SOFTWARE LICENSE AND SUPPORT AGREEMENT
General Terms and Conditions
("GTC")

软件许可与支持协议
一般条款与条件
("GTC"或"一般条款与条件")

1. DEFINITIONS.
定义

1.1 "Add-on" means any development using SAP API's that adds new and independent functionality, but does not modify existing SAP functionality.

"增强模块（亦称为"加载项"或"扩展组件"）"是指使用 SAP API 所作的任何开发，该等开发添加了新的、独立的功能，但不修改现有的 SAP 功能。

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.

"API"是指 SAP 的应用程序设计接口以及允许其他软件产品连接或访问本协议中规定的 SAP 软件的其他 SAP 程序代码（例如，SAP Enterprise Services、BAPIs、Idocs、RFCs 和 ABAP 或其他用户出口）。

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.

"关联企业"是指被许可人在地域内直接或间接拥有超过百分之五十（50%）股份或表决权的任何法人实体。任何该等法人实体仅在前述股权维持在 50%以上时方可视为一家关联企业。

1.4 "Business Partner" means a legal entity that requires access to the Software in connection with Licensee's internal business operations, such as customers, distributors and/or suppliers of Licensee.

"业务合作伙伴"是指需要就被许可人的内部业务运营，如被许可人的客户、经销商和/或供应商，而访问软件的法人实体被许可人。

1.5 "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.

就 SAP 而言，"保密信息"是指 SAP 防止向他人不受限制地进行披露的一切信息，包括但不限于：(a) 软件和文档及其他 SAP 材料，包括但不限于以下与软件相关的信息：(i) 计算机软件（目标代码和源代码）、软件中包含的编程技术和编程概念、处理方法、系统设计；(ii) 基准结果、手册、程序列表、数据结构、流程图、逻辑图、功能说明、文件格式；以及(iii) 与软件相关的发现、发明、概念、设计、流程图、文档、产品说明、应用程序接口说明、技术和流程；(b) SAP 的研发或调查；(c) 产品报价、内容合作伙伴、产品价格、产品可用性、技术图纸、运算法则、工序、想法、技术、程式、数据、图表、商业秘密、专有技术、改进、营销策划、预测与策略；及(d) 与第三方相关的任何信息（在不违反一项适用于该等第三方的保密义务的前提下向 SAP 提供的信息）。就被许可人而言，"保密信息"是指被许可人防止向他人不受限制地进行披露的一切信息以及：(i) 若以有形形式出现的，被许可人在披露时明确将之列为保密或专有的信息；以及(ii) 若以无形形式出现的（包括以口头或视觉方式披露），被许可人在披露时将之列为保密，对保密信息进行书面概述，并在任何该等披露发生之日起起三十（30）个日历日内递交该等书面概述的信息。

1.6 "Documentation" means SAP's documentation which is delivered or made available to Licensee with the Software under this Agreement.

"文档"是指根据本协议与软件一同交付予或提供给被许可人的 SAP 的文档。

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.

"知识产权"是指在任何国家，根据成文法或习惯法或通过合约产生的，无论是否完整、现有或此后申请、颁发或取得的任何类型的专利权、外观设计权、实用新型或其他类似发明权利、著作权、屏蔽作品权、商业秘密或保密权、商标、商号和服务标识及任何其他无形财产权，包括对前述任何一项权利的申请与注册。

1.8 "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, alternative user interfacesor the extension of SAP data structures; or (iii) any other change to the Software (other than an Add-on) utilizing or incorporating any SAP Materials (defined below).

"修改"是指(i) 对已交付的源代码或元数据的变更；或(ii) 对已交付的源代码或元数据的变更以外的任何开发，该等开发对软件的现有功能作出定制、提升或变更，包括但不限于创建任何新的应用程序接口、选择性用户接口或 SAP 数据结构的扩展；或(iii) 运用或结合任何 SAP 材料（定义如下）对软件（除增强模块以外）进行的任何其他变更。

1.9 "Professional Services Schedule" means the terms and conditions governing SAP's delivery of professional services, attached hereto and made a part hereof.

"专业服务附件"是指关于 SAP 专业服务交付的条款与条件，该附件为本协议之附件，构成本协议的一部分。

1.10 "SAP Materials" means any software, programs, tools, systems, data or other materials made available by SAP to Licensee in the course of the performance under this Agreement including, but not limited to, the Software and Documentation, as well as any information, materials or feedback provided by Licensee to SAP relating to the Software and Documentation.

"SAP 材料"是指 SAP 在履行本协议过程中向被许可人提供的任何软件、程序、工具、系统、数据或其他材料，包括但不限于软件和文档，以及被许可人向 SAP 提供的与软件和文档有关的任何信息、材料或反馈。

1.11 "SAP Support" means SAP's then-current SAP support offering made available to Licensee, as stated in the applicable SAP Support Schedule attached hereto and made a part hereof.

"SAP 支持服务"是指在适用的 SAP 支持服务附件中所述的 SAP 届时有效的向被许可人提供的 SAP 支持服务，该附件为本协议之附件，构成本协议的一部分。

1.12 "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.

"软件"是指(i) 本协议所附之软件订购单列明的，根据本协议向被许可人许可的、由 SAP、SAP AG、Business Objects Software Limited 和/或这些公司的任何关联公司开发或为前述公司开发并根据本协议向被许可人交付的任何及所有软件产品；(ii) 根据相关支持服务协议的约定，通过不受限制的交付方式提供的前述产品的任何新的版本，以及(iii) 前述任一产品或服务的任何完整或部分复制件。

1.13 "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. The Software Order Form does not include fees for professional services, which shall be billed under separate statements of work in accord with the Professional Services Schedule.

"软件订购单"是指软件订购单以及被许可人定购的有关 SAP 支持服务的订购单，包括关于软件的信息、SAP 支持服务、费用以及向被许可人交付该等内容所需的其他信息。软件订购单不包括专业服务费用，该等费用应根据专业服务附件中单独的工作说明书的约定收取。

1.14 "Territory" means the territory stated in the Software Order Form.

"地域"是指软件订购单中所述的地域。

1.15 "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.

"第三方软件"是指本协议所附之软件订购单列明的，根据本协议向被许可人许可的任何及所有由 SAP、SAP AG、Business Objects Software Limited 和/或这些公司的任何关联公司以外的其他公司开发并根据本协议向被许可人许可的任何和所有产品及内容；(ii) 根据相关的 SAP 支持服务附件的约定，通过不受限制的交付方式提供的前述产品的任何新的版本，以及(iii) 前述任一产品或服务的任何完整或部分复制件。

1.16 "Use" means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

"使用"是指激活软件的处理性能、加载、执行、访问、利用软件，或展示通过该等性能取得的信息。

2. LICENSE GRANT.
许可的授予

2.1 License.
许可

2.1.1 Subject to Licensee's compliance with all the terms and conditions of this Agreement, SAP grants to Licensee a non-exclusive, perpetual (except for subscription based licenses) license to Use the Software, Documentation, and other SAP Materials at specified site(s) within the Territory to run Licensee's and its Affiliates' internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations and as further set forth in the Software Order Form, unless terminated in accordance with Section 5 herein. This license does not permit Licensee (without being limited specifically to such restrictions) to: (i) use the SAP Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training) other than to Affiliates (subject to Section 2.2); (ii) lease, loan, resell, sublicense or otherwise distribute the SAP Materials, other than distribution to Affiliates (subject to Section 2.2); (iii) distribute or publish keycode(s); (iv) make any Use of or perform any acts with respect to the SAP Materials other than as expressly permitted in accordance with the terms of this Agreement; (v) use Software components other than those specifically identified in the Software Order Form, even if it is also technically possible for Licensee to access other Software components. Business Partners may Use the Software only through screen access and solely in conjunction with Licensee's Use and may not Use the Software to run any of Business Partners' business operations.

在被许可人遵守本协议全部条款与条件的前提下，且除非 SAP 根据本协议第 5 条终止许可，SAP 向被许可人授予一项非专有的永久性（以预订为基础的许可除外）许可，许可其在地域内的规定地点使用软件、文档及其他 SAP 材料开展被许可人及其关联企业的内部业务运营（包括客户备份和被动灾难恢复）以及就该等内部业务运营提供内部培训和测试及软件订购单中进一步约定的事项。本项许可不允许被许可人（不专门限于该等限制）：(i) 使用 SAP 材料向关联企业（以第 2.2 条的约定为准）以外的第三方提供服务（例如，业务流程外包、服务集中应用程序或第三方培训）；(ii) 除向关联企业（以第 2.2 条的约定为准）分发以外，对 SAP 材料进行出租、借贷、转售、分许可或以其他方式进行分发；(iii) 分发或公布关键代码；(iv) 以本协议条款明确允许的行为以外的其他行为使用或处理 SAP 材料；(v) 使用软件订购单中明确规定的软件组件以外的其他软件组件，即使被许可人在技术上能够实现对其他软件组件的访问。业务合作伙伴只能通过屏幕访问方式且仅能够与被许可人一起使用软件，且不可使用软件开展业务合作伙伴的任何业务运营。

2.1.2 Licensee agrees to install the Software only on information technology devices (e.g. hard disks or central processing units) identified by Licensee pursuant to this Agreement that has been previously approved by SAP in writing or otherwise officially made known to the public as appropriate for Use or interoperation with the Software (the "Designated Unit") and which are located at Licensee's facilities and are in Licensee's direct possession. Where SAP has agreed in writing, the information technology devices may also be located in the facilities of an Affiliate and be in the Affiliate's direct possession. Licensee must hold the required licenses as stated in the Use Terms for any individuals that Use the Software, including employees or agents of Affiliates and Business Partners. Use may occur by way of an interface delivered with or as a part of the Software, a Licensee or third-party interface, or another intermediary system. If Licensee receives licensed Software that replaces previously licensed Software, its rights under this Agreement with regard to the previously licensed Software end when it deploys the replacement Software for Use on productive systems. At that time, Licensee shall comply with Section 5.2 of this Agreement with respect to such previously licensed Software.

被许可人同意仅在被许可人根据本协议确定的且 SAP 之前已经书面同意或以其他适当方式为公众所知的用于软件的使用或与软件共同使用的信息技术装置（例如，硬盘或中央处理器）（"指定装置"）上安装软件，且该等装置位于被许可人所在地且由被许可人直接占有。经 SAP 书面同意，信息技术装置也可位于关联企业所在地并由关联企业直接占有。被许可人须为任何使用软件的个人，包括关联企业和业务合作伙伴的员工或代理人，持有使用条款中所述的必要许可。软件可经由一个与软件一同交付或作为软件一部分的接口、被许可人或第三方接口或另一中间系统实现使用。被许可人如收到替代先前的许可软件的许可软件，其在本协议项下对先前的许可软件的权利在其部署替代软件在生产系统上使用时终止。届时，被许可人应遵守本协议第 5.2 条中关于该等先前的许可软件的规定。

2.1.3 The terms and conditions of this Agreement relative to "Software" apply to Third Party Software except as otherwise stated in the Software Use Rights Schedule.

本协议中与"软件"有关的条款与条件适用于第三方软件，但软件使用权附件中另有规定的除外。

2.2 Affiliate Use. Affiliates' Use of the Software, Documentation and other SAP Materials to run their internal business operations as permitted under Section 2.1.1 is subject to the following: (i) the Affiliate agrees to be bound by the terms herein in the form of Schedule A ("Affiliate Use Agreement") attached hereto; and (ii) a breach of such Affiliate Use Agreement by Affiliate shall be considered a breach by Licensee hereunder. If Licensee has an affiliate or subsidiary with a separate agreement for SAP software licenses and/or support services with SAP AG, any SAP AG affiliate (including SAP) or any other distributor of SAP software, the Software shall not be Used to run such affiliate's or subsidiary's business operations and such affiliate or subsidiary shall not receive any support services under this Agreement even if such separate agreement has expired or is terminated, unless otherwise agreed to in writing by the parties.

关联企业使用。关联企业根据第 2.1.1 条的规定使用软件、文档及其他 SAP 材料开展其内部业务运营须遵守以下条款：(i) 关联企业通过签署本协议附件 A（"关联企业使用协议"）的形式同意其受制于本协议条款的约束；并且 (ii) 关联企业违反该等关联企业使用协议的，应视为被许可人违反本协议。被许可人的关联企业或子公司如就 SAP 软件许可和/或支持服务与 SAP AG、SAP AG 的关联企业（包括 SAP）或 SAP 软件的任何其他经销商达成单独协议的，除非各方另有书面约定，软件不得被用于开展该等关联企业或子公司的业务运营，且该等关联企业或子公司不应获得本协议项下的任何支持服务，即使该等单独协议已期限届满或被终止。

2.3 Outsourcing Services. With SAP's prior written consent, Licensee may permit services providers to access the Software solely for the purpose of providing facility, implementation, systems, application management or disaster recovery services to Licensee in connection with the business of Licensee for which the Software is herein licensed provided: (i) Licensee and such services provider execute a written agreement that includes provisions requiring such services provider's compliance with the terms of this Agreement prior to such access, including without limitation non-disclosure of SAP Confidential Information; (ii) Licensee shall hold the required licenses as stated in the Use Terms for all employees of such services provider authorized to access the Software; (iii) such services provider shall be permitted to Use the Software solely to install and configure the Software in accordance with the business of Licensee as set forth herein (or in the case of a disaster recovery vendor, to provide disaster recovery services only); (iv) under no circumstances may such services provider Use the Software to operate or provide processing services to Licensee or any other party, or in connection with such services provider's own business operations; (v) Licensee shall be responsible for any additional Software, migration tools, or third party software needed to effect such transition; and (vi) Licensee expressly agrees to indemnify SAP, its officers, employees, agents and subcontractors from and against all claims, liabilities, losses, damages and costs (including reasonable attorney fees) suffered by SAP arising from a breach by the services provider of the conditions of this Agreement. Upon SAP request, Licensee shall provide written confirmation to SAP that items (i)-(iv) are fulfilled.

外包服务。经 SAP 事先书面同意，被许可人可以允许服务供应商仅为被许可人向被许可人的被许可使用软件的业务提供设施、实施、系统、应用程序管理或灾难恢复服务的目的而访问软件，但前提是：(i) 被许可人和该等服务供应商签署一份书面协议，在其中规定该等服务供应商在进行访问之前需遵守本协议的条款，包括但不限于对 SAP 保密信息予以保密的条款；(ii) 被许可人应为该等服务供应商的所有被授权访问软件的员工持有使用条款中所述的必要许可；(iii) 该等服务供应商应被允许仅使用软件以根据本协议中规定的被许可人业务安装和配置软件（或如果是灾难恢复服务提供商，则仅提供灾难恢复服务）；(iv) 在任何情况下，该等服务供应商均不可使用软件操作或向被许可人或任何其他人提供处理服务 ，或为了该等服务供应商的自身业务运营而使用软件；(v) 被许可人应对任何额外软件、迁移工具或实现该等转换所需的第三方软件承担责任；并且 (vi) 被许可人明确同意就因服务供应商违反本协议条件对 SAP 造成的一切索赔、债务、损失、损害和支出（包括合理的律师费用）向 SAP、其管理人员、员工、代理人和分包商给予补偿并使之免受此类损害。经 SAP 要求，被许可人应向 SAP 出具书面确认证明其已经履行第(i)至(iv)项的规定。

3. VERIFICATION. SAP shall be permitted to audit (at least once annually and in accordance with SAP standard procedures, which may include on-site and/or remote audit) the usage of the SAP Materials. Licensee shall cooperate reasonably in the conduct of such audits. In the event an audit reveals that (i) Licensee underpaid license fees and/or SAP Support fees to SAP and/or (ii) that Licensee has Used the Software in excess of the license quantities or levels stated in the Software Order Form, Licensee shall pay such underpaid fees and/or for such excess usage based on SAP List of Prices and Conditions Software and Support governing use in effect at the time of the audit, and shall execute an additional Software Order Form in accordance with the terms of this Agreement to affect the required licensing of any additional quantities or levels. Reasonable costs of SAP's audit shall be paid by Licensee if the audit results indicate usage in excess of the licensed quantities or levels. SAP reserves all rights at law and equity with respect to both Licensee's underpayment of License fees or SAP Support fees and usage in excess of the license quantities or levels.

核查。 SAP 应被允许对 SAP 材料的使用情况进行审计（至少每年一次且根据 SAP 标准程序，可能包括现场和/或远程审计）。被许可人应对该等审计的开展给予合理的配合。经审计如果发现 (i) 被许可人向 SAP 支付的许可费用和/或 SAP 支持服务费用金额不足和/或 (ii) 被许可人对软件的使用已超过软件订购单中规定的许可数量或等级，则被许可人应当根据审计之时在使用方面有效的 SAP 价格列表和软件与支持服务条件支付该等少付的费用和/或该等超数量或级别使用的费用，并且应当根据本协议条款签署一份额外的软件订购单，以使任何额外数量或等级所需的许可有效。如果审计结果表明使用超出许可数量或等级的，SAP 审计的合理支出应由被许可人支付。对被许可人不足额支付许可费用或 SAP 支持服务费用以及超出许可数量或等级的使用行为，SAP 保留一切法定权利和契约权利。

4. PRICE AND PAYMENT.
价格和支付

4.1 Fees. Licensee shall pay to SAP license fees for the Software and fees for SAP Support on the terms in Software Order Forms hereto. Fees for consulting services will be paid as set forth in the Professional Services Schedule. Any fees

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被许可人在此确认并承诺，被许可人不应将软件用于任何内在危险应用中，包括但不限于大规模杀伤性武器或与生化武器制造开发相关的活动或在任何核爆炸活动或危险核燃料循环中的活动。被许可人在此同意就前述内容另行给予书面确认并遵守有关出口管制机关可能不时要求的其他该等手续。

9.2 Exclusion of Damages; Limitation of Liability. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION OR DEATH OR PERSONAL INJURY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL SAP, ITS LICENSORS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE PAID LICENSE FEES FOR THE SOFTWARE DIRECTLY CAUSING THE DAMAGES OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ATTORNEYS' FEES, COURT COSTS, INTEREST OR EXEMPLARY OR PUNITIVE DAMAGES. The provisions of this Agreement allocate the risks between SAP and Licensee. The license fees reflect this allocation of risk and the limitations of liability herein.

损害排除；责任限制。即使本协议中有任何相反规定，除因未经授权使用或披露保密信息而导致的损害或因任何一方的重大过失或故意不当行为造成的人身伤亡以外，SAP、其许可方或被许可人在任何情况下且无论主张的性质为何，均不对对方或任何其他个人或单位就超出直接导致损害的软件已经支付的许可费用的损害赔偿金额承担责任，也不对任何特别的、原发性的、继发性的或间接的损害、商誉或营业利润损失、停工、数据丢失、计算机运行失败或故障、律师费、诉讼费、利息或惩罚性损害赔偿金额承担责任。本协议的规定在 SAP 与被许可人之间进行了风险分配。许可费用反映了前述风险分配和此处的责任限制。

10. CONFIDENTIALITY.
保密

10.1. Use of Confidential Information. 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.

保密信息的使用。除为实现本协议意旨所需外，保密信息不得以任何方式复制。对方保密信息的任何复制品应为披露方的财产，并应当包含原件中带有的任何及所有保密或专有声明或图例。对于对方的保密信息，每一方均：(a) 应采取所有合理步骤（定义如下）对一切保密信息严格予以保密；并且 (b) 不应向其善意的、为行使其于本协议项下的权利需要获取保密信息的个人以外的任何人披露对方的任何保密信息。"合理步骤"是指接收方为保密其自身的类似专有及保密信息所采取的步骤，该等步骤至少须具备合理的谨慎程度。任何一方在签署本协议之前披露的保密信息应受到本协议的保护。

10.2 Exceptions. 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.

例外规定。上述对于保密信息的使用或披露的限制性规定不适用于：(a) 未经参考披露方的保密信息而由接收方独立开发，或从有权提供该等保密信息的第三方处合法获取而不存在限制性义务的保密信息；(b) 接收方未违反本协议而已经为公众所知的保密信息；(c) 在披露时已为接收方所知而无任何限制的保密信息；或 (d) 披露方书面同意免除该等限制的保密信息。

10.3 Confidential Terms and Conditions; Publicity. 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.

保密条款与条件；公开。被许可人不应向任何第三方披露本协议的条款与条件或其中包含的定价。未经对方事先书面同意，任何一方不得将对方的名称用于公开场合、广告或类似活动中，但被许可人同意 SAP 可将被许可人的名称用于客户名单中，或在双方均可接受的情况下，作为 SAP 市场推广工作（包括但不限于推荐电话与叙述、新闻推荐、现场拜访、SAPPHIRE 参与）的一部分。SAP 将尽合理努力避免推荐活动不合理地干扰被许可人的业务。

11. ASSIGNMENT. 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, including by way of sale of assets, merger or consolidation. SAP may assign this Agreement to any of its affiliates.

转让。未经 SAP 事先书面同意，被许可人不得向任何人转让、委托、质押或以其他方式让渡本协议，或其在本协议项下享有的任何权利或承担的任何义务，或 SAP 材料或 SAP 保密信息，包括以出售资产、收购或合并的方式进行让渡。SAP 可以将本协议让与其任一关联企业。

12. GENERAL PROVISIONS.
一般条款

12.1 Severability. 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.

可分割性。双方同意，本协议中的某一或某些条款在任何方面被认定为无效或不可执行，该等无效或不可执行的条款不应对本协议中的其他条款产生影响，且在解释本协议时应视为该等无效或不可执行的条款从未包含于本协议中。

12.2 No Waiver. 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.

不存在权利放弃。如果任何一方应放弃对本协议任何条款的违约行为的权利主张的，不应被视为该方由此放弃了对之前或之后相同或任何其他规定的违约行为的权利主张。

12.3 Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

副本。本协议一式两份，两份均应视为原件且应共同构成一份协议。

12.4 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.

监管事项。软件、文档和 SAP 材料均受到不同国家的出口管制法律的约束，包括但不限于美国和德国的法律。被许可人同意，未经 SAP 事先书面同意，被许可人将不为获得许可或其他监管审批而向任何政府部门提交软件、文档或其他 SAP 材料，且不向该等法律禁止的国家、个人或单位出口软件、文档和 SAP 材料。被许可人还应负责遵守被许可人登记注册所在国以及涉及被许可人和/或其关联企业对软件、文档或其他 SAP 材料的使用的任何其他国家的一切有关政府规章。

12.5 Governing Law and Arbitration; 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 the People's Republic of China, without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and China law, rules, and regulations, China 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. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within two (2) years from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

准据法和仲裁；时效。本协议以及因本协议引起或与本协议相关的任何主张及其主旨事项均应受到中华人民共和国法律的管辖并据此作出解释，但该国的法律冲突规则不予适用。外国法律、法规和规章与中国法律、法规和规章产生冲突的，应以中国法律、法规和规章为准。联合国国际货物销售合同公约不适用于本协议。已实施的统一计算机信息交易法案不适用于本协议。对于因本协议及其主旨事项引起或与之相关的任何主张，被许可人须在被许可人知道或经合理调查后应当知道引发主张的事由之日起的二（2）年内提出诉讼。

12.6 Arbitration. Except for the right of either party to apply to a court of competent jurisdiction for an injunction or other equitable relief available under applicable law to preserve the status quo or prevent irreparable harm pending the selection and confirmation of a panel or arbitrators, and for the right of SAP to bring suit on an open account for any payments due SAP hereunder, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by China International Economic and Trade Arbitration Commission in Beijing, in accordance with its rules and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Arbitration shall be conducted in the English language by a panel of three (3) members, one member selected by SAP, one member selected by Licensee and the third member, who shall be chairman, selected by agreement between the other (2) members. The chairman shall be a solicitor, and the other arbitrators shall have a background or training in computer law, computer science, or marketing of computer industry products. The arbitrators shall have the authority to grant injunctive relief in a form substantially similar to that which would otherwise be granted by a court of law. The parties agree that the arbitration proceedings and the outcome shall be kept strictly confidential and that obligations under this Section 12.5 shall survive termination or expiration of this Agreement.

仲裁。除任何一方在尚未选择并确定仲裁庭或仲裁人员时，享有的有关法律为保全现状或避免无法弥补的损害所提供的向具有管辖权的法院申请强制令或其他衡平救济的权利外，除 SAP 享有的就本协议项下应向 SAP 支付的到期未付款项提起诉讼的权利外，因本协议或违反本协议引起的或与本协议或违反本协议相关的任何纠纷或主张均应通过位于北京的中国国际经济贸易仲裁委员会根据其规则解决，且根据仲裁员的裁决作出的判决可以进入对此具有管辖权的法院。仲裁以英语进行，仲裁庭由三（3）名仲裁员组成，一名仲裁员由 SAP 指定，一名仲裁员由被许可人指定，第三名仲裁员为首席仲裁员，由另两（2）名仲裁员协议确定。首席仲裁员应为律师，其余两名仲裁员应具备计算机法律、计算机科学或计算机行业产品行销的背景或受过该等培训。各仲裁员应有权授予与法院可能授予的禁令救济形式实质相似的禁令救济。双方同意对仲裁程序和结果予以严格保密，且本第 12.6 条中规定的义务在本协议终止或有效期届满后继续有效。

12.7 Notices. 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.

通知。本协议要求或根据本协议可能作出的所有通知或报告均应以书面形式作出，并在交予位于软件订购单文首所列地址的 SAP 和被许可人各自的执行官时视为送达。本第 12.7 条或本协议其他条款中有书面形式要求的，这些要求可通过传真传送、书信往来或其他书面形式实现。

12.8 Force Majeure. 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.

不可抗力。因本协议履行一方合理控制范围以外的情形导致延迟履行或不履行本协议任何条款的（本协议项下到期应付款项的支付除外），不应构成对本协议的违约，且该条款的履行时间（如果有）应被视为相应延长，延长时间与阻碍履行的情形的持续时间相等。

12.9 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.

完整协议。本协议构成 SAP 与被许可人之间完整且唯一的约定声明，且之前的一切陈述、磋商与文书均已并入本协议并由本协议替代，且双方放弃对任何该等陈述、磋商与文书的依赖。惟经双方签字的文书方能修改本协议。本协议的效力高于可能出现于被许可人向 SAP 提供的任何订购单或其他文件中的任何额外的、冲突的或不一致的条款与条件。本协议的效力高于可能出现于软件所包含的任何点击生效的最终用户协议中的任何额外的、冲突的或不一致的条款与条件。

12.10 Hierarchy. 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 Use Terms; and (iv) the GTC.

层次结构。本协议各组成部分的规定存在矛盾或冲突的，应适用以下优先次序：(i) 软件订购单；(ii) 附件；(iii) 使用条款；和 (iv) 一般条款与条件。

12.11 Governing Language. This Agreement may be executed in the English language alone or may be executed in both the Chinese and English languages. In the event that both the Chinese and English versions are executed, and there are different interpretations of the same provision or actual contradictions, the meanings of the English version shall prevail.

使用语言。本协议可以英文签署，或同时以中文和英文签署。本协议同时以中文和英文签署的，如果对中英文版本中同一条款的解释有所歧义或相互矛盾的，应以英文版本为准。