

OpenText

End User License Agreement - China

最终用户许可协议- 中国

This End User License Agreement (“EULA”) is between the OpenText entity specified in the signature block below (“OT”) and the licensee specified in the signature block below (“Licensee”), and is effective on the last signature date (“Effective Date”). 本《最终用户许可协议》（“本协议”）的订立双方为下文签名部分所指定的 Open Text 实体（“OT”）和被许可方（“被许可方”），协议于最后签字日期（“生效日”）生效。

OT and Licensee agree as follows:

OT 和被许可方特此同意如下条款和条件:

1.0 定义

“附属公司”指由本协议任何一方控制，或控制本协议任何一方，或与本协议任何一方被共同控制的任何实体。控制是通过直接或间接拥有对象实体的大多数已发行权益资本和有投票权的权益来实现。如果某一实体不再满足这些标准，则该实体将不再是本协议下的附属公司；

“索赔”指由第三方根据协议所涉国家的法律就被许可方侵犯其专利、版权或商业秘密权利（OT 知晓该等专利、版权或商业秘密权利的存在）向该国具有合法管辖权的法庭提起指控的索赔、起诉、诉讼或诉讼程序；

“覆盖国家”指澳大利亚、奥地利、比利时、加拿大、中国（含香港，但不含澳门和台湾）、丹麦、芬兰、法国、德国、意大利、新西兰、挪威、西班牙、瑞典、瑞士、荷兰、英国和美国；

“文档”指于适用软件交付之日生效的随附用户指南、操作手册和发行说明；这些文件通常由 OT 提供；

“许可授权文件”指本协议（包括任何补遗）、许可模式一览表、所有交易文件（包括定价信息）、软件随附文档、题为《第三方通知》并可从

<http://www.opentext.com/agreements> 下载的文件，以及由 OT 提供并对所涉软件获准用途作出规定的任何其他文件；

“许可费”指被许可方应支付给 OT 的、与软件许可证授予相关的、不可退还的全部费用；

“许可模式”指与软件许可证相关的条件和限制之描述，所涉软件的使用必须严格遵守该等条件和限制；

“许可模式一览表”：对每个单独的软件许可证而言，许可模式一览表是指公布于网址

<http://www.opentext.com/agreements>、题为《许可模式一览表》且于适用的交易文件日期生效的一览表。许可模式一览表是本协议的一部分；

“物理介质”指含有所涉软件或能够启用所涉软件的物理介质或硬件；

“经销商”指 OT 的授权经销商；

“软件”包括软件产品、软件随附文档和根据本协议准予被许可方使用的支持软件，包括被许可方复制的所有副本，且暗指该软件的全部或任一部分；

“软件许可证”指根据本协议向被许可方授予的软件许可证；

“支持软件”指根据 OT 维护和支持计划向被许可方提供的所涉软件之所有维护和支持软件及其更新、升级、补

1.0 Definitions

“Affiliate” means any entity controlled by, controlling, or under common control with a party to this EULA. Control exists through ownership, directly or indirectly, of a majority of the outstanding equity capital and of the voting interests of the subject entity. If an entity ceases to meet these criteria, it will cease to be an Affiliate under this EULA;

“Claim” means claims, suits, actions or proceedings brought against Licensee in a court of competent jurisdiction in a Covered Country by a third party which allege an infringement of the third party’s patent, copyright, or trade secret rights of which OT is aware existing under the laws of the Covered Countries;

“Covered Countries” means Australia, Austria, Belgium, Canada, China (including Hong Kong, but excluding Macau & Taiwan), Denmark, Finland, France, Germany, Italy, New Zealand, Norway, Spain, Sweden, Switzerland, the Netherlands, the United Kingdom, and the United States;

“Documentation” means user guides, operating manuals, and release notes in effect as of the date of delivery of the applicable Software, made generally available by OT;

“License Documents” means this EULA including any addenda, the License Model Schedule, all Transaction Documents (including pricing information), Documentation, the document entitled Third Party Notifications available at <http://www.opentext.com/agreements>, and any other documents provided by OT setting out permitted uses of the Software;

“License Fees” means all non-refundable fees payable by Licensee to OT with respect to the granting of Software Licenses;

“License Model” means the description of the conditions, limitations and restrictions associated with the Software License which govern the use of the Software;

“License Model Schedule” for each individual Software License means the schedule entitled “License Model Schedule” posted at <http://www.opentext.com/agreements> in effect on the date of the applicable Transaction Document. The License Model Schedule is incorporated into this EULA ;

“Physical Media” means the physical media or hardware containing or enabling Software;

“Reseller” means an authorized OT reseller;

“Software” includes software products, Documentation, and Support Software licensed to Licensee under this EULA, including all copies made by Licensee and may, where the meaning so implies, refer to all of the Software or portions thereof ;

“Software License” means a license for the Software granted under this EULA to the Licensee;

丁、修复、修正、移植或新版本，以及根据该等计划提供给被许可方的所有相关随附文档；

“**税费**”指相关政府机构因本协议下的许可授予和软件交付而征收的销售税、使用税、消费税、商品和服务税以及增值税，不包括对 OT 征收的企业所得税；

“**第三方软件**”指由第三方拥有并直接向最终用户授予许可的软件产品；

“**交易文件**”包括：a) 涉及本协议并经双方签署的书面订单计划表；b) 由 OT 出具并由被许可方签署的报价；c) 由 OT 出具的发票；或 d) 涉及本协议并经 OT 书面同意的任何其他文件。如果两份或两份以上的交易文件之间存在任何不一致，交易文件的优先顺序应以上述顺序为准。所有交易文件都应遵守本协议的规定。

2.0 软件所有权

2.1 所有权。软件不被出售。所涉软件的所有所有权、知识产权和其他权益都属于 Open Text Corporation 及其附属公司或许可方。所涉软件的源代码是 Open Text Corporation 及其附属公司或许可方的商业秘密和机密信息。

3.0 许可授予

3.1 授予许可证。除非许可授权文件另行说明，否则在被许可方完全支付许可费及税费后，OT 应向被许可方授予全球性、非独占的永久（除非另行说明期限）内部业务使用许可（除非《许可模式一览表》中另有说明），准予根据许可授权文件中所述的许可模式、限制、数量、条件来下载、安装和执行适用交易文件中列明的软件。

3.2 适用的许可模式。许可模式和对软件的任何限制都将在交易文件中予以说明。如果交易文件中未说明许可模式或对软件的限制，则已向 OT 支付许可费的许可模式（以及任何容量）将适用。

3.3 将许可证分配给附属公司。除非被适用许可授权文件禁止，被许可方可在下述条件下将所涉软件分配给其附属公司：（a）被许可方确保其附属公司遵守许可授权文件；及（b）如果附属公司出现任何违反许可授权文件的行为，被许可方为其承担法律责任。

4.0 授权复制

4.1 软件和随附文档。被许可方可根据许可证为其使用所涉软件复制必要数量的副本。被许可方复制的每份软件副本都必须包含与软件正本相同的版权说明和其他通知。被许可方不得修改随附文档。软件随附文档：

（a）应仅用于为被许可方的软件使用提供支持；（b）不得向任何未经授权的第三方再版或再分发；及（c）不得在被许可方或任何其他方收取费用的情况下被分发

“**Support Software**” means all maintenance and support software, updates, upgrades, patches, fixes, modifications, ported versions, or new versions of the Software provided to Licensee pursuant to an OT maintenance and support program, together with all related Documentation provided to Licensee pursuant to such program;

“**Taxes**” means the sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate governments arising out of granting of licenses and delivery of Software under this EULA, except taxes imposed on OT's income;

“**Third Party Software**” means software products owned and licensed directly by third parties to the end user;

“**Transaction Document**” includes: a) a written order schedule signed by both parties which references this EULA, b) a quotation issued by OT and signed by the Licensee, c) an invoice issued by OT, or d) any other document that references this EULA and is agreed to by OT in writing. If and to the extent of any inconsistency between two or more Transaction Documents, the priority of the Transaction Documents will be interpreted in the order listed above. All Transaction Documents are governed by this EULA.

2.0 Ownership of the Software

2.1 Ownership. None of the Software is being sold. All ownership, intellectual property, and other rights and interests in the Software remain solely with Open Text Corporation, its Affiliates or its licensors. The source code of the Software is a trade secret of Open Text Corporation, its Affiliates or its licensors, and is their confidential information.

3.0 License Grant

3.1 Grant of License. Except as otherwise stated in the License Documents and subject to Licensee's payment of the License Fees and Taxes in full, OT grants to Licensee a worldwide, nonexclusive, perpetual (unless stated to be a time limited term), internal business use license (unless otherwise stated in the License Model Schedule) to download, install and execute the Software identified in the applicable Transaction Document subject to the License Models, restrictions, quantities, conditions, and limitations stated in the License Documents.

3.2 Applicable License Models. The License Model and any restrictions for the Software will be stated in the Transaction Document. If no License Model or restrictions are specified in the Transaction Document, the License Model (and any capacities) for which OT has been paid License Fees will apply.

3.3 Allocation of Licenses to Affiliates. Unless prohibited under the applicable License Document, the Licensee may allocate Software Licenses to its Affiliates, provided: (a) the Licensee remains responsible for the Affiliate's compliance with the License Documents; and (b) the Licensee is liable for any breach of the License Documents by an Affiliate.

4.0 Authorized Copies

4.1 Software and Documentation. Licensee may make as many copies of the Software necessary for it to use the Software as licensed. Each copy of the Software made by Licensee must contain the same copyright and other notices that appear on the original copy. Licensee will not modify the Documentation. Documentation may: (a) only be used to support Licensee's use of the Software; (b) not be republished or redistributed to any unauthorized third party; and (c) not be distributed or used to conduct training for which Licensee, or any other party, receives a fee. Licensee

或用于培训。被许可方不得复制与软件相关的任何系统方案参考文件。

5.0 限制条件

5.1 一般限制。除非许可授权文件另行规定，否则被许可方不可以，也不得允许任何其他方：(a) 以任何方式向任何方出让、转让、给予、分销、复制、传播、销售、租赁、许可、再许可、公开展示或演示、再分发或妨害所涉软件；(b) 为某服务机构或出于分时目的租用、出租或使用所涉软件，或许可任何个人或实体创建所涉软件的互联网链接或“框定”、“镜像”所涉软件到任何服务器、无线或互联网部件，或以其他方式允许第三方利用软件；(c) 使用全部或部分所涉软件来进行具有市场竞争性的提供；(d) 向任何方收取访问或使用所涉软件的费用，或(e) 以与许可授权文件不符的方式使用软件。

5.2 进一步限制。被许可方不得向任何其他方披露运行于所涉软件中的任何基准程序或其他运行、评估或测试结果。被许可方知悉，所涉软件非容错软件，且并非为需要自动防故障性能的危险环境中的在线控制设备而设计、制造、或意图使用或发布的，因此其不得将软件用于：(w) 飞机在线控制、空中交通管制、航空导航或航空通讯；(x) 任何核设施的设计、建造、运营或维护；(y) 医疗或手术应用；或(z) 任何其他可能因故障导致人身伤害或死亡的应用。除非适用法律明确允许，被许可方不得修改、改编、翻译、反向工程、反编译、反汇编、解密、端口、仿真、反向编译、反向组装，或者，减少或试图以任何方式发掘所涉软件的源代码、未公开的结构、想法或算法或其它任何机密信息或商业秘密。

5.3 衍生产品 / 改进。被许可方不得通过整合或使用所涉软件而更改、翻译、采用、安排、添加、修正、扩展、升级、更新或改进（包括专利性改进）所涉软件，或制作任何新版本或任何其他衍生产品。尽管有上述规定，如果任何软件被以源代码格式（或任何其他可修改格式）提供给被许可方，则被许可方可修改软件的该等部分，但应根据本协议使用所涉软件为唯一目的，且上述经修改部分之所有权仅为 OT 所有，被许可方将不可撤销地向 OT 永久转让关于上述经修改部分的全球范围内知识产权及其他财产权。

5.4 接口软件和交互式软件。被许可方不得允许未经 OT 许可的软件产品与所涉软件接口或交互，除非该软件产品是使用由 OT 提供的应用程序接口所完成的。

6.0 订购软件许可证

6.1 直接订购。如果被许可方直接向 OT 订购软件，该软件必须在 OT 可接受的交易文件中指明。

6.2 通过 OT 经销商订购。通过经销商订购软件许可证应依照和遵循本协议的许可授予条款和许可模式一览表中的许可模式说明。被许可方与经销商达成的订单文件将列明许可模式。如果经销商未向被许可方告知正

will not copy any system schema reference document related to the Software.

5.0 Restrictions

5.1 General Restrictions. Except as provided in the License Documents, Licensee will not and will not permit any other party to: (a) assign, transfer, give, distribute, reproduce, transmit, sell, lease, license, sublicense, publicly display or perform, redistribute or encumber the Software by any means, to any party; (b) rent, loan or use the Software for service bureau or time-sharing purposes, or permit other individuals or entities to create Internet “links” to the Software or “frame” or “mirror” the Software on any other server or wireless or Internet-based device, or in any other way allow third parties to exploit the Software; (c) use the Software, in whole or in part, to create a competitive offering; (d) charge a fee to any party for access to or use of the Software; (e) use the Software in a manner inconsistent with the License Documents.

5.2 Further Restrictions. Licensee will not disclose results of any benchmark or other performance, evaluation, or test run on the Software. Licensee acknowledges that the Software is not fault-tolerant and not designed, manufactured, or intended for use or release as online control equipment in hazardous environments requiring fail-safe performance and consequently will not use the Software for (w) the on-line control of aircraft, air traffic, aircraft navigation, or aircraft communications; (x) in the design, construction, operation or maintenance of any nuclear facility; (y) medical or surgical applications; or (z) any other application in which failure could cause personal injury or death. Except as expressly permitted under applicable law, Licensee will not modify, adapt, translate, reverse engineer, decompile, disassemble, decrypt, port, emulate the functionality, reverse compile, reverse assemble, or otherwise reduce or attempt to discover any source code or underliving structures, ideas, or algorithms of the Software or any confidential information or trade secret.

5.3 Derivative Works / Improvements. Licensee is prohibited from creating any change, translation, adaptation, arrangement, addition, modification, extension, upgrade, update, improvement, (including patentable improvements), new version, or other derivative work based on, incorporating, or using, the Software. Notwithstanding, if any of the Software is provided to the Licensee in source code format (or any other format that can be modified), the Licensee may modify such portion of the Software for the sole purpose of using the Software in accordance with this EULA and OT will solely own all modified portions and Licensee will irrevocably assign to OT in perpetuity all worldwide intellectual property and any other proprietary rights in and to any modifications of the Software.

5.4 Interfacing and Interactive Software. Licensee may not permit any software products not licensed by OT to interface or interact with the Software, unless accomplished through the use of application program interfaces provided by OT.

6.0 Ordering Software Licenses

6.1 Direct Orders. If Licensee orders Software directly from OT, the Software must be identified on a Transaction Document acceptable to OT.

6.2 Orders through an OT Reseller. Software Licenses ordered through a Reseller are governed by the license grant set out in this EULA and the License Model description set out in the License Model Schedule. The License Model will be stated in an order document between Licensee and Reseller. If Reseller does not notify Licensee

确的许可模式，则已向 OT 支付许可费的许可模式将适用。

6.3 损失风险和运输条款。 OT 应被视为已于下述两项中较早的日期交付软件：(a) OT 提供相关电子版下载链接；或 (b) OT 通过物理介质提供软件。物理介质的所有权和物理介质可能遭受的所有损失风险将在由 OT 将其运抵 OT 航运设施的货运码头时被移交给被许可方。

6.4 发票和付款。 OT 可在交付软件时向被许可方开具许可费及税费发票。被许可方应在收到 OT 的发票后向 OT 支付所有应付许可费和税费。许可费不包括应由被许可方负责的税费。如果 OT 有义务代表被许可方支付税费，被许可方应在收到 OT 的发票后立即向 OT 全额偿付。被许可方有责任向 OT 支付全额许可费，无论其是否被要求预扣或扣减任何税费。被许可方应以交易文件中指明的货币向 OT 支付所有根据本协议应付的许可费和税费。未在到期日后三十 (30) 天内向 OT 全额支付的所有许可费和税费将按月利率 1.5% (年利率 18%) 或法律允许的最高金额 (如果此金额与按利金额相比较低) 收取利息，直至全额缴足。如果通过 OT 经销商订购软件，则本条款不适用。

6.5 超限使用。 如果被许可方在使用或访问软件时超出了 OT 授权许可的数量或类型，OT 可向被许可方开具此超限费用及税费的发票。

6.6 被许可方附属公司订单。 订购软件许可证的被许可方附属公司应严格遵守本协议的条款和条件，其责任和义务与被许可方本身完全相同。被许可方及其附属公司均须为任何违反本协议的行为向 OT 承担其各自及共同责任。

6.7 OT 附属公司订单。 OT 的附属公司可根据交易文件完成订单。在此情况下，OT 的附属公司应严格遵守本协议的条款和条件，其责任和义务与 OT 本身完全相同。

7.0 OT 技术支持与维护。

7.1 OT 技术支持与维护计划。 依照 OT 维护或技术支持计划提供给被许可方的所有支持软件应遵循本协议的条款和条件。OT 提供的维护和技术支持服务均须依照其当时适用的软件维护计划手册 (可按要求提供，或从 <http://www.opentext.com/agreements> 下载：)。

8.0 审计和违约行为。

8.1 审计。 在本协议的有效期及其后的 24 个月内，被许可方应为 OT 保留足够的电子记录和其他记录，以便审核其是否遵守本协议条款的规定。被许可方应及时并准确地完成并递交 (不少于 30 天) 任何自我审计问卷，以及由其授权代表开具的证明，证实被许可方对问卷的答复准确且完全反映了被许可方对软件的使用情况。此外，OT 可每年对被许可方的记录和计算机系统 (包括服务器、数据库和所有其他适用软硬件) 进行一次审计，确保被许可方遵守本协议条款的规定。被许可方应与 OT 的审计团队合作，及时并准确地对数据库查询、位置信息、系统报告和 OT 要求的其他报告作出回应，并提供由其授权代表开具的证明，证实被许可

of the correct License Model, then the License Model for which OT has been paid License Fees will apply.

6.3 Risk of Loss and Shipping Terms. The Software is deemed delivered on the earlier of (a) when it is made available by OT for electronic download, or (b) when OT delivers the Software on Physical Media. Title to the Physical Media and all risk of loss for the Physical Media will pass to Licensee when delivered by OT to the shipping dock of the OT shipping facility.

6.4 Invoicing And Payment. OT may invoice Licensee for License Fees and Taxes upon delivery of Software. All License Fees and Taxes due to OT by Licensee are due and payable upon Licensee's receipt of an invoice from OT. License Fees do not include Taxes which are the responsibility of Licensee. If OT is obligated to pay Taxes on behalf of Licensee, Licensee will reimburse OT in full promptly following receipt of OT's invoice. Licensee is responsible for paying the full Licensee Fees to OT regardless of any Taxes Licensee is required to withhold or deduct. All License Fees and Taxes due to OT under this EULA are payable in the currency specified in the Transaction Document. All License Fees and Taxes due to OT which are not paid in full within 30 days following its due date will bear interest at a rate of 1.5% per month (18% per annum) or the maximum amount allowed by law, if less, on the unpaid portion until fully paid. This subsection does not apply if Software is purchased through an OT reseller.

6.5 Over Usage. OT may invoice Licensee for fees and Taxes payable by Licensee due to use of or access to the Software in excess of the number or type of Software Licenses granted by OT.

6.6 Licensee Affiliate Orders. Licensee's Affiliates that order Software Licenses are bound by the terms and conditions of this EULA as if it were the Licensee. Licensee and its Affiliates are jointly and severally liable to OT for any breach of this EULA.

6.7 OT Affiliate Orders. OT Affiliates may fulfill orders pursuant to a Transaction Document in which case the OT Affiliate is bound by all of the terms and conditions of this EULA as if it were OT.

7.0 OT Support and Maintenance.

7.1 OT Support and Maintenance Program. All Support Software provided to Licensee under an OT maintenance or support program is governed by this EULA. The provision of maintenance and support services by OT will be governed by the then-current version of the applicable OT software maintenance program handbook (available upon request or at <http://www.opentext.com/agreements>).

8.0 Audits and Noncompliance.

8.1 Audit. During the term of this EULA and for 24 months after, Licensee will maintain electronic and other records sufficient for OT to confirm that Licensee has complied with this EULA. Licensee will promptly and accurately complete and return (no less than 30 days) any self-audit questionnaires, along with a certification by an authorized representative of Licensee confirming that Licensee's responses to the questionnaire accurately and fully reflect Licensee's usage of the Software. Furthermore OT may once per year audit Licensee's records and computer systems (including servers, databases, and all other applicable software and hardware) to ensure Licensee has complied with this EULA. Licensee shall cooperate with OT's audit team and promptly and accurately respond to, database queries, location information, system reports, and other reports requested by OT and provide a certification by

方提供的信息准确地反映了被许可方对软件的使用情况。

8.2 实施。 审计将在标准工作时间进行，且不会无理干扰被许可方的业务。每次实施审计时，OT 将提前七（7）天通知被许可方。被许可方应允许 OT 复制其相关记录。OT 将遵守所有适用的数据保护规范。

8.3 违约行为。 如果被许可方不遵守软件许可证，被许可方将被视为已按 OT 当时的标价购得额外的软件许可证，以使其使用情况合规，而被许可方必须立即支付：（a）适用的许可费及税费；及（b）维护和技术支持费用，包括（i）在被许可方未遵守软件许可证期间产生的维护和技术支持费用；及（ii）任何额外的软件许可证的第一年维护和技术支持费用。如果被许可方未能遵守许可授权文件，被许可方应向 OT 偿付由审计产生的一切费用。遵守许可授权文件是被许可方的单方责任。

9.0 有限担保

9.1 有限软件担保。 OT 向被许可方担保，软件：

（a）在首次交付时不包含任何已知病毒；及（b）自首次交付日起六十（60）天内，其运行情况基本符合随附文档的描述。如果 OT 违反上述条款（a），其所需承担的全部责任及被许可方获得的唯一救济将限于要求 OT 向被许可方交付不包含任何已知病毒的软件替换副本；如果 OT 违反上述条款（b），其所需承担的全部责任及被许可方所获得的唯一救济将限于在商业意义上合理的时间内纠正或解决软件中导致违约行为的部分。如果未能在合理的时间内纠正或解决，OT 应退还软件该违约部分相关的所有许可费。

9.2 担保排除。 上述有限担保不适用于任何由下述情况引起的违约行为：（a）对软件的任何更改，除非此等更改是由 OT 通过支持软件进行的；（b）被许可方未能为软件提供合适的安装或操作环境；（c）被许可方将软件用于未经 OT 书面批准的软件、固件、计算机系统、数据、技术或硬件平台，或由未经 OT 书面批准的软件、固件、计算机系统、数据、技术或硬件平台所造成的软件使用；（d）被许可方使用的任何通信介质；（e）被许可方或用户未能遵照随附文档使用软件；或（f）被许可方未能在保修期内报告保修申请。OT 不保证软件没有错误或运行不会出现中断。

9.3 免责声明。 除本条款项下明确的有限担保外，OT 及 OT 的许可方均未做任何陈述，且不承认任何及所有明示或默示的担保或法定担保，无论是以书面还是口头形式，包括但不限于下述任何默示担保：适销性、特定用途适用性、不侵权的担保以及软件是否足以产生某特定结果。

9.4 无法排除担保。 如果适用于本协议的某司法管辖区不允许排除特定默示担保、对默示担保的期限限制，或不允许排除或限制偶然、附带或特殊损害：

（a）对于不可排除的担保，其期限应为软件首次交付后的六十（60）天；及（b）OT 因违反任何该等担保而须向被许可方承担的全部责任将限于本协议责任限额条款中的规定。

an authorized representative of Licensee confirming that information provided by Licensee accurately reflects Licensee's usage of the Software

8.2 Conduct. Audits will be conducted during regular business hours and will not interfere unreasonably with Licensee's business. OT will provide Licensee with 7 days prior notice of each audit. Licensee will allow OT to make copies of relevant Licensee records. OT will comply with all applicable data protection regulations.

8.3 Noncompliance. If Licensee is not in compliance with the Software Licenses, Licensee will be deemed to have acquired additional Software Licenses at OT's then-current list price to bring Licensee into compliance, and Licensee must immediately pay: (a) the applicable License Fees and Taxes, and (b) maintenance and support fees covering (i) the period Licensee was not in compliance with the Software License; and (ii) the first year maintenance and support fees on any additional Software Licenses. If Licensee has failed to comply with the License Documents, Licensee will reimburse all costs incurred by OT in performing the audit. Compliance with the License Documents is the sole responsibility of Licensee.

9.0 Limited Warranties

9.1 Limited Software Warranty. OT warrants to Licensee that Software: (a) will be free of all known viruses at the time of first delivery; and (b) will perform substantially in accordance with its accompanying Documentation for 60 days from the date of first delivery. OT's entire liability, and Licensee's sole remedy, for each breach by OT of the warranty in: (i) clause (a) is limited to requiring OT to deliver a replacement copy of the Software to Licensee free of known viruses; and (ii) clause (b) is limited to requiring OT to correct or work around the portion of the Software giving rise to such breach within a commercially reasonable time, failing which OT will refund all License Fees attributable to the portion of the Software giving rise to the breach.

9.2 Warranty Exclusions. The warranties do not apply to any breach caused by: (a) any change to the Software, except where the changes were made by OT through Support Software; (b) Licensee's failure to provide a suitable installation or operating environment for the Software; (c) use of the Software on or caused by software, firmware, computer systems, data, technology or a hardware platform not approved by OT in writing; (d) any telecommunications medium used by Licensee; (e) failure of Licensee or user to comply with the Documentation; or (f) failure of Licensee to report a warranty claim within the warranty period. OT does not warrant that the Software is error-free or will operate without interruption.

9.3. WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION, OT AND OT'S LICENSORS MAKE NO REPRESENTATIONS AND DISCLAIM ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THE ADEQUACY OF THE SOFTWARE TO PRODUCE A PARTICULAR RESULT.

9.4 Inability to Exclude Warranties. If a jurisdiction applicable to this EULA restricts the exclusion of certain implied warranties, limitations on how long an implied warranty may last, or the exclusion or limitation of incidental, consequential, or special damages: (a) each warranty which cannot be excluded is limited in time to 60 days from the date of first delivery of the Software; and (b) OT's total

liability to Licensee for breach of all such warranties are limited to the amount stated in the Limitation of Liability section.

10.0 OT 损害赔偿

10.1 损害索赔。如果被许可方因依照许可授权文件使用软件而遭任何索赔，且涉嫌侵权行为并非出于下述原因，OT 将为被许可方抗辩索赔：（a）被许可方未能执行软件更新或升级，而此更新或升级可使被许可方避免涉嫌侵权行为；（b）除 OT 以外的任何其他方对软件进行了修改；或（c）被许可方将软件与非 OT 向其许可或未经 OT 书面批准的软件、硬件、固件、数据或技术结合，或与之共同使用；或（d）被许可方未经许可的行动。

10.2 排除条款。OT 将履行其在本条款项下的义务，前提为：（a）被许可方在知晓某项索赔后的十（10）天内向 OT 发出书面通知；（b）被许可方没有做出与 OT 利益相悖的供认，除非是基于司法机关的命令或要求；（c）被许可方没有在未经 OT 事先书面同意的情况下同意就任何索赔达成和解；（d）被许可方应 OT 的要求，在 OT 就索赔进行抗辩、提起诉讼或达成和解的过程中向 OT 提供合理的帮助；和（e）对于选择或雇佣法律顾问，或就某项索赔是否提起诉讼或达成和解，OT 拥有唯一的控制权。OT 应使被许可方免受任何索赔的最后判决（相关方已用尽所有上诉途径）或最终和解的损害，其前提是本条款项下的所有条件都已得到满足。

10.3 被许可方续用软件。如果软件成为某项索赔的标的，OT 可自行决定采取下述任一措施：（a）为被许可方获得继续使用软件的许可；（b）在不造成软件功能不合理退化的前提下替换或修改软件；或（c）终止关于所涉软件侵权部分的软件许可，并退还软件侵权部分相关许可费已被收取的未摊销部分，退款金额按 3 年直线摊销法计算。对于任何索赔，OT 应承担的全部责任及被许可方所获得的唯一排他救济将限于 OT 损害赔偿条款中规定的救济。

11.0 责任限额

11.1 损害赔偿排除条款。无论 OT 是否存在任何违约行为（包括重大违约行为），或本协议是否终止，OT 都无须对被许可方或任何其他方的以下损害承担责任：（a）任何间接、偶发、特殊、继发、加重、惩戒性或惩罚性的损害；或（b）任何销售损失、收入损失、利润损失、数据丢失或损坏及任何因重新采购而发生的费用。

11.2 责任限额。OT 对被许可方的赔偿责任总额不得超过被许可方依照相关交易文件向 OT 支付的许可费总额。如无本条款，双方不会签订本协议。

11.3 免责声明。本条款的限制条件在下述情况下适用：（A）疏忽责任；（B）无论何种诉讼方式，是基于合同还是基于侵权行为或权益或法律或严格的产品责任或其它原因；（C）即使 OT 已被提前告知存在相关损害的可能性，或此损失是可预见的；以及（D）即使被许可方所获的救济未能起到基本作用。如果本条款的

10.0 OT Infringement Indemnity

10.1 Infringement Claims. OT will defend Licensee from any Claim, to the extent the Claim arises solely as a result of Licensee's use of the Software in accordance with the License Documents, and provided the alleged infringement was not caused by: (a) Licensee's failure to incorporate a Software update or upgrade that would have avoided the alleged infringement; (b) the modification of the Software by any party other than OT; (c) the combination or use of the Software with software, hardware, firmware, data, or technology not licensed to Licensee by OT or approved by OT in writing; or (d) unlicensed activities of the Licensee

10.2 Exclusions. OT's obligations in this section are conditioned upon: (a) Licensee notifying OT in writing within 10 days of Licensee becoming aware of a Claim; (b) Licensee not making an admission against OT's interests unless made pursuant to a judicial request or order; (c) Licensee not agreeing to any settlement of any Claim without the prior written consent of OT; and (d) Licensee, at the request of OT, providing all reasonable assistance to OT in connection with the defense, litigation, and settlement by OT of the Claim; and (e) OT having sole control over the selection and retainer of legal counsel, and over the litigation or the settlement of each Claim. OT will indemnify Licensee from any judgment finally awarded, for which all avenues of appeal have been exhausted, or any final settlement in connection with any Claims, provided all the conditions of this section are satisfied.

10.3 Licensee's Continued Use. If the Software becomes the subject of a Claim, OT will, in its absolute discretion, either (a) obtain a license for Licensee to continue using the Software, (b) replace or modify the Software without unreasonable degradation in functionality or (c) terminate the Software License to the infringing portion of the Software and refund the unamortized portion of the License Fees received by OT and attributable to the infringing portion of the Software, based on a 3 year straight line amortization. OT's entire liability and Licensee's sole and exclusive remedy with respect to any Claims are limited to the remedies set out in the OT Infringement Indemnity section.

11.0 Limitation of Liability

11.1 EXCLUSION OF DAMAGES. NOTWITHSTANDING ANY BREACH BY OT (INCLUDING FUNDAMENTAL BREACH) OR TERMINATION OF THIS EULA, OT IS NOT LIABLE TO LICENSEE OR TO ANY OTHER PARTY FOR: (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLARY, OR PUNITIVE DAMAGES; OR (B) ANY LOST SALES, LOST REVENUE, LOST PROFITS, LOST OR CORRUPTED DATA, OR REPROCUREMENT AMOUNT.

11.2 LIMITATION OF LIABILITY. OT'S AGGREGATE LIABILITY TO LICENSEE WILL NOT EXCEED THE TOTAL AMOUNT OF LICENSE FEES PAID TO OT UNDER THE RELEVANT TRANSACTION DOCUMENT. THE PARTIES WOULD NOT HAVE ENTERED INTO THIS EULA WITHOUT THIS SECTION.

11.3 DISCLAIMER. THE LIMITATIONS IN THIS SECTION APPLY: (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, EQUITY, AT LAW, STRICT

适用性受到了法律限制，则 OT 的责任应仅限于法律允许的范围。

12.0 终止

12.1 因违约终止。 如果任何一方出现下述情况，另一方可终止本协议：（a）无力偿债；及（b）实体或其任何资产被管理人或由管理人任命的经理接管。在不损害非违约方所有权利或救济的前提下，如出现严重违约，任何一方可经书面通知终止本协议，协议终止在发出通知的十（10）天后生效，除非另一方在此日期之前已纠正违约行为。

12.2 终止或期满生效。 如果本协议因任何原因终止或本协议项下规定的许可证终止或定期许可证期满：

（a）所有软件许可证应立即终止；（b）被许可方应立即停止对软件的一切使用；以及（c）被许可方必须将软件、随附文档及其拥有或控制的 OT 机密信息的所有副本交还 OT 或予以销毁。协议终止后的十五（15）天内，被许可方的授权代表须以书面形式出具证明，证实所有副本均已被交还 OT 或销毁。本协议的任何条款按照其性质在本协议终止或到期后应继续生效的，则在类似终止或到期后继续有效，直至履行完毕。

13.0 其他条款

13.1 保密。 如果按本协议要求而交换的信息在披露时被确认为机密信息，或披露该等信息的情况合理地表明其需要被视为机密，则该等信息应被视为机密信息。机密信息应仅被用于遵照本协议履行义务或行使权利，且只可与有必要知晓该等信息的员工、代理商或承包商共享。在信息为机密信息或商业秘密期间，应采取合理的措施保护机密信息，防止未经授权的使用或披露。该等义务不涵盖下述信息：（a）接收方已知或将为接收方所知但无须为此承担保密义务的信息；（b）接收方独立开发的信息；或（c）须根据法律规定或政府机构要求披露的信息。

13.2 自动验证。 软件可能包含或要求许可证密钥，以防止未经授权的安装或实施软件许可证的限制条件，还可能包含用于监视被许可方是否遵守本协议规定的设备或功能。

13.3 开发工具。 OT 无须对被许可方使用经 OT 许可的软件开发工具开发或使用附加软件代码或软件产品（“被许可方软件”）负责或承担法律责任，被许可方应负责抗辩并使 OT 免受任何与开发或使用被许可方软件事宜相关的索赔、损害、成本、损失或开支的侵害。

13.4 独立契约方。 OT 和被许可方都是独立的契约方。任何一方均无权以任何方式约束另一方。

13.5 弃权、修订、转让。 对本协议的任何修改均须以书面形式进行并经双方签署。未经 OT 事先书面同意，被许可方不得以书面协议、合并、兼并、变更控制权、法律实施或任何其他形式出让、转让或分许可其在本协议下的任何权益、权利或义务。本协议任何一方都不得因时间推移或由于任何声明或陈述而被视为已放弃

PRODUCT LIABILITY, OR OTHERWISE; (C) EVEN IF OT IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (D) EVEN IF LICENSEE'S REMEDIES FAIL IN THEIR ESSENTIAL PURPOSE. IF THE APPLICATION OF THIS SECTION IS LIMITED BY LAW OT'S LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

12.0 Termination

12.1 Termination for Default. Either party may terminate this EULA if the other party: (a) becomes insolvent; and (b) has a receiver or receiver manager appointed with respect to it or any of its assets. Without prejudice to each right or remedy of a non-breaching party, either party may terminate this EULA for material breach by written notice, effective 10 days after notice unless the other party first cures the breach.

12.2 Effect of Termination or Expiration. Upon any termination of this EULA, or license granted pursuant to this EULA, or upon expiration of a term license: (a) all Software Licenses will immediately terminate; (b) Licensee will immediately cease all use of the Software; and (c) Licensee must either deliver to OT or destroy all copies of Software, Documentation, and OT confidential information in Licensee's possession or control. Within 15 days after termination, an authorized representative of Licensee must certify in writing that all copies have been delivered to OT or destroyed. Any terms in this EULA which by their nature extend beyond termination or expiration of this EULA will remain in effect until fulfilled.

13.0 Miscellaneous Provisions

13.1 Confidentiality. Information exchanged under this EULA will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this EULA and may only be shared with employees, agents, or contractors with a need to know such information. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure during the period the information remains confidential or a trade secret. These obligations do not cover information that (a) was known or becomes known to the receiving party without obligation of confidentiality; (b) is independently developed by the receiving party or (c) is required to be disclosed by law or a governmental agency.

13.2 Automated Verification. The Software may contain or require a license key to prevent unauthorized installation or to enforce limits of the Software License, and may contain devices or functionality to monitor Licensee's compliance with this EULA.

13.3 Developer Tools. OT is not responsible or liable for Licensee's development or use of additional software code or software products ("Licensee Software") using software developer tools licensed by OT and Licensee will defend and indemnify OT against any claims, damages, costs, losses or expenses related to the development or use of the Licensee Software.

13.4 Independent Contractors. OT and Licensee are independent contractors. Neither party has any authority to bind the other in any manner.

13.5 Waiver, Amendment, Assignment. Any amendment of this EULA must be in writing and signed by both parties. Licensee may not assign, transfer, or sublicense any portion of its interests, rights, or obligations under this EULA by written agreement, merger, consolidation, change of control, operation of law, or

其在本协议下的任何权利，除非其正式授权代表以书面形式放弃该等权利。如果本协议任何一方放弃追究违反本协议的行为，该方不得被视为已放弃追究任何之前或之后违反本协议的行为。在违反本条款规定的情况下进行任何转让均无效。除非本条款另有明确规定，本协议应对协议双方各自的继承人和受让人具有同等法律效力，并对协议双方各自的继承人和受让人的利益生效。

13.6 准据法。本协议应受中华人民共和国的法律制约，但不包括 (a) 其冲突管辖权法律规定；及 (b)

《联合国国际货物销售合同公约》。除非 OT 要求强制性或其它平衡缓解措施，对任何源自本协议的争议，协议双方都应首先尝试通过谈判解决，并在必要时就解决争议签署一份补充协议。该补充协议应具有与本协议相同的法律效力。如果协议双方在方向另一方通知存在某争议后的三十 (30) 天 (或双方约定的其他期限) 内未能通过谈判解决争议，双方均有权将该争议提交至上海国际经济贸易仲裁委员会 (“SIETAC”)，由 SIETAC 在上海根据现行的 SIETAC 仲裁规则对该争议进行调解和/或仲裁。调解和/或仲裁应以英语进行。仲裁裁决将为最终结论，且对协议双方均有约束力。仲裁费用应由败诉方承担。

13.7 不可抗力。除支付义务、保密义务或保护知识产权义务外，本协议的任何一方都无须对由于超出其控制范围的原因而无法履行或延迟履行本协议承担责任。

13.8 可分割性。如果本协议的任何条款被具有合法管辖权的法庭视为违反适用法律或不可执行，则应将该等条款与本协议分割，本协议的所有其余条款应继续完全有效。

13.9 出口法律。软件及其随附文档受美国出口法律的管辖，包括《美国出口管理法》及其相关法规，且可能还受其他国家的进出口法律法规管辖。被许可方应严格遵守所有法律法规，并负责获得出口、再出口或进口软件或随附文档所需的任何许可。

13.10 新闻稿。OT 可在公开的新闻稿或营销材料中提及其与被许可方的关系。

13.11 属性标记。被许可方不得删除、修改、掩盖、改变大小或于其他位置重新放置软件的任何所有权、归属或品牌标记。

13.12 转售第三方软件。在使用经 OT 转售的任何第三方软件时，被许可方应受其与第三方软件所有者签订的许可协议制约。OT 不提供与第三方软件相关的任何担保。OT 无须对被许可方承担与第三方软件相关的任何责任。

13.13 美国政府最终用户——有限权利说明。如果直接或间接地代表美国政府授权许可软件，则下述适用。民用机构和部门：软件属于自费开发，且是根据 FAR 52.227-19《商业计算机软件——有限权利》的分款

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otherwise, without the prior written consent of OT. Neither party will be deemed to have waived any of its rights under this EULA by lapse of time or by any statement or representation other than by a written waiver by a duly authorized representative. No waiver of a breach of this EULA will constitute a waiver of any prior or subsequent breach of this EULA. An assignment in contravention of this section will be null and void. Except to the extent identified in this subsection, this EULA will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

13.6 Governing Law. This EULA is governed by the laws of The People's Republic of China excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods. Except for a request by OT for injunctive or other equitable relief, for any dispute arising out of this EULA, the parties' shall first attempt to resolve the dispute by negotiation and where necessary a supplemental agreement shall be signed in respect of the settlement of such dispute, which shall have equal legal effect to the agreement. In case of failure to settle such dispute through negotiation within 30 (thirty) days after one Party gives notice to the other Party about the existence of the dispute (or such other period as agreed between the parties), either Party has the right to submit the dispute to Shanghai International Economic and Trade Arbitration Commission (“SIETAC”) for mediation and/or arbitration in Shanghai which shall be conducted in accordance with the SIETAC's arbitration rules in effect as the time of applying for arbitration. The mediation and/or arbitration shall be conducted in English. The arbitration award is final and binding on both Parties. The arbitration fee should be borne by the losing Party.

13.7 Force Majeure. Except for payment and confidentiality obligations, or protection of intellectual property, neither party is responsible for any delay or failure in performance of this EULA to the extent due to causes beyond its reasonable control.

13.8 Severability. If any provision of this EULA is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the provision will be severed from this EULA and all remaining provisions will continue in full force.

13.9 Export Laws. The Software, including Documentation, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee will comply strictly with all regulations and has the responsibility to obtain any licenses required to export, re-export, or import Software or Documentation.

13.10 Press Release. OT may refer to Licensee's relationship with OT in a public press release or marketing materials.

13.11 Attribution Notices. Licensee will not remove, modify, obscure, resize, or relocate any ownership, attribution, or branding notices from the Software.

13.12 Resale of Third Party Software. The use of any Third Party Software resold by OT to the Licensee will be governed by a license agreement between the Third Party Software owner and the Licensee. OT does not provide any warranties related to the Third Party Software. OT has no liability or obligation to the Licensee related to the Third Party Software.

13.13 US Government End Users-Restricted Rights Legend. If the Software is being licensed directly or indirectly on behalf of the United States government, the following applies. For civilian agencies and departments: the

13.14 完整许可协议。许可授权文件构成协议双方之间关于本协议主题事项的完整协议，并取代双方之间的所有其他相关口头或书面协议和通讯。任何一方都未曾依赖该等其他协议或通讯。任何旨在修订或修改许可授权文件条款，或与许可授权文件相悖的购买订单条款均无效。

13.15 第三方权利。本协议不会向非协议方的任何个人或实体给予或由其强行获取任何好处。

13.16 法律审查和解释。协议双方都已有机会对许可授权文件进行法律审查。双方同意许可授权文件是经由协商达成。许可授权文件不会因由某方编制而将条款解释为对一方有利或不利。本协议中使用的标题仅为方便之用。术语“条款”指某一条款的标题（例如 3.0）下方的所有分款。术语“分款”指某一条款下按顺序编号的所有分款（例如 3.1）。

13.17 通知。根据本协议必须由一方以书面形式发出的任何通知须在以下述方式发送后方被视为有效：

（a）通过邮资预付的挂号信；或（b）通过特快专递或国家认可的快递服务将通知发送到在本协议中指明或在最近的交易文件中指明的另一方地址。

13.18 硬件。如果在交易文件中指明了硬件，则该硬件的销售和使用应受本协议之外的条款管辖。OT 不承认与硬件相关的任何担保和责任。

13.19 语言。本协议以英文和中文拟就。如果两种语言版本之间存在任何不一致，应以英文版为准。

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13.14 Entire License Agreement. The License Documents set forth the entire agreement between the parties with respect to this subject matter, and supersede all other related oral and written agreements and communications between the parties. Neither party has relied upon such other agreements or communications. Any purchase order terms which purport to amend or modify terms of the License Documents, or which conflict with the License Documents are void.

13.15 Third Party Rights. This EULA does not confer a benefit on, and is not enforceable by, any person or entity who is not a party to this EULA.

13.16 Legal Review and Interpretation. Both parties have had an opportunity for legal review of the License Documents. The parties agree that the License Documents result from negotiation between the parties. The License Documents will not be construed in favor of or against either party by reason of authorship. The headings used in this EULA are for convenience only. The term section refers to all subsections below a section heading (i.e. 3.0) and the term subsection refers to sequentially numbered subsections following a section (i.e. 3.1).

13.17 Notices. Any notice under this EULA that must be given by a party in writing is deemed effective when sent either: (a) via certified or registered mail, postage prepaid, or (b) via express mail or nationally recognized courier service to the other party's address specified in this EULA or on the most recent Transaction Document.

13.18 Hardware. IF HARDWARE IS IDENTIFIED ON A TRANSACTION DOCUMENT, THE SALE AND USE OF THE HARDWARE WILL BE GOVERNED BY TERMS OTHER THAN THIS EULA. OT DISCLAIMS ALL WARRANTIES AND LIABILITY WITH RESPECT TO THE HARDWARE.

13.19 Language. This Agreement has been prepared both in English and Chinese. In the event of any inconsistency between the two languages, the English language clause shall prevail.

Open Text Software Technology (Shanghai) Co., Ltd ("OT") 被许可方/Licensee: _____
启信软件科技（上海）有限公司("OT")

姓名/Name: _____
职务/Title: _____
日期/Date: _____
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