Article 1 Definitions

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

1.2 "Agreement" means these General Terms and Conditions and any Order Form referencing these General Terms and Conditions, and any other schedules, supplements, statements of work, exhibits or appendices thereto, whether attached or incorporated by reference.

1.3 "Cloud Materials" mean any materials produced by or with SAP pursuant to this Agreement, including in the course of providing any support or Consulting Services to Customer. Cloud Materials include materials created for or in cooperation with Customer, but do not include any Customer Data, Customer Confidential Information or the Service. For clarity, some services may be performed under a statement of work, which statement of work will be governed by the terms and conditions of this Agreement.

1.4 "Confidential Information" means, with respect to Customer, the Customer Data, marketing and business plans and/or Customer financial information, and with respect to SAP: (a) the Service, including, without limitation, all (i) computer software (both object and source codes) and related Service documentation or specifications; (ii) techniques, concepts, methods, processes and designs embodied in or relating to the Service; and (iii) all application program interfaces, system security and system architecture design relating to the Service; and (b) SAP research and development, product offerings, pricing and availability. In addition to the foregoing, Confidential Information of either SAP or Customer (the party disclosing such information being the "Disclosing Party") may also include information which the Disclosing Party protects against unrestricted disclosure to others that (i) the Disclosing Party or its representatives designates as confidential at the time of disclosure; or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure; including, without limitation, information about or concerning any third party that is disclosed to Receiving Party under this Agreement.

1.5 "Consulting Services" means implementation, configuration, training, and other similar services related to the Service.

1.6 "Customer" means the entity or individual that has consented to this Agreement by execution of an Order Form that references these General Terms and Conditions or by any other legally binding method of acceptance of this Agreement.

1.7 "Customer Data" means any content, materials, data and information that Customer or its Named Users enter into the Service.

1.8 "Documentation" means SAP's then-current technical and functional documentation for the Service which is made available to Customer with the Service, including, but not limited to, configuration workbooks or release notes, as applicable.

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

1.10 "Order Form" means all written order forms or other ordering documentation (including, if Customer is ordering the Service online, a registration Webpage or Website) entered into by SAP and Customer containing the pricing, subscription term and other specific terms and conditions applicable to the Service.

1.11 "SAP" means the entity identified by the Order Form as providing the Service to Customer.

1.12 "Service" means the hosted, on demand service described in the Order Form, including upgrades and updates thereto made generally available by SAP to its customers.

1.13 "System Availability" means the average percentage of total time during which the production version of the Service is available to Customer during a calendar month, excluding (i) any maintenance windows (including any maintenance windows defined in a supplement to this Agreement); (ii) delays due to conditions beyond the reasonable control of SAP; (iii) delays caused by systems outside of the Service, including, but not limited to, Customer's network, equipment and systems; (iv) micro outages (meaning an inaccessibility that lasts less than fifteen (15) minutes, provided that there are no more than three (3) micro outages within a calendar month); and (v) inaccessibility due to Customer's requests or where Customer approved the same in advance.

Article 2 Usage Rights

2.1 SAP shall make the Service available to Customer in accordance with and during the term stated in the Order Form to permit Named Users to remotely access and use the Service solely for Customer's own internal business purposes as permitted by and subject to the terms of this Agreement (including usage metrics stated in the Order Form) and the Documentation.

2.2 Customer shall not sublicense, license, sell, lease, rent or otherwise make the Service available to third parties (other than Named Users who are using the Service in accordance with Customer's authorized use of the Service). Customer shall be responsible for the acts and omissions of its Named Users as if they were the acts and omissions of Customer. Named User access credentials issued to access or utilize the Service cannot be shared or used by more than one individual at a time, provided however, a Named User's access rights may be transferred from one individual to another if the original Named User is removed from the Service, no longer requires, or is no longer permitted access to or use of the Service.

2.3 SAP or its licensors own all right, title and interest in any and all copyrights, trademark rights, patent rights and other intellectual property or other rights in the Service, any Cloud Materials, and any improvements, design contributions or derivative works thereto. Except as otherwise agreed in writing, Customer is granted the nonexclusive right to use the Cloud Materials in connection with its use of the Service and subject to the terms of this Agreement. Except for the limited rights expressly granted herein, this Agreement does not transfer from SAP any proprietary right or interest in the Service or the Cloud Materials. All rights not expressly granted to Customer in this Agreement are reserved by SAP and its licensors.

2.4 When using the Service, Customer shall not, and shall ensure that its Named Users do not: (a) copy, translate, disassemble, decompile, reverse-engineer or otherwise modify any parts of the Service; (b) transmit any content, data or information that is unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libelous invasive of another's privacy right or right of publicity, or racially or ethnically objectionable; (c) infringe the intellectual property rights of any entity or person; (d) interfere with or disrupt the SAP software or SAP systems used to host the Service, or other equipment or networks connected to the Service; (e) use the Service in the operation of a service bureau, outsourcing or time-sharing service; (f) circumvent or disclose the user authentication or security of the Service or any host, network, or account related thereto; (g) access the Service for the purpose of building a competitive product or service or copying its features or user interface; (h) permit access to the Service by a direct competitor of SAP; or (i) make any use of the Service that violates any applicable local, state, national, international or foreign law or regulation.

2.5 The Service may contain links to external Web sites (including embedded widgets or other means of access) and information provided on such external websites by SAP partners and third-party service providers. SAP shall not be responsible for the contents of any linked Web site.

2.6 SAP shall be entitled to monitor Customer's number of Named Users (or other applicable usage metric stated in the Order Form) regarding usage of the Service to ensure Customer's compliance with this Agreement and, subject to Article 11 of this Agreement, SAP may utilize the information concerning Customer's use of the Service to improve SAP products and services and to provide Customer with reports on its use of the Service.

2.7 SAP may change or modify the Service at any time. SAP shall not materially diminish the functionality of the Service during the term of the Order Form.

2.8 If Customer is granted access under this Agreement to a free (no fee) version of the Service, to the extent permitted by applicable law, Customer agrees that (i) SAP has no obligation to provide any particular service level or support services; and (ii) SAP may cease providing the Service at any time without notice. This Article 2.8 supersedes any conflicting term of this Agreement.

2.9 SAP may offer and Customer may choose to accept access to functionality that is not generally available and not validated and quality assured in accordance with SAP's standard processes ("**Beta Functionality**"). Beta Functionality is described as such in the Documentation. SAP may require Customer to accept additional terms to use Beta Functionality. Any production use of the Beta Functionality is at Customer's sole risk. SAP does not warrant the correctness and completeness of the Beta Functionality, and SAP shall not be liable for errors or damages caused by the usage of the Beta Functionality.

2.10 Customer agrees that its purchase of subscription(s) for the Service is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by SAP, including any roadmaps, with respect to future functionality or features.

Article 3 Support, Set up and Security

3.1 A description of the support SAP will provide for the Service will be set forth in the applicable Order Form.

3.2 SAP will use commercially reasonable security technologies (such as encryption, password protection and firewall protection) in providing the Service.

3.3 SAP warrants at least ninety-nine percent (99%) System Availability over any calendar month. Should SAP fail to achieve ninety-nine percent (99%) System Availability over a calendar month, Customer shall have the right to receive 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. Claims under this service level warranty must be made in good faith and by submitting a support case within ten (10) business days after the end of the relevant period.

Article 4 Customer Responsibilities and Obligations

4.1 Subject to Article 11 below, Customer grants to SAP the nonexclusive right to use Customer Data for the sole purpose of and only to the extent necessary for SAP to provide the Service, unless otherwise set forth in a product supplement or Order Form.

4.2 Customer shall be responsible for entering its Customer Data into the Service and Customer shall be responsible for the content of the Customer Data supplied by it. Customer agrees that it has collected and shall maintain and handle all Customer Data in compliance with all applicable data privacy and protection laws, rules and regulations. Further, Customer is solely responsible for determining the suitability of the Service for Customer's business and complying with any regulations, laws, or conventions applicable to the Customer Data and Customer's access to and use of the Service(s).

4.3 Customer shall maintain commercially reasonable security standards for its and its Named Users use of the Service.

4.4 Customer accepts that the Service is provisioned at the location of SAP's data center which may be outside the country where Customer is registered ("Customer Country"), by SAP or an SAP Affiliate which may be located outside Customer Country. Customer is responsible for the connection to the Service, including the Internet connection.

Article 5 Additional Services

This Agreement does not include services other than Consulting Services purchased in an Order Form or a separate statement of work. If Customer elects to have any services for the Service provided by a third party, SAP shall have no liability for any defect or failure of the Service caused by such third-party services, and Customer shall not be entitled to any reduction in fees for the Service. SAP may deny access to the Service to any third party service provider which SAP determines in its reasonable discretion poses a security or confidentiality risk to SAP systems, data or intellectual property.

Article 6 Prices and Terms of Payment

6.1 Customer shall pay to SAP the fees for the Service provided hereunder, in the amount as set forth in the Order Form, within thirty (30) days of receipt of invoice.

6.2 The fees set forth in the Order Form will be fixed for the committed subscription term. Following the subscription term of an Order Form, the subscription shall automatically renew for one (1) year subscription terms (each, as applicable, a "Renewal Term"). Fees for automatic Renewal Terms will be invoiced annually in advance approximately sixty (60) days prior to the start of each subscription year, unless otherwise set forth in the Order Form. Any pricing changes, which will be fixed for the entirety of such automatic Renewal Terms, will be reflected on the initial invoice for the Renewal Term. Either party may give the other party written notice (email acceptable) of non-renewal at least thirty (30) days prior to the end of the relevant subscription term.

6.3 Customer may add additional Named Users or other applicable usage metrics during the term of the Order Form by executing an addendum or additional schedule to such Order Form, as applicable, which shall then become an integral part of the amended Order Form. The term of each addendum or schedule shall be coterminous with the then-current term of the Order Form irrespective of the effective date of such addendum and all fees shall be prorated accordingly. Upon renewal of the Order Form, the term for all Named Users or other fee-based metric added to the Order Form prior to renewal shall be the same as specified in the Order Form.

6.4 Customer is responsible for monitoring its use of the Service. Customer shall promptly report to SAP any actual use in excess of the number of Named Users (or other applicable usage metric authorized in the Order Form). SAP shall invoice and Customer shall pay for any usage in excess of the usage metrics set forth in the applicable Order Form and Customer agrees to execute an addendum to such Order Form to reflect any excess. Such fees shall accrue from the date the excess use began. For the avoidance of doubt, Customer shall not be entitled to claim any reduction of the fees payable under the Order Form or reduce the Named Users (or other applicable usage metric) during the term of an Order Form or renewal.

6.5 Except as expressly set forth in this Agreement or the Order Form, all purchases of subscriptions hereunder are non-cancelable and all fees are non-refundable. Customer shall have no right to withhold or reduce fees under this Agreement or set off any amount against fees owed for alleged defects in the Service.

6.6 All fees not paid when due shall accrue interest at the maximum rate allowed under applicable law, and may result in suspension of Customer's ability to access the Service until payment is made.

6.7 "Taxes" means all taxes, levies and similar charges (and any related interest and penalties), imposed as a result of the existence of this Agreement. All prices, fees and other charges payable under this Agreement or any instrument, Order Form or agreement ancillary to or referenced by this Agreement, shall not include any Taxes now or hereafter levied. Customer shall be responsible for all of such Taxes. If any such tax or duty has to be withheld or deducted from any payment under this Agreement by law, Customer will increase payment under this Agreement by such amount and shall ensure that after such withholding or deduction SAP shall have received an amount equal to the payment otherwise required. Customer shall communicate to SAP its VAT or GST identification number(s) attributed by (i) the country where Customer has established its business, and/or (ii) any other country where Customer has established a fixed establishment, to which the Services under this Agreement are provided. SAP shall consider the Services under this Agreement to be for Customer's business use and provided to the location(s) of the Customer in accordance with the provided VAT or GST identification number(s). Customer shall comply with all applicable tax laws and regulations. Customer hereby agrees to indemnify SAP for any Taxes and related costs paid or payable by SAP attributable to Taxes that would have been Customer's responsibility under this Article 6.7 if invoiced to Customer. Customer shall promptly pay or reimburse SAP for all costs and damages related to any liability incurred by SAP as a result of Customer's non-compliance or delay with its responsibilities herein. Customer's obligation under this Article 6.7 shall survive the termination or expiration of this Agreement.

6.8 Customer shall reimburse SAP for all reasonable, pre-approved (by Customer in writing) and appropriately documented travel and related expenses incurred by SAP in performing any support or Consulting Services for Customer under 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 applicable Order Form and shall continue in effect as described in the Order Form. Termination of individual Order Forms shall leave other Order Forms unaffected.

7.2 Notwithstanding the foregoing, a party may terminate this Agreement upon thirty (30) days written notice to the other party of such other party's material breach of any provision of this Agreement unless the breaching party has cured such breach during such thirty (30) day period. In case of termination in accordance with this Article 7.2 by Customer, Customer shall be entitled to a pro-rata refund of prepaid fees for the applicable Service. Except for termination in accordance with this Article 7.2 by Customer, termination will not relieve Customer from the obligation to pay fees that remain unpaid.

7.3 Notwithstanding SAP's right to terminate as set forth in Article 7.2 above, SAP may, in its reasonable determination, deactivate Customer's user name(s) and password(s) and/or temporarily suspend access to the Service or a portion thereof, if and to the extent SAP can substantiate that the continued use of the Service may result in harm to the Service (including the security of the systems used to provide the Service) or other SAP customers, or the rights of third parties, upon prior written notice to Customer as the circumstances permit.

7.4 Upon the effective date of termination, Customer's access to the Service will be terminated. Customer shall have the ability to access its Customer Data at any time during the subscription term set forth in the applicable Order Form, unless earlier terminated pursuant to this Article 7. Customer may export and retrieve its Customer Data during a subscription term, which will be subject to technical limitations caused by factors such as (i) the availability of self-service extraction tools compatible with the Service, (ii) the size of Customer's instance of the Service; and (iii) the frequency and/or timing of the export and retrieval.

7.5 Articles 6 (other than 6.2), 9, 10, 11, and 12 shall survive the expiration or termination of this Agreement.

Article 8 Warranties by SAP

8.1 SAP warrants that the Service will substantially conform to the specifications stated in the Documentation. The foregoing warranty shall not apply to the extent: (i) the Service is not being used in accordance with this Agreement and/or any Documentation; or (ii) any non-conformity is caused by third party products, content or service being accessed through the Service that are identified as third party products, content or service; or (iii) the Service being used was provided for no fee or is a trial license of the Service. Subject to Article 8.3, Customer's sole and exclusive remedy, and SAP's entire liability for breach of the limited warranty in this Article 8.1, shall be correction of the warranted non-conformity or, if SAP fails to correct the warranted non-conformity after using reasonable commercial efforts, SAP may terminate access to the non-conforming Service and refund the subscription fees paid by Customer for such Service (as identified in the applicable Order Form) for the remainder of the subscription term (starting on the date Customer reported the non-conformity).

8.2 SAP warrants that (i) it will perform any Consulting Services in a workmanlike and professional manner consistent with generally accepted industry practices, and (ii) the Consulting Services and Cloud Materials will conform in all material respects with the descriptions set forth in the applicable Order Form, statement of work or deployment descriptions, as applicable. Subject to Article 8.3, Customer's sole and exclusive remedy, and SAP's entire liability for breach of the limited warranty in this Article 8.2, shall be the re-performance of such deficient Consulting Services; and if SAP fails to re-perform such Consulting Services as warranted, Customer shall be entitled to recover the fees paid to SAP for such deficient Consulting Services.

8.3 Customer shall provide SAP with prompt written notice of any non-conformity described in this Article 8 as follows: (i) for any non-conformity of the Service, within ninety (90) days of Customer's discovery of such non-conformity, and (ii) for any non-conformity of any Consulting Service, within ninety (90) days of completion of the applicable Consulting Service.

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

Article 9 Third Party Claims

9.1 SAP shall defend (at its sole expense) Customer and its Affiliates against claims brought against Customer by any third party alleging that Customer's use of the Service, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of a patent claim(s), copyright, or trade secret rights. SAP will pay damages finally awarded against Customer (or the amount of any settlement SAP enters into) with respect to such claims, and will pay reasonable attorney's fees in connection with such defense. This obligation of SAP shall not apply if the alleged infringement or misappropriation results from use of the Service in conjunction with any other software or service or to free (no fee) or trial licenses of the Service.

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

9.3 Customer shall defend (at its sole expense) SAP and its Affiliates and licensors against claims brought against SAP by any third party arising from or related to (i) any use of the Service in violation of any applicable law or regulation; or (ii) an allegation that the Customer Data or Customer's use of the Service in violation of 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, and will pay reasonable attorney's fees in connection with such defense. The foregoing shall apply regardless of whether such damage is caused by the conduct of Customer and/or its Named Users or by the conduct of a third party using Customer's access credentials.

9.4 The obligations under this Article 9 are conditioned on (a) the party against whom a third party claim is brought timely notifying the other party in writing of any such claim, provided however that a party's failure to provide or delay in providing such notice shall not relieve a party of its obligations under this Article 9 except to the extent such failure or delay prejudices the defense; (b) the party who is obligated hereunder to defend a claim having the right to fully control the defense of such claim; and (c) the party against whom a third party claim is brought reasonably cooperating in the defense of such claim. Any settlement of any claim shall not include a financial or specific performance obligation on or admission of liability by the party against whom the claim is brought, provided however that SAP may settle any claim on a basis requiring SAP to substitute for the Service any alternative substantially equivalent non-infringing services. The party against whom a third party claim is brought may appear, at its own expense, through counsel reasonably acceptable to the party obligated to defend claims hereunder. Neither party shall undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation, that is prejudicial to the other party's rights.

9.5 THE PROVISIONS OF THIS ARTICLE 9 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF THE PARTIES, THEIR AFFILIATES AND THEIR LICENSORS TO THE OTHER PARTY, AND IS THE OTHER PARTY'S SOLE REMEDY, WITH RESPECT TO THIRD PARTY CLAIMS COVERED HEREUNDER AND TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

Article 10 Limitation of Liability

10.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EXCEPT FOR THE PARTIES' OBLIGATIONS UNDER ARTICLE 9, DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION, AND SAP'S RIGHT TO COLLECT UNPAID FEES DUE HEREUNDER, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL EITHER PARTY (OR THEIR RESPECTIVE AFFILIATES OR SAP'S LICENSORS) BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY UNDER THIS AGREEMENT (I) FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID FOR THE APPLICABLE SERVICE IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE INCIDENT GIVING RISE TO LIABLITY; AND (II) FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE OR FOR EXEMPLARY OR PUNITIVE DAMAGES.

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

Article 11 Confidentiality

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

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

11.3 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.

11.4 Customer may provide, or SAP may solicit, input regarding the Service, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of the Service or any other SAP site, service or product, or input as to whether Customer believes SAP's development direction is consistent with Customer's business and IT needs, the technology marketplace in general, and the like (collectively "Feedback"). Customer acknowledges and agrees that any information disclosed by SAP during discussions related to Feedback shall be considered SAP Confidential Information and shall be protected from disclosure in accordance with the terms of this Agreement. In order for SAP to utilize such Feedback, Customer hereby grants to SAP a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right to sublicense to SAP's licensees and customers, under Customer's relevant

intellectual property rights, to use, publish, and disclose such Feedback in any manner SAP chooses and to display, perform, copy, make, have made, use, sell, and otherwise dispose of SAP's and its sublicensee's products or services embodying Feedback in any manner and via any media SAP chooses, without reference to the source. SAP shall be entitled to use Feedback for any purpose without restriction or remuneration of any kind with respect to Customer and/or Customer's representatives. Customer acknowledges that the information related to the Service disclosed by SAP under this Agreement is only intended as possible strategies, developments, and functionalities of the Service and is not intended to be binding upon SAP to any particular course of business, product strategy, and/or development.

Article 12 Miscellaneous

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

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

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

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

12.5 This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of the country of Customer's place of business stated in the Order Form, without reference to its conflicts of law principles. All disputes hereunder shall be subject to the exclusive jurisdiction of the courts located in the country of Customer's place of business stated in the Order Form ("Selected Venue") and each party hereby irrevocably and unconditionally consents to personal jurisdiction of the Selected Venue. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply. Either party must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when such party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s). A person who is not a party to this Agreement has no rights to enforce any term of this Agreement.

12.6 All notices pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered (certified or registered mail or by an overnight courier services with delivery receipt) to the respective executive offices of SAP or Customer at the address first set forth in any Order Form directed to the General Counsel, or in the case of notices by SAP relating to the operation of the Service, such notices, may, at SAP's option, be in the form of an electronic notice delivered by SAP to the authorized administrator identified by Customer in the applicable Order Form or as otherwise agreed by the parties. Where in this Article 12.6 or elsewhere in this Agreement, a written form is required, except for notification of any notice of termination or notice of a material breach, that requirement can be met by facsimile transmission, exchange of letters or other written form, including email.

12.7 Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

12.8 This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Customer in connection with the parties' business relationship related to the subject matter hereof, and all previous representations, discussions, and writings (including any confidentiality agreements) are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. This Agreement may be modified only by a writing signed by both parties. This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order furnished by one party to the other, and any additional terms and conditions in any such purchase order shall have no force and effect, notwithstanding the non-furnishing party's acceptance or execution of such purchase order.

12.9 Customer may not, without SAP's prior written consent, assign, delegate, pledge or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or any SAP materials or SAP Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. 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.

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

12.11 The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.