



SOFTWARE LICENSE AGREEMENT
General Terms and Conditions (for indirect sales)
("GTC")

1. DEFINITIONS.

1.1 "Add-on" means any development that adds new and independent functionality, but does not modify existing SAP functionality, and is developed using SAP application programming interfaces or other SAP code that allows other software products to communicate with or call on SAP Software.

1.2 "Affiliate" means any legal entity in the Territory in which the Licensee, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights. Any such legal entity shall be considered an Affiliate for only such time as such interest is maintained.

1.3 "Agreement" means these GTCs, any Order Form referencing these GTCs, and the Use Terms and Schedules referenced by these GTCs and/or such Order Forms. All such components are integral to the agreement, and collectively are referred to herein as the "Agreement".

1.4 "Business Partner" means a legal entity or individual that requires access to the Software in connection with Licensee's internal business operations, such as customers, distributors and/or suppliers of Licensee.

1.5 "Confidential Information" means, with respect to Licensee: Licensee's marketing and business plans and/or financial information, and with respect to SAP : (a) the Software and Documentation and other SAP Materials, including without limitation the following information regarding the Software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software; (b) the research and development or investigations of SAP; and (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies. In addition, Confidential Information of either SAP or Licensee (the party disclosing such information being the "Disclosing Party") includes information which the Disclosing Party protects against unrestricted disclosure to others that (i) the Disclosing Party or its representatives identifies as confidential at the time of disclosure; or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure; including, without limitation, information from, about or concerning any third party that is disclosed under this Agreement.

1.6 "Designated Unit" means information technology devices (e.g. hard disks or central processing units) identified by Licensee pursuant to this Agreement that have been officially made known to the public as appropriate for Use or interoperability with the Software.

1.7 "Documentation" means SAP's then-current technical and/or functional documentation which is delivered or made available to Licensee with the Software under this Agreement.

1.8 "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

1.9 "Modification" means (i) a change to the delivered source code or metadata; or (ii) any development, other than a change to the delivered source code or metadata, that customizes, enhances, or changes existing functionality of the Software including, but not limited to, the creation of any new application program interfaces, alternative user interfaces or the extension of SAP data structures; or (iii) any other change to the Software (other than an Add-on) utilizing or incorporating any SAP Materials (defined below).

1.10 "SAP Materials" means any software, programs, tools, systems, data or other materials made available by SAP to Licensee prior to or in the course of the performance under this Agreement including, but not limited to, the Software and Documentation, as well as any information, materials or feedback provided by Licensee to SAP relating to the Software and Documentation.

1.11 "SAP Reseller" means an independent entity authorized by SAP to market, promote and distribute the Software and/or to provide Reseller Delivered Support related to the Software.

1.12 "SAP Support" means either (i) SAP's then-current SAP support offering provided directly by SAP to Licensee, if agreed to by SAP and Licensee and referenced in the applicable Software Order Form to this Agreement and made a part hereof ("SAP Delivered Support") or (ii) an SAP approved support offering provided by SAP Reseller, as contracted between Licensee and SAP Reseller and as referenced in the applicable Software Order Form to this Agreement ("Reseller Delivered Support").



1.13 "Software" means (i) any and all software products licensed to Licensee under this Agreement as specified in Software Order Forms hereto, all as developed by or for SAP, SAP SE and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to SAP Support or warranty obligation and (iii) any complete or partial copies of any of the foregoing.

1.14 "Software Order Form" means the order form entered into between Licensee and SAP for licensing of the Software and Third Party Software ordered by Licensee under the GTC and procured by Licensee from the SAP Reseller pursuant to Section 4 of the GTC, including information on Software, Third Party Software, SAP Delivered Support fees (if applicable), and other information necessary for the delivery of such items to Licensee.

1.15 "Territory" means Canada.

1.16 "Third Party Software" means (i) any and all software products and content licensed to Licensee under this Agreement as specified in Software Order Forms hereto, all as developed by companies other than SAP, SAP SE and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases, updates or versions thereof made available through SAP Support or warranty obligations and (iii) any complete or partial copies of any of the foregoing.

1.17 "Use" means to, directly or indirectly, activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

1.18 "Use Terms" means, with regard to Software specified in a Software Order Form, the SAP Software Use Rights document current at the time of execution of such Software Order Form, copies of which are found at www.sap.com/company/legal/index.epx and made a part hereof. Such SAP Software Use Rights documents are incorporated herein by reference. SAP recommends Licensee prints copies of the applicable SAP Software Use Rights documents for Licensee's own records.

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2.1.2 Licensee agrees to install the Software only on Designated Units located at Licensee's facilities and in Licensee's direct possession. With advance written notice to SAP, the information technology devices may also be located in the facilities of an Affiliate or a Service Provider and be in the Affiliate's or Service Provider's direct possession. Licensee must be appropriately licensed as stated in the Use Terms for any individuals that Use the Software, including employees or agents of Affiliates and Business Partners. Use may occur by way of an interface delivered with or as a part of the Software, a Licensee or third-party interface, or another intermediary system.

2.1.3 The terms and conditions of this Agreement relative to "Software" apply to Third Party Software except (i) Licensee shall not make Modifications and/or Add-ons to Third Party Software or otherwise modify Third Party Software unless expressly authorized by SAP; and (ii) subject to Section 12.10, as otherwise stated in the Use Terms, a Schedule, an Order Form, or an Amendment.

2.2 Affiliate Use. Affiliates' Use of the Software, Documentation and other SAP Materials to run their internal business operations as permitted under Section 2.1.1 is subject to the following: (i) Licensee ensures that the Affiliate agree in writing to comply with the terms of this Agreement; and (ii) a breach of the Agreement terms by Affiliate shall be considered a breach by Licensee hereunder. If Licensee has an affiliate or subsidiary with a separate license or support agreement for SAP software with SAP SE, any SAP SE affiliate (including SAP) or any other distributor of SAP software, the Software shall not be Used to run such affiliate's or subsidiary's business operations and such affiliate or subsidiary shall not receive any support services under this Agreement even if such separate agreement has expired or is terminated, unless otherwise agreed to in writing by the parties.



2.3 Services Providers. With SAP's prior written consent, Licensee may permit services providers to access the Software solely for the purpose of providing facility, implementation, systems, application management or disaster recovery services to Licensee in connection with the business of Licensee for which the Software is herein licensed provided: (i) these rights will continue only while Licensee and such services provider have in place a written agreement that includes provisions requiring such services provider's compliance with the terms of this Agreement prior to such access, including without limitation non-disclosure of SAP Confidential Information; (ii) Licensee must be appropriately licensed for all employees of such services provider authorized to access the Software; (iii) such services provider shall be permitted to Use the Software solely to install and configure the Software in accordance with the business of Licensee as set forth herein (or in the case of a disaster recovery vendor, to provide disaster recovery services only); (iv) under no circumstances may such services provider Use the Software to operate or provide processing services to Licensee or any other party, or in connection with such services provider's own business operations; (v) Licensee shall be responsible for any additional Software, migration tools, or third party software needed to effect such transition; and (vi) Licensee expressly agrees to indemnify SAP, its officers, employees, agents and subcontractors from and against all claims, liabilities, losses, damages and costs (including reasonable legal fees) suffered by SAP arising from a breach by the services provider of the conditions of this Agreement. Upon SAP request, Licensee shall provide written confirmation to SAP that items (i)-(iv) are fulfilled.

3. VERIFICATION. SAP shall be permitted to audit (at least once annually and in accordance with SAP standard procedures, which may include on-site and/or remote audit) the usage of the SAP Materials. Licensee shall cooperate reasonably in the conduct of such audits. In the event an audit reveals that (i) Licensee underpaid license fees and/or SAP support fees to SAP and/or (ii) that Licensee has Used the Software in excess of the license quantities or levels stated in the Software Order Form, Licensee shall pay such underpaid fees and/or for such excess usage based on the then-current SAP price list, terms and conditions in effect at the time of the audit, and shall execute an additional Software Order Form to affect the required licensing of any additional quantities or levels.

Reasonable costs of SAP's audit shall be paid by Licensee if the audit results indicate usage in excess of the licensed quantities or levels. SAP reserves all rights at law and equity with respect to both Licensee's underpayment of License fees or SAP support fees and usage in excess of the license quantities or levels.

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4.2 Licensee shall pay to SAP and/or SAP Reseller fees and any applicable taxes for the Software and Support Services specified in the Software Order Form(s) made part of this Agreement.

5. TERM.

5.1 Term. This Agreement and the license granted hereunder shall become effective as of the date first set forth in the applicable Software Order Form issued under these GTCs and shall continue in effect thereafter unless this Agreement is terminated upon the earliest to occur of the following: (i) thirty days after Licensee gives SAP written notice of Licensee's direction to terminate this Agreement, for any reason, but only after payment of all License and SAP Support fees then due and owing; (ii) thirty days after SAP gives Licensee written notice of Licensee's material breach of any provision of this Agreement (other than Licensee's breach of its obligations under Sections 6, 10 or 11, which breach shall result in immediate termination), including Licensee's failure to pay any money due hereunder, unless Licensee has cured such breach during such thirty (30) day period; (iii) immediately if Licensee files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors; or (iv) thirty (30) days after SAP gives Licensee notice of Licensee's breach of any obligations to pay money due to SAP Reseller for the Software. For the avoidance of any doubt, termination of this Agreement shall strictly apply to all Software licensed under this Agreement, its appendices, schedules, addenda and order documents and any partial termination of this Agreement by Licensee shall not be permitted in respect of any part of this Agreement, its appendices, schedules, addenda, order documents.

5.2 End of Term Duties. Upon any termination hereunder, Licensee and its Affiliates shall immediately cease Use of all SAP Materials and Confidential Information. Within thirty (30) days after any termination, Licensee shall irretrievably destroy or upon SAP's request deliver to SAP all copies of the SAP Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Licensee must certify to SAP in writing that it has satisfied its obligations under this Section 5.2. Licensee agrees to certify in writing to SAP that it and each of its Affiliates has performed the foregoing. Sections 3, 4, 5.2, 6, 7.2, 8, 9, 10, 12.4, 12.6, 12.7 and 12.9 shall survive such termination. In the event of any termination hereunder, Licensee shall not be entitled to any refund of any payments made by Licensee. Termination shall not relieve Licensee from its obligation to pay fees that remain unpaid.



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8.1 Infringement and Defense of Licensee. SAP shall defend Licensee against claims brought against Licensee in the Territory by any third party alleging that Licensee's Use of the Software, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of such third party's patent claim(s), copyright or trade secret rights, and SAP will pay damages finally awarded against Licensee (or the amount of any settlement SAP enters into) with respect to such claims. This obligation of SAP shall not apply if the alleged infringement or misappropriation results from (i) Use of the Software in conjunction with any other software; (ii) Use of the Software with an apparatus other than a Designated Unit; (iii) failure to promptly use an update provided by SAP if such infringement or misappropriation could have been avoided by use of the update; or (iv) any Use not permitted by this Agreement. This obligation of SAP also shall not apply if Licensee fails to timely notify SAP in writing of any such claim; however Licensee's failure to provide or delay in providing such notice shall not relieve SAP of its obligations under this Section except to the extent SAP is prejudiced by Licensee's failure to provide or delay in providing such notice. SAP is permitted to control fully the defense and any settlement of any such claim as long as such settlement shall not include a financial obligation



on or admission of liability by Licensee. In the event Licensee declines SAP's proffered defense, or otherwise fails to give full control of the defense to SAP's designated counsel, then Licensee waives SAP's obligations under this Section 8.1. Licensee shall reasonably cooperate in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to SAP. SAP expressly reserves the right to cease such defense of any claim(s) in the event the Software is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. SAP may settle or mitigate damages from any claim or potential claim by substituting alternative substantially equivalent non-infringing programs and supporting documentation for the Software. Licensee shall not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software that is prejudicial to SAP's rights.

8.2 THE PROVISIONS OF THIS SECTION 8 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF SAP AND ITS LICENSORS TO LICENSEE, AND IS LICENSEE'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

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9.1 Not Responsible. SAP and its licensors will not be responsible under this Agreement (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect or liability is caused by Licensee, a Modification or Add-on (other than a Modification or Add-on made by SAP which is provided through SAP Support or under warranty), or third-party software; or (iii) if the Software is used in conjunction with any third party software for which the Licensee lacks sufficient rights from the third party vendor for such use; or (iv) for any Licensee activities not permitted under this Agreement. SAP AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM INHERENTLY DANGEROUS USE OF THE SOFTWARE AND/OR THIRD-PARTY SOFTWARE LICENSED HEREUNDER.

9.2 Exclusion of Damages; Limitation of Liability. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR (I) DAMAGES RESULTING FROM (a) UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION; OR (b) DEATH OR PERSONAL INJURY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (II) SAP'S OBLIGATIONS UNDER SECTION 8.1; OR (III) SAP'S RIGHT TO COLLECT UNPAID FEES, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL SAP, ITS LICENSORS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT IN EXCESS OF THE PAID LICENSE FEES FOR THE SOFTWARE DIRECTLY CAUSING THE DAMAGES OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, LEGAL FEES, COURT COSTS, INTEREST OR EXEMPLARY OR PUNITIVE DAMAGES.

9.3 Exclusions and Limitations for Third Party Software. SUBJECT TO THE EXCLUSION OF DAMAGES STATED IN SECTION 9.2 AND WITH RESPECT TO THIRD PARTY SOFTWARE, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL SAP OR ITS LICENSORS' BE LIABLE FOR AN AMOUNT IN EXCESS OF THE PAID LICENSE FEES FOR THE THIRD PARTY SOFTWARE DIRECTLY CAUSING THE DAMAGES.

9.4 The provisions of this Agreement allocate the risks between SAP and Licensee. The license fees reflect this allocation of risk and the limitations of liability herein.

10. CONFIDENTIALITY.

10.1 Use of Confidential Information. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party : (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its bona fide individuals whose access is necessary to enable it to exercise its rights and/or perform its obligations hereunder, and who are under obligations of confidentiality substantially similar to those set forth herein. As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.

10.2 Exceptions. The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without breach of this Agreement by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; or (d) the disclosing party agrees in writing is free of such restrictions.

10.3 Confidential Terms and Conditions; Publicity. Licensee shall not disclose the terms and conditions of this Agreement or the pricing contained herein to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that SAP and its affiliated companies may use Licensee's name in customer listings or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHERE participation). SAP will make reasonable efforts to avoid having the reference activities unreasonably interfere with Licensee's business. Licensee agrees that SAP may share information on Licensee with its affiliated



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11. **ASSIGNMENT.** Licensee may not, without SAP's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the SAP Materials or SAP Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. SAP may assign this Agreement to any of its affiliates.

12. **GENERAL PROVISIONS.**

12.1 **Severability.** It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

12.2 **No Waiver.** If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

12.3 **Counterparts.** This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement. Signatures sent by electronic means (facsimile, scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures.

12.4 **Regulatory Matters.** The Software, Documentation and SAP Materials are subject to the export control laws of various countries, including without limit the laws of Canada and Germany. Licensee agrees that it will not submit the Software, Documentation or other SAP Materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Software, Documentation and SAP Materials to countries, persons or entities prohibited by such laws. Licensee shall also be responsible for complying with all applicable governmental regulations of the country where Licensee is registered, and any foreign countries with respect to the use of the Software, Documentation or other SAP Materials by Licensee and/or its Affiliates.

12.5 **Arbitration.** Except for the right of either party to apply to a court of competent jurisdiction for an interim or interlocutory injunction or other provisional remedy to preserve the status quo or prevent irreparable harm pending final award of the arbitrator, any controversy or claim arising out of or relating to this Agreement, other than as to the ownership of any intellectual property right(s) in Proprietary Information, shall be finally settled by arbitration in Toronto, Ontario, in accordance with the Ontario Arbitrations Act, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If the parties fail to appoint the arbitrator within ten (10) days of service of a notice of intention to arbitrate (which notice shall include a description of the claim, a concise statement of the facts supporting it and the relief sought), either party may apply to a judge of the Ontario Court of Justice (General Division) for the appointment of such arbitrator. The arbitrator shall have a background or training in computer law, computer science, or marketing of computer products. The written decision and reasons of the arbitrator shall be communicated to the parties no later than thirty (30) days after the close of argument in the arbitration.

12.6 **Governing Law; Limitations Period.** This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws in force in the province of Ontario, without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and Canadian law, rules, and regulations, Canadian law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

12.7 **Notices.** All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of SAP and Licensee at the addresses first set forth in any Software Order Form. Where in this Section 12.7 or elsewhere in this Agreement a written form is required, except for any notice of termination or notice of a material breach which shall occur by exchange of letter(s), that requirement can be met by facsimile transmission, exchange of letters or other written form, including email.

12.8 **Force Majeure.** Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

12.9 **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Licensee, and all previous representations, discussions, and writings are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. This Agreement may be modified only by a writing signed by both parties. This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to SAP. This Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear in any clickwrap end user agreement included in the Software. Signatures sent by electronic means (facsimile or scanned and sent via e-mail) shall be deemed original signatures. This Agreement does not create any partnership, joint venture or principal-and-agent relationship.



12.10 Order of Precedence. In the event of a conflict or inconsistency between the provisions of the components of the Agreement, then the following order of precedence shall be used in resolving such conflict or inconsistency: (1) the Software Order Form's terms and conditions shall take precedence over any other component of the Agreement; (2) then the Schedule(s); (3) then the GTC; (4) then, and last, the Use Terms. Notwithstanding the foregoing, if there are any third party pass-through terms and conditions applicable to Third Party Software stated in the Use Terms, those terms and conditions must prevail over any conflicting or inconsistent terms of any component of the Agreement.