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(a) Download, install, access and utilize the Object Code of the Software solely in accordance with the type and number of active and valid Software Licenses licensed to You as set out in the Order Form or valid purchase order from the Reseller;

(b) Create one copy of the Object Code of the Software solely for backup purposes, provided that You shall not, and shall not allow any other party to, install or use any backup copy unless the licensed copy installed in accordance with this [Section 2](#) is inoperable and that You uninstall and otherwise delete such copy that is inoperable. Download or otherwise make one (1) copy of the Documentation per Software License and use such Documentation, solely in support of Your licensed use of the Software in accordance with this Agreement. All copies of the Software and Documentation made by You: (i) will be the exclusive property of SoftwareONE; (ii) will be subject to the terms and conditions of this Agreement; (iii) must include all trademark, copyright, patent and other Intellectual Property Rights notices contained in the original; and (iv) must be securely stored in a place inaccessible to non-Authorized Users; and

(c) Use and run the Object Code of the Software as properly installed and configured in accordance with this Agreement and the Documentation, solely for Your internal business purposes.

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(b) may be provided by You or by third parties. In the event that You or any third party: (I) remove access and/or use of an Item; or (II) modify an Item, the Software may cease to function or experience a reduction in its performance and/or functionality.

(i) For purchases made directly with SoftwareONE, where an Item is:

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- provided by You or one of Your third parties: (i) costs incurred by SoftwareONE to assess whether it is technically possible or commercially reasonable for it to use another Item and/or modify the Software to function with the new or modified Item; (ii) costs incurred to modify the Software; and (ii) increases in License Fees and/or Support Fees resulting thereto, shall be at Your cost. For the avoidance of doubt, no License Fees and/or Support Fees shall be reduced and/or refunded.

(ii) For purchases made through a Reseller, You agree to look solely to the Reseller to address any issues with I and/or II above and any related refunds and/or reductions claimed thereto.

4. **USE RESTRICTIONS.** You shall not, and You shall ensure Your Authorized Users do not, directly or indirectly:

(a) Access or use (including make any copies of) the Software or Documentation beyond the scope of any license granted hereunder;

- (b) Bypass any Software license keys, digital interlocks, data collection or recording mechanisms;
- (c) Provide any party who is not an Authorized User (including for example, any independent contractor, or service provider) with access to or use of the Software or Documentation;
- (d) Modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;
- (e) Combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;
- (f) Reverse engineer, disassemble, decompile, decode or otherwise attempt to use, derive or gain access to the Source Code of the Software or any part thereof (except as licensed to You in Section 1);
- (g) Utilize the Software or the Documentation (including any Source Code of the Software, or any portion thereof that is visible or otherwise accessible to You (through the normal installation or operation of the Software)) to design, build (or guide, instruct, or train any third party to design or build - regardless of whether such effort includes machine learning or other algorithmic techniques) any product or service with functionality(ies) that is substantially similar to the Software or that competes with the Software (a “*Competing Product*”);
- (h) Remove, delete, alter or obscure any trademarks or any copyright, patent or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;
- (i) Except as expressly permitted in Section 2, copy the Software or Documentation, in whole or in part;
- (j) Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software, or any features, functionality, components, elements or parts of the Software, to any third party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, software as a service, cloud hosting technology or any other technology or service; or
- (k) Use the Software or Documentation for any unlawful purpose or in violation of any applicable law.

**5. RESPONSIBILITY FOR USE OF SOFTWARE.** You are responsible for all uses of the Software and Documentation You license pursuant to this Agreement, including any unauthorized uses due to loss, theft or unauthorized distribution of the Software and Documentation. Specifically, and without limiting the generality of the foregoing, You are responsible and liable for all actions and failures to take requisite actions with respect to the Software and Documentation by Your Authorized Users or by any other party to whom You or an Authorized User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement. Furthermore, You are solely and exclusively responsible for any and all costs and expenses associated with the purchase, licensing, or use of any SAP Products or any other third party products or services and, in deploying, testing, running, or utilizing the Software, You are solely and exclusively responsible for any impact that the Software may have on the costs of SAP Products or any other third party products or services payable by You.

**6. COMPLIANCE MEASURES.**

- (a) The Software may contain technological copy protection or other security features designed to prevent use of the Software that is unauthorized or contrary to this Agreement. You shall not, and shall not attempt to, remove, disable, circumvent or otherwise create or implement any workaround to, any such copy protection or security features.
- (b) You acknowledge that Software may be “seeded” with non-executing code that is present solely to assist SoftwareONE in determining if a software product directly copied the Software Source Code in a side-by-side comparison.
- (c) The Software communicates with SoftwareONE’s servers, to which it sends identifying information of each active Software License (including the license number, licensee to whom the license was issued, and installation number). Such seeding and/or communication with SoftwareONE’s servers shall not have a materially adverse impact upon the functionality of the Software for You or Your Authorized Users.

**7. AUDIT**

- (a) During any Software License Term and for twelve (12) months thereafter, SoftwareONE, or its appointed representatives, may conduct an audit to assess Your compliance with the terms of this Agreement. SoftwareONE shall provide at least thirty (30) days’ notice (except where SoftwareONE reasonably believes there may be a potential breach of Sections 1, 2 or 4 which

may be initiated upon seven (7) days' notice) of any such audit. You shall cooperate with SoftwareONE and its representatives and shall provide all reasonable assistance and access to information, systems, personnel and sites that SoftwareONE or its representatives may reasonably request. SoftwareONE shall use its reasonable endeavors to ensure that any such audit does not unreasonably interfere with Your normal business operations and that it is conducted during Your normal business hours. Any audit will be performed pursuant to the confidentiality provisions of this Agreement and will be conducted at SoftwareONE's expense save that where an audit reveals a breach of the terms of this Agreement You shall reimburse SoftwareONE's and its representatives' reasonable costs and expense of the audit. Where SoftwareONE reasonably believes that You have copied the Source Code of the Software or have utilized the Software to develop a Competing Product, You shall in addition provide SoftwareONE, with an opportunity to, in a narrow and focused manner, examine the components of Your technical SAP development system (not production, but SAP transport system(s) only) that hosted the Software (whether currently or previously), solely to determine if a copy of the Software was made from such environment. Any such review would not involve access to any of Your production systems or business data. Furthermore, any such review shall be performed under Your control and supervision. If SoftwareONE requests to exercise its right to review a Competing Product pursuant to this Section 7, You agree to cooperate with SoftwareONE and with such request in good faith.

(b) If as a result of an audit SoftwareONE determines that:

- (i) You are in breach of any term under this Agreement, You shall, if such breach can be cured, cure or, procure its cure, within thirty (30) calendar days of receiving SoftwareONE's written notification requiring it be cured. For the avoidance of doubt, if as a result of an audit SoftwareONE determines that You have directly or indirectly copied the Source Code of the Software or utilized the Software to develop a Competing Product, then it shall be deemed a material breach of the Agreement which is incapable of cure;
- (ii) Your use of the Software is in excess of Your rights under this Agreement, You agree to pay, within thirty (30) days of written notification, the retroactive License Fees for such excess use and, unless SoftwareONE terminates this Agreement pursuant to the below, obtain and pay for a valid license to bring Your use into compliance with this Agreement. In determining the License Fees payable, unless You can demonstrate otherwise by documentary evidence, all excess use of the Software shall be deemed to have commenced on the Effective Date or, if later, the completion date of any audit previously conducted hereunder, and continued uninterrupted thereafter, and the rates for such licenses shall be determined without regard to any discount to which You may have been entitled had such use been properly licensed prior to its commencement (or deemed commencement).

(c) If You do not pay the License Fees due or cure the breach, or where the breach is incapable of cure, SoftwareONE may immediately on notice and without liability to You, terminate this Agreement.

(d) SoftwareONE's remedies set forth in this Section 7 are without prejudice to any other remedies SoftwareONE may have under this Agreement, at law or otherwise.

## **8. UPDATES AND SUPPORT SERVICES.**

(a) SoftwareONE may (either directly or indirectly through its Resellers) provide periodic updates, upgrades, new releases, adaptations, bug fixes, patches, workarounds and other error corrections (collectively, "*Updates*"). SoftwareONE may develop and provide Updates in its sole discretion, and You agree that SoftwareONE has no obligation to develop any Updates at all or for particular issues, and SoftwareONE expressly disclaims any liability for not doing so. You further agree that all Updates will be deemed Software, and related documentation will be deemed Documentation, all subject to the terms and conditions of this Agreement. You acknowledge that SoftwareONE may provide some or all Updates via download from a website designated by SoftwareONE – as such, that Your receipt thereof will require an internet connection, the security and stability of which connection and download is solely Your responsibility. SoftwareONE may also provide Updates via other, reasonable forms of media at its sole discretion.

(b) If You have purchased a Perpetual License, Updates are only provided during the term of the Support Services purchased, as set out in the Order Form or valid purchase order from the Reseller. If You have purchased a Term License, Support Services and Updates are provided as part of the Software License for the limited Software License Term. Where You have purchased Support Services or a Term License directly from SoftwareONE, SoftwareONE shall provide Support Services in accordance with Appendix 1 of this Agreement. Where You have not purchased Support Services or a Term License directly from SoftwareONE, the terms of Your contract with the Reseller will set out the details of any support services agreed with the Reseller. SoftwareONE is not responsible or liable for ensuring compliance with any Reseller support service obligations detailed in any contract between You and the Reseller nor for providing any Support Services directly to You and You shall only look to the Reseller in respect thereto.

## **9. COLLECTION AND USE OF INFORMATION.**

(a) You acknowledge that SoftwareONE may, directly or indirectly, including through the services of third party contractors, collect information regarding Your and Your Authorized Users' use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used. SoftwareONE may collect such information and data through means including, but not limited to: (i) Your use of the Software; (ii) the provision of Support Services; and (iii) security measures included in the Software as described in Section 6.

(b) The Software does not store, host, or provide SoftwareONE with access to any of Your information pertaining to Your business operations ("**Licensee Data**") that is generated by, or stored within, Your systems or that is transmitted through the use of the Software (including without limitation, data generated by Your use of any SAP Product (the "**SAP Data**"). Any information that SoftwareONE does receive about Your use of the Software shall be used solely to: (a) make the Software functional and usable for You and Your Authorized Users; (b) improve the performance of the Software, develop Updates, or provide Support Services; (c) verify Your compliance with the terms of this Agreement; and (d) enforce SoftwareONE's rights, including all Intellectual Property Rights in and to the Software. You acknowledge that SoftwareONE collects (and may involve third parties in) identifying information of each active Software License (including the license number, licensee to whom the license was issued, and installation number), which is transmitted directly to SoftwareONE's servers.

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**11. PAYMENT AND TAXES.**

(a) For all purchases made through a Reseller the fees, payment terms and tax terms shall be as agreed exclusively by and between You and the Reseller.

(b) For purchases made directly with SoftwareONE, the following shall apply:

- (i) License Fees and Support Fees shall be as set out in the Order Form. You shall pay the License Fees and Support Fees in accordance with the payment terms and in the currency set out in the Order Form. All License Fees and Support Fees are non-refundable and shall be due and payable, in full, by You.
- (ii) All amounts payable to SoftwareONE hereunder are exclusive of Taxes (except for any Taxes based solely on SoftwareONE's net income) and expenses which shall be added to the relevant invoice and be payable by You in addition thereto. Any Taxes due shall be chargeable at the rate prevailing at the date of invoice. Expenses (if any) shall be charged at cost. If You are required by law to deduct or withhold any Taxes from any amount payable to SoftwareONE, the amount payable by You will be increased so that after making all required deductions and withholdings, SoftwareONE receives an amount equal to the amount it would have received had no such deductions or withholdings been made.
- (iii) SoftwareONE shall be entitled to charge interest on any outstanding amount at a rate of 1.5% per month or the highest amount permitted by law, without any written demand or notice of default, until the amount is paid in full. SoftwareONE may cease the provision of the Software and/or the Support Services if any amount due to SoftwareONE under this Agreement is not paid when due.
- (iv) All amounts payable by You will be made without setoff or counterclaim, and without any deduction or withholding.

(c) Unless otherwise agreed in writing by SoftwareONE, SoftwareONE shall be entitled to increase License Fees and/or Support Fees on an annual basis from the Effective Date during the relevant Software License Term. In addition, and notwithstanding any agreement with SoftwareONE to fix License Fees and/or Support Fees, SoftwareONE shall (upon the provision of reasonable evidence) be entitled to immediately increase License Fees and/or Support Fees at any time during the relevant Software License Term on notice to You in circumstances where SoftwareONE's costs increase by an amount greater than ten per cent (10%) for any single vendor due to a rise in the price of development tools, software licensing, partner program costs for SAP or other third party products and/or services that are required to develop, license, certify or maintain the Software and/or to provide the Support Services. SoftwareONE shall be entitled to invoice You for such increased License Fees and/or Support Fees on or after the notification date.

## **12. TERM AND TERMINATION.**

(a) This Agreement and the Software License granted hereunder shall remain in effect for the Software License Term, unless earlier terminated as set forth herein.

(b) You may terminate this Agreement by ceasing to use and destroying all copies of the Software and Documentation.

(c) Either Party may elect not to renew the Software License(s) upon the completion of each corresponding Software License Term. This Agreement shall automatically terminate after the last day of the Software License Term of the last active Software License held by You (except to the extent that any provisions hereof shall have survived termination). Termination of this Agreement under this or any other Section shall not affect the continuance of any Sections which are stated or by their nature are intended to continue after termination nor shall it affect any existing obligations already incurred whether relating to payment or otherwise.

(d) Either Party may terminate this Agreement with immediate effect in the event of: (i) the suspension of business by the other Party; (ii) the insolvency, the institution of bankruptcy or liquidation proceedings by or against the other Party; (iii) the appointment of a trustee or receiver for the other Party's property or business; or (iv) in the case of any assignment, reorganization or arrangement by the other Party for the benefit of its creditors; or (v) in the event anything analogous to the foregoing occurs under the law of any jurisdiction in relation to the other Party.

(e) Either Party may terminate this Agreement for cause with immediate effect upon written notice to the other Party, if the other Party breaches a material obligation under the Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured for thirty (30) days after the non-breaching Party provides written notice thereof.

(f) Upon expiration or earlier termination of this Agreement, the license(s) granted hereunder shall terminate (including any Perpetual License), You shall pay all License Fees and Support Fees due and cease using and destroy all copies of the Software and any Documentation. SoftwareONE shall have the right to immediately disable the Software and cease the provision of all Support Services. In the event that You terminate, or elect not to renew, one or more individual Software Licenses, but still retain license and use rights to at least one (1) other Software License, and are otherwise in compliance with this Agreement, then this Agreement shall not terminate and shall remain in full force and effect. Upon such event, for the avoidance of any doubt, You shall cease using and destroy all copies of any Software and any Documentation related to any terminated or non-renewed Software Licenses.

## **13. WARRANTIES AND WARRANTY DISCLAIMER.**

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## **14. LIMITATION OF LIABILITY.**

(a) TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW: IN NO EVENT WILL SOFTWAREONE OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, INABILITY TO USE THE SOFTWARE, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, LOSS OF BUSINESS OR GOODWILL, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF STATUTORY DUTY OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SOFTWAREONE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW: IN NO EVENT WILL SOFTWAREONE OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY ADDITIONAL, INCREMENTAL, OR SUPPLEMENTARY COSTS, FEES, OR EXPENSES INVOLVING SAP PRODUCTS OR ANY THIRD PARTY PRODUCTS OR SERVICES THAT MAY ARISE FOR YOU IN CONNECTION WITH YOUR DEPLOYMENT, TESTING, HOSTING, OR USE OF THE SOFTWARE, INCLUDING WITHOUT LIMITATION, ANY IMPACTS ON YOUR SAP PRODUCT LICENSING COSTS.

(c) TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW: IN NO EVENT WILL SOFTWAREONE'S COLLECTIVE AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF STATUTORY DUTY OR OTHERWISE, EXCEED THE GREATER OF: (I) FIFTY THOUSAND US DOLLARS (US\$50,000); OR (II) THE TOTAL NET AMOUNT ACTUALLY PAID BY YOU TO SOFTWAREONE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD THAT IMMEDIATELY PRECEDED THE EVENT GIVING RISE TO THE CLAIM.

(d) The limitations and exclusions set out in Section 14(a), (b) and (c) above shall not apply to claims and/or losses based on any of the following: (i) death and/or personal injury caused by SoftwareONE or its personnel; (ii) damage to real property and/or tangible property caused by SoftwareONE or its personnel; (iii) willful misconduct or gross negligence by SoftwareONE personnel; (iv) fraudulent misrepresentation by SoftwareONE or its personnel; (v) an indemnity provided under Section 15; or (vi) any other liability which cannot be excluded or limited at law.

## **15. INDEMNITY.**

(a) You shall promptly indemnify, defend, and hold harmless SoftwareONE, its parents, affiliates, suppliers, successors and assigns, and all of their officers, directors, employees and agents from and against any and all claims, demands, costs, liabilities, losses, expenses, and damages (including reasonable attorney's fees) arising out of or in connection with: (i) misuse or unlawful use of the Software by You or Your Authorized Users; or (ii) breach of Section 1, Section 2, Section 3, Section 4, Section 10, or Section 16 of this Agreement by You or Your Authorized Users.

(b) SoftwareONE agrees to indemnify, defend and hold You, harmless from and against any and all claims, demands, costs, liabilities, losses, expenses, and damages (including reasonable attorney's fees) arising out of or in connection with any claims brought against You alleging that the Software infringes upon the Intellectual Property Rights of a third party.

(c) If the Software is held to be infringing third party Intellectual Property Rights, SoftwareONE shall, at its own cost, and at SoftwareONE's option either: (i) procure the right for You to continue using the Software; (ii) replace the Software with a non-infringing equivalent; or (iii) modify the Software to make it non-infringing.

(d) In no event will SoftwareONE have any obligations under Sections 15(b) or (c) or any liability for any claim or action to the extent that the claim is caused by, or results from: (i) You exceeding any license limits, Your use of the Software in a manner not in accordance with the Documentation and this Agreement or You otherwise being in breach of this Agreement; (ii) save where expressly agreed by SoftwareONE in writing, Your combination or use of the Software with Your or any third party software, products or services; (iii) modification of the Software by anyone other than SoftwareONE; or (iv) Your continued allegedly infringing activity after being provided modified or replacement Software that would have avoided the alleged infringement or refusal to accept reasonable and/or standard third party license terms.

(e) Sections 15(b), (c) and (d) set forth Your sole and exclusive remedies and SoftwareONE's sole liability in the event of a claim brought against You alleging that the Software infringes upon the Intellectual Property Rights of a third party.

(f) In relation to any indemnity given under this Agreement, the indemnified Party shall: (i) use its reasonable endeavors to mitigate any claims, demands, costs, liabilities, losses, expenses, and damages (including reasonable attorney's fees) covered by the indemnity; (ii) notify the indemnifying Party promptly upon receipt of any notice, demand, letter or other document concerning any claim for which it is or may become entitled to indemnification under this Agreement; (iii) not make any admissions, nor attempt to settle or compromise any such claim without the indemnifying Party's prior written consent (such consent not to be unreasonably withheld or delayed); (iv) give the indemnifying Party the sole conduct of the defense of the claim; and (v) act in accordance with the reasonable instructions of the indemnifying Party and, at the indemnifying Party's cost, give the indemnifying Party such assistance as the indemnifying Party shall reasonably require in relation to the claim.

## 16. **CONFIDENTIALITY.**

(a) The term "***Confidential Information***" means any and all information received or obtained in connection with the discussions leading up to or in relation to any aspect of the performance of this Agreement (whether orally, in writing, electronically or in any other manner or form) by a Party (the "***Recipient***") from the other Party (the "***Disclosing Party***") which is marked or notified to the Recipient as being confidential, together with any other information which, given the nature of the information, the circumstances of the disclosure or in the normal course of business would be considered to be of a confidential nature.

(b) Notwithstanding the foregoing, Confidential Information shall not include any information, which: (i) was in Recipient's lawful possession without a confidentiality obligation prior to the disclosure and was not obtained by Recipient either directly or indirectly from the Disclosing Party; or (ii) is or becomes publicly available through no fault of the Recipient; or (iii) is rightfully obtained from a third party, who has the right to transfer or disclose it on a non-confidential basis; or (iv) is independently developed by the Recipient without any reference to Confidential Information of the Disclosing Party, as evidenced by the records of the Recipient; or (v) is required to be disclosed pursuant to law or the order or requirement of any governmental or regulatory body (including any securities exchange) to which the Recipient is bound wherever situated. In such cases, the Recipient shall, to the extent that it is not prevented by such law or requirement: (a) limit disclosure to the extent strictly necessary and give as much notice as possible to the Disclosing Party; and (b) if requested, assist the Disclosing Party (at the Disclosing Party's cost), in seeking a protective order or other assurance with respect to maintaining the confidentiality of such Confidential Information.

(c) Each Party agrees: (i) to use the Confidential Information of the other Party only for the purposes described herein; (ii) not to reproduce the Confidential Information of the other Party and to hold in confidence and protect the Confidential Information of the other Party from dissemination to, or use by, any third party; (iii) not to create any derivative work of the Confidential Information of the other Party; (iv) to restrict access to the Confidential Information of the other Party to such of its personnel, agents or consultants who need to have access for the purposes of this Agreement, who have been advised of the confidential nature of such Confidential Information and who are bound by obligations of confidentiality no less protective of such Confidential Information than this Agreement (and, as respecting You, to such persons as are also Authorized Users hereunder, to the extent otherwise required hereby); and (v) to return, destroy or delete permanently all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

(d) Recipient will immediately, and at least within forty-eight (48) hours, notify Disclosing Party if Confidential Information of Disclosing Party is used or disclosed in breach of this Agreement.

17. **DATA PROTECTION.** Where You purchase a Software License and Support Services from SoftwareONE directly the Parties will process Personal Data in accordance with applicable privacy and data protection laws and regulations. You agree that SoftwareONE may engage its affiliates as another processor and subcontractor when contributing to the services. Within the scope of application of the GDPR (General Data Protection Regulation (EU) the following applies: to the extent that the use or implementation of SoftwareONE services involves the processing of Personal Data by SoftwareONE on Your behalf of and under Your instructions, the Parties agree that this Agreement shall incorporate the SoftwareONE Framework Data Processing Agreement ("***DPA***") available here: <https://www.softwareone.com/-/media/publishing-documents/swo-powerconnect-framework-dpa-customer-en.pdf> and the PowerConnect Data Processing Addendum available here: <https://www.softwareone.com/-/media/publishing-documents/swo-data-processing-addendum-powerconnect-en.pdf>.

18. **EXPORT REGULATION.** The Software and any Documentation may be subject to export control laws. You shall not, directly or indirectly, export, re-export or release the Software or any Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. You shall comply with all applicable laws, regulations and rules in the country or countries where You are licensed to use the Software, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Software or Documentation available.

19. **US GOVERNMENT RIGHTS.** The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if You are the US Government or any contractor therefor, You shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with: (a) 48 C.F.R. §227.7201 through 48 C.F.R.



§227.7204, with respect to the Department of Defense, as well as contractors thereto; or (b) 48 C.F.R. §12.212, with respect to any other licensee(s) that reasonably constitute(s) a facet of the US Government thereunder, as well as contractors thereto.

## 20. MISCELLANEOUS.

(a) **SoftwareONE Contracting Party and Local Provisions.** The SoftwareONE entity that will be Your SoftwareONE Contracting Party with respect to this Agreement and any Local Provisions arising as a result of the Governing Law are set out in the Country Specific Provisions.

(b) **Governing Law and Courts of Jurisdiction.** This Agreement is governed by and construed in accordance with the Governing Law, without giving effect to conflict or choice of law principles. Each Party submits to the exclusive jurisdiction of the Courts of Jurisdiction in respect of any dispute or proceedings which may arise out of or in connection with this Agreement. Application of the United Nations Convention on Contracts for the International Sales of Goods (“CISG”) is expressly excluded. Notwithstanding the foregoing, the Parties agree that SoftwareONE may enforce its rights (both at law and in equity) under this Agreement, to enforce its Intellectual Property Rights and all claims in connection therewith in any court with jurisdiction worldwide. Each Party agrees that a final judgment in any action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) **Force Majeure.** Neither Party shall be liable for any delay or failure to perform its obligations under this Agreement (other than payment obligations) to the extent that such delay or failure is a result of a Force Majeure Event. Each Party shall promptly notify the other Party of a Force Majeure Event or potential Force Majeure Event which could affect its ability to perform its obligations under this Agreement. Each Party shall use reasonable endeavors to mitigate the effects of the Force Majeure Event on the performance of its obligations.

(d) **Notices.** All notices, requests, consents, claims, demands, waivers and other communications to SoftwareONE hereunder shall be in writing to the following address: Suite B, Level 13, 500 Collins Street, Melbourne VIC 3000, Australia and shall be deemed to have been given: (a) when delivered by hand with written confirmation of receipt; or (b) when received by SoftwareONE, if sent by an internationally recognized courier with tracking confirmation. All notices, requests, consents, claims, demands, waivers and other communications to You shall be provided to the email address and/or physical address that SoftwareONE has on file for You, whether received from You or otherwise, and shall be deemed to have been given immediately upon issuance thereof by SoftwareONE.

(e) **Entire Agreement.** This Agreement, constitutes the sole and entire agreement between You and SoftwareONE with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

(f) **Assignment and Subcontractors.** You shall not assign or otherwise transfer any of Your rights, or delegate or otherwise transfer any of Your obligations or performance, under this Agreement, whether voluntarily, involuntarily, by operation of law or otherwise, without SoftwareONE’s prior written consent, which consent SoftwareONE may grant or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving You (without regard to whether You are a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which SoftwareONE’s prior written consent is required. No delegation or other transfer will relieve You of any of Your obligations or performance under this Agreement. SoftwareONE may assign this Agreement or use subcontractors in the provision of the Software or any other services under this Agreement at any time, in whole or in part by providing notice to You. Any purported assignment, delegation or transfer by You in violation of this Section 20(f) is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(g) **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and assigns and nothing herein, express or implied, is intended to or shall confer on any third party any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(h) **Waiver.** No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege hereunder or otherwise.

(i) **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(j) **Equitable Relief.** Both Parties acknowledge and agree a breach of this Agreement would cause the other Party irreparable harm for which money damages alone may not be an adequate remedy. In addition to damages and any other remedies to which one Party may be entitled, both Parties acknowledge and agree that each Party may seek injunctive relief, for specific performance or other appropriate order to prevent the actual, threatened or continued breach of this Agreement.

(k) **Interpretation.** For purposes of this Agreement, (a) the words “include”, “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein”, “hereof”, “hereby”, “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (a) to Sections refer to the Sections of this Agreement; (b) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (c) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(l) **Headings.** The headings in this Agreement are for reference only and do not affect its interpretation.

(m) **Conflicting Terms.** The terms and conditions set forth in this Agreement and in the Documentation (to the extent applicable) shall govern the terms and conditions of Your access and use to the Licensed Software, and shall expressly supersede and negate any contrary, additional or differing terms that may be set forth in any purchase order, request for proposal, or any other document. The Parties agree that any such contrary, additional or differing terms presented by You that are not expressly included in this Agreement or the Documentation are automatically null and void.

**21. DEFINITIONS.** In this Agreement, unless otherwise defined in the Agreement or the context requires otherwise the following terms shall have the following meaning:

“**Authorized Users**” means the final user who: (a) is a physical person; (b) is an officer, employee, agent, sub-contractor, consultant or representative of You; and (c) has been authorized to use the Software by You pursuant to the license granted under this Agreement.

“**Competing Product**” has the meaning set forth in Section 4(f).

“**Confidential Information**” has the meaning set forth in Section 16(a).

“**Country Specific Provisions**” means the provisions which set forth the Governing Law, the Courts of Jurisdiction, the SoftwareONE Contracting Party and/or any Local Provisions with respect to the Agreement which are available here: <https://www.softwareone.com/-/media/publishing-documents/swo-powerconnect-eula-country-specific-provisions.pdf>.

“**Courts of Jurisdiction**” means, for the applicable SoftwareONE Contracting Party, the courts set out in the Country Specific Provisions.

“**Disclosing Party**” has the meaning set forth in Section 16(a).

“**Documentation**” means any user manuals, technical manuals and any other materials provided by SoftwareONE, in printed, electronic or other form, that describe the installation, operation, use or technical specifications of the Software. For the avoidance of any doubt, the Documentation may be updated or amended by SoftwareONE from time to time in its sole discretion, and such updated Documentation shall supersede and replace the then-existing Documentation in its entirety, immediately upon issuance of the updated Documentation by SoftwareONE.

“**Effective Date**” means the date on which this Agreement enters into effect.

“**Force Majeure Event**” means: (i) acts of God, flood, fire, wind, storm, drought, earthquake or other natural disaster; (ii) epidemic or pandemic; (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iv) nuclear, chemical or biological contamination or sonic boom; (v) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary license or consent; (vi) collapse of buildings, breakdown of plant or machinery, fire, explosion or accident; (vii) any labor or trade dispute, materials or transport, strikes, industrial action or lockouts; (viii) interruption or failure of utility service; or (ix) for any other cause, whether similar or dissimilar to those enumerated, that is beyond the reasonable control and without the fault or negligence of the party whose performance is affected.

“**Governing Law**” means, for the applicable SoftwareONE Contracting Party, the laws set out in the Country Specific Provisions.

**“Intellectual Property Rights”** means patents, rights to inventions, copyrights, software, trademarks, trade names, service marks, logos, trade secrets, Confidential Information, compilations, diagrams, layouts, mask works, know-how, database rights, designs, methods, processes, formulas, rights to use and other proprietary rights and privileges, whether registered or unregistered, together with all improvements, modifications, enhancements, and derivative works to all of the foregoing, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world together with all applications for registration of any such rights and the right to apply for registration, and all renewals, revisions and extensions of such registrations.

**“Items”** has the meaning set forth in Section 3.

**“Licensee Data”** has the meaning set forth in Section 9(b). As used in this Agreement, Licensee Data may include SAP Data.

**“License Fees”** means the fees payable by You for the Software License(s) as set out in the Order Form.

**“Local Provisions”** means any local provisions (e.g. provisions required to address local laws and local regulations) with respect to the Governing Law as set out in the Country Specific Provisions.

**“Object Code”** means the fully-compiled version of the Software that can be executed by a computer and used by a user without further compilation.

**“Order Form”** means the document or form provided by SoftwareONE to You when purchasing a license in the Software and/or Support Services directly from SoftwareONE.

**“Perpetual License”** has the meaning set forth in Section 1.

**“Personal Data”** has the same meaning as “personal data” under the General Data Protection 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.

**“Recipient”** has the meaning set forth in Section 16(a).

**“Reseller”** has the meaning set forth in the first paragraph of this Agreement.

**“SAP Data”** has the meaning set forth in Section 9(b).

**“SAP Product”** means the specific SAP® software that You will utilize in conjunction with the Software. Each SAP Product utilized by You is further defined by its unique installation number and SAP product set as set forth by SAP in the Platform Availability Matrix (PAM) <http://service.sap.com/PAM>.

**“Software”** means the PowerConnect software that facilitates queries and visualizations that are available in or via Splunk® to be applied to data generated by Your SAP® Product. The term Software will include Object Code and Source Code, unless specified otherwise within the Agreement.

**“SoftwareONE Contracting Party”** means the SoftwareONE entity identified in the Country Specific Provisions.

**“Software Evaluation License”** has the meaning set forth in Section 1.

**Software Evaluation Period”** has the meaning set forth in Section 1.

**“Software License”** means the specific right and license to the use of the Software provided to You.

**“Source Code”** means computer programming code other than in Object Code form. Source Code includes code that may be displayed in a form readable and understandable by a programmer of ordinary skill, as well as any enhancements, corrections and documentation related thereto, and all related source code level system documentation, comments, procedural code, and explanatory materials.

**“Support Fees”** means the fees payable by You for the Support Services provided by SoftwareONE in connection with the Software as set out in the Order Form.

**“Support Services”** means the maintenance and support services set out in Appendix 1.

**“Taxes”** means any tax, however denominated, charge, tariff, contribution, duty, levy, assessment, government charge or fee of any kind charged, imposed or levied, directly or through withholding, by any competent authority (including withholding tax, customs charges and duties, sales tax, goods and services tax and value added tax).

**“Term”** means the period of time during which this Agreement is in effect.

**“Term License”** has the meaning set forth in Section 1.

**“Update”** has the meaning set forth in Section 8(a).

**APPENDIX 1  
SUPPORT SERVICES**

<b>Support Services</b>	<b>Description</b>	
<b>General</b>	<ul style="list-style-type: none"> <li>• SoftwareONE shall use its reasonable endeavors to provide the Support Services in accordance with the Service Levels set out in this Appendix.</li> <li>• You and Your Authorized Users shall refer Incidents to SoftwareONE using the contact methods set out below.</li> </ul>	
<b>Support Tickets</b>	Unlimited	
<b>Contact</b>	Email: <a href="mailto:support@powerconnect.io">support@powerconnect.io</a>	
<b>Severity Levels</b>	Incidents will be handled based on the following Severity Levels. When submitting an Incident to SoftwareONE, You agree to select the most appropriate Severity Level for initial Response by logging the Incident online, in accordance with the Severity Level guidelines set out below. SoftwareONE will assess logged Incidents and may re-prioritize an Incident's Severity Level at its sole discretion.	
Severity Level 1	means an Incident wherein major functionality of the Software is not functioning, accessible or operable by You and there is no workaround - for example, the Software operates slowly, there is access congestion or content errors.	
Severity level 2	means an Incident wherein major functionality is severely degraded to the point where You are unable to use the Software efficiently.	
Severity Level 3	means an Incident wherein the Software is functioning, but that some non-essential component of the Software is not functioning or where functionality thereof is degraded.	
Severity Level 4	means any Incident that is not classified as Severity Level 1, Severity Level 2 or Severity Level 3 including enhancement requests.	
<b>Service Levels</b>	<b>Standard</b>	<b>Premium</b>
<b>Severity Level 1</b>		
Service Desk Availability	24/7 x 365	24/7 x 365
Response Times	≤ 2 hours	≤ 30 minutes
Incident Update Times	Daily	1 hour
Target Resolution Times	≤ 1 Business Week	≤ 24 hours
<b>Severity Level 2</b>		
Service Desk Availability	8.00am to 5:00pm Business Days	24/7 x 365
Response Times	≤ 1 Business Day	≤ 1 hour
Incident Update Times	Weekly	4 hours
Target Resolution Times	≤ 1 Business Week	≤ 1 Business Week
<b>Severity Level 3</b>		
Service Desk Availability	8.00am to 5:00pm Business Days	8.00am to 5:00pm Business Days
Response Times	≤ 2 Business Days	≤ 4 hours
Incident Update Times	None	1 Business Day
Target Resolution Times	Next Release	Next Release
<b>Severity Level 4</b>		
Service Desk Availability	8.00am to 5:00pm Business Days	8.00am to 5:00pm Business Days

Response Times	≤2 Business Days	≤1 Business Days
Incident Update Times	None	Weekly
Target Resolution Times	None	None

<b>Exclusions</b>	<p>Support Services shall not cover and SoftwareONE shall have no liability nor any obligation to provide Support Services, including all or any Updates:</p> <ul style="list-style-type: none"> <li>• if You fail to pay the License Fees or Support Fees when due;</li> <li>• for any but the most current or, immediately preceding version or release of the Software. Any immediately preceding version or release of the Software shall continue to be supported for the period published on SoftwareONE's end of support website found at the following link: <a href="https://www.powerconnect.io/end-of-support/">https://www.powerconnect.io/end-of-support/</a>;</li> <li>• for any version of the Software for which previously-issued Updates have not been installed or implemented promptly, and where such Updates have provided a reasonable resolution for the Incident;</li> <li>• if You or any Authorized User is in material breach of any term of this Agreement;</li> <li>• for any Software that has been the subject of custom modifications, alteration or repair not completed by SoftwareONE;</li> <li>• for any Incident arising as a result any acts, omissions, negligence, abuse, damage, misapplication or misuse of the Software by You, any Authorized User or any third party who has been granted access to the Software by You or an Authorized User;</li> <li>• for any Incident arising as a result of any operation or use of, or other activity relating to, the Software other than as specified in the Documentation, including any incorporation in the Software of, or combination, operation or use of the Software in or with, any technology (including any third party products or services, software, hardware, firmware, system or network) or service not specified in the Documentation;</li> <li>• where installation, operation, access or use is beyond the licensed use;</li> <li>• for any increases in costs or decreases in efficiency that You may experience with any SAP Products or any other third party products or services utilized by Your or an Authorized User;</li> <li>• for the operation (or failure in operation) of, or access (or failure of access) to Your or a third party's system or network or any Incident arising as a result thereof;</li> <li>• where SoftwareONE makes a reasonable determination that Your operating environment or unique settings thereof are hindering or otherwise affecting functionality of the Software;</li> <li>• any other circumstances or causes outside of the reasonable control of SoftwareONE (including abnormal physical or electrical stress or a Force Majeure Event);</li> <li>• provision of training to You on the use of the Software.</li> </ul> <p>All work required to resolve any Incidents or to provide any services which are out-of-scope of the Support Services, if agreed by SoftwareONE that it will deliver such work, shall be charged to You on a times and materials basis at SoftwareONE's rates in force at the time and delivered under a separate agreement between the Parties.</p>
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**Definitions**

Incident	means an event which is not part of the standard operation of the Software, as set out in the specifications provided by SoftwareONE as part of the Documentation, and which causes, or may cause, an interruption to, or a reduction in the quality of the Software.
Response Times	means the elapsed time between an Incident being raised with SoftwareONE and the initial response by SoftwareONE to that Incident.
Resolution or Resolve	means the normal operation of the Software has been restored by a workaround or a permanent fix and the Incident status has been set to resolved by SoftwareONE.
Resolution Times	means the elapsed time between an Incident being reported to SoftwareONE and it being Resolved.
Severity Level	means the severity level of an Incident which has been allocated in accordance with the criteria set out in this Appendix.

Service Level	means a performance standard set out in this Appendix in accordance with which SoftwareONE shall use its reasonable endeavors to provide the Support Service to which it relates.
Incident Update	means the updates required to be provided by SoftwareONE to You between the time an Incident has been raised and it being Resolved.
Incident Update Times	means the elapsed time between SoftwareONE's initial Response to an Incident and each Incident Update provided by SoftwareONE to that Incident thereafter until the Incident is Resolved.