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- 3.10. Promotional License.** If you received the Software as a special offer or promotional license ("Promotional License"), you may only use the Promotional Licenses with a new Deployment. Promotional Licenses may not be added to or used with an existing Deployment or Project.
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- (a) Excluding Third Party Products, SAP BusinessObjects warrants to you that: (i) for a period of six (6) months from delivery of the Software, the Software will substantially conform to the functional description set forth in its standard documentation; and (ii) for a period of six (6) months from delivery the physical media (e.g., CD-ROM, DVD, and Electronic Software Distribution) will be free from defects in materials and workmanship. Any implied warranties on the Software and Third Party Products and media are limited to thirty (30) days from delivery, to the extent such warranties cannot be disclaimed under Section 8(c) below. The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications, or enhancements, or misapplication. SAP BusinessObjects does not warrant that use of the Software will operate uninterrupted or error free. Delivery of additional copies of, or revisions or upgrades to, the Software, including releases provided under Support Services, shall not restart or otherwise affect the warranty period.
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10. SUPPORT SERVICES. If you purchased Support Services, SAP BusinessObjects will provide to you product support services for the Software in accordance with SAP BusinessObjects then current Support Services terms and conditions. If you purchase Support Services for the Software, you must purchase Support Services for all authorized copies of said Software in your possession. Notwithstanding the foregoing, SAP BusinessObjects does not provide Support Services for Third Party Products.

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- 12. AUDIT.** During the term of this Agreement and for three (3) years after termination or expiration, SAP BusinessObjects may audit, upon reasonable notice to you and at SAP BusinessObjects' expense, your books and records to determine your compliance with this Agreement. In the event any such audit reveals that you have underpaid SAP BusinessObjects by an amount greater than five percent (5%) of the amounts due SAP BusinessObjects in the period being audited, or that you have knowingly breached any material obligation hereunder, then, in addition to such other remedies as SAP BusinessObjects may have, you shall pay or reimburse to SAP BusinessObjects the cost of the audit.
- 13. GENERAL.** Except as otherwise preempted by United States federal law, this Agreement is governed by the laws of the State of New York, United States, without reference to conflict of laws provisions and the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto. If any provision of this Agreement is ruled invalid, such invalidity shall not affect the validity of the remaining portions of this Agreement. This Agreement constitutes the entire agreement between you and SAP BusinessObjects, and supersedes any prior agreement, whether written or oral, relating to the subject matter of this Agreement. This Agreement may not be modified except by an instrument in writing duly signed by an authorized representative of each of the parties. If you are acquiring the Software on behalf of an entity, you represent and warrant that you have the legal capacity to bind such entity to this Agreement. All terms of any purchase order or other ordering document submitted by you shall be superseded by this Agreement. In the event you and SAP BusinessObjects have executed a mutually agreed upon a separately Master Software License Agreement ("MSLA") and acquired the Software pursuant to such MSLA, the terms of the MSLA may govern your use of the Software and the terms of this Agreement shall be superseded by the MSLA. The product name for the Software is a trademark or registered trademark of SAP BusinessObjects. Should you have questions concerning this License Agreement, please contact your local SAP BusinessObjects sales office or authorized reseller, or write to: SAP BusinessObjects, Attn: Contracts Department, 3410 Hillview Ave., Palo Alto, CA 94304, USA.
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- 15. EXPORT CONTROLS.** The use of this Software is subject to the U.S. Export Administration Regulations. You agree to the following: (a) you are not a citizen, national or resident of, and am not under the control of, the government of Cuba, Iran, North Korea, Syria, Sudan nor any other country to which the United States has prohibited export; (b) you will not export or re-export the Software, directly or indirectly, neither to the above mentioned countries nor to citizens, nationals or residents of those countries; (c) you are not listed on the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially Designated Narcotic Traffickers, nor are you listed on the United States Department of Commerce Table of Denial Orders; (d) you will not export or re-export the Software, directly, or indirectly, to persons on the above mentioned lists; and (e) you will not use the Software for, and will not allow the Software to be used for, any purposes prohibited by United States law, including, without limitation, for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction. For more information, see www.sap.com/company/export.
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- 17. COUNTRY UNIQUE TERMS.** If you purchased the Software in any territory specified below (the "Local Territory"), this section sets forth specific provisions as well as exceptions to the above terms and condition. To the extent any provision applicable to the Local Territory (the "Local Provision") set forth below is in conflict with any other term or condition in this agreement, the Local Provision will supersede such other term or condition with respect to any licenses purchased in the Local Territory.

Australia:

a) Limited Warranty and Remedy (Section 8): *The following is added:*

The warranties specified in this Section are in addition to any rights You may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

b) Limitation of Liability (Section 9): *The following is added:*

To the extent permitted by law, where SAP BusinessObjects is in breach of a condition or warranty implied by the Trade Practices Act 1974 or the equivalent State or Territory legislation which cannot be excluded, SAP BusinessObjects' liability is limited, at SAP BusinessObjects' sole election: (i) in case of the Software: (a) (i) to repair or replace the goods, or the supply of equivalent goods, or (ii) payment of the cost of such repair or replacement or of acquiring equivalent goods; and (ii) in case of Support Services: (x) re-supply of the Support Services; or (y) the cost of having the services supplied again. In calculating SAP BusinessObjects' aggregate liability under this Agreement, the amounts paid or the value of any goods or services replaced, repaired, or supplied by SAP BusinessObjects pursuant to this paragraph shall be included.

c) General (Section 13): *The following replaces the first sentence of this section:*

This Agreement is governed by the laws of the State or Territory in which you acquired the Software, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.

Belgium and France

a) Limitation of Liability (Section 9): *The following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. SAP BusinessObjects' liability for any damages and losses that may arise as a result of the performance of its obligations in connection with this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if SAP BusinessObjects is at fault), for a maximum amount equal to the charges You paid for the Software that has caused the damages. This limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which SAP BusinessObjects is legally liable.

2. UNDER NO CIRCUMSTANCES IS SAP BUSINESSOBJECTS, OR ANY OF ITS SOFTWARE DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by SAP BusinessObjects but also to the activities performed by its suppliers and Software developers, and represents the maximum amount for which SAP BusinessObjects as well as its suppliers and Software developers, are collectively responsible. This limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which SAP BusinessObjects is legally liable.

b) General (Section 13): *The following replaces the first sentence of this section:*

This Agreement is governed by the laws of country in which you acquired the Software, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.

Brazil

a) Warranty (Section 8): *The following replaces the terms of this section in its entirety:*

(a) SAP BusinessObjects warrants to you that: (i) for a period of six (6) months from delivery of the Software, the Software will substantially conform to the functional description set forth in the standard documentation accompanying the Software; and (ii) for a period of six (6) months from delivery the physical media (e.g., CD-ROM), such physical media will be free from defects in materials and workmanship. The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications, or enhancements, or misapplication. You understand and agree that the state of the art does not allow the development of bug free of software. As a consequence SAP BusinessObjects cannot warrant that the Software will operate uninterrupted or error free. Delivery of additional copies of, or revisions or upgrades to, the Software, including releases provided under Support Services, shall not restart or otherwise affect the warranty period.

(b) Your exclusive remedy for breach of the above-stated limited warranty shall be, at SAP BusinessObjects' option, either: (i) correction or replacement of the Software with product(s) which conform to the above-stated limited warranty; or (ii) return of the price paid for the Software and termination of this License Agreement with respect to those copies not in compliance. Such remedy shall be provided to you by SAP BusinessObjects only if you give SAP BusinessObjects written notice of any breach of the above-stated limited warranty, within thirty (30) days of delivery of the Software.

(c) LICENSEE UNDERSTANDS AND AGREES THAT THE STATE OF THE ART DOES NOT ALLOW THE DEVELOPMENT OF BUG FREE SOFTWARE AND THAT THE SOFTWARE HAS BEEN DEVELOPED FOR THE USE OF BUSINESS SOFTWARE GENERAL CUSTOMERS. THEREFORE, EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS SECTION 7, SAP BUSINESSOBJECTS AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY (I) OF MERCHANTABILITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, (III) OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR (IV) AGAINST HIDDEN DEFECTS. SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU, AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE OR BY JURISDICTION. LICENSEE ACKNOWLEDGES THAT IN ENTERING INTO THIS AGREEMENT, LICENSEE HAVE RELIED UPON LICENSEE'S OWN EXPERIENCE, SKILL AND JUDGEMENT TO EVALUATE THE SOFTWARE AND THAT LICENSEE HAS SATISFIED ITSELF AS TO THE SUITABILITY OF THE SOFTWARE TO MEET LICENSEE'S REQUIREMENTS.

b) Limitation of Liability (Section 9): *the following replaces the terms of this section in its entirety:*

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SAP BUSINESSOBJECTS OR ITS DISTRIBUTORS, SUPPLIERS OR AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOSS OR INACCURACY OF ANY DATA, OR COST OF SUBSTITUTE GOODS, REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND EVEN IF SAP BUSINESSOBJECTS HAS BEEN ADVISED OF THE POSSIBILITY OF

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c) General (Section 13): *The following replaces the word "New York":*

Brazil

Germany and Austria

a) Warranty (Section 8): *The following replaces the terms of this section in its entirety:*

SAP BusinessObjects warrants that the Software provides the functionalities set forth in the associated documentation ("Documented Functionalities") for the Limited Warranty Period following receipt of the Software when used on the recommended hardware configuration. Limited Warranty Period means one year if you are a business user and two years if you are not a business user. Non-substantial variation from the Documented Functionalities does not establish any warranty rights. THIS LIMITED WARRANTY DOES NOT APPLY TO SOFTWARE PROVIDED TO YOU FREE OF CHARGE (FOR EXAMPLE, UPDATES, PRE-RELEASE, EVALUATION, OR NFR) OR SOFTWARE THAT HAS BEEN ALTERED BY YOU, TO THE EXTENT SUCH ALTERATION CAUSED A DEFECT. To make a warranty claim, you must return, at SAP BusinessObjects expense, the Software and proof of purchase to the company from whom you obtained it. If the functionalities of the Software vary substantially from the agreed upon functionalities, SAP BusinessObjects is entitled, by way of re-performance and at its own discretion, to repair or replace the Software. If that fails, you are entitled to a reduction of the purchase price or to cancel the purchase agreement.

b) Limitation of Liability (Section 9): *the following paragraph is added to this Section:*

The limitations and exclusions specified in this Section will not apply to damages caused by SAP BusinessObjects' intentional or by gross negligence. In addition, SAP BusinessObjects shall be responsible up to the amount of the typically foreseeable damages from any damage which has been caused by SAP BusinessObjects or its agents due to the slightly negligent breach of a material contractual duty. This limitation of liability shall apply to all damage claims, irrespective of the legal basis there of and in particular, to any pre-contractual or auxiliary contractual claims. This limitation of liability shall not, however, apply to any mandatory statutory liability under the product liability act nor to any damage which is caused due to the breach of an express warranty to the extent the express warranty was intended to protect you from the specific damage incurred. This clause shall not be intended to limit liability where the extent of liability is provided by mandatory law.

c) General (Section 13): *The following replaces the first sentence of this section:*

This Agreement is governed by the laws of country in which you acquired the Software, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.

Italy

a) Limitation of Liability (Section 9): *the following replaces the terms of this section in its entirety:*

Apart from damages arising out of gross negligence or willful misconduct for which SAP BusinessObjects may not limit its liability, SAP BusinessObjects' liability for direct and indirect damages related to the original or further defects of the Software, or related to the use or the nonuse of the Software or related to any case whatsoever for breach of the Agreement, shall be limited to the fees paid by you to SAP BusinessObjects for the Software or for the part of the Software upon which the damages were based.

b) General (Section 13): *The following replaces the first sentence of this section:*

This Agreement is governed by the laws of country in which you acquired the Software, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.

United Kingdom

c) General (Section 13): *The following replaces the first sentence of this section:*

This Agreement is governed by the laws of England and Wales, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto. Notwithstanding any other provision in this Agreement, nothing in this Agreement shall create or confer (whether expressly or by implication) any rights or other benefits whether pursuant to the Contracts Rights of Third Parties) Act 1999 or otherwise in favour of any person not a party hereto.

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