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1. Definitions

- 1.1. “**Affiliate**” means any entity directly or indirectly controlled by, controlling, or under common control with a party to the Agreement. Control exists through ownership, directly or indirectly, of a majority of the outstanding equity capital or of the voting interests of the subject entity. If an entity ceases to meet these criteria, it shall cease to be an Affiliate.
- 1.2. “**Confidential Information**” means any information disclosed by one party to the other party where: (i) identified as confidential at time of disclosure; or (ii) the circumstances of disclosure reasonably indicate such information should be treated as confidential.
- 1.3. “**Licensee**” means the legal entity or individual that accepts the Agreement and is identified in the applicable TD
- 1.4. “**Documentation**” means the user documentation provided or made available by OT for use of the Software. Documentation includes, as applicable, License Model Schedule(s), Third Party Notifications, user guides, technical documents and operating manuals, and release notes made generally available by OT.
- 1.5. “**License Model**” means the conditions, rights, and restrictions that govern the licensed use of the Software, as set out in the applicable License Model Schedule.
- 1.6. “**License Model Schedule**” means the License Model applicable to each individual licensed Software product as set out in the relevant version of the document(s) titled “**License Model Schedule**” or “**Additional License Authorization (ALA)**” posted at <https://www.opentext.com/agreements>.
- 1.7. “**Software**” means the software products and Documentation, licensed to Licensee under this Agreement as purchased pursuant to a TD, including all permitted copies made by Licensee, and including all updates, upgrades, patches, fixes, modifications, or new versions of the Software that Licensee receives pursuant to Support, unless such update contains, comes with, or is otherwise specifically governed by a different end user license agreement.
- 1.8. “**Support**” means the operational and technical support services applicable to the Software, as described below and in the TD.
- 1.9. “**Third Party Notifications**” means the document entitled Third Party Notifications available at www.opentext.com/agreements, or license attributions in a file accompanying Software or in the Documentation.
- 1.10. “**Transaction Document**” or “**TD**” means one or more documents providing the specifics of the transaction for the provision of Software and Support, such as charges and a description of and information about the Software and Support which: (i) is agreed by the parties; (ii) may be titled “Order”, “Order Form”, “Product Order”, “Renewal Notice”, “Schedule”, or comparable title; (iii) includes Documentation and may include other documents which are attached or incorporated by reference by the applicable

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1. 定义

- 1.1. “**关联方**”是指直接或间接受本协议的一方控制、控制该方或与该方受共同控制的任何实体。控制是指直接或间接拥有相关实体多数已发行股本或表决权。若某实体不再符合上述标准，则不再属于关联方。
- 1.2. “**机密信息**”指一方向另一方披露的、满足下列条件之一的任何信息：(i) 在披露时被标明为机密；或 (ii) 披露情形合理表明此类信息应被视为机密。
- 1.3. “**被许可方**”指接受本协议并在适用交易文件中指明的法律实体或个人。
- 1.4. “**文档**”指 OT 为软件使用而提供或向用户开放的用户文档。文档在适用情况下包括 OT 普遍提供的许可模式附表、第三方通知、用户指南、技术文档和操作手册以及版本说明。
- 1.5. “**许可模式**”指适用许可模式附表所规定的、管辖软件的许可使用的条件、权利和限制。
- 1.6. “**许可模式附表**”指适用于每一单项许可软件产品的许可模式，载于在 <https://www.opentext.com/agreements> 发布的、题为“许可模式附表”或“附加许可授权 (ALA)”的文件的相关版本中。
- 1.7. “**软件**”指依据交易文件购买、并根据本协议许可给被许可方的软件产品及文档，包括被许可方制作的所有经许可的副本，以及被许可方根据支持所获得的软件的所有更新、升级、补丁、修复、修改或新版本，但此类更新包含、随附不同的最终用户许可协议或以其他方式明确受不同的最终用户许可协议管辖的除外。
- 1.8. “**支持**”指适用于软件的运营和技术支持服务，如下文及交易文件所述。
- 1.9. “**第三方通知**”指在 www.opentext.com/agreements 发布的题为“第三方通知”的文件，或随软件附带的文件中或文档中的许可署名声明。
- 1.10. “**交易文件**”指提供软件及支持之交易具体信息（如费用及关于软件和支持的描述与信息）的一份或多份文件，此类文件：(i) 经双方约定；(ii) 可能题为“订单”、“订购单”、“产品订单”、“续订通知”、“附表”或类似名称；(iii) 包括文档，并且可能包括由适用的交易文件所附或以援引方式并入的其他文件；且 (iv) 受本协议管辖，包括以援引 OT 网站某一 URL 的方式并入。

TD; and (iv) is governed by the Agreement, including by incorporation by reference to a URL on an OT website

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 - 4.2.7. 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; or
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3. **软件期限。** 第 4 条所授予的许可自生效日期起生效，且除交易文件另有规定外为永久性许可。
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 - 4.1. **许可。** 除交易文件另有规定或第 4.3 条（评估）另有说明外，被许可方可被授予一项不可转让、全球性、非独占的内部业务使用许可，可按本协议规定并在许可模式和文档的约束下，下载、安装和使用软件及文档。
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 - 4.2.1. 以任何方式向任何一方转让、转移、分发、再许可软件或在软件上设定权利负担；
 - 4.2.2. 修改、拆分软件或基于软件创作衍生作品，解密、反汇编、逆向工程或试图发现本软件的源代码，但适用法律允许的情况除外；
 - 4.2.3. 全部或部分使用软件打造竞争性产品；
 - 4.2.4. 将软件商业化，或用于外包、托管、服务局或类似用途，或允许任何第三方访问软件或为任何第三方利益使用软件；
 - 4.2.5. 未经授权复制软件和文档；
 - 4.2.6. 删除或更改软件或文档任何副本上或其中的任何专有权利声明、标签或标记；
 - 4.2.7. 允许任何未经 OT 许可的软件产品与软件对接或交互，但通过使用 OT 提供的应用程序接口实现的除外；或
 - 4.2.8. 未经 OT 事先书面同意，向任何第三方公开披露软件的测试或基准测试结果。
 - 4.3. **评估。** OT 可在有限期限内以“试用”方式（如测试版、评估版、免费版或预发布预览版）向被许可方提供软件，供其试用可用功能。试用软件仅许可用于内部评估和测试目的，不得用于任何开发、生产、分发或商业目的。被许可方获得一项不可转让、全球性、非独占、不可再许可的评估许可，可下载、安装、运行和使用适用交易文件中载明的软件。除非 OT 书面授权其他期限，否则试用期限自提供访问权限之日起算，为期 30 天。评估许可可在试用期结束时自动终止，被许可方须在试用期结束后 30 天内删除并销毁（或根据 OT 的选择，退还）此类软件的所有副本，并书面确认其遵守情况。任何预发布或测试版软件（“预发布软件”）的试用期限自 OT 交付软件之日起为 60 天，但 OT 书面授权其他期限的除外。试用软件按“现状”提供，不提供任何保证、服务水平协议或支持。被许可方同意及时向 OT 报告试用及预发布软件的所有问题（包括错误、故障、不符合要求的结果和意外表现），并及时回应 OT 就被许可方试用结果提出的询问。OT

agreements, or support provided. Licensee agrees to promptly report to OT all problems (including errors, failures, nonconforming results, and unexpected performances) with the Trial, and the Pre-Release Software and to timely respond to queries from OT regarding the outcomes of Licensee's Trial. OT may choose not to release a final version of the Pre-Release Software or, even if released, to alter prices or Software characteristics. OT's entire liability for all claims related to the Trial will not exceed U.S. \$5,000.00 (or equivalent in local currency), regardless of the basis of the claim.

- 4.4. **Third Party and Open Source Software.** Third party software and open source software, owned and licensed by third parties, may be made available subject to their respective license terms and conditions, which shall control in the event of any conflict with this Agreement. Information about third party software or open source license terms applicable to the Software may be found in the TD or Documentation.

5. **OT Support and Maintenance.**

- 5.1. **OT Support and Maintenance Program.** All Support provided to Licensee is governed by this Agreement and the then-current version of the applicable software maintenance program handbook (or other applicable software maintenance and support terms) as published at <https://www.opentext.com/agreements> or provided at Licensee's request. Support is provided for a 12-month period beginning on the date the Software is delivered by OT to Licensee, or the anniversary thereof.
- 5.2. **Support Exclusions.** OT shall have no responsibility to provide Support to Licensee with respect to any problem with the Software caused by: (i) Licensee's failure to install any update or upgrade provided by OT that would have avoided the alleged infringement; or (ii) any circumstance that qualifies as a Warranty exclusion in Section 7.3.

6. **Fees, Payment and Taxes.**

- 6.1. **Fees.** Licensee shall pay OT the fees and charges specified in the TD for its use of the Software and Support including any applicable overage and other charges and fees; plus any sales, use, consumption, goods and services, or value-added taxes except taxes imposed on OT's income including, but not limited to, withholding taxes ("**Applicable Taxes**"). Except as otherwise provided in the Agreement, all fees are non-refundable. Licensee's right to the Software and Support is contingent on Licensee paying applicable charges as specified in the TD. Licensee is responsible for acquiring additional license entitlements in advance of any increase in its use.
- 6.2. **Payments.** Payments are due 30 days from the date of invoice. Invoices shall be issued as set forth in the TD. Fees and other charges owed by Licensee and not paid when due shall accrue interest at the rate of one and one-half percent (1.5%) per month or, if lower, the highest rate permitted by the governing law defined in Section 14.2. If Licensee provides notice to OT that it has a bona fide dispute with any charge, it will still make timely payment of all undisputed charges pending resolution of the disputed charge, which the parties agree to undertake promptly. If any undisputed invoiced amounts remain unpaid for 30 days after such notice, OT may (reserving all other legal remedies and rights) terminate the Agreement per Section 12.1. Licensee shall bear all of OT's costs of collection of overdue fees, including reasonable attorneys' fees.
- 6.3. **Taxes.** All prices, fees and charges are exclusive of Applicable Taxes which shall be assumed and paid by Licensee on provision of a tax invoice. Licensee is responsible for providing OT with all Tax Registration Numbers and copies of applicable Registration Certificates. Licensee is responsible for self-assessing any Applicable Taxes in accordance with applicable laws. Licensee is responsible for applying withholding tax, and/or similar taxes on

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- 4.4. **第三方软件和开源软件。**由第三方拥有并许可的第三方软件和开源软件, 可依据其各自的许可条款和条件向用户提供; 如与本协议存在任何冲突, 以该等许可条款和条件为准。适用于本软件的第三方软件或开源许可条款的相关信息, 可参见交易文件或相关文档。

5. **支持与维护。**

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- 6.2. **付款。**付款应于发票开具之日起 30 天内支付。发票应按交易文件规定开具。被许可方所欠且未按期支付的费用和其他收费, 应按每月百分之一点五 (1.5%) 的利率计息, 若第 14.2 条所定义的管辖法律允许的最高利率更低, 则按该最高利率计息。若被许可方向 OT 发出通知, 表明其对任何收费存在善意争议, 则在争议收费解决之前, 被许可方仍应及时支付所有无争议收费, 双方同意及时着手解决争议。若任何无争议的已开票金额在该通知后 30 天内仍未支付, OT 可 (保留所有其他法律救济和权利) 依据第 12.1 条终止本协议。被许可方应承担 OT 追讨逾期费用而产生的全部成本, 包括合理的律师费。
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- 7.4. **Warranty Remedy.** Licensee's sole remedy under the foregoing warranty is the correction of errors in the affected portion of the Software after written notice from Licensee to OT describing such errors in detail or, at the election of OT, a pro rata refund of the fees paid by Licensee for the affected portion of the Software giving rise to the warranty claim. Licensee's sole remedy for Support is for OT to reperform the applicable Support.
8. **Confidentiality.** Confidential Information exchanged between the parties in connection with the Agreement may only be used for the purpose of fulfilling obligations or exercising rights under or in connection with the Agreement, and without the disclosing party's consent may only be shared with their employees, Affiliates, professional advisers, agents, or contractors with a need to know such information to support that purpose, and who are

最终用户许可协议 ("EULA")

以支持较低税率)后,须在考虑可适用税收协定的情况下适用尽可能低的预扣税率。被许可方应及时向 OT 提供证明文件副本,证明所预扣税额已依据适用法律缴纳给相关税务机关。OT 保留提高约定价格的权利,以补偿被许可方因上述原因将预扣的金额。

7. 保证。

- 7.1. **有限保证。** OT 保证: (a) 软件在首次交付时不含已知病毒; (b) 软件自首次交付之日起 60 天内将基本按照其随附文档运行; 且 (c) 支持服务将以合理的技能和谨慎态度提供, 基本符合交易文件的要求。
- 7.2. **保证免责声明。** 前述保证为有限保证, 除本协议所规定的, 在法律允许的范围内, OT 就软件和支持排除所有其他明示或默示、法定或其他保证和条件, 包括但不限于对适销性、令人满意的质量、特定用途适用性、所有权、非侵权的保证, 以及可能因使用、行业惯例、履行过程或交易过程而产生的保证。OT 不保证软件将满足被许可方的要求、运行不会中断、会实现任何预期结果、与任何其他软件、应用程序或系统兼容或协同工作, 也不保证任何错误或缺陷能够或将会被纠正。被许可方负责在高风险应用中采取充分预防措施, 以防止软件缺陷、中断或故障可能对其内容或运营造成的损害。OT 对在保证期之外提出的索赔不承担任何责任。
- 7.3. **保证除外情形。** 若缺陷由下列原因造成, 则第 7.1 条 (有限保证) 中的保证不适用: (i) 未按文档使用软件; (ii) 被许可方的设备或网络; (iii) 未经 OT 授权签字人书面授权对软件进行的修改; (iv) 由任何未经授权人员提供的服务; (v) 被许可方使用的非 OT 提供的、或软件并非为其设计或许可使用的其他软件; 或 (vi) 在软件或介质首次交付给被许可方之后发生的任何其他原因, 但由 OT 造成的除外。第 7.1 条中的保证不适用于 (i) 保证期后提供的任何免费软件或更新; 或 (ii) 开源软件或第三方软件, 但交易文件或文档明确规定的除外。
- 7.4. **保证救济。** 在被许可方向 OT 发出详细描述错误的书面通知后, 被许可方在前述保证下的唯一救济为纠正软件受影响部分中的错误, 或根据 OT 的选择, 按比例退还被许可方就引起保证索赔的软件受影响部分所支付的费用。被许可方就支持的唯一救济为由 OT 重新履行适用的支持。
8. **机密。** 双方就本协议交换的机密信息, 仅可用于履行本协议项下或与本协议相关的义务或行使本协议项下或与本协议相关的权利之目的, 未经披露方同意, 仅可与其为支持该目的而有必要知悉此类信息、并接受保密合同约定的员工、关联方、专业顾问、代理人或承包商共享。自收到之日起三 (3) 年内, 应以合理的谨慎程度保护机密信息, 防止未经授权的

contractually bound to protect its confidentiality. Confidential Information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for three (3) years from date of receipt. These obligations do not cover information that:

(i) becomes publicly available without breach of the Agreement; (ii) was known or becomes known to the receiving party without a duty of confidentiality; (iii) is disclosed with the disclosing party's prior written consent; (iv) is independently developed by the receiving party; or (v) where disclosure is required by law, by a court or a regulatory body. Should the receiving party be required to reveal Confidential Information under legal or governmental process, the receiving party will provide reasonable prior notice to the disclosing party (where lawfully permitted) so that disclosing party may request a protective order, if available. Each receiving party is responsible for any actions of its employees, Affiliates, professional advisers, agents and contractors in breach of this Section 8.

- 9. Ownership.** OT and its Affiliates and licensors own all right, title, and interest, in and to the Software and the Documentation. Licensee's only rights to the Software and Documentation are the rights and licenses expressly stated in the Agreement and no other rights are implied or granted. None of the Software is being sold. OT's copyright or other proprietary notices must remain on the Documentation and the Software. As between Licensee and OT, the source code of the Software is a trade secret of OT, its Affiliates and licensors. If modification of any Software is permitted under a license from OT, such modification shall be for the sole purpose of using the Software in accordance with this Agreement and OT will solely own all modified portions and Licensee irrevocably assigns to OT in perpetuity all worldwide intellectual property and any other proprietary rights in and to any modifications of the Software.

10. Indemnification.

- 10.1. Indemnification.** OT will indemnify and defend Licensee from any claim, suit, action, or proceeding brought against Licensee in a court of competent jurisdiction by a third-party that alleges an infringement by the Software of a third-party's patent or copyright ("**Infringement Claim**") to the extent it arises from Licensee's use of the Software in accordance with the provisions of the Agreement, by paying amounts finally awarded by a court against Licensee or included in a settlement approved by OT, and reasonable Infringement Claim defense costs incurred prior to notifying OT of the Infringement Claim (after approval by OT in writing).
- 10.2. Requirements.** To obtain OT's defense against and payment of Infringement Claims, Licensee must: (i) notify OT in writing promptly after Licensee becoming aware of an Infringement Claim; (ii) supply information reasonably requested by OT and provide reasonable assistance to OT in connection with the defense of the Infringement Claim; (iii) allow OT to control the defense and settlement of the Infringement Claim; (iv) not agree to any settlement without OT's written pre-approval or make any admission against OT's interests; and (v) not be in material breach of the Agreement to the extent the breach caused the claim. OT will obtain Licensee's prior consent for any settlement that includes an admission of Licensee's liability.
- 10.3. Remedies.** If the Software becomes, or in OT's opinion may become, the subject of an Infringement Claim, OT may replace or modify the affected Software to be non-infringing and have materially equivalent functionality or procure for Licensee the right to continue using it through the end of the current Software term. If neither alternative is reasonably available, OT may terminate the Software license and refund to Licensee (i) the unamortized value of the amount paid for the affected Software on a three-year basis from date of delivery or (ii) the balance of any pre-paid amount for the affected Software not available for Licensee's continued access

最终用户许可协议 ("EULA")

使用或披露。上述义务不适用于以下信息：(i) 在未违反本协议的情况下公开；(ii) 在没有保密义务的情况下为接收方所知或变成为其所知；(iii) 经披露方事先书面同意而披露；(iv) 由接收方独立开发；或 (v) 依法律、法院或监管机构要求而披露。若接收方被要求根据法律或政府程序披露机密信息，接收方应（在法律允许的情况下）向披露方提供合理的事先通知，以便披露方可以申请保护令（如有）。各接收方对其员工、关联方、专业顾问、代理人 and 承包商违反本第 8 条的任何行为负责。

- 9. 所有权。** OT 及其关联方和许可方拥有软件和文档的所有权利、所有权和权益。被许可方对软件和文档的唯一权利为本协议明确规定的权利和许可，未默示或授予任何其他权利。任何软件均不构成出售。OT 的著作权或其他专有权利声明须保留在文档和软件上。在被许可方与 OT 之间，软件的源代码为 OT、其关联方和许可方的商业秘密。若 OT 的某项许可允许对任何软件进行修改，则此类修改应仅以按本协议使用软件为目的，OT 将独家拥有所有修改部分，且被许可方不可撤销地将软件的任何修改在全球范围内的所有知识产权及任何其他专有权利永久转让给 OT。

10. 赔偿。

- 10.1. 赔偿。**对于第三方在有管辖权的法院对被许可方提起的、指控软件侵犯第三方专利或著作权的任何索赔、诉讼、起诉行为或法律程序（“**侵权索赔**”），在其源于被许可方按本协议规定使用软件的范围内，OT 将赔偿被许可方并为其抗辩，方式为支付法院终审判决被许可方承担的金额或经 OT 批准的和解所含金额，以及在就侵权索赔通知 OT 之前所产生的合理侵权索赔抗辩费用（须经 OT 书面批准）。
- 10.2. 要求。**为获得 OT 对侵权索赔的抗辩及付款，被许可方须：(i) 在被许可方知悉侵权索赔后及时书面通知 OT；(ii) 提供 OT 合理要求的信息并就侵权索赔的抗辩向 OT 提供合理协助；(iii) 允许 OT 控制侵权索赔的抗辩和解；(iv) 未经 OT 书面事先批准不得同意任何和解或作出任何有损 OT 利益的承认；且 (v) 在对本协议的违约导致索赔的范围内不存在重大违约。对于任何包含承认被许可方责任的和解，OT 将取得被许可方的事先同意。
- 10.3. 救济。**若软件成为、或 OT 认为可能成为侵权索赔的对象，OT 可替换或修改受影响的软件使其不侵权且具有实质等同的功能，或被许可方取得在当时有效的软件期限届满前继续使用的权利。若上述两种方案均无法合理实现，OT 可终止软件许可并向被许可方退还 (i) 就受影响软件所支付金额按自交付之日起三年摊销的未摊销价值，或 (ii) 若软件为期限受限许可，则退还被许可方无法继续访问和使用受影响软件时，受影响软件对应的任何预付款项的剩余余额。就任何侵

and use if the Software is under a term-limited license. OT's entire liability and Licensee's sole and exclusive remedy with respect to any Infringement Claim shall be limited to OT's defense obligations and remedies set forth in this Section 10.

- 10.4. **Exclusions.** OT has no responsibility for Infringement Claims to the extent based on: (i) modification of the Software or developments made by any party other than OT; (ii) Licensee's failure to install any update or upgrade provided by OT that would have avoided the alleged infringement; the combination or use of the Software with items not provided by OT; (iii) Licensee's unauthorized use of the Software; or (iv) open-source software, or third party software regardless of whether it is embedded in the Software.

11. Limitation of Liability.

- 11.1. **Limitation on Amount of Liability.** Except as set forth in Section 4.3 (Evaluations) and Section 11.3 (Unlimited Liabilities), the maximum aggregate liability of either party for all events (or series of connected events) will not exceed the fees paid in the relevant TD.

- 11.2. **Limitation on Liability.** In no event will either party be liable for: (i) indirect, incidental, special, consequential, or punitive damages; or (ii) lost revenues, profits, savings, or goodwill, or costs of recovery or replacement of data or the cost of substitute Software, except where such liability cannot be excluded or limited by applicable law.

- 11.3. **Unlimited Liabilities.** Nothing in Section 11.1 shall exclude or limit either party's liability for: (i) its willful misconduct or fraudulent misrepresentations; (ii) its obligations under Section 10 (Indemnification); (iii) its infringement or unauthorized use of the other party's intellectual property rights; (iv) its payment obligations under the Agreement; or (v) matters for which liability cannot be excluded or limited by applicable law.

- 11.4. **Scope.** The limitations and disclaimers in this Section 11 apply to all causes of action, including but not limited to, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts. The remedies specified in the Agreement are the parties' exclusive remedies regardless of the basis of the claim.

12. Termination.

- 12.1. **For Cause.** A party may terminate the Agreement or any TD for material breach by the other party if the other party fails to cure such breach within 30 days after written notice. In addition, OT may, in its sole discretion, terminate or suspend Support if Licensee fails to remedy a material breach within 30-days of notice by OT, including failure to pay an invoice.

- 12.2. **Actions upon Termination.** Upon any termination of the Agreement or the effective date of expiration of a TD: (i) OT shall cease to make the Software available; (ii) Licensee's right to use the Software will end and Licensee shall immediately pay all accrued fees and charges; (iii) Licensee will immediately either return to OT or destroy all copies of the Documentation; and (iv) each party shall destroy or promptly return all copies, partial copies, and any documentation or materials evidencing the other party's Confidential Information.

- 12.3. **Survival.** The following provisions shall survive termination or expiration of the Agreement: Sections 4 (Licensing), 6 (Fees, Payment and Taxes), 7 (Warranties), 8 (Confidentiality) 9 (Ownership), 10 (Indemnification), 11 (Limitation of Liability), and any provisions that by their nature should survive termination.

13. Compliance.

- 13.1. **Verification.** During the term of this Agreement and for 24 months thereafter, Licensee will maintain accurate records sufficient for OT to confirm that Licensee has complied with its licenses. Licensee will promptly and accurately complete and return (within 30 days of

最终用户许可协议 ("EULA")

权索赔, OT 的全部责任和被许可方唯一且排他的救济应限于本第 10 条所载明的 OT 抗辩义务和救济。

- 10.4. **除外情形。**在侵权索赔基于下列情形的范围内, OT 不承担责任: (i) 由 OT 以外的任何方对软件进行的修改或开发; (ii) 被许可方未安装 OT 提供的、本可避免所指控侵权的任何更新或升级; 将软件与非 OT 提供的项目组合或一并使用; (iii) 被许可方对软件的未经授权使用; 或 (iv) 开源软件或第三方软件, 无论其是否嵌入软件之中。

11. 责任限制。

- 11.1. **责任金额限制。**除第 4.3 条 (评估) 和第 11.3 条 (无限责任) 中所规定的外, 任何一方对所有事件 (或一系列相关事件) 的最高累计责任不超过根据相关交易文件支付的费用。

- 11.2. **责任限制。**在任何情况下, 任何一方均不对下列事项承担责任: (i) 间接、附带、特殊、后果性或惩罚性损害; 或 (ii) 收入、利润、储蓄或商誉的损失, 或数据恢复或替换成本或替代软件成本, 但根据适用法律不能排除或限制此类责任的除外。

- 11.3. **无限责任。**第 11.1 条中的任何规定均不排除或限制任何一方就下列事项的责任: (i) 其故意不当行为或欺诈性虚假陈述; (ii) 其在第 10 条 (赔偿) 项下的义务; (iii) 其对另一方知识产权的侵犯或未经授权使用; (iv) 其在本协议项下的付款义务; 或 (v) 适用法律不能排除或限制责任的事项。

- 11.4. **适用范围。**本第 11 条中的限制和免责声明适用于所有诉讼, 包括但不限于违约、违反保证、过失、严格责任、虚假陈述和其他侵权行为。无论索赔依据为何, 本协议规定的救济为双方的排他性救济。

12. 终止。

- 12.1. **因故终止。**若一方在书面通知后 30 天内未能纠正重大违约, 另一方可能因该方的重大违约而终止本协议或任何交易文件。此外, 若被许可方在 OT 通知后 30 天内未能纠正重大违约 (包括未支付某个发票的款项), OT 可自行酌情终止或暂停支持。

- 12.2. **终止后的行动。**在本协议发生任何终止或交易文件期满生效之日: (i) OT 应停止提供软件; (ii) 被许可方使用软件的权利终止, 被许可方应立即支付所有已产生的费用和收费; (iii) 被许可方应立即向 OT 退还或销毁文档的所有副本; 且 (iv) 各方应销毁或及时退还载有另一方机密信息的所有副本、部分副本以及任何文档或材料。

- 12.3. **存续。**下列条款在本协议终止或期满后继续有效: 第 4 条 (许可)、第 6 条 (费用、付款和税费)、第 7 条 (保证)、第 8 条 (机密)、第 9 条 (所有权)、第 10 条 (赔偿)、第 11 条 (责任限制), 以及依其性质应在终止后继续有效的任何条款。

13. 合规。

- 13.1. **审计核实。**在本协议期限内及其后 24 个月内, 被许可方应保存足以供 OT 确认其已遵守许可的准确记录。被许可方应在 (OT 请求后 30 天内) 及时、准确地填写并交回任何自审问卷, 并附上由被许可方授权代表出具的、确认被许可方对

OT request) 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. 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 Agreement. Licensee shall cooperate with OT and provide such records to OT and certify its compliance with this Agreement. OT may suspend Support in the event that Licensee does not reasonably cooperate with OT under this Section 13.

13.2. **Non-compliance.** If Licensee is determined not to be in compliance with the Software license, Licensee will be deemed to have confirmed its requirement for the additional licenses from OT at OT’s then-current list price to bring Licensee into compliance, OT may invoice and Licensee must immediately pay all applicable license fees and taxes, plus applicable Support fees for the period Licensee was not in compliance with the Software license. OT may invoice Licensee for fees and taxes payable by Licensee due to use of the Software in excess of the number or type of Software licenses granted in the TD.

14. Miscellaneous.

14.1. **Entire Agreement; Amendment; Waiver.** The Agreement represents the entire agreement of the parties, and supersedes any course of dealing, discussions, or representations between the parties. Licensee’s purchase orders do not supersede or amend the Agreement or any TD. Any amendment of the Agreement must be in writing and signed by both parties. No waiver constitutes a waiver of any prior or subsequent breach.

14.2. **OT Contracting Entity; Governing Law; Venue.**

14.2.1. **Governing law; Venue.** The Agreement is governed by the laws of the applicable jurisdiction of the OT Contracting Entity as specified below excluding: (a) such jurisdiction’s conflicts or choice of law rules; and (b) the United Nations Convention on Contracts for the International Sale of Goods. In addition, the parties agree that the Uniform Computer Information Transaction Act or any version thereof, adopted by any jurisdiction, in any form (“UCITA”), shall not apply to the Agreement. To the extent that UCITA is applicable, the parties hereby opt out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein.

问卷的回答准确、完整反映被许可方软件使用情况的证明。OT 每年可对被许可方的记录和计算机系统（包括服务器、数据库以及所有其他适用软件和硬件）进行一次审计，以确保被许可方已遵守本协议。被许可方应配合 OT，向 OT 提供此类记录并证明其遵守本协议。若被许可方未按本第 13 条合理配合 OT，OT 可暂停支持。

13.2. **不合规。**若认定被许可方未遵守软件许可，则被许可方将被视为已确认其需要按 OT 当时有效的标价从 OT 处购买额外许可以使被许可方合规，OT 可开具发票，被许可方须立即支付所有适用的许可费和税费，另加被许可方未遵守软件许可期间的适用支持费。对于被许可方因超出交易文件所授予的软件许可数量或类型使用软件而应支付的费用和税费，OT 可向被许可方开具发票。

14. 其它条款。

14.1. **完整协议；修订；豁免。**本协议构成双方的完整协议，并取代双方之间的任何交易过程、讨论或陈述。被许可方的采购订单不取代或修订本协议或任何交易文件。本协议的任何修订须采用书面形式并经双方签署。任何豁免均不构成对任何先前或后续违约的豁免。

14.2. **OT 签约实体；管辖法律；审判地。**

14.2.1. **管辖法律；审判地。**本协议受下文所载 OT 签约实体的适用管辖区法律的管辖，但不包括：(a) 该管辖区的法律冲突或法律选择规则；以及 (b) 《联合国国际货物销售合同公约》。此外，双方同意，任何管辖区以任何形式采用的《统一计算机信息交易法》或其任何版本 (“UCITA”) 均不适用于本协议。在 UCITA 可能适用的范围内，双方特此依据其中所含的排除适用条款排除 UCITA 的适用。

<u>If the OT contracting entity is domiciled in:</u> <u>若 OT 签约实体住所地为：</u>	<u>The governing law is:</u> <u>管辖法律为：</u>	<u>Venue lies exclusively in courts sitting in:</u> <u>审判地仅限设于以下地点的法院：</u>
The United States of America 美国	Delaware and controlling United States federal law 特拉华州及适用的美国联邦法律	Delaware, USA 美国特拉华州
Canada 加拿大	Ontario and controlling Canada federal law 安大略省及适用的加拿大联邦法	Toronto, Ontario, Canada 加拿大安大略省多伦多
Mexico 墨西哥	Mexico 墨西哥	City of Mexico, Mexico 墨西哥墨西哥城
Brazil 巴西	Brazil 巴西	City of São Paulo, São Paulo, Brazil 巴西圣保罗州圣保罗市
Any country in the Americas except where otherwise listed in this table 本表中未另行列出的任何美洲国家	Delaware and controlling United States federal law 特拉华州及适用的美国联邦法律	Delaware, USA 美国特拉华州

England 英国	England and Wales 英格兰和威尔士	England and Wales 英格兰和威尔士
France 法国	France 法国	Tribunal De Commerce De Nanterre, France 法国楠泰尔商事法院
Germany 德国	Germany 德国	Munich, Germany 德国慕尼黑
Any country in Europe, the Middle East, or Africa except where otherwise listed in this table 本表中未另行列出的任何欧洲、中东或非洲国家	England and Wales 英格兰和威尔士	England and Wales 英格兰和威尔士
Australia or New Zealand 澳大利亚或新西兰	New South Wales, Australia and controlling Australian federal law 澳大利亚新南威尔士州及适用的澳大利 亚联邦法律	New South Wales, Australia 澳大利亚新南威尔士州
India 印度	India 印度	Bengaluru (Bangalore), India 印度班加罗尔
China 中国	China 中国	China 中国
Japan 日本	Japan 日本	Tokyo, Japan 日本东京
Any country in Asia, East Asia or South Asia (other than India, Japan, China, Australia, or New Zealand) 任何亚洲、东亚或南亚国家（印度、日本、中国、澳大利亚或新西 兰除外）	Singapore 新加坡	Singapore 新加坡
All other countries 所有其它国家	Delaware and controlling United States federal law 特拉华州及适用的美国联邦法律	Delaware, USA 美国特拉华州

14.2.2. Each party waives any right it may have to object to such venue, including objections based on personal jurisdiction or forum non conveniens (inconvenient forum).

14.2.3. In the event of a dispute between the parties, the prevailing party shall have the right to collect from the other party its reasonable costs and attorneys' fees incurred in enforcing the Agreement.

14.3. **Governing Law Specific Terms.** The Governing Law Supplemental Terms found at Exhibit A specifies certain country-specific terms that modify and/or add to this Agreement where applicable.

14.4. **Interpretation.** In the event of any conflict or inconsistency among the documents that constitute the Agreement, the following order of precedence applies: (i) the TD; (ii) other documents incorporated by the applicable TD; and (iii) this EULA.

14.5. **Relationship of the Parties.** The relationship of the parties created by the Agreement is that of independent contractor and not that of employer/employee, principal/agent, partnership, joint venture or representative of the other. Neither party is authorized to make any representation, contract or commitment on behalf of the other party.

14.6. **Third Party Rights.** No right or cause of action for any third party is created by the Agreement or any transaction under it.

14.7. **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 Agreement.

14.8. **Resellers.** OT's obligations with respect to products or services supplied by OT and procured by Licensee from an authorized OT reseller are limited to the terms and conditions in this Agreement and the Documentation. With purchases from a reseller, the applicable pricing and payment terms are as set out in the separate agreement between Licensee and the reseller, and any terms in this

14.2.2. 各方放弃其可能享有的对该管辖地提出异议的任何权利，包括基于属人管辖权或不方便法院原则提出的异议。

14.2.3. 若双方发生争议，胜诉方应有权向另一方收取其为执行本协议而产生的合理费用和律师费。

14.3. **管辖法律特定条款。** 附件 A 所载的管辖法律补充条款载明了某些国家/地区特定条款，在适用情况下对本协议予以修改和/或补充。

14.4. **解释。** 若构成本协议的各文件之间存在任何冲突或不一致，适用下列优先顺序：(i) 交易文件；(ii) 适用交易文件所并入的其他文件；以及 (iii) 本最终用户许可协议。

14.5. **双方关系。** 本协议所建立的双方关系为独立缔约方关系，而非雇主/雇员、委托人/代理人、合伙、合资或相互代表的关系。任何一方均无权代表另一方作出任何陈述、承诺或订立合同。

14.6. **第三方权利。** 本协议或其项下的任何交易均不为任何第三方创设任何权利或诉因。

14.7. **自动核查。** 软件可能包含或需要许可密钥，以防止未经授权的安装或执行软件许可的限制，并可能包含用于监控被许可方对本协议遵守情况的装置或功能。

14.8. **经销商。** 对于 OT 提供且由被许可方从 OT 授权经销商处采购的产品或服务，OT 的义务限于本协议和文档中的条款和条件。从经销商处采购时，适用的定价和付款条款以被许可方与经销商之间的单独协议所载为准，本协议中与 OT 定价、开票和付款相关的任何条款均不适用。OT 对经销商的作为

最终用户许可协议 (“EULA”)

Agreement related to OT pricing, invoicing, and payments shall not apply. OT is not responsible for the acts or omissions of the reseller, or for any other products or services that it supplies to Licensee.

- 14.9. **Assignment.** Neither party may assign or otherwise transfer the Agreement (or any of its rights or obligations) under the Agreement, in whole or in part, without the prior written consent of the other. However, transfers or assignments by OT to an Affiliate, or in conjunction with the sale of the portion of OT's business that includes Software or Support, are not restricted.
- 14.10. **Publicity.** Neither party will use in any advertising, publicity, promotion, marketing, or other similar activity, any name, trade name, or trademark, of the other party without that party's prior written consent.
- 14.11. **Export Laws.** The Software and Documentation may be subject to export control laws of Canada, the United States, the European Union, or other countries. Licensee agrees to comply with all applicable export and import regulations, including, but not limited to the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the U.S. Treasury Office of Foreign Assets Control and end-user and destination restrictions issued by the U.S. and other governments, and will not allow use of the Software in a manner that breaches or facilitates the breach of such regulations. Licensee shall not provide access to the Software, Documentation or Content to any end user or region or country where transactions are prohibited by trade control sanctions or blocking measures.
- 14.12. **Force Majeure.** Neither party will be liable for delay or failure to fulfill its non-monetary obligations due to causes beyond its reasonable control, including but not limited to acts of God, natural disasters, epidemics or other public health emergencies, terrorism, unavailability of third-party communication facilities or energy sources, riots, or war.
- 14.13. **Notices.** All notices must be in writing and given by nationally recognized courier service or electronic transmission and addressed to the Law Department at the address specified in the TD, unless a party designates in writing a different address, and shall be effective when received.
- 14.14. **Legal Review and Interpretation.** Both parties have had an opportunity for legal review of the Agreement. The parties agree that the Agreement result from negotiation between the parties. The Agreement will not be construed in favor of or against either party by reason of authorship. The headings used in this Agreement 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). If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision, and the remaining provisions of the Agreement shall remain in effect.
- 14.15. **Commercial Computer Software.** The Software is “commercial computer software” and use, duplication, or disclosure by the United States government is subject to the restrictions set forth in this Agreement and applicable law.
- 14.16. **Hardware.** Where OT provides Software embedded in an appliance or provides hardware to Licensee for use in conjunction with Software, additional hardware terms and conditions as provided in the TD will apply. Except as expressly provided in a TD, OT disclaims all warranties, conditions and liabilities with respect to the hardware.
- 14.17. **Governing Language.** The Agreement shall be prepared and interpreted in the English language. Any translation is for the purpose of convenience only, and any language inconsistency or difference of interpretation arising from language translation will be

或不作为，或其向被许可方供应的任何其他产品或服务不承担责任。

- 14.9. **转让。**未经另一方事先书面同意，任何一方均不得全部或部分转让或以其他方式转移本协议（或其在本协议项下的任何权利或义务）。但 OT 向关联方进行的转移或转让，或结合出售 OT 包含软件或支持的业务部分进行的转移或转让，不受限制。
- 14.10. **宣传。**未经另一方事先书面同意，任何一方均不得在任何广告、宣传、推广、营销或其他类似活动中使用另一方的任何名称、商号或商标。
- 14.11. **出口法律。**软件和文档可能受加拿大、美国、欧盟或其他国家/地区出口管制法律的约束。被许可方同意遵守所有适用的出口和进口法规，包括但不限于美国商务部维护的《出口管理条例》、美国财政部外国资产控制办公室维护的贸易和经济制裁，以及美国和其他政府发布的最终用户和目的地限制，且不得允许以违反或助长违反此类法规的方式使用软件。被许可方不得向贸易管制制裁或封锁措施禁止交易的任何最终用户、地区或国家提供对软件、文档或内容的访问。
- 14.12. **不可抗力。**对于因其合理控制之外的原因（包括但不限于天灾、自然灾害、疫情或其他公共卫生紧急事件、恐怖主义、第三方通信设施或能源不可用、暴乱或战争）导致延迟或未能履行其非货币义务的情况，任何一方均不承担责任。
- 14.13. **通知。**所有通知须采用书面形式，并通过全国知名快递服务或电子传输方式发出，寄送至法务部门，地址如交易文件所载明（除非一方书面指定其他地址），且应在收到时生效。
- 14.14. **法律审查与解释。**双方均已有机会对本协议进行法律审查。双方同意，本协议是双方协商的结果。本协议不因起草人之原因而作有利于或不利于任何一方的解释。本协议中使用的标题仅为方便之用。“条”一词指某一条标题（即 3.0）下的所有子条款，“子条款”一词指某一条之后依次编号的子条款（即 3.1）。若本协议任何条款被有管辖权的法院裁定为违法，则该条款应由法院予以修改和解释，以最大程度实现原条款的目的，本协议其余条款仍应继续有效。
- 14.15. **商业计算机软件。**软件为“商业计算机软件”，美国政府对其使用、复制或披露受本协议和适用法律所载限制的约束。
- 14.16. **硬件。**若 OT 提供嵌入设备中的软件，或向被许可方提供与软件配合使用的硬件，则适用交易文件所提供的附加硬件条款和条件。除交易文件明确规定外，OT 否认就硬件的所有保证、条件和责任。
- 14.17. **管辖语言。**本协议应以英语拟定和解释。任何翻译版本仅为方便之用，因语言翻译产生的任何语言不一致或解释差异，均以英语版本为准。（针对加拿大：Les parties aux présentes confirment leur volonté que cette convention, de



resolved in favor of the English language version. (For Canada: Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents et avis qui s'y rattachent ou qui s'y rattacheront, soient rédigés en langue anglaise. (Translation: The parties confirm that this Agreement and all related documentation is and will be in the English language)).

End User License Agreement (“EULA”)

最终用户许可协议 (“EULA”)

même que tous les documents et avis qui s'y rattachent ou qui s'y rattacheront, soient rédigés en langue anglaise. (译文：双方确认本协议及所有相关文档均采用且将采用英文撰写)。

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