

END USER LICENSE AGREEMENT (for SAP On Premise indirect sales)

終端使用者授權合約 (SAP 內部部署間接銷售用)

1. DEFINITIONS.

名詞定義。

- 1.1. “**Add-on**” means any development that adds new and independent functionality, but does not modify existing SAP functionality, and is developed using SAP application programming interfaces or other SAP code that allows other software products to communicate with or call on the Software.

「**附加元件**」係指加入新功能與獨立功能但不修改現有的 SAP 功能的任何開發，並且使用 SAP 應用程式編程介面或其他 SAP 代碼進行開發，允許其他軟體產品與 SAP 軟體通訊或叫用軟體。

- 1.2. “**Affiliate**” means any legal entity in the Territory in which the Licensee, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights. Any such legal entity shall be considered an Affiliate for only such time as such interest is maintained.

「**關係企業**」係指授權區域內被授權人直接或間接持有百分之五十 (50%) 以上股份或表決權之任何法律實體。上述任何法律實體僅在維持上述利益期間內方視為關係企業。

- 1.3. “**Agreement**” means the EULA Acceptance Form, this EULA and the Software Use Rights Schedule.

「**本合約**」係指 EULA 驗收表、本 EULA 與軟體使用權利明細表。

- 1.4. “**Business Partner**” means a legal entity or individual that requires access to the Software in connection with Licensee’s internal business operations, such as customers, distributors and/or suppliers of Licensee.

「**業務合作夥伴**」係指需要存取被授權人內部業務營運相關軟體之法律實體或個人，如：被授權人的客戶、經銷商和/或供應商。

- 1.5. “**Confidential Information**” means, with respect to Licensee: Licensee’s marketing and business plans and/or financial information, and with respect to SAP:

a) the Software, Documentation and other SAP Materials, including without limitation the following information regarding the Software:

(i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software;

(ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and

(iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software;

b) the research and development or investigations of SAP; and

c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, inventions (whether patentable or not), marketing plans, forecasts and strategies. In addition, Confidential Information of either SAP or Licensee (the party disclosing such information being the “**Disclosing Party**”) includes information which the Disclosing Party protects against unrestricted disclosure to others that

(i) the Disclosing Party or its representatives identifies as confidential at the time of disclosure; or

(ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure; including, without limitation, information from, about or concerning any third party that is disclosed under this Agreement.

「**機密資訊**」係指，對於被授權人而言，為被授權人的行銷與業務計劃及/或財務資訊；對於 SAP 而言，為：

a) 軟體、文件以及其他 SAP 材料，包括但不限於以下有關軟體的資訊：

(i) 電腦軟體 (目標代碼與原始程式碼)、編程技術和編程概念、處理方法、軟體中體現的系統設計；

(ii) 基準測試結果、手冊、程式清單、資料結構、流程圖、邏輯圖、功能規格、檔案格式；以及

(iii) 發現、發明、概念、設計、流程圖、文件、產品規格、應用程式介面規範、有關軟體的技術和程序；

b) SAP 開展的研發或調查；以及

c) 產品方案、內容夥伴、產品定價、產品供應、技術圖紙、演算法、程序、觀點、技術、公式、數據、原理圖、商業秘密、技術知識、改進、發明 (不論是否可申請專利)、行銷計劃、預測和戰略。另外，SAP 或被授權人 (揭露此類資訊的相關方為「揭露方」) 的機密資訊包括以下揭露方防止未受限制揭露給他人的資訊：

(i) 揭露方或其代表在揭露時確定為機密；或

(ii) 鑒於資訊的性質及揭露時所處的情況，應被合理地視為機密；包括但不限於，根據此合約揭露之來自、關於或涉及任何第三方的資訊。

1.6. “Designated Unit” means information technology devices (e.g. hard disks or central processing units) identified by End User or Partner pursuant to or in connection with this Agreement that have been previously approved by SAP or otherwise officially made known to the public as appropriate for Use or interoperation with the Software.

「指定單元」係指終端使用者或合作夥伴根據或基於本合約確定之資訊技術裝置 (例如，硬碟或中央處理單元)，且先前業已經 SAP 核准或已正式為大眾所知曉，可根據適當情況與軟體結合使用或互操作。

1.7. “Distributor” means the person or entity to which SAP markets and distributes certain Software and from which the Partner bought or will buy the Software in case Partner has not or will not buy the Software from SAP directly.

「經銷商」係指 SAP 對其行銷與經銷若干軟體的人士或實體，而事業夥伴若尚未或未來不會直接向 SAP 購買軟體，則事業夥伴已向或將向其等購買軟體。

1.8. “Documentation” means SAP's then-current technical and/or functional documentation which is delivered or made available by SAP either indirectly via Distributor and/or Partner or directly to Licensee with the Software.

「記錄文件」係指 SAP 直接或透過經銷商及/或事業夥伴，間接向被授權人隨同軟體提交或提供之 SAP 當時技術及/或功能記錄文件。

1.9. “Effective Date” means the effective date set out in the EULA Acceptance Form as “Effective Date”.

「生效日」係指 EULA 驗收表標為「生效日」之日期。

1.10. “EULA Acceptance Form” means the “Acceptance Form for End User License Agreement (for SAP On Premise indirect sales)” concluded between SAP and Licensee.

「EULA 驗收表」係指 SAP 與被授權人間所締定之「終端使用者驗收表 (SAP 內部部署間接銷售)」。

1.11. “EUMA” means the “SAP Delivered Support Agreement (for SAP On Premise indirect sales)” which sets out the terms and conditions under which SAP provides support to End Users.

「EUMA」係指載有 SAP 據以提供支援與終端使用者之條款與條件的「SAP 交付支援合約 (SAP 內部部署間接銷售)」。

1.12. “Export Law” means all constitutions, laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits restrictive measures, trade sanctions, embargos and other legally binding requirements of all federal, country, international, state and local governmental authorities relating to export, re-export or import.

「出口法律」係指所有聯邦、國家、國際、州立與當地政府機關有關出口、轉口或進口之一切章程、法律、條款、法規、條例、命令、判決、規章、規則、許可、限制措施、貿易制裁、禁運與其他具有法律拘束力之規定。

1.13. “Intellectual Property Rights” means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

「智慧財產權」係指任何類型的專利權、新式樣權、實用新型權或其他類似發明權、著作權、積體電路佈局設計權 (mask work right)、營業秘密或機密權、商標 (trade mark)、商號 (trade name) 和服務標誌，及任何其他無形財產權，亦包括前述權利於任何國家，依成文法或判例法，或依契約之申請和註冊，並無論其是否完善，是否當前存在或係將來提請、提交或取得。

1.14. “Licensee” means the end user who is further identified in the EULA Acceptance Form as “End User”.

「被授權人」係指 EULA 驗收表內標明為「終端使用者」之人。

- 1.15. "**Modification**" means
- (i) a change to the delivered source code or metadata; or
 - (ii) any development, other than a change to the delivered source code or metadata, that customizes, enhances, or changes existing functionality of the Software including, but not limited to, the creation of any new application program interfaces alternative user interfaces or the extension of SAP data structures; or
 - (iii) any other change to the Software (other than an Add-on) utilizing or incorporating any SAP Materials.
- 「修改」係指：
- (i) 對交付之原始程式碼或中繼資料之變更；或
 - (ii) 不變更交付之原始程式碼或中繼資料，而自訂、增強或變更軟體現有功能的任何開發行為，包括但不限於撰寫任何新的應用程式介面、替代使用者介面，或擴充 SAP 資料結構；或
 - (iii) 運用或結合任何 SAP 資料，對附加元件以外之軟體進行之任何其他變更。
- 1.16. "**Partner**" means the partner which is further identified in the EULA Acceptance Form as "Partner".
- 「事業夥伴」係指 EULA 驗收表內標明為「事業夥伴」者。
- 1.17. "**SAP**" means the SAP entity which is further identified in the EULA Acceptance Form as "SAP".
- 「SAP」係指 EULA 驗收表內標明為「SAP」之 SAP 實體。
- 1.18. "**SAP Delivered Support**" means SAP's support offering to directly provide support to End Users subject to the terms and conditions set out in the EUMA.
- 「SAP 交付支援」係指根據 EUMA 之條款與條件，由 SAP 要約直接提供支援予終端使用者的 SAP 支援。
- 1.19. "**SAP Group**" means SAP Parent and any of its Affiliates.
- 「SAP 集團」係指 SAP 母公司與其任何關係企業。
- 1.20. "**SAP Materials**" means any software, programs, tools, systems, data or other materials made available to Licensee directly by SAP or via Partner prior to or after the Effective Date including, but not limited to, the Software and Documentation.
- 「SAP 資料」係指 SAP 在生效日之前或之後，直接或經由事業夥伴間接提供予被授權人之任何軟體、程式、工具、系統、數據或其他資料，包括但不限於：軟體與記錄文件。
- 1.21. "**SAP Parent**" means SAP SE, a European company (Societas Europaea), located at Dietmar-Hopp-Allee 16 in 69190 Walldorf, Germany and registered at the commercial register of Mannheim under the registration number HRB 350269.
- 「SAP 母公司」係指 SAP SE，一家歐洲公司 (Societas Europaea)，址設：Dietmar-Hopp-Allee 16 in 69190 Walldorf, Germany，其於 Mannheim 商業登記處之登記編號為 HRB 350269。
- 1.22. "**Software**" means:
- (i) any and all software products licensed to Licensee under this Agreement as specified in the EULA Acceptance Form, all as developed by or for the SAP Group and delivered by SAP either indirectly via Distributor and/or Partner or directly to Licensee;
 - (ii) any new releases, updates, or versions thereof made available through unrestricted shipment pursuant to SAP support or warranty obligation; and
 - (iii) any complete or partial copies of the foregoing.
- 「軟體」係指：
- (i) EULA 驗收表所指定，依本合約授權予被授權人的所有軟體產品，且係由 SAP 集團所自行或委託他人開發並由 SAP 直接或透過經銷商及/或事業夥伴間接交付予被授權人；
 - (ii) 依據 SAP 支援或擔保義務，藉由不受限制之出貨所提供之任何新發行內容、更新或版本；及
 - (iii) 前述任何一項的完整或部分複本。

1.23. “Software Use Rights Schedule” means the Software Use Rights Schedule current at the Effective Date of the EULA Acceptance Form which is made available at: www.sap.com/company/legal.

「軟體使用權明細表」係指在 EULA 驗收表生效日最新的軟體使用權明細表，其完整內容可參閱：www.sap.com/company/legal。

1.24. “Territory” means the territory stated in the EULA Acceptance Form.

「授權地區」係指 EULA 驗收表所載明之授權地區。

1.25. “Third Party Software” means:

(i) any and all software products licensed to Licensee under this Agreement as specified in the EULA Acceptance Form, all as developed by or for companies other than the SAP Group and delivered by SAP either indirectly via Distributor and/or Partner or directly to Licensee;

(ii) any new releases, updates or versions thereof, made available through unrestricted shipment pursuant to SAP support or warranty obligation; and

(iii) any complete or partial copies of the foregoing.

「第三方軟體」係指：

(i) EULA 驗收表所指定，依本合約授權予被授權人的所有軟體產品，且非由 SAP 集團所自行或委託他人開發並由 SAP 直接或透過經銷商及/或事業夥伴間接交付予被授權人；

(ii) 依據 SAP 支援或擔保義務，藉由不受限制之出貨所提供之任何新發行內容、更新或版本；及

(iii) 前述任何一項的完整或部分複本。

1.26. “Use” means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

「使用」係指啟用軟體之處理功能、載入、執行、存取、運用軟體或顯示此類功能所產生之資訊。

2. LICENSE GRANT.

授權：

2.1 License.

授權內容：

2.1.1 Subject to Licensee’s compliance with all the terms and conditions of this Agreement, SAP grants to Licensee a non-exclusive, non-transferable, perpetual (except for subscription based licenses) license to Use the Software, Documentation, and other SAP Materials at specified site(s) within the Territory to run Licensee’s and its Affiliates’ internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations, unless terminated in accordance with the terms of this Agreement. Licensee may make Modifications and/or Add-ons to the Software in furtherance of its permitted Use under this Agreement, and shall be permitted to use Modifications and Add-ons with the Software in accordance with this Section 2.1.1 and Section 6.3. Licensee shall not:

(i) use the SAP Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training) other than to Affiliates (subject to Section 2.2);

(ii) lease, loan, resell, sublicense or otherwise distribute the SAP Materials, other than distribution to Affiliates (subject to Section 2.2);

(iii) distribute or publish keycode(s);

(iv) make any Use of or perform any acts with respect to the SAP Materials other than as expressly permitted in accordance with the terms of this Agreement;

(v) use Software components other than those specifically identified in the EULA Acceptance Form, even if it is also technically possible for Licensee to access other Software components Licensee may permit Business Partners to Use the Software only through screen access, solely in conjunction with Licensee’s Use, and may not Use the Software to run any of Business Partners’ business operations.

除依本合約條款之規定予以終止之情形外，在被授權人遵守本合約之條款與條件的條件下，SAP 授予被授權人非獨家、不可轉

讓且永久性 (基於訂閱之授權除外) 之授權，於授權地區內之特定地點使用軟體、記錄文件和其他 SAP 資料，執行被授權人及其關係企業的內部業務營運 (包括客戶備份和被動災害復原)，並為前述內部業務營運提供內部訓練和測試。被授權人可根據本合約之許可使用，對軟體進行修改及/或建立附加元件，並根據第 2.1.1 和 6.3 條，應獲准使用軟體之該等修改和附加元件。被授權人不得從事以下行為：

- (i) 使用 SAP 資料向關係企業 (依第 2.2 條之規定) 以外的第三人提供服務 (例如委外業務處理、為第三人服務或訓練第三人)；
- (ii) 向關係企業 (依第 2.2 條之規定) 以外的對象出租、出借、轉售、轉授權或散佈 SAP 資料；
- (iii) 散佈或發佈識別碼 (keycode)；
- (iv) 將 SAP 材料用於本合約明確允許以外之使用或行為；
- (v) 使用 EULA 驗收表明確指定以外的軟體元件，即使技術上被授權人可以存取其他軟體元件，但被授權人仍僅得允許業務合作夥伴透過螢幕存取，且僅限用於被授權人之使用目的，亦不得將軟體用於執行任何業務合作夥伴之業務營運。

2.1.2 Licensee agrees to install the Software only on Designated Units located at Licensee's facilities and in Licensee's direct possession. With advance written notice to SAP, the information technology devices may also be located in the facilities of an Affiliate and be in the Affiliate's direct possession. Licensee must be appropriately licensed as stated in the Software Use Rights Schedule for any individuals that Use the Software, including employees or agents of Affiliates and Business Partners. Use may occur by way of an interface delivered with or as a part of the Software, a Licensee or third-party interface, or another intermediary system. If Licensee receives licensed Software that replaces previously licensed Software, its rights under this Agreement with regard to the previously licensed Software end when it deploys the replacement Software for Use on productive systems following a reasonable testing period. At the date the rights to the previously licensed Software end Licensee shall comply with Section 5.2 of this Agreement with respect to such previously licensed Software.

被授權人同意僅在位於被授權人工廠以及被授權人直接擁有的指定單位安裝軟體。在提前發出書面通知 SAP 的情況下，前述資訊技術裝置亦得位於關係企業之設施，且由關係企業直接持有。針對使用軟體之任何人員 (包括關係企業和業務合作夥伴之員工或代理人)，被授權人必須依「軟體使用權明細表」規定取得相關授權。得依以下方式使用：軟體隨附或內建之介面、被授權人或協力廠商介面，或其他中介系統。若被授權人取得替代先前授權軟體之授權軟體，依本合約，其先前授權軟體之相關權利於合理測試期限後部署替代軟體以用於生產系統時即告終止。在先前授權之軟體權利終止之日，被授權人應遵守本合約中關於此先前授權軟體之第 5.2 條。

2.1.3 The terms and conditions of this Agreement relative to "Software" apply to Third Party Software except

- (i) Licensee shall not make Modifications and/or Add-ons to Third Party Software or otherwise modify Third Party Software unless expressly authorized by SAP; and
- (ii) subject to Section 12.9, as otherwise stated in the Software Use Rights Schedule.

本合約中與「軟體」相關的條款與條件適用於第三方軟體，除了以下情況：

- (i) 被授權人不得對第三方軟體進行修改及/或新增動作或以其他方式修改第三方軟體，除非由 SAP 明確授權；以及
- (ii) 根據軟體使用權明細表中另行載明，受第 12.9 條約束。

2.2 Affiliate Use. Affiliates' Use of the Software, Documentation and other SAP Materials to run their internal business operations as permitted under Section 2.1.1 is subject to the following:

- (i) Licensee ensures that the Affiliate agrees in writing to comply with the terms of this Agreement; and
- (ii) a breach of the Agreement terms by Affiliate shall be considered a breach by Licensee hereunder.

If Licensee has an affiliate or subsidiary with a separate license or support agreement for SAP software with any member of the SAP Group or any other distributor of SAP software, the Software shall not be Used to run such affiliate's or subsidiary's business operations even if such separate agreement has expired or is terminated, unless otherwise agreed to in writing by the parties.

關係企業使用：關係企業使用軟體、文件和其他 SAP 材料以根據第 2.1.1 條執行其內部業務營運，需遵守下列條件：

- (i) 被授權人確保關係企業以書面形式同意遵守本合約的條款；以及
- (ii) 關係企業違反合約條款應視為被授權人違反合約。

若被授權人擁有之關係企業或子公司已與 SAP 集團之任何成員或其他任何 SAP 軟體經銷商，針對 SAP 軟體達成個別授權或支援合約，則本軟體不得用於執行上述關係企業或子公司的業務營運，除經各方另以書面同意，否則即使上述個別合約已到期或終止亦然。

3. VERIFICATION.

驗證

SAP shall be permitted to audit (at least once annually and in accordance with SAP standard procedures, which may include on-site and/or remote audit) the usage of the SAP Materials. Licensee shall cooperate reasonably in the conduct of such audits. In the event an audit reveals that

(i) Licensee underpaid license fees and/or SAP support fees and/or

(ii) that Licensee has Used the Software in excess of the license quantities or levels stated in the EULA Acceptance Form, Licensee shall pay such underpaid fees and/or for such excess usage based on the then-current SAP price list, terms and conditions in effect at the time of the audit, and shall order the Software license quantities or levels used in excess from the Partner and/or SAP and execute an additional EULA Acceptance Form to affect the required licensing of any additional quantities or levels. Reasonable costs of SAP's audit shall be paid by Licensee if the audit results indicate usage in excess of the licensed quantities or levels. SAP reserves all rights at law and equity with respect to both Licensee's underpayment of license fees or SAP support fees and usage in excess of the license quantities or levels. SAP may delegate to Partner or request Partner to perform any of the rights listed under this Section 3.

SAP 得稽核 SAP 資料之使用狀況 (至少每年一次，且遵循 SAP 標準程序，得包括駐點和/或遠端稽核)。被授權人應合理配合進行此類稽核作業。若稽核中發現：

(i) 被授權人未向支付足夠之授權費用和/或 SAP 支援費用，和/或

(ii) 被授權人使用的軟體已超過 EULA 驗收表所載明之授權數量或層級，則被授權人應根據稽核當時適用之 SAP 價格清單、條款和條件，針對此類超出使用狀況支付前述未支付之足夠費用，且應簽署額外的 EULA 驗收表，以使任何額外數量或層級的必要授權生效。若稽核結果顯示使用狀況已超過授權數量或層級，則被授權人應支付合理的 SAP 稽核費用。對於被授權人未支付足夠之授權費用或 SAP 支援費用，以及超過授權使用數量或層級，SAP 保留相關所有法律與衡平法之權利。SAP 得委派予事業夥伴或要求事業夥伴執行其依據本第 3 條所享有之任何權利。

4. ELECTRONIC DELIVERY

電子交付

In cases of electronic delivery, SAP makes the Software available for download from a network at its own cost, and Licensee is responsible for the cost of downloading the Software.

若採電子交付，則 SAP 將自費提供網路下載軟體服務，且被授權人應自負下載軟體之費用。

5. TERM.

期間：

5.1. Term. This Agreement and the license granted hereunder shall become effective on the Effective Date and shall continue in effect thereafter unless terminated upon the earliest to occur of the following:

(i) thirty days after Licensee gives SAP written notice of Licensee's direction to terminate this Agreement, for any reason;

(ii) thirty days after SAP gives Licensee written notice of Licensee's material breach of any provision of this Agreement (other than Licensee's breach of its obligations under Sections 6, 10 or 11, which breach shall result in immediate termination unless Licensee has cured such breach during such thirty day period);

(iii) immediately if Licensee files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or a petition for the opening of insolvency proceedings or similar proceedings if filed against the Licensee.

For the avoidance of any doubt, termination of this Agreement shall strictly apply to all Software licensed under this Agreement, its appendices, schedules, addenda and order documents and any partial termination of this Agreement by Licensee shall not be permitted in respect of any part of this Agreement, its appendices, schedules, addenda, order documents.

期間：本合約與基於本合約所授與之權利，應自生效日起有效，並應於其後繼續有效，除非發生下列任一情事 (以最先發生者為準)：

- (i) 被授權人因任何因素以書面通知 SAP 終止本合約滿三十日之時；
- (ii) SAP 因被授權人嚴重違反本合約任何條款而以書面通知被授權人終止本合約滿三十日之時（但不包含被授權人違反其基於第 6、10 或 11 條之義務，則該違約應屬立即中止，除非被授權人在 SAP 發出書面通知後三十日內消除其過錯）；
- (iii) 若被授權人申請破產、無償付能力或為債權人利益轉讓其權利或對被授權人提出申請以開始破產或類似程序。

為免任何疑義，被授權人終止本合約時應嚴格適用於本合約及其附錄、明細表、補述和訂購文件下授權之所有軟體，且不允许根據任何部分的合約及其附錄、明細表、補述及訂購文件來部分終止本合約。

5.2 **End of Term Duties.** Upon any termination hereunder, Licensee and its Affiliates shall immediately cease Use of all SAP Materials and Confidential Information. Within thirty (30) days after any termination, Licensee shall irretrievably destroy or upon SAP's request deliver to SAP all copies of the SAP Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Licensee must certify to SAP in writing that it has satisfied its obligations under this Section 5.2. Licensee agrees to certify in writing to SAP that it and each of its Affiliates has performed the foregoing. Sections 3, 4, 5.2, 6, 7.2, 8, 9, 10, 12.4, 12.5, 12.6 and 12.8 shall survive such termination. In the event of any termination hereunder, Licensee shall not be entitled to any refund by SAP of any payments made by Licensee to SAP. Termination shall not relieve Licensee from its obligation to pay fees that remain unpaid.

期間終止責任：依本合約終止後，被授權人及其關係企業應立即終止使用所有 SAP 資料和機密資訊。除依法要求應保存較長期間者外，自終止後三十日內，被授權人應將所有各種形式之 SAP 資料和機密資訊複本以不可回復之方式銷毀，或依 SAP 之要求送交 SAP。惟於前揭例外情形，仍應於該較長之保存期間結束時歸還或銷毀。被授權人必須向 SAP 以書面方式證明其已履行本第 5.2 條之義務。被授權人同意向 SAP 以書面形式證明，被授權人及其每個關係企業已履行前述義務。終止本合約後，第 3、4、5.2、6、7.2、8、9、10、12.4、12.5、12.6 和 12.8 條仍然有效。若依本合約實行任何終止，則被授權人無權取得任何由被授權人支付予 SAP 款項之 SAP 退款。終止本合約並不免除被授權人支付尚未付清費用之責任。

6. INTELLECTUAL PROPERTY RIGHTS.

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權利保護：被授權人不得複製、翻譯、反向組譯、解編軟體或其他 SAP 材料，也不得對其實施還原工程。被授權人不得使用軟體或其他 SAP 材料的目標代碼建立或嘗試建立原始程式碼。被授權人得依良好的資訊技術實務來備份資料，並基於此用途來建立必要的軟體備份複本。可運送光碟或其他資料媒體上的備份複本必須標示為備份複本，且與原始光碟或其他資料媒體享有相同著作權和作者聲明，除非技術上不可行。被授權人不得變更或移除 SAP 的著作權及作者聲明。

6.3. **Modifications/Add-ons.**

修改/附加元件：

6.3.1. Licensee shall comply with SAP's registration procedure prior to making Modifications or Add-ons. All Modifications and all rights associated therewith shall be the exclusive property of SAP, SAP Parent or its or their licensors. All Add-ons developed

by SAP (either independently or jointly with Licensee) and all rights associated therewith shall be the exclusive property of SAP, SAP Parent or its or their licensors. Licensee agrees to execute those documents reasonably necessary to secure SAP's rights in the foregoing Modifications and Add-ons. All Add-ons developed by or on behalf of Licensee without SAP's participation ("Licensee Add-on"), and all rights associated therewith, shall be the exclusive property of Licensee subject to SAP's rights in and to the Software and SAP Materials; provided, Licensee shall not commercialize, market, distribute, license, sublicense, transfer, assign or otherwise alienate any such Licensee Add-ons. SAP retains the right to independently develop its own Modifications or Add-ons to the Software, and Licensee agrees not to take any action that would limit SAP's sale, assignment, licensing or use of its own Software or Modifications or Add-ons thereto.

被授權人應遵守 SAP 註冊程序，方可進行修改或新增附加程式。所有修改和與之相關的所有權利應為 SAP、SAP 母公司或其授權人的專屬財產。所有由 SAP 開發之附加程式 (包括獨立或與被授權人共同開發) 及所有相關權利應為 SAP、SAP 母公司或其授權人的專屬財產。被授權人同意合理簽署上述文件，以確保前述修改和附加元件之 SAP 權利。所有 SAP 未參與而由被授權人或其代表開發之附加程式 (「被授權人附加程式」)，以及其所有相關權利，皆應為被授權人之專屬財產，且應受 SAP 之軟體和 SAP 材料權利所規範；但被授權人不應將上述任何被授權人附加程式用於商業用途，或從事行銷、散佈、授權、轉授權、移轉、轉讓或以其他方式出讓。SAP 保留獨立開發專屬軟體修改或附加程式之權利，且被授權人同意不採取任何措施限制 SAP 銷售、轉讓、授權或使用其本身軟體或修改/附加程式。

- 6.3.2. Any Modification developed by or on behalf of Licensee without SAP's participation or Licensee Add-on must not (and subject to other limitations set forth herein): enable the bypassing or circumventing any of the restrictions set forth in this Agreement and/or provide Licensee with access to the Software to which Licensee is not directly licensed; nor unreasonably impair, degrade or reduce the performance or security of the Software; nor render or provide any information concerning SAP software license terms, Software, or any other information related to SAP Materials.

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- 6.3.3 Licensee covenants, on behalf of itself and its successors and assigns, not to assert against SAP or its affiliated companies, or their resellers, distributors, suppliers, commercial partners and customers, any rights in any

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- (ii) other functionality of the SAP Software accessed by such Licensee Add-ons or Modifications.

被授權人代表自身及其繼承人和受讓人立約承諾，不會反對 SAP 或其關係企業、轉售商、經銷商、供應商、商業夥伴和客戶取得以下權利：

- (i) 被授權人新增或修改，或
- (ii) 此被授權人新增或修改存取之 SAP 軟體的其他功能。

7. PERFORMANCE WARRANTY.

履約保證：

- 7.1. Warranty. SAP warrants that the Software will substantially conform to the specifications contained in the Documentation for six months following delivery of the Software. The warranty does not apply:

- (i) if the Software is not used in accordance with the Documentation; or
- (ii) if the nonconformance is caused by a Modification or Add-on (other than a Modification or Add-on made by a member of the SAP Group which is provided through SAP support or under warranty), Partner, Licensee, another third party, third-party software, third party database or any other software not distributed by SAP; or
- (iii) to any Licensee unlicensed activities. SAP does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Licensee's business requirements. Provided Licensee notifies SAP in writing with a specific description of the Software's nonconformance within the warranty period and SAP validates the existence of such nonconformance, SAP will, at its option:

- a) repair or replace the nonconforming Software, or

b) refund the license fees paid by Licensee to Partner for the applicable nonconforming Software to Licensee in exchange for a return of such nonconforming Software.

This is Licensee's sole and exclusive remedy under this warranty. Licensee's written notification of any nonconformance must include sufficient detail for SAP to analyze the alleged nonconformance. Licensee must provide commercially reasonable assistance to SAP in analyzing and remediating any nonconformance of the Software.

保固：SAP 保證軟體在交付軟體後的六 (6) 個月內，將實質符合文件規定之功能規格。保固不適用於以下情況：

(i) 未依記錄文件使用軟體；或

(ii) 此等不正常之情況係因事業夥伴、被授權人、其他第三方軟體、第三方資料庫、或任何其他非由 SAP 散佈之修改或附加程式 (非由 SAP 集團成員透過 SAP 支援或保固提供之修改或附加程式) 所導致；

(iii) 被授權人之未授權活動。SAP 不擔保軟體作業不受中斷、不擔保軟體不致出現未對效能構成實質影響之輕微瑕疵或錯誤，也不擔保軟體包含之應用程式符合被授權人之所有業務需求。若被授權人於保固期間採書面方式通知 SAP 關於軟體不正常之具體說明，且 SAP 已確認確有此類不正常情事存在，則 SAP 將自行選擇以下作法：

a) 修復或取代不正常之軟體，或

b) 退回相關不正常軟體由被授權人支付事業夥伴的授權費用，以要求歸還此類不正常軟體。

此為被授權人依本保固所享有之唯一專屬補償。被授權人對於任何不正常所為之書面通知，必須包含足夠的詳細資訊，俾利 SAP 得據以分析其所聲稱之不正常。被授權人必須對 SAP 提供商業上合理之協助，以分析和糾正軟體之任何不正常。

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8. THIRD PARTY CLAIMS.

第三方案賠：

8.1. **Infringement and Defense of Licensee.** SAP will, at its sole discretion, either defend Licensee against or settle any claim brought against Licensee in the Territory if such claim:

(i) is brought by any owner of the Intellectual Property Right specified below giving rise to the claim and

(ii) alleges that Licensee's Use of the Software, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of such owner's patent claim(s), copyright, trademark or trade secret right. SAP will pay damages finally awarded against Licensee (or the amount of any settlement SAP enters into) with respect to such claims. This obligation of SAP does not apply if the alleged infringement or misappropriation results from:

(i) Use of the Software in conjunction with any software or service other than the Software;

(ii) Use of the Software in conjunction with an apparatus other than a Designated Unit;

(iii) failure to promptly use an update provided by a member of the SAP Group if such infringement or misappropriation could have been avoided by use of the update; or

(iv) any Use not permitted by this Agreement.

This obligation of SAP will also not apply if Licensee fails to timely notify SAP in writing of any such claim; however Licensee's failure to provide or delay in providing such notice shall not relieve SAP of its obligations under this Section except to the extent SAP is prejudiced by Licensee's failure to provide or delay in providing such notice. SAP is permitted to control fully the defense and any settlement of any such claim as long as such settlement does not include a financial obligation on or admission of liability by Licensee. In the event Licensee declines SAP's proffered defense, or otherwise fails to give full control of the defense to SAP's designated counsel, then Licensee waives SAP's obligations under this Section 8.1. Licensee must reasonably cooperate in the defense of such claim and provide SAP with all relevant information and reasonable support. Licensee may appear in any proceedings concerning such claim or legal dispute, at its own expense, through counsel reasonably acceptable to SAP. SAP expressly reserves the right to cease such defense of any claim(s) in the event the Software is no longer alleged

to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. SAP may settle or mitigate damages from any claim or potential claim by substituting alternative substantially equivalent non-infringing programs and supporting documentation for the Software. Licensee must not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software that is prejudicial to SAP's rights.

被授權人侵權與抗辯：若區域內發生對被授權人提出之索賠，SAP 得依其決定是否為被授權人辯護或和解，但限於其中此等索賠：

- (i) 此等索賠係由下列智慧財產權所有人提出，以及
- (ii) 宣稱被授權人依據本合約條款與條件而使用軟體，構成直接侵犯或濫用此等所有人之專利權、著作權、商標或商業機密權。SAP 會就此索賠向被授權人支付最終承擔的損害賠償金 (或 SAP 達成的任何和解金額)。惟如所主張之侵害係肇因於被授權人：
 - (i) 將軟體與任何其他軟體搭配使用或服務；
 - (ii) 將軟體與「指定單元」以外之裝置搭配使用；
 - (iii) 若使用 SAP 集團成員提供之更新本可避免侵害或盜用，而未立即使用此更新；或
 - (iv) 或係本合約不允許之任何使用，則 SAP 之前述責任不適用。

如果被授權人未及時以書面方式通知 SAP 此類索賠，則 SAP 的此義務亦不適用；但若被授權人未提供或延誤提供此類通知，則不得免除 SAP 於此條下的責任，惟 SAP 因被授權人未提供或延誤提供此類通知而受到損害除外。SAP 獲許主導控制任何此類索賠的抗辯和任何和解事宜，只要該和解不涉及被授權人的財務負擔或承認責任。若被授權人拒絕 SAP 提供之抗辯，或無法讓 SAP 指定律師主導控制抗辯事宜，則被授權人即依本合約第 8.1 節放棄 SAP 之責任。被授權人應合理配合上述索賠之抗辯事宜，並向 SAP 提供所有相關資訊和合理支援。被授權人可自費參與上述索賠或法律爭議的任何程序，並得委託 SAP 合理認可之律師負責。若對軟體侵害或盜用第三方權利之主張終止或暫時中止，SAP 明確表示保留中止任何對請求之抗辯事宜之權利。SAP 可透過實質上相同的非侵害替代程式和軟體的支援文件替代，解決或減輕因任何索賠或潛在索賠產生的損害賠償。被授權人不得採取任何措施，回應不利 SAP 權利之軟體侵害或盜用之情事或主張。

8.2. The liability limitations contained in Section 9 below apply to all claims made under this Section 8. Any limitations to the liability and obligations of SAP according to this Section 8 will also apply for the benefit of any member of the SAP Group and their respective licensors.

以下第 9 條包括的責任限制適用於第 8 條下的所有索賠。依據本第 8 條對於 SAP 之責任與義務的限制，還應適用於 SAP 集團之任何成員及其各自授權人的利益。

8.3. THE PROVISIONS OF THIS SECTION 8 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY AND OBLIGATION OF SAP AND ITS LICENSORS TO LICENSEE, AND IS LICENSEE'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

此第 8 條之規定為 SAP 及其授權人對被授權人所負之單一、唯一及全部之責任與義務，亦為被授權人有關侵害第三人智慧財產權之唯一救濟途徑。

9. LIMITATIONS OF LIABILITY. 責任限制。

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- (ii) if the defect or liability is caused by Licensee or Partner, a Modification or Add-on (other than a Modification or Add-on made by a member of the SAP Group which is provided through SAP support or under warranty), or third-party software; or
- (iii) if the Software is used in conjunction with any third party software for which the Licensee lacks sufficient rights from the third party vendor for such use; or
- (iv) for any Licensee activities not permitted under this Agreement.

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- (ii) 若缺陷或責任係由被授權人或事業夥伴、修改或新增 (SAP 進行之修改或新增係透過 SAP 支援或根據保固所提供則除外) 或第三方軟體所導致；或
- (iii) 若軟體與任何第三方軟體搭配使用，而被授權人對此第三方軟體之使用缺乏第三方供應商之充分權限；或
- (iv) 本合約下不允許的任何被授權人活動。

SAP 及其授權者就任何本身具危險性的軟體用途，及/或依本文授權之第三方軟體所生之索賠或損害，概不負責。

9.2. **Exclusion of Damages; Limitation of Liability.** ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR (I) DAMAGES RESULTING FROM:

- (a) UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION,
- (b) FRAUD OR WILFUL MISCONDUCT AND
- (c) DEATH OR PERSONAL INJURY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR ARISING FROM EITHER PARTY'S WILLFUL MISCONDUCT OR

(II) SAP'S OBLIGATIONS UNDER SECTION 8.1, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM WILL SAP, ITS LICENSORS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT IN EXCESS OF THE LICENSE FEES PAID BY LICENSEE TO PARTNER FOR THE SOFTWARE DIRECTLY CAUSING THE DAMAGES OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ATTORNEYS' FEES, COURT COSTS, INTEREST OR EXEMPLARY OR PUNITIVE DAMAGES.

損害排除；責任限制。即使本合約中有任何其他相反規定，除了：

- (I) 損害是起因於：
 - (a) 未經授權使用、披露機密資訊；
 - (b) 詐欺或不當行為及
 - (c) 因任一方之重大過失或不當行為而造成的死亡或人身傷害；或
- (II) SAP 依第 8.1 條之責任，在任何情況下且無論索賠請求之性質為何，其授權人或被授權人對彼此或對其他人士或實體之責任，皆不會超過被授權人支付予事業夥伴之金額，亦不負責任何特殊、附隨、衍生或間接之損害，或商譽或利潤之損失、作業停工、資料損失、電腦當機或故障、律師費、庭審費、利息、懲戒性或懲罰性之損失賠償。

9.3. **Exclusions and Limitations for Third Party Software.** SUBJECT TO THE EXCLUSION OF DAMAGES STATED IN SECTION 9.2 AND WITH RESPECT TO THIRD PARTY SOFTWARE, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL SAP OR ITS LICENSORS' BE LIABLE FOR AN AMOUNT IN EXCESS OF THE PAID LICENSE FEES FOR THE THIRD PARTY SOFTWARE DIRECTLY CAUSING THE DAMAGES.

第三方軟體之例外狀況與限制：根據第 9.2 條所述之損害排除，對第三方軟體而言，無論何種狀況和任何索賠性質，SAP、SAP 之授權人對於超出直接造成損害之第三方軟體已付授權費用的金額概不負責。

9.4. The provisions of this Agreement allocate the risks between SAP and Licensee. The license fees paid by Licensee reflect this allocation of risk and the limitations of liability herein. It is expressly understood and agreed that each and every provision of this Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the Parties to be severable and independent of any other provision and to be enforced as such.

本合約條款分配 SAP 與被授權人之間的風險。被授權人支付之授權費用反映此一風險分配及其責任限制。雙方當事人明確理解並同意，本合約的每一提供責任限制、不擔保聲明或損害排除條款，按雙方之意向，獨立於其他條款並將如是執行。

9.5. **Extension to group members.** Any limitations to the liability and obligations of SAP according to this Section 9 will also apply for the benefit of any member of the SAP Group and their respective licensors.

責任限制之適用：本第九條所產生的對於 SAP 之責任與義務的限制，還應適用於 SAP 集團之任何成員及其各自授權人的利益。

10. CONFIDENTIALITY.

保密。

10.1. Use of Confidential Information. Confidential Information must not be used or reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the Disclosing Party shall remain the property of the Disclosing Party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the Disclosing Party, the party receiving the Confidential Information (“**Receiving Party**”):

(a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and

(b) shall not disclose any Confidential Information of the other to any person other than its bona fide individuals whose access is necessary to enable it to exercise its rights and/or perform its obligations hereunder, and who are under obligations of confidentiality substantially similar to those set forth herein. As used herein “Reasonable Steps” means those steps the Receiving Party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either Party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.

使用機密資訊：除以達成本合約目的之必要外，不得以任何形式使用或複製機密資訊。揭露方任何機密資訊之一切複製仍應為揭露方之財產，且應保留原始呈現之任何和所有機密或專屬聲明或圖例。針對揭露方之機密機訊，接受機密資訊之一方（「**接收方**」）：

(a) 採取一切合理步驟（如下定義）嚴格確保所有保密資訊具備保密性；及

(b) 不得向任何人揭露另一方的任何保密資訊，除非該人員是基於行使其於本合約的權利和/或履行其義務而進行必要存取之良善用途，以及負有實質上類似於本合約所載的保密責任。此處使用的「合理步驟」是指接收方採取相關步驟，以保護自身類似的專有和保密資訊，該保護不得低於合理的保護標準。任何一方之機密資訊於本合約前所揭露予他方者，該機密資訊皆受本合約之保護。

10.2. Exceptions. The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that:

(a) is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information;

(b) has become generally available to the public without breach of this Agreement by the Receiving Party;

(c) at the time of disclosure, was known to the Receiving Party free of restriction; or

(d) the Disclosing Party agrees in writing is free of such restrictions.

例外：關於使用或揭露保密資訊之上述限制不適用於以下情況之任何保密資訊：

(a) 由接收方獨立開發，而未參照披露方之保密資訊，或自具備提供上述保密資訊權利之第三方處合法取得且不受任何限制；

(b) 接受方未違反本合約，且該保密資訊已為大眾所普遍知悉；

(c) 接受方於資訊揭露時已知不受限制；或

(d) 揭露方以書面方式同意開放上述限制。

10.3. Confidential Terms and Conditions; Publicity. Licensee shall not disclose the terms and conditions of this Agreement to any third party except for the Partner and the Distributor. Neither Party shall use the name of the other Party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that any member of the SAP Group may use Licensee's name in customer listings or, at times mutually agreeable to the Parties, as part of SAP Group's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHIRE participation). SAP will make reasonable efforts to avoid having the reference activities unreasonably interfere with Licensee's business. Licensee agrees that SAP may share information on Licensee with any other member of the SAP Group for marketing and other business purposes and that Licensee has secured permission from its employees to allow SAP to share business contact information with any other member of the SAP Group.

機密條款與條件；公開：除得向事業夥伴與經銷商揭露外，被授權人不得將本合約之條款與條件揭露予任何第三人。任一方皆不得在未經其他人事先書面同意之情況下，在公開場合、廣告或類似活動中使用另一方的名稱，除非被授權人同意。SAP 集團任何成員得在各方同意之情況下，在客戶清單中使用被授權人名稱作為 SAP 集團行銷內容的一部分 (包括但不限於參考引用和敘述、新聞測試稿、現場採訪、SAPPHIRE 參與)。SAP 將負起合理責任，避免不合理之參考活動干擾被授權人之業務。被授權人同意 SAP 得將被授權人之資訊，與 SAP 集團之任何其他成員分享，作為行銷與其他商業用途，且被授權人已得其員工之同意，准許 SAP 得將商業上聯繫資訊，分享予 SAP 集團之任何其他成員。

11. ASSIGNMENT.

轉讓

Licensee may not, without SAP's prior written consent, assign, novate, delegate, pledge, subcontract or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the SAP Materials or SAP Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. SAP may assign, novate, delegate, pledge, subcontract or otherwise transfer this Agreement or any of its rights or obligations thereunder (in whole or in part) to any member of the SAP Group. SAP and any other member of the SAP Group may use third parties as sub-contractors for fulfilling any of its rights or obligations under this Agreement. SAP will continue to be liable for such obligations.

被授權方不得在未經 SAP 事先書面同意下，指派、讓與、更新、指派、抵押、轉包或移轉本合約，或將本合約之任何權利義務或 SAP 資料或 SAP 機密資訊轉至任一方，不論是否自願或依法律操作亦然，包括資產銷售方式、合併與併購。SAP 得將本合約或其基於本合約之任何權利或義務 (無論全部或一部)，讓與、更新、委派、抵押、轉包或以他法轉讓予 SAP 集團之任何成員。SAP 及 SAP 集團之任何成員，得使用第三方擔任次承包商，以履行其基於本合約之任何權利或義務。SAP 會持續為該等義務負責。

12. GENERAL PROVISIONS.

一般條款：

- 12.1. Retention of data. With regard to business transactions covered by this Agreement, End User must retain any records for a period of ten years starting on 1th of January of the year following the year during which the data were transmitted or otherwise transferred, or for the minimum period prescribed by applicable law, whichever is longer. In addition, Licensee must maintain current, complete and accurate reports on all of SAP's Confidential Information in its possession or in the possession of its representatives.

資料保存：關於本合約所涵蓋之商業交易，終端使用者必須自資料傳輸或以他法移轉之年度的次年 1 月 1 日起十年或相關法律所訂之最低年限 (取其較長者) 內，保存其任何記錄。此外，被授權人必須就其自身或其代表所持有的所有 SAP 機密資訊，保存一份最新且完整之報告。

- 12.2. Severability. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be wholly or in part illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein. The illegal, invalid or unenforceable provision will be replaced by a valid and enforceable provision which approximates as closely as possible the intent of the invalid or unenforceable provision. This will also apply in the case of contractual gaps.

條款效力獨立：當事人各方同意，本合約若包含一或多條條款全部或部分違法、無效或無法執行，不論其層面為何，此類違法、無效或無法執行之條款不得影響本合約之其他條款，且本合約應視為不曾包含此無效或無法執行之條款。非法、無效或不可強制執行之條款將由有效且可強制執行的條款替代，該有效且可強制執行的條款應儘量貼近無效或不可強制執行條款之意圖。此亦適用於存在契約差距之情況。

- 12.3. No Waiver. If either Party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

未棄權：若任一方放棄違反本合約之任何條款，則不應據以視為放棄相同或其他任何本文條款之先前或後續的違反情事。

- 12.4. Counterparts. This Agreement may be signed in one or more counterparts, each of which will be considered an original but all of which together form one and the same instrument and will be treated as if the signatures on the counterparts were on a single copy. This Agreement may be validly executed by means of transmission of signed facsimile, pdf or any other documented form

for which a process has been provided by SAP. Signatures sent by fax, pdf, email or other electronic means for which a process has been provided by SAP shall be deemed original signatures.

合約份數：本合約得簽署一式一份或數份，每份均為正本，並共同構成一份完整文書，如同所有簽名均簽在同一正本上。本合約之簽署，得採傳送經署名之傳真、pdf 或由 SAP 提供流程之任何其他記錄方式為之。以傳真、pdf、電子郵件或由 SAP 提供流程之任何其他電子方式傳送之簽名，應視為原始簽名。

12.5. **Regulatory Matters.** The Software, SAP Delivered Support, Documentation and SAP Materials as well as parts of any of these (e.g. new versions, releases, updates, upgrades, patches, fixed or correction of a software product) are subject to Export Laws of various countries, including, without limitation, the laws of the United States, the EU, Ireland and Germany. Licensee agrees that it will not submit the Software, SAP Delivered Support, Documentation or other SAP Materials or parts of any of these to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and that it will not export, re-export or import any Software, SAP Delivered Support, Documentation and/or SAP Materials to countries, persons or entities prohibited by any applicable Export Law. In that context, Licensee is responsible for complying with all applicable Export Laws. If SAP or any other member of the SAP Group wants to deliver and/or grant access to Software, SAP Delivered Support, Documentation other SAP Materials, or parts of any of these directly to a Licensee, Licensee will support SAP and any other member of the SAP Group in obtaining any required authorization, approval or other consent from the competent authorities by providing any necessary or useful declarations or other necessary or useful information, e.g. Licensee certificates, as may be requested by SAP or any other member of the SAP Group. Licensee acknowledges that the delivery of and/or granting of access to Software, SAP Delivered Support, Documentation and SAP Materials as well as parts of any of these may be subject to the prior obtaining of export or import authorizations or both from the competent authorities and that this process may:

(i) considerably delay or prevent the delivery of and/or granting of access to Software, SAP Delivered Support, Documentation and SAP Materials or part of any of these,

(ii) impact SAP's ability or the ability of any other member of the SAP Group to provide SAP Delivered Support or other services and

(iii) lead to SAP or any other member of the SAP Group having to limit, suspend or terminate Licensee's access to SAP Delivered Support services or other services.

法規事宜：軟體、SAP 交付支援、記錄文件與 SAP 資料或其任何部分 (例如：任一軟體產品之新版本、發行版本、更新、升級、升級、更新程式、修復與更正) 皆應受到不同國家出口法律之規範，包括但不限於：美國、歐盟、愛爾蘭與德國之法律。被授權人同意不會在未經 SAP 事先書面同意之情況下，基於授權考量或其他法規核准考量，向任何政府機關或其他監管機關提供軟體、SAP 交付支援、記錄文件或其他 SAP 資料，且不會將任何軟體、SAP 交付支援、記錄文件和/或 SAP 資料出口、轉出口或進口至上述法律禁止之國家、個人或實體。在該情況下，被授權人應負責遵守一切適用的出口法律。SAP 或 SAP 集團之任何其他成員如欲就軟體、SAP 交付支援、記錄文件與 SAP 資料或其任何部分，直接交付予被授權人及/或授與存取權限，被授權人將於 SAP 或 SAP 集團之任何其他成員要求時，協助 SAP 或 SAP 集團之任何其他成員，向具有管轄權之主管機關，取得任何必要之授權、核可或其他認可，並提供任何必要或有用之聲明或資訊，例如：被授權人之證書。被授權人確認，軟體、SAP 交付支援、記錄文件與 SAP 資料或其任何部分之交付及/或授與存取權限，可能需要事先自具有管轄權之主管機關，取得出口或進口或進出口授權，而該程序可能

(i) 大幅延誤或導致軟體、SAP 交付支援、記錄文件與 SAP 資料或其任何部分無法交付及/或無法授與存取權限；

(ii) 對 SAP 或 SAP 集團之任何其他成員提供 SAP 交付支援或其他服務的能力造成影響；及

(iii) 導致 SAP 或 SAP 集團之任何其他成員必須限制、中斷或終止提供 SAP 交付支援服務或其他服務予被授權人。

Neither SAP nor any other member of the SAP Group assumes any responsibility or liability:

SAP 或 SAP 集團之任何其他成員，均不會承擔任何以下各款之情況致生的責任或義務：

a) for any delay caused in the delivery and/or granting of access to Software, SAP Delivered Support, Documentation and SAP Materials or parts of any of these due to export or import authorizations or both having to be obtained from the competent authorities;

a) 由於必須自具有管轄權之主管機關取得出口、進口或進出口授權而導致軟體、SAP 交付支援、記錄文件與 SAP 資料或其任何部分之交付及/或授與存取權限遭到任何延誤；



b)if any required authorization, approval or other consent for the delivery of and/or granting of access to Software, SAP Delivered Support, Documentation and SAP Materials or parts of any of these cannot be obtained from the competent authorities;
倘若軟體、SAP 交付支援、記錄文件與 SAP 資料或其任何部分之交付及/或授與存取權限，需要取得必要之授權、核可或其他認可，卻未能自具有管轄權的主管機關取得；

c)if the delivery of and/or granting of access to Software, SAP Delivered Support, Documentation and SAP Materials or parts of any of these is prevented due to applicable Export Laws; and
倘若軟體、SAP 交付支援、記錄文件與 SAP 資料或其任何部分之交付及/或授與存取權限由於適用的出口法律未能辦理；及

d)if access to SAP Delivered Support or other services has to be limited, suspended or terminated due to applicable Export Law.
倘若 SAP 交付支援或其他服務由於適用的出口法律必須受到限制、中斷或終止。

SAP may terminate this Agreement and the license granted hereunder with thirty days' prior written notice if SAP or any relevant member of the SAP Group may not deliver or grant access to Software, SAP Delivered Support, Documentation and SAP Materials to Licensee due to an embargo or other comparable trade sanction, which is expected to be in place for six months or longer.

倘若由於預估可能持續達六個月或更久的禁運或其他類似貿易制裁，SAP 或 SAP 集團之任何相關成員可能無法將軟體、SAP 交付支援、記錄文件與 SAP 資料交付或授與存取權限予被授權人，SAP 得向被授權人以三十日之事前書面通知，終止本合約及基於本合約所授予之權利。

12.6. **Governing Law; Limitations Period.** This Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement are governed by Taiwan law to the exclusion of the international law of conflicts and the UN Sales Convention. The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement (including any dispute regarding the existence, validity or termination of this Agreement) is the courts of Taipei, Taiwan. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

準據法：限制期間：本合約與本合約所生或與其有關之任何索賠請求（包括任何非合約之索賠請求）係以臺灣法律為準據法，且應排除國際法衝突原則及聯合國銷售公約之適用。因本合約所生或與其有關之一切爭議（包括關於本合約之存在、有效性或終止之任何爭議）皆應由台灣台北之法院進行專屬管轄。被授權人必須自知悉或經合理調查後應能知悉導致索賠之事實起一（1）年內，提出關於本合約及其系爭事項之任何索賠。

12.7. **Notices.** All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of SAP and Licensee at the addresses first set forth in the EULA Acceptance Form. Where in this Section 12.6 or elsewhere in this Agreement a written form is required, except for any notice of termination or notice of a material breach which shall occur by exchange of letter(s), that requirement can be met by facsimile transmission, exchange of letters or other written form, including email or other electronic means for which a process has been provided by SAP.

通知：本合約所需或提供之所有通知或報告皆應採書面形式，且依適當方式提供至 SAP 和被授權人於 EULA 驗收表載明之營業處所和通訊地址。無論是本合約第 12.6 條或其他條款要求以書面形式發出通知時，除提供任何終止通知或重大違約通知（應透過書信往來）外，傳真、書信往來或其他書面形式（包括電子郵件或其他由 SAP 提供之電子流程）均可滿足此要求。

12.8. **Force Majeure.** Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

不可抗力：因超過履約之一方得合理控制之原因造成對本合約任何條款之遲延履行或未履行者（到期款項之支付義務除外），應不構成違約。前述條款之履行期限應延長至與妨礙履約事由存續時間相等之期間。

12.9. **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Licensee, and all previous representations, discussions, and writings are merged in, and superseded by this Agreement and the Parties disclaim any reliance on any such representations, discussions and writings. This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to SAP. This Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear in any clickwrap end user agreement included in the Software. This Agreement does not create any partnership, joint venture or principal-and-agent relationship.

完整合意：本合約構成 SAP 及被授權人間之唯一完整合意聲明，已併入並取代先前所有之聲明、討論及書面文件，且雙方茲放棄對此類聲明、討論及書面文件之情事信賴。本合約效力高於其他任何由被授權人向 SAP 提供之採購訂單或其他文件上出現的額外、衝突或不一致的條款與條件。本合約效力高於軟體隨附之任何 Clickwrap 使用者合約上出現之額外、衝突或不一致的條款與條件。本合約不會建立夥伴、合資企業或委託代理關係。

- 12.10. **Amendments.** Any modification, amendment or supplement to this Agreement (including this Section 12.10 (Amendments) must be made in writing or in any other documented form for which a process has been provided by SAP.

修訂：對本合約的任何修改、修訂或補充 (包括本 12.10 條 (修訂))，必須以書面形式或由 SAP 提供流程之任何其他可記錄形式為之。

- 12.11. **Effective Date.** If a Party signs a part of this Agreement but fails to date its signature, the date that the other Party receives the signing Party's signature will be deemed to be the date on that the signing Party signed that part of the Agreement.

生效日期：若一方先行簽署本合約之一部，但未於簽署時將其簽名之日期記入，另一方收到簽署方已署名之合約正本之日，應視為係該簽署方在本合約該部分署名之日。

- 12.12. **WAIVER OF JURY TRIAL.** EACH PARTY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION COMMENCED UNDER OR IN CONNECTION TO THIS AGREEMENT.

放棄陪審團審理：於本合約下或與其有關之任何訴訟中，各方茲此放棄其得請求由陪審團審理之任何權利。

- 12.13. **Hierarchy.** The following order of precedence shall be applied in the event of conflict or inconsistency between provisions of the components of this Agreement:

(i) the EULA Acceptance Form;

(ii) the EULA;

(iii) the Software Use Right Schedule except with respect to third party pass-through terms for Third Party Software stated in the Software Use Rights Schedule,

in which case the Software Use Rights Schedule shall prevail over any conflict or inconsistency in any component of this EULA solely with respect to such third party pass-through terms.

階層：若本合約各組成部分間產生衝突或不一致，則應適用下列優先順序：

(i) EULA 驗收表；

(ii) EULA；

(iii) 軟體使用權明細表，

除了軟體使用權明細表中所載、適用於第三方軟體之第三方轉付條款以外；在此情況下，針對第三方轉付條款之部分，若 EULA 驗收表的任何部分有任何衝突或不一致，軟體使用權明細表應優先適用。

- 12.14. **Survival.** Section 3(Verification), Sections 6.1 (Reservation of Rights), 6.2 (Protection of Rights), 7 (Performance Warranty), 8 (Third Party Claims), 9 (Limitations of Liability), 10 (Confidentiality), 12.1 (Retention of data), 12.2 (Severability), 12.6(Governing Law; Limitations Period), 12.12 (Waiver of Jury Trial) shall survive any termination of this Agreement.

後續效力：第 3 條 (驗證)、第 6.1 條 (權利保留)、第 6.2 條 (權利保護)、第 7 條 (履約保證)、第 8 條 (第三方索賠)、第 9 條 (責任限制)、第 10 條 (保密)、第 12.1 條 (資料保存)、第 12.2 條 (條款效力獨立)、第 12.6 條 (準據法；限制期間)、第 12.12 條 (放棄陪審團審理)，應於本合約終止後繼續有效。

- 12.15. **Governing language.** This Agreement may be executed in the English language alone or may be executed in both the Chinese and English languages. In the event that both the Chinese and English versions are executed, and there are different interpretations of the same provision or actual contradictions, the meanings of the English version shall prevail.

準據語言：本合約可能僅以英文簽署，或分別以中文及英文簽署。如同時簽署中文版及英文版時，且中英文版中就相同條款之解釋有所歧義或兩者互相抵觸時，應以英文版為準。