

Master Subscription Agreement for In Mind Cloud Services



1. SCOPE

- 1.1. The terms of this Master Subscription Agreement governs the use of In Mind Cloud Services and other products and services of IN MIND CLOUD by all end users of such products and services (“Customers”). This Agreement shall constitute a legally binding agreement between the Customer and IN MIND CLOUD and governs all subscriptions to In Mind Cloud Services and other products and services (“Subscriptions”) purchased by the Customer.
- 1.2. Any references to statutory provisions are for the purposes of clarification only and do not limit their applicability unless they are modified or expressly precluded (to the extent permitted by law) in this Agreement.
- 1.3. IN MIND CLOUD reserves the right to amend and modify the terms of this Agreement in its sole discretion from time to time, provided such amendments and modifications are reasonable in the circumstances and do not affect the scope of the services being provided by IN MIND CLOUD to the Customer. Any such amendments and modifications to the terms of this Agreement may be posted by IN MIND CLOUD on its website from time to time or otherwise notified to the Customer by IN MIND CLOUD.
- 1.4. By purchasing the Subscriptions and using the IN MIND CLOUD services and other products and services provided by IN MIND CLOUD, the Customer shall be deemed to have agreed to the terms of this Agreement and any amendments thereto.

2. DEFINITIONS

For the purposes of this Agreement including its appendices, the following definitions shall apply:

“Affiliate” means in relation to an entity, (i) a related body corporate of such entity, including its holding company, its subsidiary or a subsidiary of its holding company; and (ii) an Associated Company.

“Associated Company” means in relation to an entity, a company or body corporate which is not a subsidiary of such entity but in which such entity owns or holds not less than 20 per cent of such company’s or body corporate’s issued share capital.

“Agreement” means this Master Subscription Agreement including all attachments, annexes, schedules and other ancillary documents that relate to it, as well as any other attachments, annexes, schedules and other ancillary documents referred to in this Agreement.

“Cloud Services” means service offers from abstracted IT Infrastructures (e.g. processing capacity, data storage, network capacities or ready-to-use software) which are dynamically adjusted to the respective needs and made available to the Customer via network provided by IN MIND CLOUD. This especially contains the services: SaaS - Software as a Service, PaaS - Platform as a Service, IaaS - Infrastructure as a Service.

“Confidential Information” means any information and materials relating to a Party or its Affiliates which is proprietary or confidential, or which according to the circumstances of disclosure or based on the content must be considered confidential or strictly confidential. The following information, in particular, shall be deemed to be Confidential Information: know-how, trade secrets, business and marketing plans, customer data, financial statements and information, software, programs, source codes, tools, technical data, including the related techniques, concepts, methods, processes, drawings, designs, manuals, documentation and any material or information which is provided to the other Party pursuant to this Agreement.

“Content” means any data and data content which is provided by third parties and made available by IN MIND CLOUD to use with In Mind Cloud Services.

“Customer” means the entity which has contracted with IN MIND CLOUD to purchase Subscription(s) to use the In Mind Cloud Services or such other products and services provided by IN MIND CLOUD, subject to the terms and conditions of this Agreement.

“Data of Customer” means all data as well as material and information provided by the Customer when using In Mind Cloud Services or other products and services of IN MIND CLOUD and which Customer makes available to IN MIND CLOUD in the course of the use of such products and services.

“Defined Users” means those designated employees, staff members and representatives of the Customer that the Customer has authorized to use In Mind Cloud Services.

“Fees” means all fees relating to the Subscription(s) paid or to be paid by the Customer.

“GST” means goods and services tax levied pursuant to the Goods and Services Tax Act of Singapore.

“IN MIND CLOUD” means In Mind Cloud Pte. Ltd. or its Affiliate, which is a member of the In Mind Cloud group of companies, identified in the Order Form as the party providing the relevant services to the Customer.

“In Mind Cloud Services” means all editions of application software developed by IN MIND CLOUD, e.g. Insight Selling Suite Cirrus und Cumulus Edition, Cloud CPQ Express Standard und Professional Edition, which is made available as SaaS (Software as a Service) world-wide through Cloud Computing Services. In Mind Cloud Services supports and optimizes knowledge-based marketing/sales processes of business customers.

“IP Rights” (or “Intellectual Property Rights”) means without limitation any patents and other rights to inventions, copyrights, trademarks, design rights, utility models, geographical indications and any other intangible property rights and all related rights of use or commercialization thereof.

“Order Form” means the Order Form including all ordering documents that contain specific terms and conditions for the ordering of In Mind Cloud Services or other products and services.

“Party” and “Parties” means a party and the parties to this Agreement.

“Subscription” means the subscription to In Mind Cloud Services purchased by the Customer.

“Support Conditions” means the terms and conditions which govern the support services provided by IN MIND CLOUD in connection with the subscription of In Mind Cloud Services. Support Conditions shall be deemed to be an integral part of this Agreement.

3. PROVISIONS OF SERVICES

- 3.1. IN MIND CLOUD provides the respective latest versions of In Mind Cloud Services on servers for online usage by the Customer within the contractually agreed scope of services and for processing and saving the Data of the Customer within the term of this Agreement (known as SaaS or „Software as a Service“). The internet connection required for the access to In Mind Cloud Services is not part of the services provided under this Agreement. The point of transfer of the services to be provided by IN MIND CLOUD is the connection of the router of the data center to the internet.
- 3.2. Details of the scope of the service as well as the technical requirements and conditions for usage to be fulfilled and provided by the Customer are defined in this Agreement and its ancillary documents, in particular, the Order Form. All indicated dates and schedules are only binding when explicitly agreed upon by the Parties in writing. The use of In Mind Cloud Services may require, in particular, the installation and licensing of „SAP HANA Cloud Platform“ by the Customer. Special attention must be paid to compatible configuration and sizing of SAP HANA Cloud Platform.

- 3.3. IN MIND CLOUD assumes no liability for suitability of In Mind Cloud Services for a particular use or in the case that In Mind Cloud Services contains any Content, for correctness or completeness of such Content.
- 3.4. IN MIND CLOUD provides and performs its services in line with technological advancement and oriented to the needs of the group of users as a whole. Services are always performed based on the latest version of In Mind Cloud Services. IN MIND CLOUD continuously develops In Mind Cloud Services for the purposes of optimization, adjustment to technical progress and to processing requirements. Therefore, individual functions might be modified or removed from time to time - always provided that the specified contractual purpose will not be at risk. In the case that rights of third parties or valid legal provisions are affected by providing or using In Mind Cloud Services, IN MIND CLOUD is entitled to make appropriate usage adjustments and restrictions. Furthermore, access to In Mind Cloud Services as well as its range of usage may be restricted if necessary in order to guarantee the safety of the network service, to maintain the network integrity, and, in particular, to avoid large-scale damages to the network, the software or the saved data. IN MIND CLOUD supervises the functional capacity of In Mind Cloud Services and, if technically possible, removes any software errors. The details regarding support services are specified in the Support Conditions.
- 3.5. The Parties will promptly inform each other of any circumstances relevant for processing the order and Subscription. IN MIND CLOUD will, to an economically reasonable extent use security technology (e.g. encryption, password and firewall protection) for providing In Mind Cloud Services. Customer will respect valid security guidelines and security proceedings provided to him by IN MIND CLOUD or SAP. IN MIND CLOUD cannot guarantee that data transmission via telecommunication installments including internet is safe. Furthermore, IN MIND CLOUD shall not be liable if the applied security technology fails to prevent disruptions in the usage of In Mind Cloud Services caused by third-parties.
- 3.6. All purchasable versions of In Mind Cloud Services have a system availability of at least 98 % within each calendar month. This shall not apply to downtime due to maintenance work on In Mind Cloud Services and SAP systems, esp. SAP HANA Cloud Platform, or due to technical or other problems that IN MIND CLOUD cannot control (e.g. force majeure, downtime of networks of third-party operators). In case the aforementioned system availability cannot be attained in a particular calendar month, the Customer is entitled to receive a credit in the amount of 2 % of the Subscription fee for the service ordered in the respective month for every percent (also pro rata) by which IN MIND CLOUD fails to achieve this degree of availability. The maximum credit is one hundred percent of the Fees for the respective month. The Customer may provide evidence that damage is higher, in which case granted credits shall be offset against any compensation claims. Should IN MIND CLOUD not provide a system availability of at least 98 % in three (3) consecutive calendar months, the Customer has the right of termination for good cause. Any claims are to be submitted in writing within 10 business days after the end of the relevant period.
- 3.7. Should IN MIND CLOUD not be able to provide service for reasons beyond its control, e.g. force majeure (e.g. war or natural disaster) or other events that cannot to be foreseen at the point of contract, IN MIND CLOUD's service obligations shall be suspended as long as the force majeure event lasts. Both Parties shall be entitled to termination for good cause if such a suspension should continue for more than three (3) consecutive calendar months.
- 3.8. IN MIND CLOUD may in its discretion and to the extent commercially possible employ sub- contractors for the provision of the services hereunder.
- 3.9. IN MIND CLOUD is entitled to audit and inspect, upon reasonable advance notice to the Customer as set forth in section 11 herein, whether the provisions hereunder are complied with by the Customer, especially to verify that the number of Defined Users that access In Mind Cloud Services is within the authorized number of users.

4. USAGE AND COMPLIANCE OBLIGATIONS

- 4.1. In Mind Cloud Services must be used solely via the intended user interfaces.
- 4.2. The Customer is obliged to configure its systems and programs in a way that does not affect the security, integrity, availability and orderly functioning of the systems that IN MIND CLOUD provides for service delivery. The manipulation of the services offered by IN MIND CLOUD, in particular, is prohibited. The Customer is obliged to keep its data free of viruses, Trojans and similar elements. The Defined Users are to be instructed and trained about orderly usage of In Mind Cloud Services.
- 4.3. Personal access data (keyword and password) shall be treated as confidential, be changed regularly, and be kept safe and protected from access by unauthorized third parties. Should the Customer become aware that an unauthorized third party has gained knowledge of a password, IN MIND CLOUD must be informed and the password be changed immediately.
- 4.4. When using In Mind Cloud Services the Customer must not perform any of the following actions and must furthermore ensure that the Defined Users comply with these restrictions: (a) copying, translating, disassembling, decompiling, reverse engineering or in any way modifying any parts of the service (except for as described in the documentation and as far as permitted under applicable law); (b) transferring of content, data, or information which is illegal, damaging, threatening, malicious, injuring, harassing, prohibited, defamatory, vulgar, obscene, or offensive, or which disregards the right to privacy or the right of publicity of a third party, or which is hateful and discriminating towards certain races or groups of people, or which is in any other way objectionable;
- 4.5. (c) violation of the rights of intellectual property of a third party; (d) disturbance or interruption of the provided software and systems that host In Mind Cloud Services or of other devices or networks connected to In Mind Cloud Services, or the violation of any requirements, proceedings, guidelines or provisions for networks connected with In Mind Cloud Services of which the Customer gained knowledge; (e) using In Mind Cloud Services for running a service office, for the purpose of outsourcing or for time-sharing services; (f) providing and making available links, hypertext (URL [Universal Resource Locator] addresses) or similar elements (except for „bookmarks“ in a web browser) on the website or in In Mind Cloud Services or in any part of it; (g) bypassing of user authorizations or of security functions of the website, of In Mind Cloud Services or of a host, network or account connected to it; (h) using any other application programming interface for gaining access to In Mind Cloud Services than the one provided by IN MIND CLOUD; (i) using In Mind Cloud Services in any way that violates applicable law or provisions on a local, state or federal level, or that violates international or foreign laws or provisions; (j) authorizing third parties - beyond the rights of Defined Users according to this Agreement - to use user authorizations, codes, key words, proceedings and user keys that were issued to or chosen by the Customer for accessing In Mind Cloud Services.
- 4.6. The Customer shall provide IN MIND CLOUD in a timely manner and without prior request with all information, documents and data necessary for providing the services and, as the case may be, for the rectification of errors. Further, the Customer will extend its cooperation, required for the successful provision of services in accordance with this Agreement, e.g. providing availability and accessibility of the respective systems of the Customer to IN MIND CLOUD.
- 4.7. The Customer is obliged to check the accuracy and completeness of its data entries and processing results solely and on its own authority. The Customer must accumulate, maintain and manage its data in accordance with all applicable data protection acts, rules and provisions.
- 4.8. A qualified contact person shall be specified to IN MIND CLOUD that shall either be authorized to make all required decisions himself or be able to consult authorized persons at short notice to implement decisions quickly.
- 4.9. Only the Customer, including all its Defined Users, is entitled to use In Mind Cloud Services. It is prohibited to transfer the rights of use and grant access or opportunities for use to third parties without prior written agreement of IN MIND CLOUD. The Customer shall be held responsible for all acts and omissions of the Defined Users.

- 4.10. Notification to Defined Users and consent of third parties: The Customer shall instruct and inform the Defined Users in a timely manner of the rights and obligations regarding the use of In Mind Cloud Services. The Customer shall be responsible for any breaches of this Agreement by the Defined Users

5. SUSPENSION OF SERVICES

- 5.1. In case of non-payment or delay in payment of Fees by the Customer, IN MIND CLOUD is entitled to restrict, suspend or deny access to In Mind Cloud Services until full payment is received by IN MIND CLOUD.
- 5.2. IN MIND CLOUD is entitled to restrict, suspend or deny access to In Mind Cloud Services in case of misuse or unauthorized access to In Mind Cloud Services or of In Mind Cloud Services pending investigation until the situation has been resolved. In such event, the Customer will be informed promptly.
- 5.3. If the Customer is responsible for the misuse or unauthorized access or other material breach of this Agreement, all Fees paid by the Customer will not be refunded and the Customer shall also be liable for all losses, damages and costs incurred by IN MIND CLOUD arising from or in connection with such breaches.

6. SUPPORT AND WARRANTY

- 6.1. The Customer shall immediately notify IN MIND CLOUD of any defects, errors or issues which it encounters during the usage of In Mind Cloud Services. The Customer shall provide the necessary support to IN MIND CLOUD in the rectification of any defects and, in particular, supply all information, documents, data etc. necessary for error analysis and removal. The details regarding support services provided by IN MIND CLOUD are specified in the Support Conditions
- 6.2. Third-party software used by IN MIND CLOUD: In absence of authorization to access third-party software used by IN MIND CLOUD, the responsibility of IN MIND CLOUD only extends to obtaining and installing generally accessible upgrades, updates or service packs (if available) from the provider of such software.
- 6.3. If within the framework of error detection and error removal IN MIND CLOUD provides services which it is not obliged to provide, IN MIND CLOUD may ask for remuneration for these services on the basis of its current pricing. This shall apply especially if a notified material defect cannot be detected or be assigned to IN MIND CLOUD, or if In Mind Cloud Services is not being used in accordance with the documentation.
- 6.4. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND ORDER FORM, IN MIND CLOUD DOESN'T MAKE ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING THE SUITABILITY OR FITNESS OF IN MIND CLOUD SERVICES FOR A PARTICULAR USE OR PURPOSE.

7. FEES AND INVOICING

- 7.1. The Contractual Fee shall be exclusive of any applicable consumption, sales or value-added and withholding taxes imposed by the local government as applicable on the day of invoicing.
- 7.2. The remuneration specified in the Order Form shall cover the indicated scope of service. Additional or special services (such as performance of briefings and training services, changes or customization services) are to be invoiced additionally according to the pricing of IN MIND CLOUD.
- 7.3. The invoice shall be deemed accepted unless written objections are claimed within 2 weeks after receipt of the invoice.
- 7.4. The subscription fee is due according to Order Form and first applicable with cloud service start. All other Contractual Fees are becoming due immediately and without deduction on the date of invoicing. Payment shall be made by bank transfer to the business accounts and free of charge for IN MIND CLOUD.

- 7.5. All invoice claims will be due immediately in case of suspension of payment, insolvency filing, or ineffective enforcement against the Customer.

8. TERM OF AGREEMENT

- 8.1. This Agreement shall be valid and effective during the entire period in which the Customer subscribes for In Mind Cloud Services (including any extension or renewal thereof).
- 8.2. The Customer may order additional Subscriptions for users or other metrics of In Mind Cloud Services subject to payment of additional Fees. Unless otherwise agreed for the additional orders, the initially agreed term shall apply and, therefore, existing and additional Subscriptions shall terminate at the same time.
- 8.3. After the agreed initial subscription period has terminated, this Agreement is extended by 1 year, unless it is terminated observing a notice period of 3 months before contract end date.
- 8.4. IN MIND CLOUD shall have the right to terminate this Agreement without notice for good cause at any time. Any of the following reasons will constitute good cause: (a) material breach of contractual obligations by the Customer, which is not remedied after due notice and an appropriate time period for remedy has been given, (b) a reasonable determination by IN MIND CLOUD that Customer continued use of the In Mind Cloud Services may result in harm or damage to the In Mind Cloud Services platform and the applied Cloud systems or other Customers, or result in a violation of applicable law or legal rights of another party, (c) illegal or unauthorized actions related to the use of In Mind Cloud Services, in particular misusing the access or access data or permitting unauthorized usage by third parties, (d) filing for insolvency or appointment of a judicial manager by the Customer (e) more than thirty (30) days delay in payment delay by the Customer after due notice and an appropriate time period for remedy has been given.
- 8.5. Access to the In Mind Cloud Services will automatically be blocked upon termination or expiry of this Agreement. Notwithstanding the foregoing, the Customer can read, save or print its stored data via one of the offered interfaces for a limited period of time, particularly for the purposes of complying with documentation obligations in accordance with applicable law. Access to customer data requested after termination or expiry of this Agreement is subject to additional charges and will be invoiced separately according to prevailing rates set by IN MIND CLOUD. Any digital user documentation is to be deleted from the systems of the Customer and any physical versions are to be destroyed or, as the case may be, returned to IN MIND CLOUD. IN MIND CLOUD will permanently delete all data of the Customer contained in In Mind Cloud Services 14 days after termination or expiry of this agreement unless the Customer requests to access the data within this period. Failure to give such notification shall be deemed as giving consent to the deletion of the Customer's data.
- 8.6. If IN MIND CLOUD terminates this Agreement for good cause which the Customer is responsible for, the Fee for the remaining Subscription period shall remain due and payable.

9. SET OFF AND RIGHT OF RETENTION

The Parties shall only be entitled to a right of set-off or have the right of retention if the counterclaim is undisputed or legally binding.

10. INTELLECTUAL PROPERTY RIGHTS AND RIGHTS OF USE

- 10.1. IN MIND CLOUD, its Affiliates or its licensors own all rights, titles and interests in all copyright, trademark rights, patent rights, design rights and other IP Rights or other rights to In Mind Cloud Services as well as to any work output and all further developments, updates, upgrades, enhancements, modifications or derivative works which are developed on or out of In Mind Cloud Services by any Party. Under this Agreement or otherwise, the Customer does not acquire any IP Rights with the exception of the limited license as expressly stated in this Agreement to use the In Mind Cloud Services and related materials for its own purposes.
- 10.2. IN MIND CLOUD grants the Customer a non-exclusive, non-transferable and non-sub licensable right of use of In Mind Cloud Services for the envisaged purpose and subject to the restriction of use to the Defined Users. The right of use shall be valid world-wide, insofar as there are no exceptions due to legal provisions (in particular country-specific export prohibitions) and subject to the restrictions listed on the website of SAP (in its respective applicable version): www.sap.com/company/legal/index.epx.
- 10.3. The Customer shall not sub-license, license, sell, lease, rent, or outsource In Mind Cloud Services, or make it in any other way accessible to third parties, or use it for third parties. The right of use may not be exerted by more than one person. Furthermore, the rights of a Defined User cannot be transferred to another person, unless the original user does not require access anymore and/or is no longer authorized to access the service.
- 10.4. The Customer grants IN MIND CLOUD the non-exclusive, spatially unlimited right to use the Customer's data solely for the purpose of providing In Mind Cloud Services, if required.
- 10.5. IN MIND CLOUD reserves the copyright and all IP Rights of manuals, images, drawings, models, catalogues, brochures and other documents that were provided to the Customer during installation and implementation of In Mind Cloud Services. The aforementioned materials are not to be copied, published or made accessible to third parties without agreement of IN MIND CLOUD. Upon request of IN MIND CLOUD, such documents shall be returned and copies be destroyed immediately unless otherwise agreed by IN MIND CLOUD.
- 10.6. Any rights that are not expressly granted to the Customer in this Agreement are reserved to IN MIND CLOUD, its Affiliates and its licensors (as the case may be).

11. AUDIT

- 11.1. During the term of this Agreement and with prior written notice IN MIND CLOUD or an external expert appointed by IN MIND CLOUD who is reasonably acceptable to the Customer ("Nominated Auditor") may audit - at IN MIND CLOUD's expense and provided there is legitimate interest in the audit - whether the Customer's use of In Mind Cloud Services is consistent with the rights granted to Customer herein. The prior written notice must be given to the Customer at least 30 days before the audit is to take place.
- 11.2. The audit must take place during standard business hours of the Customer and not more often than once each calendar year and in compliance with Clause 16 of this Agreement. The audit shall be performed on an anonymous basis as far as possible in order to prevent disclosure of any customer names and/or contacts and/or contract information of the Customer to IN MIND CLOUD during the audit procedure.

12. LIABILITY

- 12.1. IN MIND CLOUD SHALL, REGARDLESS OF THE LEGAL REASON, BE FULLY LIABLE FOR ANY DEATH OR PERSONAL INJURY DUE TO IN MIND CLOUD'S OR ANY OF IN MIND CLOUD'S OFFICER'S, DIRECTOR'S, AGENT'S, AFFILIATE'S AND/OR EMPLOYEE'S INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE.
- 12.2. IN MIND CLOUD SHALL FURTHERMORE BE LIABLE FOR DAMAGES DUE TO INTENTIONAL OR NEGLIGENT VIOLATION OF MATERIAL OBLIGATIONS UNDER THIS AGREEMENT, PROVIDED THAT THE AMOUNT AND EXTENT OF LIABILITY IS LIMITED TO THE SUM OF TOTAL FEES RECEIVED FROM THE CUSTOMER IN THE LAST TWELVE (12) CALENDAR MONTHS PRIOR TO THE CLAIM FOR THE RESPECTIVE SUBSCRIPTION AND NOT EXCEEDING ONE POINT FIVE MILLION EUROS (EUR 1,500,000) IN AGGREGATE.
- 12.3. NEITHER PARTY SHALL IN ANY EVENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES OR LOSSES OF ANY KIND OR FOR ANY LOSS OF USE, SAVINGS BUSINESS, GOODWILL, PROFITS, REVENUE OR REPUTATION, WHETHER ARISING UNDER CONTRACT, TORT STATUTORY LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS REASONABLY FORSEEABLE OR THE PARTY KNOWS OR HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- 12.4. THE AFOREMENTIONED LIABILITY RESTRICTIONS SHALL ALSO APPLY FOR THE BENEFIT OF EMPLOYEES, STAFF, DIRECTORS, OFFICERS, ASSISTANTS, LEGAL REPRESENTATIVES OR VICARIOUS AGENTS OF IN MIND CLOUD INCLUDING ITS AFFILIATES

13. INDEMNITY

- 13.1. The parties including their Affiliates and the persons whom they use to perform their obligations (vicarious agents) shall indemnify each other against all third-party claims which were caused by breaches of obligations under this Agreement. The Customer shall, in particular, release IN MIND CLOUD from such claims that arise from illegal or unauthorized use of In Mind Cloud Services including the data transferred by the Customer or transferred with its approval in violation of any applicable law or this Agreement. IN MIND CLOUD shall defend (at its sole expense) Customer and its Affiliates against claims brought against Customer by any third party alleging that Customer's use of the In Mind Cloud Services, in accordance with this Contract, constitutes a direct infringement or misappropriation of a patent claim(s), copyright, or trade secret rights.
- 13.2. The indemnification hereunder shall extend to and include all reasonable costs and expenses (especially, but not limited to, legal costs including, but not limited to, solicitor and arbitration/court fees) and compensation claim payments as well as other obligations that arise from the demands of third parties. The Parties shall extend their cooperation and give immediate notice to each other regarding any claims raised by third parties and provide each other with all information and documents necessary for legal proceedings.
- 13.3. Indemnification shall in amount and extent be restricted to the liability insurance which each party is required to maintain, and in the case of IN MIND CLOUD, subject to the aggregate limit of liability set out in Clause 12.2 above.

14. TRANSFER AND ASSIGNMENT

- 14.1. IN MIND CLOUD shall be entitled to assign and transfer its rights and obligations hereunder to third parties.
- 14.2. The Customer will be notified of the assignment in writing at least 2 months before the proposed date of assignment.
- 14.3. The assignment of rights and obligations arising out of this Agreement by the Customer is subject to the prior written consent of IN MIND CLOUD which consent shall not be unreasonably withheld or delayed. This Agreement shall be binding on the respective legal successors and assigns of both Parties.

15. PERSONAL DATA PROTECTION

- 15.1. The collection, processing and the use of personal data shall be done solely for and in furtherance of the purposes defined in this Agreement.
- 15.2. IN MIND CLOUD acts solely as a data intermediary in the storing and processing of personal data provided by the Customer in the course of providing In Mind Cloud Services to the Customer. IN MIND CLOUD is not obliged to ensure the Customer's compliance with applicable personal data protection or privacy laws.
- 15.3. The Customer remains solely responsible for compliance with applicable personal data protection and privacy laws in its usage of IN MIND CLOUD SERVICES. Whether or to what extent data will be entered or accessed is solely within the discretion of the Customer. For the usage of personal data, the Customer shall provide appropriate authorization management, password assignment etc. The Customer shall inform IN MIND CLOUD immediately if it becomes aware of any breach of personal data protection or privacy laws in the course of using In Mind Cloud Services.

16. CONFIDENTIALITY

- 16.1. Each Party shall keep confidential and not disclose to any third party the contents of this Agreement and any business and trade secrets and other Confidential Information regarding the other Party disclosed to it in connection with this Agreement or its implementation, except as expressly agreed upon by the other Party.
- 16.2. The Parties shall not seek to register IP Rights of the other Party.
- 16.3. Any press releases and other public communication in connection with this Agreement shall require the prior written consent of the other Party.
- 16.4. Notwithstanding the above, each Party may disclose any information as may be required in order to comply with any applicable law, an enforceable order of a court or public authority or the rules and regulations of any stock exchange; provided, however, that the relevant Party shall, to the extent legally permissible and practicable, notify the other Party thereof in advance and seek to agree with it upon the content of the information.
- 16.5. The confidentiality obligations hereunder shall not be affected by the termination or expiration of this Agreement. Both Parties agree at the option of the other Party to forthwith return or destroy the Confidential Information of the other Party upon the expiration or termination of this Agreement and to certify that it has complied with these obligations.
- 16.6. Prior to the execution of the Contract, the Parties may have exchanged information considered Confidential Information, which shall be subject to the same treatment as Confidential Information exchanged after the execution of this Agreement.
- 16.7. A separately concluded Confidentiality/Secrecy Agreement precedes the foregoing stipulations, which in the remainder amend such separate agreement.

17. ACKNOWLEDGEMENTS REGARDING SAP SERVICES

- 17.1. Maintenance, Support and Warranty. Customer acknowledges (i) that SAP has no obligation whatsoever to furnish any maintenance and support services with respect to IN MIND CLOUD Services, (ii) that SAP will have no other warranty obligation whatsoever with respect to In Mind Cloud Services, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be IN MIND CLOUD's sole responsibility, (iii) that Customer and IN MIND CLOUD, not SAP, are responsible for addressing any claims of the Customer or any third party relating to IN MIND CLOUD Services or the Customer's possession and/or use of IN MIND CLOUD Services.

- 17.2. Legal Compliance. The Customer represents and warrants that (i) he/she is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) he/she is not listed on any U.S. Government list of prohibited or restricted parties.
- 17.3. Intellectual Property Rights. IN MIND CLOUD and the Customer acknowledge that, in the event of any third party claim that the IN MIND CLOUD Services or the Customer’s possession and use of that IN MIND CLOUD Services infringes that third party’s intellectual property rights, IN MIND CLOUD or the Customer, not SAP, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.
- 17.4. Third Party Beneficiary. IN MIND CLOUD and the Customer acknowledge and agree that SAP, and SAP’s subsidiaries, are third party beneficiaries of this Agreement, and that, upon the Customer’s acceptance of the terms and conditions of this Agreement, SAP will have the right (and will be deemed to have accepted the right) to enforce this Agreement against the Customer as a third party beneficiary thereof.

18. FINAL PROVISIONS

- 18.1. This Agreement contains the entire agreement between the Parties and supersedes any previous understanding, commitment, agreements, arrangements or representations whatsoever, whether oral or written, express or implied in relation to the subject matter hereof. This Agreement may be signed in counterparts delivered to the other Party, each of which shall be deemed an original and which shall together constitute one Agreement.
- 18.2. This Agreement and any dispute or claim arising out of or in connection with this Agreement, including any issues regarding its formation, subject matter, validity or termination (including non- contractual disputes or claims), shall be governed by and construed in accordance with the laws of Germany and the rules of the United Nations Convention on Contracts for the International Sales of Goods (CISG) shall be expressly excluded.
- 18.3. Each Party irrevocably agrees that the Court of Munich, Germany shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement.
- 18.4. The invalidity or unenforceability for any reason of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remaining provisions.
- 18.5. No failure or delay on the part of a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, and no waiver shall be valid unless in writing.
- 18.6. The Parties acknowledge that no third party shall be entitled to enforce any term of this Agreement, whether any such entitlement would arise under statute or otherwise.