



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.

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.

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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.

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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 attorney 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.

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5. TERM.

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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.

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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.