



**Special conditions for End Users of "Datavard Insights" or "SNP CrystalBridge Monitoring" as part of the SAP Peak Bundle or Enterprise Edition for SAP Solutions Bundle licensed by AppDynamics.**

## **§ 1**

### **Application**

1. Datavard AG, Germany and/or SNP Deutschland GmbH ("DV") has authorized AppDynamics to license Software distributed under the brand name "Datavard Insights" or "SNP CrystalBridge Monitoring" ("DV-Software") to third parties as part of the SAP Peak Bundle or Enterprise Edition for SAP Solutions Bundle.
2. This End User License Agreement ("EULA") sets out rights and duties of the End User in addition to the terms of the License Agreement entered into between AppDynamics as Licensor and the End User as Licensee, including all Updates, Upgrades or other modifications of the DV-Software.
3. In case of conflict between the terms of this EULA and the License Agreement, this EULA shall gain supremacy.

## **§ 2**

### **License Terms**

1. The End User's rights of use in the DV-Software are governed by the License Agreement as entered into between the End User and AppDynamics.
2. If the License Agreement does not govern the rights of use in the DV-Software explicitly, or if the License Agreement refers to a separate EULA, the End User's right of use in the DV-Software shall be the same as the rights of use in the remaining parts of the SAP Peak Bundle or Enterprise Edition for SAP Solutions Bundle.

The End User may install and/or

run the DV-Software on one productive system and on up to three non-productive systems only. Any installation on non-productive-systems may occur only to the extent this is necessary (a) to ensure the future use of the DV-Software, (b) test the DV-Software; or (c) in order to backup data and for archiving purposes according to the End User's operational needs. The End User shall clearly identify such copies as "copy".

## **§ 3**

### **WARRANTY DISCLAIMER**

1. NEITHER DV NOR ANY ENTITY IN WHICH DV HOLDS A VOTING INTEREST AND WHICH WAS, HAS BEEN, IS OR WILL BE INVOLVED IN THE PROVISION OF THE DV-SOFTWARE TO THE END USER ("DV-GROUP-ENTITY") ENTER INTO THE LICENSE AGREEMENT WITH THE END USER. ANY AND ALL REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT THERETO, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR THE CONTINUOUS, UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, OR SECURE ACCESS TO OR OPERATION OF THE DV-SOFTWARE ARE HEREBY EXCLUDED.
2. ANY WARRANTY OF DV OR DV GROUP ENTITY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION OR DATA ACCESSED OR USED IN CONNECTION WITH THE DV-SOFTWARE IS HEREBY EXCLUDED.

## **§ 4**

### **LIMITATION OF LIABILITY**

IN NO EVENT SHALL DV OR ANY DV-GROUP ENTITY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF REVENUES OR PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE END USER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING

ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

## **§ 5**

### **Audit**

During the lifetime of the License Agreement and for a period of one year after its expiration, the End User shall allow DV or a third party which is subject to the same confidentiality duties as DV towards the End User from time to time and notice of three working days to inspect End User's IT-Systems in order to verify whether or not End User uses the DV-Software in compliance with the terms of this EULA. Each party shall bear its own expenses.

## **§ 6**

### **Lifetime and Termination**

1. This EULA forms an integral part of the License Agreement and therefore shares its validity.
2. In addition to any terms forming part of the License Agreement governing the use of the DV-Software after expiration of the License Agreement, the End User shall, after termination of this EULA, delete the DV-Software from its own IT-systems or any IT-Systems under its control entirely and, upon first request by DV, furnish the Licensor with a written confirmation of deletion signed



by its management.

## **§ 7**

### **Confidentiality**

End User and DV (individually "EULA-Party", together "EULA-Parties") agree that the confidentiality obligations as laid out in the License Agreement shall apply in analogy to each other.

## **§ 8**

### **Use of Information collected from End User Systems**

The DV-Software collects certain information from the End User's IT-Systems which relates to the performance, health and resource of certain software, its components (transactions, code libraries) and related infrastructure (nodes, tiers), which service those components. The End User hereby agrees that DV or any entity in which DV holds a voting interest may use, modify and exploit this information on an aggregated level without further restrictions, always provided that the End User is not recognizable as the source of the information for third parties.

## **§ 9**

### **Miscellaneous**

1. This EULA is subject to the law and jurisdiction to which the License Agreement is subject.
2. Failure by either EULA-Party to exercise any of its rights under, or to enforce any provision of, this EULA will not be deemed a waiver or forfeiture of such rights or ability to enforce such provision.
3. If any provision of this EULA is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision will be amended to achieve as nearly as possible the same economic effect of the original provision and the remainder of this EULA will remain in full force and effect.

4. This EULA together with the License Agreement, if applicable, represent the entire agreement between the EULA-Parties and supersede any previous or contemporaneous oral or written agreements or communications regarding the subject matter of this EULA.
5. Any modification to this EULA must be in writing and signed by a duly authorized agent of both parties.
6. This EULA shall control over additional or different terms of any purchase order, confirmation, invoice or similar document, even if accepted in writing by either EULA-Party, and waivers and amendments to this EULA shall be effective only if made by non-pre-printed agreements clearly understood by both EULA-Parties to be an amendment or waiver to this EULA.
7. The rights and remedies of a EULA-Party hereunder will be deemed cumulative and not exclusive of any other right or remedy conferred by this EULA or by law or equity.
8. No joint venture, partnership, employment, or agency relationship exists between the EULA-Parties as a result of this EULA or use of the DV-Software.
9. This EULA may not be assigned by the a EULA-Party without the prior written approval of the other EULA-Party and any purported assignment in violation of this section shall be void; provided, however, that either EULA-Party may assign this EULA in connection with the transfer, directly or indirectly, of more than fifty percent (50%) of the respective EULA-Party's outstanding voting securities or of all or substantially all of the

assets of the EULA-Party (a "Change in Control"); provided, further, that DV may assign this EULA to any of its affiliates. Upon any assignment of this EULA by End User in connection with a Change in Control, any licenses that contain an "unlimited" feature in terms of number of users or Logical CPUs will, with respect to End User or the successor entity, as applicable, be capped at the number of authorized users using the DV-Software pursuant to the License Agreement and this EULA immediately prior to such change in control.

10. End User agrees that DV may refer to End User by trade name and logo, and may briefly describe End User's business, in DV's marketing materials and web site.
11. DV may give notice to End User by electronic mail to End User's e-mail address on record in End User's account information maintained by the Licensor, or by written communication sent by first class mail or pre-paid post to End User's address on record in End User's account information as maintained by Licensor. End User may give notice to DV at any time by any letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to DV at the following address: SNP Deutschland GmbH, c/o Datavard AG, Speyerer Str. 4, 69115 Heidelberg, Germany. Notice to DV shall be deemed given when received by DV.