SAP General Terms and Conditions for SAP Cloud Services (for indirect sales)

Article 1 Definitions

1.1 "Affiliate" of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights or controls or is under common control with that legal entity. "Control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through ownership, by contract or otherwise. Any such company shall be considered an Affiliate for only such time as such interest or control is maintained.

1.2 "Confidential Information" means, with respect to Customer, the Customer Data, and with respect to SAP: (a) the Service, including, without limitation, all (i) computer software (both object and source codes) and related Service documentation or specifications; (ii) techniques, concepts, methods, processes and designs embodied in or relating to the Service; and (iii) all application program interfaces, system infrastructure, system security and system architecture design relating to the Service; (b) SAP research and development, product offerings, pricing and availability; and (c) any information about or concerning any third party which information was provided to SAP subject to an applicable confidentiality obligation to such third party. In addition to the foregoing, Confidential Information of either SAP or Customer (the party disclosing such information being the "Disclosing Party") may also include information which the Disclosing Party protects against unrestricted disclosure to others and which (i) if in tangible form, the Disclosing Party clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), the Disclosing Party identifies as confidential or proprietary at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary within thirty (30) calendar days of any such disclosure.

1.3 "Customer Data" means any content, materials, data and information provided by Customer or its Named Users to SAP in the course of using the Service.

1.4 "Documentation" means SAP's then-current technical and functional documentation for the Service which is delivered or made available to Customer with the Service.

1.5 "Named User" means Customer's and its Affiliates' employees, agents, contractors, consultants, suppliers or other individuals who are authorized by Customer to use the Service.

1.6 "System Availability" means the average percentage of total time during which the Service is available to Customer, excluding (i) any maintenance windows (as may be defined in a supplement to this Agreement); (ii) any emergency maintenance (as may be defined in a supplement to this Agreement); (iii) delays due to conditions beyond the reasonable control of SAP; (iv) delays caused by equipment provided by Customer (or its service providers); or (v) delays caused by systems outside of the Service, including, but not limited to, Customer's network.

1.7 "Work Product" means any work product or tangible results produced by or with SAP pursuant to this Agreement, including in the course of providing support, training or configuration services to Customer. Work Product includes works created for or in cooperation with Customer, but does not include any Customer Data, Customer Confidential Information or the Service.

Article 2 Usage Rights and Customer Obligations

2.1 Subject to subscription fees paid by SAP Reseller to SAP, SAP shall make the Service available to Customer in accordance with and during the paid up subscription term to permit the number of subscribed Named Users to remotely access and use the Service solely for Customer's own internal business purposes as permitted by and subject to the terms of this Agreement and the Documentation. The right to use the Service is worldwide, subject to Article 14.4.

2.2 Customer shall be responsible to use the Service only for the aggregate number of then-subscribed Named Users and shall not sublicense, license, sell, lease, rent, outsource or otherwise make the Service available to third parties, other than Named Users. Customer shall be responsible for the acts and omissions of its Named Users as if they were the acts and omissions of Customer. Rights of any Named User licensed to utilize the Service cannot be shared or used by more than one individual. In addition, a Named User may not be transferred from one individual to another unless the original user no longer requires, and is no longer permitted, access to the Service.

2.3 Customer shall not remove notices and notations in the Service that refer to copyrights, trademark rights, patent rights and other intellectual property rights. SAP or its licensors own all right, title and interest in any and all copyrights, trademark rights, patent rights and other intellectual property or other rights in the Service, as well as any Work Product, and any improvements, design contributions or derivative works conceived or created by either party in or to the Service. Except as otherwise agreed in writing, Customer is granted the nonexclusive right to use the Work Product in connection with its use of the Service and subject to the terms of this Agreement. Except for the limited rights expressly granted herein, this Agreement does not transfer from SAP any proprietary right or interest in the Service. All rights not expressly granted to Customer in this Agreement are reserved by SAP and its licensors.

2.4 When using the Service, Customer shall not, and shall ensure that its Named Users do not: (a) copy, translate, disassemble, decompile, reverse-engineer or otherwise modify any parts of the Service (except as described and permitted in the Documentation); (b) transmit any content, data or information that is unlawful, harmful, malicious, or invasive of another's privacy ; (c) infringe the intellectual property rights of any entity or person; (d) interfere with or disrupt the SAP software or SAP systems used to host the Service, or other equipment or networks connected to the Service, or disobey any reasonable requirements, procedures, policies or regulations of networks connected to the Service made known to Customer; (e) circumvent or disclose the user authentication or security of the Service or any host, network, or account related thereto to a third party other than a Named User on a need to know basis; (f) use any application programming interface to access the Service other than those made available by SAP; (g) make any use of the Service that violates any applicable law or regulation.

2.5 If the Service includes content delivered by SAP, such content is provided "as is", and SAP makes no warranty as to its accuracy or completeness. Customer uses such Content at its own risk, and SAP shall have no liability to Customer or any third party based on Customer's use of or reliance on such Content.

2.6 SAP shall be entitled to monitor Customer's compliance with the terms of this Agreement, including but not limited the number of Named Users accessing the Service and, subject to Article 12 of this Agreement, SAP may utilize the information concerning Customer's use of the Service to improve SAP products and services and to provide Customer with reports on its use of the Service.

2.7 SAP may change or modify the Service at any time. SAP shall not materially diminish the Service during the term of the Order Form. Nothing in this Article 2.7 shall require SAP to continue to provide any portion of the Service if this would result in SAP violating the rights of any third party or any applicable law.

Article 3 Support, Set up and Security

3.1 SAP will provide support for the Service as described in Exhibit 1 hereto.

3.2 SAP will use commercially reasonable security technologies (such as encryption, password protection and firewall protection) in providing the Service. Customer agrees that SAP does not control the transfer of data, including but not limited to Customer Data, over telecommunications facilities, including the Internet, and SAP does not warrant that such security technologies will be able to prevent third party disruptions of the Service. SAP and Customer are further subject to the terms and conditions of Exhibit 2 ("Annex for Commissioned Processing of Personal Data").

3.3 SAP warrants at least ninety-nine percent (99%) System Availability over any calendar month. Should SAP fail to achieve ninety-nine percent (99%) System Availability over a calendar month, Customer shall have the right to receive from SAP Reseller a credit equal to two percent (2%) of its subscription fees for the Service for that month, for each one percent (1%) (or portion thereof) by which SAP fails to achieve such level, up to one hundred percent (100%) of the fees for such month. This is Customer's sole and exclusive remedy for any breach of this service level warranty; provided however, that should SAP fail to achieve ninety-nine percent (99%) System Availability in each of two (2) consecutive calendar months, Customer shall have the right to terminate the Order Form for cause, in which case SAP Reseller will refund to Customer any prepaid fees for the remainder of its subscription term after the date of termination. Where Customer is entitled to receive credits under this Article 3.3, SAP will issue such credits to SAP Reseller who will forward to Customer. Claims under this service level warranty must be made in good faith and by submitting a support case within ten (10) business days after the end of the relevant period.

Article 4 Customer Responsibilities and Obligations

4.1 Subject to Article 12 below, Customer grants to SAP the nonexclusive right to use Customer Data for the sole purpose of and only to the extent necessary for SAP to provide the Service.

4.2 Customer shall be responsible for entering its Customer Data into the Service and Customer shall be responsible for the maintenance of the Customer Data supplied by it. Customer hereby represents and warrants to SAP that the Customer Data is free of all viruses, Trojan horses, and comparable elements which could harm the systems or software used by SAP or its subcontractors to provide the Service. Customer agrees that it has collected and shall maintain and handle all Customer Data in compliance with all applicable data privacy and protection laws, rules and regulations.

4.3 Customer shall change all passwords used to access the Service at regular intervals. Should Customer learn of an unauthorized third party having obtained knowledge of a password, Customer shall inform SAP thereof without undue delay and promptly change the password.

4.4 Customer is responsible for the connection to the Service, including the Internet connection.

4.5 SAP only supports the Service in those countries explicitly named as supported countries in the Documentation. These are the only valid, localized/language versions of the Service available for use by the Customer. Any Named Users from outside these countries are required to access a valid, localized/language version of the Service as provided to Customer.

Article 5 Intentionally Removed

Article 6 Reseller Relationship, Prices and Payment

6.1 Customer acknowledges and agrees that the SAP Reseller through which Customer has arranged for the procurement of the Services or from which Customer receives any services related to the Services is not an agent of SAP. The SAP Reseller is an independent company, person, or entity with no authority to bind SAP or to make representations or warranties on behalf of SAP. SAP makes no representations or warranties as to such authorized distributor or reseller, or any other third party, related to the performance of the products or services of such entities, and fully disclaims any such warranties in accordance with Article 8.

6.2 Customer expressly acknowledges and agrees that SAP is entitled to rely on written information from SAP Reseller in making any determination as to suspension of the Services or termination of the Agreement relative to Article 7.2, and SAP shall have no liability to Customer for any actions thereunder based on SAP's reasonable belief in the accuracy or reliability of such information.

6.3 Customer shall pay SAP Reseller (or successors in interest or assignee(s) of SAP Reseller) fees and any applicable taxes for the Services specified in the applicable Order Form(s), pursuant to the payment agreement between SAP Reseller and Customer. Provision of the Services is contingent upon SAP's receipt of payment for the Service from the SAP Reseller.

6.4 In the event of termination of the reseller agreement between SAP and SAP Reseller, or if for any other reason SAP Reseller is no longer entitled to receive fees for the Services hereunder, SAP may, at its option and upon notice to Customer, require continued payment of fees for the Services hereunder to either another SAP reseller or to SAP. Failure to pay such fees shall be considered a material breach of this Agreement.

Article 7 Term, Termination and Termination Support

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

7.2 Notwithstanding the foregoing, this Agreement shall terminate (i) thirty (30) days after SAP gives Customer notice of Customer's material breach of any provision of the Agreement; (ii) upon 30 days' written notice to Customer if Reseller's payment of any money due for the Service is more than thirty (30) days delinquent, unless Reseller has cured such failure to pay within such thirty (30) day period; or (iii) thirty (30) days after Customer gives SAP notice of SAP's material breach of any provision of the Agreement, unless SAP has cured such breach during such thirty (30) day period. In case of termination in accordance with Article 7.2 (iii), Customer shall be entitled to a pro-rata refund of prepaid fees for the applicable Service through SAP Reseller. Except for termination in accordance with Article 7.2(iii), termination will not relieve Customer from the obligation to pay fees that remain unpaid. For avoidance of doubt, Customer's failure to pay fees due for the Services (whether to SAP Reseller, successors in interest or assignee(s) of SAP Reseller) shall be considered a material breach of this Agreement.

7.3 Notwithstanding SAP's right to terminate as set forth in Article 7.2 above, in the event of (i) any material breach of this Agreement which is not cured within thirty (30) days after receipt of written notice from SAP; or (ii) a determination by SAP that continued use of the Service may result in harm to the Service (including the systems used to provide the Service) or other SAP customers, or result in a violation of applicable law, regulation, legal obligation or legal rights of another, in addition to any other remedies available at law or in equity; or (iii) thirty (30) days after SAP or SAP Reseller gives Customer notice of Customer's breach of any obligations under separate agreement to SAP Reseller, including non-payment of any fees; or (iv) non-payment of any fees due to SAP by SAP Reseller that remain overdue by more than 30 days, SAP will have the right immediately, in SAP's sole discretion, to remove any potentially offending Customer Data from the Service, deactivate Customer's user name(s) and password(s) and/or suspend access to the Service.

7.4 Upon the effective date of termination, Customer's access to the Service will be terminated. Customer shall have the ability to access its Customer Data at any time during a subscription term. Furthermore, upon reasonable request, Customer may export and retrieve its Customer Data during a subscription term, which request will be subject to technical limitations caused by factors such as (i) the size of Customer's instance of the Service; and (ii) the nature of Customer's request, e.g., the frequency and/or timing of the export and retrieval. Customer shall have the ability to export and retrieve its Customer Data within thirty (30) days after the effective date of termination. Thirty (30) days after the effective date of termination, SAP shall have no obligation to maintain or provide any Customer Data. Except when such Customer Data has been removed in accordance with Article 7.3, exported by Customer or Customer was granted a free (no fee) license to the Service, upon termination of the Agreement, SAP shall use commercially reasonable efforts to permanently and irrevocably remove, purge or overwrite all data still remaining on the servers used to host the Service, including, but not limited to, Customer Data, unless and to the extent applicable laws and regulations require further retention of such data.

7.5 Articles 6, 9, 10, 11, 12 and 13 shall survive the expiration or termination of this Agreement.

Article 8 Warranties by SAP

8.1 SAP warrants that the Service (excluding any third party products, content or services accessed through the Service) will substantially conform to the specifications stated in the Documentation. The foregoing warranty shall not apply: (i) if the Service is not used in accordance with this Agreement and/or any Documentation; or (ii) if the non-conformity is caused by third party services, content or products or any modifications, configurations or customizations to the Service.

8.2 Customer shall report any non-conformities with respect to Article 8.1 to SAP in writing without undue delay through an SAP approved support channel, submitting a detailed description of the problem and any information useful for rectification of the non-conformity.

8.3 Provided Customer complies with Article 8.2 such that existence of non-conformity is validated, SAP will, at its option: (i) repair the non-conforming Service; or (ii) return an appropriate portion of any payment made by Customer with respect to the affected portion of the applicable Service. This is Customer's sole and exclusive remedy under this warranty.

8.4 EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE 8.1, NEITHER SAP NOR ITS VENDORS MAKE ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING THE MERCHANTABILITY, SUITABILITY, ORIGINALITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE, NON-INFRINGEMENT OR RESULTS TO BE DERIVED FROM THE USE OF THE SERVICE, OR ANY INFORMATION TECHNOLOGY SERVICES, SOFTWARE, HARDWARE OR OTHER MATERIALS PROVIDED UNDER THIS AGREEMENT, OR THAT THE OPERATION OF ANY SUCH SERVICE, SOFTWARE, HARDWARE OR OTHER MATERIAL WILL BE UNINTERRUPTED OR ERROR FREE.

Article 9 Indemnification by SAP

9.1 SAP shall defend Customer and its Affiliates against claims brought against Customer by any third party alleging that Customer's use of the Service, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of a patent claim(s), copyright or trade secret rights, and SAP will pay damages finally awarded against Customer (or the amount of any settlement SAP enters into) with respect to such claims. This obligation of SAP shall not apply if the alleged infringement or misappropriation results from use of the Service in conjunction with any other software or service, or unlicensed activities or use of the Service in violation of this Agreement or to free (no fee) or trial licenses of the Service. This obligation of SAP also shall not apply if Customer fails to timely notify SAP in writing of any such claim, however Customer's failure to provide or delay in providing such notice shall not relieve SAP of its obligations under this Article except to the extent SAP is prejudiced by Customer's failure to provide or delay in providing such notice. SAP is permitted to fully control the defense and any settlement of any such claim as long as such settlement does not include a financial obligation on or admission of liability by Customer. In the event Customer declines SAP's proffered defense, or otherwise fails to cede full control of the defense to SAP's designated counsel, then Customer waives SAP's obligations under this Article 9.1. Customer shall reasonably cooperate in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to SAP. SAP expressly reserves the right to cease such defense of any claim(s) in the event the Service is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. SAP may settle any claim on a basis requiring SAP to substitute for the Service alternative substantially equivalent non-infringing services. Customer shall not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Service that is prejudicial to SAP's rights.

9.2 In the event a Claim under Article 9.1 is made or in SAP's reasonable opinion is likely to be made, SAP may, at its sole option and expense: (i) procure for Customer the right to continue using the Service under the terms of this Agreement; or (ii) replace or modify the Service to be non-infringing without material decrease in functionality. If the foregoing options are not reasonably available, SAP may terminate this Agreement and through SAP Reseller refund to Customer all prepaid fees for the remainder of its term after the date of termination.

9.3 THE PROVISIONS OF THIS ARTICLE 9 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF SAP AND ITS LICENSORS TO CUSTOMER, AND IS CUSTOMER'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

Article 10 Indemnification by Customer

Customer shall defend SAP and its Affiliates against claims brought against SAP by any third party arising from or related to (i) any use of the Service in violation of any applicable law or regulation; or (ii) an allegation that the Customer Data or Customer's use of the Service in violation of this Agreement violates, infringes or misappropriates the rights of a third party. Customer will pay damages finally awarded against SAP (or the amount of any settlement Customer enters into) with respect to such claims. The foregoing shall apply regardless of whether such damage is caused by the conduct of Customer and/or its Named Users or by the conduct of a third party using Customer's access credentials. This obligation of Customer shall not apply if SAP fails to timely notify Customer in writing of any such claim, however SAP's failure to provide or delay in providing such notice shall not relieve Customer of its obligations under this Article except to the extent Customer is prejudiced by SAP's failure to provide or delay in providing such notice. Customer is permitted to fully control the defense and any settlement of any such claim as long as such settlement does not include a financial obligation on or admission of liability by SAP or otherwise obligates SAP to specific performance. In the event SAP declines Customer's proffered defense, or otherwise fails to cede full control of the defense to Customer's designated counsel, then SAP waives Customer's obligations under this Article 10. SAP shall reasonably cooperate in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Customer.

Article 11 Limitation of Liability

11.1 Subject to Article 11.3 below, under no circumstances, regardless of the nature of the claim shall either SAP (or its Affiliates or Licensors) or Customer (or its Affiliates) be liable to each other or any other person or entity, in any amount, for any of the following types of loss or damage arising under or in relation to this Agreement: loss of profits, loss of goodwill, loss of business or business opportunity, loss of revenue or anticipated savings, loss resulting from business disruption or work stoppage, loss of data, loss resulting from computer failure or malfunction, exemplary or punitive damages or for any special, incidental, consequential or indirect loss or damage howsoever arising, whether or not the other party has been advised of the possibility of such loss or damage.

11.2 Subject to Article 11.3 below, the aggregate liability of SAP (or its Affiliates or Licensors) or Customer (or its Affiliates) to each other or any other person or entity arising under or in connection with this Agreement, shall not exceed an amount of damages exceeding the fees paid to SAP Reseller by Customer for the applicable Service in the twelve (12) month period preceding the date of the incident giving rise to such liability according to any applicable SAP price list in effect as of the effective date of the applicable Order Form.

11.3 Nothing in this Agreement shall exclude or limit either party's liability for (i) death or personal injury caused by negligence, (ii) breach of the obligations imposed by s.12, Sales of Goods Act 1979 or s.2, Supply of Goods and Services Act 1982, (iii) willful misconduct (iv) fraud or fraudulent misrepresentation, (v) damages resulting from unauthorised use or disclosure of confidential information under Article 12 of this Agreement, (vi) SAP's right to collect unpaid fees hereunder or (vii) any other liability which cannot be excluded or limited by applicable law.

11.4 The provisions of this Agreement allocate the risks between SAP and Customer. The Service fees reflect this allocation of risk and limitations of liability herein. The aforementioned liability limitations shall include any claims against employees of, subcontractors of, or any other persons authorized by, SAP.

Article 12 Confidentiality

12.1 Confidential Information shall not be used or reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other party shall remain the property of the Disclosing Party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than individuals whose access is necessary to enable it to exercise its rights and/or perform its obligations hereunder and who are under obligations of confidentiality substantially similar to those set forth herein. As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.

12.2 The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the Disclosing Party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without breach of this Agreement by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; or (d) the Disclosing Party agrees in writing is free of such restrictions.

12.3 Customer shall not disclose the terms and conditions of this Agreement or the pricing contained herein to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Customer agrees that SAP may use Customer's name in customer listings or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHIRE participation). SAP will make reasonable efforts to avoid having the reference activities unreasonably interfere with Customer's business.

12.4 Customer may provide, or SAP may solicit, input regarding the Service, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of the Service or any other SAP site, service or product, or input as to whether Customer believes SAP's development direction is consistent with Customer's business and IT needs, the technology marketplace in general, and the like (collectively "Feedback"). Customer acknowledges and agrees that any information disclosed by SAP during discussions related to Feedback shall be considered SAP Confidential Information and shall be protected from disclosure in accordance with the terms of this Agreement. In order for SAP to utilize such Feedback, Customer hereby grants to SAP a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right to sublicense to SAP's licensees and customers, under Customer's relevant intellectual property rights, to use, publish, and disclose such Feedback in any manner SAP chooses and to display, perform, copy, make, have made, use, sell, and otherwise dispose of SAP's and its sublicensees' products or services embodying Feedback in any manner and via any media SAP chooses, without reference to the source. SAP shall be entitled to use Feedback for any purpose without restriction or remuneration of any kind with respect to Customer and/or Customer's representatives. Customer acknowledges that the information related to the Service disclosed by SAP under this Agreement is only intended as possible strategies, developments, and functionalities of the Service and is not intended to be binding upon SAP to any particular course of business, product strategy, and/or development.

Article 13 Data Protection

13.1 Customer has and accepts the full responsibility for all personal data as 'controller' in terms of Art. 2 (d) of the EU Data Protection Directive 95/46/EC. To the extent personal data is stored and/or processed under this Agreement, SAP will adhere to Customer's instructions as a 'processor' in the terms of Art. 2 (e) of the EU Data Protection Directive 95/46/EC. Customer's instructions exceeding the scope of services offered by SAP will be at Customer's expense and subject to technical and organizational feasibility by SAP. SAP and Customer will implement all technical and organizational measures necessary to meet the requirements of applicable data protection laws to protect personal data against misuse.

13.2 To the extent that personal data of Customer are being processed, SAP shall obligate its personnel entrusted with the processing of Customer's data to data protection and data secrecy in accordance with applicable law.

13.3 SAP is authorized to engage subcontractors for the processing of personal data to the extent necessary for fulfilling its contractual obligations under this Agreement. SAP shall obligate its subcontractors to obey all relevant data protection rules. In case that such subcontractor is located outside the EU, SAP shall provide for a level of data protection deemed adequate under EU data protection regulations.

13.4 Customer ensures that no legal requirements of Customer prevent SAP from fulfilling its contractual obligations under this Agreement in compliance with applicable law. This includes, but is not limited to, ensuring that all concerned individuals have previously declared consent to a possible processing of personal data.

Article 14 Miscellaneous

14.1 It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

14.2 If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

14.3 The Service Schedule may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Order Form. Signatures sent by electronic means (facsimile or scanned and sent via e-mail) shall be deemed original signatures.

14.4 The Service, Documentation and other SAP materials are subject to the export control laws of various countries, including without limitation the laws of the United States and Germany. Customer agrees that it will not submit the Service, Documentation or other SAP materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Service, Documentation and SAP materials to countries, persons or entities prohibited by such laws. Customer shall also be responsible for complying with all applicable governmental regulations of the country where Customer is registered, and any foreign countries with respect to the use of the Service, Documentation or other SAP materials by Customer and its Named Users.

14.5 This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws ofof England and Wales, without reference to its conflicts of law principles and the parties hereby agree to submit all disputes arising hereunder to the exclusive jurisdiction of the English Courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Customer must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Customer knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

14.6 All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of SAP or Customer at the address first set forth in any Service Schedule. Where in this Article

14.6 or elsewhere in this Agreement, a written form is required, except for notification of any notice of termination or notice of a material breach, that requirement can be met by facsimile transmission, exchange of letters or other written form, including email.

14.7 Dates and timelines shall be non-binding and time will not be of the essence unless expressly agreed by the parties. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

14.8 This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Customer, and all previous representations, discussions, and writings are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. This Agreement may be modified only by a writing signed by both parties. This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Customer to SAP. This Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear in any clickwrap or browsewrap end user agreement included in the Service (except for end user agreements governing third party products or services).

14.9 Customer may not, without SAP's prior written consent, assign, delegate, pledge or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or any SAP materials or SAP Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. SAP may assign this Agreement to any of its Affiliates. SAP may in its sole discretion sub-contract parts of the Service to third-parties.

14.10 The following order of precedence shall be applied in the event of conflict or inconsistency between provisions of the components of this Agreement: (i) the Service Schedule; (ii) the schedules, exhibits and appendices included with or referenced by the Service Schedule; (iii) and these General Terms and Conditions.

14.11 Customer understands and agrees that the Service may include communications such as service announcements and administrative messages from SAP or SAP's partners. Customer will not be able to opt out of receiving these service announcements and administrative messages while using the Site and/or the Service unless Customer sends SAP a specific written notice requesting that the Customer's details be eliminated from the Site and any mailing list.

EXHIBIT 1
SUPPORT TERMS

1. SUPPORT OFFERINGS

1.1 SAP's Cloud Support organization offers two levels of Customer support for the Service. Premium Support is included in the subscription fees for the Service and, for an additional cost, Customer can purchase Platinum Support, if and when available for the applicable Service.

1.2 For purposes of this Exhibit 1, the following definitions apply:

"Admin Training Course" means Administrator training offered through the SAP Academy.

"Administration Units ("AUs")" means pre-purchased units that a Customer who has purchased Platinum Support for SAP SuccessFactors Services may redeem for certain support services related to the SAP SuccessFactors Services. AUs may be used for key administrative tasks such as, by way of example, User and permission management, document and workflow management, analytics and reporting set-up and management and content management. For the avoidance of doubt, AUs shall not be available for, nor apply to, any SAP On-Demand Services.

"Annual Support Review" means the annual review conducted by the Platinum Support Account Manager which may include the review of Customer's adoption of the Service, best practices, issues and mitigation plans, as applicable.

"Application Administrator" means the Primary Customer Contact who is required to take the Admin Training Course prior to Customer's production use of the Service.

"Basic Form Configuration" means copies of existing form templates, text changes, and basic workflow modifications.

"Case Management System" means the global web-based system or tool available to Customer for reporting and logging cases or issues with SAP's support team at any time (including outside of the Cloud Support Hours of Operation, as defined below), which system or tool is accessible by SAP, its Affiliates and authorized Subprocessors.

"Customer Community Site" means the complimentary, web-based, peer-to-peer community where customers can search for product or support information and collaborate with other SAP customers at http://community.successfactors.com for SAP SuccessFactors Services and at https://www.sme.sap.com for SAP On-Demand Services (or any subsequent site(s) of which SAP informs Customer).

"Customer Outreach" means any communications from SAP, including, but not limited to, newsletters, informational notices, known issues alerts and blog posts.

"Knowledge Base" means the searchable articles and videos contained within the Case Management System.

"Live Session" means a training or webinar conducted with a person that is not recorded.

"Live Review" means a remote review with a person via phone or web conference**.**

"Local Time Zone" means Customer's local time zone, depending on where Customer is headquartered or, for Platinum Support customers, where the Assigned Support Account Manager is located.

"Platinum Support Technical Resolution Team" means the SAP support team that is specialized by Service product and which is focused on technical issue resolution for Platinum Support accounts.

"Product Bundle" means a Service Product Bundle, if any, subscribed to by Customer and set forth in an Order Form.

"Release Notes" means the generally available documented summaries, webinars and videos provided by SAP to inform and instruct customers on new product release changes.

"SAP On-Demand Service" shall mean any Service set forth in an applicable Order Form that is not an SAP SuccessFactors Service.

"SAP SuccessFactors Service" shall mean the Service for SuccessFactors Business Execution Software Solutions or other SuccessFactors Service identified in the applicable Order Form.

"Welcome and Transition" means any email notification, Live Session, videos and/or direct phone calls provided by SAP to customers to introduce them to the SAP Cloud Support organization.

The table below describes the services included in the Premium Support and Platinum Support levels.

	Premium Support	**Platinum Support**
Customer Support Hours of Operation (excluding SAP holidays)*	Monday- Friday 8:00 am - 6:00 pm Local Time Zone*	Monday- Friday 8:00 am - 6:00 pm Local Time Zone*
24 X 7 X 365 Support (English Only)	P1 and P2 Issues	P1 and P2 Issues
Customer Contacts Authorized to Contact SAP Support	Two (2) Primary Contacts; if Customer has subscribed to multiple Product Bundles: two (2) Primary Contacts per Product Bundle	Two (2) Primary Contacts; if Customer has subscribed to multiple Product Bundles: two (2) Primary Contacts per Product Bundle
Access to SAP Cloud Support Services (English only) including:	Included	Included
- Customer Community Site		
- Case Management System		
- Knowledge Base		
- Phone		
-Chat	Included for SAP SuccessFactors Services only	Included for SAP SuccessFactors Services only
Customer Outreach	Included	Included
Welcome and Transition	Live Session	Live Session
Assigned Support Account Manager	Not included	Included
Platinum Support Technical Resolution Team	Not Included	Included
Annual Support Review	Not included	Included
Scheduled Review of Open Requests	Not Included	Weekly
Release Notes	Self Serve	Live Review
Application Administration	Not Applicable	AUs (for SAP SuccessFactors Services only)

*Support is also available in the following languages: German, available during the above Support Hours of Operation for Germany; Spanish, available during the above Support Hours of Operation for Spain; French, available during the above Support Hours of Operation for France; and Chinese, available during the above Support Hours of Operation for China. Customer must contact support for the above applicable countries to receive support in the above languages other than English.

2. CONTACTING SUPPORT

Customer will have one (1) back-up Customer Contact for each primary Customer Contact. At least one of Customer's primary and back-up Customer Contacts shall be an Application Administrator. Application Administrators should have taken SAP's Admin Training Course.

If the primary Customer Contacts are known as of the Effective Date, they can be specified in the applicable Service Schedule. Otherwise, Customer shall identify its Customer Contacts (primary and back-up) through the applicable Cloud Support Customer Portal ("Customer Portal") set forth below. Updates to the Customer Contacts should be made through the applicable Customer Portal.

Cloud Support Customer Portal	
SAP SuccessFactors Services Cloud Support	https://support.successfactors.com
SAP On-Demand Services Cloud Support	https://www.sme.sap.com

During the Service configuration and up until "Go-Live", Customer's primary point of contact shall be SAP Cloud Consulting Services, or a SAP implementation partner, as applicable. After "Go-Live" of the Service, Customer's primary point of contact shall be SAP's Cloud Support organization. Notwithstanding the foregoing, Customer shall be free to contact SAP's Cloud Support organization at any time after the Effective Date for support services or to initiate AU services for SAP SuccessFactors Services.

3. RESPONSE LEVELS. SAP will respond to submitted support cases as follows:

Priority	Definition	Response Level
P1	**Very High:** The production system is not accessible or a critical business process for mission critical application cannot be completed for multiple users and no workaround is available. It may include issues that materially affect data integrity or breach of security.	**Initial Response:** within one hour of case being submitted **Ongoing communication:** Once every hour **Resolution Target:** SAP to provide a response within four hours. Response to include either (i) a resolution; (ii) a workaround; or (iii) an action plan.
P2	**High:** The production system is operational but experiencing a major functional loss that impedes transactions from being completed. The development/test system is not accessible or operational.	**Initial Response:** within two hours of case being submitted **Ongoing Communication:** Once every six hours.
P3	**Medium:** The production system is experiencing a minor functional loss that does not significantly impede transactions from being completed. Also includes configurations or change requests that have high business impact.	**Initial Response:** within four business hours of case being submitted **Ongoing Communication:** Once every three business days for non-defect and two weeks for product defect.
P4	**Low:** Change or configuration requests and minor problems. Inquiries about product usage and application capabilities.	**Initial Response:** within one business day of case being submitted **Ongoing Communication:** Once every week for non-defect and three weeks for product defect.

4. CUSTOMER RESPONSIBILITIES.

- Customer shall cooperate with SAP and provide relevant information to enable SAP to reproduce, troubleshoot and resolve the experienced error such as, by way of an example, instance name, username, form name and screenshot.
- Support cases shall be filed and documented through the applicable Customer Portal to allow for proper tracking and compliance with the above-mentioned response level commitments.

EXHIBIT 2

ANNEX FOR COMMISIONNED PROCESSING OF PERSONAL DATA

This Annex for Commissioned Processing of Personal Data stipulates the rights and obligations of Customer and SAP in connection with personal data processed by SAP on behalf of Customer and its Affiliates for the Named Users under the Agreement. This Annex shall be an integral part of the Agreement. Any capitalized terms referenced herein shall have the meaning given to them in the Agreement.

1. Customer Obligations

1.1 Customer hereby acknowledges that the use of Service represents a commissioned processing of personal data of Named Users.

1.2 Customer acknowledges that only Customer and its respective Affiliates (each a data controller) shall be responsible for the permissibility of the processing of personal data as well as for safeguarding the rights of the data subjects.

1.3 Customer shall ensure that its Affiliates, where legally required, shall give their commissions to Customer in writing, by facsimile or via e-mail to authorize SAP and its Affiliates to process personal data as contemplated under the Agreement.

1.4 Customer shall ensure that its Named Users make available the personal data for processing to SAP and the results of the processing shall be transferred back by SAP to Customer by using a defined transfer procedure or in accordance with the functionality implemented in the Service.

1.5 Customer shall inform SAP without delay, if Named Users detect errors or irregularities in the processing of personal data.

1.6 Customer shall ensure that its Affiliates authorize Customer to authorize SAP as its subcontractor for the processing of personal data. SAP shall only adhere to the obligations set out in this Annex when processing personal data of Named Users.

2. SAP Obligations

2.1 SAP shall process the personal data and other operating data of Named Users exclusively in accordance with the data controller's instructions as provided to SAP by Customer, which may include (without limitation) the correction, erasure and/or the blocking of such data if and to the extent the functionality of the Service does not allow the Customer or Named User to do so. The personal data shall not be used by SAP for any other purpose except to provide the Service contemplated under the Agreement. SAP shall not preserve such personal data longer than instructed by Customer. The statutory preservation periods remain unaffected.

2.2 For processing personal data SAP shall only use personnel which demonstrably committed themselves to observe data secrecy and secrecy of telecommunications pursuant to the applicable data protection laws. SAP may discharge this obligation by utilizing one standard template for all its customers.

2.3 SAP shall implement all technical and organisational measures to comply with the requirements pursuant to the applicable data protection laws. SAP undertakes to Customer that it has taken and will, on a continuing basis, take appropriate technical and organizational measures to keep personal data secure and protect it against unauthorized or unlawful processing and accidental loss, destruction or damage. In particular, SAP shall take and regularly check the following protection measures:

- *Physical access control*: SAP shall install an access control system.
- *Access control*: SAP shall control and log access to data processing systems.
- *Access limitation control*: SAP shall define, implement and monitor a concept for user rights, rules for passwords and login procedures to remotely or physically access the Service by its personnel, as required to operate, maintain, support or secure the Service.
- *Transmission control*: SAP shall ensure personal data transmission in encrypted form or by a secure alternative procedure. Transmissions must be logged and guidelines for personal data transmissions must be laid down in writing.
- *Input control*: SAP shall implement a detailed logging system for input, modification and deletion or blocking of personal data to the greatest extent supported by the Service.
- *Job control*: SAP shall define in writing and establish control mechanisms to ensure that data are processed strictly in accordance with the instructions of the data controller as provided to SAP by Customer and as contemplated in the Agreement.
- *Availability control*. SAP shall run a state of the art backup system and define a restore operation procedure to protect personal data from accidental destruction or loss.
- *Data separation*: SAP shall ensure by technical means and defined organisational procedures that personal data collected for different purposes (e.g. different customers) can be processed separately. Technical means can be separated computer systems or demonstrably logical separation in a multi-tenant architecture. Access by one SAP customer to the data of any other SAP customer must be prevented.

Since SAP provides the Service to all customers uniformly via a hosted, web-based application, all appropriate and then current technical and organizational measures apply to SAP's entire customer base hosted out of the same data center and subscribed to the same Service. Customer understands and agrees that the technical and organizational measures are subject to technical progress and development. In that regard, SAP is specifically allowed to implement adequate alternative measures as long as the security level of the measures is maintained. In the event of any significant changes SAP shall provide a notification together with any necessary documentation related thereto to Customer by email or publication on the Site or alternative site easily accessible by Customer.

2.4 If the security measures implemented by SAP do not meet the legal requirements, SAP shall notify Customer without delay.

2.5 SAP shall notify Customer if SAP considers an instruction given by Customer on behalf of the data controller to be in violation of data protection laws. SAP shall not be obliged to perform a comprehensive legal examination.

2.6 SAP shall inform Customer immediately in case of serious disruptions of the operating process, suspected data protection violations or other irregularities in connection with the processing of Named Users' data.

2.7 At Customer's written request and at Customer's expense SAP shall reasonably support Customer in dealing with requests from individual data subjects and/or a supervisory authority with respect to the processing of personal data controlled by Customer. SAP shall notify Customer about inspections and measures of a supervisory or other competent authority.

2.8 Upon expiry or termination of the Agreement for processing of data for a Named User, SAP shall in accordance with the terms of the Agreement (or any other relevant contractual provision) and Customer's instructions, either (i) return to Customer all Customer Data and all copies or reproductions thereof (except for backup media that is used for multiple SAP customers and regularly overwritten); or (ii) erase and/or destroy such personal data and media on production systems and confirm the erasure and/or destruction to Customer in writing.

2.9 The compelling provisions of the applicable data protection laws and regulations shall additionally apply and if and to the extent in conflict with the terms of this Annex they shall prevail.

3. Subcontractors

SAP is authorized to engage subcontractors for the processing of personal data (each a "Subprocessor") as long as SAP remains responsible for any acts or omissions of its Subprocessors in the same manner as for its own acts and omissions. SAP shall pass on to Subprocessors.

SAP's obligation as data processor vis-à-vis Customer as set out in this document and obligate Subprocessors to obey all relevant data protection rules. SAP will inform Customer upon its request by email or through the Site or otherwise about the name, address and role of each Subprocessor concerned. SAP shall ensure that each Subprocessor adheres to an adequate level of data protection by law or contract with SAP not materially less protective than the obligations applicable to SAP under the Agreement.

4. Monitoring Rights of Customer

4.1 Customer shall have all necessary right to verify that SAP processes the personal data duly in accordance with the Agreement. These monitoring rights shall be carried out in coordination with SAP. In general, during the term of the Agreement, Customer may request an annual written self-certification from SAP based on an independent third party audit (e.g. a so called SSAE16-CUS II report) that scrutinizes and confirms the processing of personal data is in accordance with the agreed to measures herein. If the Customer has reasonable ground to suspect the non compliance with this Annex, in particular if the audit findings expressly state so or if SAP fails to audit on time, Customer (or an independent third party auditor on its behalf that is subject to strict confidentiality obligations) may audit SAP's control environment and security practices relevant to personal data processed hereunder once in any 12-month period, at its own expense, with reasonable prior written notice (at least 30 days) and under reasonable time, place and manner conditions. After notifying SAP the monitoring can be carried out, in particular, during SAP's usual business hours on SAP's premises where the personal data processing is performed.

4.2 SAP shall reasonably support Customer throughout these verification processes and provide Customer with the required information.

4.3 SAP shall contractually safeguard Customer's powers of disposal and monitoring rights under this agreement vis-à-vis SAP's Subprocessor who may come into contact with the personal data. Where applicable data protection law requires a data controller to enter into a direct contractual relationship with SAP, SAP hereby authorizes and empowers Customer to enter into the necessary agreement with the data controller on SAP´s behalf, but only based on a contract template which SAP will provide to Customer upon Customer´s request.

4.4 Services rendered by SAP in connection with Customer´s monitoring rights shall be at Customer's expense.

5. Special Confidentiality Obligation

SAP undertakes to treat the personal data, which have become known to SAP, confidential and to use such data exclusively for the commissioned data processing in conjunction with the provision of the Service as contemplated under the Agreement. SAP undertakes to impose on its employees, who may obtain knowledge of personal data, the same confidentiality obligations as entered into above by SAP. SAP shall use commercially reasonable efforts to ensure that those employees to whom it grants access to personal data are regularly trained on IT security and data protection.