

**Exact Terms and Conditions 2018****易科 2018 条件和条款**

Dear Exact Software user,  
尊敬的易科软件使用人：

Thank you for purchasing Exact software.  
感谢你购买了易科软件。

This part describes the terms and restrictions that apply to the use of the Exact products and services supplied to you.

本节描述的条款和限制适用于你对向你提供的易科产品和服务的使用。

This document contains:

本文件包括：

1. the Software Agreement (Chapter I)  
软件协议（第一章）
2. the Maintenance Agreement (Chapter II)  
维护（第二章）
3. the Consultancy Agreement (Chapter III)  
顾问协议（第三章）
4. the General Terms & Conditions (Chapter IV)  
一般条款和条件（第四章）

The Software Agreement sets out your rights and obligations in respect of the use of Exact software (hereinafter: 'the Software'). The Maintenance Agreement sets out your rights and obligations in respect of the maintenance and support of the Software. The General Terms & Conditions apply to all use, maintenance and support of the Software and to all other services provided by Exact.

软件协议规定了你使用易科软件（以下称为“软件”）的权利和义务。维护协议规定了你有关软件维护和支持的权利和义务。一般条款和条件适用于软件的所有使用、维护、支持以及易科提供的所有其他服务。

The agreements and terms in this document do not apply to so-called 'customized versions' or adapted versions of the Exact software. The 'Terms and conditions for your software, maintenance and support in respect of Exact customized software' apply to such versions.

本文件中包含的协议和条款不适用于所谓“定制版本”或易科软件的修改版本。对于这种版本，应适用“关于定制的易科软件的使用、维护和支持的条款和条件”。

If you do not agree with the conditions and limitations as stated in one of the Agreements or in the General Terms & Conditions you are not permitted to install the Software or have it installed, or to use, access or open the Software, and must return the Software to Exact unused and in its original packaging.

如果你不同意在上述某一协议或一般条款和条件中规定的条件和限制，你即未被允许安装软件，或如果已安装，你也被未被允许使用、接触或打开软件，且你必须将未使用的软件在原包装中退回易科。

You are required to carefully read the enclosed Agreement(s) applicable to this Software as well as the General Terms & Conditions, as they fully apply to the Software supplied to you and - where applicable - to the maintenance and/or the services provided.

你被要求仔细阅读所附的适用于本软件的协议（或多份协议）以及一般条款和条件，因其完全适用于向你提供的软件，且——在可适用的情况下——适用于所提供的维护和/或服务。

We wish you a lot of success in using the Exact software and trust you will derive the full benefit from them.

我们祝愿你使用易科产品获得巨大成功且相信你将从其全面获益。

**CONTENTS:**

目录

Chapter I 第一章	: Software Agreement 软件协议
Chapter II 第二章	: Maintenance Agreement 维护协议
Chapter III 第三章	: Consultancy Agreement 顾问协议
Chapter IV 第四章	: General Terms & Conditions 一般条款和条件

**CHAPTER I:**  
**第一章**  
**SOFTWARE AGREEMENT**  
**软件协议**

THE SOFTWARE USER STATED ON THE SIGNED PROPOSAL, AND EXACT GROUP B.V. AND/OR ONE OF ITS SUBSIDIARIES ACTING AS (SUB-) CONTRACTOR (HEREINAFTER: 'THE SELLER'), HEREBY AGREE AS FOLLOWS: 在经签署的建议书上列明的软件使用人以及易科集团公司和/或作为转包人的其某一子公司（以下称为“卖方”）特同意如下条款：

**DEFINITIONS**  
定义

**Article 1**  
第 1 条

Unless otherwise described in this Software Agreement, capitalized terms in this Software Agreement shall have the meanings ascribed to them in Article 1 of the General Terms & Conditions.

除非本软件协议另有规定，本软件协议中大写的词语应具有一般条款和条件第 1 条中所赋予的含义。

**RIGHT OF USE**  
使用权

**Article 2**  
第 2 条

2.1 The Seller grants the Software user the non-exclusive right to use the Software in accordance with the provisions in this Software Agreement and to install the Software or have it installed for this purpose once per server and to create the maximum number of administrations and/or databases mentioned in the File. The File may only be used once.

卖方授予软件使用人非排他的权利，以根据本软件协议的条款使用软件，并为此目的在每一服务器上安装或致使安装一次软件，且建立文档所规定的最大数量的应用和/或资料库。文档仅限于使用一次。

2.2 The Software user shall only use the Software on the computer system used for the Software user's internal operations, using the File made available by the Seller and for the number of Named Users stated in the File. The Software user is not permitted to have the Software used by or on behalf of any other person or legal entity, except when the Software contains functionality which makes it possible for third parties to make use of that functionality via web access.

软件使用人应仅在为软件使用人内部运营而使用的计算机上利用卖方提供的文档且限于文档列明的用户人

数使用软件。软件使用人未被允许让由或代表任何其他人或法律实体使用软件，除非软件具有某种功能，使得第三方有可能通过网络使用该功能。

2.3 The right of use also includes the right to use the Documentation pertaining to the Software.

使用权也包括使用有关软件的文件的权利。

2.4 The Software Agreement and the right to use the Software come into effect only after both Seller and Software user have accepted, in writing or via an electronic system, the Proposal and the Software user has accepted in writing or via an electronic system the applicable Software Agreement and General Terms and Conditions.

仅在卖方和软件使用人已经书面或通过电子系统接受建议书且软件使用人已经书面或通过电子系统接受适用的软件协议和一般条款和条件后，软件协议和使用软件的权利方生效。

2.5 The Software user is only permitted to use the Software within the Software user's own company on a computer system that complies with the System Requirements.

软件使用人仅被允许在软件使用人的公司内的符合系统要求的计算机系统上使用软件。

2.6 With the exception described in Article 2.2, the Software user is expressly prohibited from having the Software used or from allowing it to be used for or by other than or by more than the maximum number of Named Users stated in the File.

除第 2.2 条规定外，软件使用人被明确禁止为或由超过文档规定的最大用户人数或未列于文档的人士使用软件，或允许软件为或由超过文档规定的最大用户人数使用或被未列于文档的其他人员使用。

2.7 The software fee for each part of the Software for which a right of use is granted pursuant to this Software Agreement is listed in the Price list or an other price list officially published by the Seller. The software fee is due and payable as of the effective date referred to in Article 2.4 or any later date as agreed in writing between Seller and Software user, irrespective whether Software user uses the Software or not.

本协议授权使用的软件各部分软件使用费用在价目表或由卖方正式公布的其他价目表中列出。不论软件使用人是否使用软件，软件使用费用应在本协议第 2.4 条约定的生效日或卖方及软件使用人书面同意的其他日期到期并支付。

2.8 The Seller is entitled to request the Software user to register on an annual basis. 卖方有权要求软件使用人每年进行注册。

**TRANSFERABILITY**

可转让性  
Article 3  
第 3 条

3.1 The Software user is prohibited, being it for remuneration or not, from transferring the right and software of use of the Software to third parties by act of law or by agreement, including but not limited to through a merger or change of Control, or to hire out, sub-contract, sell, dispose of or pledge the Software.

软件使用人不得凭借法律规定或协议有偿或无偿地向第三人转让软件使用权，包括但不限于通过合并或控制权变更，或出租、转包、出售、处分或者以软件作担保。

3.2 The Software user is prohibited from passing and/or accepting the Software into control and/or use of a third party, including hosting, timesharing or outsourcing. The term 'third party' also includes Affiliated Companies.

软件使用人不得将软件转交和/或同意第三方控制和使用软件，包括寄存、分时共享或者外包。“第三方”一词也包括关联公司。

3.3 If the Software user grants a third party the unauthorized use of the Software as referred to in Article 3.1 and Article 3.2 of this Software Agreement, the Software user will, from the commencement date of the right of use referred to in Article 2.4 of this Agreement, remain liable for the payment of the software fees and/or maintenance fees both for the Software user's own use as well as the unauthorized use by that third party, without prejudice to the Seller's right to recover these fees directly from that third party. The right to recover software fees and/or maintenance fees, as described here above does not affect the Seller's right to recover the full damages resulting from an infringement of the provisions in Article 3.1 and/or Article 3.2 of this Agreement from the Software user nor the right to terminate the Software Agreement in accordance with Article 10 of the General Terms and Conditions.

若软件使用人如本协议第 3.1 条和第 3.2 条所列未经许可即授权第三方使用软件，软件使用人将自本协议第 2.7 条所述的使用权起始日起承担软件使用人自用及该第三方未经许可而使用软件而产生的使用费和/或维护费，且不影响卖方直接向第三方追索相关费用的权利。追索上述软件使用费和/或维护费的权利并不影响卖方就软件使用人违反本协议第 3.1 条和/或第 3.2 条向其追偿全部损失的权利，也不影响卖方根据一般条款和条件第 10 条的约定行使终止本协议的权利。

3.4 The Software Agreement can only be transferred after the express written consent of the Seller. Any actions, behavior or circumstances of any nature whatsoever do not alter this condition. For example, if a third party pays software fees and/or maintenance fees to the Seller on behalf of the Software user, or uses Support, this never results in a valid transfer of the Software Agreement.

本软件协议仅能在卖方明确书面同意后方可转让。任何行动、行为或者任何情况下都不能变更本条件。例如，如第三方代表软件使用人向卖方支付软件使用费和/或维护费，或者使用支持服务，这不会导致本软件协议的有效转让。

#### MANNER OF USE

使用方式  
Article 4  
第 4 条

4.1 The Software user shall use the Software in the correct manner, with due observance of the provisions in this Software Agreement (including the General Terms & Conditions) and the Documentation. With the exception of the provisions in Articles 4.2 and 4.3 of this Software Agreement the Software user is prohibited from copying, reproducing, translating, modifying, disassembling, decompiling, imitating, changing or reconstructing the Software and/or Documentation, or reproducing or processing it in any other manner, wholly or in part, without the express prior written consent of the Seller.

软件使用人应当以正确的方式使用软件，正当遵守本软件协议（包括一般条款和条件）的各项条款以及文件。除本软件协议第 4.2 条和第 4.3 条规定外，除非得到卖方事先书面明确同意，软件使用人不得全部或部分拷贝、复制、翻译、修改、拆解、反编译、仿造、更改或重组软件和/或文件，或以其他任何方式处理软件。

4.2 The Software user is entitled to make one copy of the Software as backup and for recovery purposes. The Software user will only use this copy to replace the original Software when it has become unfit for use. Software user has the right to make a copy for backup and recovery purposes. Software user can only use this copy to replace the original software when the software is unusable.

4.3 The Software user must make regular backups of all data files that are generated, used and/or applied with the Software. Software user must make regular backups of all data files that are generated, used and/or applied with the Software. Software user must make regular backups of all data files that are generated, used and/or applied with the Software.

4.4 Pursuant to this Software Agreement the Software user must:

根据本软件协议，软件使用人必须：

- a) always ensure that the Software and Documentation are sufficiently protected against misuse, damage (including damage as a result of hidden risks such as viruses, worms, Trojan horses, logic bombs etc.), theft or destruction by any party;  
始终确保软件和文件得到充分保护免遭他方滥用、损坏（包括诸如病毒，蠕虫，木马，逻辑炸弹等造成的损坏）、盗窃或损毁。
- b) prevent any unauthorized persons from copying, reproducing, translating, modifying, disassembling, decompiling, imitating, changing or reconstructing the Software and/or Documentation, from having access to the Software and/or Documentation or from reproducing or processing the Software and/or Documentation in any other manner;  
防止任何人未经授权而拷贝、复制、翻译、修改、拆解、反编译、仿造，更改或重组软件和/或文件；防止任何人未经授权而接触软件和/或文件，或以其他方式复制或处理软件和/或文档。
- c) immediately notify the Seller of any and all information the Software user obtains relating to the unauthorized copying, changing or use of the Software and/or Documentation or relating to all other actions that are prohibited pursuant to Articles 4.4 and 4.1;  
就软件使用人获得的任何以及全部有关未经授权复制，更改或使用软件和/或文件的信息，或者本协议第 4.4 条和第 4.1 条所禁止的所有其他活动的信息立即通知卖方。
- d) ensure that the number of Named Users does not exceed the allowed number stated in the File.  
确保指定用户的数量不超过文档允许的数量。

4.5 The Software user is ultimately responsible for the proper installation and configuration of the Software on the Software user's computer system. At the request of the Software user the Seller will support the Software user in the installation and configuration of the Software and will train the Software user or the Software user's Named Users in the use and operation of the Software (hereinafter: 'Configuration and Training'). The Configuration and Training can take place at the Seller's premises or at the Software user's premises, as further to be agreed between the parties in a separate agreement. The Software user will pay the Seller a fee for Configuration and Training in accordance with the Price list.

软件使用人最终负责在其电脑系统上合理安装和配置软件。卖方将应软件使用人的要求为其提供软件安装和配置的支持，并且培训软件使用人或者软件使用人的指定用户使用和操作软件（以下简称“配置和培训”）。根据双方另行达成的协议，配置和培训可以在卖方或者软件使用人的场所进行。软件使用人应根据价目表向卖方支付配置和培训的费用。

4.6 The Seller is never obliged to provide Maintenance Services if the Software user has not entered into a Maintenance Agreement, with the exception as set forth in Article 5.1 of this Software Agreement. Maintenance is essential for some modules of the Software. The Software user is aware that the continued proper functioning of the Software is not possible without maintenance and that errors and/or Defects may occur without such maintenance. The Seller accepts no liability for any damages whatsoever resulting from the use of the Software for which maintenance is deemed essential if the Software user has not entered into a Maintenance Agreement in respect of this Software.

除本软件协议第 5.1 条的规定外，若软件使用人未签署维护协议，则卖方没有义务提供维护服务。维护对于软件的某些部分来说是必要的。软件使用人意识到若不进行维护，则无法实现软件的持续、适当运行，并可能出现错误和/或故障。若软件使用人未签署有关本软件的维护协议，因使用必需维护的软件而导致的任何损害，卖方不负任何责任。

## FUNCTIONING OF THE SOFTWARE

软件的功能

### Article 5 第 5 条

5.1 The Seller declares that the Software supplied to the Software user hereunder will function substantially in accordance with the provisions of the accompanying Documentation during a one-off period of ninety (90) calendar days from the date of supply of the Software or from another starting date expressly agreed in writing between the Seller and the Software user. The Software user must notify the Seller of any claim related to the functioning of the Software no later than 5 Work Days after the aforementioned ninety (90) calendar days, in writing and by certified mail. If the Software user notifies the Seller in accordance with the provisions of this Article 5.1 that the Software does not function substantially in accordance with the accompanying Documentation, the Seller will provide the Maintenance Services as described in Articles 4 and 5.1, under a and b, of the Maintenance



Agreement, even if the Software user has not entered into a Maintenance Agreement.

卖方声明，自软件提供之日起或者卖方和软件使用人书面同意的其他明确起始日起九十（90）个公历日内，向软件使用人提供的软件将根据附随文件的规定实质性运行。软件使用人对于软件功能的任何索赔须在上述九十（90）个公历日后的 5 个工作日内以书面形式且通过可查证的邮件通知卖方。若软件使用人根据本 5.1 条的规定告知卖方软件未根据附随文件的规定实质性运行，则即使软件使用人未签署维护协议，卖方也将按照维护协议第 4 条以及第 5.1 条 a 款和 b 款的约定，提供维护服务。

**5.2 The Seller is not obliged to restore corrupted or lost data or provide Maintenance services pursuant to Article 5.1 in respect of errors and/or Defects that are not attributable to the Seller, including but not limited to errors and/or Defects resulting from:**

对于不可归因于卖方的错误和/或缺陷，包括但不限于由以下原因产生的错误和/或缺陷的，卖方无义务根据第 5.1 条的规定恢复损坏或丢失的数据或者提供维护服务：

- a) **modifications to the Software, of any nature, that were not made by or on behalf of the Seller;**  
非由卖方或代表卖方对软件进行的任何性质的修改；
- b) **use of the Software by or on behalf of the Software user in a manner or in combination with other software or hardware that is not described in the accompanying Documentation or is otherwise not permitted pursuant to this Agreement;**  
以附随文件无描述的或本协议不允许的方式或与以附随文件无描述的或本协议不允许的其他软件或硬件一并使用的方式，由软件使用人或代表软件使用人使用软件；
- c) **use of an old Update three (3) months after the Seller has introduced a new Software Update or Upgrade;**  
在卖方引入新软件更新或升级三（3）个月，仍使用某个旧的更新；
- d) **use of an old Upgrade six (6) months after the Seller has introduced a new Software Upgrade;**  
在卖方已引入新软件升级六（6）个月，仍使用某个旧的升级；
- e) **intentional incorrect use of the Software, whether or not by the Software user;**  
无论是否由软件使用人造成的对软件的故意错误使用；
- f) **defects, hidden risks (such as viruses, worms, Trojan horses, logic bombs, etc.)**

or errors in software not originating from the Seller, hardware, communication equipment, peripherals or other equipment belonging to the Software user or a third party, or failure on the part of the Software user to have this equipment and/or software maintained on a regular basis;

非源自于卖方的软件缺陷、潜在风险（诸如病毒、蠕虫、木马、逻辑炸弹等）或错误，属于软件使用人或第三方的硬件、通信设备、外围设备或者其他设备，或者软件使用人未对该设备和/或软件进行正常维持。

- g) **data entry errors or errors related to data used by the Software user.**  
数据录入错误或者软件使用人使用数据的错误。

If the Seller nevertheless, at its sole discretion decides to perform this work at the request of the Software user, the Software user must pay the Seller a fee in accordance with the tariffs listed in the Price list applicable at that time, in addition to the maintenance fee the Software user must pay pursuant to any Maintenance Agreement the parties may have entered into.

尽管如此，如果卖方仍然单方决定应软件使用人的要求履行本项工作，软件使用人除应支付根据双方可能签署的维护协议规定所必须支付的维护费用外，还须向卖方支付根据届时适用的价目表中列出的费率计算的费用。

**5.3 The one-off ninety (90) day period for previously ordered and supplied Software referred to in Article 5.1 is not extended by (additional) Software that is ordered and supplied at a later date. If additional orders are added for which the period referred to in Article 5.1 has expired, this period will not revive for the previously ordered and supplied Software.**

本协议第 5.1 条中规定的先前订购和提供的软件的一次性九十（90）日期间，不因日后订购和提供的（额外）软件而延长。如果在一个第 5.1 条规定的期间已经届满的软件上增加额外的订单，则对先前订购和供应的软件该期间不能重新计算。

**5.4 If more than three (3) months have expired since the issue of an Update or six (6) months since a Software Upgrade, the Seller is not obliged to supply the preceding Update or Upgrade or any extension of the software based thereon.**

若自发布更新之日起超过三（3）个月或自发布升级软件之日起超过六（6）个月，卖方即无义务提供上述更新或升级或基于其的任何软件延展。

**5.5 The Software user is fully responsible for the Software receiving correct and correctly formatted data from all software and**

hardware used to exchange data with the Software or to provide data to the Software.  
软件使用人应对软件从交换数据的或向软件提供数据的所有软件和硬件处接收正确的及正确格式的数据承担全部责任。

#### SOFTWARE USER'S NAME

软件使用人名称

#### Article 6

##### 第 6 条

6.1 The name for the Software user provided by the Software user must correspond with the business name used by the Software user as it is registered in the commercial register of the Chamber of Commerce or the equivalent commercial register in his country, or - in the event that the Software user is not registered in the commercial register - the business name the Software user uses for legal purposes.

软件使用人提供的名称必须与其在商会的商业登记簿上登记的或在其国家内同类商业机构登记的营业名称一致，或若软件使用人未在商业登记簿上登记的，则应与软件使用人为合法目的而使用的商业名称一致。

6.2 The Seller reserves the right to unilaterally change a name provided by the Software user and accepted by the Seller with due observance of Article 6.1.

在遵守第 6.1 条的情况下，卖方保留单方变更由软件使用人提供且由卖方接受的名称的权利。

#### GENERAL TERMS & CONDITIONS

一般条款和条件

#### Article 7

##### 第 7 条

The Seller's General Terms & Conditions form an integral part of this Software Agreement and are deemed to have been fully included in this Agreement.

卖方的一般条款和条件是本协议组成部分，且被认为已全部包括在本协议中。

**CHAPTER II:**  
**第二章**  
**MAINTENANCE AGREEMENT**  
**维护协议**

THE FOLLOWING TERMS & CONDITIONS APPLY BETWEEN THE SELLER AND THE SOFTWARE USER IF THE SOFTWARE USER ENTERS INTO A MAINTENANCE AGREEMENT WITH THE SELLER.

如果软件使用人与卖方签署维护协议，以下条款和条件在卖方和软件使用人之间适用。

**DEFINITIONS AND APPLICABILITY**

定义和适用

**Article 1**

**第 1 条**

1.1 Unless otherwise described in this Maintenance Agreement, capitalized terms in this Maintenance Agreement shall have the meanings ascribed to them in Article 1 of the General Terms & Conditions.

除非本维护协议另有规定，本维护协议中大写词语应当具有一般条款和条件第 1 条所规定的含义。

1.2 This Maintenance Agreement entitles the Software user to make use of the Maintenance Services provided by the Seller, as defined in Article 3 of this Agreement, for the duration of this Agreement.

本维护协议赋予软件使用人，在本协议有效期内，使用本协议第 3 条所定义的维护服务的权利。

1.3 If there is no Software Agreement in force between the Seller and the Software user, the Software user is not entitled to Maintenance Services in respect of the Software pursuant to this Maintenance Agreement.

如果卖方和软件使用人之间不存在有效的软件协议，根据本维护协议，软件使用人无权就软件使用维护服务。

1.4 The Maintenance Agreement covers all the Software for which the Seller has granted the

Software user. The provisions in this Agreement do not apply to so-called 'customized versions' or modified versions of the software. The 'Terms and conditions for your software, maintenance and support in respect of Exact customized software' apply to such versions.

维护协议覆盖了卖方授予软件使用人的所有软件。本协议条款不适用于软件的所谓的“定制版”或修改版。“关于定制的易科软件的使用、维护和支持的条款和条件”应适用于这些版本。

1.5 The Seller reserves the right to outsource (part of) its obligations pursuant to the Maintenance Agreement to one or more third party/parties, provided this party/these parties is/are able to provide equivalent services, at the sole discretion of the Seller.

卖方保留根据维护协议向一方或更多的第三方外包（部分）义务的权利，如果根据卖方的单方决定，该方/该多方能提供相同的服务。

1.6 The provisions in the Software Agreement apply to the use and treatment of all Software (including Updates and Upgrades supplied pursuant to the Maintenance Agreement), Documentation and other materials supplied to the Software user by the Seller pursuant to this Maintenance Agreement.

软件协议的条款适用所有软件的使用和处理（包括根据维护协议提供的更新和升级）、文件和其他根据维护协议卖方向软件使用人提供的材料。

**MAINTENANCE FEES**

维护费

**Article 2**

**第 2 条**

2.1 Pursuant to the Maintenance Agreement the Software user must pay the Seller an annual maintenance fee. The maintenance fee will be calculated on the basis of the Software, the number of Named Users and the Price list. The Software user must pay the maintenance fee annually in advance. Where possible the maintenance fee will always be invoiced one (1) month prior to the applicable Renewal Date. The Seller is entitled to suspend its obligations pursuant to this Maintenance Agreement until all outstanding maintenance fees have been paid in full. The maintenance fee is payable irrespective of whether the Software user uses the Software or uses Support or Maintenance Services.

根据维护协议，软件使用人必须向卖方支付年度维护费。维护费将在软件、指定用户的数量和价目表的基础上计算。软件使用人必须预先支付每年的维护费。在可能的情况下，应在适用的续展日期前一个月开具维护费发票。卖方有权终止其在维护协议下的义务，直到所有未付的维护费被全额支付。不论软件使用人是否使用软件或使用支持或维护服务，都应支付维护费。

2.2 The Seller is entitled to adjust the maintenance fee on an annual basis. Any price changes will be communicated to the Software user in good time by means of the Customer Portal or some other means. The Software user expressly declares that he agrees with any price increases in respect of the Maintenance services as defined in Article



3.1, when these increases are in line with and do not exceed the CBS (*Dutch Central Statistics Bureau*) Consumer Price Index figure (series: all households 2005 = 100). In the event of any price increases that exceed the aforementioned Price Index figure the Software user is entitled to terminate the Agreement pursuant to Article 3.2 of the General Terms & Conditions.

卖方有权每年调整维护费。任何价格变动都将通过客户端口或以其他方式及时通知软件使用者。软件使用者明确声明其同意第 3.1 条确定的关于维护服务的任何价格增长，只要这些增长符合且不超过 CBS（荷兰中央统计局）的消费者物价指数（级数：2005 年所有家庭=100）。如果任何价格增长超过了上述价格指数，软件使用者有权根据一般条款和条件第 3.2 条终止协议。

## MAINTENANCE SERVICES GENERAL

维护服务概述

### Article 3

第 3 条

3.1 For the purpose of this Agreement the term 'Maintenance Services' means (I) Support as described in Article 4 and (II) Maintenance as described in Article 5, subject to the exceptions described in Article 6.

为本协议的目的，“维护服务”一词意指(I)第 4 条描述的支持和 (II)第 5 条描述的维护，但第 6 条规定例外除外。

3.2 All Maintenance services will be performed on Work Days between 09.00 a.m. and 05.00 p.m. Other and/or extended opening hours may be possible, which may differ per Exact office.

所有维护服务在工作日的上午 9:00 到下午 5:00 之间进行。在其他的和/或延长的营业时间也可能提供服务，因每个易科营业机构而异。

## SUPPORT

支持

### Article 4

第 4 条

4.1 'Support (Services)' means the provision of telephonic, written and/or electronic helpdesk support relating to the use and functioning of the Software.

“支持（服务）”意指提供与软件使用和运行相关的电话、书面的和/或电子求助台的支持。

4.2 When the Software user or an Employee of the Software user requests Support, the computer system on which the Software is installed must be in the immediate vicinity of and constantly available to the Software user or Employee of the Software user.

Furthermore, the Software user must have a

ready-for-use Internet connection with the Seller. Support can only be provided if the Software user or the Employee of the Software user provides the Seller with the correct software number and software name. 当软件使用者或者软件使用者雇员要求支持时，安装软件的电脑系统必须在软件使用者或软件使用者雇员的手边且可持续使用。此外，软件使用者必须拥有与卖方联系的可用网络连接。支持仅在软件使用者或其雇员向卖方提供正确软件号码和软件名称的情况下方可提供。

## 4.3 Only the Software user and its Employees can request Support.

只有软件使用者和其雇员可以要求支持。

## MAINTENANCE

维护

### Article 5

第 5 条

#### 5.1 Maintenance includes:

维护包括：

a) the tracing and repairing, with commercially reasonable efforts, of all Defects in the Software the Software user has reported to the Seller in accordance with Article 5.5. If a Defect is noted the Software user must notify the Seller forthwith and provide the Seller with all system environment and other relevant information relating to the Defect in order to enable the Seller to isolate, reproduce and resolve the Defect;

通过商业上的合理努力，追踪和修复软件使用者根据第 5.5 条向卖方报告的软件的所有缺陷。如果一项缺陷被发现，软件使用者必须立刻通知卖方且向其提供所有系统环境以及其他与缺陷相关的信息，以使卖方分离、复制和解决缺陷。

b) the provision of Software Updates and/or Upgrades at the sole discretion of the Seller. Updates and/or Upgrades will, as much as possible, be provided via the Customer Portal. In an Update and/or Upgrade the Seller may duplicate the functionality from the previous Software Updates and/or Upgrades without change, but does not guarantee that every new Update and/or Upgrade will have the same functionality as the previous Software Updates and/or Upgrades.

软件更新和/或升级的提供由卖方单方决定。更新和/或升级将尽可能通过客户端口提供。在了一项更新和/或升级中，卖方可能从先前软件更新和/或升级中无修改地复制某功能，但不保证每个新的更新和/或升级都具有与先前软件更

新和/或升级相同的功能。

5.2 The Seller may require that the Software user adapts his computer system to new System Requirements set by Seller due to increased functionality or increased requirements of Software Updates or Upgrades. If the Software user fails to comply with these new System Requirements and nevertheless installs a Software Update or Upgrade, the Seller is not in any way liable for any ensuing loss or damages. If the Software user does not comply with the System Requirements set by the Seller and continues to use the previous Software Update or Upgrade the provisions in Article 5.4 c) and d) also apply.

由于增加功能或增加软件更新或升级的要求，卖方可能要求软件用户调整其电脑系统以适应卖方制定的新的系统要求。如果软件用户未能遵守这些新的系统要求但仍然安装一项软件更新或升级，卖方对任何随之发生的损失或损害不承担任何形式的责任。如果软件用户未能遵守卖方制定的系统要求且继续使用先前的软件更新或升级，第 5.4 条中 c) 和 d) 款同样适用。

5.3 Maintenance Services will, as much as possible, be performed online. The Software user is responsible for realizing a data connection with the Seller in his computer system. The Seller reserves the right to suspend Maintenance services if it can reasonably be determined that the data connection does not meet the necessary technical and safety requirements set by the Seller.

维护服务将尽可能地在在线进行。软件用户有责任在其电脑系统上实现与卖方的数据连接。如果可以合理认定数据连接不能满足卖方制定的必要技术和安全要求，卖方保留中止维护服务的权利。

5.4 The Seller is not obliged to provide Maintenance Services, including Maintenance Services relating to errors and/or Defects, resulting from:

对于下列事项，卖方没有义务提供维护服务，包括与错误和/或缺陷有关的维护服务，：

- a) modifications to the Software, of any nature, that were not made by or on behalf of the Seller;  
非由卖方或非代表卖方进行的、任何性质的对软件更改；
- b) use of the Software by or on behalf of the Software user in a manner or in combination with other software or hardware that is not described in the accompanying Documentation or is otherwise not permitted pursuant to this Agreement and/or the Software Agreement;

由软件使用人或代表软件使用人进行的、以某种方式或连同其他软件或硬件进行的、附随文件未规定的或本协议和/或软件协议未允许的软件使用；

- c) use of an old Update three (3) months after the Seller has introduced a new Software Update;  
在卖方已引入新的软件更新三（3）个月后，仍使用某一旧更新的；
- d) use of an old Upgrade six (6) months after the Seller has introduced a new Software Upgrade;  
在卖方已引入新的软件升级六（6）个月后，仍使用某一旧升级的；
- e) intentional incorrect use of the Software, whether or not by the Software user;  
故意地错误使用软件，无论使用是否由软件使用人进行；
- f) defects, hidden risks (such as viruses, worms, Trojan horses, logic bombs, etc.) or errors in software not originating with the Seller, hardware, communication equipment, peripherals or other equipment belonging to the Software user or a third party, or failure on the part of the Software user to have this equipment and/or software maintained on a regular basis;  
非源自于卖方的软件缺陷，潜在风险（诸如病毒、蠕虫、木马、逻辑炸弹等）或错误，属于软件使用人或第三方的硬件、通信设备、外围设备或者其他属于软件使用人或第三方，或者软件使用人未能对该设备和/或软件进行正常维护。
- g) data entry errors or errors related to data used by the Software user.  
数据录入错误或者软件使用人使用数据的错误。

If the Seller nevertheless, at its sole discretion, decides to perform this work at the request of the Software user, the Software user must pay the Seller a fee in accordance with the tariffs listed in the Price List applicable at the time, in addition to the maintenance fee.

尽管如此，如果卖方仍然单方决定根据软件使用人的要求从事本项工作，除了维护费用外，软件使用人还须向卖方支付按照当时适用的价目表中列出的费率计算的费用。

5.5 Within three (3) Work Days after the Software user has reported a Defect via the Customer Portal in such sufficient detail that the Seller is able to reproduce the Defect, the Seller will give the Software user an initial response to the Defect. This response may consist of a preliminary analysis or, where

available, the provision of a known workaround.

在软件使用人通过客户端以卖方可复制该缺陷的充分详情报告一项缺陷后的三个（3）工作日内，卖方给予软件使用人关于缺陷的最初回应。回应可包括预先分析或者，如可能，提供一个已知的解决方案。

**5.6 The Seller will use commercially reasonable efforts to remedy the Defects the Software user has reported in accordance with the provisions in Article 5.5. The Seller reserves the right to set priorities in remedying the Defects on the basis of their seriousness and consequences of the Defects for the entire data file. Depending on the seriousness of the Defect the Seller is entitled, at its sole discretion, to resolve the reported Defect by offering the Software user a repair option or workaround.**

卖方应根据第 5.5 条的规定尽商业的合理的努力修复软件使用人报告的缺陷。卖方保留根据缺陷对于整个资料文档的严重程度和后果制定修复缺陷优先顺序的权利。根据缺陷的严重程度，卖方有权单方决定通过向软件使用人提供一个修复维护选择方案或者解决方案以解决已报告的缺陷。

**5.7 The Software user will render every assistance to the Seller's investigation of the Defect, including ceasing the use of the Software in question at the request of the Seller in order to enable the Seller to analyze and repair the Defect. If the Software user fails to provide this assistance the Seller will not be obliged to further investigate or remedy the Defect.**

软件使用人将为卖方调查缺陷提供一切协助，包括按照卖方的要求停止使用问题软件，以使卖方可以分析和修复缺陷。如果软件使用人没有提供此协助，卖方即没有义务进一步检查或者修复缺陷。

## EXCEPTIONS

例外

### Article 6

#### 第 6 条

**Maintenance Services pursuant to this Maintenance Agreement do not include:**

根据本维护协议提供的维护服务不包括：

- a) services in respect of system configurations, hardware and networks; 有关系统配置、硬件和网络的服务；
- b) structural work such as defining layouts, overviews, annual reports, the lay-out of accountant's charts, bookkeeping issues, import definitions and connections to third-party software; 结构性工作，比如确定版面、概观、年度报告、会计图表格式、记帐问题、输入定义和与第三方软件的连接；

- c) on-site support; 现场支持；
- d) extensions to the functionality of the Software at the request of the Software user; 根据软件使用人要求，软件功能的扩大；
- e) file conversions; 文档转换
- f) services with respect to external databases of producers other than the Seller; 关于除卖方以外的其他制造商的外部数据库的服务；
- g) installation, configuration, training or other services not expressly described in this Agreement; 本协议中为明确规定的安装、配置、培训或其他服务；
- h) maintenance or support for software supplied by the Seller other than the Software and/or for (operating) software of producers other than the Seller; 对卖方提供的、非为本软件的其他软件、和/或为（运行）非由卖方编制的软件而进行维护或支持；
- i) maintenance or support for hardware; 硬件的维护或支持；
- j) file repairs, the cause of which cannot be attributed to the Seller's Software 维护原因不能归咎于卖方软件的文档修复，；
- k) the issuance of other products than the Software that are put on the market by or on behalf of the Seller; 由卖方或者代表卖方投放市场的非本软件的其他产品；
- l) reproduction of corrupted or lost data. 损坏或遗失数据的复制。

**The Seller is not obliged to perform work in respect of the matters listed under a) through l). If the Seller nevertheless, at its sole discretion, decides to perform this work at the request of the Software user, the Software user must pay the Seller a fee in accordance with the tariffs listed in the Price List applicable at the time, in addition to the maintenance fee.**

卖方没有义务从事 a)到 l) 列举事项的工作。尽管如此，如果卖方仍然单方决定按照软件使用人要求从事该工作，在维护费用外，软件使用人还须向卖方支付根据当时适用的价目表所列出的费率计算的费用。

## COMMENCEMENT, DURATION AND TERMINATION OF THE MAINTENANCE AGREEMENT

维护协议的开始、期间和终止

### Article 7

#### 第 7 条

7.1 If a Maintenance Agreement is entered into it is deemed to take effect on the same day the Software Agreement with respect to the Software came into effect. If a Maintenance Agreement is not entered into but a Software Agreement is in place for any period, and after this period the Software user decides to enter into a (new) Maintenance Agreement, the Software user must pay the Seller the maintenance fee retroactively from the moment the earlier Maintenance Agreement was stopped or from the date the Software Agreement came into effect.

如果一项维护协议被签署，则其应被认定为在相关软件协议生效日的同一天生效。如果一项维护协议没有被签署，但一项软件协议已生效任何一段期间，且如果在此期间后，软件使用人决定签订一份（新的）维护协议，软件使用人须向卖方支付维护费，此维护费应追溯到先前的维护协议终止之时或者软件协议生效之日。

7.2 The Maintenance Agreement is entered into for a duration of one (1) year and will be tacitly renewed for a subsequent period of one (1) year, unless either party gives the other party written notice by certified mail, no later than three (3) months prior to the Renewal Date, that this party wishes to terminate the Agreement. If the Software user wishes to terminate the Agreement the written notice of termination must be sent to the Seller.

签署的维护协议的期间为一（1）年，且将在其后默认续展一（1）年，除非一方在距续展之日至少三

（3）个月前，通过可查证的邮件向另一方发出书面通知，表示该方希望终止协议。如果软件使用人希望终止协议，书面终止通知须向卖方寄发。

7.3 The duration of this Maintenance Agreement will not change as a result of the Software user adding additional orders to the Software under the same Software Agreement. These additional orders are added to the current Maintenance Agreement and the maintenance fee for the Maintenance services in respect of the additional orders will therefore for the then current year be invoiced proportionally, in other words, from the date the additional orders are added to the current Maintenance Agreement until the first next Renewal Date. As from the first next Renewal Date, the maintenance fee will

be invoiced over the total value of the Software.

本维护协议的期间不因软件使用人在相同软件协议下增加额外软件订单而改变。这些额外订单会被增加到目前的维护协议中，因额外订单维护服务产生的维护费用将按比例计算到本年度所开具的发票中，也就是说，新增订单将从加入到当前维护协议之日起延续到下一续约日为止。然后从下一续约日开始，维护费用将按照全部软件的总价值来开具发票。

7.4 If the Software Agreement is terminated the Seller's obligation to provide Maintenance services pursuant to this Agreement automatically ceases in respect of the Software as per the termination date of the software. This cessation will not result in a reimbursement of maintenance fees.

如果软件协议终止，在终止日，卖方根据本协议对终止的软件提供维护服务的义务自动终止。终止不会导致对维护费的返还。

7.5 Termination of the Maintenance Agreement in respect of part of the Software results in the right of use being ceased for the modules for which the maintenance has been cancelled.

就部分软件的维护协议的终止导致维护被取消的模块的使用权被终止。

## GENERAL TERMS & CONDITIONS

一般条款和条件

### Article 8

#### 第 8 条

The Seller's General Terms & Conditions form an integral part of this Maintenance Agreement and are deemed to have been fully included in this Agreement.

卖方的一般条款和条件是本维护协议的组成部分，且应被认为完全包括在本协议中。



**CHAPTER III:**  
**第三章**  
**CONSULTANCY AGREEMENT:**  
**顾问协议**

THE FOLLOWING TERMS AND CONDITIONS APPLY BETWEEN THE SELLER AND THE SOFTWARE USER, WHEN THE SOFTWARE USER ENTERS INTO A CONSULTANCY AGREEMENT WITH THE SELLER

当软件使用人与卖方签署顾问协议时，以下条款和条件对卖方和软件使用人适用。

**DEFINITIONS**

定义

**Article 1**

**第 1 条**

1.1 Unless otherwise described in this Consultancy Agreement, capitalized words in this Consultancy Agreement shall have the meanings ascribed to them in Article 1 of the General Terms and Conditions.

1.1 除协议另有规定外，本协议大写术语具有通用条款和条件第 1 条规定的含义。

1.2 For the following words in this Consultancy Agreement the following definitions apply:

1.2 本协议使用的下列术语具有以下含义：

a) 'Consultancy Order (Confirmation)': the written or electronic document containing the agreements between the Seller and the Software user based on which the Consultancy Agreement is entered into. Such agreement may also be taken up in a Proposal;

• “顾问订单（确认函）”是指书面或电子文件，包含签订本协议所依据的卖方和软件使用人之间签署的协议。该协议还可被视为一份提案；

b) 'Plan of Approach': the written or electronic document containing amongst other things a description of the goal of the consultancy services, a description of the consultancy services to be provided by the Seller and a planning.

• “处理计划”是指书面或电子文件，包含对顾问服务目标的描述、卖方拟提供的顾问服务的描述以及计划。

**CONSULTANCY FEE**

顾问费

**Article 2**

**第 2 条**

2.1 Pursuant to the Consultancy Agreement, the Software user must pay the Seller the price agreed and/or rates agreed by the Software user and the Seller in the Proposal and/or the Consultancy Order Confirmation.

The Seller reserves the right to charge other fees.

2.1 根据本协议的规定，软件使用人必须向卖方支付双方在提案和/或顾问订单确认函中一致同意的价格和/或费率。卖方保留收取其它费用的权利。

All prices and rates are exclusive of VAT and exclusive of travel, accommodation and subsistence costs.

所有价格和费率不含增值税、差旅费、住宿费和生活费。

Invoicing will take place on a time-spent basis per full hour. On-site consults are invoiced with a minimum of four (4) hours per visit per consultant. The hourly rates are increased on Work Days after 6:00 pm to 150% of the normal rate and to 200% during non-Work Days.

根据所花费的完整小时数开立发票。提供现场顾问服务的，以每顾问至少提供四（4）小时服务为基准开立发票。如果在工作日后下午 6:00 提供股顾问服务，每小时加收 150%；如果在非工作日提供顾问服务，每小时加收 200%。

**CONSULTANCY SERVICES**

顾问服务

**Article 3**

**第 3 条**

3.1 The Software user shall be entitled to the consultancy services to be carried out by the Seller in the form and scale as set down in the Consultancy Order Confirmation and/or the Plan of Approach signed by both parties.

3.1 软件使用人有权获得卖方按照经双方签字的顾问订单确认函和/或处理计划规定的形式和范围提供的顾问服务。

3.2 The consultancy services to be carried out by the Seller for the Software user may relate to implementation and/or installation and/or set-up and/or training in the use of the Software and/or the Customized Software of the Software user, and are carried out per part day. Depending on the activities, the consultancy services can, at the Seller's sole discretion, be carried out remotely or on-site at the Software user.

3.2 卖方拟向软件使用人提供的顾问服务可能涉及执行和/或安装和/或设置和/或培训使用软件和/或软件使用人的定制软件，按天执行。鉴于此，卖方可自行决定通过远程服务或在软件使用人现场提供顾问服务。

3.3 All copyrights, patent rights, other intellectual property and industrial property rights as well as all similar rights for the protection of information in respect of materials, tools, reports and documentation deriving from the consultancy services are the exclusive property of the Seller. None of



the provisions in the Consultancy Agreement can be interpreted in such a way that it results in the full or partial transfer of these rights to the Software user and no such transfer is aimed, meant or may be understood. The Seller grants the Software user the non-exclusive right to use such materials, tools, reports and documentation for the duration of the Software Agreement. The Software user is prohibited, being it for remuneration or not, from transferring such right to third parties by act of law or by agreement, including but not limited to through a merger or change of Control, or to hire out, sub-contract, sell, dispose of or pledge the materials, tools, reports and documentation deriving from the consultancy services.

3.3 与因顾问服务而产生的资料、工具、报告和文件相关的所有版权、专利权、其它知识产权和工业产权，以及与保护信息相关的所有类似权利，属于卖方专有财产。顾问协议的任何规定不得被解释为向软件使用者转让全部或部分上述权利；本协议不主张、不希望且不得被理解为转让该权利。卖方授予软件使用者非独占使用权，在软件协议有效期内使用上述资料、工具、报告和文件。禁止软件使用者以有偿或无偿方式向第三方转让因履行法律或协议（包括但不限于通过并购或控制权变更，或出租、分包、出售、处置或质押因履行顾问服务而产生的资料、工具、报告和文件）而获得的权利。

#### CONSULTANCY ORDER (CONFIRMATION)

顾问订单（确认函）

##### Article 4

##### 第 4 条

4.1 In the event that the Software user wishes to purchase consultancy services which are not (yet) agreed upon in a Proposal, the Software user must contact the Seller for this purpose a minimum of 1 Work Day before the commencement date desired by the Software user, then the Seller shall plan for such consultancy services, taking into account as far as possible the schedule desired by the Software user. The Seller can not guarantee the schedule requested by the Software user.

4.1 如果软件使用者希望购买提案（尚）未规定的顾问服务，软件使用者必须在其预计的起始日期前至少一个工作日与卖方联系。届时，卖方应尽可能顾及软件使用者的期望时间安排，制定顾问服务履行计划。卖方无法保证满足软件使用者要求的时间计划。

The Seller shall confirm the consultancy services desired by the Software user to the Software user in a Consultancy Order Confirmation. The consultancy services shall only be carried out following receipt of a Consultancy Order Confirmation signed by the Software user to indicate its approval.

卖方应在顾问订单（确认函）中确认软件使用者希望卖方提供的顾问服务。当且仅当软件使用者签字批准顾问订单（确认函）后，方可实施顾问服务。

4.2 If there is a Proposal agreed upon between the Seller and the Software user, the Seller will, with input from the Software user create a Plan of Approach. The consultancy services shall only be carried out following receipt of the Plan of Approach signed by the Software user to indicate its approval.

4.2 如果卖方和软件使用者就提案达成一致意见，卖方可根据软件使用者信息编制一份处理计划。当且仅当收到经软件使用者签字批准的处理计划后，方可实施顾问服务。

4.3 The Software user may cancel the requested consultancy services up to 5 (five) Working days before the (start) date agreed in the Consultancy Order Confirmation or Plan of Approach or ask the Seller for a new (start) date, which shall not be any earlier than the original (start) date. A new (start) date shall be established in the form of a Consultancy Order Confirmation and/or an amended Plan of Approach to be signed by the Software user indicating its approval. In the event that the Software user does not take the stated period of 5 (five) Working days into account for this purpose, the Seller shall be entitled to invoice the Software user the cancelled consultancy services. If travel costs have already been made by the Seller prior to cancellation of the consultancy services (irrespective of the date of cancellation), the Seller is entitled to charge these costs to the Software user.

4.3 软件使用者可在顾问订单确认函或处理计划规定的（起始）日期前五（5）个工作日，取消预定的顾问服务，或者要求卖方实施新的（起始）日期[不得早于原定（起始）日期]。以经软件使用者签字批准的顾问订单（确认函）和/或处理计划的形式，确定新（起始）日期。如果软件使用者未遵守提前五（5）个工作日通知的规定，卖方有权就被取消的顾问服务向软件使用者开立发票。

如果在取消顾问服务（无论取消日期为何）之前卖方已经产生了差旅费，卖方有权要求软件使用者偿付该费用。

4.4 The Seller shall make every effort to carry out the consultancy services agreed in the Consultancy Order Confirmation or the Plan of Approach within the periods agreed for this. All (delivery) periods stated by the Seller have been determined to the best of its knowledge on the basis of the information that was known when the Consultancy Order Confirmation or Plan of Approach was entered into. The Seller shall not be in breach if a stated (delivery) period is exceeded.

4.4 卖方应尽其最大努力在规定期限内提供顾问订单确认函或处理计划规定的顾问服务。卖方根据在签署顾问订单确认函或处理计划时已经获悉的所有信息，确定了所有（交付）期。如果超出规定的交付期，不得视为卖方违约。

4.5 Articles 9 and 15 of the General Terms and Conditions shall apply mutatis mutandis.

4.5 经适当修改后，适用通用条款和条件第 9 条和第 15 条规定。

#### EFFORTS OF THE SELLER

卖方的努力

##### Article 5

第 5 条

5.1 The Seller shall carry out the consultancy services to the best of his ability and make every effort to carry out the consultancy services with care, in accordance with the agreements and procedures laid down in writing with the Software user, where appropriate.

5.1 卖方应竭尽全力提供顾问服务，并且尽其最大努力按照本协议规定以及与软件使用人一同书面制定的程序，如果适当，提供服务服务。

5.2 If it has been agreed in the Consultancy Order Confirmation or Plan of Approach that the consultancy services shall take place in phases, the Seller may postpone starting the services that form part of a subsequent phase, until the Software user has approved the results of the phase preceding it in writing.

5.2 如果双方在顾问订单确认函或处理计划中已经同意分阶段提供顾问服务，卖方可延期提供构成后续阶段内容的相关服务，直至软件使用人已经书面批准前一阶段成果。

#### IMPLEMENTATION OF CONSULTANCY SERVICES

实施顾问服务

##### Article 6

第 6 条

6.1 The consultancy services are carried out on Work Days during normal office hours, with a lunch time of thirty (30) minutes.

6.1 应在工作日的正常工作时间内提供顾问服务，其中午餐时间为三十（30）分钟。

6.2 A visit report is drawn up every day or at the end of consecutive visit days by the consultant, which must be signed off by the Software user and is passed to the Software user by the Seller via the Customer Portal. If the Software user does not agree to the content of a visit report, the Software user shall notify this in writing to the consultant, project manager or consulting manager of the Seller within fourteen (14) days after the

publication of the visit report on the Customer Portal. If such notification is not received in time, the contents of the visit report are deemed to be accepted by the Software user as being complete and correct.

6.2 每天或在顾问连续视察期结束时编制一份视察报告，经软件使用人签字后，由卖方通过客户门户网站传递给软件使用人。如果软件使用人不同意某视察报告的内容，在客户门户网站发表视察报告后十四（14）天内，软件使用人应书面通知卖方的顾问、项目经理或顾问经理。如果未能及时收到该通知，将被视为软件使用人认为视察报告内容完整且准确。

#### ADDITIONAL WORK

额外工作

##### Article 7

第 7 条

7.1 The Seller is only obliged to follow up the Software user's instructions given in a timely and responsible manner when performing services if this has been expressly agreed in writing in the Consultancy Order Confirmation or Plan of Approach. The Seller is not obliged to follow up instructions that change the content of the consultancy services described in the Consultancy Order Confirmation or Plan of Approach; in the event that instructions such as these are followed up, the activities in question shall be paid for as additional work, as set down in Article 7.2.

7.1 如果双方在顾问订单确认函或处理计划中明确书面同意，在服务履行过程中，卖方仅有义务执行软件使用人以及及时且负责任的方式发出的指令。卖方无义务执行旨在修改顾问订单确认函或处理计划规定的顾问服务内容的任何指令；如果执行了上述指令，应按照第 7.2 条规定，将相关行为视为额外工作，收取相应费用。

7.2 In the event that the consultancy services requested by the Software user exceed the estimated number of hours necessary to carry out the consultancy services requested, to the best of the Seller's knowledge as set out in the Consultancy Order Confirmation and/or Proposal and/or Plan of Approach, the consultancy services for the Software user may be carried out on the basis of the usual rates for the Seller, for which a separate Consultancy Order Confirmation and/or Plan of Approach shall be entered into between the Seller and the Software user.

7.2 如果软件使用人要求提供的顾问服务超出了就卖方所知的履行该顾问服务所需的预计小时数（参见顾问订单确认函和/或提案和/或处理计划），可按照卖方的常用费率向软件使用人提供顾问服务，为此，卖方和软件使用人应另行签署顾问订单确认函和/或处理计划。

#### OBLIGATIONS OF SOFTWARE USER

软件使用人的义务

#### Article 8

##### 第 8 条

8.1 The Software user shall, at all times, provide the Seller with all data or information that is useful and necessary to perform the consultancy services properly, and shall collaborate fully.

8.1 软件使用人应始终向卖方提供正确提供顾问服务所需且有用的所有数据或信息，并充分配合卖方。

8.2 The Software user shall be responsible for the use and application of the equipment, software and services to be provided by the Seller within its organization, as well as for the surveillance and security procedures and adequate system management.

8.2 软件使用人应对在其组织内部使用和应用卖方提供的设备、软件和服务负责，并且负责实施监督和安全程序以及适当的系统管理。

8.3 The Software user shall be responsible for the computer system's compliance with the System Requirements. Should this not be the case when the consultancy services begin, the Seller shall be entitled to invoice the consultancy days that it could not reasonably fulfill, due to the fact that the Software user's computer system does not meet the System Requirements, or (at the Seller's discretion), pass on the expenses that the Seller incurred in order to get the computer system working in accordance with the System Requirements.

8.3 软件使用人应确保计算机系统符合系统要求。如果在开始提供顾问服务时不符合该要求，卖方有权就其因为软件使用人的计算机系统不符合系统要求而无法合理履行服务的顾问时间开立发票，或者，卖方可自行决定转移其为保证计算机系统按照系统要求工作而产生的费用。

8.4 The Software user shall indemnify the Seller against claims of third parties, including its Employees, who suffer loss as a result of carrying out the Consultancy Order Confirmation or the Plan of Approach, which is the consequence of the Software user's actions or failure to do something or of unsafe situations in its organization.

8.4 软件使用人应补偿卖方，使其免于承担第三方（包括其员工）对因软件使用人的作为或不作为或组织内部的不安全因素导致在实施顾问订单确认或处理计划而蒙受的损失而提出的索赔。

#### GENERAL TERMS AND CONDITIONS

通用条款和条件

#### Article 9

##### 第 9 条

The General Terms and Conditions form an integral part of this Consultancy Agreement

and are deemed to have been fully included in this Agreement.

通用条款和条件构成本协议不可分割的一部分，应被视为完全并入本协议。

**CHAPTER IV:**  
**第四章**  
**GENERAL TERMS & CONDITIONS**  
**一般条款和条件**  
**EXACT GROUP B.V.**  
**易科集团公司**

**DEFINITIONS**

定义

**Article 1****第 1 条**

For the following words in these General Terms & Conditions and in the Agreements the following definitions apply:

对于在一般条款和条件以及协议中使用的下列词语，应适用下列定义：

a) 'Affiliated Company': a group company of the Software user in the meaning of Article 24 of Book 2 of the Dutch Civil Code, as well as any other company or partnership in which the Software user has a controlling interest, by virtue of law, agreement or otherwise;

“关联企业”：荷兰民法典第 2 册第 24 条定义的软件使用人的集团所属公司，以及软件使用人由于法律、协议或其他原因而拥有控制利益的任何其他公司或合伙；

b) 'Agreement': the Software Agreement and/or the Maintenance Agreement and/or any other agreement between Seller and Software user;

“协议”：软件协议和/或维护协议；

c) 'Confidential information': the confidential information of the Software user or Seller, including but not limited to (a) information that is indicated 'confidential' in writing, (b) information that is not commonly known, (c) information that has not been made accessible by the party to which the information relates and/or from which the information originates and/or (d) information of which the confidential nature must reasonably be assumed by the other party;

“保密信息”：软件使用人或卖方的保密信息，包括但不限于（a）以书面注明“机密”的信息，（b）非为公知的信息，（c）与该信息有关和/或构成该信息来源的某方未同意接触的信息，和/或（d）对方可以对其保密性质进行合理估计的信息；

d) 'Control': the possibility of exercising decisive influence on the activities of a business of a legal entity, by virtue of an agreement or by law;

“控制”：由于某协议或法律规定而对一个法人实体的业务活动行使决定性影响的可能；

e) 'Customer Portal': the protected part of the website indicated by the Seller, to which Named Users are given access by means of a User ID issued by Seller;

“客户端口”：卖方指定的网络的被保护部分，通过使用卖方发出的用户身份，指定用户可以进入该部分；

f) 'Defect': all substantial failures in the Software that prevent the Software from functioning substantially in accordance with the accompanying Documentation. The lack of certain functionality in a new Software Upgrade and/or Update that was present in an earlier Upgrade and/or Update is not considered to be a Defect;

“缺陷”：阻止软件按照附随文件实质性发挥作用的所有软件的实质性失效。在某一新的软件更新和/或升级中某一在先前的更新和/或升级中已存在的特定功能的丧失不能认为是一个缺陷；

g) 'Documentation': the written and/or electronic documentation pertaining to the Software;

“文件”：关于软件的书面和/或电子文件；

h) 'Employee': a natural person employed by the Seller or Software user, or a natural person authorized to carry out work activities for and/or under the responsibility of the Seller or Software user;

“雇员”：由卖方或软件使用人雇用的自然人，或经授权为卖方或软件使用人和/或其责任而进行工作的一个自然人；

i) 'Software Agreement': the Agreement between the Seller and the Software user that contains the rights and obligations relating to the use of the Software, as described further in Chapter I;

“软件协议”：卖方和软件使用人之间订立的包含关于软件使用权利和义务的协议，对于该协议在第一章中有进一步的规定；

j) 'Software user': the natural person or legal entity who entered into an Agreement with the Seller;

“软件使用人”：与卖方订立协议的自然人或法人；

k) 'File': the file issued by the Seller to the Software user that can be used to create administrations and/or databases and Named Users in the Software;

“文档”：卖方向软件使用人发出的、可用于在软件中建立管理功能和/或资料库和列明用户的文档；

l) 'Seller': Exact Group B.V. and/or one of its subsidiaries acting as a (sub) Contractor;

“卖方”：易科集团公司和/或其作为（转）包人的某一子公司；

m) 'Maintenance Agreement': the Agreement between the Seller and the Software user



that sets out the rights and obligations relating to the maintenance provided by the Seller in respect of the Software, as described further in Chapter II;

“维护协议”：卖方和软件使用人之间订立的、规定卖方提供的有关软件维护的权利和义务的协议，对于该协议在第二章中有进一步规定；

n) ‘Named User’: the natural person for whom a User ID is created, which User ID gives access to the Software (irrespective if this natural person uses the Software or not) and/or to the Customer Portal;

“列明用户”：为其建立用户身份的自然人，该用户身份可用于进入软件（无论该自然人是否使用软件）和/或用户端口；

o) ‘Price list’: the official (international) price list of the Seller that applies at any given time;

“价目表”：卖方在任何特定时间使用的、正式的（国际）价目表；

p) ‘Proposal’: the written or electronic document containing the commercial offering of Seller to Software user based on which an Agreement is entered into;

“建议书”：包含卖方向软件使用人商业要约条件的书面或电子的文件，基于该文件某协议被签署；

q) ‘Renewal Date’: the date on which the Maintenance Agreement is renewed in accordance with the provisions in the relevant Agreement;

“续展日”：维护协议根据有关协议的规定而续展的日期；

r) ‘Software’: the standard executable software of the Seller that is supplied to the Software user or made available to the Software user via the Customer Portal pursuant to the Software Agreement as well as all Updates and Upgrades the Seller has issued to the Software user. ‘Software’ does not refer to third-party software that is also supplied;

“软件”：根据软件协议向软件使用人提供的、或通过客户端口使软件使用人获得的卖方的标准的可执行软件，以及卖方向软件使用人发出的所有更新和升级。“软件”不涉及提供的第三方软件。

s) ‘Subsidiary’: a legal entity in which the Seller or one or more of its Subsidiaries, either by agreement with other voters or otherwise, alone or together, can exercise more than half of the voting rights in the general meeting and thus can determine the course of action of the business conduct by that legal entity;

“子公司”：卖方或其一个或多个子公司，通过与其他投票者的协议或通过其他方法，单独或共同地在其大

会上对其行使超过一半投票权并由此决定其商业活动的法人实体；

t) ‘System Requirements’: the minimum requirements for Software user’s computer system with regard to hardware and third party software as prescribed by the Seller from time to time;

“系统要求”：由卖方不时规定的关于硬件和第三方软件的系统使用人计算机系统的最低要求；

u) ‘Update’ (maintenance release): a version of the Software in which a minor adjustment or a solution to a Defect or an enhancement is made;

“更新”（维护软件发布）：具有小的调整或对缺陷的解决方案或功能增强的软件版本；

v) ‘Upgrade’ (release): a version of the Software in which an important change in the functionality and/or technology is made;

“升级”（软件发布）：含有功能和/或技术的重要改变的软件版本；

w) ‘User ID’: a code that is exclusive to the Named User, consisting of a user name and password. The User ID may only be used by the Named User;

“用户身份”：由用户名和密码组成的指明用户专用的密码。用户身份仅能由指明用户使用。

x) ‘Work Days’: public accepted work days in the country from which maintenance and support services are provided, with the exception of official public holidays;

“工作日”：提供维护和支持服务的国家的公众接受的工作日，不包括正式官方公共假日；

## OFFER AND AGREEMENT

要约和协议

### Article 2

#### 第 2 条

2.1 These General Terms & Conditions apply to all negotiations and offers and to all Agreements pursuant to which the Seller supplies or could supply goods of any nature and/or provides or could provide services of any nature, even if these goods or services are not further specified in these General Terms & Conditions or in the Agreement, unless agreed otherwise in writing.

除非另行书面同意，这些一般条款和条件适用于所有的谈判和要约和所有的协议，根据这些协议卖方提供或可以提供任何性质的商品且/或提供或可以提供任何性质的服务，即使这些商品或服务并未在这些一般条款和条件或协议中进一步明确。

2.2 An offer or quotation from the Seller that is not directed at a specific person or legal entity is free of obligations and is revocable



and must be considered an invitation to place an order. The Seller reserves the right to refuse orders without giving any reasons. 非发给特定人或法律实体的卖方的某一要约或报价不构成义务且是可撤销的且必须被认为是要约邀请。卖方保留不说明原因即拒绝订单的权利。

2.3 The Seller is entitled to unilaterally change the General Terms & Conditions and the Agreement. Where possible the Software user will be notified of such changes two (2) months before the changes come into effect. The Software user is entitled to terminate an Agreement within two (2) weeks after the Seller has announced the changes to the General Terms & Conditions and the Agreements if the changes are material and/or unreasonable onerous for the Software user. Price increases in accordance with Article 2.2. of the Maintenance Agreement and/or Article 3.2 of the General Terms & Conditions are considered neither to be material nor unreasonably onerous. In this case the Agreement will terminate at the time the changes come into effect. This termination will not result in reimbursements of software, maintenance and/or any other fees to Software user. In the absence of a written, express objection against the announced change(s) within the stated period the Software user is deemed to have accepted the changes.

卖方有权单方面改变一般条款和条件和协议。在可行时，软件使用人将在这些改变生效前两（2）个月被通知。如果改变是重大的和/或不合理地增加软件使用人责任的，软件使用人有权在卖方宣布对一般条款和条件的改变后两（2）周内终止某协议。根据维护协议第 2.2 条和/或一般条款和条件第 3.2 条进行的价格上调被认为是既非重大、也非不合理地增加软件使用人的责任。在这种情况下，协议将在改变生效时终止。此终止不会导致向软件使用人退还软件、维护和/或其他费用。在规定的期间内如无对于宣布的改变（多项改变）的书面、明确的反对，软件使用人即被认为已经接受了这些改变。

## PRICE AND PAYMENT

价格和付款

### Article 3

#### 第 3 条

3.1 All prices and other tariffs are exclusive of VAT and exclusive of any other government levies payable by the Software user.

所有的价格和其他费率均不包括由软件使用人支付的增值税以及其他任何政府税费。

3.2 The Seller is entitled to adjust fees agreed upon with the Software user on an annual basis. The price changes will be communicated to the Software user in good

time by means of the Customer Portal or some other means. The Software user expressly declares that he agrees with these price increases, when they are in line with and do not exceed the CBS (*Dutch Central Statistics Bureau*) Consumer Price Index figure (series: all households 2005 = 100). In the event of price increases that exceed the aforementioned Price Index figure the Software user is entitled to terminate the Agreement before the Renewal Date by notifying the Seller accordingly in writing and by certified mail within two (2) weeks after the price increase was announced. If the Software user does not respond to an announced increase within the aforementioned period of two (2) weeks the Software user is deemed to have accepted the Seller's new price terms.

卖方有权按年度调整已经与软件使用人达成一致的費用。价格调整将通过客户端口或其他方式及时通知软件使用人。软件使用人明确申明其同意这些价格调整，如果调整符合且不超过 CBS（荷兰中央统计局）的消费者价格指数的数字（系数：2005 年所有家庭=100）。如果价格上调超过了上述价格指数的数字，在价格上调被宣布后两（2）周内软件使用人有权通过书面的且可查证的邮件通知卖方在续展日前终止本协议。如果软件使用人未在上述两（2）周期间内就某一宣布的价格上调做出反应，软件使用人即被认为已经接受了卖方的新价格条款。

3.3 The Software user must make payments in accordance with the payment terms stated on the invoice. If no such terms are mentioned payment must be made in Euros within thirty (30) calendar days after the invoice date. The amount must be paid in full without any deductions or setoffs. The Seller reserves the right to request full or partial advance payment for the Software and for any services to be provided.

软件使用人必须根据发票上注明的支付条款支付款项。如果没有这些条款，付款必须在发票日后三十（30）个公历日以欧元进行。付款必须是全额的，没有折扣和抵销。卖方保留就软件 and 任何将提供的服务要求全额或部分预付款的权利。

3.4 If the Software user wholly or in part fails to meet his payment obligations under Article 3.3 of these General Terms & Conditions, or fails to meet his payment obligations on time, the Software user is in default without any further notice being required. Once in default the Software user must pay interest of 1.5% per month or part thereof, commencing on the date the payment was due. If, after the payment has become due and the Software user has not made a payment, the Seller asks for payment of the principal sum only, this never means that the Seller waives the aforementioned interest. The Software user will always be liable to pay

interest from the moment the payment first became due.

如果软件使用人未全部或部分履行其在一般条款和条件第 3.3 条下规定的付款义务，或未按时履行其付款义务，软件使用人即违约而无需进一步的通知。一旦违约，软件使用人必须自付款到期日支付每月 1.5% 的利息或其部分。如果，在款项到期且软件使用人未付款后，卖方仅要求支付本金，这绝不意味着卖方放弃了要求利息的权利。软件使用人始终应对自付款首次到期后的利息支付承担责任。

3.5 All costs, including reasonable attorney fees, incurred by the Seller, either through the courts or otherwise, as a result of the Software user not meeting his obligations under an Agreement will be at the expense of the Software user. The extrajudicial (collection) costs incurred by the Seller will be set at a minimum of 15% of the principal amount of the claim, with a minimum amount of EUR 250.

由于软件使用人未履行其在某一协议下的义务而导致卖方蒙受所有开支，包括合理的律师费，无论是通过法庭或是以其他方式支付，均应由软件使用人负担。卖方蒙受的法庭以外（收款）的费用将最低为索偿本金总额的 15%，最低金额为 250 欧元。

3.6 The Seller is entitled to suspend any obligation pursuant to the General Terms & Conditions and the Agreements until such time as the Software user has paid all outstanding amounts in full. The (financial) administration of the Seller serves as full proof.

卖方有权根据一般条款和条件以及协议的规定中止履行任何义务，直到软件使用人全额支付所有到期款项。应以卖方（财务）管理部门的证明为准。

## CONFIDENTIALITY

保密

### Article 4

#### 第 4 条

4.1 Neither party will disclose Confidential Information about the other party or use such information for anything other than the purpose for which the Confidential Information was obtained, unless such use is necessary in the scope of the realization of an Agreement.

任何一方不得披露关于另一方的保密信息，或为保密信息取得之目的以外的任何事项使用这种信息，除非此种使用是某一协议履行范围内必需的。

4.2 Both parties will take all reasonable precautions to ensure they comply with their confidentiality obligations. None of the provisions included in this Article (4) imposes any restrictions on the receiving party in respect of information or data - either the same or similar to the information or data

contained in the Confidential information or otherwise - if this information or data:

双方将行使所有合理的谨慎以确保其遵守保密义务。对于信息或资料而言——无论是否与包含在保密信息中的信息或资料相同或相似或就有其他情况——本第 4 条中的任何规定均不对接受方有任何限制，如果此信息或资料：

(I) was already the legal property of the receiving party before it was obtained from the party in question;

在其被从另一方获得前已经是接受方的合法财产；

(II) was developed independently by the receiving party without using information or data of the party in question;

未使用另一方的信息或资料而由接受方独立开发；

(III) is or will be generally known or accessible other than by an act or omission on the part of the receiving party; or

非由于接受方的作为或不作为而成为或将成为公知或可被获得；或

(IV) is disclosed to the receiving party by a third party without an obligation of confidentiality toward the party in question being infringed.

由第三方未违反对另一方承担的保密义务而向接受方披露。

The confidentiality obligations pursuant to this Article 4 also do not apply if the Confidential Information of the other party must be made public pursuant to the law, an ordinance, a court order or a decision by another government agency, on condition that the receiving party makes every effort to limit the scope of the publication and notifies the party concerned in advance of any such intended publication.

如果另一方的保密信息根据法律、法令、法庭命令或另一政府部门的决定而必须公开，本第 4 条下的保密义务也不适用，条件是接受方应尽一切努力限制公开的范围并就任何即将进行的公开实现通知相关方。

4.3 The parties guarantee that their Employees and third parties engaged by the parties will comply with the confidentiality obligations as described above in Articles 4.1 and 4.2.

双方保证其雇员以及双方聘用的第三方将遵守第 4.1 条和第 4.2 条的保密义务。

## RETENTION OF TITLE

保留所有权

### Article 5

#### 第 5 条

5.1 All items the Seller has supplied to the Software user, such as disks, CD-ROMs, DVDs and Documentation, are on loan to the Software user for the duration of the Agreement. These items remain the full property of the Seller at all times. The Software user is prohibited from encumbering, disposing of or renting out the items loaned to him, or making these items available to third parties in any other manner. Upon the expiry of the Agreement the Software user is obliged to return the items loaned to him to the Seller within two (2) weeks. Without prejudice to the above statements no (part of any) intellectual property rights or any other rights the Seller has in respect of the Software are transferred to the Software user at any time and no such transfer is aimed, meant or may be understood.

卖方向软件使用人提供的所有物品如磁盘、光盘只读存储器、DVD 和文件均是在协议期间出借给软件使用人的。这些物品在任何时候均为卖方的财产。软件使用人不得对借给其的物品设立权利限制、处置或出租，或以任何其他方式向第三方提供。在协议终止时，软件使用人有义务在两（2）周之内将出借给他的物品归还卖方。在不影响上述声明的同时，卖方就软件所拥有的任何（部分）知识产权或任何其他权利在任何时候均未被转让给软件使用人，且双方均无这种转让的目标、意思或理解。

5.2 The Software user must notify the Seller forthwith when any items or property rights the Seller has provided to the Software user pursuant to the Agreement are seized. In the event of such a seizure, or if the Software user is granted a suspension of payments or if the Software user is declared bankrupt, the Software user must notify the process server charged with seizing the items, the trustee, the administrator or the receiver forthwith of the fact that the Seller is the owner of the items and/or property rights.

如果卖方根据协议向软件使用人提供的任何物品或财产权利被查封，软件使用人必须立即通知卖方。在这种查封的情况下，或如果软件使用人被赋予中止付款的权利或如果软件使用人宣告破产，软件使用人必须通知负责查封财产的程序送达官员、受托人、管理人或托管人卖方是物品和/或财产权利的所有者。

## COOPERATION OF THE SOFTWARE USER

软件使用人的合作

### Article 6

#### 第 6 条

6.1 The Software user is aware that keeping the Software operational is a continuous process that requires an investment in time, money and energy on the part of all the parties involved. For this reason the Software

user must lend his cooperation to enable the Seller to comply with its obligations pursuant to an Agreement. The Software user must always provide the Seller with all the useful and necessary information and guarantee the correctness of this information.

软件使用人意识到保持软件运行是一个持续的过程，该过程要求所涉各方投入时间、金钱和精力。由此，软件使用人必须向卖方提供合作以使其得以履行其在某一合同下的义务。软件使用人必须始终向卖方提供所有有用的和必需的信息并确保此信息的正确性。

6.2 The Software user must notify the Seller in writing and in due time of any changes to the company details and of any other relevant information.

软件使用人必须在公司以及任何其他相关信息发生变化后的适当时间内以书面通知卖方。

6.3 The Software user is responsible for (I) the correct use and application of the Software and services provided by the Seller; (II) the implementation of the required procedures in his organization; (III) the security of the data, like making backups of data files; and (IV) complying with the System Requirements. The Software user will also install or have installed all new Updates and/or Upgrades provided by the Seller correctly and in a timely manner. The Software user is not allowed to change files, to add extra files to the Software or, with the exception of the cases outlined in the Software or Documentation, to change files in any other manner.

软件使用人应负责（I）卖方提供的软件和服务的正确使用和应用；（II）在其机构中实行必要的程序；（III）资料安全，如资料文档的备份；以及（IV）遵守系统要求。软件使用人也将及时且正确地安装或致使安装卖方提供的所有新的更新和/或升级。软件使用人不得改变文件、向软件增加额外的文档或以任何方式改变文档（软件或文件中规定的情况除外）

6.4 If it has been agreed that the Software user will provide the Seller with materials or data by means of third-party information carriers, these information carriers must meet the Seller's specifications for the activities in question and be free of any hidden risks such as viruses, worms, Trojan horses, logic bombs etc.

如果双方同意软件使用人通过第三方信息传输者向卖方提供材料或资料，这些信息传输者必须符合进行这些传输的卖方规格且应不存在任何隐藏的危险比如病毒、蠕虫、木马、逻辑炸弹等。

6.5 If the Software user fails to provide the information the Seller requires in order to meet its obligations pursuant to an Agreement in good time, or if the Software user fails to meet his obligations pursuant to an Agreement in any other way, the Seller is

entitled to suspend its obligations pursuant to the Agreement and to charge the Software user an additional fee.

如果软件使用人未及时提供卖方为履行其协议义务而要求的信息，或如果软件使用人以任何其他方式未履行其在某一协议下的义务，卖方有权根据协议中止履行其义务并向软件使用人收取额外的费用。

6.6 If the Employees of the Seller need to perform their work at the Software user's premises, the Software user will ensure that these Employees are able to work undisturbed. The Software user will comply with all reasonable requests from the Seller, communicated through these Employees, free of charge. The Software user will provide the aforementioned Employees with access to all Software, Documentation and other materials, and to any location containing goods supplied by the Seller.

如果卖方的雇员需要在软件使用人的场地进行工作，软件使用人将确保这些雇员可以不受干扰地工作。软件使用人将服从卖方通过这些雇员传递的所有合理的要求，且不得收取费用。软件使用人将让上述雇员接触所有的软件、文件和其他材料，以及包含由卖方提供的产品的任何地点。

## CUSTOMER PORTAL

客户端口

Article 7

第 7 条

7.1 The Seller will provide the Software user with access to the Customer Portal by means of issuing a User ID.

卖方将通过发出用户身份的方式让软件使用人接触客户端口。

7.2 From the Customer Portal, amongst other, information can be obtained and Updates and Upgrades can be downloaded. The Customer Portal can also be used to provide the Software user and its Employees with support.

除其他内容外，从客户端口可以获得信息并下载更新和升级。客户端口也可被用于向软件使用人以及其雇员提供支持。

7.3 The Seller is at all time entitled to limit or block access to the Customer Portal for an indefinite period of time, without giving reasons, if the Seller suspects improper use or misuse, whether or not caused by the Software user or one or more of its Employees.

在任何时间卖方均有权在一个不确定的时间内限制或阻断接入客户端口，且无需说明原因，如果卖方怀疑存在不使用的使用或滥用，无论是否由软件使用人或其一名或多名雇员造成。

7.4 The Software user will ensure that the right granted to him pursuant to Article 7.1 is only delegated to its Employees.

软件使用人将确保在第 7.1 条下赋予其的权利仅可转让给其雇员。

7.5 The Software user guarantees that its Employees will handle their access to the Customer Portal and the information thus obtained in a responsible manner, while the Software user retains and/or accepts unconditionally the ultimate responsibility for any information its Employees add to the Customer Portal.

软件使用人保证其雇员将以负责任的方式接触客户端口以及由此获得的信息，而软件使用人无条件地就其雇员向客户端口添加的任何信息承担和/或接受最终的责任。

7.6 The Software user must take care of and is responsible for the User ID. The User ID is not transferable and must not be used outside the Software user's organization. The Software user and its Employees are obliged to observe complete confidentiality with regard to any other in respect of their User ID. The Software user is responsible for any use of the Customer Portal with his User ID, regardless of whether the Software user permitted this use. As soon as the Software user becomes aware of or has reason to suspect that third parties have obtained access to his User ID, the Software user will notify the Seller of this fact forthwith, without prejudice to the Software user's obligation to immediately take his own measures against these third parties.

软件使用人必须照管好其用户身份并对其负责。用户身份是不可转让的且不得在软件使用人组织之外使用。软件使用人及其雇员有义务就其用户身份向其他人进行完全的保密。软件使用人应对以其用户身份而对客户端口的任何使用负责，无论软件使用人是否同意这种使用。一旦软件使用人知晓或有理由怀疑第三方已经接触到其用户身份，软件使用人将立即将此情况通知卖方，但不影响软件使用人立即针对此第三方自行采取措施的义务。

7.7 Using the most recent versions of antivirus programs and other programs the Software user and its Employees will scan their (personal) computers, hardware and information carriers on a regular basis for hidden risks such as computer viruses, worms, Trojan horses, logic bombs and other conceivable harmful programs and - if such hidden risks are found - immediately take the appropriate measures.

软件使用人及其雇员将利用最新版本的杀毒程序和其他程序定期对其（个人）计算机、硬件和信息输送方进行扫描以搜寻隐藏的危险比如计算机病毒、蠕虫、木马、逻辑炸弹以及其他可能的危险程序且——如果发现这种隐蔽的危险——立即采取适当的措施。



7.8 The information that is made available via the Customer Portal by or on behalf of the Seller is provided without any guarantees unless stated otherwise, and the Software user or third parties cannot derive any rights from this information.

由或代表卖方通过客户端提供的信息不含有任何保证，除非另有说明，且软件使用人或第三方不得从此信息中获得任何权利。

## COMPLAINTS

投诉

### Article 8

第 8 条

The Software user must notify the Seller in writing of any complaints in respect of an incorrect delivery or the performance of an incorrect or deficient service within two (2) weeks after the Seller has made the Software available or has provided the service in question. Such notification does not suspend the payment obligations of the Software user toward the Seller, nor is such notification deemed to constitute an extension of the obligations regarding the functioning of the Seller's Software described in the Software Agreement. The Software user is prohibited from returning goods to the Seller without prior consent from the Seller.

在卖方已经提供软件或有关服务后两（2）周内，软件使用者必须就有关错误交付或错误或有缺陷的服务提供的任何投诉以书面方式通知卖方。此种通知不得中止软件使用者向卖方的付款，也不得被视为是关于软件协议规定的卖方软件运行的义务的延长。未经卖方事先同意，软件使用者不得将产品退还卖方。

## (DELIVERY) PERIODS

（交付）期间

### Article 9

第 9 条

The Seller sets all the (delivery) periods to the best of its knowledge and complies with these periods as much as possible. As soon as the Seller becomes aware of any circumstance that may prevent the timely delivery of the goods, the Seller will consult with the Software user. The Software user is never entitled to compensation in respect of a late delivery. The Seller is always entitled to make partial deliveries.

卖方根据其了解的情况规定所有的（交付）期间并尽可能遵守这些期间。一旦卖方知晓任何情况可能阻碍货物的及时交付，卖方将与软件使用者协商。软件使用者就延迟交付无权获得赔偿。卖方始终有权进行分批交货。

## TERMINATION OF THE AGREEMENT

协议终止

### Article 10

第 10 条

10.1 Without prejudice to the provisions in Article 7 of the Maintenance Agreement and Article 3.2 of the General Terms & Conditions, an Agreement can be dissolved in writing and without judicial intervention, if: 不影响维护协议第 7 条以及一般条款和条件第 3.2 条，一份协议可以以书面方式解除且无需司法介入，如果：

- a) the party, after having been served the appropriate notice of default, still fails to meet his obligations pursuant to the Agreement thirty (30) days after receipt of the notice of default; 在被送达适当的违约通知后，一方在收到违约通知三十（30）天后仍未根据协议的规定履行其义务；
- b) a change of Control occurs with respect to the Software user. 软件使用者的控制发生改变。

10.2 The Seller is entitled to terminate an Agreement by operation of law and with immediate effect at the time the Software user notifies the Seller that he is no longer able or prepared to meet his payment obligations, or at the time the Seller must conclude from the circumstances that the Software user is no longer able to meet his payment obligations, or at the moment the Software user ceases his activities. An Agreement will terminate by operation of law and with immediate effect if the (company of the) Software user goes into liquidation, is granted a suspension of payments or is declared bankrupt.

在软件使用者通知卖方其无力或不准备履行付款义务时，或卖方根据情况断定软件使用者无力或不准备履行付款义务时，或软件使用者停止营业时，卖方有权根据法律规定而终止一份协议并立即生效。如果软件使用者进入清算、被裁定中止对外付款或被宣布破产时，一份协议将由于法律规定而终止并立即生效。

10.3 The Seller is in no event obliged to pay any damages as a result of the dissolution or termination of an Agreement as described in the preceding paragraphs of this Article. 在任何情况下，卖方均无义务就本条前述各款规定的协议解除或终止而支付任何赔偿。

10.4 Unless the parties explicitly agree otherwise in writing, if an Agreement is terminated all rights, obligations and activities of the parties will cease to exist at the time of termination, with the exception of the provisions in Articles 4, 5, 11, 13 and 17



of the General Terms & Conditions. At the time the Software Agreement is terminated the Software user will immediately cease and not resume all use of the Software, Documentation and other materials supplied by the Seller and will return the Software, Documentation and other materials to the Seller in accordance with the provisions in Article 5.1 of these General Terms & Conditions. If an Agreement is terminated, for any reason, the Seller will not reimburse software and/or maintenance and/or support and/or other fees.

除非各方以书面方式另行约定，如果一份协议终止，在终止时各方的所有权利、义务和活动将停止，一般条款和条件第 4、5、11、13 和 17 条例外。在软件协议终止时，软件使用人将立即停止对卖方提供的软件、文件和其他材料的所有使用，并根据一般条款和条件第 5.1 条的规定将软件、文件和其他材料退还卖方。如果一份协议由于任何原因而终止，卖方将不退还软件和/或维护和/或支持和/或其他费用。

## LIABILITY

责任

### Article 11

#### 第 11 条

11.1 Unless statutory regulations exclude a limitation to the liability of the Seller for damages resulting from an intentional act or omission, willful misconduct or gross negligence, the Seller is only liable for damages as described in the following paragraphs of this Article 11.

除非法律排除对卖方由于主观行为或不行为、故意过错行为或严重疏忽而产生的损失的责任的限制，卖方仅承担本第 11 条下列各款规定的损害赔偿。

11.2 In the event of physical injury, irrespective of whether this injury results in death, the liability of the Seller is in any case limited to an amount of EUR 500,000 per damage causing incident. In the event of property damage the liability of the Seller is in any case limited to an amount of EUR 50,000 per damage causing incident. In both cases a series of related events is considered a single incident.

如发生人身伤害，无论伤害导致死亡与否，卖方的责任在任何情况下均限于每一导致损害的事件 500,000 欧元。如发生财产损失，卖方的责任在任何情况下均限于每一导致损害的事件 50,000 欧元。在上述两种情况下，一系列相关事件应被视为是一个事件。

11.3 The Seller is never liable for indirect damages, lost profits, missed savings, reduced goodwill, damages resulting from operational stagnation, damages resulting from the Software user not complying with the System Requirements, damages resulting

from claims by the Software user's clients, corruption or loss of data, damages associated with the use of third-party items, materials or software prescribed to the Seller by the Software user, damages associated with the deployment of suppliers prescribed to the Seller by the Software user, consequential losses, irrespective of the nature of the action (breach of contract, unlawful act or otherwise), even if the Seller was notified of the possibility of such damages.

卖方不承担间接损失、利润损失、储蓄减少、商誉损失、由于营业停滞的损失、软件使用人不遵守系统要求的损失、软件使用人客户的索赔损失、资料损坏或丧失、与软件使用人向卖方建议的第三方物品、材料或软件使用有关的损失、与软件使用人向卖方建议的供应商的配置有关的损失、附带的损失，无论诉讼的性质（违约、非法行为或其他），即使卖方曾被告知这种损失的可能性。

Some countries and/or states and jurisdictions do not allow the exclusion or limitation of special, indirect, incidental or consequential damages, so the above limitation and exclusion may not apply to all Software users. In that case the liability of the Seller is limited to the maximum extent possible by law.

一些国家和/或州和司法管辖区不允许排除和限制特殊的、间接的、偶发的和附带的损失，上述限制和排除可能不能适用于所有的软件使用人。在这种情况下，卖方的责任应被限制在法律许可的最大范围内。

11.4 Insofar as the Seller can not invoke the liability exclusions or limitations described in this Article 11, the Seller's liability at any time will be limited to an amount equal to 50% of all amounts, exclusive of VAT, invoiced on the basis of an Agreement with the Software user in the twelve (12) months preceding the default after the notice of default. If and to the extent that an agreement provides for periodical payments the Seller will never owe more than 50% of all amounts invoiced in the six (6) months preceding the default. Insofar as the Seller is also unable to invoke the limitation referred to in paragraph 4 of this Article 11, the liability of the Seller is in any case limited to EUR 10,000. The Seller will deduct the amount of any credit notes to the Software user from the amounts referred to in paragraph 4 of this Article 11.

在卖方不能援引本第 11 条规定的责任排除和限制的情况下，卖方在任何时候的责任将限于一个相当于在违约通知后的违约前十二（12）个月内在一份协议下向软件使用人开具发票额的 50% 的金额，不包括增值税。如果一份协议规定分期付款且在此范围内，卖方将不可能获得在违约日前六（6）个月内所有开具的发票额的 50% 以上。在卖方也不可能援引本第 11 条第 4 款的规定的情况下，卖方的责任在任何情

况下应限于 10,000 欧元。卖方将从本第 11 条第 4 款规定的金额中扣除软件使用人的应付金额。

**11.5 The Software user acknowledges and accepts that the software fee for the Software has been determined with due observance of the liability limitation referred to in this Article 11 and the provisions referred to in Article 5 of the Software Agreement.**

软件使用人确认且接受软件费的确定已适当遵守了本第 11 条以及软件协议第 5 条规定的责任限制。

**11.6 The Software user acknowledges and accepts that the Software can never be perfect or be 100% free of Defects and that Seller may not be able to remedy all Defects. Without prejudice to the provisions in Article 5 of the Software Agreement the Software user accepts the Software in the condition it is in on the date of delivery ('as is').**

软件使用人确认且接受软件不是完美的，或 100% 无缺陷的，且卖方可能无法修复所有的缺陷。在不影响软件协议第 5 条规定的情况下，软件使用人根据软件在交付日的状态接受软件（“按现状”）。

**11.7 The Software user indemnifies the Seller against claims from third parties resulting from or related to the Agreement, unless the Software user is able to enforce these claims against the Seller with due observance of the provisions in this Article 11 as if the Software user had suffered the damage himself.**

软件使用人免除卖方对第三方源自协议或与协议相关的索赔的责任，除非软件使用人能够在适当遵守本第 11 条规定的情况下对卖方强制执行这些索赔，如同软件使用人自身遭受这些损失一样。

**11.8 Liability on the part of the Seller with regard to attributable shortcomings in the fulfillment of an Agreement with the Software user will in any case only exist if the Software user serves the Seller with proper notice of default forthwith, whereby a reasonable period must be given for the Seller to remedy the breach, and the Seller remains in breach of his obligations even after this period. The notice of default must contain the most complete and detailed description of the breach possible, allowing the Seller to respond adequately.**

在任何情况下，只有在软件使用人向卖方迅速发出违约通知，并给予卖方合理的期间对违约进行补救，且卖方在此期间后仍继续违约的情况下，卖方在履行某一协议中的过错是存在的。违约通知必须包括对于可能的违约的最完整和详细的描述，以使得卖方可以适当回应。

**11.9 A claim for compensation cannot be considered unless written notice of the loss has been given to the Seller as soon as**

possible after it occurs. Any claim for compensation against the Seller lapses by the mere lapse of time 12 months after the damage has manifested itself.

索赔不能被考虑，除非书面损失通知在损失发生后尽可能短的时间内已经发送给卖方。针对卖方的索赔在损失出现 12 个月后即仅由于该期间届满而失效。

**11.10 Any right to compensation becomes void in any case if the Software user has neglected to take measures to (I) limit the damage immediately after it occurs; or (II) prevent any other or further damage.**

在任何情况下，索赔权利应成为无效，如果软件使用人疏于采取措施以（I）在损失发生后减少损失，或（II）防止任何其他或进一步的损失。

**11.11 The above limitations and exclusions apply to their full extent insofar as the applicable law allows, even if the Seller is unable to remedy problems with the Software.**

上述限制和排除应在适用法律允许的最大范围内适用，即使卖方无力修复软件的问题。

## EXCLUSION/ DISCLAIMER

排除/免责声明

Article 12

第 12 条

With the exception of provisions that have been expressly included in the Agreement the Seller does not make any other or further guarantees, promises or conditions in respect of the Software, Documentation, materials or services supplied to the Software user, and the Seller hereby rejects all other guarantees, promises or conditions, either explicit, implicit or in pursuant the law (including but not limited to guarantees or conditions relating to salability, non-infringement of other rights or suitability for a specific purpose or resulting from a specific use or commercial use) in respect of the Software, Documentation, materials and services.

Some countries and/or states and jurisdictions do not allow the exclusion or implied warranties; thus, the above exclusion may not apply to all Software users. In that case the minimum warranties as prescribed by the applicable law apply.

除明确包含在协议中的条款，卖方没有就向软件使用人提供的软件、文件、材料或服务做出任何其他或进一步的保证、允诺或条件，且就软件、文件、材料或服务，卖方拒绝所有其他的保证、允诺或条件，无论是明示或默示或根据法律（包括且不限于关于商销性、非侵害其他权利或符合特定用途或来自于特定使用或商业使用的保证或条件）。一些国家和/或州和司法管辖区不允许排除默示担保；由此上述排除可能

不能适用于所有的软件使用人。在这种情况下，适用法律规定的最低担保应适用。

The warranties contained in the Agreements give Software user specific legal rights, and Software user MAY also have other rights, which vary from state to state or jurisdiction to jurisdiction.

协议包含的担保给予软件使用人特定的法律权利，且软件使用人可能还拥有其他的权利，这种权利在不同国家之间或不同的司法管辖区之间均不相同。

## INTELLECTUAL PROPERTY RIGHTS

知识产权

### Article 13

#### 第 13 条

13.1 All copyrights, patent rights, trade name rights, trademark rights, other intellectual and industrial property rights, as well as all similar rights for the protection of information in respect of the Software and Documentation are the exclusive property of the Seller or its seller(s). None of the provisions in the Agreement can be interpreted in such a way that it results in the full or partial transfer of these rights to the Software user and no such transfer is aimed, meant or may be understood.

所有版权、专利权、商号权、商标权、其他知识和工业产权，以及与保护与软件和文件信息有关的所有相似的权利均为卖方或其卖方（多个卖方）的排他财产。协议的任何条款不得被解释以导致这种权利被全部或部分转让给软件使用人，且没有转让的目的、意图或理解。

13.2 The Software user is prohibited from changing, removing or making unrecognizable any notice in respect of the intellectual property rights of the Seller on or in the Software or Documentation. The Software user is prohibited from registering any brand, design or domain name of the Seller or a similar name that could be associated with the Seller in any venue anywhere in the world.

软件使用人不得改变、消除关于卖方对软件或文件拥有知识产权的任何通知，或使其无法辨认。软件使用人不得在世界上的任何地方注册卖方的任何商标、设计或域名，或可能与卖方联系的任何相似名称。

13.3 The Seller indemnifies the Software user against any compensation and all costs and expenses the Software user may be ordered to pay as a result of a third-party legal claim for the infringement or assumed infringement of valid patents, copyrights, brands or other rights of third parties in respect of Software issued pursuant to an Agreement or any part thereof that is the result of the Software user's use of the

Software in accordance with the provisions in the Agreement and the Documentation, provided the Software user notifies the Seller in writing of such a legal claim as soon as it is filed and provides the Seller with all the relevant information.

对于软件使用人可能被判令支付的、由于第三方就某一协议或其任何部分下发出的软件而提出的由于软件使用人根据协议和文件使用软件而产生的对有效专利、版权、商标或第三方其他权利侵权或可能侵权的法律诉讼而引起的任何赔偿和所有的成本和费用，卖方应免除软件使用人的责任，条件是软件使用人在诉讼被提起后立即以书面方式将此种法律诉讼通知卖方并向卖方提供所有的有关信息。

13.4 If an injunction is imposed on the Software user prohibiting the use of the Software because of an infringement within the meaning of the previous paragraph or if, in the opinion of the Seller, there is a chance that the Software will become the subject of a successful claim for infringement, the Seller is entitled, at its own discretion and own expense, to (I) obtain the right for the Software user to continue to use the Software as per the Software Agreement; (II) replace the Software or adjust it in such a way that it no longer constitutes an infringement, provided the functionality of the Software remains materially unchanged; or (III) if options (I) and (II) are not reasonably feasible, to terminate the Software Agreement together with any rights to the infringing Software that were granted pursuant to the Software Agreement and to reimburse the Software user an amount of money for the infringing Software on the understanding that the amount to be reimbursed is maximum the total software fees paid by the Software user for the Software, which total software fees are depreciated on a straight-line basis over a period of three (3) years, commencing on the effective date of the Agreement or from another starting date expressly agreed in writing between the Seller and the Software user, which method takes into account the fact that the Software user effectively used the Software during the period in question.

如果软件使用人收到禁令，由于前述条款规定的侵权而被禁止使用软件，或如果根据卖方的意见，软件有可能成为一个成功的侵权索赔的目标，卖方有权利，自行决定并自负费用，（I）按照软件协议的规定为软件使用人继续使用软件获得权利；（II）更换软件或对软件进行调整以使其不构成侵权，条件是软件的功能实质性保持不变；或（III）如果上述（I）、（II）项选择不合理可行，终止软件协议以及根据软件协议而授予的有关侵权软件的任何权利，并就侵权软件退还一笔最高金额为软件使用人为软件支付的软件费总额的款项，该软件费总额应按照直线折旧在为期三（3）年的期间内进行折旧，自协议生效日或卖方与软件使用人同意的其他生效日开始计算。该方法

应考虑到软件使用人在上述期间内已实际使用软件的事实。

13.5 Without prejudice to the provisions in Article 13.3, pursuant to this Article 13 the Seller is not liable toward the Software user insofar as a claim is based on (I) use of the Software in conjunction with data, equipment or software that was not supplied by the Seller, whereby the Software would, in itself, not constitute an infringement or otherwise be the subject of the claim; (II) incorrect use of the Software, or use of the Software in a manner not described in the Documentation; (III) an amendment to the Software implemented by a natural person or legal entity other than the Seller; or (IV) the Seller's compliance with strict instructions from the Software user. The Software user indemnifies and holds the Seller harmless against claims as described in points (I) through (IV) of this Article 13.5.

不影响第 13.3 条的规定，根据本第 13 条，卖方不对软件使用人承担责任，如果索赔系基于（I）与非由卖方提供的资料、设备或软件一起使用软件，而卖方提供的软件本身不构成侵权或以其他方式遭到指控；（II）不正确地使用软件，或使用软件的方式不符合文件的规定；（III）由卖方以外的自然人或法律实体对软件进行修改；或（IV）卖方严格按照软件使用人的指令行事。软件使用人应豁免卖方并使其免受本第 13.5 条（I）至（IV）项指控的影响。

13.6 The Software user acknowledges and accepts that the full and exclusive liability of the Seller in respect of infringements of patents, copyrights, brands or other intellectual property rights reads as the provisions in this Article 13 and Article 11.

软件使用人确认并接受卖方就专利、版权、商标或其他知识产权侵权的全部和排他的责任限于本第 13 条和第 11 条的规定。

13.7 The Seller is entitled to make and maintain technical provisions for the purpose of protecting (the intellectual property rights of) the Software and/or Documentation or with a view to enforcing the agreed restrictions in the use of the Software. The Software user is prohibited from circumventing or removing such technical provisions.

为保护软件和/或文件（的知识产权）或为施行已同意的对软件使用的限制，卖方有权指定并维持技术措施。软件使用人无权规避或消除这些技术措施。

#### CHECKING AND INSPECTION

检查和调查

Article 14

第 14 条

The Seller is entitled to perform a check and/or inspection or have such a check and/or inspection performed in order to determine whether the Software user is complying with the provisions in an Agreement and the General Terms & Conditions, provided such a check and/or inspection is performed during normal office hours, in such a way that the Software user's operational activities are not unreasonably obstructed. Such an inspection will be performed by an expert chosen and deployed by the Seller. This expert will submit a summary outlining his findings in respect of the inspection of the reports delivered by the Software user and the Software user's compliance with the provisions in the Agreements and the General Terms & Conditions, but will never provide the Seller with any other information apart from the information he becomes aware of during the check and/or inspection. The costs associated with this inspection are at the expense of the Seller, unless the inspection proves that the Software user is not complying with the provisions in the Agreements or the General Terms & Conditions, in which case the costs are at the expense of the Software user.

为确认软件使用人是否遵守某协议和一般条款和条件的规定，卖方有权进行检查和/或调查，或致使进行这些检查和/或调查，条件是这种检查和/或调查应在正常的办公时间内进行且其方式应确保软件使用人的经营活动不受到不合理的阻碍。这种调查应由卖方指定并安排的专家进行。该专家应就软件使用人提供的报告和软件使用人遵守协议条款和一般条款和条件的情况提交汇总报告列明其发现，但他不应向卖方提供其在检查和/或调查中知晓的其他情况。与调查有关的开支由卖方支付，除非调查证明软件使用人没有遵守协议条款或一般条款和条件的规定，在该种情况下，开支应由软件使用人承担。

#### FORCE MAJEURE

不可抗力

Article 15

第 15 条

15.1 Neither party is obliged to comply with a contractual obligation resulting from an Agreement, with the exception of payment obligations, if such compliance is prevented by a situation of force majeure. Force majeure includes but is not limited to: military actions, government actions, the elements, unavailability of or disruptions in telecommunication and Internet connections, delays or inadequacies in the compliance with obligations on the part of suppliers of the Seller, transport problems and strikes. 任何一方均无义务遵守协议义务，如果该遵守受到不可抗力的阻碍，但付款义务除外。不可抗力包括且不限于：军事行动、政府行动、大自然力量、电讯和



互联网连接的中断或干扰、卖方供应商的履约延迟或不完全履行、运输问题和罢工。

15.2 If, at the time the force majeure occurs, the Seller has already partially met its obligations, or can only partially meet its obligations, the Seller is entitled to invoice the supplied performance and/or the part of the performance that can be supplied separately, and the other party or the Software user is obliged to pay this invoice as if it concerns a separate agreement.

如果，在不可抗力事件发生时，卖方已经部分履行其义务，或仅能部分履行其义务，卖方有权就已经提供的供应或可以另行提供的部分履行开具发票，且另一方或软件使用者有义务对发票付款如同其在另一独立协议下发生一样。

## TELECOMMUNICATION

通讯

Article 16

第 16 条

If the Seller uses telecommunication facilities for the Maintenance and/or Support Services for the Software or other services, all parties are responsible for the selection and prompt installation of the telecommunication equipment or facilities, including Internet connections. The Seller is not liable for errors in, interception of or loss of data or process results during the transmission of this data through its telecommunication facilities.

如果卖方为软件的维护和/或支持服务或其他服务使用通讯设施，所有各方应就通讯设备或设施包括互联网连接的选择和迅速安装承担责任。卖方对于通过其通讯设施而传输资料的过程中发生的资料或程序的错误、拦截或丢失不承担责任。

## NON-COMPETITION CLAUSE

非竞争

Article 17

第 17 条

17.1 Each party will refrain from employing or hiring employees or third parties who/that were involved in the execution of an Agreement in the preceding twelve (12) months without prior written consent from the other party. This Article 17.1 ceases to apply if either party is declared bankrupt or if either party is granted a suspension of payments.

如没有对方的书面同意，任何一方不得雇用或聘请在此之前十二（12）个月内涉及某一协议履行的雇员或第三方。如果一方被宣布破产，或如果一方被赋予中止对外付款权利，则本第 17 条不适用。

17.2 By violating the provisions in Article 17.1 (and without prejudice to the wronged party's right to seek other forms of compensation) the contravening party is, without any notification, notice of default and/or judicial intervention being required, obliged to pay the other party a penalty of EUR 50,000 in compensation for the investment the other party has made and lost in the training and expertise of the employee or third party in question, notwithstanding the Seller's right to seek reimbursement for the full damages suffered. 如违反第 17.1 条的规定（且不影响受害方寻求其他形式赔偿的权利），违约方应，不需要任何通知、违约通知和/或司法介入，有义务向另一方支付 50,000 欧元的罚金，以补偿另一方在雇员或有关第三方的培训和专有知识方面的损失，尽管卖方仍有权利就其遭到的全部损失要求赔偿。

## APPLICABLE LAW AND DISPUTES

法律适用和争议

Article 18

第 18 条

18.1 The Agreement, including these General Terms & Conditions, is governed by Dutch law only. The provisions of the Vienna Sales Convention (CISG) do not apply.

本协议，包括一般条款和条件，受荷兰法律管辖。维也纳销售公约（CISG）不适用。

However if the Software was acquired by and supplied to the Software user outside the Netherlands, and if local law prohibits the use of Dutch law, local law may apply.

然而，如果软件被在荷兰以外的软件使用者获得或被提供给荷兰以外的软件使用者，且如果当地法律禁止适用荷兰法律，则当地法律可以适用。

18.2 Any and all disputes, disagreements or claims resulting from or associated with the Agreement, or with the non-compliance, termination or invalidity thereof shall be submitted to the competent court in Rotterdam.

源自或与协议、或违约、终止或无效有关的任何和所有争议、争执或索赔均应提交鹿特丹有管辖权的法院解决。

However if the Software was acquired by and supplied to the Software user outside the Netherlands and this clause is not valid under local law any dispute, disagreement or claim arising out of or relating to the Agreements, or the breach, termination or invalidity thereof, shall be submitted to the adjudication of the competent court in the region where the Software user is located.

然而，如果软件被在荷兰以外的软件使用者获得或被提供给荷兰以外的软件使用者，且根据当地法律，本



款无效，则源自或与协议、或违约、终止或无效有关的任何争议、争执或索赔均应提交软件使用人所在地区的有管辖权的法院裁决。

**18.3** The application of part or all of any purchase conditions or other terms and conditions of the Software user is explicitly rejected, unless the Seller has explicitly accepted such terms and/or conditions. 软件使用人的部分或所有采购条件或其他条款和条件的适用被明确排除，除非卖方明确同意接受这些条款和/或条件。

### THIRD-PARTY SUPPLIER: GENERAL TERMS & CONDITIONS AND LIABILITY

第三方供应商：一般条款和条件和责任

#### Article 19

##### 第 19 条

**19.1** If and to the extent that the Seller's Software contains software from a third party (for instance Microsoft), the terms and conditions that apply between the Seller and the third party in question will also apply between the Seller and the Software user. At the Software user's first request the Software user will be provided with a copy of the general terms and conditions in question (for instance Microsoft End-User Software Agreements) free of charge. The Software user declares he has been able to take note of said general terms and conditions in full and in good time.

如果卖方的软件包含第三方软件（如微软）且在此范围内，在卖方与相关第三方之间适用的条款和条件应在卖方和软件使用人之间适用。根据软件使用人的首次要求，应向软件使用人免费提供有关一般条款和条件的复印件（例如微软最终用户软件协议）。软件使用人申明其已充分且及时注意到这种一般条款和条件。

**19.2** More specifically, the terms and conditions of the third party referred to in this Article 19 in respect of (the limitation of) liability and guarantees will apply between the Seller and the Software user. It must be stated first and foremost that the Seller accepts no liability for any damages whatsoever resulting from errors and/or defects in the software of the third party supplier.

更明确地说，本第 19 条提及的有关责任（限制）和保证的第三方条款和条件将在卖方和软件使用人之间适用。首先必须声明卖方对于第三方供应商软件中出现的错误和/或缺陷不承担责任。

### PRIVACY

隐私

#### Article 20

##### 第 20 条

**20.1** Insofar as with the use of the Software personal data are processed this is done at the full responsibility and liability of the Software user. The Seller will only process personal data on the instructions of the Software user and in accordance with the Software user's instructions, also including the provisions in the Agreements. The Software user guarantees that he will process the personal data in accordance with the law.

在使用软件处理个人资料的情况下，软件使用人对此承担全部的责任和义务。卖方仅基于并根据软件使用人的指令，包括协议的条款而处理个人资料。软件使用人保证其将根据法律规定处理个人资料。

**20.2** The Software user indemnifies the Seller against any claims by third parties relating to an Agreement and/or data processed by the Software user in the scope of an Agreement as a result of an infringement of the [Dutch] Personal Data Protection Act and/or other legislation related to the processing of personal data that is not attributable to the Seller.

对于由于违反（荷兰）个人资料保护法和/或其他关于处理个人资料的立法而由第三方提出的关于协议和/或软件使用人在协议范围内部处理的资料、不可归因于卖方的任何索赔，软件使用人应确保卖方免受责任。

### OTHER PROVISIONS

其他条款

#### Article 21

##### 第 21 条

**21.1** The Seller is entitled to transfer or outsource his rights or obligations pursuant to the Agreement to a Subsidiary or to another third party the Seller has contracted for this purpose. In the event of the transfer or outsourcing these General Terms & Conditions continue to apply to the Software user.

卖方有权根据协议将其权利或义务向某一子公司或卖方为此目的而订立合同的另一个第三方进行转让或外包。在转让或外包的情况下，一般条款和条件应继续适用于软件使用人。

**21.2** All notifications or other announcements relating to the Agreement must be made in writing and addressed to the other party at the address stated on the applicable agreement or Proposal.

与协议有关的所有的通知或其他声明必须以书面方式做出并根据在适用的协议或建议书上注明的地址发至对方。

**21.3** If any provision in an Agreement or in these General Terms & Conditions is

completely or partially void, voidable or conflicts with any law, it is deemed to be isolated and not applicable. In such a case the parties will consult with each other in order to replace the provision in question by a provision with a similar purport that is not completely or partially void, voidable or conflicts with any law. The other provisions in the Agreement or these General Terms & Conditions remain in full force.

如果某一协议或一般条款和条件的任何条款完全或部分无效、可撤销或与法律冲突，该条款应视为被分离并不适用。在这种情况下，各方应互相协商以通过具有相似意义且不是完全或部分无效、可撤销或与法律冲突的条款替代该条款。协议的其他条款或一般条款和条件继续有效。

**21.4 Delays or omission on the part of the Seller in respect of enforcing any rights the Seller has against the Software user pursuant to the Agreement never constitutes a waiver of the Seller's right. If a party waives any right it has pursuant to the Agreement this does not mean that the party in question will or can be obliged to waive this right or any other rights in a subsequent matter.**

卖方根据协议行使针对软件使用人的任何权利的延误或不作为不得构成卖方对权利的弃权。如果一方放弃根据协议拥有的任何权利，不意味这该方将或有义务在某一后续事项上放弃此权利或任何其他权利。

**21.5 The Seller is permitted to include the name of the Software user on internal customer lists of the Seller.**

卖方有权将软件使用人的名字列于卖方内部的客户名单上。

**21.6 The Agreement fully reflects everything that has been agreed between the parties and replaces all earlier and concurrent, explicit or implied agreements, contracts, declarations and guarantees, both written and verbal. With the exception of the provisions in Article 2.2 of the Maintenance Agreement and Article 2.3 of the General Terms & Conditions the Agreement can only be amended by means of a written agreement signed by both the Software user and the Seller.**

本协议全面反映了各方同意的各个方面并取代了所有先前和同时的、明示或默示的协议、合同、声明和保证，无论是书面的还是口头的。除维护协议第 2.2 条和一般条款和条件第 2.3 条，协议仅得由卖方和软件使用人签署的书面协议进行修改。

**21.7 In the event of any disagreement or difference of opinion about or obscurity in respect of the provisions in these General Terms & Conditions and/or an Agreement, the Dutch text prevails over the translation. [in case the T&C are translated from English to another language, the English text prevails over the translation]**

如果就一般条款和条件和/或某一协议的条款存在争议或意见不一致或含糊之处，应以荷兰文本为准。

（如果一般条款和条件被从英文翻译到其他语言，应以英文文本为准）