

## TRIAL CLOUD SERVICES AGREEMENT

THIS AGREEMENT IS FOR THE TRIAL OF THE SUPPLIER CLOUD SERVICES MADE AVAILABLE ON SUPPLIER'S WEBSITE. READ THIS AGREEMENT CAREFULLY. BY CLICKING "I ACCEPT" ON THE SIGN-UP WEBPAGE TO WHICH THIS TRIAL CLOUD SERVICES AGREEMENT IS LINKED OR BY ACCESSING OR USING THE CLOUD SERVICES, YOU (THE "**CUSTOMER**") AGREE TO BE BOUND BY AND ACCEPT ALL THE TERMS OF THIS AGREEMENT. YOU MAY ENTER INTO THIS AGREEMENT AS AN INDIVIDUAL, IF YOU INTEND TO USE THE CLOUD SERVICES SOLELY IN YOUR PERSONAL CAPACITY (IN WHICH CASE, YOU AS AN INDIVIDUAL WILL BE THE "CUSTOMER"). IF YOU ENTER INTO TO THIS AGREEMENT ON BEHALF OF YOUR ORGANIZATION (IN WHICH CASE, YOUR ORGANIZATION WILL BE THE "CUSTOMER"), YOU REPRESENT THAT YOU ARE AUTHORIZED TO ACCEPT THE TERMS OF THIS AGREEMENT ON BEHALF OF YOUR ORGANIZATION. ALL ACCESS TO OR USE OF THE CLOUD SERVICES IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF THIS AGREEMENT AND YOUR AUTHORITY TO BIND THE CUSTOMER TO THIS AGREEMENT.

This Trial Cloud Services Agreement, including any Cloud Service specific information and additional click through terms on the sign-up webpage to which this Trial Cloud Services Agreement is linked, (collectively, the "**Agreement**") is entered into by and between **Software AG USA, Inc. ("Supplier")** and Customer and will be effective as of the date Customer accepts the terms of this Agreement as set forth above ("**Effective Date**"). 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 on the sign-up webpage to which this Trial Cloud Services Agreement is linked ("**Cloud Services**"), including the then current version of any user manuals and operating instructions generally provided with the Cloud Services ("**Documentation**") for a period of thirty (30) days from the Effective Date unless otherwise extended at Supplier's sole discretion ("**Trial Term**"). CUSTOMER MAY USE THE CLOUD SERVICES SUBJECT TO THE TERMS OF THIS AGREEMENT AND SOLELY FOR CUSTOMER'S INTERNAL EVALUATION AND TESTING PURPOSES. CUSTOMER WILL NOT PROCESS ANY LIVE DATA, INCLUDING PERSONAL DATA, IN CONNECTION WITH ITS EVALUATION AND TESTING OF THE CLOUD SERVICES.
- 1.2 **User Access:** 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. "**Users**" of the Cloud Services mean Customer (if Customer is an individual) or the employees or contractors of Customer (if Customer is an organization) who are authorized by Customer in accordance with this Agreement to access the Cloud Services using Customer's account credentials created for the Cloud Services ("**Credentials**").
- 1.3 **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) process any production data or any data that qualifies as personal data under any applicable laws, including without limitation the General Data Protection Regulation;
  - (c) commercially exploit or make the Cloud Services available to any third-party;
  - (d) disassemble, reverse engineer, reverse compile, translate, modify, adapt, alter, copy or create derivative works from any products or services provided with the Cloud Services;
  - (e) 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 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;
  - (f) disseminate performance-related information relating to the Cloud Services; or
  - (g) use, access, or provide access to the Cloud Services in any manner that violates an applicable economic, financial or trade prohibition, sanction or embargo, which may include but is not limited to such prohibitions, sanctions or embargoes enacted or imposed by law other restrictive measure and administered or enforced by (i) the United Nations Security Council, (ii) the United States government, (iii) the European Union or any of its member states' governments, (iv) the United Kingdom, (v) the Singaporean government, (vi) the Swiss Confederation, or (vii) any other authority that has jurisdiction over Customer, Supplier or the relevant project or activity for which the Cloud Service is being used, accessed or provided.
- 1.4 **Cloud Services Availability:** 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.
- 1.5 **No Cloud Services Support:** Supplier, in its sole discretion, may provide (or, after providing, withdraw, or terminate) limited maintenance or support for the Cloud Services during the Trial Term. Notwithstanding any decision by Supplier to exercise its discretion in providing Customer with limited maintenance or support for the Cloud Services, in no event is Supplier obligation to provide any maintenance or support for the Cloud Services.
- 1.6 **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:** Except for 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 its provision and use of Customer Data with the Cloud Services; the accuracy, quality and content of the Customer Data; and 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:

- (a) in connection with maintaining, providing and/or making available the Cloud Services; and
- (b) as reasonably required 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 **Privacy Notice:** Supplier will collect and process any Operational Data that qualifies as personal data according to Art. 4 No. 1 of the General Data Protection Regulation 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](https://www.softwareag.com/corporate/cloud_privacy_policy).

2.4 **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 CONFIDENTIALITY

3.1 **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.

3.2 **Confidentiality Obligations:** 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.

### 4 WARRANTY DISCLAIMER

4.1 **Warranty Disclaimer:** Customer acknowledges that the Cloud Services are provided "as is" without any warranty whatsoever. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUPPLIER DOES NOT WARRANT THAT THE CLOUD SERVICES WILL OPERATE UNINTERRUPTED OR ERROR FREE AND SUPPLIER DISCLAIMS ALL WARRANTIES, EXPRESS, STATUTORY, AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF ACCURACY, QUIET ENJOYMENT, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

### 5 INDEMNITY

5.1 **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) any modification or use of the Cloud Services with any Customer application, 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 settlement of such claim, except that Customer will not enter into any settlement that adversely affects any rights of or imposes any obligation or liability on Supplier without Supplier's prior written consent.

### 6 LIMITATION OF LIABILITY

6.1 **Limitation of Liability:** SUPPLIER IS NOT LIABLE FOR ANY LOSSES OR DAMAGES THAT MAY ARISING FROM OR RELATE TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR OTHER EXEMPLARY DAMAGES (INCLUDING LOSS OF PROFITS), REGARDLESS OF THE FORM ALLEGED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 7 USAGE LIMITS

7.1 **Usage Limits:** Customer will ensure that its use of the Cloud Services does not exceed the usage terms set forth in this Agreement.

### 8 SUSPENSION AND TERMINATION

8.1 **Suspension:** Supplier may suspend Customer's access to the Cloud Services to: (i) comply with any law, regulation, government or court order or (ii) prevent any degradation of the Cloud Services caused by Customer.

8.2 **Termination:** This Agreement will automatically terminate upon expiration of the Trial Term. Notwithstanding the foregoing, Supplier may immediately terminate this Agreement upon notice to Customer. Upon any termination of this Agreement, all access to the Cloud Services will be removed and Customer will not have any access to the Customer Data processed by the Cloud Services. All disclaimers of warranties, limitations of liability, and provisions for the protection of Supplier's proprietary rights in the Cloud Services as set forth herein will survive any termination of this Agreement.

### 9 GENERAL

9.1 **Third Party Components:** If Customer downloads any portion of the Cloud Services, including but not limited to plug-ins or connectors or fat clients ("**Cloud Service Downloadable**"), Customer acknowledges that such Cloud Service Downloadable may contain or be distributed with certain open source, free, or commercial third-party components, which may be subject to special license terms and conditions ("**Third Party Terms**") located at <https://softwareag.com/licenses>. Third Party Terms include important licensing and warranty information and disclaimers of third party licensors.

9.2 **Export Control:** Customer may not use, access, download, provide access to, or 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 export laws, regulations, and restrictions (whether international, federal, state, local, or provincial). Supplier reserves the right to not perform any obligation under this Agreement if prohibited by such export laws, regulations, or restrictions. Without limiting the generality of the foregoing, Customer represents and warrants that:

- (a) Customer is not a citizen, national, or resident of, and is not under control of, the government of Cuba, Iran, North Korea, Sudan, Syria, nor any country to which the European Union (EU) or the United States have prohibited export;
- (b) Customer is not listed on the EU's 'Consolidated List of persons, groups and entities subject to EU financial sanctions' or on the United States

Department of Treasury lists of 'Specially Designated Nationals', 'Specially Designated Terrorists', or 'Specially Designated Narcotic Traffickers', nor is Customer listed on the United States Department of Commerce 'Denied Persons List' or 'Entity List'; and

- (c) Customer will not download, grant access to, or otherwise export or re-export the Cloud Services, directly or indirectly, to (i) the countries, or the citizens, nationals or residents of the countries, referenced in subsection (a) or (ii) the persons, groups, or entities referenced in subsection (b).
- 9.3 **Anti-Corruption:** The Parties will comply with all applicable 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.
- 9.4 **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.
- 9.5 **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. Formal proceedings may not commence until 30 days after the initial written 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.
- 9.6 **Governing Law:** This Agreement is governed by the laws of the State of New York without giving effect to its conflicts-of-laws provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Uniform Commercial Code (UCC). The Parties consent to exclusive personal jurisdiction in federal and state courts located in the Southern District of New York. In the event a dispute arising under this Agreement results in litigation, the non-prevailing Party will pay the court costs and reasonable attorneys' fees and expenses of the prevailing Party. EACH PARTY WAIVES ALL RIGHT TO A JURY TRIAL IN ANY PROCEEDING ARISING OUT OF THIS AGREEMENT.
- 9.7 **Notices:** All notices and demands relating to this Agreement must be in writing and sent to the other Party: (a) if to Supplier, at 11700 Plaza America Drive, Suite 700, Reston, Virginia, 20190, USA, to the attention of the Legal Department and (b) if to Customer, at the email address Customer provided on the sign-up webpage. All notices and demands will be effective upon delivery when: (i) delivered in person with signed receipt; (ii) sent by registered mail (return receipt requested); (iii) sent by nationally recognized trackable carrier service; or (iv) on the date sent by email.
- 9.8 **U.S. Government Use:** If Customer is a U.S. Government entity, the Cloud Services, including the related software, and Documentation are "commercial computer software" and "commercial computer software documentation" under applicable Federal Acquisition Regulation (or other similar regulation) and are governed solely by the terms of this Agreement.
- 9.9 **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 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 Cloud Services specific information or additional click through terms on the sign-up webpage, the provisions of this Agreement will prevail (except that the DPA will prevail with respect to the Parties' data protection obligations). 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.