

SAP PartnerEdge Partner Grouping Agreement

This SAP PartnerEdge Partner Grouping Agreement (“**PGA**”) is entered into between Business Objects Software Ltd. t/a SAP Solutions, Waterside 3, Citywest Business Campus, Dublin 24, D24 WA02, Ireland, Registered number: 367746, (“**SAP**”) and ||VAR:CPNAME02||, with offices at ||VAR:CPADDRESS02||, ||VAR:CPPOSTCODE02|| ||VAR:CPCITY02||, ||VAR:CPCOUNTRYN02||, ||VAR:CPVATNUM02|| (“**Partner**”), together referred to as “**Parties**” and individually as “**Party**”.

1. PREAMBLE

Whereas, SAP would like to offer members of a Partner Group easier access to the SAP PartnerEdge program;

Whereas, Partner is already participating in a SAP PartnerEdge program track and has executed a PartnerEdge Agreement with SAP or another SAP entity;

Now therefore, the Parties agree as follows:

2. DEFINITIONS

“**Agreement**” means this PGA and any document incorporated by reference, whereby this PGA and any such documents represent together one contractual document.

“**Effective Date**” means the date on which the last signature was affixed to this PGA.

“**Partner Group**” means a group of companies where one legal entity (“**Parent**”) has and maintains direct or indirect Control over all other entities in that group and where all entities in the group, including the Parent, are participating in the SAP PartnerEdge program,. For clarity: Partner may also be the Parent.

“**Control**” means the power to direct or cause the direction of the affairs of an entity whether by means of direct or indirect ownership of more than fifty per cent (50%) of the voting rights or similar rights of ownership or by means of having the power to direct the management or directors whether conferred by constitutional documents, shareholder agreement or other document regulating the affairs of an entity.

“**PartnerEdge Agreement**” means a contract relevant to participation in a specific track of the SAP PartnerEdge program.

3. PGA SCOPE

The PGA is a precondition for activating certain benefits under the SAP PartnerEdge program. Furthermore, it centralizes payment of fees under the SAP PartnerEdge program (“**Program Fees**”) as outlined in the SAP PartnerEdge Program Guide with the SAP entity which is party to this PGA. Upon execution of this PGA and during the term of the PGA, the Program Fees will be invoiced by SAP out of Ireland. Any prior arrangements to invoicing of the Program Fees in geographies where a PartnerEdge Agreement has been signed will be administered with an invoice from SAP. As outlined in the SAP PartnerEdge Program Guide, the Program Fees under the SAP PartnerEdge program (excluding any payments related to reselling of SAP products) for all members of a Partner Group will be invoiced to Partner. Members of the Partner Group must be enrolled by Partner under the PGA as described in the SAP PartnerEdge Program Guide. The SAP PartnerEdge Program Guide which is published on SAP’s partner-dedicated website is hereby made part of the Agreement by reference.

4. PAYMENT AND TAXES

4.1. Payment

4.1.1. Program Fees invoiced under this PGA are payable by credit card annually in advance. Program Fees are calculated from 1st January to 31st December (For new partners, pro-rated if a PGA is effective after 1st January). In case Partner is prohibited from paying via credit card for legal or country-specific regulatory reasons, payments can be made via Electronic Fund Transfer (EFT).

4.1.2. Partner may offset claims only if they are uncontested or finally and bindingly awarded by a court of law.

4.1.3. If Partner fails to pay the Program Fees on its due date in accordance with the Agreement, interest will accrue at the applicable statutory interest rate and not to exceed the maximum allowed by law. However, the assertion of further damages is not excluded.

4.1.4. If Partner fails to pay the Program Fees on its due date, SAP may, at its sole discretion, suspend all or part of Partner’s rights under the Agreement until such time as any outstanding amount has been received by SAP. Towards other members of the Partner Group, SAP or the relevant SAP entity may invoke similar rights under the relevant PartnerEdge Agreement(s).

4.2. 2. Taxes

4.2.1. Any fees invoiced by SAP under this Agreement do not include any taxes, fees, charges or similar amounts. Partner agrees to pay all applicable indirect or transactional taxes or charges of any kind (including but not limited to, customs duties, tariffs, excise, gross receipts, value-added (VAT), goods and services (GST), sales and use tax and digital tax) or similar transaction

SAMPLE AGREEMENT – NOT FOR SIGNATURE

taxes except corporate income tax. Partner shall provide SAP its VAT, GST or similar identification number applicable to the country where Partner has established its business and where the partner benefits from this Agreement. SAP shall consider the partner benefits are provided to the Partner location associated with the VAT, GST or similar identification number and are for Partner's business use.

- 4.2.2. If Partner is required by law to withhold or deduct income taxes (e.g. withholding taxes) from payment, Partner shall submit such withholding tax amounts to the appropriate and competent tax authority. Partner shall send to SAP one original and one copy of the receipt for tax payment (tax certificate) officially issued by the local tax authority or any other document which SAP may reasonably require to obtain a tax credit or tax refund without undue delay.
- 4.2.3. If, in connection with the Partnership Fees payable to SAP under this Agreement, SAP is required by local or other law or regulations to become a registered tax payer in the country and/or is required to file separate tax returns therein where SAP is not otherwise required to do so, Partner agrees to assign the PGA to another member of the Partner Group located in another country as requested by SAP and which has executed a PartnerEdge Agreement with a SAP entity. SAP has the sole discretion to determine such appropriate country. If Partner is unable to assign the PGA to another member of the Partner Group acceptable to SAP, SAP may terminate the PGA with 30-day written notice to Partner. Partner agrees that SAP may cease provision of all services under the Agreement without any liability to Partner.

5. LIMITATION OF LIABILITY

Liability of the Parties under the Agreement shall be limited to the amount of the annual Program Fees payable hereunder. This limitation shall not apply in case of death or personal injury arising from either party's wilful misconduct or negligence, or any other liability which cannot be limited or excluded by applicable law. Regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty, claims by third parties arising from any breach of this Agreement) neither Party shall be liable for (i) loss of good will or profits, work stoppage, data loss, computer failure or malfunction, attorney's fees, court costs or interest (whether any such loss or damage is direct or indirect and even if advised of the possibility of such damages) or (ii) special, incidental, consequential, indirect, exemplary or punitive damages. A Party must initiate a cause of action for any claim(s) arising out of or relating to any part of the Agreement and its subject matter within one year from the date when the Party knew, or should have known after reasonable investigations, of the facts giving rise to the claim(s). The provisions of the Agreement allocate the risks between SAP and Partner. The fees paid by Partner reflect this allocation of risk and the limitations of liability herein. It is expressly understood and agreed that each and every provision of the Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the Parties to be severable and independent of any other provision and to be enforced as such.

6. TERM AND TERMINATION

- 6.1. The Agreement comes into effect on the Effective Date and shall renew automatically on 1st January of each calendar year until terminated as outlined herein. This Agreement shall terminate automatically upon termination or expiration of the PartnerEdge Agreement.
- 6.2. Partner and SAP may terminate this Agreement to the end of a calendar year by providing three (3) months prior notice. However, Partner may not terminate this Agreement while at least one PartnerEdge Agreement is in place between a member of the Partner Group and a SAP entity.
- 6.3. Either Party may terminate this PGA at any time for cause:
- (i) upon thirty (30) days written notice of the other Party's material breach of the Agreement, unless the breach is cured during such period; or
 - (ii) immediately if the other party files for a petition for winding up, becomes insolvent, makes an assignment for the benefit of creditors, or an event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an equivalent effect to any of the foregoing, or
 - (iii) immediately in the event of a change of Control if the business interests of the other Party are materially affected (for example, if a direct competitor of a Party becomes a direct or indirect majority shareholder).
- 6.4. Termination of this PGA does not relieve Partner from its obligation to pay any fees that remain unpaid. Furthermore, termination of this PGA does not affect any PartnerEdge Agreements entered by Partner or any other member of the Partner Group.

7. MISCELLANEOUS

- 7.1. This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Partner in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are superseded by the Agreement. Each party acknowledges that in entering into the Agreement it has not relied on any representation, discussion, collateral contract or other assurance or writings except those expressly set out in the Agreement. Each party waives all rights and remedies

SAMPLE AGREEMENT – NOT FOR SIGNATURE

which, but for this section, might otherwise be available to it in respect of any such representation, discussion, collateral contract or other assurance or writings. The Agreement may be modified solely in writing signed by both parties, except as expressly permitted under the Agreement.

- 7.2. Partner may not, without SAP's prior written consent, assign, delegate, pledge, or otherwise transfer the Agreement, or any of its rights or obligations under the Agreement to any party, whether voluntarily or by operation of law, including as a result of a change in Control event or by way of a sale of assets, merger or consolidation. SAP may assign the Agreement to another SAP entity.
- 7.3. If any provision of the Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement. The invalid or unenforceable provision will be replaced by a valid and enforceable provision which approximates as closely as possible the intent of the invalid or unenforceable provision.
- 7.4. Electronic signatures that comply with applicable law are deemed original signatures.
- 7.5. Any notice or other communication under or in connection with the Agreement must be made in writing to each party's authorized representative or administrator identified in the existing PartnerEdge Agreement between Partner and SAP or another SAP entity. Such notice or communication may be made by mail, email or other electronic means except as set forth above. Except regarding breach, termination or suspension of rights notices, SAP may satisfy its obligation under the Agreement to deliver information to the Partner by posting this information onto an electronic partner-dedicated website (e.g. the SAP PartnerEdge Portal). SAP will supply Partner with the address of and any relevant password for the partner-dedicated website.
- 7.6. This Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement and its subject matter are governed by and construed under the laws of Ireland. The international law of conflicts, the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement. The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement is Dublin, Ireland. The Parties agree that the aforementioned courts are the most appropriate and convenient courts to settle disputes and accordingly no Party will argue to the contrary.

IN WITNESS WHEREOF, the Parties hereto have caused this PGA to be executed by their respective authorized representatives

Accepted By:

SAP Solutions
(SAP)

Accepted By:

[[VAR:CPNAME02]]
(Partner)

NOT FOR SIGNATURE

Name:

Title:

Date:

NOT FOR SIGNATURE

Name:

Title:

Date:

NOT FOR SIGNATURE

Name:

Title:

Date:

NOT FOR SIGNATURE

Name:

Title:

Date: