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1. DEFINITIONS.

- 1.1 "Acceptance Form" means the Acceptance Form for End User License Agreement (between SAP and Indirect End User) as may be applicable to this EULA upon SAP or Partner directions.
- 1.2 "Add-on" means any development that adds new and independent functionality, (including any new functional components for business processes not provided by the Software), and connects to and/or communicates through published SAP application program interfaces or user exits.
- 1.3 "Agreement" means the Software Order Form or the Acceptance Form as the case may be, this EULA and the Software Usage Rights Schedule.
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- 1.5 "Affiliate" means 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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- "Confidential Information" means, with respect to SAP, all information which SAP protects against unrestricted disclosure to others, including but not limited to: (a) the Software and Documentation and other SAP Materials, including without limitation the following information regarding the Software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software; (b) the research and development or investigations of SAP; (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies; and (d) any information about or concerning any third party (which information was provided to SAP subject to an applicable confidentiality obligation to such third party). With respect to Licensee, "Confidential Information" means all information which Licensee protects against unrestricted disclosure to others and which (i) if in tangible form, Licensee clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Licensee identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary within thirty (30) calendar days of any such disclosure.
- 1.8 "Documentation" means SAP's documentation which is delivered or made available to Licensee with the Software under this Agreement.
- 1.9 "End User" means the End User to whom the Software is licensed under this Agreement as identified in the Acceptance Form or the Software Order Form.
- 1.10 "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or database 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.
- 1.11 "Licensee" means the End User.
- 1.12 "Modification" means (i) a change to the delivered source code or metadata; or (ii) any development, other than a change to the delivered source code or metadata, that customizes, enhances, or changes existing functionality of the Software including, but not limited to, the creation of any new application program interfaces or alternative user interfaces, the extension of SAP data structures, or other change utilizing or incorporating any SAP Materials (defined below).
- $1.13 \quad \text{``} \underline{\textbf{Partner''}} \text{ means the company that resells the Software licenses to the End User under a valid SAP reselling partner contract.}$

1.14 "SAP" means

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- 1.18 "Software Usage Rights Schedule" means the Software Use Rights Schedule current at the time of execution of the Software Order Form or the Acceptance Form which can be found at: www.sap.com/company/legal
- 1.19 "Territory" means the territory stated in the Software Order Form or the Acceptance Form or if no such document exists, the Territory where Partner is authorized to resell the Software.
- 1.20 "Third Party Software" means (i) any and all software products and content licensed to Licensee under this Agreement as specified in the Software Order Form or the Acceptance Form, 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 an SAP support service; and (iii) any complete or partial copies of any of the foregoing.
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TERM.

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- 5.2 <u>End of Term Duties</u>. Upon any termination hereunder, Licensee and its Affiliates shall immediately cease Use of all SAP Materials and Confidential Information. Within thirty (30) days after any termination, Licensee shall irretrievably destroy or upon SAP's request deliver to SAP all copies of the SAP Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Licensee must certify to SAP in writing that it has satisfied its obligations under this Section 5.2. Licensee agrees to certify in writing to SAP that it and each of its Affiliates has performed the foregoing. Sections 3, 4, 5.2, 6, 7.2, 8, 9, 10, 13.4, 13.5, 13.6 and 13.8 shall survive such termination. In the event of any termination hereunder, Licensee shall not be entitled to any refund of any payments made by Licensee. Termination shall not relieve Licensee from its obligation to pay fees that remain unpaid.

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- 9.3 Nothing in this Agreement shall exclude or limit either party's liability under section 10, Licensee's liability for any breach of section 6, section 13.4, or for any infringement of SAP's Intellectual Property Rights.

10. CONFIDENTIALITY.

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 the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party: (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its bona fide individuals whose access is necessary to enable it to exercise its rights hereunder. As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.

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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; Publicity</u>. Licensee shall not disclose the terms and conditions of this Agreement 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 party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. SAP may assign this Agreement to any of its affiliates.

12. PERSONAL DATA.

12.1 Each party will carry out its obligations under the Agreement in accordance with the applicable law in the Territory implementing the European Union Data Protection Directive 95/46/EC and any other legislation applicable to personal data in the European Economic Area (EEA). To the extent that SAP exports or processes Licensee's personal data outside the EEA, it will ensure any such processing or export shall be on terms equivalent to those herein and SAP shall enforce such terms against the relevant subcontractors.

13. GENERAL PROVISIONS.

- 13.1 <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.
- 13.2 <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.
- 13.3 <u>Counterparts</u>. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.
- 13.4 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.
- Governing Law; Limitations Period. 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 Lithuania, without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and Lithuania law, rules, and regulations, Lithuanian 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. The Uniform Computer Information Transactions Act as enacted shall not apply.
- 13.6 Any dispute arising out of or in connection with the Agreement, including any disputes regarding the existence, validity or termination, shall be settled by arbitration in accordance with the following rules:

Lithuania:

- in Vilnius Court of Commercial Arbitration in accordance with the rules of Vilnius Court of Commercial Arbitration in force at the time when such proceedings are commenced. The number of arbitrators shall be 3 (three);
- 13.6.2 The language of arbitration shall be English. For the avoidance of doubt, any arbitration decision shall be final and binding and be confidential between the parties and not disclosed to any third party. If a dispute is brought before an ordinary court by the Customer, on SAP's request, the dispute shall be rejected by that court and submitted to a court of arbitration as set out above. Notwithstanding the above, at the request of SAP, which request can be made by SAP at any time and in respect of any dispute, the parties shall instead submit to the exclusive jurisdiction of the courts of the country of residence of the SAP entity which the Customer has entered into an agreement with.
- 13.6 <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 delivered by hand or sent by registered post and deemed duly given when delivered to the respective executive offices of SAP or Licensee at the addresses first set forth in any Software Order Form. Where in this section 13.6 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.
- 13.7 <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.

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- 13.8 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 only be modified in 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.
- 13.9 <u>Hierarchy</u>. 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 Acceptance Form; (ii) the Schedules; (iii) the Use Terms; (iv) the EULA; and (v) the Software Order Form.