

## END USER LICENSE AGREEMENT (FOR SAP ON PREMISE INDIRECT SALES)

最终用户许可协议（用于 SAP 企业预置型间接销售）

（“EULA”）

（以下简称“EULA”）

### 1. DEFINITIONS.

定义。

1.1 “Add-on” means any development that adds new and independent functionality, but does not modify existing SAP functionality, and is developed using SAP application programming interfaces or other SAP code that allows other software products to communicate with or call on the Software.

“扩展组件”是指用于增加独立新功能的任何开发，此类开发不会修改现有的 SAP 功能，并使用 SAP 应用程序编程接口或者支持其他软件产品与 SAP 软件通信或调用 SAP 软件的其他 SAP 代码开发而成。

1.2 “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 interest is maintained.

“关联企业”是指在相应地域内，被许可方可直接或间接拥有其超过百分之五十（50%）股份或表决权的任何法人实体。前述法人实体在所述权益维持在 50%以上水平的前提下应将之视为一家关联企业。

1.3 “Agreement” means the EULA Acceptance Form, this EULA and the Software Use Rights Schedule.

“协议”是指 EULA 认可书、本 EULA 和软件使用权利协议。

1.4 “Associated Company” means any legal entity of which a person or company has direct or indirect Control and only as long as a person or company maintains direct or indirect Control.

“关联公司”是指个人或公司对其持续拥有直接或间接控制权的任何法律实体。

1.5 “Business Partner” means a legal entity or individual 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”是指出于被许可方内部业务运营目的而访问软件的法人实体或个人，如被许可方的客户、分销商和/或供应商。

1.6 “Confidential Information” means, with respect to Licensee: Licensee’s marketing and business plans and/or financial information, and with respect to SAP: (a) the Software, 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; and (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, inventions (whether patentable or not), marketing plans, forecasts and strategies. In addition, Confidential Information of either SAP or Licensee (the party disclosing such information being the “Disclosing Party”) includes information which the Disclosing Party protects against unrestricted disclosure to others that (i) the Disclosing Party or its representatives identifies as confidential at the time of disclosure; or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure; including, without limitation, information from, about or concerning any third party that is disclosed under this Agreement.

“保密信息”，就被许可方而言，是指被许可方的市场营销计划和业务计划和/或财务信息；就 SAP 而言，是指：(a) 软件、文档以及其他 SAP 材料，包括但不限于与软件相关的下列信息：(i) 计算机软件（目标代码和源代码）、软件中体现的编程技术和理念、处理方法、系统设计；(ii) 基准结果、指南、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、产品说明书、应用程序编程接口规范、技术和流程；(b) SAP 的研发或调查；(c) 产品供应、内容合作伙伴、产品定价、产品可用性、技术设计图、算法、工序、理念、工艺、程式、数据、图表、商业秘密、技术秘密、改进、发明（无论是否可申请专利）、营销计划、预测与战略。除此之外，SAP 或被许可方（披露此类信息的一方为“披露方”）的保密信息还包括披露方防止向他人不受限制地进行披露的信息，其中包括：(i) 披露方或其代表在披露时规定具有保密性的信息；或 (ii) 根据其性质或披露时的情形应被视为具有保密性的信息，包括但不限于依据本协议披露的、由第三方提供的或涉及任何第三方或与之相关的信息。

1.7 “Control” means the power to direct or cause the direction of the affairs of an entity whether by means of direct or indirect ownership of fifty per cent (50%) or more of the voting rights or similar rights of ownership or by means of having the power to direct the management or directors whether conferred by constitutional documents, shareholder agreement or other document regulating the affairs of an entity.

“控制权”是指通过直接或间接拥有某个实体百分之五十（50%）或以上的投票权或类似所有权利，或通过章程性文件、股东协议或其他约束某一实体事务的文件而拥有对该实体的管理层或董事的指导权力，从而获得的引导或影响该实体事务发展方向的权力。

1.8 “Designated Unit” means information technology devices (e.g. hard disks or central processing units) identified by End User or Partner pursuant to or in connection with this Agreement that have been previously approved by SAP or otherwise officially made known to the public as appropriate for Use or interoperation with the Software.

“指定装置”是指最终用户或合作伙伴依据本协议或本协议相关规定指定，且经 SAP 事先核准或经正式公告为适合与软件配合使用或交互操作的信息技术设备（如硬盘或中央处理器）。

1.9 “Distributor” means the person or entity to which SAP markets and distributes certain Software and from which the Partner bought or will buy the Software in case Partner has not or will not buy the Software from SAP directly.

“分销商”是指 SAP 向其营销和分销特定软件，且合作伙伴除了可以直接向 SAP 购买软件外，还可以向其购买软件的个人或实体。

1.10 “Documentation” means SAP's then-current technical and/or functional documentation which is delivered or made available by SAP either indirectly via Distributor and/or Partner or directly to Licensee with the Software.

“文档”是指 SAP 间接通过分销商和/或合作伙伴或由 SAP 直接随软件一起交付或提供给被许可方的届时最新的技术性和/或功能性文档。

1.11 “Effective Date” means the effective date set out in the EULA Acceptance Form as “Effective Date”.

“生效日期”是指 EULA 认可书中规定为“生效日期”的日期。

1.12 “EULA Acceptance Form” means the “Acceptance Form for End User License Agreement (for SAP On Premise indirect sales)” concluded between SAP and Licensee.

“EULA 认可书”是指 SAP 与被许可方之间达成的“最终用户许可协议认可书（用于 SAP 企业预置型间接销售）”。

1.13 “EUMA” means the “SAP Delivered Support Agreement (for SAP On Premise indirect sales)” which sets out the terms and conditions under which SAP provides support to End Users.

“EUMA”是指规定了 SAP 向最终用户提供支持所依据的条款和条件的“SAP 交付支持协议（用于 SAP 企业预置型间接销售）”。

1.14 “Export Law” means all constitutions, laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits restrictive measures, trade sanctions, embargos and other legally binding requirements of all federal, country, international, state and local governmental authorities relating to export, re-export or import.

“出口法律”是指所有联邦、国家、国际组织、州和地方政府当局的与出口、再出口或进口有关的所有宪法、法律、法规、规范、条例、指令、判令、法令、禁令、规则、规定、允许限制性措施、贸易制裁、禁运和其他具有法律约束力的要求。

1.15 “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”是指因成文法或习惯法或通过合约产生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、掩膜作品权、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，包括在任何国家对前述任何一项权利的申请与注册，无论此类权利是否完整、现有抑或在此后申请、颁发或取得。

1.16 “Licensee” means the end user who is further identified in the EULA Acceptance Form as “End User”.

“被许可方”是指在 EULA 认可书中进一步确认为“最终用户”的最终用户。

1.17 “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 interfaces or 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.

“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，此类开发对软件的现有功能进行定制、增强或变更，包括但不限于创建任何新的应用程序接口、备用用户接口或 SAP 数据结构的扩展；或 (iii) 运用或结合任何 SAP 材料对软件（除扩展组件以外）进行的任何其他变更。

1.18 “Partner” means the partner which is further identified in the EULA Acceptance Form as “Partner”.

“合作伙伴”是指在 EULA 认可书中进一步确认为“合作伙伴”的合作伙伴。

1.19 “SAP” means the SAP entity which is further identified in the EULA Acceptance Form as “SAP”.

“SAP”是指在 EULA 认可书中进一步确认为“SAP”的 SAP 实体。

1.20 “SAP Delivered Support” means SAP's support offering to directly provide support to End Users subject to the terms and conditions set out in the EUMA.

“SAP 交付支持”是指 SAP 根据 EUMA 中规定的条款和条件向最终用户直接提供的支持。

1.21 “SAP Group” means SAP Parent and any of its Associated Companies.

“SAP 集团”是指 SAP 母公司及其任何关联公司。

1.22 “SAP Materials” means any software, programs, tools, systems, data or other materials made available to Licensee directly by SAP or via Partner prior to or after the Effective Date including, but not limited to, the Software and Documentation.

“SAP 材料”是指在生效日期前后由 SAP 直接向被许可方提供或通过合作伙伴提供的任何软件、程序、工具、系统、数据或其他材料，包括但不限于软件和文档。

1.23 “SAP Parent” means SAP, a European company (Societas Europaea), located at Dietmar-Hopp-Allee 16 in 69190 Walldorf, Germany and registered at the commercial register of Mannheim under the registration number HRB 350269.

“SAP 母公司”是指位于德国沃尔多夫市 Dietmar-Hopp-Allee 16 (69190) 的一家欧洲公司 SAP，其注册地为曼海姆，工商注册号为：HRB 350269。

1.24 “Software” means (i) any and all software products licensed to Licensee under this Agreement as specified in the EULA Acceptance Form, all as developed by or for the SAP Group and delivered by SAP either indirectly via Distributor and/or Partner or directly to Licensee; (ii) any new releases, updates or versions thereof, made available through unrestricted shipment pursuant to SAP support or warranty obligation; and (iii) any complete or partial copies of any of the foregoing.

“软件”是指 (i) 根据 EULA 认可书中的规定, 在本协议项下向被许可方许可的任何及所有软件产品, 所有这些软件产品均由 SAP 集团开发或为 SAP 集团而开发, 并由 SAP 通过分销商和/或合作伙伴间接或由 SAP 直接向被许可方交付; (ii) 根据 SAP 支持或保证责任, 通过无限量发售方式提供的前述所有软件产品的新发布、更新或版本; 以及 (iii) 前述任一产品的任何完整或部分副本。

1.25 “**Software Use Rights Schedule**” means the Software Use Rights Schedule current at the Effective Date of the EULA Acceptance Form which is made available at: [www.sap.com/company/legal](http://www.sap.com/company/legal).

“软件使用权利协议”是指在 EULA 认可书生效日期之时有效的软件使用权利协议, 该协议可从以下网址找到: [www.sap.com/company/legal](http://www.sap.com/company/legal).

1.26 “**Territory**” means the territory stated in the EULA Acceptance Form.

“地域”是指 EULA 认可书中所述的地域。

1.27 “**Third Party Software**” means (i) any and all software products licensed to Licensee under this Agreement as specified in the EULA Acceptance Form, all as developed by or for companies other than the SAP Group and delivered by SAP either indirectly via Distributor and/or Partner or directly to Licensee; (ii) any new releases, updates or versions thereof, made available through unrestricted shipment pursuant to SAP support or warranty obligation; and (iii) any complete or partial copies of any of the foregoing.

“第三方软件”是指 (i) 在本协议项下, 根据 EULA 认可书的规定, 向被许可方许可的任何及所有软件产品, 所有这些软件产品均由 SAP 集团以外的其他公司开发或为此类公司而开发, 并由 SAP 通过分销商和/或合作伙伴间接或由 SAP 直接向被许可方交付; (ii) 根据 SAP 支持或保证责任, 通过无限量发售方式提供的上述所有软件产品的新发布、更新或版本; 以及 (iii) 前述任一产品的任何完整或部分副本。

1.28 “**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功能, 加载、执行、访问、利用软件, 或显示通过这些功能取得的信息。

## 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, non-transferable, 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, unless terminated in accordance with the terms of this Agreement. Licensee may make Modifications and/or Add-ons to the Software in furtherance of its permitted Use under this Agreement, and shall be permitted to use Modifications and Add-ons with the Software in accordance with this Section 2.1.1 and Section 6.3. Licensee shall not: (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 EULA Acceptance Form, even if it is also technically possible for Licensee to access other Software components Licensee may permit Business Partners to Use the Software only through screen access, solely in conjunction with Licensee’s Use, and may not Use the Software to run any of Business Partners’ business operations.

在被许可方遵守本协议全部条款与条件的前提下, SAP 向被许可方授予一项非独占的、不可转让的永久性(基于租用的许可除外)许可, 允许其在地域内的规定地点使用软件、文档及其他 SAP 材料开展被许可方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), 并就此类内部业务运营提供内部培训和测试, 根据本协议条款予以终止的除外。被许可方在本协议允许的使用方式的基础上可以对软件进行修改和/或开发扩展组件, 并应依据第 2.1.1 节和第 6.3 节的规定, 将修改和扩展组件与软件结合使用。被许可方不得: (i) 使用 SAP 材料向关联企业(根据第 2.2 条的约定)以外的第三方提供服务(如业务流程外包、服务机构应用程序或第三方培训); (ii) 除向关联企业(根据第 2.2 条的约定)分发以外, 对 SAP 材料进行出租、出借、转售、再许可或以其他方式进行分发; (iii) 分发或公布密钥; (iv) 以本协议条款明确允许的方式以外的其他方式使用 SAP 材料或对 SAP 材料执行任何操作; (v) 使用 EULA 认可书中明确规定的软件组件以外的其他软件组件, 即使被许可方在技术上能够实现对其他软件组件的访问。被许可方仅可允许业务合作伙伴以屏幕访问的形式使用软件且仅与被许可方的使用一同进行, 但不允许使用软件开展合作伙伴的任何业务运营。

2.1.2 Licensee agrees to install the Software only on Designated Units located at Licensee’s facilities and in Licensee’s direct possession. With advance written notice to SAP, the information technology devices may also be located in the facilities of an Affiliate and be in the Affiliate’s direct possession. Licensee must be appropriately licensed as stated in the Software Use Rights Schedule 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 following a reasonable testing period. At the date the rights to the previously licensed Software end Licensee shall comply with Section 5.2 of this Agreement with respect to such previously licensed Software.

被许可方同意, 仅在位于被许可方所在地的指定装置中安装软件并由被许可方直接拥有。经事先书面通知 SAP, 信息技术设备也可位于关联企业所在地并由关联企业直接拥有。被许可方须为使用软件的任何个人, 包括关联企业和业务合作伙伴的员工或代理, 取得软件使用权利协议中所述的适当许可。使用可经由一个与软件一同交付或作为软件一部分交付的接口、被许可方或第三方接口或另一中间系统进行。被许可方如收到替代先前已许可软件的新许可软件, 则被许可方在一段合理的测试期后将替换软件部署在生产系统上进行使用时, 其就先前已许可软件在本协议项下的权利将随之终止。在先前已许可软件的权利终止之日, 被许可方应遵循本协议第 5.2 节中有关此类先前已许可软件的规定。

2.1.3 The terms and conditions of this Agreement relative to “Software” apply to Third Party Software except (i) Licensee shall not make Modifications and/or Add-ons to Third Party Software or otherwise modify Third Party Software unless expressly authorized by SAP; and (ii) subject to Section 12.13, as otherwise stated in the Software Use Rights Schedule.

本协议中与“软件”有关的条款和条件同样适用于第三方软件，但以下情况除外：(i) 除非 SAP 明确授权，否则被许可方不得对第三方软件进行修改和/或开发扩展组件，或者以其他方式修改第三方软件；(ii) 遵守第 12.13 节的规定，除非软件使用权利协议中另有规定。

**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) Licensee ensures that the Affiliate agrees in writing to comply with the terms of this Agreement; and (ii) a breach of the Agreement terms by Affiliate shall be considered a breach by Licensee hereunder. If Licensee has an affiliate or subsidiary with a separate license or support agreement for SAP software with any member of the SAP Group or any other distributor of SAP software, the Software shall not be Used to run such affiliate's or subsidiary's business operations even if such separate agreement has expired or is terminated, unless otherwise agreed to in writing by the parties.

**关联企业的使用。**关联企业依据第 2.1.1 节的规定使用软件、文档及其他 SAP 材料开展内部业务运营时须遵守以下条款：(i) 被许可方确保关联企业以书面形式遵守本协议的条款；并且 (ii) 关联企业违反协议条款的，应视为被许可方违反本协议。被许可方的关联企业或子公司如就 SAP 软件与 SAP 集团的任何成员或任何其他 SAP 软件分销商签订单独许可或支持协议，除非各方另有书面约定，否则，软件不得用于开展此类关联企业或子公司的业务运营，即使前述单独协议有效期届满或终止。

**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 and/or (ii) that Licensee has Used the Software in excess of the license quantities or levels stated in the EULA Acceptance Form, Licensee shall pay such underpaid fees and/or for such excess usage based on the then-current SAP price list, terms and conditions in effect at the time of the audit, and shall order the Software license quantities or levels used in excess from the Partner and/or SAP and execute an additional EULA Acceptance Form 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 with respect to both Licensee's underpayment of license fees or SAP support fees and usage in excess of the license quantities or levels. SAP may delegate to Partner or request Partner to perform any of the rights listed under this Section 3.

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无须承担责任。在以下情况下，SAP 及其许可方不承担本协议项下的责任：(i) 未依照文档使用软件的；或 (ii) 缺陷或责任由被许可方或合作伙伴、修改或扩展组件（SAP 集团成员所作修改或扩展组件并通过 SAP 支持或根据保证条款提供的除外）或第三方软件引起的；或 (iii) 软件与任何第三方软件结合使用，但被许可方没有从第三方供应商处就此类使用获得足够权限的；或 (iv) 任何被许可方未经本协议许可的活动。对于因使用软件和/或本协议项下许可的第三方软件的固有危险所引起的任何索赔或损害赔偿，SAP 及其许可方不承担任何责任。

9.2 Exclusion of Damages; Limitation of Liability. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR (I) DAMAGES RESULTING FROM (a) UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION, (b) FRAUD OR WILFUL MISCONDUCT AND (c) DEATH OR PERSONAL INJURY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR ARISING FROM EITHER PARTY'S WILLFUL MISCONDUCT OR (II) SAP'S OBLIGATIONS UNDER SECTION 8.1, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM WILL SAP, ITS LICENSORS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT IN EXCESS OF THE LICENSE FEES PAID BY LICENSEE TO PARTNER 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 PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ATTORNEYS' FEES, COURT COSTS, INTEREST OR EXEMPLARY OR PUNITIVE DAMAGES.

免除赔偿；责任限制。即使本协议中有任何相反规定，除 (I) 损害因 (a) 未经授权使用或披露保密信息而导致；(b) 欺诈或故意不当行为所导致和 (c) 因任何一方的重大过失或故意不当行为造成的人身伤亡；或 (II) SAP 在第 8.1 节中的义务以外，在任何情况下，不论何种性质的索赔，SAP、其许可方或被许可方均不会为对方或任何其他个人或实体就超出直接导致损害的软件由被许可方已付给合作伙伴的许可费的赔偿额承担责任，也不会就任何特殊的、偶发的、衍生的或间接的损害、商誉或利润损失、停工、数据丢失、计算机故障、律师费、诉讼费、利息或惩罚性赔偿等金额承担责任。

9.3 Exclusions and Limitations for Third Party Software. SUBJECT TO THE EXCLUSION OF DAMAGES STATED IN SECTION 9.2 AND WITH RESPECT TO THIRD PARTY SOFTWARE, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL SAP OR ITS LICENSORS' BE LIABLE FOR AN AMOUNT IN EXCESS OF THE PAID LICENSE FEES FOR THE THIRD PARTY SOFTWARE DIRECTLY CAUSING THE DAMAGES.

针对第三方软件的免责和限制。依据第 9.2 节中有关第三方软件的损失免责规定，在任何情况下，不论何种性质的索赔，SAP 或其许可方均不会就超出直接导致损害的第三方软件已付许可费的赔偿金额承担责任。

9.4 The provisions of this Agreement allocate the risks between SAP and Licensee. The license fees paid by Licensee reflect this allocation of risk and the limitations of liability herein. It is expressly understood and agreed that each and every provision of this Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the Parties to be severable and independent of any other provision and to be enforced as such.

本协议的规定将风险在 SAP 与被许可方之间进行了分配。被许可方支付的许可费反映了前述风险分配和本协议项下的责任限制。协议双方均明确理解并一致同意，本协议中有关责任限制、保证免责声明或免除赔偿的各项条款均各自分割且独立行使，不受本协议项下其他条款的影响。

9.5 Extension to group members. Any limitations to the liability and obligations of SAP according to this Section 9 will also apply for the benefit of any member of the SAP Group and their respective licensors.

向集团成员扩展。第 9 节规定的所有 SAP 责任和义务限制同样也适用于 SAP 集团的任何成员和其各自的许可方的利益。

## 10. CONFIDENTIALITY.

保密。

10.1. Use of Confidential Information. Confidential Information must not be used or reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the Disclosing Party 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 Disclosing Party, the party receiving the Confidential Information ("Receiving 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 and/or perform its obligations hereunder, and who are under obligations of confidentiality substantially similar to those set forth herein. 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。除了为实现本协议目的之需要外，不得以任何形式使用或复制保密信息。披露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一切及所有保密或专有声明或标识。对于披露方的保密信息，接收保密信息的一方（简称“接收方”）：(a) 应采取所有合理步骤（定义如下）对一切保密信息予以严格保密；并且 (b) 不应向为行使本协议项下的权利和/或履行其义务需要获取保密信息的真实个人及具有与本协议规定条款大体类似的保密义务的个人以外的其他人披露对方的任何保密信息。此处使用的“合理措施”是指接收方为保护自己的类似于专有和保密的信息所采取的措施，此类措施不得低于合理的谨慎程度。任何一方在签署本协议之前披露的保密信息应受到前述保密规定的保护。

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。**上述针对保密信息使用或披露的限制条款不适用于以下保密信息：(a) 未参考披露方的保密信息而由接收方独立开发的，或从有权提供此类保密信息的第三方处合法获取且不存在限制的；(b) 在接收方未违反本协议的情况下已为公众所知的；(c) 在披露时已为接收方所知且不存在限制的；或 (d) 披露方书面同意免除此类限制的。

10.3 **Confidential Terms and Conditions; Publicity.** Licensee shall not disclose the terms and conditions of this Agreement to any third party except for the Partner and the Distributor. 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 any member of the SAP Group may use Licensee's name in customer listings or, at times mutually agreeable to the Parties, as part of SAP Group's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPHIRE participation). SAP will make reasonable efforts to avoid having the reference activities unreasonably interfere with Licensee's business. Licensee agrees that SAP may share information on Licensee with any other member of the SAP Group for marketing and other business purposes and that Licensee has secured permission from its employees to allow SAP to share business contact information with any other member of the SAP Group.

**保密条款与条件；公开。**被许可方不得向任何第三方泄露本协议的条款和条件，合作伙伴和分销商除外。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，但被许可方同意 SAP 集团的任何成员可以将被许可方的名称用于客户名单中的，或作为 SAP 集团营销工作（包括但不限于样板客户拜访和案例、新闻推荐、现场拜访、参与 SAPHIRE）的一部分以双方一致同意的次数进行使用的除外。SAP 将尽合理努力避免样板客户活动不合理地干扰被许可方的业务运营。被许可方同意，SAP 可出于营销和其他业务目的与 SAP 集团的任何成员共享被许可方的信息，且被许可方已获得其员工的许可，允许 SAP 与 SAP 集团的任何成员共享业务联系信息。

11. **ASSIGNMENT.** Licensee may not, without SAP's prior written consent, assign, novate, delegate, pledge, subcontract 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, novate, delegate, pledge, subcontract or otherwise transfer this Agreement or any of its rights or obligations thereunder (in whole or in part) to any member of the SAP Group. SAP and any other member of the SAP Group may use third parties as sub-contractors for fulfilling any of its rights or obligations under this Agreement. SAP will continue to be liable for such obligations.

**转让。**未经 SAP 事先书面同意，被许可方不得转让、抵债、委托、抵押、转包或以其他方式转让（无论是基于自愿还是因法律规定而导致的）本协议、被许可方在本协议项下的任何权利或义务、SAP 材料或 SAP 的保密信息给任何人，包括以资产出售、合并或并购的方式进行的转让。SAP 可向 SAP 集团的任何成员转让、抵债、委托、抵押、转包或以其他方式转让本协议或其在本协议项下的（全部或部分）权利或义务。SAP 和 SAP 集团的任何其他成员均可使用第三方转包商履行其在本协议项下的任何权利或义务。而 SAP 将继续为此类义务承担责任。

## 12. **GENERAL PROVISIONS.**

### **一般条款。**

12.1 **Retention of data.** With regard to business transactions covered by this Agreement, Licensee must retain any records for a period of ten years starting on 1<sup>st</sup> of January of the year following the year during which the data were transmitted or otherwise transferred, or for the minimum period prescribed by applicable law, whichever is longer. In addition, Licensee must maintain current, complete and accurate reports on all of SAP's Confidential Information in its possession or in the possession of its representatives.

**数据保留。**对于本协议所涵盖之商业交易，被许可方必须将所有记录保留十年时间（从传输或以其他方式转移数据后下一年的 1 月 1 日算起）或适用法律规定的最短期限，以较长者为准。此外，被许可方必须保留有关其掌握或其代表掌握的所有 SAP 保密信息的完整且准确的最新报告。

12.2 **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 wholly or in part illegal, invalid or unenforceable in any respect, such illegality, 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. The illegal, invalid or unenforceable provision will be replaced by a valid and enforceable provision which approximates as closely as possible the intent of the invalid or unenforceable provision. This will also apply in the case of contractual gaps.

**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全部或部分被认定为非法、无效或不可执行的，此类非法、无效或不可执行的情况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此类无效或不可执行的条款从未包含于本协议中。非法、无效或不可执行的条款将由与无效或不可执行条款的意图尽可能接近的有效且可执行的条款替代。存在合同漏洞时本条款将同样适用。

12.3 **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.

**无弃权。**任何一方放弃对本协议任何条款的违约行为主张权利的，不应视为该方由此放弃了对之前或之后相同或任何其他条款的违约行为提出主张的权利。

12.4 **Counterparts.** This Agreement may be signed in one or more counterparts, each of which will be considered an original but all of which together form one and the same instrument and will be treated as if the signatures on the counterparts were on a single copy. This Agreement may be validly executed by means of transmission of signed facsimile, pdf or any other documented form for which a process has been provided by SAP. Signatures sent by fax, pdf, email or other electronic means for which a process has been provided by SAP shall be deemed original signatures.

**协议副本。**本协议可签署一份或多份副本，每份皆视为原件，但是所有副本一并构成唯一的同一份法律文件，并且所有副本上的签名都将被视为在一份副本上。本协议可通过传输经签署的传真件、pdf 或 SAP 提供流程的任何其他文档形式进行有效签署。通过传真、pdf、电子邮件或 SAP 提供流程的其他电子形式提供的签名应视为原件签名。



**12.5 Regulatory Matters.** The Software, SAP Delivered Support, Documentation and SAP Materials as well as parts of any of these (e.g. new versions, releases, updates, upgrades, patches, fixed or correction of a software product) are subject to Export Laws of various countries, including, without limitation, the laws of the People's Republic of China, the United States, the EU, Ireland and Germany. Licensee agrees that it will not submit the Software, SAP Delivered Support, Documentation or other SAP Materials or parts of any of these to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and that it will not export, re-export or import any Software, SAP Delivered Support, Documentation and/or SAP Materials to countries, persons or entities prohibited by any applicable Export Law. In that context, Licensee is responsible for complying with all applicable Export Laws. If SAP or any other member of the SAP Group wants to deliver and/or grant access to Software, SAP Delivered Support, Documentation other SAP Materials, or parts of any of these directly to a Licensee, Licensee will support SAP and any other member of the SAP Group in obtaining any required authorization, approval or other consent from the competent authorities by providing any necessary or useful declarations or other necessary or useful information, e.g. End User certificates, as may be requested by SAP or any other member of the SAP Group. Licensee acknowledges that the delivery of and/or granting of access to Software, SAP Delivered Support, Documentation and SAP Materials as well as parts of any of these may be subject to the prior obtaining of export or import authorizations or both from the competent authorities and that this process may (i) considerably delay or prevent the delivery of and/or granting of access to Software, SAP Delivered Support, Documentation and SAP Materials or part of any of these, (ii) impact SAP's ability or the ability of any other member of the SAP Group to provide SAP Delivered Support or other services and (iii) lead to SAP or any other member of the SAP Group having to limit, suspend or terminate Licensee's access to SAP Delivered Support services or other services.

**监管事项。** 软件、SAP 交付支持、文档和 SAP 材料以及任何前述项的组成部分（例如软件产品的新版本、发布、更新、升级、补丁、修补和更正）均受各个国家的出口法律的制约，包括但不限于中国、美国、欧盟、爱尔兰和德国的法律。被许可方同意，未经 SAP 事先书面同意，被许可方不得出于许可或其他监管审批的目的而向任何政府部门提交软件、SAP 交付支持、文档或其他 SAP 材料以及任何前述项的组成部分，且不得将软件、SAP 交付支持、文档和/或 SAP 材料出口、再出口或进口到任何适用出口法律所禁止的国家/地区、个人或实体。在此情况下，被许可方有义务遵守所有适用的出口法律。如 SAP 或 SAP 集团的任何其他成员希望向被许可方直接交付和/或授予其对软件、SAP 交付支持、文档或其他 SAP 材料以及任何前述项的组成部分的访问权限，被许可方应当通过提供 SAP 或 SAP 集团的任何其他成员可能要求的任何必要的或有用的声明或其他必要的或有用的信息，如最终用户证书，支持 SAP 或 SAP 集团的任何其他成员从主管当局处获得所需的授权、审批或其他准许。被许可方确认，交付和/或授予对软件、SAP 交付支持、文档或其他 SAP 材料以及任何前述项的组成部分的访问权限需事先获得主管当局的出口和/或进口授权，且这一过程可能会：(i) 明显延迟或妨碍交付和/或授予对软件、SAP 交付支持、文档或其他 SAP 材料以及任何前述项的组成部分的访问权限；(ii) 影响 SAP 或 SAP 集团任何其他成员提供 SAP 交付支持或其他服务的能力；(iii) 导致 SAP 或 SAP 集团的任何其他成员不得限制、暂停或终止被许可方对 SAP 交付支持服务或其他服务的访问。

Neither SAP nor any other member of the SAP Group assumes any responsibility or liability:

SAP 或 SAP 集团的任何其他成员均不对如下事项承担任何义务或责任：

a) for any delay caused in the delivery and/or granting of access to Software, SAP Delivered Support, Documentation and SAP Materials or parts of any of these due to export or import authorizations or both having to be obtained from the competent authorities;

因需向主管当局获取出口和/或进口授权而导致的对交付和/或授予对软件、SAP 交付支持、文档或其他 SAP 材料以及任何前述项的组成部分的访问权限的延迟；

b) if any required authorization, approval or other consent for the delivery of and/or granting of access to Software, SAP Delivered Support, Documentation and SAP Materials or parts of any of these cannot be obtained from the competent authorities;

无法从主管当局处获取交付和/或授予对软件、SAP 交付支持、文档或其他 SAP 材料以及任何前述项的组成部分的访问权限所需的授权、审批或其他准许；

c) if the delivery of and/or granting of access to Software, SAP Delivered Support, Documentation and SAP Materials or parts of any of these is prevented due to applicable Export Laws; and

交付和/或授予对软件、SAP 交付支持、文档或其他 SAP 材料以及任何前述项的组成部分的访问权限受适用出口法律的阻碍；和

d) if access to SAP Delivered Support or other services has to be limited, suspended or terminated due to applicable Export Law.

因适用出口法律的规定而不得限制、暂停或终止对 SAP 交付支持或其他服务的访问。

SAP may terminate this Agreement with thirty days' prior written notice if SAP or any relevant member of the SAP Group may not deliver or grant access to Software, SAP Delivered Support, Documentation and SAP Materials to Licensee due to an embargo or other comparable trade sanction, which is expected to be in place for six months or longer.

如 SAP 或 SAP 集团的任何相关成员因禁运或其他类似的贸易制裁（预计长达六个月或更长时间），无法对被许可方交付或授予其对软件、SAP 交付支持、文档和 SAP 材料的访问权限，则 SAP 可在提前 30 天发出书面通知的情况下，终止本协议。

**12.6 Governing Law; Limitations Period; Dispute Resolution.** This Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement are governed by the laws of the People's Republic of China to the exclusion of the international law of conflicts and the UN Sales Convention. The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement (including any dispute regarding the existence, validity or termination of this Agreement) is the People's Republic of China. 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). Any dispute arising from or in connection with this Agreement shall be submitted to Shanghai International Arbitration Center ("SHIAC") for arbitration which shall be conducted in Shanghai in accordance with SHIAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties. The parties agree that the arbitration proceedings and the outcome shall be kept strictly confidential and that obligations under this Section 12.6 shall survive termination or expiration of this Agreement.

**管辖法律；时效；争议解决。** 本协议以及因本协议产生或与本协议有关的任何索赔（包括任何非合同索赔）适用中华人民共和国法律，国际冲突法和联合国销售公约不予适用。因本协议引起或与本协议相关的所有争议（包括关于本协议的存续、效力或终止的任何争议）的专属管辖地为中华人民共和国。对于因本协议及其主旨引起或与之相关的任何索赔，被许可方须在知道或经合理调查后应当知道引发索赔的事由之日起的二（2）年内提出诉讼理由。

仲裁。凡因本协议引起的或与本协议有关的任何争议均应提交上海国际仲裁中心，按照申请仲裁时该中心现行有效的仲裁规则在上海进行仲裁。仲裁裁决是终局的，对双方均有约束力。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 the EULA Acceptance Form. Where in this Section 12.7 or elsewhere in this Agreement a written form is required, except for any notice of termination or notice of a material breach which shall occur by exchange of letter(s), that requirement can be met by facsimile transmission, exchange of letters or other written form, including email or other electronic means for which a process has been provided by SAP.

**通知。**本协议要求或根据本协议可能会做出的所有通知或报告均应以书面形式做出，并在送至 EULA 认可书文首所列地址的 SAP 和被许可方各自的办公室时视为送达。第 12.7 节或本协议其他条款中有书面形式要求的，除通过书信往来发送的任何终止通知或重大违约通知外，这些要求均可通过传真传送、书信往来或其他书面形式（包括电子邮件或 SAP 提供流程的其他电子形式）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。**因超过协议任何一方合理控制原因而造成对协议任何条款的迟延履行或不能履行的（到期款项之支付义务除外），不应构成对本协议的违约，且此类条款（如有）的履行时间应被视为相应延长，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 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. This Agreement does not create any partnership, joint venture or principal-and-agent relationship.

**完整协议。**本协议构成 SAP 与被许可方之间协议的完整且唯一的陈述，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，且双方声明不再依赖任何此类陈述、磋商与文书。当本协议与被许可方提供给 SAP 的任何采购订单或其他文件中的任何其他条款和条件产生矛盾或冲突时，应以本协议的条款和条件为准。当本协议与软件中包含的任何点击生效的最终用户协议的任何其他条款和条件产生矛盾或冲突时，应以本协议的条款和条件为准。本协议不构成任何合作伙伴关系、合资关系或委托代理关系。

**12.10 Amendments.** Any modification, amendment or supplement to this Agreement (including this Section 12.10 (Amendments)) must be made in writing or in any other documented form for which a process has been provided by SAP.

**修订。**对本协议的任何修改、修订或补充（包括此处第 12.10 节：修订）必须以书面形式做出或以 SAP 已提供流程的任何其他文档形式做出。

**12.11 Effective Date.** If a Party signs a part of this Agreement but fails to date its signature, the date that the other Party receives the signing Party's signature will be deemed to be the date on that the signing Party signed that part of the Agreement.

**生效日期。**如一方在签署本协议的一部分时未填写签署日期，则另一方收到已签署方签署文件之日将被视为其签署该部分协议的签署日。

**12.12 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 EULA Acceptance Form; (ii) the EULA; (iii) the Software Use Right Schedule except with respect to third party pass-through terms for Third Party Software stated in the Software Use Rights Schedule, in which case the Software Use Rights Schedule shall prevail over any conflict or inconsistency in any component of this EULA solely with respect to such third party pass-through terms.

**效力等级。**本协议各组成部分的规定之间存在矛盾或冲突的，适用以下优先顺序：(i) EULA 认可书；(ii) EULA；(iii) 软件使用权利协议，但其中就第三方软件规定的第三方传递条款除外，在该情况下，软件使用权利协议优先于 EULA 各组成部分中的任何矛盾或冲突条款，但仅限于此类第三方传递条款。

**12.13 Survival.** Sections 3 (Verification), 5.2 (End of Term Duties), 6.1 (Reservation of Rights), 6.2 (Protection of Rights), 7 (Performance Warranty), 8 (Third Party Claims), 9 (Limitations of Liability), 10 (Confidentiality), 12.1 (Retention of data), 12.2 (Severability), 12.6 (Governing Law; Limitations Period; Dispute Resolution) shall survive any termination of this Agreement.

**存续。**第 3 节（查证）、5.2 节（终止后责任）、6.1 节（权利的保留）、6.2 节（权利的保护）、7 节（履约保证）、8 节（第三方索赔）、9 节（责任限制）、10 节（保密）、12.1 节（数据保留）、12.2 节（可分割性）、12.6 节（管辖法律；时效；争议解决）在本协议终止后继续有效。