

ENTERPRISE SERVICES COMMUNITY MEMBERSHIP AND CONFIDENTIALITY AGREEMENT

This Enterprise Services Community Membership and Confidentiality Agreement ("Agreement") is entered into by and between SAP AG ("SAP"), and the entity ("Member") identified below. The Effective Date of the Agreement is the date that Member signs the Agreement.

WHEREAS, SAP has developed a technology known as "enterprise SOA", which is defined below;

WHEREAS, SAP may disclose confidential material related to SAP's enterprise SOA to Member; and

WHEREAS, SAP desires to enter into a number of similar agreements to create a community with the intention of understanding and promulgating SAP's enterprise SOA ("Enterprise Services Community" or "Community").

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definitions.

(a) "**enterprise SOA information**" means the framework, guidelines, technology, service declarations or any other subject matter for defining, creating, accessing and/or running enterprise business process solutions as part of a service-oriented architecture.

(b) "**Confidential Information**" means information that is disclosed or otherwise obtained under this Agreement, provided that the information is marked as confidential. Confidential Information may be in any tangible form including hardcopy, electronic mail, schematics or other work. Information that is transmitted orally shall be treated as Confidential Information after the receipt of written notice to that effect from the disclosing party, provided that such notice is received within ten (10) days of such oral disclosure. In addition, the enterprise SOA information, and any information obtained from SAP that is related to the enterprise SOA information is understood to constitute Confidential Information of SAP without regard to the marking requirements above.

(c) "**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, and any other intangible property rights including applications 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, but specifically excluding trademarks, service marks, trade dress, and trade names.

2. Treatment of Confidential Information.

(a) Duty of Confidentiality. Each party has the duty to keep strictly secret the Confidential Information of the other party, and not to disclose such information except to employees and contractors, under a contractual obligation of secrecy, who have a legitimate need to know such information. In addition, except as expressly provided in this Agreement, neither party has the right to use the Confidential Information in any manner for any purposes outside of

the express license grants under this Agreement. The duties of confidentiality and non-use shall survive the expiration or termination of this Agreement.

(b) Exceptions. Notwithstanding anything to the contrary, "Confidential Information" shall not include any information that, without restrictions of confidentiality or any breach thereof: (i) was known to the other party prior to the disclosure by the disclosing party; (ii) is or becomes publicly known without the fault of the receiving party; (iii) is obtained by the receiving party from a third party; or (iv) is developed independently by the receiving party without reference to any other Confidential Information. In addition, neither party shall be prohibited from disclosing the other party's Confidential Information to the extent required by a court proceeding, provided that the disclosing party promptly notifies the other party of the disclosure requirement, and fully cooperates with the other party in seeking a protective order covering (or other protections restricting) such disclosure.

3. Utilization of the enterprise SOA information

(a) Member shall utilize the enterprise SOA information and any other Confidential Information of SAP solely for purposes of: (i) determining whether Member is interested in participating in any group of the Enterprise Services Community, such as a Community Advisory Group or Community Definition Group (as defined in Exhibit A); or (ii) providing comments or feedback to SAP regarding the enterprise SOA information or any other SAP technology, without participating in a Community Advisory Group or Community Definition Group ("Comments or Feedback"). Unless permitted and pursuant to a Community Definition Group in which a Member participates, Member shall not make any modifications or create derivative works of the enterprise SOA information. Any such modifications or derivative works shall be considered Feedback even if not directly provided to SAP.

(b) Member understands that Member is not obligated to provide Comments or Feedback. In the event Member does provide any Comments or Feedback, then SAP shall be entitled to utilize such information (including providing such information to others) without restriction of any kind and without accounting to or providing a reference to the source, subject to any Exhibits to this Agreement. This Section 3(b) will survive any expiration or termination of this Agreement.

(c) SAP has published documents that set forth the rules for operating within the Enterprise Services Community (including any service fees that are payable). SAP may update these rules upon thirty (30) days advance notice to Member. If Member does not agree with the rules or any updates to the rules, then Member must give written notice to SAP within thirty (30) days of accessing such rules or updates regarding the Member's disagreement, and this Agreement shall automatically terminate upon such notice. Failure to object within such thirty (30) day period shall be deemed a waiver of the right to object; however, Member may terminate this Agreement at will pursuant to Section 5(c).

4. Additional Terms and Conditions

This Agreement includes Exhibits setting forth additional terms and conditions for utilization of the information provided under this Agreement, as applicable to Member. For instance:

Exhibit A.1 – ES Community Advisory Group – Inbound and Outbound IP Policy
Exhibit A.2 – Product-focused ES Community Definition Group – Inbound IP Policy

SAP may, from time to time, offer updates to or additional versions of these Exhibits, or additional Exhibits.

Each Exhibit shall, upon execution, be incorporated by reference into this Agreement. Member represents that the Exhibits may be provided separately in electronic form with a “click-through” or the like for confirmation of acceptance, and that the representative of Member that accepts the “click-through” binds Member to the terms of the Exhibit.

5. Term; Termination.

(a) Unless earlier terminated as contemplated in this Agreement, this Agreement will commence on the Effective Date and will continue in effect for a period of four (4) years, after which the Agreement may be renewed for a one (1) year period upon mutual agreement.

(b) SAP may terminate this Agreement: (i) immediately for cause in the event of a material breach of any provision of this Agreement; or (ii) at any time upon sixty (60) days written notice to Member.

(c) Member may terminate this Agreement at any time, upon written notice to SAP, without having to observe any notice period.

(d) Any expiration or termination of this Agreement will automatically terminate all of the Exhibits and any other terms incorporated by reference herein.

(e) Upon any expiration or termination of this Agreement, Member shall immediately return any and all copies of Confidential Information in Member’s possession or control, or certify in writing that the Confidential Information in Member’s possession has been destroyed.

6. General.

(a) Except as otherwise may be expressly provided in an Exhibit to this Agreement, no rights with respect to the enterprise SOA information (or any portion thereof) is granted, or may arise, whether under a theory of implication or estoppel or otherwise.

(b) This Agreement does not restrict either party from entering into any agreement with another entity that may be similar in nature or scope, or restrain either party from providing products and services to any client or prospective client.

(c) The headers in this Agreement are merely exemplary and shall not be construed as terms of limitation.

(d) The parties acknowledge that the laws and regulations of Germany and/or European Community, the United States and/or other applicable countries may restrict the export and re-export of commodities and technical data of their respective origin. Both parties acknowledge that a close cooperation with regard to development of critical components is necessary in order to minimize potential export restrictions.

(e) Anything contained in this Agreement to the contrary notwithstanding, the obligations of SAP and Member shall be subject to all laws, present and future, of any government having jurisdiction over the SAP and Member including, without limitation, all data protection laws,

antitrust laws and laws concerning unfair competition, export and re-export laws and regulations. It is the intention of SAP and Member that this Agreement and all referenced documents shall comply with all applicable laws and regulations.

(f) Both parties are independent entities in performing all obligations hereunder, and nothing contained herein shall be deemed or construed to create any employer/employee relationship or any partnership or joint venture between the parties or their respective directors, officers, employees, or other personnel.

(g) The failure of SAP or Member to enforce any right resulting from breach of any provision of this Agreement will not be deemed a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder.

(h) Neither SAP nor Member shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes or any other cause which is beyond the reasonable control of such party.

(j) 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.

(j) This Agreement and its applicable Exhibits constitute the entire agreement between the parties with respect to the subject matter hereof, and except as otherwise provided in this Agreement, may not be amended except in a writing signed (or a click-through accepted) by a duly authorized representative of the respective parties. Any other agreements between the parties, including non-disclosure agreements, will not be affected by this Agreement to the extent not related to the subject matter hereof.

(k) Regardless of which party may have drafted this Agreement, no rule of strict construction shall be applied against either party. If any provision of this Agreement is determined by a court to be unenforceable, the parties shall deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from this Agreement, and the remainder of this Agreement will continue in effect. Unless expressly indicated by the context in which it appears, the term "include" (and all variations thereof) shall be construed as exemplary, rather than as a term of limitation.

(l) All taxes or customs duties except income or corporation taxes will be borne by the Member. If any such tax or duty has to be withheld or deducted from any payment under this Agreement, Member will increase payment under this Agreement by such amount as shall ensure that after such withholding or deduction SAP shall have received an amount equal to the payment otherwise required.

Income taxes will be borne by SAP. If Member is required to withhold income or corporation tax or a similar tax from any payment to the SAP under this Agreement, then Member shall be entitled to withhold or deduct such tax from the gross amount to be paid. However, Member shall use all endeavors to reduce any such withholding tax payable to the lowest possible rate subject to compliance with all applicable laws and double taxation treaties. Member will in the case of any withholding of tax provide to SAP a receipt from the relevant tax authority to which such withholding tax has been paid.

(m) ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING AND EXCEPT FOR CASES OF WILFULL MISCONDUCT: (I) THE ESA IS PROVIDED ON AN “AS IS” BASIS; (II) SAP DISCLAIMS ALL IMPLIED REPRESENTATIONS OR WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OF NONINFRINGEMENT. NO WARRANTY OR UNDERTAKING SHALL BE IMPLIED BY MEMBER FROM ANY OTHER PUBLISHED SAP DESCRIPTION OF OR ADVERTISEMENT FOR THE MATERIALS OR INFORMATION PROVIDED HEREUNDER; EXCEPT TO THE EXTENT SAP HAS EXPRESSLY CONFIRMED THAT OTHER QUALITY IN WRITING. WARRANTIES ARE VALIDLY GIVEN ONLY WITH THE EXPRESS WRITTEN CONFIRMATION OF SAP’S MANAGEMENT.

EXCEPT FOR DAMAGES RESULTING FROM (I) UNAUTHORIZED USE OR DISCLOSURE OF SAP CONFIDENTIAL INFORMATION, OR (II) WILFULL MISCONDUCT AND GROSS NEGLIGENCE, NO PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES BY REASON OF ANY ALLEGED BREACH OF THIS EXHIBIT C ON ANY THEORY OF LIABILITY. IN ALL OTHER CASES THE LIABILITY IS LIMITED ON THE AMOUNT PAID HEREUNDER. THE LIMITATION ON LIABILITY SHALL NOT APPLY IN CASES OF STATUTORY LIABILITY FOR PERSONAL INJURY OR AS MANDATED UNDER APPLICABLE PRODUCT LIABILITY LAWS.

(n) Except as may otherwise be expressly provided in an Exhibit, this Agreement does not extend rights to use SAP software or products, whether for internal business purposes or otherwise.

(o) Member may not assign any of its rights, delegate any of its obligations, or transfer this Agreement (including all its Exhibits), without the prior written consent of SAP, and any such attempted assignment, delegation or transfer shall be void. Any change of control of Member shall be deemed an attempted transfer of this Agreement.

(p) Contacts for providing notices regarding this Agreement are as follows:

For SAP:

Contact	Director of Business Development, ES Community
Address	3410 Hillview Avenue Palo Alto, CA 94304 USA
Phone	+1 267 307 3186
Fax	+1 610 492 9872
Email	esc@sap.com

With a copy to each of:

Contact	Chief Intellectual Property Officer
Address	3410 Hillview Avenue Palo Alto, CA 94304 USA
Phone	+1 650 849-4113
Fax	+1 650 494-5617
Email	tim.crean@sap.com

Contact	Corporate Legal Department – SAP AG
Address	SAP AG Dietmar-Hopp-Allee 16 69190 Walldorf, Germany
Phone	
Fax	
Email	

For Member:

Contact	
Company	
Address	
Phone	
Fax	
Email	

MEMBER:

SAP AG
Dietmar-Hopp-Allee 16
69190 Walldorf, Germany

BY: _____
NAME: _____
TITLE: _____
DATE: _____

BY: _____
NAME: _____
TITLE: _____
DATE: _____

BY: _____
NAME: _____
TITLE: _____
DATE: _____

EXHIBIT A.1.0 Community Advisory Group -- Inbound and Outbound IP Policy

This document is an exhibit to and is part of the Enterprise Services Community Membership and Confidentiality Agreement ("Membership Agreement") between the parties. In addition to the definitions provided in the Membership Agreement, the following definitions shall also apply.

Whereas, SAP has formed an Enterprise Services Community that includes community advisory groups (CAG, as defined below); and

Whereas, the purpose of a CAG is to discuss concepts for community definition groups (CDG, as defined below), operations of the Enterprise Services Community, or other topics outside of development of technology;

Therefore, the parties agree to the following terms:

1. Additional Definitions.

"Background IP" means all Intellectual Property owned or licensable by Member which is necessary for utilizing any Contribution, and which is pre-existing as of Member's acceptance into a given CAG, or which is otherwise acquired outside of Member's participation in the Community.

"Community Advisory Group" or "CAG" means a project team approved by the community process and comprised of representatives of Members and SAP, which is chartered to develop and/or disclose best known or other recommended practices related to enterprise SOA, or to propose to SAP the formation of new CDG(s), or to advise on the successful management and operation of the Enterprise Services Community.

"Community Definition Group" or "CDG" means a project team approved by the community process and comprised of representatives of Members and SAP who meet and confer, with the expectation to create one or more Specifications.

"Contribution" means all information and material, of any kind whatsoever, which is provided or created by Member or SAP, in connection with a CAG.

"Website" means the SAP website at which the Enterprise Services Community information is contained. Currently the Website is located at <http://esc.sap.com>.

2. CAG Participation.

(a) Eligibility and Governance. Member may apply to join any CAG specified at the Website. This Exhibit A.1.0 applies to Member for each CAG that Member joins that is operating under this IP policy, which will be stated at the Website.

(b) Membership. An Enterprise Services Community Member will be deemed to be a participant of a CAG ("Participating Member") provided it satisfies criteria stated at the Website in the section about CAGs. The process for forming, joining, participating in and continuing to participate in a CAG is defined and managed by SAP and described at the Website.

(c) Confidentiality. Contributions(s) by SAP or Participating Member and discussions among the CAG will not be treated as Confidential Information. A Contribution may or may not become incorporated into the tangible result(s), if any, created in the CAG.

(d) Treatment of Contributions, Intellectual Property.

(i) It is understood that there may be an output from a CAG, which may be in the form of a white paper, project plan or other tangible result(s). All results and drafts from a CAG including copyrights will be owned and controlled by SAP (subject to Participating Member's ownership of any Background IP that may be incorporated). To this end, Member understands and agrees that SAP may utilize any Contribution(s) or Background IP without reference to the source. Member will not assert any patents covering its Contribution(s) or any tangible result(s) of the CAG against SAP or its products or services.

(ii) Participating Members of a CAG will receive a copy of the final tangible result(s), if any, and may reproduce and distribute such final tangible result(s), if any, only in the exact form provided by SAP. There are no rights provided to modify or create derivative works of any final tangible result(s). A Participating Member may not use Contribution(s) provided by other Members or by SAP except for purposes of participating in the CAG.

3. General.

(a) Effect on Existing Agreements. This Exhibit, together with the Membership Agreement, supersedes and modifies any conflicting terms of existing agreements concerning the same subject matter hereof, except that this Exhibit is not intended to govern product software licensed or offered by SAP.

(b) No Third Party Rights. Notwithstanding any other provision of this Exhibit, Participating Member may provide Contribution(s) and participate in creation of outputs only to the extent that Participating Member owns or has the right to license the same for the full scope of activities contemplated hereunder. Without limiting the generality of the foregoing, Participating Member shall not, without SAP's prior written consent, incorporate into any Contribution or output, or configure the same to require the use of, any subject matter known or suspected by such Participating Member to: (i) be covered by any third party's intellectual property right (other than other Participating Members' Background IP) that Participating Member does not have the right to freely license as set forth above; or (ii) be subject to any open source license obligation.

(c) Participating Members as Authors. SAP has the right to list Participating Member as an author of a publication produced by the CAG.

(d) Representatives of Participating Members. Each individual person supplied by Participating Member shall be deemed and relied upon as being able to represent Participating Member and to fully participate in behalf of Participating Member in the CAG.

(e) Term Commencement. This Exhibit shall go into effect on the commencement of the first CAG in which a Member participates.

(f) No Implied Licenses. Except as otherwise expressly granted in this Exhibit, there are no rights, express or implied, by estoppel or otherwise, to any Intellectual Property.

EXHIBIT A.2.0 Product-Focused ES Community Definition Group – Inbound IP Policy

This document is an exhibit to and is part of the Enterprise Services Community Membership and Confidentiality Agreement (“Membership Agreement”) between the parties. In addition to the definitions provided in the Membership Agreement, the following definitions shall also apply.

Whereas, SAP has formed an Enterprise Services Community that includes product-focused community definition groups (Product CDG, as defined below); and

Whereas, the purpose of a Product CDG is to create one or more Specifications (defined below) that can be implemented in SAP products and for which SAP can extend licenses to others;

Therefore, the parties agree to the following terms:

1. Additional Definitions.

“**Background IP**” means all Intellectual Property owned or licensable by Member which is necessary for utilizing any Contribution or Specification, and which is pre-existing as of Member’s acceptance into a given CDG, or which is otherwise acquired outside of Member’s participation in the Community.

“**Contribution**” means all information and material, of any kind whatsoever, which is provided or created by Member or SAP, in connection with a CDG.

“**Community Definition Group**” or “CDG” means a project team approved by the community process and comprised of representatives of Members and SAP who meet and confer, with the expectation to create one or more Specifications.

“**Product CDG**” means a CDG that is oriented to produce one or more Specifications implementable on or with SAP products.

“**Newly Developed IP**” means all Intellectual Property, whether developed by Member or SAP, either solely or jointly, during participation in and in furtherance of a CDG.

“**Specification**” means 1) a description of technology that is developed as the work product of a CDG, that 2) has been designated a completed result of the CDG by SAP.

“**Website**” means the SAP website at which the Enterprise Services Community information is contained. Currently the Website is located at <http://esc.sap.com>.

2. CDG Membership.

(a) Eligibility and Governance. Member may apply to join any Product CDG specified at the Website. This Exhibit A.2.0 applies to Member for each Product CDG that Member joins that is operating under this inbound IP policy, which will be stated at the Website.

(b) Membership. An Enterprise Services Community Member will be deemed to be a participant of a Product CDG ("Participating Member") only if approved by SAP. The process for forming, joining, participating in and continuing to participate in a CDG is defined and managed by SAP and described at the Website.

(c) Confidentiality. For avoidance of doubt, any information transmitted or created by SAP as part of a Product CDG is considered Confidential Information of SAP. It shall be noted and it is acknowledged by Participating Member that any Contributions by Participating Member will not be treated as Confidential Information of Participating Member. A Contribution may or may not become incorporated into the Specification(s).

(d) Licenses to be Made Available. SAP will make a license available to each Participating Member to evaluate and internally develop products according to Specification(s) developed by the Product CDG. SAP will provide the terms of such license in more detail in a separate document. SAP may also make additional licenses available, also on separately defined terms.

(e) Treatment of Contributions, Intellectual Property.

- (i) SAP grants to Participating Members a worldwide, paid-up, non-exclusive license for the duration of the Product CDG to evaluate drafts of specifications and internally develop products in accordance with those drafts of specifications that are distributed to the Participating Members by SAP.
- (ii) Participating Member grants to SAP a worldwide, perpetual, irrevocable, paid-up, non-exclusive license, with sublicense rights, under Participating Member's Background IP to reproduce, display, distribute, create derivative works of the Specification(s), as well as the right to make, have made, use, sell, offer to sell and import, products implementing the Specification(s).
- (iii) Copyrights in the Specification(s), as well as any drafts and other written materials produced by the Product CDG, shall be owned by SAP (subject to Participating Member's ownership of any Background IP that may be incorporated).
- (iv) All Newly Developed IP shall be owned exclusively by SAP. Should additional steps be required to secure full ownership of any Newly Developed IP item, Participating Member shall cooperate with SAP and not take any actions or fail to take action that has the effect of impairing SAP's securing full ownership of such Newly Developed IP.

3. General.

(a) Effect on Existing Agreements. This Exhibit, together with the Membership Agreement, supersedes and modifies any conflicting terms of existing agreements concerning the same subject matter hereof, except that this Exhibit is not intended to govern product software licensed or offered by SAP.

(b) No Third Party Rights. Notwithstanding any other provision of this Exhibit, Participating Member may provide Contribution(s) and participate in creation of Specification(s) only to the extent that Participating Member owns or has the right to license the same for the full scope of activities contemplated hereunder. Without limiting the generality of the foregoing, Participating Member shall not, without SAP's prior written consent, incorporate into any Contribution or Specification, or configure the same to require the use of, any subject matter known or suspected by such Participating Member to: (i) be covered by any third party's intellectual property right (other than other Participating Member's Background IP) that Participating Member does not have the right to freely license as set forth above; or (ii) be subject to any open source license obligation.

(c) Participating Members as Authors. SAP has the right to list Participating Member as an author of Specification(s) produced by the Product CDG.

(d) Representatives of Participating Members. Each individual person supplied by Participating Member shall be deemed and relied upon as being able to represent Participating Member and to fully participate in behalf of Participating Member in the Product CDG.

(e) Term Commencement. This Exhibit shall go into effect on the commencement of the first Product CDG in which a Member participates.

(f) No Implied Licenses. Except as otherwise expressly granted in this Exhibit, there are no rights, express or implied, by estoppel or otherwise, to any Intellectual Property.