

# Int4 General Terms and Conditions for Free Trial License Agreement of Int4 IFTT

Version: August 2021

## 1. Scope:

- 1.1. These General Terms and Conditions are applicable for all arrangements entered into by Licensor regarding limited in time, free of charge trial of Software by a Licensee.
- 1.2. The rights and obligations of Parties shall be determined only by these General Terms and Conditions and the Request Form for Free Trial; general terms and conditions of Licensee shall not apply.
- 1.3. Licensor renders no services of any kind to Users who are consumers. By accepting these General Terms and Conditions, User confirms that itself or a party represented by User, is not a Consumer.

## 2. Definitions: Capitalized terms not otherwise defined shall have the following meaning:

- 2.1. **Consumer** means a natural person who concludes a legal transaction for a purpose which cannot be attributed to its commercial or independent business activity.
- 2.2. **Free Trial License Agreement** means the agreement between Licensee and the Licensor regarding limited time, free of charge trial of Software, consisting of these General Terms and Conditions and the Request Form for Free Trial.
- 2.3. **GTC** means these General Terms and Conditions for free trial of Int4 IFTT.
- 2.4. **Int4 IFTT** means Interface Testing Tool - a computer program that is a suite for test automation of SAP application integration, in version current at the time of its delivery, in object code, owned by Licensor.
- 2.5. **Licensor** means **Int4 AG** a duly registered company with registered seat in Zug, Switzerland (Bahnhofstrasse 11, 6300 Zug), having the UID number CHE-151.322.615.
- 2.6. **Licensee** means a natural or legal person, or a judicable Partnership that in concluding a Free Trial License Agreement is acting in the execution of its commercial or independent business activity, that is identified as such in the submitted Request Form for Free Trial or by means of individual electronic communication.
- 2.7. **Parties** means Licensee and Licensor.
- 2.8. **Party** means Licensee or Licensor.
- 2.9. **Request Form for Free Trial** or **Request Form** means an electronic form accessible on the website of Licensor, that a Licensee fills out and submit to Licensor in order to obtain a free trial offer from Licensor.
- 2.10. **Software** means a trial version of Int4 IFTT suitable for testing on non-production instances and the appertaining manual in electronic Form, both owned by Licensor.
- 2.11. **Term** means the period of time during which a Licensee is entitled to exercise the right of use in Software subject to the terms of the Free Trial License Agreement.
- 2.12. **User** any natural person interested in concluding a Free Trial License Agreement in its own name or on behalf of a third party.

## 3. Subject / Third Party Software

- 3.1. Subject of Free Trial License Agreement is the limited in time, free of charge, trial of Software by Licensee in order to inform itself about the functionality of the Software and its fitness for the intended use as well the

granting of rights of use therein in the scope set forth in these GTC by the Licensor. The source code of the Software is not an object of the Free Trial License Agreement.

- 3.2. Licensor shall not be liable to Licensee for Software's suitability for any particular use intended by Licensee or its suitability for its ordinary use.
- 3.3. Licensor will provide Licensee for the limited period of the Term with a manual of Software only in English in electronic format including an installation tutorial, which enables the Licensee to install Software autonomously.
- 3.4. Installation, configuration, parametrization, training, maintenance, consultancy services, data migration and services of any kind, that are not expressly agreed upon by the Parties, are not subject of Free Trial License Agreement.
- 3.5. Licensor hereby declares that is the creator and owner of proprietary copyrights to Software. Licensor declares at the same time that Software is an Add-on to the SAP NetWeaver 7.40 software which is owned by Business Objects Software Limited trading as "SAP Solutions" (1012 - 1014 Kingswood Avenue, City West Business Campus, Dublin 24, Ireland - hereinafter "**SAP**"), according to the agreement between Licensor and SAP. **The Licensee declares that is informed about the attached SAP requirements and** may only use the Software in compliance with the SAP requirements as set forth in **Attachment 1**

#### **4. Hardware and Software environment**

- 4.1. Licensee is solely responsible for and shall ensure that its IT infrastructure (hard- and software) meets the requirements for the proper operation of Software and is maintained appropriately.
- 4.2. In order to use Software, Licensee will require appropriate licenses for SAP NetWeaver or the appropriate other licenses applicable to the respective underlying SAP software. Licensor declares that Software is compatible with SAP NetWeaver basis component 7.40 and onwards and SAP Process Integration/Orchestration 7.3, 7.4 and 7.5. Licensor has certified Software with SAP according to SAP certification procedures.

#### **5. Conclusion**

- 5.1. By filling out the Request Form and clicking on the button „APPLY“ located on the website of Licensor, the User submits an offer to the Licensor for concluding a Free Trial License Agreement.
- 5.2. User warrants that all data provided by it in the Request Form is true, current, correct and complete.
- 5.3. Licensor is not obliged to inform the User about a receipt of its Request Form in electronic form. In the event Licensor does not reply to the submitted Request Form within 14 calendar days after it was sent, the request for the conclusion of a Free Trial License Agreement shall be deemed rejected by Licensor. In the event the Licensor approves the Request Form, it will convey the installation file as well as the license key to the e-mail address given by the User within the Request Form. The Free Trial License Agreement shall become legally binding as soon as the Licensor provides a valid license key to the Licensor.
- 5.4. In order to complete the installation of Software and enter the license key, User must confirm that it is familiar with and accepts these GTC by ticking a corresponding box in the dialog window. If User does not accept these GTC it should refrain from installation of Software and delete any downloaded files received from Licensor.
- 5.5. **In the event User concludes Free Trial License Agreement on behalf of any other party who shall be the Licensee, it confirms by ticking the box described in section 5.4. that is legally authorised to do so.**
- 5.6. Licensor reserves the right to render its services and/or make Software available to Users that are acting in the execution of their commercial or independent business activity while concluding a Free Trial License Agreement and reside in the countries, which guarantee at least equal level of legal protection of copyrights regarding software as within the EU.

#### **6. Term**

- 6.1. The Term of Free Trial License Agreement is 30 calendar days starting from the activation of the license key. Free

## 7. License

- 7.1. For the Term specified in section 6. of these GTC and subject to the conditions of these GTC, Licensor grants to Licensee a non-exclusive, worldwide, limited in time, revocable upon the terms set forth in these GTC, untransferable and not sublicensable right to use the Software and the appertaining manual exclusively for the purpose of usability tests on other than production instances and without the rights to create derivative works.
- 7.2. Notwithstanding the applicable mandatory rules of law Licensee shall not, and shall not permit or assist any third party to: (i) reproduce, modify, translate, adapt, rearrange or otherwise modify Software or correct errors hereof unless agreed to by Licensor in writing; (ii) reverse engineer, disassemble or otherwise attempt to determine ideas, structures and principles of Software; (iii) use Software or a part of Software to develop any other product, especially if it could be competitive with Software or for any other commercial purposes; (iv) remove any proprietary notices contained in Software or program documentation; (v) distribute, (sub)license, assign or (re)sell Software; (vi) use Software to render data processing center services, outsourcing services or application services to third parties; (vii) distribute Software or copies thereof to the public, including use or rental; (viii) or otherwise commercially exploit Software; (ix) use Software in a manner that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable Law; (x) demonstrate Software to third parties on production systems; (xi) provide to third parties any evaluation regarding to Software; (xii) allow any third party that offers or provides services that are competitive to Software to use or access Software.

## 8. License Infringement / Contractual Penalty

- 8.1. In the event of any breach of **sections 7.1. – 7.2** Licensee shall pay to Licensor for each breach a contractual penalty of CHF 25'000 (say: twenty-five thousand Swiss francs) to Licensor. In case the damages of Licensor surpass the contractual penalty described in this section 8.1, Licensor shall be entitled to demand the surpassing amount of damages according to statutory provisions. The payment of the contractual penalty does not free the Licensee from its obligations under this Free Trial License Agreement.

## 9. Trademarks

- 9.1. Granting of rights of any kind in or to Licensor's trade name, trademark, service mark, slogan, logo or domain name to Licensee is not subject of Free Trial License Agreement.

## 10. Ownership

- 10.1. Licensor retains and shall have sole and exclusive ownership of all rights (including any registered and unregistered intellectual property rights worldwide such as, but not limited to patents, copyrights, trademarks, product names, domain names, designs, Software and its source and object code, web-design, trade secrets, know how, moral rights, database protection etc.), title, and interest (hereinafter: "IP Rights") in and to Software, deliverables, possible documentation (e.g. manuals), specifications, materials and other items provided or created according this Free Trial License Agreement, including all derivative works of or modifications or improvements to the foregoing.
- 10.2. Unless stated expressly otherwise in this Free Trial License Agreement, such IP Rights of the Licensor may not be used in any way, disclosed, transferred, sold, published or otherwise exploited by the Licensee.
- 10.3. In the event Licensee creates, solely or jointly with Licensor or third parties, derivative works, modifications, or improvements with respect to any item mentioned in section 10.1, Licensor retains and shall have sole and exclusive ownership of all IP Rights in and to such items. Licensee hereby transfers to Licensor free of charge all IP Rights in and to such items upon their creation without restrictions in terms of material scope, time or geographical scope. Licensee represents that Licensee has corresponding agreements, permitting Licensee to

comply with this section 10.3 with all its employees, agents and/or subcontractors.

## 11. Limited Warranty

- 11.1. Licensor warrants to the best of its knowledge that Software does not violate or infringe any rights of third parties in regard to intellectual property, patents and/or trademarks and that to the best of its knowledge no legal action has been taken against Licensor for any infringement or violation of any third-party intellectual property rights. Licensor warrants to hold Licensee harmless and indemnify Licensee for any cost, loss or damage it may incur due to a lawsuit or threatened lawsuit brought against it in regard to Licensee's use of Software, provided such use by the Licensee is in conformity with this Free Trial License Agreement. Licensee shall promptly notify Licensor in case of such action giving reasonable details and request Licensor's consent prior to any settlement in relation to such lawsuit or claim. Licensor shall never be liable to Licensee if and to the extent the infringement of third parties' rights are based solely on an alteration or modification or use of Software by Licensee which is not in compliance with this Free Trial License Agreement.

## 12. Limitation of Liability

- 12.1. To the maximum extent permitted by applicable law, Software and any services are provided "AS IS" and without any warranty of any kind (either express, implied or by application of law). Therefore, Licensor provides in particular no warranty and disclaims all assurances as to the general merchantability and fitness of Software for a particular purpose, conformity with applicable regulations, data accuracy and correctness of the results delivered by Software when in use. The selection and use of the Software is the sole responsibility of Licensee, and Licensee is solely responsible for the correctness of its work results and the diligent performance of its services. Licensee will make no representations or warranties on behalf of Licensor regarding Software or any services rendered by Licensor.
- 12.2. In particular, but not limited to, Licensor is in no event liable for: (i) any disturbance, malfunction or changes of hardware and/or software environment deployed by Licensee in order to run the Software; (ii) operating and malfunctions resulting of outdated third parties' software being installed on the same instances or hardware as Software; (iii) disturbance of the Internet access of Licensee or any third party; (iv) any alteration or modification of Software by Licensee or any use of Software which is not in compliance with this Free Trial License Agreement; (v) other events out of control of Licensor (such as breakdown of a data center, failure of access providers, breakdown of a power plant etc.); (vi) changes of the hardware and/or software environment; (vii) force majeure events.
- 12.3. Licensor shall only be liable for unlawful intent and gross negligence as well as only for direct damage caused by bodily injury. Any further liability of the Licensor shall be excluded to the maximum extent permitted by law. In particular, Licensor shall not be liable for minor and medium negligence, any lack of commercial success, lost profits or any other consequential and indirect damages. Furthermore, any liability of Licensor for actions of auxiliary persons and contractual partners Licensor engages for the performance of the Free Trial License Agreement shall be excluded to the maximum extent permitted by law.

## 13. Indemnification

- 13.1. Licensee shall defend, indemnify and hold harmless the Licensor and its affiliates from all losses, liabilities, damages and expenses (including court fees and reasonable attorney fees) incurred as a result of any claim, demand, action or proceeding arising out of any breach of this Free Trial License Agreement by the Licensee. Licensor shall promptly notify Licensee in case of such legal action and request Licensee's consent prior to any settlement in relation to such lawsuit or claim.

## 14. Force Majeure

- 14.1. Neither Party will be liable to the other for any failure or delay in performance by circumstances beyond its control, including but not limited to, acts of God, fire, explosion, earthquakes, drought, tidal waves, floods, war,

invasion, act of foreign enemies, rebellion or civil war, embargo, contamination, epidemics, pandemic, riot, strikes, governmental action or terrorism.

- 14.2. If Force Majeure continues for more than fifteen (15) days preventing a Party from performing, either Party may terminate Free Trial License Agreement upon a notice to the other Party.

## 15. Confidentiality

- 15.1. For purposes of Free Trial License Agreement, “**Confidential Information**” shall mean any and all information received from the other Party or information regarding the other Party or its enterprise disclosed or obtained in any other way in connection with the Partner Agreement such as but not limited to information related to or regarding a disclosing party's products, services, technology, organization, billing records, investments, business plans, customers, prospective customers and other information that might have economic value, Software and its source code, Software documentation, customer lists, the conclusion of this Partner Agreement and its terms and conditions, regardless of whether such information was marked as "confidential", "restricted", “proprietary” or similarly and irrespective of the form such information was disclosed or obtained (including but not limited to in writing, digitally, orally, by visible inspection or in any other form).
- 15.2. Information will not be deemed Confidential Information under Free Trial License Agreement if such information (i) is publicly known; (ii) known to the receiving Party prior to receipt from the disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of Free Trial License Agreement by the receiving Party; or (iv) is independently developed by the receiving Party.
- 15.3. Each Party shall (a) use Confidential Information solely for the purpose and to the extent necessary to perform its rights and obligations under the Free Trial License Agreement and (b) not disclose such Confidential Information to third parties.
- 15.4. Each Party shall take technical and organisational measures reasonably required to prevent the unauthorized use or disclosure of Confidential Information. Confidential Information of the other Party shall only be disclosed or made accessible to staff members who need to know this information and require the documents to perform Free Trial License Agreement, or an individual contract concluded on the basis of Free Trial License Agreement and who have themselves been contractually obligated to maintain confidentiality. Neither Party shall pass on Confidential Information of the disclosing Party to third parties without the disclosing Party's prior written consent, except as necessary to exercise its rights under Free Trial License Agreement. If such consent has been granted, the third party must be obligated in writing to maintain confidentiality in accordance with the provisions of this section 15.
- 15.5. A Party may disclose Confidential Information of the other Party only if it is compelled by Law to disclose Confidential Information upon request or decision of the competent authority or court, after it provided the other Party with notice of such disclosure and the other (disclosing) Party did not attain limitation of the disclosure. The receiving Party shall provide the other (disclosing) Party with reasonable assistance, at the disclosing Party's cost, if the disclosing Party wishes to contest the disclosure.
- 15.6. Each Party shall return the documents, materials, or information of the other Party that it has received in connection with the performance of Free Trial License Agreement, including all copies thereof, at any time at the latter's request, or confirm that such documents have been destroyed.
- 15.7. The confidentiality obligation is binding throughout the term of Free Trial License Agreement and five years after its termination.

## 16. Termination

- 16.1. Both Licensor and Licensee may terminate this Free Trial License Agreement at their sole discretion at any time with immediate effect.
- 16.2. In case of termination of Free Trial License Agreement:

- a. any right to use Software granted to Licensee extinguishes,
- b. Licensee shall immediately cease to use and uninstall Software on each and every server and destroy all copies of Software and upon Licensor's request deliver a confirmation of the execution of these activities to Licensor.

## **17. Data Protection**

17.1. Each Party undertakes to comply with all applicable data protection regulations in their respective areas.

**17.2.** Licensor informs Licensee about the processing of Personal Data in connection with the conclusion and performance of the Free Trial License Agreement in its Personal Data Protection Notice which can be accessed under: [https://int4.com/Docs/Personal\\_Data\\_Protection\\_Notice.pdf](https://int4.com/Docs/Personal_Data_Protection_Notice.pdf)

## **18. Compliance with Laws**

18.1. Licensee shall comply with the statutory provisions of public law applicable to Free Trial License Agreement and use of Software. In particular it shall not violate antitrust laws and shall take all necessary measures to avoid corruption and violations against the rules of fair competition, trade restrictions and/or legally required concessions.

## **19. Entire Agreement / Written Form / English Language**

19.1. Free Trial License Agreement, including Attachments thereto, contains all agreements between the Parties relating to the subject of Free Trial License Agreement. All the amendments to Free Trial License Agreement shall be made in writing or else shall be null and void.

19.2. All notices, consents, waivers and other communications in connection with Free Trial License Agreement must be in English, in writing (electronic signatures are deemed to be sufficient), and will be deemed given when (i) delivered to the appropriate address by hand, courier, post or e-mail.

## **20. Severability**

20.1. Should portions of Free Trial License Agreement be or become invalid in part or in their entirety, this shall not affect the validity of the remaining provisions. The Parties rather shall undertake to replace the invalid provision with a valid provision that comes closest to the desired economic intent.

## **21. Applicable Law**

21.1. The Free Trial License Agreement shall be governed by and construed in accordance with the laws of Switzerland to the exclusion of the UN Convention on the International Sale of Goods (CISG) and any conflicts of law's provisions.

## **22. Venue**

22.1. Any dispute between the Parties that may arise out of Free Trial License Agreement or in connection with Free Trial License Agreement shall be submitted to the competent ordinary courts of the canton of Zug, Switzerland, provided that the Licensee is a merchant, a legal person or a legal entity under public law

## **Attachment 1**

### **to section 3.5. of Int4 General Terms and Conditions for Free Trial License Agreement of Int4 IFTT**

Due to the provisions of the section 2.3 of „Exhibit A – 1 - Development Licenses - to the Platform Application Development Cooperation Agreement” of agreement between SAP and Licensor, the Licensor is obliged to inform the Licensee about the following provisions and the Licensee shall comply with them. Licensee accepts and acknowledges the fact that the following conditions might be amended unilaterally by the SAP, and Licensee shall not have any claims against Licensor due to such situation.

For the purpose of this Attachment:

- Δ the Licensor shall be referred to as the Partner;
- Δ Licensee shall be referred to as the End User;
- Δ Licensor and SAP shall be referred to as the Parties.
- Δ The Software shall be referred to as the Add-on.

Section 2.3 of „Exhibit A – 1 - Development Licenses - to the Platform Application Development Cooperation Agreement” of agreement between SAP and Licensor:

2.3.1.1. *The software, particularly the ABAP Workbench and SAP NetWeaver, contains software tools. These tools may not be transferred, either in whole or in part, into modified or created software. Partner must use these tools only to modify or create Add-ons to the Software or non-SAP software in accordance with the terms and conditions set forth herein. The Software contains function modules, which are stored in a function library. Some of these function modules carry an indicator expressly releasing them for transfer into modified or newly created software. Partner may only transfer these function modules into Modifications to the Software. The function modules must in principle not be altered or decompiled.*

2.3.1.2. *Partner acknowledges that it performs Modifications and Add-ons to the Software and uses the tools and function modules at its own risk and only if it is technically capable of doing so without unauthorized decompiling. Further, SAP assumes no responsibility for Java developments or implementations developed by the Partner when creating Modifications or Add-ons with the use of tools or function modules.*

2.3.1.3. *Partner acknowledges that even minor modifications or other changes to the Software may lead to significant, unpredictable faults in the performance of the modified/enhanced program or other programs. Under no circumstances shall Partner develop Modifications to Hybris Software by changing the delivered code or metadata.*

2.3.1.4. *Therefore, Partner will be solely responsible for any of its Modifications and Add-ons to the Software. If defects or malfunctions are attributable to any of Partner’s Modifications and Add-ons, SAP is not required to meet any warranty or SAP Enterprise Support obligations and excludes all liability in this regard. Partner shall reimburse SAP for any additional costs and expenses arising with SAP in this regard. Partner has the burden of proof concerning the cause of defects or malfunctions and that they are not attributable to Partner’s Modifications and Add-ons.*

2.3.1.5. *Partner acknowledges that if an End User wishes to use the Partner’s Modifications and Add-ons, such End User will require appropriate licenses for SAP NetWeaver or the appropriate other licenses applicable to the respective underlying SAP software. Partner will not misrepresent any SAP license requirements or restrictions to End Users and will inform SAP immediately about any misuse by End Users which comes to Partner’s*



attention.

2.3.1.6. *Partner shall be entitled to develop Modifications and Add-ons for the Software subject to the conditions set forth under this Section 2.3.*

### 2.3.2. *Modifications*

2.3.2.1. *The ownership of Modifications and any Intellectual Property Rights embodied therein, shall vest with SAP. Partner irrevocably assigns to SAP all Partner's rights, title and interest ("Assigned Intellectual Property Rights") in and to the Modifications, including the right to register or file proprietary rights based on the Modifications. Partner further agrees to provide to SAP promptly upon SAP's request all pertinent facts and documents relating to such Modifications and to perform promptly such lawful acts and to sign promptly such further applications, assignments, statements, and other lawful documents as SAP may reasonably request to effectuate fully this assignment.*

2.3.2.2. *SAP grants to Partner a worldwide, non-exclusive, fully paid up, royalty free, perpetual, irrevocable license under the Assigned Intellectual Property Rights in the Modifications to make, have made, use, reproduce, display, distribute, create derivative works of, lease, sell, offer for sale, import, export or otherwise transfer through standard tiers of distribution (a "Full License") to any Partner created code included in the Modifications, subject to SAP's ownership of the underlying and/or unmodified code.*

2.3.2.3. *Partner grants SAP a Full License to any Partner Background Materials in the Modifications, provided that such Partner Background Materials are used only in connection with the Modification and/or derivative works thereof.*

2.3.2.4. *Subject to the extent of Partner's rights therein, Partner further grants SAP a Full License to any third-party materials incorporated in the Modifications. To the extent Partner does not have sufficient rights to grant SAP a Full License to such third-party materials, Partner covenants to use its best efforts to procure such rights for SAP in and to the third-party materials incorporated in such Modifications.*

### 2.3.3. *Add-ons*

*The ownership of Add-ons shall vest in Partner. For clarification purposes: Platform Applications or parts thereof which add new and independent functionality to the Software are to be considered Add-ons under this Agreement.*

### 2.3.4. *Enterprise Service Licensing Terms of Modifications and Add-Ons.*

2.3.4.1. *In addition, any Modifications or Add-ons must not:*

2.3.4.1.1. *unreasonably impair, degrade or reduce the performance or security of the SAP Software;*

2.3.4.1.2. *enable the bypassing or circumventing of SAP license restrictions and/or provide users with access to the Software to which such users are not directly licensed;*

2.3.4.1.3. *render or provide, without written consent from SAP, any information concerning SAP software license terms, SAP Software, or any other information related to SAP products. Partner shall refer any End User requiring such information to SAP; and/or*

2.3.4.2. *In exchange for the right to develop Add-ons under this Agreement, Partner covenants not to assert any Intellectual Property Rights in Add-ons created by Partner against any SAP product, service, or future SAP development.*

### 2.3.5. *Miscellaneous*

2.3.5.1. *Except to the extent explicitly specified in this Section 2.3, nothing shall be construed, whether by implication, estoppel or otherwise, to transfer ownership rights in or grant license rights to the Background Materials of the*



2.3.5.2. *Nothing shall restrict SAP's and/or its Affiliates' freedom to independently develop any new or improved functionalities, products, means, systems and/or processes related to SAP software, including but not limited to Modifications or Add-ons, which, in whole or in parts are congruent, similar and/or comparable to developments by Partner. SAP reserves the rights to provide additional or new SAP software products, including but not limited to SAP software based on new technical infrastructures, under separate terms and conditions than provided for in this Section 2.3.*