



**(SAP- CARAHSOFT 3-8-2012 FINAL)**  
**SOFTWARE LICENSE AND SUPPORT AGREEMENT**  
**General Terms and Conditions**  
**("GTC")**

1. **DEFINITIONS.**

1.1 **"Add-on"** means any development using SAP API's that adds new and independent functionality, but does not modify existing SAP functionality.

1.2 **"Agreement"** means these GTCs, any Order Form referencing these GTCs, and the Use Terms and Schedules referenced by these GTCs and/or such Order Forms. All such components are integral to the agreement, and collectively are referred to herein as the "Agreement".

1.3 **"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.

1.4 **"Affiliate"** mean 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.

1.5 **"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.

1.6 **"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.

1.7 **"Documentation"** means SAP's 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.

1.9 **"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, alternative user interfaces or the extension of SAP data structures; or (iii) any other change to the Software (other than an Add-on) utilizing or incorporating any SAP Materials (defined below).

1.10 **"Professional Services Schedule"** means the terms and conditions governing SAP's delivery of professional services, attached hereto and made a part hereof.

1.11 **"SAP Materials"** means any software, programs, tools, systems, data, or other materials made available by SAP to Licensee 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.

1.12 **"SAP Support"** means SAP's then-current SAP support offering specified in the applicable Order Forms and made available to Licensee as stated in the applicable SAP Support Schedule incorporated into the Agreement (also available at [www.sap.com/company/legal/index.epx](http://www.sap.com/company/legal/index.epx)) as of the effective date of the first Software Order Form issued under these GTCs. Such SAP Support Schedule is incorporated herein by reference. For the avoidance of doubt, such SAP Support Schedule shall apply to all Order Forms issued under these GTCs unless otherwise agreed by the parties.

1.13 **"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 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 the respective support agreement and (iii) any complete or partial copies of any of the foregoing.

1.14 **"Software Order Form"** means the order form for the Software and related SAP Support ordered by Licensee thereunder, including information on Software, SAP Support, fees, and other information necessary for the delivery of such items to Licensee. The Software Order Form does not include fees for professional services, which shall be billed under separate statements of work in accord with the Professional Services Schedule.

1.15 **"Territory"** means the world except for those countries prohibited by United States' export laws, and further subject to Section 12.4 of the GTC.

1.16 **"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 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 the respective SAP Support Schedule and (iii) any complete or partial copies of any of the foregoing.

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

1.18 **"Use Terms"** means, with regard to Software specified in a Software Order Form, metric definitions and product-specific terms described in the Agreement or applicable Order Form.

## **2. LICENSE GRANT.**

### **2.1 License.**

2.1.1 Subject to Licensee's compliance with all the terms and conditions of this Agreement, SAP grants to Licensee a non-exclusive, perpetual (except for subscription based or term licenses) license to Use the Software, Documentation, and other SAP Materials at specified site(s) within the Territory to run Licensee's and its Affiliates' internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations and as further set forth in the Software Order Form, unless terminated in accordance with Section 5 herein. This license does not permit Licensee (without being limited specifically to such restrictions) to: (i) use the SAP Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training) other than to Affiliates (subject to Section 2.2); (ii) lease, loan, resell, sublicense or otherwise distribute the SAP Materials, other than distribution to Affiliates (subject to Section 2.2); (iii) make any Use of or perform any acts with respect to the SAP Materials other than as expressly permitted in accordance with the terms of this Agreement; or (iv) use Software components other than those specifically identified in the Software Order Form, even if it is also technically possible for Licensee to access other Software components. Business Partners may Use the Software only through screen access and solely in conjunction with Licensee's Use and may not Use the Software to run any of Business Partners' business operations.

2.1.2 Licensee agrees to install the Software only on information technology devices (e.g., hard disks or central processing units) identified by Licensee pursuant to this Agreement and that has been previously approved by SAP in writing or otherwise officially made known to the public as appropriate for Use or interoperation with the Software (the "Designated Unit"). Licensee must hold the required licenses as stated herein and in the applicable Order Forms, for any individuals that Use the Software, including employees or agents of Affiliates and Business Partners. Use may occur by way of an interface delivered with or as a part of the Software, a Licensee or third-party interface, or another intermediary system.

2.1.3 The terms and conditions of this Agreement relative to "Software" apply to Third Party Software except as otherwise stated in the Software Use Rights Schedule, a Schedule, an Order Form, or an Amendment.

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) the Affiliate agrees to be bound by the terms herein in the form of Schedule A ("Affiliate Use Agreement") attached hereto; 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 AG, any SAP AG 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 **Outsourcing Services.** 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) Licensee and such services provider execute 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 shall hold the required licenses as stated in the Use Terms 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. 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, provided that SAP abides by applicable facility access and security requirements. 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, SAP may be entitled to to recover such underpaid fees and/or for such excess usage based on SAP List of Prices and Conditions Software and Support governing use in effect at the time of the audit. SAP reserves all rights at law 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, PAYMENT, AND DELIVERY.

4.1 Fees. Licensee shall pay to the named reseller on behalf of SAP license fees for the Software and fees for SAP Support on the terms in Software Order Forms hereto. Fees for consulting services will be paid as set forth in the GSA Pricelist.

4.3 Delivery of the Software and SAP Support. SAP will deliver the Software and SAP Support by making it available for electronic download through the SAP ServiceMarketplace (<http://service.sap.com/swdc>) to Licensee. Risk of loss passes at the time of such electronic delivery. Licensee agrees not to request any physical delivery of Software or SAP Support and should it occur that any such delivery will be rejected by Licensee.

5. TERM.

5.1. Term. This Agreement and the license granted hereunder shall become effective as of the date first set forth in the first Software Order Form issued under these GTCs, and shall continue in effect thereafter unless this Agreement is 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; or (ii) immediately after SAP prevails on any FAR 52.233-1-related claim submitted to Licensee's Contracting Officer for Licensee's material breach of any provision of the Agreement. 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 termination of the Agreement by Licensee shall not be permitted in respect of any part of the Agreement, its appendices, schedules, addenda, order documents.

5.2 End of Term Duties. Upon any termination hereunder, Licensee and its Affiliates shall immediately cease Use of all SAP Materials and Confidential Information. Within thirty (30) days after any termination, Licensee shall irretrievably destroy or upon SAP's request deliver to SAP all copies of the SAP Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Licensee must certify to SAP in writing that it has satisfied its obligations under this Section 5.2. Licensee agrees to certify in writing to SAP that it and each of its Affiliates has performed the foregoing. Sections 3, 4, 5.2, 6, 7.2, 8, 9, 10, 12.4, 12.5, 12.6 and 12.8 shall survive such termination. In the event of any termination hereunder, Licensee shall not be entitled to any refund of any payments made by Licensee. Termination shall not relieve Licensee from its obligation to pay fees that remain unpaid.

6. INTELLECTUAL PROPERTY RIGHTS.

6.1 Reservation of Rights. The SAP Materials, and all Intellectual Property Rights embodied in the foregoing, shall be the sole and exclusive property of SAP, SAP AG (the parent company of SAP) or its or their licensors, subject to any rights expressly granted to Licensee in Section 2 and 6.3 herein. Except for the rights set forth in Section 6.3 herein, Licensee is not permitted to modify or otherwise make derivative works of the Software. Any such unauthorized works developed by Licensee, and any Intellectual Property Rights embodied therein, shall be the sole and exclusive property of SAP or SAP AG.

6.2 Protection of Rights. Licensee shall not copy, translate, disassemble, or decompile, nor create or attempt to create the source code from the object code of the Software in any manner. Reverse engineering of the Software and other SAP Materials is prohibited. Licensee is permitted to back up data in accordance with good information technology practice and for this purpose to create the necessary backup copies of the Software. Backup copies on transportable discs or other data media must be marked as backup copies and bear the same copyright and authorship notice as the original discs or other data media. Licensee must not change or remove SAP's copyright and authorship notices.

6.3 Modifications/Add-ons.

6.3.1 Conditioned on Licensee's compliance with the terms and conditions of this Agreement, Licensee may make Modifications and/or Add-ons to the Software in furtherance of its permitted Use under this Agreement, and shall be permitted to use Modifications and Add-ons with the Software in accordance with the License grant to the Software set forth in Section 2.1.1(a) herein. Licensee shall comply with SAP's registration procedure prior to making Modifications or Add-ons. All Modifications and all rights associated therewith shall be the exclusive property of SAP and SAP AG. All Add-ons developed by SAP (either independently or jointly with Licensee) and all rights associated therewith shall be the exclusive property of SAP and SAP AG. Licensee agrees to execute those documents reasonably necessary to secure SAP's rights in the foregoing. All Add-ons developed by or on behalf of Licensee without SAP's participation ("Licensee Add-on"), and all rights associated therewith, shall be the exclusive property of Licensee subject to SAP's rights in and to the Software; provided, Licensee shall not commercialize, market, distribute, license, sublicense, transfer, assign or otherwise alienate any such Licensee Add-ons. SAP retains the right to independently develop its own Modifications or Add-ons to the Software, and Licensee agrees not to take any action that would limit SAP's sale, assignment, licensing or use of its own Software or Modifications or Add-ons thereto.

6.3.2 Any Modification developed by or on behalf of Licensee without SAP's participation or Licensee Add-on must not (and subject to other limitations set forth herein): enable the bypassing or circumventing any of the restrictions set forth in this Agreement and/or provide Licensee with access to the Software to which Licensee is not directly licensed; nor permit mass data extraction from