



**STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT**

AMENDMENT #: 2

CONTRACT #: AR2481

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and Emergent , LLC (Referred to as CONTRACTOR).

**BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:**

Attachment E is hereby amended to include the attached:

- Concur Cloud Services Supplemental Terms and Conditions; and
- General Terms and Conditions for SAP Cloud Services ("GTC").

Attachment C is hereby amended to include Concur at a minimum discount of 2.5% from list.

Effective Date of Amendment: 4/6/2018

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

**CONTRACTOR**

**STATE OF UTAH**

Paul D. Kohler 4/16/2018  
 Contractor's Signature Date

J. J. Jole 4-16-18  
 Director, State of Utah Division of Purchasing Date

Paul D. Kohler  
Contractor's Name (Print)

Executive Vice President

Title (Print)

**For Division of Purchasing Internal Use**

Purchasing Agent	Phone #	E-mail Address	Contract #
Solomon Kingston	801-538-3228	skingston@utah.gov	AR2481

## CONCUR CLOUD SERVICE

### SUPPLEMENTAL TERMS AND CONDITIONS

These Supplemental Terms and Conditions for the Service shall apply to the Agreement. All undefined capitalized terms herein shall have the meanings ascribed to such terms as defined in the Agreement.

- 1. Service Description Guide.** The Service will be provided substantially as described in the Service Description Guide for the Service ordered by Customer under an Order Form.
- 2. Metrics/Fees.** The provisions of the GTC related to usage metrics and verification shall not apply to the Concur Service. As such, the usage metrics and fees shall be as set forth in the applicable Order Form.
- 3. Changes to Service and Fees.** The provisions of the GTC related to modification of the Cloud Service shall not apply to the Concur Service. Concur may from time to time effect reasonable modification to the Service and/or the Service Description Guide for the Service, provided that any such modification does not reduce the service level commitments, security or overall level of beneficial service provided to Customer immediately prior to such modification. If the "Travel & Expense" or "Travel" Service is provided under the Agreement, then Concur shall have the right to effect reasonable changes to the recurring fees under the Agreement to the extent of any general fee change assessed across Concur's customers of the applicable Service due to changes in Concur's third-party costs associated with its travel management business (e.g., GDS or other similar third party fees), upon notice to Customer at least 30 days before the effective date of the change and provided that such costs are passed through without markup by Concur.
- 4. Customer Data.** Subject to the terms of the Agreement, Customer hereby grants Concur a non-exclusive, non-transferable, worldwide right to use and disclose the electronic data specifically pertaining to Customer and/or its Authorized Users that is submitted into the Service (collectively, "Customer Data") as necessary for the limited purpose of providing the Service.
- 5. Feedback.** Customer may provide Concur with suggestions for product or service improvement or modification in connection with any present or future Concur product or service ("Feedback"). Accordingly, Feedback shall not be considered Confidential Information under the Agreement and neither Concur nor any of its customers or business partners shall have any obligation or liability to Customer with respect to any use or disclosure of such Feedback.
- 6. Notices.** All notices hereunder by either party shall be given (i) by personal delivery (including reputable courier service), fees prepaid, (ii) by sending such notice by registered or certified mail return receipt requested, postage prepaid, or (iii) by sending such notice via email to Concur at [notices@concur.com](mailto:notices@concur.com) and to Customer at their email address for notices set forth in the initial Order Form. Such notices shall be deemed to have been given and delivered upon receipt or attempted delivery (if receipt is refused), as the case may be, and the date of receipt identified by the applicable postal service on any return receipt card shall be conclusive evidence of receipt. A party, by written notice to the other as described above, may alter the address for receipt of notices hereunder.
- 7. Term.** Except as otherwise set forth in an Order Form, the term of the Service will commence on the Order Effective Date set forth in the initial Order Form and will continue thereafter for the initial term specified in the initial Order Form (the "Initial Term"). After the Initial Term or any renewal term, the term for the Service shall continue thereafter, provided that either party may terminate the Agreement after the Initial Term or any renewal term by delivering written notice of termination to the other party at least 90 days (unless otherwise specified in an Order Form) before the desired effective date of such termination. All terms and conditions of the GTC

and the Supplement shall remain in effect until termination of the Agreement, except as the parties expressly agree otherwise in writing.

- 8. Invoicing.** Concur will invoice for the Fees set forth in an Order Form, as set forth herein and in such Order Form.
- 8.1 Currency for Fees:** All fees set forth in such Order Form are denominated in the currency specified under "Currency for Fees" in such Order Form and shall be paid by Customer in such currency.
- 8.2 Initial Set Up Fees:** Concur shall be entitled to invoice Customer for the Initial Set Up Fees specified in such Order Form at any time on or after the "Order Effective Date" set forth in such Order Form.
- 8.3 Transaction Fees and Other Recurring Fees:** Concur shall be entitled to invoice Customer for the recurring Transaction Fee for a given Service Type (and for all recurring Transaction Fees and Recurring Fees specified in the "Extended Services Ordered" section(s) set forth in such Order Form that pertain to such Service Type) beginning on the Transaction Fee Start Date (as defined in such Order Form) for such Service and continuing thereafter for each Billing Cycle during the term of the Agreement.
- 9. Optional Select Access Services.** Notwithstanding anything to the contrary, Customer will have the option to activate and use Concur's Select Access Services in conjunction with Customer's use of an applicable Concur Service for additional fees based on actual usage of such Select Access Services. A list of Concur's Select Access Services and corresponding fees and related terms are posted on the Concur Support Portal website, incorporated herein by this reference, and subject to change from time to time as specified on such website.
- 10. Definitions.** The following terms will have the meanings specified below:
  - 10.1 "Annual Period"** means each 12-month period beginning on the Order Effective Date set forth in the applicable Order Form.
  - 10.2 "Base Transactions"** means, collectively, the stipulated number of Transactions for which Customer is required to pay the corresponding Base Transaction Fee specified in the applicable Order Form for a given Billing Cycle.
  - 10.3 "Billing Cycle"** means the billing frequency specified in the applicable Order Form.
  - 10.4 "Incremental Transactions"** means, collectively, the number of Transactions, in excess of the number of Base Transactions, for which Customer is required to pay the corresponding Incremental Transaction Fee specified in the applicable Order Form for a given Billing Cycle.
  - 10.5 "Production Availability"** means, for the Service Type(s) ordered hereunder, the date on which such Service Type is made available to Customer for production use.
  - 10.6 "Recurring Fee"** means the fee to be paid for each Billing Cycle for the unit-based Extended Services based on the aggregate number of Base Transactions for the Service Type ordered as set forth on the applicable Order Form. The Recurring Fees will be invoiced in advance of each Billing Cycle and the Incremental Transaction Fees, if any, related to the Transactions for which there are Recurring Fees will be invoiced in arrears for the preceding Billing Cycle.
  - 10.7 "Service Type"** means each primary service offering ordered as specified in the "Service Ordered" section on the applicable Order Form.
  - 10.8 "Transaction"** means, except as otherwise set forth in a Transaction table in the Service Description Guide for the applicable service, an expense report that is submitted by or on behalf of an Authorized User during a given Billing Cycle through the use of the Service; provided, however, that all submissions and re-submissions of a single expense report shall be counted as a single Transaction. In addition, for Travel and Expense, the definition of Transaction includes each travel booking transaction submitted through the use of such Service Type (and not otherwise timely cancelled) if, within 120 days after the date of such travel booking transaction, such travel booking transaction does not correspond to an expense report submitted through the use of such Service Type.

**10.9 "Transaction Fee"** means the fee to be paid for each Billing Cycle consisting of: (i) the applicable Base Transaction Fee specified in the applicable Order Form; and (ii) an Incremental Transaction Fee equal to the number of Incremental Transactions for the applicable Billing Cycle, multiplied by the applicable rate per Incremental Transaction specified in such Order Form. The Base Transaction Fees will be invoiced in advance of each Billing Cycle and the Incremental Transaction Fees, if any, will be invoiced in arrears for the preceding Billing Cycle.

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

### 1. DEFINITIONS

Capitalized terms used in this document are defined in the Glossary.

### 2. USAGE RIGHTS AND RESTRICTIONS

#### 2.1 Grant of Rights.

SAP grants to Customer a non-exclusive, non-transferable and world-wide right to use the Cloud Service (including its implementation and configuration), Cloud Materials and Documentation solely for Customer's and its Affiliates' internal business operations. Permitted uses and restrictions of the Cloud Service also apply to Cloud 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 Acceptable Use Policy.

With respect to the Cloud Service, Customer will not:

- (a) disassemble, decompile, reverse-engineer, copy, translate or make derivative works,
- (b) transmit any content or data that is unlawful or infringes any intellectual property rights, or
- (c) circumvent or endanger its operation or security.

#### 2.4 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.

#### 2.5 Suspension of Cloud Service.

SAP may suspend 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. SAP will limit the suspension in time and scope as reasonably possible under the circumstances.

#### 2.6 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.

#### 2.7 Mobile Access to Cloud Service.

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

### 3. SAP RESPONSIBILITIES

#### 3.1 Provisioning.

SAP provides access to the Cloud Service as described in the Agreement.

#### 3.2 Support.

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

#### 3.3 Security.

SAP uses reasonable security technologies in providing the Cloud Service. As a data processor, SAP will implement technical and organizational measures referenced in the Order Form to secure personal data processed in the Cloud Service in accordance with applicable data protection law.

### **3.4 Modifications.**

- (a) The Cloud Service and SAP Policies may be modified by SAP. SAP will inform Customer of modifications by email, the support portal, release notes, Documentation or the Cloud Service. The information will be delivered by email if the modification is not solely an enhancement. Modifications may include optional new features for the Cloud Service, which Customer may use subject to the then-current Supplement and Documentation.
- (b) If Customer establishes that a modification is not solely an enhancement and materially reduces the Cloud Service, Customer may terminate its subscriptions to the affected Cloud Service by providing written notice to SAP within thirty days after receipt of SAP's informational notice.

### **3.5 Analyses.**

SAP, SAP SE or SAP Affiliates may create analyses utilizing, in part, Customer Data and information derived from Customer's use of the Cloud Service and Consulting Services. Analyses will anonymize and aggregate information, and will be treated as Cloud Materials. Examples of how analyses may be used include: optimizing resources and support; research and development; automated processes that enable continuous improvement, performance optimization and development of new SAP products and services; verification of security and data integrity; internal demand planning; and data products such as industry trends and developments, indices and anonymous benchmarking.

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

### **4.1 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 nonexclusive right to process Customer Data solely to provide and support the Cloud Service.

### **4.2 Personal Data.**

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

### **4.3 Security.**

Customer will maintain reasonable security standards for its Authorized Users' use of the Cloud Service.

### **4.4 Access to Customer Data.**

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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 will pay fees as stated in the Order Form. After prior written notice, SAP may suspend Customer's use of the Cloud Service until payment is made. Customer cannot withhold, reduce or set-off fees owed nor reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancellable and fees non-refundable.

## **5.2 Taxes.**

Fees and other charges imposed under an Order Form will not include taxes, all of which will be for Customer's account. Customer is responsible for all taxes, other than SAP's income and payroll taxes. Customer must provide to SAP any direct pay permits or valid tax-exempt certificates prior to signing an Order Form. If SAP is required to pay taxes (other than its income and payroll taxes), Customer will reimburse SAP for those amounts and indemnify SAP for any taxes and related costs paid or payable by SAP attributable to those taxes.

## **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 days written notice of the other party's material breach unless the breach is cured during that thirty day period,
- (b) as permitted under Sections 3.4(b), 7.3(b), 7.4(c), or 8.1(c) (with termination effective thirty 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 12.6.

### **6.3 Refund and Payments.**

For termination by Customer or an 8.1(c) termination, 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, 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 returned or destroyed as required by the Agreement, 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, and 12 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) the re-performance of the deficient Cloud Service, and

- (b) if SAP fails to re-perform, Customer may terminate its subscription for the affected Cloud Service. Any termination must occur within three months of SAP's failure to re-perform.

#### **7.4 System Availability.**

- (a) 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").
- (b) 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.
- (c) In the event SAP fails to meet the SLA (i) for four consecutive months, or (ii) for five or more months during any twelve months period, or (iii) at a system availability level of at least 95% for one calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing SAP with written notice within thirty 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, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of SAP or product roadmaps in obtaining subscriptions for any Cloud Service.

### **8. THIRD PARTY CLAIMS**

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

- (a) SAP will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' use of the Cloud Service infringes or misappropriates a patent claim, copyright, or trade secret right. SAP will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement SAP enters into) with respect to these claims.
- (b) SAP's obligations under Section 8.1 will not apply if the claim results from (i) Customer's breach of Section 2, (ii) use of the Cloud Service in conjunction with any product or service not provided by SAP, or (iii) use of the Cloud Service provided for no fee.
- (c) In the event a claim is made or likely to be made, SAP may (i) procure for Customer the right to continue using the Cloud Service under the terms of the Agreement, or (ii) replace or modify the Cloud Service to be non-infringing without a material decrease in functionality. 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.

#### **8.2 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.**

- (a) The party against whom a third party claim is brought will timely notify the other party in writing of any claim, reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the party providing the defense.
- (b) The party that is obligated to defend a claim 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 party against whom the claim is brought.

### **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 Unlimited Liability.**

Neither party will exclude or limit its liability for damages resulting from:

- (a) the parties' obligations under Section 8.1(a) and 8.2,
- (b) unauthorized use or disclosure of Confidential Information,
- (c) either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data,
- (d) death or bodily injury arising from either party's gross negligence or willful misconduct, or
- (e) any failure by Customer to pay any fees due under the Agreement.

### **9.2 Liability Cap.**

Subject to Sections 9.1 and 9.3, the maximum aggregate liability of either party (or its respective Affiliates or SAP's subcontractors) to the other or any other person or entity for all events (or series of connected events) arising in any twelve month period will not exceed the annual subscription fees paid for the applicable Cloud Service directly causing the damage for that twelve month period. Any "twelve month period" commences on the Subscription Term start date or any of its yearly anniversaries.

### **9.3 Exclusion of Damages.**

Subject to Section 9.1:

- (a) neither party (nor its respective Affiliates or SAP's subcontractors) will be liable to the other party for any special, incidental, consequential, or indirect damages, loss of good will or business profits, work stoppage or for exemplary or punitive damages, and
- (b) SAP will not be liable for any damages caused by any Cloud Service provided for no fee.

### **9.4 Risk Allocation.**

The Agreement allocates the risks between SAP and Customer. The fees for the Cloud Service and Consulting Services reflect this allocation of risk and limitations of liability.

## **10. INTELLECTUAL PROPERTY RIGHTS**

### **10.1 SAP Ownership.**

SAP, SAP SE, their Affiliates or licensors own all intellectual property rights in and related to the Cloud Service, Cloud Materials, Documentation, Consulting Services, design contributions, related knowledge or processes, and any derivative works of them. All rights not expressly granted to Customer are reserved to SAP, SAP SE and its licensors.

### **10.2 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.

### **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 Consulting Services.

## **11. CONFIDENTIALITY**

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

- (a) The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users 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. Customer will not disclose the Agreement or the pricing to any third party.
- (b) Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 11.
- (c) In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.

### **11.2 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) is generally available to the public without breach of the Agreement by the receiving party,
- (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or
- (d) the disclosing party agrees in writing is free of confidentiality restrictions.

### **11.3 Publicity.**

Neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Customer agrees that SAP may use Customer's name in customer listings or quarterly calls with its investors or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including reference calls and stories, press testimonials, site visits, SAPPHIRE participation). Customer agrees that SAP may share information on Customer with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Customer employee contact information with SAP.

## **12. MISCELLANEOUS**

### **12.1 Severability.**

If any provision of the Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.

### **12.2 No Waiver.**

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

### **12.3 Electronic Signature.**

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

### **12.4 Regulatory Matters.**

SAP Confidential Information is subject to export control laws of various countries, including the laws of the United States and Germany. Customer will not submit SAP Confidential Information to any government agency for licensing consideration or other regulatory approval, and will not export SAP Confidential Information to countries, persons or entities if prohibited by export laws.

### **12.5 Notices.**

All notices will be in writing and given when delivered to the address set forth in an Order Form with copy to the legal department. Notices by SAP relating to the operation or support of the

Cloud Service and those under Sections 3.4 and 5.1 may be in the form of an electronic notice to Customer's authorized representative or administrator identified in the Order Form.

**12.6 Assignment.**

Without SAP's prior written consent, Customer may not assign or 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.

**12.7 Subcontracting.**

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

**12.8 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.

**12.9 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.

**12.10 Governing Law.**

The Agreement and any claims relating to its subject matter will be governed by and construed under the laws of Pennsylvania, without reference to its conflicts of law principles. All disputes will be subject to the exclusive jurisdiction of the courts located in Philadelphia, Pennsylvania. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement. Either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

**12.11 Entire Agreement.**

The Agreement constitutes the complete and exclusive statement of the agreement between SAP and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both parties, except as permitted under Section 3.4. An Agreement will prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if SAP accepts or does not otherwise reject the purchase order.

## **Glossary**

- 1.1 "Affiliate"** of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the 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 an Order Form and documents incorporated into an 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
- (a) Customer,
  - (b) Customer's Affiliates, and/or
  - (c) 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.
- 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 "Cloud Materials"** mean any materials provided or developed by SAP (independently or with Customer's cooperation) in the course of performance under the Agreement, including in the delivery of any support or Consulting Services to Customer. Cloud Materials do not include the Customer Data, Customer Confidential Information or the Cloud Service.
- 1.7 "Confidential Information"** means
- (a) with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, (iii) Customer implementation plans, and/or (iv) Customer financial information, and
  - (b) with respect to SAP: (i) the Cloud Service, Documentation, Cloud Materials and analyses under Section 3.5, and (ii) information regarding SAP research and development, product offerings, pricing and availability.
  - (c) Confidential Information of either SAP or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.
- 1.8 "Consulting Services"** means professional services, such as implementation, configuration, custom development and training, performed by SAP's employees or subcontractors as described in any Order Form and which are governed by the Supplement for Consulting Services or similar agreement.
- 1.9 "Customer Data"** means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include SAP's Confidential Information.
- 1.10 "Documentation"** means SAP's then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud Service which is made available to Customer with the Cloud Service.
- 1.11 "Order Form"** means the ordering document for a Cloud Service that references the GTC.
- 1.12 "SAP SE"** means SAP SE, the parent company of SAP.
- 1.13 "SAP Policies"** means the operational guidelines and policies applied by SAP to provide and support the Cloud Service as incorporated in an Order Form.
- 1.14 "Subscription Term"** means the term of a Cloud Service subscription identified in the applicable Order Form, including all renewals.
- 1.15 "Supplement"** means the supplemental terms and conditions that apply to the Cloud Service and that are incorporated in an Order Form.
- 1.16 "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.