

CLOUD SERVICES AGREEMENT

Software AG South Africa (Pty) Ltd (“**the Supplier**”) offers certain web-based products and services both directly and indirectly through third parties (“**Partners**”) and the recipient of such services (“**the Customer**”) has signed an agreement with a Partner for the provision of certain such services the details of which are set out in the relevant order, document or process pursuant to which such Partner has agreed to make such services available to the Customer (“**Order Form**”). This Agreement sets out the terms and conditions on which the same will be provided to the Customer. The accessing and use by the Customer of such products and/or services indicates the acceptance by the Customer of these terms and conditions. Supplier and Customer are each a “**Party**” and together the “**Parties**”.

1 USE OF SERVICES

- 1.1 **Provision of Cloud Services:** Supplier grants Customer a non-exclusive, non-transferable, non-sublicensable right to access and use the Supplier web-based products and services identified in an Order Form (“**Cloud Services**”), including the then current version of any user manuals and operating instructions generally provided with the Cloud Services (collectively, “**Documentation**”), for the term set out in the Order Form (“**Cloud Services Term**”). Customer may use the Cloud Services subject to the terms of this Agreement. Customer will not receive a copy of any programs listed in the Order Form other than for temporary download of plug-ins or fat clients (which will be deemed part of the Cloud Services) as described in the applicable Order Form. “**Users**” of the Cloud Services mean employees or contractors of Customer who are authorized by Customer in accordance with the Agreement to access the Cloud Services using Customer’s account credentials (“**Credentials**”). Customer is solely responsible for all User use and access to the Cloud Services and the security of any Credentials and will immediately report to Supplier any suspected unauthorized use of the Cloud Services or Credentials.
- 1.2 **Restrictions:** Customer will comply with all laws and regulations applicable to Customer and to Customer’s use of the Cloud Services. Customer will not, or permit or cause any third party to:
 - (a) use the Cloud Services other than expressly authorized by, and in accordance with the usage terms of, this Agreement;
 - (b) 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;
 - (c) disassemble, reverse engineer, reverse compile, translate, modify, adapt, alter, copy or create derivative works from any products or services provided with the Cloud Services except to the extent permitted by applicable law;
 - (d) interfere with or disrupt the integrity or performance of the Cloud Services or the data contained therein in any way, including but not limited to: (i) conducting penetration testing in multi-tenant environments; (ii) conducting penetration tests in single-tenant environments without the Supplier’s prior written consent; (iii) attempting to gain unauthorized access to the Cloud Services or their related systems or networks; or (iv) storing or transmitting a virus or other malicious code through the Cloud Services;
 - (e) disseminate performance-related information relating to the Cloud Services;
 - (f) use the Cloud Services to store or transmit infringing, libelous, offensive, unlawful or tortious material; or
 - (g) 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.
- 1.3 **Service Level:** Supplier will use commercially reasonable efforts to make the Cloud Services accessible to 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 applicable Order Form.
- 1.4 **Reservation of Rights:** Supplier owns all intellectual property rights in and to the Cloud Services, Documentation and all related materials and derivative works thereof. There is no transfer or assignment by Supplier of any ownership right and Supplier reserves all rights not expressly granted under this Agreement.

2 CUSTOMER INFORMATION

- 2.1 **Operational Data: Feedback:** Supplier will automatically collect information associated with Customer’s access and use of the Cloud Services, including, without limitation application telemetry, IP addresses, IP configurations, stored sessions, open ports, Credentials, network metadata, and device operating system, status, version and configuration (collectively “**Operational Data**”). Supplier may use the Operational Data to monitor, analyze, develop, support or improve the performance of the Cloud Services. Customer grants to Supplier a worldwide, perpetual, irrevocable license to use and commercialize any suggestions, enhancement, requests, recommendations, corrections or other feedback provided by Customer relating to the Cloud Services.
- 2.2 **Customer Data:** With the exception of Operational Data, Customer owns all content, information, materials and intellectual property provided by Customer in connection with Customer’s use of the Cloud Services (“**Customer Data**”). Customer is solely responsible for: (i) its provision and use of Customer Data with the Cloud Services; (ii) the accuracy, quality and content of the Customer Data; (iii) assessing the Cloud Services suitability for Customer’s intended use; and (iv) obtaining all necessary rights, consents and permissions. Customer will comply with all applicable laws, in its provision and use of Customer Data in connection with the Cloud Services. Customer grants Supplier a worldwide, irrevocable, non-transferable, non-assignable (except as permitted under this Agreement), sub-licensable, non-exclusive license to access, retrieve, store, copy, display, distribute, transmit and otherwise use Customer Data associated with the Cloud Services as follows:
 - (a) in connection with maintaining, providing and/or making available the Cloud Services; and
 - (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.
- 2.3 **Data Protection Agreement:** The obligations of the parties in connection with the processing of any data that qualifies as personal data according to art. 4 no. 1 of the General Data Protection Regulation (“**Personal Data**”) including the applicable technical and organizational measures that supplier is required to implement and maintain to protect Personal Data, will be as set out in the data processing agreement entered into between the parties (“**Data Processing Agreement**”).
- 2.4 **Privacy Notice:** Supplier will collect and process any Operational Data that qualifies as Personal Data in accordance with its then current Privacy Notice. Supplier may change its Privacy Notice from time to time by posting a new version at https://www.softwareag.com/corporate/cloud_privacy_policy.
- 2.5 **Security:** Supplier will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Supplier 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).

3 PAYMENT

- 3.1 **Payment:** All payments shall be due and payable on the basis set out in the agreement between the Customer and the Partner with whom the Customer

has contracted for the provision of the Cloud Services. Supplier's standard payment terms are thirty (30) days of the date of invoice and Customer agrees that in the event of the non-payment to the Supplier by the Partner of any fees due to the Supplier in connection with the delivery of the Cloud Services the Supplier shall be entitled to suspend the provision of the Cloud Services to the Customer.

- 3.2 **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 **CONFIDENTIALITY**

- 4.1 **Confidential Information:** Each Party will have access to confidential or nonpublic information ("**Confidential Information** ") of the other Party or third parties. Confidential Information disclosed is proprietary and will remain the sole property of the disclosing Party or such third parties. The Cloud Services and Documentation are Confidential Information of Supplier. Confidential Information will not include information that: (i) is or becomes publicly available or enters the public domain through no fault of the recipient; (ii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations; (iii) is already in the recipient's possession free of any confidentiality obligations at the time of disclosure; (iv) is independently developed by the recipient; or (v) is approved, in writing, for release or disclosure without restriction.

- 4.2 **Confidentiality Obligation:** Each Party agrees to: (i) use Confidential Information only for the purposes of this Agreement; (ii) hold Confidential Information in confidence and protect it from dissemination to, and use by, any third party; (iii) not to create any derivative work from Confidential Information; (iv) restrict access to Confidential Information to its personnel, affiliates, agents, and contractors who need access to such Confidential Information and who have agreed in writing to treat such Confidential Information in accordance with this Agreement; and (v) return or destroy all Confidential Information of the other Party upon termination or expiration of this Agreement. If the recipient is required by law or valid legal order to disclose Confidential Information, the recipient will, unless prohibited by law, give reasonable notice of such demand to allow the disclosing Party to seek a protective order or other remedy.

5 **WARRANTIES**

- 5.1 **Mutual Warranties:** Each Party represents and warrants that it has the full right and power to enter into and perform its obligations under this Agreement.

- 5.2 **Supplier Warranties:** Supplier warrants that: (i) the Cloud Services, when properly used, will perform substantially in accordance with the Documentation; and (ii) the Cloud Services are subject to standard virus scanning methods designed to detect and remove malware. SUPPLIER DOES NOT WARRANT THAT THE CLOUD SERVICES WILL OPERATE UNINTERRUPTED OR ERROR FREE. Supplier does not and cannot control or warrant the flow of data to or from Supplier's or Customer's network and other portions of the internet. THE WARRANTIES IN THIS CLAUSE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, STATUTORY, AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF ACCURACY, QUIET ENJOYMENT, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

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 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.

- 6.2 **Exceptions:** Supplier will have no indemnity obligation nor other liability under this Agreement to the extent the claim is based upon: (i) Cloud Services modified by anyone other than Supplier; (ii) 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; (iii) use of the Cloud Services in conjunction with other software, hardware or Customer data, where such use gave rise to the infringement claim; (iv) use of the Cloud Services in a manner inconsistent with its Documentation; or (v) use of Cloud Services other than as expressly authorized in this Agreement.

- 6.3 **Remedy:** If Supplier determines that the Cloud Services are likely to be the subject of a claim of infringement, Supplier may, in its sole discretion: (i) replace or modify the Cloud Services; (ii) procure the right for Customer to continue using the Cloud Services; or (iii) terminate access to the Cloud Services and refund to Customer a pro-rated portion of the applicable unused Cloud Services fees. THIS SECTION STATES SUPPLIER'S EXCLUSIVE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY REGARDING ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT BY THE CLOUD SERVICES OR ANY MATERIALS OR SERVICES PROVIDED UNDER THIS AGREEMENT.

- 6.4 **Customer Indemnity:** Customer will indemnify Supplier from any third party action against Supplier to the extent proximately based upon an allegation arising from: (i) any access to or use of Customer Data with the Cloud Services; or (ii) modification or use of the Cloud Services with any Customer applications, provided that Supplier (a) promptly notifies Customer of any such action; (b) gives Customer full authority, information, and assistance to defend such claim; and (c) gives Customer sole control of the defense of such claim and all negotiations for the compromise or settlement of such claim.

7 **LIMITATION OF LIABILITY**

- 7.1 **Limitation of Liability:** EXCEPT AS EXPRESSLY SPECIFIED IN THIS AGREEMENT, SUPPLIER IS NOT LIABLE FOR ANY LOSSES OR DAMAGES THAT MAY ARISE IN CONNECTION WITH CUSTOMER'S USE OF THE CLOUD SERVICES. SUPPLIER IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS) FOR ANY CLAIM THAT ARISES FROM OR RELATES TO THIS AGREEMENT (INCLUDING THE CLOUD SERVICES), REGARDLESS OF THE FORM ALLEGED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR SUPPLIER'S OBLIGATIONS UNDER SECTION 'IPR INDEMNITY' AND IN THE EVENT OF DEATH OR PERSONAL INJURY OF A PERSON NEGLIGENTLY CAUSED BY SUPPLIER SUPPLIER'S LIABILITY FOR MONETARY DAMAGES, REGARDLESS OF THE FORM OF ACTION, WILL NOT EXCEED THE FEES PAID UNDER THIS AGREEMENT FOR THE CLOUD SERVICES IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO THE LIABILITY.

8 **USAGE LIMITS**

- 8.1 **Usage Limits:** Customer will ensure that its usage of the Cloud Services does not exceed the usage terms set forth in this Agreement and will be liable for any excess usage at Supplier's then current rates during the period in which usages exceeds the licensed amount.

9 **SUSPENSION AND TERMINATION**

- 9.1 **Suspension:** Supplier may suspend Customer's access to the Cloud Services in order to: (i) comply with any law, regulation, government or court order; or (ii) prevent any degradation of the Cloud Services caused by Customer. Supplier will promptly resume the Cloud Services if and when the cause of the suspension has been removed.

- 9.2 **Termination:** In the event of a material breach of this Agreement, the non-breaching party may terminate this Agreement if the material breach has not been cured within thirty (30) days after written notice specifying such breach. Failure to make any payment due under this Agreement is a material breach. In the event of termination by Customer for Supplier's material breach, Supplier will refund a pro-rated portion of the applicable unused Cloud Services

fees. In the event of termination by Supplier for Customer's material breach, all remaining Cloud Services fees under any Order Form will be immediately due and payable. Any terms that by their nature extend beyond termination or expiration will survive notwithstanding the termination or expiration of this Agreement.

10 GENERAL

- 10.1 **Assignment:** Customer may not assign, transfer, delegate, or sublicense any of Customer's rights or obligations under this Agreement without Supplier's prior written consent. Any assignment, transfer, delegation, or grant of sublicense without Supplier's consent is 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.
- 10.2 **Export Control:** Customer may not download, provide access to, and otherwise export or re-export the Cloud Services, in whole or in part, except as explicitly allowed in this Agreement and in compliance with all applicable laws, regulations and restrictions (whether international, federal, state, local, or provincial). Customer will not nor permit or cause a third party to use the Cloud Services for military, para-military, police, border protection, intelligence service, arms, nuclear power plants, nuclear technology (including production, operations, transport, delivery of such items), Internet and/or communication surveillance (including person tracking, face recognition functions) purposes. The Customer will not access or use, or permit any user to access or use, the Cloud Services - in whole or in part - in violation of any EU or U.S. export control or economic sanctions law or regulation, including but not limited to using or permitting such access or use in an Embargoed Country or by anyone named on the Specially Designated Nationals List or for any prohibited purpose. Supplier reserves the right to not perform any obligation under the Agreement if prohibited by such export control laws, regulations or restrictions.
- 10.3 **Third Party Components:** If the Customer downloads any portion of the Cloud Service, including but not limited to plug-ins or connectors or fat clients ("Cloud Service Downloadable"), the Customer acknowledges that such Cloud Service Downloadable may contain or be distributed with certain open source, free, or commercial third party components ("Third Party Components"), which may be subject to special license terms and conditions ("Third Party Terms") located at <http://softwareag.com/licenses>. Third Party Terms include important licensing and warranty information and disclaimers of third party licensors. For the avoidance of doubt, if Customer uses the Cloud Service Downloadable in accordance with the Documentation, the Third Party Terms do not restrict the rights granted under this Agreement. In the event that a third party manufacturer no longer provides active support for any Third Party Component, Supplier will use commercially reasonable efforts to respond to any issues with the Cloud Service Downloadable related to the Third Party Components.
- 10.4 **Anti-Corruption:** The Parties will comply with all laws, regulations and requirements (whether international, federal, state, local, or provincial) prohibiting bribery, money laundering, and anti-corruption, including the U.S. Foreign Corrupt Practices Act.
- 10.5 **Dispute Resolution:** In the event of a dispute, each Party will appoint a senior management representative to negotiate in good faith to resolve the dispute before commencing formal proceedings. Formal proceedings may not commence until 30 days have passed since the initial request to negotiate the dispute; provided, however, that a Party may file for formal proceedings at any time to avoid the expiration of any limitations period, preserve a superior position with respect to other creditors, or apply for interim, injunctive, or equitable relief.
- 10.6 **Independent Contractors:** The Parties are independent contractors and have no power to bind or incur obligations on the other Party's behalf.
- 10.7 **Force Majeure:** Neither Party is liable for failing to perform an obligation under this Agreement if such failure is due to any act or condition beyond that Party's reasonable control.
- 10.8 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa. For the purpose of all or any proceedings hereunder the parties consent to the jurisdiction of the magistrates' court having territorial jurisdiction, notwithstanding that such proceedings are otherwise beyond its jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to section 45 of the Magistrates' Court Act, 1944, provided, nevertheless, that any party shall have the right at its sole option and discretion to institute proceedings in any other competent court.
- 10.9 **Marketing:** Customer agrees that, while this Agreement is in effect, Supplier is authorized to identify Customer as a customer in public relations and marketing materials, including identification on Supplier's website, and use Customer's corporate name and logo.
- 10.10 **Notices:** All notices, demands, or other communications by any party to the other shall be deemed to have been duly given when: (i) made in writing and delivered in person with signed receipt, or (ii) 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.
- 10.11 **Entire Agreement; Waiver; Priority; Severability:** This Agreement constitutes the entire agreement between the Parties, and supersedes all prior written and oral agreements and communications related to the subject matter of this Agreement. Any modifications to this Agreement must be in writing and signed by the duly authorized representatives of the Parties. Any waiver under this Agreement must be in writing and signed by the Party granting the waiver. A waiver granted under this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other provision of this Agreement. No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right. In the event of any conflict between any provision of this Agreement and any Order Forms incorporated and made part of this Agreement, such conflict will be resolved by giving precedence to the Order Form(s). Any contrary or additional terms and conditions included in any purchase order or similar document (printed or online) related to this Agreement will be invalid and non-binding, even if received, accepted, approved, or signed by a Party. If any provision of this Agreement is held invalid or unenforceable, the provision will be limited to the minimum effect necessary and the remaining provisions of this Agreement will remain binding and enforceable. This Agreement may be executed in one or more counterparts, with the same effect as if the Parties had signed the same document. The Parties agree to the use of digital signatures.