

SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

UPDATED: 22 December 2022

BY SIGNING AN ORDERING DOCUMENT, CUSTOMER AGREES TO BE BOUND BY THIS SOFTWARE LICENSE AND MAINTENANCE AGREEMENT (THE "LICENSE AGREEMENT"), AS UPDATED FROM TIME TO TIME. THE LICENSE AGREEMENT (INCLUDING ANY APPENDICES, DATA PROCESSING ADDENDUMS) AND THE ORDERING DOCUMENT (COLLECTIVELY, THE "AGREEMENT") GOVERN CUSTOMER'S USE OF THE SOFTWARE AND ANY RELATED DOCUMENTATION AND BLUE YONDER'S PROVISION OF MAINTENANCE, IF PROVIDED. "JDA" OR "BLUE YONDER" MEANS BLUE YONDER TECHNOLOGY (SHANGHAI) CO., LTD. (F.K.A. JDA SOFTWARE (SHANGHAI) CO., LTD.)

TERMS AND CONDITIONS

1. SELECTED DEFINITIONS

- 1.1 "Bundled License" means multiple Software products licensed for one bundled License Fee.
- 1.2 "Data Processing Addendum" means the addendum available at <https://blueyonder.com/legal/general-data-protection-regulation> which sets out additional terms with regard to the processing of personal data in order to meet the requirements of European Data Protection Law (as such term is defined therein).
- 1.3 "Chinese Data Protection Laws" means (a) Data Security Law of the People's Republic of China, Cybersecurity Law of the People's Republic of China, Personal Information Protection Law of the People's Republic of China; (b) any other cybersecurity, data protection or privacy laws in China as applicable from time to time; (c) regulations, guidance, rules, orders, opinions and other legislative and regulatory documents as applicable from time to time, including without limitation the Cross-Border Data Transfer Safety Evaluation Practice Guide, Practice Guide for Cybersecurity Standards - Technical Specification for the Certification of Cross-Border Processing of Personal Information; and (d) any cybersecurity, data protection or privacy law, and any regulations, guidance, rules, orders, opinions and other legislative and regulatory documents, respectively, as amended, replaced or superseded from time to time. For the purpose of this Agreement, "People's Republic of China" or "China" shall exclude Hong Kong SAR, Macau SAR and Taiwan.
- 1.4 "Data Protection Loss" means any loss, expense, compensation, fine, penalty, liability, damages or costs arising out of or in connection with Blue Yonder's or Blue Yonder's Affiliated Companies' breach of their respective obligations in the Data Processing Addendum or breach of any other obligations relating to the processing of personal data under this Agreement.

软件许可与维护协议

于 2022 年 12 月 22 日更新

通过签署订购文件，客户同意受本软件许可和维护协议（“许可协议”）的约束，该许可协议将不时更新。许可协议（包括任何附录、数据处理附录）和订购文档（统称为“协议”）适用于管辖客户对软件 and 任何相关文档的使用以及碧涌达提供的维护服务（如果提供的话）。“JDA”或“碧涌达”指碧涌达科技（上海）有限公司（前称：杰迪软件（上海）有限公司）

条款与条件

关键定义

- “捆绑许可”指在一个捆绑许可费下许可的多个软件产品。
- “数据处理附录”指在 <https://blueyonder.com/legal/general-data-protection-regulation> 可得的附录，其中列出了有关处理个人数据以达到欧盟数据保护法（该等术语在其中定义）要求的额外条款。
- “中国数据保护法”是指(a)《中华人民共和国数据安全法》、《中华人民共和国网络安全法》、《中华人民共和国个人信息保护法》；(b) 任何其他不时适用的网络安全、数据保护或隐私的中国法律；(c) 不时适用的法规、指南、规则、命令、意见和其他的立法和监管文件，包括但不限于《数据出境安全评估办法》、《网络安全标准实践指南—个人信息跨境处理活动安全认证规范》；以及(d) 经不时修订、替换或取代的任何数据保护或隐私法律以及据此制定的任何法规、指南、规则、命令、意见和其他的立法和监管文件。仅就本协议而言，“中华人民共和国”或“中国”不包括香港特别行政区、澳门特别行政区和台湾地区。
- “数据保护损失”是指指因碧涌达或碧涌达的关联公司违反其在数据处理附录中的相应义务或违反任何与此协议下处理个人数据有关的其他义务而产生或与之相关的任何损失，开销，赔偿，罚款，罚金，责任，损害赔偿或费用。

- 1.5 **"Documentation"** means Blue Yonder's standard user instructions and/or functional specifications embedded within the Software, and any additions, updates, copies, translations, derivations, adaptations or modifications of or to the foregoing, in whole or in part.
- 1.6 **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- 1.7 **"IP Claim"** means a claim by a third party against Customer that the Licensed Materials, when used within the scope of the terms set forth under this Agreement, infringes a third-party copyright or trademark, infringes a patent issued in the Territory (as defined in the relevant Ordering Document) or misappropriates a third-party trade secret.
- 1.8 **"License Fees"** means the fees for the licensing of the Software specified in the Ordering Document.
- 1.9 **"License Term"** means the license term identified in the Ordering Document.
- 1.10 **"Licensed Materials"** means the Software and Documentation.
- 1.11 **"Maintenance Fees"** means the fees for Maintenance specified in the Ordering Document.
- 1.12 **"Renewal Term"** means one or more consecutive 1-year periods following the Initial Term.
- 1.13 **"Ordering Document"** means any document entered into by the parties that references this Agreement.
- 1.14 **"Software"** means the Standard Software, Updates and any copies, translations, derivations, adaptations or modifications of or to the foregoing, in whole or in part.
- 1.15 **"Standard Software"** means the unmodified version of the software, in object code form, identified under an Ordering Document.
- 1.16 **"Supported Software"** means the Software components for which Customer has purchased, paid for and continues to pay for Maintenance.
- 1.17 **"Territory"** means the country or countries specified in Ordering Document. The Territory excludes the direct or indirect export, transmission, or delivery to any region or country prohibited by applicable law, including the export laws of the European Union and/or the United States of America.
- 1.18 **"Third Party Software"** means third party software specified in an Ordering Document that Blue Yonder provides to Customer under license agreements with one or more third parties.
- "文档"**指软件中内嵌的碧涌达标准用户指南和/或功能性规格以及对上述内容的全部或部分内容的任何新增, 更新, 副本, 翻译, 衍生, 改编或修改。
- "知识产权"**指在世界任何地方, 依据任何专利、版权、商标、商业机密、数据库保护或其它知识产权法律或与该等法律相关而被授予、运用的或以其它方式现存或在本协议签署之后存在的任何以及全部已注册的以及未注册的权利, 以及类似或等同的权利或保护形式。
- "IP 索赔"**指第三方对客户就许可材料(在本协议条款和范围内使用时)提出的就侵犯第三方著作权或商标权或地区(定义见相应订购文档)内注册的专利权或滥用第三方商业秘密的索赔。
- "许可费"**指获得订购文档中所载软件许可的费用。
- "许可期"**指订购文档中确定的许可期。
- "许可资料"**指软件和文档。
- "维护费"**指订购文档中规定的维护的费用。
- "续期"**指首期之后的一个或多个连续的一年期间。
- "订购文档"**指在生效日期当天双方签署的提述本协议的任何订购文档。
- "软件"**指标准软件, 更新, 以及标准软件和更新的任何拷贝、翻译、衍生、改编或修改, 整体或部分。
- "标准软件"**指订购文档中确定的未经修改的、目标代码形式的软件版本。
- "受支持软件"**指客户已购买且已支付维护费并将继续支付维护费的软件组件。
- "地区"**指在订购文档中载明的国家。地区不包括直接或间接出口, 传输或运送到适用法律(包括欧盟和/或美利坚合众国的出口法律)禁止的任何地区或国家。
- "第三方软件"**指订购文档中载明的、由碧涌达按照与一家或多家第三方签署的许可协议向客户提供的第三方软件。

1.19 **“Updates”** means all new releases, programs, temporary fixes or patches to the Software, including any Documentation, that are provided by Blue Yonder when and if they become generally commercially available to its supported customers who are current in paying applicable Maintenance Fees. Updates do not include products, features or modules that are marketed by Blue Yonder for an additional fee.

Capitalized terms used herein and not otherwise defined shall have the meaning indicated on an Ordering Document.

2. SOFTWARE LICENSE

2.1 **Grant of License.** Subject to payment of all License Fees and Customer's compliance with the terms of this Agreement, Blue Yonder grants Customer a non-exclusive, non-transferable, non-assignable (except as permitted under Clause 12.10) limited license to install, access and use the Software and the Documentation licensed under the applicable Ordering Document(s) during the License Term to support Customer's internal business needs in the Territory.

2.2 **Protection.** Customer shall make reasonable efforts to protect the Licensed Materials from unauthorized copying, distribution, possession, access or use, including with regard to compliance with Clause 2.5 below. If Customer becomes aware of any unauthorized copying, distribution, possession, access or use of the Licensed Materials, Customer shall promptly notify Blue Yonder in writing and provide Blue Yonder with complete details of the foregoing, assist Blue Yonder in preventing the recurrence thereof, and cooperate with Blue Yonder in any investigation, action, litigation or proceedings reasonably necessary to protect Blue Yonder's rights.

2.3 **Copies.** Customer may make a reasonable number of copies of the Software for archival, disaster recovery, and internal testing purposes. Customer may make a reasonable number of copies of the Documentation for its own internal business purposes to support Customer's license to the Software. No other reproduction rights are granted under this Agreement.

2.4 **Ownership.** The Licensed Materials are licensed and not sold hereunder, and Customer will not have or acquire under or in connection with this Agreement or any Ordering Documents any ownership interest in the Licensed Materials, including any enhancements, derivatives, modifications or adaptations thereto, or in any related Intellectual Property Rights. Blue Yonder and its licensors are and will remain the exclusive owners of all right, title and interest in and to the Licensed Materials, including any Intellectual Property Rights relating thereto. Customer is not receiving and shall not receive any express or implied rights to modify, translate, adapt, or create any derivative works of the Licensed Materials, or any modifications, enhancements, derivatives or alterations thereto, and has no right to commercialize or transfer any Licensed Materials, in whole or in part, except as expressly permitted by this Agreement.

“更新” 指在可进行一般性商用的情况下，**碧涌达**向正在支付相关**维护费**而受其支持的客户所提供的**软件**（包括任何**文档**）的所有新发布、程序临时修复或补丁。**更新**不包括由**碧涌达**另行营销的额外收费的产品、功能和模块。

此**许可协议**中使用的大写的术语如无其他定义，其含义应以**订购文档**中注明的为准。

软件许可

授予许可。在**客户**已支付所有**许可费**并遵守本协议条款的前提下，**碧涌达**授予**客户**一项非独占的、不可转移、不可转让（第 12.10 条下同意的除外）的有限许可，以便**客户**在**许可期**内安装、读取和使用在相关**订购文档**下受许的**软件**和**文档**，以支持**客户**在**地区**内的内部业务需要。

保护。**客户**应采取合理的努力保护**许可资料**免遭未经授权地复制、分发、占有、读取或使用**许可材料**，包括遵守下文第 2.5 条的规定。如**客户**发现任何未经授权的复制、分发、占有、读取或使用，**客户**应立即书面通知**碧涌达**，并向**碧涌达**提供该等事件完整的细节信息，协助**碧涌达**阻止此类事件再次发生，并在保护**碧涌达**权益所合理必要的任何调查、行动、诉讼或法律程序中与**碧涌达**合作。

拷贝。**客户**可为存档、灾难复原和内部测试目的制作合理数量的**软件**拷贝。**客户**可为其内部业务目的制作**文档**的合理数目的拷贝，以支持**客户**的**软件**使用许可。本协议下不授予**客户**任何其它复制权利。

所有权。本协议下，**许可资料**仅作许可而非出售，且**客户**并未依据或由于本协议或任何**订购文档**而拥有或获得**许可资料**（包括其任何功能增强、衍生、修改或改编）或任何相关**知识产权**的任何所有权权益。**碧涌达**及其许可方是并将始终是**许可资料**（包括其任何**知识产权**）的所有权利、所有权和权益的唯一所有者。**客户**并未取得、亦不得取得修改、翻译、改编**许可资料**或创制**许可资料**的任何衍生作品或其任何修改、增强、衍生或改动的任何明示或默示权利，也无权整体或部分地商业化或转让任何**许可资料**（本协议明文允许的情况除外）。

2.5 **Restrictions.** Except as expressly authorized in this Agreement or a Ordering Document, Customer shall not: (i) rent, lease, sublicense, distribute, transfer, encumber, copy, reproduce, display or timeshare the Licensed Materials or any portion thereof; (ii) modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of the Licensed Materials (iii) remove or alter the copyright, patent, or proprietary information legends or notices that appear on or in the Licensed Materials; (iv) distribute, export, sell or otherwise transfer, in whole or in part, the Licensed Materials; (v) allow any third parties to access or use the Licensed Materials without Blue Yonder's prior written consent; (vi) demonstrate or disclose the Licensed Materials or the results of any testing or bench-marking of same to any third parties without Blue Yonder's prior written consent; (vii) except where such restriction is prohibited by applicable law, reverse engineer, de-compile, attempt to derive source code (or underlying ideas, algorithms, structure or organization) of or to the Licensed Materials, as applicable, or (viii) bypass or breach any security device or protection used for or contained in the Licensed Materials. Third Party Software included as part of the Software may only be used in conjunction with the Software and pursuant to the Documentation, and is subject to additional third-party terms and conditions ("Additional Terms"), which are available at: <https://blueyonder.com/legal/third-party-software-terms-and-conditions>. If the Software contains Third Party Software, by executing an Ordering Document, Customer agrees to be bound by the applicable Additional Terms.

3. DELIVERY

Blue Yonder will provide Customer with functional access codes that permit Customer to take immediate possession of the Software and Documentation on Customer's hardware. Delivery will be complete on the date when Blue Yonder first furnishes the functional access codes to Customer for electronic delivery, (the "Delivery Date").

4. MAINTENANCE

4.1 **Maintenance.** Customer may purchase Maintenance for the fees and on the terms and conditions specified in the applicable Ordering Document. Maintenance consists of: (i) Updates to the Supported Software, when and if they become generally commercially available; (ii) Blue Yonder's solution line telephone support; (iii) Blue Yonder's solution line e-mail support; (iv) Blue Yonder applying reasonable commercial efforts to provide corrections of the Supported Software to cause it to substantially conform with the Documentation; (v) future non-English language versions of the Supported Software, when and if they become generally commercially available; and (vi) the option to migrate the Supported Software to other operating platforms then supported by Blue Yonder and generally available to maintenance paying customers, provided that (a) the option to migrate is only available for platforms that are determined by Blue Yonder to be similar in price, features and functionality, and (b) upon

限制。除非本协议或订购文档中明确授权，否则客户不得：(i)出租、租赁、分许可、散播、转移、质押、复制、再生、展示或分时使用许可资料或其任何部分；(ii)修改、修正、改编、翻译、增强许可资料或以其他方式编制许可资料的衍生作品或改进许可资料；(iii)移除或更改许可资料之上或其中存在的版权、专利、专有信息图例或提示；(iv)分发、出口、出售或以其它方式转让全部或部分许可资料；(v)在未事先获得碧涌达书面同意的情况下，允许任何第三方读取或使用许可资料；(vi)在未事先获得碧涌达书面同意的情况下，向任何第三方演示或披露许可资料或其任何测试结果或基准数据；(vii)若适用，对许可资料进行反向工程、反编译，试图从许可资料获取源代码（或基础概念、算法、结构或组织），除非本项限制被适用法律所禁止，或(viii)绕过或违反用于许可资料或其中包含的任何安全装置或保护。作为组成部分包含在软件内的第三方软件仅可依据文档与软件一同使用，且第三方软件受其它第三方条款与条件的制约（“其它条款”，详情可点击<https://blueyonder.com/legal/third-party-software-terms-and-conditions> 查看）。如果软件中包含第三方软件，客户同意自签署订购文档之时起受相关其它条款的制约。

交付

碧涌达将向客户提供使客户能够在其硬件上立即占有软件和功能性的读取代码。交付在碧涌达首次向客户提供功能性读取代码（电子交付）之日（“交付日期”）完成。

维护

维护。客户可以按照所适用的订购文档的中所述的费用以及根据其项下的条款和条件购买维护。维护包括：(i) 受支持软件的更新（如/当该等更新已投入一般商用时）；(ii) 碧涌达解决方案电话支持；(iii)碧涌达解决方案电子邮件支持；(iv)碧涌达采取合理商业努力提供对受支持软件的修正，以使其基本符合文档；(v)受支持软件的将来非英语版本（如/当该等非英语版本已投入一般商用时）；及(vi) 可以选择将受支持软件迁移到届时受碧涌达支持、且为购买了维护的客户所通常可以获得的其它操作平台的权利，但前提是(a)迁移选择权适用的仅是碧涌达确定具有类似价格、特征和功能的平台，并且(b)客户在迁移到新平台后，客户对旧平台的使用权即告终止，客户应将旧平台的软件的全部拷贝归还给碧涌达，或按照碧涌达的选择，销毁这些旧平台的软件的全部拷贝。客户必须为每个软件产品的全部许可购买维护。客户不得终止少于各软件产品许可总数的维护。如客户为捆绑许可购买了维护，则客户仅可将该捆绑许可的全部维护终止，而不是终止包含在捆绑许可

migration to a new platform, Customer's right to use the old platform will terminate and Customer shall return to Blue Yonder, or at Blue Yonder's option destroy, all copies of such Software on the old platform. Maintenance must be purchased for the total number of licenses of each Software product. Customer may not terminate Maintenance for less than the total number of licenses of each Software product. If Customer purchases Maintenance for a Bundled License, then Customer may terminate Maintenance only for the entire Bundled License and not for any of the individual Software products that comprise the Bundled License. Updates are automatically licensed to Customer under this Agreement if Customer is current in paying Maintenance Fees.

4.2 **Limitations.** Blue Yonder is not obligated to provide Maintenance for (i) Software that has been modified by Customer or a third party; (ii) Software modified by Blue Yonder for Customer, except as agreed to by the parties in an Ordering Document for an additional maintenance fee; (iii) problems resulting from any technology (including any software, hardware, firmware, system or network) or service not specified for Customer's use in the Documentation; (iv) issues which have been addressed in a patch release or temporary fix that Customer has elected not to apply; or (v) problems resulting from Customer's data. Customer acknowledges that to the extent it fails to maintain the Software at the most current Software release made available to Customer, the applicable Software may experience incompatibility issues. Compatibility among Blue Yonder products and release levels is provided in the product release notes that are delivered with the Software and in the Software installation guides. Blue Yonder is not responsible for any incompatibility that results from Customer's use of different release levels between different Blue Yonder products.

4.3 **Initial and Renewal Terms; Price Increases.** Subject to payment by Customer of the annual Maintenance Fees, Maintenance will commence on effective date of the applicable Ordering Document and will continue for the duration of the Initial Term. After the Initial Term, during the License Term, Maintenance will automatically renew for successive Renewal Terms, unless either party terminates Maintenance by providing written notice thereof to the other party not less than 90 days' prior to the end of the Initial Term or a Renewal Term, as applicable. Upon expiration of the Initial Term, Blue Yonder may increase the Maintenance Fees no more than once annually. If different Software products are licensed to Customer on different billing cycles, Blue Yonder may consolidate and prorate the Maintenance Fees for the additional products at the time of Customer's purchase of additional Maintenance.

4.4 **Fees; Reinstatement.** Maintenance Fees will be invoiced annually in advance. In the event of non-payment, Blue Yonder may suspend performance of Maintenance, in accordance with Clause 9.3. If Maintenance is terminated for any reason other than a material breach of the Agreement by Blue Yonder, and Customer thereafter desires to reinstate Maintenance,

中的个别软件的许可。如果客户正常支付维护费，在本协议下更新将自动许可给客户。

限制。碧涌达不为下述各项提供任何维护义务：(i)经客户或第三方修改后的软件；(ii)碧涌达为客户修改后的软件（但双方在相关订购文档中同意另外付维护费的除外）；(iii)文档中未明确列出供客户使用的任何技术（包括任何软件、硬件、固件、系统或网络）或服务所产生的问题；(iv)补丁、发布或临时修复中已解决的问题，但客户决定不采用该补丁、发布或临时修复；或(vi)客户的数据造成的问题。客户认可若其未能将软件保持处于碧涌达向客户提供的最新软件发布级别，则相应的软件可能会产生不匹配问题。与软件一同交付的产品发布说明以及软件安装指南中提供了碧涌达产品和发布级别间的兼容性信息。若因客户使用不同软件发布级别造成任何不兼容，碧涌达对此无任何义务。

首期及续期；价格提高。在客户支付年度维护费的前提下，维护将始于相关订购文档的生效日期，并将持续整个首期期间。首期过后，维护应自动延续至下个续期进行连续续约，除非任何一方于首期或续期（如适用）结束之前至少 90 日书面通知另一方取消维护。首期过后期，碧涌达可每年至多提高一次维护费。如果不同的软件产品许可在不同的开票期中许可给客户，碧涌达可在客户选择购买额外维护时合并并按比例计算额外产品的维护费。

费用；被终止维护的恢复。碧涌达将就维护费每年提前开具发票。若客户不付款碧涌达可依照第 9.3 条中止提供维护，且就不就此中止提供维护承担任何责任。如果并非由于碧涌达严重违反本协议而使维护终止，并且客户此后愿意恢复维护，碧涌达可收取相当于在未提供维护期间到期的年度维护费的最多 150% 的恢复费。

Blue Yonder may charge Customer a reinstatement fee of up to 150% of the annual Maintenance Fees that would have been due during the period during which Maintenance was not provided.

4.5 **Test Environment.** Customer shall maintain (i) a test environment for the Supported Software and the ability to update the test environment from production when issues occur to enable Blue Yonder to diagnose and research support issues, (ii) remote/VPN access as requested by Blue Yonder to enable Blue Yonder to diagnose and research support issues, and (iii) a Blue Yonder log-on code that will allow Blue Yonder access to Customer's application environment to support both the Customer server and database software. This remote sign-on capability may be used to allow access to Customer's system to enable Blue Yonder to provide diagnostic and problem-solving assistance. The remote sign-on capability may also be used by Blue Yonder's other services, customer support or product development staff to deliver custom enhancements or modifications, if any, to be provided pursuant to a written agreement between Blue Yonder and Customer. Remote access is controlled by Customer who will, where appropriate, authorize Blue Yonder's access to its system and pay any related connectivity charges.

4.6 **Subcontractors.** Blue Yonder may use subcontractors to perform Maintenance. Blue Yonder will require that its subcontractors are bound to confidentiality and (where that subcontractor is also a Sub-Processor as defined in the Data Processing Addendum) data protection obligations that in both cases are substantially similar to Blue Yonder's confidentiality and data protection obligations under this Agreement, and Blue Yonder will be responsible for any breaches of this Agreement by its subcontractors.

4.7 **Details of Affiliates and Sub-Processors.** Further information on Blue Yonder's current Affiliates and Sub-Processors is set out in the Data Processing Addendum.

5. SERVICES

Customer may purchase implementation, consulting, education, cloud, and other services from Blue Yonder pursuant to a separate, signed written services agreement.

6. WARRANTIES; DISCLAIMERS

6.1 **Software Performance Warranty.** Subject to Clause 6.4, Blue Yonder warrants to Customer that, for a period of 180 days from the first Delivery Date of the Standard Software (the "Software Warranty Period"), the Standard Software and any Updates made available in respect of that Standard Software during the Software Warranty Period, will substantially conform in all material respects to the Documentation.

6.2 **Anti-Virus Warranty.** Blue Yonder warrants that before it delivers the Software to Customer, it uses generally available

测试环境。客户将维护(i)受支持软件的测试环境以及在发生问题时基于生产环境更新测试环境的能力,以便碧涌达能够诊断和研究支持问题,(ii)碧涌达要求的方便其诊断和研究支持问题的远程/VPN 访问,及(iii)碧涌达登录码,使碧涌达能够访问客户的应用环境以支持客户端、服务器和数据库软件。该远程登陆系统能力可用于直接访问客户的系统,以便碧涌达能够提供诊断和解决问题的协助。碧涌达的咨询服务、客户支持或产品开发人员还可利用远程登陆系统能力交付定制的功能增强或修改(如果按碧涌达与客户间的书面协议提供任何增强或修改的话)。远程访问由客户控制,客户将在适当情况下授权碧涌达访问客户的系统并由客户支付相关的连接费用。

分包商。碧涌达可使用分包商履行维护。碧涌达将要求其分包商受与本协议下碧涌达的保密义务以及数据保护义务(当该分包商也同时是数据处理附录中所定义的其他处理者)基本类似的保密和数据保护义务的约束,且碧涌达将为其分包商在本协议下的任何违约承担责任。

关联公司以及其他处理者的细节信息。有关碧涌达现有的关联公司以及其他处理者的进一步信息,请见数据处理附录。

服务

客户可以在一份单独的双方书面签署的服务协议下购买碧涌达的实施、咨询、培训、云以及其他服务。

保证; 免责声明

软件性能保证。在受 6.4 条约束的前提下,碧涌达向客户保证,自标准软件首次交付日期起 180 天("软件保证期")内,标准软件以及在软件保证期内交付给客户的对该等标准软件的更新将于所有主要方面实质性符合文档的要求。

反病毒保证。碧涌达保证,在向客户交付软件之前,将使用通常可得工具保护软件不受恶意代码(如病毒、蠕虫或特洛伊木马病毒)的侵害。

tools to protect the Software against malicious code such as viruses, worms, or Trojan horses.

6.3 Exclusive Remedies. If Blue Yonder breaches, or is alleged to have breached, the warranty set out in Clause 6.1, provided Customer has notified Blue Yonder promptly in writing of such breach, or alleged breach, during the applicable Software Warranty Period, Blue Yonder may, in its discretion and its expense, take any of the following steps to remedy such breach: (a) repair the Software; (b) replace the Software with functionally equivalent software (which software will, on its replacement of the Software, constitute Software hereunder); or (c) if Blue Yonder is unable to repair or replace the software as set out in this Clause within a commercially reasonable period of time, terminate this Agreement and, provided that Customer fully complies with its post-termination obligations as set out in Clause 8, promptly refund to Customer the License Fees paid for the non-conforming Software. THIS CLAUSE 6.3 SETS OUT BLUE YONDER'S ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF THE WARRANTY SET OUT IN CLAUSE 6.1. To be eligible to receive the foregoing remedies, Customer must be in compliance with all terms and conditions of this Agreement (including but not limited to the payment of all license fees then due and owing).

6.4 Exclusions. The warranty set out in Clause 6.1 does not apply to problems arising out of or relating to: (a) Customer's or a third-party's modification of or damage to the Software or the media on which it is provided; (b) Customer's operation or use of the Software other than as specified in the Documentation; (c) Customer's combination, operation or use of the Software with any technology (including any software, hardware, firmware, system or network) or service not specified for Customer's use in the Documentation; (d) Customer's negligence or abuse of the Software; (e) Customer's failure to promptly install all Updates that Blue Yonder has made available to Customer during the Software Warranty Period; (f) the operation of, or access to, a Customer or a third party system or network; (g) any Third Party Software, beta software, software that Blue Yonder makes available for testing or demonstration purposes, temporary software modules or software for which Blue Yonder does not receive a license fee; (h) Customer's breach of any material provision of this Agreement; or (i) any other circumstances or causes outside of the reasonable control of Blue Yonder (including abnormal physical or electrical stress).

6.5 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS CLAUSE 6, NEITHER BLUE YONDER, ITS AFFILIATES NOR ITS LICENSORS MAKE ANY WARRANTY, REPRESENTATION, TERM, CONDITION OR AGREEMENT WITH RESPECT TO THE LICENSED MATERIALS OR MAINTENANCE AND THE LICENSED MATERIALS AND MAINTENANCE ARE PROVIDED 'AS-IS'. BLUE YONDER AND ITS LICENSORS EXPRESSLY DISCLAIM AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL IMPLIED AND

排他性救济。 如果碧涌达在相关软件保证期内违反或被指违反 6.1 条中规定的保证（前提是客户已用书面形式将此违反或被指违反及时通知碧涌达），碧涌达可（自行决定并自行承担费用）采取下列任何步骤修复该违反：(a) 修复软件；(b) 以功能等同的软件替换软件（该软件将在取代软件后等同于本协议所指软件）；或(c) 如果碧涌达无法在商业上合理的时间内按本条规定修复或替换软件，则终止本协议，并在客户完全遵守第 8 条所规定的其终止后义务的前提下，及时将客户为不合格软件支付的许可费退还给客户。本 6.3 条规定了碧涌达针对 6.1 条保证的任何违反的全部义务及责任。为能收到前述救济，客户必须遵守本协议的所有条款及条件（包括但不限于支付届时到期应付的所有许可费）。

排除。 第 6.1 条规定的保证不适用于源自或与下列事项有关的问题：(a) 被客户或第三方对软件或提供软件的承载媒介的修改或损害；(b) 客户在文件规定之外运行、使用软件；(c) 客户结合任何非文档指定其使用的技术（包括任何软件、硬件、固件、系统或网络）或服务使用软件；(d) 客户疏忽或不当使用软件；(e) 客户未能及时安装碧涌达于软件保证期内提供的所有更新；(f) 客户或第三方系统或网络的运行或存取；(g) 任何第三方软件、测试版软件、碧涌达提供用于测试或展示目的的软件、以及碧涌达未收取许可费的临时软件模块或软件；(h) 客户违反本合同的任何重要条款；或(i) 超出碧涌达合理控制的其他任何情形或原因（包括非正常物理应力或电应力）。

保证免责。 除本第 6 条的明确规定以外，碧涌达及其关联企业及许可方不针对许可资料或任何维护以及基于“现状”提供许可材料和维护作出任何保证、声明、条款、条件或协议。碧涌达及其许可方在法律允许的最大范围内明确放弃并排除所有默示和法定保证（包括但不限于所有对适销性、不侵权、满意的质量或适于某一特定目的默示保证，以及所有源自交易过程、使用或贸易实践的所有保证）。在不限上述规定的条件下，碧涌达不保证或承诺许可资料或任何其它碧涌达或第三方商品、维护、技术或资料（包括但不限于任何软件和硬件）、或使用它们的任何产

STATUTORY WARRANTIES (INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE). WITHOUT LIMITING THE FOREGOING, BLUE YONDER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND THAT THE LICENSED MATERIALS, OR ANY OTHER BLUE YONDER OR THIRD-PARTY GOODS, MAINTENANCE, TECHNOLOGIES OR MATERIALS (INCLUDING BUT NOT LIMITED TO ANY SOFTWARE OR HARDWARE), OR ANY PRODUCTS OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET CUSTOMER'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, MAINTENANCE, TECHNOLOGIES OR MATERIALS (INCLUDING BUT NOT LIMITED TO ANY SOFTWARE, HARDWARE, SYSTEM OR NETWORK), OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH THIRD-PARTY MATERIALS.

7. INDEMNIFICATION

7.1 **Indemnity by Blue Yonder.** Blue Yonder shall defend Customer against or, subject to Clause 7.5, settle any IP Claim and shall indemnify Customer for any damages, reasonable and verifiable costs and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction (or settlements agreed to in writing by Blue Yonder) which are directly attributable to such IP Claim.

7.2 **Exclusive Remedies.** In the event of an IP Claim or Blue Yonder believes that an IP Claim is likely, Blue Yonder, in its discretion, may: (i) obtain for Customer the right to continue using the Licensed Materials; (ii) replace or modify the affected Licensed Materials so that they become non-infringing while giving substantially equivalent functionality; or (iii) if such remedies are not reasonably available, terminate the license for the affected portion of the Licensed Materials and require Customer to return such affected portion of the Licensed Materials, whereupon Blue Yonder will refund any prepaid License Fees after an appropriate deduction using a monthly straight-line depreciation over a thirty-six (36) month period based on Customer's first Delivery Date of the Licensed Materials and the date of removal of such affected Licensed Materials by Customer. CUSTOMER HEREBY AGREES THAT THIS CLAUSE 7.2 TOGETHER WITH THE INDEMNITY SET OUT IN CLAUSE 7.1 SET OUT BLUE YONDER'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY IP CLAIM.

品或结果使用结果将满足客户或其他人的要求、可无中断运行、获得任何预期结果、兼容其它任何商品、维护、技术或材料（包括但不限于任何软件、硬件、系统或网络）或与其共同运行，或保证其安全、准确、完整、无有害代码或无错误。所有第三方材料均按“现状”提供，任何针对或关于这些第三方材料的声明或保证严格限于客户与第三方所有者或此类第三方材料分销方之间。

赔偿

碧涌达负责的赔偿。在第 7.5 条的前提下，碧涌达应就任何 IP 索赔维护客户且应就任何经有管辖权的法院判决由客户承担的（或在合理的情况下经碧涌达书面同意的）由该等 IP 索赔直接引起的损失、合理和可证实的费用和花费（包括合理的法律费用）对客户进行赔偿。

排他性救济。如果存在 IP 索赔或碧涌达相信可能有 IP 索赔，碧涌达可自行决定：(i) 为客户获得继续使用许可资料的权利；(ii) 替换或修改受影响的许可资料，使其不再侵权，同时还能提供基本相同的功能；或 (iii) 如果此类补救不可以合理手段获得，则终止许可资料中受影响的部分，并要求客户归还此类受影响许可资料。在此情形下，碧涌达将根据对客户的首次交付日期及客户移除此类受影响许可资料的日期，使用月度直线法折旧（36 个月时间）进行合理扣减后，向客户退还任何预付的许可费。客户在此同意，本第 7.2 条以及第 7.1 条所列赔偿为碧涌达就任何 IP 索赔的全部责任及客户的排他性救济。

7.3 **Exclusions.** Blue Yonder is not liable, and will be relieved of its obligation to indemnify Customer under Clause 7.1, for IP Claims to the extent the alleged infringement is based on or arises from (a) Customer's or a third-party's modification of the Licensed Materials; (b) Customer's combination, operation, or use of the Licensed Materials in combination with any technology (including any software, hardware, firmware, system or network) or service not specified for Customer's use in the Documentation, to the extent such infringement would not have occurred but for the combination, operation or use; (c) use of the Licensed Materials not in accordance with the Documentation or in any manner not permitted by this Agreement; (d) Blue Yonder's compliance with Customer's specifications or directions, including, but not limited to, the incorporation of any software or other materials or processes provided by or requested by Customer; (e) Customer's use or possession of other than the then-most current release of the Licensed Materials, on condition that the then-most current release was made available to Customer, to the extent such infringement would have been prevented by Customer's use of the then-most current release; (f) software that Blue Yonder makes available for testing or demonstration purposes, temporary software modules or software for which Blue Yonder does not receive a license fee.

7.4 **Indemnity by Customer.** Customer shall indemnify, defend and hold harmless Blue Yonder against any third party claims or allegations that are based on: (i) Customer's use of the Licensed Materials in violation of this Agreement; (ii) any data, information, software or other materials provided or otherwise made available to Blue Yonder by Customer or Blue Yonder's access to or handling or processing of the same (provided such access, handling or processing by Blue Yonder or its subcontractors or personnel is for purposes of fulfilling its obligations hereunder); or (iii) Blue Yonder's compliance with Customer's specifications or directions, including, but not limited to, the incorporation of any software or other materials or processes provided by or requested by Customer.

7.5 **Indemnity Procedures.** The obligations of each indemnifying party are conditioned upon receiving from the party seeking indemnification: (i) prompt written notice of such claim (but in any event notice in sufficient time for the indemnifying party to file a defense to any proceedings before expiration of any applicable filing deadlines); (ii) the exclusive right to control and direct the investigation, defense and settlement (if applicable) of such claim; and (iii) all reasonable cooperation of the indemnified party. The indemnified party may participate in the defense of such claim using its own counsel at its own expense. The indemnifying party does not require the indemnified party's consent to settle any claim except where such settlement requires the indemnified party to take or refrain from taking any action that would be materially detrimental to their overall business and reputation (except with respect to use or non-use of the Licensed Materials or use of other material licensed by one party to the other hereunder).

8. TERMINATION; SURVIVAL

排除。针对基于或源自下列情形主张的**IP 索赔**，**碧涌达**不承担第 7.1 条项下**客户**赔偿责任并将被解除此赔偿义务：

(a)**客户**或第三方进行的**许可资料**修改；(b)**客户**结合任何非**文档**指定其使用的技术（包括任何软件、硬件、固件、系统或网络）或服务使用**许可资料**，而侵权正是由于该联合使用所致；(c)**许可资料**的使用未严格依照**文档**要求，或以不被本**协议**允许的任何方式进行；(d)**碧涌达**遵守**客户**规范或指令，包括但不限于纳入**客户**所提供或要求的任何软件或其他资料或流程；(e)在**客户**可获得届时最新版**许可资料**的条件下，**客户**使用或拥有非届时最新版**软件**，而侵权正是由于**客户**不使用届时最新版**许可资料**所致；(f)**碧涌达**提供用于测试或展示目的的软件、以及**碧涌达**未收取许可费的临时软件模块或软件。

客户负责的赔偿。**客户**应针对任何基于下列情形的第三方索赔或主张为**碧涌达**进行赔偿、抗辩并使**碧涌达**免受伤害：(i) **客户**对**许可资料**的使用违反了本**协议**的规定；(ii) 由**客户**提供给**碧涌达**或因**客户**使**碧涌达**可获得的任何数据、信息、软件或其他材料，或**碧涌达**读取或管理或处理（只要**碧涌达**或其分包商或个人是为履行其义务的目的而进行该等读取、管理或处理）的任何数据、信息、软件或其他材料；(iii)**碧涌达**遵守**客户**的规范或指令，包括但不限于纳入**客户**所提供或要求的任何软件或其他资料或流程。

赔偿流程。赔偿方的义务基于其从寻求赔偿方收到：(i) 及时的书面索赔通知（但在任何情况下都应给赔偿方留出充足的通知时间以便其任何适用的提交截止日期之前就任何程序提交抗辩）；(ii) 控制、主导索赔的调查、抗辩及和解（如适用）的排他性权利；以及 (iii) 被赔偿方所有合理的合作。被赔偿方可使用己方法律顾问并自担费用参与索赔抗辩。赔偿方无需获得接受赔偿方事先的书面同意即可达成任何索赔和解除非该等和解要求被赔偿方采取或避免采取任何行动而如此会对其整体业务和商誉有重大的不利影响（除了与**许可资料**的使用或不使用有关，或与本**协议**下一方向另一方许可的其他资料的使用有关）。

终止；继续有效

8.1 **Term.** The term of this Agreement commences on the Effective Date of the applicable Ordering Document and continues indefinitely until terminated in accordance with this Clause 8.

8.2 **Termination for Cause.** Either party may terminate this Agreement and any Ordering Documents and other attachments for cause if the other party materially breaches this Agreement and does not cure such breach within 30 days after its receipt of written notice specifying such breach from the non-breaching party. Consent to extend the cure period will not be unreasonably withheld. However, termination of any Maintenance (individually or collectively) will not terminate this Agreement.

8.3 **Termination for Insolvency.** Either party may terminate this Agreement and any Ordering Documents, and other attachments immediately on written notice to the other party at any time if the other party ceases to do business without appointing a successor, becomes unable to pay its debts when due in the ordinary course, becomes or is deemed to be insolvent, has a receiver, manager, administrator, administrative receiver, or similar officer appointed in respect of the whole or any part of its assets or business, enters into any moratorium or suspension of payments proceeding, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or enters into liquidation whether compulsorily or voluntarily.

8.4 **Effect of Termination.** Upon termination or expiration of this Agreement, Customer shall (i) immediately discontinue all use of the Licensed Materials and return to Blue Yonder, or at Blue Yonder's option destroy, all copies of same; and (ii) deliver a letter signed by a duly authorized officer of Customer certifying compliance with the requirements set forth herein.

8.5 **No Prejudice to Other Rights.** Termination of this Agreement is without prejudice to any rights either party has against the other party, including but not limited to injunctive relief, and termination will not relieve either party of any of its obligations to the other existing at the time of termination, including Customer's obligation to pay all fees and charges that accrued prior to termination.

8.6 **Survival.** The rights and obligations contained in Clauses 2.4 (Ownership), 2.5 (Restrictions), 6.5 (Disclaimer of Warranties), 9 (Invoicing and Payment), 10 (Limitations of Liability), 11 (Confidentiality), and 12 (Miscellaneous) shall survive termination of this Agreement.

9. INVOICING AND PAYMENT

9.1 **Invoicing and Payment.** Customer shall pay all fees and costs (without any set-off, counterclaim, deduction or (subject to Clause 9.5) withholding) within 30 days of the date of the

有效期。本协议的有效期自相关订购文档的生效日期起无限期持续，直至根据本第 8 条终止。

因故终止。如果一方严重违反本协议且在该方从非违约方收到说明此类违约的书面通知后 30 天内未纠正违约，另一方可因此终止本协议和任何订购文档及其它附件。延长纠正期的同意不得被无理拖延。但终止任何维护（无论单个维护还是全部维护）将不会终止本协议。

因破产的终止。如另一方停止业务但未指定继承人，无法在正常情形下支付到期债务，破产或视为破产，存在接管人、管理人、行政管理人或类似的就其整体或部分资产或业务指定的人员，进入任何拖延或暂缓支付程序，与其债权人进行任何重组或安排，因债务而采取或遭受任何类似的诉讼，或为解散或清算而作出的命令或决议（除了为有偿债能力的合并或重建的目的之外），或进入强制性或资源清算，另一方可以以书面通知的形式在任何时间终止协议、任何订购文档或任何其它附件。

终止效力。当本协议终止或到期时，客户应(i)立即停止对于许可资料的全部使用，并将许可资料的全部拷贝归还给碧涌达，或在碧涌达的选择下销毁许可资料的全部拷贝；以及(ii)递交给碧涌达一封由客户正式授权的官员签署的证明客户遵守了本协议规定的所有要求的确认信。

不损害其它权利。本协议的终止不损害任何一方针对另一方的任何权利（包括但不限于禁令救济），并且终止不解除任何一方在终止时已存在的对另一方的任何义务，包括客户支付终止前发生的所有费用的义务。

继续有效。第 2.4（所有权）、2.5（限制）、6.5（保证免责）、9（开票和付款）、10（责任限制）、11（保密）以及 12（其它）条款中包含的权利与义务将在本协议终止后继续有效。

开票及付款

开立发票及付款。客户应于相关发票开立日期 30 日内、或依照适用订购文档的要求支付所有费用及支出（不得进行任何抵销、反诉、扣减或预提（受制于第 9.5 条））。

applicable invoice, or as otherwise required under the applicable Ordering Document. Any payment (except payment subject to a good faith dispute pursuant to Clause 9.2 below) not received from Customer by the due date will, at Blue Yonder's discretion, accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

9.2 **Disputes.** Customer may dispute any part of an invoice by: (i) notifying Blue Yonder in writing of such dispute within ten (10) days of the invoice date; (ii) as part of the written notice, describing the nature of the dispute in reasonable detail to allow Blue Yonder to analyze the dispute; (iii) only making such dispute in good faith; and (iv) paying all undisputed amounts when due, and for the amounts in dispute, promptly after resolution of such dispute.

9.3 **Suspension of Maintenance.** If Customer's account is more than thirty (30) days past due (except with respect to fees subject to a good faith dispute pursuant to Clause 9.2), in addition to any other rights or remedies Blue Yonder may have under this Agreement or by law, Blue Yonder reserves the right to immediately suspend performance of Maintenance (in whole or in part), without liability to Customer.

9.4 **Taxes.** All amounts payable to Blue Yonder are exclusive of any sales or use taxes, value added tax (VAT), goods and services tax (GST), service tax or any and all similar taxes or legally imposed fees, duties or contributions based on such amounts payable, all of which shall be the sole responsibility of Customer whether due now or subsequently imposed by any jurisdiction. Applicable taxes for License Fees and Maintenance Fees will be calculated based on the Installation Address. Customer is not responsible for any taxes based upon the net income of Blue Yonder or its employees unless agreed to elsewhere in this Agreement or subsequent Ordering Document.

9.5 **Withholding Taxes.** If Customer is required to withhold income tax on any payments due under this Agreement, it shall promptly provide Blue Yonder with the official receipt of payment of these taxes to the appropriate taxing authority. Customer shall withhold only to the extent legally required under existing tax laws of Customer's legal country of domicile and after full consideration of applicable income tax treaty provisions, if any, by and between Customer's and Blue Yonder's respective legal countries of domicile. If tax is withheld and Customer does not submit a tax certificate to Blue Yonder within thirty (30) days after the payment due date, Customer shall immediately remit full payment for the outstanding amount to Blue Yonder.

10. LIMITATIONS OF LIABILITY

10.1 **General Liability Cap.** EXCEPT FOR (A) FEES PAYABLE BY CUSTOMER UNDER THIS AGREEMENT, (B) DAMAGES ARISING OUT OF OR RELATING TO CUSTOMER'S BREACH OF CLAUSE 2 (SOFTWARE LICENSE) OF THIS

对于任何逾期未付金额（下述 9.2 条所涉善意争议款除外），**碧涌达**可从付款到期日起至**碧涌达**收到付款之日向**客户**计取利息，利率在月利 1.5% 或法定最高利率间取金额较小者。

争议。**客户**可通过如下方式就发票任何部分提出争议：(i) 在发票开立日期 10 日内以书面方式将此争议通知**碧涌达**；(ii) 作为书面通知的一部分；以合理的细致度描述争议的性质，以便**碧涌达**分析争议；(iii) 始终以善意提出争议；并(iv)支付所有到期无争议的金额，并在争议解决后立即支付此争议涉及的金额。

中止维护。如**客户**的账户超过 30 天逾期（除根据第 9.2 条有善意的争议的费用外），在**碧涌达**根据本协议或法律所能寻求的任何其他权利或救济之外，**碧涌达**保留立即中止**维护**（全部或部分）履行的权利且不对**客户**承担任何责任。

税金。**客户**应向**碧涌达**支付的全部金额不包含任何销售税、使用税、增值税、货物及服务税，服务税，或任何及所有类似税种，或基于前述应付款合法征收的费用、关税或摊款。前述所有税金将由**客户**一方单独承担，无论这些税金是否当前应缴还是后续由任何管辖机关征收。**许可费**和**维护费**所适用的额税率将基于**安装地址**而计算。**客户**不承担基于**碧涌达**或其员工净收入征收的任何税，除非于本协议或订购文档中议定。

代扣代缴税款。如果**客户**被要求为本协议下应付的任何款项代扣代缴所得税，**客户**需立即向**碧涌达**提供向适格的税务机关支付这些税款的正式收据。**客户**代扣代缴的范围应仅限于**客户**法定居住国现有税法规定的范围，并已全面考虑过**客户**和**碧涌达**各自法定居住国间签署的有关所得税条约规定（如果有的话）。如果税款被代扣代缴，但**客户**在付款到期日后 30 天内未向**碧涌达**提交缴税凭证，则**客户**需立即全部付清拖欠**碧涌达**的未清款项。

责任限制

一般责任上限。除了(a) **客户**于本协议下应付的金额，(b) 源于**客户**违反本协议第 2 条（软件许可）或与其相关的损害赔偿，(c) 源于一方违反本协议第 11 条（保密）或与其相关的损害赔偿，(d) 第 7 条中一方的赔偿义务，或(e) 数

AGREEMENT, (C) DAMAGES ARISING OUT OF OR RELATING TO A PARTY'S BREACH OF CLAUSE 11 (CONFIDENTIALITY) OF THIS AGREEMENT, (D) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER CLAUSE 7, OR (E) DATA PROTECTION LOSSES (WHICH ARE SUBJECT TO CLAUSE 10.2 BELOW), TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE CUMULATIVE, AGGREGATE LIABILITY OF EITHER PARTY AND THEIR RESPECTIVE AFFILIATES FOR ALL CLAIMS OR LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ALL ORDERING DOCUMENT AND THE DATA PROCESSING ADDENDUM) ARE LIMITED TO (i) IN THE CASE OF STANDARD SOFTWARE, THE AMOUNTS PAID OR PAYABLE BY CUSTOMER FOR THE STANDARD SOFTWARE GIVING RISE TO THE CLAIM, OR (ii) IN THE CASE OF MAINTENANCE, THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE TO Blue Yonder FOR THE MAINTENANCE GIVING RISE TO THE CLAIM IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10.2 **Data Protection Losses Liability Cap.** IN NO EVENT WILL BLUE YONDER'S OR ITS AFFILIATED COMPANIES' AGGREGATE LIABILITY IN RESPECT OF DATA PROTECTION LOSSES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ALL ORDERING DOCUMENT AND THE DATA PROCESSING ADDENDUM), EXCEED 150% OF THE FEES PAID OR PAYABLE BY CUSTOMER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM (OR IF NO FEES HAVE BEEN PAID OR PAYABLE IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT, THEN 150% OF THE FEES PAID OR PAYABLE IN THE MOST RECENT 12-MONTH PERIOD WHERE ANY FEES WERE PAID OR PAYABLE). TO THE EXTENT THAT ANY BREACH OF CLAUSE 11 OF THIS AGREEMENT RELATES TO THE PROCESSING OF ANY PERSONAL DATA, THEN THE CAP IN THIS CLAUSE 10.2 APPLIES.

10.3 **Damages Waiver.** EXCEPT FOR (A) FEES PAYABLE BY CUSTOMER UNDER THIS AGREEMENT, (B) DAMAGES ARISING OUT OF OR RELATING TO CUSTOMER'S BREACH OF CLAUSE 2 (SOFTWARE LICENSE) OF THIS AGREEMENT, (C) DAMAGES ARISING OUT OF OR RELATING TO A PARTY'S BREACH OF CLAUSE 11 (CONFIDENTIALITY) OF THIS AGREEMENT, OR (D) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER CLAUSE 7, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY (OR THEIR RESPECTIVE AFFILIATES) IS LIABLE FOR ANY LOST PROFITS, LOST REVENUE, LOSS OF DATA OR COSTS OF RECREATING DATA, OR THE COST OF ANY SUBSTITUTE EQUIPMENT OR SOFTWARE (IN EACH CASE WHETHER DIRECT OR INDIRECT IN NATURE) OR FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES ARISING IN ANY WAY OUT OF THE USE OF

据保护损失（依下述第 10.2 条）之外，在适用法律的最大允许范围内，一方及其相关关联企业针对源自或与本协议（包括所有订购文档及数据处理附录）相关的所有索赔或损失的累积及总体责任将仅限于：(i) 针对**标准软件**：客户为引起索赔的**标准软件**支付或应付的金额，或 (ii) 针对**维护**：引起索赔的事件之前 12 个月就引起索赔的**维护碧涌达**收到或应付给**碧涌达**的所有费用总计。

数据保护损失责任上限。无论在何种情况下，**碧涌达**或其**关联公司**就本协议（包含所有**订购文档**和**数据处理附录**）项下或与之相关所产生的数据保护损失的累计责任将仅限于引起**索赔**的事件之前紧邻的 12 个月（若引起**索赔**的事件之前紧邻的 12 个月内无费用被支付或应付，则为最近的有任何费用被支付或应付的 12 个月）向**碧涌达**已付的或应付给**碧涌达**的所有费用总计的 150%。若就第 11 条的违反与对任何**个人数据**的**处理**有关，则此 10.2 条的责任上限适用于该等违反。

损害的弃权。除了 (a) 客户在协议项下的应付费用；(b) 客户违反本协议第 2 条（软件许可）的规定所产生的或与之相关的损害，(c) 一方违反本协议第 11 条（保密）的规定所产生的或与之相关的损害，或 (d) 第 7 条中一方的赔偿义务，在适用法律之最大允许范围内，任何一方(或其各自的关联公司)均不对下述各项承担责任（即使一方事前已获知该等损失或损害的可能性）：根据协议、侵权（包括但不限于疏忽）、严格责任或其他因素认定的以任何方式源于**许可资料**的使用或**维护**或本协议的任何利润损失、营收损失、数据损失、数据重构成本或任何替代设备或软件的成本（在任何情形下，无论其实质为直接或间接），或特殊损害、附随性损害、衍生性损害、间接损害或惩罚性损害（即使一方提前被告知此类损害赔偿的可能性）。

THE LICENSED MATERIALS, OR ANY MAINTENANCE OR THIS AGREEMENT REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND EVEN IF A PARTY IS INFORMED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES IN ADVANCE.

10.4 *IN ALL CASES, CUSTOMER'S EXCLUSIVE REMEDIES ARE SET OUT IN THIS AGREEMENT. BOTH CUSTOMER AND BLUE YONDER HEREBY AGREE THAT THE FOREGOING LIMITATIONS AND WAIVERS SET OUT IN THIS CLAUSE 10 APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. Further, any right of action, proceeding or claim permitted under or in connection with this Agreement and not brought within 36 months after the occurrence of the act, omission or event first giving rise to the liability is irrevocably waived.*

11. CONFIDENTIALITY

11.1 **Definition.** As used in this Agreement, "Confidential Information" means all confidential or proprietary information belonging to either party hereto and disclosed, made available to or learned by the other party during the term of this Agreement, including, without limitation, technical, business, financial, marketing or other information of every kind or nature (including, without limitation, trade secrets, know-how and information relating to the technology, software, designs, specifications and prototypes, customers, business plans, promotional and marketing activities, finances and other business affairs of such party), third party confidential information, and, with respect to Blue Yonder, the Licensed Materials and the terms and conditions of this Agreement (including but not limited to pricing).

11.2 **Exclusions.** Confidential Information does not include any information that (i) is or becomes generally available to the public through no improper action or inaction by the receiving party or any affiliate, agent, consultant or employee of the receiving party; (ii) was properly in the receiving party's possession or properly known by it, without restriction, prior to receipt from the disclosing party; (iii) was rightfully disclosed to the receiving party by a third party without restriction; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

11.3 **Confidentiality Obligations.** Subject to the terms of this Agreement, each party shall (i) hold in strict confidence all Confidential Information of the other party, (ii) use the Confidential Information solely to perform its obligations or exercise its rights under this Agreement, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any person or entity other than to its directors, officers, employees, consultants, subcontractors, auditors, and legal and financial advisors of such party ("Representatives") who need to know such Confidential Information and who are under confidentiality obligations at least as restrictive as the terms of

在所有情形下，**客户**的排他性救济均已于本**协议**中规定。**客户**与**碧涌达**于此同意，本第 10 条中前述限制及弃权即使在任何补救未能达到其基本目的时依然适用。另外，本**协议**项下允许或与本**协议**相关联、但于导致该责任的行为、不作为或事件首次发生后 36 个月内尚未提出的任何行动、诉讼或索赔的权利将被不可撤销的放弃。

保密

定义。本**协议**中使用的“**保密信息**”指**协议**一方所拥有的、并在本**协议**有效期间披露给另一方或为另一方获得或了解到的所有保密或专有信息，包括但不限于技术信息、商业信息、财务信息、市场营销信息或其它任何种类或性质的信息（包括但不限于贸易机密、知识、以及与一方技术、软件、设计、规格、原型、客户、商业计划、促销和市场活动、财务和其它业务活动相关的信息）、第三方**保密信息**，以及有关**碧涌达**的**许可材料**和本**协议**条款与条件（包括但不限于定价）。

排除。**保密信息**不包括以下任何信息：(i) 非因接受方或其任何关联企业、代理、顾问或雇员的不正当行为或作为，是或成为公众普遍可得的信息；(ii) 接受方从披露方接受之前已不受限制地完全为接受方所有或完全为其所知的信息；(iii) 由不受限制的第三方合法披露给接受方的信息；或 (iv) 由接受方在未使用或未参考披露方**保密信息**的情况下独立开发的信息。

保密义务。在遵守本**协议**条款的前提下，**协议**任何一方均应 (i) 为另一方的**保密信息**严格保密，(ii) 仅使用**保密信息**履行其在本**协议**下的义务，行使其在本**协议**下的权利，以及 (iii) 不将**保密信息**的全部或任何部分转移、展示、传递或披露给任何人或实体或使其可得，除了该方需要获悉此类**保密信息**以及承担着至少与本**协议**规定同样严格的保密义务的董事、执行官、员工、咨询顾问、分包商、审计人员以及法律和财务顾问（“**代表**”）。任何一方均应承担其**代表**在本**协议**下的违约责任。除非在本**协议**中另行明确规定，否则任何一方均不应在未得到披露方事先书面同意的情况下使用或披露另一方的**保密信息**。任何一方均应采取

this Agreement. Each party is responsible for any breaches of this Agreement by its Representatives. Except as otherwise expressly provided in this Agreement, neither party shall use or disclose the Confidential Information of the other party without the prior written consent of the disclosing party. Each party shall use the same degree of care to protect the disclosing party's Confidential Information as it uses to protect its own Confidential Information, but in no circumstances less than reasonable care.

11.4 **Permitted Disclosures.** The receiving party may disclose the Confidential Information of the other party in response to a valid court order, subpoena, civil investigative demand, law, rule, regulation (including, without limitation, any securities exchange regulation), or other governmental action, provided that (i) to the extent permitted by applicable law or regulation, the disclosing party is notified in writing prior to disclosure of the information, (ii) the receiving party uses reasonable efforts to obtain a protective order or, in the absence of a protective order, to limit the disclosure of the Confidential Information and to obtain confidential treatment thereof, and (iii) the receiving party has allowed the disclosing party to participate in the proceeding that requires the disclosure.

11.5 **Ownership.** As between the parties, the parties agree that the Confidential Information of the disclosing party is, and will remain, the property of the disclosing party. The receiving party obtains no right, title, interest, or license in or to any of the Confidential Information of the disclosing party except for the rights expressly set out in this Agreement.

11.6 **Suggestions.** Customer may from time to time provide suggestions, enhancement requests, recommendations or other feedback ("Suggestions") to Blue Yonder with respect to the Software and/or Maintenance. Both parties agree that all Suggestions are and shall be given entirely voluntarily. Suggestions, even if designated as confidential by Customer, shall not, absent a separate written agreement, create any confidentiality obligation for Blue Yonder. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, Blue Yonder shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Suggestions provided to it as it sees fit, entirely without obligation or restriction of any kind on account of Intellectual Property Rights or otherwise.

12. MISCELLANEOUS

12.1 **Governing Law.** The Agreement and any Ordering Document shall be governed by laws of the People's Republic of China, without reference to its choice of law rules.

12.2 **Arbitration.** Subject to Clause 12.3 below, any dispute, controversy, claim, question or disagreement ("Claim") arising out of or related to the Agreement or in connection with a breach of the Agreement will be settled by binding arbitration proceedings administered by the Shanghai International Economic and Trade Arbitration Commission ("SHIAC") in Shanghai, the People's Republic of China, under the

与其保护己方**保密信息**同样的细心保护披露方的**保密信息**，但在任何情形下均不得少于合理程度的细心。

允许的披露。接受方为回应有效的法庭命令、传票、民事调查要求、法律法规（包括但不限于任何证券交易法规）或其它政府行动，可披露另一方的**保密信息**，但前提是(i) 在适用法律或法规允许的范围内，信息被披露之前披露方得到书面通知，(ii) 接受方采取合理的努力去获得保护令，或者在没有保护令的情况下，限制**保密信息**的披露，并去获取**保密信息**的保密待遇，以及 (iii) 接受方已允许披露方参与要求披露的法律程序。

所有权。双方同意，在双方之间披露方的**保密信息**是且始终是披露方的财产。接受方不获得披露方**保密信息**的任何权利、权属、权益或许可，本协议中明确规定的权利除外。

建议。客户可以不时向**碧涌达**就**软件**和/或**维护**提出提供建议，增强请求，推荐或其他反馈（“**建议**”）。各方同意所有**建议**的给予是且将为自愿。**建议**，即使被**客户**认为是保密，将不对**碧涌达**产生任何保密义务，除非额外的书面协议另有约定。此外，除在额外的后续书面协议中在各方间另行约定，**碧涌达**将可以在其认为合适的情况下自由使用、披露、复制、许可或以其它方式分发，以及利用所提供其的**建议**，而完全没有因知识产权或其他原因的义务或限制。

其它

管辖法律。协议应适用中国法律管辖，不涉及其法律选择规则。

仲裁。受制于以下第 12.3 条，产生于或与**协议**有关或因违反**协议**所发生的任何争议、索赔、问题或分歧（“**索赔**”），将依据于该**索赔**提交仲裁时有效的上海国际经济贸易仲裁委员会（“**SHIAC**”）的商业仲裁规则由该会一名仲裁员通过仲裁程序在中国上海最终解决。仲裁语言将为英文。仲裁员应拥有计算机软件方面的经验及知识。该仲裁员无权作出不符合本**协议**的任何裁定、判断或裁决。仲裁

arbitration rules of the SHIAC in effect at the time such Claim is submitted to arbitration. The arbitrator must be a person having experience with and knowledge of the computer software business and the language of the arbitration will be English. The arbitrator will not have any authority to make any ruling, finding or award that does not conform to the Agreement. The judgment upon the award rendered by the arbitrator will be final and binding on all parties and may be entered as a judgment and enforceable by any court of competent jurisdiction.

12.3 **Equitable Relief.** Notwithstanding anything to the contrary contained in Clauses 12.1 or 12.2: (a) a party may immediately seek equitable relief (without the necessity of posting a bond), including, without limitation, temporary injunctive relief, against the other party in any court of competent jurisdiction with respect to any and all equitable remedies sought in connection with violation of the other party's confidentiality or Intellectual Property Rights arising out of or related to this Agreement; and (b) Blue Yonder, at its option, may pursue any and all remedies available at law and in equity in any court of competent jurisdiction with respect to any claim against Customer for nonpayment.

12.4 **Attorneys' Fees and Costs.** The prevailing party, or if there isn't one, the substantially prevailing party, in any action or proceeding to enforce this Agreement, is entitled to recover from the other party its costs and reasonable attorneys' and expert witness' fees in addition to its damages.

12.5 **Notices.** All notices must be in writing and in English and may be sent by email, except for notices of breach or demands for indemnification, which must be sent by either, certified mail or internationally recognized courier to the address indicated in the relevant Ordering Document or such other address as either party may indicate by at least 10 days' prior written notice to the other party. Notices to Blue Yonder will be addressed to Chief Executive Officer, with a copy to General Counsel at Blue Yonder Technology (Shanghai) Co., Ltd., c/o Blue Yonder, Inc. (f.k.a. JDA Software, Inc.) 15059 N Scottsdale Road, Suite 400, Scottsdale, Arizona 85254, USA.

12.6 **Entire Agreement.** This Agreement, including any appendices, the Data Processing Addendum and Ordering Documents that are incorporated herein by this reference, sets forth the entire understanding and agreement between Customer and Blue Yonder and supersedes all prior and contemporaneous agreements, proposals or communications, in whatever form, between the parties relating to the subject matter of this Agreement, including the licensing of the Licensed Materials and provision of the Maintenance. The parties acknowledge that, except as expressly set out in this Agreement, they are not relying on any prior agreements, proposals or communications, in whatever form. In the event of any conflict or inconsistency between this Agreement and any Ordering Document or appendix the applicable Ordering Document or appendix controls and governs over this Agreement to the extent necessary to resolve the conflict or

员的仲裁裁决为终局判决，并对所有各方具有约束力，并可在有管辖权的任何法院作为判决执行。

衡平法救济。无论在 12.1 或 12.2 条中是否存在任何相反规定，(a)当一方违反其保密义务或侵犯另一方的产生自或与**协议**相关的**知识产权**时，另一方可针对对方在有管辖权的法院立即寻求与该等违反或侵犯相关的任何和全部衡平法救济（无需提供保证金），包括但不限于临时性的禁令救济；以及(b)**碧涌达**在其选择之下，可以针对**客户**的不付款在任何有管辖权的法院寻求任何和全部法定和衡平法救济。

律师费用与支出。在强制执行本**协议**的任何法律诉讼中胜诉的当事人，或在无胜诉当事人的情况下的实质胜诉当事人，有权在损害赔偿金外向另一方追诉其支出以及合理的律师费及专家证人费。

通知。所有通知均为英文书面形式，可通过电子邮件发送，但违约通知或要求赔偿之通知则必须通过经挂号信或国际公认的快递公司送往有关**订购文档**所载地址或任何一方至少提前 10 日书面通知另一方之其他地址。发给**碧涌达**的通知将寄给首席执行官 (CEO)，并抄送碧涌达科技（上海）有限公司法律总顾问，由其转交 Blue Yonder, Inc. (前称 JDA Software, Inc.), 15059 N Scottsdale Road, Suite 400, Scottsdale, Arizona 85254, USA。

全部协议。本**协议**，包括通过此提述纳入本**协议**的任何附件、**数据处理附录**和**订购文档**，规定了**客户**与**碧涌达**间的全部理解与共识，并取代就本**协议**主旨（包括**许可资料**许可及**维护**提供）双方先前及同期作出的所有形式的协议、建议或沟通。各方认同，除本**协议**明确列出之外，各方没有倚赖任何形式的事先约定、提议或沟通。如果本**协议**与任何附件或**订购文档**之间存在任何冲突或不一致之处，在解决此不一致或冲突的必要范围内以附件或**订购文档**（依适用情况而定）为准，并以其管辖本**协议**。如在本**协议**和**数据处理附录**之间有任何不一致，则在解决该等冲突的必要情况下，**数据处理附录**控制和优先于本**协议**（除本**协议**中明确表明对**数据处理附录**中特别章节进行覆盖）。此外，**客户**不会要求**碧涌达**或其员工签署或以任何其他方式进入任何未在本**协议**中引用的和纳入本**协议**的协议、附录或其他文件，或要求**碧涌达**或其员工接受任何未在此**协议**

inconsistency. In the event of any inconsistency between this Agreement and the Data Processing Addendum, the Data Processing Addendum controls and governs over this Agreement (except where this Agreement expressly states an intention to override a specific section of the Data Processing Addendum) to the extent necessary to resolve the conflict or inconsistency. Customer will not require Blue Yonder or its employees to sign, or otherwise enter into any additional agreements, addendums or other documents not specifically referenced and incorporated in this Agreement nor require Blue Yonder or its employees to undergo any security or background screening, not expressly set out in this Agreement as a condition of Blue Yonder performing any services under this Agreement or any related statement of work or change request.

- 12.7 **Amendment.** This Agreement and each Ordering Document may not be amended, modified, or supplemented orally and may only be amended, modified, or supplemented by a written instrument signed by both parties.
- 12.8 **Waiver.** Subject to Clause 10.4, the delay or failure of either party to enforce any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision.
- 12.9 **Severability.** If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain in full force and effect.
- 12.10 **Assignment; Successors and Assigns.** Customer shall not assign (by operation of law or otherwise) any of its rights, obligations, or privileges hereunder without the prior written consent of Blue Yonder, which consent will not be unreasonably withheld. Any attempted assignment in violation of this Clause is null and void and of no force or effect. Subject to the foregoing, this Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns. Blue Yonder may assign or sublicense this Agreement, in whole or in part, to any of its affiliates or in connection with a merger (by operation of law or otherwise) or sale or acquisition of all or substantially all of its assets or voting securities.
- 12.11 **Force Majeure.** If the performance of either party is delayed or prevented at any time due to extraordinary circumstances beyond its reasonable control, performance will be excused until such condition no longer exists.
- 12.12 **Purchase Orders.** Nothing contained in any purchase order, clickwrap agreement, or other document or instrument issued by Customer will in any way modify or add any additional terms or conditions to this Agreement, and any such modified or additional terms or conditions are expressly rejected and excluded from the parties' agreement hereunder.

中明确列出的作为**碧涌达**履行本协议或任何工作声明或变更申请项下的服务的条件的任何安全或背景调查。

修订。本协议与每份**订购文档**均不得口头进行修订、修改或补充，只可通过双方签署书面文件进行修订、修改或补充。

弃权。在第 10.4 条的基础上，任何一方未要求或延迟要求另一方执行本协议的任何规定，不构成其放弃后续执行该规定的权利。

可分割性。如果本协议的任何条款无效或不可执行，则该条款将为消除其无效性或不可执行性的目的而作出必要的解释、限制、修改或分割（如有必要），且本协议中其它条款仍将保持全部执行力和效力。

转让；继承人和受让人。未经**碧涌达**事先书面同意，**客户**不得转让（因法律规定或其它）其在本协议项下的任何权利、义务或特权，但**碧涌达**也不得无理拖延该同意。任何违反本节规定试图进行的转让均无效。在遵守前述规定的前提下，本协议对双方及其各自的继承人与准许的受让人均具约束力，并由其享受协议利益。**碧涌达**可将本协议部分或全部转让或分许可给其任何**关联公司**，或在并购（因法律规定或其它）或售出或获得其所有或几乎所有资产或有表决权股份的行动中部分或全部地转让或分许可本协议。

不可抗力。如果任何一方在任何时候因超出其合理控制的特殊情况，推迟履行或不能履行本协议，履行将延至该情况不再存在。

采购订单。**客户**签发的任何采购订单、点击许可协议或其它文档或文件中的任何内容均不会对本协议作出修改或向其增加新的条款与条件，任何此类修改或新增的条款与条件都从本协议中明确拒绝和排除。

12.13 **Cooperation.** Each party will reasonably cooperate with the other party in connection with each party's performance under this Agreement. Customer acknowledges that timely providing Blue Yonder with office accommodations, facilities, suitably configured computer products, software (which may include permitting Blue Yonder's remote access to the Supported Software), equipment, assistance, cooperation, and complete and accurate information and data from Customer's officers, agents and employees may be necessary to enable Blue Yonder to perform Maintenance.

12.14 **Independent Contractors.** The relationship between Blue Yonder and Customer will continue to be that of independent contractors. Neither party is the legal representative, agent, joint venturer, partner, employee, or employer of the other party. Neither party has any right, power, or authority under this Agreement to assume or create any obligation on behalf of the other party, or to bind the other party in any respect. Neither party has entered into this Agreement with a corrupt motive to obtain or retain business nor to secure an unfair business advantage and each shall fully comply at all times with all applicable laws.

12.15 **Export.** Customer will not divert Licensed Materials or Maintenance, nor provide services using Licensed Materials or Maintenance, to prohibited locations, end users or end uses. By accepting the terms of this Agreement, Customer acknowledges that the Licensed Materials and Maintenance are subject to U.S. sanctions and export controls, and undertakes all necessary action to prevent Customer, its employees, or contractors using the Licensed Materials or Maintenance from diverting the Licensed Materials or Maintenance contrary to U.S. and/or European Union law. Customer specifically represents and warrants that it will not export, re-export, sell, supply or transfer Blue Yonder products to any country or person to which the United States and/or the European Union has embargoed or restricted the provision of items, including, but not limited to, Cuba, Crimea, Iran, North Korea, or Syria, or to nationals of those countries and locations, or to any other embargoed or restricted destination or person, including those entities that are fifty percent (50%) or more owned or controlled by embargoed or restricted persons. Customer also warrants that it: (a) will not send any of the Licensed Materials or Maintenance to an individual or entity for a prohibited purpose including, without limitation, defense, nuclear, chemical, or biological weapons proliferation or development of missile technology; and (b) upon learning that any of the Licensed Materials or Maintenance were diverted contrary to the obligations in this Clause, Customer will immediately notify Blue Yonder.

12.16 **U.S. Government Restricted Rights.** The Licensed Materials provided under this Agreement are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as these terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire

合作。双方将就双方的协议履行进行合理合作。客户承认，客户执行官、代理商以及雇员及时向碧涌达提供办公场所、设施、合适配置的计算机产品、软件（可包括允许碧涌达远程读取受支持软件）、设备、协助、合作、以及完整、准确的信息与数据，对于碧涌达履行维护（如果有的话）是必要的。

独立签约人。碧涌达与客户之间的关系将保持为独立签约人之间的关系。任何一方均不是另一方的法人代表、代理商、合营企业、合伙人、雇主或雇员。双方在本协议下均无权利、权力或权威代表另一方承担或创设任何义务，或在任何方面约束对方。任何一方签署本协议时均不存在为获得或留住业务或为取得不公平的业务优势而具有的贪污动机，并且任何一方均应始终遵守所有适用法律。

出口。客户将不得转移许可材料或维护到，或使用许可材料或维护提供服务给禁止的地点、终端用户或最终使用。在接受本协议的条款时，客户认同，许可材料和维护受制于美国法令和出口管制，且将承担所有必要的行动以防止客户、其员工、或承包商使用许可材料或维护使之被转移而与美国和/或欧盟法律相悖。客户特别承诺和担保其将不会将任何碧涌达的产品出口、再出口、销售、供应或转移到任何美国和/或欧盟已经禁止或限制提供物品的国家或个人，包括但不限于古巴，克里米亚，伊朗，朝鲜或叙利亚，或这些国家和地区的国民，或给任何其他被禁止或限制的地点或个人，包括但不限于那些被该等被禁止或限制的个人拥有或控制 50%或以上的实体。客户也担保其(a)不会为任何被禁止的目的（包括但不限于防御，核武器，化学武器或生物武器的扩散或导弹技术的开发）将任何许可材料或维护发给任何个人或实体；且(b)在获知任何许可材料或维护被转移以至与本条责任相悖时，客户将立即通知碧涌达。

美国政府有限权利。本协议下提供的许可资料为“商业项目”（按美国联邦法典 48 C.F.R. 2.101 中的定义），其中包含“商用计算机软件”和“商用计算机软件文档”（按美国联邦法典 48 C.F.R. 12.212 中的定义）。在与 48 C.F.R. 12.212 以及 48 C.F.R. 227.7202-1 直至 227.7202-4 中的规定保持一致的同时，所有美国政府终端用户获取软件和文档后所拥有的权利仅限于本协议中规定的权利。所有者

the Software and Documentation with only those rights set out in this Agreement. Owner and licensor is Blue Yonder, Inc., 15059 N Scottsdale Road, Suite 400, Scottsdale, Arizona 85254, USA.

及许可方为 Blue Yonder, Inc., 地址为 15059 N Scottsdale Road, Suite 400, Scottsdale, Arizona 85254, USA.

12.17 Compliance and Audit Rights. Once annually, upon ten (10) business days' prior written notice, Blue Yonder may verify Customer's compliance with this Agreement by reviewing Customer's use and deployment of the Software. Either Blue Yonder or an independent public accounting firm reasonably acceptable to both parties will perform the audit during Customer's regular business hours with minimal disruption to Customer's ongoing business operations. Customer shall pay Blue Yonder for any over deployments of the Software disclosed by the audit. License Fees for such over deployments will be invoiced to and paid by Customer at the undiscounted license list price in effect as of the audit completion date ("**List Price**"), unless otherwise mutually agreed. Blue Yonder will bear the costs of the audit, unless the audit discovers that the List Price value of non-compliant Software deployment exceeds five (5%) percent of the total List price value of Software paid for by Customer, in which case, Customer shall pay the reasonable costs of the audit.

合规性和审计权利。在碧涌达提前十个工作日给出书面通知后, 碧涌达可一年一度审查客户对软件的使用和部署, 以核实客户对本协议的合规情况。碧涌达或双方均可合理接受的独立的上市财务公司将在客户正常的工作时间内、以最小化影响客户日常业务运营为前提开展审计。客户应为审计披露的任何软件超范围部署支付费用。碧涌达将针对这些超范围部署的许可费开具发票, 并由客户付款。许可费金额将以审计完成之日届时有效的无折扣的许可订价("订价")为准, 除非双方另行商定。碧涌达将承担审计费用, 除非审计发现针对不合规软件部署的订价金额已超过客户所付软件订价总金额的 5%; 在此情形下, 客户应支付审计的合理费用。

12.18 Publicity; Press Releases. Blue Yonder may on one or more occasions reference Customer in advertisements, brochures, customer lists, presentations, financial reports or other marketing, promotional or related materials. In addition, upon Customer's approval, which approval will not be unreasonably withheld, Blue Yonder may issue a press release (or similar public announcement or communication) publicizing the relationship between Blue Yonder and Customer created by this Agreement.

宣传; 新闻稿。碧涌达可以一次或多次在广告、宣传册、客户名单、演示、财务报告或其他市场营销的、促销性的或相关的材料中提及客户。另外, 在客户批准的前提下(客户不得无理拖延此批准), 碧涌达可以发行新闻稿(或类似的公众性公告或通信)宣传因本协议而结成的碧涌达与客户的合作关系。

12.19 Non-Solicitation. During the term of this Agreement and for a period of 12 months after its termination or conclusion, or if a court of competent jurisdiction determines that twelve (12) months is overbroad or unenforceable, for a period of six (6) months after its termination or conclusion (the "Restricted Period"), neither Party shall, directly or indirectly, solicit or recruit any employee or contractor of the other Party who, provided services under this Agreement and/or, in connection with his or her performance of work related to this Agreement, learnt Confidential Information about the other Party. Nothing in this Clause prevents either Party from hiring an employee or contractor of the other who responds to an advertised job opening directed to the general public, so long as the hiring party does not target the personnel of the other Party for recruitment.

不延揽。在本协议有效期内及被终止或结束之后 12 个月内(或如果有管辖权的法院认为 12 个月的期间是过度的或无法执行的, 则为被终止或结束之后 6 个月内)("限制期"), 任何一方不得直接或间接地延揽或招募另一方的在本协议下提供过服务的, 和/或与其与本协议相关的工作的履行有关的, 知晓另一方的保密信息的任何员工或合同工。但本条规定不阻止任何一方聘用应向社会大众直接公开广告的职业而来的对方员工或合同工, 只要该招募方并非是针对对方的人员而进行招募。

12.20 Interpretation. In the event of a dispute between the parties, this Agreement will not be construed for or against either party but will be interpreted in a manner consistent with the intent of the parties as evidenced by the terms of this Agreement. Unless otherwise specified, "days" means calendar days.

解释。如果双方之间发生争议, 双方不得对本协议作出有利于或不利于任何一方的解释, 而应以与本协议条款所昭示的双方意图相一致的方式进行解释。除非另有规定, "日"指日历日。

12.21 Third Party Rights. Except for Blue Yonder's licensors, no third party will be deemed to be an intended or unintended third party beneficiary of this Agreement.

第三方权利。除碧涌达的许可方, 其它无任何第三方被视为本协议的拟定或非拟定的第三方受益人。

12.22 **Data Protection.** Except as set out in Clause 12.23 (Personal Information), Customer acknowledges that Blue Yonder is relying on the fact that Customer does not and will not provide or give access to Blue Yonder any personal information, important data, national core data or any other data as described under Chinese Data Protection Laws (“**Chinese Data**”) under or in connection with this Agreement. Regardless of the foregoing, where Customer provides or gives access to Blue Yonder or its Affiliates within or outside China any and all Chinese Data under or in connection with this Agreement, Customer warrants that (i) it has obtained any and all consent, authorization or approval relating to the collection, storage, use, processing, transmission, provision, disclosure, export and deletion of Chinese Data, and in particular, it has obtained sufficient and explicit consents as required under Chinese Data Protection Laws on Blue Yonder (including its Affiliates and subcontractors)’s processing of Chinese Data for the purpose of fulfilling its obligations under or in connection with this Agreement; (ii) it shall protect the legitimate rights and interests of the subject of Chinese Data (including but not limited to the right to know, right to delete etc.) in accordance with Chinese Data Protection Laws; and (iii) it shall take all necessary and reasonable actions and measures to ensure the cross-border provision and export of Chinese Data (if any) is legal, including without limitation, carrying out impact assessment or security assessment, obtaining data protection certification, and/or other actions or measures as required under the Chinese Data Protection Laws as and where applicable. Customer further warrants that it shall not provide or give access to Blue Yonder any Personal Data (as defined in General Data Protection Regulation) which by itself, or by reason of the Processing (as defined in General Data Protection Regulation) of which, may be subject to the laws of the member states of the European Union, including without limitation the General Data Protection Regulation.

12.23 **Personal Information.** Customer acknowledges that Blue Yonder, its Affiliates and/or subcontractors within or outside China may process certain personal data about the Customer and/or its agents, representatives, employees or other related third parties for its own purposes including for the purposes of: (a) processing orders; (b) managing Customer’s account with Blue Yonder or its Affiliates; and (c) compiling aggregate statistics of the distribution and use of the Software and Maintenance. Customer may request access to and correction of the personal data or exercise any other rights it may have in respect of such personal data. The parties agree that the Data Processing Addendum shall govern Blue Yonder or its Affiliate’s processing of such personal data (where Customer is the data controller and Blue Yonder is the data processor), and Appendix 1 of the Ordering Document shall set out the details of the personal data which Blue Yonder (including its Affiliates and subcontractors) processes on Customer’s behalf which is required to meet the applicable Data Protection Laws (as defined in the Data Processing Addendum). More details on Blue Yonder’s data processing activities are set out in its Privacy Notice a current version (as at the Effective Date of the

数据保护。除在第 12.23 条（个人信息）中列出的，**客户**认同**碧涌达**依赖于该等事实—即**客户**将不在本协议下或与本协议有关而提供给**碧涌达**或使**碧涌达**读取任何在**中国数据保护法**项下所定义的个人重要数据、国家核心数据或任何其他数据（“**中国数据**”）。无论上述情况如何，当**客户**根据本协议向**碧涌达**或其境内外关联公司提供或允许访问任何及所有**中国数据**时，**客户**应保证 (i) 其已获得与收集、储存、使用、处理、传输、提供、披露、出口及删除**中国数据**有关的任何及所有同意、授权或批准，特别是就**碧涌达**（包括其关联公司和分包商）为履行其在本协议项下或与本协议有关的义务而对**中国数据**进行的处理已获得根据**中国数据保护法**规定下充分和明确的同意；(ii) 其应根据**中国数据保护法**规定依法保护**中国数据**主体的合法权益（包括但不限于知情权、删除权等）；以及 (iii) 其应采取一切必要和合理的行动和措施，确保**中国数据**的跨境提供（如有）是合法的，包括但不限于进行个人信息保护影响评估或安全评估，获得个人信息保护认证，和/或其他**中国数据保护法**要求的适用的行动或措施。**客户**进一步保证其将不得向**碧涌达**提供或使**碧涌达**读取任何因其自身或对其的**处理**（定义见《通用数据保护条例》）而可能受制于欧盟成员国法律（包括但不限于《通用数据保护条例》）的**个人数据**（定义见《通用数据保护条例》）。

个人信息。**客户**认同**碧涌达**及其境内外关联公司和分包商，为自身目的包括但不限于如下，可能处理有关**客户**和/或其代理、代表、员工或其他相关第三方的特定的**个人数据**(a)处理订单；(b)管理**客户**在**碧涌达**或其关联公司的账户；和(c) 编制**软件**和**维护**分发和使用的汇总统计信息。**客户**可以要求读取和更正**个人数据**或行使其对**个人数据**所有的其他权利。各方同意**数据处理附录**（以**客户**作为数据控制者而**碧涌达**作为数据处理者）将管辖**碧涌达**或其关联公司对该等**个人数据**的处理。本协议的附件 1 列出了**碧涌达**（包括其关联公司和分包商）代表**客户**处理的**个人数据**细节，以达到适用的**数据保护法**（定义见**数据处理附录**）的规定。**碧涌达**数据处理活动的更多细节请见其隐私通知，其目前（在相关订购文档生效日期之时）的版本在 <https://blueyonder.com/privacy-policy> 可得。

relevant Ordering Document) is available
<https://blueyonder.com/privacy-policy>.

12.24 **Security.** Blue Yonder has implemented, and shall maintain, an internal information security policy. Blue Yonder's information security policy is designed specifically for equipment, networks and systems directly controlled by Blue Yonder (collectively, the "Blue Yonder Network"), and requires Blue Yonder to implement several technical, physical and organizational measures to prevent the unauthorized access to information stored or processed on the Blue Yonder Network. Blue Yonder shall continuously improve its security program by implementing security controls as per its information security policy as it relates to Customer Confidential Information stored and processed on the Blue Yonder Network. Blue Yonder will notify Customer without undue delay of any security breach known to Blue Yonder that directly affects the Customer Confidential Information, and in response to such breach, Blue Yonder will take commercially reasonable efforts to prevent further such breaches.

12.25 **Execution.** The parties represent that they have each caused this Agreement to be signed by a representative duly authorized to bind the respective party. The Agreement may be executed in counterparts.

12.26 **Language.** This Agreement is drafted and executed in both English and Chinese language. In case of any conflict between the two versions, the *English* language version shall prevail.

安全。碧涌达已实施并维护一套由专门针对碧涌达直接控制的设备、网络及系统（统称为“碧涌达网络”）的内部信息安全原则。该原则要求碧涌达采取若干技术、实体及组织措施阻止对碧涌达网络上储存或处理的信息的未授权读取。对于碧涌达网络上储存或处理的客户保密信息，碧涌达也将通过依据其信息安全原则实施安全管控而持续改善其信息程序。碧涌达将把其获悉的直接影响客户保密信息的任何安全性缺口不拖延通知给客户；针对此缺口，碧涌达将采取商业上合理的努力防止未来再次产生此类缺口。

签署。各方承诺其已各自使其适当授权的代表签署本协议以使相应一方受协议约束。协议可以副本签署。

语言。本协议使用中英文起草。如两个语言版本之间有任何冲突，则以英文版为准。