

## **SAP MUTUAL NON-DISCLOSURE AGREEMENT**

Please sign and email a signed copy to Daniela Kondareva and cc Stephanie Choi and Scott Jones.

Daniela Kondareva ([Daniela.Kondareva@sap.com](mailto:Daniela.Kondareva@sap.com))

Stephanie Choi ([Stephanie.Choi@sap.com](mailto:Stephanie.Choi@sap.com))

Scott Jones ([Scott.Jones@sap.com](mailto:Scott.Jones@sap.com))

SAP accepts and executes soft copies. It is not necessary to send originals.

## MUTUAL NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("**Agreement**") is effective as of \_\_\_\_\_, 20\_\_ ("**Effective Date**") and is entered into between \_\_\_\_\_, a \_\_\_\_\_ corporation, having a place of business at \_\_\_\_\_ ("**Company**"), and **SAP AG**, a German company, with its place of business at **Dietmar Hopp Allee 16, 69190 Walldorf, Germany** on behalf of itself and its wholly owned subsidiaries, ("**SAP**"). In consideration of the mutual covenants contained herein, SAP and Company, intending to be legally bound hereby, agree to the following:

1. In connection with an evaluation relating to a potential relationship, cooperation or transaction (the "**Evaluation**"), SAP and Company may deliver to each other, upon the execution of this Agreement, Confidential Information as defined below (the party disclosing such Confidential Information being the "**Disclosing Party**" and the party receiving such Confidential Information being the "**Receiving Party**").

2. As used herein, "**Confidential Information**" shall mean all information which Disclosing Party protects against unrestricted disclosure to others, furnished by the Disclosing Party or its Representatives (defined below) to the Receiving Party or its Representatives in writing or in other tangible form and clearly identified as confidential or proprietary at the time of disclosure marked with an appropriate legend indicating that the information is deemed confidential or proprietary by the Disclosing Party, including but not limited to, information that is related to: (a) the business plans or operations of the Disclosing Party; (b) the research and development or investigations of the Disclosing Party; (c) the business of any customer or partner of the Disclosing Party; (d) Disclosing Party's properties, employees, finances, operations; (e) any information about or concerning any third party (which information was provided to the Disclosing Party subject to an applicable confidentiality obligation to such third party);, (f) software and related documentation ("**Disclosing Party's Software**") including the following information regarding Disclosing Party's Software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in Disclosing Party's Software; and (ii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to Disclosing Party's Software; and (g) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, inventions (whether patentable or not), marketing plans, forecasts and strategies. Where the Confidential Information has not been reduced to written or other tangible form at the time of disclosure, and such disclosure is made orally or visually, the Disclosing Party agrees to identify it as confidential or proprietary at the time of disclosure and to summarize the Confidential Information in writing and deliver such summary within thirty (30) calendar days of such oral or visual disclosure. Neither party shall identify information as confidential or proprietary that is not in good faith believed to be confidential, privileged, a trade secret, or otherwise entitled to such markings or proprietary claims.

3. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of a Disclosing Party shall remain the property of the Disclosing Party and shall contain any and all confidential or proprietary notices or legends which appear on the original. The Receiving Party: (a) shall take all reasonable steps (defined below) to keep all Confidential Information strictly confidential; (b) shall not disclose or reveal any Confidential Information to any person other than its Representatives who are actively and directly participating in the Evaluation or who otherwise need to know the Confidential Information for the purpose of the Evaluation; (c) shall not use Confidential Information for any purpose other than in connection with the Evaluation; and (d) shall not disclose to any person (other than those of its Representatives who are actively and directly participating in the Evaluation or who otherwise need to know for the purpose of the Evaluation) any information about the Evaluation, or the terms or conditions or any other facts relating thereto, including, without limitation, the fact that discussions are taking place with respect thereto or the status thereof, or the fact that Confidential Information has been made available to the Receiving Party or its Representatives. As used herein "**reasonable steps**" means those steps the Receiving Party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. As used herein, "**Representatives**" shall mean (i) employees of Receiving Party; (ii) attorneys, accountants, or other professional business advisors; and, additionally, (iii) employees of SAP AG and those entities directly or indirectly owned by SAP AG. The Receiving Party shall be responsible for any breach of the terms of this Agreement by it or its Representatives.

4. 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 Receiving Party without reference to the 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 Receiving Party; (c) at the time of disclosure to Receiving Party was known to such party free of restriction; or (d) Disclosing Party agrees in writing is free of such restrictions.

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5. Neither party is required to disclose any particular information to the other and any disclosure is entirely voluntary and is not intended to be construed as: (a) granting rights by license or otherwise under any trademark, patent, copyright or other intellectual property right; (b) creating a commitment as to any product, including the development or functionality of any product; (c) soliciting any business or incurring any obligation not specified herein; or (d) prohibiting either party from associating themselves with competitors of the other party for purposes substantially similar to those involved herein. Notwithstanding the foregoing, Company agrees that any and all ideas, concepts, or other intellectual property rights conceived or created during the Evaluation and related in any way to the techniques, knowledge or processes of any SAP products or materials are the exclusive property of SAP.

6. Nothing in this Agreement shall prohibit or restrict either party's right to develop, make, use, market, license or distribute products or services similar to or competitive with those of the other party disclosed in the Confidential Information as long as it shall not thereby breach this Agreement. Each party acknowledges that the other may already possess or have developed products or services similar to or competitive with those of the other party disclosed in the Confidential Information. Further, either party shall be free to use for any purpose the residuals (defined below) resulting from access to or work with Confidential Information disclosed hereunder. The term "**residuals**" means information in non-tangible form which may be retained in the unaided memory by persons who have had access to the Confidential Information so long as such persons have not studied the information for the purpose of replicating the same from memory. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals.

7. During the course of this Agreement, Company may provide or SAP may solicit Company's input regarding SAP's Software, products, services, business or technology plans, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of SAP Software, products and/or services, or input as to whether Company believes SAP's development direction is consistent with their own business and IT needs, the technology marketplace in general, and the like (collectively "**Feedback**"). Company acknowledges and agrees that any information disclosed by SAP during discussions related to Feedback shall be considered SAP Confidential Information and shall be protected from disclosure in accordance with the terms of this Agreement. In order for SAP to utilize such Feedback, Company grants to SAP a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right to sublicense to SAP's licensees and customers, under all relevant Company intellectual property rights, to use, publish, and disclose such Feedback in any manner SAP chooses and to display, perform, copy, make, have made, use, sell, and otherwise dispose of SAP's and its sublicensee's products or services embodying Feedback in any manner and via any media SAP chooses, without reference to the source. SAP shall be entitled to use Feedback for any purpose without restriction or remuneration of any kind with respect to Company and/or its representatives. Company acknowledges that the information related to SAP's Software, products, services, business or technology plans, disclosed to it under this Agreement, is only intended as possible strategies, developments, and functionalities of the SAP products or services and is not intended to be binding upon SAP to any particular course of business, product strategy, and/or development.

8. In the event that the Receiving Party or any of its Representatives are requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Confidential Information or any other information concerning the Disclosing Party or the Evaluation, the Receiving Party shall provide the Disclosing Party with prompt notice of such request or requirement in order to enable the Disclosing Party (i) to seek an appropriate protective order or other remedy; (ii) to consult with the Receiving Party with respect to the Disclosing Party's taking steps to resist or narrow the scope of such request or legal process; or (iii) to waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained in a timely manner, or the Disclosing Party waives compliance, in whole or in part, with the terms of this Agreement, the Receiving Party or its Representative shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally required to be disclosed and to require that all Confidential Information that is so disclosed will be accorded confidential treatment.

9. Upon the Disclosing Party's written request, the Receiving Party shall (at the Receiving Party's election) promptly return or destroy (provided that any such destruction shall be certified by a duly authorized Representative of the Receiving Party) all Confidential Information of the Disclosing Party and all copies, reproductions, summaries, analyses or extracts thereof or based thereon (whether in hard-copy form or on intangible media, such as electronic mail or computer files) in the Receiving Party's possession or in the possession of any Representative of the Receiving Party; provided, however: (i) that if a legal proceeding has been instituted to seek disclosure of the Confidential Information, such material shall not be destroyed until the proceeding is settled or a final judgment with respect thereto has been rendered; and (ii) that the Receiving Party shall not, in connection with the foregoing obligations, be required to identify or delete Confidential Information held in archive or back-up systems in accordance with general systems archiving or backup policies.

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10. Until a separate definitive agreement regarding a potential relationship or transaction has been executed by the parties, neither party shall be under any legal obligation or have any liability to the other party of any nature whatsoever with respect to any proposal, term sheet, letter of intent, or draft agreement relating to any such potential relationship or transaction (other than with respect to the confidentiality and other matters set forth herein). Any business decision either party makes in anticipation of definitive agreements is at the sole risk of the party making the decision, even if the other party is aware of or has indicated approval of, such decision. Either party can end the discussions at any time, for any reason, and without liability to the other and each party shall bear its own costs resulting from the discussions.

11. Without prejudice to the rights and remedies otherwise available to either party hereto, each party hereto shall be entitled to equitable relief by way of injunction or otherwise if the other party or any of its Representatives breach or threaten to breach any of the provisions of this Agreement.

12. The Receiving Party acknowledges that neither the Disclosing Party nor its Representatives nor any of the officers, directors, employees, agents or controlling persons of such Representatives makes any express or implied representation or warranty regarding the Confidential Information, including, without limitation, any representation or warranty as to the completeness or accuracy of the Confidential Information.

13. This Agreement will be governed by the laws of Germany without reference to conflict of laws principles, and the parties hereby submit to venue in, and jurisdiction of the courts of Karlsruhe for purposes relating to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement.

14. This Agreement constitutes the entire understanding between the parties hereto as to Confidential Information disclosed hereunder and merges all prior discussions between them relating thereto. Notwithstanding the foregoing, in the event the parties have entered into, or enter into in the future, other agreements which contain terms concerning ownership or use of work product of SAP or software license provisions and rights, then this Agreement shall not supersede either party's rights and obligations as provided in such other agreements, unless such other agreement specifically provides otherwise. Neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party. No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and signed on behalf of each of the parties by their respective duly authorized officers or representatives. Any waiver of a provision of this Agreement shall not be deemed a subsequent waiver of the same or any other provision of this Agreement. It is further understood and agreed that no failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

15. The term of this Agreement shall be one (1) year beginning with the Effective Date, unless terminated earlier by either party at such party's sole discretion upon thirty (30) days written notice to the other party. The provisions herein concerning the disclosure, protection and use of Confidential Information shall survive the termination or expiration of this Agreement.

This Agreement may be executed in counterparts or by facsimile, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

MUTUAL NON-DISCLOSURE AGREEMENT

Accepted and Agreed to by:

Company:

SAP AG

By

Typed

Title

Date

By

Typed

Title

Date

By

Typed

Title

Date