

SOFTWARE LICENCE AND MAINTENANCE AGREEMENT

The Supplier is the holder of distribution and/or exploitation rights relating to the software set forth in this Licence and Maintenance Agreement and any Software Attachments (hereinafter referred to as "**Agreement**"). This Agreement governs the use and maintenance of the software products which are the subject matter of the Agreement. The Licence and Maintenance Terms and Conditions attached hereto are incorporated by reference into this Agreement.

| Parties | | |
|--------------------------|--|-----------------------------------|
| between | Software AG (UK) Limited (" the Supplier ") | G Cloud (" the Customer ") |
| Reg. No. | 1310740 | |
| Registered office | Pride Park, Locomotive Way, DERBY, Derbyshire DE24 8PU, UNITED KINGDOM | G Cloud |

| Effective Date |
|--|
| The last date of signing by duly authorised representatives of all of the parties. |

The parties have shown their acceptance of the terms of this Agreement by signing it below. This Agreement shall come into force and effect upon the Effective Date referred to above. This document may be executed in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original and all such counterparts shall be construed together and shall constitute one agreement. The parties agree to the use of digital signatures.

| Agreement | | | |
|---|--|---|--|
| Duly authorised for and on behalf of Supplier | | Duly authorised for and on behalf of Customer | |
| Signed | | Signed | |
| Name | | Name | |
| Title | | Title | |
| Date | | Date | |

SOFTWARE LICENCE AND MAINTENANCE TERMS AND CONDITIONS

1 LICENCE GRANT

- 1.1 **Grant of Licence:** Subject to the terms and conditions set forth in this Agreement and in exchange for payment of the licence fees, the Supplier grants to the Customer a non-exclusive, non-transferable, non-sublicensable right to use the software products identified in any Software Attachment (hereinafter "**Software**") based on the licence parameters, terms and conditions set out herein and as further set forth in the Software Attachment or any amendment to this Agreement. In addition, the Customer may copy and use the end user manuals or associated documentation related to the Software and delivered to the Customer pursuant to the clause "Delivery" below ("**Documentation**"). Licences are granted on the basis of a single non-divisible licence for each of the Software separately listed on any Software Attachment and include the right to use new Software versions, which are provided to the Customer in connection with the maintenance of the Software (Clause 'Maintenance and Support Services' below).
- 1.2 **Restrictions:** Unless otherwise agreed in the Software Attachment, Customer shall not: (1) permit any outsourcer or other third party including any parent, subsidiary or affiliated entity to use the Software; (2) use the Software to process or cause or permit third parties to process the data of any other party; (3) extend the capacity to use the Software by means of virtualization (Sub-capacity/Partitioning) or otherwise; or (4) have the right to share a pool of configurable computing resources (e.g. networks, servers, storage, applications and services) through an on-demand network access (Cloud Enablement). For the purposes of this Agreement "**Outsourcing**" refers to the act of allowing a third party whose business is the maintenance and operation of other companies' computers or business services (the "**Outsourcer**") to operate or maintain the Customer's computer systems on the Customer's behalf. This may take place on the Customer's premises and computers, also known as facilities management, or at the Outsourcer's premises on the Outsourcer's computers.
- 1.3 **Delivery:** The Software and Documentation shall be distributed electronically over the Internet through a password-protected web page or, if applicable, by CD/DVD or tape cartridge. In case of electronic delivery, Supplier will deliver a software activation password key and software download instructions to Customer via an e-mail message sent to Customer's designated contact person.
- 1.4 **Acceptance:** Acceptance shall be deemed to have occurred upon shipment of the data carrier (F.O.B. Supplier's distribution facility) to Customer, or upon delivery of the software activation key and download instructions, as applicable. In case of installation, consulting or education services provided by the Supplier or any third party in relation to the Software, the acceptance of the Software shall not be conditioned upon the conclusion of such services, nor shall the payment date(s) set forth herein be conditioned upon or modified for any reason based upon the actual date of conclusion of such services.

2 OWNERSHIP

- 2.1 **Ownership:** Customer acknowledges that the Software and its structure, underlying concepts, organization, architecture, and source code are the exclusive property of and constitute valuable trade secrets of Supplier and its suppliers. Customer agrees not to (1) disassemble, reverse engineer, or reverse compile the Software in whole or in part; (2) copy, modify, adapt, alter,

translate, or create derivative works from the Software or (3) merge the Software with other software save to the extent expressly permitted by law. The Supplier expressly reserves all rights not granted under this Agreement. Customer acknowledges that Customer's failure to comply with the provisions of this Clause shall result in irreparable harm to Supplier for which a remedy at law would be inadequate, and therefore, in the event of the breach or threatened breach by Customer of its obligations under this Clause, Supplier shall be entitled to seek equitable relief in the form of specific performance and/or an injunction for any such actual or threatened breach, in addition to the exercise of any other remedies at law and in equity.

3 MAINTENANCE AND SUPPORT SERVICES

- 3.1 **Maintenance Terms and Conditions:** In exchange for payment of the fees set forth in this Agreement, Supplier shall provide the maintenance and support services described in the applicable Maintenance and Support Service Description as published by the Supplier from time to time.
- 3.2 **Maintenance Renewal:** Maintenance and support services under this Agreement for Software licensed under any Software Attachments are provided for a fixed term of twelve (12) months and automatically renew on an annual basis unless terminated by either party on not less than three (3) months' notice in writing given at any time prior to the relevant renewal date. If the agreement for the provision of maintenance and support services terminates or otherwise expires and the Customer subsequently wishes to renew maintenance and support services, Customer shall pay the support fees that would have been due for the period during which maintenance and support services were not provided plus a reinstatement fee in accordance with Supplier's then current reinstatement policy.
- 3.3 **Price Increase:** Upon the first renewal of the maintenance and support services, the Maintenance Fee shall (provided that the Software is then licensed on a like for like basis) be the Maintenance Fee indicated in the corresponding Software Attachment in respect of the period of 12 calendar months from the Licence Start Date increased by the Index KAC6 from the table "EARN01 Average Weekly Earnings – total pay, Great Britain (seasonally adjusted)" (or any successor index thereto) in respect of the most recently available month prior to the relevant renewal date as published by the Office for National Statistics of Her Majesty's Government (or any equivalent successor body). If the published percentage is 0% (or less) no adjustment shall be made. Subsequent renewals in the Maintenance and Support Services Fee shall be determined by the Supplier but increases shall not exceed 10% per annum.

4 PAYMENT

- 4.1 **Payment:** All payments shall be due and payable within thirty (30) days of the date of invoice.
- 4.2 **Taxes:** All payments under this Agreement shall be made without recoupment or set-off and are exclusive of taxes and duties. Customer agrees to bear and be responsible for the payment of all taxes and duties including, but not limited to, all sales, use, rental, receipt, personal property and other taxes (but excluding taxes based upon Supplier's income), which may be levied or assessed in connection with this Agreement.
- 4.3 **Interest:** If any payment due under this Agreement is not paid in accordance with the terms of this Agreement, then interest shall be payable and recoverable as a debt on all outstanding amounts at the rate of 1½% per month (or part thereof), accruing daily from the date upon which

the payment becomes due (both before and after judgment) together with all costs of collection including reasonable legal costs.

5 CONFIDENTIALITY

5.1 **Confidential Information:** The parties acknowledge that each party will have access to intellectual property or other confidential information of the other party or third parties in respect of which the disclosing party has a duty of confidentiality (“**Confidential Information**”). Both parties agree that Confidential Information disclosed is proprietary and shall remain the sole property of the disclosing party or such third party.

5.2 **Confidentiality:** Each Party agrees:

- (a) to use Confidential Information only for the purposes described herein; and
- (b) not to reproduce Confidential Information and to hold it in confidence and protect it from dissemination to, and use by, any third party; and
- (c) not to create any derivative work from Confidential Information; and
- (d) to restrict access to the Confidential Information to its personnel, agents, sub-contractors and/or consultants, who need to have access to such Confidential Information and who have been advised of and have agreed in writing to treat such Confidential Information in accordance with this Agreement; and
- (e) to return or, at the disclosing party’s discretion, destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

5.3 **Exclusions:** The restrictions shall not apply to Confidential Information that:

- (a) is publicly available or in the public domain at the time disclosed;
- (b) is or becomes publicly available or enters the public domain through no fault of the recipient;
- (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto;
- (d) is already in the recipient’s possession free of any confidentiality obligations with respect thereto at the time of disclosure;
- (e) is independently developed by the recipient; or
- (f) is approved for release or disclosure by the disclosing Party without restriction.

5.4 **Compliance with law permitted:** Each Party may disclose Confidential Information to the limited extent required to comply with the order of a court or other governmental body or applicable law, including to make such court filings as it may be required to do, provided that it gives reasonable notice of the demand to allow the other Party to seek a protective order or other appropriate remedy (unless is legally prohibited from doing so).

5.5 **Relief:** Customer acknowledges that Customer’s failure to comply with the provisions of this Clause shall result in irreparable harm to Supplier for which a remedy at law would be inadequate, and therefore, in the event of the breach or threatened breach by Customer of its obligations under this Clause, Supplier shall be entitled to seek equitable relief in the form of specific performance and/or an injunction for any such actual or threatened breach, in addition to the exercise of any other remedies at law and in equity.

6 IPR INDEMNITY

6.1 **Indemnity:** Supplier shall indemnify, defend, and hold Customer harmless from any action

brought by a third-party against Customer to the extent that it is caused by an allegation that the Software licensed under this Agreement has infringed an intellectual property right or trade secret registered in the country of Supplier's residence, and pay those damages or costs related to the settlement of such action or finally awarded against Customer in such action, including but not limited to reasonable attorneys' fees, provided that Customer:

- (a) promptly notifies Supplier of any such action; and
- (b) gives Supplier full authority, information, and assistance to defend such claim; and
- (c) gives Supplier sole control of the defense of such claim and all negotiations for the compromise or settlement of such claim.

6.2 **Exclusions:** Supplier shall have no liability under this Agreement with respect to any claim based upon:

- (a) Software that has been modified by anyone other than Supplier;
- (b) use of other than the then-current release of the Software, if the infringement could have been avoided by use of the then-current release and such current release has been made available to Customer;
- (c) use of the Software in conjunction with Customer data where use with such data gave rise to the infringement claim;
- (d) use of the Software with other software or hardware, where use with such other software or hardware gave rise to the infringement claim;
- (e) use of any Software in a manner inconsistent with its Documentation;
- (f) open source software or technology included within the Software; and/or
- (g) use of any Software which use breaches this Agreement.

6.3 **Remedy by Supplier:** If Supplier determines that the Software is or is likely to be the subject of a claim of infringement, Supplier shall have the right:

- (a) to replace Customer's copy of the Software with non-infringing software that has substantially equivalent functionality;
- (b) to modify the Software so as to cause the Software to be free of infringement;
- (c) to procure, at no additional cost to Customer, the right to continue to use the Software; or
- (d) to terminate the licence to use the Software and Documentation, and refund to Customer the applicable fees (i.e. the applicable licence fee depreciated on a straight-line basis over a five (5) year period for a perpetual licence term including any prepaid but unused maintenance fees for the applicable Software or refund the pro-rated portion of the applicable prepaid but unused licence fee for a subscription licence term).

6.4 **Exclusive remedy:** THE PROVISIONS OF THIS CLAUSE STATE THE EXCLUSIVE LIABILITY OF THE SUPPLIER AND THE EXCLUSIVE REMEDY OF THE CUSTOMER WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY OR TRADE SECRET MISAPPROPRIATION OR INFRINGEMENT BY THE SOFTWARE, ANY PART THEREOF, AND ANY MATERIAL OR SERVICES PROVIDED HEREUNDER, AND ARE IN LIEU OF ALL OTHER REMEDIES, LIABILITIES, AND OBLIGATIONS.

7 WARRANTIES

7.1 **Warranties:** Supplier warrants to Customer: (i) that it has the right to grant to Customer the right to use the Software and to enter into this Agreement; and (ii) that for 1 (one) year from the acceptance of the Software by Customer under this Agreement, the Software will conform in all

material respects to the description of the Software contained in the user manual for the Software as amended from time to time. Supplier's entire liability and Customer's exclusive remedy under this warranty shall be that Supplier will use reasonable commercial efforts to correct, provide a workaround for, or replace any reproducible error in the Software, at Supplier's cost and expense, provided written notice itemizing such error is given to Supplier during the warranty period.

7.2 **Warranty Exclusions:** The warranty set forth in this clause above shall not apply to the degree that the reproducible error occurs because

- (a) the affected Software has been altered, modified, merged or converted by Customer except as authorized by Supplier;
- (b) of the malfunctioning of Customer's hardware or other software; or
- (c) the affected Software, or a portion thereof, has become inoperative due to any other causes beyond the control of Supplier.

The Customer hereby expressly agrees and acknowledges that the foregoing warranties are the only warranties given by Supplier and that all other conditions, terms, undertakings and warranties express or implied, statutory or otherwise in respect of the Software or the Customer's use of the Software or which arise out of this Agreement including, but not limited to, those as to quality, performance, merchantability or fitness for any purpose are hereby excluded to the maximum extent permitted by law.

8 LIMITATION OF LIABILITY

8.1 **Limitation of Liability:** IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, ECONOMIC OR CONSEQUENTIAL LOSS OR DAMAGES IN CONNECTION WITH ANY CLAIM THAT ARISES FROM OR RELATES IN ANY WAY TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION ALLEGED, EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY OF ANY KIND. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS CLAUSE ARE INDEPENDENT OF EACH EXCLUSIVE OR LIMITED REMEDY SET FORTH IN THIS AGREEMENT. EXCEPT WITH RESPECT TO THE DEFENSE OF INFRINGEMENT CLAIMS UNDER CLAUSE 'INDEMNITY' AND IN THE EVENT OF DEATH OR PERSONAL INJURY OF A PERSON NEGLIGENTLY CAUSED BY SUPPLIER, IN NO EVENT SHALL THE LIABILITY OF SUPPLIER UNDER THIS AGREEMENT EXCEED THE AMOUNT OF THE LICENCE FEES PAID TO SUPPLIER BY CUSTOMER HEREUNDER FOR THE SOFTWARE TO WHICH CUSTOMER'S CLAIM RELATES. CUSTOMER ACKNOWLEDGES THAT THE LIMITATIONS SET OUT IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT SUPPLIER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT.

9 BREACH

9.1 **Breach:** If the Customer shall fail to comply with any of the provisions of the Clauses Confidentiality or Licence Grant or shall become insolvent or enter into liquidation whether voluntary or compulsory (save for the purposes of reconstruction or amalgamation) or commit

any act of bankruptcy or make any arrangement or composition with its creditors or have a trustee, receiver or administrator or similar officer appointed over all or any part of its assets or if the Software or any part thereof shall be taken under any distress for rent or in execution under any process or law, then Supplier may at its option terminate this Agreement and all licences granted hereunder forthwith by notice in writing. If Customer shall fail to comply with any of the provisions of this Agreement then Supplier may at its option serve notice in writing on Customer specifying the breach and requiring the same to be remedied. If Customer fails to remedy the same within 30 days of receipt of the notice then Supplier may at its option either: (i) terminate this Agreement and all licences granted hereunder forthwith by notice in writing; or (ii) suspend performance of Maintenance and Support Services under all licences granted hereunder for the Software to which the breach relates (or, where the breach does not relate to any particular Software), suspend performance of Maintenance and Support Services under this Agreement for all licences for all Software granted under this Agreement) until such time as the specified breach has been remedied. Rights granted to Supplier under this Clause shall be in addition to any other remedies which may exist in law or equity.

10 EFFECT OF TERMINATION

- 10.1 **Effect of Termination:** Upon termination or expiry of this Agreement all rights to use the Software granted under this Agreement shall cease forthwith and the Customer shall within 7 days de-install and return the Software, the data carrier and the documentation and all copies thereof to Supplier and erase the Software from any memory or data storage apparatus and provide Supplier with a written undertaking that the Customer no longer holds or has access to any copies of the same. Termination or expiry shall be without prejudice to the rights of the parties accrued prior to the termination or expiry.
- 10.2 **Survival of Clauses:** The provisions of this Clause and Clauses Ownership, Confidentiality, IPR Indemnity, Limitation of Liability, Effect of Termination and Governing Law shall remain in full force and effect as between the parties notwithstanding any termination or expiry of this Agreement or any licence to use granted under this Agreement.

11 GENERAL

- 11.1 **Data Protection:** Unless stated otherwise, the obligations of the parties in connection with the processing of any customer data that qualify as personal data according to Art. 4 No. 1 of the General Data Protection Regulation (GDPR) ("**Customer Personal Data**") including the applicable technical and organizational measures that Supplier is required to implement and maintain to protect Customer Personal Data, shall be as set out in the Data Processing Agreement (if any) entered into between the Parties.
- 11.2 **Customer Use Case Report:** Supplier will create an internal customer use case report after the delivery of the Software to Customer. Any use of this report other than for internal purposes of Supplier requires a separate written approval by Customer. Customer agrees to provide input to this report e.g. by being available for a 30 minute telephone interview.
- 11.3 **Third Party Licence Restrictions:** The Software may contain or be distributed with certain open source, free or commercial third party licensor's components ("**Third Party Components**"). These Third Party Components, if any, may be identified in, and may be subject to, special licence terms and conditions ("**Third Party Terms**") set forth in "*.txt" or *.pdf" files in the

installation directory, a licence notice on installation or in readme or licence files accompanying Third Party Components and may be retrieved online for then current versions of Software at <http://softwareag.com/licenses>. Third Party Terms include important licensing and warranty information and disclaimers of licensors. For the avoidance of doubt the Third Party Terms do not restrict the rights granted under this Agreement. In the event that individual program versions from third party manufacturers that are provided to the Customer in connection with the contractual Software and which are required in order to operate the Software (such as Java virtual machines, applications, frameworks, and databases) ("**Accompanying Programs**") or versions of embedded Third Party Components are no longer actively supported by their respective manufacturers, the Supplier will spend commercial reasonable efforts to respond and to solve incidents related to the no longer actively supported Accompanying Programs or embedded Third Party Components. As long as the Customer takes and pays for Maintenance Services for the contractual Software, the Supplier will replace no longer actively supported Third Party Components with other versions of the same Third Party Components or components with similar functions and with available support by the respective manufacturers. None of the forgoing shall restrict Supplier's support obligations for the Software or parts of the Software owned by Supplier.

- 11.4 **Audit for Software**: The Customer will, within 10 working days from the date of receipt of a written request from Supplier (such requests not to be submitted by Supplier more than once per calendar year), confirm to Supplier in writing the Software installed on which machines and at what location(s), including, without limitation, details of the operating capacity available to the Software ('Self-disclosure'). The Self-disclosure shall contain sufficient detail to enable Supplier to assess compliance by the Customer with the terms and conditions set out in this Agreement. Supplier, or at Supplier's discretion an independent consultant appointed by Supplier, shall have the right on giving reasonable notice to the Customer to enter into any premises (in accordance with any Customer security access requirements) where any Software is held and have access to the relevant machines on which any of the Software is installed for the purpose of auditing the Customer use of the Software in accordance with the terms set out in this Agreement.
- 11.5 **Anti-Corruption**: The parties recognize and agree that they will comply with laws, regulations, rules and requirements against bribery, money laundering, and anti-corruption including but not limited to the Bribery Act 2010 and they have in place and will maintain policies and procedures in order to ensure compliance with such laws, regulations, rules and requirements. Non-compliance with the provisions of this clause shall grant to the affected party the right to terminate the Agreement immediately with notice.
- 11.6 **Force Majeure**: If the performance of this Agreement or any obligation under this Agreement, except for the making of payments, is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other Act of God or casualty or accident, or strikes or labour disputes affecting third-party vendors, inability to procure or obtain delivery of parts, supplies or power, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirements of any governmental agency, denial of service attacks, cybercrimes or malware caused by a third party, failure of utilities or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected will take all reasonable steps to avoid or remove such cause of non-performance and will resume performance hereunder with dispatch whenever such causes are removed.

- 11.7 **Assignment:** The Customer shall not assign, sub-license, sell, lease, encumber, charge or otherwise in any manner attempt to transfer this Agreement or any of its rights or obligations hereunder. Any purported transfer of this Agreement by the Customer in violation of this Clause shall be null and void. The Supplier shall be entitled to transfer this Agreement within the group of companies of which the Supplier is a member as well as to any third party in connection with the assignment to any such third party of the right of the Supplier to receive any sums payable by the Customer to it hereunder.
- 11.8 **Export Control:** Customer may not download, get and/or provide access to, or otherwise export or re-export any underlying software or service, technology or other information from the Software or Documentation except as stated explicitly in this Agreement and in full compliance with all applicable national and international laws and regulations. Customer agrees to indemnify and hold harmless and defend Supplier against any and all liability arising from or relating to Customer's breach of this Clause. Supplier reserves the right not to execute affected parts of, or the entire Agreement, in case any national or international export regulations or foreign trade legislation, or any target country/customer/usage restrictions implied by embargoes or other sanctions prohibit the provision of export controlled goods (Dual-Use items) and services to be granted to the Customer under this Agreement. Supplier will inform the Customer whether a related official export approval by national or international export control authorities is required. Provision of affected goods and services will then be postponed until all such required approvals have been granted. The provision of agreed goods or services not restricted by the above mentioned export prohibitions will remain unaffected by this clause.
- 11.9 **Dispute Resolution:** The Parties shall attempt to resolve any dispute arising under this Agreement through the informal means described in this Clause. Each Party shall appoint a senior management representative who does not devote substantially all of his or her time to performance under this Agreement. The representatives shall negotiate in good faith to resolve the dispute without the need for any formal proceeding. Formal proceedings for the resolution of the dispute may not be commenced until the earlier of (i) the designated representatives mutually conclude that resolution through negotiation does not appear likely; or (ii) thirty (30) calendar days have passed since the initial request to negotiate the dispute was made; provided, however, that a Party may file for formal proceedings earlier solely to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for interim or equitable relief.
- 11.10 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties shall submit to the non-exclusive jurisdiction and procedure of the Courts of England.
- 11.11 **Prevailing Party:** In the event a dispute arising under this Agreement results in litigation, the non-prevailing party shall pay the court costs and reasonable attorneys' fees of the prevailing party.
- 11.12 **Non-waiver:** No waiver or retraction of a waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom such waiver is sought. The failure of either Party to exercise any right granted herein, or to require the performance by the other Party hereto of any provision in this Agreement, or the waiver by either party of any breach of this Agreement, will not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach of the same or any other provision

of this Agreement.

- 11.13 **Notices:** All notices, demands, or other communications by any party to the other shall be deemed to have been duly given when:
- (a) made in writing and delivered in person with signed receipt, or
 - (b) sent via a nationally recognized, traceable, overnight delivery carrier, to the address detailed above, or to such address as the parties may provide to each other in writing from time to time.
- Notice will be effective upon delivery. Maintenance and Support Services related notices will be posted on Supplier's then current web-based support portal.
- 11.14 **Amendments in writing:** No variation of this Agreement shall be binding unless it is agreed in writing and signed on behalf of both parties by a duly authorized representative. No variation or omission from or addition to any of the terms and conditions of this Agreement whether written or oral shall be binding upon Supplier unless expressly accepted in writing by Supplier.
- 11.15 **Severability:** If any Clause (or part of any Clause) of this Agreement is determined by a court of competent jurisdiction to be or becomes illegal, unenforceable or in conflict with any law governing this Agreement, such clause shall be adjusted to the minimum extent necessary (most closely reflecting the legal and economic intent of the parties) to cure such unenforceability, illegality or conflict and the remainder of this Agreement (and the remainder of the relevant Clause) shall remain in effect in accordance with its terms as modified by such adjustment.
- 11.16 **Entire Agreement:** This Agreement as may be amended from time to time constitutes the entire agreement between the parties and supersedes all previous communications, non-fraudulent representations or prior and contemporaneous agreements (written or oral) between the parties with respect to the subject matter hereof.
- 11.17 **Withholding counter-performance:** Customer may only enforce its rights to withhold counter-performance if the counterclaims upon which the withholding is based relate to the same contractual relationship and are undisputed, mutually settled or have been finally awarded by a competent court of jurisdiction.
- 11.18 **Contracts (Rights of Third Parties) Act 1999:** Save to the extent expressly granted hereunder, this Agreement does not create any right enforceable by any person who is not a party to it ("**Third Party**") under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a Third Party which exists or is available apart from that Act.
- 11.19 **Software Attachments:** In the event of any conflict or inconsistency in the definition or interpretation of any term or provision set forth in this Agreement and Exhibits, such conflict or inconsistency shall be resolved by giving precedence to the Software Attachment(s). Any contrary or additional terms and conditions attached to or part of any purchase order or similar document related to this Agreement shall be invalid and non-binding.

Software Attachment

The Software AG entity referred to below is the holder of distribution and/or exploitation rights relating to the software set out in this Software Attachment (together hereinafter referred to as "**the Software**"). The use by the Customer of the Software is governed by the terms and conditions set out in the Agreement referred to below together with any associated amendments thereto (collectively herein referred to as the "**Agreement**"). In the event of any conflict the terms and conditions set out below in this Software Attachment shall prevail over those set out in the Agreement.

| Parties | | |
|---|--|---|
| between | Software AG (UK) Limited (" the Supplier ") | G Cloud (" the Customer ") |
| Reg. No. | 1310740 | |
| Registered office | Pride Park, Locomotive Way, DERBY, Derbyshire DE24 8PU, UNITED KINGDOM | G Cloud |
| Software Licence and Maintenance Agreement | | See Reference No. above |
| Licence Type | | Perpetual |
| Licence Start Date | | the Effective Date of the Software Licence Agreement which refers to this Software Attachment |
| Maintenance Service Term | | 12 months from the Licence Start Date |
| Maintenance and Support Service Level | | Enterprise Active |
| Designated Location | | G Cloud |
| Shipping Address | | G Cloud |
| Contact Person | | G Cloud |
| Contact E-mail Address | | G Cloud |

| Payment and Invoicing Terms | |
|-----------------------------|--|
| Licence Fee | GBP 47,220.25 (excluding VAT) |
| Maintenance Fee | GBP 11,427.30 (excluding VAT) |
| Payment Terms | 30 days from the date of invoice |
| Invoice Terms | Invoice Date |
| | Immediately on signature of this Agreement |

Software

| Product Name and Operating System | Quantity and Licence Metric | Product Code | Usage |
|-----------------------------------|-----------------------------|--------------|------------|
| ARIS Connect Server on Windows | 1 x Tenant | YCS | Production |

Licence Metrics

| | |
|--------|---|
| Tenant | A "tenant" is a client organization sharing utilization of a single software instance on a server with other tenants having dedicated separated tenant data and utilizing the provided standard or limited customized virtual application instance. A multi-tenant system is a software architecture where a single instance of the Software runs on a server serving multiple client organisations and/or multiple departmental organisations within one client (tenants). With a multi-tenant architecture, the software application is designed virtually to partition its data and configuration and each client organisation works with a standard or very limited customised virtual application instance. A single – tenant system is a software architecture where the tenant is provided with a single and dedicated instance of the Software with full configurability of the Software, own database, enhanced security and an individual or segregated virtual server installation (with security controls). |
|--------|---|

Product Related Licence Provisions

| Product Name | Product Code | Product Related Licence Provisions |
|---------------------|--------------|--|
| ARIS Connect Server | YCS | ARIS Connect Server (YCS) is a multi-tenant server and the Customer is licensed in respect of the number of tenants indicated running on a single ARIS Connect Server installation. For these purposes a 'tenant' is a specific partition within the ARIS server that contains one unique client organisation and/or multiple departmental organisations within one client. Content produced using ARIS Connect Server may only be published to content consumers who are themselves appropriately licensed to have access to ARIS and cannot be exported and subsequently published via any other 3rd party collaboration tool (e.g. Microsoft Sharepoint or similar). |

Effective Date

The last date of signing by duly authorised representatives of all of the parties.

The parties have shown their acceptance of the terms of this Software Attachment by signing it below. This Software Attachment shall come into force and effect upon the Effective Date referred to above. This document may be executed in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original and all such counterparts shall be construed together and shall constitute one agreement. The parties agree to the use of digital signatures.

Agreement

| Duly authorised for and on behalf of Supplier | | Duly authorised for and on behalf of Customer | |
|---|--|---|--|
| Signed | | Signed | |
| Name | | Name | |
| Title | | Title | |
| Date | | Date | |

STANDARD MAINTENANCE AND SUPPORT SERVICE

Customer is a licensee of certain Software AG products under a Licence and Maintenance Agreement that the Customer has executed with a Software AG subsidiary (hereinafter **"Supplier"**). The maintenance and support services that the Supplier has agreed to deliver as provided in the Licence and Maintenance Agreement are defined herein, and this document forms an attachment to the Licence and Maintenance Agreement.

1 DEFINITIONS

1.1 **Definitions:** Unless the context requires otherwise the following words and expressions shall bear the meanings set out below where used in this Agreement:

| | |
|---|--|
| "Business Day" | means the days from Monday to Friday excluding public holidays in country as specified in the Customer address field on the first page of the underlying Licence and Maintenance Agreement that correspond with Software AG's Global Support operating days. |
| "Business Hour" | means the hours from 8.00 am to 5.00 pm on a Business Day of the main support hub within Customer's region: (a) EMEA – 8 to 5 Central European Time (CET) (b) APJ – 8 to 5 Malaysia Time (MYT) (c) US – 8 to 5 Mountain Time (MT) Global Support operating hours may change from time to time. |
| "Documentation" | means the user manuals that the Supplier makes available to licensees of the Software. |
| "Error" | means any verifiable and reproducible failure of the Software to substantially conform to the specifications for such Software. Notwithstanding the foregoing, "Error" shall not include any such failure that is caused by: (i) the use or operation of the Software with any other software or code or in an environment other than that intended or recommended in the Documentation, (ii) modifications to the Software not made or approved by the Supplier in writing, or (iii) any bug, defect, or error in third-party Software used with the Software. |
| "Error Correction" | means either a modification or addition to or deletion from the Software having the effect that such Software substantially conforms to the then current specifications, or a procedure or routine that, when exercised in the regular operation of the Software, eliminates any material adverse effect on the Customer caused by an Error. An Error Correction may be a correction, workaround, fix, Service Pack or Service Release. |
| "Fix" | Supplier creates defect fixes at the component level to resolve specific issues. These issues may be identified in Supplier's QA labs, or at Customer installations. Fixes are: (a) Tested to ensure the issue is resolved within the target configuration; (b) Cumulative within functional sub-components, e.g., Integration Server Scheduler; (c) Periodically rolled up into planned, cumulative Service Packs or Service Releases; (d) Made available to other Customers via Software AG's Support Portal. |
| "Innovation Release" | means a product release intended to give Customer early access to new product capabilities. An Innovation Release has a shorter maintenance and support period compared to a Standard Release. An Innovation Release is clearly labelled as such in documentation and software download tools. |
| "Licence Agreement" | means the Licence and Maintenance Agreement under which the Software is licensed to the Customer. |
| "Major Version" | a "major version" means one in which significant new features and functionality are delivered. Some but not all of the major versions may also contain architecture changes, thus requiring a complete reinstall to upgrade, rather than the simple "install over" that is typical of Minor Versions, Service Packs and Service Releases. A version that ends in "X.0" is considered a major version. |
| "Minor Version" | means one in which some new features and functionality are delivered along with fixes. Versions with numbering of "X.Y" are usually considered minor versions, e.g. webMethods 9.7 or Natural 6.3. Minor versions usually offer easy upgrade and an "install over" approach to upgrade. |
| "Service Release"/"Service Pack" | means a planned release in which an accumulation of Fixes is delivered. It may additionally include new features. These Service Packs/Service Releases are denoted using SP or SR in the numbering, e.g. Product A X.Y SP1 or Product B X.Y SR 1. In places where a full version identifier is specified, Service Packs/Service Releases are denoted by the third part of the version number ("X.Y.Z") Service Packs/Service Releases offer easy upgrade and an "install over" approach to upgrade. For optimal support, Customer is required to upgrade to the latest Service Pack/Service Release. |
| "Software" | means the Supplier software programs licensed to the Customer under the Licence Agreement. |
| "Software AG Global Support" | means the Supplier's Global Support Organization providing the support and maintenance services for the respective Customer. |
| "Software AG's Support Portal" | means the Supplier's web-based Customer support system, designed with proactive services, information and Error Corrections. Software AG's Support Portal can currently be accessed on "https://empower.softwareag.com" (this URL may change from time to time). |
| "Standard Release" | means a full product release that is maintained and supported for several years, as defined in the roadmap published on Software AG's Support Portal. |
| "Update" | means the application of a fix and/or a documentation refresh within a major, minor version. |
| "Upgrade" | means a modification to a Major Version, Minor Version, Service Pack or Service Release. |

2 SERVICE DESCRIPTION

2.1 **Introduction:** Customer is entitled to receive the following services for the Software against payment of the agreed-upon support and maintenance fees and according to agreed-upon terms & conditions. Where the Customer holds more than one licence to use any Software then Customer is required to take product maintenance and support services for all (and not some only) of the licensed Software – partial termination is not permitted.

2.2 **Standard Maintenance and Support Service:** Software AG's Standard Maintenance and Support Service consists of the following services:

- Twenty-four (24) hour access to Software AG's Support Portal including access for authorized technical contacts (**"ATC"**) to Supplier's request reporting system for browsing and submitting incidents, online access to new product information, documentation, knowledge center, and information on available Software fixes.
- 24x7 support service for crisis incidents. Telephone support according to this agreement is available 24x7 (24 hours a day; 7 days a week) for crisis requests and is provided during after-Business Hours and on non-Business Days in English only. With respect to Supplier's Adabas & Natural product

line, 24x7 support service for crisis incidents is available only for Customers located in the US region.

- (c) 9x5 (9 hours a day; 5 days a week) telephone support for critical and standard incidents according to this agreement during Business Hours. Customer will receive initial response within the defined reaction times during Business Hours only. The respective telephone number is available in Software AG's Support Portal. If not provided in local language, telephone support is provided in English.
- (d) Seven (7) authorized technical contacts (ATC) of the Customer entitled to access Software AG's Support Portal. This restriction applies per Customer and not per contract. All ATCs shall have appropriate professional and technical qualifications and shall be assigned internally by Customer to process queries from users about the Software. To protect against improper use of services, services may only be requisitioned by these ATCs previously-reported to Software AG. Customer may contract for additional authorized contacts. ATC Group accounts that are used by multiple Customer representatives are not allowed. One Customer representative equals one ATC only.
- (e) Information on new features, events, and Customer application articles.

3 SOFTWARE AND DOCUMENTATION UPDATES

3.1 **Software and Documentation Updates:** On a when and if available basis, Software AG Global Support provides:

- (a) New versions of licensed Software AG products;
- (b) Updates of Software containing error corrections;
- (c) Documentation updates for the Software.

Information regarding availability of Software and Documentation updates is published by the Supplier and available in Software AG's Support Portal.

4 PROCESSING CUSTOMER REQUESTS

4.1 **Introduction:** Customer requests will be received by Software AG Global Support and will be documented in Software AG's Support Portal for further processing. The Customer will be given a reference processing number for future reference.

- (a) All crisis incidents must be submitted to Software AG Global Support by telephone. When submitting Security Incidents to Software AG Global Support, Customer must indicate this aspect to the support representative or set the security flag in the support ticket if reported via customer support portal.
- (b) The region of a customer is the region where that customer is located or has opted to define that region as their region. For example the region for an EMEA customer is EMEA, however an EMEA customer may opt for another region, say AME, to be their default region.
- (c) During after-Business-Hours and non-Business Days, all communication will be in English only.
- (d) When reaching Software AG Global Support by telephone, Customer is to provide the incident/ticket number so that work on the incident can commence.
- (e) Software AG Global Support has no obligation to solve the Customer's issue within the reaction or any other time frame.

4.2 **Service Expectations:** The following support severities are used for classifying the Customer's incidents. These classifications ensure consistent treatment of incidents handled by Software AG Global Support. Software AG Global Support will determine the appropriate severity level according to the following table:

| Severity Level | Crisis | Critical | Standard |
|-------------------------------|---|---|--|
| Definitions | Customer's problem has a severe business impact, e.g. production down. Customer is unable to use the Software, resulting in a major impact on Customer's operations. Work cannot reasonably continue. | Customer's problem has a significant business impact; however, operations can continue in a restricted fashion. The Software is usable but severely limited. There is no acceptable workaround available. Customer is experiencing a significant loss of service. | Customer's problem has some business impact. The Software is usable and causes only minor inconvenience. It may be a minor Error, documentation Error, or incorrect operation of the application, which does not significantly impede the operation of a system. |
| Reaction Time | 1 Hour: call-back or electronic reply. | 4 Business Hours: call-back or electronic reply. | 1 Business Day: call-back or electronic reply. |
| Reporting (time frame) | Daily reporting (unless otherwise agreed with Software AG Global Support on a case-by-case basis). | As agreed between Software AG Global Support and Customer on a case-by-case basis. | As agreed between Software AG Global Support and Customer on a case-by-case basis. |
| Reaction Measure | Customer is provided with a timeline for Error Correction. | Customer is provided with a timeline for Error Correction. | <ul style="list-style-type: none"> • Information about publication date of the Software release that will solve the issue • Indication that changes/enhancements are being handled in accordance with Software AG's strategy. |
| Required Effort | Economically justifiable effort within standard scope of resources. | Reasonable effort within standard scope of resources. | Reasonable effort within standard scope of resources. |

4.3 **Tools and Processes:** Software AG Global Support uses the following processes and tools to solve or find a workaround to the Customer's issues:

Fault diagnosis/analysis for Supplier's products:

- (a) Evaluation of Customer data supplied (including diagnostic information)
- (b) Classification of the reported situation as a product issue, user issue or third-party issue
- (c) Research in Supplier's Support Knowledge Center
- (d) Reproduction of the error situation (if possible)
- (e) Coordination with Supplier's product development

Results and/or solutions or workarounds will be provided via one of the following media:

- (a) Telephone
- (b) Software AG's Support Portal
- (c) E-mail
- (d) Data carriers

4.4 **Remote Diagnosis:** Software AG Global Support may perform remote diagnosis to facilitate issue analysis. In such case, Software AG Global Support will access Customer's environment via a Remote Online Diagnostic Tool for purposes of diagnosis and analysis only. Remote access to Customer's environments will occur during Business Hours at the times agreed between the Customer and Software AG Global Support.

5 SERVICES OUTSIDE THE SCOPE OF SOFTWARE AG'S MAINTENANCE AND SUPPORT SERVICE

5.1 **Out of Scope Services:** In addition to the scope of Support and Maintenance Services as defined in these Maintenance and Support Services Conditions and the underlying Licence and Maintenance Services Terms and Conditions, the Customer may request additional Support and Maintenance Services. Based on availability, such services can be offered as part of a separate service agreement and payment of applicable fees. Further information can be found on Software AG's Support Portal. The following add-on services are examples and may be subject to change at irregular intervals:

- (a) Customer Success Manager
- (b) Designated Engineer
- (c) After-Business-Hours Support
- (d) Go-Live Support
- (e) Multi-Region Support
- (f) Jumpstart Support
- (g) Installation Support
- (h) Upgrade Support
- (i) Environment Assessment
- (j) End of Maintenance Extension

5.2 **Third Party Materials:** In the event that individual program versions from third party manufacturers that are provided to the Customer in connection with the Software and which are required in order to operate the Software (such as Java virtual machines, applications, frameworks, and databases) ("Accompanying Programs") are no longer actively supported by their respective manufacturers, the Supplier shall have no obligation to correct errors occurring in connection with the Accompanying Programs and to respond to incidents reported by the Customer.

6 END OF MAINTENANCE

6.1 **Road Map:** The roadmap for the provision of maintenance and support services in respect of Major Versions and Minor Versions is published on Software AG's Support Portal. No separate notice will be provided to the Customer who will be responsible for monitoring updates published on Software AG's Support Portal. The dates on which maintenance and support services in respect of Major Versions and Minor Versions will be terminated ("**End of Maintenance**") will be published on Software AG's Support Portal and may change from time to time.

6.2 **Sustained Support:** Following End of Maintenance, Supplier shall be under no obligation to provide new Fixes but will (for a minimum of 12 months from End of Maintenance) provide web-based and telephone assistance ("**Sustained Support**") to the Customer for Standard Releases in respect of the relevant Major Version and/or Minor Version. All fixes available prior to End of Maintenance ("**Available Fixes**") shall continue to be available to the Customer.

6.3 **Beyond Sustained Support:** At the conclusion of Sustained Support, Supplier will (for so long as the Customer continues to take and pay for the relevant maintenance and support service) continue to permit the Customer to access hints and available Fixes only.

6.4 **New Fixes:** Full Support and the supply of new fixes beyond End of Maintenance and Sustained Support may be available at Supplier's discretion for an additional fee – further details about obtaining an End of Maintenance Extension agreement are available upon request.

7 CUSTOMER RESPONSIBILITIES

7.1 **Customer Responsibilities:** The services to be performed are subject to the following conditions:

- (a) The Customer entered into a valid software support and maintenance agreement with the Supplier and has fully paid the respective support and maintenance fees.
- (b) The Customer entered into a valid Licence Agreement with Supplier regarding the Software to be supported and has fully paid the respective licence fees that are due to payment.
- (c) The Software is installed at the Customer's site or any third party's site that is authorized – pursuant to the underlying Licence and Maintenance Agreement – to operate the Software on Customer's behalf (Outsourcing provider).
- (d) The Customer allows remote access for Software AG Global Support to the Customer environment where Customer is requesting support.
- (e) The Customer provides appropriate tools to enable remote access for Software AG Global Support (e.g. Interactive Problem Control System (IPCS), Time Sharing Option (TSO), Terminal-Emulation, Netviewer etc.).
- (f) The Customer establishes appropriate security measures to ensure that Software AG Global Support's access is restricted to permissible areas.
- (g) The Customer has installed the release levels of the Software which are supported at the time the relevant Customer request occurs.
- (h) The Customer uses hardware, operating system software and database software that comply with the specifications of the release levels of the Software which are supported at the time the relevant Customer request occurs; the release levels of the Software which are supported at the time the relevant Customer request occurs can be identified on Software AG's Support Portal.
- (i) The Customer provides Software AG Global Support with:
 - sufficient information and assistance as requested by Software AG Global Support regarding the Customer's environment (including appropriate computing time) and all necessary information on the error
 - specific third party expertise relevant to the Customer's environment, if applicable
 - information on any used software tools upon Software AG Global Support's request
 - diagnostic information such as traces, dumps, parameters, etc. upon Software AG Global Support's request.

ENTERPRISE ACTIVE MAINTENANCE AND SUPPORT SERVICE

Customer is a licensee of certain Software AG products under a Licence and Maintenance Agreement that the Customer has executed with a Software AG subsidiary (hereinafter “**Supplier**”). The maintenance and support services that the Supplier has agreed to deliver as provided in the Licence and Maintenance Agreement are defined herein, and this document forms an attachment to the Licence and Maintenance Agreement.

1 DEFINITIONS

1.1 **Definitions:** Unless the context requires otherwise the following words and expressions shall bear the meanings set out below where used in this Agreement:

| | |
|--|--|
| “ Business Day ” | means the days from Monday to Friday excluding public holidays in country as specified in the Customer address field on the first page of the underlying Licence and Maintenance Agreement that correspond with Software AG’s Global Support operating days. |
| “ Business Hour ” | means the hours from 8.00 am to 5.00 pm on a Business Day of the main support hub within Customer’s region: (a) EMEA – 8 to 5 Central European Time (CET) (b) APJ – 8 to 5 Malaysia Time (MYT) (c) US – 8 to 5 Mountain Time (MT) Global Support operating hours may change from time to time. |
| “ Documentation ” | means the user manuals that the Supplier makes available to licensees of the Software. |
| “ Error ” | means any verifiable and reproducible failure of the Software to substantially conform to the specifications for such Software. Notwithstanding the foregoing, “ Error ” shall not include any such failure that is caused by: (i) the use or operation of the Software with any other software or code or in an environment other than that intended or recommended in the Documentation, (ii) modifications to the Software not made or approved by the Supplier in writing, or (iii) any bug, defect, or error in third-party Software used with the Software. |
| “ Error Correction ” | means either a modification or addition to or deletion from the Software having the effect that such Software substantially conforms to the then current specifications, or a procedure or routine that, when exercised in the regular operation of the Software, eliminates any material adverse effect on the Customer caused by an Error. An Error Correction may be a correction, workaround, fix, Service Pack or Service Release. |
| “ Fix ” | Supplier creates defect fixes at the component level to resolve specific issues. These issues may be identified in Supplier’s QA labs, or at Customer installations. Fixes are: (a) Tested to ensure the issue is resolved within the target configuration; (b) Cumulative within functional sub-components, e.g., Integration Server Scheduler; (c) Periodically rolled up into planned, cumulative Service Packs or Service Releases; (d) Made available to other Customers via Software AG’s Support Portal. |
| “ Innovation Release ” | means a product release intended to give Customer early access to new product capabilities. An Innovation Release has a shorter maintenance and support period compared to a Standard Release. An Innovation Release is clearly labelled as such in documentation and software download tools. |
| “ Licence Agreement ” | means the Licence and Maintenance Agreement under which the Software is licensed to the Customer. |
| “ Major Version ” | a “major version” means one in which significant new features and functionality are delivered. Some but not all of the major versions may also contain architecture changes, thus requiring a complete reinstall to upgrade, rather than the simple “install over” that is typical of Minor Versions, Service Packs and Service Releases. A version that ends in “X.0” is considered a major version. |
| “ Minor Version ” | means one in which some new features and functionality are delivered along with fixes. Versions with numbering of “X.Y” are usually considered minor versions, e.g. webMethods 9.7 or Natural 6.3. Minor versions usually offer easy upgrade and an “install over” approach to upgrade. |
| “ Service Release ”/“ Service Pack ” | means a planned release in which an accumulation of Fixes is delivered. It may additionally include new features. These Service Packs/Service Releases are denoted using SP or SR in the numbering, e.g. Product A X.Y SP1 or Product B X.Y SR 1. In places where a full version identifier is specified, Service Packs/Service Releases are denoted by the third part of the version number (“X.Y.Z”) Service Packs/Service Releases offer easy upgrade and an “install over” approach to upgrade. For optimal support, Customer is required to upgrade to the latest Service Pack/Service Release. |
| “ Software ” | means the Supplier software programs licensed to the Customer under the Licence Agreement. |
| “ Software AG Global Support ” | means the Supplier’s Global Support Organization providing the support and maintenance services for the respective Customer. |
| “ Software AG’s Support Portal ” | means the Supplier’s web-based Customer support system, designed with proactive services, information and Error Corrections. Software AG’s Support Portal can currently be accessed on “https://empower.softwareag.com” (this URL may change from time to time). |
| “ Standard Release ” | means a full product release that is maintained and supported for several years, as defined in the roadmap published on Software AG’s Support Portal. |
| “ Update ” | means the application of a fix and/or a documentation refresh within a major, minor version. |
| “ Upgrade ” | means a modification to a Major Version, Minor Version, Service Pack or Service Release. |

2 SERVICE DESCRIPTION

2.1 **Introduction:** Customer is entitled to receive the following services for the Software against payment of the agreed-upon support and maintenance fees and according to agreed-upon terms & conditions. Where the Customer holds more than one licence to use any Software then Customer is required to take product maintenance and support services for all (and not some only) of the licensed Software – partial termination is not permitted.

2.2 **Enterprise Active Maintenance and Support Service:** Software AG’s Enterprise Active Maintenance and Support Service consists of the following services:

- Twenty-four (24) hour access to Software AG’s Support Portal including access for authorized technical contacts (“**ATC**”) to Supplier’s request reporting system for browsing and submitting incidents, online access to new product information, documentation, knowledge center, and information on available Software fixes.
- 24x7 support service for all incidents with initial response from Software AG Global Support within the defined reaction time. Telephone support

according to this agreement is available 24x7 (24 hours a day; 7 days a week). The respective telephone number is available in Software AG's Support Portal. If not provided in local language, telephone support is provided in English. Telephone support is provided during after-Business Hours and on non-Business Days in English only.

- (c) Information on new features, events, and Customer application articles.
- (d) Resolution plan within first four hours after receipt of Crisis incident.
- (e) Prioritized queuing of support incidents (identical severity levels only).
- (f) Multi-region support – see "Processing Customer Requests" clause below.
- (g) Unlimited number of authorized technical contacts of the Customer entitled to access Software AG's Support Portal. All ATCs shall have appropriate professional and technical qualifications and shall be assigned internally by Customer to process queries from users about the Software. To protect against improper use of services, services may only be requisitioned by these ATCs previously-reported to Supplier. Customer must review and update the list of ATCs once per year in order to ensure accuracy. ATC Group accounts that are used by multiple Customer representatives are not allowed. One customer representative equals one ATC only.
- (h) One-on-one web-based consulting sessions on a variety of topics limited to up to 4 consultations per year plus others upon request and subject to availability. A list of sessions is available on Software AG's Support Portal and is subject to change from time to time.

3 SOFTWARE AND DOCUMENTATION UPDATES

3.1 **Software and Documentation Updates:** On a when and if available basis, Software AG Global Support provides:

- (a) New versions of licensed Software AG products;
- (b) Updates of Software containing error corrections;
- (c) Documentation updates for the Software.

Information regarding availability of Software and Documentation updates is published by the Supplier and available in Software AG's Support Portal.

4 PROCESSING CUSTOMER REQUESTS

4.1 **Introduction:** Customer requests will be received by Software AG Global Support and will be documented in Software AG's Support Portal for further processing. The Customer will be given a reference processing number for future reference.

- (a) All crisis incidents must be submitted to Software AG Global Support by telephone.
- (b) Global Support will respond within the defined reaction time. For critical and standard severity incidents, the active support region will initiate work on the solution. When the ATC's default support region comes online, it will take over the ownership of the incident.
- (c) After the default region takes ownership of the incident, critical and standard incidents will be progressed only during the business hours of the ATC's default region.
- (d) Default region of an ATC is the region where that ATC is located or has opted to define that region as their default region. For example the default region of an EMEA customer is EMEA, however an EMEA ATC may opt another region, say AME as their default region.
- (e) On non-Business Days Customer must always report critical and standard incidents through Software AG's Support Portal and must follow up with Global Support service provider via telephone in order to receive an initial response from Global Support based on the agreed upon reaction time. The reaction time is measured from the time the Customer gets in contact with a Software AG Support Engineer.
- (f) During after-Business-Hours and non-Business Days, all communication will be in English only.
- (g) When reaching Software AG Global Support by telephone, Customer is to provide the incident/ticket number so that work on the incident can commence.
- (h) Software AG Global Support has no obligation to solve the Customer's issue within the reaction or any other time frame.
- (i) Management Assistance Process will be halted once Customer is provided a potential resolution and until Customer has tested the solution. If Customer informs Software AG Global Support that the resolution hasn't resolved the problem, Management Assistance Process will resume.

4.2 **Service Expectations:** The following support severities are used for classifying the Customer's incidents. These classifications ensure consistent treatment of incidents handled by Software AG Global Support. Software AG Global Support will determine the appropriate severity level according to the following table:

| Severity Level | Crisis | Critical | Standard |
|--|---|---|--|
| Definition | Customer's problem has a severe business impact, e.g. production down. Customer is unable to use the Software, resulting in a major impact on Customer's operations. Work cannot reasonably continue. | Customer's problem has a significant business impact; however, operations can continue in a restricted fashion. The Software is usable but severely limited. There is no acceptable workaround available. Customer is experiencing a significant loss of service. | Customer's problem has some business impact. The Software is usable and causes only minor inconvenience. It may be a minor Error, documentation Error, or incorrect operation of the application, which does not significantly impede the operation of a system. |
| Reaction Time | 30 minutes: call-back or electronic reply | 2 Hours: call-back or electronic reply | 1 Day: call-back or electronic reply |
| Prioritized Queuing | Incidents are prioritized ahead of Standard Support incidents of the same severity level | | |
| Software AG Management Assistance Process | After 1 Day: Regional Director Support After 2 Days: Global Vice President Support After 3 Days: Global Senior Vice President Support After 5 Days: Chief Operating Officer | After 5 Business Days: Regional Director Support After 7 Business Days: Global Vice President Support After 9 Business Days: Global Senior Vice President Support After 11 Business Days: Chief Operating Officer | None |
| Reporting (time frame) | As agreed between Software AG Global Support and Customer | Daily or as agreed between Software AG Global Support and Customer | As agreed with Software AG Global Support and Customer on a case-by-case basis |
| Reaction Measure | Resolution plan provided within first four (4) hours after receipt of Crisis incident to include - in Supplier's sole discretion - EITHER: (i) a definition of the intended solution to the problem, OR (ii) a definition of a work-around while Supplier develops or defines a solution, OR (iii) a documented action plan that will include: | Customer is provided with a timeline for Error Correction | <ul style="list-style-type: none"> • Information about publication date of the Software release that will solve the issue • Indication that changes/enhancements are being handled in accordance with Software AG's strategy |

| Severity Level | Crisis | Critical | Standard |
|------------------------|--|--|--|
| | <ul style="list-style-type: none"> • current status of the resolution • target timeline for next feedback • responsible Supplier resource(s) • Customer obligations (e.g. provisioning of log files, etc.) | | |
| Required Effort | Economically justifiable effort within standard scope of resources | Reasonable effort within standard scope of resources | Reasonable effort within standard scope of resources |

- 4.3 **Tools and Processes:** Software AG Global Support uses the following processes and tools to solve or find a workaround to the Customer's issues:

Fault diagnosis/analysis for Supplier's products:

- Evaluation of Customer data supplied (including diagnostic information)
 - Classification of the reported situation as a product issue, user issue or third-party issue
 - Research in Supplier's Support Knowledge Center
 - Reproduction of the error situation (if possible)
 - Coordination with Supplier's product development
- Results and/or solutions or workarounds will be provided via one of the following media:

- Telephone
- Software AG's Support Portal
- E-mail
- Data carriers

- 4.4 **Remote Diagnosis:** Software AG Global Support may perform remote diagnosis to facilitate issue analysis. In such case, Software AG Global Support will access Customer's environment via a Remote Online Diagnostic Tool for purposes of diagnosis and analysis only. Remote access to Customer's environments will occur during Business Hours at the times agreed between the Customer and Software AG Global Support.

5 SERVICES OUTSIDE THE SCOPE OF SOFTWARE AG'S MAINTENANCE AND SUPPORT SERVICE

- 5.1 **Out of Scope Services:** In addition to the scope of Support and Maintenance Services as defined in these Maintenance and Support Services Conditions and the underlying Licence and Maintenance Services Terms and Conditions, the Customer may request additional Support and Maintenance Services. Based on availability, such services can be offered as part of a separate service agreement and payment of applicable fees. Further information can be found on Software AG's Support Portal. The following add-on services are examples and may be subject to change at irregular intervals:

- Customer Success Manager
- Designated Engineer
- After-Business-Hours Support
- Go-Live Support
- Jumpstart Support
- Installation Support
- Upgrade Support
- Environment Assessment
- End of Maintenance Extension

- 5.2 **Third Party Materials:** In the event that individual program versions from third party manufacturers that are provided to the Customer in connection with the Software and which are required in order to operate the Software (such as Java virtual machines, applications, frameworks, and databases) ("Accompanying Programs") are no longer actively supported by their respective manufacturers, the Supplier shall have no obligation to correct errors occurring in connection with the Accompanying Programs and to respond to incidents reported by the Customer.

6 END OF MAINTENANCE

- 6.1 **Road Map:** The roadmap for the provision of maintenance and support services in respect of Major Versions and Minor Versions is published on Software AG's Support Portal. No separate notice will be provided to the Customer who will be responsible for monitoring updates published on Software AG's Support Portal. The dates on which maintenance and support services in respect of Major Versions and Minor Versions will be terminated ("End of Maintenance") will be published on Software AG's Support Portal and may change from time to time.

- 6.2 **Sustained Support:** Following End of Maintenance, Supplier shall be under no obligation to provide new Fixes but will (for a minimum of 12 months from End of Maintenance) provide web-based and telephone assistance ("Sustained Support") to the Customer for Standard Releases in respect of the relevant Major Version and/or Minor Version. All fixes available prior to End of Maintenance ("Available Fixes") shall continue to be available to the Customer.

- 6.3 **Beyond Sustained Support:** At the conclusion of Sustained Support, Supplier will (for so long as the Customer continues to take and pay for the relevant maintenance and support service) continue to permit the Customer to access hints and available Fixes only.

- 6.4 **New Fixes:** Full Support and the supply of new fixes beyond End of Maintenance and Sustained Support may be available at Supplier's discretion for an additional fee – further details about obtaining an End of Maintenance Extension agreement are available upon request.

7 CUSTOMER RESPONSIBILITIES

- 7.1 **Customer Responsibilities:** The services to be performed are subject to the following conditions:

- The Customer entered into a valid software support and maintenance agreement with the Supplier and has fully paid the respective support and maintenance fees.
- The Customer entered into a valid Licence Agreement with Supplier regarding the Software to be supported and has fully paid the respective licence fees that are due to payment.
- The Software is installed at the Customer's site or any third party's site that is authorized – pursuant to the underlying Licence and Maintenance Agreement – to operate the Software on Customer's behalf (Outsourcing provider).
- The Customer allows remote access for Software AG Global Support to the Customer environment where Customer is requesting support.
- The Customer provides appropriate tools to enable remote access for Software AG Global Support (e.g. Interactive Problem Control System (IPCS), Time Sharing Option (TSO), Terminal-Emulation, Netviewer etc.).
- The Customer establishes appropriate security measures to ensure that Software AG Global Support's access is restricted to permissible areas.
- The Customer has installed the release levels of the Software which are supported at the time the relevant Customer request occurs.
- The Customer uses hardware, operating system software and database software that comply with the specifications of the release levels of the Software which are supported at the time the relevant Customer request occurs; the release levels of the Software which are supported at the time the relevant Customer request occurs can be identified on Software AG's Support Portal.
- The Customer provides Software AG Global Support with:
 - sufficient information and assistance as requested by Software AG Global Support regarding the Customer's environment (including appropriate computing time) and all necessary information on the error
 - specific third party expertise relevant to the Customer's environment, if applicable
 - information on any used software tools upon Software AG Global Support's request
 - diagnostic information such as traces, dumps, parameters, etc. upon Software AG Global Support's request.

CLOUD SERVICES AGREEMENT

The Supplier offers a suite of software and platform programs available as on-demand services over the internet as set forth in this Cloud Services Agreement and any Cloud Services Attachments (hereinafter together referred to as "**Agreement**"). This Agreement governs the provision of the cloud services which are the subject matter of the Agreement. The Cloud Services Terms and Conditions attached hereto are incorporated by reference into this Agreement.

| Parties | | |
|--------------------------|--|-----------------------------------|
| between | Software AG (UK) Limited (" the Supplier ") | G Cloud (" the Customer ") |
| Reg. No. | 1310740 | |
| Registered office | Pride Park, Locomotive Way, DERBY, Derbyshire DE24 8PU, UNITED KINGDOM | G Cloud |

| Effective Date |
|--|
| The last date of signing by duly authorised representatives of all of the parties. |

The parties have shown their acceptance of the terms of this Agreement by signing it below. This Agreement shall come into force and effect upon the Effective Date referred to above. This document may be executed in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original and all such counterparts shall be construed together and shall constitute one agreement. The parties agree to the use of digital signatures.

| Agreement | | | |
|---|--|---|--|
| Duly authorised for and on behalf of Supplier | | Duly authorised for and on behalf of Customer | |
| Signed | | Signed | |
| Name | | Name | |
| Title | | Title | |
| Date | | Date | |

CLOUD SERVICES TERMS AND CONDITIONS

1 USE OF SERVICES

- 1.1 **Provision of Cloud Services:** Subject to the terms and conditions set forth in this Agreement and in exchange for payment of the cloud services fees, the Supplier grants the Customer a non-exclusive, non-transferable, non-sub-licenseable right to access and use the Cloud Services (hereinafter “**Cloud Services**”) identified in any Cloud Services Attachment (hereinafter “**Cloud Services Attachment**”) in accordance with the Documentation solely for its internal business purposes as contemplated by this Agreement for the duration of the Cloud Services Term. “**Documentation**” means the Cloud Services Attachment, user manuals, and operating instructions generally provided with the Cloud Services to a customer. The Cloud Services Attachment describes the Supplier’s management, maintenance and service level commitment for the Cloud Services.
- 1.2 **Delivery Entity:** The Cloud Services will be provided by the Cloud Services Delivery Entity and its subcontractors where applicable (hereinafter “**Delivery Entity**”) referred to in the Cloud Services Attachment and the Customer acknowledges and agrees to the appointment by the Supplier of such Delivery Entity for such purposes under this Agreement. The Delivery Entity will be the only entity of Supplier accessing Customer Data, if applicable, as further defined below.
- 1.3 **Term and Renewal Term:** The initial fixed term of this Agreement is defined in the applicable Cloud Services Attachment, and renews on the basis set out in the Cloud Services Attachment.
- 1.4 **Restrictions:** The right to use the Cloud Services granted herein is subject to the following restrictions:
- (a) the Customer will not receive a copy of any software or platform programs listed in the Cloud Services Attachment (“**Software**”), will not be permitted any access to the programming or source code, or have the right to install the Software (or any part thereof other than for temporary download of plug-ins or fat clients as described in the applicable Cloud Services Attachment) locally in any system of the Customer, contractor or agent;
 - (b) Customer shall not:
 - license, sub-license, sell, rent, lease, transfer, assign, distribute, outsource, permit time sharing or service bureau use, or otherwise commercially exploit or make the Cloud Services available to any third party, other than as expressly permitted by this Agreement and by international export laws and regulations;
 - interfere with or disrupt the integrity or performance of the Cloud Services or the data contained therein. In particular: (i) it is expressly prohibited to conduct penetration testing in multi-tenant environments; and (ii) penetration tests in single-tenant environments require the Supplier’s prior written consent. Customer understands and agrees that the Cloud Services could be disrupted by the third-party infrastructure provided unless such consent is obtained. The applicable Cloud Service delivery model is defined in the Cloud Service Attachment.
 - attempt to gain unauthorized access to the Cloud Services or their related systems or networks;
 - disseminate performance-related information relating to the Cloud Services or the Software;
 - store or process any personal data of the following types: information on a person’s

racial or ethnic origin, political opinions, religious or philosophical convictions, union membership, health (HITECH - Health Information Technology for Economic and Clinical Health Act & HIPAA - Health Insurance Portability and Accountability Act), sex life, concerning bank or credit card accounts (PCI DSS - Payment Card Industry Data Security Standard) comprising but not limited to data according to GDPR Art. 9 No. 1;

- use the configuration and reporting capabilities of the Cloud Services for any other purposes besides those set forth in this Agreement; or
 - otherwise utilize the Cloud Services in any manner, except as expressly permitted under this Agreement;
- (c) the Customer agrees to use its best efforts to prevent unauthorized third parties from accessing the Cloud Services;
- (d) the Customer is responsible for all user access to and use of the Cloud Services and shall abide by all applicable laws and regulations including those regulations applicable to data privacy and data security regulations; and
- (e) the Customer shall obtain at its sole expense any consents and authorizations necessary for the Customer's use (and the Supplier's provision) of the Cloud Services.

1.5 **Authorized Users:** "Users" of the Cloud Services shall mean employees or contractors of the Customer who are authorized by the Customer in accordance with the Agreement to access the Cloud Services using an identifier and password. The Customer shall not make the Cloud Services available to any person or entity other than Users and shall remain liable to the Supplier for all acts and omissions by Users as though such acts or omissions were those of the Customer itself.

1.6 **Reservation of Rights:** Subject only to the rights expressly granted to the Customer under this Agreement, all rights, title and interest in and to the Cloud Services will remain with and belong exclusively to the Supplier.

2 CUSTOMER INFORMATION

2.1 **Customer Access:** The Customer is responsible for the access to the Cloud Services and is responsible for maintaining the confidentiality of its access methods such as usernames and passwords and agrees to notify the Supplier via the Cloud Services support channel if a password is lost, stolen, or disclosed to an unauthorized third party, or otherwise may have become compromised. The Customer is responsible for all activities that occur under its Account.

2.2 **Metadata, Customer Data and Customer Personal Data:** In order for the Cloud Services to perform the function for which they are designed, the Cloud Services will gather and transmit certain technical information, Account information, and metadata associated with the Customer's access and use of the Cloud Services, including without limitation application telemetry, IP addresses, IP configurations, stored sessions, open ports, Account credentials, network metadata, and device operating system, status, version and configuration (collectively "**Metadata**"). For clarification, Metadata is used to provide the Cloud Services and will not include any of the actual Customer Data processed with the Cloud Services. With the exception of Metadata the Customer shall own all content, information, materials, and intellectual property provided in its unaltered form by Customer in connection with Customer's use of and access to the Cloud Services ("**Customer Data**"). The obligations of the parties in connection with the

processing of any Customer Data that qualify as personal data according to Art. 4 No. 1 of the General Data Protection Regulation (GDPR) ("**Customer Personal Data**") including the applicable technical and organisational measures that Supplier is required to implement and maintain to protect Customer Personal Data, shall be as set out in the Data Processing Agreement entered into between the Parties.

2.3 **Customer Responsibility for Customer Data:** The Customer is solely responsible for all Customer Data provided, or uploaded to, stored in or transmitted through the Cloud Services and the use of the Cloud Services by the Customer and its Users. The Supplier takes no responsibility and assumes no liability for any Customer Data posted, transmitted through, or uploaded to the Cloud Services by the Customer or any third party, nor is the Supplier liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity that the Customer and/or its Users may encounter. The Customer is responsible for securing any privacy-related rights and permissions as may be required by local law or by the Customer's internal policies. The Supplier's only obligations in connection with Customer Data is to handle the Customer Data securely as set out in the Agreement and to perform Data Backups in order to meet Recovery Point Objectives and Recovery Time Objectives (each as described in the Cloud Services).

2.4 **Supplier Access to Customer Data and Metadata:** The Supplier will not use or access the Customer Data associated with the use of and access to the Cloud Services by the Customer in the ordinary course of the provision of the Cloud Services and has policies and data protection controls in place which prohibit cloud operations staff from accessing Customer Data unless explicitly authorised and instructed by the Customer administrator. Should the Supplier require such access it may do so only with the prior instruction of the Customer (not to be unreasonably withheld or delayed in any of the circumstances referred to below). Customer hereby instructs and accordingly grants to the Supplier a worldwide, irrevocable, non-transferable, non-assignable (except as permitted under this Agreement), sub-licenceable, non-exclusive licence to access, retrieve, store, copy, display, distribute, transmit and otherwise use the Customer Data associated with the Cloud Services:

- (a) in connection with maintaining, providing and/or making available the Cloud Services;
- (b) as reasonably required in order to cooperate with legitimate governmental requests, subpoenas or court orders provided that Supplier gives Customer reasonable notice of the demand to allow Customer to seek a protective order or other appropriate remedy unless Supplier is legally prohibited from doing so;
- (c) as otherwise required in order to protect the Supplier's systems and the Customer; and
- (d) otherwise for the purposes of ensuring the integrity and operation of the Supplier's business and systems.

The Customer hereby consents to the use by the Supplier of the Metadata as reasonably required in in connection with maintaining, providing and/or making available the Cloud Services.

3 SUPPLIER OBLIGATIONS

3.1 **Service Level:** The Supplier shall use commercially reasonable efforts to make the Cloud Services accessible to the Customer, subject to the availability of third party infrastructure, required and emergency maintenance, availability of third party networks and communications facilities and force majeure events. The Cloud Services are hosted on a shared third-party

infrastructure environment as set forth in the Cloud Services Attachment.

- 3.2 **Cloud Privacy Policy:** In order to provide the Cloud Services, the Supplier will access and use the Metadata in accordance with its then current Cloud Privacy Policy which is incorporated herein by this reference. Supplier reserves the right to change its Cloud Privacy Policy from time to time by posting a new version at <http://www.softwareag.com/corporate/privacy.asp>. Customer will have the option to subscribe to email notifications regarding new versions of the Cloud Privacy Policy. Customer agrees to and accepts any modified terms by continuing to use the Cloud Services after such changes are posted and effective.
- 3.3 **Security:** In performing the Cloud Services, Supplier:
- (a) will employ commercially reasonable security measures;
 - (b) agrees to make reasonable commercial efforts to safeguard the personal data associated with the Customer Data from unauthorised access or use; and
 - (c) will comply with its then current Cloud Information Security Policy as amended from time to time and available on request (subject to a written confidentiality agreement between the Parties). The Cloud Information Security Policy is designed along the requirements of ISO 27001.
- 3.4 **Exit Terms:** The Supplier's obligations upon termination of the Cloud Services regarding Customer Data and disposal are described in the applicable Cloud Services Attachment.

4 PAYMENT

- 4.1 **Payment:** All payments shall be due and payable within thirty (30) days of the date of invoice.
- 4.2 **Taxes:** All payments under this Agreement shall be made without recoupment or set-off and are exclusive of taxes and duties. Customer agrees to bear and be responsible for the payment of all taxes and duties including, but not limited to, all sales, use, rental, receipt, personal property and other taxes (but excluding taxes based upon Supplier's income), which may be levied or assessed in connection with this Agreement.
- 4.3 **Interest:** If any payment due under this Agreement is not paid in accordance with the terms of this Agreement, then interest shall be payable and recoverable as a debt on all outstanding amounts at the rate of 1½% per month (or part thereof), accruing daily from the date upon which the payment becomes due (both before and after judgment) together with all costs of collection including reasonable legal costs.

5 CONFIDENTIALITY

- 5.1 **Confidential Information:** The Parties acknowledge that each Party will have access to intellectual property or other confidential information of the other party or third parties in respect of which the disclosing party has a duty of confidentiality which, for the purposes of this Agreement, is limited to the Cloud Services, Customer Data, and Personal Data the terms and pricing of this Agreement and any other information clearly identified as being "Confidential" ("**Confidential Information**"). Both Parties agree that Confidential Information disclosed is proprietary and shall remain the sole property of the disclosing Party or such third party.
- 5.2 **Confidentiality:** Each Party agrees:
- (a) to use Confidential Information only for the purposes described herein; and
 - (b) not to reproduce Confidential Information and to hold it in confidence and protect it from dissemination to, and use by, any third party; and

- (c) not to create any derivative work from Confidential Information; and
- (d) to restrict access to the Confidential Information to its personnel, agents, sub-contractors and/or consultants, who need to have access to such Confidential Information and who have been advised of and have agreed in writing to treat such Confidential Information in accordance with this Agreement; and
- (e) to return or, at the disclosing party's discretion, destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

5.3 **Exclusions:** The restrictions shall not apply to Confidential Information that:

- (a) is publicly available or in the public domain at the time disclosed;
- (b) is or becomes publicly available or enters the public domain through no fault of the recipient;
- (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto;
- (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure;
- (e) is independently developed by the recipient; or
- (f) is approved for release or disclosure by the disclosing Party without restriction.

5.4 **Compliance with law permitted:** Each Party may disclose Confidential Information to the limited extent required to comply with the order of a court or other governmental body or applicable law, including to make such court filings as it may be required to do, provided that it gives reasonable notice of the demand to allow the other Party to seek a protective order or other appropriate remedy (unless is legally prohibited from doing so).

5.5 **Relief:** Customer acknowledges that Customer's failure to comply with the provisions of this Clause shall result in irreparable harm to Supplier for which a remedy at law would be inadequate, and therefore, in the event of the breach or threatened breach by Customer of its obligations under this Clause, Supplier shall be entitled to seek equitable relief in the form of specific performance and/or an injunction for any such actual or threatened breach, in addition to the exercise of any other remedies at law and in equity.

6 WARRANTIES

6.1 **Supplier Warranties:** The Supplier warrants that:

- (a) it has the full right and power to enter into and perform this Agreement without the consent of, or any notice to, any third party;
- (b) the Cloud Services, when properly used, will perform substantially in accordance with the Documentation.
- (c) the Cloud Services will not contain any computer code that:
 - has been deliberately designed by or on behalf of the Supplier to disrupt, disable, harm, modify, delete or otherwise impede in any manner, the operation of the Cloud Services or any of the Customer's software, firmware, hardware, computer systems or networks ("**the Customer's Systems**"), such devices sometimes referred to as "viruses" or "worms";
 - has been deliberately designed by or on behalf of the Supplier to access the Customer's Systems to cause disablement or impairment (sometimes referred to as "trap doors", "access codes" or "back door" devices).

(d) the Cloud Services are subject to standard virus scanning methods.

6.2 **Warranty Exclusions:** The warranty set forth in this clause above shall not apply to the degree that any Cloud Services errors occur because:

- (a) the affected Cloud Service has been altered, modified, merged or converted by Customer except as authorized by Supplier;
- (b) of the malfunctioning of Customer's hardware or other software; or
- (c) the affected Cloud Services, or a portion thereof, has become inoperative due to any other causes beyond the control of Supplier.

The Supplier does not and cannot control the flow of data to or from the Supplier's or Customer's network and other portions of the internet. Such flow depends in large part on internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt the Customer's connections to the internet (or portions thereof). The Supplier cannot guarantee that such events will not occur and disclaims any liability resulting from or related to such events. The Customer hereby expressly agrees and acknowledges that the foregoing warranties are the only warranties given by Supplier and that all other conditions, terms, undertakings and warranties express or implied, statutory or otherwise in respect of the Cloud Services or the Customer's use of the Cloud Services or which arise out of this Agreement including, but not limited to, those as to quality, performance, merchantability or fitness for any purpose are hereby excluded to the maximum extent permitted by law.

6.3 **Customer Warranties:** The Customer warrants that:

- (a) it has the full right and power to enter into and perform this Agreement without the consent of, or any notice to, any third party.

7 IPR INDEMNITY

7.1 **Indemnity:** Supplier shall indemnify, defend, and hold Customer harmless from any action brought by a third-party against Customer to the extent that it is proximately caused by an allegation that the Cloud Services provided under this Agreement have infringed an intellectual property right or trade secret registered in the country of Supplier's residence, and pay those damages or costs related to the settlement of such action or finally awarded against Customer in such action, including but not limited to reasonable attorneys' fees, provided that Customer:

- (a) promptly notifies Supplier of any such action; and
- (b) gives Supplier full authority, information, and assistance to defend such claim; and
- (c) gives Supplier sole control of the defense of such claim and all negotiations for the compromise or settlement of such claim.

7.2 **Exclusions:** Supplier shall have no liability under this Agreement with respect to any claim based upon:

- (a) Cloud Services that have been modified by anyone other than Supplier;
- (b) use of other than the then-current release of any fat clients or plug-ins provided to Customer for the purposes of accessing and using the Cloud Services, if the infringement could have been avoided by use of the then-current release and such current release has been made available to Customer;
- (c) use of the Cloud Services in conjunction with Customer Data where use with such data gave rise to the infringement claim;
- (d) use of the Cloud Services with other software or hardware, where use with such other

software or hardware gave rise to the infringement claim;

(e) use of any Cloud Services in a manner inconsistent with its Documentation; and/or

(f) use of any Cloud Services which use breaches this Agreement.

7.3 **Remedy by Supplier:** If Supplier determines that the Cloud Services are or are likely to be the subject of a claim of infringement, Supplier shall have the right:

(a) to replace the Cloud Services with non-infringing service that have substantially equivalent functionality;

(b) to modify the Cloud Services so as to cause the Cloud Services to be free of infringement;

(c) to procure, at no additional cost to Customer, the right to continue to use the Cloud Services; or

(d) to terminate the licence to use the Cloud Services and refund to Customer the pro-rated portion of the applicable prepaid but unused Cloud Services Fees).

7.4 **Exclusive remedy:** THE PROVISIONS OF THIS CLAUSE STATE THE EXCLUSIVE LIABILITY OF THE SUPPLIER AND THE EXCLUSIVE REMEDY OF THE CUSTOMER WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY OR TRADE SECRET MISAPPROPRIATION OR INFRINGEMENT BY THE CLOUD SERVICES, ANY PART THEREOF, AND ANY MATERIAL OR SERVICES PROVIDED HEREUNDER, AND ARE IN LIEU OF ALL OTHER REMEDIES, LIABILITIES, AND OBLIGATIONS.

7.5 **Customer Indemnity:** Customer shall indemnify, defend, and hold the Supplier harmless from any action brought by a third-party against the Supplier to the extent that it is proximately caused by an allegation that:

(a) any access to or use of Customer Data with the Cloud Services; or

(b) modification or use of the Cloud Services with the Customer's applications;

have infringed any intellectual property right or trade secret and pay those damages or costs related to the settlement of such action or finally awarded against the Supplier in such action, including but not limited to reasonable attorneys' fees, provided that the Supplier:

- promptly notifies Customer of any such action; and
- gives Customer full authority, information, and assistance to defend such claim; and
- gives Customer sole control of the defence of such claim and all negotiations for the compromise or settlement of such claim. Customer shall have the right to settle or compromise any such claim provided that such settlement or compromise does not impose any costs or material disadvantage to Supplier without Supplier's prior written consent.

8 LIMITATION OF LIABILITY

8.1 **Limitation of Liability:** IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, ECONOMIC OR CONSEQUENTIAL LOSS OR DAMAGES IN CONNECTION WITH ANY CLAIM THAT ARISES FROM OR RELATES IN ANY WAY TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION ALLEGED, EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY OF ANY KIND. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS CLAUSE ARE INDEPENDENT OF EACH EXCLUSIVE OR LIMITED REMEDY SET FORTH IN THIS AGREEMENT. EXCEPT IN THE EVENT OF DEATH

OR PERSONAL INJURY OF A PERSON NEGLIGENTLY CAUSED BY SUPPLIER, IN NO EVENT SHALL THE LIABILITY OF SUPPLIER UNDER THIS AGREEMENT EXCEED THE AMOUNT OF THE CLOUD SERVICES FEES PAID TO SUPPLIER BY CUSTOMER HEREUNDER FOR THE CLOUD SERVICES TO WHICH CUSTOMER'S CLAIM RELATES. CUSTOMER ACKNOWLEDGES THAT THE LIMITATIONS SET OUT IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT SUPPLIER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT.

9 BREACH

- 9.1 **Breach:** If the Customer shall fail to comply with any of the provisions of the Clause "Confidentiality" or shall become insolvent or enter into liquidation whether voluntary or compulsory (save for the purposes of reconstruction or amalgamation) or commit any act of bankruptcy or make any arrangement or composition with its creditors or have a trustee, receiver or administrator or similar officer appointed over all or any part of its assets, then Supplier may at its option terminate this Agreement and cease providing the Cloud Services hereunder forthwith by notice in writing. If Customer shall fail to comply with any of the provisions of this Agreement then Supplier may at its option serve notice in writing on Customer specifying the breach and requiring the same to be remedied. If Customer fails to remedy the same within 30 days of receipt of the notice then Supplier may at its option either: (i) terminate this Agreement and all Cloud Services provided hereunder forthwith by notice in writing; or (ii) suspend performance of the Cloud Services to which the breach relates (or, where the breach does not relate to any particular Cloud Services, suspend performance of all Cloud Services under this Agreement) until such time as the specified breach has been remedied. Rights granted to Supplier under this Clause shall be in addition to any other remedies which may exist in law or equity.

10 AUDIT

- 10.1 **Self-Disclosure:** Customer hereby consents that Supplier accesses usage statistics from the Cloud Services. Customer shall within 10 working days from the date of receipt of a written request from Supplier (such requests not to be submitted by Supplier more than once per calendar year) provide to Supplier in writing sufficient additional detail to enable Supplier to assess compliance by the Customer with the terms and conditions set out in this Agreement.
- 10.2 **Audit for Cloud Services:** Supplier, or at Supplier's discretion an independent consultant appointed by Supplier, shall have the right, on giving reasonable notice to the Customer, to access any and all relevant log-in data held and managed by the Customer related to any accounts created by the Supplier for the purpose of auditing the Customer's use of the Cloud Services in accordance with the terms set out in this Agreement.

11 GENERAL

- 11.1 **Customer Use Case Report:** Supplier will create an internal customer use case report in connection with the use by the Customer of the Cloud Services. Any use of this report other than for internal purposes of Supplier requires a separate written approval by Customer. Customer agrees to provide input to this report e.g. by being available for a 30 minute telephone interview.
- 11.2 **Publicity:** Supplier shall be entitled to identify Customer as a customer in the Supplier's publicity

materials. Subject to reasonable request by Supplier, Customer agrees to:

- (a) serve as a reference; and
- (b) provide reasonable assistance in connection with press releases announcing or promoting the relationship between the parties or case studies or other marketing collateral.

- 11.3 **Export Control**: Customer may not download, get and/or provide access to, or otherwise export or re-export any underlying software or service, technology or other information from the Cloud Services except as stated explicitly in this Agreement and in full compliance with all applicable national and international laws and regulations. Customer agrees to indemnify and hold harmless and defend Supplier against any and all liability arising from or relating to Customer's breach of this Clause. Supplier reserves the right not to execute affected parts of, or the entire Agreement, in case any national or international export regulations or foreign trade legislation, or any target country/customer/usage restrictions implied by embargoes or other sanctions prohibit the provision of export controlled goods (Dual-Use items) and Cloud Services to be granted to the Customer under this Agreement. Supplier will inform the Customer whether a related official export approval by national or international export control authorities is required and may postpone the provision of affected Cloud Services until all such required approvals have been granted. In the event of any change of related export classifications or requirements the Supplier may postpone or suspend (as the case may be) the provision of affected Cloud Services until all such required approvals have been granted and, in the event that such approvals are not granted, terminate the provision of the relevant Cloud Services. The provision of agreed goods or services not restricted by the above mentioned export prohibitions will remain unaffected by this clause.
- 11.4 **Anti-Corruption**: The parties recognize and agree that they will comply with laws, regulations, rules and requirements against bribery, money laundering, and anti-corruption including but not limited to the Bribery Act 2010 and they have in place and will maintain policies and procedures in order to ensure compliance with such laws, regulations, rules and requirements. Non-compliance with the provisions of this clause shall grant to the affected party the right to terminate the Agreement immediately with notice.
- 11.5 **Force Majeure**: If the performance of this Agreement or any obligation under this Agreement, except for the making of payments, is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other Act of God or casualty or accident, or strikes or labour disputes affecting third-party vendors, inability to procure or obtain delivery of parts, supplies or power, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirements of any governmental agency, denial of service attacks, cybercrimes or malware caused by a third party, failure of utilities or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected will take all reasonable steps to avoid or remove such cause of non-performance and will resume performance hereunder with dispatch whenever such causes are removed.
- 11.6 **Assignment**: The Customer shall not assign, sub-license, sell, lease, encumber, charge or otherwise in any manner attempt to transfer this Agreement or any of its rights or obligations hereunder. Any purported transfer of this Agreement by the Customer in violation of this Clause shall be null and void. The Supplier shall be entitled to transfer this Agreement within the group of companies of which the Supplier is a member as well as to any third party in connection with the assignment to any such third party of the right of the Supplier to receive any sums payable by the

Customer to it hereunder.

- 11.7 **Dispute Resolution**: The Parties shall attempt to resolve any dispute arising under this Agreement through the informal means described in this Clause. Each Party shall appoint a senior management representative who does not devote substantially all of his or her time to performance under this Agreement. The representatives shall negotiate in good faith to resolve the dispute without the need for any formal proceeding. Formal proceedings for the resolution of the dispute may not be commenced until the earlier of (i) the designated representatives mutually conclude that resolution through negotiation does not appear likely; or (ii) thirty (30) calendar days have passed since the initial request to negotiate the dispute was made; provided, however, that a Party may file for formal proceedings earlier solely to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for interim or equitable relief.
- 11.8 **Governing Law**: This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties shall submit to the non-exclusive jurisdiction and procedure of the Courts of England.
- 11.9 **Prevailing Party**: In the event a dispute arising under this Agreement results in litigation, the non-prevailing party shall pay the court costs and reasonable attorneys' fees of the prevailing party.
- 11.10 **Non-waiver**: No waiver or retraction of a waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom such waiver is sought. The failure of either Party to exercise any right granted herein, or to require the performance by the other Party hereto of any provision in this Agreement, or the waiver by either party of any breach of this Agreement, will not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach of the same or any other provision of this Agreement.
- 11.11 **Notices**: All notices, demands, or other communications by any party to the other shall be deemed to have been duly given when:
- (a) made in writing and delivered in person with signed receipt, or
 - (b) sent via a nationally recognized, traceable, overnight delivery carrier, to the address detailed above, or to such address as the parties may provide to each other in writing from time to time.
- Notice will be effective upon delivery. Maintenance and Support Services related notices will be posted on Supplier's then current web-based support portal.
- 11.12 **Amendments in writing**: No variation of this Agreement shall be binding unless it is agreed in writing and signed on behalf of both parties by a duly authorized representative. No variation or omission from or addition to any of the terms and conditions of this Agreement whether written or oral shall be binding upon Supplier unless expressly accepted in writing by Supplier.
- 11.13 **Severability**: If any Clause (or part of any Clause) of this Agreement is determined by a court of competent jurisdiction to be or becomes illegal, unenforceable or in conflict with any law governing this Agreement, such clause shall be adjusted to the minimum extent necessary (most closely reflecting the legal and economic intent of the parties) to cure such unenforceability, illegality or conflict and the remainder of this Agreement (and the remainder of the relevant Clause) shall remain in effect in accordance with its terms as modified by such adjustment.
- 11.14 **Entire Agreement**: This Agreement as may be amended from time to time constitutes the entire

agreement between the parties and supersedes all previous communications, non-fraudulent representations or prior and contemporaneous agreements (written or oral) between the parties with respect to the subject matter hereof.

- 11.15 **Withholding counter-performance**: Customer may only enforce its rights to withhold counter-performance if the counterclaims upon which the withholding is based relate to the same contractual relationship and are undisputed, mutually settled or have been finally awarded by a competent court of jurisdiction.
- 11.16 **Cloud Services Attachments**: In the event of any conflict or inconsistency in the definition or interpretation of any term or provision set forth in this Agreement, such conflict or inconsistency shall be resolved by giving precedence to the Cloud Services Attachment(s). Any contrary or additional terms and conditions attached to or part of any purchase order or similar document related to this Agreement shall be invalid and non-binding.

Cloud Services Attachment

The Software AG entity referred to below is the holder of distribution and/or exploitation rights relating to the cloud services set out in this Cloud Services Attachment (together hereinafter referred to as "**the Cloud Services**"). The use by the Customer of the Cloud Services is governed by the terms and conditions set out in the Cloud Services Agreement referred to below together with any associated amendments thereto (collectively herein referred to as the "**Agreement**"). In the event of any conflict the terms and conditions set out below in this Cloud Services Attachment shall prevail over those set out in the Cloud Services Agreement.

| Parties | | |
|--|--|---|
| between | Software AG (UK) Limited (" the Supplier ") | G Cloud (" the Customer ") |
| Reg. No. | 1310740 | |
| Registered office | Pride Park, Locomotive Way, DERBY, Derbyshire DE24 8PU, UNITED KINGDOM | G Cloud |
| Cloud Services Agreement | | See Reference No. above |
| Cloud Services Delivery Entity | | Software AG Cloud GmbH Co. Reg. No. HRB 86781 (AG Darmstadt); registered office: Uhlandstraße 12 64297 Darmstadt, Germany |
| Service Start Date | | the Effective Date of the Cloud Services Agreement which refers to this Cloud Services Attachment |
| Cloud Services Term | | 12 months from the Service Start Date |
| Maintenance and Support Service Level | | Standard |
| Contact Person | | G Cloud |
| Contact E-mail Address | | G Cloud |

| Payment and Invoicing Terms | |
|-----------------------------|--|
| Cloud Services Fee | GBP xxx (excluding VAT) per annum. Cloud Services Fees include application management, infrastructure, licence and Maintenance Services. |
| Payment Terms | 30 days from the date of invoice |
| Invoice Terms | Invoice Date |
| | Immediately on signature of this Agreement |

Cloud Services

| Cloud Service Name | Quantity and Usage Metric | Product Code | Usage |
|--------------------|---------------------------|--------------|------------|
| xxx | 1 Named User | POL | Production |

| Licence Metrics | |
|-----------------|--|
| Named User | Use by the Customer of the Cloud Services whose Usage Metric is indicated as 'Named User' above is limited to use by a total number of users which does not exceed the licensed number indicated above. For these purposes a 'user' means a uniquely identified individual employee of the Customer, entity, device, or process that accesses, operates, or maintains such Cloud Services. |

| Effective Date |
|--|
| The last date of signing by duly authorised representatives of all of the parties. |

The parties have shown their acceptance of the terms of this Cloud Services Attachment by signing it below. This Cloud Services Attachment shall come into force and effect upon the Effective Date referred to above. This document may be executed in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original and all such counterparts shall be construed together and shall constitute one agreement. The parties agree to the use of digital signatures.

| Agreement | | | |
|---|--|---|--|
| Duly authorised for and on behalf of Supplier | | Duly authorised for and on behalf of Customer | |
| Signed | | Signed | |
| Name | | Name | |
| Title | | Title | |
| Date | | Date | |

STANDARD CLOUD SUPPORT SERVICE

Customer is a user of certain Cloud Services under a Cloud Services Agreement that the Customer has executed with a Software AG subsidiary (hereinafter “**Supplier**”). The maintenance and support services that the Supplier has agreed to deliver as provided in the Cloud Services Agreement are defined herein, and this document forms an attachment to the Cloud Services Agreement.

1 DEFINITIONS

1.1 **Definitions:** Unless the context requires otherwise the following words and expressions shall bear the meanings set out below where used in this Agreement:

| | |
|-----------------------------------|--|
| “Business Day” | means the days from Monday to Friday excluding public holidays in country as specified in the Customer address field on the first page of the underlying Cloud Services Agreement that correspond with Software AG’s Global Support operating days. |
| “Business Hour” | means the hours from 8.00 am to 5.00 pm on a Business Day of the main support hub within Customer’s region: (a) EMEA – 8 to 5 Central European Time (CET) (b) APJ – 8 to 5 Malaysia Time (MYT) (c) US – 8 to 5 Mountain Time (MT) Global Support operating hours may change from time to time. |
| “Cloud Services” | means the Supplier cloud services to be provided to the Customer under the Cloud Services Agreement. |
| “Cloud Services Agreement” | means the Cloud Services Agreement under which the Cloud Services are to be provided to the Customer. |
| “Documentation” | means the user manuals that the Supplier makes available to users of the Cloud Services. |
| “Error” | means any verifiable and reproducible failure of the Cloud Services to substantially conform to the specifications for such Cloud Services. Notwithstanding the foregoing, “ Error ” shall not include any such failure that is caused by: (i) the use or operation of the Cloud Services with any other software or code or in an environment other than that intended or recommended in the Documentation, (ii) modifications to the Cloud Services not made or approved by the Supplier in writing, or (iii) any bug, defect, or error in third-party software used with the Cloud Services. |
| “Error Correction” | means either a modification or addition to or deletion from the Cloud Services having the effect that such Cloud Services substantially conforms to the then current specifications, or a procedure or routine that, when exercised in the regular operation of the Cloud Services, eliminates any material adverse effect on the Customer caused by an Error. An Error Correction may be a correction, workaround or service update. |

| | |
|---------------------------------------|--|
| “Software AG Global Support” | means the Supplier’s Global Support Organization providing the support and maintenance services for the respective Customer. |
| “Software AG’s Support Portal” | means the Supplier’s web-based Customer support system, designed with proactive services, information and Error Corrections. Software AG’s Support Portal can currently be accessed on “https://empower.softwareag.com” (this URL may change from time to time). |

2 SERVICE DESCRIPTION

2.1 **Standard Maintenance and Support Service:** Software AG’s Standard Maintenance and Support Service consists of the following services:

- (a) Twenty-four (24) hour access to Software AG’s Support Portal including access for authorized technical contacts (“**ATC**”) to Supplier’s request reporting system for browsing and submitting incidents, online access to new product information, documentation and knowledge center.
- (b) 24x7 support service for crisis incidents. Telephone support according to this agreement is available 24x7 (24 hours a day; 7 days a week) for crisis requests and is provided during after-Business Hours and on non-Business Days in English only.
- (c) 9x5 (9 hours a day; 5 days a week) telephone support for critical and standard incidents according to this agreement during Business Hours. Customer will receive initial response within the defined reaction times during Business Hours only. The respective telephone number is available in Software AG’s Support Portal. If not provided in local language, telephone support is provided in English.
- (d) Seven (7) authorized technical contacts (ATC) of the Customer entitled to access Software AG’s Support Portal. This restriction applies per Customer and not per contract. All ATCs shall have appropriate professional and technical qualifications and shall be assigned internally by Customer to process queries from users about the Cloud Services. To protect against improper use of services, services may only be requisitioned by these ATCs previously-reported to Software AG. Customer may contract for additional authorized contacts. ATC Group accounts that are used by multiple Customer representatives are not allowed. One Customer representative equals one ATC only.
- (e) Documentation on updates to the Cloud Services. Information regarding availability of Cloud Services and Documentation updates is published by Supplier and available in Software AG’s Support Portal.
- (f) Information on new features, events, and Customer application articles.

3 PROCESSING CUSTOMER REQUESTS

3.1 **Introduction:** Customer requests will be received by Software AG Global Support and will be documented in Software AG’s Support Portal for further processing. The Customer will be given a reference processing number for future reference.

- (a) All crisis incidents must be submitted to Software AG Global Support by telephone. When submitting Security Incidents to Software AG Global Support, Customer must indicate this aspect to the support representative or set the security flag in the support ticket if reported via customer support portal.
- (b) The region of a customer is the region where that customer is located or has opted to

define that region as their region. For example the region for an EMEA customer is EMEA, however an EMEA customer may opt for another region, say AME, to be their default region.

- (c) During after-Business-Hours and non-Business Days, all communication will be in English only.
- (d) When reaching Software AG Global Support by telephone, Customer is to provide the incident/ticket number so that work on the incident can commence.
- (e) Software AG Global Support has no obligation to solve the Customer's issue within the reaction or any other time frame.

3.2 **Service Expectations:** The following support severities are used for classifying the Customer's incidents. These classifications ensure consistent treatment of incidents handled by Software AG Global Support. Software AG Global Support will determine the appropriate severity level according to the following table:

| Severity Level | Crisis | Critical | Standard |
|------------------------------|---|--|---|
| Definitions | Customer's problem has a severe business impact, e.g. production down. Customer is unable to use the Cloud Services, resulting in a major impact on Customer's operations. Work cannot reasonably continue. | Customer's problem has a significant business impact; however, operations can continue in a restricted fashion. The Cloud Services are usable but severely limited. There is no acceptable workaround available. Customer is experiencing a significant loss of service. | Customer's problem has some business impact. The Cloud Services are usable and cause only minor inconvenience. It may be a minor Error, documentation Error, or incorrect operation of the Cloud Services, which does not significantly impede the operation of the Cloud Services. |
| ReactionTime | 1 Hour: call-back or electronic reply. | 4 Business Hours: call-back or electronic reply. | 1 Business Day: call-back or electronic reply. |
| Reporting (timeframe) | Daily reporting (unless otherwise agreed with Software AG Global Support on a case-by-case basis). | As agreed between Software AG Global Support and Customer on a case-by-case basis. | As agreed between Software AG Global Support and Customer on a case-by-case basis. |
| Reaction Measure | Customer is provided with a timeline for Error Correction. | Customer is provided with a timeline for Error Correction. | <ul style="list-style-type: none"> • Information about publication date of the Cloud Services release that will solve the issue • Indication that changes/ enhancements are being handled in accordance with Software AG's strategy. |

4 CUSTOMER RESPONSIBILITIES

- 4.1 **Customer Responsibilities:** Customer shall co-operate with Software AG Global Support and provide relevant information to enable Supplier to reproduce, troubleshoot and resolve the experienced error.
- 4.2 **Customer Consent:** In case that an incident is submitted to Software AG's Support Portal Customer authorizes Supplier, for the purposes of troubleshooting and resolving such incident, to access Customer's cloud environment for the duration of the submitted incident on the basis set out in the Cloud Services Agreement.

DATA PROCESSING AGREEMENT

This Data Processing Agreement ("**DPA**") is an integral part of the existing Agreement between the parties which is referred to below (hereinafter together referred to as "**Agreement**") and is entered into by and between:

| Parties | | |
|--------------------------|--|---|
| between | Software AG (UK) Limited (" Supplier " and " Processor ") acting in its own name and acting in the name and on behalf of the Processors listed in Appendix 4 | G-Cloud (" Customer " and " Controller ") |
| Reg. No. | 1310740 | |
| Registered office | Pride Park, Locomotive Way, DERBY, Derbyshire DE24 8PU, UNITED KINGDOM | x |

each a "**Party**", together the "**Parties**".

| Agreement | |
|-----------|--|
| Agreement | Reference: Ref Date/Service Start Date: 20-May-2019 |

PREAMBLE

WHEREAS, under the Agreement concluded between the Supplier and the Customer, the Supplier agreed to provide the Customer with the services as further specified in the Agreement and in Appendix 2 to this DPA (the "**Services**");

WHEREAS, the Parties agree that the bundling of the Processors (as listed in Appendix 4) within this single DPA is only undertaken for efficiency purposes (i.e. to avoid a multitude of different contract documents) and shall result in legally separate DPAs between the Controller and each Processor as designated in Appendix 4 and shall not create any legal or other relationship whatsoever between the bundled Processors other than between the Controller and each Processor separately;

WHEREAS, in rendering the Services, Processor may from time to time be provided with, or have access to information of Controller's end-customers or to information of other individuals having a (potential) relationship with Controller and this information may qualify as personal data within the meaning of the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("**GDPR**") and other applicable data protection laws;

WHEREAS, Controller engages Processor as a commissioned processor acting on behalf of Controller

as stipulated in Art. 28 GDPR;

WHEREAS, European data protection laws require controllers in EU/EEA countries to provide adequate protection for transfers of personal data to non-EU/EEA countries and such protection can be adduced by requiring processors to enter into the Standard Contractual Clauses for the Transfer of Personal Data to Processors Established in Third Countries ("**Standard Contractual Clauses**") pursuant to Commission Decision 2010/87/EU of 5 February 2010 as set out in Appendix 1;

WHEREAS, this DPA contains the terms and conditions applicable to the processing of such personal data by Processor as a commissioned data processor of Controller with the aim to ensure that the Parties comply with applicable data protection law.

In order to enable the Parties to carry out their relationship in a manner that is compliant with applicable law, the Parties have entered into the DPA as follows:

1 DEFINITIONS

- 1.1 For the purposes of this DPA, the terminology and definitions as used by the GDPR shall apply. In addition to that,

| | |
|----------------------|--|
| "Data Exporter" | shall mean the Controller, if (a) (i) the Controller is located in the EU/EEA or (ii) is located outside of the EU/EEA and is subject to the GDPR, and (b) transfers personal data to a Data Importer. |
| "Data Importer" | shall mean the Processor or Subprocessor that is located in a Third Country. |
| "Member State" | shall mean a country belonging to the European Union or to the European Economic Area. |
| "Subprocessor" | shall mean any further processor that is engaged by Processor as a sub-contractor for the performance of the Services or parts of the Services to be provided by Processor to Controller provided that such Subprocessor has access to the personal data of Controller when carrying out the subcontracted Services. |
| "Third Country" | shall mean a country outside of the EU/EEA that is not a White-List Country. |
| "White-List Country" | shall mean a country which is found by a decision of the EU Commission to ensure an adequate level of data protection within the meaning of Article 25 (2) of the Data Protection Directive (95/46/EC) and from May 25, 2018 within the meaning of Article 45 (1) General Data Protection Regulation. |

- 1.2 This DPA has four Appendices. Appendix 1 contains the main body of the Standard Contractual Clauses. Appendix 2 contains the details of the processing and Appendix 3 contains the technical and organizational measures. Appendix 4 contains the list of processors. Appendix 2, Appendix 3 and Appendix 4 shall always apply. Appendix 1 shall apply in addition to this DPA only, if
- (a) the Controller is located in the EU/EEA or is located outside of the EU/EEA and is subject to the GDPR, and
 - (b) the Processor is located in a Third Country. If Appendix 1 applies, Appendix 1 will prevail

over this DPA in case of contradictions.

2 DETAILS OF PROCESSING

- 2.1 The details of the processing operations provided by Processor to Controller as a commissioned data processor (e.g., the subject-matter of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects) are specified in Appendix 2 to this DPA.

3 OBLIGATIONS OF CONTROLLER

- 3.1 Controller is obliged to ensure compliance with any applicable obligations under the GDPR and any other applicable data protection law that applies to Controller as well as to demonstrate such compliance as required by Art. 5 (2) GDPR. Controller remains the responsible data controller for the processing of the personal data.
- 3.2 Controller is obliged to confirm before processing is carried out that the technical and organizational measures of Processor, as set out in Appendix 3, are appropriate and sufficient to protect the rights of the data subject and acknowledges that the Processor provides sufficient guarantees in this respect.
- 3.3 If required under local laws, Controller shall provide to the Processor a copy of the privacy notice that the Controller has delivered to the data subjects.

4 INSTRUCTIONS

- 4.1 Controller instructs Processor to process the personal data only on behalf of Controller. Controller's instructions are provided in this DPA and the Agreement. Controller is obliged to ensure that any instruction given to the Processor is in compliance with applicable data protection law. Processor is obliged to process the personal data only in accordance with the instructions given by the Controller unless otherwise required by European Union law, Member State law or other applicable data protection law (in the latter case clause 5.4 (b) applies).
- 4.2 Any further instructions that go beyond the instructions contained in this DPA or the Agreement must be within the subject matter of this DPA and the Agreement. If the implementation of such further instructions results in costs for Processor, Processor shall inform Controller about such costs with an explanation of the costs before implementing the instructions. Only after Controller's confirmation to bear such costs for the implementation of the instructions, Processor is required to implement such further instructions. Controller shall give further instructions generally in writing, unless the urgency or other specific circumstances require another (e.g., oral, electronic) form. Instructions in another form than in writing shall be confirmed by Controller in writing without delay.
- 4.3 Processor shall immediately inform Controller if, in its opinion, an instruction infringes the GDPR or other applicable data protection law and request the Controller to withdraw, amend or confirm the relevant instruction. Pending the decision of the Controller on the withdrawal, amendment or confirmation of the relevant instruction, Processor shall be entitled to suspend the implementation of the relevant instruction.

5 OBLIGATIONS OF PROCESSOR

- 5.1 The Processor and persons authorized by Processor to process the personal data on behalf of

Controller, in particular Processor's employees as well as employees of any Subprocessors, shall have committed themselves to confidentiality or shall be under an appropriate statutory obligation of confidentiality. Processor may not process personal data for purposes different than those that derive from or are related to the performance of its obligations under this DPA, or for purposes different than those instructed by the Controller.

5.2 Processor is obliged to implement the technical and organizational measures as specified in Appendix 3 before processing the personal data on behalf of Controller. Processor may amend the technical and organizational measures from time to time provided that the amended technical and organizational measures are not less protective as those set out in Appendix 3.

5.3 Processor is obliged to make available to Controller information in order to demonstrate compliance with the obligations of Processor laid down in Art. 28 GDPR. The Parties agree that this information obligation is met by providing Controller with an audit report upon request ("**Audit Report**"). To the extent additional audit activities are legally required, Controller may request inspections conducted by Controller or another auditor mandated by Controller ("**On-Site Audit**"). Such On-Site Audit is subject to the following conditions:

- (a) On-Site Audits are limited to processing facilities and personnel of Processor involved in the processing activities covered by this DPA; and
- (b) On-Site Audits occur not more than once annually or as required by applicable data protection law or by a competent supervisory authority or immediately subsequent to a material personal data breach that affected the personal data processed by Processor under this DPA; and
- (c) may be performed during regular business hours, solely insubstantially disrupting the Processor's business operations and in accordance with Processor's security policies, and after a reasonable prior notice; and
- (d) Controller shall bear any costs arising out of or in connection with the On-Site Audit at Controller and Processor.

Controller is obliged to create an audit report summarizing the findings and observations of the On-Site Audit ("**On-Site Audit Report**"). On-Site Audit Reports as well as Audit-Reports are confidential information of Processor and shall not be disclosed to third parties unless required by applicable data protection law or subject to Processor's consent.

5.4 Processor is obliged to notify Controller without undue delay:

- (a) about any legally binding request for disclosure of the personal data by a law enforcement authority, unless otherwise prohibited, such as by a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
- (b) if Processor or Subprocessor is required pursuant to European Union law, Member State law or other applicable data protection law to which Processor or Subprocessor is subject to process the personal data beyond the instructions of Controller, before carrying out such processing beyond the instruction, unless that European Union law, Member State law or other applicable data protection law prohibits such information on important grounds of public interest - the notification to Controller shall specify the legal requirement under such European Union law Member State law or other applicable data protection law; and/or
- (c) after Processor has documented reason to believe that a personal data breach at Processor or its Subprocessors has occurred that may affect the personal data of Controller covered by this DPA. In this case, Processor will assist Controller with

Controller's obligation under applicable data protection law to inform the data subjects and the supervisory authorities, as applicable, by providing information according to Art. 33 (3) GDPR or other applicable data protection law as available to Processor. Processor shall implement remediation measures and corrective measures in order to prevent further breaches to occur again.

- 5.5 Processor is obliged to assist Controller with its obligation to carry out a data protection impact assessment as may be required by Art. 35 GDPR or under any other applicable data protection law and prior consultation as may be required by Art. 36 GDPR that relates to the Services provided by Processor to Controller under this DPA by means of providing the necessary and available information to Controller. Processor shall be obliged to provide such assistance only insofar that Controller's obligation can not be met by Controller through other means.
- 5.6 Processor is obliged - at the choice of the Controller - to delete or return to Controller all the personal data (and data storage media, which had been handed over by Controller, if any) which are processed by Processor on behalf of Controller under this DPA after the end of the provision of Services, and delete any existing copies unless European Union, Member State law or other applicable local law requires Processor to retain such personal data.

6 DATA SUBJECT RIGHTS

- 6.1 Controller is primarily responsible for handling and responding to requests made by data subjects.
- 6.2 Processor is obliged to assist Controller with appropriate and possible technical and organizational measures to respond to requests for exercising the data subjects' rights which are laid down in Chapter III of the GDPR or other applicable data protection laws.

7 SUBPROCESSING

- 7.1 Controller authorises the use of Subprocessors engaged by Processor for the provision of the Services under this DPA. The same applies to the use of further Subprocessors engaged by Subprocessors, in which case the below applies accordingly. Processor shall choose such Subprocessor diligently. Processor remains responsible for any acts or omissions of its Subprocessors in the same manner as for its own acts and omissions hereunder. Controller approves the following Subprocessors:

| Name | Address | Purpose of use |
|-------------|---|--|
| Software AG | Uhlandstraße 12 64297 Darmstadt Germany | provision of Maintenance and Support Services provision of Cloud Services provision of Consulting Services |

- 7.2 Processor shall pass in writing (electronic form is sufficient) to Subprocessors the obligations of Processor under this DPA to the extent applicable to the subcontracted Services.
- 7.3 Processor may remove, replace or appoint suitable and reliable further Subprocessors at its own discretion in accordance with this clause:
- (a) Processor shall notify Controller in advance of any changes to the list of Subprocessors as set out under clause 7.1. If Controller does not object in accordance with this clause 7.3
 - (b) within thirty days after receipt of Processor's notice the further Subprocessor(s) shall

be deemed accepted.

- (b) If Controller has a legitimate reason to object to a Subprocessor, Controller shall notify Processor thereof in writing within thirty days after receipt of Processor's notice. If Controller objects to the use of the Subprocessor, Processor shall have the right to cure the objection within thirty days after Processor's receipt of Controller's objection. If the objection has not been cured within thirty days after Processor's receipt of Controller's objection, either party may terminate the affected Service with reasonable prior written notice.

8 LIMITATION OF LIABILITY

- 8.1 Any liability arising out of or in connection with a violation of the obligations of this DPA or under applicable data protection law, shall follow, and be governed by, the liability provisions set forth in, or otherwise applicable to, the Agreement, unless otherwise provided within this DPA.

9 INDEMNITY

- 9.1 The Controller shall defend, indemnify, and hold harmless Processor and the officers, directors, employees, successors, and agents of Processor (collectively, "indemnified parties") from all claims, damages, liabilities, assessments, losses, costs, administrative fines and other expenses (including, without limitation, reasonable attorneys' fees and legal expenses) arising out of or resulting from any claim, allegation, demand, suit, action, order or any other proceeding by a third party (including supervisory authorities) that arises out of or relates to the violation of Controller's obligations under this DPA and/or applicable data protection law.

10 DURATION AND TERMINATION

- 10.1 The term of this DPA is identical with the term of the Agreement. Save as otherwise agreed herein, termination rights and requirements shall be the same as set forth in the Agreement.

11 GENERAL

- 11.1 In the event of inconsistencies between the provisions of this DPA and any other agreements between the Parties, the provisions of this DPA shall prevail with regard to the Parties' data protection obligations. In case of doubt as to whether clauses in such other agreements relate to the Parties' data protection obligations, this DPA shall prevail.
- 11.2 If any provision of this DPA is held to be invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired.
- 11.3 This DPA shall be governed by the same law as the Agreement.

| Agreement | | | |
|--|--|---|--|
| Duly authorised for and on behalf of Supplier acting in its own name and acting in the name and on behalf of the Processors listed in Appendix 4 | | Duly authorised for and on behalf of Customer | |
| Signed | | Signed | |
| Name | | Name | |

| | | | |
|-------|--|-------|--|
| Title | | Title | |
| Date | | Date | |

APPENDIX 1

STANDARD CONTRACTUAL CLAUSES

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

1 Definitions

For the purposes of the Clauses:

- (a) “personal data”, “special categories of data”, “process/processing”, “controller”, “processor”, “data subject” and “supervisory authority” shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) “the data exporter” means the controller who transfers the personal data;
- (c) “the data importer” means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) “the sub-processor” means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) “the applicable data protection law” means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) “technical and organisational security measures” means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

2 Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 2 which forms an integral part of the Clauses.

3 Third-party beneficiary clause

- 1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
- 2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
- 3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
- 4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

4 Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 3 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 3, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

5 Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 3 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 3 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

6 Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising

out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

7 Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

- (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
- (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

8 Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

9 Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

10 Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

11 Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

12 Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

Signatures: See DPA signature page

APPENDIX 2

DETAILS OF PROCESSING

Controller/Data Exporter

The Controller/Data Exporter performs the following activities relevant to the transfer (Controller to specify):

- The Controller/Data Exporter is providing business data to assist in the analysis and resolution of Support Incidents reported in software products of Processor/Data Importer
- The Controller/Data Exporter is providing business data necessary in course of use of and to assist in the analysis and resolution of Support Incidents reported in the Cloud Services of Processor/Data Importer
- The Controller/Data Exporter is providing business data to or granting access to Processor/Data Importer to help develop or implement solutions for Controller/Data Exporter.

Processor/Data Importer

The Processor/Data Importer is a member of the Software AG group.

Data subjects

The personal data transferred concern the following categories of data subjects (Controller to specify):

- employees of Controller/Data Exporter
- end-customers of Controller/Data Exporter
- potential end-customers of the Controller/Data Exporter
- any person with whom Controller/Data Exporter maintains a business relationship
- potentially end customers of the Controller/Data Exporter
- end-customers of Controller/Data Exporter
- potential end-customers of the Controller/Data Exporter
- any person with whom Controller/Data Exporter maintains a business relationship

Categories of data

The personal data transferred concern the following categories of data (Controller to specify):

- Data of the Controller/Data Exporter used within the products offered by Processor/Data Importer
- Name
- Corporate Personnel ID
- Business e-mail address
- Telephone number
- IP Address
- Data of the Controller/Data Exporter used within the systems which are in the scope as defined in the relevant Statement of Work.

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (Controller to specify):

- The transfer of special categories of personal data is not anticipated.
- The Controller/Data Exporter decides which data is transmitted for the purpose of providing customer support
- The Controller/Data Exporter decides which data is transmitted for the purpose of providing Cloud Services
- The Controller/Data Exporter decides which data is made available to the Processor/Data Importer in the scope of the systems as defined in the relevant Statement of Work.

Processing operations

The personal data transferred will be subject to the following basic processing activities:

- Support incident solution research using Controller/Data Exporter business data to analyse or reproduce incidents reported by the Controller/Data Exporter
- Processor/Data Importer processes Controller/Data Exporter Data with a Software as a Service /Platform as a Service in a public cloud infrastructure as defined in the Cloud Services agreement
- The Processor/Data Importer will use the personal data of the Controller/Data Exporter only as defined in the Service Agreement.

Subject matter of the processing

As described in the applicable Maintenance and Support Service description

The subject matter of the data processing under this addendum are the Controller/Data Exporter data processed in the cloud services as defined in the Cloud Services Attachment including the operation of a Cloud Service platform. To access the operated platform users need to be authenticated and authorized. User details will be used to create unique user id's that are used for authentication and authorization. Email addresses might be used to send notifications to the users as result of using services of the Cloud Service platform and corresponding support systems (e.g. Ticket system).

The subject matter of the processing is described in the relevant Statement of Work

Nature and purpose of the processing

Processor/Data Importer processes the personal data of the data subjects on behalf of Controller/Data Exporter in connection with the following:

- Processor/Data Importer processes the personal data of the data subjects on behalf of Controller/Data Exporter in order to solve problems in software products of Processor/Data Importer
- The purpose of the data processing under this addendum the provisioning of the Cloud Services initiated by the Controller/Data Exporter. The Cloud Services processing systems and respective processing properties are defined in the Cloud Services Attachment
- Processor/Data Importer processes the personal data of the data subjects on behalf of Controller/Data Exporter in order to provide the Consulting Services described in detail in the relevant Statement of Work.

Signatures: See DPA signature page

APPENDIX 3

TECHNICAL AND ORGANISATIONAL MEASURES

Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Processor/Data Importer shall implement the following technical and organisational measures which have been confirmed as appropriate by the Controller/Data Exporter to ensure a level of security appropriate to the risks for the rights and freedoms of natural persons. In assessing the appropriate level of security Controller/Data Exporter took account in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction loss, alteration, unauthorized disclosure of, or access to personal data transmitted, stored or otherwise processed.

A. GENERAL TECHNICAL AND ORGANISATIONAL SECURITY MEASURES - MAINTENANCE AND SUPPORT SERVICES

1 CONFIDENTIALITY (ART 32 PARA. 1 LIT B GDPR)

- 1.1 **Access Control of Processing Areas:** Processor/Data Importer shall implement suitable measures to prevent unauthorised persons from gaining access to the data processing equipment where the personal data is processed. This shall be accomplished by:
- (a) Access to premises is controlled by security guards, access cards or locks with keys.
 - (b) The data centres where personal data are hosted are secured by appropriate security measures. Data centres operated by Processor/Data Importer are located in the highest security zone according to the Physical Access Policy and data centres of service providers guarantee equivalent adequate safeguards.
- 1.2 **Access control to data processing systems:** Processor/Data Importer shall implement suitable measures to prevent its data processing systems from being used by unauthorised persons. This shall be accomplished by:
- (a) Staff members of Processor/Data Importer are issued their own logins; passwords must adhere to constraints in length, complexity, ageing and history according to the corporate Login and Password Policy.
 - (b) Automatic time-out of workstations if left idle, authentication is required to reopen.
 - (c) Staff policies in respect of each staff access rights to personal data (if any), informing staff about their obligations and the consequences of any violations of such obligations, to ensure that staff will only access personal data and resources required to perform their job duties and training of staff on applicable privacy duties and liabilities.
 - (d) Use of state of the art encryption technologies for data in transfer and data at rest on workstations.
- 1.3 **Access Control to Use Specific Areas of Data Processing Systems:** Processor/Data Importer shall commit that the persons entitled to use its data processing system are only able to access the data within the scope and to the extent covered by their respective access permission (authorisation) and that personal data cannot be read, copied, modified, or removed without authorisation. This shall be accomplished by:

- (a) Staff members of Processor/Data Importer are assigned minimum access rights dependent on their job requirements. Access to data provided by the Controller/Data Exporter (e.g. traces, dumps, configuration files) is controlled by the support systems. The Processor/Data Importer support systems limit the access to only the staff members of Processor/Data Importer that need to work with the data to assist in solving the support issues.
 - (b) Policies are in place to control the retention of backup copies.
 - (c) Use of state of the art encryption technologies for data in transfer and data at rest on workstations.
- 1.4 **Separation of processing for different purposes**: Processor/Data Importer shall implement suitable measures to make sure that data collected for different purposes can be processed separately. This shall be accomplished by:
- (a) Access to data is separated through application security for the authorised users.
 - (b) Data that is provided by Controller/Data Exporter to the Processor/Data Importer is stored in dedicated support systems which are used only for the purpose of analyzing the data in the scope of solving the support issues.
- 1.5 **Pseudonymization**: In order to achieve the purposes of the commissioned data processing it is not possible to pseudonymize the personal data. If pseudonymization is required by the Controller/Data Exporter, the data provided to the Processor/Data Importer needs to be provided in pseudonymized format.
- 1.6 **Encryption**: The personal data are stored on Processor's/Data Importer's IT systems and the personal data are transmitted to Processor/Data Importer via the Processor's/Data Importer's IT infrastructure. Hence, Processor/Data Importer is responsible to provide mechanisms for encryption of the personal data in transit. Data at rest has to be either encrypted or stored on devices which are physically located in highest security zone according to the Physical Access Policy.

2 INTEGRITY (ART 32 PARA. 1 LIT B GDPR)

- 2.1 **Input control**: Processor/Data Importer shall implement suitable measures to make sure that it can check and establish whether and by whom personal data has been input into data processing systems or removed. This shall be accomplished by:
- (a) Authentication of the authorised personnel; individual user IDs that, once assigned, cannot be re-assigned to another person (including subsequently).
 - (b) Passwords must adhere to constraints in length, complexity, ageing and history according to the corporate Login and Password Policy.
 - (c) Automatic log-off of user ID's (requirement to re-enter password to use the relevant work station) that have not been used for a substantial period of time.
 - (d) If Processor/Data Importer should get remote access to systems of the Controller/Data Exporter, this has to happen under the control of the Controller/Data Exporter and Processor/Data Importer personnel will follow exactly the instructions as provided by the Controller/Data Exporter.
- 2.2 **Transmission Control**: Processor/Data Importer implements suitable measures to prevent the personal data from being read, copied, altered or deleted by unauthorised parties during the transmission thereof or during the transport of the data media. This is accomplished by:

- (a) Use of appropriate firewall and encryption technologies wherever personal data is processed. Secure FTP and HTTPS are provided to ensure data is encrypted while in transport.
- (b) As far as possible, all data transmissions are logged and monitored.
- (c) The Controller/Data Exporter controls which data is provided to the Processor/Data Importer as needed to analyse a support issue.

3 AVAILABILITY AND RESILIENCE (ART 32 PARA. 1 LIT B GDPR)

- 3.1 **Availability Control:** Processor/Data Importer shall implement suitable measures to make sure that personal data is protected from accidental destruction or loss. This will be accomplished by:
- (a) Infrastructure redundancy to ensure data access is restored within a timely manner. The systems used to provide support services to the Controller/Data Exporter are certified according to ISO 22301.
 - (b) Any detected security incident is recorded, alongside the followed data recovery procedures, and the identification of the person who carried them out.
- 3.2 **Resilience:** External access to the networks and systems used to provide the services is protected by Firewalls and Intrusion Detection Prevention Systems used to limit/filter network traffic. The Disaster Recovery for the systems used to provide the services is tested and reviewed on a yearly basis in the scope of the BCMS (ISO 22301).

4 PROCESS FOR REGULARLY TESTING, ASSESSING AND EVALUATING THE EFFECTIVENESS OF TECHNICAL AND ORGANIZATIONAL MEASURES FOR ENSURING THE SECURITY OF THE DATA PROCESSING (ART. 32 PARA. 1 LIT. D GDPR)

- 4.1 **Data Protection Management:** The Processor/Data Importer has implemented a Data Protection Management System which defines data protection processes and data protection in general, tracks data breaches, maintains records of processing activities, and is used to regularly audit, review and improve these processes.
- 4.2 **Incident Response Management:** The Processor/Data Importer has clearly defined IT Security Incident Handling and Data Breach Handling processes in the scope of the Quality Management and Data Protection Management System.
- 4.3 **Data Protection by Default (Art. 25 para. 2 GDPR):** Controller/Data Exporter decides which data is provided to the Processor/Data Importer, so it is not possible for the Processor/Data Importer to implement data protection by default in the context of this data processing.
- 4.4 **Job Control:** Processor/Data Importer implements suitable measures to ensure that the personal data is processed in accordance with the instructions of the Controller. Processor/Data Importer shall ensure that if security measures are adopted through external entities it obtains written description of the activities performed that guarantees compliance of the measures adopted with this document. Processor/Data Importer shall further implement suitable measures to monitor its system administrators and to ensure that they act in accordance with instructions received. This is accomplished by:
- (a) Individual appointment of system administrators;
 - (b) Yearly audits of system administrators' activity to assess compliance with assigned tasks;
 - (c) Keeping an updated list with system administrators' identification details and tasks

assigned.

B. GENERAL TECHNICAL AND ORGANISATIONAL SECURITY MEASURES - CLOUD SERVICES

As of the Data Processing Agreement Effective Date Processor/Data Importer's entity set out in the relevant Cloud Services Attachment as the entity delivering the Cloud Services (hereinafter "**Cloud Service Unit**" or "**CSU**") is verified under ISO/IEC 27001 and agrees to maintain an information security program for the services that complies with the ISO/IEC 27001 standards or such other alternative standards as are substantially equivalent to ISO/IEC 27001 for the establishment, implementation, control and improvement of the Cloud Service Unit Security Standards.

1 CONFIDENTIALITY (ART 32 PARA. 1 LIT B GDPR)

- 1.1 **Access Control of Processing Areas:** Processor/Data Importer shall implement suitable measures to prevent unauthorised persons from gaining access to the data processing equipment where the personal data is processed. This is accomplished through the following measures:
- (a) Processor/Data Importer facilities access is strictly controlled. Physical access to sensitive IT facilities is regulated via Processor/Data Importer's Physical Access Policy.
 - (b) Cloud Service Unit (CSU)'s Infrastructure as a Service sub-processor (IaaS Supplier), identified in the Cloud Services Attachment, maintains physical access control over the Cloud Services data processing equipment. The respective physical security mechanisms of the IaaS Supplier are reviewed by independent external audits in regards to ISO/IEC 27001 compliance.
- 1.2 **Access Control to Data Processing Systems:** Processor/Data Importer shall implement suitable measures to prevent its data processing systems from being used by unauthorised persons. This is accomplished through the following measures:
- (a) The following will be applied, among other controls, depending upon the particular Cloud Services subscribed: authentication via passwords and/or multi-factor authentication, documented authorisation processes, documented change management processes and logging of access on several levels.
 - (b) Access to Controller/Data Exporter data and systems is controlled in accordance with CSU's Access Control Policy aligned with the ISO/IEC 27001 Standard (Refer to Annex A 9 for additional details).
- 1.3 **Access Control to Use Specific Areas of Data Processing Systems:** Processor/Data Importer shall commit that the persons entitled to use its data processing system are only able to access the data within the scope and to the extent covered by their respective access permission (authorisation) and that personal data cannot be read, copied, modified, or removed without authorisation. This is accomplished through the following measures:
- (a) Operational System Administrative access is granted based on the principle of least privilege. Access controls to be applied include a documented change management process and the use of multi-factor authentication and encryption. This access is controlled in alignment with CSU's Access Control Policy, Clear Desk and Clear Screen Policy, Cryptographic Controls Policy and Data Privacy Policy.

- (b) Data transfer requirements of the CSU's Communication Security Policy are aligned with the ISO/IEC 27001 Standard (Refer to Annex A 13 for additional details).
 - (c) Backup up of Controller/Data Exporter tenant data and protection of log files are controlled in alignment with the ISO/IEC 27001 Standard (Refer to Annex A 12 for additional details).
- 1.4 **Separation of Processing for Different Purposes**: Processor/Data Importer shall implement suitable measures to make sure that data collected for different purposes can be processed separately. This is accomplished through the following measures:
 - (a) Processing of tenant content is directly encapsulated in the cloud application accessed via the cloud service. Access control to the tenant application is in the responsibility of the Controller/Data Exporter. All Controller/Data Exporter tenant content is directly encapsulated in the logically segregated tenant database.
- 1.5 **Pseudonymization**: In order to achieve the purposes of the commissioned data processing it is not possible to pseudonymize the Personal Data.
- 1.6 **Encryption**: Encryption of Controller/Data Exporter data at rest and in transit is ensured and controlled by the CSU's Cryptographic Controls Policy aligned with the ISO/IEC 27001 Standard (Refer to Annex A 10 for additional details).

2 INTEGRITY (ART 32 PARA. 1 LIT B GDPR)

- 2.1 **Input control**: Processor/Data Importer shall implement suitable measures to make sure that it can check and establish whether and by whom personal data has been inputted into data processing systems or removed. This is accomplished through the following measures:
 - (a) The source of Personal Data is under the control of the Controller/Data Exporter, and Personal Data input into the system, is managed by secured file transfer (i.e., via web services or entered into the application) from the Controller/Data Exporter. Note - specific Cloud Services may permit Controllers/Data Exporters to use unencrypted file transfer protocols, in such cases, Controller/Data Exporter is solely responsible for its decision to use such unencrypted file transfer protocols.
 - (b) Only authorised personnel will be able to access the production cloud infrastructure of Controller/Data Exporter data processing for the sole purpose of management and maintenance functions. All personnel have a unique user-id and use strong passwords according to CSU's Login and Password Policy and all such activities are monitored and logged.
- 2.2 **Transmission Control**: Processor/Data Importer implements suitable measures to prevent the personal data from being read, copied, altered or deleted by unauthorised parties during the transmission thereof or during the transport of the data media. This is accomplished through the following measures:
 - (a) For all production cloud environments IaaS provider security mechanisms are used to provide private, isolated areas for Processor/Data Importer Cloud where respective Cloud resources are launched in a defined virtual network. All scoped data is stored in a virtual cloud environment and is transmitted through HTTPS with up-to-date encryption ciphers.
 - (b) Controller/Data Exporter tenant Data-at-rest for Cloud Services are encrypted. Except as otherwise specified for the Cloud Services (including within the ordering document or the applicable service specifications), transfers of data outside the Cloud Service environment are encrypted. The content of communications (including sender and recipient addresses)

sent through some email or messaging services may not be encrypted. Controller/Data Exporter is solely responsible for the results of its decision to use unencrypted communications or transmissions.

- (c) Data transfer requirements of the CSU's Communication Security Policy protect the transfer of Controller/Data Exporter tenant data through the use of all types of communication facilities.

3 AVAILABILITY AND RESILIENCE (ART 32 PARA. 1 LIT B GDPR)

- 3.1 **Availability Control:** Processor/Data Importer shall implement suitable measures to make sure that personal data is protected from accidental destruction or loss. This is accomplished through the following measures:

- (a) Any changes to the production environments are fully monitored. CSU performs regular tenant backups to be able to restore virtual machine images and tenant data according to the Recovery Point Objectives and Recovery Time Objectives specified in the relevant Cloud Services Attachment.
- (b) Control of availability for Cloud Services is ensured under CSU's Information Security Continuity Management and Operations Backup and Restore Controls aligned with the ISO/IEC 27001 Standard (Refer to Annex A 12 and 17 for additional details).
- (c) The CSU's IaaS Supplier services are protected from utility service outages in alignment with the ISO/IEC 27001 standard as validated and certified by an independent auditor, and the identification of the person who carried them out is recorded.

- 3.2 **Resilience:** External access to all cloud production networks and systems is protected by Firewalls and Intrusion Detection Prevention Systems used to limit/filter network traffic. Cloud Services Disaster recovery is tested and reviewed on a yearly basis.

4 PROCESS FOR REGULARLY TESTING, ASSESSING AND EVALUATING THE EFFECTIVENESS OF TECHNICAL AND ORGANIZATIONAL MEASURES FOR ENSURING THE SECURITY OF THE DATA PROCESSING (ART. 32 PARA. 1 LIT. D GDPR)

- 4.1 **Data protection management:** In addition to the access control rules set forth in Sections Access control of processing areas and Access control to data processing systems, Controller/Data Exporter controls access to its Cloud Services and to Personal Data and other data through its authorised personnel. Personal Data from different Controllers/Data Exporters' environments are logically segregated. CSU's policy does not allow the replication of Controller/Data Exporter's production data to non-production environments unless explicitly requested by Controller/Data Exporter.

- 4.2 **Incident Response Management:** CSU has implemented a Security Incident Response Process and Security Incident Response Policy aligned with the ISO/IEC 27001 Standard (Refer to Annex A 16 for additional details). Controllers/Data Exporters are made aware of their responsibilities in the context of Cloud Service and Cloud Support Agreements. Security Incidents are tracked with the Processor/Data Importer incident management tool. Controller/Data Exporter point of contacts are notified via e-mail according to the Security Incident Response Policy. The incident response program of the IaaS Supplier (detection, investigation and response to incidents) has been developed in alignment with ISO 27001

standards, system utilities are appropriately restricted and monitored.

- 4.3 **Data Protection by default (Art. 25 para. 2 GDPR):** CSU has data protection policies and controls in place which prohibit CSU staff from accessing tenant data unless explicitly authorised and granted by the Controller/Data Exporter tenant administrator. All Controller/Data Exporter tenant content is directly encapsulated in the logically segregated tenant database. Personal Data is accessible and manageable only by properly authorised staff, direct database query access is restricted, and application access rights are established and enforced. Default configurations of Cloud Services are designed to process only Personal Data required to deliver the service.
- 4.4 **Job Control:** Processor/Data Importer implements suitable measures to ensure that the personal data is processed in accordance with the instructions of the Controller. This is accomplished through the following measures:
- (a) The control of Personal Data remains with Controller/Data Exporter, and as between Controller/Data Exporter and CSU, Controller/Data Exporter will at all times remain the Controller for the purposes of the Cloud Services, the Cloud Services Agreement, and the Data Processing Agreement. Controller/Data Exporter is responsible for compliance with its obligations as Controller under data protection laws, in particular for justification of any transmission of Personal Data to CSU (including providing any required notices and obtaining any required consents), and for its decisions and actions concerning the Processing and use of the data.
 - (b) CSU will process Personal Data solely for the provision of the Cloud Services, and will not otherwise (i) process or use Personal Data for purposes other than those set forth in the Cloud Services Agreement or as instructed by Controller/Data Exporter, or (ii) disclose such Personal Data to third parties other than CSU Cloud Operations supporting units or Subprocessors for the aforementioned purposes or as required by law.
 - (c) Access to Controller/Data Exporter data and systems are controlled in accordance with CSU's Access Control Policy and Operations Security Controls aligned with the ISO 27001 Standard (Refer to Annex A 9 and 12 for additional details).
- 4.5 **Job Control – Owners and Engineers:** Processor/Data Importer shall further implement suitable measures to monitor its cloud service system system administrators and to ensure that they act in accordance with instructions received. This is accomplished through the following measures:
- (a) Individual appointment of system administrators;
 - (b) Adoption of suitable measures to log system administrators' access and keep those logs secure, accurate and unmodified for at least six months;
 - (c) Yearly audits of system administrators' activity to assess compliance with assigned tasks, the instructions received by importer and applicable laws; and
 - (d) Keeping an updated list with system administrators' identification details (e.g. name, surname, function or organisational area) and tasks assigned.

C. GENERAL TECHNICAL AND ORGANISATIONAL SECURITY MEASURES - SERVICES

1 CONFIDENTIALITY (ART 32 PARA. 1 LIT B GDPR)

- 1.1 **Access Control of Processing Areas:** Processor/Data Importer shall implement suitable measures to prevent unauthorised persons from gaining access to the data processing equipment where the personal data is processed. This shall be accomplished by:
- (a) Access to premises is controlled by security guards, access cards or locks with keys.
 - (b) The data centres where personal data are hosted are secured by appropriate security measures. Data centres operated by Processor/Data Importer are located in the highest security zone according to the Physical Access Policy and data centres of service providers guarantee equivalent adequate safeguards.
- 1.2 **Access Control to Data Processing Systems:** Processor/Data Importer shall implement suitable measures to prevent its data processing systems from being used by unauthorised persons. This shall be accomplished by:
- (a) Staff members of Processor/Data Importer are issued their own logins; passwords must adhere to constraints in length, complexity, ageing and history according to the corporate Login and Password Policy.
 - (b) Automatic time-out of workstations if left idle, authentication is required to reopen.
 - (c) Staff policies in respect of each staff access rights to personal data (if any), informing staff about their obligations and the consequences of any violations of such obligations, to ensure that staff will only access personal data and resources required to perform their job duties and training of staff on applicable privacy duties and liabilities.
 - (d) Use of state of the art encryption technologies for data in transfer (e.g. VPN when accessing remote systems) and data at rest on workstations and mobile devices.
- 1.3 **Access Control to Use Specific Areas of Data Processing Systems:** Processor/Data Importer shall commit that the persons entitled to use its data processing system are only able to access the data within the scope and to the extent covered by their respective access permission (authorisation) and that personal data cannot be read, copied, modified, or removed without authorisation. This shall be accomplished by:
- (a) Staff members of Processor/Data Importer are assigned minimum access rights dependent on their job requirements. The Processor/Data Importer systems limit the access to only the staff members of Processor/Data Importer that have been assigned to work on the project with the Controller/Data Exporter.
 - (b) Policies are in place to control the retention of backup copies.
 - (c) Use of state of the art encryption technologies for data in transfer (e.g. VPN when accessing remote systems) and data at rest on workstations and mobile devices.
- 1.4 **Separation of Processing for Different Purposes:** Processor/Data Importer shall implement suitable measures to make sure that data collected for different purposes can be processed separately. This shall be accomplished by:
- (a) Access to data is separated through application security for the authorized users.
 - (b) Data that is provided by Controller/Data Exporter to the Processor/Data Importer is stored in dedicated systems which are used only for the purpose of providing the Consulting Services described in detail in the relevant Statement of Work.
- 1.5 **Pseudonymization:** In order to achieve the purposes of the commissioned data processing it is not possible to pseudonymize the personal data. If pseudonomization is required by the Controller/Data Exporter, the data provided to the Processor/Data Importer needs to be provided in pseudonymized format.

- 1.6 **Encryption:** The personal data are stored on Processor's/Data Importer's IT systems and the personal data are transmitted to Processor/Data Importer via the Processor's/Data Importer's IT infrastructure. Hence, Processor/Data Importer is responsible to ensure encryption of the personal data at rest and in transit. All data in transfer has to be encrypted. Data at rest has to be either encrypted or stored on devices which are physically located in highest security zone according to the Physical Access Policy.

2 INTEGRITY (ART 32 PARA. 1 LIT B GDPR)

- 2.1 **Input Control:** Processor/Data Importer shall implement suitable measures to make sure that it can check and establish whether and by whom personal data has been inputted into data processing systems or removed. This shall be accomplished by:
- (a) Authentication of the authorised personnel; individual user IDs that, once assigned, cannot be re-assigned to another person (including subsequently).
 - (b) Passwords must adhere to constraints in length, complexity, ageing and history according to the corporate Login and Password Policy.
 - (c) Automatic log-off of user ID's (requirement to re-enter password to use the relevant work station) that have not been used for a substantial period of time.
 - (d) If Processor/Data Importer should get remote access to systems of the Controller/Data Exporter, this has to happen under the control of the Controller/Data Exporter and Processor/Data Importer personnel will follow exactly the instructions as provided by the Controller/Data Exporter.
- 2.2 **Transmission Control:** Processor/Data Importer implements suitable measures to prevent the personal data from being read, copied, altered or deleted by unauthorised parties during the transmission thereof or during the transport of the data media. This is accomplished by:
- (a) Use of appropriate firewall and encryption technologies wherever personal data is processed. Secure FTP, HTTPS, and VPN are provided to ensure data is encrypted while in transport.
 - (b) As far as possible, all data transmissions are logged and monitored.
 - (c) The Controller/Data Exporter controls which data is provided to the Processor/Data Importer as needed to work on the assigned projects.

3 AVAILABILITY AND RESILIENCE (ART 32 PARA. 1 LIT B GDPR)

- 3.1 **Availability Control:** Processor/Data Importer shall implement suitable measures to make sure that personal data is protected from accidental destruction or loss. This will be accomplished by:
- (a) Infrastructure redundancy to ensure data access is restored within a timely manner.

4 PROCESS FOR REGULARLY TESTING, ASSESSING AND EVALUATING THE EFFECTIVENESS OF TECHNICAL AND ORGANIZATIONAL MEASURES FOR ENSURING THE SECURITY OF THE DATA PROCESSING (ART. 32 PARA. 1 LIT. D GDPR)

- 4.1 **Data Protection Management:** The Processor/Data Importer has implemented a Data Protection Management System which defines data protection processes and data protection in general, tracks data breaches, maintains records of processing activities, and is used to regularly audit, review and improve these processes.

- 4.2 **Incident Response Management**: The Processor/Data Importer has clearly defined IT Security Incident Handling and Data Breach Handling processes in the scope of the Quality Management and Data Protection Management System.
- 4.3 **Data Protection by Default (Art. 25 para. 2 GDPR)**: Processor/Data Importer shall implement a suitable data protection by default in its organisation.
- 4.4 **Job Control**: Processor/Data Importer implements suitable measures to ensure that the personal data is processed in accordance with the instructions of the Controller. Processor/Data Importer shall ensure that if security measures are adopted through external entities it obtains written description of the activities performed that guarantees compliance of the measures adopted with this document.

D. ADDITIONAL COUNTRY SPECIFIC MEASURES

No additional country specific measures applied.

Signatures: See DPA signature page

APPENDIX 4

LIST OF PROCESSORS

The following organizations are located in third countries and for these the EU Standard Contractual Clauses listed in Appendix 1 will be concluded directly with the Customer, which means they take the role of being Processors. The Supplier has been given a power of attorney by the listed organizations to conclude the EU Standard Contractual Clauses with the Customer on their behalf.

| # | Country | Name | Address | Data Processing Operation | | |
|---|-----------|--|---|---------------------------|----------------------------|---------------------------|
| 1 | Australia | Software AG Australia Pty Ltd. | 201 Miller Street, Level 16 North Sydney, NSW 2060 | Consulting Services | | |
| 2 | Australia | Software AG Cloud APJ PTY Ltd. | Level 16, 201 Miller Street North Sydney, NSW 2060 | | Cloud Services and Support | |
| 3 | Bahrain | Software AG (Gulf) S.P.C. | Office No. 31, 3rd Floor, Building No. 1269, Road No. 3227, Block 332 Manama | Consulting Services | | |
| 4 | Brazil | Software AG Brasil Informatica e Serviços Ltda | Av. das Nações Unidas 12.901, 33º andar, Torre Norte CEP 04578-000 São Paulo/SP | Consulting Services | Cloud Services and Support | Customer Support Services |
| 5 | China | Software AG Limited | Room 1701-2, 17/F, No. 8 Fleming Road, Wanchai HongKong | Consulting Services | | |
| 6 | China | Software AG China Ltd. | Room 660-17, building No.2 of No.351 Guoshoujing Road, Zhangjiang High-tech Park 200041 Shanghai | Consulting Services | | |
| 7 | India | Software AG Chennai | VBC Solitaire, 4th Floor, No. 47 & 49, | Consulting Services | Cloud Services and | Customer Support |

| | | | | | | |
|----|--------------|---|--|---------------------|----------------------------|---------------------------|
| | | Development Center India Pvt Ltd | Bazulla Road, T. Nagar 600 017 Chennai | | Support | Services |
| 8 | India | Software AG Bangalore Technologies Private Ltd. | Embassy Tech Village 5th and 6th Floor, 2A East Tower, Marathahalli Outer Ring Road 560 103 Devarabisanahalli Bangalore | Consulting Services | Cloud Services and Support | Customer Support Services |
| 9 | Japan | Software AG Ltd. Japan | AKASAKA K-Tower 4F, 1-2-7 Motoakasaka 107-0051 Minato-ku, Tokyo | Consulting Services | Cloud Services and Support | Customer Support Services |
| 10 | Malaysia | Software AG Operations Malaysia Sdn Bhd. | Suite 2B-22-1, Level 22, Block 2B, Plaza Sentral, Jalan Stesen Sentral 5, Kuala Lumpur Sentral, 50470 Kuala Lumpur | Consulting Services | Cloud Services and Support | Customer Support Services |
| 11 | Mexico | Software AG, S.A. de C.V. | Blvd Manuel Avila Camacho No. 88 Piso 11, Torre Picasso, Col. Lomas de Chapultepec 11590 Mexico, Distrito Federal | Consulting Services | Cloud Services and Support | Customer Support Services |
| 12 | Philippines | Software AG, Inc. | 12F Multinational Bancorporation Centre, Ayala Avenue 1225 Makati City | Consulting Services | | |
| 13 | Singapore | Software AG Pte LTD | 12 Marina Boulevard #17-04, Marina Bay Financial Centre Tower 3 018982 Singapore | Consulting Services | | |
| 14 | South Africa | Software AG South Africa (Pty) Ltd | Culross on Main Office Park, 34 Culross Road, | Consulting Services | | |

| | | | | | | |
|----|----------------------|---------------------------------------|--|---------------------|----------------------------|---------------------------|
| | | | Building 3 2021 Bryanston | | | |
| 15 | United Arab Emirates | Software AG International FZ-LLC | Star Building, EIB 4, Office # 204, P.O. Box # 502274 Dubai | Consulting Services | | |
| 16 | USA | Software AG Cloud Americas, Inc. | 1209 Orange Street Wilmington, DE 19801 | | Cloud Services and Support | |
| 17 | USA | Software AG Government Solutions, Inc | 11700 Plaza America Drive, Suite 700 Reston, VA 20190 | Consulting Services | | |
| 18 | USA | Software AG USA, Inc. | 11700 Plaza America Drive, Suite 700 Reston, VA 20190 | Consulting Services | | Customer Support Services |

ORDER FORM FOR SERVICES

The Supplier has agreed to provide the Services referred to below in this Order Form for Services (hereinafter also referred to as “**Agreement**”) which will be supplied on the terms and subject to the conditions set out in the Global Consulting Services Terms and Conditions which are attached to and form part of this Agreement.

| Parties | | |
|--------------------------|--|-----------------------------------|
| between | Software AG (UK) Limited (“ the Supplier ”) | G-Cloud (“ the Customer ”) |
| Reg. No. | 1310740 | |
| Registered office | Pride Park, Locomotive Way, DERBY, Derbyshire DE24 8PU, UNITED KINGDOM | x |

| Contact Details | |
|--|-------------------|
| Contact Person | x |
| Contact E-mail Address | x |
| Supplier Contact | x |
| Supplier Contact e-mail address | x |

| Services Details | |
|----------------------------|---|
| Service Description | Consultancy Services in connection with the provision of the Deliverables |
| Period | 12 months from the Effective Date |
| Service Location | x |
| Consultant(s) | As determined by Supplier |

| Payment and Invoicing Terms | |
|-----------------------------|--|
| Services Fees | GBP x (excluding VAT) This is a fixed price services engagement |
| Payment Terms | 30 days from the date of invoice |
| Invoice Terms | Immediately on signature of this Agreement |
| Expenses | Travel costs, expenses and costs for accommodation will be charged as incurred based on the Supplier’s expense policy set out in the clause “Travel Expenses” of this Agreement. |

| | |
|-----------------------|--|
| Binding Period | Supplier shall be bound to this offer until x. Order confirmations which Supplier receives after this date shall be considered as being a new offer requiring Supplier acceptance. |
|-----------------------|--|

| |
|--|
| Effective Date |
| The last date of signing by duly authorised representatives of all of the parties. |

The parties have shown their acceptance of the terms of this Agreement by signing it below. This Agreement shall come into force and effect upon the Effective Date referred to above. This document may be executed in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original and all such counterparts shall be construed together and shall constitute one agreement. The parties agree to the use of digital signatures.

| Agreement | | | |
|---|--|---|--|
| Duly authorised for and on behalf of Supplier | | Duly authorised for and on behalf of Customer | |
| Signed | | Signed | |
| Name | | Name | |
| Title | | Title | |
| Date | | Date | |

SOFTWARE AG GLOBAL CONSULTING TERMS AND CONDITIONS

1 DEFINITIONS

1.1 **Definitions:** Unless the context requires otherwise the following words and expressions shall bear the meanings set out below where used in this Agreement:

| | |
|----------------------------------|--|
| “Acceptance Criteria” | means the acceptance criteria in respect of any Work or Deliverables as described in a Statement of Work, Proposal or other agreement of which these terms and conditions form a part. |
| “Consultants” | means the consultants to be deployed by Supplier referred to in a Statement of Work, Proposal or other agreement of which these terms and conditions form part. |
| “Customer Obligations” | means obligations or responsibilities required to be met or fulfilled by the Customer as detailed in this Agreement. |
| “Delivery Date” | means the date specified in the relevant Statement of Work, Proposal or other agreement of which these terms and conditions form part by which Supplier will use reasonable endeavours to deliver the relevant Deliverables. |
| “Deliverables” | means any documentation, software programs or code provided to the Customer as part of the Work described in a Statement of Work, Proposal or other agreement of which these terms and conditions form part. |
| “Non-Solicitation Period” | means the duration of the provision of the Services and the period of one year thereafter. |
| “Period” | means the period of time during which the Work will be provided as set out in a Statement of Work, Proposal or other agreement of which these terms and conditions form part. |
| “Proposal” | means any proposal from Supplier to the Customer in connection with the provision of Work and/or Deliverables and which incorporates these terms and conditions either expressly or by reference. |
| “Services” | means any consultancy and/or support services provided by Supplier to Customer pursuant to this Agreement. |
| “Specification” | means the specification for and description of the Work and/or the Deliverables as set out in a Statement of Work, Proposal of the agreement of which these terms and conditions form a part. |
| “Statement of Work” | means any statement of work agreed between the parties in connection with the provision of Work/or Deliverables and which incorporates these terms and conditions either expressly or by reference. |
| “Work” | means the work described in any Statement of Work, Proposal or other agreement of which these terms and conditions form part. |

2 DEVIATING OR CONFLICTING TERMS AND CONDITIONS

2.1 **Deviating Customer Terms and Conditions:** Any general terms and conditions of business

which the Customer may use shall be inapplicable to the relationship between Supplier and the Customer, even if Supplier did not expressly object to them. By accepting Supplier's services, the Customer is deemed to acknowledge these terms and conditions and to waive application of any other general terms and conditions which conflict with them. General terms and conditions used by the Customer shall be deemed binding upon the contracting parties only if Supplier has accepted them in writing. In such cases, these terms and conditions shall also apply as a supplement.

- 2.2 **Conflicting Terms and Conditions**: If any term in the Statement of Work, Proposal or other agreement of which these terms and conditions form part including any appendix thereof, conflicts with these terms and conditions, these terms and conditions shall supersede and govern unless otherwise specifically agreed in the Statement of Work, Proposal or other agreement of which these terms and conditions form part.

3 PERFORMANCE OF SERVICES

- 3.1 **Performance of Services**: Supplier will provide the Work to be performed by the Consultants during the Period, including delivering any Deliverables by the Delivery Date, as defined in the Statement of Work, Proposal or other agreement. Supplier shall render the Work in accordance with the principles of proper professional practice and taking account of the relevant, acknowledged state of the art and technology applicable at the time the respective agreement is made. Supplier shall perform the Work in accordance with the subject matter of the respective Statement of Work, Proposal or other agreement during regular working hours, either remotely or in person at the Customer's business or the agreed location.
- 3.2 **Exchange of Consultants**: In the event that any of the Consultant(s) become unavailable for an extended period, Supplier will replace such Consultant(s) with personnel having equivalent skills and experience and Supplier shall, where possible, provide a period of over-lap of outgoing and incoming Consultants at no additional charge as deemed reasonably necessary by both parties to assure uninterrupted services and timely delivery.

4 SUB-CONTRACTORS

- 4.1 **Subcontractors**: Supplier is entitled to have a third party perform all or some of the Work covered by this Agreement. In the event a third party is engaged to do so, Supplier, as the contractual counterparty, hereby warrants proper performance of its contractual obligations to the Customer, and the Customer shall accept the Work rendered by the third party as services of Supplier.

5 CUSTOMER'S OBLIGATIONS

- 5.1 **Customer's Obligations**: The Customer will at its own cost promptly provide such information, materials and facilities as Supplier or the Consultant(s) shall reasonably require to enable Supplier to perform its obligations under these terms and conditions and, in particular, shall be responsible for the fulfilment of the Customer Obligations (if any) as a condition precedent to the proper performance by Supplier of its obligations hereunder.

6 REMUNERATION

- 6.1 **Remuneration**: Customer will pay the Services Fees set out in this Agreement. All Services

provided by Supplier will be invoiced as set out in the Statement of Work, Proposal or other agreement of which these terms and conditions form part.

6.2 **Taxes:** All payments under this Agreement shall be made without recoupment or set-off and are exclusive of taxes and duties. Customer agrees to bear and be responsible for the payment of all taxes and duties including, but not limited to, all sales, use, rental, receipt, personal property and other taxes (but excluding taxes based upon Supplier's income), which may be levied or assessed in connection with this Agreement.

6.3 **Interest:** If any payment due under this Agreement is not paid in accordance with the terms of this Agreement, then interest shall be payable and recoverable as a debt on all outstanding amounts at the rate of 1½% per month (or part thereof), accruing daily from the date upon which the payment becomes due (both before and after judgment) together with all costs of collection including reasonable legal costs.

6.4 **Commitment:** Supplier will deliver the Deliverables to the Customer.

7 TRAVEL EXPENSES

7.1 **Travel Expenses:** Travel expenses will be charged as set out in the Statement of Work, Proposal or other agreement of which these terms and conditions form part.

7.2 **Expenses Rates:** The following rates shall apply in respect of the following expenses:

| Expenses | Amount [GBP] |
|---|------------------------|
| per Consulting Day | Country specific rates |
| Mileage allowance company and private cars (per km) | 0.45 |
| Rental car (plus fuel) | Actual expense |
| Train (2nd class) | Actual expense |
| Flight (Business Class for international flights above 3 hours) | Actual expense |
| Hotel | Actual expense |
| Miscellaneous (toll, taxi, parking fee, bus etc.) | Actual expense |

8 RIGHTS OF USE

8.1 **Rights of Use:** Supplier grants the Customer the non-exclusive, perpetual, irrevocable and non-assignable right to use the Deliverables for its own internal purposes and that of its affiliates. Any other uses require the express written consent of the Supplier. If and to the extent that new (co-)copyrights or other new intellectual property rights to the Deliverables are created, then all rights to exploit, publish, edit and reproduce shall inure to Supplier in accordance with this section.

8.2 **Supplier's Rights of Use:** Nothing in any Statement of Work, Proposal or other agreement of which these terms and conditions form part shall prevent Supplier or the Consultants at any time hereafter from using data processing techniques, software programming or development techniques, tools, ideas and know-how which existed prior to any Statement of Work, Proposal or

other agreement of which these terms and conditions form part or was gained during the performance of the Services, in the furtherance of Supplier's normal business.

- 8.3 **No Rights of Use regarding Standard Software Products:** Nothing in any Statement of Work, Proposal or other agreement of which these terms and conditions form part shall be construed in any way to grant the Customer a right to use in any of Supplier's standard software products. Such licences to Supplier's standard software products shall at all times be subject to a separate software licence and maintenance agreement between Supplier and Customer.

9 ACCEPTANCE

- 9.1 **Acceptance:** Upon delivery of the Deliverables by Supplier, the Deliverables shall be tested by the Customer against the Acceptance Criteria to verify their operation in accordance with the Specification.
- 9.2 **Failure to meet Acceptance Criteria:** The Customer shall notify Supplier immediately that it becomes aware following commencement of the acceptance testing of all errors or omissions in any Deliverables which result in failure to meet the Acceptance Criteria and Supplier shall be given the opportunity to correct the errors or omissions and to resubmit the Deliverables (or that relevant part thereof) for further testing.
- 9.3 **Deemed Acceptance:** Acceptance of the Deliverables shall occur on whichever is the earliest of:
- (a) Delivery (for Deliverables with no agreed Acceptance Criteria);
 - (b) Rectification by Supplier to the Customer's reasonable satisfaction of all material errors and omissions agreed by Supplier to be due to its default or deficiency which result in the Deliverables not meeting the Acceptance Criteria; and
 - (c) Operational use of the Deliverables by the Customer for any purposes other than acceptance testing or training; and
 - (d) 60 days from the date of delivery of the Deliverables.

10 CHANGE REQUESTS

- 10.1 **Change Requests:** During the Period, events may occur which require a change to the nature and/or scope of the Work, Deliverables, the Period or Delivery Dates. No change shall be implemented unless the Parties agree on such change and comply with the terms of this clause. Either Party may propose a change to the nature and scope of the Work, Deliverables, the Period or Delivery Dates by sending a Scope Change Document to the other Party detailing the desired changes.
- 10.2 **Scope Change Document:** Should a Scope Change Document be made by:
- (a) the Customer, then the Customer shall specify the reasons for that change and describe the change in sufficient detail to enable Supplier to formulate a response. Supplier shall investigate the likely impact of any proposed changes on the provision of the Work, Deliverables, the Period or Delivery Dates and shall provide the Customer with a scope change proposal, including amended pricing and time frames;
 - (b) Supplier, then Supplier shall detail in a scope change proposal the reasons for and impact of the change, the services required to implement the change and the effect that the changes, if implemented, will have on the relevant Work, Deliverables, the Period or Delivery Dates, including amended pricing and time frames.
- 10.3 **Discussions:** The Parties shall discuss the proposed changes and shall effect the amendments

to any relevant scope change proposal as may be agreed. The scope change proposal shall then be considered by the Customer and approved or rejected in its discretion in writing within 3 (three) Business Days. If a scope change proposal:

- (a) is accepted by the Customer, the scope change proposal shall be signed off by duly authorized representatives of the Parties and incorporated into the relevant Statement of Work, Proposal or other agreement of which these terms and conditions form part;
- (b) is rejected by the Customer, the Work, Deliverables, the Period or Delivery Dates shall remain on the existing terms.

- 10.4 **Sign Off:** Neither Supplier nor the Customer shall be entitled to proceed with or require the implementation of any change to Work, Deliverables, the Period or Delivery Dates until the change and all matters relating to the change have been agreed in writing between the Parties. Pending sign-off, the Parties will continue to perform their obligations without taking account of the proposed changes. Neither Party shall be obliged to agree to any change proposed by the other Party but the Parties will not unreasonably delay or withhold their agreement to a proposed change. It is expressly recorded that amendments to the content of these terms and conditions which do not directly impact the nature and scope of the Work, Deliverables, the Period or Delivery Dates shall not be subject to this change control process, but shall be executed in writing on the basis set out below in these terms and conditions.

11 CONFIDENTIALITY

- 11.1 **Confidential Information:** The parties acknowledge that each party will have access to intellectual property or other confidential information of the other party or third parties in respect of which the disclosing party has a duty of confidentiality ("**Confidential Information**"). Both parties agree that Confidential Information disclosed is proprietary and shall remain the sole property of the disclosing party or such third party.

- 11.2 **Confidentiality:** Each Party agrees:
- (a) to use Confidential Information only for the purposes described herein; and
 - (b) not to reproduce Confidential Information and to hold it in confidence and protect it from dissemination to, and use by, any third party; and
 - (c) not to create any derivative work from Confidential Information; and
 - (d) to restrict access to the Confidential Information to its personnel, agents, sub-contractors and/or consultants, who need to have access to such Confidential Information and who have been advised of and have agreed in writing to treat such Confidential Information in accordance with this Agreement; and
 - (e) to return or, at the disclosing party's discretion, destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

- 11.3 **Exclusions:** The restrictions shall not apply to Confidential Information that:
- (a) is publicly available or in the public domain at the time disclosed;
 - (b) is or becomes publicly available or enters the public domain through no fault of the recipient;
 - (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto;
 - (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure;

- (e) is independently developed by the recipient; or
 - (f) is approved for release or disclosure by the disclosing Party without restriction.
- 11.4 **Compliance with law permitted**: Each Party may disclose Confidential Information to the limited extent required to comply with the order of a court or other governmental body or applicable law, including to make such court filings as it may be required to do, provided that it gives reasonable notice of the demand to allow the other Party to seek a protective order or other appropriate remedy (unless is legally prohibited from doing so).
- 11.5 **Relief**: Customer acknowledges that Customer's failure to comply with the provisions of this Clause shall result in irreparable harm to Supplier for which a remedy at law would be inadequate, and therefore, in the event of the breach or threatened breach by Customer of its obligations under this Clause, Supplier shall be entitled to seek equitable relief in the form of specific performance and/or an injunction for any such actual or threatened breach, in addition to the exercise of any other remedies at law and in equity.

12 NON-SOLICITATION

- 12.1 **Non-solicitation**: Supplier and Customer hereby undertake with each other that they will not, for the duration of the Non-Solicitation Period, employ or take under contract:
- (a) any employee or former employee of the other party; or
 - (b) any agent or independent contractor working for the other party or who previously worked for the other party;
- where such employee, agent or independent contractor is or has been at any time concerned with or directly involved in any work delivered under this Agreement.

13 WARRANTIES

- 13.1 **Supplier Warranties**: The Supplier warrants that:
- (a) it will carry out the Work with reasonable care and skill using suitably qualified Consultant(s), exercising the requisite competence, diligence, qualifications and expertise and, save where other-wise agreed with the Customer, will carry out the Work in accordance with Supplier's then current internal quality management system(s).
 - (b) the Works will be free from defects, i.e. in particular will conform to the descriptions contained in the Statement of Work, Purchase Order or other agreement
 - (c) it will use all reasonable endeavours to deliver all Deliverables by the Delivery Dates provided al-ways that Supplier shall not be liable for any failure to provide any of the Deliverables by the Delivery Dates to the extent that any such failure is due to any failure by the Customer to provide the Customer's Assistance or otherwise to fulfil its obligations under the Statement of Work, Proposal or other agreement of which these terms and conditions form part. The Delivery Dates shall be extended by a period equal to the extent of any delay so caused.
 - (d) Supplier's sole obligation for failure to meet this warranty will be as follows: For failure to perform any Work substantially in accordance with any Statement of Work, Proposal or other agreement, Supplier will attempt to correct any such failure for individual Works which was not performed as warranted. If Supplier does not restore the affected Work to warranted performance within a reasonable time, Customer may terminate the affected Work and Supplier will refund any charges paid for the affected Work.

The Customer hereby expressly agrees and acknowledges that the warranties and undertakings given in these terms and conditions are the only warranties and undertakings given by Supplier and that all other conditions, terms, undertakings and warranties express or implied, statutory or otherwise (including but not limited to those as to quality, performance, suitability and fitness for purpose) are hereby excluded.

14 LIMITATION OF LIABILITY

- 14.1 **Limitation of Liability:** IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, ECONOMIC OR CONSEQUENTIAL LOSS OR DAMAGES IN CONNECTION WITH ANY CLAIM THAT ARISES FROM OR RELATES IN ANY WAY TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION ALLEGED, EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY OF ANY KIND. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS CLAUSE ARE INDEPENDENT OF EACH EXCLUSIVE OR LIMITED REMEDY SET FORTH IN THIS AGREEMENT. EXCEPT IN THE EVENT OF DEATH OR PERSONAL INJURY OF A PERSON NEGLIGENTLY CAUSED BY SUPPLIER, IN NO EVENT SHALL THE LIABILITY OF SUPPLIER UNDER THIS AGREEMENT EXCEED THE AMOUNT OF THE FEES PAID TO SUPPLIER BY CUSTOMER HEREUNDER FOR THE SERVICES TO WHICH CUSTOMER'S CLAIM RELATES. CUSTOMER ACKNOWLEDGES THAT THE LIMITATIONS SET OUT IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT SUPPLIER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT.

15 IPR INDEMNITY

- 15.1 **IPR Indemnity:** Supplier shall indemnify, defend, and hold Customer harmless from any action brought by a third-party against Customer to the extent that it is caused by an allegation that the possession or use of the Service Results or any part of the Service Results by the Customer has infringed an intellectual property right or trade secret, and pay those damages or costs related to the settlement of such action or finally awarded against Customer in such action, including but not limited to reasonable attorneys' fees, provided that Customer:
- (a) gives written notice to Supplier of any such infringement not later than five days after becoming aware of the same; and
 - (b) gives Supplier full authority, information, and assistance to defend such claim; and
 - (c) gives Supplier sole control of the defense of such claim and all negotiations for the compromise or settlement of such claim.
- 15.2 **Exclusions:** Supplier shall have no liability under this Agreement with respect to any claim based upon:
- (a) Service Results or any part of the Service Results which have been modified by anyone other than Supplier;
 - (b) use of the Service Results or any part of the Service Results in conjunction with Customer data where use with such data gave rise to the infringement claim.
 - (c) use of the Service Results with software or hardware, where use with such other software

or hardware gave rise to the infringement claim.

- 15.3 **Remedy by Supplier:** If Supplier determines that the Service Results or any part of the Service Results are or are likely to be the subject of a claim of infringement, Supplier shall have the right:
- (a) to replace Customer's Service Results or any part of the Service Results with non-infringing Service Results that have substantially equivalent functionality;
 - (b) to modify the Service Results or any part of the Service Results so as to cause the Service Results or any part of the Service Results to be free of infringement;
 - (c) to procure, at no additional cost to Customer, the right to continue to use the Service Results or any part of the Service Results; or
 - (d) to terminate the Customer's right to use the Service Results or any part of the Service Results, and refund to Customer the applicable fees.

- 15.4 **Exclusive remedy:** THE PROVISIONS OF THIS CLAUSE STATE THE EXCLUSIVE LIABILITY OF THE SUPPLIER AND THE EXCLUSIVE REMEDY OF THE CUSTOMER WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY OR TRADE SECRET MISAPPROPRIATION OR INFRINGEMENT BY THE SERVICE RESULTS, ANY PART THEREOF, AND ANY MATERIAL OR SERVICES PROVIDED HEREUNDER, AND ARE IN LIEU OF ALL OTHER REMEDIES, LIABILITIES, AND OBLIGATIONS.

- 15.5 **IPR Indemnity by Customer:** Customer will indemnify and hold the Supplier harmless against all claims, costs, damages and expenses that may be awarded or agreed to be paid to any third party in respect of any and all claims or actions that the possession or use of any materials provided by Customer to Supplier in connection with the delivery of the Services or any part thereof by the Supplier infringes any patent, copyright, registered design, or other intellectual property right of said third party ("**Intellectual Property Infringement by Supplier**") provided that the Supplier:

- (a) gives written notice to Customer of any such infringement not later than five days after becoming aware of the same;
- (b) gives to Customer the sole conduct of the defence of any claim or action in respect of an Intellectual Property Infringement by the Supplier and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express written instructions of Customer;
- (c) acts in accordance with the reasonable instructions of Customer at the sole cost and expense of Customer and gives Customer such assistance as it shall reasonably require in respect of the conduct of the said defence.

The Supplier shall not be entitled to recover any costs and expenses (including legal costs) incurred in defending any claim unless such costs and expenses have been expressly authorized in advance by Customer in writing. Where any Intellectual Property Infringement by the Supplier is admitted or determined to exist or upon being notified of any alleged such infringement, Customer at its option may substitute the infringing materials for substantially equivalent materials; or require the Supplier to return the materials to Customer when Supplier shall be released from any obligation to provide Services which are reliant upon the availability of such materials. Upon such substitution or return, if any, neither party shall have any further obligations to the other (without prejudice to previous breaches on either side) in respect of the Services or otherwise.

- 15.6 **Export restrictions/compliance with legal obligations:** The Customer shall comply with all

national and international laws and regulations on export control applicable to the contractual services on his own responsibility. The Customer shall defend the Supplier against and indemnify the Supplier against any liability arising from any breach of this clause by the Customer. The Supplier reserves the right not to perform affected portions of the Contract or the entire Contract if national or international export regulations or foreign trade laws, or other restrictions for the recipient country, e.g. due to embargoes or other sanctions, prohibit the provision of services, materials and documents (hereinafter "**Goods**") subject to export control and provided to the Customer under this Contract. Supplier will inform the Customer whether a related official export approval by national or international export control authorities is required for the provision of the agreed goods by the Supplier. Provision of affected goods will then be postponed until all such required approvals have been granted. The provision of agreed goods not restricted by the above mentioned export prohibitions will remain unaffected by this clause.

16 TERM AND TERMINATION

16.1 **Term and Termination:** The Statement of Work, Proposal or other agreement of which these terms and conditions form part shall terminate upon completion of the delivery of the Deliverables, unless otherwise specified in the relevant Statement of Work, Proposal or other agreement.

16.2 **Breach:** If the Customer shall fail to comply with any of the provisions of the Clause Confidentiality or shall become insolvent or enter into liquidation whether voluntary or compulsory (save for the purposes of reconstruction or amalgamation) or commit any act of bankruptcy or make any arrangement or composition with its creditors or have a trustee, receiver or administrator or similar officer appointed over all or any part of its assets, then Supplier may at its option terminate this Agreement forthwith by notice in writing. If Customer shall fail to comply with any of the provisions of this Agreement then Supplier may at its option serve notice in writing on Customer specifying the breach and requiring the same to be remedied. If Customer fails to remedy the same within 30 days of receipt of the notice then Supplier may at its option either:

- (a) terminate this Agreement forthwith by notice in writing; or
- (b) suspend performance of the Services to which the breach relates (or, where the breach does not relate to any particular Services), suspend performance of all Services under this Agreement until such time as the specified breach has been remedied.

Rights granted to Supplier under this Clause shall be in addition to any other remedies which may exist in law or equity.

17 GENERAL

17.1 **No Joint Venture:** By entering into and performing any obligations under this Agreement, Supplier and the Customer each have and will have the status of independent contractors, and nothing herein will contemplate or constitute Supplier as the Customer's joint venturer, partner, agent or employee or the Customer as Supplier's joint venturer, partner, agent or employee.

17.2 **Anti-Corruption:** The parties recognize and agree that they will comply with laws, regulations, rules and requirements against bribery, money laundering, and anti-corruption including but not limited to the Bribery Act 2010 and they have in place and will maintain policies and procedures in order to ensure compliance with such laws, regulations, rules and requirements. Non-compliance with the provisions of this clause shall grant to the affected party the right to

- terminate the Agreement immediately with notice.
- 17.3 **Force Majeure:** If the performance of this Agreement or any obligation under this Agreement, except for the making of payments, is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other Act of God or casualty or accident, or strikes or labour disputes affecting third-party vendors, inability to procure or obtain delivery of parts, supplies or power, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirements of any governmental agency, denial of service attacks, cybercrimes or malware caused by a third party, failure of utilities or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected will take all reasonable steps to avoid or remove such cause of non-performance and will resume performance hereunder with dispatch whenever such causes are removed.
- 17.4 **Assignment:** The Customer shall not assign, sub-license, sell, lease, encumber, charge or otherwise in any manner attempt to transfer this Agreement or any of its rights or obligations hereunder. Any purported transfer of this Agreement by the Customer in violation of this Clause shall be null and void. The Supplier shall be entitled to transfer this Agreement within the group of companies of which the Supplier is a member as well as to any third party in connection with the assignment to any such third party of the right of the Supplier to receive any sums payable by the Customer to it hereunder.
- 17.5 **Dispute Resolution:** The Parties shall attempt to resolve any dispute arising under this Agreement through the informal means described in this Clause. Each Party shall appoint a senior management representative who does not devote substantially all of his or her time to performance under this Agreement. In the event of any dispute between the parties arising out of or in connection with a specific Statement of Work or Proposal that involves assigned project managers, the project managers of each party shall meet within fourteen (14) days of receipt of a written notice from either party to the other, in an effort to resolve the dispute. If the project managers fail to resolve a dispute then the matter will be escalated to the authorized representatives who shall meet within seven (7) days of the meeting between the project managers, in an effort to resolve the dispute. The representatives shall negotiate in good faith to resolve the dispute without the need for any formal proceeding. Formal proceedings for the resolution of the dispute may not be commenced until the earlier of (i) the designated representatives mutually conclude that resolution through negotiation does not appear likely; or (ii) thirty (30) calendar days have passed since the initial request to negotiate the dispute was made; provided, however, that a Party may file for formal proceedings earlier solely to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for interim or equitable relief.
- 17.6 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties shall submit to the non-exclusive jurisdiction and procedure of the Courts of England.
- 17.7 **Prevailing Party:** In the event a dispute arising under this Agreement results in litigation, the non-prevailing party shall pay the court costs and reasonable attorneys' fees of the prevailing party.
- 17.8 **Non-waiver:** No waiver or retraction of a waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom such waiver is sought. The failure of either Party to exercise any right granted herein, or to require the performance by

the other Party hereto of any provision in this Agreement, or the waiver by either party of any breach of this Agreement, will not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach of the same or any other provision of this Agreement.

17.9 **Notices:** All notices, demands, or other communications by any party to the other shall be deemed to have been duly given when:

- (a) made in writing and delivered in person with signed receipt, or
- (b) sent via a nationally recognized, traceable, overnight delivery carrier, to the address detailed above, or to such address as the parties may provide to each other in writing from time to time.

Notice will be effective upon delivery.

17.10 **Amendments in writing:** No variation of this Agreement shall be binding unless it is agreed in writing and signed on behalf of both parties by a duly authorized representative. No variation or omission from or addition to any of the terms and conditions of this Agreement whether written or oral shall be binding upon Supplier unless expressly accepted in writing by Supplier.

17.11 **Severability:** If any Clause (or part of any Clause) of this Agreement is determined by a court of competent jurisdiction to be or becomes illegal, unenforceable or in conflict with any law governing this Agreement, such clause shall be adjusted to the minimum extent necessary (most closely reflecting the legal and economic intent of the parties) to cure such unenforceability, illegality or conflict and the remainder of this Agreement (and the remainder of the relevant Clause) shall remain in effect in accordance with its terms as modified by such adjustment.

17.12 **Entire Agreement:** This Agreement as may be amended from time to time constitutes the entire agreement between the parties and supersedes all previous communications, non-fraudulent representations or prior and contemporaneous agreements (written or oral) between the parties with respect to the subject matter hereof.

17.13 **Withholding counter-performance:** Customer may only enforce its rights to withhold counter-performance if the counterclaims upon which the withholding is based relate to the same contractual relationship and are undisputed, mutually settled or have been finally awarded by a competent court of jurisdiction.

17.14 **Contracts (Rights of Third Parties) Act 1999:** Save to the extent expressly granted hereunder, this Agreement does not create any right enforceable by any person who is not a party to it ("Third Party") under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a Third Party which exists or is available apart from that Act.

17.15 **Project Report:** Supplier will create an internal project report after the implementation of its products. Any use of this report other than for internal purposes of Supplier requires a separate written approval by Customer. Customer agrees to provide input to this report e.g. by being available for a 30 minute telephone interview.

ORDER FORM FOR SERVICES

The Supplier has agreed to provide the Services referred to below in this Order Form for Services (hereinafter also referred to as “**Agreement**”) which will be supplied on the terms and subject to the conditions set out in the Global Consulting Services Terms and Conditions which are attached to and form part of this Agreement.

| Parties | | |
|--------------------------|--|-----------------------------------|
| between | Software AG (UK) Limited (“ the Supplier ”) | G Cloud (“ the Customer ”) |
| Reg. No. | 1310740 | x |
| Registered office | Pride Park, Locomotive Way, DERBY, Derbyshire DE24 8PU, UNITED KINGDOM | x |

| Contact Details | |
|--|-------------------|
| Contact Person | x |
| Contact E-mail Address | x |
| Supplier Contact | x |
| Supplier Contact e-mail address | x |

| Services Details | |
|----------------------------|---|
| Service Description | Consultancy Services in connection with the use or deployment of Supplier software products |
| Commitment | Approximately 1.00 Consulting Day(s) |
| Period | 12 months from the Effective Date |
| Service Location | TBC |
| Consultant(s) | As determined by Supplier |

| Payment and Invoicing Terms | |
|-----------------------------|--|
| Services Fees | GBP 123 per Consulting Day (excluding VAT) |
| Payment Terms | 30 days from the date of invoice |
| Invoice Terms | Monthly in arrears as delivered |
| Expenses | Travel costs, expenses and costs for accommodation will be charged as incurred based on the Supplier’s expense policy set out in the clause “Travel Expenses” of this Agreement. |

| | |
|-------------------------------|--|
| Billing of Travel Time | Travel times will be billed to the Customer with % of the Services Fee (excluding VAT) set out above. |
| Binding Period | Supplier shall be bound to this offer until 30 April 2019. Order confirmations which Supplier receives after this date shall be considered as being a new offer requiring Supplier acceptance. |

Effective Date

The last date of signing by duly authorised representatives of all of the parties.

The parties have shown their acceptance of the terms of this Agreement by signing it below. This Agreement shall come into force and effect upon the Effective Date referred to above. This document may be executed in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original and all such counterparts shall be construed together and shall constitute one agreement. The parties agree to the use of digital signatures.

Agreement

| Duly authorised for and on behalf of Supplier | | Duly authorised for and on behalf of Customer | |
|---|--|---|--|
| Signed | | Signed | |
| Name | | Name | |
| Title | | Title | |
| Date | | Date | |

SOFTWARE AG GLOBAL CONSULTING TERMS AND CONDITIONS

1 DEFINITIONS

1.1 **Definitions:** Unless the context requires otherwise the following words and expressions shall bear the meanings set out below where used in this Agreement:

| | |
|----------------------------------|---|
| “Business Day” | means any normal working day on which the banks are open for business in the country in which the Services are delivered. |
| “Commitment” | means the number of consulting days identified in this Agreement or a Statement of Work, Proposal or other agreement of which these terms and conditions form part. |
| “Consultants” | means the consultants to be deployed by Supplier referred to in a Statement of Work, Proposal or other agreement of which these terms and conditions form part. |
| “Customer Obligations” | means obligations or responsibilities required to be met or fulfilled by the Customer as detailed in this Agreement. |
| “Consulting Day” | means 7½ working hours within the hours of 9am to 5.30pm on a Business Day. |
| “Non-Solicitation Period” | means the duration of the provision of the Services and the period of one year thereafter. |
| “Period” | means the period of time during which the Commitment is to be provided identified (if any) in any Statement of Work, Proposal or other agreement of which these terms and conditions form a part. |
| “Proposal” | means any proposal from Supplier to the Customer in connection with the provision of Services and which incorporates these terms and conditions either expressly or by reference. |
| “Services” | means any consultancy and/or support services provided by Supplier to Customer pursuant to this Agreement. |
| “Service Results” | means tangible results or service deliverables which are generated during the course of the Services. |
| “Statement of Work” | means any statement of work agreed between the parties in connection with the provision of Services and which incorporates these terms and conditions either expressly or by reference. |

2 DEVIATING OR CONFLICTING TERMS AND CONDITIONS

2.1 **Deviating Customer Terms and Conditions:** Any general terms and conditions of business which the Customer may use shall be inapplicable to the relationship between Supplier and the Customer, even if Supplier did not expressly object to them. By accepting Supplier's services, the Customer is deemed to acknowledge these terms and conditions and to waive application of any other general terms and conditions which conflict with them. General terms and conditions used by the Customer shall be deemed binding upon the contracting parties only if Supplier has accepted them in writing. In such cases, these terms and conditions shall also apply as a supplement.

- 2.2 **Conflicting Terms and Conditions:** If any term in the Statement of Work, Proposal or other agreement of which these terms and conditions form part including any appendix thereof, conflicts with these terms and conditions, these terms and conditions shall supersede and govern unless otherwise specifically agreed in the Statement of Work, Proposal or other agreement of which these terms and conditions form part.

3 PERFORMANCE OF SERVICES

- 3.1 **Performance of Services:** Supplier will provide the Services of the Consultants as defined in the Statement of Work, Proposal or other agreement to perform during the Period. Supplier's Services shall be limited to consulting and support and Supplier shall not be obliged to provide more than the Commitment under the relevant Statement of Work, Proposal or other agreement. All consulting services will be delivered solely on the basis of a time and material engagement. The only deliverables under the relevant Statement of Work, Proposal or other agreement are the number of days comprised within the Commitment. Hence the Parties explicitly agree that no legal provision regarding contracts for work and labor - in particular acceptance and warranty provisions - shall apply to any performance rendered under this contract. To the extent that the term "Project" is used in the relevant Statement of Work, Proposal or other agreement it does not intend to describe a defined deliverable to be provided by the Supplier.
- 3.2 **Work Schedules:** Work schedules are coordinated and agreed between Customer and Supplier in written form. Customer and Supplier jointly decide on the task assignment for the Consultant deployed. Customer bears the overall responsibility for the project management and the achievement of the project objectives. Supplier will support the Customer in this regard and according to the Customer's instructions.
- 3.3 **Exchange of Consultants:** In the event that any of the Consultant(s) become unavailable for an extended period, Supplier will replace such Consultant(s) with personnel having equivalent skills and experience and Supplier shall, where possible, provide a period of over-lap of outgoing and incoming Consultants at no additional charge as deemed reasonably necessary by both parties to assure uninterrupted services and timely delivery.

4 SUB-CONTRACTORS

- 4.1 **Sub-contractors:** Supplier is entitled to have a third party perform all or some of the Services. In the event a third party is engaged to do so, Supplier, as the contractual counterparty, hereby warrants proper performance of its contractual obligations to the Customer and the Customer shall accept the services rendered by the third party as services of Supplier.

5 CUSTOMER'S OBLIGATIONS

- 5.1 **Customer's Obligations:** The Customer will at its own cost promptly provide such information, materials and facilities as Supplier or the Consultant(s) shall reasonably require to enable Supplier to perform its obligations under these terms and conditions and, in particular, shall be responsible for the fulfilment of the Customer Obligations (if any) as a condition precedent to the proper performance by Supplier of its obligations hereunder.

6 REMUNERATION

- 6.1 **Remuneration:** Customer will pay the Services Fees set out in this Agreement. All Services

provided by Supplier will be invoiced as set out in the Statement of Work, Proposal or other agreement of which these terms and conditions form part. For short-term assignments at least half a Man Day will be charged. Any additional hours will be charged on a pro-rata temporis basis. For non-pre-announced system failure or waiting periods e.g. short notice for cancelled appointments the Man Day rate set out in the Order Form for Services will be charged per scheduled Consultant.

- 6.2 **Taxes:** All payments under this Agreement shall be made without recoupment or set-off and are exclusive of taxes and duties. Customer agrees to bear and be responsible for the payment of all taxes and duties including, but not limited to, all sales, use, rental, receipt, personal property and other taxes (but excluding taxes based upon Supplier's income), which may be levied or assessed in connection with this Agreement.
- 6.3 **Interest:** If any payment due under this Agreement is not paid in accordance with the terms of this Agreement, then interest shall be payable and recoverable as a debt on all outstanding amounts at the rate of 1½% per month (or part thereof), accruing daily from the date upon which the payment becomes due (both before and after judgment) together with all costs of collection including reasonable legal costs.
- 6.4 **Commitment:** Only Consulting Day(s) delivered during the Period will be invoiced to the Customer – there shall be no further obligation on either party in respect of any Consulting Day(s) which are not delivered during the Period.

7 TRAVEL EXPENSES

- 7.1 **Travel Expenses:** Travel expenses will be charged as set out in the Statement of Work, Proposal or other agreement of which these terms and conditions form part.
- 7.2 **Expenses Rates:** The following rates shall apply in respect of the following expenses:

| Expenses | Amount [GBP] |
|---|------------------------|
| per Consulting Day | Country specific rates |
| Mileage allowance company and private cars (per km) | 0.45 |
| Rental car (plus fuel) | Actual expense |
| Train (2nd class) | Actual expense |
| Flight (Business Class for international flights above 3 hours) | Actual expense |
| Hotel | Actual expense |
| Miscellaneous (toll, taxi, parking fee, bus etc.) | Actual expense |

8 RIGHTS OF USE

- 8.1 **Rights of Use:** Supplier grants the Customer the non-exclusive, perpetual, irrevocable and non-assignable right to use the Service Results, if any, for its own internal purposes. Any other uses require the express written consent of the Supplier. If and to the extent that new (co-)copyrights or other new intellectual property rights to the Services Results are created, then all rights to

exploit, publish, edit and reproduce shall inure to Supplier in accordance with this section.

8.2 **Supplier's Rights of Use**: Nothing in any Statement of Work, Proposal or other agreement of which these terms and conditions form part shall prevent Supplier or the Consultants at any time hereafter from using data processing techniques, software programming or development techniques, tools, ideas and know-how which existed prior to any Statement of Work, Proposal or other agreement of which these terms and conditions form part or was gained during the performance of the Services, in the furtherance of Supplier's normal business.

8.3 **No Rights of Use regarding Standard Software Products**: Nothing in any Statement of Work, Proposal or other agreement of which these terms and conditions form part shall be construed in any way to grant the Customer a right to use in any of Supplier's standard software products. Such licences to Supplier's standard software products shall at all times be subject to a separate software licence and maintenance agreement between Supplier and Customer.

9 CONFIDENTIALITY

9.1 **Confidential Information**: The parties acknowledge that each party will have access to intellectual property or other confidential information of the other party or third parties in respect of which the disclosing party has a duty of confidentiality ("**Confidential Information**"). Both parties agree that Confidential Information disclosed is proprietary and shall remain the sole property of the disclosing party or such third party.

9.2 **Confidentiality**: Each Party agrees:

- (a) to use Confidential Information only for the purposes described herein; and
- (b) not to reproduce Confidential Information and to hold it in confidence and protect it from dissemination to, and use by, any third party; and
- (c) not to create any derivative work from Confidential Information; and
- (d) to restrict access to the Confidential Information to its personnel, agents, sub-contractors and/or consultants, who need to have access to such Confidential Information and who have been advised of and have agreed in writing to treat such Confidential Information in accordance with this Agreement; and
- (e) to return or, at the disclosing party's discretion, destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

9.3 **Exclusions**: The restrictions shall not apply to Confidential Information that:

- (a) is publicly available or in the public domain at the time disclosed;
- (b) is or becomes publicly available or enters the public domain through no fault of the recipient;
- (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto;
- (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure;
- (e) is independently developed by the recipient; or
- (f) is approved for release or disclosure by the disclosing Party without restriction.

9.4 **Compliance with law permitted**: Each Party may disclose Confidential Information to the limited extent required to comply with the order of a court or other governmental body or applicable law, including to make such court filings as it may be required to do, provided that it gives reasonable notice of the demand to allow the other Party to seek a protective order or other appropriate

remedy (unless is legally prohibited from doing so).

- 9.5 **Relief:** Customer acknowledges that Customer's failure to comply with the provisions of this Clause shall result in irreparable harm to Supplier for which a remedy at law would be inadequate, and therefore, in the event of the breach or threatened breach by Customer of its obligations under this Clause, Supplier shall be entitled to seek equitable relief in the form of specific performance and/or an injunction for any such actual or threatened breach, in addition to the exercise of any other remedies at law and in equity.

10 NON-SOLICITATION

- 10.1 **Non-solicitation:** Supplier and Customer hereby undertake with each other that they will not, for the duration of the Non-Solicitation Period, employ or take under contract:

- (a) any employee or former employee of the other party; or
- (b) any agent or independent contractor working for the other party or who previously worked for the other party;

where such employee, agent or independent contractor is or has been at any time concerned with or directly involved in any work delivered under this Agreement.

11 WARRANTIES

- 11.1 **Supplier Warranties:** The Supplier warrants that:

- (a) it has the full right and power to enter into and perform this Agreement without the consent of, or any notice to, any third party;
- (b) it will carry out the Services with reasonable care and skill using suitably qualified Consultant(s), exercising the requisite competence, diligence, qualifications and expertise and, save where otherwise agreed with the Customer, will carry out the Services in accordance with Supplier's then current internal quality management system(s).

- 11.2 **Liability for Breach of Warranty:** The liability of Supplier for any breach of warranty (where the same relates to the provision of services) shall be limited, at the option of Supplier to one or more of the following:

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again.

- 11.3 **Exclusions:** Except as expressly stated herein, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

12 LIMITATION OF LIABILITY

- 12.1 **Limitation of Liability:** IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, ECONOMIC OR CONSEQUENTIAL LOSS OR DAMAGES IN CONNECTION WITH ANY CLAIM THAT ARISES FROM OR RELATES IN ANY WAY TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION ALLEGED, EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY OF ANY KIND. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS CLAUSE ARE INDEPENDENT OF EACH EXCLUSIVE OR LIMITED REMEDY SET FORTH IN THIS AGREEMENT. EXCEPT IN THE EVENT OF DEATH OR PERSONAL INJURY OF A PERSON NEGLIGENTLY CAUSED BY SUPPLIER, IN NO

EVENT SHALL THE LIABILITY OF SUPPLIER UNDER THIS AGREEMENT EXCEED THE AMOUNT OF THE FEES PAID TO SUPPLIER BY CUSTOMER HEREUNDER FOR THE SERVICES TO WHICH CUSTOMER'S CLAIM RELATES. CUSTOMER ACKNOWLEDGES THAT THE LIMITATIONS SET OUT IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT SUPPLIER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT.

13 IPR INDEMNITY

- 13.1 **IPR Indemnity:** Supplier shall indemnify, defend, and hold Customer harmless from any action brought by a third-party against Customer to the extent that it is caused by an allegation that the possession or use of the Service Results or any part of the Service Results by the Customer has infringed an intellectual property right or trade secret, and pay those damages or costs related to the settlement of such action or finally awarded against Customer in such action, including but not limited to reasonable attorneys' fees, provided that Customer:
- (a) gives written notice to Supplier of any such infringement not later than five days after becoming aware of the same; and
 - (b) gives Supplier full authority, information, and assistance to defend such claim; and
 - (c) gives Supplier sole control of the defense of such claim and all negotiations for the compromise or settlement of such claim.
- 13.2 **Exclusions:** Supplier shall have no liability under this Agreement with respect to any claim based upon:
- (a) Service Results or any part of the Service Results which have been modified by anyone other than Supplier;
 - (b) use of the Service Results or any part of the Service Results in conjunction with Customer data where use with such data gave rise to the infringement claim.
 - (c) use of the Service Results with software or hardware, where use with such other software or hardware gave rise to the infringement claim.
- 13.3 **Remedy by Supplier:** If Supplier determines that the Service Results or any part of the Service Results are or are likely to be the subject of a claim of infringement, Supplier shall have the right:
- (a) to replace Customer's Service Results or any part of the Service Results with non-infringing Service Results that have substantially equivalent functionality;
 - (b) to modify the Service Results or any part of the Service Results so as to cause the Service Results or any part of the Service Results to be free of infringement;
 - (c) to procure, at no additional cost to Customer, the right to continue to use the Service Results or any part of the Service Results; or
 - (d) to terminate the Customer's right to use the Service Results or any part of the Service Results, and refund to Customer the applicable fees.
- 13.4 **Exclusive remedy:** THE PROVISIONS OF THIS CLAUSE STATE THE EXCLUSIVE LIABILITY OF THE SUPPLIER AND THE EXCLUSIVE REMEDY OF THE CUSTOMER WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY OR TRADE SECRET MISAPPROPRIATION OR INFRINGEMENT BY THE SERVICE RESULTS, ANY PART THEREOF, AND ANY MATERIAL OR SERVICES PROVIDED HEREUNDER, AND ARE IN LIEU OF ALL OTHER REMEDIES, LIABILITIES, AND OBLIGATIONS.

13.5 **IPR Indemnity by Customer:** Customer will indemnify and hold the Supplier harmless against all claims, costs, damages and expenses that may be awarded or agreed to be paid to any third party in respect of any and all claims or actions that the possession or use of any materials provided by Customer to Supplier in connection with the delivery of the Services or any part thereof by the Supplier infringes any patent, copyright, registered design, or other intellectual property right of said third party ("**Intellectual Property Infringement by Supplier**") provided that the Supplier:

- (a) gives written notice to Customer of any such infringement not later than five days after becoming aware of the same;
- (b) gives to Customer the sole conduct of the defence of any claim or action in respect of an Intellectual Property Infringement by the Supplier and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express written instructions of Customer;
- (c) acts in accordance with the reasonable instructions of Customer at the sole cost and expense of Customer and gives Customer such assistance as it shall reasonably require in respect of the conduct of the said defence.

The Supplier shall not be entitled to recover any costs and expenses (including legal costs) incurred in defending any claim unless such costs and expenses have been expressly authorized in advance by Customer in writing. Where any Intellectual Property Infringement by the Supplier is admitted or determined to exist or upon being notified of any alleged such infringement, Customer at its option may substitute the infringing materials for substantially equivalent materials; or require the Supplier to return the materials to Customer when Supplier shall be released from any obligation to provide Services which are reliant upon the availability of such materials. Upon such substitution or return, if any, neither party shall have any further obligations to the other (without prejudice to previous breaches on either side) in respect of the Services or otherwise.

13.6 **Export restrictions/compliance with legal obligations:** The Customer shall comply with all national and international laws and regulations on export control applicable to the contractual services on his own responsibility. The Customer shall defend the Supplier against and indemnify the Supplier against any liability arising from any breach of this clause by the Customer. The Supplier reserves the right not to perform affected portions of the Contract or the entire Contract if national or international export regulations or foreign trade laws, or other restrictions for the recipient country, e.g. due to embargoes or other sanctions, prohibit the provision of services, materials and documents (hereinafter "**Goods**") subject to export control and provided to the Customer under this Contract. Supplier will inform the Customer whether a related official export approval by national or international export control authorities is required for the provision of the agreed goods by the Supplier. Provision of affected goods will then be postponed until all such required approvals have been granted. The provision of agreed goods not restricted by the above mentioned export prohibitions will remain unaffected by this clause.

14 TERM AND TERMINATION

14.1 **Term and Termination:** The Statement of Work, Proposal or other agreement of which these terms and conditions form part shall terminate upon completion of the delivery of the Commitment, or earlier termination under this Clause. Supplier has the option of terminating the

Services at any time upon thirty (30) business days' prior written notice to Customer. Customer will pay Supplier for all Services that are performed by Supplier under the relevant Statement of Work, Proposal or other agreement prior to the effective date of termination.

- 14.2 **Breach:** If the Customer shall fail to comply with any of the provisions of the Clause Confidentiality or shall become insolvent or enter into liquidation whether voluntary or compulsory (save for the purposes of reconstruction or amalgamation) or commit any act of bankruptcy or make any arrangement or composition with its creditors or have a trustee, receiver or administrator or similar officer appointed over all or any part of its assets, then Supplier may at its option terminate this Agreement forthwith by notice in writing. If Customer shall fail to comply with any of the provisions of this Agreement then Supplier may at its option serve notice in writing on Customer specifying the breach and requiring the same to be remedied. If Customer fails to remedy the same within 30 days of receipt of the notice then Supplier may at its option either:
- (a) terminate this Agreement forthwith by notice in writing; or
 - (b) suspend performance of the Services to which the breach relates (or, where the breach does not relate to any particular Services), suspend performance of all Services under this Agreement until such time as the specified breach has been remedied.

Rights granted to Supplier under this Clause shall be in addition to any other remedies which may exist in law or equity.

15 GENERAL

- 15.1 **No Joint Venture:** By entering into and performing any obligations under this Agreement, Supplier and the Customer each have and will have the status of independent contractors, and nothing herein will contemplate or constitute Supplier as the Customer's joint venturer, partner, agent or employee or the Customer as Supplier's joint venturer, partner, agent or employee.
- 15.2 **Anti-Corruption:** The parties recognize and agree that they will comply with laws, regulations, rules and requirements against bribery, money laundering, and anti-corruption including but not limited to the Bribery Act 2010 and they have in place and will maintain policies and procedures in order to ensure compliance with such laws, regulations, rules and requirements. Non-compliance with the provisions of this clause shall grant to the affected party the right to terminate the Agreement immediately with notice.
- 15.3 **Force Majeure:** If the performance of this Agreement or any obligation under this Agreement, except for the making of payments, is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other Act of God or casualty or accident, or strikes or labour disputes affecting third-party vendors, inability to procure or obtain delivery of parts, supplies or power, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirements of any governmental agency, denial of service attacks, cybercrimes or malware caused by a third party, failure of utilities or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected will take all reasonable steps to avoid or remove such cause of non-performance and will resume performance hereunder with dispatch whenever such causes are removed.
- 15.4 **Assignment:** The Customer shall not assign, sub-license, sell, lease, encumber, charge or otherwise in any manner attempt to transfer this Agreement or any of its rights or obligations hereunder. Any purported transfer of this Agreement by the Customer in violation of this Clause shall be null and void. The Supplier shall be entitled to transfer this Agreement within the group of

companies of which the Supplier is a member as well as to any third party in connection with the assignment to any such third party of the right of the Supplier to receive any sums payable by the Customer to it hereunder.

- 15.5 **Dispute Resolution**: The Parties shall attempt to resolve any dispute arising under this Agreement through the informal means described in this Clause. Each Party shall appoint a senior management representative who does not devote substantially all of his or her time to performance under this Agreement. In the event of any dispute between the parties arising out of or in connection with a specific Statement of Work or Proposal that involves assigned project managers, the project managers of each party shall meet within fourteen (14) days of receipt of a written notice from either party to the other, in an effort to resolve the dispute. If the project managers fail to resolve a dispute then the matter will be escalated to the authorized representatives who shall meet within seven (7) days of the meeting between the project managers, in an effort to resolve the dispute. The representatives shall negotiate in good faith to resolve the dispute without the need for any formal proceeding. Formal proceedings for the resolution of the dispute may not be commenced until the earlier of (i) the designated representatives mutually conclude that resolution through negotiation does not appear likely; or (ii) thirty (30) calendar days have passed since the initial request to negotiate the dispute was made; provided, however, that a Party may file for formal proceedings earlier solely to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for interim or equitable relief.
- 15.6 **Governing Law**: This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties shall submit to the non-exclusive jurisdiction and procedure of the Courts of England.
- 15.7 **Prevailing Party**: In the event a dispute arising under this Agreement results in litigation, the non-prevailing party shall pay the court costs and reasonable attorneys' fees of the prevailing party.
- 15.8 **Non-waiver**: No waiver or retraction of a waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom such waiver is sought. The failure of either Party to exercise any right granted herein, or to require the performance by the other Party hereto of any provision in this Agreement, or the waiver by either party of any breach of this Agreement, will not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach of the same or any other provision of this Agreement.
- 15.9 **Notices**: All notices, demands, or other communications by any party to the other shall be deemed to have been duly given when:
- (a) made in writing and delivered in person with signed receipt, or
 - (b) sent via a nationally recognized, traceable, overnight delivery carrier, to the address detailed above, or to such address as the parties may provide to each other in writing from time to time.
- Notice will be effective upon delivery.
- 15.10 **Amendments in writing**: No variation of this Agreement shall be binding unless it is agreed in writing and signed on behalf of both parties by a duly authorized representative. No variation or omission from or addition to any of the terms and conditions of this Agreement whether written or oral shall be binding upon Supplier unless expressly accepted in writing by Supplier.

- 15.11 **Severability**: If any Clause (or part of any Clause) of this Agreement is determined by a court of competent jurisdiction to be or becomes illegal, unenforceable or in conflict with any law governing this Agreement, such clause shall be adjusted to the minimum extent necessary (most closely reflecting the legal and economic intent of the parties) to cure such unenforceability, illegality or conflict and the remainder of this Agreement (and the remainder of the relevant Clause) shall remain in effect in accordance with its terms as modified by such adjustment.
- 15.12 **Entire Agreement**: This Agreement as may be amended from time to time constitutes the entire agreement between the parties and supersedes all previous communications, non-fraudulent representations or prior and contemporaneous agreements (written or oral) between the parties with respect to the subject matter hereof.
- 15.13 **Withholding counter-performance**: Customer may only enforce its rights to withhold counter-performance if the counterclaims upon which the withholding is based relate to the same contractual relationship and are undisputed, mutually settled or have been finally awarded by a competent court of jurisdiction.
- 15.14 **Contracts (Rights of Third Parties) Act 1999**: Save to the extent expressly granted hereunder, this Agreement does not create any right enforceable by any person who is not a party to it ("Third Party") under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a Third Party which exists or is available apart from that Act.
- 15.15 **Project Report**: Supplier will create an internal project report after the implementation of its products. Any use of this report other than for internal purposes of Supplier requires a separate written approval by Customer. Customer agrees to provide input to this report e.g. by being available for a 30 minute telephone interview.

SOFTWARE AG TRAINING AND EDUCATION SERVICES TERMS AND CONDITIONS

1 DEFINITIONS

- 1.1 **Definitions:** Unless the context requires otherwise the following words and expressions shall bear the meanings set out below where used in this Agreement:

| | |
|----------------------------|--|
| “Customer” | means the services ordering/receiving company, as set out in any Statement of Work. |
| “Location” | means the location (if any) set out in any Statement of Work. |
| “Statement of Work” | means any statement of work, proposal or other document (such as order confirmation, Training Learning Credit Agreement) agreed between the parties in connection with the provision of Training and which incorporates these terms and conditions either expressly or by reference. |
| “Supplier” | Software AG or any of its world-wide affiliates |
| “Training” | means the education services set out in any Statement of Work. |

2 DEVIATING OR CONFLICTING TERMS AND CONDITIONS

- 2.1 **Conflicting Terms and Conditions:** If any term in the Statement of Work or other agreement of which these terms and conditions form part including any appendix thereof, conflicts with these terms and conditions, these terms and conditions shall supersede and govern unless otherwise specifically agreed in the Statement of Work or other agreement of which these terms and conditions form part.
- 2.2 **Deviating Customer Terms and Conditions:** Any general terms and conditions of business which the Customer may use shall be inapplicable to the relationship between Supplier and the Customer, even if Supplier did not expressly object to them. By accepting Supplier's services, the Customer is deemed to acknowledge these terms and conditions and to waive application of any other general terms and conditions which conflict with them. General terms and conditions used by the Customer shall be deemed binding upon the contracting parties only if Supplier has accepted them in writing. In such cases, these terms and conditions shall also apply as a supplement.

3 SCOPE OF SERVICES

- 3.1 **Scope:** Supplier will provide Customer with the Training under this Agreement and the Statement of Work.

4 LOCATION AND TIMING

- 4.1 **Location:** The Training shall be provided at the Location. If no location is specified in the Statement of Work, the Training will be provided at a location to be determined and to be confirmed in writing with the Customer. For on-site, virtual and e-learning training, the Customer is responsible for testing all necessary facilities and systems prior to the scheduled Training to enable Supplier to provide the training unless otherwise specified on the Statement of Work. For on-site training the Customer is responsible for making all necessary facilities available for training to enable Supplier to provide on-site training unless otherwise specified in the Statement

of Work.

- 4.2 **Confirmation:** Until class dates are confirmed in writing, all dates are considered tentative and subject to cancellation. Once confirmed, Customer will be subject to the cancellation policy as detailed herein.
- 4.3 **Public Classes:** All public classes are confirmed two weeks prior to the publicized course date.
- 4.4 **Training Term:** The Training plan is only valid for the term specified in the Statement of Work (including the start and end date). Upon the expiration of the term, Supplier will invoice for the outstanding plan value. If Training has been paid up-front, Customer will be not granted any refund for unused Training.
- 4.5 **Timing:** The delegates to the Training should arrive at the location no later than 15 minutes prior to the course start time as advised in the Confirmation of Booking. Where and when the length of a course are specified in a number of days, a “day” is not more than seven hours of lectures with one hour break for lunch. Lunch and refreshments are included for full-day public courses; for ½ day public courses only refreshments are provided.

5 COURSE AVAILABILITY AND CONTENT

- 5.1 **Course Content:** Course content, utilizing standard Supplier course curriculum, will be substantially in line with the relevant course description set out in <https://knowledge.softwareag.com/calendar/view.php>. Non-standard Supplier course curriculum will be detailed in the applicable Statement of Work.
- 5.2 **Availability:** Supplier reserves the right to withdraw or reschedule courses at any time prior to the course start date without any liability to the Customer other than the refund of any relevant fees paid by the Customer in respect of such Training. In the event that Supplier is aware that there is a need to reschedule, then Supplier will make a reasonable effort to notify the Customer at least one week in advance.

6 TRAINING PARTICIPANTS

- 6.1 **Additional Participants:** Supplier does not allow Customers to have additional participants “audit” its training courses. Customer agrees to pay for any and all participants that are ordered, plus last minute participants and drop-ins. This applies to both Live and Virtual Classroom environments. Additional participants are only permitted within the first two hours of the class start time. Any last minute participant and drop-in may be subject to a late registration fee.
- 6.2 **Exclusions:** Supplier reserves the right to exclude training participants from the class who are, in its reasonable opinion, causing disruption to such class. If the Customer is unable to resolve the classroom issue and a dismissal is required, such exclusion will result in no refund of any associated fees.
- 6.3 **Course Pre-requisites:** Customer is responsible for ensuring that all attendees are prepared to attend the Training, including completion of the pre-requisites as noted in the course description. Supplier reserves the right to exclude any participant who has not completed the pre-requisites and is not capable of completing the course.

7 PAYMENT AND CANCELLATION CHARGES

- 7.1 **Invoicing:** The Training is only valid for the number of Training Learning Credits, courses, dates and times (including the start and end date), locations, delivery mechanisms (i.e. onsite, virtual or

other), and number of participants specified in the Statement of Work. Upon the performance of the Training, Supplier will invoice all fees (including fees for extra participants) for the performed services. If Customer is purchasing a product specific e-learning Passport (a purchase of either limited or unlimited access to product specific e-learning courses over the agreed period or a package of Training Learning Credits (a purchase of credits which will be applied to future Training)), Supplier will invoice the Customer upon signing of the contract or Statement of Work. If Customer is purchasing specific training courses, Supplier will invoice the Customer upon delivery of each confirmed course specified in the Statement of Work or contract. Unless different payment terms were agreed in the Statement of Work or contract, the entire amount invoiced plus any applicable tax (sales tax) is due in full no later than 30 days from the date of Supplier's invoice. Training Learning Credits are valid for 12 months from the date of purchase, unless otherwise specified in the Statement of Work or contract. Upon expiration, such Training Learning Credits are forfeited.

- 7.2 **Calculation of Rates:** All rates are calculated on the number of participants mentioned in the respective Statement of Work. Additional costs for additional participants are mentioned in the Statement of Work. All discounts agreed / granted in the Statement of Work are based on the assumption that all services offered in the Statement of Work are fully used within a period of 6 months from the date of purchase (not applicable for Training Learning Credit Agreements). In the event that during this term the services offered are just used partially, Supplier reserves the right to:
- (a) recalculate the discount based on the consumed volume; and
 - (b) adjust the pricing in case the list prices have been changed during this period.
- 7.3 **Travel Expenses:** Unless otherwise specified in the Statement of Work, total training costs do not include any travel expenses of the trainer for any onsite training. Such costs will be invoiced separately, as travel expenses are incurred.
- 7.4 **Payment:** Payment will be made by the Customer to the Supplier at the address listed on the invoice and in the currency specified in the Statement of Work.
- 7.5 **Training Learning Credits:** Resale of Training Learning Credits is not permitted. The Training Learning Credits are not transferable to other entities and are non-refundable.
- 7.6 **Cancellation Charges:** Customer may cancel Training by giving prior written notice to Supplier. The following cancellation charges will apply to all confirmed Training requesting cancellation:

| Cancellation Notice | Cancellation Fee |
|-----------------------|------------------------|
| More than 4 weeks | No cancellation fee |
| Between 2 and 4 weeks | 50% of the course fee |
| Less than 2 weeks | 100% of the course fee |

8 OWNERSHIP AND PROPRIETARY RIGHTS

- 8.1 **Ownership:** Ownership of all copyright and other intellectual property rights in any course material, or other documentation, data, technical information and know-how (together called the "Documentation") provided to training participants or otherwise to the Customer remains vested in Supplier. Customer acknowledges that the Documentation is confidential and proprietary to and constitutes valuable trade secrets of Supplier and that Customer shall not obtain any intellectual property or other ownership rights whatsoever in any Supplier Documentation. All

Documentation shall be held in confidence and not disclosed or copied to third parties. Subject to the restrictions set out below, a participant may use the Documentation to carry out his duties for the Customer, but the Documentation may not be copied or used by any other person, including other employees or sub-contractors working for the Customer or to provide training to any other person, including other employees or sub-contractors working for the Customer.

9 WARRANTIES

- 9.1 **Training:** Supplier warrants that the Certified Instructors who present the Training will be suitably qualified or experienced. Supplier does not warrant that the Training will meet the Customer's business requirements. Supplier cannot guarantee that every participant will obtain the full benefit of the Training. The Customer must ensure that training participants have the necessary pre-requisite experience and show a full commitment to the learning process to enable its training participants to meet the specific learning objectives of the Training.
- 9.2 **Supplier Warranties:** SUPPLIER SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS, STATUTORY, AND IMPLIED, IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF ACCURACY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

10 CONFIDENTIALITY

- 10.1 **Confidentiality:** The Customer undertakes to treat as confidential all information provided by Supplier in connection with this Agreement and shall have the right to use such information only to perform the individual contract concerned. The Customer undertakes to keep confidential from unauthorized third parties, including all other Supplier customers, the Statement of Work.
- 10.2 **Customer Data:** Supplier will store data of the Customer's employees registered for training where such data relates to the business relationship between the Customer and Supplier. Supplier shall not disclose Customer's data to unauthorized third parties.

11 LIMITATION OF LIABILITY

- 11.1 **Limitation of Liability:** Neither party excludes liability to the other for death or personal injury arising from the negligence of its employees, agents or subcontractors.
- 11.2 **Damages:** EXCEPT AS PROVIDED IN SECTION ABOVE, IN NO EVENT SHALL CUSTOMER BE ENTITLED TO ANY MONETARY DAMAGES AGAINST SOFTWARE AG, REGARDLESS OF THE FORM OF ACTION ALLEGED, IN EXCESS OF THE FEES ACTUALLY PAID TO SOFTWARE AG BY CUSTOMER UNDER THIS SOW. IN NO EVENT SHALL SOFTWARE AG BE LIABLE TO CUSTOMER FOR ANY LOSS OF PROFIT, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH ANY CLAIM THAT ARISES FROM OR RELATES IN ANY WAY TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION ALLEGED, EVEN IF SOFTWARE AG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY OF ANY KIND.

12 GENERAL

- 12.1 **Anti-Corruption:** The parties recognize and agree that they will comply with laws, regulations,

rules and requirements against bribery, money laundering, and anti-corruption including but not limited to the Bribery Act 2010 and they have in place and will maintain policies and procedures in order to ensure compliance with such laws, regulations, rules and requirements. Non-compliance with the provisions of this clause shall grant to the affected party the right to terminate the Agreement immediately with notice.

- 12.2 **Force Majeure:** If the performance of this Agreement or any obligation under this Agreement, except for the making of payments, is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other Act of God or casualty or accident, or strikes or labour disputes affecting third-party vendors, inability to procure or obtain delivery of parts, supplies or power, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirements of any governmental agency, denial of service attacks, cybercrimes or malware caused by a third party, failure of utilities or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected will take all reasonable steps to avoid or remove such cause of non-performance and will resume performance hereunder with dispatch whenever such causes are removed.
- 12.3 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties shall submit to the non-exclusive jurisdiction and procedure of the Courts of England.
- 12.4 **Non-waiver:** No waiver or retraction of a waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom such waiver is sought. The failure of either Party to exercise any right granted herein, or to require the performance by the other Party hereto of any provision in this Agreement, or the waiver by either party of any breach of this Agreement, will not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach of the same or any other provision of this Agreement.
- 12.5 **Notices:** All notices, demands, or other communications by any party to the other shall be deemed to have been duly given when:
- (a) made in writing and delivered in person with signed receipt, or
 - (b) sent via a nationally recognized, traceable, overnight delivery carrier, to the address detailed above, or to such address as the parties may provide to each other in writing from time to time.
- Notice will be effective upon delivery. Maintenance and Support Services related notices will be posted on Supplier's then current web-based support portal.
- 12.6 **Amendments in writing:** No variation of this Agreement shall be binding unless it is agreed in writing and signed on behalf of both parties by a duly authorized representative. No variation or omission from or addition to any of the terms and conditions of this Agreement whether written or oral shall be binding upon Supplier unless expressly accepted in writing by Supplier.
- 12.7 **Severability:** If any Clause (or part of any Clause) of this Agreement is determined by a court of competent jurisdiction to be or becomes illegal, unenforceable or in conflict with any law governing this Agreement, such clause shall be adjusted to the minimum extent necessary (most closely reflecting the legal and economic intent of the parties) to cure such unenforceability, illegality or conflict and the remainder of this Agreement (and the remainder of the relevant Clause) shall remain in effect in accordance with its terms as modified by such adjustment.
- 12.8 **Entire Agreement:** This Agreement as may be amended from time to time constitutes the entire

agreement between the parties and supersedes all previous communications, non-fraudulent representations or prior and contemporaneous agreements (written or oral) between the parties with respect to the subject matter hereof.

- 12.9 **Contracts (Rights of Third Parties) Act 1999**: Save to the extent expressly granted hereunder, this Agreement does not create any right enforceable by any person who is not a party to it ("**Third Party**") under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a Third Party which exists or is available apart from that Act.