

Master Professional Service Agreement for In Mind Cloud Services



1. SCOPE

- 1.1. The terms of this Master Professional Services Agreement govern the use of Consulting and Professional Services offered by IN MIND CLOUD to the Customer. This Agreement shall constitute a legally binding agreement between the Customer and IN MIND CLOUD and governs all Consulting and Professional Services purchased by the Customer.
- 1.2. General Terms and Conditions of the Customer other than the present shall not be accepted, even if IN MIND CLOUD has not objected to these and accepts and performs the order.
- 1.3. Any references to statutory provisions are for the purpose 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.
- 1.4. 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 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.
- 1.5. By purchasing and using Consulting and Professional Services of 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:

„Affiliates“ 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.

“Agreement“ means this Master Professional Services 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.

“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.

“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.

„Consultant“ means IN MIND CLOUD employees and subcontractors of IN MIND CLOUD including self-employed persons deployed by IN MIND CLOUD at its own discretion to perform the Services.

„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 Consulting and Professional Services of IN MIND CLOUD, subject to the terms and conditions of this Agreement.

„Fees“ means all fees to be paid by the Customer under this Agreement.

„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.

3. PROVISIONS OF SERVICES

- 3.1. Details of the scope of the Services are defined in this Agreement and its ancillary documents, in particular, the Order Form.
- 3.2. IN MIND CLOUD is free in determining the time and place of the Services to be rendered under this Agreement. All indicated Dates and schedules are only binding when explicitly agreed upon by the Parties in writing. IN MIND CLOUD's duty to realize a design or concept does not commence until Customer accepts the design or concept.
- 3.3. IN MIND CLOUD should also observe the business needs of the Customer. Even where Services are provided at Customer's facility, IN MIND CLOUD has sole managerial authority over its Consultants. The Consultants do not become integrated into Customer's workforce.
- 3.4. The Customer carries the risk of ordered Services meeting its wishes and needs. If in doubt, the Customer should obtain advice and consulting from IN MIND CLOUD or third-party experts in good time.
- 3.5. IN MIND CLOUD shall specify a qualified contact person to the Customer 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. IN MIND CLOUD may document any discussions detailing or amending provision of Services. The Customer shall check this documentation as soon as possible and inform IN MIND CLOUD of any necessary amendments or additions.
- 3.6. The provision of Services and working together shall be based on mutual and trusting cooperation. The Parties will promptly inform each other of any circumstances relevant for processing the Contract.
- 3.7. If at any time one Party is dissatisfied with the working performance or behavior of an assigned Consultant or a respective contact person (see section 3.5 and 4.2), the dissatisfied party shall promptly report such dissatisfaction to the other party in writing and may request a replacement. The other party shall use its reasonable discretion in accomplishing any such change (which also, in the case of IN MIND CLOUD, shall be subject to staffing availability).

- 3.8. If IN MIND CLOUD provides Services other than those specified in the Order Form with Customer's consent, the provisions of this Agreement are deemed also applicable to those Services.
- 3.9. Should IN MIND CLOUD not be able to provide Services for reasons beyond its control, e.g. force majeure (e.g. war or natural disaster) or other events that cannot be foreseen at the point of contract conclusion, 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.
- 3.10. IN MIND CLOUD may in its discretion and to the extent commercially possible employ sub- contractors for the provision of the Services hereunder.

4. OBLIGATIONS OF CUSTOMER

- 4.1. 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 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.
- 4.2. 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.
- 4.3. Free of charge, the Customer must provide all collaboration that IN MIND CLOUD requires in connection with performance of the Services, including, for example, human resources, working offices, IT systems, test environments, facilities, equipment, computer programs and parts of computer programs, data, and telecommunication facilities which are necessary for performance of the Services. Customer must answer questions and inspect results. Customer warrants that any materials provided by it for IN MIND CLOUD to perform its contractual duties are free of defects in title that would preclude IN MIND CLOUD from performing those duties.
- 4.4. Customer will respect valid security guidelines and security proceedings provided to him by IN MIND CLOUD.
- 4.5. Customer must take appropriate precautions against the possibility of faults (for example, data backups, error diagnosis, and regular results monitoring). Customer shall in particular prior to any installation and/or access by Consultants or sub-contractors mandated by IN MIND CLOUD to its system take a complete data security backup of all system and application data. The data backup is to be stored in such a way that the recovery of the secured data is possible at any time. Except where otherwise expressly indicated in writing or in individual cases, Consultants are always entitled to act on the assumption of sufficient data backups.
- 4.6. Before commencing live operation with any provided Work Product, Customer must test it thoroughly for freedom from defects and for suitability in the situation.
- 4.7. Performance by Customer of its general collaborative duties is a primary contractual duty and necessary precondition for the correct performance of IN MIND CLOUD's Services. Customer bears all consequences and cost resulting from breach of its duties.

5. CHANGE REQUEST PROCEDURE

- 5.1. Changes to the content or extent of the Services (e.g. methods, dates and times and other details) may be requested through their respective contact person (see section 3.5 and 4.2), in writing.
- 5.2. If Customer makes a change request, IN MIND CLOUD shall inform Customer within fourteen (14) working days whether the change is possible or not and what impact the change would have on the ordered Services with particular reference to the timeline and remuneration. Customer must thereupon inform IN MIND CLOUD in writing within five (5) working days whether the change request is to be applied or whether the Order Form is to be continued on the existing terms. If the investigation of a change request itself requires substantial work, IN MIND CLOUD is entitled to bill separately for that work.
- 5.3. If IN MIND CLOUD submits a change request, Customer must notify IN MIND CLOUD in writing within fourteen (14) working days whether it accepts the change or not.
- 5.4. IN MIND CLOUD shall be entitled to claim for an additional payment based on time spent on the basis of the agreed rates in respect of the additional expenses, which IN MIND CLOUD incurs in the realization of the change request by Customer as well as in the carrying out of the change request procedure.
- 5.5. Services will continue in accordance with the existing Order Form until the requested changes are accepted. Customer can alternatively require that performance of Services be suspended.
- 5.6. With effect from the first working day of suspension, remuneration is payable at the agreed rate, or, in default of an agreed rate, at the daily rate based on the Price List of IN MIND CLOUD, in respect of each Consultant whose work is suspended and each day of the suspension.

6. FEES AND INVOICING

- 6.1. The Contractual Fee is a net price plus statutory value-added tax as applicable on the day of invoicing.
- 6.2. Services of IN MIND CLOUD are provided on either a time-and-materials or fixed fee basis, as provided in the Order Form. Services will be invoiced at the rates specified in the applicable Order Form. If no fees or rates are specified in the Order Form, Services will be invoiced at the standard rates based on the latest Price List of IN MIND CLOUD.
- 6.3. Unless otherwise agreed in applicable Order Form, charges on time-and-materials basis will be invoiced monthly to the end of the month.
- 6.4. In case of charges for fixed fee Services IN MIND CLOUD is entitled to submit invoices for subsets of the Services.
- 6.5. Contractual Fees are becoming due immediately and without deduction on the date of invoicing except otherwise stated in Order Form. Payment shall be made by bank transfer to the business accounts and free of charge for IN MIND CLOUD.
- 6.6. The invoice shall be deemed accepted unless written objections are claimed within 2 weeks after receipt of the invoice.
- 6.7. All invoice claims will be due immediately in case of suspension of payment, insolvency filing, or ineffective enforcement against the Customer.

7. TERMS OF AGREEMENT

- 7.1. This Agreement shall be effective during the entire period of the relevant Order Form. Each individual Agreement shall remain in effect until completion of the Services or terminated earlier by either party in accordance with this Section.
- 7.2. Unless otherwise agreed or prescribed by mandatory law, each Agreement may be terminated by either party upon thirty (30) days prior written notice to the other party. If there is more than one Agreement, an individual Agreement may be terminated for convenience in accordance with the terms of this Section without terminating the other Agreement and this Agreement which shall continue.
- 7.3. IN MIND CLOUD shall have the right to terminate this Agreement without notice for good at any time. Any of the following reasons will constitute good cause: (a) material breach of contractual

- 7.4. obligations by the Customer, which is not remedied after due notice and an appropriate time period for remedy has been given, (b) filing for insolvency or appointment of a judicial manager by the Customer (c) more than thirty (30) days delay in payment by Customer after due notice has been given.
- 7.5. At the end of this Agreement the provided materials are to be returned immediately and any copies, when they are no longer required in the ordinary course of business, are to be destroyed. Furthermore the parties shall irretrievably return all Confidential Information to the party that disclosed it, or at the disclosing party's request, destroy the Confidential Information of disclosing party and certify that it has complied with these obligations.
- 7.6. The termination of the Contract by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination.

8. 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.

9. INTELLECTUAL PROPERTY RIGHTS AND RIGHTS OF USE

- 9.1. 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.
- 9.2. 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 .
- 9.3. 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.
- 9.4. 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.
- 9.5. 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.
- 9.6. 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).

10. WARRANTY

- 10.1. Each Party is solely responsible for all its acts and omissions under this Agreement.
- 10.2. IN MIND CLOUD warrants to perform its obligations under this Contract according to usual standard of diligence but does not guarantee the achievement of any specific commercial objective.
- 10.3. Unless otherwise agreed IN MIND CLOUD shall not in any case be liable for success in the sense of the law on contracts for work, but shall be responsible for proper performance of Services.

11. LIABILITY

- 11.1. 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.
- 11.2. 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 SGD TWO MILLION (2,000,000) DOLLARS IN AGGREGATE.
- 11.3. 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.
- 11.4. 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.

12. INDEMNITY

- 12.1. 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.
- 12.2. 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.
- 12.3. 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 11.2 above.

13. TRANSFER AND ASSIGNMENT

- 13.1. IN MIND CLOUD shall be entitled to assign and transfer its rights and obligations hereunder to third parties.
- 13.2. The Customer will be notified of the assignment in writing at least 2 months before the proposed date of assignment.
- 13.3. 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.

14. CONFIDENTIALITY

- 14.1. 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.
- 14.2. The Parties shall not seek to register IP Rights of the other Party.
- 14.3. Any press releases and other public communication in connection with this Agreement shall require the prior written consent of the other Party.
- 14.4. 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.
- 14.5. 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 termination or expiration of this Agreement and to certify that it has complied with these obligations.
- 14.6. Prior to the execution of this Agreement, 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.

15. FINAL PROVISIONS

- 15.1. 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.
- 15.2. 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.
- 15.3. 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.
- 15.4. 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.
- 15.5. 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.
- 15.6. 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.