SAP SERVICES GENERAL TERMS AND CONDITIONS

SAP 服务一般条款和条件

These SAP Services General Terms and Conditions ("GTC") are effective as of the Effective Date of the relevant Order Form and are entered into by and between SAP (China) Co., Ltd., with offices at Unit 01, 47F, No. 1717, Nanjing West Road, Jing An District, Shanghai, P. R. China, (hereinafter "**SAP**") and Prime Contractor.

本 SAP 服务一般条款和条件（以下简称"GTC"）由思爱普（中国）有限公司，其办公地址位于中华人民共和国上海市静安区南京西路 1717 号 47 楼 01 单元（以下简称"**SAP**"）与主承包商签订，自相关订购单生效日期起生效。

RECITALS

陈述

WHEREAS, Prime Contractor has obtained or may obtain contracts to provide professional services to Customers who have acquired from SAP (or an SAP SE Affiliate, or an authorized SAP reseller) a license to use certain SAP Software.

鉴于，主承包商已签订或可能签订合同，向已经从 SAP（或 SAP SE 关联企业或授权的 SAP 经销商）处获得使用特定 SAP 软件许可的客户提供专业服务。

WHEREAS, SAP provides certain services in the P. R. China (excluding Hong Kong, Macau and Taiwan) which Prime Contractor desires to obtain on the basis of certain Scope Documents as provided under an Order Form referencing and incorporating these GTC (each an "Order Form").

鉴于，SAP 在中国（不包括香港、澳门和台湾）提供主承包商希望依据引述和纳入本 GTC 的订购单（每一"订购单"）项下提供的特定范围文档获得的特定服务。

WHEREAS, Prime Contractor as the prime contractor to the Customer wishes to involve SAP as a subcontractor for such services.

鉴于，作为客户主承包商的主承包商希望 SAP 作为此类服务的分包商。

NOW, THEREFORE, the parties agree as follows:

为此，双方达成如下协议：

1. **Definitions.**

   定义。

   1.1 "Agreement" means an Order Form for Services governed by these GTC, including any documents attached to and/or referred to in the Order Form and/or GTC.

   "协议"是指受本 GTC 约束的服务订购单，包括订购单和/或 GTC 中所附和/或引用的任何文档。

   1.2 "Affiliate" of a party means any legal entity in which and as long as a party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights. Any such legal entity shall be considered an Affiliate for only such time as such interest is maintained.

   一方的"关联企业"是指一方直接或间接拥有百分之五十（50%）以上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 "Confidential Information" means, with respect to SAP, all information which SAP protects against unrestricted disclosure to others, including but not limited to: (a) the SAP Software, documentation, Work Product, SAP hosted or on-demand solution and other SAP materials, including without limitation the following information regarding the SAP Software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the software or SAP hosted or on demand services; (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 Prime Contractor, "Confidential Information" means all information which Prime Contractor or Customer protects against unrestricted disclosure to others and which: (i) if in tangible form, Prime Contractor or Customer clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Prime Contractor or Customer identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary to SAP within thirty (30) calendar days of any such disclosure.

"保密信息"就 SAP 而言，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) SAP 软件、文档、工作成果、SAP 托管或按需随选型解决方案或其他 SAP 材料，包括但不限于以下与 SAP 软件相关的信息：(i) 计算机软件（目标代码和源代码），以及软件、SAP 托管服务或按需服务中体现的程序设计技术和设计概念、处理方法和系统设计；(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、应用程序接口说明、工艺和流程；(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、运算法则、流程、想法、工艺、公式、数据、图表、商业秘密、技术秘密、改进、营销策划、预测与策略；及 (d) 与任何第三方相关的任何信息（基于 SAP 对此类第三方承担的适用保密义务而向 SAP 提供的信息）。就主承包商而言，"保密信息"是指主承包商或客户防止向他人不受限制地进行披露的一切信息以及下列信息：(i) 若以有形形式披露，主承包商或客户在披露之时明确列为保密或专有的信息；以及 (ii) 若以无形形式披露（包括以口头或视觉方式披露），主承包商或客户在披露之时列为保密的信息，且以书面形式概述此类保密信息，并于进行任何此类披露后的三十（30）日内向 SAP 递交此类书面概述。

1.4 "Consultants" means employees and third party contractors which SAP utilizes to provide Services to Prime Contractor.

"顾问"是指 SAP 通过其向主承包商提供服务的员工和第三方承包商。

1.5 "Customer" means the end customer of the Prime Contractor, with such Customer to be identified in the relevant Order Form.

"客户"是指主承包商的最终客户，此类客户在相关订购单中予以明确。

1.6 "Customer Data" means any content, materials, data and information that Prime Contractor or its authorized users enter into managed services or Customer-specific data that is derived from Prime Contractor's use of the managed services (e.g. Customer-specific reports) as long as such derivative work is not a component of the managed services itself or furnished by SAP under the Agreement. Customer Data shall not include any component of the Services or material provided by or on behalf of SAP.

"客户数据"是指主承包商或其授权用户输入托管服务的任何内容、材料、数据和信息，或主承包商使用托管服务过程中衍生的客户特定数据（如客户特定报表），此类衍生作品为托管服务的一部分或 SAP 依据本协议提供的除外。客户数据不包含服务的任何部分，或由 SAP 提供或代表 SAP 提供的材料的任何部分。

1.7 "Deliverables" means those specific Work Products which are explicitly identified as a deliverable under the applicable Order Form for delivery to Prime Contractor.

"交付物"是指根据适用的订购单，明确确认为可向主承包商交付的特定工作成果。

1.8 "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how 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、屏蔽作品权、商业秘密、专有技术或保密权、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/地区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、现有亦或在此后申请、颁发或取得。

1.9 "License Agreement" means the agreement between SAP (or an SAP SE Affiliate, or an authorized reseller of the SAP Software) and the Customer under which Customer procured or will procure the license rights to use SAP Software.

"许可协议"是指 SAP（或 SAP SE 关联企业，或 SAP 软件的授权经销商）与客户之间达成的协议，客户据此取得或将取得使用 SAP 软件的许可权利。

1.10 "Order Form" means all written order forms for Services entered into by SAP and Prime Contractor containing the pricing and other specific terms and conditions applicable for each of the Services under an applicable Order Form.

"订购单"是指 SAP 与主承包商签订的所有书面服务订购单，其中包括适用的订购单中适用于每一项服务的定价和其他特定的条款和条件。

1.11 "SAP Software" means: (i) any and all software products licensed to Customer under the License Agreement as specified in software order forms (or other order forms, schedules or appendices as applicable) thereto; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to the respective support agreement or warranty obligation and (iii) any complete or partial copies of any of the foregoing.

"SAP 软件"是指 (i) 在许可协议下，根据协议所附之软件订购单（或适用的其他订购单、附件或附录）的规定，向客户许可的任何及所有软件产品；(ii) 根据相应的支持协议或担保义务的约定，通过不受限的运输方式提供的前述产品的任何新发布版本、更新或版本，以及 (iii) 前述任一产品的任何完整或部分副本。

1.12 "Scope Document" means the document that is provided with and becomes part of the Order Form which further defines the scope of Services to be provided and other engagement specifics.

"范围文档"是指作为订购单的一部分随之一起提供，进一步规定了提供的服务范围和其他具体约定的文档。

1.13 "Services" mean those service(s) as further defined by those specific Scope Documents provided to Prime Contractor under an Order Form that references this GTC.

"服务"是指根据引用本 GTC 的订购单向主承包商提供的特定范围文档中进一步规定的服务。

1.14 "Taxes" means sales, VAT, withholding, property, excise, service or similar taxes now or hereafter levied all of which shall be for Prime Contractor's account.

"税费"是指全部应由主承包商缴纳的现在或将来所征收的营业税、增值税 (VAT)、预提所得税、使用税、物权税、消费税、服务税或类似税款。

1.15 "Work Product" means any work product or tangible results produced by or with SAP pursuant to this Agreement, including, but not limited to, works created for or in cooperation with Prime Contractor or Customer.

"工作成果"是指依据本协议，由 SAP 或与 SAP 合作生产的任何工作成果或可见成果，包括但不限于为主承包商或客户创建的成果或与主承包商或客户合作创建的成果。

1.16 "Residuals" means information in non-tangible form which may be retained in the unaided memory by persons who have had access to the Confidential Information so long as such persons have not studied the information for the purpose of replicating the same from memory.

"残留信息"是指曾经接触过保密信息的人员保留在独立记忆中的无形信息，但此类人员不得出于从记忆中复制此类无形信息的目的研究此类信息。

1.17 "SAP SE" means SAP Societas Europaea, a German corporation, with offices located in Walldorf, Germany.

"SAP SE"是指 SAP Societas Europaea，一家总部位于德国瓦尔多夫的德国公司。

1.18 "SAP SE Affiliate" means a subsidiary of SAP SE.

"SAP SE 关联企业"是指 SAP SE 的子公司。

2. Provision of Services.

服务条款。

2.1. SAP will provide the Services in accordance with the Order Form.

SAP 将根据订购单提供服务。

2.2. SAP may utilize third party contractors to perform SAP's duties. SAP shall be responsible for the performance of the Services of such third party contractors to the same extent as SAP is liable for its own Consultants.

SAP 可以利用第三方承包商来履行 SAP 的义务。SAP 应负责确保此类第三方承包商的服务履行情况达到 SAP 的自身顾问有责任达到的相同水平。

2.3. If any Service, in whole or in part, cannot be provided by SAP due to a Prime Contractor issue or a Customer issue and Prime Contractor fails to provide SAP with reasonable advance notice, the time agreed to be spent by SAP resources on such Service will be billable to Prime Contractor.

如因主承包商的问题或客户的问题使得 SAP 无法提供任何服务的全部或部分，且主承包商未能向 SAP 提供合理的事先通知，则仍按照所议定的 SAP 资源花费在此类服务上的时间向主承包商计费。

2.4. The selection of Consultants assigned or deployed to deliver Services is at SAP's sole discretion, and SAP reserves the right to replace any Consultant at any time at its sole discretion with a Consultant with equivalent skills.

SAP 自行决定选择用于交付服务的顾问，且 SAP 保留基于单方考量随时使用具备同等技能的顾问替换任何顾问的权利。

2.5. Any services, Deliverables, and Work Products provided by SAP prior to the execution of an applicable Order Form or a Change Request are the sole property and Confidential Information of SAP and shall be governed by the terms of this Agreement. If no Order Form is completed, all Services, Work Products and Deliverables must be returned or deleted and must not be used.

签署相应的订购单或变更请求之前，由 SAP 提供的任何服务、交付物和工作成果均为 SAP 的独有财产和保密信息，应受本协议条款的制约。如未达成任何订购单，则所有服务、工作成果和交付物都必须予以返还或销毁，不得使用。

2.6. Acceptance

验收

Deliverable Acceptance Procedure. Upon delivery by SAP of a completed Deliverable, Prime Contractor shall have 10 calendar days to accept or reject ("Acceptance Period") the Deliverable, due to a material defect using reasonable discretion, based on the acceptance criteria set forth in the Order Form for that Deliverable. A "material defect" means the Deliverable fails to substantially comply with the applicable and corresponding acceptance criteria for that Deliverable set forth in the Order Form. If the relevant Deliverable passes the agreed acceptance criteria set forth in the Order Form, Prime Contractor shall accept the Deliverable. Acceptance will not be unreasonably withheld by Prime Contractor. If Prime Contractor notifies SAP that it has rejected the Deliverable due to a material defect, Prime Contractor shall provide written notice, within such 10 day period, specifying the basis of the defect. SAP shall have a reasonable period to cure and redeliver the Deliverable for an additional Acceptance Period. If Prime Contractor fails to reject any Deliverable within the Acceptance Period, in a written document specifying the defect, Prime Contractor shall be deemed to have accepted such Deliverable as of the 10th day of the Acceptance Period. Upon acceptance of a Deliverable, all Services associated with such Deliverable shall be deemed accepted and SAP shall have no further obligation with respect to an accepted Deliverable. A Deliverable shall not be made available for productive use, unless it has been accepted by Prime Contractor (either expressly or by passage of time). Where acceptance criteria is not specified in the Order Form for a Deliverable, such Deliverable will be deemed complete and accepted by Prime Contractor the day after SAP performs it or delivers it.

交付物验收程序。主承包商应在 SAP 交付所完成的交付物之日起十（10）日（以下简称"验收期限"）内，基于订购单中针对该交付物规定的验收条件，接受该交付物，或运用合理的判断并基于实质性缺陷拒绝接收该交付物。"实质性缺陷"是指交付物无法切实满足订购单就该交付物所规定的适用的、相关的验收条件。如相关交付物达到订购单中约定的验收条件，则主承包商应当接受交付物。主承包商不得无理拒绝验收。如主承包商通知 SAP 其因实质性缺陷而拒绝交付物，主承包商应在此十（10）日期限内提供书面通知，指出缺陷的理由。SAP 应在

合理期限内修复和重新提交交付物，验收期限重新计算。如主承包商未能在验收期限内拒绝任何交付物并在书面文件中说明缺陷，则应视为主承包商已经在验收期限的第 10 日结束时接受了交付物。一旦接受交付物，即应视为同时接受与该交付物相关联的所有服务，并且 SAP 对于已验收的交付物不再负有任何其他义务。在主承包商验收交付物（明确验收或因超过期限视为验收）之前，不得将交付物用于生产用途。如订购单中未指定某个交付物的验收条件，则此类交付物在 SAP 执行或交付之后即视为完整交付且已由主承包商接受。

3. **Prime Contractor's General Responsibilities.**

主承包商的一般责任。

3.1. Prime Contractor is responsible for making the necessary arrangements to allow SAP to perform the Services.

主承包商需负责进行必要的安排以便 SAP 能够履行服务。

3.2. Prime Contractor shall provide and make available all Prime Contractor personnel that SAP reasonably requires in connection with performance of the Services and as may be further addressed in an applicable Order Form. Prime Contractor shall procure the availability of any Customer personnel that SAP reasonably requires in connection with performance of the Services.

主承包商根据 SAP 的合理要求，提供和准备与履行服务有关的所有主承包商人员，这些人员可在适用的订购单中进一步加以明确。主承包商应能联系到 SAP 合理要求的与履行服务相关的客户人员。

3.3. If the Services are performed at Prime Contractor's site or remotely on Prime Contractor's resources, Prime Contractor agrees to provide necessary access including, but not limited to, appropriate access to Prime Contractor premises, computer systems and other facilities. If the Services are performed at Customer's site or remotely on Customer's resources, Prime Contractor agrees to procure necessary access including, but not limited to, appropriate access to Customer premises, computer systems and other facilities.

如服务通过主承包商的资源在主承包商的现场或通过远程履行，主承包商同意提供必要的访问权限，包括但不限于针对主承包商场所、计算机系统以及其他设施的适当访问权限。如服务通过客户的资源在客户的现场或通过远程履行，主承包商同意提供必要的访问权限，包括但不限于针对客户场所、计算机系统以及其他设施的适当访问权限。

3.4. Prime Contractor shall appoint a contact person to supply SAP with any necessary or relevant information and who shall have the authority to make decisions or obtain decisions from others expeditiously. Prime Contractor may instead appoint an employee of the Customer, however subject always to the condition that the employee of the Customer shall be given full authority to make decisions on behalf of the Prime Contractor in relation to this Agreement and as required by this section. In such a case, SAP shall be entitled to fully rely on the decisions of the employee of the Customer as an authorized representative of the Prime Contractor.

主承包商应指定一名联系人，负责为 SAP 提供必要或相关的信息，并且该联系人应有权做出决定或者迅速获得他人的决策信息。主承包商也可以指定一名客户员工，但前提是该客户员工应有完全的权限代表主承包商制定与本协议相关以及本节要求的决策。这种情况下，SAP 应有权全面依据作为主承包商授权代表的客户员工所制定的决策。

3.5. Prime Contractor ensures to have all necessary license rights including third party license rights required for the Services. Prime Contractor agrees to ensure that Customer has all necessary license rights including third party license rights required for SAP's performance of the Services.

主承包商负责确保其拥有履行服务所需的所有必要的许可权利，包括第三方许可权。主承包商同意确保客户拥有 SAP 履行服务所需的所有必要许可权利，包括第三方许可权。

Before commencing live operation with any provided Service and/or Deliverable (including any Services provided to remedy a defect) Prime Contractor – who shall have a use right for test purposes only - should test the provided Services and Deliverables thoroughly for defect resolution and for suitability in the situation.
在对任何提供的服务和/或交付物（包括为弥补缺陷而提供的任何服务）进行生产使用之前，主承包商（应拥有仅用于测试的使用权利）应对提供的服务和交付物进行全面测试，以发现缺陷并确保适用。

Prime Contractor is responsible for appropriate precautions against the possibility that the works may have or cause faults and take precautions including, for example, data backups, error diagnosis, and regular results monitoring (including data quality). Except where otherwise expressly stated in writing in each individual case, SAP Consultants are always entitled to act on the assumption that all data with which they come into contact has met these precautions. 主承包商负责采取适当的措施防止工作成果出现或引发故障，预防措施包括，数据备份、错误诊断和常规结果监测（包括数据质量）等。除在个案中另行明确书面规定外，SAP 顾问在采取行动时将默认其接触到的所有数据均已采用了上述预防措施。

Contractual collaboration requires a high level of trust, interaction and willingness to agree. Except in emergencies, a limited time fixed by Prime Contractor pursuant to the law or this Agreement and/or an Order Form must not be less than 10 working days. If, from a failure to comply with any fixed time limit, a right accrues to Prime Contractor to be released from the Agreement and/or an Order Form (e. g. by rescission, termination, or claim for damages in lieu of performance) or to a price reduction for breach, SAP is entitled, after the expiration of the time limit, to give notice requiring Prime Contractor to exercise that right not later than two weeks after receiving the notice. 契约合作需要双方之间有充分的信任、互动和达成一致意见的意愿。除紧急情况外，主承包商根据法律或本协议和/或订购单采取纠正措施的时间期限不得少于十（10）个工作日。如因未能遵守任何此类时间期限，使主承包商获得不受本协议和/或订购单约束（例如，解除、终止或提出损失赔偿作为替代）或因违约而降低价格的权利，则 SAP 有权在该时间期限届满后通知主承包商，要求其在接到通知两周内行使该权利。

4. **Change Request Procedures.**

   变更请求程序。

   4.1. Either party can request changes to the Service in accordance with the change request form attached to the Order Form or provided by SAP from time to time ("Change Request").

   协议双方均可根据订购单所附的或 SAP 不时提供的变更请求表，请求对服务进行变更（以下简称"变更请求"）。

   4.2. SAP is not required to perform under a Change Request until agreed to and signed by the parties.

   在双方一致同意并签字确认之前，SAP 不需要依据变更请求实施任何行为。

5. **Satisfaction with Personnel.**

   对人员的满意度。

   If at any time Prime Contractor or SAP is dissatisfied with the material performance of an assigned Consultant or a Prime Contractor project team member, the dissatisfied party shall promptly report such dissatisfaction to the other party in writing and may request a replacement. In the case of SAP dissatisfaction with a Customer project team member, SAP shall report such dissatisfaction to the Prime Contractor. The other party shall use its reasonable discretion in accomplishing any such change (which also, in the case of SAP, shall be subject to staffing availability).

   如任何时候主承包商或 SAP 对指定顾问或主承包商项目团队成员的实际表现不满意，不满意的一方应及时以书面形式将这种不满意情况报告给另一方，并可请求换人。如 SAP 对客户项目团队成员不满意，SAP 应将这种不满意情况报告给主承包商。另一方应经过合理的判断处理任何此类变更请求（就 SAP 而言，这还应取决于人员的可用性）。

6. **Compensation of SAP.**

   SAP 的报酬。

   6.1 SAP will provide an invoice specifying the fees for each of the Services in accordance with the terms of the Order Form. Payment is due thirty (30) days after the invoice is issued. If payment is not received by SAP within such thirty (30) days period, SAP may (without affecting any other rights or remedies that it has), (i) charge late payment interest in accordance with applicable law and/or (ii) suspend performance of the Services provided that it has given Prime Contractor at least seven (7) days' prior written notice of its intention to do so.

SAP 应依据订购单的规定针对每一项服务的费用开具发票。付款应于开具发票后三十(30)日内支付。如果 SAP 没有在该三十(30)日内收到付款，SAP 可以（不影响任何其他可得权利或救济）(i) 保留根据相关法律收取延迟支付利息的权利，和/或 (ii) 在 SAP 提前七(7)日书面通知主承包商的前提下暂停履行服务。

6.2 Fees and other charges described in the Agreement do not include Taxes. Any applicable direct pay permits or valid tax-exempt certificates must be provided to SAP prior to the execution of the Agreement. If SAP is required to pay Taxes, Prime Contractor shall reimburse SAP for such amounts. Prime Contractor hereby agrees to indemnify SAP for any Taxes and related costs (including those related to the long term assignment of SAP employees), interest and penalties paid or payable by SAP. This Section shall not apply to taxes based on SAP's income.

本协议所载之费用及其他收费均不含任何税费。签署协议前，必须向 SAP 提交任何适用的直接支付许可或有效免税证明。若 SAP 被要求支付任何税费，主承包商应偿付 SAP 该等税费。主承包商谨此同意，对 SAP 已付或应付的任何税费及其相关费用（包括与长期指派 SAP 员工有关的费用）、利息及罚金进行补偿。本节不适用于基于 SAP 收入的税费。

6.3 SAP's remuneration (or SAP's receipt of such remuneration) shall not in any way be conditioned upon the Prime Contractor receiving payment from the Customer.

在任何情况下，SAP 的报酬（或 SAP 收到此类报酬）不应以主承包商收到客户付款为前提条件。

7. **Term and Termination.**

期限和终止。

7.1 Term of the GTC. These GTC shall remain in effect unless terminated earlier by either party in accordance with this Section 7.

GTC 期限。除非任何一方按照本节（第 7 节）的规定提前终止本 GTC，否则本 GTC 将持续有效。

7.2 Termination of the GTC for Convenience. Either party may terminate this GTC for convenience upon thirty (30) days prior written notice to the other party. If these GTC are terminated for convenience prior to the completion of one or more Order Forms, such termination will not affect the continuation of any such Order Form as governed by these GTC.

任意终止 GTC。任何一方均可在提前三十（30）天书面通知另一方后随时终止本 GTC。如在一个或多个订购单完成之前任意终止本 GTC，则此类终止不影响受本 GTC 制约的任何此类订购单的继续执行。

7.3 Term of an Order Form or Service. Each Order Form and Service shall be effective on the effective date set forth in that Order Form, and shall remain in effect until end of term or completion of the Services in accordance with the Order Form, the respective Scope Document, or terminated earlier by either party in accordance with this Section 7. For the avoidance of doubt, the termination of any particular Service in accordance with this Section 7 shall not cause or result in the termination of any other Services ordered under the same Order Form nor reduce Prime Contractor's liability for payments to SAP.

订购单或服务的期限。订购单和服务应自订购单上规定的生效日期起生效，并在依据订购单、相应的范围文档规定的期限届满之前或服务完成之前、或任何一方依据第 7 节的规定提前终止之前持续有效。为避免疑义，依据第 7 节规定对任何特定服务的终止不应导致或造成同一订购单下任何其他订购服务的终止，亦不应减少主承包商对 SAP 负有的付款义务。

7.4 Termination of an Order Form for Convenience. Except as otherwise agreed in an Order Form, each Order Form (excluding fixed-price Services and excluding subscription based Services) may be terminated by either party (except for customer development projects which can only be terminated by SAP), upon thirty (30) days' prior written notice to the other party.

任意终止订购单。除非订购单中另有约定，否则订购单（不包括固定价格服务和基于租用的服务）均可由任何一方（仅可由 SAP 终止的客户开发项目除外）在提前三十（30）日书面通知另一方之后予以终止。

7.5 Termination of Agreement and/or an Order Form for cause.

因故终止协议和/或订购单。

Either party may terminate these GTC and/or an Order Form for cause:

任何一方均可出于下列原因终止本 GTC 和/或订购单：

7.5.1 upon thirty (30) days prior written notice of the other party's material breach of any provision (including more than thirty (30) days delinquency in Prime Contractor's payment of any money due hereunder or any Order Form) of the Agreement unless such party has cured such breach during such thirty (30) day period; or

在提前三十（30）日书面通知另一方其已实质性违反本协议任何条款（包括主承包商拖欠本协议或任何订购单下任何到期应付款项超过三十（30）日的情况后予以终止，除非该违约方在此三十（30）日期限内纠正了此类违约行为；或者

7.5.2 immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise breaches materially its obligations in Confidential Information or assignment.

如另一方进入破产申请程序、无力偿还债务或者为债权人利益进行分配，或实质性违反了其在"保密信息"或"转让"中的义务，则可立即予以终止。

7.6 Effect of Termination. Prime Contractor shall be liable for all payments to SAP, including all fees and expenses for all Services incurred in the performance of such Services up to the date on which any termination takes effect. All Confidential Information of the other party provided in connection with this Agreement in the possession of such party shall, subject to any legal retention rights and upon request of the other party be returned to the disclosing party or destroyed with certification of such destruction from an individual of authority to bind the respective party. The obligation to return or destroy Confidential Information does not apply to Work Products that are provided by SAP to Prime Contractor, unless the Order Form or Agreement is terminated by SAP in accordance with section 7.5 herein.

终止的效力。主承包商有责任向 SAP 支付所有款项，包括截至任何终止的生效日期之前在履行服务的过程中发生的所有此类服务的所有费用和开支。任何一方所保留的另一方依据本协议提供的所有保密信息，均应适用任何法律保留权利并应在另一方请求时返还给另一方，或者予以销毁，并且由独立权威机构提供有关此销毁的证明以约束相关方。返还或销毁保密信息的义务不适用于 SAP 提供给主承包商的工作成果，除非 SAP 依据本协议第 7.5 节规定终止订购单或协议。

8. **Intellectual Property Rights.**

知识产权。

8.1 All title to and rights in the Services, Deliverables and Work Products, and all Intellectual Property Rights embodied therein, including techniques, knowledge or processes of the Services and/or Deliverables (whether or not developed for Prime Contractor'), shall be the sole and exclusively property of SAP and SAP SE. Prime Contractor agrees to execute and to ensure its third parties execute such documentation as reasonably necessary to secure SAP's or SAP SE's title over such rights.

服务、交付物和工作成果的全部所有权和权利以及其中所含的所有知识产权，包括服务和/或交付物（无论是否是为主承包商开发的）的技术、知识或流程，均属 SAP 和 SAP SE 的专有财产。主承包商同意签署并确保其第三方签署保护 SAP 或 SAP SE 的此类权利的合理的必要文件。

8.2 Once all amounts due under an Order Form are paid in full and all claims have been satisfied, Prime Contractor is granted a non-exclusive, non-transferable license in SAP Deliverables and Work Product solely to permit Prime Contractor to sub-license such SAP Deliverables and Work Product to the Customer for the duration of the license granted to Customer under the License Agreement to run Customer's and its Affiliates' internal business operations to the same extent as Customer is granted a license to use the SAP Software, documentation and SAP Confidential Information in the License Agreement, so long as: (i) Prime Contractor complies with the terms of this Agreement; and (ii) Customer complies with the terms of the License Agreement.

当足额支付了订购单项下的所有应付款项并满足所有要求后，主承包商将获得 SAP 交付物和工作成果的非独占且不可转让的许可，仅用于允许主承包商在依据许可协议向客户授予许可的期限内，向客户分许可此类 SAP 交付物和工作成果，以进行客户及其关联企业的内部业务运营，并根据许可协议的规定，在所获许可的范围内使用 SAP 软件、文档和 SAP 保密信息，但前提是 (i) 主承包商遵守本协议条款以及 (ii) 客户遵守许可协议的条款。

8.3 Prime Contractor must immediately notify SAP in writing if any third party gains unauthorized access to SAP proprietary materials or Confidential Information. Prime Contractor shall take all

reasonable steps to stop such unauthorized access. Prime Contractor shall also undertake such notification and informing duties on behalf of the Customer and shall ensure that the Customer takes all necessary steps to stop such unauthorized access.

如任何第三方未经授权获取了 SAP 专有材料或保密信息，主承包商必须立即书面通知 SAP。主承包商应当采取一切合理的措施阻止此类未经授权的获取。主承包商还应代表客户承担此类通知和告知义务，且应确保客户采取所有必要措施阻止此类未经授权的获取。

9. **Confidentiality.**

    保密。

    9.1 Use of Confidential Information. Confidential Information shall not be reproduced in any form except as required by the receiving party to perform its obligations under 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。除接收方依据本协议履行其义务所需外，不得以任何形式复制保密信息。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标识。对于对方的保密信息，双方均：(a) 应采取合理步骤（定义如下）对一切保密信息予以严格保密；并且 (b) 不应向其真实的、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其他人披露对方的任何保密信息。此处提及的"合理措施"是指接收方为保护其自身的类似专有及保密信息所采取的措施，且此类措施不得低于合理注意标准。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约束。

    9.2 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。上述针对保密信息的使用或披露的限制性规定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而不存在限制性义务的；(b) 接收方未违反本协议而该保密信息已经为公众所知；(c) 在披露时已为接收方所知且不存在限制性义务的；或 (d) 披露方书面同意免除此类限制性义务的。

    9.3 Confidential Terms and Conditions; Publicity. Prime Contractor shall not disclose the terms and conditions of this Agreement including the pricing contained in an Order Form to any third party including the Customer (save for any practical, non-commercial terms required by SAP to be passed through to the Customer by the Prime Contractor). 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 Prime Contractor agrees that SAP may use Prime Contractor's name in customer listings and to analyze and leverage details from this Agreement (e.g., to forecast product demand), as part of SAP's marketing efforts (including without limitation reference calls and site visits at times mutually agreeable to the parties, press testimonials, site visits, SAPPHIRE participation). SAP will make reasonable efforts to avoid having to reference activities that unreasonably interfere with Prime Contractor's business. Prime Contractor will take reasonable steps to procure similar rights for SAP in relation to the use of Customer's name and Customer information if required. Prime Contractor agrees that SAP may share such information with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Prime Contractor and Customer employee contact information with SAP as needed.

<u>保密条款和条件；公开</u>。主承包商不得向包括客户在内的任何第三方披露本协议的条款和条件，包括订购单中的定价信息（SAP 要求主承包商告知客户的任何非商业性实践条款除外）。未经另一方事先书面同意，任何一方不得将对方的名称用于公开场合、广告宣传或类似活动中，但主承包商同意 SAP 将主承包商的名称作为 SAP 的营销工作（包括但不限于双方一致同意的样板客户电话沟通和现场拜访、媒体推荐、现场拜访和参加 SAPPHIRE 大会）的一部分，用于客户名单中以及分析和利用来自本协议的详细信息（例如，用于预测产品需求）的除外。SAP 将尽合理努力避免样板客户活动不合理地干扰主承包商的业务运营。在需要时，主承包商应采取合理措施帮助 SAP 获得使用客户名称和客户信息的类似权利。主承包商同意，SAP 可出于营销和其他业务目的与其关联企业分享此类信息，且主承包商已获得在必要时与 SAP 分享主承包商和客户员工联系信息的相应授权。

10. <u>**Feedback.**</u>

   <u>反馈信息。</u>

   Prime Contractor may be invited to participate in certain evaluations, presentations, meetings, surveys or discussions (collectively, "Discussions") for the purpose of informing Prime Contractor of SAP's business and technology direction, and to allow Prime Contractor (or as used herein includes Prime Contractor's affiliates), at its sole discretion, to provide SAP (or as used herein SAP SE or other SAP entity) with input, comments or suggestions from Prime Contractor, regarding SAP's business and technology direction and/or the possible creation, modification, correction, improvement or enhancement of the software, products and/or services of SAP, (collectively "Feedback"). Prime Contractor grants to SAP SE a non-exclusive, perpetual, irrevocable, worldwide, transferable, royalty-free license, with the right to sublicense through multiple tiers, under all relevant Prime Contractor Intellectual Property Rights, to use, publish, disclose, perform, copy, make, have made, use, modify, create derivative works, distribute, sell, offer for sale and otherwise benefit from Feedback in any manner and via any media. Content of Discussions may include areas outside the scope of Services and may relate to any SAP software, products, solutions and/or services. Confidential Information disclosed or made available by SAP or Prime Contractor during Discussions may only be used for the purpose of the Discussions and shall be protected from unauthorized use and disclosure in accordance with Section 9 of these GTC. Prime Contractor acknowledges that the information related to software, products, services, business or technology plans of SAP, disclosed during the Discussions, is only intended as possible strategies, developments, and functionalities and is not intended to bind SAP to any particular course of business, product strategy, and/or development. In the event that Customer may be invited to participate in such Discussions and to provide Feedback, Prime Contractor shall make all reasonable efforts to assist SAP in acquiring Customer's written agreement to substantially similar terms, as a pre-requisite to Customer participation. For clarity, Customer shall not participate in such Discussions unless such agreement is provided in writing.

   SAP 可以邀请主承包商参加一些评估、演示、会议、调查或讨论（以下统称"讨论"），以便将 SAP 的业务和技术方向告知主承包商，并使主承包商（此处主承包商亦包括主承包商的关联企业）可以自行决定向 SAP（此处 SAP 是指 SAP SE 或其他 SAP 实体）提供与 SAP 的业务和技术方向和/或 SAP 的软件、产品和/或服务可能进行的创建、修改、更正、改进或增强有关的看法、意见或建议（以下统称"反馈"）。主承包商授予 SAP SE 非独占的、永久的、不可撤销的、全球范围内的、可转让的、免交特许权使用费的许可，SAP 凭借此权利可向多级授予从属许可，使之有权依据主承包商的所有相关知识产权，通过任何方式和介质使用、发布、披露、执行、复制、制作、代其制作、使用、修改、创建衍生作品、分发、买卖、出售或通过任何其他方式从此类反馈信息中获益。讨论的内容可能包括服务范围之外的内容，也可能与任何 SAP 软件、产品、解决方案和/或服务相关。SAP 或主承包商在讨论过程中披露或提供的任何保密信息只能用于讨论目的，且依据本 GTC 第 9 节的规定不得未经授权使用和对外披露。主承包商兹确认：SAP 在讨论过程中披露的与 SAP 软件、产品、服务、业务或技术计划相关的所有信息，仅拟作为潜在的战略、开发和功能信息，不对 SAP 的任何特定业务流程、产品战略和/或开发路线构成约束。如客户受邀参加此类讨论并提供反馈，作为客户参与的前提条件，主承包商应尽合理努力协助 SAP 获得客户对实质上类似的条款的书面同意。特此澄清，除非客户书面同意遵守此类条款，否则客户不得参与此类讨论。

11. <u>**Warranty.**</u>

   <u>保证。</u>

   11.1 SAP warrants that its Services shall be performed in a professional workman-like manner by Consultants with the skills reasonably required for the Services.

   SAP 保证其服务将由拥有合理技能的顾问以专业水准提供。

SAP warrants that for thirty (30) days following provision of the Service the Deliverables will materially conform with the specifications for that Deliverable in accordance with the respective Scope Document. For clarity, the warranty period for Deliverables (if any) resulting from any subscription based Services will in no event exceed the termination date of the subscription based Services.

SAP 保证在服务提供后三十（30）天内，交付物将在实质上符合相应的范围文档中对该交付物的说明。特此澄清，任何情况下，任何基于租用的服务产生的交付物（如有）的保证期限都不得超过基于租用的服务的终止日期。

SAP does not warrant error-free or uninterrupted operation of any Service or Deliverable or that SAP will correct all non-conformities. SAP does not warrant that the Deliverables are designed to meet all of Customer's business requirements.

SAP 不保证任何服务或交付物不会出现错误或运行中断，也不保证会对所有不符合的情况进行纠正。SAP 不保证交付物的设计满足客户的所有业务需求。

Prime Contractor shall notify SAP within thirty (30) days of provision of the Service or Deliverable in writing of the alleged warranty breach and provide SAP with a precise description of the problem and all relevant information reasonably necessary for SAP in order to rectify such warranty breach.

主承包商应在提供服务或交付物的三十 (30) 天内就声称的违反服务保证的情况书面通知 SAP，并将问题的准确描述以及 SAP 为改正此类违反服务保证的行为而合理要求的所有相关信息提供给 SAP。

11.2 Provided Prime Contractor has notified SAP in accordance with section 11.1 of a warranty breach and SAP validates the existence of such warranty breach, SAP will, at its option:

如主承包商已依据第 11.1 节规定将违反服务保证的具体情况说明通知 SAP 并且 SAP 证实此类违反保证情况的存在，SAP 将自行决定：

　　i.　　re-perform the applicable Services or Deliverable;

　　　　重新提供相应的服务或交付物；

　　ii.　　refund the fee paid or reallocate quota for the specific non-conforming Service or Deliverable.

　　　　退还针对特定不合规服务或交付物已支付的费用或重新分配配额。

This is Prime Contractor's sole and exclusive remedy for a warranty breach.

这是主承包商就违反保证情况所能获得的唯一且专有的补救措施。

The warranty shall not apply:

下列情形不适用保证：

　　a.　　if the Deliverables are not used in accordance with the Documentation; or

　　　　交付物未按照文档要求进行使用，或

　　b.　　if the alleged warranty breach is caused by a modification to the Deliverable, Prime Contractor or third-party software.

　　　　因修改交付物，以及主承包商或第三方的软件导致声称违反服务保证。

11.3 SAP and its licensors disclaim all warranties express or implied or statutory, including without limitation, any implied warranties of merchantability or fitness for a particular purpose except to the except to the extent that any warranties implied by law cannot be validly waived.

SAP 与其许可方不承担任何明示、默示或法定的保证责任，包括但不限于任何有关适销性及适合特殊用途的默示保证，但法律规定不得免责的默示保证除外。

12. <u>Third Party Claims.</u>

<u>第三方索赔。</u>

12.1 <u>Claims Brought Against Prime Contractor</u>. SAP shall defend (at its sole expense) Prime Contractor against claims brought against Prime Contractor by any third party alleging that Prime Contractor's

pass-on of the Deliverable, in accordance with the terms and conditions of the Agreement, constitutes an infringement or misappropriation of a patent claim(s), copyright, or trade secret rights. SAP will indemnify Prime Contractor against all damages finally awarded by a court of competent jurisdiction against Prime Contractor (or the amount of any settlement SAP enters into) with respect to such claims. This obligation of SAP shall not apply if the alleged infringement or misappropriation results from: (a) use of the Deliverable in conjunction with any other software, services, or any product, data or apparatus that SAP did not provide; or (b) anything Prime Contractor or Customer provides including configurations, instructions or specifications; (c) a modification of the Deliverable by Prime Contractor or Customer or by a third party on behalf of Prime Contractor or (d) any use not permitted by the Agreement.

对主承包商提出的索赔。任何第三方声称主承包商依据本协议的条款和条件提供交付物的行为构成对专利申请、版权或商业秘密权的侵权或盗用并因此而对主承包商提出索赔的，SAP 应自行承担费用为主承包商提供抗辩。SAP 应承担由具有管辖权的法院就此类索赔作出的终审判决对主承包商造成的损失（或 SAP 达成的任何和解金额）。如声称的侵权或盗用因以下情形造成，则 SAP 不承担此义务：(a) 将交付物与任何其他软件、服务或非由 SAP 提供的任何产品、数据或装置一起使用；或 (b) 主承包商提供的任何内容，包括配置、说明或规范；或 (c) 主承包商、客户或代表主承包商的第三方对交付物的修改；或 (d) 协议不允许的任何使用。

12.2 Remedies. In the event of a claim under Section 12.1 is made or in SAP's reasonable opinion is likely to be made, SAP may, at its sole option and expense: (i) procure for Prime Contractor the right to continue using the Deliverable under the terms of the Agreement; or (ii) replace or modify the Deliverable to be non-infringing without material decrease in functionality. If SAP provides written notice to Prime Contractor that the foregoing options are not reasonably available, Prime Contractor shall be entitled to a refund for the infringing portion of the Deliverable subject to return or cessation of use of the refunded Deliverable.

补救措施。如根据第 12.1 节的规定构成索赔，或以 SAP 的合理判断可能构成索赔，SAP 可自行选择并承担费用：(i) 为主承包商取得根据本协议的条款继续使用交付物的权利；或 (ii) 在不实质性减少功能的情况下更换或修改交付物，做到不侵权。若 SAP 向主承包商发出书面通知，说明前述选项无法合理实现，则主承包商应有权就交付物的侵权部分获得退款，并返还或停止使用已针对其退款的交付物。

12.3 Claims Brought Against SAP. Prime Contractor shall defend SAP and its affiliated companies against claims brought against SAP by any third party arising from or related to: (i) any Prime Contractor or Customer use of the Services in violation of any applicable law or regulation; (ii) an allegation that the Customer Data, Prime Contractor's use of the Services, Customer's use of the Services or anything Prime Contractor has provided to SAP including access to third party software or proprietary information violates, infringes or misappropriates the rights of a third party. The foregoing shall apply regardless of whether such damage is caused by the conduct of Prime Contractor, Customer, and/or its named users or by the conduct of a third party using Prime Contractor's or Customer's access credentials.

对 SAP 提出的索赔。任何第三方因下列原因导致对 SAP 提出索赔的，主承包商应为 SAP 及其关联企业提供抗辩：(i) 主承包商或客户违反任何适用法律或法规使用服务的任何行为；(ii) 声称因客户数据、主承包商对服务的使用、客户对服务的使用或主承包商提供给 SAP 的任何内容（包括访问第三方软件或专有信息）妨碍、侵犯或盗用第三方权利。不论是因主承包商、客户和/或其指定用户（或亦称为命名用户）的行为还是使用主承包商或客户访问凭据的第三方的行为导致的此类损害，前述义务均适用。

12.4 Procedure. The obligations under this Section 12 are conditioned on: (a) the party against whom a third party claim is brought timely notifying the other party in writing of any such claim, provided however that a party's failure to provide or delay in providing such notice shall not relieve a party of its obligations under this Section 12 except to the extent such failure or delay prejudices the defense; (b) the party who is obligated hereunder to defend a claim having the right to fully control the defense of such claim; and (c) the party against whom a third party claim is brought reasonably cooperating in the defense of such claim. Any settlement of any claim shall not include a financial or specific performance obligation on or admission of liability by the party against whom the claim is brought, provided however that SAP may settle any claim on a basis requiring SAP to substitute for the Services any alternative substantially equivalent non-infringing services. The party against whom a third party claim is brought may appear, at its own expense, through counsel reasonably acceptable to the party obligated to defend claims hereunder. Neither party

shall undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation that is prejudicial to the other party's rights.

程序。第 12 节项下所述义务的前提条件为：(a) 第三方索赔所针对的一方应及时就此类索赔书面通知另一方，但该方未能提供或延迟提供此类通知不应免除该方在第 12 节下应承担的义务，此类未能提供或延迟提供行为未对抗辩造成危害的除外；(b) 有义务进行抗辩的一方有权全权控制此类索赔的抗辩事宜；及 (c) 第三方索赔所针对的一方应在此类索赔的抗辩过程中予以合理的配合。但任何索赔的任何和解结果均不应构成此类索赔所针对一方的经济赔偿或特定履行义务或赔偿责任，但可要求 SAP 使用实质上相同的备选非侵权服务替换服务，以此来解决此类索赔。针对其提出第三方索赔的一方可通过承担抗辩义务一方合理认可的律师提出诉讼，并承担相关费用。任何一方不得就任何侵权或盗用或声称的侵权或盗用作出任何有损于另一方权利的行为。

12.5 <u>Exclusive Remedy</u>. The provisions of this Section 12 state the sole, exclusive, and entire liability of the parties, their Affiliates and their licensors to the other party, and is the other party's sole remedy, with respect to third party claims covered hereunder and to the infringement or misappropriation of third-party intellectual property rights.

<u>排他补救措施</u>。第 12 节规定了协议双方及其关联企业和许可方就本协议项下涉及的第三方索赔及侵犯或盗用第三方知识产权对另一方唯一的、排他性的和全部的责任以及唯一的补救措施。

13. <u>Limitation of Liabilities.</u>

<u>责任限制。</u>

13.1 Notwithstanding anything herein to the contrary, except for damages resulting from (i) unauthorized use or disclosure of Confidential Information (including Customer Data), or (ii) damages resulting from death or bodily injury arising from either party's gross negligence or willful misconduct, or (iii) SAP's right to collect unpaid fees, under no circumstances and regardless of the nature of the claim shall either party (or their respective Affiliates or SAP's licensor's) be liable to each other to or any other person or entity under the Agreement for an amount of damages in excess of the fees paid for the applicable Services under the relevant Order Form or in the case of subscription based Services including managed services, the fees paid in the twelve (12) month period preceding the date of the incident giving rise to the liability, or, any special, incidental, consequential, or indirect damages, loss of good will or business profits, work stoppage or for exemplary or punitive damages.

即使本协议中有任何相反规定，除 (i) 因未经授权使用或披露保密信息（包括客户数据在内）造成的损失；或 (ii) 因任何一方的重大过失或故意不当行为导致他人损伤或死亡而造成的损失；或 (iii) 因 SAP 征收未付费用的权利而造成的损失外，协议任何一方（或其关联企业或 SAP 的许可方）在任何情况下，不论索赔性质如何，都不对另一方或本协议中的其他任何个人或实体承担：超过相应订购单下适用服务的已付费用的赔偿；或在包括托管服务在内的基于租用的服务中，超出应承担责任事件发生之日前十二（12）个月的已付费用金额；或任何特殊、偶发、衍生或间接损害、商誉损失或营业利润损失、停工或惩罚性或惩戒性损害。

14. <u>Assignment.</u>

<u>转让。</u>

Prime Contractor 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 Work Products and Deliverables 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: (i) assign this Agreement to any of the SAP SE Affiliates or (ii) subcontract all or part of the work to be performed under this Agreement to a qualified third party.

未经 SAP 事先书面同意，主承包商不得让与、委托、抵押或以其他形式转让（无论是基于自愿还是因法律的规定而导致的）本协议、主承包商在本协议项下的任何权利或义务、或工作成果和交付物、或 SAP 的保密信息给任何人，包括以资产收购的方式、合并或并购方式进行的转让。SAP 可 (i) 将本协议转让给任何 SAP SE 关联企业或 (ii) 将根据本协议执行的全部或部分工作分包给某个合格第三方。

15. <u>General Provisions.</u>

<u>一般条款。</u>

15.1 <u>Severability</u>. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or

unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

可分割性。根据双方意向，本协议中如有一项或多项条款在任何方面被认定为无效或不可执行的，则该无效或不可执行不影响本协议其他条款的效力，且解释本协议时，应视为从未包含该等无效或不可执行的条款。

15.2 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.

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。

15.3 Electronic signature. Signatures sent by electronic means (facsimile, scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures.

电子签名。以电子方式发送的签名（传真、扫描并通过电子邮件发送，或采用法律许可的电子签名服务）应视为原始签名。

15.4 Notice. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed to be duly given when delivered to the respective executive offices of SAP and Prime Contractor at the addresses first set forth in the applicable Order Form. Where in this Section 15.4 or elsewhere in this Agreement written form is required, that requirement can be met by email, facsimile transmission, exchange of letters or other written form.

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，并在送至适用订购单文首所列地址的 SAP 和主承包商各自的办公室时视为送达。本协议第 15.4 节或其他条款要求采用书面形式的，可采用电子邮件、传真、信函或其他书面形式满足该要求。

15.5 Independent Contractor. The relationship of SAP and Prime Contractor established by this Agreement is that of an independent contractor and no employment, agency, trust, partnership or fiduciary relationship is created by this Agreement.

独立订约方。本协议在 SAP 和主承包商之间构建的关系是独立订约方的关系，本协议并没有建立雇佣、代理、信托、合作伙伴或委托关系。

15.6 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延迟履行或不履行的（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。

15.7 Governing Law. 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 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. Prime Contractor 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 Prime Contractor knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

管辖法律。本协议以及因本协议和其主旨引起或与之相关的任何索赔均应受中国法律的管辖并据此做出解释，但该国/地区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。对于因本协议及其标的引起或与之相关的任何索赔，主承包商须在知悉或经合理调查后应知悉引发索赔的事实之日起的二（2）年内提出诉讼。

Arbitration. 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 15.7 shall survive termination or expiration of this Agreement.

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 15.7 条规定在本协议终止或有效期届满后继续有效。

15.8 Non-Solicitation. Neither party shall knowingly solicit or hire, any of the other party's employees involved in the Services during the term of the applicable Order Form and for a period of six (6) months from the termination thereof, without the express written consent of the other party. This provision shall not restrict the right of either party to solicit or recruit generally in the media. Where legally enforceable, Prime Contractor shall put in place contractual provisions with the Customer that the Customer shall not knowingly solicit to hire any of SAP's employees involved in this Agreement during the term of this Agreement and for a period of six (6) months from the termination thereof, without the express written consent of SAP.

禁止招揽。未经另一方明确书面同意，任何一方不得在适用订购单的有效期限内及适用订购单终止后的六（6）个月内，故意招揽或雇用另一方参与服务的任何员工。本条款不得限制任何一方通过媒体进行正常招揽或聘用的权利。根据法律强制规定，主承包商应与客户达成契约条款，规定未经 SAP 书面同意，在本协议期限内以及本协议终止之后的六（6）个月内，客户不得故意招揽或雇佣参与本协议的任何 SAP 员工。

15.9 Entire Agreement; Written Form. Each Agreement, as defined in an applicable Order Form, constitutes the complete and exclusive statement of the agreement between SAP and Prime Contractor with respect to the subject matter hereof and all previous representations, discussions and writings are merged in, and superseded by each such Agreement and the parties disclaim any reliance on any such representations, discussions and writings. An Agreement may be modified only by a writing signed by both parties. An Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Prime Contractor to SAP.

完整协议；书面形式。各协议（见相关订购单）构成 SAP 与主承包商之间就与所议主旨所达成协议的完整且唯一的声明，且之前的一切陈述、磋商与文书均已并入各个此类协议并由各个此类协议所替代，双方声明不再依赖任何此类陈述、磋商与文书。惟经双方书面签字方能修改协议。当协议与主承包商提供给 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，应以协议的条款和条件为准。

15.10 Hierarchy. In the event of any inconsistencies between these GTC and an Order Form, the Order Form shall take precedence over the GTC. The Scope Document prevails over any Order Form and GTC.

效力等级。本 GTC 与订购单之间存在任何不一致时，应以订购单为准。范围文档的效力高于任何订购单和 GTC。

15.11 Regulatory Matters.

法定事项。

The SAP Confidential Information inclusive of all Services, Work Product and Deliverables and other SAP Materials, are subject to the export control laws of various countries, including without limit the laws of the United States, Germany and China. Prime Contractor agrees that it will not, and will ensure that Customer agrees that it will also not, submit the SAP Services, Work Product, Deliverables, other SAP Materials or SAP Confidential Information to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Confidential Information to countries, persons or entities prohibited by such laws. Prime Contractor shall also be responsible for complying with all applicable governmental regulations and laws of the country where Prime Contractor is registered, and any foreign countries with respect to the use of the Confidential Information and provision of Customer Data by Prime Contractor and/or its subsidiaries, Customer and/or its subsidiaries, or authorized users.

SAP 保密信息（包括所有服务、工作成果、交付物和其他 SAP 材料）均受不同国家/地区的出口管制法的约束，包括但不限于美国、德国和中国的法律。主承包商同意，并确保客户同意，未经 SAP 事先书面同意，不会出于

许可或其他法定审批事宜而向任何政府部门提交 SAP 服务、工作成果、交付物、其他 SAP 材料或 SAP 保密信息，且不会向此类法律禁止的国家/地区、个人或实体出口保密信息。主承包商还应负责遵守主承包商登记注册所在国家/地区，以及涉及主承包商和/或其子公司、客户和/或其子公司或授权用户对保密信息的使用和对客户数据的提供的任何其他国家/地区的一切相关政府规章和法律。

15.12 <u>Governing Language</u>. This Agreement is executed in both the Chinese and English languages. In the event there are different interpretations of the same provision or actual contradictions, the meanings of the Chinese version shall prevail.

<u>使用语言</u>。本协议以中文和英文签署。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，应以中文版本为准。

15.13 <u>Survival</u>.

<u>存续</u>。

Sections 7 (Term and Termination), 8 (Intellectual Property Rights), 9 (Confidentiality), 13 (Limitation of Liabilities), 15.7 (Governing Law and Arbitration), 15.8 (Non-Solicitation) and 15.12 (Governing Language) shall survive any termination of this Agreement.

第 7 节（期限和终止）、第 8 节（知识产权）、第 9 节（保密）、第 13 节（责任限制）、第 15.7 节（管辖法律和仲裁）、第 15.8 节（禁止招揽）和第 15.12 节（使用语言）在本协议以任何形式终止后仍然有效。

16. **System Security and Data Safeguards.**

<u>系统安全和数据保护。</u>

When SAP is given access to Prime Contractor or Customer's systems and data, SAP shall comply with Prime Contractor or Customer's (as applicable) reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. In connection with such access, Prime Contractor shall be responsible for providing SAP Consultants with user authorizations and passwords to access its systems and revoking such authorizations and terminating such access, as Prime Contractor deems appropriate from time to time. Prime Contractor shall ensure that Customer will be responsible for providing SAP Consultants with user authorizations and passwords to access its systems and revoking such authorizations and terminating such access, as Customer deems appropriate from time to time. Prime Contractor shall not grant SAP access to Prime Contractor systems or personal information (of Prime Contractor or any third party) unless such access is essential for the performance of Services under the Agreement and Prime Contractor shall ensure that Customer agrees to the same in relation to Customer systems or personal information (of Customer or any third party). The parties agree that no breach of this provision shall be deemed to have occurred in the event of SAP non-conformance with the aforementioned safeguard but where no personal information has been compromised.

当 SAP 获准访问主承包商或客户的系统和数据后，SAP 应遵从主承包商或客户（如适用）的合理管理、技术和物理保护规定，以保护此类数据并防止未经授权的访问。针对此类访问，主承包商应不时在自己认为适当的时候，负责为 SAP 顾问提供访问其系统所需的用户授权和密码，和撤消此类授权以及终止此类访问。主承包商应确保客户不时在其认为适当的时候，负责为 SAP 顾问提供访问其系统所需的用户授权和密码，和撤消此类授权以及终止此类访问。主承包商不得授予 SAP 访问主承包商系统或（主承包商或任何第三方的）个人信息的权限，除非此类访问是依据本协议履行服务所必要的，且主承包商应确保客户也同意就客户系统或（客户或任何第三方的）个人信息遵守前述规定。双方同意，如 SAP 未能遵循上述保护规定但并未损害个人信息，则不视为违反本条款。

IN WITNESS WHEREOF, the parties have so agreed.

兹证明，双方达成上述约定。