

**Order Form  
for SAP Cloud Services**

Between        **SAP Public Services, Inc.**  
                  **3999 West Chester Pike**  
                  **Newtown Square, PA 19073**  
                  **United States**  
                  **("SAP")**

And             **Brevard County**  
                  **2725 Judge Fran Jamieson Way**  
                  **Viera, FL, 32940**  
                  **("Customer")**

**Customer ID:    327514**  
**Case ID:        3062672147**

**1.        EFFECTIVE DATE**

- 1.1.        This Order Form as issued by SAP is a binding offer by SAP. It only becomes effective upon SAP's receipt of this Order Form signed by Customer ("**Effective Date**") on or prior to 04/30/2024.

**2.        CLOUD SERVICES**

- 2.1.        Cloud Service Order and Support
- 2.1.1.      Customer subscribes to and SAP will provide the SAP cloud services during the Subscription Term in accordance with the Usage Metrics and volume each as set forth in Schedule 1 ("**Cloud Services**").
- 2.1.2.      Unless otherwise stated in Schedule 1 or in the applicable Supplement, SAP will provide Customer with "SAP Enterprise Support, cloud editions" for the Cloud Services as set forth in the Cloud Support Schedule.
- 2.2.        Subscription Term
- 2.2.1.      The initial subscription term for the relevant Cloud Service will begin on the Product Start Date and will be effective until the Product End Date as set forth in Schedule 1 ("**Initial Subscription Term**"). If there are different consecutive Product Start Dates and Product End Dates set forth in Schedule 1 for the same Cloud Service, the initial Subscription Term will run from the first Product Start Date to the last Product End Date for such Cloud Service.
- 2.2.2.      Unless the Supplement states otherwise, the Initial Subscription Term and any renewal Subscription Term will automatically renew for terms of 12 months ("each a "**Renewal Subscription Term**"). Auto-renewal will not occur if Customer notifies SAP at least 1 month or SAP notifies Customer at least 6 months prior to the end of any Subscription Term of its intent to not renew the Order Form.

**3.        PAYMENT TERMS AND INVOICING**

- 3.1.        Customer shall pay all fees due to SAP in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, et seq. within 45 days of date of invoice. All payments due and not made within the time specified by this section bear interest from 30 days after the due date at the rate of 1 percent per month on the unpaid balance. SAP must invoice Customer for any interest accrued in order to receive the interest payment. Any overdue period of less than 1 month is considered as 1 month in computing interest. Unpaid interest is compounded monthly. For the purposes of this section, the term "1 month" means a period beginning on any day of one month and ending on the same day of the following month. Customer purchase orders are for administrative convenience and not a condition of payment. Payment is not dependent upon completion of any implementation or other services.

- 3.2. Unless the Supplement states otherwise, fees for the Cloud Services and Cloud Credits will be invoiced by SAP and paid by Customer yearly in advance. SAP will deduct fees or invoice Customer monthly in arrears for use of the Active Cloud Services in the preceding month as further set out in this Order Form.
- 3.3. The fee for the Initial Subscription Term is set forth in Schedule 1 as Total Net Fee. SAP may increase the Cloud Services fees in accordance with this Order Form.
- 3.4. If applicable, fees for non-recurring services will be invoiced by SAP on a one-time basis and paid by Customer upon commencement of the first Product Start Date.
- 3.5. Customer shall reimburse SAP for all appropriately documented travel and related expenses pre-approved by Customer and incurred by SAP in performing any support for the Cloud Service.
- 3.6. SAP may provide invoices to the email address provided by Customer below as main contact.

#### 4. AUTHORIZED ADMINISTRATORS

- 4.1. Customer contacts for order confirmation and system notices are:

Main contact name: Lois Boisseau  
Main contact e-mail: lois.boisseau@brevardfl.com

Technical administrator name: Suyapa Cerrato

Technical administrator e-mail: [Suyapa.Cerrato@brevardfl.gov](mailto:Suyapa.Cerrato@brevardfl.gov)

- 4.2. The following token can be used by Customer to select a different or additional Technical Administrator and gain access to SAP support web sites:

User Onboarding Token: da16eaf2-2de3-44fd-9782-99292db19bf7

User Onboarding Website: <https://account.sap.com/manage/onboarding/da16eaf2-2de3-44fd-9782-99292db19bf7>

- 4.3. Customer Location and Tax Determination

Customer has provided the following primary access location:

Brevard County

2725 Judge Fran Jamieson Way, 32940 Viera, FL, United States

This is the primary (but not the only) location from which Customer will access the Cloud Service. If Customer does not provide a primary access location, SAP will incorporate a default primary access location to Customer's sold-to address as indicated in the preamble of this Order Form. Customer agrees and understands that the calculation of Taxes is in accordance with applicable jurisdictional laws of the primary access location, and payment of such Taxes is the responsibility of Customer. Valid direct pay permits or tax exemption certificates relevant to the primary access location must be provided to SAP prior to execution of this Order Form.

#### 5. SUBSCRIPTION CLOUD SERVICES

- 5.1. Application

This Section applies only to Subscription Cloud Services as defined below.

- 5.2. Specific Definitions

- 5.2.1. "**Subscription Cloud Services**" means all Cloud Services subscribed to under this Order Form, except for Subscription Plus Excess Use Cloud Services, CPEA Cloud Services, BTPEA Cloud Services, ICEA Cloud Services and Pay-As-You-Go Cloud Services, if any.

- 5.2.2. "**Excess Use**" means any use of the Subscription Cloud Service that exceeds the Usage Metrics and their volume stated in Schedule 1 in this Order Form.

- 5.3. Excess Use

Fees for Excess Use accrue from the date the Excess Use began. Customer shall execute an additional Order Form to document subscriptions for additional Usage Metrics and their volume. Customer shall pay for Excess Use based on SAP's prices on the date the Excess Use began.

#### 5.4. Fee Changes

The Cloud Services shall be subject to an annual fee increase of 3.3% effective on each anniversary of 06/25/2024. This increase shall apply in addition to the Annual Fee stated in Schedule 1 in this Order Form or the increased Annual Fee, as applicable. Not raising fees is not a waiver of SAP's right to do so.

### 6. CLOUD PLATFORM ENTERPRISE AGREEMENT

#### 6.1. Application

This Section applies only to CPEA Cloud Services as defined below.

#### 6.2. Definitions

6.2.1. **"Active Cloud Service"** means an Eligible Cloud Service that Customer activated and has not deactivated.

6.2.2. **"Cloud Credits"** means the monetary amount available for the relevant Cloud Credits Period, as specified under "Usage Metric Limitation" in Schedule 1 in this Order Form for the Initial Subscription Term and calculated accordingly for each Cloud Credits Period thereafter.

6.2.3. **"Cloud Credits Period"** means:

- (a) for the Initial Subscription Term, each period starting on a Product Start Date and ending on the next Product End Date as set forth for the CPEA Cloud Services and the Cloud Platform Voucher in Schedule 1 in this Order Form; and
- (b) thereafter, the Cloud Credits Period will be 12 months starting on the first day after the previous Cloud Credits Period ended unless the remaining part of the Renewal Subscription Term is shorter, in which case the last Cloud Credits Period will be equal to the remaining part of the Renewal Subscription Term.

6.2.4. **"CPEA Cloud Services"** means Cloud Services designated as "Cloud Platform Enterprise Agreement" or "CPEA" in Schedule 1 in this Order Form.

6.2.5. **"Eligible Cloud Services"** means the cloud services listed in the Eligible Cloud Services List.

6.2.6. **"Eligible Cloud Services List"** is the list of Eligible Cloud Services found on the SAP Business Technology Platform Website here <https://cloudplatform.sap.com/price-lists>.

6.2.7. **"Free Tier Cloud Services"** means designated Eligible Cloud Services provided for no fee and marked with "Service Plan: Free" in the Eligible Cloud Services List.

#### 6.3. Consumption of Cloud Credits

6.3.1. During any Cloud Credits Period, Customer can use Cloud Credits to activate any of the Eligible Cloud Services through the administrative cockpit of the SAP Business Technology Platform. Each Active Cloud Service is deemed a Cloud Service as defined in the GTC and is subject to its product-specific Supplement.

6.3.2. If Customer has Cloud Credits available for the current Cloud Credits Period, SAP will:

- (a) deduct fees for the activation and/or use of the Active Cloud Services by Customer from the Cloud Credits based on the corresponding metric, range, if applicable, and per-unit list price as specified in the Eligible Cloud Services List; and
- (b) provide a monthly balance statement reflecting the activation and/or use of the Active Cloud Services by Customer for the preceding calendar month and the remaining balance of Cloud Credits.

6.3.3. If the Cloud Credits for the current Cloud Credits Period have been fully consumed, SAP will invoice Customer monthly in arrears for the activation and/or use of the Active Cloud Services instead.

6.3.4. Cloud Credits will only be available during the current Cloud Credits Period. Customer may increase the Cloud Credits during a Cloud Credits Period by executing an order form for additional Cloud Credits.

6.3.5. Any unused Cloud Credits are forfeited by Customer at the end of the current Cloud Credits Period and will not be available for use in any subsequent Cloud Credits Period.

#### 6.4. Activation and Deactivation of Active Cloud Services

6.4.1. Customer is solely responsible for deactivating any Active Cloud Service.

6.4.2. Customer authorizes the technical administrator set out in this Order Form (and any successor designated by Customer) to activate and deactivate Eligible Cloud Services. Customer is solely responsible for any acts or omissions taken by such administrators.

#### 6.5. Fee Changes

##### 6.5.1. Fee Changes to Cloud Credits

The fees for the Cloud Credits shall be subject to an annual fee increase of 3.3% effective on each anniversary of 06/25/2024. This increase shall apply in addition to the Annual Fee stated in Schedule 1 in this Order Form or the increased Annual Fee, as applicable. Not raising fees is not a waiver of SAP's right to do so.

##### 6.5.2. Fee Changes to Per-Unit List Price

SAP may change the per-unit list prices on the Eligible Cloud Service List from time to time as follows:

6.5.3. Increases in the per-unit list prices for Eligible Cloud Services will not exceed 3.3%. SAP shall give notice of price increases by email or through the administrative cockpit of the SAP Business Technology Platform at least 45 days before the start of the next Renewal Subscription Term. The increased per-unit list prices shall apply to the Eligible Cloud Services at the beginning of the next Renewal Subscription Term. If SAP notifies Customer of an increase less than 45 days prior to the upcoming Renewal Subscription Term, the increase shall not apply at the start of the upcoming Renewal Subscription Term but from the one thereafter onwards.

##### 6.5.4. Fee Reduction

SAP shall reflect reductions in per-unit list prices for Eligible Cloud Services on the next full monthly report or invoice if such reduced per-unit list price is lower than the per-unit list price in effect on the later of the Effective Date of the Order Form or the date the Cloud Service becomes an Eligible Cloud Service.

#### 6.6. Adding and Removing Eligible Cloud Services

6.6.1. SAP may add Cloud Services and associated per-unit list prices to the Eligible Cloud Services List during the Subscription Term.

6.6.2. SAP may remove any Eligible Cloud Service from the Eligible Cloud Services List by giving Customer 6 months' prior notice via email or through the administrative cockpit of the SAP Business Technology Platform. However, Customer may keep such Eligible Cloud Services activated for the remainder of its then-current Subscription Term.

#### 6.7. Relationship to Subscription Cloud Services

Any Excess Use of a Subscription Cloud Service that is also an Eligible Cloud Service, will be regarded as use of an Active Cloud Service and billed accordingly.

#### 6.8. Free Tier Cloud Services

6.8.1. Free Tier Cloud Service may only be used for non-productive testing and evaluation and may not be used to process Personal Data.

6.8.2. Customer's use of the Free Tier Cloud Services is subject to the specifications in the administrative cockpit of the SAP Business Technology Platform ("**Cockpit Specifications**"). SAP may modify the Cockpit Specifications at any time without notice. SAP may terminate Customer's use of the Free Tier Cloud Services without advance notice for failure to adhere to the Cockpit Specifications.

6.8.3. SAP may remove any Free Tier Cloud Service from the Eligible Cloud Services List upon one month's prior notice. SAP shall give such notice by email or through the administrative cockpit of the SAP Business Technology Platform.

6.8.4. SAP may deactivate Customer's Free Tier Cloud Services if, in SAP's sole determination, Customer is not actively using the services.

6.8.5. SAP will not provide any support for the Free Tier Cloud Services and the Support Policy does not apply.

### 7. CLOUD PLATFORM VOUCHER

At the beginning of each Cloud Credits Period, SAP shall add the Cloud Credits for the Cloud Platform Voucher to Customer's CPEA account. The Cloud Credits of the Cloud Platform Voucher may not be transferred between CPEA accounts. The terms set out in the Section entitled "Cloud Platform Enterprise Agreement" apply to the Cloud Credits shown as Cloud Platform Voucher.

**8. ADDITIONAL TERMS**

The Agreement is subject to the following modifications:

**8.1. Product Development Schedule**

The Product Development Schedule published at <http://sap.com/agreements-cloud-product-development-schedule> (which will be provided by SAP upon request upon or before execution of the Agreement) is incorporated into and becomes an integral part of the Agreement.

**8.2. Publicity**

SAP may include Customer's name and subscribed Cloud Services in SAP customer lists and earnings communications.

**8.3. Termination of Software**

Upon execution of this Order Form 3062672147 and provided Customer: (i) has paid SAP Support Service Fees through the date of termination; and (ii) is not in default of its SAP Support Service Fee payment obligations or otherwise in material breach under the Agreement, then Customer shall have the one-time right to terminate any previously licensed SAP Software and/or Named Users ("Terminated Software") and a maximum Support Base value detailed below (excluding Software and/or Named Users licensed on an unlimited basis and any Named Users and/or Software for which Use rights are parked or suspended, if any) by notifying SAP in writing with 90 days' notice.

For the avoidance of doubt, Customer may exercise the Termination Right with respect to third party software; however, Customer must terminate one hundred percent (100%) of all the products licensed from a particular third-party software licensor.

The license grant to the Software and SAP Support for such Terminated Software shall be terminated as detailed in a Termination Amendment, executed by both parties. The Termination Amendment will take effect on a calendar month end date (calendar quarter end date for third-party software), but no later than the end of the initial Subscription Term (defined in Section 2.2.1 above). Upon termination, the Support Base and the SAP Support Service Fees shall be reduced as detailed in such Termination Amendment. A License Audit must be completed prior to the execution of Termination Amendment.

The earliest termination date is December 31, 2024, and the maximum total value of SAP Support Base allowed for termination is USD \$1,004,099.11.

**8.4. TRANSFORMATION INCENTIVE.**

Provided that Customer is in compliance with all of the terms and conditions of the Agreement, and subject to the Cloud Extension Policy, SAP shall provide Customer with a one-time Credit as set forth below.

There are three types of credits: Maintenance Credit, Professional Services Credit and Cloud Credit. Delete the credit type(s) that do not apply.

**8.4.1. Types of Credit**

"Credit" shall collectively refer to each of the credits described below.

8.4.1.1. "Maintenance Credit" is a credit in the amount set forth in Section 1.2 that is applied to future maintenance/support invoice(s) for Customer's SAP on-premise software. Subject to Section 1.2.4 below, the Maintenance Credit shall be applied to such future invoices for on-premise maintenance/support until the Maintenance Credit has been fully consumed. Any remaining balance of the Maintenance Credit after the termination of SAP maintenance/support shall be forfeited.

8.4.1.2. "Cloud Credit" is a credit in the amount set forth in Section 1.2 that is applied to future invoices issued under this Order Form or to invoices that are issued under any other order form(s) for SAP Cloud Services with an order form effective date that is either the same as or is subsequent to this Order Form Effective Date. Subject to Section 1.2.4 below, the Cloud Credit shall be applied to such future invoices for SAP Cloud Services until the Cloud Credit has been fully consumed. Any remaining balance of the Cloud Credit after the termination or expiration of Customer's subscription to SAP Cloud Services shall be forfeited.

**8.4.2. Credit Issuance and Forfeiture**

8.4.2.1. SAP shall issue the Credit as follows: (i) the Credit set forth in Section 9.4.2.2 shall be issued on the Order Form Effective Date ("Phase 1"), and (ii) the remaining Credit set forth in Section 9.4.2.3 shall be issued on the date SAP provides Customer with access to RISE Cloud Services ("Phase 2").

8.4.2.2. SAP shall issue the following Credit in Phase 1:

8.4.2.2.1. Maintenance Credit in the amount of USD 124,324.83.

8.4.2.2.2. Cloud Credit in the amount of USD 124,324.83.

8.4.2.3. SAP shall issue the following Credit in the Phase 2:

8.4.2.3.1. Maintenance Credit in the amount of 124,324.83.

8.4.2.3.2. Cloud Credit in the amount of 124,324.83.

8.4.2.4. Customer must use the Credit within the timeframes set forth below, after which the Credit shall expire, and SAP shall have no obligation to provide any credit, reduction, refund or remuneration.

The Maintenance Credit and the Cloud Credit must be used on or before the Product End Date set forth herein.

8.5. E-Verify.

The County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider a contractor's intentional employment of unauthorized aliens as grounds for immediate termination of said contract.

SAP shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by SAP during the term of the Agreement and shall expressly require any subcontractors performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the sub-contractor during the term of the Agreement.

In accordance with the E-Verify provisions, SAP agrees to provide a copy of their fully executed E-Verify Memorandum of Understanding prior to execution of the Agreement.

Compliance with the terms of this Section is made an express condition of this Agreement and the County may treat a failure to comply with the provisions herein as a material breach of this Agreement.

8.6. Certification Regarding Scrutinized Activities.

SAP shall certify that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, if a contract is for more than one million dollars, the contractor shall further certify that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes.

For contracts of any amount, if the County determines a contractor submitted a false certification under Section 287.135(5), Florida Statutes, or if the contractor has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the County shall either terminate the contract after it has given the contractor notice and an opportunity to demonstrate the County's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or on a case-by-case basis the County may choose to maintain the contract if the conditions of Section 287.135(4), Florida Statutes, are met.

For Contracts \$1,000,000 and greater, if the County determines the contractor submitted a false certification under Section 287.135(5), Florida Statutes, or if the contractor has been placed on the Scrutinized Companies with Activities in the Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the County shall either terminate the contract after it has given the contractor notice and an opportunity to demonstrate the County's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or on a case-by-case basis the County may choose to maintain the contract if the conditions of Section 287.135(4), Florida Statutes, are met.

SAP agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

As provided in Section 287.135(8), Florida Statutes, if federal law ceases to authorize these contracting prohibitions, this Section shall become inoperative and unenforceable.

8.7. Public Records

**SAP Confidential**

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**SAP OPP 304450979 / QUOTE 246742000037 / CASE 3062672147**



The County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes, and all other applicable Florida Statutes. If the materials provided by the Contractor do not fall under a specific exemption under Florida or federal law, materials provided by the Contractor to the County would have to be provided to anyone making a public records request. It will be the Contractor's duty to identify the information it deems is exempt under Florida or federal law, and identify the statute, by number, that exempts such information.

Should any person or entity make a public request of the County, which requires or would require the County to allow inspection or provide copies of records which the Contractor maintains are exempt from Public Records Law or are confidential, it shall be the Contractor's obligation to provide the County within 24 hours (not including weekends and legal holidays), of notification by the County to the Contractor of the request, of the specific exemption or confidentiality provision so the County will be able to comply with the requirements of Chapter 119, Florida Statutes.

Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the Contractor to the County which the Contractor maintains are exempt or confidential from such inspection/production as a public record, then the Contractor shall hire and compensate attorney(s) who shall represent the interest of the County as well as the Contractor in defending such action. The Contractor shall also pay any costs to defend such action and shall pay any costs and attorney fees, which may be awarded pursuant to Section 119.12, Florida Statutes.

IF SAP HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SAP'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE INFORMATION TECHNOLOGY DEPARTMENT:

Alice.Colon@brevardfl.gov; (321)617-7395; 2725 JUDGE FRAN JAMIESON WAY, SUITE C-203, VIERA, FL 32940.

## 9. EXPORT RESTRICTIONS

Customer may not use the Cloud Services, Documentation and other Cloud Materials in any country where these may not be used according to the export control and trade sanctions laws of the United States, the EU, Germany or any other applicable export control and trade sanctions laws. Customer may not permit the use of the Cloud Services, Documentation and other Cloud Materials to any end user with whom transactions are prohibited in accordance with the terms of the Agreement. Further information on SAP's Export Control and Sanctions Compliance can be found at: <https://www.sap.com/about/agreements/export-statements.html>.

## 10. GOVERNING LAW

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

10.2. Jurisdiction and Mandatory Venue

This Agreement shall be governed, interpreted, and construed according to the laws of the State of Florida.

Venue for any legal action brought by any party to this Agreement, to interpret, construe, or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida.

## 11. REFERENCED DOCUMENTS

11.1. Table of Agreement

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

| No. | Agreement  | Location  |
|-----|--|---|
| 1.  | This Order Form including Schedule 1 (" <b>Order Form</b> ")                 |   |
| 2.  | Supplemental Terms and Conditions for Cloud Services (" <b>Supplement</b> ") | <a href="https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?sort=title_asc&amp;search=Supplement&amp;tag=language:english">https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?sort=title_asc&amp;search=Supplement&amp;tag=language:english</a> |
| 3.  | Support Schedule for Cloud Services (" <b>Cloud Support Schedule</b> ")      | <a href="https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?sort=title_asc&amp;search=Support&amp;tag=language:english">https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?sort=title_asc&amp;search=Support&amp;tag=language:english</a>       |

| No. | Agreement  | Location  |
|-----|--|---|
| 4.  | Service Level Agreement for Cloud Services (" <b>SLA</b> ")      | <a href="https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?sort=title_asc&amp;search=Service%20Level%20Agreement&amp;tag=language:english">https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?sort=title_asc&amp;search=Service%20Level%20Agreement&amp;tag=language:english</a> |
| 5.  | Data Processing Agreement for Cloud Services (" <b>DPA</b> ")    | <a href="https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?sort=title_asc&amp;search=Data%20Processing&amp;tag=language:english">https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?sort=title_asc&amp;search=Data%20Processing&amp;tag=language:english</a>                     |
| 6.  | General Terms and Conditions for Cloud Services (" <b>GTC</b> ") | Attached to this Order Form   |

11.2. Review

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

Accepted by:

Brevard County  
(Customer)

Name:

Title:

Date:



Schedule 1  
Pricing Summary

From 06/25/2024 To 06/24/2029

| SAP Cloud Service                        | Usage Metric           | Usage Metric Limitation | Annual Fee | Product Start Date | Product End Date | Total Fee in USD |
|--|------------------------|-------------------------|------------|--------------------|------------------|------------------|
| SAP S/4HANA Cld, Digital Access, priv ed | 1000 Document          | 1                       | 45.95      | 06/25/2024         | 06/22/2025       | 45.77            |
| RISE with SAP S/4HANA Cld, priv ed, prem | 1 Full Use Equivalent  | 247                     | 528,629.40 | 06/25/2024         | 06/22/2025       | 526,577.64       |
| SAP Cld, mem ext f. prod tiers, priv ed  | 256 Gigabyte           | 1                       | 24,810.00  | 06/25/2024         | 06/22/2025       | 24,713.71        |
| SAP Cld, mem ext f. non-prd, Priv Ed     | 256 Gigabyte           | 1                       | 12,972.00  | 06/25/2024         | 06/22/2025       | 12,921.65        |
| SAP Time Track Cld, priv ed              | 1 User                 | 3,000                   | 33,048.00  | 06/25/2024         | 06/22/2025       | 32,919.73        |
| SAP Payroll Processing, pce              | 1 User                 | 3,000                   | 85,592.20  | 06/25/2024         | 06/22/2025       | 85,259.99        |
| SAP U.S. Payroll Tax Cal by BSI, priv ed | 1 User                 | 3,000                   | 17,841.60  | 06/25/2024         | 06/22/2025       | 17,772.35        |
| SAP S/4HANA Cld, disaster rec, priv ed   | % of Net Recurring Fee | 1                       | 120,481.71 | 06/25/2024         | 06/22/2025       | 120,014.09       |
| SAP Addit File Storage, priv cld ed      | 100 Gigabyte           | 20                      | 18,748.80  | 06/25/2024         | 06/22/2025       | 18,676.03        |
| SAP SFSF EC, core HR                     | 1 User                 | 3,000                   | 84,520.80  | 06/25/2024         | 06/22/2025       | 84,192.75        |
| S/4 Cld, addt non-prod tier, priv ed (S) | 1 Tenant               | 1                       | 105,633.36 | 06/25/2024         | 06/22/2025       | 105,223.37       |
| SAP S/4HANA Cld, disaster rec, priv ed   | % of Net Recurring Fee | 1                       | 117,294.42 | 06/23/2025         | 06/24/2029       | 469,820.39       |

| SAP Cloud Service                        | Usage Metric          | Usage Metric Limitation | Annual Fee | Product Start Date | Product End Date | Total Fee in USD |
|--|-----------------------|-------------------------|------------|--------------------|------------------|------------------|
| SAP S/4HANA Cld, Digital Access, priv ed | 1000 Document         | 1                       | 45.95      | 06/23/2025         | 06/24/2029       | 184.05           |
| S/4 Cld, addt non-prod tier, priv ed (S) | 1 Tenant              | 1                       | 105,633.36 | 06/23/2025         | 06/24/2029       | 423,112.25       |
| SAP Payroll Processing, pce              | 1 User                | 3,000                   | 85,592.20  | 06/23/2025         | 06/24/2029       | 342,837.80       |
| SAP Time Track Cld, priv ed              | 1 User                | 3,000                   | 33,048.00  | 06/23/2025         | 06/24/2029       | 132,373.08       |
| SAP U.S. Payroll Tax Cal by BSI, priv ed | 1 User                | 3,000                   | 17,841.60  | 06/23/2025         | 06/24/2029       | 71,464.16        |
| SAP Cld, mem ext f. prod tiers, priv ed  | 256 Gigabyte          | 1                       | 24,810.00  | 06/23/2025         | 06/24/2029       | 99,375.95        |
| SAP Cld, mem ext f. non-prd, Priv Ed     | 256 Gigabyte          | 1                       | 12,972.00  | 06/23/2025         | 06/24/2029       | 51,959.08        |
| SAP SFSF EC, core HR                     | 1 User                | 3,000                   | 84,520.80  | 06/23/2025         | 06/24/2029       | 338,546.33       |
| RISE with SAP S/4HANA Cld, priv ed, prem | 1 Full Use Equivalent | 247                     | 528,629.40 | 06/23/2025         | 06/24/2029       | 2,117,414.20     |
| Cloud Platform Enterprise Agreement      | Cloud Credits         | USD 149,417.81          | 90,000.00  | 06/25/2024         | 06/22/2025       | 89,650.68        |
| Cloud Platform Voucher                   | Spend                 | USD 10,889              |            | 06/25/2024         | 06/22/2025       |                  |
| Cloud Platform Enterprise Agreement      | Cloud Credits         | USD 821.92              | 90,000.00  | 06/23/2025         | 06/24/2025       | 493.15           |
| Cloud Platform Enterprise Agreement      | Cloud Credits         | USD 150,000.00          | 90,000.00  | 06/25/2025         | 06/24/2026       | 90,000.00        |
| Cloud Platform Enterprise Agreement      | Cloud Credits         | USD 150,000.00          | 90,000.00  | 06/25/2026         | 06/24/2027       | 90,000.00        |

| SAP Cloud Service                   | Usage Metric  | Usage Metric Limitation | Annual Fee | Product Start Date | Product End Date | Total Fee in USD |
|-------------------------------------|---------------|-------------------------|------------|--------------------|------------------|------------------|
| Cloud Platform Enterprise Agreement | Cloud Credits | USD 150,000.00          | 90,000.00  | 06/25/2027         | 06/24/2028       | 90,000.00        |
| Cloud Platform Enterprise Agreement | Cloud Credits | USD 150,000.00          | 90,000.00  | 06/25/2028         | 06/24/2029       | 90,000.00        |
| Cloud Platform Voucher              | Spend         | USD 60                  |            | 06/23/2025         | 06/24/2025       |                  |
| Cloud Platform Voucher              | Spend         | USD 10,931              |            | 06/25/2025         | 06/24/2026       |                  |
| Cloud Platform Voucher              | Spend         | USD 10,931              |            | 06/25/2026         | 06/24/2027       |                  |
| Cloud Platform Voucher              | Spend         | USD 10,931              |            | 06/25/2027         | 06/24/2028       |                  |
| Cloud Platform Voucher              | Spend         | USD 10,931              |            | 06/25/2028         | 06/24/2029       |                  |

|               |              |
|---------------|--------------|
| Total Net Fee | 5,525,548.20 |
|---------------|--------------|

|  |              |
|--|--------------|
| Period 1 From 06/25/2024 To 06/24/2025 | 1,123,997.28 |
| Period 2 From 06/25/2025 To 06/24/2026 | 1,100,387.73 |
| Period 3 From 06/25/2026 To 06/24/2027 | 1,100,387.73 |
| Period 4 From 06/25/2027 To 06/24/2028 | 1,100,387.73 |
| Period 5 From 06/25/2028 To 06/24/2029 | 1,100,387.73 |
| Total Net Fee                          | 5,525,548.20 |

The amounts set out above are subject to fee changes as set forth in the Order Form.

The amounts set out above are net amounts. Applicable taxes are not included. This is not a tax invoice.

Usage Metric Limitation shows the maximum quantity that Customer may use over a 12-month period, unless:

- (a) the name of the Cloud Service includes "Cloud Platform Enterprise Agreement" "Cloud Platform Voucher" or "Business Technology Platform Enterprise Agreement", in which case the Usage Metric Limitation shows the amount of (Gross) Cloud Credits available for a Cloud Credits Period; or
- (b) the name of the Cloud Service includes "Pay-As-You-Go";
- (c) the name of the Cloud Service includes "Industry Cloud Enterprise Agreement", in which case the Usage Metric Limitation shows the amount of Cloud Credits available during the Initial Subscription Term.

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

### 1. DEFINITIONS

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

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

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

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

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

### **2.2. Authorized Users**

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

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

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

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

SAP may suspend or limit use of the Cloud Service if:

- a) continued use may result in material harm to the Cloud Service or its users; or
- b) to comply with laws and regulations applicable to SAP, its Affiliates' or subcontractors.

SAP will promptly notify Customer of the suspension or limitation. SAP will limit a suspension or limitation in time and scope as reasonably possible under the circumstances.

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

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

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

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

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

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



### **3. SAP RESPONSIBILITIES**

#### **3.1. Provisioning**

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

#### **3.2. Support**

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

#### **3.3. Security**

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

#### **3.4. Modifications**

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

SAP may modify the Cloud Service (including support services, Maintenance Windows and Major Upgrade Windows), provided that SAP shall not materially degrade the core functionality of the Cloud Service during the Subscription Term.

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

SAP shall provide Customer with reasonable advance notice of modifications to the functionality of the Cloud Service in accordance with Section 13.5, except for any change to a Maintenance Window or Major Upgrade Window which shall be in accordance with the Service Level Agreement.

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

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

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

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

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

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

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

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

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

#### **4.4. Security**

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

#### **4.5. Access to Customer Data**

##### **4.5.1. During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical**

limitations, in which case SAP and Customer will find a reasonable method to allow Customer access to Customer Data.

- 4.5.2. Before the Subscription Term expires, Customer may use SAP's self-service export tools (as available) to perform a final export of Customer Data from the Cloud Service.
- 4.5.3. At the end of the Agreement, SAP will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.
- 4.5.4. In the event of third party legal proceedings relating to the Customer Data, SAP will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

## **5. FEES AND TAXES**

### **5.1. Fees and Payment**

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

### **5.2. Taxes**

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

## **6. TERM AND TERMINATION**

### **6.1. Term**

The Subscription Term is as stated in the Order Form.

### **6.2. Termination**

A party may terminate the Agreement:

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

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

For termination by Customer (including but not limited to Sections 3.4.3, 6.2(a), 7.3 (b) or 7.4.3) or termination under Sections 8.1.4 or 13.4 Customer will be entitled to:

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

6.4. Effect of Expiration or Termination

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

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

6.5. Survival

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

**7. WARRANTIES**

7.1. Compliance with Law

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

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

7.2. Good Industry Practices

SAP warrants that it will provide the Cloud Service:

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

7.3. Remedy

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

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

7.4. System Availability

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

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

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

7.5. Warranty Exclusions

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

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

## 7.6. Disclaimer

Except as expressly provided in the Agreement, neither SAP nor its subcontractors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of SAP or product roadmaps in obtaining subscriptions for any Cloud Service.

## 8. THIRD PARTY CLAIMS

### 8.1. Claims Brought Against Customer

8.1.1. SAP will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that (i) Customer's and its Affiliates' use of the Cloud Service infringes or misappropriates a patent claim, copyright, or trade secret right; (ii) bodily injury or damage to real or tangible personal property was caused by the gross negligence or willful misconduct of SAP; or (iii) SAP's breach of its data security obligations resulted in the unauthorized disclosure of Customer Data to an unrelated third party. SAP will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement SAP enters into) with respect to these claims.

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

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

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

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

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

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

### 8.2. Claims Brought Against SAP

Customer will defend SAP against claims brought against SAP, SAP SE, its Affiliates and subcontractors by any third party caused by Customer Data. Customer will indemnify SAP against all damages finally awarded against SAP, SAP SE, its Affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims. Customer's indemnity and liability obligations hereunder shall be subject to the Customer's common law right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes.

### 8.3. Third Party Claim Procedure

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

- a) The party against whom a third party claim is brought (the "**Named Party**") will timely notify the other party (the "**Defending Party**") in writing of any claim. The Named Party shall reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the Defending Party subject to Section 8.3b).
- b) The Defending Party will have the right to fully control the defense.

- c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by the Named Party.

#### 8.4. Exclusive Remedy

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

### 9. LIMITATION OF LIABILITY

#### 9.1. No Cap on Liability

The Customer's liability obligations shall be subject to the common law right of sovereign immunity and limited to the extent of and limitations on damages as set forth in Section 768.28, Florida Statutes. Subject to the above limitation, neither party's liability is capped for damages resulting from:

- a) the parties' obligations under Section 8.1.1 and 8.2 (excluding SAP's obligation under Section 8.1.1 where the third party claim(s) relates to a Cloud Service(s) not developed by SAP and 8.1.1 (ii) and (iii));
- b) death or bodily injury arising from either party's gross negligence or willful misconduct; and/or
- c) Customer's unauthorized use of any Cloud Service and/or any failure by Customer to pay any fees due under the Agreement.

#### 9.2. Liability Cap

Except as set forth in Section 9.1, the maximum aggregate liability of either party (or its respective Affiliates or SAP's subcontractors) to the other or to any other person or entity for all events (or series of connected events) arising in any 12 month period will not exceed the annual subscription fees paid for the applicable Cloud Service associated with the damages for the prior twenty-four month period (except for Cloud Service(s) not developed by SAP, in which case the maximum aggregate liability will not exceed the annual subscription fees paid for the applicable non-SAP developed Cloud Service(s) associated with damages for the prior twelve month period). Any "12 month period" commences on the Subscription Term start date or any of its yearly anniversaries.

#### 9.3. Exclusion of Damages

In no case will:

- a) either party (or its respective Affiliates or SAP's subcontractors) be liable to the other party for any special, incidental, consequential, or indirect damages, loss of goodwill or business profits, work stoppage or for exemplary or punitive damages; and/or
- b) SAP be liable for any damages caused by any Cloud Service provided for no fee.

### 10. INTELLECTUAL PROPERTY RIGHTS

#### 10.1. SAP Ownership

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

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

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

#### 10.2. Acceptable Use Policy

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

- a) copy, translate, disassemble, decompile, make derivative works, or reverse engineer the Cloud Service or SAP Materials (or attempt any of the foregoing);

- b) enter, store, or transfer any content or data on or via the Cloud Service that is unlawful or infringes any Intellectual Property Rights;
- c) circumvent or endanger the operation or security of the Cloud Service; or
- d) remove SAP's copyright and authorship notices.

## **11. CONFIDENTIALITY**

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

#### **11.1.1. The receiving party shall:**

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

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

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

### **11.2. Compelled Disclosure**

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

### **11.3. Exceptions**

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

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

### **11.4. Destruction and Return of Confidential Information**

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



- a) if legal proceedings related to the Confidential Information prohibit its return or destruction, until the proceedings are settled or a final judgment is rendered;
- b) to Confidential Information held in archive or back-up systems under general systems archiving or backup policies; or
- c) to Confidential Information the receiving party is legally entitled or required to retain.

## **12. FEEDBACK**

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

## **13. MISCELLANEOUS**

### **13.1. Severability**

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

### **13.2. No Waiver**

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

### **13.3. Counterparts**

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

### **13.4. Trade Compliance**

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

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

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

### **13.5. Notices**

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

### **13.6. Assignment**

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

### **13.7. Subcontracting**

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

#### 13.8. Relationship of the Parties

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

#### 13.9. Force Majeure

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

#### 13.10. Governing Law

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

#### 13.11. Jurisdiction and Mandatory Venue

This Agreement shall be governed, interpreted, and construed according to the laws of the State of Florida.

Venue for any legal action brought by any party to this Agreement, to interpret, construe, or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida.

#### 13.12. Waiver of Right to Jury Trial

In the event of any legal action to interpret or enforce the terms of this Agreement or any provision hereof, any trial shall be non-jury.

#### 13.13. Statute of Limitation

Customer must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within 1 year from the date when the Customer knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

#### 13.14. Insurance

##### 13.14.1. During the term of the Agreement, SAP [adjust as necessary based on contract definition], using commercially reasonable efforts, shall maintain the following insurance policies with insurer(s) having an AM Best Rating of A- or better:

- (a) commercial general liability with a limit of \$1,000,000 per occurrence and in general aggregate;
- (b) commercial automobile liability with a combined single limit of \$1,000,000 per occurrence;
- (c) workers' compensation in compliance with statutory requirements;
- (d) employer's liability with limits of \$1,000,000 each accident, \$1,000,000 by disease each employee and \$1,000,000 by disease policy limit;
- (e) excess/umbrella liability with a limit of \$4,000,000 per occurrence and in the aggregate with respect to coverage required in (a) and (b); and
- (f) technology professional liability with a limit of \$5,000,000 per claim and in the aggregate covering claims arising out of errors or omissions in connection with services provided by SAP as described in the Agreement and including network security and private data risks involving unauthorized access, failure of security,

transmission of malicious code, denial of service attacks, and unauthorized disclosure or misappropriation of private data.

- 13.14.2. Following execution of the Agreement and upon request of Customer, SAP shall deliver or make available for download a blanket certificate of insurance evidencing existence of the required coverage. SAP, its insurer(s) or broker(s) shall endeavor to provide Customer thirty (30) days advance written notice in event of cancellation of policies required herein. None of the requirements contained herein as to types or limits or Customer's approval of insurance coverage to be maintained by SAP are intended to, and shall not in any manner, limit, qualify or quantify the liabilities and obligations assumed by SAP under the Agreement.

13.15. Entire Agreement

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