

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

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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 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.

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 interoperation with the Software.

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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

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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 the world except for those countries prohibited by applicable export laws and further subject to Section 12.4 of the GTC.

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

1.17 "Use Terms" means the Software Use Rights document as defined in the Software Order Form.

## **2. LICENSE GRANT.**

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period. At the date the rights to the previously licensed Software end, Licensee shall comply with Section 5.2 of this Agreement with respect to such previously licensed Software.

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 agrees in writing to comply with the terms of this Agreement; and (ii) a breach of such Affiliate Use Agreement by Affiliate shall be considered a breach by Licensee hereunder. If Licensee has an affiliate or subsidiary with a separate agreement for SAP software licenses and/or support services 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.

### **4. PRICE AND PAYMENT**

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4.2 Taxes. Fees and other charges described in this Agreement do not include federal, provincial or local sales, PST, GST, HST, foreign withholding, use, property, excise, service, or similar transaction 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.

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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.

## **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 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, SAPPHIRE 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 companies for marketing and other business purposes and that Licensee has secured permission from its employees to allow SAP to share business contact information with its affiliates.

## **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, 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 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 of 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. 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).

12.7 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 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.