



TERMS AND CONDITIONS

Last Revised: 11th September 2019

These Terms and Conditions (“Terms”) as published on the website of SoftwareOne located at www.SoftwareOne.com/ (click your region and specific SoftwareOne subsidiary) comprise the terms and conditions - as amended from time to time - under which SoftwareOne will supply Licenses and or Services. You accept these terms on behalf of the entity you represent (“Company”) (together with its Affiliates) by either: (i) physically or electronically signing a Contract incorporating the Terms; or (ii) placing an order with SoftwareOne on behalf of Company.

1 DEFINITIONS AND INTEGRATION

In addition to any definitions contained within the body of these Terms, the following definitions apply:

“Affiliates” means any person, corporation or other entity that now or in the future, directly or indirectly controls, is controlled by or is under common control with a party. For purposes of this definition, “control” means: (a) with respect to a corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; and (b) with respect to any other entity, the power to direct the management of such entity.

“Contract” means a written agreement entered into under these Terms for the supply of Licenses or the provision of Services between SoftwareOne and Company. A Contract for Services will describe the Services, requirements, and Deliverables. Examples of a Contract include a statement of work, cloud services agreement, or other agreement for managed, cloud, or professional services.

“Deliverables” means all tangible output of the Services created exclusively for Company by SoftwareOne and identified in a Contract. Deliverables may include, data, reports, and specifications.

“EULA” means the applicable end user license agreement, customer product use rights (“PUR”), or other agreement from a Licensor relating to the Licenses to Company (e.g. Microsoft customer agreement for Cloud Services) as well as the then applicable standard terms and conditions for cloud, maintenance and/or support services of software, as amended from time to time.

“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.

“Knowledge Capital” means the ideas, concepts, know-how, skills, methodologies, and techniques, whether possessed by SoftwareOne prior to the commencement of these Terms or developed, modified, improved, or refined by SoftwareOne during the course of performance of the Services.

“Licenses” means the permission granted by a Licensor to Company, allowing Company to exercise certain privileges with respect to its software regardless if the software is installed on premises or accessed as cloud services. The Licenses to be supplied or made available under these Terms will be listed in the respective quote from SoftwareOne, Company purchase order and Order Confirmation(s) and may include temporary usage rights (e.g. subscriptions, cloud services), updates and upgrades, patches or any other changes offered by the Licensor according to the EULA.

“Licensor” means the legal entity that is the owner of the Intellectual Property Rights vested in the Licenses with the authority to define the End User License Agreement (“EULA”), Product Terms (“PT”) or other terms and conditions for the use of the Licenses.

“Order Confirmation” means SoftwareOne’s binding acceptance of a Company’s order containing the details of the Licenses, the price and other terms agreed upon by the parties. For the avoidance of doubt, an automatically generated response by SoftwareOne which does not state the details of the License(s), the price and other applicable terms or a Company’s order is not sufficient to constitute a valid Order Confirmation.

“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.

“Sanctions Rules” mean all applicable laws, regulations, rules and requirements in force from time to time relating to trade, financial or economic sanctions or embargoes including, any sanctions or embargoes enforced by the U.S. government, (including the U.S. Export Administration Regulations and the International Traffic in Arms Regulations), the European Union or any member state of the European Union as well as any applicable import, export or re-export controls and any end-user, end-use, and destination restrictions of the U.S. and other governments that apply to the other party’s materials or to the use, transfer, import, export, or re-export of any products licensed or distributed under the Contract.

“Services” means the services to be provided by SoftwareOne under these Terms and the applicable Contract.

“SoftwareOne” means the SoftwareOne entity named in an Order Confirmation or Contract.

“SoftwareOne IP” means SoftwareOne’s Intellectual Property Rights and Knowledge Capital.

Unless otherwise agreed in writing by SoftwareOne, all Licenses and Services are supplied under these Terms to the exclusion of any other terms and conditions set out or referred to in any document or other communication used by Company prior to or in concluding a Contract. These Terms will apply to each Contract. In the event of a conflict between the Terms and a Contract, the Terms will control unless all of the following apply: (i) the Contract clearly identifies the applicable section of the Terms that is to be modified; and (ii) the Contract clearly states that such provision of the Contract supersedes the conflicting or inconsistent provision in the Terms. Any other attempt to alter or amend these Terms will be deemed void and have no effect. Any modifications to these Terms contained within a Contract are effective as to that Contract only and will not modify the Terms for any other purpose whatsoever. These Terms cannot be modified except in a written document signed by all parties.

2 ORDER AND DELIVERY POLICY

Price quotations and purchase orders are not binding upon either party until SoftwareOne issues to the Company an Order Confirmation or (if earlier) supplies the Licenses or commences provision of the Services. SoftwareOne may deliver the Licenses by electronic transmission, electronic access, download or other method provided by the Licensor. If electronic delivery is not possible, SoftwareOne may deliver Licenses by arranging shipment to Company's address. Company orders for Licenses are irrevocable, non-cancellable and cannot be modified once SoftwareOne places its order with the applicable Licensor. Company may modify or cancel any purchase orders for Licenses at any time prior to SoftwareOne placing its order for Licenses with the Licensor.

SoftwareOne will deliver the Licenses to the location identified in the Order Confirmation. SoftwareOne shall immediately inform Company of any delays in the delivery of the Licenses and shall provide Company with the reason for any anticipated duration of the delay. Delivery Dates are estimates only.

3 AFFILIATES

SoftwareOne's Affiliates may enter into a contractual relationship with Company pursuant to these Terms and Company's Affiliates may procure Licenses and Services by executing the applicable Contract hereunder. Company and its Affiliates will be jointly and severally liable for all orders for Licenses and Services by Company's Affiliate.

4 ACCEPTANCE OF LICENSES; RETURN POLICY

- 4.1 Company shall inspect the Licenses received within a reasonable time, but not exceeding five (5) Business Days from the date of receipt, to ensure that the Licenses delivered are in the correct quantity and type. In the event of errors in the quantity or type of Licenses, or to the extent allowed by the Licensor's return policies, Company may return the Licenses. If Company does not object to the quantity or type of Licenses within five (5) Business Days, then such Licenses will be deemed accepted upon the delivery date. SoftwareOne will not accept the return of supplied Licenses unless such returns are admissible as per the Licensor's return policies. If the Licenses received are not those detailed in the Contract, Company shall inform SoftwareOne no later than ten (10) Business Days of delivery.
- 4.2 Company acknowledges that the EULA or PT of certain Licensors have automatic renewal provisions for the Licenses, requiring licensees to provide notice of their intention not to renew a License. If Licenses purchased under a Contract contain an automatic renewal provision, SoftwareOne shall make commercially reasonable efforts to notify Company of such provision within the Contract. If Company does not wish to renew a License with an automatic renewal provision, then Company shall: (i) provide notice to SoftwareOne of its intention not to renew a License thirty (30) days in advance of any period required by the Licensor in the EULA or PT; and (ii) provide notice of its intention not to renew the License to the Licensor as required by the EULA or PT. For example, if a Licensor's EULA or PT require a thirty (30) day notice of intent not to renew, then Company shall provide SoftwareOne with a sixty (60) day notice of intent not to renew. If Company fails to deliver the required notice of intent not to renew, then the License will renew and Company will be responsible for payment.

5 ACCEPTANCE OF DELIVERABLES

SoftwareOne shall notify Company upon completion of the Services ("Notification of Completion"). Company shall examine the Services and any corresponding Deliverables and declare or refuse (for material faults only) the acceptance in writing, signed by an authorized representative, within ten (10) Business Days after receipt of the Notification of Completion. If Company does not provide a notice of defect within ten (10) Business Days, then the Services and corresponding Deliverables will be deemed accepted.

6 ACADEMIC, NON-PROFIT AND GOVERNMENT LICENSES

Certain products are only available for purchase by qualified institutions, such as educational institutions ("Academic" products), qualified non-profit organizations ("Non-Profit" products) or government units ("Government" products). By identifying itself as a qualified institution, Company represents that it is familiar with all of the Licensor's requirements with respect to such product and that it complies with all of the Licensor's requirements for such Academic, Non-Profit or Government product.

7 SERVICES

SoftwareOne shall perform the Services with due care and in accordance with the Contracts. SoftwareOne will not be required to follow any requests or instructions (“Change Request”), which change or supplement the substance or scope of the Services described in a Contract. If SoftwareOne provides the Services described in a Change Request, then Company shall pay for such Services pursuant to these Terms and the applicable Contract. SoftwareOne does not grant the achievement of a particular work result.

8 COMPANY OBLIGATIONS

- 8.1 Company shall: (a) cooperate with SoftwareOne in all matters relating to the Contract for facilitating the provision of the Services and Licenses ; (b) provide all information SoftwareOne may request in order to carry out the Services and provide the Licenses in a timely manner and ensure that it is accurate in all material respects; (c) provide timely access to Company’s Intellectual Property, premises, data and such office accommodation and other facilities as agreed with Company in writing in advance and as necessary for the purpose of providing the Services; and (d) inform SoftwareOne of health and safety rules and regulations and any other reasonable security requirements at its premises.
- 8.2 If the performance of SoftwareOne is prevented or delayed by any act or omission of Company, its agents, sub-contractors or employees, Company shall pay SoftwareOne all reasonable costs, fees or losses sustained or incurred by SoftwareOne as a result of such delay.
- 8.3 Company will be solely responsible for: (i) backing up its data; (ii) ensuring normal operation of its own software; and (iii) the necessary working environment of the software.
- 8.4 Company shall pay SoftwareOne’s invoices as provided in Section 9.

9 PRICING; PAYMENT; TAXES

- 9.1 Company shall pay SoftwareOne for the Licenses and the Services along with all agreed charges set forth in the Contract. All prices and availability are subject to change unless agreed upon through a binding Order Confirmation or a Contract signed by both parties.
- 9.2 If Licenses or third-party services consist of consumption-based services, including subscription services that are performed by a party other than SoftwareOne, then the fee for such a service will be determined by the Licensor or company performing the service. Such fees are not always fixed and may be subject to the usage of the applicable Services and Licenses by Company. Company shall review and accept the billing model and shall pay the fees in accordance with any third-party terms. Company is solely responsible for understanding any third-party billing model.
- 9.3 SoftwareOne will invoice, and Company shall pay the invoiced amounts, plus pertinent taxes, including, all applicable withholding taxes, import taxes, levies, and duties resulting from cross-border transactions (transactions where SoftwareOne and Company are tax residents of different countries). If Company is required by law to deduct or withhold any taxes from any amount payable on a cross-border transaction, the amount payable hereunder 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.
- 9.4 In the absence of an expressly agreed invoicing schedule, Company shall pay all amounts relating to Services provided by SoftwareOne at the end of every calendar month in arrears.
- 9.5 If payment terms are not indicated in a Contract, invoices are automatically due 14 calendar days following the invoice date. All payments made by the Company to SoftwareOne shall be in the currency of the country where SoftwareOne is located, which delivers the Licenses or Services, unless otherwise agreed between the Parties.
- 9.6 If Company does not pay the amounts owed in a timely manner, then Company shall pay interest charges and late payment fees on the outstanding amount, without any written demand or notice of default being necessary. All past due amounts will bear interest at the lesser of 1.5 % per month or the highest rate allowed by law, until the invoice is paid in full.
- 9.7 Company shall pay all charges incurred by authorized users of its account, by credit card, by wire transfer or other similar payment mechanisms in effect. To the extent permitted by applicable law, SoftwareOne may require Company to pay transaction charges levied by credit card issuers relating to purchases. Company shall reimburse SoftwareOne for all bank fees relating to checks, credit card or bankcard, and sales drafts returned by the Company's bank or card issuer. Company shall pay all attorney fees, court costs, collection agency fees, or any other costs incurred by SoftwareOne in collecting any overdue amount owed.

- 9.8 Company shall not set off amounts against amounts payable under the Contract.
- 9.9 In the event of payment default by the Company by more than fourteen (14) calendar days, SoftwareOne shall be entitled to prohibit the use of the Licenses, Services, and Deliverables with immediate effect (contractual right of prohibition/services suspension).
- 9.10 SoftwareOne retains the title on the Licenses, together with all right, title, and interest to the Services and Deliverables until all its future payment claims against the Company at the time of the service or in connection with the delivery items have been settled. With respect to current accounts, the retained ownership shall be regarded as security for the offset balance or current account receivable of Company.

10 WARRANTIES AND DISCLAIMER

- 10.1 Each party represents that: (i) they are a valid legal entity in good standing under the laws of the jurisdiction in which they are organized; (ii) they have full power and authority to enter into these Terms and any Contract, which will create a binding agreement between the parties; and (iii) the performance by the parties hereunder will not violate any obligation or duty owed to a third party.
- 10.2 Company acknowledges that SoftwareOne only delivers Licenses subject to the applicable EULA and PT, which may contain a limited warranty from Licensor. All of Company's rights and remedies with respect to the Licenses, warranty, liability, and indemnity will be governed by the applicable EULA, PT or other documentation. Company acknowledges that it will be required to enter into a EULA, PT or similar end user agreement with the Licensor as a condition precedent to using Licensor's software. The EULA/PT or similar agreement will outline all warranties and representations with respect to the Licenses purchased. SoftwareOne does not make any representations or warranties relating to any Licenses or software.
- 10.3 All third party services distributed by SoftwareOne are delivered with the service provider's limited warranty. The warranties for third party services that are not performed by SoftwareOne will be governed by the applicable policies and procedures of the service provider only. SoftwareOne does not make any express or implied warranties for third party services.
- 10.4 SoftwareOne represents and warrants that: (a) it will perform the Services and deliver Licenses using personnel with the abilities, qualifications and experience in accordance with these Terms and the applicable Contract; and (b) it will perform the Services in a professional and workmanlike manner and in accordance with the applicable Contract and all applicable laws, rules, and regulations.
- 10.5 As far as SLA are agreed in writing, breach of service level agreements ("SLA") are deemed to be relevant or considered a material breach of these Terms and the applicable Contract, only if SoftwareOne has culpably violated the SLA parameters (negligence or deliberate act) and if said violation lasts for a period of at least three (3) months; furthermore SoftwareOne shall only be held responsible of the non-availability of a Service (e.g. Cloud Services) if it occurs outside of a regular or irregular service/maintenance window (the service windows are described in the SLA document of the respective Service). In case of payment of service credits or penalties for breach of SLA this is the sole and exclusive remedy of the Company, and further obligation and liability of SoftwareOne relating to the claims identified above are excluded.
- 10.6 EXCEPT AS STATED IN THIS SECTION 10, OR THE APPLICABLE EULA, PT, SERVICES DESCRIPTIONS, SOFTWAREONE HEREBY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

11 LIMITATION OF LIABILITY

- 11.1 SoftwareOne's liability for any damages relating to Licenses or Services available through SoftwareOne are limited to the value of the amounts paid by Company under the Contract for such Licenses or Services over the last twelve calendar months preceding the incident giving rise to the damage. In no event will SoftwareOne be liable for any incidental, consequential, special, punitive or indirect damages of any kind, including damages resulting from delay, loss of profits, lost business opportunity, loss of content, interruption of business or loss of goodwill, which may arise in connection with or pertaining to these Terms or any Contract, even if such party has been notified of the possibility or likelihood of such damages occurring under any theory of law (including tort or other theory).
- 11.2 NOTHING IN THESE TERMS OR ANY CONTRACT LIMITS EITHER PARTY'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; (C) WILLFUL MISCONDUCT; (D) INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; (E) THE BREACH OF CONFIDENTIALITY OBLIGATIONS; (F) COMPANY PAYMENT OBLIGATIONS; OR WHICH (G) CANNOT BE LIMITED UNDER APPLICABLE LAW.
- 11.3 Company agrees that any Contract or other document relating to the purchase of Licenses or Services submitted to SoftwareOne that includes any warranty to Company or that includes language that may create a liability for SoftwareOne, or conflicts with these Terms, is void and of no effect, unless it complies with the integration requirements stated in Section 1.
- 11.4 Some jurisdictions do not allow for the limitation or exclusion of warranties or damages, so the limitations on damages may not apply.

12 INTELLECTUAL PROPERTY RIGHTS; IP INDEMNITY

- 12.1 Except as expressly provided in this Section 12, nothing in these Terms provides Company any right, title or interest in or to any Intellectual Property Rights comprised in the Licenses or the Services, which will at all times remain the property of SoftwareOne or of the Licensors, as applicable.
- 12.2 SoftwareOne shall assist Company with the handling of any associated claims or issues with the Licensor. Company acknowledges that SoftwareOne is not the publisher or developer of the Licenses and the only warranties or indemnities or license rights are those granted by the Licensor.
- 12.3 Company represents and warrants that it is buying the Licenses for its own internal use and not for resale.
- 12.4 In the event of conflict between these Terms and the EULA/PT or similar agreement regarding the scope of the Intellectual Property Rights, the warranties and representations conferred to Company, the EULA/PT will prevail.
- 12.5 Upon full and final payment of the Deliverables, SoftwareOne shall grant and hereby grants Company a perpetual, worldwide, fully paid up, royalty free license to use the applicable Deliverables for internal purposes.
- 12.6 SoftwareOne owns all right, title, and interest in all SoftwareOne IP, whether possessed by SoftwareOne prior to the commencement of these Terms or developed, improved, or refined by SoftwareOne during the course of performance of the Services. If SoftwareOne includes any SoftwareOne IP or Knowledge Capital within the Deliverables, then SoftwareOne shall grant Company a limited, perpetual, fully paid up, royalty free, non-exclusive, non-assignable, non-transferrable, revocable (solely for breach of the license), license to use, copy, modify, enhance, and maintain: (i) the SoftwareOne IP (but excluding Knowledge Capital) for Company's internal purposes and solely to the extent necessary to use the Deliverables; and (ii) SoftwareOne's Knowledge Capital as embodied in, or to the extent necessary for its use of the SoftwareOne IP or the Deliverables for Company's internal purposes.
- 12.7 Third Party Intellectual Property Rights delivered as part of the Service will be made available to Company subject to the terms provided by such third party, which SoftwareOne will make available to Company upon request.
- 12.8 Company hereby grants to SoftwareOne a revocable, non-exclusive, royalty-free license to use Company's Intellectual Property Rights to enable SoftwareOne to perform the Services or to identify new Services for Company. Company reserves all other right, title and interest to its Intellectual Property Rights.

12.9 Company shall not and shall not permit any Affiliates or third party to translate, reverse engineer, decompile, recompile, update, or modify any SoftwareOne IP, or any Deliverable in a targeted manner in order to discover SoftwareOne IP. If Company provides any input, comments or suggestions regarding the Services, SoftwareOne IP, or SoftwareOne's business or technology plans, including comments or suggestions regarding the possible creation, development, modification, correction, improvement or enhancement of the Services or SoftwareOne IP (collectively "Feedback"), then Company shall grant and hereby grants SoftwareOne a perpetual, non-exclusive, world-wide, royalty free, license to use such Feedback without restriction.

12.10 Aggregated Data and Analytics Data. Notwithstanding any contrary provisions in any Contract, SoftwareOne may compile and retain Aggregated Data collected from or submitted through the Services and Analytics Data it creates during the performance of the Services, for purposes of operating, maintaining, analyzing, and improving its Services, SoftwareOne IP, and Knowledge Capital, as well as research and development of new services, SoftwareOne IP, and Knowledge Capital.

"Aggregated Data" means information and data collected from or submitted, confirmed, or provided by users in the course of accessing and using the Services. "Analytics Data" means SoftwareOne's analysis of the usage of its Services, SoftwareOne IP, and Knowledge Capital. SoftwareOne will own all right, title, and interest in and to all Aggregated Data and Analytics Data, provided that such Aggregated Data and Analytics Data will be anonymized such that will not identify Company or any user.

12.11 SoftwareOne Indemnity. SoftwareOne will indemnify and defend Company from direct damages arising from any third party claim that the Deliverables infringe any patent, copyright, trademark, or trade secret right owned by such third party. In no event will SoftwareOne have any obligations under this Section 12 or any liability for any claim or action to the extent that the claim is caused by, or results from: (a) Company's combination or use of the Deliverables with software, services, or products developed by Company or third parties; (b) modification of the Deliverables by anyone other than SoftwareOne; (c) Company's continued allegedly infringing activity, after being provided modifications that would have avoided the alleged infringement; or (d) Company's use of the Deliverables in a manner not in accordance with the applicable Contract. In the event that the Deliverable are the subject of an infringement claim, SoftwareOne shall, at its option: (i) procure the right for Company to continue using the Deliverables; (ii) make such alteration, modification or adjustment to the Deliverables so that they become non-infringing without incurring a material diminution in function in Company's reasonable estimation; or (iii) replace the infringing Deliverables at no cost to Company with non-infringing substitutes provided that the substitutes do not entail a material diminution in function in Company's reasonable estimation. If none of the foregoing is reasonable, in SoftwareOne's reasonable discretion, Company shall return the infringing Deliverables and SoftwareOne will promptly refund the sum of all payments made by Company hereunder for such Deliverables.

- 12.12** Company Indemnity. Company will indemnify and defend SoftwareOne from any damages arising from any third party claim that the Company Assets or Company's Intellectual Property Rights, used by SoftwareOne in connection with the Services, infringe any patent, copyright, trademark, or trade secret right owned by such third party.
- 12.13** Indemnification Requirements; Sole Remedy. The indemnifying party's obligation to indemnify the indemnified party pursuant to this Section 12 is contingent upon the indemnified party: (a) providing the indemnifying party prompt written notice of any claim; (b) tendering the exclusive control of the defense of any claim to the indemnifying party; and (c) reasonably cooperating with the indemnifying party in the defense of the claim, at the indemnifying party's expense. This Section 12 sets forth the sole and exclusive remedy of the indemnified party, and the entire obligation and liability of the indemnifying party relating to the claims identified above.

13 SUPPORT

SoftwareOne will not provide any technical support, training or installation, unless expressly provided in a Contract. If SoftwareOne provides support services (e.g. by Cloud Service) without any additional use charges, SoftwareOne reserves the right to limit requests for support to a certain number of requests per contract year and to refer the Company to fee based support services in all other regards.

14 TERM, TERMINATION, & SURVIVAL

- 14.1 The Contract including these Terms are effective upon execution, submission of the Order Confirmation, or delivery of the Services/Licenses - as the case maybe- and will remain in effect until terminated as provided herein. Unless otherwise agreed in the Contract, which may provide for a longer or shorter term, any Contract for managed Services (as defined in such Contract) will have a term of one (1) year ("Initial Term"). Except as provided in a Contract, following the Initial Term, a Contract for Managed Services will automatically renew for additional thirty (30) day terms.
- 14.2 SoftwareOne may terminate any Contract or modify the Terms hereunder at any time and for any reason by providing thirty (30) days' prior written notice to the other party. The terms and conditions of these Terms will survive any termination with respect to any Contract, until its expiration.
- 14.3 Either party may immediately terminate the Terms or any Contract hereunder by providing written notice to the other party if: (a) the other party commits a material breach of any of its obligations under the Terms or the applicable Contract that remains uncured for thirty (30) days following written notice therefor, or in the case of a breach that may not be cured within thirty (30) days, the breaching party does not act to cure the breach within the thirty (30) day period; (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is engaged in any procedures relating to a rescheduling of debt, an arrangement with creditors, a winding up procedure, a moratorium; (c) a party becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; (d) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within ten (10) Business Days; or (e) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.4 Sections 1, 3, 4, 8.4, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21 and 22 will survive any termination of these Terms.

15 FORCE MAJEURE

SoftwareOne shall not be liable to Company for any loss or damages which may be suffered by Company as a direct or indirect result of the supply of Licenses and Services by SoftwareOne being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond SoftwareOne's reasonable control including but not limited to acts of God, war, riot, strike, lock-out, fire, flood, and storm.

16 CONFIDENTIALITY

- 16.1 Definition. “Confidential Information” means non-public information of a competitive or commercially sensitive, proprietary, financial, trade secret nature, or information that involves or implicates privacy interests. Confidential Information includes any information labeled “Confidential” or “Proprietary”, business plans, strategies, forecasts, analyses, financial information, employee information, technology information, trade secrets, products, technical data, specifications, documentation, rules and procedures, methods, contracts, presentations, know-how, product plans, business methods, product functionality, data, customers, markets, competitive analysis, databases, formats, methodologies, applications, developments, inventions, processes, payment, delivery and inspection procedures, designs, drawings, algorithms, formulas or information relating to engineering, marketing, or finance and any other information that the Recipient should reasonably believe to be confidential given the circumstances.
- 16.2 Exclusions from Confidentiality. Confidential Information excludes information that: (i) is known by the Recipient prior to its receipt; (ii) is now or becomes publicly known by acts not attributable to the Recipient; (iii) is disclosed to Recipient by a third party who has the legal right to make such a disclosure; (iv) is disclosed by the Recipient with Discloser’s prior written consent; (v) is subsequently developed by the Recipient independently of any disclosures made hereunder and without use or access to any of the Discloser’s Confidential Information; or (vi) is required to be disclosed pursuant to governmental regulation or court order.
- 16.3 Confidentiality Obligations. Each party acknowledges that certain information it will receive from the other party may be Confidential Information of the other party. Any party receiving Confidential Information (“Recipient”) shall exercise the same degree of care and protection with respect to the Confidential Information of the party disclosing Confidential Information (“Discloser”) that it exercises with respect to its own Confidential Information, but in no event less than a reasonable standard of care. Recipient and its personnel may only use Discloser’s Confidential Information to the extent necessary to fulfill its obligations under the applicable Contract. The Recipient shall not, directly or indirectly, disclose, copy, distribute, republish or allow any third party to have access to any Confidential Information of the Discloser. The Recipient may only disclose Confidential Information to its personnel, if such personnel have a need to know the Confidential Information in order for the Recipient to perform its obligations under the applicable Contract, and such personnel have agreed in writing to comply with the confidentiality obligations contained in these Terms.

16.4 Injunctive Relief. Each party acknowledges that any violation of its obligations relating to Confidential Information would result in damages to the other party that are largely intangible but nonetheless real, and that cannot be remedied by an award of damages. Accordingly, any such violation will give the other party the immediate right to a court-ordered injunction or other appropriate order to enforce those obligations. A party's right to injunctive relief is in addition to any other rights and remedies available to such party at law and in equity. The party against whom any such injunction is entered shall pay to the other party all reasonable expenses, including attorney fees, incurred in obtaining such enforcement.

17 DATA PROTECTION

17.1 Parties will ensure that Personal Data will be processed in accordance with applicable privacy and data protection laws and regulations.

17.2 If SoftwareOne processes Personal Data solely for the purpose of providing the agreed Services and act on behalf and under the instructions of the Company, SoftwareOne will treat such Personal Data confidential and implement appropriate technical and organizational measures to protect this data. Company agrees that SoftwareOne may engage its affiliates as another processor and subcontractor when contributing to the Services.

17.3 Within the scope of application of the GDPR (General Data Protection Regulation (EU) 2016/679) the following applies: to the extent that the use or implementation of SoftwareOne Services involves the processing of Personal Data by SoftwareOne on behalf of and under the instructions of the Company, the parties are obliged to enter into a separate Data Processing Agreement (DPA).

18 AUDIT RIGHTS

SoftwareOne shall be entitled to audit the compliance of the Company with the requirements under these Terms or applicable Contract either itself or by a third party obligated to confidentiality, at any time after prior notification during regular business, on site, and in a manner that impacts the operational business of the Company as little as possible. As part of such an audit, SoftwareOne may also check the Company's documentation and reports. The Company shall grant SoftwareOne access to the relevant information, databases, log files and the like for this purpose and shall enable SoftwareOne or the third party to monitor the compliance with these Terms and/or the Contract. The Company shall support SoftwareOne or the third party to the best of its effort.

19 EXPORT CONTROL

- 1.1 Each party shall comply with Sanctions Rules in relation to all matters connected with or arising out of the applicable Contract and agrees that, as between the parties, it is solely responsible for ensuring its compliance with Sanctions Rules.
- 19.1 SoftwareOne shall obtain all necessary authorizations and licenses required to comply with Sanctions Rules applicable to the export of any Licenses, Services and Deliverables supplied or sold to Company under any Contract.
- 19.2 Neither party shall act or fail to act in such a manner that would cause the other party to be in breach of Sanctions Rules.

20 ANTI-BRIBERY AND CORRUPTION

- 20.1 The parties shall not commit, authorize or permit any action in connection with the negotiation, conclusion or the performance of the Contract that violates any applicable anti-corruption or anti-bribery laws or regulations. This obligation applies in particular to illegitimate payments to government officials, representatives of public authorities or their associates, families or close friends.
- 20.2 The parties shall not offer, or give to any employee, representative or third party acting on behalf of the other party, or accept, from any employee, representative or third party acting on behalf of the other party, any undue gift or benefit, be it monetary or other, with regard to the negotiation, conclusion or the performance of the Contract.
- 20.3 Each party shall promptly notify the other party if it becomes aware of or suspects any corruption relating to the negotiation, conclusion, or the performance of the Contract.

21 JURISDICTION AND GOVERNING LAW

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the country / state in which SoftwareOne entity entering the Contract is incorporated, to the exclusion of its rules on conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Contract. Each party irrevocably agrees that the courts of the country / state in which SoftwareOne entity entering the Contract is incorporated shall have exclusive jurisdiction to settle such disputes.

22 GENERAL

- 22.1 The invalidity or unenforceability of any provision of these Terms will not adversely affect the validity or enforceability of the remaining provisions.
- 22.2 All notices and other communications required or permitted to be served or given shall be in writing.
- 22.3 The failure of SoftwareOne to enforce a provision of these Terms does not constitute a waiver of it and will in no way affect the right to later enforce such provision.
- 22.4 Any heading, caption, or paragraph title contained in these Terms is inserted only as a matter of convenience and in no way defines or explains any paragraph or provision hereof.
- 22.5 Nothing in these Terms or any Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorize any party to make or enter into any commitments for or on behalf of any other party.
- 22.6 These Terms together with the Contracts, represent the entire agreement between the parties regarding the subject matter hereof, and supersede all other agreements and understandings.