

**SOFTWARE LICENSE AND SUPPORT AGREEMENT**  
**General Terms and Conditions**  
**("GTC")**

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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 the agreement as defined in the Software Order Form.

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.

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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 interoperation 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.

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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 Support" means SAP's then-current SAP support offering made available to Licensee, as stated in the applicable Software Order Form and made a part hereof.

1.12 "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.

1.13 "Software Order Form" means the order form for the Software, Third Party Software and related SAP Support ordered by Licensee thereunder, including information on Software, Third Party Software, SAP Support, fees, and other information necessary for the delivery of such items to Licensee.

1.14 "Territory" means Australia or the territory stated in the Software Order Form.

1.15 "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.

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

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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 12.9, as otherwise stated in the Use Terms.

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) Licensee accepts responsibility for the acts or omissions of such Affiliates as if they were Licensee's acts or omissions; (iii) Licensee shall indemnify SAP & SAP SE against losses or damages suffered by SAP or SAP SE arising from breach of this Agreement by any such Affiliates as if effected by Licensee and (iv) such Use shall not constitute an unauthorised exportation of any SAP Proprietary Information under the applicable laws and regulations. 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.

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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4.1 Fees. Licensee shall pay to SAP the software license fees and the support fees as specified in the Software Order Forms. Any fees not paid when due shall accrue interest at the rate of 3% above the ANZ Bank of Australia Business Finance "ANZ Reference Rate" per annum, but not to exceed the maximum amount as allowed by law. Licensee fees include costs of initial delivery and packaging for physical shipment. In cases of electronic delivery, SAP makes the Software available for download from a network at its own cost, and Licensee is responsible for the cost of downloading the Software. Licensee acknowledges that a purchase order is for administrative convenience only and that SAP has the right to issue an invoice and collect payment without a corresponding purchase order.

4.2 Taxes. Fees and other charges described in this Agreement do not include sales, VAT, withholding, use, property, excise, service, or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Licensee's account. Any applicable direct pay permits or valid tax-exempt certificates must be provided to SAP prior to the execution of this Agreement. If SAP is required to pay Taxes, Licensee shall reimburse SAP for such amounts. Licensee hereby agrees to indemnify SAP for any Taxes and related costs, interest and penalties paid or payable by SAP.

4.3 GST. If a goods and services tax ("GST") is imposed on any supply made under or in accordance with the Agreement, Licensee agrees to pay to SAP an additional amount equal to the GST payable on or for the taxable supply subject to Licensee receiving a valid tax invoice in respect of the supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement and the GST shall be calculated at the rate that applies under the GST legislation at the date of the taxable supply.

## 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 and shall continue in effect thereafter unless 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 day period; (iii) immediately if Licensee files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors. 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.

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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.

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If SAP is in breach of a condition or warranty implied by the Competition and Consumer Act 2010 (other than a condition or warranty implied by articles 51-53 of schedule 2 of that Act), SAP's liability is limited to: (i) where SAP supplied services, the cost of having the services supplied again, and (ii) where SAP supplied goods, the repair or replacement of the goods or the supply of equivalent goods.

#### 10. CONFIDENTIALITY.

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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

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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 the United States 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 **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 of New South Wales without reference to its conflicts of law principles. Licensee consents to the jurisdiction of any court sitting in New South Wales. In the event of any conflicts between foreign law, rules, and regulations, and New South Wales law, rules, and regulations, New South Wales 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. The Uniform Computer Information Transactions Act as enacted shall not apply. 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).

12.6 **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 12.6 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..

12.7 **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.

12.8 **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.

12.9 **Hierarchy.** The following order of precedence shall be applied in the event of conflict or inconsistency between provisions of the components of this Agreement: (i) the Software Order Form; (ii) the Schedules; (iii) the GTC; and (iv) the Use Terms; except with respect to third party pass-through terms for Third Party Software stated in the Use Terms, in which case the Use Terms prevail over any conflict or inconsistency in any component of this GTC solely with respect to such third party pass-through terms.