

General terms and conditions for the license of software and the provision of software service

关于软件许可及服务提供的通用条款与条件



These general terms and conditions for the license of software and the provision of software service (hereinafter “**Contractual Conditions**”) govern all related details which are necessary and relevant for the legal relations between the Contracting Parties (defined below). All designations of persons apply equally to both genders.

本《关于软件许可及服务提供的通用条款与条件》（以下简称“**合同条件**”）适用于为合同双方（定义见下）之间的法律关系所需的且与之相关的所有具体规定。所有人称均同等地适用于两性。

In these Contractual Conditions, “**EPLAN**” means EPLAN Software & Services (Shanghai) Co., Ltd. (hereinafter “**EPLAN**”).

在本合同条件中，“**EPLAN**”系指易盼软件（上海）有限公司（以下简称“**EPLAN**”）。

In these Contractual Conditions, “**Customer**” means the company, the merchant, the legal entity under private law or public law named in the Order Confirmation (defined in chapter A., section 1.1 below) as EPLAN's contracting party and who is not a consumer as contemplated under Article 2 of the PRC Law on the Protection of Consumer Rights and Interests (hereinafter the “**Customer**”; together with EPLAN, the “**Contracting Parties**”).

在本合同条件中，“**客户**”是指在订单确认（定义见下文A章第1.1条）中作为EPLAN的合同相对方的公司、商户、私法或公法下的法人实体，但排除《中华人民共和国消费者权益保护法》第二条所规定的消费者（以下简称“**客户**”；客户与EPLAN以下合称“**合同双方**”）。

In these Contractual Conditions, “**Affiliates**” means legally independent business enterprises which a) hold the majority of the shares or voting rights in another business enterprise (majority shareholding) and business enterprises subject to any such majority shareholding, or b) are able to exert a direct or indirect controlling influence on another business enterprise (control relationship) and business enterprises subject to such control relationship, or c) are subject to a common management or have another dependent relation among each other (group relationship) (hereinafter “**Affiliates**”).

在本合同条件中，“**关联公司**”是指合法独立的商业企业，其a)持有另一家商业企业的多数股份或投票权（多数股权）以及受制于该多数股权的商业企业，或b)能够对另一家企业施加直接或间接控制影响（控制关系）以及受制于该等控制关系的商业企业，或c)受到共同管理或彼此之间具有另外附属关系（集团关系）的商业企业（以下简称“**关联公司**”）。

A. Principles of the cooperation between the Customer and EPLAN

客户与EPLAN之间的合作原则

1. Subject matter of the contract

合同标的

1.1 A contract (hereinafter each a “**Contract**”) shall be effectively formed and become binding on the Contracting Parties only after EPLAN confirms an order placed by the Customer in writing (hereinafter each an “**Order Confirmation**”).

仅在EPLAN以书面形式对客户下达的订单予以确认（以下简称“**订单确认**”）后，合同（以下简称“**合同**”）才有效订立且对合同双方产生约束力。

1.2 The subject matter of a Contract is specified in the respective Order Confirmation by EPLAN, together with the documents and agreements referred to therein, including these Contractual Conditions.

合同标的的规定于由EPLAN作出的相关订单确认以及该等确认中提及的文件和协议（包括本合同条件）。

1.3 Any offers which deviate from the Order Confirmation, as well as any other draft agreements which serve the evaluation of the cooperation which were exchanged between the Contracting Parties in the course of the negotiations are non-binding, including in relation to License Fees (defined in chapter A., section 3.1 below), quantities, delivery dates, delivery options, technical, data, specifications and quality descriptions.

任何偏离订单确认的要约，以及在谈判过程中合同双方之间交换的、任何其他用于对合作进行评估的协议草案均不具有约束力，包括许可费（定义见A章以下第3.1条）、数量、交付日期、交付选项、技术、数据、规格和质量说明。

2. Applicability of these Contractual Conditions

本合同条件的适用性

2.1 In addition to the Order Confirmation, these Contractual Conditions form the basis of all legal transactions between EPLAN and the respective Customer and, therefore, govern the legal relationship.

订单确认与本合同条件共同构成EPLAN与相关客户之间的所有合法交易之基础，并因此适用于合同双方之间的法律关系。

- 2.2 Any deviating and/or conflicting contractual terms and conditions of the Customer will not be accepted, regardless of whether or not they constitute a material modification of the Order Confirmation and regardless of the acceptance and payment of the Standard Software (defined in chapter B., part I., section 1.1 below) and services of EPLAN by the Customer.
任何与本合同条件相偏离和/或冲突的客户的合同条款和条件均不予接受, 无论其是否构成对订单确认的重大修改, 亦无论客户是否已接受标准软件 (定义见下文B章第I部分第1.1条) 及EPLAN的服务并支付相关价款。
- 2.3 Notwithstanding the above, these Contractual Conditions will always prevail, unless the Contracting Parties agree otherwise.
尽管有上述规定, 除非合同双方另有约定, 否则应始终以本合同条件为准。
- 3. License Fees, Remuneration and other costs**
许可费、报酬及其他费用
- 3.1 All license fees payable in consideration for the License (defined in chapter B., part I., section 2.1 below) in relation to the Standard Software shall be stipulated in the Order Confirmation (hereinafter "**License Fees**").
作为标准软件之许可 (定义见下文B章第I部分第2.1条) 的对价的许可费应规定于订单确认 (以下简称 "**许可费**") 。
- 3.2 The remuneration for software maintenance shall be charged on the basis of the fee schedule of EPLAN in force upon the conclusion of the Contract (hereinafter "**Remuneration**").
软件维护和咨询的报酬应以合同签订时有效的EPLAN费率表为基础收取 (以下简称 "**报酬**") 。
- 3.3 If applicable, all License Fees and the Remuneration are net of VAT and other applicable taxes, duties, charges and fees.
所有许可费和报酬均不含增值税和其他适用的税、关税、收费和费用。
- 4. Payment, set-off and right of retention**
付款、抵销和留置权
- 4.1 Unless agreed otherwise, the invoiced amounts of the License Fees and the Remuneration owed to EPLAN will be due and payable a) within three (3) weeks upon conclusion of the respective Contract without any deductions and b) by way of a transfer to EPLAN's bank account designated in the respective Order Confirmation. After the expiry of the foregoing time limit for payment, the Customer will be in default and shall be liable for a late payment penalty at the rate of 0.05% per day of the total License Fees and/or the Remuneration outstanding until full and final payment has been made. Should the Customer delay the payment for thirty (30) days or more, EPLAN shall be entitled to terminate the respective Contract and its obligations thereunder with immediate effect with written notice to the Customer. In addition to the foregoing late payment penalty, EPLAN shall in this case also be entitled to claim liquidated damages equaling 20% of the total License Fees and/or the Remuneration under the respective Contract to the extent permitted by applicable laws and regulations.
除非另有约定, 客户应a)在相应的合同订立后三 (3) 周内且b)通过向EPLAN在相应订单确认中指定的银行账户转账的方式, EPLAN支付许可费和报酬的发票金额, 且不得作出任何抵扣。如客户未能在前述付款期限内付款, 客户将构成违约, 并应每日按未偿付许可费和/或报酬之总额的0.05%支付迟延付款违约金, 直至全部和最终支付完毕。如果客户迟延支付达到或超过三十 (30) 日, EPLAN将有权书面通知客户立即终止相关合同及EPLAN在相关合同项下的义务。除上述迟延付款违约金外, 在此种情况下, EPLAN还有权在适用的法律和法规允许的范围内, 要求支付相当于相关合同项下许可费和/或报酬之总额的20%的违约金。
- 4.2 The Customer may only make a set-off of payment claims of EPLAN against claims which are undisputed or have become final and conclusive. The Customer only has rights of retention to the extent that these are based on the same legal transaction.
客户只能以无争议的或已为终局性的主张抵销EPLAN之付款主张。只有在基于同一法律交易的情况下, 客户才享有留置权。
- 5. Delivery**
交付
- 5.1 Standard Software will be delivered by EPLAN in intangible form, i.e., through the Internet, retrievable via a download by a link provided by EPLAN which allows the access to systems provided by EPLAN Software & Service GmbH & Co., KG (hereinafter "**EPLAN Germany**") for the download of a copy of the relevant Standard Software and the documentation that accompanies the software (hereinafter the "**Documentation**"). The quality of the Standard Software and the services is governed exclusively by the specification of services or technical specifications in force upon the conclusion of the respective Contract and which are available to the Customer, as well as the related documentation which accompanies the Standard Software and the services.
标准软件将由EPLAN以无形形式交付, 即经由互联网通过EPLAN提供的链接下载, 通过该链接可以进入EPLAN Software & Service GmbH & Co., KG (以下简称 "**EPLAN德国**") 提供的系统并下载相关标准软件的复本及附带文档 (以下简称 "**附带文档**") 。
- 标准软件和服务的质量仅适用相关合同订立时有效的且提供给客户的服务说明或技术性说明以及标准软件和服务附随的相关文档。
- 5.2 Within ten (10) working days upon conclusion of a Contract, EPLAN shall deliver to the Customer a link and a preliminary activation code allowing to download a copy of the respective Standard Software subject to a limited use of one (1) month (hereinafter the "**Temporary Code**"). Within ten (10) working days upon receipt of the full License Fees paid by the Customer, EPLAN shall deliver to the Customer a link and a final activation code allowing to download a copy of the respective Standard Software for permanent use (hereinafter the "**Permanent Code**").
在合同订立后的十 (10) 个工作日内, EPLAN应向客户提供下载链接及初始激活码, 凭借该初始激活码客户可以下载限一 (1) 个月使用期的标准软件之复本 (以下简称 "**临时码**") 。
- 在收到客户支付的许可费全款后的十 (10) 个工作日内, EPLAN应向客户提供下载链接及最终激活码, 凭借该最终激活码客户可以下载永久性使用的标准软件之复本 (以下简称 "**永久码**") 。
- 5.3 The Customer shall confirm its receipt of the link, the Temporary Code and the Permanent Code in writing to EPLAN within one (1) working day upon receipt of the respective information sent by EPLAN. Should the Customer fail to notify EPLAN

within the foregoing time limit, it shall be deemed to have well received such information.

客户应在收到EPLAN发送的相关信息后一(1)个工作日内,以书面形式向EPLAN确认其已收到下载链接、临时码和永久码。如果客户未能在前述时限内通知EPLAN,则应视为其已收到该等信息。

5.4 Partial deliveries will be admissible to the extent that they are reasonable for the Customer.

在对客户而言是合理的程度内,则EPLAN可以进行部分交付。

5.5 Standard Software will exclusively be delivered in machine-readable object code or, in an SAP environment, in ABAP form, and only for the contractually agreed use. The Customer has no claim to a disclosure or use of the source code. Unless expressly agreed otherwise in writing, the source code does not form part of the respective Contract.

标准软件将仅以机器可读的目标代码或(在SAP环境中)ABAP格式交付,且仅用于合同约定的用途。客户无权要求公开或使用源代码。除非另有书面明确约定,否则源代码不构成合同的一部分。

5.6 The relevant time for the compliance with delivery dates is the time when the Standard Software is ready for retrieval in accordance with chapter A., section 5.1 above and EPLAN has transmitted the Temporary Code or the Permanent Code to the Customer.

根据上文A章第5.1条标准软件已可读取且EPLAN已将临时码或永久码发送给客户之时点,为相关交付得到履行之日。

5.7 Unless expressly agreed otherwise in the respective Contract, delivery dates will always be non-binding and only an approximation. They will be subject to the timely delivery to EPLAN by its own suppliers (if applicable).

除非合同中另有明确约定,否则交付日期始终不具有约束力,而只是预估。交付日期将取决于EPLAN的供应商(如适用)向EPLAN作出的交付。

5.8 If an expressly agreed delivery date is exceeded for reasons for which EPLAN is responsible, the Customer shall grant EPLAN in writing a grace period of at least one (1) week.

如果由于EPLAN的原因导致超过了明确约定的交付日期,客户应以书面形式再给予EPLAN至少一(1)周的宽限期。

5.9 So long as the rendering of EPLAN's performances is impaired as a result of strikes or lock-outs in third-party enterprises or within EPLAN's own enterprise (in the latter case, however, only if the industrial dispute is lawful), official intervention, statutory prohibitions or other circumstances for which EPLAN is not responsible (hereinafter "**Force Majeure**"), any time limits for deliveries and services will be deemed to be extended by the duration of the impairment and a reasonable start-up period after the end of the impairment (hereinafter "**Downtime**"), and no breach of duty by EPLAN will exist for the duration of the Downtime. EPLAN shall notify the Customer of any such impairments and their expected duration without undue delay. If Force Majeure persists for an uninterrupted period of more than three (3) months, both Contracting Parties will be released from their duties to perform.

如由于第三方企业或EPLAN公司内部(但在后一种情形下,仅限于合法劳资纠纷的情况)的罢工或停业,或由于政府干预、法定禁止或EPLAN不对此负有责任的其他情形(以下简称“**不可抗力**”),导致EPLAN的履约受到减损,则任何交付和服务提供的时限将被视为因损害的持续时间和损害结束后的合理启动期而得以延长(以下简称“**停滞期**”),在停滞期内,EPLAN不承担任何违约责任。EPLAN应无不当延迟地将任何该等损害及其预计持续时间通知客户。如果不可抗力无间断持续的时间超过三(3)个月,则合同双方的履约义务均将被解除。

6. Customer's duties to cooperate and provide information

客户的合作和信息提供之义务

6.1 The Customer is solely responsible for the necessary hardware and software environment in relation to the Standard Software and services to be provided by EPLAN. This also applies in respect of the system requirements and the handling of the software by the Customer's employees and other staff.

客户自身负责准备为使用标准软件及EPLAN提供的服务所必须的硬件和软件环境,包括符合要求的系统以及操作软件的客户的员工和其他人员。

6.2 The Customer is responsible for the establishment of an adequately dimensioned hardware and software environment, also in consideration of the additional load by the Standard Software and services.

客户负责建立一个适当规模的硬件和软件环境,同时考虑到因使用标准软件和服务而会产生的额外负荷。

6.3 Before using them, the Customer shall thoroughly test the Standard Software and services for their freedom from defects and their usability in the existing hardware and software configuration. This applies also to the Standard Software and services provided to the Customer within the scope of warranty and maintenance.

在使用标准软件和服务之前,客户应充分测试标准软件和服务是否存在瑕疵以及该等软件和服务在现有硬件和软件配置中的可用性。前述规定同样适用于向客户提供的在保修和维护范围内的标准软件和服务。

6.4 The Customer shall observe the notes and minimum requirements provided by EPLAN in relation to the installation and use of the Standard Software and services.

客户应遵守EPLAN提供的、有关标准软件及服务之安装和使用的注意事项和最低要求。

6.5 The Customer shall, free of charge and to the required extent, provide any requirements and parameters as are necessary for a contractual use of the Standard Software and services, for example, staff, workspaces and access to them, as well as hardware and software, data and telecommunications systems.

客户应在要求的范围内自费提供按约使用标准软件和服务所需的任何要求和参数,例如员工、工作空间和对该等工作空间的使用以及硬件和软件、数据和电信系统。

6.6 To enable EPLAN to remedy any fault in the best possible manner and as quickly as possible, the Customer shall, in connection with the troubleshooting and rectification of the fault, grant to EPLAN access to the Standard Software and services provided by EPLAN, in particular, software and components thereof. If necessary, the Contracting Parties shall enter into any agreements and take security measures to preserve data protection.

为使EPLAN能够以最佳的方式并尽快纠正任何故障,就故障排除和纠正,客户应授权EPLAN访问标准软件和EPLAN所提供

的服务（特别是软件及其组件）。必要时, 合同双方应订立协议并采取安全措施以维持对数据的保护。

- 6.7 The Customer hereby warrants that the Customer backs up its data regularly at reasonable and application-adequate intervals within the scope of the general legal, business-management and organisational principles, in particular, IT security and compliance principles. Before EPLAN is granted access as specified above for the aforementioned purposes, the Customer shall back up the data affected thereby (for example, project files) in the aforementioned manner. A regular data backup will be deemed "application-adequate" if it warrants - subject to the sensitivity and relevance of the data - an immediate or short-term restoration of the condition which existed before the access at reasonable expense.

客户在此保证, 客户应在一般法律、业务管理和组织原则（尤其是IT安全和合规原则）的范围内, 根据合理且适当的间隔, 定期备份其数据。在为上文提到的目的而授予EPLAN相关访问权限之前, 客户应以前述方式备份受EPLAN访问影响的数据（例如项目文件）。如果定期数据备份能够保证（根据数据的敏感性和相关性）以合理的费用可以将数据立即或短期内恢复到访问之前的状态, 则该定期数据备份将被认为系“适当”的。

7. Warranty; Limitation of actions

保证; 行为限制

- 7.1 **LIMITED WARRANTY: UNLESS OTHERWISE EXPRESSLY AGREED BETWEEN THE CONTRACTING PARTIES IN WRITING, EPLAN WARRANTS THAT THE STANDARD SOFTWARE IT DELIVERS TO THE CUSTOMER SHALL PERFORM SUBSTANTIALLY AS DESCRIBED IN THE DOCUMENTATION. OTHER THAN THE FOREGOING, EPLAN EXPRESSLY EXCLUDES ANY OTHER WARRANTIES OR GUARANTEES TOWARDS THE STANDARD SOFTWARE, WHETHER EXPRESS OR IMPLIED, TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS.** The Customer must download and inspect the Standard Software delivered and notify EPLAN in writing of any obvious defects within one (1) working day upon receipt of the Temporary Code or the Permanent Code and subject to the time limit stipulated in chapter A., section 7.6 below, shall immediately notify EPLAN in writing of any hidden defects after their discovery. If he fails to do so, the Standard Software shall be deemed to have been accepted free of defects.

有限保证: 除非合同双方另有书面明确约定, EPLAN保证标准软件的性能应与附随文档中的描述基本相同。除前述保证外, 在适用法律允许的范围内, EPLAN明确不对标准软件作出任何其他明示或暗示的保证或担保。客户须下载并检查交付的标准软件, 并在收到临时码或永久码后的一(1)个工作日内将发现的任何明显瑕疵以书面形式通知EPLAN。在下文A章第7.6条规定的期限内, 客户应在其发现任何隐蔽瑕疵后立即以书面形式通知EPLAN。如果客户未依前述规定作出通知, 则标准软件应被视为已被客户验收且不存在任何瑕疵。

- 7.2 The Customer may only assert any warranty claims in relation to a defect which is reproducible or can be identified otherwise. The Customer shall document any such defect in a comprehensible form and submit the notification of the defect, as well as the Documentation, to EPLAN, including any useful information known to the Customer, without undue delay after becoming aware of the defect. The Customer shall take all reasonable measures which facilitate an identification of the defect and its causes.

客户只能就可复制的或可以其他方式识别的瑕疵提出保证主张。客户应以可以理解的形式记录任何此类瑕疵, 并在知晓瑕疵后无不当迟延地将就瑕疵作出的通知及附随文档（包括客户已知的任何有用信息）提交给EPLAN。客户应采取一切便于识别瑕疵及其原因的合理措施。

- 7.3 If EPLAN is obliged to rectify a defect, EPLAN may, at its option, repair the Standard Software or providing a reasonable workaround solution suitable of avoiding the impacts of the defect.

如果EPLAN有义务纠正瑕疵, 则EPLAN可以自行选择维修标准软件或提供合理且合适的解决方法来避免瑕疵的影响。

- 7.4 EPLAN Germany may publish the latest version of the Standard Software from time to time (hereinafter the "New Version"). A New Version (i.e., any new software version in relation to the Standard Software and services, in particular, updates, hotfixes, patches, service packs etc., but excluding other modules, products, add-ins and add-ons) shall be accepted by the Customer provided that it serves the purpose of avoiding or rectifying defects, the contractual functional scope is preserved, and the acceptance does not result in substantial disadvantages to the Customer. The New Version shall be subject to the provisions of these Contractual Conditions except that the limitation period stipulated in chapter A., section 7.6 below shall not be extended or otherwise impacted.

EPLAN德国可不时发布标准软件的最新版本（以下简称“新版本”）。新版本系与标准软件及服务有关的任何新软件版本, 特别包括更新、修补程序、补丁、服务包等, 但不包括其他模块、产品、加载项和附加组件。在新版本系用于避免或纠正瑕疵之目的、合同的功能范围将不因此受影响且接受该等新版本不会对客户造成重大不利影响的前提下, 客户应当接受该等新版本。新版本应适用本合同条件的规定, 但不得延长下文A章第7.6条中规定的期限或对该等期限产生其他影响。

- 7.5 The Customer's warranty claims do not extend to (1) the Customer's failure to follow the instructions specified in the documentation that accompanies the Standard Software and the services and (2) any Standard Software and services which are modified by the Customer or any third party or which are used in a system environment other than the intended or contractually agreed system environment. The Customer will be free to prove that the defect was not caused as a result of any such different use.

在任何以下情形下, 客户无权向EPLAN提出保证主张: (1) 客户未遵循标准软件或服务附随文档中的使用说明, 以及 (2) 客户或任何第三方对任何标准软件和服务作出修改, 或在非预期或非合同约定的系统环境中使用任何标准软件和服务。客户可以自由证明瑕疵并非系由任何前述的不当使用而造成的。

- 7.6 The limitation period for any claims under this section 7 is one (1) year from the conclusion of the respective Contract.

根据本第7条提出任何主张的期限为合同订立后的一(1)年。

8. Liability

责任

- 8.1 Subject to chapter A., section 7 above, **EPLAN'S LIABILITY SHALL BE EXCLUDED TO THE FULLEST EXTENT**

PERMITTED BY APPLICABLE LAWS, EXCEPT THAT EPLAN SHALL BE LIABLE FOR ANY DAMAGE CAUSED BY ITS OWN INTENT OR GROSS NEGLIGENCE, OR BY A NEGLIGENT BREACH OF MATERIAL CONTRACTUAL DUTIES. “Material Contractual Duties” means duties which render the proper performance of the contract possible in the first place and on the compliance with which the other contracting party may regularly rely.

受制于上文A章第7条的规定，EPLAN应仅对因其故意、重大过失或对重要合同义务的过失性违反而造成的损害承担责任，除此之外，在适用法律允许的最大范围内，EPLAN的责任应被排除。“重要合同义务”指使得合同的适当履行成为可能以及合同相对方通常可以信赖其能被遵守的义务。

- 8.2 The liability under mandatory statutory provisions, as well as for violations of life, body or health and in relation to claims arising from product liability, insofar as there are special legal regulations under the laws of the PRC (which for the purposes of these Contractual Conditions only shall exclude the Hong Kong SAR, the Macao SAR and Taiwan), remains unaffected by the above limitations of liability.

如中国（仅为本合同条件之目的不包括香港特别行政区、澳门特别行政区和台湾）法项下存在特殊法律规定，强制性法律规定项下的责任，侵犯生命、人身或健康的责任，以及与由产品责任引起的索赔相关的责任，均不受上述责任限制的影响。

- 8.3 **THE LIABILITY OF EPLAN UNDER THE RESPECTIVE CONTRACT AND THESE CONTRACTUAL CONDITIONS SHALL BE LIMITED TO THE RESULTANT PROPERTY AND PECUNIARY DAMAGE WHICH COULD TYPICALLY AND REASONABLY BE EXPECTED TO OCCUR UPON THE CONCLUSION OF THE CONTRACT, AND SHALL IN ANY CASE, CAPPED AT THE TOTAL AMOUNT OF THE LICENSE FEES AND/OR THE REMUNERATION FOR EPLAN AGREED IN THE RESPECTIVE CONTRACT, IF SUCH TOTAL SUM CAN BE DETERMINED OR, IF SUCH TOTAL SUM CANNOT BE DETERMINED (FOR EXAMPLE, BECAUSE OF AN INDEFINITE TERM), THE TOTAL REMUNERATION PAID TO EPLAN WITHIN THE TWELVE (12) MONTHS PRECEDING THE OCCURRENCE OF THE DAMAGE.**

EPLAN在相关合同和本合同条件项下所承担的责任应仅限于合同订立时通常能够合理预见的财产和金钱损害，且在任何情况下，不得超过相关合同中约定的、客户应向EPLAN支付的许可费和/或报酬之总额（如果该等总额能够确定）或损害发生前十二（12）个月内客户向EPLAN支付的报酬之总额（如果合同中约定的总额无法确定，比如由于合同的期限不固定）。

- 8.4 **IN ALL OTHER CASES, A LIABILITY WILL BE EXCLUDED. THIS APPLIES ALSO IN RELATION TO INDIRECT DAMAGE, CONSEQUENTIAL DAMAGE OR LOSS OF PROFIT.**

在所有其他情况下，EPLAN的责任将被排除。间接损害、结果性损害或利润损失亦应被排除。

- 8.5 EPLAN reserves the right to plead contributory fault.

EPLAN保留请求混合过错的权利。

- 8.6 The limitations of liability under this section 8 shall also apply to the benefit of EPLAN's employees, agents and support staff.

本第8条中的责任限制也应适用于EPLAN的员工、代理和支持性人员。

9. Confidentiality and data protection

保密及数据保护

- 9.1 The Contracting Parties shall maintain secrecy regarding any information of a technical, financial or other commercial or confidential nature received by them directly or indirectly in connection with the respective Contract and its performance and shall not disclose the same to third-parties; Affiliates of a Contracting Party are not deemed to be third-parties. In addition, the Contracting Parties shall not use any information obtained for any purpose other than the purpose expressly stated in the Contract.

合同双方应对其直接或间接接收到的，与相关合同及其履行相关的任何技术性、财务性或其他商业或保密性质的信息进行保密，且不得向第三方披露；合同一方的关联公司不视为第三方。此外，合同双方不得将获取的任何信息用于除合同中明确规定的以外的任何目的。

- 9.2 These duties of confidentiality do not apply to any information which is in the public domain, which had already been known to a party, which was lawfully obtained by a party from a third-party, or which a party has developed itself in the absence of a breach of duties of confidentiality. The party invoking the above bears the burden of proof.

该等保密义务不适用于已在公知领域的，或已被合同一方所知晓，或已由合同一方自第三方处合法获得，或已由合同一方在不违反保密义务的情况下自行开发的任何信息。援引上述规定的合同一方承担举证责任。

- 9.3 These duties regarding comprehensive secrecy and confidentiality survive the termination of the respective Contract.

本条中关于全面保密的义务在相关合同终止后仍然有效。

- 9.4 EPLAN may collect, process and store personal data of the Customer in compliance with the regulations of the applicable data protection laws, directive and other regulations.

EPLAN可以根据适用的数据保护法律、指令和其他规定，收集、处理和存储客户的个人数据。

- 9.5 Should EPLAN analyse Customer data, EPLAN shall do so exclusively within the admissible scope under the applicable data protection laws.

如果EPLAN对客户数据进行分析，则EPLAN应仅在适用的数据保护法允许的范围内进行。

- 9.6 EPLAN further warrants that all employees of EPLAN have undertaken in writing to comply with data secrecy and observe special confidentiality in accordance with applicable data protection, telecommunications and other applicable laws.

EPLAN进一步保证，EPLAN所有员工均已书面承诺遵守数据保密义务，并根据适用的数据保护、电信和其他适用法律遵守特别保密义务。

10. Final provisions

最终条款

- 10.1 EPLAN may, at its own discretion and in consideration of the Customer's legitimate interests, assign performances to

subcontractors selected by EPLAN. EPLAN will be liable for the performances of its subcontractors as if they were EPLAN's own performances.

EPLAN可以自行决定并出于对客户合法利益的考虑, 选择分包商履行相关合同义务。EPLAN将对其分包商的履约行为负责, 如同该等履行是由EPLAN自身作出。

- 10.2 Any amendments and supplements to these Contractual Conditions must be in writing (including fax and email) to be effective and must expressly be referred to as such. This also applies to any modifications of this Section 10.2. No oral side agreements were made.

对本合同条件的任何修改和补充必须以书面形式(包括传真和电子邮件)作出方为有效, 且必须指明其系对本合同条件的修改和补充。前述规定亦适用于对本第10.2条作出的任何修改。合同双方从未达成过任何口头的附属协议。

- 10.3 Should any of the provisions of these Contractual Conditions be or become ineffective, contain an inadmissible time limit or a gap, the validity of the remaining provisions will not be affected thereby. In such case, the Contracting Parties shall replace the ineffective provision by an effective provision which comes closest to the Contracting Parties' economic and legal intentions.

如果本合同条件的任何规定无效或失效、包含不被允许的时限或存在遗漏, 其余条款的效力将不受影响。在该等情况下, 合同双方应以最接近合同双方经济和法律意图的有效条款取代无效条款。

- 10.4 These Contractual Conditions and the entire legal relationships between the Contracting Parties are governed by the laws of the People's Republic of China (which for the purposes of these Contractual Conditions only shall exclude the Hong Kong SAR, the Macao SAR and Taiwan), to the exclusion of its conflict of law rules and the UN Convention on Contracts for the International Sale of Goods (CISG).

本合同条件以及合同双方之间的所有法律关系应适用中华人民共和国(仅为本合同条件之目的不包括香港特别行政区、澳门特别行政区和台湾)的法律, 并排除适用中国冲突法规则及《联合国国际货物销售合同公约》(CISG)。

- 10.5 All disputes arising from or in connection with these Contractual Conditions shall first be resolved by friendly negotiation between the Contracting Parties. If such negotiation fails, either of the Contracting Parties shall have the right to submit the dispute to the China International Economic and Trade Arbitration Commission (CIETAC) Shanghai Sub-commission for arbitration which shall be conducted in accordance with the CIETAC arbitration rules in effect at the time of applying for arbitration. The arbitral tribunal shall be composed of three (3) arbitrators. The place of arbitration shall be Shanghai and the language of arbitration shall be English. The arbitration award shall be final and binding on the Contracting Parties. The arbitration fee and the attorney's fee of the winning party shall be borne by the losing party unless provided otherwise in the arbitration award.

凡因本合同条件产生或与之有关的一切争议, 合同双方首先应通过友好协商解决。协商不成的, 任何一方均有权将争议提交中国国际经济贸易仲裁委员会(CIETAC)上海分会, 按照申请仲裁时该会现行有效的仲裁规则进行仲裁。仲裁庭应当由三(3)位仲裁员组成。仲裁地应为上海, 仲裁语言应为英文。仲裁裁决是终局的, 并对合同双方具有约束力。除非仲裁裁决有任何其他规定, 仲裁费和胜诉方的律师费应由败诉方承担。

- 10.6 The respective Contract may not be transferred or assigned to a third-party without EPLAN's prior written consent (which may not be unreasonably withheld), unless the transferee or assignee is a legal successor of the transferor as a result of a merger, a transfer, a consolidation, an acquisition, a legal restructuring, a sale of assets or a purchase of substantially all assets to which the subject matter of these Contractual Conditions relates.

未经EPLAN事先书面同意(EPLAN不得无理拒绝作出同意), 相关合同不得被转让或让与给第三方, 除非由于兼并、转让、合并、收购、合法重组、资产出售或对与本合同条件之标的相关的绝大部分资产的购买, 受转让人或受让人是转让人的合法承继主体。

- 10.7 These Contractual Conditions are written in both English and Chinese. In case of discrepancy between the two language versions, the English version shall prevail.

本合同条件以中、英文双语书就。两个语言版本存在不一致的, 以英文版本为准。

B. Special provisions regarding the cooperation between the Customer and EPLAN

关于客户与EPLAN合作之特别条款

I. Standard Software; Third-party Software

标准软件; 第三方软件

1. Bases

基本规定

- 1.1 In these Contractual Conditions, "Standard Software" means - including the related application documentation - any software and software products, i.e., programmes, programme modules, applications, tools, add-ins and other prefabricated solutions etc., which are developed and owned by EPLAN Germany and licensed by EPLAN Germany to EPLAN for distribution to a variety of Customers in Mainland China, the Hong Kong SAR and the Macao SAR under the respective Contracts and which are not exclusively developed for an individual Customer (hereinafter "**Standard Software**").

在本合同条件中, “标准软件”, 包括相关的应用文档, 是指由EPLAN德国开发、所有并许可EPLAN在相关合同项下经销给中国大陆、香港特别行政区和澳门特别行政区的客户的任何软件及软件产品, 即程序、程序模块、应用、工具、插件和其他预制解决方案等, 但不包括为单一客户专门开发的软件(以下简称“**标准软件**”)。

- 12 In these Contractual Conditions, “software of other manufacturers” means any software and/or software components which were not developed by EPLAN Germany or EPLAN and/or in relation to which EPLAN Germany or EPLAN is no author or co-author and/or owner (hereinafter “**Third-Party Software**”).

在本合同条件中，“其他制造商的软件”是指非由EPLAN德国或EPLAN开发的，及/或EPLAN德国或EPLAN并非作者或共同作者和/或所有者的任何软件和/或软件组件（以下简称“**第三方软件**”）。

- 13 Third-Party Software as defined in chapter B., part I., section 1.2 above includes, in particular, any open-source software (hereinafter “**OSS**”).

上述B章第I部分第1.2条所定义的第三方软件特别包括任何开源软件（以下简称“**OSS**”）。

- 14 If the software has defined namespaces, the namespace of EPLAN Germany or EPLAN, as applicable, will be deemed to be Standard Software; any development outside the scope of such namespace will not be deemed to be Standard Software.

如果软件有定义的命名空间，EPLAN德国或EPLAN（如适用）的命名空间将被视为标准软件；在该命名空间范围之外的任何开发将不被视为标准软件。

2. Granting of rights of use and licence rights

使用权及许可权的授予

- 21 EPLAN will grant to the Customer a non-exclusive, permanent right of use (hereinafter the “**Licence**”) in relation to the Standard Software in accordance with the provisions of these Contractual Conditions and subject to the scope and the limitations specified in the respective Contract. Any use of the Standard Software in excess of the foregoing scope is prohibited and will always require EPLAN's express written consent.

EPLAN将根据本合同条件之规定，并依据相关合同规定的范围和限制，向客户授予对标准软件的非专有的永久使用权（以下简称“**软件许可**”）。除非得到EPLAN的明确书面同意，否则禁止超出前述范围使用标准软件。

- 22 Exclusively limited to internal application purposes in each case, EPLAN will grant to the Customer upon the conclusion of the respective Contract, in accordance with the respective licensing terms stated in the Contract and subject to the condition precedent of the payment of the respective full Licence Fees, the following Licences:

仅限于客户的内部应用目的，EPLAN将在相关合同订立后，根据合同中相关许可条款，同时以相关许可费得到全额支付为前提条件，向客户授予以下软件许可：

- a) **Single-user licence:** A non-exclusive right of use unlimited in time, which is, however, limited in terms of content and space to one single installation on single-user hardware; or

单一用户许可：时间上不受限制的非专有使用权，但是在内容和空间方面，仅限于单一用户硬件上的单一安装；或

- b) **Net licence:** A non-exclusive right of use unlimited in time, which is, however, limited in terms of content and space to the installation on several computers within the internal network and only for the use in Mainland China, the Hong Kong SAR and the Macao SAR; in that respect, the maximum number of parallel uses will be governed by the number of the acquired and activated Licences administered by licence management software provided by EPLAN; or

网络许可：时间上不受限制的非专有使用权，但是在内容和空间方面，仅限于在内部网络中的多台计算机上安装，并且只能在中国大陆、香港特别行政区和澳门特别行政区使用；对此，并行使用的最大数量取决于由EPLAN提供的许可管理软件所管理的已获取且已激活的许可数量；或

- c) **WAN licence:** A non-exclusive right of worldwide use unlimited in time, which is, however, limited in terms of content and space to the installation on several computers within the internal network; in that respect, the maximum number of parallel uses will be governed by the number of the acquired and activated Licences administered by licence management software provided by EPLAN; or

广域网许可：时间上不受限制的、全球范围内的非专有使用权，但是在内容和空间方面，仅限于在内部网络中的多台计算机上安装；对此，并行使用的最大数量取决于由EPLAN提供的许可管理软件所管理的已获取且已激活的许可数量；或

- d) **Named user licence:** A non-exclusive right of use unlimited in time, which is, however, limited in terms of content and space to one registered named user. Any additional or other restrictions resulting from this type of Licence, in particular, the inclusion of products in product families, result from the related Documentation.

命名用户许可：时间上不受限制的非专有使用权，但是在内容和空间方面，仅限于单一已注册的命名用户使用。对此类许可的任何附加或额外限制，特别是产品系列中所包含的产品，均来自相关附随文档。

- 23 “Internal application purposes” includes the settlement of the Customer's own business transactions and the business transactions of the Customer's Affiliates. EPLAN's prior written consent will be required, in particular, for (i) the operation of a computer centre for third-parties or (ii) the temporary provision of the Standard Software (e.g., in the form of Application Service Providing) to persons or entities other than Affiliates or (iii) the use of the Standard Software to train persons other than employees or other staff of the Customer or its Affiliates. The operation by a commissioned third-party under the control by, and exclusively for the purposes of, the Customer (IT outsourcing, hosting) is permitted. The use by the Customer of technical solutions by which the Customer intends to obtain a use in excess of the scope of the acquired licensing, i.e., in particular, through dongle servers and remote maintenance software, is not permitted.

“内部应用目的”包括对客户自身的商业交易及客户的关联公司的商业交易的处理。特别地，在涉及（i）为第三方运营计算机中心或（ii）向除关联公司之外的个人或实体临时提供标准软件（例如，以提供应用服务的形式）或（iii）使用标准软件培训除客户或其关联公司的员工或其他人员以外的个人时，需要取得EPLAN的事先书面同意。允许受客户委托的第三方在客户的控制下且仅为服务客户之目的所进行的操作（IT外包、托管）。不允许客户使用旨在使客户超出其所取得的许可范围外进行使用的技术解决方案，特别是，使用加密狗服务器和远程维护软件。

- 24 Other than the rights expressly granted by EPLAN in chapter B., part I., section 2.2 above, the Customer shall have no other rights on the Standard Software. In particular, all rights (including but not limited to copyrights) of the Standard Software shall always belong to EPLAN Germany and shall be protected by the international copyright law, the *Copyright Law of the People's Republic of China* and other relevant laws and regulations.

除上文B章第I部分第2.2条中EPLAN明确授予的权利外，客户对标准软件不享有任何其他权利。特别地，标准软件的所有权利（包括但不限于著作权）应始终属于EPLAN德国，并受国际著作权法、《中华人民共和国著作权法》和其他相关法律、法规的保护。

- 25 A transmission of the Standard Software and a transfer of the rights of use to third-parties will only be permitted if EPLAN has expressly consented to the transfer in writing and if the rights of use are passed to the third-party with the scope, and in the composition, which has been acquired by the Customer before. In so doing, the Standard Software may only be surrendered to the third-party in a uniform manner and completely, including any Documentation and all other related materials. Any temporary surrender, leasing or letting is not permitted. Any partial surrender of the Standard Software, or components thereof, to third-parties, or the surrender of the same Standard Software to several third-parties, is prohibited, to the fullest extent permitted by applicable laws.

只有在以下条件都满足的情况下，客户才被允许向第三方传送标准软件并转让对该标准软件的使用权：EPLAN已明确书面同意该等转让，并且转让的使用权不超过客户此前获得的范围及组成。标准软件只能以统一的方式完整地（包括任何附随文档和全部其他相关材料）交付第三方。任何临时性交付或出租都不被允许。在适用法律允许的最大范围内，禁止将标准软件或其组件部分地交付第三方，或将同一标准软件交付多个第三方。

In the event of an admissible transfer, the Customer shall ensure, and shall furnish written evidence thereof upon EPLAN's request, that:

在转让被许可的情况下，客户应确保满足以下要求，并应在EPLAN要求时提供书面证据证明以下要求得到满足：

- the third-party has undertaken to comply with these Contractual Conditions and the rights of use, or restrictions thereof, granted herein;
第三方已承诺遵守本合同条件及本合同条件中授予的使用权或对使用权作出的限制；
- the Standard Software, dongles, serial numbers (if any), the Documentation and other materials delivered together with the Standard Software, including all copies, updates and earlier versions, were transferred to the third-party;
标准软件、加密狗、序列号（如有）、附随文档及与标准软件一并交付的其他材料，包括所有复本、更新和早期版本，均转让给第三方；
- the Customer has not retained any copies, including backup copies;
客户未保留任何复本，包括备份；
- EPLAN was informed of the transfer and the third-party, while stating the related serial numbers and licence keys of the respective Standard Software; and
已向EPLAN告知该等转让及第三方，同时说明相关标准软件的序列号和许可密钥；且
- the re-registration of the serial numbers and licence keys to the third-party by EPLAN was applied for.
已向EPLAN申请为第三方重新登记序列号及许可密钥。

Upon the transfer, all rights of use of the Customer in relation to the Standard Software will expire.

转让后，客户对标准软件的全部使用权将终止。

A transfer of the Standard Software which is permitted under the aforementioned requirements will not automatically result in a transfer or assignment of warranty claims or a maintenance contract for the Standard Software which may exist in the relation between the Customer and EPLAN.

根据前述要求对标准软件的经许可转让，将不会导致客户和EPLAN之间可能存在的对标准软件的保证主张或维护合同的自动转让或让与。

- 26 Copies of the Standard Software may only be made for the purposes of backup. To this end, the Customer may copy the Standard Software to a data carrier. Backup copies on removable data carriers must be marked as such, be provided with the copyright notice of the original data carrier, adequately documented in terms of the number and whereabouts of any such copies and submitted to EPLAN upon EPLAN's request. The Customer shall not transfer or otherwise provide such copies to any third parties. The rights to, and in connection with, any such copies are also governed by these Contractual Conditions.

客户仅可出于备份之目的制作标准软件的复本。为此，客户可以将标准软件拷贝至数据载体。存储于可移动数据载体上的备份复本应被标记为备份复本且与原数据载体的版权声明一并提供。客户应适当地记录存储于可移动数据载体上的备份复本的数量和存放处，且在EPLAN要求时将该等备份复本提交给EPLAN。客户不得将该等复本转让或以其他方式提供给任何第三方。对任何该等复本及与之相关的权利亦受本合同条件的约束。

- 27 The Customer may only make those modifications, extensions and other adaptations of the Standard Software which are permitted within the limits of applicable laws, i.e.,

客户仅可在适用法律的允许范围内，对标准软件进行以下修改、扩展和其他改编：

- a) in particular, decompilations in order to create interoperability with other hardware and software, or
特别是，以创建标准软件与其他硬件和软件的互用性而进行的反编译，或
- b) which are necessary for the intended use and the rectification of faults, or
预期用途和故障纠正所必需的修改、扩展和其他改编，或
- c) which have been expressly contractually agreed. In other respects, the Customer has no adaptation right.
已经由合同明确约定的修改、扩展和其他改编。在其他情况下，客户没有改编权。

- 28 If the Customer violates any of the restrictions under chapter B., part I., sections 2.5, 2.6 and 2.7 above, EPLAN shall be entitled to terminate the respective Contract with immediate effect by written notice to the Customer and the License Fees which have been paid by the Customer shall not be refunded. In addition, EPLAN shall be entitled to claim for liquidated damages of 500,000 RMB from the Customer to the extent permitted by applicable laws and regulations. If the actual losses incurred by EPLAN and/or EPLAN Germany due to the Customer's violation exceed such liquidated damages, the Customer shall also compensate EPLAN and/or EPLAN Germany for any additional losses.

客户违反上文B章第I部分第2.5、2.6和2.7条所规定的任何使用限制的，EPLAN有权书面通知客户立即解除合同，客户已支付的许可费不予退还。此外，EPLAN应有权在适用法律和法规允许的范围内，要求客户就该违约行为支付违约金人民币500,000元。如客户违约行为造成EPLAN和/或EPLAN德国所遭受的实际损失超过该违约金，客户还应就任何额外损失向EPLAN和/或EPLAN德国作出赔偿。

- 29 If EPLAN provides the Customer with a New Version in connection with rectifications or maintenance which replaces the contractual objects provided earlier (hereinafter the "Old Version"), such New Version will be subject to the provisions of these Contractual Conditions.

如果EPLAN就瑕疵纠正或维护向客户提供一个新版本，以取代此前提供的合同标的物（以下简称“旧版本”），该新版本将受本合同条件中条款的约束。

- 210 If EPLAN provides a New Version of the Standard Software, the Customer's rights under the respective Contract in relation to the Old Version will automatically terminate. The Customer may, however, continue to use the Old Version for reasons of compatibility to the extent that the Customer's customers or suppliers use Older Versions; the total number of the acquired licences will not thereby increase. The Customer will not, however, have any claims to software services, in particular, the maintenance of such Old Version. If the Customer uses the New Version with a file originally stored under an Old Version, such file can no longer be edited with the Old Version.

如果EPLAN提供标准软件的一个新版本，客户在相关合同项下与旧版本有关的权利将自动终止。但是，出于兼容性理由，只要客户的客户或供应商使用旧版本，则客户可以继续使用旧版本；客户获得的许可总数并不因此增加。但是，客户无权就旧版本要求提供软件服务，特别是对该等旧版本的维护。如客户使用新版本打开原本存储于旧版本的文档，则该等文档将无法再使用旧版本进行编辑。

- 211 EPLAN will not assert any rights in relation to the files, documentation and other data of the Customer created as a result of the use of the Standard Software as intended and contractually agreed.

就客户以预期和合同约定的方式使用标准软件而创建的文件、文档和其他数据，EPLAN将不对其主张任何权利。

3. Third-Party Software

第三方软件

- 3.1 In relation to Third-Party Software, the terms of use, or licensing terms and conditions, of the respective manufacturer apply exclusively. Any Third-Party Software is specified in the respective offer with the name and/or product name of the respective manufacturer (e.g., SAP, Autodesk) and normally also refers to its terms of use there.

对于第三方软件，应仅适用相关制造商的使用条款或许可条款和条件。相关报价中会注明任何第三方软件、相关制造商的名称和/或产品名称（例如SAP、Autodesk），且通常会援引第三方软件的使用条款。

- 32 Third-Party Software does not form part of the Software Service (defined in chapter B., part III., section 2.1 below) or other software maintenance services, and the provisions of these Contractual Conditions regarding Software Service or software maintenance services do not apply to Third-Party Software. Third-Party Software is governed exclusively by the terms and conditions of its respective manufacturer.

第三方软件不构成软件服务（定义于下文B章第III部分第2.1条）或其他软件维护服务的一部分，本合同条件中关于软件服务或软件维护服务的条款不适用于第三方软件。第三方软件仅适用其相关制造商的条款和条件。

- 33 The information and documentation required in relation to OSS form part of the Documentation relating to the Standard Software in accordance with chapter A., section 5.1 of these Contractual Conditions.

与OSS有关的所需信息和文档按照本合同条件A章第5.1条构成与标准软件有关的附随文档的一部分。

4. Protection against the unauthorised reproduction of the software (measures and mechanisms)

防止未经授权复制软件（措施和机制）

- 4.1 To protect their intellectual property, EPLAN Germany or EPLAN (if applicable) may include hardware or software copy protection in all Standard Software and services.

为保护其知识产权，EPLAN德国或EPLAN（如适用）可能在所有标准软件和服务中设置硬件或软件复制保护。

- 42 The Customer shall use the Standard Software and all its components exclusively as intended and contractually agreed and shall, in particular, keep the surrendered hardware copy protection or hardlock, respectively (dongle) (if any), carefully and safe from access by third-parties. "Third-parties" for the purposes of this provision do not include the Customer's employees or other persons who stay with the Customer for the contractual use of the contractual objects.

客户应仅按预期和合同约定的方式使用标准软件及其所有组件，尤其应谨慎、安全地保管交付的硬件复制保护或加密锁（加密狗）（如有），以防止第三方获取。为本条款之目的，“第三方”不包括客户的员工或与客户一同依约使用合同标的物的其他人员。

- 43 The Customer may not modify or remove copyrights notices, marks and/or control numbers or characters of EPLAN Germany or EPLAN (if applicable) or the respective licensor/manufacturer.

客户不得修改或移除EPLAN德国或EPLAN（如适用）或相关许可人/制造商的版权声明、标记和/或控制编号或字符。

- 4.4 EPLAN may, at reasonable intervals, audit whether the Standard Software and services are used in accordance with these Contractual Conditions. To this end, EPLAN may request information from the Customer, in particular, regarding the period and scope of the use of the Standard Software and services, and may inspect the Customer's books and records, as well as the Customer's hardware and software. For that purpose, EPLAN shall be granted access to the Customer's business premises during usual business hours and be allowed to use software of EPLAN Germany or EPLAN in that respect. EPLAN shall notify the Customer of any such audit in writing in good time in advance.

EPLAN可能会在合理的时间间隔内审查客户对标准软件和服务之使用是否符合本合同条件。为此，EPLAN可能会向客户索要信息，尤其是有关标准软件和服务的使用期限和使用范围的信息，并且可能会检查客户的账簿和记录以及客户的硬件和软件。为此目的，客户应准许EPLAN在正常营业时间内进入客户的营业场所，并允许其使用EPLAN德国或EPLAN的软件。如将进行该等审查，EPLAN应及时提前以书面形式通知客户。

- 4.5 If the Customer provides third-parties with data carriers, memories or other hardware on which software or other related components of EPLAN Germany or EPLAN are stored (in whole or in part, unchanged or adapted) or gives up direct possession thereof, the Customer shall ensure that the stored software or other related components of EPLAN Germany or EPLAN are completely and permanently deleted before.

如果客户向第三方提供其上存储了EPLAN德国的或EPLAN的软件或其他相关组件（全部或部分，未更改或已改编后的）的数据载体、存储器或其他硬件，或放弃对前述数据载体、存储器或其他硬件的直接占有，客户应确保在此之前完全且永久性地删除其上存储的EPLAN德国的或EPLAN的软件或其他相关组件。

II. Software Service

软件服务

1. Software Service for Standard Software

标准软件的软件服务

EPLAN will provide software services only for the Standard Software created by EPLAN Germany or EPLAN which is marked accordingly.

EPLAN只为EPLAN德国或EPLAN制作（该等软件上有相应标识）的标准软件提供软件服务。

2. Subject matter of the Software Service

软件服务的内容

- 21 In these Contractual Conditions, “**Software Service**” means performances in relation to the maintenance of Standard Software in accordance with the provisions of these Contractual Conditions; the type and scope of the Performances and services to be provided are governed by the Software Service level stated in detail in the respective Contract based on the related Performance Specifications (hereinafter, collectively, “**Software Service**”).

在本合同条件中，“**软件服务**”是指根据本合同条件的规定对标准软件进行维护所作出的履行；所要提供的运行和服务的类型和范围由在相关合同中基于相关运行说明所具体规定的软件服务等级决定（以下合称为“**软件服务**”）。

- 22 Any changes to the scope of services must be agreed in writing to be effective.

任何服务范围的变更必须以书面形式由双方达成一致方为有效。

- 23 In connection with the Software Service, the Customer will be provided with the standard version of the new software versions from time to time.

在软件服务方面，新版软件的标准版本将不时向客户提供。

The Customer alone will be responsible to make customer-specific adaptations. Individual programmes and customer-specific adaptations of the software based on customising technologies such as API programming, scripting, individualisation of master data, batch routines etc. are excluded from the Software Service. Any related work required to maintain the operability after the delivery of New Versions of the Standard Software must be commissioned and paid separately.

客户将自行负责对软件进行客户特定的改编。软件服务中不包括基于定制技术（例如：API编程、脚本、主数据的个性化、批处理程序等）的个性化程序和客户特定的软件改编。在新版标准软件交付后，为保持可操作性所需的任何相关工作必须另行委托并支付报酬。

Software, or components thereof, with namespaces:

带有命名空间的软件或其组件：

In the case of software with namespaces, the relevant namespace for the differentiation between Standard Software and customer-specific adaptations is the namespace of EPLAN Germany or EPLAN. Standard developments will be made in the namespace of EPLAN Germany or EPLAN, while customer-specific adaptations will be made in the Customer's namespace.

对于带有命名空间的软件，用于区分标准软件和客户特定改编的相关命名空间是EPLAN德国或EPLAN的命名空间。标准开发将在EPLAN德国或EPLAN的命名空间中进行，而客户特定的改编将在客户的命名空间中进行。

3. Scope of Software Service

软件服务的范围

- 3.1 EPLAN will, during the term of the respective Contract, render the performances specified therein in accordance with the Performance Specifications applicable at the date of the Contract.

EPLAN将在相关合同的期限内，按照合同签订之日所适用的运行说明，提供合同中规定的软件服务。

32 Unless expressly agreed otherwise, the following performances do not form part of the Contract and require a separate agreement:
除非另有明确约定, 否则以下服务不构成合同的一部分, 而需另行订立协议:

- services for programmes not used under the operating conditions specified by EPLAN;
为不在EPLAN规定的操作条件下所使用的程序提供服务;
- adaptations of the software to new operating system releases or conversions of the software to operating systems for which the software of EPLAN is not generally approved;
将软件进行改编以适应新发行的操作系统或将软件转至EPLAN软件一般不认可的操作系统;
- services which become necessary as a result of the non-compliance by the Customer with the operating instructions, other forms of operating errors, negligent or intentional damage or modification of the software or its data carriers;
由于客户未遵守操作说明、其他形式的操作错误、疏忽或故意损坏或对软件或其数据载体的修改而导致的必要服务;
- services at the place of installation;
在安装地点的服务;
- training services via the hotline.
通过热线提供培训服务。

Any such services must be ordered separately on the basis of a relevant order.

任何此类服务必须基于相关订单另行订购。

4. Service fees

服务费

41 The fees will be calculated in the form of an annual lump sum in accordance with the respective Contract and will be charged in advance for the respective year.

费用将根据相关合同以全年一次性总额形式计算, 并在相应的年度预收。

42 The lump-sum fee provided in the Contract may be increased by a written notification subject to three (3) months' notice to the end of a contract year (and for the first time after the expiry of the first (1st) contract year). In the event of an increase by more than 10%, the Customer may terminate the Software Service subject to one (1) month's notice to the entry into force of the increase.

合同中规定的一次性支付的费用可在合同年度结束前三 (3) 个月以书面通知形式予以增加 (首次费用增加应在第一 (1) 个合同年度结束后)。如涨幅超过10%, 客户可以终止软件服务, 但须在涨价生效前一 (1) 个月作出通知。

5. Term of Software Service

软件服务的期限

51 The Software Service is agreed for an initial fixed term of twenty-four (24) months from the commencement of the Contract. After the expiry of the initial fixed term, the Software Service will automatically be extended continuously by an additional twelve (12) months, unless it is terminated by either Contracting Party in writing subject to three (3) months' notice to the end of its term from time to time. During its respective term, the Software Service may only be terminated for good cause.

软件服务的初始固定期限为二十四 (24) 个月, 自合同生效之日起计算。初始固定期限届满后, 软件服务将自动续展十二 (12) 个月, 除非合同任何一方在期限届满前三 (3) 个月书面通知合同终止。在相应的期限内, 双方仅能基于正当理由终止软件服务。

52 The Customer's right to terminate in the event of service fee increases in accordance with section 4.2 above remains unaffected.

在服务费上涨的情况下, 客户根据上述第4.2条之规定享有的终止合同的权利不受影响。

(as of January 2022)

(更新于2022年1月)