

[Non-binding translation from German]

## **Joint Report**

### **of the Executive Board of SAP AG and the management of SAP Sechste Beteiligungs- und Vermögensverwaltungs GmbH**

pursuant to Section 293 a of the German Stock Corporation Act (*Aktiengesetz*, "AktG")  
on the Control and Profit Transfer Agreement between SAP AG and  
SAP Sechste Beteiligungs- und Vermögensverwaltungs GmbH

#### **I. General information**

The Executive Board of SAP AG and the management of Sechste Beteiligungs- und Vermögensverwaltungs GmbH hereby submit the following report on the Control and Profit Transfer Agreement between SAP AG and SAP Sechste Beteiligungs- und Vermögensverwaltungs GmbH (hereinafter the "Subsidiary"), which will be presented to the General Meeting of Shareholders (*Hauptversammlung*) of SAP AG for approval on May 25, 2011.

#### **II. Conclusion of the Control and Profit Transfer Agreement**

On March 23, 2011, SAP AG concluded a Control and Profit Transfer Agreement with the Subsidiary (hereinafter also referred to as the "Agreement"). The effectiveness of the Control and Profit Transfer Agreement is conditional upon the approval of both the General Meeting of Shareholders of SAP AG and the approval of the shareholders' meeting (*Gesellschafterversammlung*) of the Subsidiary.

The Executive Board and the Supervisory Board of SAP AG will therefore propose at the 24th annual General Meeting of Shareholders of SAP AG called for May 25, 2011 that the Control and Profit Transfer Agreement be approved.

Pursuant to Section 294 (2) AktG, the Agreement will not become effective before its registration in the commercial register at the place of the Subsidiary's registered office.

#### **III. Parties to the Control and Profit Transfer Agreement**

##### **1. SAP AG**

SAP AG, having its registered office in Walldorf and entered in the commercial register of the Local Court (*Amtsgericht*) of Mannheim under HRB 350269, is a listed stock corporation under German law (*Aktiengesellschaft*) and the ultimate holding company of the SAP Group. According to its Articles of Incorporation, the corporate purpose of the Company is to directly or indirectly engage in activities in the area of the development, production and marketing of products and the provision of services in the field of information technology, particularly in the following fields:

- developing and marketing integrated product and service solutions for e-commerce;
- developing software for information technology and licensing its use to others;
- organization and deployment consulting as well as user training for e-commerce and other software solutions;
- selling, leasing, renting and arranging the procurement and provision of all

other forms of use of electronic data processing systems and relevant accessories;

- making capital investments in enterprises active in the field of information technology to promote the opening of and expansion into international markets in the field of information technology.

SAP AG is authorized to act in all of the business areas listed above and to delegate such activities to affiliated companies (*verbundene Unternehmen*) within the meaning of Sections 15 *et seq.* AktG; SAP AG is in particular authorized to outsource its business in whole or in part to such companies. SAP AG is authorized to establish branch offices in Germany and elsewhere, to establish, acquire, and invest in other companies of the same or a related kind and to enter into cooperation and joint venture agreements. SAP AG is further authorized to invest in enterprises of all kinds principally for the purpose of placing financial resources. SAP AG is authorized to sell investments and to place the management of enterprises in which it participates under uniform control as well as to enter into affiliation agreements with such enterprises, or to do no more than manage its investment. Finally, SAP AG is authorized to take all actions and measures that are consistent with its corporate purpose or that directly or indirectly further its corporate purpose.

## **2. The Subsidiary**

The Subsidiary is a company with limited liability under German law. It was established on February 25, 2011 upon the adoption of its Articles of Association by notarial deed (roll of deeds no. 5 UR 93/2011) of notary public Manfred Gaul, notary's office of Heidelberg, and was registered in the commercial register of the Local Court of Mannheim under register number HRB 711411 on March 4, 2011. According to its Articles of Association, the Subsidiary's registered office is in Walldorf, Germany. The Subsidiary's fiscal year is the calendar year.

According to its Articles of Association, the corporate purpose of the Subsidiary is the acquisition and management of investments, taking over the management, the investment in commercial companies (*Handelsgesellschaften*) as a general partner or the acquisition of investments as a limited partner in limited partnerships (*Kommanditgesellschaften*) as well as the management of its own assets. The Subsidiary may establish, take over and represent other enterprises of the same or a related kind in Germany and elsewhere; it may also acquire investments in such enterprises and establish branch offices. The Subsidiary may also engage in all transactions that are suitable to further its own corporate purpose and that of its companies.

The Subsidiary has not taken up operations yet. For the time being, it is a mere shelf company (*Vorratsgesellschaft*). The company currently has no employees and no operative business. No profits have been generated to date.

A copy of the Subsidiary's opening balance sheet is attached to this report as Schedule 1. The Subsidiary's sole shareholder is SAP AG, directly holding 100% of its shares. The Subsidiary's sole managing director, authorized to represent the company alone, is Michael Junge.

## **IV. Legal and economic reasons for the conclusion of the Control and Profit Transfer Agreement**

The conclusion and the effective implementation of a control and profit transfer agreement (having regard to the control terms thereof) are best suited to ensure the unified control of the Subsidiary's management and its integration into the SAP Group.

The Control and Profit Transfer Agreement will in particular enable the Executive Board of SAP AG to issue directions to the Subsidiary's management in the overriding interest of the Group and to ensure that SAP AG and the Subsidiary will conduct their operations uniformly.

Although the Subsidiary's shareholders' meeting may issue directions to the management, there is no sufficient legal certainty as to the extent to which the shareholders' meeting (or any other corporate body authorized to do so under the Articles of Association) may also issue disadvantageous directions to the management. The Control and Profit Transfer Agreement provides the necessary legal clarity and allows even disadvantageous directions to be issued to a wide extent. Moreover, a formal resolution is required for each direction issued by the shareholders' meeting. For these reasons, the power granted to the shareholders' meeting to issue directions is not as suited to achieve the intended unified control of the Subsidiary as a control agreement. The conclusion of a control and profit transfer agreement allows SAP AG (having regard to the profit transfer terms thereof) to achieve tax optimization. The conclusion of the Control and Profit Transfer Agreement is an essential requirement for establishing a fiscal unity for corporate income and trade tax purposes (*körperschaft- und gewerbsteuerliche Organschaft*) (fiscal unity for income tax purposes (*ertragsteuerliche Organschaft*)) between SAP AG and the Subsidiary. A fiscal unity for income tax purposes will enable both companies to achieve tax optimization. In particular, it will ensure that the Subsidiary's profits taxable in Germany will not be taxed at the level of the Subsidiary but attributed to and taxed at the level of SAP AG; likewise, SAP AG will have to assume any losses incurred at the level of the Subsidiary. Ultimately, the income of the Subsidiary will be set off against the taxable (positive or negative) income of SAP AG. It can thus be avoided that profits of one company must be taxed while the other company incurs losses that are not, or not yet, tax deductible. As a result, this method of setting off profits and losses on an intra-group level will reduce the total tax burden and eventually serve group financing purposes.

The Control and Profit Transfer Agreement is intended to be concluded even prior to the Subsidiary taking up its operations in order to ensure that the benefits of the Control and Profit Transfer Agreement described above can be attained in the Subsidiary's future activities. The Agreement will already at this stage be submitted to the General Meeting of Shareholders of SAP AG for approval in order for the Subsidiary to be included in the fiscal entity (*steuerlicher Organkreis*) of SAP AG as early as during the current fiscal year, if necessary. SAP AG, if it were to acquire companies or carry out intra-group restructurings, will in this manner be able to attain on a short-term basis a tax optimized integration in the SAP Group through the Subsidiary. However, there are currently no specific plans as to the use of the Subsidiary.

## **V. Explanation of the Control and Profit Transfer Agreement**

A copy of the Control and Profit Transfer Agreement is attached to this report as Schedule 2. The key terms of the Agreement are explained below.

### **1. § 1 Management of the Subsidiary's Business**

Pursuant to Clause 1 (1) sentence 1 of the Agreement, the Subsidiary places the management of its company under the control of SAP AG. This is to lay down the transfer of decision-making powers, which is an essential part of a control agreement.

Clause 1 (1) sentence 2 of the Agreement provides for the controlling company's power to issue directions, which is a characteristic feature of a

control agreement. SAP AG is thus entitled to issue directions to the management of the Subsidiary with respect to the management of its business. As the Agreement does not contain any provisions to the contrary, directions may also be issued which are disadvantageous to the Subsidiary in accordance with Section 308 (1) sentence 2 AktG, provided that they serve the interests of SAP AG or the SAP Group. SAP AG may thus exercise a decisive controlling influence on the management of the Subsidiary's business.

However, Clause 1 (2) of the Agreement provides for an exception insofar as the power to issue directions does not extend to the amendment, maintenance or termination of the Control and Profit Transfer Agreement itself. The content of this Clause is in accordance with the statutory provision laid down in Section 299 AktG and is intended to enable the controlled Subsidiary and its management to freely decide in its own responsibility on the content of the Agreement and its term.

The above provisions are customary for a control and profit transfer agreement.

## **2. § 2 Transfer of Profits**

Clause 2 (1) sentence 1 of the Agreement lays down the obligation to transfer the entire profits to the other contracting party, which is a characteristic feature of a profit transfer agreement. During the term of the Agreement, the Subsidiary will be obligated to transfer all of its profits to SAP AG.

Pursuant to Clause 2 (1) sentence 2 of the Agreement, the profits to be transferred are, in accordance with Section 301 AktG as currently in force and subject to the establishment and dissolution of reserves pursuant to Clause 2 (3) of the Agreement, the annual net profits arising without the transfer of profits in accordance with the relevant provisions of German commercial law, less any loss carried forward from the preceding year, any amount to be transferred to the statutory reserve pursuant to Section 300 AktG and the amount not available for distribution pursuant to Section 268 (8) of the German Commercial Code (*Handelsgesetzbuch*; "HGB"). Clause 2 (1) sentence 3 of the Agreement provides that Section 301 AktG is to apply *mutatis mutandis* as amended from time to time.

Pursuant to Clause 2 (3) sentence 1 of the Agreement, the Subsidiary may allocate amounts from the annual net profits to the revenue reserves pursuant to Section 272 (3) HGB with the consent of SAP AG, to the extent this is permissible under applicable commercial law and justified in economic terms on the basis of reasonable commercial assessment. Pursuant to Clause 2 (3) sentence 2 of the Agreement, any other revenue reserves pursuant to Section 272 (3) HGB established during the term of the Agreement must, upon SAP AG's request, be dissolved and be used to compensate any annual net loss or be transferred as profits. Clause 2 (3) sentence 3 of the Agreement clarifies that any other reserves and any profit carried forward from the period prior the date of the Agreement may neither be transferred as profits nor used to compensate any annual net loss.

The above provisions are customary for a profit transfer agreement.

Pursuant to Clause 2 (2) sentence 1 of the Agreement, the obligation to transfer profits will for the first time apply for the full fiscal year of the Subsidiary in which the Agreement takes effect. In addition, the next sentence contains specific provisions regarding the constitution, due date and

interest payable on the claim for the transfer of profits: Pursuant to Clause 2 (2) sentence 2 of the Agreement, the claim for transfer of profits will in each case arise and fall due at the end of the fiscal year, and interest will be payable thereon as from such date in accordance with Sections 352 (1), 353 HGB, i.e. at a rate of 5% p.a. This is intended to set off any loss in interest income of SAP AG.

### 3. § 3 Assumption of Loss

Clause 3 (1) sentence 1 of the Agreement provides for the obligation of SAP AG as the controlling company to compensate, in accordance with Section 302 (1) AktG, any annual net loss of the Subsidiary which would otherwise arise during the term of the Agreement in accordance with the relevant provisions of applicable commercial law, unless such annual net loss is compensated by withdrawal pursuant to Clause 2 (3) sentence 2 of the Agreement of amounts from the other revenue reserves pursuant to Section 272 (3) HGB which were allocated to such reserves during the term of the Agreement. This obligation to assume losses necessarily results from the Control and Profit Transfer Agreement. Clause 3 (1) sentence 2 of the Agreement provides that in the event of any amendment, Section 302 (1) AktG will apply *mutatis mutandis* as amended from time to time.

Clause 3 (2) of the Agreement refers to the statutory provisions laid down in the additional paragraphs of Section 302 AktG and also provides that, in the event of any amendment, Section 302 AktG will apply *mutatis mutandis* as amended from time to time.

Section 302 (3) AktG governs the Subsidiary's options to waive the compensation claim and to reach a settlement on such claim. In the present case, the reference made to Section 302 (3) AktG therefore currently entails, in particular, the following: The Subsidiary may waive or reach a settlement on the compensation claim no earlier than three years from the date on which the registration of the termination of the Agreement in the commercial register is deemed to have been announced pursuant to Section 10 HGB. This does not apply in the event that SAP AG is insolvent or compounds with its creditors to avert insolvency proceedings or if arrangements for compensation are made in an insolvency plan.

Pursuant to Section 302 (4) AktG, the claim for the compensation of losses becomes statute-barred after ten years from the date on which the registration of the termination of the Agreement in the commercial register is deemed to have been announced pursuant to Section 10 HGB.

The above provisions of Clause 3 of the Agreement are customary for a control and profit transfer agreement.

Pursuant to Clause 3 (3) sentence 1 of the Agreement, the obligation to assume losses for the first time applies for the full fiscal year of the Subsidiary in which the Agreement takes effect. With regard to the constitution, due date and the interest payable on the obligation concerning the assumption of losses, Clause 3 (3) sentence 2 of the Agreement refers to the corresponding provision on the transfer of profits, i.e. the Subsidiary's claim will arise and fall due at the end of the fiscal year, and interest will be payable thereon as from such date in accordance with Sections 352 (1), 353 HGB, i.e. at a rate of 5% p.a. This is intended to set off any loss in interest income of the Subsidiary.

#### 4. § 4 Effectiveness and Term

Pursuant to Clause 4 (1) sentence 1 of the Agreement, the conclusion of the Agreement is conditional upon the approval of the general meeting of shareholders of SAP AG and the shareholders' meeting of the Subsidiary. This is to take account of Section 293 (1) and (2) AktG. Clause 4 (1) sentence 2 of the Agreement provides that the Agreement will become effective upon registration in the commercial register at the place of the Subsidiary's registered office. The requirement of registration at the place of the Subsidiary's registered office for the effectiveness of the Agreement ensues from Section 294 (2) AktG.

Clause 4 (2) through (5) of the Agreement contains provisions concerning the term and termination of the Agreement. Clause 4 (2) sentence 1 of the Agreement provides that the Agreement will be concluded for a minimum term of five full years (which do not have to coincide with the calendar year). The period for the calculation of such minimum term commences at the beginning of the Subsidiary's fiscal year during which the Agreement becomes effective upon registration in the commercial register at the place of the Subsidiary's registered office, but no earlier than at the beginning of the fiscal year to which Section 14 (1) sentence 1 of the German Corporate Income Tax Act (*Körperschaftsteuergesetz*, "KStG") applies for the first time. Section 4 (2) sentence 2 of the Agreement provides that the Agreement may not be terminated during the initial five-year term. Current legislation (Section 14 (1) sentence 1 no. 3 in conjunction with Section 17 KStG) requires a minimum term of five full years (which do not have to coincide with the calendar year) for the establishment of a fiscal unity for corporate income tax purposes. After the expiration of the minimum term, the Agreement may be terminated by notice. The Agreement will be automatically renewed after the minimum term for an additional period of one year, unless terminated in writing by either contracting party upon three months' notice to the end of the calendar year (Clause 4 (3) sentence 1 of the Agreement).

The provision in Clause 4 (4) of the Agreement is also intended to ensure the minimum term of five full years (which do not have to coincide with the calendar year) required for the recognition of a fiscal unity for corporate income tax purposes. In the event that a fiscal year of the Subsidiary during the term of the Agreement comprises less than twelve calendar months or a fiscal unity for corporation tax purposes (*körperschaftsteuerliche Organschaft*) is not recognized by the tax authorities for the first year of validity of this Agreement, the minimum term of the Agreement is extended by additional complete (short) fiscal years up to the expiration of at least five full years (which do not have to coincide with the calendar year).

Moreover, Clause 4 (5) sentence 1 of the Agreement clarifies that both contracting parties have the right to terminate the Agreement at any time for cause without observing any notice period. Pursuant to Clause 4 (5) sentence 2 of the Agreement, a termination for cause is deemed possible in particular in the event that SAP AG ceases to hold the majority of the voting rights in the Subsidiary or for any other reason within the meaning of R60 (6) sentence 2 of the German Income Tax Rules of 2004 (*Körperschaftsteuer-Richtlinien 2004*) or any other provision replacing such provision.

#### 5. § 5 Final Provisions

Pursuant to Clause 5 (1) of the Agreement, the parties among other things

intend to effectively establish a fiscal unity for income tax purposes (*ertragsteuerliche Organschaft*) by entering into the Agreement. The so-called severability clause contained in Clause 5 sentence 2 of the Agreement ensures the validity and practicability of the Agreement in the event that individual provisions are invalid or impracticable at the time of its conclusion or will become invalid or impracticable at a later date, e.g. by a change in legislation or court practice.

## **VI. Miscellaneous**

### **1. No determination pursuant to Sections 304, 305 AktG**

As SAP AG holds all shares in the Subsidiary, there is no need to determine any compensation payments according to Section 304 AktG or any offers for consideration according to Section 305 AktG. Consequently, there is also no requirement for the companies concerned to be valuated. The Agreement has no effect on the stakes held by the shareholders of SAP AG within the meaning of Section 293 a (2) AktG, either.

### **2. No review of the Control and Profit Transfer Agreement**

As SAP AG holds all shares in the Subsidiary, there is no requirement for a review of the Agreement by a contract auditor (*Vertragsprüfung*) pursuant to Section 293 b AktG.

Walldorf, March 24, 2011

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