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1. <u>DEFINITIONS</u>.

- 1.1 "Add-on" means any development using SAP API's that that adds new and independent functionality but does not modify existing SAP functionality.
- 1.2 "API" means SAP's application programming interfaces, as well as other SAP code that allow other software products to communicate with or call on SAP Software (for example, SAP Enterprise Services, BAPIs, Idocs, RFCs and ABAP or other user exits) provided under this Agreement.
- 1.3 "Affiliate" mean any legal entity in the Territory in which the Licensee, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights. Any such legal entity shall be considered an Affiliate for only such time as such equity interest is maintained.
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- 1.6 "<u>Documentation</u>" means SAP's documentation which is delivered or made available to Licensee with the Software under this Agreement.
- 1.7 "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.
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- 1.9 "SAP Materials" means any software, programs, tools, systems, data or other materials made available by SAP to Licensee prior to the formation of and in the course of the performance under this Agreement including, but not limited to, the Software and Documentation.
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- 1.11 "Software" means (i) any and all software products licensed to Licensee under this Agreement as specified in Software Order Forms hereto, all as developed by or for SAP, SAP AG, Business Objects Software Limited and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective support agreement and (iii) any complete or partial copies of any of the foregoing.
- 1.12 "Software Order Form" means the order form for the Software and related SAP Support ordered by Licensee thereunder, including information on Software, SAP Support, fees, and other information necessary for the delivery of such items to Licensee.
- 1.13 "Territory" means the territory stated in the Software Order Form.

- 1.14 "Third Party Software" means (i) any and all software products and content licensed to Licensee under this Agreement as specified in Software Order Forms hereto, all as developed by companies other than SAP, SAP AG, Business Objects Software Limited and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective SAP Support Schedule and (iii) any complete or partial copies of any of the foregoing.
- 1.15 "Use" means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

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- 8.2 The provisions of this section 8 state the sole, exclusive and entire liability of SAP and its licensors to Licensee, and is Licensee's sole remedy, with respect to the infringement or misappropriation of third-party intellectual property rights.

9. <u>LIMITATIONS OF LIABILITY</u>.

- 9.1 <u>No Limitation.</u> Nothing in this Agreement shall exclude or in any way limit each Party's liability for: (i) personal injury or death to the extent it results from the negligence of the other Party, its personnel or sub-contractors; and (ii) wilful misconduct, fraud and gross negligence.
- 9.2 <u>Not liable</u>. SAP and its licensors will not be liable for any claims or damages arising out of or in connection with this Agreement (i) if such damages result from use of the Software is not in accordance with the Documentation; or (ii) if the defect or damages are caused by Licensee, a Modification or Add-on (other than a Modification or Add-on made by SAP which is provided through SAP Support or under warranty), or third-party software. SAP and its licensors shall not be liable for any claims or damages arising from inherently dangerous use of the Software and/or Third Party Software licensed hereunder.
- 9.2 Exclusion of Damages: Limitation of Liability. Anything to the contrary herein notwithstanding, is SAP's total liability under this Agreement limited to an amount equal to the lower of the following two amounts: € 500.000 or an amount equal to the paid license fees for the software directly causing the damages. Under no circumstances shall SAP or its licensors be liable for other damages than direct damages. Any further liability of SAP or its licensors is excluded, irrespective of the cause of action, whether in contract, tort or otherwise and regardless of whether Licensee was advised of the possibility of such damages. In no event is SAP or its licensors liable in any amount for special, incidental, consequential or indirect damages, costs or expenses, loss of good will or business profits, work stoppage, data loss, computer failure or malfunction or exemplary or punitive damages arising out of or in connection with this Agreement.

10. <u>CONFIDENTIALITY.</u>

10.1. <u>Use of Confidential Information</u>. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other shall remain the property of

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- 10.2 <u>Exceptions</u>. The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without breach of this Agreement by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; or (d) the disclosing party agrees in writing is free of such restrictions.
- 10.3 <u>Confidential Terms and Conditions</u>; <u>Publicity</u>. Licensee shall not disclose the terms and conditions of this Agreement or the pricing contained therein to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that SAP may use Licensee's name in customer listings or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHIRE participation). SAP will make reasonable efforts to avoid having the reference activities unreasonably interfere with Licensee's business.
- 11. <u>ASSIGNMENT</u>. Licensee may not, without SAP's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the SAP Materials or SAP Confidential Information, to any other party. SAP may assign this Agreement to any of its affiliates.

12. GENERAL PROVISIONS.

- 12.1 <u>Severability</u>. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.
- 12.2 <u>No Waiver</u>. If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.
- 12.3 Regulatory Matters. The Software, Documentation and SAP Materials are subject to the export control laws of various countries, including without limit the laws of the United States and Germany. Licensee agrees that it will not submit the Software, Documentation or other SAP Materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Software, Documentation and SAP Materials to countries, persons or entities prohibited by such laws. Licensee shall also be responsible for complying with all applicable governmental regulations of the country where Licensee is registered, and any foreign countries with respect to the use of the Software, Documentation or other SAP Materials by Licensee and/or its Affiliates.
- 12.4 <u>Governing Law: Limitations Period</u>. This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of Belgium without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and Belgian law, rules, and regulations, Belgian law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Exclusive place of jurisdiction for any disputes arising from or in connection with this Agreement shall be the competent court in Brussels, Belgium. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).
- 12.5 <u>Notices</u>. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of SAP and Licensee at the addresses first set forth in any Software Order Form. Where in this section 12.6 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.
- 12.6 <u>Force Majeure</u>. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.
- 12.7 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Licensee, and all previous representations, discussions, and writings are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. This Agreement may be modified only by a writing signed by both parties. This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to SAP. This Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear in any clickwrap end user agreement included in the Software. Signatures sent by electronic means (facsimile or scanned and sent via e-mail) shall be deemed original signatures.
- 12.8 <u>Hierarchy</u>. Unless explicitly stated otherwise, the following order of precedence shall be applied in the event of conflict or inconsistency between provisions of the components of this Agreement: (i) the Software Order Form; (ii) the Schedules; (iii) the GTC; and (iv) the SAP Software Use Rights document.