

AUTHORIZED RESELLER END USER LICENSE AGREEMENT (BETWEEN SAP AND INDIRECT END USER) ("EULA")

1. DEFINITIONS.

1.1 "Acceptance Form" means the Acceptance Form for Authorized Reseller End User License Agreement (between SAP and Indirect End User).

1.2 "Add-on" means any development that adds new and independent functionality, (including any new functional components for business processes not provided by the Software), and connects to and/or communicates through published SAP application program interfaces or user exits.

1.3 "Agreement" means the Acceptance Form as the case may be, the EULA and the Software Use Rights Schedule.

1.4 "API" means SAP's application programming interfaces, as well as other SAP code that allow other software products to communicate with or call on SAP Software (for example, SAP Enterprise Services, BAPIs, Idocs, RFCs and ABAP or other user exits) provided under this Agreement.

1.5 "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 equity interest is maintained.

1.6 "Authorized Reseller" means the authorized reseller who is further identified in the Acceptance Form.

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

1.8 "Confidential Information" means, with respect to SAP, all information which SAP protects against unrestricted disclosure to others, including but not limited to: (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; (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; and (d) any information about or concerning any third party (which information was provided to SAP subject to an applicable confidentiality obligation to such third party). With respect to Licensee, "Confidential Information" means all information which Licensee protects against unrestricted disclosure to others and which (i) if in tangible form, Licensee clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Licensee identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary within thirty (30) calendar days of any such disclosure.

1.9 "Distributor" means the distributor who is further identified in the Acceptance Form. 1.9 "Documentation" means SAP's documentation which is delivered or made available to Licensee with the Software.

1.10 "End User" means the end user who is further identified in the Acceptance Form.

1.11 "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or database 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.

1.12 "Licensee" means the End User.

1.13 "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 or alternative user interfaces, the extension of SAP data structures, or other change utilizing or incorporating any SAP Materials (defined below).

1.14 "SAP" means **SAP America, Inc.**

1.15 "SAP Materials" means any software, programs, tools, systems, data or other materials made available by SAP (whether before or after the effective date of 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.

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"Software Order Form" means the order placed by the Distributor with SAP for the Software ordered (i) by Licensee from the Authorized Reseller; and (ii) by Authorized Reseller from Distributor, including information on Software and other information necessary for the delivery of such items to Licensee.

1.17 "Software Use Rights Schedule" means the Software Use Rights Schedule current at the time of execution of the Acceptance Form which can be found at: www.sap.com/company/legal

1.18 "Territory" means the United States.

1.19 "Third Party Software" means (i) any and all software products and content licensed to Licensee under this Agreement, all as developed by companies other than SAP, SAP AG, Business Objects Software Limited and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to an SAP support service; and (iii) any complete or partial copies of any of the foregoing.

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5.1. Term. This Agreement and the license granted hereunder shall become effective unless otherwise provided in the Acceptance Form on the delivery date 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 to the Authorized Reseller of all License fees then due and owing; (ii) thirty days after SAP gives Licensee notice of Licensee's material breach of any provision of the Agreement (other than Licensee's breach of its obligations under Sections 6, 10 or 11, which breach shall result in immediate termination), including more than thirty days delinquency in Licensee's payment of any monies owed to Authorized Reseller, unless Licensee has cured such breach in the meantime; (iii) immediately if Licensee files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or a petition for the opening of insolvency proceedings or similar proceedings if filed against the Licensee. For the avoidance of any doubt, termination of the Agreement shall strictly apply to all licenses under the Agreement, its appendices, schedules, addenda and order documents and any partial

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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 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 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, SAPHIRE participation). SAP will make reasonable efforts to avoid having the reference activities unreasonably interfere with Licensee's business.

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 wholly or in part illegal, invalid or unenforceable in any respect, such illegality, 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. The illegal, 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. This will also apply in the case of gaps.

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.

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, **SAP Confidential**

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12.5 Governing Law; Limitations Period. This Agreement and any claims (including and non-contractual claims) arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of Pennsylvania, without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and Pennsylvania law, rules, and regulations, Pennsylvania 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 the Acceptance Form. Where in this section 12.6 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.

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 (including this Section 12.8) 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.

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 Acceptance Form; (ii) the Software Use Right Schedule; (iv) the EULA.