End User License Agreement (EULA) for Blitz Report™

Please read this EULA carefully, as it sets out the basis upon which Enginatics GmbH, Obere Wiltisgasse 50, 8700 Küsnacht, Switzerland (the **Licensor** or **We**), grants a license to use the Software Blitz Report™ (the **Software**) to you (the **User** or **You**) (each a **Party,** together the **Parties**).

Blitz Report™ is an Oracle Forms-based software add-on, compatible and fully integrated with the Oracle E-Business Suite. The Software contains a selection of pre-built SQL-report templates that are linked to various functional areas covered by Oracle E-Business Suite. Blitz Report™ is a customization of your Oracle E-Business Suite. The Software enables the extraction of data saved in your Oracle E-Business Suite, the storage of and the editing of SQL scripts for reports. Blitz Report™ generates reports in CSV and XLSX format.

Before you install and use the Software, you must expressly agree to the terms and conditions of this EULA. By agreeing to be bound by this EULA, you agree that your employees or any person you authorize to use the Software will also comply with the provisions of this EULA.

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1. Definitions

1.1 Terms in Capitals shall have the meaning as defined when being used for the first time in bold Capital letters in the text.

1.2 Except to the extent expressly provided otherwise, in this EULA:

a) "**Charges**" means those amounts that the Parties have agreed in writing shall be payable by the User to the Licensor in respect of this EULA;

b) **"Confidential Information"** means any and all technical and non-technical information or company secrets relating to existing, future and/or proposed products and services of each of the Parties. Without limiting the generality of the foregoing, the protection of Confidential Information shall extend to all information concerning research, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans. Confidential Information may be communicated in writing, orally or electronically;

c) "**Documentation**" means the documentation for the Software produced and made available by the Licensor to the User;

d) "**Effective Date**" means the date upon which the User gives his express consent to this EULA;

e) "**EULA**" means this end user license agreement, including any amendments to this end user license agreement from time to time;

f) "**FADP**" means the Swiss Federal Act on Data Protection.

g) "**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the Party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

h) "**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

i) "**License**" has the meaning provided in Clause 3.1;

j) "**Licensor Indemnity Event**" has the meaning given to it in Clause 10.1;

k) "**Maintenance Services**" means the supply to the User of Updates and Upgrades;

l) "**Minimum Term**" means, in respect of this EULA, the period of one month beginning on the Effective Date;

m) "**Software**" means *Blitz Report™*;

n) "**Software Defect**" means a defect, error or bug in the Software or any deviation from the Software Specification.

o) "**Software Specification**" means the specification for the Software set out in the Documentation;

p) "**Source Code**" means the Software code in human-readable form or any part of the Software code in human-readable form, including code compiled to create the Software or decompiled from the Software, but excluding interpreted code comprised in the Software;

q) "**Support Services**" means support in relation to the use of the Software and the identification and resolution of errors in the Software, but shall not include the provision of training services whether in relation to the Software, the creation of SQL content or otherwise;

r) "**Term**" means the term of this EULA, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

s) "**Update**" means a hotfix, patch or minor version update to the Software;

t) "**Upgrade**" means a major version upgrade of the Software;

u) "**User Indemnity Event**" has the meaning given to it in Clause 10.4.

2. Term

2.1 This EULA shall come into force upon the Effective Date.

2.2 This EULA shall remain in force for the duration that User has acquired a License, subject to termination in accordance with the provisions in Clause 14.

3. License

3.1 Grant of License

Subject to the terms and conditions set out in this EULA, Licensor hereby grants to User a non-exclusive license, not restricted with regard to territory, to:

a) install the Software (Licensor only makes available a data package for self-installation, User must install himself). User may only use the Software for a specified amount of users which may operate the Software only on one single productive system and additional environments required to support that productive system, such as test or development environments.

b) use the Software (i) in accordance with the Documentation (ii) within one single productive system for the amount of users granted under the License and (iii) for internal business purposes only. If a user ceases to use the Software for more than sixty (60) days, his user-based right to use the Software may be reused by another user (floating user-based license). For the avoidance of doubt, shared user accounts shall count as one user. The number of permitted users shall be agreed in writing between the Parties and will be confirmed and implemented by Licensor with the configuration of a license key for the duration of the license;

c) make copies of the Software for back-up and archiving purpose, in particular with a view to operating redundant systems as well as for test and development purposes.

The License granted under this Clause 3 is conditioned upon User complying with the terms and conditions set forth in this EULA, in particular the payment of Charges pursuant to Clause 7.3.

3.2 The User shall leave all intellectual property notices, such as copyrights and other reservations of rights, in or on the Software and the Documentation unchanged, and shall include such notices in any copy produced by it.

3.3 Save to the extent expressly permitted by this EULA or required by mandatory applicable law, any License granted under this Clause 3 shall be subject to the following limitations:

a) The User may not assign, lease, market, publish, distribute, transfer or sublicense any copy of or rights to the Software or Documentation, or otherwise grant any rights of access or use to any third party, neither in original nor in any other form, without the prior written consent of Licensor, unless such use is permitted under this EULA.

b) The User may not alter, edit or adapt or modify in full or in part the Software.

c) The User may not reverse engineer, disassemble, decompile or otherwise seek to devise or discover the Source Code for the Software, to the extent permitted under applicable law.

3.4 The User shall be responsible for securing copies of the Software made accessible to it under this EULA and shall use all reasonable efforts (including all reasonable security measures) to ensure that access to such copies is restricted to persons authorized to use them under this EULA.

4. Rights of Ownership

4.1 The User acknowledges and agrees that it does not have, and will not in any way acquire under this EULA, any Intellectual Property Rights in and to the Software or the Documentation, including and without limitation to any copyrights, trademarks, trade secrets or patents.

4.2 Licensor remains the holder of all rights relating to the Software and the Documentation, including any copies for back-up or archives purposes produced by User. The User acknowledges and agrees that nothing in this EULA grants the User ownership rights in the Software or the Documentation, or any copyrights, trademarks, trade secrets, patents or other Intellectual Property Rights relating to thereto.

4.3 Any discoveries or improvement, process or device relating to data processing licensed or developed pursuant to this EULA shall be the sole property of Licensor, except for any discoveries or improvement, process or device specifically related to the User's owned system and software.

5. Maintenance Services

5.1 The Licensor shall provide Maintenance Services to the User during the Term.

5.2 The User may terminate the Maintenance Services by giving Licensor a one (1) month prior written notice, exercisable at the earliest after expiry of the Minimum Term.

5.3 The Licensor may announce to User that he intends to terminate the Maintenance Services by giving at least a ninety (90) days' prior written notice to the User.

6. Support Services

6.1 The Licensor shall provide the Support Services to the User during business hours from 8AM to 6PM CET.

6.2 The Licensor shall provide the Support Services with reasonable skill and care.

7. Payment and Charges

7.1 The User shall pay the Charges to the Licensor in accordance with this EULA.

7.2 If you, as a User, are granted a Freemium-Test-Version, you may use the Software free of charge for using up to thirty (30) different SQL-reports for an indefinite amount of users. Once, more than thirty (30) different SQL-reports are in use, the Freemium-Test-Version shall be deemed expired and you may no longer use the Software free of charge.

7.3 If you, as a User, are granted a normal Software-License under this EULA, you shall pay the Licensor an upfront license and maintenance fee in the amount of EUR 9 / CHF 10 / USD 10 per user for the agreed time period. The amount does not include Value Added Taxes (**VAT**). All payments due under this EULA shall be made plus VAT, if applicable. Other than that, each Party shall bear its own taxes and duties.

7.4 Special rates may apply if separately agreed.

7.5 The User shall pay the upfront license and maintenance fee within thirty (30) days at the latest with the payment method instructed by Licensor.

8. Warranties

8.1 The Licensor warrants to the User that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

8.2 The Licensor warrants that at the time of installation, the Software has no material defects and that the Software does not materially differ from the specifications contained in the Documentation in a way that would have a negative adverse effect on the conduct of User's business. User agrees that minor deviations of the Software from the specifications in the Documentation shall be disregarded.

8.3 The warranty period shall be six (6) months after the Effective Date of this EULA.

8.4 The Licensor warrants to the User that the Software, when used by the User in accordance with this EULA, will not breach any laws, statutes or regulations applicable under Swiss law.

8.5 The Licensor warrants to the User that to its knowledge the Software, when used by the User in accordance with this EULA, does not infringe the Intellectual Property Rights of any third party.

8.6 All warranties given by Licensor shall become void and of no effect in the event that User makes any alterations to the Software or to any other software program necessary for the operation of the Software.

8.7 The User warrants to the Licensor that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

8.8 All of the Parties' warranties and representations in respect of the subject matter of this EULA are expressly set out in this EULA. To the maximum extent permitted by applicable law, all other representations and warranties concerning the subject matter of this EULA shall hereby be excluded.

9. Acknowledgements and Warranty Limitations

9.1 The User acknowledges that complex software is never wholly free from Software Defects and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be wholly free from Software Defects.

9.2 The User acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be entirely secure.

9.3 The User acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification; and the Licensor does not warrant or represent that the Software will be compatible with any other software. The User acknowledges and agrees that the Software is only designed to extract, process and analyze data. The Licensor does not grant and excludes any representation and warranty for the suitability or appropriateness of the data analysis results

obtained with the use of the Software or for report templates that are pre-built or made available through the website of the Licensor.

9.4 The User acknowledges that the Licensor will not provide any legal, financial, accountancy or taxation advice under this EULA or in relation to the Software; and, except to the extent expressly provided otherwise in this EULA, the Licensor does not warrant or represent that the Software or the use of the Software by the User will not give rise to any legal liability on the part of the User or any other person.

9.5 The User acknowledges that he must hold a valid license to use the ORACLE-software (Oracle E-Business Suite) and that he must reasonably cooperate to conduct the customizations of certain features of his licensed copy of the ORACLE-software, if necessary.

10. Indemnities

10.1 The Licensor shall indemnify and shall keep indemnified the User against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the User and arising directly or indirectly as a result of any breach by the Licensor of the warranties in Clause 8, subject to the limitations set out in Clause 9 (a **Licensor Indemnity Event**).

10.2 The User must:

a) upon becoming aware of an actual or potential Licensor Indemnity Event, notify the Licensor;

b) provide to the Licensor all such assistance as may be reasonably requested by the Licensor in relation to the Licensor Indemnity Event;

c) allow the Licensor the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Licensor Indemnity Event; and

d) not admit liability to any third party in connection with the Licensor Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Licensor Indemnity Event without the prior written consent of the Licensor,

The Licensor's obligation to indemnify the User under Clause 10.1 shall not apply if the User does not comply with the requirements of Clause 10.2.

10.3 If the Licensor reasonably determines, or any third party alleges, that the use of the Software by the User in accordance with this EULA infringes any person's Intellectual Property Rights, the Licensor may (acting reasonably at its own cost and expenses):

a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights, providing that any such modification must not introduce any Software Defects into the Software and must not result in the Software failing to conform with the Software Specification; or

b) procure for the User the right to use the Software in accordance with this EULA.

10.4 The User shall indemnify and shall keep indemnified the Licensor against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Licensor and arising directly or indirectly as a result of any breach by the User of this EULA (a **User Indemnity Event**).

11. Data Protection

11.1 To the extent that Licensor should gain access to personal or personally identifiable data, Licensor will collect, store and process such data only in accordance with the applicable data protection and privacy laws, in particular with the FADP.

11.2 In particular, Licensor will only use personal data under this EULA for the purposes and to the extent necessary for the performance under this EULA and in accordance with instructions received from User. Licensor will make sure to entrust only those employees needed with the processing of personal data.

11.3 Licensor undertakes that personal data will be protected against unauthorized processing through adequate technical and organizational measures. Licensor shall also immediately inform User, if it gains knowledge of any unauthorized access to personal data of User.

11.4 Should Licensor need to transfer personal data into countries outside of Switzerland and/or the EU/EEA which do not provide for an adequate data protection standard, Licensor will make sure to enter into data transfer agreements with the data processing recipient abroad to ensure that the recipient adheres with the same data protection standards as in Switzerland and/or the EU/EEA.

12. Confidentiality

12.1 The Parties to this EULA undertake to maintain confidentiality in respect of all information and company secrets of the other Party which comes to their notice, even after the termination of this EULA. The Parties shall not be entitled to use such information either directly or indirectly without the prior written consent of the other Party, not to forward nor divulge it to third parties, with the exception of those persons who require knowledge of such Confidential Information for the purposes of this EULA.

12.2 Each Party to which Confidential Information is disclosed by the other Party shall keep such Confidential Information strictly secret and shall not disclose it to any unauthorized third party without the prior written consent of the other Party.

12.3 Each Party may disclose Confidential Information received from the other Party, provided such information was legitimately known to the Party prior to receipt from the other Party, becomes rightfully available to the Party, becomes public knowledge without the fault of the Party, is developed independently by the Party or is required to be disclosed by an order of a court or governmental agency.

12.4 The confidentiality obligations contained in this Clause 12 shall remain effective even after the termination of this EULA.

13. Limitations and Exclusions of Liability

13.1 Nothing in this EULA will:

    a) limit or exclude any liability for death or personal injury resulting from negligence;

    b) limit or exclude any liability for fraud or fraudulent misrepresentation; or

    c) limit any liabilities in any way that is not permitted under applicable law, in particular liability for damages caused by grossly negligent or willful acts or mandatory statutory duties;

13.2 Subject to the limitations set forth under Clause 13.1, the Licensor excludes any and all liabilities arising under this EULA or relating to the subject matter of this EULA, including liabilities arising under contract or tort. In particular, the Licensor shall not be liable with respect to any direct or indirect or special

consequential damages, including loss of profits or anticipated savings, loss of business, contracts or opportunities, loss or corruption of data or losses arising out of a Force Majeure Event.

13.3   The liability of the Licensor to the User under this EULA in respect of any event or series of related events shall not exceed the total amount paid by the User to the Licensor under this EULA in the twelve (12) month period preceding the commencement of the event or events.

13.4   The aggregate liability of the Licensor to the User under this EULA shall not exceed the greater of the total amount paid and payable by the User to the Licensor under this EULA.

14.   Termination

14.1   Licensor may terminate this EULA if:

a)   User commits a breach of provisions in this EULA, and the breach is not remediable;

b)   User commits a breach of provisions in this EULA, and the breach is remediable but User fails to remedy the breach within a period of thirty (30) days following the giving of a written notice by Licensor requiring the breach to be remedied; or

c)   User is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

d)   an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of User;

e)   an order is made for the winding up of User, or passes a resolution for its winding up (other than for the purpose of a solvent company reorganization where the resulting entity will assume all the obligations of User under this EULA) ; or

f)   it intends to terminate the Maintenance Services by giving at least a ninety (90) days' prior written notice to the User.

14.2   User may terminate this EULA if:

a)   Licensor commits a breach of this EULA and Licensor fails to remedy the breach within an appropriate period of time following the giving of a written notice by User requiring the breach to be remedied, in any event not less than thirty (30) days;

b)   Licensor is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

c)   an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of assets of Licensor; or

d)   an order is made for the winding up of Licensor, or passing a resolution for winding up Licensor (other than for the purpose of a solvent company reorganization where the resulting entity will assume all the obligations of Licensor under this EULA).

15.   Effects of Termination

15.1   Upon the termination of this EULA, all of the provisions of this EULA shall cease to have effect, save that

the following provisions of this EULA shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3.1, 12, 13, 15, 16 and 17.

15.2   Except to the extent that this EULA expressly provides otherwise, the termination of this EULA shall not affect the accrued rights of either party. In particular,   termination of this EULA for any reason shall not release either Party from liabilities which at said time have already incurred to the other Party.

15.3   Within thirty (30) days following the termination of this EULA for any reason:

a)   the User shall pay to the Licensor any and all outstanding Charges in respect of the License and Services provided to the User before the termination of this EULA, if any; and

b)   the Licensor shall refund to the User any pro-rata Charges paid by the User to the Licensor in respect of the License and Services that cannot be provided to the User after the termination of this EULA;

without prejudice to the Parties' other legal rights.

15.4   For the avoidance of doubt, the Licenses of the Software in this EULA shall terminate upon the termination of this EULA; and, accordingly, the User must immediately cease to use the Software upon the termination of this EULA.

15.5   Within ten (10) business days following the termination of this EULA, the User must irrevocably delete and uninstall from all computer systems in its possession or control all copies of the Software.

16.   Applicable Law and Jurisdiction

16.1   This EULA shall in all respects be governed by and construed in accordance with the substantive laws of Switzerland without any reference to conflict of law rules.

16.2   Any disputes arising out of or in connection with this EULA shall be submitted to the exclusive jurisdiction of the courts of the city of Zurich Switzerland.

17.   Miscellaneous

17.1   The Parties are independent contractors. Consequently, the provisions of this EULA shall not, under any circumstances, be interpreted as creating any association or partnership between the Parties. Neither Party may bind the other in any manner whatsoever or in favor of anyone whomsoever, except in accordance with this EULA.

17.2   The failure of any of the Parties to enforce any of the provisions of this EULA or any rights with respect thereto shall in no way be considered as a waiver of such provisions or rights, or in any way affect the validity of this EULA. The waiver of any breach of this EULA by any Party hereto shall not operate to be construed as a waiver of any prior, concurrent or subsequent breach of the same and no waiver shall be effective unless made in writing.

17.3   If any provision of this EULA, or the application of such provision to any person or circumstance, shall be held by any court or other competent authority to be unlawful and/or unenforceable, the remainder provisions of this EULA shall not be affected thereby.

17.4   All changes to this EULA, including this paragraph, must be made in writing and bear the Parties' signature.

17.5   The rights and obligations under this EULA may not be assigned, transferred or licensed to a third party without the prior written consent of the other Party

17.6 This EULA is made for the benefit of the Parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the Parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.

17.7 This EULA shall constitute the entire agreement between the Parties in relation to the subject matter of this EULA, and shall supersede all previous agreements, arrangements and understandings between the parties in respect to that subject matter.

18. Interpretation

18.1 In this EULA, a reference to a statute or statutory provision includes a reference to:

   a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

   b) any subordinate legislation made under that statute or statutory provision.

18.2 The headings used herein are inserted only as a matter of convenience and for reference only and shall not affect the construction or interpretation of this EULA.