

OUTSOURCING CHANNEL MASTER LICENSE AGREEMENT
General Terms and Conditions
("GTCs")

外包渠道主许可协议
一般条款和条件
(以下简称"GTC")

1. DEFINITIONS

定义

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

"增强模块(亦称为"加载项"或"扩展组件)"是指使用 SAP API 所作的任何开发, 此类开发旨在增加新的独立功能, 但不修改现有的 SAP 功能。

"Agreed Program Scope" shall have the meaning as defined in the Master Agreement.

"议定项目范围"应适用主协议中的定义。

"Agreement" means these General Terms and Conditions ("GTCs"), the Master Agreement, any Order Form, Exhibit, Schedule or Appendix referencing these GTCs and any Exhibit, Schedule or Appendix referenced by the foregoing. All such components are integral to the agreement, and collectively are referred to herein as the "Agreement".

"协议"是指一般条款和条件("GTC")、主协议、引用本 GTC 的任何订购单、附件或附录以及前述文件所引用的任何附件或附录。所有组成部分均为本协议不可或缺的部分, 并于此处统称为"协议"。

"API" means SAP's application programming interfaces, as well as other commands or instructions that allow other software products to communicate with or call on Software (for example, SAP enterprise services, BAPIs, Idocs, RFC, and ABAP customer exits) provided under this Agreement.

"API"是指 SAP 的应用程序编程接口以及允许其他软件产品与本协议项下提供的软件进行通信或调用的其他命令或指令(例如, SAP Enterprise Services、BAPI、Idoc、RFC 和 ABAP 用户出口)。

"Authorized Services" shall have the meaning as defined in the Master Agreement.

"授权服务"应适用主协议中的定义。

"Background Material" means any pre-existing works in which the Intellectual Property Rights are owned by either Party, which have been prepared by that Party outside the scope of this Agreement or which were licensed from a third party by that Party.

"背景材料"是指任何事先存在的资料, 其知识产权归协议一方所有并由该方在本协议范围之外准备或由第三方授予许可并提供给该方。

"Business Partner" means a third party that requires access to the Software solely in connection with the operation of the business of Customer or Customer Affiliate. Such third parties may include Customer's customers, distributors, dealers, vendors, manufacturers, independent sales representatives and suppliers.

"业务合作伙伴"是指仅出于客户或客户关联企业的业务运营之目的而访问软件的第三方。此类第三方可包括客户的客户、分销商、经销商、供应商、制造商、独立的销售代表和提供商。

"Confidential Information" means information reasonably identifiable as the confidential and proprietary information of SAP or Provider including but not limited to information that is related to: (a) the operations of the Disclosing Party; (b) the research and development or investigations of the Disclosing Party; (c) the business of any customer or partner of the Disclosing Party; (d) Disclosing Party's properties, employees, finances, operations; (e) the following information regarding software and related documentation including, but not limited to, the Provider software used to provide the Authorized Services (for Provider), and the SAP Materials and SAP Interface (for SAP), (respectively, "Disclosing Party's Software"); discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, techniques and processes relating to Disclosing Party's Software; and (f) product offerings, content partners, product pricing, product availability, technical drawings, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, inventions (whether patentable or not), marketing plans, forecasts and strategies. Without limiting the meaning of the foregoing, the following information shall be deemed Confidential Information: (i) with respect to SAP and SAP SE (the licensor of the SAP Proprietary Information to SAP), the Software and Documentation, any other third-party software licensed with or as part of the Software, benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications; (ii) the business plans of the Disclosing Party and (iii) the algorithms, source codes and application software interface (including but not limited to SAP Interface) specifications algorithms, contained in Disclosing Party's Software as well as programming techniques and programming concepts, methods of processing and system designs embodied in Disclosing Party's Software.

"保密信息"是指可合理认定为 SAP 或提供商的保密和专有信息的信息, 包括但不限于: (a) 披露方的运营; (b) 披露方的研究和开发或调查; (c) 披露方的任何客户或合作伙伴的业务; (d) 披露方的财产、员工、财务、运营; (e) 与软件和相关文档, 包括但不限于, 用于提供授权服务的提供商软件(适用于提供商)以及 SAP 材料和 SAP 接口(适用于 SAP)(分别为"披露方的软件")有关的以下信息: 与披露方的软件相关的发现、发明、概念、设计、流程图、文档、产品规格、工艺和流程, 以及 (f) 产品供应、内容合作伙伴、产品定价、产品可用性、技术设计图、流程、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)、营销策划、预测与策略。在不限制前述规定的情况下, 以下信息应视为保密信息: (i) 就 SAP 和 SAP SE(向 SAP 许可 SAP 专有信息的许可方)而言, 软件和文档、随软件一起或作为软件一部分许可的任何其他第三方软件、基准评测结果、手册、程序列表、数据结构、流程图、逻辑图、功能说明相关的信息; (ii) 披露方的业务计划; 以及 (iii) 披露方软件中包含的算法、源代码和应用程序软件接口(包括但不限于 SAP 接口)规范算法以及披露方软件中嵌入的编程技术、编程概念、处理方法和系统设计。

"Contract Year" shall have the meaning as defined in the Master Agreement.

"合同年"应适用主协议中的定义。

"Customer" means the entity that enters into a Customer Service Agreement with the Provider.

"客户"是指与提供商签署客户服务协议的实体。

"Customer Affiliate(s)" shall have the meaning set forth in the Master Agreement.

“客户关联企业”应适用主协议中的定义。

“**Customer Service Agreement**” shall have the meaning as defined in the Master Agreement.

“客户服务协议”应适用主协议中的定义。

“**Customer User**” means an employee of Customer, a Customer Affiliate or Business Partner.

“客户用户”是指客户、客户关联企业或业务合作伙伴的员工。

“**Data Center(s)**” means the site or sites at which the Software will be hosted to provide the Authorized Services to Customers. Such site or sites shall at all times be owned or controlled by the Provider.

“数据中心”是指负责托管软件以向客户提供授权服务的一个或多个站点。此类站点应当始终由提供商拥有或控制。

“**Disclosing Party**” means a Party to this Agreement disclosing confidential or proprietary information to the Receiving Party.

“披露方”是指本协议中向接收方披露保密信息或专有信息的一方。

“**Documentation**” means SAP’s documentation which is delivered or made available to Provider with the Software under this Agreement.

“文档”是指随本协议下的软件一同交付或提供给提供商的 SAP 文档。

“**Excluded License**” means an open source or other software license that requires, as a condition of license, use, modification, distribution or conveyance, that (a) the code be disclosed or distributed in source code form; (b) others have the right to modify or create derivative works of it; and/or (c) the code becomes redistributable at no charge.

“排除许可”是指符合以下许可、使用、修改、分发或传输条件的开放源或其他软件许可：（a）以源代码的形式披露或分发的代码；（b）其他人有权对其进行修改或创建衍生品；和/或（c）可免费再分发的代码。

“**Fees**” means all fees to be paid by Provider under this Agreement, including but not limited to the Net License Fees, Subscription Fees, Support Fees and any Floor Commitments as delineated in the Master Agreement and any Exhibit, Annex, Schedule or Order Form thereof.

“费用”是指提供商依据本协议支付的所有费用，包括但不限于主协议及其任何附件、附录或订购单中规定的净许可费、租用费、支持费和任何基础承诺。

“**Floor Commitment**” shall have the meaning as defined in the Master Agreement.

“基础承诺”应适用主协议中的定义。

“**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/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、现有抑或在此后申请、颁发或取得。

“**Licensed Level**” shall have the meaning as defined in the Use Terms.

“许可级别”应适用使用条款中的定义。

“**Logo**” shall have the meaning as defined in the Master Agreement.

“徽标”应适用主协议中的定义。

“**Net License Fees**” shall have the meaning as defined in the Master Agreement.

“净许可费”应适用主协议中的定义。

“**Marks**” shall have the meaning set forth below in Section 5.4 of the GTC’s.

“标识”应适用本 GTC 第 5.4 节中的定义。

“**Master Agreement**” means the Outsourcing Channel Master License Agreement executed by the Parties that references and incorporates these GTCs.

“主协议”是指引用和纳入本 GTC 的由协议双方签署的外包渠道主许可协议。

“**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 (defined below).

“修改”是指（i）对已交付的源代码或元数据的更改；或（ii）对已交付的源代码或元数据的更改以外的任何开发，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）运用或结合使用任何 SAP 材料（定义见下文）对软件（除增强模块以外）进行的任何其他更改。

“**Order Form**” shall have the meaning as defined in the Master Agreement.

“订购单”应适用主协议中的定义。

“**Order Form Term**” means the duration, as defined in each Order Form, of the licenses granted under such Order Form.

“订购单期限”是指各订购单中规定的在此类订购单下授予的许可的期限。

“**Party**” or “**Parties**” shall have the meaning as defined in the Master Agreement.

“协议一方”或“协议双方”应适用主协议中的定义。

“**Price List**” shall have the meaning as defined in the Master Agreement.

“价目表”应适用主协议中的定义。

“**Provider Affiliate**” means any legal entity in which the Provider, 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.

“提供商关联企业”是指提供商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律实体。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其视为一家关联企业。

“**Receiving Party**” means a Party receiving confidential or proprietary information from the Disclosing Party.

“接收方”是指从披露方接收保密信息或专有信息的一方。

“Redistributable Files” means the function modules and sample code files identified in the Documentation for inclusion and distribution with Provider created Add-ons.

“可分发文件”是指文档中规定的用于包含于以及与提供商创建的增强模块一起分发的功能模块和示例代码文件。

“SAP Affiliate” means any legal entity in which SAP SE, 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.

“SAP 关联企业”是指 SAP SE 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律实体。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其视为一家关联企业。

“SAP Interface” means any application interface developed by or with SAP or any SAP Affiliate that resides on or in the Software and which, when activated by the Provider’s software or tools, will give access to the Software.

“SAP 接口”是指由 SAP 或任何 SAP 关联企业开发或协助开发的、位于软件中且由提供商软件或工具激活之后有权访问该软件的任何应用程序接口。

“SAP Materials” means any software, programs, tools, systems, data, or other materials made available by SAP to Provider in the course of the performance under this Agreement including, but not limited to, the Software and Documentation.

“SAP 材料”是指 SAP 在履行本协议过程中向提供商提供的任何软件、程序、工具、系统、数据或其他材料，包括但不限于软件和文件。

“SAP Support” shall have the meaning as defined in the Master Agreement.

“SAP 支持”应适用主协议中的定义。

“SAP Support Fees” shall mean those fees that are due and payable in accordance with the Order Forms executed under the Master Agreement for the support services rendered by SAP pursuant to the SAP Support valid for this Agreement.

“SAP 支持费”是指针对 SAP 依据本协议下生效的 SAP 支持提供的支持服务而在主协议下签署的订单中的规定到期应付的费用。

“SAP Trademarks” shall have the meaning set forth below in Section 5.1 of the GTC’s.

“SAP 商标”应适用本 GTC 第 5.1 节中的定义。

“Screen Access” means Use of the Software solely through remote access and solely for the purpose of entering and accessing data and requesting Provider to process such data. For the sake of clarity, Screen Access shall not include the Software being installed on the hardware of the Customer.

“屏幕访问”是指仅通过远程访问和仅出于输入和访问数据以及请求提供商处理此类数据之目的而使用软件。为避免疑惑，屏幕访问应不包括安装于客户硬件上的软件。

“Software” shall have the meaning as defined in the Master Agreement.

“软件”应适用主协议中的定义。

“Subscription Fees” means the annual license fees for the Software licensed under an Order Form, which incorporate both the Net License Fee and the Support Fee.

“租用费”是指订购单下许可的软件的年度许可费，其中包括净许可费和支持费。

“Term” shall have the meaning as defined in the Master Agreement.

“期限”应适用主协议中的定义。

“Third Party Software” shall have the meaning as defined in the Master Agreement.

“第三方软件”应适用主协议中的定义。

“Use” or “Using” shall have the meaning as defined in the Master Agreement.

“使用”应适用主协议中的定义。

“Use Terms” shall have the meaning as defined in Section 2.1 in the Master Agreement.

“使用期限”应适用主协议第 2.1 节中的定义。

“Wind Down” shall have the meaning as defined in the Master Agreement.

“逐渐减少”应适用主协议中的定义。

Other defined terms not included above shall have the meanings set forth herein.

上面未包括的其他定义的术语应遵循本协议规定的含义。

2. SCOPE OF RELATIONSHIP

关系范围

2.1 No exclusivity. SAP and Provider agree to collaborate on a non-exclusive basis as detailed in this Agreement, to enable the provision of Authorized Services by Provider. Each Party is free to conduct business with other partners at its sole discretion.

非排他性。SAP 和提供商一致同意，双方将在本协议中详述的非排他基础上进行协作，使得提供商能够提供授权服务。协议双方均有权自行决定与其他合作伙伴的业务往来。

2.2 Provider offers its services in its own name, at its own risk, and for its own account, to Customer. Provider conducts its own business with Customer and is not acting as an agent of SAP or in any other way representing SAP. Provider shall, in correspondence and otherwise in connection with the provision of services always clearly indicate that SAP is the copyright owner, author, and developer of the Software.

提供商以其自身名义向客户提供服务，并自行承担风险且自负盈亏。提供商自行与客户开展业务，既不属于 SAP 的代理，亦不以任何其他方式代表 SAP。提供商应在通信中以及在提供服务过程中始终明确指出，SAP 是软件的版权所有人、作者和开发商。

2.3 Provider shall advise Customer that SAP Support for the Software licensed under the Master Agreement can only be delivered by SAP to the Provider and that SAP will not provide direct support to the Customer for the Software utilized by the Provider to deliver any Authorized Services, even if the Customer is an existing SAP customer with a current SAP maintenance and support agreement for SAP software. If the Customer is an existing SAP customer, then Provider shall advise Customer that the Software utilized by the Provider to deliver any Authorized Services will not be covered by the Customer’s current SAP maintenance and support agreement for SAP software.

提供商应告知客户，只能由 SAP 向提供商提供主协议下许可的软件的 SAP 支持服务，SAP 将不针对提供商用于提供授权服务的软件向客户提供直接的支持，即使客户是 SAP 的现有客户，且就 SAP 软件已签署 SAP 维护和支持协议。如果客户是 SAP 的现有客户，则提供商应告知客户，提供商用于提供授权服务的软件将不在客户就 SAP 软件签署的维护和支持协议的范围之内。

3. LICENSE GRANT 许可的授予

3.1 Grant of License

授予许可

3.1.1 Subject to the terms and conditions of this Agreement and the specific limitations set forth in the Master Agreement and the Order Forms, SAP hereby grants Provider the non-exclusive right and license within the Agreed Program Scope to Use Software in the Data Center(s) solely as required for the provision of Authorized Services to its Customers for the duration of the applicable Order Form Term.

依据本协议的条款和条件以及主协议和订购单中规定的特定限制条款，SAP 谨此授予提供商在议定项目范围内非独占的权利和许可，允许其在相应订购单期限内向数据中心中仅为向客户提供授权服务的需要而使用软件。

3.1.2 Sub-Licenses. Provider shall be entitled to grant non-perpetual, non-exclusive and non-transferable sub-licenses to Customer for the applicable Order Form Term, limited to providing Customer Users Screen Access to the Software (the "Sub-Licenses").

再许可。提供商应有权在相应的订购单期限内向客户授予非永久性的、非独占的且不可转让的再许可，该许可仅限于为客户用户提供对软件的屏幕访问（以下简称“再许可”）。

3.1.3 No Provider internal use. Under the terms of this Agreement, Provider shall not be allowed to Use Software for its own internal operational needs or to provide Authorized Services to Provider, Provider Affiliates, any entity controlling Provider, or any entities controlled by a common entity as Provider.

禁止提供商内部使用。根据本协议条款，提供商不得出于自身内部运营需求使用软件或者以提供商身份向提供商、提供商关联企业、任何控制提供商的实体或由共同实体控制的实体提供授权服务。

3.1.4 SAP owns all rights and title, including all Intellectual Property Rights, in and to SAP software as made available by SAP to Provider. Provider is only granted a limited license to the Software as expressly stated in this Agreement.

SAP 向提供商提供的 SAP 软件的所有权利和权益或与之相关的所有权利和权益均归 SAP 所有，包括所有知识产权。提供商仅获得一份本协议明确规定对软件的有限许可。

3.1.5 The terms and conditions of this Agreement relative to "Software" apply to Third Party Software except (i) Provider 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 the document order of precedence, as otherwise stated in the Use Terms.

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，否则提供商不得对第三方软件进行修改和/或开发增强模块，或者以其他方式修改第三方软件；和（ii）受文档优先次序的制约，除非使用条款中另有规定。

3.1.6 Provider has to license any Software which is required to provide Authorized Services to Customers, including, but not limited to any prerequisite defined in (i) the Use Terms, or (ii) the Price List. Authorized Services may be provided in conjunction with the SAP Software licensed to Customers by SAP or its affiliates or resellers pursuant to a Customer's license agreement for the Use of SAP Software. Any use by Provider, of such SAP Software licensed to Customer shall be in accordance with the Customers license obligations under the SAP license agreement for the use of such SAP Software and be subject to the respective Named User type and in accordance with the identified Licensed Level under that license agreement. Customer and Provider must comply with the provisions of the Use Terms at all times.

提供商需要获得向客户提供授权服务所需的任何软件的许可，包括但不限于（i）使用条款或（ii）价目表中规定的任何先决条件。授权服务可能会与 SAP 或其关联企业或经销商依据针对 SAP 软件使用的客户许可协议而向客户许可的 SAP 软件一起提供。提供商对向客户许可的此类 SAP 软件的使用应遵循针对使用此类 SAP 软件的 SAP 许可协议下规定的客户许可义务，且受相应的指定用户（或亦称为命名用户）类型和许可协议下规定的许可级别的约束。客户和提供商必须始终遵守使用条款的规定。

3.2 Third Party Access to the Software 对软件的第三方访问

3.2.1 An authorized third party acting on behalf of the Provider may access the Software so long as: (i) such third party is accessing the Software solely on behalf of Provider to support Provider in its exercise of the rights set forth in Section 3.1 in conformance with the Agreement; (ii) such third party is subject to confidentiality obligations that are at least as restrictive as those set forth in Section 9; and (iii) Provider is responsible for any breach of this Agreement caused by such third party.

经授权而代表提供商的第三方可以访问软件，但前提是：（i）此类第三方仅出于支持提供商依据协议的规定行使其在第 3.1 节中的权利的目的，代表提供商访问软件；（ii）此类第三方受到至少与第 9 节中的规定同等严格的保密义务的约束；以及（iii）提供商对于此类第三方导致的违反本协议的行为承担责任。

3.2.2 The Sub-Licenses may include the right to allow an authorized third party acting on behalf of the Customer to have Screen Access to the Software so long as: (i) such third party is utilizing the Screen Access solely for the consumption of Authorized Services on behalf of Customer to run Customer's internal business processes; (ii) such third party is subject to confidentiality obligations that are at least as restrictive as those set forth in Section 9; and (iii) Customer is responsible for any breach of the Customer Services Agreement caused by such third party.

再许可可以包括允许经授权而代表客户的第三方对软件进行屏幕访问的权利，但前提是：（i）此类第三方仅出于代表客户使用授权服务来运行客户的内部业务流程的目的，使用屏幕访问；（ii）此类第三方受到至少与第 9 节中的规定同等严格的保密义务的约束；以及（iii）客户对于此类第三方导致的违反客户服务协议的行为承担责任。

3.3 Reporting Obligations and Audit Rights

报告义务和审计权利

3.3.1 Provider shall provide all information requested by SAP necessary to fulfill any obligations for payment of royalties to SAP's

business partners arising as a result of licenses under this Agreement for Third Party Software or other software components.

提供商应提供 SAP 要求的所有必需信息，支持 SAP 履行因本协议项下针对第三方软件或其他软件组件的许可而应向 SAP 业务合作伙伴支付特许权使用费的义务。

- 3.3.2 Upon SAP's reasonable request, Provider shall deliver to SAP a report, as defined by SAP, evidencing Provider's Use of the Software licensed under this Agreement, which shall be in addition to any other reporting obligations of Provider as set out in this Agreement.

除本协议中规定的提供商所承担的任何其他报告义务之外，提供商还应在 SAP 的合理要求下，向 SAP 提供由 SAP 指定的报告，用于证明提供商对本协议项下许可的 SAP 软件的使用情况。

- 3.3.3 Subject to limitations under contract and law and without gathering or transmitting to SAP any content or other confidential information of Provider or Customer, SAP may implement the Software so that each system generates and transmits to SAP information related to Use of the Software by Provider and/or the Customers. Provider will support SAP in accordance with SAP's reasonable instructions, including but not limited to preparing a measurement log within four (4) weeks of SAP's request, such requests not to be made more often than on a quarterly basis. The measurement shall be carried out using only the unaltered SAP tools provided by SAP and the result of the measurement is to be transmitted to SAP promptly in unaltered form.

在遵守合同和法律的限制、不收集或不向 SAP 传输提供商或客户的任何内容或其他保密信息的情况下，SAP 可以实施软件，使得各系统生成并向 SAP 传输与提供商和/或客户的软件使用有关的信息。提供商将按照 SAP 的合理指示向 SAP 提供支持，包括但不限于在 SAP 提出请求后的四周时间内准备评估日志，但此类请求每个季度不宜超过一次。评估仅可使用 SAP 提供的、未经任何修改的 SAP 工具执行。评估结果应立即以未经修改的形式传输给 SAP。

- 3.3.4 SAP shall be permitted upon fifteen (15) days prior notice 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 Software. Provider shall cooperate reasonably in the conduct of such audits.

在提前十五（15）天发出通知的情况下，SAP 有权对软件的使用情况进行审计（至少每年一次且遵循 SAP 标准程序，其中可能包括现场和/或远程审计）。对前述审计的开展，提供商应给予合理配合。

- 3.3.5 In the event a report or an audit reveals that (i) Provider underpaid license fees and/or SAP Support fees to SAP and/or (ii) the Use of the Software by Provider or Customer is in excess of the Licensed Level of the Order Forms executed under the Master Agreement, Provider shall pay such underpaid fees and/or for such excess usage based on SAP List of Prices and Conditions for Software and Support governing use in effect at the time of the audit, and shall execute an additional Order Form in accordance with the terms of this Agreement to effect the required licensing of any additional quantities or levels, but SAP's right to receive payment of those fees shall not be dependent upon signature of such Order Form. Reasonable costs of SAP's audit shall be paid by Provider if the audit results indicate usage in excess of the licensed quantities or levels. SAP reserves all rights at law and equity with respect to both Provider's underpayment of license fees or SAP Support fees and usage in excess of the license quantities or levels or in breach of the license granted herein.

如报告或审计结果表明：（i）提供商未向 SAP 支付足够的许可费用和/或 SAP 支持费用及/或（ii）提供商对客户对软件的使用已超过主协议下签署的订购单的许可级别，则提供商应当根据审计时有效的 SAP 价目表以及软件和支持使用条件，支付前述少付的费用和/或就前述超范围使用支付费用，并且应当依据本协议条款签署一份额外的订购单，获取任何额外数量或级别所需的许可，但 SAP 收取前述费用的权利并不以此类订购单的签署为前提。如审计结果显示使用超出许可数量或级别，则提供商应支付 SAP 审计的合理支出。对于提供商不足额支付许可费或 SAP 支持费以及超出许可数量或级别的使用或违反本协议所授予许可的行为，SAP 保留一切法律权利和衡平法权利。

- 3.3.6 Use of the Software licensed hereunder may require third party software or hardware (including but limited to databases, operating systems and servers). Unless specifically licensed in the Master Agreement, this Agreement does not contain a license to use such additional materials.

对本协议项下所许可软件的使用可能需要第三方软件或硬件（包括但不限于数据库、操作系统和服务器）。除非在主协议中明确许可，否则本协议不包含使用此类额外材料的许可。

4. CUSTOMER SERVICE AGREEMENT **客户服务协议**

- 4.1 To give effect to the obligations, limitations and liabilities contained in this Agreement, Provider agrees that prior to granting Customer access to the Authorized Services, Provider will enter into a Customer Service Agreement with Customer that includes (i) a grant of license to the Customer and its Customer Users which corresponds with and does not exceed Provider's rights as set out in Section 3 and (ii) a provision according to which SAP shall be entitled to claim damages or seek equitable relief as a third party beneficiary in case the Customer violates any of the license terms of the Customer Service Agreement. Nothing in this Agreement shall prevent SAP from pursuing an action for an infringement of SAP's intellectual property rights by the Customer.

为了使本协议中所含的义务、限制和责任生效，提供商谨此同意，在授予客户访问授权服务的权限之前，与客户签署客户服务协议，协议内容包括（i）向客户及其客户用户授予许可，该许可应符合且不得超出第 3 节规定的提供商的权利；以及（ii）如客户违反客户服务协议的任何许可条款，则 SAP 有权以第三方受益人的身份向其索赔损失或寻求衡平救济。客户服务协议中的任何条款都不得限制 SAP 对客户侵犯 SAP 知识产权的行为提起诉讼的权利。

- 4.2 If requested by SAP, Provider will represent and warrant to SAP that Provider has entered into such a Customer Service Agreement with Customer, provided always that no contractual relationship will exist between SAP and any Customer except as set forth in Section 4.1 above or under any supplementary contract which SAP expressly agrees to enter into directly with a Customer in connection with the Authorized Services.

在 SAP 要求下，提供商应向 SAP 陈述并保证已与客户签署此类客户服务协议，但前提是除上述第 4.1 节的规定以及 SAP 明确同意与客户直接签署的与授权服务相关的任何补充合同以外，SAP 未与任何客户之间始终不存在合同关系。

5. TRADEMARK LICENSE **商标许可**

- 5.1 To the extent usage is specifically allowed in the Master Agreement, SAP grants to Provider for the Term of the Agreement a revocable, nonexclusive, nontransferable license to use the Logo as set forth in the **SAP Partner Logo Usage Guidelines** in

any countries allowed under the Agreed Program Scope and in accordance with the terms of this Section 5. This license to use the Logo includes the right to use the SAP corporate logo as part of the Logo (together "SAP Trademarks"). Provider is not permitted to grant sublicenses to SAP Trademarks.

在主协议明确许可的使用范围内, SAP 授予提供商在协议期限内可撤销的、非独占性的、不可转让的使用许可, 许可其依照本协议第 5 节的条款, 在议定项目范围所允许的任何国家使用 **SAP 合作伙伴标识使用指南** 中规定的标识。该标识使用许可包括使用作为标识一部分的 SAP 企业标识 (统称 "SAP 商标") 的权利。提供商不得对 SAP 商标进行再许可。

- 5.2 SAP will provide the most recent version of the **SAP Partner Logo Usage Guidelines** to Provider upon Provider's written request. SAP may, at its sole option, change the **SAP Partner Logo Usage Guidelines** but will provide the new version to Provider. Provider will conform its usage of the Logo to the new **SAP Partner Logo Usage Guidelines** immediately upon receipt. If Provider does not agree to the proposed changes, SAP shall be entitled to terminate Provider's right to use the Logo with immediate effect.

提供商提出书面请求时, SAP 将向其提供最新版的 **SAP 合作伙伴标识使用指南**。SAP 可自行更改 **SAP 合作伙伴标识使用指南**, 但会向提供商提供最新版本。在收到新版 **SAP 合作伙伴标识使用指南** 之后, 提供商应立即遵照该新的 SAP 合作伙伴标识使用指南使用标识。如提供商不同意提议的更改, SAP 应有权立即终止提供商使用标识的权利。

- 5.3 Provider shall not contest the validity of SAP Trademarks or support the contesting of its validity and shall not derive any right against SAP through its permitted use of SAP Trademarks. In its use of SAP Trademarks, Provider shall indicate that the SAP Trademark is registered by and for SAP. In this context Provider acknowledges that SAP is the sole owner of rights in the SAP Trademarks Provider is permitted to use. Provider undertakes to make all those declarations and provide all those documents for the benefit of SAP as SAP may require in the prosecution of its rights in the SAP Trademarks. All advertising and sales material used by Provider for the Software must bear the notices prescribed by SAP concerning trademarks and other identifying marks. Provider must refrain from registering SAP's name (or any domain name incorporating name or trademarks) or SAP's logo (or any names, logos, domain names or trademarks which are confusingly similar to any of them) for itself or permitting third parties to using or otherwise exploiting SAP's name, logo or trademark (or any name, logo, trademark or domain name which are confusingly similar to any of them). Provider must, at SAP's choice, either transfer any rights regarding such logos, trademarks and domain names to SAP as soon as they arise or permit SAP to exploit them in any countries globally. Provider must afford SAP such assistance as may be necessary for SAP to obtain at SAP's expense the appropriate registrations for protection in any such country. Any provision adding to or differing from the above must be agreed in writing.

提供商不得质疑 SAP 商标的有效性或支持对其有效性的质疑, 不得通过获得的 SAP 商标使用权而获得任何对 SAP 不利的权利。提供商在使用 SAP 商标时, 应当指明 SAP 商标由 SAP 注册并为 SAP 而注册。对此, 提供商承认 SAP 是提供商获得使用权的 SAP 商标的唯一权利人。为了 SAP 的利益, 提供商保证作出上述所有声明, 并承诺在 SAP 追诉其对 SAP 商标的权利而要求时, 提供对 SAP 有益的所有文件。提供商针对软件的所有广告及销售材料均须带有 SAP 规定的关于商标及其他识别标记的声明。提供商不得为自己注册 SAP 的名称 (或任何包含名称或商标的域名) 或 SAP 的标识 (或与其中任何一项的相似度达到容易产生混淆的任何名称、标识、域名或商标), 也不得允许第三方使用或以其他方式利用 SAP 的名称、标识或商标 (或与其中任何一项的相似度达到容易产生混淆的任何名称、标识、商标或域名)。提供商必须根据 SAP 的选择, 在涉及前述标识、商标和域名的权利产生时即将此类权利让与 SAP 或允许 SAP 在全球任何国家内使用该等标识、商标和域名。SAP 在任何此类国家内, 为获得保护而自行承担费用进行相应的注册时, 提供商须给予 SAP 就获得此类注册可能需要的协助。在上述条款基础上另行增加的规定或与上述条款不同的规定, 均须经双方以书面形式同意。

- 5.4 Provider shall provide samples of its advertising copy and sales literature for the Authorized Services, in their original language and in English, as applicable, to SAP on its request. SAP reserves the right to review and approve all uses of SAP's Trademarks, service marks, or trade names in Provider's advertising and promotion of the Software and Authorized Services, prior to use. Such approval will not limit Provider's obligation to comply with all applicable laws and will not be deemed an endorsement or approval of any advertising content.

在 SAP 要求时, 提供商应当向 SAP 提供原始语言和英语版的针对授权服务的广告文案及促销资料的样稿。SAP 保留权利在投入使用前对提供商在软件和授权服务的广告宣传和促销中对 SAP 的商标、服务标识或商号的所有使用情况进行审阅和批准。此类批准不会影响提供商遵守一切适用法律的义务, 亦不视为对任何广告内容的认可或批准。

- 5.5 SAP shall have permission to list Provider with name and logo on its website and marketing material as an SAP partner in the business field as it relates to the Authorized Services without the requirement to seek Provider's written permission for each such listing, unless such permission is rescinded by Provider in writing.

SAP 应有权将提供商作为授权服务相关业务领域的 SAP 合作伙伴, 将提供商的名称和标识列在网站以及市场营销材料中, 而无需在每次列出时均征得提供商的书面许可, 提供商以书面形式撤销此类许可的情况除外。

- 5.6 Except as stated above, no Party has the right to use or display the other Party's names, trademarks, trade names, logos, or service marks ("Marks") without prior written approval. Notwithstanding the foregoing, nothing contained in this Agreement shall affect either Party's rights to use any trademarks, service marks or proprietary words or symbols of the other Party to properly identify the goods or services of such other Party to the extent permitted by applicable law or by written agreement between the Parties.

除上述规定外, 未经事先书面批准, 任何一方均无权使用或显示另一方的名称、商标、商号、标识或服务标识 (以下统称为 "商标")。尽管存在上述规定, 本协议中的任何条款不影响任何一方依照适用法律的规定或者协议双方之间签署的书面协议, 出于正确识别另一方的商品或服务的目的而使用其任何商标、服务标识或专有词语或符号的权利。

- 5.7 Each Party agrees to promptly notify the other Party of any unauthorized use of the other Party's Marks or proprietary words or symbols of which it has actual knowledge. Each Party shall have the sole right and discretion to enforce any rights and claims regarding its Marks or unfair competition related thereto. Each Party agrees to provide the other Party with its reasonable cooperation and assistance at the requesting Party's expense with respect to any such infringement proceedings.

协议双方一致同意: 一旦实际知晓任何未经授权使用对方商标或专有词语或符号的行为, 则立即通知对方。协议各方就其商标或与之相关的不正当竞争拥有实施任何权利和索赔的唯一权利和自由裁量。协议各方均一致同意就任何该等侵权诉讼为对方提供合理的协作和协助, 但请求协助方应承担相关费用。

- 5.8 If at any time SAP determines that the laws or policies of any country are or become materially insufficient to protect its intellectual or proprietary rights in the Software, SAP may restrict or terminate Provider's rights to use the SAP Trademarks in or to that country, on written notice to Provider. Provider shall take all actions reasonably necessary to comply with and enforce any such restriction or termination.

如 SAP 在任何时候认为一个国家/地区的法律或政策在实质上不足以或将不足以保护其对软件的知识产权或所有权, SAP 可以通过向提供商发送书面通知的形式, 限制或终止提供商在该国家/地区使用 SAP 商标的权利。提供商应当采取一切必要的合理措施, 遵守并执行任何此类限制或终止。

6. REMUNERATION, PAYMENT TERMS, TAXES AND DELIVERY 报酬、支付条款、税费与交付

6.1 Fees. Provider shall pay to SAP the Fees on such terms and in the amount as set forth in the Master Agreement or any Order Forms, Schedules or Exhibits thereof. Additionally, Provider commits to pay the Floor Commitments set forth in the Master Agreement, if any, such amounts to be invoiced pursuant to the terms of the Master Agreement. Provider can offset claims only if they are uncontested or awarded by final and binding court or arbitration panel order. Any Fees not paid when due shall accrue interest at the rate of 18% per annum, but not to exceed the maximum amount as allowed by the applicable law. Provider shall not be entitled to any refund of the Fees paid for under this Agreement.

费用。 提供商应按主协议或其任何订单单、附录或附件中规定的金额和条款, 向SAP支付费用。此外, 提供商承诺履行主协议中规定的基础承诺(如有), 该等金额将按照主协议的条款开具发票。提供商仅可以对无争议的索赔或者具有约束力的最终法庭或仲裁机构下达的索赔进行抵扣。到期未付的所有费用将追加年利率为18%的利息, 但不得超过适用法律允许的最高金额。提供商无权要求SAP退还本协议项下的已付费用。

6.2 Taxes. All taxes, including, without limitation, VAT, GST, sales, use, property, excise, service, or similar taxes or customs duties, except income or corporation taxes of SAP, will be borne by Provider. If any such tax or duty has to be withheld or deducted from any payment under this Agreement, Provider will increase payment under this Agreement by such amount as shall ensure that after such withholding or deduction SAP shall have received an amount equal to the payment otherwise required. Income or corporation taxes of SAP will be borne by SAP. If Provider is required to withhold income or corporation tax or a similar tax from any payment to SAP under this Agreement, Provider shall be entitled to withhold or deduct such tax from the gross amount to be paid. However, Provider shall use all endeavors to reduce any such withholding tax payable to the lowest possible rate subject to compliance with all applicable laws and double taxation treaties. Provider will in the case of any withholding of tax provide SAP a receipt from the relevant authority to which such withholding tax has been paid.

税款。 除SAP的所得税或公司税以外, 所有税款, 包括但不限于增值税(VAT)、商品及服务税(GST)、销售税、使用税、物权税、消费税、服务税或类似税款或关税均由提供商承担。如任何此类税款或关税应从本协议项下的任何付款中预扣或扣除, 则提供商应在本协议项下的付款金额基础上增加此类金额, 从而确保在预扣或扣除之后, SAP还能收到与应付款相等的金额。SAP的所得税或公司税由SAP承担。如果提供商必须从本协议项下支付给SAP的任何付款中预扣所得税、公司税或类似税款, 则提供商应有权从应付总额中预扣或扣减此类税款。但提供商应在遵循所有适用法律和双重税务条约的前提下, 尽最大努力将任何此类应付预扣税款降低至尽可能最低的比率。在预扣税款的情况下, 提供商将向SAP提供相关权利机构开具的已经支付该预扣税的收据。

6.3 Delivery of the Software and SAP Support. SAP will deliver the Software and SAP Support by making it available for electronic download through the SAP ServiceMarketplace (<http://service.sap.com/swdc>) to Provider. Risk of loss passes at the time of such electronic delivery. Provider agrees not to request any physical delivery of Software or SAP Support and should it occur any such delivery will be rejected by Provider. Provider agrees and understands that the calculation of Taxes may be affected by the delivery method and delivery location of the Software and corresponding SAP Support.

软件和SAP支持的交付。 SAP将通过在SAP ServiceMarketplace (<http://service.sap.com/swdc>)上提供电子下载的方式向提供商交付软件和SAP支持。损失风险在此类电子交付时转移。提供商谨此同意, 不要求以物理方式交付软件或SAP支持。如出现以物理方式交付的情况, 提供商应拒绝任何此类交付。提供商谨此同意并理解: 税费计算可能会受到软件和相应SAP支持的交付方式和交付地点的影响。

7. TERM AND TERMINATION 期限和终止

7.1 Term. This Agreement is entered for the Term, unless earlier terminated as set forth herein or in accordance with any right to terminate specified in the Master Agreement. The Term may be extended as mutually agreed by the Parties in writing or as specifically set forth in the Master Agreement. For the avoidance of any doubt, termination of the Agreement shall strictly apply to all licenses under the Agreement, Order Forms, Exhibits, its appendices, schedules, addenda and order documents and any partial termination of the Agreement by Provider shall not be permitted in respect of any part of the Agreement, its appendices, Exhibits, Annexes, schedules, addenda, or order documents.

期限。 除非按照本条款的规定提前终止或依据主协议中规定的终止权利而终止, 否则本协议在期限保持有效。经协议双方书面约定或在主协议中明确规定, 可延长期限。为避免疑义, 本协议的终止应严格适用于协议、订购单、附件、附件之附录、附录、补充协议及其他文件中授予的所有许可, 并且提供商不得就协议、其附录、附件、补充协议或其他文件的任何部分对协议进行部分终止。

7.2 Termination by SAP. This Agreement and the licenses granted under this Agreement may be terminated by SAP in accordance with the following: (a) except for Provider's breach of its obligations under Sections 8, 9 or 14.1, thirty (30) days after SAP gives Provider notice of Provider's breach of any provision of the Agreement including more than thirty (30) days delinquency in Provider's payment of any money due hereunder, unless Provider has cured such breach during such thirty (30) day period; (b) immediately if (1) Provider commences negotiations with one or more of its creditors with a view to rescheduling major parts of its indebtedness or (2) Provider files for bankruptcy, has a petition for bankruptcy filed on its behalf which is not dismissed within sixty days of filing, becomes insolvent, or makes an assignment for the benefit of creditors; and/or (3) Provider breaches any of its obligations under Sections 8, 9 and/or 14.1 [Intellectual Property Ownership, Confidentiality, Assignment].

SAP 终止。 SAP 可依据以下情形终止本协议和本协议项下授予的许可: (a) 除提供商违反第 8、9 或 14.1 节规定的义务外, 在 SAP 向提供商发出通知, 告知其违反任何协议条款三十(30)日后, 包括提供商拖欠支付本协议项下的到期款项超过三十(30)日的, (除非提供商在三十(30)日期限内纠正此类违约行为); (b) 在以下情况下立即终止: (1) 提供商就延期偿还其债务的主要部分开始与一位或数位债权人协商; 或者(2) 提供商申请破产, 有代表其进行的破产申请(且未在申请后六十天内撤回)、已经资不抵债或转让债权人权益; 和/或(3) 提供商违反第 8、9 和/或 14.1 节规定的任何义务[知识产权归属、保密、转让]。

7.3 Termination by Provider. This Agreement may be terminated by Provider in accordance with the following: (a) except for SAP's breach of its obligations under Sections 8 or 9, thirty (30) days after Provider gives SAP notice of SAP's breach of any provision of the Agreement, unless SAP has cured such breach during such thirty (30) day period; (b) immediately if (1) SAP commences negotiations with one or more of its creditors with a view to rescheduling major parts of its indebtedness or (2) SAP files for bankruptcy, has a petition for bankruptcy filed on its behalf which is not dismissed within sixty days of filing, becomes insolvent,

or makes an assignment for the benefit of creditors; and/or (3) SAP breaches its obligations under Sections 8 and/or 9 [Intellectual Property Ownership, Confidentiality].

提供商终止。提供商可依据以下情形终止本协议：（a）除 SAP 违反第 8、9 节规定的义务外，在提供商向 SAP 发出通知，告知其违反任何协议条款三十（30）日后（除非 SAP 在三十（30）日期限内纠正此类违约行为）；（b）在以下情况下立即终止：（1）SAP 就延期偿还其债务的主要部分开始与一位或数位债权人协商；或者（2）SAP 申请破产，有代表其进行的破产申请（且未在申请后六十天内撤回）、已经资不抵债或转让债权人权益；和/或（3）SAP 违反第 8 和/或 9 节规定的义务[知识产权归属、保密]。

- 7.4 **Termination for change of control.** This Agreement may be terminated immediately by SAP upon written notice to Provider if Provider comes under direct or indirect control of any entity competing with SAP. If before such change Provider has informed SAP of such potential change of control without undue delay, the Parties agree to discuss solutions on how to mitigate such termination impact on Customer, such as stepping into the Customer contract by SAP or by any other Affiliate of Provider or any other form of transition to a third party provider.

因控制权变更而终止。如提供商受到与 SAP 竞争的任何实体的直接或间接控制，则 SAP 可以书面形式通知提供商立即终止本协议。如在此类变更之前，提供商已及时通知 SAP 此类潜在的控制权变更，则协议双方同意就如何降低此类终止对客户产生的影响商讨解决方案，例如：SAP 或提供商的任何其他关联企业与客户直接签署合同，或采取任何其他形式过渡到第三方提供商。

- 7.5 **Duties upon termination and surviving terms.** Upon any termination hereunder and subject to any Wind Down set forth in the Section "Term and Termination" of the Master Agreement, Provider and its Affiliates shall (i) immediately cease acquiring new Customers and marketing the Software as part of the Authorized Services under this Agreement; (ii) immediately cease Use of all SAP Materials and Confidential Information; (iii) ensure that each Customer ceases Use of all SAP Materials and SAP Confidential Information; and (iv) within thirty (30) days after any termination, irretrievably destroy or upon SAP's request deliver to SAP all copies of all SAP Materials and Confidential Information in every form, except to the extent it is legally required to keep such materials for a longer period in which case such return or destruction shall occur at the end of such period. Provider agrees to certify in writing to SAP that it and each of its Affiliates has performed the foregoing. Notwithstanding the foregoing, Sections 1, 6, 7, 8.1, 8.3-8.8, 9, 10.2, 11, 12, 14.5, 14.6, 14.7 and 14.9 shall survive any termination.

终止后的义务和继续有效的条款。根据本协议中的规定终止本协议后，依据主协议中“期限和终止”一节对“逐渐减少”的规定，提供商及其关联企业应（i）立即停止吸纳新客户，且不再将软件作为本协议项下授权服务的一部分进行营销宣传；（ii）立即停止使用所有 SAP 材料和保密信息；（iii）确保所有客户停止使用所有 SAP 材料和 SAP 保密信息；且（iv）在终止之后三十（30）日内彻底销毁或应 SAP 要求向 SAP 返还 SAP 材料和保密信息的任何形式的所有副本，除非法律要求将此类副本文件保存更长期限，在这种情况下，前述返还或销毁行为应在该期限届满时作出。提供商同意以书面形式向 SAP 证明提供商及其各个关联企业均已履行前述义务。尽管有前述规定，第 1、6、7、8.1、8.3 至 8.8、9、10.2、11、12、14.5、14.6、14.7 和 14.9 节在协议终止之后仍然有效。

- 7.6 **Effect of Termination.** In the event of any termination hereunder (i) Provider shall not be entitled to any refund of any payments made by Provider; (ii) any outstanding Fees (including any portion of the Floor Commitments) already invoiced or due prior to the termination of the Agreement remain or become immediately due and payable; (iii) except in case of a termination in accordance with Section 7.3 by Provider, any Fees which are unpaid by the Provider (based on the Fees payable for the Term as set forth in the Master Agreement) will become immediately due and payable, including any unfulfilled Floor Commitments for any Contract Year completed or commenced prior to the effective date of the termination.

终止的效力。一旦根据本协议的规定终止本协议后，（i）提供商无权要求返还其已支付的任何款项；（ii）在协议终止之前已开具发票或到期的任何未付费用（包括基础承诺的任何款项部分）应继续支付或立即到期应付；（iii）除非提供商依据第 7.3 节终止协议，否则提供商未支付的任何费用（根据主协议中就期限规定的应付费用）应立即支付，包括在终止生效之前已结束或已开始的任何合同年内作出的任何未履行的基础承诺。

8. INTELLECTUAL PROPERTY OWNERSHIP

知识产权归属

- 8.1 **Software Ownership and Limited Rights.** The Software, SAP Materials, and all Intellectual Property Rights embodied in the foregoing, shall be the sole and exclusive property of SAP, SAP SE or its SAP Affiliates, or its or their licensors, subject to any rights expressly granted to Provider in Section 8 hereof. Except for Modifications and Add-ons authorized under this Agreement, Provider is not permitted to create derivative works of the Software or SAP Materials. Any such unauthorized works developed by Provider, and any Intellectual Property Rights embodied therein, shall be the sole and exclusive property of SAP, SAP SE or any of its SAP Affiliates, as applicable, and Provider hereby assigns all rights in them (including moral rights) to such SAP entity. To the extent Intellectual Property Rights are not eligible to be transferred by operation of the law, SAP, SAP SE or any of its SAP Affiliates shall be granted exclusive rights to use to the widest extent lawfully possible. All rights in and to the Software and SAP Materials not expressly granted in this Agreement are reserved by SAP. Provider shall use commercially reasonable efforts to ensure that no Customer is violating the terms of its Customer Service Agreement, including without limitation ensuring that the use of the Software by its Customers has not exceeded the agreed Licensed Level. In the event Provider becomes aware that any Customer is violating its Customer Service Agreement in relation to the Software or any SAP Materials, Provider shall promptly notify SAP of such. Provider shall reasonably cooperate with SAP to enforce the terms of any such Customer Services Agreement with a Customer.

软件所有权和有限权利。除依据本协议第 8 节中明确授予提供商的任何权利，软件、SAP 材料及其中包含的所有知识产权均应为 SAP、SAP SE 及其关联企业或其许可方的唯一专有财产。除本协议项下授权的修改和增强模块以外，提供商不得制作软件或 SAP 材料的衍生作品。提供商开发的任何此类未经授权的作品以及其中包含的任何知识产权，均为 SAP、SAP SE 或其任何关联企业（视情况而定）的唯一专有财产，提供商特此将此类所有权利（包括著作人身权）转让给此类 SAP 实体。如知识产权依照法律规定不能转让，则 SAP、SAP SE 或其任何关联企业应视为已被授予排他性权利，能够在法律允许的最大范围内使用此类知识产权。本协议中没有明确授予的软件和 SAP 材料的所有权利均由 SAP 保留。提供商应采取商业上合理的措施，确保客户不违反客户服务协议的条款，包括但不限于确保客户对软件的使用未超出约定的许可级别。提供商一旦发现任何客户违反与软件或任何 SAP 材料相关的客户服务协议，则应立即就此类行为通知 SAP。提供商应合理配合 SAP 执行与客户签署的任何此类客户服务协议的条款。

- 8.2 **Modifications and Add-ons.** Subject to the licensing of the required development rights under separate agreement, Provider shall be entitled to develop Modifications and Add-ons for the Software and shall be permitted to Use Modifications and Add-Ons with the Software in accordance with the license grant to the Software set forth in Section 3.1 herein. Provider shall promptly notify SAP if and when Provider is planning to develop Modifications or Add-ons to the Software. The notification provided by Provider shall include a high level description of the intended functionality and of the timeframe planned for such development. In addition, any Modifications or Add-ons must not i) unreasonably impair, degrade or reduce the performance or security of the

Software; ii) enable the bypassing or circumventing of SAP license restrictions and/or provide users with access to the Software to which such users are not directly licensed; and/or iii) permit mass data or metadata extraction from an SAP software to a non-SAP software for the purpose of replacing the Software as the data's system of record. With regards to the aforementioned item iii), Provider shall refer any Customer requiring such information to SAP.

修改和增强模块。在符合就要求的开发权利获得许可而签署的单独协议的情况下，提供商应有权对软件进行修改和/或开发增强模块，并可以依据本协议第 3.1 节授予的软件许可与软件一起使用修改和增强模块。如提供商计划对软件进行修改或开发软件的增强模块，则应立即通知 SAP。提供商发送的通知中应包括此类开发的预期功能以及计划时间框架的大致概述。此外，任何修改或增强模块不得 (i) 不合理地削弱、降低或减少软件的性能或安全性；(ii) 支持绕过或规避 SAP 许可限制和/或向用户提供不对其直接授予许可的软件的访问权限；和/或 (iii) 出于替换作为数据记录系统的软件之目的，允许将 SAP 软件中的大量数据或元数据提取至非 SAP 软件中。就前述 (iii) 而言，提供商应将任何需要此类信息的客户提供给 SAP。

- 8.3 Modifications. The ownership of Modifications, and any Intellectual Property Rights embodied therein, shall vest in SAP, SAP SE or the applicable SAP Affiliate. Provider irrevocably assigns to SAP all Provider's rights, title and interest ("Assigned Intellectual Property Rights") in and to the Modifications, including the right to register or file proprietary rights based on the Modifications. Provider further agrees to provide to SAP promptly upon the SAP's request all pertinent facts and documents relating to such Modifications, and to perform promptly such lawful acts and to sign promptly such further applications, assignments, statements, and other lawful documents as SAP may reasonably request to effectuate fully this assignment. Provider hereby grants SAP a worldwide, non-exclusive, fully paid up, royalty free, perpetual and irrevocable license to any Provider contributed Intellectual Property Rights in any Provider Background Materials contained in the Modifications to make, have made, use, reproduce, display, distribute, create derivative works of, lease, sell, offer for sale, import, export or otherwise transfer through standard tiers of distribution such Provider Background Materials (a "Full License"), provided that such Provider Background Materials are used only in connection with the Modification or derivative works thereof. Subject to the extent of Provider's rights therein, Provider further grants SAP a Full License to any third-party materials incorporated in the Modification. To the extent Provider does not have sufficient rights to grant SAP a Full License to such third party materials, Provider covenants to use its best efforts to procure such rights for SAP in and to the third party materials incorporated in such Modifications.

修改。修改及其包含的知识产权均归 SAP、SAP SE 或相应的 SAP 关联企业所有。提供商以不可撤销的方式将提供商对修改的所有权利、权益和利益（以下称为“转让的知识产权”）转让给 SAP，其中包括基于此类修改注册或申请专有权利的权利。提供商进一步同意：在 SAP 要求时，提供商将立即向 SAP 提供与此类修改相关的所有数据和文档；立即执行此类合法行为；立即签署同意其他此类申请、转让、声明以及 SAP 为完成该转让可能合理要求的其他法律文档。提供商特此授予 SAP 对修改中包含的任何提供商背景材料的知识产权拥有世界范围内的、非独占的、已足额缴付的、免特许使用费的、永久性的且不可撤销的许可，使 SAP 有权制作、代其制作、使用、复制、显示、分发、创建衍生作品、出租、销售、标价出售、进口、出口或以其他方式通过标准分销渠道转让此类提供商背景材料（以下称为“完全许可”），但前提是此类提供商背景材料仅能与本协议所述的修改或衍生作品一起使用。根据本协议项下提供商的权利范围，提供商进一步向 SAP 授予修改中涉及的任何第三方材料的完全许可。如果提供商权限不足，无法向 SAP 授予此类第三方材料的完全许可，则提供商保证将尽最大努力为 SAP 购买此类修改中涉及的第三方材料的此类权利。

- 8.4 Add-ons. The ownership of the Add-ons developed by Provider shall vest in Provider or the Customer as provided in the Customer Services Agreement subject to SAP's rights in and to the Software. Provider may copy and may include Redistributable Files in Add-ons. Any Provider created Add-ons that contain Redistributable Files must not be made (directly or indirectly) subject to an Excluded License. In the event Provider distributes or makes available Add-ons to third parties, Provider will indemnify SAP, SAP SE and their affiliated companies against any and all claims brought against them (individually or jointly) arising from Licensee's development and distribution of such Provider Add-on. In exchange for the right to develop Add-ons under this Agreement, Provider covenants not to assert any Intellectual Property Rights in Add-ons created by Provider against any SAP product, service, or future SAP development.

增强模块。受制于 SAP 在软件中的权利，提供商开发的增强模块，根据客户服务协议中的规定，归提供商或客户所有。提供商可在增强模块中复制和包含可再分发文件。供应商创建的包含可再分发文件的任何增强模块不得直接或间接受制于排他的许可。如提供商向第三方分发或提供增强模块，对于因被许可方开发和分发此类提供商增强模块而导致 SAP、SAP SE 和其关联企业（分别或共同）被要求索赔的，提供商应就此向 SAP、SAP SE 和其关联企业作出赔偿。作为依据本协议交换增强模块开发权利的条件，提供商承诺不针对任何 SAP 产品、服务或未来 SAP 开发主张提供商创建的增强模块中的任何知识产权。

- 8.5 Reverse Engineering, Source Code. Provider shall not disassemble, reverse engineer or decompile, nor otherwise create or attempt to create the source code from the object code of the Software or SAP Materials in any manner, unless such action is indispensable in order to obtain information necessary to achieve interoperability of the Software with an independently created computer program and Provider has not been provided such information, despite a written request, within a reasonable period of time. Information obtained through such action may not be used for purposes other than to achieve interoperability, and may not be given to third parties, unless this is necessary to establish interoperability, in particular is not to be used for the development, creation or marketing of programs similar to the Software. If Provider wishes to exercise any right to reverse engineer to ensure interoperability in accordance with applicable law, Provider shall first provide written notice to SAP and permit SAP, at its option, to make an offer to provide information and assistance reasonably required to ensure interoperability of the Software with other products for a fee to be mutually agreed upon (if any).

反向工程、源代码。提供商不得分解、反向工程或反编译，亦不得以任何方式从软件或 SAP 材料的目标代码中创建或试图创建源代码，除非该等行为是获取实现软件与独立创建的计算机程序之间互操作性的必要信息所必不可少的，且即使提供商以书面形式提出请求，在合理时间内亦未获得此类信息。通过此类行为获得的信息不得用于除实现互操作性以外的任何目的，亦不得提供给第三方（除非为了实现互操作性而必须提供），特别是不得用于开发、创建或宣传与软件类似的程序。如提供商希望依据适用法律的规定行使任何反向工程权利，以确保互操作性，则应首先向 SAP 发出书面通知，并允许 SAP 自行选择提供合理需要的信息和协助，以确保软件与其他产品间的互操作性，相关费用（如有）由双方共同商定。

- 8.6 Except to the extent explicitly specified in this Section 8 or a written separate agreement between the Parties, nothing in this Agreement shall be construed, whether by implication, estoppel or otherwise, to transfer ownership rights in, or grant license rights to Background Materials to the other Party.

除非本协议第 8 节或双方另行签订的书面协议中明确规定，否则本协议中的任何内容均不得视为以暗示、默许或其他方式向另一方转让背景材料的所有权或授予此类材料的许可权利。

- 8.7 Feedback. During the course of this Agreement, Provider agrees to provide and SAP will solicit Provider's input regarding Software, products, services, business or technology plans, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of software, products and/or services, or input as to whether Provider believes SAP's development direction is consistent with their own business and IT needs, the technology

marketplace in general, and the like (collectively "Feedback"). Provider acknowledges and agrees that any information disclosed by SAP during discussions related to Feedback shall be considered SAP Confidential Information and shall be protected from disclosure in accordance with the terms of this Agreement. In order for SAP to utilize such Feedback, Provider grants to SAP a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right to sublicense to SAP's licensees and customers, under all relevant Provider intellectual property rights, to use, publish, and disclose such Feedback in any manner SAP chooses and to display, perform, copy, make, have made, use, sell, and otherwise dispose of SAP's and its sub-licensees' products or services embodying Feedback in any manner and via any media SAP chooses, without reference to the source. SAP shall be entitled to use Feedback for any purpose without restriction or remuneration of any kind with respect to Provider and/or its representatives. Provider acknowledges that the information related to Software or SAP, products, services, business or technology plans, disclosed to it under this Agreement, is only intended as possible strategies, developments, and functionalities of the SAP products or services and is not intended to be binding upon SAP to any particular course of business, product strategy, and/or development.

反馈信息。在本协议履行期间, 提供商同意提供, SAP 也将征求提供商关于软件、产品、服务、业务或技术计划的信息, 包括但不限于, 与软件、产品和/或服务的可能创建、修改、更正、改进或增强相关的评论或建议, 或者提供商认为 SAP 的发展方向是否符合其自身业务和 IT 需求以及一般的技术市场趋势之类的信息 (以下统称“反馈信息”)。提供商兹确认并同意: SAP 在反馈信息讨论过程中披露的任何信息均应视为 SAP 保密信息, 且依据本协议条款不得对外披露。为了让 SAP 使用此类反馈信息, 提供商授予 SAP 非独占的、永久性的、不可撤销的、全球范围内的、免特许权使用费的许可, SAP 凭借此权利可向 SAP 的被许可方和客户授予从属许可, 使 SAP 的被许可方和客户有权依据提供商的所有相关知识产权, 以 SAP 选择的任何方式使用、发布和披露此类反馈信息, 并使 SAP 的被许可方和客户有权在不考虑反馈信息来源的情况下, 以 SAP 选择的任何方式和介质, 显示、执行、复制、制作、代其制作、使用、销售或以其他方式处理包含此类反馈信息的 SAP 及其从属被许可方的产品或服务。SAP 有权出于任何目的使用反馈信息, 且不受与提供商和/或其代表相关的任何限制或报酬的约束。提供商特此确认: 提供商依据本协议获取的与软件或 SAP、产品、服务、业务或技术计划相关的信息, 仅为 SAP 产品或服务的可能战略、开发和功能信息, 且该等信息不得对 SAP 的任何特定业务流程、产品战略和/或开发构成任何约束力。

- 8.8 The Parties recognize that either Party has the right to develop independently software that would compete with the other Party's software without use of any Confidential Information disclosed to such other Party hereunder. Further, either Party shall be free to use for any purpose the residuals resulting from access to or work with confidential information disclosed hereunder. The term "residuals" means information in non-tangible form, which may be retained inadvertently in the unaided memory by persons who have had access to the confidential information, including ideas, concepts, know-how or techniques contained herein, so long as such persons have not studied the information for the purpose of replicating the same from memory. Neither Party shall have any obligation to limit or restrict the assignment of such persons or to pay product fees for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either Party a license under the other Party's copyrights or patents.

本协议双方均一致确认: 在不使用另一方披露的任何保密信息的情况下, 协议任一方均有权独立开发与另一方软件竞争的软件。此外, 无论出于任何目的, 协议双方有权自由使用因接触或使用根据本协议披露的保密信息而引发的残留信息。“残留信息”一词指曾经接触保密信息 (包括其中包含的想法、概念、专有知识或技术) 的人员无心保留在独立记忆中的无形信息, 但前提是此类人员不是出于从记忆中复制该等信息的目的而研究此类信息。任何一方均没有义务限制或约束此类人员的工作, 或为因使用残留信息而产生的任何工作支付产品费。但是, 前述内容不得视为向协议一方授予另一方著作权或专利权下的许可。

9. CONFIDENTIALITY

保密

- 9.1. **Use of Confidential Information.** Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other 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 other Party, 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 Party to any person other than its bona fide individuals whose access is necessary to enable Provider and Customers to exercise their rights and meet their obligations hereunder. To the extent that Customers or third parties are provided access to SAP Confidential Information, such access shall be subject to confidentiality terms that are at least as restrictive as those set forth here. 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 and neither Party shall use the other Party's Confidential Information for any purpose other than in connection with the Parties' performance under this Agreement.

保密信息的使用。除为实现本协议意旨所需外, 不得以任何方式复制保密信息。一方任何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。对于一方的保密信息, 任何一方均: (a) 应采取合理措施 (定义如下) 对一切保密信息予以严格保密; 并且 (b) 不得向其他人披露另一方的保密信息, 但向为支持提供商和客户行使其于本协议项下的权利以及履行其义务而需要获取保密信息的善意个人进行的披露不在此限。如向客户或第三方提供对 SAP 保密信息的访问, 则此类访问应受至少与此处规定的条款具有同等限制的保密条款的约束。此处使用的“合理措施”是指接收方为保护类似于自有的专有和保密信息所采取的措施, 此类措施至少须具备合理的关注程度。任何一方在签署本协议之前披露的保密信息应受到本协议保密条款的约束。任何一方均不得出于履行本协议之外的任何其他目的使用另一方的保密信息。

- 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。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。

- 9.3 **Confidential Terms and Conditions.** In addition to the foregoing limitations, neither Party shall disclose the terms or conditions of this Agreement without the prior written approval of the other Party (other than to those of the Party's Representatives who must know such information in order for the Party to perform under the Agreement or enforce its rights hereunder). As used

herein, "Representatives" shall mean (i) employees of Receiving Party; (ii) attorneys, accountants, or other professional business advisors; and, additionally, (iii) employees of SAP and/or any of the SAP Affiliates, and (iv) employees of any entity who are directly involved in the performance of obligations under this Agreement. The Receiving Party shall be responsible for any breach of the terms of this Agreement caused by its Representatives.

保密条款和条件。除前述限制性条款外，未经另一方事先书面批准，任何一方不得披露本协议的条款和条件（必须知晓此类信息以便协议一方履行本协议条款或执行本协议下权利的协议一方的代表除外）。此处使用的“代表”指（i）接收方的员工；（ii）律师、会计或其他专业业务顾问；（iii）SAP和/或SAP关联企业的员工；以及（iv）任何直接涉及履行本协议项下义务的实体的员工。接收方应对其代表违反本协议条款的一切行为负责。

- 9.4 In the event that the Receiving Party or any of its Representatives are requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Confidential Information or any other information concerning the Disclosing Party, this Agreement, or the Parties' performance hereunder, the Receiving Party shall provide the Disclosing Party with prompt notice of such request or requirement in order to enable the Disclosing Party (i) to seek an appropriate protective order or other remedy; (ii) to consult with the Receiving Party with respect to the Disclosing Party's taking steps to resist or narrow the scope of such request or legal process; or (iii) to waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained in a timely manner, or the Disclosing Party waives compliance, in whole or in part, with the terms of this Agreement, the Receiving Party or its Representative shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally required to be disclosed and to require that all Confidential Information that is so disclosed will be accorded confidential treatment.

如根据适用的法律或法规或法律程序的规定，接收方或其任何代表被要求披露任何保密信息或涉及披露方、本协议或协议双方对本协议履行情况的其他信息，则接收方应当立即通知披露方此类请求或要求，使披露方能够（i）寻求合理的保护措施或其他补救措施；（ii）就对抗或缩小此类请求或法律程序范围所需采取的措施咨询接收方；（iii）放弃遵守本协议的所有或部分条款。如未能及时获得此类保护措施或采取其他补救措施，或者披露方放弃遵守本协议的全部或部分条款，则接收方或其代表应采取商业上合理的措施，仅披露法律要求披露的部分保密信息，并要求由此披露的所有保密信息均遵循保密处理规定。

- 9.5 Publicity. 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 Provider agrees that SAP may use Provider's name in customer listings or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHIRE participation). SAP will make reasonable efforts to avoid having the reference activities unreasonably interfere with Provider's business.

公开。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、广告或类似活动中，但提供商同意SAP将提供商的名称用于客户名录中的，或在双方共同同意的时间用于SAP营销工作（包括但不限于推荐电话和案例、新闻推荐、现场拜访、SAPPHIRE参与）的一部分的除外。SAP将尽合理努力避免推荐活动不合理地干扰提供商的业务。

10. PERFORMANCE WARRANTY

性能保证

- 10.1 Warranty. SAP warrants that the Software will substantially conform to the specifications contained in the Documentation for twelve (12) months following delivery of the Software. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; or (ii) if the nonconformance is caused by a Modification or Add-on (other than a Modification or Add-on made by SAP and which is provided through SAP Support or under warranty), Provider, Third Party Software or any software not provided by SAP. SAP does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Provider's business requirements. Provided Provider notifies SAP in writing with a specific description of the Software's nonconformance within the warranty period and SAP validates the existence of such nonconformance, SAP will, at its option: (a) repair or replace the nonconforming Software, or (b) refund the license fees paid for the applicable nonconforming Software in exchange for a return of such nonconforming Software. This is Provider's sole and exclusive remedy under this warranty. Provider is not entitled to imply any representation, warranty, undertaking, or guarantee, including, but not limited to, in any other published SAP description or advertisement of the Software, except to the extent that SAP has expressly confirmed such in writing.

保证。SAP保证在交付软件后的十二（12）个月内，软件实质上符合文档中所规定的规格。该项保证不适用于以下情形：（i）未依照文档使用软件的；或（ii）不合格是由于修改或增强模块（SAP作出的修改或增强模块并通过SAP支持或根据保证条款提供的除外）、提供商、第三方软件或任何非由SAP提供的软件引起的。SAP不保证软件能不间断运行，亦不保证软件完全不存在对软件性能不会产生实质性影响的细小缺陷或错误，但此类小缺陷或错误对软件性能不会有重大影响，亦不保证软件包含的应用程序是符合被提供商的一切业务要求而设计的。如提供商在保证期内书面通知SAP软件的不合格之处且SAP证实的确存在不合格的情况，则SAP将自行选择：a）修复或更换不合格的软件，或b）退还就有关不合格软件支付的许可费用，同时要求返还该不合格软件。这是提供商在本保证条款下能获得的所有和唯一补偿。提供商无权对包括但不限于任何其他已发布的SAP对软件描述或广告作出任何陈述、保证、承诺或担保的默示理解，SAP已明确书面确认的除外。

- 10.2 Express Disclaimer. SAP AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

免责声明。SAP与其许可方不承担任何其他的明示或默示保证责任，包括但不限于任何的可销售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。

- 10.3 Provider shall notify SAP in writing of any nonconformance in sufficient detail for SAP to analyze the claimed nonconformance. Provider shall give commercially reasonable assistance to SAP in analyzing and remediating any nonconformity.

提供商应就任何不合格情况以书面形式详细告知SAP，以便SAP对声称的不合格进行分析。提供商应提供商业上合理的协助，帮助SAP分析和纠正任何不合格之处。

11. THIRD PARTY CLAIMS

第三方索赔

- 11.1 Indemnification by SAP.
SAP 赔偿。

(a) SAP shall defend Licensee against claims brought against Provider in the Territory where such claim (i) is brought by a third party owner of the intellectual property giving rise to the claim and (ii) alleges that Provider's distribution of the Software in accordance with the terms and conditions of this Agreement constitutes a direct infringement or misappropriation of a patent claim(s), copyright, trademark or trade secret rights. SAP will pay damages finally awarded against Provider (or the amount of any settlement SAP enters into) with respect to such claims provided that: 符合下列条件在地域内对提供商提出的索赔, SAP 应为被许可方进行抗辩: (i) 由引起索赔的知识产权的第三方所有者提出的索赔; 并 (ii) 声称提供商根据本协议的条款和条件分发软件构成对专利申请、版权、商标或商业秘密权利的直接侵犯或剽窃的索赔。SAP 将会承担就此类索赔作出的终审判决对提供商造成的损失 (或由 SAP 达成的任何和解金额), 但前提是:

1. Provider notifies SAP in writing of any such alleged claim without undue delay, and 提供商及时将任何此类声称的索赔以书面形式通知 SAP; 并
2. Provider authorizes SAP to have sole control over the defense or settlement any such claim, 提供商授权 SAP 由其全权负责任何此类索赔的辩护或和解事宜;
3. Provider cooperates fully in the defense of such claim and provides SAP with all relevant information and reasonable support, and 提供商全力配合此类索赔的辩护, 并向 SAP 提供所有相关的信息以及合理支持; 以及
4. Provider shall not undertake any action in response to any infringement, or alleged infringement, of the Software that is prejudicial to SAP's rights. 提供商不得就软件的任何侵权或涉嫌侵权的回应作出任何有损于 SAP 权利的行为。

SAP expressly reserves the right to cease such defense of any claim(s) in the event the Software is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. 软件不再存在侵犯或剽窃第三方权利嫌疑的或不被认为是侵犯或剽窃第三方权利的, SAP 明确保留停止对任何索赔的该等抗辩的权利。

(b) SAP shall have no obligation under this Section 11.1 if the claim results from (i) Software or Documentation that has been altered by anyone other than SAP or (ii) failure to use a New Release promptly made available by SAP if such infringement or misappropriation could have been avoided by use of the New Release, or (iii) unlicensed activities. Further, SAP shall have no obligation under this Section 11.1 for a claim which could have been avoided (i) if the Provider had not used the Software or SAP Materials in combination or conjunction with any software, data or systems not provided by SAP; or (ii) if the Provider (or its Customer or End User) had not acted outside the scope of the licensed rights under this Agreement.

如索赔是出于以下情况, SAP 不应承担本节 (第 11.1 节) 下的义务: (i) 除 SAP 之外的任何人对软件或文档进行的变更, 或 (ii) 在使用新版本即可避免此类侵权或剽窃的情况下, 未能及时使用 SAP 提供的新版本, 或 (iii) 未获得许可的活动。此外, 对于本可以通过如下方式避免的索赔, SAP 不承担本节 (第 11.1 节) 中下的义务: (i) 如提供商不将软件或 SAP 材料与非由 SAP 提供的任何软件、数据或系统结合使用或一起使用; 或 (ii) 如提供商 (或其客户或最终用户) 未超出本协议项下许可的权利的范围行事。

(c) If an infringement or misappropriation of the intellectual property rights of a third party by the Software in accordance with Section 11.1(a) above is alleged or, in the reasonable opinion of SAP, an infringement or misappropriation of the intellectual property rights of a third party is likely to occur or be alleged, SAP may, at its discretion:

根据上述第 11.1 节的规定, 如软件涉嫌侵犯或剽窃第三方的知识产权, 或者根据 SAP 的合理判断, 认为软件很有可能或涉嫌侵犯或剽窃第三方的知识产权, 则 SAP 有权自行决定采取以下措施:

- (i) procure for Provider the continued right to use the Software at no additional charges to Provider, or 不向提供商收取额外费用, 为提供商获取继续使用软件的权利;
- (ii) modify the Software or substitute alternative substantially equivalent non-infringing programs and supporting Documentation for the Software, or 修改软件, 或替换实质上同等的非侵权备用程序以及软件的相关文档; 或
- (iii) if none of the foregoing alternatives can be achieved at a reasonable cost, SAP may terminate the Agreement and refund the prices paid by Provider less an appropriate amount covering the period of actual use of the Software by the Provider. 如上述任一选项均无法以合理成本实现, 则 SAP 有权终止协议, 并退还提供商已支付的款项, 且其中应扣除提供商实际使用软件期间应支付的相应金额。

(d) THE PROVISIONS OF SECTION 11.1 STATE THE SOLE, EXCLUSIVE AND ENTIRE LIABILITY AND OBLIGATION OF SAP TO PROVIDER, AND PROVIDER'S SOLE REMEDY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS THAT MAY ARISE RELATED IN ANY WAY TO THE SOFTWARE, SAP MATERIALS, BUNDLED PRODUCTS, CLOUD SERVICES OR DOCUMENTATION. The liability limitations contained in Section 12 below shall apply to all claims made under Section 11.1.

第 11.1 节规定了 SAP 对提供商唯一的、排他性的、完整的责任和义务, 以及当软件、SAP 材料、附带的产品、云服务或文档以任何形式侵犯第三方知识产权时, 提供商应就此造成的任何索赔采取的唯一补救措施。下面第 12 节中包含的责任限制应适用于第 11.1 节下提出的所有索赔。

11.2 Indemnification by Provider. If an action is brought against SAP by a third party arising from (a) any taxes and related costs, interest and penalties paid or payable by SAP, (b) Provider's representations not authorized by SAP, (c) Provider's breach of this Agreement, including but not limited to: (i) any breach or violation of applicable export laws or regulations; or (ii) action in excess of Provider's authority hereunder and arising out of any claims by any Customers or End Users; or (d) Provider's failure to comply with the terms of the Customer Service Agreement, (e) any agreement between Provider and its distributors, resellers or Customers, (f) a claim that any Provider Confidential Information infringes, misappropriates or violates any patent, copyright or trademark of any third party or Provider's combining (or its authorizing others to combine) the Software with any products not provided by SAP, or (g) a third party's assertion that Provider acted as SAP's agent or otherwise on its behalf, then Provider shall defend SAP, at Provider's expense, and shall pay any settlement amounts Provider authorizes and all damages, costs and attorneys' fees finally awarded against SAP in the action. Provider shall indemnify and hold harmless SAP from any damages and costs SAP incurs as a consequence of any infringement of intellectual property rights of third parties caused by any of the circumstances set forth in this Section or the use of the Software not in accordance with this Agreement.

提供商赔偿。如因以下原因导致第三方对 SAP 提起诉讼: (a) SAP 应支付或已支付的任何税费和相关成本、利息和罚金; (b) 提供商未经 SAP

授权的陈述；(c) 提供商违反本协议，包括但不限于(i) 违反任何适用的出口法律或法规；或(ii) 超出提供商在本协议项下的权限范围的行为、因任何客户或最终用户提出索赔导致采取的行为；或(d) 提供商未遵循客户服务协议的条款；(e) 提供商与其分销商、经销商或客户之间签署的任何协议；(f) 被指称提供商的保密信息侵犯、剽窃或违反任何第三方的任何专利、著作权或商标；或提供商(或授权他人)将软件与非 SAP 提供的任何产品结合使用；或(g) 第三方声称提供商是 SAP 的代理或以其他方式代表 SAP 的利益；则提供商应自行付费为 SAP 提供辩护，并应支付提供商同意的和解金额，以及 SAP 在此类诉讼中被最终判决支付的所有损失、费用和律师费。因本条款规定的任一情形、或者因未按照本协议规定使用软件而导致侵犯第三方知识产权的，提供商应就此给 SAP 造成的任何损失和费用向 SAP 作出赔偿，并使其免受此类损害。

12. EXCLUSIONS AND LIMITATIONS OF LIABILITY 责任的免除和限制

12.1 Provider's Remedies. Provider's sole and exclusive remedies for any damages or loss in any way connected with the Software or SAP Support furnished by SAP and its licensors, including due to SAP's negligence or breach of any other duty, shall be, at SAP's option: (i) to bring the performance of the Software into substantial compliance with the functional specifications; (ii) re-performance of SAP Support; or (iii) return of an appropriate portion of any payment made by Provider with respect to the applicable portion of the Software or SAP Support.

提供商的补救措施。因SAP及其许可方提供之软件或SAP支持以任何方式造成的任何损害或损失，包括因SAP的过失或未履行任何其他责任而引起的损害或损失，提供商能获得的唯一补救措施为SAP自行选择的下列方式之一：(i) 使软件的性能实质上符合功能规格；(ii) 重新提供SAP支持；或者(iii) 退还提供商已支付款项中与相应的软件或SAP支持有关的部分。

12.2 Not Responsible. SAP and its licensors will not be responsible under this Agreement (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by Provider or Customer, a Modification or Add-on, third-party software, or third party database. SAP AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM INHERENTLY DANGEROUS USE OF: (a) THE SOFTWARE AND/OR (b) THIRD-PARTY SOFTWARE LICENSED HEREUNDER.

无须承担责任。在本协议项下，SAP和其许可方就下列事项不承担责任：(i) 未依照文档使用软件；或(ii) 缺陷是由提供商或客户、修改或增强模块、第三方软件或第三方数据库所造成。对于因内在在危险的方式使用(a) 软件和/或(b) 本协议项下许可的第三方软件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。

12.3 Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL SAP OR ITS LICENSORS OR PROVIDER BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES, IN THE AGGREGATE, IN EXCESS OF THE LESSER OF THE EQUIVALENT AMOUNT IN RMB OF EUR 500,000 CALCULATED BASED ON THE THEN CURRENT EXCHANGE RATE APPROVED BY SAP OR THE LICENSE FEES PAID UNDER THE AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE DATE IN WHICH THE CLAIM ARISES OR (B) IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES.

责任限制。在任何情况下，对于损失金额(共计)超出基于SAP批准的届时的汇率计算的500,000欧元等值人民币金额或索赔发生之前的十二(12)个月内本协议项下已付的许可费金额的部分，SAP或其许可方或提供商不对彼此或其他任何人或实体承担责任，也不对任何特殊的、偶发的、后果性的或间接的损害、商誉损失或营业利润损失、停工、数据丢失、计算机无法运行或功能紊乱、或惩戒性的或惩罚性的损害承担任何金额的赔偿责任。

12.4 Exclusions. THE LIMITATIONS AND EXCLUSIONS IN SECTION 12.3 SHALL NOT APPLY TO (i) CASES OF GROSS NEGLIGENCE OR MALICIOUS INTENT (ii) UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION (iii) FEES OWED UNDER THIS AGREEMENT OR (iv) CLAIMS PURSUANT TO SECTION 11.2.

除外。第12.3节中的责任限制和免除不适用于以下情况：(i) 因任何一方的重大过失或故意不当行为造成的损害，(ii) 未经授权的使用或披露保密信息，(iii) 本协议项下的应付费用，或(iv) 依据第11.2节提出的索赔。

12.5 Severability of Actions. 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.

执行之可分割性。协议双方均清楚理解并同意本协议中有关责任限制、保证义务免责声明，及免除损害赔偿的各条规定，均为独立于其他任何条款的可分割条款，并可分别单独执行。

13. PROVIDER COMPLIANCE 提供商应遵守的规定

13.1 Provider shall conduct its operations at all times in strict compliance with all applicable anticorruption laws including the US Foreign Corrupt Practices Act (FCPA), the U.K Bribery Act 2010, and SAP's then current local SAP Provider Code of Business Conduct. Such obligation shall also apply to the Provider's subcontractors, Affiliates, resellers and distributors. If Provider has in place or adopts policies which establish similar standards to the SAP Code of Business Conduct, Provider may comply with its own policies to fulfil the requirements of this Section.

提供商在开展业务时应始终严格遵循所有适用的反腐败法，其中包括美国的《海外反腐败法》(FCPA)、英国于2010年颁布的《反腐败法》以及SAP所在地区届时有效的SAP提供商业务行为守则。此类合规义务同样也适用于提供商的分包商、关联企业、经销商和分销商。如果提供商具备或采用了与SAP员工业务行为守则相似标准的制度，则提供商可以通过遵守其自有制度来达到本节的要求。

13.2 Provider shall not obtain on SAP's behalf or provide to SAP any information which is not legally available in the Territory, or which is procurement-sensitive, proprietary, or classified, where there is reason to believe that possession of such information is unauthorized, illegal, or unethical.

提供商不得代表SAP获取或向SAP提供在地域内不可合法获取的信息，或有理由认为是未经授权、非法或不道德获取的采购敏感的信息、专有的信息或机密的信息。

13.3 Provider shall not make, offer or promise any payments or gifts directly or indirectly to any employee of potential Customers or End Users. Any business entertainment offered to potential Customers must comply with the spirit and letter of the limits established in the relevant then current local SAP Code of Business Conduct.

提供商不得向潜在客户或最终用户的任何员工直接或间接支付、给予或承诺给予任何款项或赠与。向潜在客户提供的任何业务招待须符合当地届时有效的相关 SAP 业务行为守则中所设定的精神和文字限制。

- 13.4 Provider represents and warrants to SAP that Provider and any other person acting on the Provider's behalf have not directly or indirectly paid, offered or promised to pay, or authorized the payment of, and will not directly or indirectly pay, offer or promise to pay, or authorize the payment of any monies or gifts or anything of value to any employee or representative of a Customer or prospect, or government official or employee, political party official or candidate, or officer or employee of any public international organization (or an immediate family member of such persons) for the purpose of influencing their acts or decisions in order to secure or retain business on behalf of SAP.

提供商向 SAP 表示并保证，提供商以及代表提供商的任何其他人均未/亦不会出于影响以下人员的行为或决定，从而为 SAP 获取或保持业务的目的而直接或间接向以下人员支付、给予、承诺给予或委托给予任何款项或赠与或任何有价物品：客户或潜在用户的任何员工或代表、政府官员或员工、政党官员或候选人、任何国际公共组织的官员或员工（或前述人员的直系家庭成员）。

- 13.5 Provider represents and warrants that it is not listed by any government agency as debarred, suspended, or proposed for suspension or debarment or otherwise ineligible for government procurement programs. Provider certifies that neither it nor its employees or subcontractors are members of management or in a position to influence decisions related to work performed under the Agreement with respect to any Customer.

提供商表示并保证，其未被政府部门列为政府采购项目的排除、暂停单位，亦未被提议为暂停或排除单位或以其他方式被列入政府采购项目不合格名单。提供商证实或其员工或分包商均不是任何客户的管理团队中的一员，亦不处于任何客户中能够影响与依本协议所履行工作有关的决策的职位。

- 13.6 SAP shall be entitled to require Provider to certify once per year that Provider is in compliance with the terms of this Section 13.

SAP 有权要求提供商保证（每年一次）提供商遵守第 13 节的相关条款。

14. GENERAL PROVISIONS

一般条款

- 14.1 **Assignment.** Provider may not, without SAP's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the SAP Materials or SAP Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. SAP may assign this Agreement to an SAP Affiliate.

转让。 未经 SAP 事先书面同意，提供商不得让与、委托、抵押或以其他方式转让（无论是基于自愿还是因法律规定而导致的）本协议、其在本协议项下的任何权利或义务、SAP 材料或 SAP 保密信息给任何人，包括以资产出售、兼并或合并的方式进行转让。SAP 可将本协议转让予 SAP 关联企业。

- 14.2 **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 invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

可分割性。 双方同意，本协议中的某一或某些条款在任何方面被认定为无效或不可执行，此类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。

- 14.3 **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。

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

协议文本：本协议可分别签署，每份均为正本，共同构成一份协议。

- 14.5 **Regulatory Matters.** The Software, Documentation and SAP Materials are subject to the export control laws of various countries, including without limit the laws of Ireland, the United States and Germany. Provider agrees that it will not submit the Software, Documentation or other SAP Materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Software, Documentation and SAP Materials to countries, persons or entities prohibited by such laws or utilize Data Center(s) in such prohibited countries. Provider shall also be responsible for complying with all applicable governmental regulations of the country where Provider is registered, and any foreign countries with respect to the use of the Software, Documentation or other SAP Materials by Provider and/or its Affiliates.

监管事项。 软件、文档和 SAP 材料均受到不同国家/地区的出口管制法的约束，包括但不限于爱尔兰、美国和德国的法律。提供商同意，未经 SAP 事先书面同意，提供商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、文档或其他 SAP 材料，且不得将软件、文档和 SAP 材料出口给此类法律所禁止的国家/地区、个人或实体，或在此类法律所禁止的国家/地区使用数据中心。提供商还应负责遵守提供商注册所在国家/地区，以及与其提供商和/或其关联企业使用软件、文档或其他 SAP 材料有关的任何其他国家/地区的一切适用的政府法规。

- 14.6 **Governing Law; Limitations Period; Arbitration.** This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of the People's Republic of China without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and China law, rules, and regulations, China law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act as enacted shall not apply. Provider 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 Provider knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

适用法律；时效；仲裁。 本协议以及因本协议及其主旨引起的或与之相关的任何索赔均应受中华人民共和国法律的管辖并据此作出解释，但该国的法律冲突规则不予适用。外国法律、法规和规章与中国法律、法规和规章产生冲突时，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》和《统一计算机信息交易法案》不适用于本协议。对于因本协议及其主旨引起或与之相关的任何索赔，提供商须在知晓或在经过合理调查后应当知晓引发索赔的事由之日起二（2）年内提起诉讼。

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 **Error! Reference source not found.** shall survive termination or expiration of this Agreement.

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条中规定的义务在本协议终止或有效期届满后继续有效。

- 14.7 **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 Provider at the addresses first set forth in the Master Agreement. Each Party will send two copies to such address, one addressed to the other Party’s signatory to the Master Agreement and the other to “General Counsel”. Where in this section 14.7 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.

通知。 本协议所要求的或依据本协议作出的所有通知或报告均应以书面形式提交，且在递交至位于主协议首页所列的SAP及提供商各自的行政办公室时即视为送达。各方将向上述地址发送两份副本，一份发送给主协议另一方的签署人，另一份发送给“法律总顾问”。本协议第14.7节或其他条款要求采用书面形式的，可采用传真、信函或其他书面形式满足该要求。

- 14.8 **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），不应构成违约。前述条款之履行期限应延长至与妨碍履约事由存续时间相等之期间。

- 14.9 **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Provider, and all previous representations, discussions, and writings are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. This Agreement may be modified only by a writing signed by both Parties, except where a more stringent form (e.g. notarization) is required under applicable law. 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 Provider 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. Signatures sent by electronic means (facsimile or scanned and sent via e-mail) shall be deemed original signatures. This Agreement does not create any partnership, joint venture or principal and agent relationship.

完整协议。 本协议构成SAP与提供商之间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。除根据相应法律应采取更严格的形式（如公证）以外，只有经双方书面签字方能修改本协议。当本协议与提供商提供给SAP的任何采购订单或其他文档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。以电子方式发送的签名（传真或扫描并通过电子邮件发送）应视为原始签名。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。

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

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