

SOFTWARE LICENSE AND SERVICES AGREEMENT

软件许可和服务协议

This Software License and Services Agreement (the "Agreement") is entered into between **TOPSUN Information Technology Co., LTD.** ("TOPSUN") and the customer identified below ("Customer") and consists of this execution page and each of the Schedules indicated below.

本软件许可和服务协议（以下称“协议”），由腾桑嘉诚（上海）信息科技股份有限公司（以下称“TOPSUN”）和下述用户（以下称“用户”）签订。本协议含签署页和下列各附件。

Schedule	Incorporated Yes/No
Schedule A – General Terms and Conditions	Yes
Schedule B – Licensed Software Terms and Conditions	Yes
Schedule C – Software Maintenance Terms and Conditions	Yes
Schedule D – Professional Services Terms and Conditions	Yes

附件	作为协议之组成是/否
附件 A – 一般条款和条件	是
附件 B – 被许可软件的条款和条件	是
附件 C – 软件维护条款和条件	是
附件 D – 专业服务条款和条件	是

This Agreement constitutes the full and complete statement of the agreement between the parties with respect to the subject matter hereof and supersedes any previous or contemporaneous agreements, understandings or communications, whether written or oral, relating to such subject matter. Other than an LSDA as defined in Schedule A, if Customer issues a purchase order, memorandum or other instrument covering the Software, as defined in Schedule B, or services provided under this Agreement, it is agreed that any terms and conditions contained therein that are additional to or inconsistent with this Agreement will not be binding on the parties. This Agreement may not be varied other than in writing, executed by the duly authorized representatives of both parties. Customer acknowledges that Customer has read this Agreement, understands it and agrees to be bound by its terms and conditions.

本协议构成双方间就协议主题事项所达成的全部完整协议，并取代双方此前或当前就该主题事项达成的所有书面或口头协议、谅解或沟通。除附件 A 中定义的 LSDA 外，双方同意，如果用户就软件（定义见附件 B）或根据本协议提供的服务出具订单、备忘录或其他文件，该等订单、备忘录或其他文件中未在本协议中涵盖或与本协议不一致的条款和条件将对双方不具约束力。非经书面形式作出，且经双方的授权代表签署，不得对本协议作出修改。用户确认其已审阅本协议，理解本协议的内容并且同意受本协议的条款和条件的约束。

This Agreement is written in both English and Chinese. Should there is any conflict between the English version and Chinese version, the English version shall prevail.

本协议由中文和英文书就。若中文版本和英文版本有任何的不一致，则以英文版本为准。

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the last date written below.

双方在下列所述的最后日期正式签署并提交本协议，以昭信守。

CUSTOMER:

用户:

(insert company name)

(插入公司名称)

By: _____

签署: _____

Name:

姓名:

Title:

职务:

Date:

日期:

Address:

地址:

City:

城市:

TOPSUN Information Technology Co., LTD.

腾乐嘉诚（上海）信息科技股份有限公司

By: _____

签署: _____

Name:

姓名:

Title:

职务:

Date:

日期:

By: _____

签署: _____

Name:

姓名:

Title:

职务:

Date:

日期:

Schedule A
GENERAL TERMS AND CONDITIONS

1. Applicability of this Schedule. The terms and conditions contained in this Schedule A apply to all Software licensed under Schedule B, all maintenance services provided under Schedule C and all professional services provided under Schedule D.

2. Ordering Software or Services. This Agreement is a master agreement under which multiple orders for Software, maintenance services, and/or professional services may be placed by customers. Orders for Software and maintenance services shall be placed on one or more Licensed Software Designation Agreements, or a similar ordering document that is acceptable in form to TOPSUN (each an "LSDA"). Each LSDA must incorporate this Agreement by reference. Orders for professional services shall be placed on a statement of work in a form that is acceptable to TOPSUN ("SOW"). Each SOW must incorporate this Agreement by reference. An individual LSDA or SOW may contain terms that are additional to those contained herein and are specific to the particular products or services offered therein.

3. Fees. Customer will pay such fees as are mutually agreed upon by the parties in writing for the Software, maintenance services and other services provided pursuant to this Agreement, including shipping, handling, transit insurance coverage and other charges identified in TOPSUN's quotation and any other charges mutually agreed by the parties.

4. Delivery and Installation of Software. TOPSUN, in its sole discretion, reserves the right to accept or reject any LSDA. Once an LSDA for Software is accepted by TOPSUN, delivery of the Software identified in the LSDA will occur when TOPSUN makes the Software available to the Customer by means of electronic download from a website specified by TOPSUN. In the alternative, within TOPSUN's discretion, TOPSUN also has the option of shipping media containing the Software to the Customer as an accommodation to the Customer or because certain elements of the Software are not available for electronic download. Unless otherwise provided in the LSDA, the Software will be delivered Incoterms 2010. Customer will, at its expense, obtain any necessary permits and consents to install the Software at the Customer's site. If Customer has purchased TOPSUN installation services, TOPSUN will install the Software, or cause it to be installed in accordance with a mutually agreed upon schedule.

5. Taxes. Customer is responsible for, and will remit directly to the appropriate tax authorities, or pay to or reimburse TOPSUN, all applicable taxes, assessments, duties, permits, fees and other charges of any nature or kind, now in force or enacted in the future ("Taxes"), however designated, assessed or levied, including, but not limited to all national, foreign, state, local, regional, provincial or municipal sales and/or use taxes, value added taxes, goods and services taxes, consumption taxes, personal property taxes, ad valorem taxes, custom duties, import fees, stamp duty, intangibles tax, registration fees, but not including taxes based on the net income of TOPSUN. Such amounts shall also include without limitation any penalties,

附件 A
一般条款和条件

1. 本附件的适用。 本附件 A 的条款和条件适用于附件 B 项下许可的所有软件、附件 C 项下提供的所有维护服务和附件 D 项下提供的所有专业服务。

2. 订购软件或服务。 本协议是主协议，根据本协议用户可以就软件、维护服务和/或专业服务下多个订单。软件和维护服务的订单应载于一份或多份许可软件确认协议或其形式为 TOPSUN 所接受的类似订单文件（每一份协议或文件称为一项“LSDA”）中。各 LSDA 必须通过提述并入本协议。专业服务的订单应载于其形式为 TOPSUN 所接受的工作说明书（下称“工作说明书”）中。各工作说明书必须通过提述并入本协议。各 LSDA 或工作说明书可包含本协议以外的针对该 LSDA 或工作说明书项下提供的特定产品或服务的条款。

3. 费用。 用户将支付双方以书面形式一致同意的软件、维护服务及根据本协议提供的其他服务的费用，包括装运、装卸、运输保险费用、TOPSUN 报价中确定的其他收费以及双方一致同意的任何其他收费。

4. 软件的交付和安装。 TOPSUN，依其单独裁量，保留接受或拒绝任何 LSDA 的权利。一旦软件的 LSDA 为 TOPSUN 所接受，LSDA 所确定的软件的交付将在 TOPSUN 使用户可通过从 TOPSUN 指定的网站以电子形式下载软件时完成。另一办法是为便于用户，或由于软件的某些要素无法以电子形式下载，TOPSUN 自由选择将含有软件的载体发送给用户。除非在 LSDA 中另有约定，TOPSUN 将以国际商会国际贸易术语解释通则 2010 的方式交付软件。用户将自担费用获取在用户所在地安装软件所需的任何必要的许可和同意。如用户已购买 TOPSUN 的安装服务，则 TOPSUN 将按照双方一致同意的时间表安装软件或促使他人安装软件。

5. 税款。 用户应负责并将经确认的、评估的或征收的所有现行有效或将来颁布的法律下的相关税收、估税、关税、许可费、费用与其它任何性质或种类的收费（以下称“税款”）直接汇给税务主管机构，或支付或偿付给 TOPSUN，包括但不限于国家、外国、州、当地、区域性、省级或市级的所有营业和/或使用税、增值税、货物及服务税、消费税、个人财产税、从价税、关税、进口费用、印花税、无形资产税、登记费用，但不包括基于 TOPSUN 的净收入征收的税款。该类款项金额还应包括但不限于因未按照法律要求的时间或方式支付任何此类税款而导

interest, fees, or other expenses, if any, incurred as the result of any such Taxes not being paid at the time or in the manner required by law. Taxes includes those amounts which are due based upon (i) transactions arising under this Agreement, (ii) amounts payable hereunder, (iii) the Software or other services being provided to the Customer hereunder, (iv) the subsequent use of such Software or services by the Customer, and/or (v) Customer's possession of the Software or services.

If Customer is exempt from sales tax, uses the product or services provided herein in an exempt manner, or otherwise deems itself not subject to sales tax, then Customer must provide a valid and executed exemption certificate, direct pay permit, or other such government approved documentation in good faith to TOPSUN.

If Customer is required by law to make any income tax deduction or to withhold income tax from any sum payable directly to TOPSUN hereunder, Customer shall promptly effect payment thereof to the applicable tax authorities, and shall also promptly provide TOPSUN with official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that the income taxes have been paid and to enable TOPSUN to support a claim for tax credit relief for such income tax payments made on its behalf by Customer. Failure of the Customer to provide official tax receipts or other evidence of payment to TOPSUN shall result in Customer paying directly to TOPSUN additional amounts equal to the amounts originally deducted or withheld from the original payment and for which no documentation was provided. Customer shall also use its best efforts to work with and assist TOPSUN in minimizing any domestic law withholding tax rate and, if applicable, obtain a lower withholding tax rate if one is available under the applicable tax treaty including supplying the appropriate documentation to TOPSUN, assisting in its completion, providing a translation, and providing any other necessary support or documentation.

6. Invoicing and Payment Terms. Customer will pay TOPSUN for all the license, maintenance service and other fees identified in each LSDA according to the payment terms specified in such LSDA..

7. Disclaimer. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TOPSUN AND ITS THIRD PARTY SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE OR SERVICES PROVIDED UNDER AND PURSUANT TO THIS AGREEMENT AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED.**

8. Limitation of Liability. TOPSUN's entire liability for all claims or damages arising out of or related to this Agreement, regardless of the form of action, whether in contract, tort or otherwise, will be limited to and will not exceed, in the aggregate the amount paid to TOPSUN under this Agreement for the specific Software or service that caused the damage or that is the subject matter of the claim. This limitation is not applicable to claims for patent, copyright, and trade secret infringement that

致的任何罚款、利息、费用或其它开支（若有的话）。税款包括基于以下各项应支付的税收款项 (i) 本协议项下发生的交易, (ii) 本协议项下应付的金额, (iii) 本协议项下向用户提供的软件或其它服务, (iv) 用户对此类软件或服务的后续使用, 和/或(v) 用户对软件或服务的占有。

若用户免缴营业税, 以免税的方式使用本协议项下提供的产品或服务, 或出于其他理由认为自己无须缴纳营业税, 则用户必须善意地向 TOPSUN 提供有效且已签署的免税证明、直接付款许可或其它此类政府批准文件。

若任何法律要求用户从本协议项下任何应直接支付给 TOPSUN 的款项中扣除或预提任何所得税, 则用户应立即将相关款项支付给税收主管机构, 并立即向 TOPSUN 提供正式纳税凭证或税收主管机构出具的其它证据, 该等凭证或证据应足以证明已经缴纳所得税, 并可使 TOPSUN 基于用户代扣代缴的所得税提出税收减免的申请。若用户未能向 TOPSUN 提供正式的纳税凭证或其它缴税证明, 则用户应根据从原先支付款项中扣除或预提但未提供相关文件说明的原始金额, 直接以同等的金额另外支付给 TOPSUN。用户还应尽其最大努力与 TOPSUN 合作并为其提供协助, 以使根据国内法律预提的所得税税率达到最低, 并在适用的情况下, 获取比适用的税收条约下可获得的税率更低的预提所得税税率, 包括向 TOPSUN 提供适当的文件, 帮助其填写完成文件, 提供文件翻译版本, 并提供任何其它必要的支持与文件。

6. 请款发票和付款条件. 用户应根据每一 LSDA 中的付款条款向 TOPSUN 支付该 LSDA 中所列明的软件许可费、维护服务费和所有其他费用。

7. 免责声明. TOPSUN 及其第三方供应商就本协议项下及根据本协议提供的软件或服务未作出任何类型的保证, 包括适销性或适用于任何特定目的的任何暗示性的保证。

8. 责任限制. TOPSUN 对本协议引起或与本协议有关的所有索赔或损害赔偿所承担的全部责任, 无论诉讼的形式为合同、侵权或其它诉讼, 将限制在并总计不超过根据本协议就造成损害或作为索赔主题事项的具体软件或服务而支付给 TOPSUN 的金额。此责任限制不适用于本协议第 9 条所述的专利、著作权及商业秘密侵权索赔、任何情况下, TOPSUN 应支付的损害赔偿不应包括, 且 TOPSUN 不

are covered by Section 9 of this Schedule. In no event will the measure of damages payable by TOPSUN include, nor will TOPSUN be liable for, any amounts for loss of income, profit or savings or indirect, incidental, consequential, exemplary, punitive or special damages of any party, including third parties, even if TOPSUN has been advised of the possibility of such damages in advance, and all such damages are expressly disclaimed. Neither party may make a claim under this Agreement arising out of an event or events that occurred more than two (2) years after the event is, or should have been, discovered by the party making the claim.

9. Indemnity. TOPSUN will defend, at its expense, any action brought against Customer to the extent that it is based upon a claim that any Software furnished hereunder infringes a PRC patent, copyright, trade secret or other intellectual property right and will pay all costs and damages finally awarded against Customer by a court of competent jurisdiction, provided that TOPSUN is given prompt written notice of such claim and is given information, reasonable assistance, and sole authority to defend or settle the claim.

TOPSUN, at its option, will obtain for Customer the right to continue using, or will replace or modify the Software involved so it becomes noninfringing; or, if such remedies are not reasonably available, TOPSUN will grant Customer a refund for the Software involved based on a straight line amortization over 60 months from initial delivery, and accept the return of the Software.

TOPSUN will have no obligation under this Section if the alleged infringement or violation is based upon the use of the Software in combination with other software not furnished by TOPSUN if such alleged infringement or violation would not have occurred except for such combined use or if such claim arises from TOPSUN's compliance with Customer's designs, specifications or instructions. This Section represents the sole and exclusive liability of TOPSUN for infringement of the intellectual property rights of a third party under this Agreement.

10. Termination. If either party materially defaults in the performance of any of its duties or obligations under this Agreement and fails to proceed within 30 days after written notice thereof to commence curing the default and thereafter to proceed with reasonable diligence to substantially cure the default, the other party may, by giving written notice thereof, terminate this Agreement effective immediately. However, this provision does not apply to (i) a breach by TOPSUN of the limited warranty set forth in Section 6 of Schedule B (since a specific remedy for such a breach is provided therein), (ii) a material breach of Section 5 of Schedule B by Customer (no cure period is provided for such a breach and TOPSUN may terminate this Agreement effective immediately), or (iii) a default in payments to TOPSUN.

If Customer defaults in the payment of any amount due to TOPSUN pursuant to this Agreement and does not cure such default within 10 days after written notice thereof, TOPSUN may, by giving written notice thereof to Customer, (i) terminate Software maintenance services effective immediately if Customer defaults in the payment of Software maintenance fees,

应承担, 任何一方(包括第三方)的任何收入、利润或成本节约的损失或间接的、附属的、结果性的、惩戒性的、惩罚性的或特殊的损害赔偿, 即使 TOPSUN 事先已就发生该类损害的可能性得到相关提醒, 且公司明确放弃就所有该类损害要求赔偿的权利。任何一方均不得在索赔方发现或应当发现发生引起索赔事件之日起超过两(2)年后就该类事件根据本协议提出索赔主张。

9. 补偿。 对任何以 TOPSUN 根据本协议提供的软件侵犯了一中国专利、著作权、商业秘密或其他知识产权为由向用户提出的诉讼, TOPSUN 将自费对该诉讼进行辩护, 并将支付用户最终被具有管辖权的法庭判罚的所有费用和损害赔偿, 但前提条件是, TOPSUN 及时地收到了有关上述索赔的书面通知, 并取得了进行辩护和解决该索赔所需的资料、合理的协助和排他的授权。

TOPSUN 将自行选择为用户获得继续使用侵权软件的权利, 或替换上述软件或修正侵权软件使其不再侵权, 或者, 如上述补救措施不能通过合理的途径获得, TOPSUN 将根据在首次交货日起六十(60)个月内进行直线折旧而得出的价值, 向用户退还侵权软件的款项, 并接受用户退还的上述软件。

如被指控的侵权为或违法行为是由于用户将软件和其他非 TOPSUN 提供的软件混合使用而造成的(如果没有该等混合使用, 上述被指控的侵权或违法行为不会发生), 或该侵权索赔是因 TOPSUN 按照用户的设计、规格或指令而发生, TOPSUN 将不承担本条项下任何责任。本条规定了 TOPSUN 在本协议项下就侵犯第三方知识产权应承担的唯一和排他的责任。

10. 终止。 如一方在履行其在本协议项下的责任或义务时有实质性违约, 且在收到另一方要求补救的书面通知后的三十(30)日内未开始采取补救措施, 并在之后未合理谨慎地进行实质性的补救时, 另一方在向违约方发出书面通知后, 可立即有效地终止本协议。但是, 本条规定不适用于下列情形: (i) TOPSUN 违反了本协议附件 B 第 6 条所述的保证(因为该条已明确地规定了对该类违约行为的具体补救措施); (ii) 用户实质性违反本协议附件 B 第 5 条(对该条的违约没有规定补救的期限, TOPSUN 可立即有效地终止本协议); 或(iii) 用户未履行对 TOPSUN 的付款义务。

如用户未履行其在本协议项下对 TOPSUN 的各项到期应付款项的支付义务, 且该等违约未在收到书面通知后十(10)天之内得到补救, TOPSUN 可在向用户发出书面通知后, 行使以下权利: (i) 如用户未支付软件维护费时, 可立即有效地终止软件维护服务; (ii) 如用户未支付尚未

(ii) terminate professional services provided pursuant to an outstanding SOW if Customer defaults in the payment of any amount due under the SOW, or (iii) terminate this Agreement in its entirety effective immediately if Customer defaults in the payment of Software license fees.

Except as may be prohibited by applicable bankruptcy laws, in the event of either party's insolvency or inability to pay debts as they become due, voluntary or involuntary bankruptcy proceedings by or against a party hereto, or appointment of a receiver or assignee for the benefit of creditors, the other party may terminate this Agreement by written notice.

All license rights granted will cease upon any termination of this Agreement. Within 15 days after termination of the license rights granted herein or this Agreement for any reason, Customer will destroy the original and all copies of the Software in all forms, and will certify to TOPSUN in writing that such obligation has been fulfilled.

11. Notices. All notices required by or relating to this Agreement will be in writing and will be sent to TOPSUN to the attention of Law Building 9B2, Longfeng Building, No.1566 West Yan 'an Road, Changning District, Shanghai 200050; and to Customer at the address set forth in the signature page of this Agreement; or to such other address as either party may specify by written notice to the other.

12. Export. TOPSUN's obligation to fulfill this Agreement is subject to the proviso that it is not prevented by any impediments arising out of national or international foreign trade or customs requirements, including embargoes or any other sanctions.

This Agreement is subject to all United States government laws and regulations as may be enacted, amended or modified from time to time regarding the export from the United States of TOPSUN software, services, technology, or any derivatives thereof. Customer will not export or re-export any TOPSUN software, services, technology, or any derivatives thereof, or permit the shipment of same without: (i) the express written consent of TOPSUN and (ii) if necessary, obtaining at Customer's expense any required prior authorization from the United States Department of Commerce or other applicable authority as may be required by law.

The provision of this Section will survive the expiration or termination of this Agreement for any reason.

13. Confidentiality. The parties recognize that in the course of providing the Software and performing the services pursuant to this Agreement, both parties may have access to confidential information and trade secrets belonging to the other and each desire that such confidential information and trade secrets remain confidential. Each party agrees that all confidential information and trade secrets communicated to one party by the other in any manner (the "Confidential Information"), will be used by the recipient party only for the purposes allowed by this Agreement. The other party's Confidential Information will not be disclosed by the recipient party, other than to its

完成的工作说明书规定的任何应付款项,可终止根据该工作说明书提供的专业服务;或 (iii) 如用户未支付软件许可费时,可立即有效地终止整个本协议。

除非为适用的破产法所禁止,如发生任何一方资不抵债或无力偿还到期债务,一方成为自愿或强制性破产程序的主体,或为一方债权人利益指定了接管人或受托人,则另一方可经书面通知终止本协议。

本协议终止之时,所有被许可的权利将被停止。不论本协议项下的被许可的权利或本协议因何原因被终止,用户应在本协议终止后的十五(15)日内销毁软件的原件及所有形式的复制本,并以书面形式向 TOPSUN 确认其已完成上述义务。

11. 通知。 本协议所要求或与本协议相关的所有通知,应以书面形式作出,发给 TOPSUN 的通知应发送到上海市长宁区延安西路 1566 号龙峰大厦 9B2 座,邮编 200050,发给用户的通知应发送至本协议签署页中指定的地址;或一方随时以书面形式通知另一方的其它地址。

12. 出口。 TOPSUN 履行本协议的义务应受制于以下条件:此类义务的履行不应受到任何国内外外贸及海关要求(包括禁运令或任何其它制裁)的阻碍。

本协议受美国政府可能不时颁布、修订或修改的有关自美国出口 TOPSUN 的软件、服务、技术或任何其衍生内容的法律法规的约束。用户在未获得 (i) TOPSUN 明确书面同意,且 (ii) (如有必要)自费取得法律可能要求的美国商务部或其它主管部门的事先许可的前提下,不得将任何 TOPSUN 软件、服务、技术或任何其衍生产品出口、再出口或许可装运。

本条规定在本协议期满或因任何原因被终止后,仍将继续有效。

13. 保密。 双方认识到,在根据本协议提供软件和履行服务的过程中,双方都可以接触到对方的保密信息和商业秘密,且各方都要求将该保密信息和商业秘密保持在保密状态。各方同意,一方以任何方式向另一方提供的保密信息和商业秘密(下称"保密信息"),只能由接收方用于本协议允许的目的。未经另一方事先书面同意,接收方不得向其雇员(在 TOPSUN 一方,包括 TOPSUN 的关联企业、顾问、代理和承包商)以外的他人泄露另一方的保密信息。各方应告知收到另一方保密信息的雇

employees and, in the case of TOPSUN, to its affiliated companies, its consultants, agents, and contractors, without the prior written consent of the other party. Each party will advise its employees and, in the case of TOPSUN, its affiliated companies, consultants, agents, and contractors, who receive any of the other party's Confidential Information of its confidential nature. Notwithstanding anything to the contrary contained in this Section, the parties further agree that the TOPSUN Software will be subject to the confidentiality restrictions contained in Section 5 of Schedule B. The confidentiality provisions of this Section will not apply to any Confidential Information that (i) was or becomes generally available to the public other than as a result of disclosure by the recipient party in violation of this Agreement; (ii) becomes available to the recipient party from a source other than the other party, provided that the recipient party has no reason to believe that such source is itself bound by a confidentiality or nondisclosure agreement with the other party or otherwise prohibited from disclosing such Confidential Information by a legal, contractual or fiduciary obligation; (iii) was in the recipient party's possession prior to receipt from the other party; (iv) is independently developed by the recipient party without the use of the other party's Confidential Information; or (v) is required to be disclosed by the recipient party by a governmental agency or law, so long as the recipient party provides the other party with written notice of the required disclosure promptly upon receipt of notice of the required disclosure. Upon any actual or threatened violation of this Section by either party, the other party will have the right, in addition to such other remedies which may be available to it, to seek injunctive relief enjoining such acts or attempts, it being acknowledged and agreed that monetary damages are inadequate to protect the other party.

In the event Customer conducts benchmarks or other tests concerning the Software, including any content or functionality of TOPSUN's third party licensors, the results shall constitute Confidential Information and shall not be published or otherwise revealed to any third party.

This Section will survive the expiration or termination of this Agreement for any reason.

14. Audits. Customer will at all times maintain records specifically identifying the Software licensed under this Agreement, the location of each copy thereof, and the location and identity of the workstations and servers on which the Software is installed. TOPSUN may, during regular business hours and upon reasonable advance notice, conduct an audit to determine Customer's compliance with the terms and conditions of this Agreement. Customer will permit TOPSUN or its authorized agents to access Customer's facilities, workstations and servers and otherwise cooperate fully with TOPSUN in any such investigation and will take all commercially reasonable actions to assist TOPSUN in accurately determining Customer's compliance with the terms and conditions of this Agreement.

TOPSUN and its authorized agents will comply with Customer's reasonable security regulations while on Customer's premises.

15. Mutual Cooperation. Each of the parties agrees to cooperate in good faith with the other party with respect to the

员（在 TOPSUN 一方，包括其关联企业、顾问、代理和承包商），该等信息是保密的。不论本条款中有任何相反规定，双方进一步同意 TOPSUN 软件将依照附件 B 第 5 条中保密限制的的规定。本条的保密规定不适用于下列信息：(i) 并非由于接收方违反本协议进行披露而为公众普遍所知的信息；(ii)接收方从另一方以外的消息源获取的信息，但前提是接收方无理由相信该类消息源本身受到与另一方之间的保密或不披露协议的约束，或出于法律、合同或诚信义务，被禁止披露此类保密信息；(iii) 在从另一方接收前，接收方已占有的信息；(iv) 接收方未使用另一方的保密信息而独立开发的信息；或 (v) 政府机关或法律要求接收方披露的信息，但前提是接收方在收到披露要求后立即将披露要求书面通知另一方。一旦一方出现实际违反或将要违反本条规定的情况，则除可获取的其它补救措施外，另一方将有权寻求禁令救济来禁止此类行为或企图，双方承认和同意，金钱赔偿不足以保护另一方。

如用户对软件（包括 TOPSUN 的第三方许可方的内容和功能）进行基准或其他测试，其结果构成保密信息，不得公布或以其他方式透露给任何第三方。

本协议期满或因任何原因被终止后，本条款将继续有效。

14. 审计。用户将始终保留具体标明本协议项下许可的软件、各复制本的位置以及安装有该软件的工作站及服务器的位置与标识的记录。TOPSUN 可在正常的营业时间内且提前合理时间通知的情况下，进行审计以确定用户是否遵守本协议的条款与条件。用户将允许 TOPSUN 或其授权代理进入用户设施、工作站及服务器，并在任何此类调查中与 TOPSUN 全力合作，并将采取所有在商业上合理的措施来协助 TOPSUN 正确确定用户是否遵守本协议的条款与条件。

TOPSUN 及其授权代理将在用户的场所内遵守用户的合理安全规范。

15. 共同合作。各方同意就交付另一方在履行本协议

delivery of notices, certificates or any other information or documentation reasonably required by the other party in meeting its obligations under this Agreement.

16. **General.** This Agreement will extend to and be binding upon the successors, legal representatives and permitted assigns of the parties. However, this Agreement and the licenses granted hereunder may not be assigned, sublicensed, or otherwise transferred (by operation of law or otherwise) by Customer without the prior written consent of TOPSUN.

The failure of either party to enforce at any time any of the provisions of this Agreement will in no way be construed to be a waiver of such provision, nor in any way affect the validity of this Agreement or any part thereof, or the right of the other party thereafter to enforce each and every provision.

Neither party will be liable for any delay in or failure to perform any of its non-monetary obligations under this Agreement if due to any cause or condition beyond their reasonable control, whether foreseeable or not.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

TOPSUN may advertise the signing of this Agreement within trade publications and by written press release, newswire and/or the Internet. TOPSUN may disclose the Agreement's general terms, content, value and Customer rationale for selection of TOPSUN as the provider.

This Agreement will be governed by and construed in accordance with the substantive laws of the PRC, without giving effect to any choice-of-law rules that may require the application of the laws of another jurisdiction. The UN Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded, shall not apply to transactions under this Agreement.

Any dispute arising from, out of or in connection with this Agreement shall be settled through friendly consultations between the parties. Such consultations shall begin immediately after a party has delivered to the other party a written request for such consultation. If within 90 days following the date on which such notice is given, the dispute cannot be settled through consultations, the dispute shall, upon the request of either party, be submitted to the China International Economic and Trade Commission Shanghai Sub-commission ("CIETAC") in Shanghai for arbitration, and be resolved in accordance with the arbitration procedure as set forth in the arbitration rules of CIETAC.

项下义务过程中合理要求的通知、证明或任何其他信息或文件与另一方友好合作。

16. **一般规定。** 本协议将对双方的继任者、合法代表及许可受让者均应具有约束力。但是，未经 TOPSUN 事先书面同意，用户不得转让、再许可或与其他形式让予本协议以及本协议项下授予的许可（无论是否出于实施法律或其它需要）。

一方在任何时间未能要求另一方履行本协议项下的某项条款时，不得视为其对该条款的放弃，亦不得因此而影响本协议或其任何部分的有效性，或另一方此后要求其履行任何条款的权利。

如果任何一方因超出其合理控制能力的原因或情况（不论是可预见还是不可预见的）而延迟履行或未能履行本协议项下的非金钱义务，该方将不承担任何责任。

若本协议的任何条款被认为无效、不合法或不可执行，其余条款的有效性、合法性及可执行性不应受到任何形式的影响或损害，且该条款应视为重新叙述，以在适用法律允许的范围內尽可能反映双方的原始意愿。

TOPSUN 可以在商业出版物、书面新闻发布、新闻专线和/或国际互联网上宣传本协议的签署。TOPSUN 可以披露本协议的一般条款、内容、价值和用户选择 TOPSUN 作为其供应商的原因。

本协议将受中国实体法律的管辖，并据其进行解释，但不适用中国法律中可能要求适用其它辖区法律的任何法律选择规范。本协议明确地排除《联合国国际货物销售合同公约》的管辖，该公约不适用于本协议项下的交易。

因本协议引起、产生于本协议或与本协议有关的任何争议应由双方通过友好协商加以解决。该等协商应在一方向另一方发出有关协商的书面要求后立即开始。如果在上述通知发出后的九十(90)日内，争议未能通过协商解决，则争议应根据任何一方的要求，交由中国国际经济贸易仲裁委员会上海分会（简称“贸仲会”）在上海仲裁，依据贸仲会届时有效的仲裁规则所规定的仲裁程序解决。

Schedule B
LICENSED SOFTWARE TERMS AND CONDITIONS

附件 B
许可软件的条款和条件

1. Definitions.

(a) “Authorized Users” means (i) the employees of Customer, including employees of unincorporated divisions of Customer, but not employees of other legal entities (including employees of any legal entity that is a subsidiary of Customer or part of a group of companies affiliated with Customer), and (ii) Customer’s consultants, agents and contractors who are working on Customer’s premises, provided they are not competitors of TOPSUN and they have agreed in writing to restrictions on the use of the Software and obligations of confidentiality no less stringent than those set forth in this Agreement.

(b) “Documentation” means the explanatory printed or electronic materials provided by TOPSUN with the Software, including, but not limited to, license specifications, instructions on how to use the Software and technical specifications.

(c) “License Types” refers to the definition of the various types of licenses pertaining to the Software as provided in Section 3 of this Schedule, including the limitations on the number of users specified therein.

(d) “Software” means any software that is owned or licensed by TOPSUN to Customer under this Agreement, including the Documentation.

(e) “Territory” means the country in which a customer initially acquires and installs the Software.

2. License Grant. TOPSUN grants to Customer a nonexclusive, nontransferable, limited license to install, access and use the executable form of the Software in the Territory for the purpose of processing Customer’s own internal business. The description of the License Types in the following Section 3 defines the scope of the license rights TOPSUN is granting to Customer. Any license granted herein is limited to use by the Authorized Users. Any usage of the Software outside the scope of the applicable License Type constitutes an infringement of TOPSUN’s intellectual property rights and is a material breach of this Agreement. No license is granted to anyone under this Agreement if the Software has not been lawfully acquired.

No title to or ownership in the Software is transferred to Customer. Title to the Software, and all applicable rights in patents, copyrights, trade secrets and other intellectual property rights inherent in the Software will remain in TOPSUN or third parties from whom TOPSUN has obtained the right to license the Software.

TOPSUN reserves all rights in the Software not explicitly granted herein.

TOPSUN reserves the right to embed a software security mechanism within the Software to monitor usage of the Software to verify the Customer’s compliance with this Agreement. Such a security mechanism may store data relating to the usage of the Software and the number of times it has been copied, or may

1. 定义。

(a) “授权使用者”是指 (i) 用户的员工，包括用户的非公司化分支机构的员工，但不包括其它法人实体的员工（包括作为用户子公司的法人实体的员工或作为用户关联公司集团一员的法人实体的员工），及 (ii) 在用户场所内工作的用户的顾问、代理和承包商，但前提是该类人员不是 TOPSUN 的竞争者且其书面同意接受其严格程度不低于本协议规定的软件使用限制条件及保密义务。

(b) “文件说明”是指 TOPSUN 与软件一起提供的用于解释的打印文件或电子格式材料，包括但不限于，许可规格、软件使用方法说明以及技术规格。

(c) “许可类型”是指本附件第 3 条中规定的软件附带的各种类型许可的定义，包括规定的使用者数量的限制。

(d) “软件”是指本协议项下 TOPSUN 拥有或向用户授予许可的任何软件，包括文件说明。

(e) “区域”是指用户首次获得并安装软件的国家。

2. 授予许可。 TOPSUN 向用户授予一项非排他性的、不可转让的、有限的许可，在区域内为处理用户自己内部业务安装、获取和使用软件的可执行格式。在下文第 3 条中对许可类型的描述对 TOPSUN 授予用户许可的范围作出了定义。本协议项下授予的任何许可仅可由授权使用者使用。使用适用许可类型范围之外的软件构成对 TOPSUN 知识产权的侵犯，并构成对本协议的实质性违约。如软件非经合法取得，不得根据本协议向任何人授予许可。

软件的所有权并没有转让给用户。软件的所有权、各项有关专利、著作权和商业秘密的权利，以及软件固有的其它知识产权仍然属于 TOPSUN 或授权 TOPSUN 向他人许可软件的第三方所有。

TOPSUN 保留未在本协议中明确授予的对软件的所有权利。

TOPSUN 保留在软件内嵌入软件安全机制的权利，以监督软件的使用来确保用户遵守本协议。该安全机制可存储与软件使用相关的数据及其被拷贝次数的数字，或可以与 TOPSUN 控制的电脑通信（该通信以任何形式的通

communicate with computers controlled by TOPSUN over any type of communications link to exchange communications and report data relating to the usage of the Software and the number of times it has been copied. TOPSUN reserves the right to use a hardware lock device, license administration software, and/or a license authorization key to control access to the Software. The Customer may not take any steps to avoid or defeat the purpose of any such measures. Use of any Software without any required lock device or authorization key is prohibited.

3. License Types. The following License Types may be offered with respect to individual Software products or product families. The License Type will be specified in an LSDA or similar ordering document provided by TOPSUN.

(a) “Concurrent User” licenses means that access to the Software at any given moment will be limited to the maximum number of concurrent users for whom licenses have been validly acquired under this Agreement.

(b) “Named User” licenses means that access to the Software will be restricted to those individuals within Customer’s organization that are named by Customer and for whom licenses have been validly acquired under this Agreement. Customer shall have the right to change Named User licenses provided that no individual Named User license may be changed more than once every thirty (30) days.

(c) “Node-Locked” license means that the use of the Software will be restricted to a single workstation specified by the Customer. This type of license is usually accompanied by a device or dongle to manage this restriction.

(d) “Per Server” license means that the use of the Software is restricted to a single server specified by Customer.

(e) “Per Product” license means that the use of the Software will be restricted to the number of third party products the Software is interfaced with on a one-to-one basis.

(f) “Subscription” license means a license whose term is limited to a period of time mutually agreed by TOPSUN and the Customer in an LSDA, which term will generally be between 6 months and 5 years. A Subscription license is renewable by mutual agreement of the parties for an additional limited term or terms following expiration of the initial Subscription term, but a Subscription license may not be converted to an extended term license or perpetual license under any circumstances. Upon expiration of the initial term or any renewal term, if applicable, the Subscription license will terminate and the Customer must cease any further use of the Subscription license thereafter. Maintenance services for a Subscription license are included in the Subscription license fee. Subscription license fees are payable in advance and will be invoiced as specified by the parties in an LSDA. For multiple year Subscription terms, TOPSUN retains the right to require new license keys to be issued periodically during the Subscription term. TOPSUN retains the right to withhold Subscription licensing from certain of its Software products and/or certain of the third party products which TOPSUN has the right to distribute.

信链接交换通信) 并报告软件使用的相关数据及其被拷贝次数的数字。TOPSUN 保留以下权利: 使用硬件锁定装置、许可管理的软件, 和/或许可授权密钥, 以控制软件的访问。用户不得采取任何步骤避开或阻碍上述措施所要达成的目的, 并禁止使用任何无需锁定装置或无授权密钥的软件。

3. 许可类型. 就单个的软件产品或产品系列可授予以下许可类型。许可类型将在 LSDA 或 TOPSUN 提供的类似订购文件中作出规定。

(a) “同时使用者”许可是指在任何既定时刻对软件的访问将限制最大同时使用者数量, 这些使用者已根据本协议获得有效许可。

(b) “指定使用者”许可是指对软件的访问应仅限于用户指定的在其组织内的个人, 该类个人已根据本协议获得有效许可。用户应有权变更指定使用者许可, 但前提是各个指定使用者许可的变更频率不可超过每三十 (30) 天一次。

(c) “节点锁定”许可是指软件的使用仅限于用户指定的单个工作站。该类型许可一般与管理该限制的装置或软件锁一起使用。

(d) “单个服务器”许可是指软件的使用仅限于用户指定的单个服务器。

(e) “单个产品”许可是指对软件的使用限制与该软件一对一接口的第三方产品的数量。

(f) “订阅”许可是指软件的许可期限为一段 (通常为 6 个月至 5 年) 由 TOPSUN 和用户在某一 LSDA 内约定的特定期限的软件许可。初始的订阅期满后, 该类许可的使用期限经双方同意可以延长一段或多段固定期限, 但是“订阅”许可在任何情况下都不得转换为永久许可。当初始的订阅期或者任何延长期过后, “订阅”许可将终止, 用户必须随即立即停止使用该软件。“订阅”许可的维护服务费将包含在“订阅”许可费中。“订阅”许可费必须提前支付并且按照双方在 LSDA 中的约定开具发票。对于多年的“订阅”期, TOPSUN 有权在“订阅”期间定期要求出具新的许可密钥。对于某些 TOPSUN 软件产品和/或某些 TOPSUN 有权销售的第三方软件产品, TOPSUN 有权拒绝授予“订阅”许可。

The following are additional licensing options that are available:

(g) “Academic Institutional” license. If TOPSUN identifies a Software license as an Academic Institutional license, the Customer must be an academic institution or other qualifying non-profit organization and may use up to the maximum number of copies of the Software that have been validly obtained pursuant to TOPSUN’s Academic Program provided that they are used for educational purposes and for no other purpose. Without limiting the foregoing, Academic Institutional licenses may not be used for commercial, professional or productive purposes, for commercial training or any other for-profit purposes.

(h) “Student” license. If TOPSUN identifies a license as a Student license, the Customer must be a student attending an academic institution and must limit the use of the Software to personal learning purposes and no other purpose. Student versions of the Software are provided without maintenance services and may be used only for a period of one (1) year from the date the Software is obtained. This version of the Software may not be used for commercial, professional or productive purposes, for commercial training or any other for-profit purpose.

(i) “Backup (or Failsafe)” license means a license that Customer may purchase separately solely to support redundancy on Customer’s backup or failsafe installations, and may not be used for any other purpose.

(j) “Loaner” license means a license to the Software that is granted to Customer at TOPSUN’s option on a temporary basis, not to exceed 90 days, in order to provide Customer with a temporary workaround as part of TOPSUN’s maintenance obligations under Schedule C.

(k) “Test/QA” license means a license that Customer may purchase solely for the purpose of supporting Customer’s need for ongoing installation customization, support and testing, and may not be used for any other purpose.

4. Permitted Actions. Customer may copy the Software as reasonably required in conjunction with Customer's permitted use under this Agreement and for backup purposes. Customer will retain and reproduce all copyright or proprietary notices in their exact form on all copies (including partial copies) of the Software made by Customer. The original and all complete and partial copies of the Software, including the intellectual property rights inherent in the Software, will remain the sole property of TOPSUN and will be subject to the terms and conditions of this Agreement. If Customer breaches or threatens to breach the terms of this Section 4, TOPSUN will have the right, in addition to such other remedies which may be available to it, to seek injunctive relief enjoining such acts or attempts, it being acknowledged and agreed by Customer that monetary damages are inadequate to protect TOPSUN.

以下是可选用的其它类型许可:

(g) “学术机构”许可。若 TOPSUN 确定特定软件许可为学术机构许可，则用户必须为学术机构或其它符合条件的非营利组织，并可使用根据 TOPSUN 学术项目规定有效获得的最大数量的软件复制件，但前提是该类复制件仅能用于教育目的。在不限制上述规定的前提下，学术机构许可不可用于商业、专业或生产目的，或用于商业培训或任何其它营利性目的。

(h) “学生”许可。若 TOPSUN 确定特定许可为学生许可，则用户必须为在学术机构学习的学生，软件仅能用于个人学习的目的。软件的学生版不提供相关维护服务，且自获得软件起仅能使用一（1）年。该软件版本不可用于商业、专业或生产目的，或用于商业培训或任何其它营利性目的。

(i) “备份（或故障防护）”许可是指用户可单独购买的仅能用于支持用户备份或故障防护系统的冗余性的许可，该许可不得用于任何其它目的。

(j) “出借”许可是指 TOPSUN 可选择临时（不超过九十（90）天）授予用户的软件许可，以向用户提供临时解决方案，作为 TOPSUN 在附件 C 项下维护义务的一部分。

(k) “测试/问答”许可是指用户可购买仅能用于支持用户进行客户化安装、支持及测试需求的许可，该许可不得用于任何其它目的。

4. 被允许的行为。用户可就本协议项下允许的使用以及出于备份目的的合理需求而复制软件。用户应在用户制作的所有软件复制本上以其原有的格式保留并复制所有著作权和专有权通知。软件的原件及所有全部和部分复制本，包括软件本身具有的知识产权，应作为 TOPSUN 的专有财产，且受本协议条款与条件的约束。若用户实际或将要违反本第 4 条规定时，则除可获取的其它补救措施外，TOPSUN 将有权寻求禁令救济来禁止此类行为或企图，用户承认并同意金钱赔偿不足以用于保护 TOPSUN。

5. Customer Responsibilities and Prohibited Actions.

(a) Confidentiality. Pursuant to this Agreement, TOPSUN will share the Software and other confidential business information of TOPSUN and/or its third party suppliers with Customer. Customer will hold such information in confidence and take the precautions necessary to safeguard the confidentiality of such information. Customer will limit use of the Software to Authorized Users solely for processing the work of Customer's own internal business, but excluding processing the data of or for any other third parties. If, however, Customer's business is to produce and deliver to its customers a computer mathematical rendition of a product design, such use of the Software is permitted subject to the obligations of confidentiality and nondisclosure set forth in this Agreement as they apply to the Software.

(b) Remarketing of Software. The following uses of the Software are expressly forbidden: to cause or permit (i) disclosure, display, access, or use of the Software by anyone other than an Authorized User, (ii) the loan, publication, transfer of possession (whether by sale, exchange, gift, operation of law or otherwise) of the Software, in whole or in part, to or for any third party, and (iii) use of the Software as a service bureau.

(c) Transfer of Software. Customer may not distribute, rent, loan, lease, sell, sublicense or otherwise transfer all or any portion of the Software, or any rights granted in this Agreement, to any other person without the prior written consent of TOPSUN.

(d) Reverse Engineering or Modifying the Software. Customer will not reverse engineer, decompile, translate, disassemble, or otherwise attempt to discover the source code of the Software. In the event Customer has a valid license to use TOPSUN's Knowledge Fusion product or a TOPSUN Application Programming Interface (collectively referred to herein as "API's") that has been provided with the Software, Customer is authorized to use the API's to develop software solely for Customer's internal use in conjunction with the Software and Customer is prohibited from reselling any software developed through the use of the API's unless Customer is separately authorized to do so as a member of a TOPSUN partner program. Customer may not otherwise modify, alter, adapt, or merge the Software.

(e) Use Outside of Territory. Customer may not access the Software outside of the Territory.

(f) Host Identifier. With respect to each order for Software under this Agreement, Customer will provide TOPSUN with the host identifier required by TOPSUN and such other information reasonably requested by TOPSUN for each workstation and/or server on which the license management portion of the Software will be installed to permit TOPSUN to generate a license file that will restrict end-user access to only those Software modules licensed under this Agreement and limit use of such Software modules at any given time to the maximum number of Authorized Users licensed.

5. 用户的责任与禁止的行为。

(a) 保密。根据本协议规定，TOPSUN 将与用户共享软件和 TOPSUN 和/或其第三方供应商的其他保密商业信息。用户将就该类信息保密，采取所需的预防措施来保护该类信息的保密性。用户将仅允许授权使用者将该软件用于处理用户内部业务，但不包括用于处理第三方数据之目的。但是，如果用户的业务是向其客户生产并交付产品设计的计算机数学重建图像，则此类软件应在本协议规定的保密及不披露义务许可的范围内允许此类使用。

(b) 软件的再交易。明确禁止对软件进行以下使用：促使或允许 (i) 除授权使用者之外的其它人进行披露、显示、访问或使用该软件，(ii) 全部或部分向第三方出借、出版软件或转让软件的占有权（无论是通过出售、交换、赠与、法律实施或是其它方式），及 (iii) 作为服务机构使用软件。

(c) 软件转让。未经 TOPSUN 事先书面同意，用户不能向任何其他人分发、出租、出借、租赁、销售、再许可或转让软件的所有或任何部分，或本协议中授予的任何权利。

(d) 软件的逆向工程与修订。用户不得对软件进行逆向工程、反编译、翻译、反汇编或以其它方式企图查找软件的源代码。若用户具有有效许可，可使用与软件一起提供的 TOPSUN 的知识融合产品或 TOPSUN 应用程序编程界面（以下合称为“API”），则用户可使用 API 来开发软件，供用户结合软件进行内部使用，禁止用户将使用 API 开发的任何软件进行转售，但用户作为 TOPSUN 合作伙伴获得单独授权的除外。用户不可修订、更改、改编或合并软件。

(e) 区域外使用。用户不可在区域外访问软件。

(f) 主机标识。就本协议项下每一软件订单，用户将向 TOPSUN 提供将安装许可证管理部分软件的工作站和/或服务器的主机标识以及 TOPSUN 合理要求的其它信息，以允许 TOPSUN 生成许可文档，限制终端用户仅可访问本协议中许可的软件模块，并将在任何既定时间对此类软件模块的使用限制在授权使用者的最大数量范围内。

(g) Third Party Suppliers. Customer agrees that TOPSUN's third party suppliers may enforce this Agreement as it relates to their Software directly against Customer.

6. Limited Warranty and Disclaimers.

(a) TOPSUN warrants that it has all requisite rights and licenses to grant to the Customer the rights purported to be granted pursuant to this Agreement.

(b) TOPSUN warrants that, as of the date the Software is made available to Customer via electronic download and for a period of 90 days thereafter (the "Warranty Period"), the Software will provide the features and functions generally described in the Documentation and that the media on which the Software is furnished, if any, will be free from defects in materials and workmanship. TOPSUN's entire liability, and Customer's exclusive remedy, during the Warranty Period will be, at TOPSUN's option, to attempt to correct or work around errors, to replace defective media on which Software is installed, if any, or to refund the license fees for the Software involved. Any refund is subject to the return of the Software or defective media to TOPSUN.

(c) Functionality Limitations. Computer-aided design software and other technical software are tools intended to be used by trained professionals only. They are not substitutes for Customer's professional judgment. Computer-aided design software and other technical software are intended to assist with product design and are not substitutes for independent design analysis, estimation or testing for product stress, safety and utility. Due to the large variety of potential applications for the Software, the Software has not been tested in all situations under which it may be used. TOPSUN shall not be liable in any manner whatsoever for the results obtained through the use of the Software. Persons using the Software are responsible for the supervision, management and control of the Software. This responsibility includes, but is not limited to, the determination of appropriate uses for the Software and the selection of the Software and other programs to achieve intended results. Persons using the Software are also responsible for establishing the adequacy of independent procedures for testing the reliability and accuracy of any program output, including all items designed by using the Software.

(d) Academic Institutional and Student Versions. Work product and other data created with Academic Institutional versions and Student versions of the Software contain certain limitations that make the data unusable outside the educational use area. If Customer combines or links data created with Academic Institutional versions or Student versions of the Software with data otherwise created, then such other data may also be affected by these limitations. TOPSUN shall have no responsibility or liability whatsoever if Customer combines or links data created with Academic Institutional version or Student versions of the Software with data otherwise created.

(e) EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION 6, TOPSUN MAKES AND CUSTOMER RECEIVES NO EXPRESS WARRANTIES. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE

(g) 第三方供应商. 用户同意 TOPSUN 的第三方供应商就其软件相关事宜可直接针对用户执行本协议。

6. 有限保证与免责声明.

(a) TOPSUN 保证, 其具备所有必需权利及许可, 可授予用户根据本协议应授予的权利。

(b) TOPSUN 保证, 于用户可通过电子形式下载获取软件之日及之后九十 (90) 天内 (以下称“保证期”), 软件将具备文件说明中所述的一般特征与功能, 且软件的载体 (若有的话) 无材质及工艺上的缺陷。在保证期内, TOPSUN 的全部责任, 以及用户的唯一救济, 将是努力修正或排除错误, 替换有缺陷的软件安装载体, 或退还相关软件的许可费用 (由 TOPSUN 选择方式)。任何退款应以向 TOPSUN 返还软件或有缺陷的载体为条件。

(c) 功能限制. 计算机辅助设计软件及其它技术软件仅能由经培训的专业人员作为工具使用, 不能替代用户的专业判断。计算机辅助设计软件及其它技术软件仅能用于协助产品设计, 不能替代独立的产品应力、安全性及效用的设计分析、评估或测试。由于软件的潜在应用程序类型多种多样, 软件未在所有可能使用软件的情况下对其进行测试。TOPSUN 不应以任何方式对通过使用软件而获得的结果承担任何责任。使用软件的人员应负责监督、管理并控制软件。该责任包括但不限于确定软件的适当用途, 以及为达到预期结果选择软件和其他程序。使用软件的人员还应负责创建独立的流程, 测试任何程序输出结果 (包括通过使用软件设计的所有项目) 的可靠性与正确性。

(d) 学术机构与学生版本. 使用软件的学术机构版本与学生版本创建的作品和其它数据包含特定限制, 使得该等数据无法在教学使用区域外使用。若用户将使用软件的学术机构版本或学生版本创建的数据与以其它方式创建的数据进行合并或链接, 则此类其它数据可能也会受到该等限制的影响。若用户将使用软件的学术机构版本或学生版本创建的数据与以其它方式创建的数据进行合并或链接, TOPSUN 不应承担任何责任或义务。

(e) 除本第 6 条中明确规定的有限保证外, TOPSUN 未作出且用户未收到任何其它明示性保证。文件说明或与用户之间的任何沟通文件中任何有关软件及其功能的声明

SOFTWARE AND ITS FUNCTIONALITY IN THE DOCUMENTATION OR ANY COMMUNICATION WITH CUSTOMER CONSTITUTE TECHNICAL INFORMATION AND NOT AN EXPRESS WARRANTY OR GUARANTEE. IN ADDITION, TOPSUN SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, TOPSUN DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

7. Special Terms Applicable to Academic Institutional Licenses. The Software provided to Customer as an Academic Institutional license is limited to those Software products that TOPSUN has designated as academic bundles and is licensed on a “term” basis. The initial term of such license will extend for a period of one year following the first day of the month immediately following the date the Software is made available to Customer via electronic download and will automatically renew thereafter on an annual basis. Either party may terminate such license by providing the other party with at least 60 days written notice prior to the expiration of the then current term. This Agreement will terminate automatically if Customer discontinues use of the Software as part of its standard offered classroom curriculum.

Customer will limit use of the Software to Authorized Users solely for purposes directly related to teaching, training, degree-granting programs, and research and development that are part of the instructional functions performed by Customer. TOPSUN expressly prohibits use of the Software for (i) any training, or instructional endeavors for non-degree seeking students; (ii) any training or instructional endeavors for any third party that may be a licensee of the Software under separate agreement with TOPSUN; (iii) any commercial purpose, including but not limited to, commercial processing, paid-for consulting, or processing the work of any affiliates; and (iv) developing software for sale or license. Notwithstanding anything to the contrary in this Agreement, for purposes of the Academic Institutional license the term “Authorized Users” means Customer faculty, staff members, students and graduate assistants and the term “Territory” is limited to the area included in the zip code or other postal code in which the Software is first installed.

As a condition precedent to use by Authorized Users of Academic Institutional licenses on personal or home computers, Customer will have the Authorized Users sign TOPSUN’s standard Academic Single User Agreement. Customer will keep the signed Academic Single User Agreements on file and provide them to TOPSUN at TOPSUN’s request.

Customer must also meet the following conditions:

(i) Customer will use the Software as part of its standard offered curriculum in a course(s) offered at least once per academic year.

(ii) Customer will obtain advance written approval from

或陈述构成技术信息，但不构成明示性保证或担保。此外，TOPSUN 就任何其它保证作出明确免责声明，包括但不限于适销性、适用于任何特定目的、或不侵权的暗示性的保证。在不限制上述规定的前提下，TOPSUN 并未保证软件的运行无中断或不存在错误。

7. 适用于学术机构许可的特殊条款。作为学术机构许可提供给用户的软件限于 TOPSUN 已指定为学术软件包且授予“定期”许可的软件产品。此类许可的初始期限为自用户可通过电子形式下载获取软件之日后的下个月首日起一（1）年，且每年将自动展期一（1）年。任何一方可通过在当前期限届满前至少提前六十（60）天向另一方发送书面通知终止此类许可。若用户停止将软件作为其提供的标准课程的一部分进行使用，则本协议将自动终止。

用户将限制软件的使用，仅允许授权使用者用于与教学、培训、学位课程以及作为用户实施辅导职能一部分的研发直接相关的目的。TOPSUN 明确禁止将软件用于(i)针对不寻求学位的学生进行的任何培训或辅导；(ii) 针对在与 TOPSUN 单独签署的协议中作为软件被许可方的任何第三方进行的培训或辅导；(iii) 任何商业目的，包括但不限于商业性处理、有偿咨询或为任何关联方进行的处理；以及 (iv) 为销售或许可目的而开发软件。不管本协议是否存在任何相反的规定，就学术机构许可而言，“授权使用者”是指用户的教职人员、员工、学生及助教，且“区域”应限制在首先安装软件的地点的邮政编码所涵盖的区域。

作为授权使用者在个人计算机或家庭计算机上使用学术机构许可的前提条件，用户应让授权使用者签署 TOPSUN 的标准单个学术使用者协议。用户将保存经签署的单个学术使用者协议，并在 TOPSUN 要求时向其提供。

用户还必须满足以下条件：

(i) 用户将软件作为其每学年至少提供一次的标准课程的一部分。

(ii) 用户将就其想要出版的有关软件的容量、功能和/或

TOPSUN for all documents intended for publication by Customer which concern the capability, functionality and/or methodology of the Software.

(iii) All Software programs and associated documentation developed by Authorized Users which interact and/or interface with the Software will be disclosed to TOPSUN. Such programs and documentation will be made available to TOPSUN in source code form, if so requested. Customer grants to TOPSUN a nonexclusive, transferable, paid-up, royalty free license to use and/or market, distribute and modify any such software program, to the extent that this provision does not conflict with any pre-existing processing grant or contract applicable to such software and documentation. Where such pre-existing Customer grant or contract conflicts with this provision, the pre-existing grant or contract provision will take precedence over this provision provided that TOPSUN is notified of such grant or contract restriction.

(iv) Product specific terms with respect to Academic bundles that include TOPSUN's e-ShopKeeper Export Trade Channel Cloud、TBPM、TiMES or T-One products shall be included in an LSDA to be signed by the parties.

(v) Schedule C of this Agreement does not apply to Academic Institutional licenses. TOPSUN will provide Software maintenance services to Customer, but not individual Authorized Users, between the hours of 8:00 a.m. and 5:00 p.m. in local time zones of Beijing, the PRC, Monday through Friday, excluding TOPSUN observed holidays. Customer will designate a knowledgeable full-time staff representative who will serve as a focal point for administering and resolving all Customer requests for Software maintenance. Such individual will use best efforts to solve Customer problems or issues related to the Software prior to contacting TOPSUN for assistance. This individual will forward all service requests to TOPSUN and will also serve as the recipient of all site-wide TOPSUN Software maintenance services.

Maintenance service is provided only for the most current release of the Software when installed on the type of computer and the operating system for which the Software was designed to operate and consists of the following:

(i) Telephone support line service which consists of support requests answered by TOPSUN technical support personnel for the Software specific technical needs and problems;

(ii) bulletin board service which will allow Customer to electronically log Software support requests and access release notes and Software information; and

(iii) upgrades to the Software, if and when made available by TOPSUN. Upgrades will not include separate Software modules that are available for license at additional charge. Customer agrees to install all Software updates received from TOPSUN within 30 days after receipt thereof, or at the end of Customer's current semester, whichever is later.

方法的所有文件事先获取 TOPSUN 的书面批准。

(iii) 授权使用者开发的与软件互相作用和/或接口的所有软件程序与相关文件说明将披露给 TOPSUN。若 TOPSUN 提出相关要求，该类程序与文件说明将以源代码形式提供给 TOPSUN。用户授予 TOPSUN 一项非排他性的、可转让的、费用已付的且无需许可费用的许可，以使用和/或营销、经销并修改任何该类软件程序，但前提是本规定不与已有的适用于该类软件与文件说明的处理授权或合同产生冲突。若此类已有的授权或合同与本规定冲突，应以已有的授权或合同为准，但前提是已通知 TOPSUN 该类授权或合同限制。

(iv) 有关学术软件包（包括 TOPSUN 的 e-ShopKeeper Export Trade Channel Cloud、TBPM、TiMES 或 T-One 产品）的产品具体条款应包含在双方签署的 LSDA 中。

(v) 本协议附件 C 不适用于学术机构许可。TOPSUN 将向用户（单个授权使用者除外）提供软件维护服务，服务时间为中国北京当地时间周一至周五上午八点（8:00 a.m.）至下午五点（5:00 p.m.），TOPSUN 的国定假除外。用户将指定一名知识渊博的正式员工代表作为一个联络点，对用户的所有软件维护申请进行管理并解决相关问题。该代表将在联系 TOPSUN 请求协助前，尽全力解决用户与软件相关的问题或难题。该代表将向 TOPSUN 转发所有的服务申请，还将作为该区域内所有 TOPSUN 软件维护服务的接收方。

维护服务仅适用于将软件安装至指定类型的计算机和操作系统时最新发布软件，且由以下部分组成：

(i) 电话支持服务，包括 TOPSUN 技术支持人员就具体的软件技术需求与问题予以解答；

(ii) 公告板服务，用户可以电子方式输入软件支持申请，并访问新版本发布通知和软件信息；以及

(iii) 当 TOPSUN 提供升级版本时的软件升级服务。升级版本将不包括需要另外付费获取许可的独立软件模块。用户同意在从 TOPSUN 接收到软件升级版本之日起的三十（30）天内，或用户的当前学期结束时（以二者中较晚者为准）安装所有软件升级版本。

Schedule C
SOFTWARE MAINTENANCE TERMS AND
CONDITIONS

附件 C
软件维护条款与条件

1. Software Maintenance. Software maintenance services consist of (a) the provision of Software updates, (b) the provision of Error corrections, as defined herein, for the Software, and (c) the provision of telephone support in connection with the Software. Software maintenance services will be provided in accordance with the terms of this Schedule to those customers who have purchased maintenance services under this Agreement for the applicable Software. Software maintenance services are, and will continue to be, available under this Agreement only to the extent that these services are made available by TOPSUN with respect to the Software, or any portion of the Software, to its customer base in general.

2. Maintenance Term. Customer may purchase Software maintenance services for an initial annual maintenance term or such other time period that is acceptable to TOPSUN. Thereafter, maintenance services will automatically renew for successive one (1) year terms unless terminated by Customer by providing notice of termination in writing to TOPSUN at least 60 days prior to the expiration of the initial term or any renewal term. If Customer purchases additional Software licenses during the term of this Agreement, TOPSUN reserves the right to adjust the annual maintenance term and pro rate the annual maintenance fees for such add-on Software to be coterminous with the initial Software maintenance term and billing cycle.

3. New Releases of Software. New versions of the Software released by TOPSUN may contain Error corrections and/or new or enhanced functionality. A new version may be either a point release denoted by a change to the right of the first decimal point (e.g. V18.0 to V18.1) (a "Point Release") or a major release denoted by a change to the left of the first decimal point (e.g. V18.0 to V19.0) (a "Major Release"). A Point Release will generally consist of corrections to known Errors. A Major Release will generally consist of a new version of the Software that contains new or enhanced functionality. Customer shall have the right to receive new Point Releases and new Major Releases of the Software that are released to TOPSUN's customers in general during any period of time for which Customer has purchased maintenance services under this Agreement for the applicable Software. This right does not extend to any release, module, option, future product, or any upgrade in functionality or performance of the Software which TOPSUN develops as a customized product for a single customer or that TOPSUN develops and licenses as a separate product and not for release to customers in general as part of maintenance services. Customer is responsible for the installation and implementation of any new version and any required data conversion. Customer remains solely responsible for the configuration of its own equipment and software, including the compatibility of any additional equipment or software with the TOPSUN Software.

4. Support for Prior Versions of the Software. Once a

1. 软件维护。软件维护服务包括：(a) 提供软件升级版本；(b) 提供本附件定义的软件错误修正，以及(c) 提供与软件相关的电话支持服务。软件维护服务将根据本附件的条款提供给购买了本协议项下相关软件维护服务的用户。根据本协议提供的软件维护服务目前且将继续仅限于 TOPSUN 就软件或软件的任何部分提供给其一般客户群体的服务。

2. 维护期限。用户可购买初始期限为一（1）年或 TOPSUN 可接受的其它期限的软件维护服务。此后，维护服务将自动展期，展期期限为一（1）年，除非在初始期限或任何展期届满之前，由用户通过至少提前六十（60）天向 TOPSUN 发出书面终止通知而终止。若用户在本协议期限内购买其它的软件许可，TOPSUN 保留就该新加软件调整一年的维护期限并按比例计算年度维护费用的权利，使其与初始的软件维护期限与收费周期相衔接。

3. 软件的新发布版本。TOPSUN 发布的软件新版本可能包含错误修正和/或新的或改进的功能。新的软件版本可为改良版本（改变小数点右边第一位数字（如将 V1.0 变更为 V1.1））（“改良版本”）或为新的主要版本（改变小数点左边第一位数字（如将 V1.0 变更为 V2.0））（“主要版本”）。一般而言，改良版本包含对已知错码的修正，而主要版本则由包含新的或改进功能的软件新版本组成。在用户就相关软件已购买本协议项下维护服务的期间内，用户应有权接收由 TOPSUN 向其一般用户发布的软件的新改良版本和主要版本。该类权利不包括 TOPSUN 为单一客户定制开发的或作为独立产品开发并许可的，而非作为维护服务的一部分向一般客户提供的软件的任何版本、模块、选件、将来产品或任何功能或性能的升级。用户负责任何新版本的安装与执行以及任何需要的数据转换。用户应自行负责对其自有设备和软件进行配置，包括任何添加设备或软件与 TOPSUN 软件之间的兼容性。

4. 对软件之前版本的支持。软件的新版本一旦发布，无论

new version of the Software is released, either a Point Release or a Major Release, TOPSUN will maintain the current version it just released and the most current Point Release that relates to the immediately preceding Major Release. For example, if V2.1 is released, TOPSUN will maintain V2.1 and V1.x, where x is the latest Point Release in the V1 series. If a known Error has been corrected in an update to the prior Major Release, TOPSUN retains the right to require the Customer to upgrade to the requisite Point Release that contains the Error correction rather than providing a separate patch or workaround.

5. Error Corrections. An Error means the failure of the Software to conform substantially to the Documentation (“Error”). Customer may report any suspected Error to TOPSUN and, upon TOPSUN's request, Customer will provide TOPSUN with a detailed, written description and documentation of the suspected Error. TOPSUN will investigate the facts and circumstances related thereto and Customer will cooperate with TOPSUN's investigation. If TOPSUN finds that the Software contains an Error, TOPSUN will use all commercially reasonable efforts to correct the Error. An Error correction may consist of a separate patch, a workaround or it may be included in the next available Point Release or Major Release of the Software, at the discretion of TOPSUN.

6. Telephone Support. Customer shall have the right to receive telephone support in connection with the Software by calling the toll-free number provided by TOPSUN between the hours of 8:00 am and 5:00 pm, in local time zones of Beijing, the PRC, Monday through Friday, except on holidays recognized by TOPSUN.

Customer will also be provided with the ability, by means of an electronic channel via the Internet, to log Software support requests, report suspected Errors, monitor progress on the Customer's prior requests, download Software fixes and workarounds, exchange information on a bulletin board, and obtain access to release notes and other Software information.

7. Limitation of Remedies. TOPSUN's sole and exclusive responsibility, and Customer's sole and exclusive remedy, for a failure to provide error corrections for the Software in accordance with this Schedule will be that Customer may terminate Software maintenance for the Software involved. TOPSUN will thereafter promptly refund the unused portion of the fees paid for the remainder of the then current term of the Software maintenance services for the applicable Software.

8. Initial and Renewal Fees. Purchase of Software maintenance services for a Customer site will be subject to the purchase of such services for all TOPSUN supported Software modules licensed for use at that site. The fees for Software maintenance services will be set forth on TOPSUN's quotation for such services. For each

是改良版本还是主要版本, TOPSUN 将对其刚刚发布的版本以及与最近发布的主要版本有关的最新改良版本提供维护服务。例如, 如果发布了 V2.1, 则 TOPSUN 将对 V2.1 与 V1.x (x 是 V1 系列中最新的改良版本) 提供维护服务。如果在之前主要版本的升级版本中, 已知错码已得到修正, 则 TOPSUN 保留要求用户升级至包含错码修正的必要的改良版本, 而非提供独立补丁或解决方案的权利。

5. 错码修正。 错码是指软件并未实质上符合文件说明 (“错码”)。用户应及时向 TOPSUN 报告任何疑似错码。应 TOPSUN 的要求, 用户将向 TOPSUN 提供疑似错码详细的书面描述和相关文件。TOPSUN 将对相关的事实和情况进行调查, 用户将配合 TOPSUN 的调查。如 TOPSUN 发现软件存在错码, TOPSUN 将尽其商业上合理的努力纠正该错码。软件纠正可根据 TOPSUN 的自行决定, 由单独的补丁、解决方案组成或包含在下一个软件的改良版本或主要版本之中。

6. 电话支持。 用户有权在中国北京当地时间星期一至星期五 (TOPSUN 的假期除外) 上午八点 (8:00 a.m.) 至下午五点 (5:00 p.m.) 通过拨打 TOPSUN 提供的免费电话得到有关软件的电话支持服务。

TOPSUN 还将向用户提供途径, 使其通过互联网电子渠道输入软件支持的申请, 报告疑似错码, 监控用户之前申请的进展, 下载软件补丁和解决方案, 在公告栏交流信息, 并可以访问新版本发布通知和其他软件信息。

7. 救济限制。 TOPSUN 未能根据本附件提供软件错码修正服务所承担的唯一和排他的责任及用户享有的唯一和排他的救济是: 用户可以终止相关软件的维护服务。之后 TOPSUN 应及时地向用户返还已付但尚未使用的该软件在剩余软件维护服务期内的费用。

8. 初始费用和展期费用。 为用户场所购买软件维护服务须购买为 TOPSUN 支持的许可用于该场所的软件模块的服务。软件维护服务费将列于 TOPSUN 对该等服务的报价中。在初始维护期后的前两 (2) 个维护期展期之内, TOPSUN 可对软件维护费进行调整, 但前提是 (i) TOPSUN 在当前服务期末前至少提前六十 (60) 天书面通知用户; (ii) 费用调

of the first two renewal terms following the initial term, TOPSUN may adjust the Software maintenance fees provided that: (i) TOPSUN provides written notice to Customer at least 60 days prior to the end of the then current term, (ii) the fee adjustment becomes effective upon expiration of the then current term, and (iii) the percentage of the fee adjustment does not exceed three percent (3%) per year. Following the first two renewal terms, TOPSUN's ability to increase maintenance prices shall not be subject to the cap or notice period requirements.

整在当前维护期届满时生效；(iii) 费用调整的比例不超过每年百分之三（3%）的幅度。在前两（2）次展期之后，TOPSUN 增加维护费的权利不受此上限及通知期的要求。

Schedule D
PROFESSIONAL SERVICES TERMS AND CONDITIONS

附件 D
专业服务条款与条件

1. Professional Services. TOPSUN will perform the services, and produce the deliverables, described in a statement of work (“SOW”) that incorporates this Agreement by reference. The SOW must be in a form that is specified by, or acceptable to, TOPSUN.

A formal change control procedure will be used for all changes or revisions requested by Customer or TOPSUN to the scope of work, approach, schedule, charges, or deliverables associated with the professional services. Upon submission of a change control request by TOPSUN or Customer, TOPSUN will complete a charge estimate and schedule impact based upon the requested change or revision and submit it to the Customer for written acceptance. If the change control request is approved by Customer, TOPSUN will proceed with the services as therein amended. If the change control request is not accepted by Customer within 10 calendar days from submittal by TOPSUN, the change control request will be considered null and void and TOPSUN will continue performing the professional services as defined prior to the requested change order.

2. Personnel. TOPSUN reserves the sole right to determine the allocation of TOPSUN personnel in providing the services.

The TOPSUN personnel performing the services will be and remain the employees of TOPSUN, and TOPSUN will provide for and pay the compensation and other benefits of such employees, including salary, health, accident and workers' compensation benefits and all taxes and contributions which an employer is required to pay relating to the employment of employees.

TOPSUN will have the right to use subcontractors in performance of its obligations under any applicable SOW provided that TOPSUN will remain primarily liable to Customer for any work performed by its subcontractors.

While TOPSUN is providing services under this Agreement and for a period of 12 months thereafter, neither party will solicit, directly or indirectly, for employment or employ any employee of the other party, or of a TOPSUN subcontractor, who is or was actively involved in the performance, consumption or evaluation of the services without the prior written consent of the other. Notwithstanding the foregoing, the parties acknowledge and agree that this Agreement will not prohibit (i) any executive search or similar business used by TOPSUN or by any of its affiliates from engaging in its business in the ordinary course in a manner consistent with past practices on behalf of clients other than TOPSUN or (ii) solicitations through advertising or other publications of general circulation.

3. Customer Responsibilities. Customer will perform its obligations set forth in the applicable SOW. In addition, to the extent reasonably required by TOPSUN to perform the services at Customer facilities, Customer will make available

1. 专业服务。 TOPSUN 将按照工作说明书 (“工作说明书”) 中列明的提供服务并制作可交付件, 该工作说明书通过提述并入本协议。工作说明书的形式必须由 TOPSUN 指定或为 TOPSUN 所接受。

用户或 TOPSUN 要求对与专业服务相关的工作范围、方式、时间表、费用或可交付件作出的所有变更或修改应遵循正式的变更控制程序。在 TOPSUN 或用户提交变更控制要求后, TOPSUN 将基于要求之变更或修改完成费用估算及对进度影响的评估, 并将其提交用户书面确认。若用户批准了变更控制要求, 则 TOPSUN 将履行变更后的服务。若用户未在 TOPSUN 提交后的十 (10) 天内接受变更控制要求的, 则该变更控制要求将被视为无效, TOPSUN 将继续提供订单变更之前确定的专业服务

2. 人员。 TOPSUN 保留在提供服务过程中决定 TOPSUN 人员分配的独家权利。

提供服务的 TOPSUN 人员将是且始终是 TOPSUN 的员工, TOPSUN 将为这些员工提供并支付薪酬及其他福利, 包括工资、健康险、意外险、工伤补偿险以及雇主就雇用员工应支付的所有税收和缴款。

TOPSUN 有权在履行相关工作说明书项下义务时使用分包商, 但前提是 TOPSUN 仍将就其分包商进行的任何工作对用户承担主要责任。

在 TOPSUN 提供本协议项下的服务期间并且在此后的十二 (12) 个月内, 未经另一方事先书面同意, 任何一方不得直接或间接地征聘或聘用另一方或 TOPSUN 分包商的雇员 (该等雇员现在或过去积极地履行、使用或评价上述服务)。尽管有前述规定, 双方确认并同意, 本协议不禁止下列行为: (i) TOPSUN 或其关联企业使用的猎头公司或其它类似机构按其作为 TOPSUN 以外的其他客户提供服务的惯常的方式从事正常业务; 或 (ii) 通过广告或其它的普通出版物进行的招聘活动。

3. 用户的责任。 用户将履行相关工作说明书中规定的义务。此外, 如 TOPSUN 合理要求在用户的设施内提供服务时, 用户将允许 TOPSUN 进入设施, 向 TOPSUN 提供办公空间、办公设备、电话和传真服务、公用设施、办公

to TOPSUN facility access, office space, office furnishings, telephone and telecopy services, utilities, office supplies, and duplicating services. If the services require that any software licensed or otherwise provided to Customer by third parties be disclosed to TOPSUN, or used or accessed by TOPSUN, Customer will, at no expense to TOPSUN, obtain all consents, licenses and sublicenses necessary for TOPSUN to perform its services in connection with the third party software. Customer will defend any claim brought against TOPSUN to the extent that such claim is due to Customer's failure to fulfill Customer's obligations under the preceding sentence. Customer will bear the expense of such defense and pay any damages and attorneys' fees finally awarded by a court of competent jurisdiction which are attributable to such claim or which result from a settlement thereof, provided that TOPSUN notifies Customer promptly in writing of the claim and allows Customer to fully direct the defense or settlement of such claim. Customer will not be responsible for any settlement or compromise made without Customer's consent. This section will survive the expiration or termination of this Agreement for any reason.

4. Ownership of Deliverables.

(a) Pre-existing Software and Technology. Each party will retain all rights in any software, ideas, concepts, know-how, development tools, techniques or any other proprietary material or information that it owned or developed prior to the inception of a professional services project, or acquired or developed thereafter without reference to or use of the intellectual property of the other party.

(b) Third Party Software and Technology. All software and technology that is licensed by a party from a third party vendor will be and remain the property of such vendor.

(c) Deliverables Based on TOPSUN Software and Technology. Subject to any third party rights or restrictions, TOPSUN will own all intellectual property rights in or related to all deliverables that are developed and delivered by TOPSUN under this Agreement, provided that they consist of pre-existing TOPSUN software or TOPSUN software development tools ("TOPSUN Tools"), modifications thereto developed as part of the Services, or works derived from pre-existing TOPSUN software or TOPSUN Tools developed as part of the Services.

(d) Deliverables Based on Customer's Software and Technology. Subject to any third party rights or restrictions, Customer shall own all intellectual property rights in or related to any deliverables that do not constitute pre-existing TOPSUN software, TOPSUN Tools, or modifications thereto or

用品和复印服务。若服务需要将由第三方许可或提供给用户的任何软件披露给 TOPSUN, 或供 TOPSUN 使用或让 TOPSUN 接触, 用户将为 TOPSUN 获取提供与第三方软件有关的服务所需的所有同意、许可及再许可, 并承担相关费用。如用户未履行前述义务而致使 TOPSUN 被索赔, 用户将为 TOPSUN 辩护。用户将承担此类辩护费用, 并支付因上述索赔主张而发生的由有管辖权的法院最终判决或调解达成的赔偿金和律师费, 但前提是 TOPSUN 立即将该等索赔主张书面通知用户, 并允许用户对该等索赔的辩护或调解全权作主。用户对未经其同意而达成的调解或和解将不承担任何责任。本条规定将在本协议期满或因任何原因终止后继续有效。

4. 制作成果的所有权。

(a) 原有软件及技术。各方将保留对以下各项的所有权利: 在专业服务项目开始前其已拥有或开发的, 或在未参考或使用另一方知识产权的情况下在专业服务项目开始后获得或开发的任何软件、构想、概念、专有技术、开发工具、技术或任何其它专有材料或信息。

(b) 第三方软件与技术。从第三方供应商处获取的由一方许可使用的所有软件与技术将属于并始终属于该供应商的财产。

(c) 基于 TOPSUN 软件及技术的可交付件。受任何第三方的权利或限制的约束, TOPSUN 将拥有其在本协议项下开发并交付的所有可交付件本身或与其相关的所有知识产权, 但前提是该等可交付件应包含原有 TOPSUN 软件或 TOPSUN 软件开发工具(以下称"TOPSUN 工具")、作为服务组成部分而开发的原有 TOPSUN 软件或 TOPSUN 工具的改进版本, 或作为服务组成部分而开发的原有 TOPSUN 软件或 TOPSUN 工具的衍生品。

(d) 基于用户软件及技术的可交付件。受任何第三方的权利或限制的约束, 用户应拥有任何不构成原有 TOPSUN 软件、TOPSUN 工具或其改进版本或衍生品的可交付件本身或与其相关的所有知识产权。

works derived therefrom, that are developed as part of the Services.

(e) License Grant for Deliverables Owned by TOPSUN. With respect to deliverables owned by TOPSUN, Customer is hereby granted a license to use the deliverables provided by TOPSUN to Customer as part of a services project. If the deliverable is software, it will be in object code form and Customer is authorized to load, execute, display, store and otherwise use the software. Upon payment in full for such deliverable, the license granted to Customer in this Section will be perpetual, royalty-free, non-transferable and nonexclusive and will be limited to Customer's internal use of such copy.

(f) The Services provided hereunder shall not constitute "works made for hire" under any applicable copyright laws. Ownership of work in progress under a SOW shall remain with TOPSUN until such time as title to a Deliverable transfers, if at all, in accordance with this Agreement.

(g) No License to Intellectual Property of the Other Party. No licenses will be deemed to have been granted by either party to any of its patents, copyrights, trade secrets or other intellectual property except as otherwise expressly provided in this Agreement. TOPSUN will be free to use the ideas, concepts, methodologies, processes and know-how that are developed or created in the course of performing the services provided that TOPSUN does not use, or make reference to, the intellectual property or proprietary information of Customer.

5. Warranty. TOPSUN represents and warrants that the services will be performed in a professional and workmanlike manner.

EXCEPT AS PROVIDED IN THIS SCHEDULE D, WITH RESPECT TO THE PROFESSIONAL SERVICES TOPSUN MAKES NO OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(e) 就 TOPSUN 拥有的可交付件的许可授予。就 TOPSUN 拥有的可交付件, TOPSUN 特此授予用户一项许可, 允许其使用 TOPSUN 作为服务项目一部分向用户提供的可交付件。若可交付件为软件, 则以目标代码形式交付, 并授权用户装载、执行、显示、存储及以其他方式使用该软件。在该等可交付件的款项付清后, 本条款中授予用户的许可将为永久性、无需许可费、不可转让及非独家的许可, 其复制本仅限于用户内部使用。

(f) 本协议项下提供的服务不应构成任何适用的著作权法下的“职务作品”。工作说明书下的在制作品的所有权由 TOPSUN 保留, 直至根据本协议将可交付件的所有权转移(若有的话)时为止。

(g) 无另一方知识产权的许可。除本协议明确规定外, 任一方未就其任何专利、著作权、商业秘密或其它知识产权授予任何许可。TOPSUN 将免费使用在提供服务过程中开发或创造的任何构想、概念、方法论、工艺和专有技术, 但前提是 TOPSUN 未使用或参考用户的知识产权或专有信息。

5. 保证。TOPSUN 陈述并保证, TOPSUN 将以专业和熟练的方式提供服务。

除本附件 D 规定之外, TOPSUN 不就专业服务提供明示、暗示或法定的其他保证, 且所有其他保证于此免除, 包括但不限于适销性或适用于特定目的的保证。