



SOFTWARE LICENCE AND MAINTENANCE AGREEMENT

This Software License and Maintenance Agreement (the “Agreement”) is a binding agreement for the purchase of the software and/or services described in a Purchase Order, Order Schedule or Exhibit (“Exhibit”) that refers to this Agreement, acquired by Licensee(“you”/“your”/“Licensee”) from SAP (U.K.) Limited, Clockhouse Place, Bedfont Road, Feltham, Middlesex, TW14 8HD, (Company number 2152073) or from its Authorized Partner, as applicable (we”/“us”/“our”/“SAP”).

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Documentation	The descriptions in electronic format which accompany the Software when we deliver it to you plus any updates to those descriptions that we supply as part of warranty and maintenance service. These descriptions are not end user documentation. They comprise online implementation guides and assistance with completing fields.
Exhibit	An order document which is entitled Exhibit, which refers to this Agreement and which contains order-specific information (for example, the specific software modules licensed, the pricing measures and fee information). Each Exhibit will form a part of this Agreement.
Intellectual Property Rights	(i) Rights which arise by virtue of or in relation to copyright, databases, patents, rights to inventions and trade marks (registered or unregistered); (ii) rights which arise as a result of any applications which have been made to register any of these items; (iii) moral rights; (iv) rights in relation to confidential information (including trade secrets and know-how); and (v) any other similar or equivalent rights in any country.
Software	The software modules listed in the Exhibit together with any software provided as part of warranty and maintenance service.

1.2 Interpretation

- 1.2.1 The clauses in this Agreement have been given headings in order to make it easy to navigate around the Agreement but the headings are not intended to have any influence on the meaning of the Agreement.
- 1.2.2 Any phrase that uses 'including', 'in particular', 'for example', 'such as' or any similar expression is just giving examples and is not a complete list.
- 1.2.3 Use of any gender includes the other genders.
- 1.2.4 Any reference to **persons** includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).
- 1.2.5 Any reference to a **company** includes any body corporate, wherever and however incorporated or established.

- 1.2.6 Companies shall be considered to be in a group if one is a subsidiary of the other or both are subsidiaries of a third company (in this Agreement, 'subsidiary' has the meaning given in section 736 of the Companies Act 1985).
- 1.2.7 In most instances, we are the distributor of the Software and Documentation rather than the owner of the Intellectual Property Rights in them. For this reason, there are a number of references in this Agreement to our licensors. These are the persons who have granted us the right to license the Software and Documentation and to provide the maintenance service on the terms of this Agreement.
- 1.2.8 References to the Software and/or the Documentation should be interpreted as references either to the whole of the Software and/or the Documentation or to any part of them, depending on the context.
- 1.2.9 Any reference to an English legal term shall, in respect of any jurisdiction other than England and Wales, be deemed to mean what most closely approximates in that jurisdiction to that term.
- 1.2.10 Any reference to a statute, or to a particular section of a statute, is meant to include any modification or re-enactment of that statute or section which is in force from time to time and also any statutory instrument or regulations made under that statute or section. This will not be the case, however, if it would impose on us or on you any new or extended obligation, liability or restriction or if it would adversely affect our rights or yours.
- 1.2.11 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any Exhibit, the terms of that Exhibit will take precedence in relation to the licences ordered under that Exhibit but not otherwise.
- 1.2.12 The Schedules form a part of this Agreement.

2 DELIVERY

2.1 Original shipment

We will deliver one copy of the current release of the Software and Documentation as soon as possible after an Exhibit has been executed unless the Exhibit is an order which relates to Software that is already in use under this Agreement (for example, an order for increased user numbers) in which case we will not make any shipment. We will only deliver to destinations that are permitted under current export and import regulations (more details of these regulations are given in clause 5.3 below). There are two ways in which we may make delivery. We will either give you an access authorisation key to enable you to download the Software and Documentation from our systems or we will despatch it to you by carrier on physical data media, such as CD-ROMs. If we choose to use a carrier, the Software and Documentation will be treated as having been delivered at the point when we hand the physical data media to the carrier.

2.2 Further copies

We will supply a reasonable number of additional copies upon request and without charge at any time.

2.3 Unlicensed software

As a result of our streamlined shipping procedures, there may be other software modules included within a delivery as well as those listed in the Exhibit. The fact that you have received this additional software does not mean that any person is authorised by this Agreement to use it.

3 RIGHTS OF USE: GENERAL

3.1 General

The Software and Documentation may only be used and copied as authorised by this Agreement. In particular, the licence fees payable by you have been calculated according to certain pricing measures so the utilization made of the Software must not exceed the scope of use for which you have agreed to pay. Please refer to the Exhibit for details of that scope of use and the pricing measures.

3.2 Non-exclusive

The rights of use granted by this Agreement are not exclusive. This means that other persons will have rights to use the same or similar products.

3.3 No transfer of ownership

Persons who are authorised by this Agreement to use the Software and Documentation will not have any rights in relation to the Software and Documentation other than those granted by this Agreement. All Intellectual Property Rights relating to the Software and Documentation belong to us or our licensors.

3.4 Product use rights

The scope of use granted by this Agreement is governed by the product use rights set out in www.businessobjects.com/products/licenses/.

3.5 Internal use only

The Software and Documentation may only be used for your own internal business transactions and those of your subsidiaries. For example, it may not be used to undertake computer centre or service bureau operations or application service provision or to provide managed services except in any case to your subsidiaries nor may it be used to provide commercial training in the use of the Software.

3.6 Module restrictions

Certain modules of the Software are subject to additional restrictions as to their use. Whenever this is the case, those restrictions are described in the Exhibit or the relevant Documentation.

3.7 Location

There are only three restrictions which affect where the Software and Documentation may be installed.

- 3.7.1 The Software may not be installed in a country where we reasonably believe that our Intellectual Property Rights (or those of our licensors) may be unenforceable.
- 3.7.2 The Software may not be installed in a country where that would involve a breach of any export or import regulations (see further clause 5.3).
- 3.7.3 The Software may only be installed at premises which are owned or controlled by you or a person authorised to use the Software under clause 4.1.1 or 4.1.2.

3.8 Licence key-codes

Our start-up procedure must be followed each time the Software and Documentation are installed otherwise only limited user access to the Software will be possible and full functionality will not be available. Our start-up procedure includes an application to us for a licence key-code. Our form must be used when applying for a licence key-code. This will include space where details must be inserted of the platform on which the Software and Documentation are to be installed. We need this information to provide the maintenance service. We will respond promptly each time we are asked for a licence key-code and there is no additional charge for supplying them.

3.9 Power stations, mass transit applications and direct medical applications

The Software must not be used to operate power stations, mass transit applications or for any direct medical applications.

3.10 Copies

Persons exercising rights of use granted by this Agreement may create as many copies of the Software and Documentation as they need in order to exercise those rights of use. For example, they may create back-up copies in accordance with good technological practice. When copies are made, the copyright and other Intellectual Property Rights notices that appear in the programs and on the media on which the Software and Documentation were originally delivered must be reproduced in full.

3.11 Modifications and enhancements

3.11.1 The Software may be modified or enhanced as long as the restrictions explained in this clause are observed. When we talk about modifying the Software, we mean making an alteration to it, such as a change to the source code. Configuration of the Software does not count as a modification. When we talk about enhancing the Software, we mean the creation of new code, supporting an existing business scenario within the Software, which is deployed on the same installation as the Software and connected to it by means of an SAP-approved interface

3.11.2 Only individuals who are licensed as named users within the 'developer user' category may use the development tools contained in the Software. They may use these tools to modify or enhance either the Software or third-party applications or to create a new interface to the Software or to create new applications. None of the tools may be transferred into the modified, enhanced or newly-created software or third-party software.

3.11.3 The Software also contains function modules which are stored in a function library. A function module can only be transferred into modified, enhanced or newly-created software if it carries a release indicator. They cannot be

transferred into third-party software. Modification or decompilation of any of the function modules is also not permitted.

- 3.11.4 A start-up code is required before a modification can be made. We will supply a start-up code free of charge to any person who has been granted appropriate rights of use under this Agreement. We may at any time require that the Intellectual Property Rights in a modification which has been made in exercise of rights granted by this Agreement are transferred to us so long as that modification is not a severable improvement. We will pay a reasonable sum for this transfer. The same rights of use will apply under this Agreement in relation to that modification following the transfer as apply in relation to the use of the Software which was the subject of that modification work.
- 3.11.5 We must be informed if any person exercising rights of use granted by this Agreement intends to enhance the Software and we must be given a reasonable opportunity to participate in the project. If it is agreed that we will participate in an enhancement project, then the ownership of Intellectual Property Rights in the enhancement will be dealt with as part of the contract relating to the project. If we do not participate, we may at any time request that you negotiate (or procure that the person who is the owner of the Intellectual Property Rights negotiates) with us for the purchase by us of the Intellectual Property Rights in the enhancement for a reasonable sum. You will use (or procure that the relevant person uses) all reasonable efforts in those negotiations to reach agreement with us. If we do purchase the Intellectual Property Rights, the same rights of use will apply under this Agreement in relation to that enhancement following the transfer as apply in relation to the use of the Software which was the subject of that enhancement work.
- 3.11.6 We will not be responsible in any way for compatibility issues arising from any modifications and enhancements (for example, compatibility with subsequent releases of the Software).
- 3.11.7 If anyone exercising rights of use granted by this Agreement makes modifications or enhancements then that is done at your risk. Doing so may cause major, unforeseeable malfunctions in the Software and/or other software which could affect use of the Software and its operating security. It could also invalidate the warranty that we give you for the Software (see clause 7.5) and/or make it more difficult for us to provide certain elements of the maintenance service.
- 3.11.8 Third-party software may not be modified or enhanced because we are not authorised to grant this right. This applies in respect of database software in particular.

3.12 **Decompilation**

Neither the Software nor the Documentation may be reverse engineered, decompiled, disassembled or translated unless that is authorised by section 50B of the Copyright, Designs and Patents Act 1988. Before any person exercising rights of use granted by this Agreement carries out any work of this nature, we must first be asked to provide the information that the relevant person needs to create interoperability. It is only if we fail to provide that information within a reasonable period of time that the relevant person will be able to rely on the statutory right under section 50B.

3.13 Bringing rights of use to an end

The rights of use granted by this Agreement may only be brought to an end as described in clause 13.

3.14 Prohibition on sub-licensing and rental

Sub-licensing, rental and lending of the Software or Documentation is prohibited except as described in clause 4. Nor may they be used as security, for example, to secure a loan.

3.15 Database software

Additional contractual terms may apply if an Exhibit includes an order for database software. If this is the case, you will need to sign a copy of those terms before any person will be able to exercise rights of use in respect of the database software under this Agreement.

3.16 Technology infrastructure

The Software contains certain infrastructure technology, such as SAP Web Application Server. The rights of use granted by this Agreement include what is known as an application-specific runtime licence in respect of the infrastructure technology. This means that the underlying technology of the Software may be used to execute the programs within the Software, including modifications and enhancements relating to business scenarios supported by those programs. Use of any of the technology infrastructure outside of this scope (for example, separate installation of the SAP Web Application Server) is not permitted by this Agreement.

4 USE BY OTHERS

4.1 Permitted categories of person

You may permit the following persons to use the Software and Documentation on the basis set out in this clause 4:

4.1.1 any of your subsidiaries;

4.1.2 any person that is contracted to provide services to you related to the Software (for example, a services company that you have engaged to undertake a modification of the Software *or* a company to which you have outsourced operation or hosting of the Software *or* a company that is contracted to provide IT business continuity services to you); and

4.1.3 any person that requires access to the Software in connection with the operation of your business (for example, your customers, distributors and suppliers).

4.2 Subsidiaries

A subsidiary may only use the Software and Documentation while it remains one of your subsidiaries. During that time, the rights of use granted to you by this Agreement will apply equally to that company. For example, it will be able to permit use of the Software and Documentation by persons falling within the descriptions given in clauses 4.1.2 and 4.1.3.

4.3 Service providers

The use of the Software and Documentation by a person falling within the description given in clause 4.1.2 must be restricted to use on behalf of you and your subsidiaries. It must not use the Software and Documentation to operate or manage its own business. In the case of an IT business continuity, outsourcing, hosting or similar arrangement, you may not allow the relevant person to start using the Software until you have notified us of who it will be and we have given our written approval to that person's identity. We will respond promptly to any request for approval and we will act reasonably when considering all requests of this nature.

4.4 Supply chain third parties

The use of the Software and Documentation by a person falling within the description given in clause 4.1.3 must be restricted to use in connection with the operation of your business and that of your subsidiaries. It must not use the Software and Documentation to operate or manage its own business. Furthermore, it must not be allowed access to the source or object code of the Software or Documentation.

4.5 General

4.5.1 All persons using the Software and Documentation on the basis of this clause 4 must comply with all the terms of this Agreement except those relating to payment of fees which are your sole responsibility. In particular, the scope of use for which you have agreed to pay must not be exceeded (see clause 3.1) and the audits must cover all utilization (see clause 5.1). We will hold you responsible for any non-compliance because our contract is with you. This means that you must enforce the terms of this Agreement against persons using the Software and Documentation on the basis of this clause 4 and that you will be legally liable to us for their behaviour as if that behaviour were your own behaviour.

4.5.2 When a person has had a right to use the Software and Documentation on the basis of this clause 4 but that right comes to an end, you must ensure that this person un-installs and destroys all copies of the Software and Documentation that it has had in its possession or control. This must be done within thirty (30) days of its rights of use coming to an end. You must certify that this has been done if we ask you to do so.

5 OTHER RIGHTS AND OBLIGATIONS

5.1 Audit

You must audit utilization of the Software once a quarter using tools provided by us. No alterations may be made to the measurement logs generated by these tools. You must give us a copy of each set of measurement logs. If you do not carry out any audit as required by this clause, we may undertake that audit ourselves. You will ensure that all relevant persons co-operate with us so that all audits are conducted efficiently and effectively.

5.2 Our development activities

Nothing in this Agreement will limit our software development activities, or those of our licensors, in any way.

5.3 Legal restrictions

5.3.1 The Software and Documentation are subject to export control regulation by various countries. This regulation can apply to any re-export that might be proposed not just to the export which we make when we initially deliver the Software and Documentation. This is the case even if the re-export is to a person that has a right of use under clause 4. It is not just the physical shipping of data media which counts as export/import. The regulation also applies to export/import by electronic means (including remote access).

5.3.2 It is also possible for the import of the Software and Documentation into the country of destination and/or its use there to be restricted or banned by that country.

5.3.3 Persons exercising rights of use granted by this Agreement must comply with:

5.3.3.1 all export and import control regulations each time the Software or Documentation is re-exported; and

5.3.3.2 all local laws relating to use of the Software and Documentation.

5.3.4 You must indemnify us on demand in respect of any loss, damage or expense we suffer or incur as a result of any breach of clause 5.3.3. You must indemnify our licensors in the same way.

5.4 Misuse of Software

Persons exercising rights of use granted by this Agreement must ensure that all reasonable precautions are taken to safeguard the Software and Documentation to prevent its misuse.

5.5 Good practice

Persons exercising rights of use granted by this Agreement must take all reasonable precautions against the possibility of the Software not functioning properly, such as running regular data back-ups, carrying out error diagnosis and monitoring results on a regular basis.

6 MAINTENANCE SERVICE

6.1 Terms of Maintenance Services

We will provide our maintenance service to you in accordance with the terms set out in Schedule 2 (Enterprise Support Schedule) for the Software licensed by you.

7 WARRANTIES

7.1 Software warranty

We warrant that for six (6) months from the date of first delivery of any Software under this Agreement the Software will perform substantially in accordance with the relevant Documentation if it is used in accordance with that Documentation and the terms of this Agreement. This warranty does not apply to new releases and correction packages.

7.2 Further details relating to the Software warranty

We do not warrant that the Software:

7.2.1 will operate uninterrupted; or

7.2.2 will be error-free; or

7.2.3 is designed to meet all local requirements; or

7.2.4 is fit for your particular purposes or those of any other persons who may be granted rights of use by this Agreement since it has not been developed to meet your individual requirements or the individual requirements of any other persons who may be granted rights of use by this Agreement.

7.3 Claims

7.3.1 You must tell us within the six (6) month period referred to in clause 7.1 if you want to make a Software warranty claim. The first step will be for us to attempt to remedy the defect. The remedy will take the form of eliminating the defect, providing a new release or correction package or demonstrating how to avoid the effects of the defect in a reasonable manner.

7.3.2 We must be supported in locating any defect and its cause by: receiving the co-operation of relevant staff; being allowed access to the Software and the platform on which it functions (including remote access); and being provided with as detailed a description of the defect as possible. If we fail to remedy the defect within a reasonable period of time, the next step will be for us to agree with you a written plan of action, including a date by which the defect should be remedied. We will act reasonably in trying to agree the plan with you and you must do the same. You will be entitled to seek damages if we fail to remedy the defect by the agreed date. Claims for damages are governed by clause 12. All other rights are excluded.

7.4 Maintenance service warranty

We warrant that we will perform the maintenance service with reasonable skill and care.

7.5 Work not covered by the warranties

If we have done work in response to a warranty claim but it turns out that the subject matter of the claim was neither a breach of warranty nor covered by the maintenance service, you will have to pay us for that work. We will also charge you for work we do to repair defects or malfunctions which are caused by modifications or enhancements carried out by someone other than us. Our fee will be calculated in accordance with our then current time and materials rates. Travel, subsistence and any other reasonable expenses that we have incurred will be added at cost.

8 INTELLECTUAL PROPERTY RIGHTS INDEMNITY

8.1 Right to license

We warrant that we have the right to license the Software and Documentation on the terms of this Agreement. The remedies which will be available if there is a breach (or alleged breach) of this warranty are the remedies described in this clause 8. They are subject to the exclusions set out in clause 8.3 and to the conditions set out in clause 8.2 being fulfilled. They are not subject to the limitations or exclusions of liability set out in clause 12. All other rights are excluded.

8.2 Conditions

8.2.1 We must be given full written details straightaway of any claim that is brought or threatened against any person exercising rights of use granted by this Agreement alleging that use or possession of the Software or Documentation infringes the Intellectual Property Rights of the person making the claim.

8.2.2 No claim of this nature may be conceded, settled or otherwise prejudiced without our prior written consent which we may give or withhold in our absolute discretion.

8.2.3 We must be authorised by the person against whom the claim is made to assume sole conduct of the dispute with the claimant both in and out of court.

8.2.4 We must be given all reasonable help by the person against whom the claim is made. We will reimburse the proper and reasonable costs of the relevant person for giving this help.

8.3 Exclusions

The indemnity mentioned in clause 8.4 will not be given nor will we provide one of the solutions mentioned in clause 8.5:

8.3.1 unless all the conditions set out in clause 8.2 are fulfilled in relation to the relevant claim; or

8.3.2 to the extent that the relevant claim arises as a result of:

8.3.2.1 any use or possession of the Software and Documentation which is not authorised by this Agreement; or

8.3.2.2 any modification of or enhancement to the Software or Documentation carried out by someone other than us or another company in our group; or

8.3.2.3 the use of the Software or Documentation in combination with anything which was not supplied either by us or by another company in our group; or

8.3.2.4 the latest release or correction package of the Software or Documentation that we have made available to you not being used.

8.4 Indemnity

We will indemnify any person exercising rights of use granted by this Agreement against all damages and costs awarded by a court of competent jurisdiction or agreed by us by way of settlement in connection with a claim of the nature mentioned in clause 8.2.1.

8.5 Continued use or refund

If use or possession of the Software or Documentation infringes, or in our reasonable opinion may be held to infringe, the Intellectual Property Rights of the claimant, we shall at our expense either obtain the right to continue to use the Software or Documentation on the terms of this Agreement or adapt or replace it to avoid the infringement. We will decide which we think is the best of these two options. If we decide to adapt or replace the Software or Documentation then we will ensure that we do not materially detract from its functionality in doing so. If we are not able to accomplish either of the options mentioned earlier in this clause on reasonable terms, we will refund the licence fees you have paid for the affected module of the Software. The rights of use granted by this Agreement will then come to an end in relation to that particular Software and its Documentation.

9 FEES AND PAYMENT

9.1 Calculation of licence fees

The licence fee payable for any particular order is set out in the relevant Exhibit. It will have been calculated in accordance with the pricing measures set out in that Exhibit. We must receive the fee within thirty (30) days of the date of the Exhibit.

9.2 Calculation of maintenance service fees

9.2.1 Maintenance service fees are calculated on a calendar year basis and payable annually in advance. We will invoice them on 1 January each year and we must receive payment by 31 January in the relevant year. The fees are calculated per Exhibit by multiplying the gross licence fees specified in that Exhibit by our then current price list maintenance fee percentage.

9.2.2 A maintenance service fee for a part year will be calculated proportionately based on the number of days left in the year. The maintenance service fee payable for the remainder of the year in which a particular Exhibit is concluded is stated in that Exhibit. We must receive that fee within thirty (30) days of the date of that Exhibit.

9.3 Over-use

You will have to pay us additional licence and maintenance service fees if utilization of the Software exceeds the scope of use which has been licensed by you as recorded in the Exhibit. The licence fees and first period's maintenance service fees will be calculated as at the date when the unlicensed use started and by reference to our price list which was current at that time. We will give you a new Exhibit detailing the relevant scope of use and fees. We will be entitled to payment of the relevant fees within thirty (30) days of giving you that Exhibit and your licensed scope of use will be adjusted accordingly regardless of whether you sign that Exhibit or not.

9.4 Deductions

You may not make any deduction or set-off against any sums which are due under this Agreement except in the circumstances mentioned in clause 9.7.

9.5 Interest

We may charge you interest if you do not pay us on time. If we charge you interest, the rate used to calculate that interest will be a rate equal to three per cent (3%) per year above the base rate from time to time of National Westminster Bank PLC. If the business of National Westminster Bank PLC is at any time absorbed into the business of another person, then the late payment interest rate applying under this Agreement will be three per cent (3%) per year above that person's base rate. Interest will be calculated from the date when the relevant fees should have been paid until the date that they are actually paid. If we obtain a court judgment for the fees, then this period may fall partly before and partly after the date that the judgment is obtained.

9.6 VAT

All fees quoted are exclusive of Value Added Tax and any similar sales tax. You will have to pay the tax in addition.

9.7 Withholding tax

If you are legally required to deduct withholding tax from any payment which is due to us, you must use your best efforts to reduce that tax to the lowest level possible. We will cooperate with you to that end. You must promptly provide us with evidence of receipt by the relevant tax authority of any sum that you have deducted as withholding tax. We will notify you if we are unable to recover the full amount of the deduction from the UK tax authorities. In this circumstance, you must make an additional payment to us so that the total amount we receive is the same as it would have been if you had not been required to deduct withholding tax. Any additional payment of this nature must be received by us within thirty (30) days of us notifying you that we were unable to make a full recovery.

9.8 Currency of payment

All payments must be made in the currency in which they are expressed in the Exhibit.

10 CONFIDENTIALITY

10.1 Confidential information

The following information counts as confidential information. The method by which it is communicated (for example, orally or in writing) is irrelevant.

10.1.1 The commercial terms of this Agreement;

10.1.2 trade secrets and know-how (including the concepts, techniques and ideas embodied in the Software and the structure, sequence and organisation of the Software);

10.1.3 technical data and specifications and commercial information, data and ideas belonging or relating to the person who has communicated the information or to a company within its group or to a person with whom it has a business relationship, the release of which could be damaging to one or more of them or advantageous to their rivals or to others; and

10.1.4 any other information which would be considered to be confidential by a reasonable person based on the nature of the information and the circumstances in which it was communicated.

10.2 **Our obligation to maintain confidentiality**

We will maintain the confidentiality of your confidential information. We will not use or disclose any of it without your prior written consent except as described in clause 10.3 or where we need to in order to fulfil our obligations under this Agreement or where it is required by law or stock exchange regulation.

10.3 **Sharing your confidential information**

We will only disclose your confidential information to companies within our group and to those of our officers, staff and professional advisors who need it in order to fulfil this Agreement or to give professional advice to us. We will ensure that they maintain its confidentiality.

10.4 **Your obligations**

You agree that your responsibilities in respect of our confidential information are equivalent to those imposed on us by clauses 10.2 and 10.3.

10.5 **Publicity**

We may include your name in our customer list. You will procure that persons exercising rights of use granted by this Agreement accept up to three (3) reference site visits every year in aggregate from prospective customers of ours. We will always ensure that we have your written approval of the wording of any public announcement, press release, circular or other public comment concerning this Agreement or its subject matter before it is made. You must do the same in terms of obtaining our prior written approval.

10.6 **Duration**

This clause 10 will still apply after this Agreement ends. It will stop applying, however, to information which loses its necessary quality of confidence for any reason other than a breach of this clause 10 or a disclosure made by someone else in breach of another obligation of confidence. This may happen before or after this Agreement comes to an end.

11 PERSONAL DATA

11.1 **Meaning of certain phrases**

In this clause, the phrases “personal data”, “data processor” and “data controller” have the same meaning as they do in the Data Protection Act 1998.

11.2 **Relevance**

In the course of the maintenance service, we may process personal data in respect of which you are the data controller and you may process personal data in respect of which we are the data controller.

11.3 **Our obligations**

Where we process personal data as a data processor on your behalf, we will:

11.3.1 act only on your instructions as the data controller;

11.3.2 take all appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and

11.3.3 comply with any notice from you asking us to provide you with any information that you reasonably require in order to check that we are complying with our obligations under this clause.

11.4 Your obligations

Your responsibilities in relation to personal data in respect of which we are the data controller are equivalent to those imposed on us by the previous clause.

11.5 Transfer outside EEA by us

Many of our group companies will also process personal data which is transferred during the provision of maintenance service since they will carry out elements of the maintenance service on our behalf. This will sometimes be outside the European Economic Area (EEA). We have a contract in place with all relevant group companies which imposes obligations on them that are equivalent to those imposed on us by clause 11.3. We will maintain that contract in force while this Agreement remains current and we will enforce its terms against our group companies.

11.6 Transfer outside EEA by you

Personal data which is transferred from us or our group companies during the provision of maintenance service may be processed by you or by other persons exercising rights of use granted by this Agreement. This will sometimes be outside the EEA. For that reason, you must put in place contracts with those persons before any such personal data is transferred to them. Those contracts must impose on the relevant persons obligations which are equivalent to those imposed on you by clause 11.4. You must maintain those contracts in force as long as the relevant persons are exercising rights of use granted by this Agreement and you must enforce their terms against those persons.

12 LIMITATIONS AND EXCLUSIONS OF LIABILITY

12.1 Unlimited liability

Clause 12 does not limit:

12.1.1 liability for death or personal injury caused by negligence; or

12.1.2 liability for any claim based on fraud; or

12.1.3 liability for any breach of the conditions implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (if applicable); or

12.1.4 any other liability which cannot be excluded or limited by applicable law.

12.2 Exclusions

Regardless of the basis of liability (for example, contract, tort or statute), we shall not be liable for any loss or damage within the following categories unless it arises in relation to any claim covered by clause 12.1:

- 12.2.1 loss of profits; or
- 12.2.2 loss of business; or
- 12.2.3 loss of revenue; or
- 12.2.4 loss of goodwill; or
- 12.2.5 loss of anticipated savings; or
- 12.2.6 loss of or damage to data; or
- 12.2.7 any indirect, incidental, consequential or special loss or damage.

12.3 **Cap**

Regardless of the basis of liability (for example, contract, tort or statute) and ignoring claims covered by clause 12.1, our aggregate liability will not in total exceed a sum equal to one hundred and twenty-five per cent (125%) of the total licence fees payable under this Agreement.

13 ENDING THIS AGREEMENT

13.1 **Your rights**

After the expiry of six (6) months from the date of this Agreement, you may end this Agreement at any time by giving us notice.

13.2 **Our rights**

We may end this Agreement at any time by giving you notice if:

- 13.2.1 you have committed a material breach of this Agreement which cannot be put right; or
- 13.2.2 you have committed a material breach of this Agreement which was capable of being put right, but you did not put it right even though we gave you notice at least thirty (30) days beforehand that we intended to bring this Agreement to an end unless you put it right; or
- 13.2.3 an order is made or a resolution is passed for your winding-up or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in respect of you; or
- 13.2.4 you cease to trade.

13.3 **Material breach**

Repeated breaches could together constitute a material breach. A repudiatory breach could constitute a material breach. One specific example of a material breach would be

non-payment of undisputed licence fees after we have given you notice reminding you that the relevant invoice was overdue for payment.

13.4 Consequences of Agreement ending

When this Agreement ends, the following things will happen:

- 13.4.1 all rights of use granted by this Agreement will end at that time;
- 13.4.2 every person who has had a right of use must un-install and return to us (or, if we ask, destroy) all copies of the Software and Documentation that it has had in its possession or control;
- 13.4.3 you must give us notice within thirty (30) days of the Agreement ending certifying that all Software and Documentation has been un-installed and returned/destroyed;
- 13.4.4 any rights which accrued before the Agreement ended will not be affected (in particular, you must pay us all the money that you owe us whether or not we have sent you an invoice at the date this Agreement comes to an end); and
- 13.4.5 any terms of this Agreement which are supposed to remain effective when the Agreement ends will do so as intended (for example, clauses 10, 12, 13.4.2 and 13.4.3).

14 GENERAL

14.1 Entire agreement

This Agreement represents the entire agreement and understanding we have concluded with you relating to the supply, possession and use of the Software and Documentation and the provision of the maintenance service. It completely replaces any previous contract, arrangements or understanding (both written and oral) between you and us on those subjects. Installation and other consultancy services are not covered by this Agreement so they must be contracted for separately. You acknowledge that in entering into this Agreement you have not relied and do not rely on any representation, statement, warranty, forecast or other information (whether written or oral) other than anything actually set out in this Agreement although this will not affect any liability of the nature described in clause 12.1.2.

14.2 No implied terms

The terms of this Agreement have been agreed in place of all warranties, conditions, undertakings, terms and obligations concerning the subject matter of this Agreement which might have applied had we not agreed this clause with you. For example, there is no implied term as to fitness for purpose.

14.3 Variation

No variation of this Agreement shall be valid unless it is in writing, it clearly states that it varies this Agreement and it is signed by authorised representatives of you and us. In particular, no contractual terms will be incorporated into this Agreement from any purchase order.

14.4 **Waiver**

A failure to exercise or a delay in exercising any right or remedy provided by this Agreement or by law shall not amount to a waiver of that right or remedy. If any effective waiver is made, however, that waiver shall not amount to a waiver in respect of any other breach.

14.5 **Invalidity**

If any term of this Agreement is or becomes invalid or unenforceable:

14.5.1 this will not affect the other terms of this Agreement which shall remain in full force and effect; and

14.5.2 if that term would be valid or enforceable if some part of it were deleted, it shall apply with such modification as may be necessary to make it valid or enforceable.

14.6 **Events beyond control**

No delay, failure or default in performing any obligation under this Agreement shall amount to a breach of contract if it arises from causes beyond the reasonable control of the person whose performance is affected but this clause will not excuse you from any payment obligations.

14.7 **Notices**

All notices which must be given under this Agreement must be in writing and must be sent to our/your then current registered office marked for the attention of the relevant Finance Director. Any notice must be delivered personally or sent by first class pre-paid recorded delivery. It will be deemed to have been served, at the time of delivery if delivered personally, or two (2) days after posting if sent by first class pre-paid recorded delivery.

14.8 **Rights of third parties**

14.8.1 This Agreement does not create any right enforceable by any person other than you and us.

14.8.2 You may enforce the terms of this Agreement for the benefit of persons granted rights of use under clause 4 (in particular, the warranty, Intellectual Property Rights indemnity and maintenance service terms). The intention is that you should have available to you any remedy that would have been available to any such person if it had been a party to this Agreement in your place (and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly).

14.8.3 We may enforce the terms of this Agreement for the benefit of our licensors (in particular, clause 5.3.4) on equivalent terms to those stated in clause 14.8.2.

14.9 **No transfer of rights**

You may not transfer or hold on trust any of your rights or obligations under this Agreement.

14.10 **Law and jurisdiction**

This Agreement shall be governed by and interpreted in accordance with the law of England and Wales. Only the courts of England and Wales shall have jurisdiction in relation to any claim or matter arising under or in connection with this Agreement and the legal relationship it has established.

SCHEDULE 1

The product use rights set out in www.businessobjects.com/products/licenses/.

SCHEDULE 2

Terms of Maintenance Services – Enterprise Support Schedule

This Schedule is hereby annexed to and made a part of the Agreement. In each instance in which provisions of this Schedule contradict or are inconsistent with the provisions of the Agreement, the provisions of this Schedule shall prevail and govern.

This Schedule governs the provision of support services by SAP as further defined herein (“SAP Enterprise Support”) for all software licensed by Licensee under the Agreement (hereinafter collectively referred to as the “Enterprise Support Solutions”), excluding software to which special support agreements apply exclusively.

1. Definitions:

1.1 “Go-Live” marks the point in time from when, after implementation of the Enterprise Support Solutions or an upgrade of the Enterprise Support Solutions, the Enterprise Support Solutions can be used by Licensee for processing real data in live operation mode and for running Licensee’s business in accordance with the Agreement.

1.2 “Licensee Solution” shall mean Enterprise Support Solutions and any other software licensed by Licensee from third parties provided such third party software is operated in conjunction with Enterprise Support Solutions.

1.3 “Production System” shall mean a live SAP system used for normal business operations and where Licensee’s data is recorded.

1.4 “SAP Software Solution(s)” shall mean a group of one or multiple Production Systems running Licensee Solutions and focusing on a specific functional aspect of Licensee’s business. Details and examples can be found on the SAP Service Marketplace (as specified in SAP Note 1324027 or any future SAP Note which replaces SAP Note 1324027).

1.5 “Service Session” shall mean a sequence of support activities and tasks carried out remotely to collect further information by interview or by analysis of a Production System resulting in a list of recommendations. A Service Session could run manually, as a self-service or fully automated.

1.6 “Top-Issue” shall mean issues and/or failures identified and prioritized jointly by SAP and Licensee in accordance with SAP standards which (i) endanger Go-Live of a pre-production system or (ii) have a significant business impact on a Production System.

1.7 “Local Office Time” shall mean regular working hours (8.00 a.m. to 6.00 p.m.) during regular working days, in accordance with the applicable public holidays observed by SAP’s registered office.

2. **Scope of SAP Enterprise Support.** Licensee may request and SAP shall provide, to such degree as SAP makes such services generally available, SAP Enterprise Support services for the Enterprise Support Solutions. SAP Enterprise Support currently includes:

Continuous Improvement and Innovation

- New software releases of the licensed Enterprise Support Solutions, as well as tools and procedures for upgrades.
- Support packages - correction packages to reduce the effort of implementing single corrections. Support packages may also contain corrections to adapt existing functionality to changed legal and regulatory requirements.

- For releases of the SAP Business Suite 7 core applications (starting with SAP ERP 6.0, and with releases of SAP CRM 7.0, SAP SCM 7.0, SAP SRM 7.0 and SAP PLM 7.0 shipped in 2008), SAP provides enhanced functionality and/or innovation through enhancement packages or by other means as available.
- Technology updates to support third-party operating systems and databases. Details of SAP's release strategy and recommendations for technology updates for SAP's enhancement packages can be found on the SAP Service Marketplace.
- Available ABAP source code for Software applications and additionally released and supported function modules.
- Software change management, such as changed configuration settings or Software upgrades, supported currently through content and information material, tools for client copy and entity copy, and tools for comparing customization.
- SAP provides Licensee with up to five days remote support services per calendar year from SAP solution architects to assist Licensee in evaluating the innovation capabilities of the latest SAP enhancement package and how it may be deployed for Licensee's business process requirements. SAP and Licensee shall schedule such service as mutually agreed.
- Configuration guidelines and content for Software is usually shipped via SAP Solution Manager Enterprise Edition (see also SAP's product standard "SAP Business Solution Configuration Standard").
- Best practices for SAP System Administration and SAP Solution Operations for Software.
- SAP configuration and operation content is supported as integral parts of Software.
- Content, tools and process descriptions for SAP Lifecycle Management are part of the SAP Solution Manager Enterprise Edition, the Software and/or the applicable Documentation for the Software.

Advanced Support for Enhancement Packages and other SAP Software Updates

SAP offers special remote checks delivered by SAP solution experts to analyze planned or existing modifications and identify possible conflicts between Licensee custom code and enhancement packages and other Software updates. Each check is conducted for one specific modification in one of Licensee's core business process steps. Licensee is entitled to receive two services from one of the following categories per calendar year per SAP Software Solution.

- **Modification Justification:** Based on Licensee's provision of SAP required documentation of the scope and design of a planned or existing custom modification in SAP Solution Manager Enterprise Edition, SAP identifies standard functionality of Software which may fulfill the Licensee's requirements (for details see <http://service.sap.com/>).
- **Custom Code Maintainability:** Based on Licensee's provision of SAP required documentation of the scope and design of a planned or existing custom modification in SAP Solution Manager Enterprise Edition, SAP identifies which user exits and services may be available to separate custom code from SAP code (for details see <http://service.sap.com/>).

Global Support Backbone

- SAP Service Marketplace - SAP's knowledge database and SAP's extranet for knowledge transfer on which SAP makes available content and services to licensees and partners of SAP only.
- SAP Notes on the SAP Service Marketplace document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may

- contain coding corrections that customers can implement into their SAP system. SAP Notes also documents related issues, customer questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant - a tool to install specific corrections and improvements to SAP components.
- **SAP Solution Manager Enterprise Edition** – as described in Section 2.4.

Mission Critical Support

- Global message handling by SAP for problems related to Enterprise Support Solutions (excluding software to which special support agreements apply), including Service Level Agreements for Initial Reaction Time and Corrective Action (for more information refer to Section 2.1.1).
- SAP Support Advisory Center – as described in Section 2.2.
- Continuous Quality Checks – as described in Section 2.3.
- Global root cause analysis and escalation procedures in accordance with section 2.1.1 a. below.
- Root Cause Analysis for Custom Code: For Licensee custom code built with the SAP development workbench, SAP provides mission-critical support root-cause analysis, according to the Global Message Handling process and Service Level Agreements stated in Sections 2.1.1, 2.1.2 and 2.1.3 applicable for priority “very high” and priority “high” messages. If the Licensee custom code is documented according to SAP’s then-current standards (for details see <http://service.sap.com/>), SAP may provide guidance to assist Licensee in issue resolution.

Other Components, Methodologies, Content and Community Participation

- Monitoring components and agents for systems to monitor available resources and collect system status information of the Enterprise Support Solutions (e.g. Early Watch Alert).
- Pre-configured test templates and test cases, which are usually delivered via the SAP Solution Manager Enterprise Edition. In addition, the SAP Solution Manager Enterprise Edition assists Licensee’s testing activities with functionalities and currently includes:
 - Test administration for Software by using the functionality provided as part of the SAP Solution Manager Enterprise Edition;
 - Quality Management for management of “Quality-Gates“;
 - SAP-provided tools for automatic testing; and
 - SAP-provided tools to assist with optimizing regression test scope. Such tools support identifying the business processes that are affected by a planned software change and make recommendations for the test scope as well as generating test plans (for details see <http://service.sap.com/>).
- Content and supplementary tools designed to help increase efficiency, which may include implementation methodologies and standard procedures, an Implementation Guide (IMG) and Business Configuration (BC) Sets.
- Access to guidelines via the SAP Service Marketplace, which may include implementation and operations processes and content designed to help reduce costs and risks. Such content currently includes:
 - End-to-End Solution Operations: Assists Licensee with the optimization of the end-to-end operations of Licensee’s SAP Software Solution.
 - Run SAP Methodology: Assists Licensee with application management, business process operations, and administration of the SAP NetWeaver® technology platform, and currently includes:
 - The SAP standards for solution operations;

- The road map of Run SAP to implement end-to-end solution operations; and
- Tools, including the SAP Solution Manager Enterprise Edition application management solution.
- For more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>.
- Participation in SAP's customer and partner community (via SAP Service Marketplace), which provides information about best business practices, service offerings, etc.

2.1. Global Message Handling and Service Level Agreement (SLA). When Licensee reports malfunctions, SAP supports Licensee by providing information on how to remedy, avoid and bypass errors. The main channel for such support will be the support infrastructure provided by SAP. Licensee may send an error message at any time. All persons involved in the message solving process can access the status of the message at any time.

In exceptional cases, Licensee may also contact SAP by telephone. For such contact (and as otherwise provided) SAP requires that the Licensee provide remote access as specified in Section 3.2(iii).

The following Service Level Agreements ("SLA" or "SLAs") shall apply to all Licensee support messages that SAP accepts as being Priority 1 or 2 and which fulfill the prerequisites specified herein. Such SLAs shall commence in the first full Calendar Quarter following the Effective Date of this Schedule. As used herein, "Calendar Quarter" is the three month period ending on March 31, June 30, September 30 and December 31 respectively of any given calendar year.

2.1.1 SLA for Initial Response Times:

a. Priority 1 Support Messages ("Very High"). SAP shall respond to Priority 1 support messages within one (1) hour of SAP's receipt (twenty-four hours a day, seven days a week) of such Priority 1 support messages. A message is assigned Priority 1 if the problem has very serious consequences for normal business transactions and urgent, business critical work cannot be performed. This is generally caused by the following circumstances: complete system outage, malfunctions of central SAP functions in the Production System, or Top-Issues.

b. Priority 2 Support Messages ("High"). SAP shall respond to Priority 2 support messages within four (4) hours of SAP's receipt during SAP's Local Office Time of such Priority 2 support messages. A message is assigned Priority 2 if normal business transactions in a Production System are seriously affected and necessary tasks cannot be performed. This is caused by incorrect or inoperable functions in the SAP system that are required to perform such transactions and/or tasks.

2.1.2 SLA for Corrective Action Response Time for Priority 1 Support Messages: SAP shall provide a solution, work around or action plan for resolution ("Corrective Action") of Licensee's Priority 1 support message within four (4) hours of SAP's receipt (twenty-four hours a day, seven days a week) of such Priority 1 support message ("SLA for Corrective Action"). In the event an action plan is submitted to Licensee as a Corrective Action, such action plan shall include: (i) status of the resolution process; (ii) planned next steps, including identifying responsible SAP resources; (iii) required Licensee actions to support the resolution process; (iv) to the extent possible, planned dates for SAP's actions; and (v) date and time for next status update from SAP. Subsequent status updates shall include a summary of the actions undertaken so far; planned next steps; and date and time for next status update. The SLA for Corrective Action only refers to that part of the processing time when the message is being processed at SAP ("Processing Time"). Processing Time

does not include the time when the message is on status “Partner Action”, “Customer Action” or “SAP Proposed Solution”, whereas: (a) the status “Partner Action” means the support message was handed over to a technology or software partner of SAP or a third party vendor of SAP for further processing; (b) the status “Customer Action” means the support message was handed over to Licensee; and (c) the status “SAP Proposed Solution” means SAP has provided a Corrective Action as outlined herein. The SLA for Corrective Action shall be deemed met if within four (4) hours of processing time: SAP proposes a solution, a workaround or an action plan; or if Licensee agrees to reduce the priority level of the message.

2.1.3 Prerequisites and Exclusions.

2.1.3.1 Prerequisites. The SLAs shall only apply when the following prerequisites are met for support messages: (i) in all cases except for Root Cause Analysis for Custom Code under Section 2, support messages are related to releases of Enterprise Support Solutions which are classified by SAP with the shipment status “unrestricted shipment”; (ii) support messages are submitted by Licensee in English via the SAP Solution Manager Enterprise Edition Software in accordance with SAP’s then current support message processing log-in procedure, and such messages shall contain the relevant details necessary (as specified in SAP Note 16018 or any future SAP Note which replaces SAP Note 16018) for SAP to take action on the reported error; (iii) support messages are related to a product release of Enterprise Support Solutions which falls into Mainstream Maintenance or Extended Maintenance. For Priority 1 support messages, the following additional prerequisites must be fulfilled by Licensee: (a) the issue and its business impact are described in detail sufficient to allow SAP to assess the issue; (b) Licensee makes available for communications with SAP, twenty four (24) hours a day, seven (7) days a week, an English speaking contact person with training and knowledge sufficient to aid in the resolution of the Priority 1 message consistent with Licensee’s obligations hereunder; and (c) a Licensee contact person is provided for opening a remote connection to the system and to provide necessary log-on data to SAP.

2.1.3.2 Exclusions. For SAP Enterprise Support, in particular, the following types of Priority 1 and Priority 2 Support Messages are excluded from the SLAs: (i) support messages regarding a release, version and/or functionalities of Enterprise Support Solutions developed specifically for Licensee (including, without limitation, those developed by SAP Custom Development and/or by SAP subsidiaries), except for custom code built with the SAP development workbench; (ii) support messages regarding country versions that are not part of the Enterprise Support Solutions and instead are realized as partner add-ons, enhancements, or modifications are expressly excluded even if these country versions were created by SAP or an affiliated company of SAP; and (iii) the root cause behind the support message is not a malfunction, but a missing functionality (“development request”) or the support message is ascribed to a consulting request.

2.1.4 Service Level Credit.

2.1.4.1. SAP shall be deemed to have met its obligations pursuant to the SLAs as stated above by reacting within the allowed time frames in ninety-five percent (95%) of the aggregate cases for all SLAs within a Calendar Quarter. In the event Licensee submits less than twenty (20) messages (in the aggregate for all SLAs) pursuant to the SLAs stated above in any Calendar Quarter during the Enterprise Support term, Licensee agrees that SAP shall be deemed to have met its obligations pursuant to the SLAs stated above if SAP has not exceeded the stated SLA time-frame in more than one support message during the applicable Calendar Quarter.

2.1.4.2. Subject to Section 2.1.4.1 above, in the event that the timeframes for the SLA’s are not met (each a “Failure”), the following rules and procedures shall apply: (i) Licensee

shall inform SAP in writing of any alleged Failure; (ii) SAP shall investigate any such claims and provide a written report proving or disproving the accuracy of Licensee's claim; (iii) Licensee shall provide reasonable assistance to SAP in its efforts to correct any problems or processes inhibiting SAP's ability to reach the SLAs; (iv) subject to this Section 2.1.4, if, based on the report, an SAP Failure is proved, SAP shall apply a Service Level Credit ("SLC") to Licensee's next SAP Enterprise Support Fee invoice equal to one quarter percent (0.25%) of Licensee's SAP Enterprise Support Fee for the applicable Calendar Quarter for each Failure reported and proved, subject to a maximum SLC cap per Calendar Quarter of five percent (5%) of Licensee's SAP Enterprise Support Fee for such Calendar Quarter. Licensee bears the responsibility of notifying SAP of any SLCs within thirty (30) days after the end of a Calendar Quarter in which a Failure occurs. No credits will be applied unless notice of Licensee's proven claim for SLC(s) is received by SAP in writing. The SLC stated in this Section 2.1.4 is Licensee's sole and exclusive remedy with respect to any alleged or actual Failure.

2.2 SAP Support Advisory Center. For Priority 1 Support Messages and Top-Issues directly related to the Enterprise Support Solutions, SAP shall make available a global unit within SAP's support organization for mission critical support related requests (the "Support Advisory Center"). The Support Advisory Center will perform the following support tasks: (i) remote support for Priority 1 Support Messages and Top-Issues – the Support Advisory Center will act as an additional escalation level, enabling 24X7 root cause analysis for problem identification; (ii) Continuous Quality Check service delivery planning in collaboration with Licensee's IT, including scheduling and delivery coordination; (iii) provides one SAP Enterprise Support report on request per calendar year; (iv) remote primary certification of the SAP Customer Center of Expertise if requested by Licensee; and (v) providing guidance in cases in which Continuous Quality Checks (as defined in Section 2.3 below), an action plan and/or written recommendations of SAP show a critical status (e.g. a red CQC report) of the Enterprise Support Solutions.

As preparation for the Continuous Quality Check delivery through SAP Solution Manager Enterprise Edition, Licensee's Contact Person (as defined below) and SAP shall jointly perform one mandatory setup service ("Initial Assessment") for the Enterprise Support Solutions. The Initial Assessment shall be based upon SAP standards and documentation.

The designated SAP Support Advisory Center will be English speaking and available to Licensee's Contact Person (as defined below) or its authorized representative twenty-four hours a day, seven days a week for Priority 1 Support Messages and Top Issues. The available local or global dial-in numbers are shown in SAP Note 560499.

The Support Advisory Center is only responsible for the above mentioned mission critical support related tasks to the extent these tasks are directly related to issues or escalations regarding the Enterprise Support Solutions.

2.3 SAP Continuous Quality Check. In case of critical situations related to the SAP Software Solution (such as Go Live, upgrade, migration or Top Issues), SAP will provide at least one Continuous Quality Check (the "Continuous Quality Check" or "CQC") per calendar year for each SAP Software Solution.

The CQC may consist of one or more manual or automatic remote Service Sessions. SAP may deliver further CQC's in cases where vital alerts are reported by SAP EarlyWatch Alert or in those cases where Licensee and the SAP Advisory Center mutually agree that such a service is needed to handle a Top-Issue. Details, such as the exact type and priorities of a CQC and the tasks of SAP and cooperation duties of Licensee, shall be mutually agreed upon between the parties. At the end of a CQC, SAP will provide Licensee with an action plan and/or written recommendations.

Licensee acknowledges that all or part of the CQC sessions may be delivered by SAP and/or a certified SAP partner acting as SAP's subcontractor and based on SAP's CQC standards and methodologies. Licensee agrees to provide appropriate resources, including but not limited to equipment, data, information, and appropriate and cooperative personnel, to facilitate the delivery of CQC's hereunder.

Licensee acknowledges that SAP limits CQC re-scheduling to a maximum of three times per year. Re-scheduling must take place at least 5 working days before the planned delivery date. If Licensee fails to follow these guidelines, SAP is not obliged to deliver the yearly CQC to the Licensee.

2.4 SAP Solution Manager Enterprise Edition.

SAP Solution Manager Enterprise Edition shall be licensed subject to the Agreement and is for the following purposes only: (i) delivery of SAP Enterprise Support and support services for Licensee Solution including delivery and installation of software and technology maintenance for Enterprise Support Solutions; (ii) the operation of a service desk for Enterprise Support Solutions and remote diagnostic tools for Licensee Solutions; (iii) application management for Licensee Solutions including implementation, testing, change request management, operations and continuous improvement for Enterprise Support Solutions; and; (iv) administration, monitoring and reporting for Licensee Solution. The use of SAP Solution Manager Enterprise Edition is limited to the Licensee Solutions only.

SAP Solution Manager Enterprise Edition is subject to the usage rights granted in the Agreement and may not be used for any other purposes than those specified herein. The right to use any SAP Solution Manager Enterprise Edition capabilities other than those above is subject to a separate written agreement with SAP, even if such capabilities are contained in or related to SAP Solution Manager Enterprise Edition.

3. Licensee's Responsibilities.

3.1 SAP Enterprise Support Program Management. In order to receive SAP Enterprise Support hereunder, Licensee shall designate a qualified English speaking contact within its SAP Customer Center of Expertise for the Support Advisory Center (the "Contact Person") and shall provide contact details (in particular an e-mail address and telephone number) by means of which the Contact Person or the authorized representative of such Contact Person can be contacted at any time. Licensee's Contact Person shall be Licensee's authorized representative empowered to make necessary decisions for Licensee or bring about such decision without undue delay.

3.2 Other Requirements. In order to receive SAP Enterprise Support hereunder, Licensee must also satisfy the following requirements:

- (i) Continue to pay all Enterprise Support Service Fees in accordance with the Agreement.
- (ii) Otherwise fulfill its obligations under the Agreement and this Schedule.
- (iii) Provide and maintain remote access via a technical standard procedure as defined by SAP and grant SAP all necessary authorizations, in particular for problem analysis as part of message handling. Such remote access shall be granted without restriction regarding the nationality of the SAP employee(s) who processes support messages or the country in which they are located. Licensee acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render SAP unable to provide help in an efficient manner. The necessary software components must also be installed for support services. For more details, see SAP Note 91488.
- (iv) Establish and maintain an SAP certified Customer COE meeting the requirements specified in Section 4 below within twelve months of the Effective Date of this Schedule.

(v) Have installed, configured and be using productively, an SAP Solution Manager Enterprise Edition Software system, with the latest patch levels for Basis, ABAP, and the latest SAP Solution Manager Enterprise Edition support packages.

(vi) Activate SAP EarlyWatch Alert for the Production Systems and transmit data to Licensee's productive SAP Solution Manager Enterprise Edition system. See SAP Note 1257308 for information on setting up this service.

(vii) Perform the Initial Assessment as described in Section 2.2 and implement all of the recommendations of SAP that are classified as mandatory.

(viii) Establish a connection between Licensee's SAP Solution Manager Enterprise Edition installation and SAP and a connection between the Licensee Solutions and Licensee's SAP Solution Manager Enterprise Edition installation. Licensee shall maintain the solution landscape in Licensee's SAP Solution Manager Enterprise Edition system for all Production Systems and systems connected to the Production Systems. Licensee shall maintain the Software and core business processes in Licensee's SAP Solution Manager Enterprise Edition system at least for the Production Systems. Licensee shall document any implementation or upgrade projects in Licensee's SAP Solution Manager Enterprise Edition system.

(ix) To fully enable and activate the SAP Solution Manager Enterprise Edition, Licensee shall adhere to the applicable documentation.

(x) Licensee agrees to maintain adequate and current records of all modifications and, if needed, promptly provide such records to SAP.

(xi) Submit all error messages via the then current SAP support infrastructure as made available by SAP from time to time via updates, upgrades or add-ons.

(xii) Inform SAP without undue delay of any changes to Licensee's installations and Named Users and all other information relevant to the Enterprise Support Solutions.

4. Customer Center of Expertise.

4.1 Role of the Customer Center of Expertise. In order to leverage the full potential value delivered as part of SAP Enterprise Support, Licensee is required to establish a Customer Center of Expertise ("Customer Center of Expertise", or "Customer COE"). The Customer COE is designated by Licensee as a central point of contact for interaction with the SAP support organization. As a permanent center of expertise, the Customer COE supports Licensee's efficient implementation, innovation, operation and quality of business processes and systems related to the SAP Software Solution based on the Run SAP methodology provided by SAP (for more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>). The Customer COE should cover all core business process operations. SAP recommends starting the implementation of the Customer COE as a project that runs in parallel with the functional and technical implementation projects.

4.2 Basic Functions of the Customer COE. The Customer COE must fulfill the following basic functions:

- **Support Desk:** Set-up and operation of a support desk with a sufficient number of support consultants for infrastructure/application platforms and the related applications during regular local working hours (at least 8 hours a day, 5 days (Monday through Friday) a week). Licensee support process and skills will be jointly reviewed in the framework of the service planning process and the certification audit.
- **Contract administration:** Contract and license processing in conjunction with SAP (license audit, maintenance billing, release order processing, user master and installation data management).
- **Coordination of innovation requests:** Collection and coordination of development requests from the Licensee. In this role, the Customer COE shall also be empowered to

function as an interface to SAP to take all action and decisions needed to avoid unnecessary modification of Software and to ensure that planned modifications are in alignment with the SAP software and release strategy.

- Information management: Distribution of information (e.g. internal demonstrations, information events and marketing) about Software and the Customer COE within the Licensee's organization.
- CQC Planning: Licensee shall regularly engage in a service planning process with SAP. The service planning starts during the initial implementation and will then be continued regularly.

4.3 Customer COE Certification. Licensee must establish a certified Customer COE within one (1) year after the Effective Date. To obtain the then current primary Customer COE certification by SAP, the Customer COE undergoes an audit procedure. Detailed information on the initial certification and re-certification process and conditions, as well as information on the available certification levels, is available on the SAP Service Marketplace (<http://service.sap.com/enterprisesupport>).

- 5. Enterprise Support Fees.** SAP Enterprise Support Fees shall be paid annually in advance and shall be calculated in accordance with the Agreement and the then current SAP Price List. The scope and terms of SAP Enterprise Support may be changed annually by SAP at any time upon three months prior written notice.
- 6. Term and Termination.** The term of this Schedule shall be the remainder of the current calendar year following the Effective Date and the next two full calendar years ("Initial Term"), provided however, the support services based on SAP Enterprise Support shall not commence before delivery of the licensed Software. After the Initial Term, this Schedule shall automatically renew for additional one year terms unless terminated by either party by sending written notice to the other party at least three (3) full calendar months prior to the end of the Initial Term or any subsequent calendar year. Notwithstanding the foregoing, SAP may terminate this Schedule upon thirty (30) days written notice in the event of: (i) Licensee's failure to pay SAP Enterprise Support Fees in accordance with the Agreement.
- 7. Verification.** To check the Licensee's compliance with the terms of this Schedule, SAP shall be entitled to periodically monitor (at least once annually and in accordance with SAP's standard procedures): (i) the correctness of the information that the Licensee has provided; and (ii) Licensee's usage of the Solution Manager Enterprise Edition in accordance with the rights and restrictions set out in Section 2.4.
- 8. Reinstatement.** In the event that the Licensee terminates SAP Enterprise Support in accordance with Section 6 above, the Licensee may reinstate SAP Enterprise Support at a later date by paying to SAP all Enterprise Support Fees that would have been due but for the termination plus a reinstatement fee.
- 9. Other Terms and Conditions.**
 - 9.1 The scope of SAP Enterprise Support offered by SAP may be changed annually by SAP at any time upon three months prior written notice.
 - 9.2 Licensee hereby confirms that Licensee has obtained all required licenses for the Licensee Solutions.
 - 9.3 In the event that Licensee is entitled to receive one or more of the services detailed in Section 2.3 above per calendar year: (i) Licensee shall not be entitled to receive such services in the first calendar year if the Effective Date of this Schedule is after September 30; and (ii) Licensee shall not be entitled to transfer a service to the next year if Licensee has not utilized such service.

9.4 FAILURE TO UTILIZE SAP ENTERPRISE SUPPORT PROVIDED BY SAP MAY PREVENT SAP FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE, FOR WHICH SAP CANNOT BE HELD RESPONSIBLE.

9.5 In the event SAP licenses third party software to Licensee under the Agreement, SAP shall provide Enterprise Support for such third party software to the degree the applicable third party makes such Enterprise Support available to SAP. Licensee may be required to upgrade to more recent versions of its operating systems and databases to receive SAP Enterprise Support. If the respective vendor offers an extension of support for its product, SAP may offer such extension of support under a separate written agreement for an additional fee.

9.6 SAP Enterprise Support is provided according to the current support phases of SAP software releases as stated in <http://service.sap.com/releasestrategy>.