVISORY AUTHORITY**
- 3.1. In respect of the New Standard Contractual Clauses:
- 3.1.1. Module 2: Transfer Controller to Processor
  - 3.1.2. Module 3: Transfer Processor to Processor
- 3.2. Where Customer is the data exporter, the supervisory authority shall be the competent supervisory authority that has supervision over the Customer in accordance with Clause 13 of the New Standard Contractual Clauses.

## **Schedule 2 Technical and Organizational Measures**

This Schedule 2 applies to describe the applicable technical and organizational measures for the purposes of the Standard Contractual Clauses (2010), New Standard Contractual Clauses and applicable Data Protection Law.

SAP will apply and maintain the Technical and Organizational Measures.

To the extent that the provisioning of the Cloud Service comprises New SCC Relevant Transfers, the Technical and Organizational Measures set out in Schedule 2 describe the measures and safeguards which have been taken to fully take into consideration the nature of the personal data and the risks involved. If local laws may affect the compliance with the clauses, this may trigger the application of additional safeguards applied during transmission and to the processing of the personal data in the country of destination (if applicable: encryption of data in transit, encryption of data at rest, anonymization, pseudonymization).

## GENERAL TERMS AND CONDITIONS FOR CLOUD SERVICES ("GTC")

### 1. DEFINITIONS

- 1.1. **"Affiliate"** means any legal entity in which SAP SE or Customer, directly or indirectly, holds more than 50% of the entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
- 1.2. **"Agreement"** means the agreement as defined in the applicable Order Form.
- 1.3. **"Authorized User"** means any individual to whom Customer grants access authorization to use the Cloud Service that is an employee, agent, contractor or representative of Customer, Customer's Affiliates, or Customer's and Customer's Affiliates' Business Partners.
- 1.4. **"Business Partner"** means a legal entity that requires use of a Cloud Service in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer and its Affiliates.
- 1.5. **"Cloud Service"** means any distinct, subscription-based, hosted, supported and operated on-demand solution provided by SAP under an Order Form.
- 1.6. **"Confidential Information"** means all information which the disclosing party protects against unrestricted disclosure to others that the disclosing party or its representatives designates as confidential, internal and/or proprietary at the time of disclosure, should reasonably be understood to be confidential at the time of disclosure given the nature of the information and the circumstances surrounding its disclosure.
- 1.7. **"Customer Data"** means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include SAP's Confidential Information.
- 1.8. **"Documentation"** means SAP's then-current technical and functional documentation, including any roles and responsibilities descriptions relating to the Cloud Services which SAP makes available to Customer under the Agreement.
- 1.9. **"Export Laws"** means all applicable import, export control and sanctions laws, including without limitation, the laws of the United States, the EU, and Germany.
- 1.10. **"Feedback"** means input, comments or suggestions regarding SAP's business and technology direction, and the possible creation, modification, correction, improvement or enhancement of the Cloud Service.
- 1.11. **"Intellectual Property Rights"** means patents of any type, design rights, utility models or other similar invention rights, copyrights and related rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, whether registered or unregistered, including applications (or rights to apply) and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.
- 1.12. **"Order Form"** means the ordering document for a Cloud Service and/or Professional Services that references the GTC.
- 1.13. **"Professional Services"** means implementation services, consulting services or other related services provided under an Order Form and may also be referred to in the Agreement as "Consulting Services".
- 1.14. **"Representatives"** means a party's Affiliates, employees, contractors, sub-contractors, legal representatives, accountants, or other professional advisors.
- 1.15. **"SAP Materials"** means any materials (including statistical reports) provided, developed or made available by SAP (independently or with Customer's cooperation) in the course of performance under the Agreement, including in the delivery of any support or Professional Services to Customer. SAP Materials do not include

the Customer Data, Customer Confidential Information or the Cloud Service. SAP Materials may also be referred to in the Agreement as "Cloud Materials".

- 1.16. **"SAP SE"** means SAP SE, the parent company of SAP.
- 1.17. **"Subscription Term"** means the initial subscription term and if applicable any renewal subscription term of a Cloud Service identified in the Order Form.
- 1.18. **"Taxes"** means all transactional taxes, levies and similar charges (and any related interest and penalties) such as federal, state or local sales tax, value added tax, goods and services tax, use tax, property tax, excise tax, service tax or similar taxes.
- 1.19. **"Usage Metric"** means the standard of measurement for determining the permitted use and calculating the fees due for a Cloud Service as set forth in an Order Form.

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

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

SAP grants to Customer a non-exclusive and non-transferable right to use the Cloud Service (including its implementation and configuration), SAP Materials and Documentation solely for Customer's and its Affiliates' internal business operations. Customer may use the Cloud Service world-wide, except Customer shall not use the Cloud Service from countries where such use is prohibited by Export Laws. Permitted uses and restrictions of the Cloud Service also apply to SAP Materials and Documentation.

### **2.2. Authorized Users**

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

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

Customer will monitor its own use of the Cloud Service and report any use in excess of the Usage Metrics and volume. SAP may monitor use to verify compliance with Usage Metrics, volume and the Agreement.

### **2.4. Suspension of Cloud Service**

SAP may suspend or limit use of the Cloud Service if continued use may result in material harm to the Cloud Service or its users. SAP will promptly notify Customer of the suspension or limitation. SAP will limit a suspension or limitation in time and scope as reasonably possible under the circumstances.

### **2.5. Third Party Web Services**

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

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

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

### **2.7. On-Premise Components**

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

### **3. SAP RESPONSIBILITIES**

#### **3.1. Provisioning**

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

#### **3.2. Support**

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

#### **3.3. Security**

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

#### **3.4. Modifications**

##### **3.4.1. Scope**

3.4.1.1. As the Cloud Service evolves, SAP may improve or modify the Cloud Service (including support services, Maintenance Windows and Major Upgrade Windows). This includes the option to remove functionality from the Cloud Service where SAP either provides a functional equivalent or where this does not materially reduce functionality of the Cloud Service. Functionality beyond the initial scope of the Cloud Service may be subject to additional terms and Customer's use of such additional functionality shall be subject to those terms.

##### **3.4.2. Modification Notices**

3.4.2.1. SAP shall inform Customer of modifications to the Cloud Service within a reasonable period in advance. SAP shall provide Customer one (1) month's advance notice before changing its Maintenance and Major Upgrade Windows (unless such change is a reduction in the duration of the applicable Maintenance or Major Upgrade Windows) and support services.

3.4.2.2. Where in justified cases, SAP removes functionality from the Cloud Service without providing a functional equivalent, SAP shall provide Customer six (6) months' advance notice.

##### **3.4.3. Customer Termination**

If a modification materially degrades the overall functionality of the affected Cloud Service, Customer may terminate its subscription to the affected Cloud Service by providing written notice to SAP within one (1) month of SAP's applicable notice. If SAP does not receive timely notice, Customer is deemed to have accepted the modification.

### **4. CUSTOMER AND PERSONAL DATA**

#### **4.1. Customer Ownership**

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

#### **4.2. Customer Data**

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

#### **4.3. Personal Data**

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



#### 4.4. Security

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

#### 4.5. Access to Customer Data

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

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

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

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

### 5. FEES AND TAXES

#### 5.1. Fees and Payment

Customer shall pay fees as stated in the Order Form. If Customer does not pay fees in accordance with the terms of the Agreement then, in addition to any other available remedies, SAP may suspend Customer's use of the applicable Cloud Service until payment of all outstanding fees is made. SAP shall provide Customer with prior written notice before any such suspension. Any fees not paid when due shall accrue interest at the maximum legal rate. Purchase orders are for administrative convenience only. SAP may issue an invoice and collect payment without a corresponding purchase order. Customer may not withhold, reduce or set-off fees owed. Customer may not reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancellable. All fees are non-refundable except per Sections 6.3 or 7.4.2.

#### 5.2. Taxes

All fees and other charges are subject to applicable Taxes, which will be charged in addition to fees under the Agreement.

### 6. TERM AND TERMINATION

#### 6.1. Term

The Subscription Term is as stated in the Order Form.

#### 6.2. Termination

A party may terminate the Agreement:

- a) upon thirty (30) days' prior written notice of the other party's material breach of any provision of the Agreement (including Customer's failure to pay any money due hereunder within thirty (30) days of the payment due date) unless the breaching party has cured the breach during such thirty (30) day period;
- b) as permitted under Sections 3.4.3, 7.3.b), 7.4.3, 8.1.4, or 13.4 (with termination effective thirty (30) days after receipt of notice in each of these cases); or
- c) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 11 or 13.6.

### 6.3. Refund and Payments

For termination by Customer or termination under Sections 8.1.4 or 13.4 Customer will be entitled to:

- a) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination (unless such refund is prohibited by Export Laws); and
- b) a release from the obligation to pay fees due for periods after the effective date of termination.

### 6.4. Effect of Expiration or Termination

Upon the effective date of expiration or termination of the Agreement:

- a) Customer's right to use the Cloud Service and all SAP Confidential Information will end;
- b) Confidential Information of the disclosing party will be retained, returned, or destroyed as required by the Agreement or applicable law; and
- c) termination or expiration of the Agreement does not affect other agreements between the parties.

### 6.5. Survival

Sections 1, 5, 6.3, 6.4, 6.5, 8, 9, 10, 11, 12 and 13 will survive the expiration or termination of the Agreement.

## 7. WARRANTIES

### 7.1. Compliance with Law

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

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

### 7.2. Good Industry Practices

SAP warrants that it will provide the Cloud Service:

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

### 7.3. Remedy

Customer's sole and exclusive remedies and SAP's entire liability for breach of the warranty under Section 7.2 will be:

- a) correction of the deficient Cloud Service; and
- b) if SAP fails to correct the deficient Cloud Service, Customer may terminate its subscription for the affected Cloud Service. Any termination must occur within three (3) months of SAP's failure to correct the deficient Cloud Service.

### 7.4. System Availability

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

#### 7.4.2. Customer's sole and exclusive remedy for SAP's breach of the SLA is the issuance of a credit in the amount described in the SLA. Customer will follow SAP's posted credit claim procedure. When the validity of the service credit is confirmed by SAP in writing (email permitted), Customer may apply the credit to a future invoice for the Cloud Service or request a refund for the amount of the credit if no future invoice is due.

#### 7.4.3. In the event SAP fails to meet the SLA (i) for four (4) consecutive months, or (ii) for five (5) or more months during any twelve (12) month period, or (iii) at a system availability level of at least 95% for one (1) calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing SAP with written notice within thirty (30) days after the failure.

## 7.5. Warranty Exclusions

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

- a) the Cloud Service is not used in accordance with the Agreement or Documentation;
- b) any non-conformity is caused by Customer, or by any product or service not provided by SAP; or
- c) the Cloud Service was provided for no fee.

## 7.6. Disclaimer

Except as expressly provided in the Agreement, neither SAP nor its subcontractors make any representation or warranties, and SAP and its subcontractors disclaim all representations, warranties, terms, conditions or statements, which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded to the fullest extent permitted by law including the implied conditions, warranties or other terms as to quality, suitability, originality, or fitness for a particular use or purpose. Further, except as expressly provided in this Agreement, neither SAP nor its subcontractors make any representations, warranties, terms, conditions or statements of non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of SAP or product roadmaps in obtaining subscriptions for any Cloud Service.

# 8. THIRD PARTY CLAIMS

## 8.1. Claims Brought Against Customer

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

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

- a) use of the Cloud Service in conjunction with any product or service not provided by SAP;
- b) use of the Cloud Service provided for no fee;
- c) Customer's failure to timely notify SAP in writing of any such claim if SAP is prejudiced by Customer's failure to provide or delay in providing such notice; or
- d) any use of the Cloud Service not permitted under the Agreement.

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

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

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

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

## 8.2. Claims Brought Against SAP

Customer will defend SAP against claims brought against SAP, SAP SE, its Affiliates and subcontractors by any third party related to Customer Data. Customer will indemnify SAP against all damages finally awarded against SAP, SAP SE, its Affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims.

### 8.3. Third Party Claim Procedure

All third party claims under Section 8 shall be conducted as follows:

- a) The party against whom a third party claim is brought (the "**Named Party**") will timely notify the other party (the "**Defending Party**") in writing of any claim. The Named Party shall reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the Defending Party subject to Section 8.3b).
- b) The Defending Party will have the right to fully control the defense.
- c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by the Named Party.

### 8.4. Exclusive Remedy

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

## 9. LIMITATION OF LIABILITY

### 9.1. No Cap on Liability

9.1.1 Subject to Section 9.3 neither party's liability is capped for damages resulting from:

- a) the parties' obligations under Section 8.1.1 and 8.2 (excluding SAP's obligation under Section 8.1.1 where the third party claim(s) relates to Cloud Services not developed by SAP);
- b) Customer's unauthorized use of any Cloud Service and / or any failure by Customer to pay any fees due under the Agreement;
- c) Breach of the obligations imposed by s.12 Sales of Goods Act 1979 or s.2 Supply of Goods and Services Act 1982; and/or
- d) Any liability for other losses which cannot be excluded or limited by applicable law.

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

- a) fraud or fraudulent misrepresentation,
- b) death or bodily injury arising from either party's negligence.

### 9.2. Liability Cap

Except as set forth in Section 9.1.1 and 9.3, and regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence) misrepresentation or breach of statutory duty, breach of warranty, claims by third parties arising from any breach of this Agreement) the maximum aggregate liability of either party (or its respective Affiliates or SAP's subcontractors) arising out of or accruing under or in connection with the Agreement to the other or to any other person or entity for all events (or series of connected events) arising in any twelve (12) month period will not exceed the annual subscription fees paid for the applicable Cloud Service associated with the damages for that twelve (12) month period. Any "twelve (12) month period" commences on the Subscription Term start date or any of its yearly anniversaries.

### 9.3. Exclusion of Damages

To the extent permitted by law in no case will:

- a) either party (or its respective Affiliates or SAP's subcontractors) be liable to the other party for
  - (i) any special, incidental, consequential, or indirect damages, or
  - (ii) the following damages: loss of goodwill or business profits, losses resulting from work stoppage, loss of revenue or opportunity; in each case (whether such losses are direct or indirect) or
  - (iii) exemplary or punitive damages; and
- b) SAP be liable for any damages caused by any Cloud Service provided for no fee.

- 9.4 The Agreement allocates the risk between SAP and the Customer. The fees for the Cloud Services and / or Professional Services reflects this allocation of risk and limitation of liability.

## **10. INTELLECTUAL PROPERTY RIGHTS**

### **10.1. SAP Ownership**

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

- a) the Cloud Service;
- b) SAP Materials;
- c) Documentation; and
- d) any Professional Services, design contributions, related knowledge or processes, whether or not developed for Customer.

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

### **10.2. Acceptable Use Policy**

- 10.2.1. With respect to the Cloud Service, Customer will not:

- a) Except to the extent such rights cannot be validly waived by law, copy, translate, disassemble, decompile, make derivative works, or reverse engineer the Cloud Service or SAP Materials (or attempt any of the foregoing);
- b) enter, store, or transfer any content or data on or via the Cloud Service that is unlawful or infringes any Intellectual Property Rights;
- c) circumvent or endanger the operation or security of the Cloud Service; or
- d) remove SAP's copyright and authorship notices.

### **10.3 Non-Assertion of Rights**

Customer covenants, on behalf of itself and its successors and assigns, not to assert against SAP, SAP SE, their Affiliates or licensors, any rights, or any claims of any rights, in any Cloud Service, Cloud Materials, Documentation, or Professional Services.

## **11. CONFIDENTIALITY**

### **11.1. Use of Confidential Information**

- 11.1.1. The receiving party shall:

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

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

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

11.2. Compelled Disclosure

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

11.3. Exceptions

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

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

11.4. Destruction and Return of Confidential Information

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

- a) if legal proceedings related to the Confidential Information prohibit its return or destruction, until the proceedings are settled or a final judgment is rendered;
- b) to Confidential Information held in archive or back-up systems under general systems archiving or backup policies and which is not generally accessible to the personnel of the receiving party; or
- c) to Confidential Information the receiving party is legally entitled or required to retain.

**12. FEEDBACK**

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

**13. MISCELLANEOUS**

13.1. Severability

If any provision of the Agreement is held to be wholly or in part invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

13.2. No Waiver

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

### 13.3. Counterparts

The Agreement may be signed in counterparts, each of which is an original and together constitute one Agreement. Electronic signatures via DocuSign or any other form as determined by SAP are deemed original signatures.

### 13.4. Trade Compliance

13.4.1. SAP and Customer shall comply with Export Laws in the performance of this Agreement. SAP Confidential Information is subject to Export Laws. Customer, its Affiliates, and Authorized Users shall not directly or indirectly export, re-export, release, or transfer Confidential Information in violation of Export Laws. Customer is solely responsible for compliance with Export Laws related to Customer Data, including obtaining any required export authorizations for Customer Data. Customer shall not use the Cloud Service from the following list of countries which may be updated from time to time: Crimea/Sevastopol, Cuba, Iran, the People's Republic of Korea (North Korea) or Syria.

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

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

### 13.5. Notices

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

### 13.6. Assignment

Without SAP's prior written consent, Customer may not assign, delegate or otherwise transfer the Agreement (or any of its rights or obligations) to any party. SAP may assign the Agreement to SAP SE or any of its Affiliates

### 13.7. Subcontracting

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

### 13.8. Relationship of the Parties

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

### 13.9. Force Majeure

Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

### 13.10. Governing Law

The Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement and its subject matter will be governed by and construed under the laws of England and Wales. The United Nations Convention on Contracts for the International Sale of Goods and any conflicts of law principles and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement.

13.11. Jurisdiction and Mandatory Venue

The parties submit to the exclusive jurisdiction of the courts located in London. The parties waive any objections to the venue or jurisdictions identified in this provision.

13.12. Statute of Limitation

With the exception of claims related to payment or refund obligations, either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within 1 year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

13.13. Entire Agreement

The Agreement constitutes the complete and exclusive statement of the agreement between SAP and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. Each party acknowledges that (i) in entering into this Agreement it has not relied on any representation, discussion, collateral contract or other assurance except those set out in this Agreement and hereby waives all rights and remedies which, but for this section, might otherwise be available to it in respect of any such representation, discussion, collateral contract or other assurance and (ii) it shall have no remedies in respect of any representation or warranty that is not expressly set out in this Agreement. The Agreement may be modified solely in writing signed by both parties, except as permitted under the Agreement. Terms and conditions of any Customer-issued purchase order shall have no force and effect, even if SAP accepts or does not otherwise reject the purchase order. Nothing in this Agreement shall limit or exclude any liability for fraud.

13.14. Contracts (Rights of Third Parties) Act 1999.

Notwithstanding any other provision in this Agreement, nothing in this Agreement shall create or confer (whether expressly or by implication) any rights or other benefits whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise in favour of any person not a party hereto.