SAP PartnerEdge

Sell On Premise Specific Terms and Conditions for Distribution

("**Sell On Premise Distribution Model**")

Article 1   Definitions and Interpretation

1. Definitions

"**Discount Letter**" with regard to this Sell On Premise Distribution Model means the "SAP Open Ecosystem Sell On Premise Distribution Model - Discount Letter" for this Sell On Premise Distribution Model applicable to the country in which End User is located which is published on SAP's partner-dedicated website or directly provided to Distributor by SAP.

"**EULA**" means the "End User License Agreement (for SAP On Premise indirect sales)" which is made available on www.sap.com/company/legal.

"**EULA Acceptance Form**" means the "Acceptance Form for End User License Agreement (for SAP On Premise indirect sales)" which will be provided by SAP on a deal by deal basis.

"**EUMA**" means the "SAP Delivered Support Agreement" which sets out the terms and conditions under which SAP provides support to End Users and which will be provided by SAP on a deal by deal basis.

"**EUMA Effective Date**" means the date on that the last signature was affixed to the EUMA or in case SAP does not sign the EUMA, any other act through which SAP accepts the EUMA or the order of SAP Delivered Support for the Software.

"**Initial Term**" means the period starting on the EUMA Effective Date and ending one year later but excluding the date of the EUMA Effective Date.

"**Maintenance Services**" with regard to this Sell On Premise Distribution Model means SAP Delivered Support.

"**Open Ecosystem Partner**" with regard to this Sell On Premise Distribution Model means any person or entity to which Distributor markets and distributes certain Software and who then markets and distributes the Software to End Users in connection with the "Sell On Premise Open Ecosystem Model"; a list of available open ecosystem sell partners is displayed on SAP's partner-dedicated website under "Open Ecosystem Partners".

"**Price List**" with regard to this Sell On Premise Distribution Model means the "SAP List of Prices and Conditions (indirect sales)" consisting of the "SAP Pricing & Licensing Principles", "SUR" and "SAP Price List for Authorized Reselling Partners" applicable to the country in which End User is located which is published on SAP's partner-dedicated website or directly provided to Distributor by SAP.

"**Product Family**" means an SAP product family which may comprise of one or several SAP software products or services as further set out on SAP's partner-dedicated website and in the applicable RSPI.

"**Program Requirements**" means that the Distributor has to fulfill certain minimum program entry requirements as well as ongoing program requirements, some of which are general Distribution requirements, some of which are specific for the "Sell Engagement" and some of which are specific for the different "On Premise" Product Families, including, without limitation, payment of the Program Fee(s), upholding a Sell Authorization for at least one "On Premise" Product Family and other requirements as set out in detail in the Distributor Program Guide and the RSPI.

"**SAP Delivered Support**" means SAP's support offering to directly provide support to End Users subject to the terms and conditions set out in the EUMA.

"**Sell Authorization**" means that Distributor needs to meet specific training and qualification requirements for each product included in an "On Premise" Product Family that Distributor wants to resell as set out in detail in the Distributor Program Guide and the applicable RSPI.

"**SUR**" means the software use rights agreements which include additional or supplemental terms and conditions under which Software is licensed and which is made available on www.sap.com/company/legal.

2. Any terms not defined in this Sell On Premise Distribution Model will have the meaning ascribed to them in any other part of the Agreement.

3. The headings in this Sell On Premise Distribution Model are for convenience only and are to be ignored in construing this Sell On Premise Distribution Model.

4. Any reference in this Sell On Premise Distribution Model to a defined document is a reference to that defined document as amended, varied, novated or supplemented from time to time.

5. Where the context so admits, the singular includes the plural and vice versa.

Article 2   Engagement Model

1. Upon Distributor meeting the Program Requirements for the first time and subject to Distributor's compliance with all Program Requirements at all times during the term of this Sell On Premise Distribution Model, SAP hereby grants to Distributor and Distributor hereby accepts from SAP the right to:

a) market and distribute those Software products for which Distributor achieved and continues to uphold a successful Sell Authorization in its own name, at its own risk, and for its own account; and

b) position SAP Delivered Support for the Software purchased from SAP, if available for the Software product,

to Open Ecosystem Partners located in the Territory (as defined in the Sell On Premise Distribution Schedule).

2. SAP will inform its Open Ecosystem Partners located in the Territory:

a) once Distributor has fulfilled the Program Requirements for the first time by displaying the Distributor on SAP's partner-dedicated website; and

b) if Distributor ceases to fulfill the Program Requirements or if this Sell On Premise Distribution Model is terminated, rescinded or ends in any other way by either showing the Distributor as "non-operational" on or delisting the Distributor from SAP's partner-dedicated website.

3. SAP will inform Distributor about available Open Ecosystem Partners located in the Territory by displaying the available Open Ecosystem Partners on SAP's partner-dedicated website. If an Open Ecosystem Partner is no longer authorized to order Software from a Distributor, SAP will either show the Open Ecosystem Partner as "non-operational" on or delist it from SAP's partner-dedicated website. Prior to placing an order with SAP, Distributor must verify on SAP's partner-dedicated website that the person or entity that Distributor wants to sell the Software to is still authorized to order Software as Open Ecosystem Partner.

4. Distributor is solely responsible for accurately and completely representing the Software and the Maintenance Services. Distributor assumes all financial and legal liability for the quality, reliability and accuracy of all representations and warranties made by Distributor, its employees, agents and consultants beyond what is contained in the Documentation. Distributor will at any presentation give the SAP Group and its licensors appropriate credit for the ownership of the Software, Documentation and other SAP Materials.

5. Distributor must not deliver or recommend any software or other products that are incompatible with the Software.

6. Distributor will be solely responsible for setting its own prices vis-à-vis the Open Ecosystem Partner for the distribution of the Software.

Article 3   Advertising Materials

1. Distributor may add its own material to the information supplied by SAP, solely for the purposes of Distributor's own marketing activities. Any material which is added must be clearly marked as Distributor's material.

2. Marketing and promotional materials, including advertising and publicity materials, which are provided by SAP will be provided by SAP to Distributor upon Distributor's request, and charged to Distributor at SAP's cost, unless the Parties agree otherwise.

3. All marketing and promotional materials developed by or for Distributor, including, but not limited to, print advertisement, broadcast or telecast commercials, product brochures, sales aids, manuals, displays, and publicity concerning the Software distributed hereunder and related services must be of first quality.

Article 4   Specific Order Processes and Requirements

1. Distributor will order Software from SAP using and filling out completely such forms and minimum order requirements as SAP may prescribe from time to time and must comply with any then-current order process for the specific Software product. Where applicable, Distributor agrees to use the electronic means provided by SAP for placing orders.

2. With regard to each Software order for an End User, Distributor must provide SAP with:

a) the name and address of the Open Ecosystem Partner who will distribute the Software to the End User;

b) the name and address of the End User for whom the Software was ordered;

c) details of the Software ordered for the Open Ecosystem Partner, including, without limitation, the product and country version as well as the number of users for each Software product;

d) details of any SAP Delivered Support agreement concerning the specific End User;

e) Distributor's contact and billing information; and

f) any other data required by SAP in any then-current order process for the specific Software, Maintenance Services or both.

3. Orders and confirmations are binding, non-cancellable, non-revocable and non-transferable once submitted to SAP. All orders are subject to acceptance by SAP.

4. SAP will accept the Software order by the same means or by performing the Software order.

5. SAP reserves the right to decline Software orders if the Software is intended to be used on computers, operating and database management systems that SAP considers to be not suitable for use with the Software.

Article 5   Delivery of Software

1. SAP will deliver the Software as described in the Documentation and the Price List and will also provide the appropriate license key for the relevant End User. With regard to the features, quality and functionality of the Software the product description in the Documentation and the Price List is solely decisive. SAP does not own any additional features, quality or functionality. Distributor can, in particular, not assert any additional feature, quality or functionality from any public statements, publications or advertisements by SAP except to the extend SAP has expressly confirmed such additional feature, quality or functionality in writing. Any representation, warranty, undertaking or guarantee regarding additional features, quality or functionality is effective only if expressly confirmed by SAP's management in writing.

2. After acceptance of an order, SAP will deliver to Distributor one copy of the relevant Software:

a) on discs or other data media ("**Physical Shipment**"); or

b) by making it available for downloading through the internet (usually on the SAP ServiceMarket Place (http://service.sap.com/swdc)) ("**Electronic Delivery**").

3. The relevant Software and Documentation will be deemed delivered (including but not limited for the purpose of fixed delivery dates or timely delivery) and the risk passes to Distributor:

a) in case of Physical Shipment, when the relevant disc or other data media thereof is handed over to the freight carrier (FCA - Free Carrier (named place of delivery), Incoterms 2010); or

b) in case of Electronic Delivery, when SAP has made an electronic copy thereof available for downloading and has informed Distributor accordingly,

("**Delivery**").

4. Upon Distributor's request or if stipulate in the order, SAP may agree to provide Software and/or the appropriate license key directly to the relevant Open Ecosystem Partner instead ("**Open Ecosystem Partner Delivery**"). In case of Open Ecosystem Partner Delivery, the provisions set out in this Article 5 (Delivery of Software) will apply analogously; delivery to Distributor will be deemed to occur upon Delivery to the Open Ecosystem Partner.

5. Upon Distributor's request or if stipulate in the order, SAP may agree to provide Software and/or the appropriate license key directly to the relevant End User instead ("**End User Delivery**"). In case of End User Delivery, the provisions set out in this Article 5 (Delivery of Software) will apply analogously; delivery to Distributor will be deemed to occur upon Delivery to the End User.

6. SAP might be entitled to suspend the delivery of the Software, Maintenance Services, applicable license key or both to Distributor, Open Ecosystem Partner or End User or both as further set out in this Sell On Premise Distribution Model as well as the Distribution GTCS.

7. If Distributor receives a new copy of the Software, Documentation and/or other SAP Materials that replaces previously provided Software, Documentation and/or other SAP Materials, Distributor must distribute that newest copy provided and either destroy or upon SAP's request return previous copies.

8.   Distributor must not make the Software, Documentation and/or other SAP Materials available to the Open Ecosystem Partner or End User by any means other than by delivering the Software, Documentation and/or other SAP Materials as originally provided by SAP. Distributor's right to pass on the Software, Documentation and/or other SAP Materials is subject to the provisions of this Agreement.

Article 6   Resale Software Fee

1.   Pricing for the Software is stipulated in the Price List and the applicable Discount Letter and will be specified in each Software order.

2.   In consideration of the Delivery of the Software, Distributor will pay to SAP the fee for the Software ordered for any Open Ecosystem Partner as set out in the corresponding Software order.

3.   In case of Physical Shipment, Distributor will have to pay the costs of delivery and packaging.

4.   In case of Electronic Delivery, SAP will make the relevant Software available for download at its own cost; Distributor will bear the costs for downloading the Software and Documentation.

5.   The fee for the Software ordered for an Open Ecosystem Partner will be invoiced after Delivery of the relevant Software.

Article 7   Protection of rights

Distributor is not entitled to:

a)   Use the Software;

b)   make any Modifications, Add-Ons or other derivative work to the Software; and

c)   copy or otherwise reproduce temporarily or permanently in whole or in part the Software, not even for back-up purposes.

Article 8   License

1.   Use rights for the Software that Distributor orders from SAP for a specific End User will be granted directly by SAP to the End User via the EULA Acceptance Form, the EULA and the SUR.

2.   When Distributor submits a Software order, Distributor must also submit a copy of the EULA Acceptance Form signed by the End User for whom the Software is ordered. SAP will provide the electronic means to attach, upload or otherwise submit a signed copy of the EULA Acceptance Form together with the order in the order process. If required in the country of the relevant End User, SAP will provide an address to which an originally signed copy of the EULA Acceptance Form by the End User must be send.

3.   Distributor is prohibited from making any changes to the EULA Acceptance Form, the EULA and the SUR but may have to insert certain additionally required information into the EULA Acceptance Form. Distributor must further ensure that End User does not change the EULA Acceptance Form, the EULA and the SUR.

4.   If the relevant End User has not duly signed the EULA Acceptance Form or if the content of the EULA Acceptance Form, the EULA or the SUR was unduly changed or is incomplete, SAP will not accept the corresponding Software order for such End User and will, thus, neither deliver any Software nor the applicable license key. Distributor will indemnify SAP against any and all losses, actions, claims, expenses, demands and liabilities which may be incurred by or made against SAP if the EULA Acceptance Form, the EULA and/or the SUR were unduly changed or are incomplete.

5.   SAP's obligation to grant license rights to an End User is suspended where and for as long as certain adverse conditions are present as provided for in Article 5 (SAP's obligation to deliver) of Part 1 of the Distribution GTCS.

Article 9   SAP Delivered Support Agreement/EUMA

1.   Conclusion of the SAP Delivered Support Agreement/EUMA

a)   If an End User wants to order SAP Delivered Support and provided SAP offers SAP Delivered Support for the relevant Software product(s), the End User will need to conclude a EUMA directly with SAP.

b)   When Distributor submits a Software order, Distributor must also submit a copy of the EUMA signed by the End User for whom the Software is ordered if the relevant End User wants to order SAP Delivered Support. SAP will provide the electronic means to attach, upload or otherwise submit a signed copy of the EUMA together with the order in the order process. If required in the country of the relevant End User, SAP will provide an address to which an originally signed copy of the EUMA by the End User must be send.

c)   Distributor is prohibited from making any changes to the EUMA but may have to insert certain additionally required information into the EUMA. Distributor must further ensure that End User does not change the EUMA.

d)   If the relevant End User has not duly signed the EUMA or if the content of the EUMA was unduly changed or is incomplete, SAP will not accept the corresponding SAP Delivered Support order for such End User and will, thus, not provide SAP Delivered Support. Distributor will indemnify SAP against any and all losses, actions, claims, expenses, demands and liabilities which may be incurred by or made against SAP if the EUMA was unduly changed or is incomplete.

2.   Payment of fees for SAP Delivered Support

a)   For the Initial Term, Distributor must collect - at its own risk - all fees for SAP Delivered Support from each Open Ecosystem Partner for each End User for whom a EUMA was concluded and pay these fees directly to SAP. For that purpose, Distributor must invoice each Open Ecosystem Partner the exact amount of fees for SAP Delivered Support for each End User stated in the EUMA that the relevant End User signed. These fees for SAP Delivered Support for the Initial Term are payable by the Distributor to SAP in advance without deduction and are non-refundable even if an Open Ecosystem Partner fails to pay the fees for SAP Delivered Support to the Distributor (including, without limitation, if an Open Ecosystem Partner fails to pay because an End User fails to pay the fees to the Open Ecosystem Partner).

b)   After the Initial Term, SAP will invoice each End User directly for SAP Delivered Support.

3.   Additional discounts

Subject to the provisions in the Discount Letter, SAP will grant a Maintenance Resale Discount (as defined in the Discount Letter) to Distributor, if Distributor provides Qualified Assistance (as defined in the Discount Letter). Any Maintenance Resale Discount represents a one-time discount and Distributor's exclusive compensation for facilitating the conclusion of a EUMA between SAP and an End User and for submitting an order for SAP Delivered Support for an End User with SAP. Distributor is not entitled to any further compensation (including any Maintenance Resale Discount) for any renewal term. Distributor does not have any claims for further compensation if SAP or any third party sells additional Software, SAP Delivered Support, software, maintenance, support or other services to any End User.

Article 10   Term and Termination for convenience

1. Term. This Sell On Premise Distribution Model comes into effect as of the Effective Date defined in the Sell On Premise Distribution Schedule and remains in full force and effect until and including 31 December of the same year. Thereafter its term is automatically extended for subsequent periods of one year.

2. Termination for convenience. Either Party may terminate this Sell On Premise Distribution Model for convenience with three months' prior written notice to 31 December of each year.

3. Termination for non-compliance with Program Requirements. SAP may terminate this Sell On Premise Distribution Model with three months' prior written notice if Distributor:

a) did not meet all of the Program Requirements for the first time within six months after the Effective Date defined in the Sell On Premise Distribution Schedule; or

b) does not comply with any of the Program Requirements excluding the Program Fee for which the termination periods set out in Article 9 (Termination for good cause) no. 1 a) and no. 2 a) of Part 1 of the Distribution GTCS apply.

Article 11   Model-specific Effect of Termination

1. If this Sell On Premise Distribution Model is terminated, rescinded or ends in any other way, Distributor's right to:

a) market and distribute the Software; and

b) position SAP Delivered Support,

to Open Ecosystem Partners located in the Territory under this Sell On Premise Distribution Model as set out in Article 2 (Engagement Model) immediately ends.

2. However, Distributor will be allowed to distribute each Software product ordered from SAP for a specific Open Ecosystem Partner for that SAP accepted Distributor's order before this Sell On Premise Distribution Model was terminated, rescinded or ended in any other way ("**Accepted Software**") without undue delay to the Open Ecosystem Partner for whom the Software product was ordered. Obligations existing or arising under subsisting individual orders remain unaffected. SAP is entitled to refuse to accept orders if SAP has reasonable grounds to believe that the End User cannot go live with the Software during the term of this Sell On Premise Distribution Model.

3. Notwithstanding anything in Article 10 (Effect of Termination) of Part 1 of the Distribution GTCS, Distributor will be allowed to use the Documentation as well as the SAP Logo and other SAP trademarks which he was authorized to use as set out in Article 4 (Trademark License) of Part 1 of the Distribution GTCS solely in connection with the Documentation in order to distribute the Accepted Software without undue delay to the specific Open Ecosystem Partner for whom the Accepted Software was ordered.

4. SAP will inform its Open Ecosystem Partners about the termination of this Sell On Premise Distribution Model by either showing the Distributor as "non-operational" on or delisting the Distributor from SAP's partner-dedicated website.