

## LICENSE AND PURCHASE AGREEMENT

## 许可和购买协议

### 1. License.

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(b). **Perpetual License.** If you are being granted a perpetual License, your License is revocable by EFI if you discontinue Maintenance for the Software for any two (2) consecutive annual Maintenance terms. You may install only the number of copies of the Software at the Site Location(s) for which you have been granted a License for use by you, your employees or authorized independent contractors. You may make and retain one additional copy for backup purposes only and may transfer the location of any Site Location if you obtain EFI's prior written consent.

(c). **Term License.** If you are being granted a term License, except as otherwise specified on the Purchase Documentation, such License has an Initial Term of three (3) years from the Start Date. If you do not provide written notice of termination to EFI at least 90 days before the end of the Initial Term or any Renewal Term, the term will automatically renew at EFI's then-current Fees. Only you, your employees or authorized independent contractors, and your end users, as applicable, may Access the Product, and only for your business. You are solely responsible for ensuring that data entry is timely, accurate, and reflects your requirements. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from data entered by you or your end users or on your behalf.

(d). **Third-Party Materials.** Some third-party materials distributed with the Product may be subject to other terms and conditions, which are typically found in a separate license agreement or "Read Me" file provided with those third-party materials. The License does not apply to any third-party software except as specified herein.

### 1. 许可。

(a). **概述。** EFI授予您有限、个人、不可转让和非独占的许可，您只能按文件规定的用途使用或访问软件 and 文件。仅您、您的员工或授权独立承包商以及您的最终用户（如适用）可使用或访问产品或文件。本软件只供许可使用，而非出售。除本协议规定外，您对软件或文件没有任何明示或暗示的所有权或任何其他权利。您不得对软件（包括任何数据库）或文件授予再许可、再授权、复制、修改、增强、纠正错误、创建衍生作品、反编译、解密、逆向工程或反汇编，或允许任何第三方这样做。您不得通过任何分时共享、服务机构或类似安排出租、租赁、出借或以其他方式分发或使用软件或文件，也不得以任何方式使软件或文件全部或部分受任何排除许可证的影响。新产品或更新、发布或升级时可能会提供附加条款和条件。

(b). **永久许可。** 如果您被授予永久许可，但在连续两（2）个年度维护期停止对软件的维护，EFI可撤销您的许可。您只能在获得许可的指定场地位置安装约定数量的软件副本给您、您的员工或授权独立承包商使用。您可以制作并保留一份额外的副本，仅供备份之用。如果事先获得EFI书面同意，您可以转移软件安装的场地位置。

(c). **定期许可。** 如果您被授予定期许可，除购买文件另有规定外，该许可的初始期限为自开始日期起三（3）年。如果您在初始期限或任何续期期限结束前至少90天未向EFI发出书面终止通知，将按当时价格向EFI支付费用自动续期。仅您、您的员工或授权独立承包商以及您的最终用户（如适用）可以访问产品，并且只能用于您的业务。您应自行负责保证数据输入及时、准确，并且反映您的要求。因您、您的最终用户或代表输入的数据而产生的任何责任、损害或费用，您应向EFI作出赔偿并使其免受损害。

(d). **第三方材料。** 与产品一起分发的部分第三方资料可能受到其他条款和条件的约束，它们通常在单独的许可协议或此类第三方资料提供的“自述文件”中。许可不适用于任何第三方软件，但本协议另有规定时除外。

(c). Unauthorized Use. THE PRODUCT MAY CONTAIN A LICENSE KEY TO PREVENT UNAUTHORIZED USE AND EFI MAY EXECUTE OR DEACTIVATE THE LICENSE KEY UPON TERMINATION OF YOUR LICENSE. YOU ACKNOWLEDGE THAT THE LICENSE KEY IS NOT A VIRUS, AND THAT EXECUTION OR DEACTIVATION OF THE LICENSE KEY MAY RENDER THE PRODUCT OR A PORTION OF IT INOPERABLE. IF THE LICENSE KEY IS EXECUTED OR DEACTIVATED AS SPECIFIED IN THIS AGREEMENT, YOU MAY BE OBLIGATED TO PAY EFI'S THEN-CURRENT FEE TO REACTIVATE THE PRODUCT.

## 2. Installation and Professional Services.

(a). Installation. Unless specified in the Purchase Documentation, the installation and implementation of the Product is your exclusive responsibility. EFI has no responsibility to modify the Product to cause it to function or operate on any particular hardware system, configuration, or platform or with any other software.

(b). Professional Services. You may purchase Professional Services from EFI, and statement(s) of work may be created to more fully describe the scope, duration, and/or Fees for the Professional Services, which will be governed by this Agreement. All pre-paid Professional Services must be used within twenty-four (24) months of the Start Date.

(c). Compensation and Expenses. On-site Professional Services days are based on a standard 8-hour work day. Additional hours will be billed at EFI's then-current applicable rate unless a different rate is mutually agreed. Customer shall reimburse EFI for all reasonable out-of-pocket expenses (including travel, lodging and meals) incurred in connection with on-site Professional Services session(s). Professional Services scheduled and/or performed (i) during after-hours on a weekday or (ii) on a Saturday will be invoiced at 150% of EFI's then-current Professional Services Fees. Professional Services scheduled and/or performed on a Sunday or a government-recognized holiday will be invoiced at 200% of EFI's then-current Professional Services Fees.

## 3. Hosted Solutions.

If EFI or its designated third-party providers are hosting the Software, the following additional terms and conditions apply:

(a). Access. EFI or its designated provider will provide those services necessary to allow you Access, including a password(s).

(b). Data Entry. All data generated by and through your Access will reside on servers of EFI or its third party providers.

(c). 未经授权使用。产品可能包含一个许可证密钥，以防止未经授权的使用，EFI可在您的许可终止后执行或取消激活许可证密钥。您承认许可证密钥并非病毒，而且执行或取消激活它将使产品或其部分无法操作。如果许可证密钥按本协议规定被执行或取消激活，您必须按当时价格向EFI支付费用以重新激活产品。

## 2. 安装和专业服务。

(a). 安装。除非购买文件另有规定，您应自行负责产品的安装和实施。EFI 不负责修改产品使其能够在任何特定的硬件系统、配置、平台或任何其他软件上运行或操作。

(b). 专业服务。您可以向EFI购买专业服务并创建工作说明书，以更全面地描述专业服务的范围、期限和/或费用，这些内容受本协议约束。所有预付款专业服务必须在开始日期后二十四（24）个月内使用。

(c). 报酬和费用。现场专业服务天数按8小时的标准工作日计算。额外的小时数将按EFI当时的适用费率计费，但双方约定其他费率时例外。客户应报销EFI产生的与现场专业服务有关的所有合理自付费用（包括差旅、住宿和膳食）。(i) 工作日下午下班后或(ii)周六安排和/或执行的专业服务将按EFI当时专业服务费的150%开具发票。周日或政府认可假日安排和/或执行的专业服务将按EFI当时专业服务费的200%开具发票。

## 3. 托管解决方案。

如果EFI或其指定第三方提供商托管软件，以下附加条款和条件适用：

(a). 访问。EFI或其指定提供商将提供允许您访问的必要服务，包括密码。

(b). 数据输入。您的访问及藉由访问生成的所有数据都将保留在EFI或其第三方提供商的服务器上。

(c). Password Security. You are solely responsible for (i) ensuring that only authorized individuals have access to passwords to Access the Product, (ii) assigning roles and authority levels for your Access, (iii) the conduct of individuals with Access, and (iv) maintaining the confidentiality and integrity of passwords and authority levels. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from your failure to comply with this Section.

(d). Scheduled Downtime and Upgrades. Downtime is required from time-to-time for regular maintenance of the technology that supports the Product. EFI shall use commercially reasonable efforts to perform scheduled downtime outside normal business hours. EFI may also install new or updated software from time to time, including supporting software and firmware, in addition to the Software, to aid in providing ongoing stability and security of the hosted solution. You shall facilitate commercially reasonable upgrades and operations without undue delay or objection.

(e). Unexpected Outages. EFI shall use commercially reasonable efforts to avoid unexpected outages and to restore Access as soon as possible. If you do not have Access for more than two (2) consecutive hours within any 24-hour period because of an unexpected outage caused by EFI, you may request credit for one day of the applicable Fees (based on an average of that month's invoice). THIS IS YOUR SOLE AND EXCLUSIVE REMEDY AND EFI'S ENTIRE LIABILITY FOR UNSCHEDULED DOWNTIME OR OUTAGES, AND EFI WILL NOT BE LIABLE FOR ANY DAMAGES RELATED TO ANY UNSCHEDULED DOWNTIME OR OUTAGES.

(f). Self-Hosting. You at all times retain the right to self-host the Product from another location and, if you are being granted a term license, continue to pay the Term License Fees for the Software. Any Professional Services performed by EFI in migrating a hosted solution to a self-hosted solution are billable at EFI's standard rates.

(g). Maintenance. If you are being granted a perpetual License as a hosted solution, you must remain on Maintenance for the period that EFI or its designated third-party provider is providing the hosting services to you.

#### 4. Fees and Delivery.

(a). Fees. You shall pay all applicable Fees.

(b). Title and Risk of Loss. Title and risk of loss for any media or hardware for the Product transfers to you at EFI's designated manufacturing plant(s) or warehouse(s). If the Product is delivered electronically, risk of loss transfers to you when the Product or Access is made available to you.

(c).密码安全。您应自行负责：（i）确保只有经授权的个人才能使用密码访问产品，（ii）为您的访问分配角色和权限级别，（iii）具有访问权限的个人的行为，以及（iv）维护密码和权限级别的保密性和完整性。因您未遵守本条规定而产生的任何责任、损害或费用，您应向EFI作出赔偿并使其免受损害。

(d).计划停机和升级。为了定期维护产品支持技术，时不时需要停机。EFI应尽商业上合理的努力在正常工作时间以外执行计划停机。EFI还可以不时安装新的或更新软件，包括软件以外的支持软件和固件，以保障托管解决方案的持续稳定性和安全性。您应为商业上合理的升级和操作提供便利，不得过分拖延或反对。

(e). 意外中断。EFI应尽商业上合理的努力避免意外中断并尽快恢复访问。如果您在任何24小时内因EFI造成的意外中断而连续两(2)小时以上无法访问，您可以申请抵扣一天的适用费用（根据当月发票的平均值）。这是您唯一拥有的补救，也是EFI对计划外停机或中断的全部责任。对于任何计划外停机或中断相关的任何损害，EFI概不负责。

(f). 自行托管。您始终保留从其他地点自行托管产品的权利，如果您被授予定期许可，则继续支付软件的定期许可费。EFI在将托管解决方案迁移到自行托管解决方案的过程中所提供的任何专业服务均按EFI的标准费率计费。

(g). 维护。如果您被授予托管解决方案的永久许可，您必须在EFI或其指定第三方提供商向您提供托管服务期间保持维护状态。

#### 4. 费用和交付。

(a). 费用。您应支付所有适用的费用。

(b). 所有权和损失风险。产品的任何介质或硬件的所有权和损失风险在EFI指定的制造工厂或仓库转移给您。如果产品以电子方式交付，向您提供产品或访问权限时，损失风险将转移给您。

(c). Hardware Delivery. Unless otherwise specified in the Purchase Documentation, where you are purchasing hardware: (i) EFI shall act as agent for you and procure insurance against risk of loss and/or procure and prepay for shipment, (ii) you shall reimburse EFI for all charges relating to the shipment of hardware upon EFI providing an invoice for such charges. EFI shall use commercially reasonable efforts to ship hardware as soon as practicable following execution of this Agreement and EFI's receipt of any required deposits. If you request a delay in delivery or otherwise cause a delay in the transportation process, EFI reserves the right to separately charge you for any costs it incurs for paying the logistics company to store and warehouse hardware on your behalf.

## 5. Product Maintenance.

(a). Subject to your timely payment of all applicable Fees, EFI or its designated provider will provide you with annual Maintenance for the Product. Maintenance terms automatically renew for consecutive 12-month periods unless cancelled by either party with written notice at least 30 days before the Maintenance Renewal Date. Notwithstanding the foregoing, Maintenance for certain Products (e.g., individual Software modules that are part of the EFI Software solution) may only be cancelled in the event that you are no longer using those certain Products; please first consult with EFI in the event you desire to cancel Maintenance for any Product.

(b). You must possess a valid License to use any upgrade or update. By using an upgrade or update, your license to any previous version of the Product automatically terminates. If you (i) have an out-of-date version of the Product or (ii) are not current on Maintenance due to your failure to timely pay Maintenance Fees and wish to update your version of the Product, you must pay any unpaid Fees and may be subject to additional fees to transfer or convert any old data. EFI reserves the right to discontinue Maintenance for all out-of-date versions of the Product.

## 6. Warranty and Disclaimer.

(c). 硬件交付。除非购买文件中另有规定，否则在您购买硬件时：(i)EFI应作为代理为您取得损失风险保险和/或取得并预付运费，(ii)您应在EFI提供收费发票后向EFI支付硬件运输相关的所有费用。EFI应在签署本协议和收到任何要求的保证金后，采取商业上合理的努力在可行的情况下尽快运输硬件。如果您要求延迟交货或以其他方式导致运输过程延误，EFI有权单独向您收取代向物流公司支付的硬件存放和仓储所产生的任何费用。

## 5. 产品维护。

(a). 在您及时支付所有适用费用的前提下，EFI或其指定提供商将为您提供产品年度维护。除非任一方在维护续订日期前至少30天发出书面通知取消，否则维护条款将按12个月的连续期间自动续订。尽管有上述规定，仅在您不再使用某些产品的情况下，才能取消对这些产品（比如构成EFI软件解决方案组成部分的单个软件模块）的维护；如果您希望取消任何产品的维护，请先咨询EFI。

(b). 您必须持有有效的许可证才能使用任何升级或更新。您在使用升级或更新时对产品任何先前版本的许可将自动终止。如果您(i)拥有产品的过时版本或(ii)由于您没有及时支付维护费而没有进行维护，但希望更新您的产品版本，您必须支付任何未支付的费用，并且可能需要支付额外费用转移或转换任何旧数据。EFI保留对产品的所有过时版本停止维护的权利。

## 6. 有限保证及免责声明。

(a). Limited Warranties. EFI warrants to you that (i) EFI has the right to grant the License, (ii) subject to your timely payment of all applicable Fees, the Products as delivered to you will perform materially in accordance with EFI's then-current, applicable specifications if all available updates, upgrades, and bug-fixes are properly installed, and (iii) any Professional Services you purchase will be provided in good and workmanlike manner consistent with generally accepted industry standards. This warranty does not apply to defects attributable to (A) any equipment or software not provided or approved for use by EFI, (B) any modification of the Product by you, your employees, or any third party acting on your behalf, (C) any accident, neglect, misuse, or abuse by you, your employees, or any third party acting on your behalf, or (D) exposure of the Product to conditions outside the range of environmental, power, and operating specifications provided by EFI. You shall cooperate fully and promptly with EFI's attempts to identify the cause of any claimed breach of this limited warranty.

(b). Security of Your Systems. You are solely responsible for (i) ensuring the confidentiality, security, and integrity of your network connectivity, data, and servers, (ii) preventing and bearing the risk of any loss or damage to any data on your servers, and (iii) maintaining archive and backup copies of any data.

(c). WARRANTY DISCLAIMER AND REMEDIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. EFI, ITS SUPPLIERS, AND LICENSORS SPECIFICALLY DISCLAIM ANY OTHER WARRANTIES AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; ANY WARRANTIES RELATING TO SECURITY; AND ANY WARRANTIES THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED, OR ERROR-FREE. EFI MAKES NO WARRANTY, IMPLIED OR OTHERWISE, REGARDING THE PERFORMANCE OR RELIABILITY OF ANY OTHER THIRD PARTY PRODUCTS, OR SERVICES.

(a). 有限保证。EFI向您保证：(i)EFI有权授予许可，(ii)在您及时支付所有适用费用的前提下，如果已适当安装所有可用的更新、升级和错误修复程序，向您交付的产品将在实质上按EFI当时适用的规范执行，以及 (iii) 您购买的任何专业服务将以符合广泛认可行业标准的良好且技能熟练方式提供。本保证不适用于以下原因造成的缺陷：(A)任何并非EFI提供或批准使用的设备或软件；(B)您、您的员工或代表您的任何第三方对产品进行的任何修改；(C)您、您的员工或代表您的任何第三方的任何事故、疏忽、误用或滥用；或(D)产品暴露于EFI提供的环境、功率和操作规范范围之外的条件下。您应充分并迅速配合EFI查明任何声称违反本有限保证的事由。

(b). 您的系统安全。您应自行负责：(i)确保您的网络连接、数据和服务器的保密性、安全性和完整性，(ii)预防并承担服务器上任何数据丢失或损坏的风险，以及(iii)维护任何数据的存档和备份。

(c). 保证免责声明和补救。在适用法律允许的最大限度内，本协议中的保证和补救是排他性的，并取代所有其他保证和补救。EFI及其供应商和许可方特别声明不作任何其他保证和补救，包括但不限于：有关适销性、针对特定用途的适用性和不侵权的暗示保证；有关安全性的任何保证；以及产品的操作将不会中断或无错误的任何保证。EFI对任何其他第三方产品或服务的性能或可靠性不作任何暗示或其他保证。

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOLE AND EXCLUSIVE REMEDY TO WHICH YOU ARE ENTITLED FOR BREACH OF THESE LIMITED WARRANTIES, AND THE ENTIRE LIABILITY OF EFI AND ITS SUPPLIERS RELATING TO BREACH OF THESE LIMITED WARRANTIES, IS, AT EFI'S OPTION, TO (1) REPAIR OR REPLACE THE PRODUCT OR RE-PERFORM THE SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY, OR (2) PROVIDE A REFUND OF THE THEN-CURRENT REASONABLE COMMERCIAL VALUE (IF ANY) FOR THE PRODUCT OR SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY. EXCEPT AS PROVIDED IN THIS AGREEMENT, THERE ARE NO REFUNDS, RETURNS, EXCHANGES, OR REPLACEMENTS.

## 7. Infringement Indemnification.

EFI shall indemnify you from IP Claims and reimburse you for damages paid by you to the party bringing the IP Claim pursuant to a final, non-appealable judgment that the Product directly infringes any Third Party IP Rights. If you do not notify EFI in writing within 10 business days of learning of the IP Claim, and give EFI proper and full information, assistance, and exclusive authority to defend or settle the IP Claim, EFI will be relieved of its obligations under this Section. If the Product or any part of it is in EFI's opinion likely to become the subject of a claim of infringement of Third Party IP Rights, or if it is adjudicatively determined that the Product or any part of it infringes Third Party IP Rights, EFI may at its option (i) obtain for you a license or right to use the Third Party IP Rights so you can continue to use the Product, or (ii) replace or modify the Product with other suitable and reasonably equivalent non-infringing technology or parts, or (iii) if it is not commercially reasonable to take the actions described in clauses (i) or (ii) in this sentence, terminate your License and, if you return the Product to EFI, refund a portion of the license fee paid by you equal to the then-current reasonable commercial value (if any) of the Product. EFI shall not be responsible, liable, or obligated to indemnify or reimburse you if the alleged infringement arises out of (i) compliance with your requirements or specifications that are outside EFI's standard specifications for the Product, (ii) any addition or incorporation to or modification of the Product at your request, (iii) any combination of the Product with any product or software not provided by EFI, or (iv) use of the Product in the practice of a process or system other than that for which it was intended. In any event as described in the preceding sentence, you shall defend and/or settle any claim brought against EFI at your own expense, and shall indemnify EFI against any costs, legal fees, other expenses, and damages required for the defense or settlement of the claim.

THE RIGHTS GRANTED TO YOU IN THIS SECTION ARE YOUR SOLE AND EXCLUSIVE REMEDIES FOR ANY ALLEGED INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## 8. LIMITATION OF LIABILITY.

在适用法律允许的最大限度内，您对于违反有限保证有权采取的唯一和排他性的补救，EFI及其供应商因违反有限保证产生的全部责任是根据EFI的选择：(1)修理或更换不符合有限保证的产品或重新提供服务，或(2)退回不符合有限保证的产品或服务的当时合理的商业价值（如果有）。除非本协议另有规定，不提供任何退款、退货、交换或替换服务。

## 7. 侵权赔偿。

EFI 应赔偿针对您的知识产权索赔，并补偿您因不可上诉的最终判决裁定产品直接侵犯任何第三方知识产权而向知识产权索赔的发起方支付的赔偿金。如果您未在获悉知识产权索赔后10个工作日内向EFI发出书面通知，也未向EFI提供适当和充分的信息、协助以及抗辩或和解知识产权索赔的专属权限，EFI将被免除本节规定的义务。如果EFI认为产品或其任何部分可能成为第三方知识产权侵权索赔的对象，或经裁决确定产品或其任何部分侵犯第三方知识产权，EFI可选择：(i)为您取得使用第三方知识产权的许可或权利，以便您可以继续使用产品，或(ii)以其他合适且合理等效的非侵权技术或部件替换或修改产品，或(iii)如果采取(i)或(ii)所述的行动在商业上不合理，将终止您的许可证。如果您将产品退回EFI，将退还您支付的部分许可费，金额相当于产品当时的合理商业价值（如果有）。如果被诉侵权由以下原因造成，EFI不承担任何责任，也没有义务对您进行赔偿或补偿：(i)符合您的要求或规范，但不属于EFI的产品标准规范，(ii)按您的要求对产品进行任何添加、合并或修改，(iii)将产品与并非EFI提供的任何产品或软件进行任何组合；或(iv)将产品用于非预定用途的过程或系统。在上句所述的任何情况下，您应承担费用为EFI抗辩和/或和解任何针对EFI发起的索赔，并应赔偿EFI抗辩或和解索赔所需的任何费用、法律费用、其他支出和损害赔偿。

本节授予您的权利是您对任何第三方知识产权侵权起诉的唯一补救。

## 8. 责任限制。

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL EFI OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EFI IS NOT RESPONSIBLE FOR ANY LOST PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCT, LOSS OF DATA, OR THE COST OF RECOVERING ANY DATA. EXCEPT FOR INSTANCES INVOLVING EFI'S WILLFUL MISCONDUCT, EFI WILL NOT BE LIABLE FOR DAMAGES ARISING FROM ANY BREACH, UNAUTHORIZED ACCESS, MISUSE, OR INTRUSION RELATED TO YOUR DATA ON EFI'S OR ITS SUPPLIERS' SERVERS OR ANY NETWORK YOU USE IN CONNECTION WITH THE PRODUCT.

IN NO EVENT WILL EFI'S TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO THE PRODUCTS, SERVICES, ACCESS, AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, UNDER STATUTE, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY YOU IN THE 12 MONTHS PRECEDING THE CLAIM FOR THE EFI PRODUCT, SERVICES, OR ACCESS GIVING RISE TO THE CLAIM. YOU AGREE THAT THIS AMOUNT IS SUFFICIENT TO SATISFY THE ESSENTIAL PURPOSE OF THIS AGREEMENT AND THAT THE PRICE OF THE PRODUCT, PROFESSIONAL SERVICES, OR ACCESS REFLECTS THIS ALLOCATION OF RISK.

THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS FORM AN ESSENTIAL ELEMENT OF THIS AGREEMENT, WITHOUT WHICH EFI WOULD NOT HAVE LICENSED OR SOLD THE PRODUCT TO YOU OR PROVIDED YOU WITH ACCESS.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS OF LIABILITY IN THIS AGREEMENT, SOME OR ALL OF THEM MAY NOT APPLY TO YOU.

## 9. Proprietary Rights and Confidential Information.

(a). No Implied Conveyance of Proprietary Rights. The Product, Documentation, and any Work Product are the valuable, confidential, and proprietary property of EFI, its suppliers and licensors. EFI is not conveying any of its Intellectual Property Rights, except the limited rights specified in this Agreement. You shall maintain and reproduce all copyright, trademark, patent, and other proprietary notices on the Product in the same form and manner as delivered by EFI.

在法律不禁止的限度内，在任何情况下，EFI或其供应商或许可方均不对与任何间接、特殊、附带、后果性、依赖性、惩戒性或惩罚性的损害负责，无论其因何产生，基于何种法律责任，即使已被告知可能发生此类损害。EFI不对任何利润或收入损失、产品使用损失、数据损失或恢复任何数据的费用负责。除涉及EFI有故意不当行为的情况外，对您在EFI或其供应商的服务器或您使用的与产品有关的任何网络上的数据的任何违反、未经授权的访问、误用或入侵所造成的损害，EFI概不负责。

在任何情况下，EFI对因产品、服务、访问和/或本协议引起的或与之相关的所有索赔的全部责任，无论诉讼方式如何（合同、侵权、依据法规等），均不会超过您在索赔前12个月期间对引起索赔的EFI产品、服务或访问实际支付的费用总额。您同意该金额已充分满足本协议的根本目的，并同意产品、专业服务或访问的价格反映所述风险分配。

上述责任限制和免责声明构成本协议的一个要件，如果没有此要件，EFI将不会向您授予产品许可、出售产品或向您提供访问权限。

由于某些司法管辖区不允许部分或全部排除和/或限制本协议下的责任，所以上述部分或全部的排除和限制可能对您不适用。

## 9. 专有权利和保密信息。

(a). 不暗示专有权利转让。产品、文件和任何工作成果都是EFI及其供应商和许可方的宝贵、机密和专有财产。除本协议规定的有限权利外，EFI不转让其任何知识产权。您应以EFI交付的相同形式和方式维持和复制产品的所有版权、商标、专利和其他专有权利通知。

(b). Protection of Information. You shall not disclose any of EFI's Confidential Information, and shall take precautions with respect to EFI's Products and Confidential Information that are at least as protective as you take to protect your own confidential information and proprietary rights of the greatest sensitivity. You shall advise your employees and authorized independent contractors of the confidential and proprietary nature of the Product and EFI's Confidential Information and of the restrictions imposed by this Agreement, and confine access to the Product and EFI's Confidential Information to those individuals who need it in the ordinary course and scope of their employment or relationship with you. Except as specified in this Agreement, you shall not directly or indirectly disclose any part of the Product, EFI's Confidential Information, or Documentation to any third party.

(c). Termination; Injunctive Relief. Your violation of the confidentiality obligations or of EFI's Intellectual Property Rights may cause irreparable damage that cannot be fully remedied by money damages. In the event of any actual or threatened violation, you agree that EFI will be entitled, in addition to any other remedy available to it, to (i) terminate this Agreement, retake possession of the Product, execute the License Key, and/or terminate Access, and/or (ii) obtain injunctive or other equitable relief from any court of competent jurisdiction to prevent any further violation.

(d). Use of Your Trademarks and Logos. Subject to any reasonable use guidelines, you grant EFI a non-exclusive, worldwide, royalty-free license to use Customer Marks in connection with this Agreement, for use with the Product, for promoting EFI's Products in marketing materials, print, or on-line advertising, and for identifying you as an EFI customer. You shall also secure for EFI any rights or sublicenses required for EFI's use of the trademarks or service marks of your Affiliates. EFI acknowledges that (i) Customer Marks are owned solely and exclusively by you or your Affiliates, (ii) EFI has no other rights, title, or interest in or to Customer Marks, and (iii) all use and goodwill of Customer Marks by EFI inures to the benefit of you and your Affiliates.

## 10. Termination.

(a). This Agreement may be terminated immediately upon written notice to the other party (i) by EFI, if you fail to make any required payment other than Maintenance Fees, (ii) by the non-breaching party, if you or EFI fails to cure a material breach within 30 days after written notice from the non-breaching party, or (iii) by EFI, if you cease doing business as a going concern, become the object of voluntary or involuntary bankruptcy or liquidation proceedings that are not dismissed within 60 days after the initial filing, or if a receiver is appointed with respect to a substantial portion of your assets.

(b). Upon termination, you shall promptly (i) pay EFI all unpaid fees accrued before the termination, (ii) return all EFI Confidential Information and the Product, and (iii) return any materials, programs, manuals, and other items related to or derived from the Product in your possession or control. EFI shall use commercially reasonable efforts to provide you with any proprietary data belonging to you in the format in which it is stored by EFI at the time of termination.

(b). 信息的保护。您不得泄露EFI的任何保密信息，并且应采取至少与保护您自身的保密信息和最敏感的专有权利相同的预防措施保护EFI的产品和保密信息。您应向员工和授权独立承包商指出产品和EFI保密信息的保密和专有性质以及本协议规定的限制，并仅限于在正常雇佣或与您建立关系过程中和范围下有必要知悉的个人访问产品和EFI保密信息。除本协议另有规定外，您不得直接或间接向任何第三方披露产品的任何部分、EFI的保密信息或文件。

(c). 终止；禁令救济。您对保密义务的违反或EFI知识产权的侵犯可能导致无法弥补的损失，且不能够通过金钱赔偿实现充分补救。在实际违反或威胁违反的情况下，您同意EFI将在其可用的任何其他补救之外有权：(i)终止本协议，重新占有产品，执行许可证密钥和/或终止访问，和/或(ii)从任何具有适当司法管辖权的法院取得禁令或其他衡平法救济，以阻止任何进一步的违反。

(d). 使用您的商标和标志。在遵守任何合理使用指南的前提下，您授予EFI在全球范围内的非独占和无特许使用费的许可，允许将本协议相关的客户标志用于产品，推广EFI产品的营销材料、印刷品或在线广告，并且将您标识为EFI的客户。您还应保证为EFI取得使用您的关联公司的商标或服务标志所需的任何权利或分许可。EFI承认：(i)客户标志由您或您的关联公司独自拥有，(ii)EFI对客户标志没有任何其他权利、所有权或利益，(iii)EFI对客户标志的所有使用和商誉符合您和您的关联公司的利益。

## 10. 终止。

(a). 如发生以下任何情形，一方可立即向另一方发出书面通知终止本协议：(i)如果您未能支付维护费以外的任何要求款项，由EFI终止，(ii)如果您或EFI在非违约方发出书面通知后30天内未能纠正重大违约行为，由非违约方终止，或(iii)如果您不在作为持续经营的企业开展业务，成为自愿或非自愿破产或清算程序的对象，并且该程序在首次申请后60天内未被驳回，或如果您的大部分资产被指定接管人，由EFI终止。

(b). 终止时，您应立即：(i)向EFI支付终止前应计的所有未付费用，(ii)退回所有EFI保密信息和产品，(iii)退回与您占有或控制的产品有关或衍生的任何材料、程序、手册和其他物品。EFI应尽商业上的合理努力，以终止时EFI存储的格式向您提供属于您的任何专有数据。



## 11. Audit Rights.

EFI may audit your use of or Access to the Product. Any audit will take place after prior notice to you, during regular business hours, and in a manner that does not unreasonably interfere with your normal business. If the audit shows that you are using or accessing the Product in a way that violates this Agreement, EFI may invoice you for such use or Access, including late fees, interest, and expenses associated with the audit. If you do not timely pay that invoice, EFI may exercise its termination rights and pursue any other rights or remedies available to it.

## 12. Consent to Use Data.

EFI may collect and use technical data and related information to facilitate providing and/or confirming authorized use of Products, Access, Professional Services, and/or Maintenance to and by you. Subject to EFI's then-current privacy policy (available at <https://www.efi.com/legal/privacy/>) and applicable laws and regulations, EFI may (i) use this information to improve its products, to provide customized services or technologies to you, and/or to confirm authorized use, (ii) transfer this information to EFI's affiliates, agents, and partners, and (iii) transfer this information to the United States and/or any other country where EFI or its affiliates, agents, and partners maintain facilities.

## 13. Compliance with Laws.

(a). Export Law Compliance. The Product and related technology, information, and materials are subject to the export laws and regulations of the United States. You shall comply with those and any other applicable export laws or regulations. You are solely responsible for obtaining any necessary export licenses and exemptions. The Product and related technology, information, and materials may not be exported or re-exported to any U.S.-embargoed country, to any person or entity on any list of prohibited parties designated by the U.S. government, or otherwise in violation of any export law or regulation.

(b). Compliance with Laws. You may only use the Product in compliance with all applicable laws and regulations. Upon written notice to you, EFI may modify or suspend your use of or Access to the Product as necessary to comply with any law or regulation. Both parties acknowledge their responsibilities and commitments to abide by and comply with international anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act and the United Kingdom Anti-Bribery Act, and any amendments and regulations relating to those laws, in addition to each of our own ethical guidelines (EFI's Code of Conduct is available online at <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Specifically, for example, no employee, or any individual or entity acting on behalf of or for the benefit of either EFI or Customer, may give or receive anything of value, or anything that may be perceived as valuable, to or from a government official or any other individual for the purpose of influencing any act, securing any improper advantage, or obtaining or retaining business.

## 11. 审计权。

EFI可审计您对产品的使用或访问。任何审计都将在向您发出事先通知后于正常营业时间内进行，并且不会采取不合理的方式干扰您的正常业务。如果审计显示您使用或访问产品的方式违反本协议，EFI可就该使用或访问向您开具发票，包括滞纳金、利息和与审计相关的费用。如果您未能及时支付该发票，EFI可行使终止权并寻求任何其他权利或补救。

## 12. 同意使用数据。

EFI可能收集和使用技术数据和相关信息，以便向您提供和/或确认您对产品、访问、专业服务和/或维护的授权使用。根据EFI最新的隐私政策（详情见 <https://www.efi.com/legal/privacy/>）以及适用的法律和法规，EFI可(i)使用这些信息改进自己的产品，向您提供定制服务或技术和/或确认授权使用，(ii)将这些信息传输给自己的附属机构、代理和合作伙伴，以及(iii)将该信息传输到美国和/或EFI及其附属机构、代理和合作伙伴设有办事处的任何其他国家。

## 13. 遵守法律。

(a). 遵守出口法律。产品及相关技术、信息和材料受美国出口法律和法规的约束。您必须遵守美国法律和法规以及任何其他适用的出口法律和法规。您应自行负责取得任何必要的出口许可和豁免。产品及相关技术、信息和材料出口或再出口到任何美国禁运国家、美国政府指定的任何禁运方名单上的任何个人或实体、或以其他方式违反任何出口法律或法规。

(b). 遵守法律。您只能在遵守所有适用法律和法规的情况下使用产品。向您发出书面通知后，EFI可在必要时修改或暂停您对产品的使用或访问，以遵守任何法律或法规。双方承认各自均有责任并承诺遵守和履行国际反腐败法律，包括但不限于美国《反海外腐败法》和英国《反贿赂法》，与这些法律有关的任何修正案和条例，以及双方各自的道德准则（EFI《职业守则》可通过以下网址在线查看 <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>）。具体而言，例如任何员工或代表EFI或客户或为其利益行事的任何个人或实体，均不得出于影响任何行为、取得任何不当利益、获取或保留业务之目的，向政府官员或任何其他个人赠送或接受任何有价值的物品或可能被视作为有价值的物品。

## 14. General Provisions.

(a). Taxes. Except with respect to income recognized by EFI, you are liable for all tariffs, duties, and taxes, however designated or levied, based on your possession, use of, or Access to the Product, this Agreement, and/or any Professional Services, including but not limited to sales, use, value added, excise, services, personal property, or other taxes.

(b). Governing Law. This Agreement is not governed by the 1980 UN Convention on Contracts for the International Sales of Goods or any other international treaty or convention. Rather, this Agreement is governed in all respects by the laws of the State of California, USA, without regard to conflicts of laws principles. For all disputes related to this Agreement, the Product, Access, or any services provided under this Agreement, each party consents to the exclusive personal jurisdiction and venue of the state and federal courts in and for Santa Clara County, California, USA.

(c). Severability; Interpretation. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by any court of competent jurisdiction, that provision will be fully severable and this Agreement will be construed and enforced as if it were not included. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor or against either party. The captions are for convenience only and do not affect the scope, intent, or meaning of the provisions. Any failure or delay to enforce any provision of this Agreement will not be deemed a waiver of EFI's right to do so.

(d). No Assignment. Assignment or transfer of this Agreement in its entirety, including all Licenses purchased, whether voluntarily, by operation of law, or otherwise, requires EFI's prior written consent, which may be withheld, delayed, or conditioned in EFI's sole discretion, and may require payment of a License transfer fee. Partial assignment or transfer of this Agreement, including a portion of Licenses purchased, whether voluntarily, by operation of law, or otherwise, is prohibited. Any merger, consolidation or acquisition of Customer or other transfer of all or substantially all of the shares or assets of Customer is deemed to be an assignment under this Agreement. Any attempted assignment or transfer without EFI's consent is void.

(e). Language. This Agreement is only in English, which is controlling in all respects. If EFI has provided you with a translation, the translation is for your convenience only and the English-language version, not the translation, is legally binding. If there are any conflicts or inconsistencies between the English-language version and a translation, the English-language version controls. Any notices relating to this Agreement must be in writing in English.

## 14. 一般条款。

(a). 税收。除EFI确认的收入外，您应承担因占有、使用或访问产品、本协议和/或任何专业服务产生的所有关税、税款和税收（不论以何种方式指定或征收），包括但不限于营业税、使用税、增值税、消费税、服务税、个人财产税或其他税款。

(b). 管辖法律。《1980年联合国国际货物销售合同公约》或任何其他国际协定或公约不适用于本协议。然而，本协议在所有方面均受加利福尼亚州法律管辖，不考虑法律冲突的原则。对于与本协议、产品、访问或本协议下提供的任何服务相关的所有争议，各方均同意接受美国加利福尼亚州圣克拉拉县的州法院和联邦法院的专属个人管辖权并将其作为审判地。

(c). 可分割性；解释。如果本协议的任何条款被任何具有适当司法管辖权的法院认定为不合法、无效或不可强制执行，该条款将可完全分割，本协议将继续解读和实施，犹如该条款不包含在内。本协议将依其条款公允解释，无任何有利于或不利于任一方的严格解释。标题仅为行文方便而设，不影响条款的范围、意图或含义。EFI未能或延迟执行本协议的任何条款均不视为放弃执行。

(d). 不转让。本协议之全部转让或转移，包括购买的全部许可证，不论是否出于自愿、依据法律规定或其他方式，均要求获取EFI的事先书面同意。EFI可酌情决定拒绝、延迟或附加条件，并且可以要求支付许可证转让费。本协议之部分转让或转移均受禁止，包括购买的部分许可证，不论是否出于自愿、依据法律规定或其他方式。对客户的所有任何兼并、合并或收购，或客户全部或几乎全部股份或资产的其他转让，均被视为本协议项下的转让。任何未经EFI同意的企图转让或转移均无效。

(e). 语言。本协议仅提供英语版本，在所有方面均以英语为准。EFI可能仅为了方便您阅读提供翻译版本。英语版本应具有合法约束力，而并非翻译版本。若英语版本和翻译版本之间存在任何冲突或不一致之处，应以英语版本为准。与本协议有关的任何通知必须以英文书写。

(f). Entire Agreement and Modification. With respect to the subject matter or any term of this Agreement: (i) this Agreement constitutes the entire understanding of the parties; (ii) this Agreement supersedes all prior and contemporaneous communications and understandings (including but not limited to discussions, representations, warranties, inducements, promises, and agreements); (iii) there are no such communications or understandings not explicitly contained herein; (iv) neither party has relied on any such communications or understandings except as explicitly contained in this Agreement; and (v) any waiver, modification, or amendment will be effective only if in a writing signed by the parties, where email does not constitute a signed writing.

(g). Orders and Acceptance. All orders for Products or Professional Services made pursuant to this Agreement are non-cancelable, non-refundable and must be submitted at least fifteen (15) days prior to the requested order delivery date. For any given order, you shall make the order and corresponding payment to EFI or its subsidiary or Affiliate depending upon which company is making the sale of Products or Professional Services for that order. Orders are not binding without written notification of acceptance from EFI. This Agreement governs all subsequent orders, and nothing contained in Customer's purchase orders or other communications will in any way modify this Agreement.

(h). Independent Contractors. You and EFI, and our respective employees and representatives, are and will be independent contractors with respect to the other party. Neither party by virtue of this Agreement has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

(i). Survival. The provisions of this Agreement that relate to fees and payment terms, ownership of intellectual property and proprietary rights, export law compliance, termination, confidentiality, infringement indemnification, warranty disclaimers, limitation of liability, governing law, survivability, force majeure, severability and interpretation, definitions, modification and use of software products owned or distributed by Microsoft or Oracle included in an EFI Product will survive termination of this Agreement.

(j). Force Majeure. Except for payment of monies, no party will be liable for its failure to perform any obligations on account of strikes, shortages, failure or acts of suppliers, riots, insurrection, fires, flood, storm, explosions, acts of God, war, military operations, acts of terrorism whether actual or threatened, acts of a public enemy, epidemics, quarantines, governmental action, labor conditions, earthquakes, material shortages, or any cause that is similar to those enumerated or beyond the reasonable control of the affected party.

(f). 完整协议和修改。就本协议主题事项或任何条款而言：(i)本协议构成双方的完整理解；(ii)本协议取代先前和同期签订的一切沟通和谅解（包括但不限于讨论、陈述、保证、诱因、承诺和协议）；(iii)没有本协议未明确包含的任何此类沟通或谅解；(iv)除本协议明确包含的内容外，任一方均未依赖任何此类沟通或谅解；以及(v)任何放弃、修改或修正仅采取双方签署的书面形式方可生效，而电子邮件不构成签署的书面形式。

(g). 订单和接受。根据本协议发出的所有产品或专业服务订单均不可取消和不可退款，且必须在要求的订单交付日期之前至少十五（15）天提交。对于任何特定的订单，您应将订单和相应的款项交给EFI或其子公司或关联公司，具体取决于为该订单出售产品或提供专业服务的公司。未经EFI发出书面接受通知，订单不具有约束力。本协议适用于所有随后发出的订单，客户采购订单或其他通信中的任何内容均不会以任何方式修改本协议。

(h). 独立承包商。您和EFI以及我们各自的员工和代表是且将是对方的独立承包商。任一方均不得因本协议而有任何权利、权力或权限代表另一方行事或产生任何明示或暗示的义务。

(i). 存续。本协议中的费用和支付条件、知识产权和专有权利的所有权、遵守出口法律、终止、保密、侵权赔偿、保证免责声明、责任限制、管辖法律、存续、不可抗力、可分割性和解释、定义、EFI产品中包含的Microsoft或Oracle拥有或分发的软件产品的修改和使用条款将在本协议终止后继续生效。

(j). 不可抗力。除付款外，任一方将不会因罢工、短缺、供应商的不作为或作为、暴动、暴乱、火灾、洪水、暴风雨、爆炸、天灾、战争、军事行动、实际或威胁的恐怖主义行为、公敌行为、流行病、检疫、政府行动、劳动条件、地震、材料短缺、或类似于上述原因或超出受影响方合理控制的任何原因而未能履行任何义务而负有任何责任。

(k). U.S. Government Restricted Rights. Use, duplication, or disclosure of the Product by the United States Government is subject to restrictions as set forth in FAR 12.212 or DFARS 227.7202-3 - 227.7202-4 and, to the extent required under U.S. federal law, the minimum restricted rights as set out in FAR 52.227-14, Restricted Rights Notice (June 1987) Alternate III(g)(3) (June 1987) or FAR 52.227-19 (June 1987). To the extent any technical data is provided pursuant to the Agreement, such data is protected per FAR 12.211 and DFARS 227.7102-2 and to the extent explicitly required by the U.S. Government, is subject to limited rights as set out in DFARS 252.227.7015 (November 1995) and DFARS 252.227-7037 (September 1999). If any of the above-referenced agency regulations are modified or superseded, the subsequent equivalent regulation shall apply. The name of the Contractor is Electronics For Imaging, Inc.

## 15. Product-Specific and Third Party Provisions.

If you have obtained a License for certain Products, some of the following terms and conditions might apply to you.

### (a). Products that include Microsoft Software (such as Windows or SQL Server).

(i). The term “Product” as used in this Agreement includes certain Microsoft software and related documentation, associated media, “online” or electronic documentation, upgrades and updates. EFI does not own these products and the use thereof is subject to certain rights and limitations.

(ii). Microsoft is not responsible for any support services for the Product. Notwithstanding the foregoing, in the event any support issues arise related to the Microsoft software that cannot be resolved by EFI, support to you may be provided by Microsoft pursuant to the Microsoft Premier support services agreement, or a similar type agreement, between EFI and Microsoft.

(iii). The Product is not fault-tolerant. The Product is not designed or intended for use in any situation where failure or fault of any kind of the Product could lead to death or serious bodily injury of any person, or to severe physical or environmental damage (“High Risk Use”). You are not licensed to use the Product in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug, and Cosmetic Act. You shall not use the Product in, or in connection with, any High Risk Use. You are responsible for taking all appropriate measures to ensure the safe use of the Product if used for such purposes and EFI and its suppliers, including Microsoft, will not be liable for any claims or damages arising from such use.

### (b). Products that include Software Products Owned or Distributed by Oracle.

(k). 美国政府限制权利。美国政府部门使用、复制或披露本软件的行为受FAR 12.212或DFARS 227.7202-3 - 227.7202-4规定的限制条款的约束，并且在美国联邦法律规定的范围内，受FAR 52.227-14、限制权利通知（1987年6月）Alternate III(g)(3)（1987年6月）或FAR 52.227-19（1987年6月）规定的最低限制权利的约束。如果按照本协议提供任何技术数据，在此范围内这些数据受FAR 12.211和DFARS 227.7102-2规定的保护，并且在美国政府明确规定的范围内，受DFARS 252.227.7015（1995年11月）和DFARS 252.227-7037（1999年9月）规定的有限权利的约束。上述政府部门法规如有修改或被取代，应当以后来具有同等效力的法规为准。Electronics For Imaging, Inc.是承包商名称。

## 15. 产品特定和第三方条款。

如果您已经取得特定产品的许可，以下部分条款和条件可能适用于您。

### (a). 包含Microsoft软件（例如Windows或SQL Server）的产品。

(i). 本协议中使用的“产品”一词包含特定的Microsoft软件和相关文件、相关媒介、“在线”或电子文件、升级和更新。EFI不拥有这些产品，其使用须服从特定权利和限制。

(ii). Microsoft不负责提供产品的任何支持服务。尽管有上述规定，但如果产生与Microsoft软件相关的任何支持问题并且EFI无法解决，Microsoft可根据EFI和Microsoft之间签订的Microsoft Premier支持服务协议或类似协议向您提供支持。

(iii). 产品不具有容错性。产品设计或用途并非用于任何类型的产品故障或过错可导致死亡或严重人身伤害，或导致严重物理或环境损害的情形（“高风险用途”）。您未获授权将产品用于高风险用途，或与高风险用途同时使用。严格禁止高风险用途。高风险用途包括但不限于：飞机或其他大规模载人运输方式、核设施或化学设施，以及《联邦食品、药品和化妆品法》规定的第三类医疗器械。您不应将产品用于高风险用途或与之相关的用途。倘若用于上述用途，您应负责采取一切适当的措施确保产品的安全使用，EFI及其供应商（包括Microsoft）将不会对因该用途导致的任何索赔或损害负有责任。

### (b). 包含Oracle拥有或分发软件产品的产品。

(i). The term “Product” as used in this Agreement includes certain software products provided by EFI that are owned or distributed by Oracle USA, Inc. (“Oracle”) and related program documentation (the “Oracle Programs”); EFI does not own the Oracle Programs and the use thereof is subject to certain rights and limitations. The Oracle Programs included herein are subject to a restricted use license and can only be used in conjunction with the Product. Oracle or its licensors retain all ownership of intellectual property rights to the Oracle Programs. You are hereby notified that Oracle is a supplier of EFI and a third-party beneficiary to this Agreement to the extent that this Agreement contains provisions which relate to your use of the Oracle Programs. Such provisions are made expressly for the benefit of Oracle and are enforceable by Oracle in addition to EFI.

(ii). You acknowledge and agree that you are prohibited from (a) publishing any results of benchmark tests run on the Oracle Programs, (b) using the Oracle Programs for rental, timesharing, subscription service, hosting, or outsourcing, and (c) removing or modifying any program markings or notice of Oracle’s or Oracle’s licensors’ proprietary rights.

(iii). To the extent not prohibited by law, in no event will Oracle be liable for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Oracle Programs.

(iv). You hereby permit EFI to (a) report any audit results obtained pursuant to this Agreement to Oracle to the extent such results are related to the Oracle Programs, or (b) assign such rights to audit your use of the Oracle Programs to Oracle.

(v). You are hereby notified that some Oracle Programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code is governed by the terms of this Agreement.

(vi). The Computer Information Transactions Act does not apply to this Agreement.

(vii). You acknowledge and agree that in the event a third party technology may be appropriate or necessary for use with some Oracle Programs, it will be specified in the Product package documentation or as otherwise noted, and such third party technology is licensed to you only for use with the Product under the terms of the third party license agreement specified in the Product package documentation or as otherwise noted, and not under the terms of this Agreement.

(c). E-commerce Applications.

(i). Use at Site Location. You may use or Access the Product only for production activity at the Site Location. If you have more than one production facility, you may not use or Access the Product for production activity at any facility other than the Site Location(s) for which you have been granted a license.

(i). 本协议中使用的“产品”一词包含EFI提供、Oracle USA, Inc. (“Oracle”) 拥有或分发的特定软件产品以及相关的程序文件 (“Oracle程序”)；EFI不拥有Oracle程序，因此其使用受特定权利和限制约束。本协议包含的Oracle程序受限制使用许可证的约束，只能与产品一起使用。Oracle或其许可方保留对Oracle程序全部知识产权的所有权。您特此被告知，本协议包含与您使用Oracle程序有关的条款时，Oracle既是EFI的供应商，也是本协议的第三方受益人。这些条款明确表示为Oracle的利益而制定，除EFI以外，Oracle也可以强制执行。

(ii).您承认并同意，您被禁止：(a) 发布在Oracle程序上运行的任何基准测试结果；(b) 将Oracle程序用于出租、分时共享、订阅服务、托管或外包；以及 (c) 删除或修改Oracle或Oracle许可方的任何程序标记或专有权利通知。

(iii).在法律不禁止的限度内，Oracle绝不会因使用Oracle程序造成的：(a) 任何损害，无论是直接、间接、附带、特殊、惩罚性还是后果性的，以及 (b) 任何利润、收入、数据或数据使用的损失，而负有任何责任。

(iv).您特此允许EFI：(a) 向Oracle报告根据本协议获得的、与Oracle程序有关的任何审计结果，或 (b) 将您使用Oracle程序的审计权利转让给Oracle。

(v).您特此被告知，某些Oracle程序可能包含Oracle作为该程序标准发货的一部分提供的源代码，这些源代码受本协议条款的约束。

(vi).《计算机信息交易法》不适用于本协议。

(vii).您承认并同意，在某些Oracle程序中使用第三方技术可能是合适或必要的，将在产品封装文件中指出或另行说明，并且该第三方技术仅许可给您与产品一起使用，所依据的是产品封装文件中指出或另行说明的第三方许可协议条款，而非本协议的条款。

(c). 电子商务应用。

(i). 在指定场地位置使用。您对产品的使用或访问只能用于指定场地位置的生产活动。如果您有不止一个生产工厂，您可以在指定场地位置以外已被授予许可的任何工厂为了生产活动使用或访问产品。

(ii). Links. If you have obtained a License for EFI e-Commerce Software, you represent and warrant that you have the right to create and maintain, or to allow EFI to create and maintain, all Links to the Product and any other websites mutually agreed upon between you and EFI. You shall incorporate EFI's "Powered by EFI" logo on any website utilizing EFI e-commerce Software.

(ii). Relationships with Third Parties. Use of or Access to the e-Commerce Product does not create a contract or other obligation between you and any of your customers or between EFI and any of your customers or vendors. EFI cannot and does not guarantee the performance of any of your customers, vendors, or other third parties. EFI will have no liability in connection with any dispute between you and any third party, and any third party dispute will not relieve you of any obligation to EFI under this Agreement.

(d). Open Source Software. Some versions of the Products contain open source software. Open source software is licensed to you under that software's own license terms, which can be found in the "Help," "About," "Read Me," or other specified portion of the Product. You are responsible for complying with any terms and conditions applicable to any open source software. To the extent that this Agreement imposes greater restrictions on you than the open source software license terms, the open source software license terms control, but solely with respect to the open source software.

## 16. Definitions.

"**Access**" means the connection to and use of a Product by Customer via an Internet web browser under the terms of this Agreement.

"**Affiliate**" means any entity directly or indirectly controlling, controlled by, or under common control with a party.

"**Agreement**" means this License and Purchase Agreement.

"**Confidential Information**" means any information that you have been informed or have a reasonable basis to believe is confidential to EFI, whether provided to you before, on, or after this Agreement, including, for example, ideas, programs, data, software, systems configurations, reports, projections, initiatives, customer data, or other business or technical information. Confidential Information includes any written information marked as confidential or proprietary, and any information disclosed orally or visually that is identified as confidential or proprietary at or around the time of its disclosure. All EFI Intellectual Property Rights and technical information related to the Product are Confidential Information whether or not marked as confidential or proprietary.

"**Customer Marks**" means your name and logo or other trademarks, service marks, or other marks.

"**Documentation**" means user's guides, manuals, and other information related to the Product or Professional Services.

(ii). 链接。如果您已获得EFI电子商务软件的许可证，您声明并保证您有权创建和维护或允许EFI创建和维护所有指向产品以及您与EFI约定的任何其他网站的链接。您应将EFI的"Powered by EFI"标识包含于任何使用EFI电子商务软件网站。

(ii). 与第三方的关系。使用或访问电子商务产品不会在您与您的任何客户之间或EFI与您的任何客户或供应商之间产生合同或其他义务。EFI不能够也不保证您的任何客户、供应商或其他第三方的履行。EFI对您与任何第三方之间的任何争议不承担任何责任，任何第三方争议将不会免除您在本协议下对EFI的任何义务。

(d). 开源软件。某些版本的产品包含开源软件。开源软件根据其自身的许可条款授予许可给您，详情参见产品的"帮助"、"关于"、"自述文件"或其他指定部分。您有责任遵守适用于任何开源软件的任何条款和条件。倘若本协议对您施加的限制大于开源软件许可条款，则以开源软件许可条款为准，但仅限于开源软件。

## 16. 定义。

"**访问**"是指客户根据本协议条款通过Internet网页浏览器连接和使用产品。

"**关联公司**"是指直接或间接控制一方、受一方控制或与一方处于共同控制之下的任何实体。

"**协议**"是指本许可和购买协议。

"**保密信息**"是指您已被告知或有合理依据认为对EFI具有保密性的任何信息，无论是在本协议签订之前、签订时还是之后向您提供，包括例如创意、程序、数据、软件、系统配置、报告、预测、提议、客户数据或其他业务或技术信息。保密信息包括标记为保密或专有的任何书面信息，以及任何在披露时或披露前后被确定为保密或专有的口头或视觉披露信息。所有与产品有关的EFI知识产权和技术信息均为保密信息，无论是否标记为保密或专有。

"**客户标志**"是指您的名称和标识、其他商标、服务标志，或其他标志。

"**文件**"是指用户指南、手册以及与产品或专业服务有关的其他信息。

“**EFI**” means Electronics For Imaging, Inc., Electronics for Imaging BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas De Informacao Ltda., alphagraph Team GmbH, or another EFI subsidiary or Affiliate referred to in the Purchase Documentation.

“**Excluded License**” means any license that requires as a condition of use, modification, and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge.

“**Fees**” means the fees for the Product, Access, or Professional Services, including any fees set forth in your Purchase Documentation, License fees, hardware fees, Term License Fees, Hosting Fees, Maintenance Fees, or other applicable fees. Unless otherwise specified in the Purchase Documentation, payments for any fees must be made within 30 days of the date of the invoice in the currency listed in the Purchase Documentation. Any amount not paid when due is subject to a service charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law, and EFI may defer shipments of Products and/or provision of services until all overdue payments are received. Payment of the service charge will not foreclose any other right that EFI may have as a consequence of late payment. In the event that EFI is required to take legal action to collect unpaid amounts, and EFI is successful in such action, Customer shall reimburse all costs and reasonable attorneys’ fees incurred by EFI in such action.

“**Hosting Fees**” means the hosting fees described in the Purchase Documentation. Unless otherwise specified in the Purchase Documentation, payment obligations for Hosting Fees commence on the first day of the next month following 30 days from the Start Date.

“**Initial Term**” means the three-year period of time beginning on the Start Date.

“**Intellectual Property Rights**” means, individually or collectively, any patent, copyright, trademark, service mark, trade secret, trade name, or other intellectual property right.

“**IP Claim**” means a lawsuit filed against you by a third party that is not a patent assertion entity or non-practicing entity.

“**License**” means the license granted to you for the Product you have obtained.

“**License Key**” means a programming code included in the Product that, if executed or deactivated, renders the Product or portions of it inoperable.

“**Link**” means a hypertext reference that, when activated, moves users from one website to another on the Internet.

“**EFI**” 是指 Electronics For Imaging, Inc., Electronics for Imaging BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas De Informacao Ltda., alphagraph Team GmbH, 或购买文件中提到的其他EFI子公司或关联公司。

“**已排除许可证**”是指任何要求以使用、修改和/或分发软件受已排除许可证约束作为条件的许可证，并且此类软件或与之组合和/或一起分发的其他软件必须 (i) 以源代码形式公开或分发； (ii) 为制作衍生作品授权；或 (iii) 免费再分发。

“**费用**”是指产品、访问或专业服务的费用，包括您的购买文件中规定的任何费用、许可费、硬件费、定期许可费、托管费、维护费或其他适用的费用。除非购买文件中另有规定，任何费用必须在发票日期后30天内以购买文件中所列的货币支付。任何到期未支付的款项将被收取服务费，服务费相当于每月百分之一点五(1.5%)或法律允许的最高金额，以较低者为准。EFI可推迟产品发货和/或服务提供，直到收到所有逾期付款。服务费的支付将不会排除EFI因逾期付款而享有的任何其他权利。如果EFI需要通过法律诉讼收回未支付的款项，并且EFI在该等诉讼中胜诉，客户应补偿EFI在该诉讼中产生的所有费用和合理的律师费。

“**托管费**”是指购买文件中所述的托管费。除非购买文件中另有规定，托管费的付款义务从开始日期30天后下一个月的第一天开始。

“**初始期限**”是指从开始日期起的三年期限。

“**知识产权**”是指单独或集体的任何专利、版权、商标、服务标志、商业秘密、商业名称或其他知识产权。

“**知识产权索赔**”是指并非专利主张实体或非执业实体的第三方对您发起的诉讼。

“**许可证**”是指对于您获得的产品授予您的许可证。

“**许可证密钥**”是指产品中包含的编程代码，如果执行或停用该代码，将使本软件或其部分无法操作。

“**链接**”是指激活时将用户从一个网站跳转至互联网上另一个网站的超文本引用。

“**Maintenance**” means (i) correction of material defects so that the Product will operate materially in conformity with the warranties in this Agreement, (ii) periodic updates that incorporate corrections of material defects and fixes of minor bugs in the Product, (iii) telephone or email/electronic consultation services regarding the use of the Product during EFI’s standard support hours, and (iv) enhancements and/or revisions to software components of the Product, which are subject to additional charge unless they are provided at no charge to substantially all other licensees.

“**Maintenance Fees**” means the support and/or maintenance fees charged by EFI and/or a third party for the Product. Unless otherwise specified in the Purchase Documentation, payment obligations for Maintenance Fees commence on the first day of the next month following 30 days from the Start Date and continue for 12 consecutive months thereafter, subject to any Maintenance renewal term(s). Any use of a virtual private network or other requirement that requires EFI to act outside of its normal processes in order to provide Maintenance to you may be subject to additional fees.

“**Maintenance Renewal Date**” means the anniversary of the start of the Maintenance coverage period stated on the first Software Maintenance invoice that EFI issued to you, whether issued pursuant to this Agreement or a prior agreement or Purchase Documentation.

“**Product**” means Software or hardware, and may also include third party software and documentation, downloads, on-line materials, bug fixes, patches, releases, release notes, updates, upgrades, technical support materials, and information related to the EFI software or hardware.

“**Professional Service(s)**” means any training, installation, implementation, customization and/or other professional services provided by EFI to Customer.

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