

SOFTWARE LICENSE AND SUPPORT AGREEMENT
General Terms and Conditions
("GTC")

軟體授權及支援合約
一般條款與條件
(以下簡稱「GTC」)

1. DEFINITIONS.

1. 定義

1.1 "Add-on" means any development using SAP API's that adds new and independent functionality, but does not modify existing SAP functionality.

1.1 附加程式：係指任何使用 SAP 應用程式界面之情況，且該界面增加嶄新且獨立功能，但未更改原有之 SAP 功能。

1.2 "API" means SAP's application programming interfaces, as well as other SAP code that allow other software products to communicate with or call on SAP Software (for example, SAP Enterprise Services, BAPIs, Idocs, RFCs and ABAP or other user exits) provided under this Agreement.

1.2 API：係指 SAP 應用程式界面，以及其他能使其他軟體產品與本合約書提及之 SAP 軟體溝通連接之 SAP 程式（如：SAP 企業服務、BAPI、Idoc、RFC 和 ABAP 或其他 User Exit）。

1.3 "Affiliate" mean 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 equity interest is maintained.

1.3 關係企業：係指任何位於區域內且被授權人持有超過 50% 股份或表決權之法人組織。前述法人組織只在被授權人持續持有上述股權利益時，才視為關係企業

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

1.4 業務相關夥伴：係指與被授權人之內部業務經營有關，而需利用軟體之法人組織，例如被授權人之顧客、經銷商及/或供應商。

1.5 "Confidential Information" means, with respect to SAP, all information which SAP protects against unrestricted disclosure to others, including but not limited to: (a) the Software and 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; (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies; and (d) any information about or concerning any third party (which information was provided to SAP subject to an applicable confidentiality obligation to such third party). With respect to Licensee, "Confidential Information" means all information which Licensee protects against unrestricted disclosure to others and which (i) if in tangible form, Licensee clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Licensee identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary within thirty (30) calendar days of any such disclosure.

1.5 機密資訊：係指關於 SAP 部分，所有 SAP 保障免於無限制揭露予他人之資訊，包括但不限於：(a) 軟體、文件及其他 SAP 資料，包括但不限於下列與軟體相關之資訊：(i) 電腦軟體（目的程式碼及原始程式碼）、電腦編輯技術及概念、處理方式及軟體所涵蓋之系統設計；(ii) 評比結果、使用手冊、程式清單、資料結構、流程圖、邏輯圖、功能明細、檔案格式；及(iii) 發現、創新、概念、設計、流程圖、文件、產品明細、應用程序界面明細、軟體相關之科技及處理方式；(b) SAP 之研究、發展及檢查；(c) 產品提供、內容夥伴、產品價格、產品可利用性、科技製圖、規則系統、處理、觀念、技術、公式、資料、圖式、營業秘密、技術、改善、行銷計畫、預測與策略；及(d) 與第三人相關之任何資訊，且該資訊係因 SAP 對該第三人負保密義務而提供予 SAP 之資訊。關於被授權人部分，「機密資訊」係指所有被授權人防止向他人無限制揭露，且其 (i) 若為有形種類，被授權人於揭露時明確定義為機密或專有者；及(ii) 為無形種類，包括口頭或視覺上揭露者，被授權人於揭露時認定為機密，且以書面方式摘要機密資訊，並於揭露後三十日內交付該摘要予對方。

1.6 "Documentation" means SAP's documentation which is delivered or made available to Licensee with the Software under this Agreement.

1.6 文件：係指依本合約書交付或令軟體被授權人取得之 SAP 文件

1.7 "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.

1.7 智慧財產權：係指任何種類的專利、新式樣權利、新型權利或其他類似發明權、著作權、積體電路布局權、營業秘密或機密權、商標、商品命名與服務標示，以及其他任何無形財產權，包括在任一國家，依法規、普通法或契約之前項任一種權利之申請與登記，不論其是否完善，現存或之後遞送、核發或取得。

1.8 **"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 (defined below).

1.8 **修改:** 係指(i)對已交付原始程式碼或修改後資料之改變；(ii)任何非對已交付原始碼或修改後資料加以改變之發展，以客製化、促進或改變現行軟體功能，包括但不限於對新應用程序界面之創新、替代性使用者界面、SAP 資料架構之擴張；或(iii)任何其他對使用或安裝任何 SAP 資料（見以下定義）之改變，不包括附加程式。

1.9 **"SAP Materials"** means any software, programs, tools, systems, data or other materials made available by SAP to Licensee in the course of the performance under this Agreement including, but not limited to, the Software and Documentation, as well as any information, materials or feedback provided by Licensee to SAP relating to the Software and Documentation.

1.9 **SAP 資料:** 係指 SAP 依本合約履約過程中向被授權人提供的任何軟體、程式、工具、系統、資料或其他資料，包括但不限於軟體和文件，以及被授權人向 SAP 提供之任何軟體及紀錄文件相關資訊、資料或回應。

1.10 **"SAP Support"** means SAP's then-current SAP support offering made available to Licensee, as stated in the applicable SAP Software Order Form and made a part hereof.

1.10 **SAP 支援服務:** 係指 SAP 當前向被授權人提供之 SAP 支援服務，細節載於適用之 SAP 軟體訂購單，並構成本合約之一部分。

1.11 **"Software"** means (i) any and all software products licensed to Licensee under this Agreement as specified in Software Order Forms hereto, all as developed by or for SAP, SAP SE, Business Objects Software Limited and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective support agreement and (iii) any complete or partial copies of any of the foregoing.

1.11 **軟體:** 係指(i)任何及所有於本合約書中授權予被授權人且於相關軟體訂購單上載明之軟體，所有被或為 SAP, SAP SE, Business Objects Software Limited 及/或其他所有附屬公司發展並交付予被授權人者；(ii)任何依據個別支援合約透過無限制發貨得以取得之新發行版本；(iii)任何前述完整或部分複製之版本。

1.12 **"Software Order Form"** means the order form for the Software and related SAP Support ordered by Licensee thereunder, including information on Software, SAP Support, fees, and other information necessary for the delivery of such items to Licensee.

1.12 **軟體訂購單:** 係指被授權人訂購軟體及相關 SAP 支援服務所依據之訂購單，包括與軟體、SAP 支援服務、費用相關之資訊，以及其他必須交付予被授權人之資訊。

1.13 **"Territory"** means the territory stated in the Software Order Form.

1.13 **授權區域:** 係指詳列於軟體訂購單之地區。

1.14 **"Third Party Software"** means (i) any and all software products and content licensed to Licensee under this Agreement as specified in Software Order Forms hereto, all as developed by companies other than SAP, SAP SE, Business Objects Software Limited and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective SAP Support Schedule and (iii) any complete or partial copies of any of the foregoing.

1.14 **第三方軟體:** 係指(i)依本合約書並載明於軟體訂購單之任何及所有授權予被授權人之軟體產品及內容，且非屬 SAP, SAP SE, Business Objects Software Limited 及/或任何其他附屬公司並交付予被授權者；(ii)任何依據個別 SAP 支援服務附錄透過無限制發貨得以取得之新發行版本；(iii)任何前述完整或部分複製之版本

1.15 **"Use"** means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

1.15 **使用:** 係指驅動軟體之處理功能，載入、執行、存取、使用軟體，或顯示經該處理功能取得之資訊。

2. **LICENSE GRANT.**

2. **權利授予**

2.1 **License.**

2.1 **授權**

2.1.1 Subject to Licensee's compliance with all the terms and conditions of this Agreement, SAP grants to Licensee a non-exclusive, 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 and as further set forth in the Software Order Form, unless terminated in accordance with Section 5 herein. This license does not permit Licensee (without being limited specifically to such restrictions) to: (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 Software Order Form, even if it is also technically possible for Licensee to access other Software components. Business Partners may Use the Software only through screen access and solely in conjunction with Licensee's Use and may not Use the Software to run any of Business Partners' business operations.

2.1.1 倘被授權人符合本合約書之條款及約定，除非依第 5 條終止合約書外，SAP 授予被授權人非獨家且永久性之授權（除非為訂閱制授權），於授權區域內之特定地點使用軟體、文件、及其他 SAP 資料，以進行被授權人及其關係企業之內部商業運作（包括客戶支援及被動災難修復），並對該內部商業運作提供如軟體訂購單所載之內部訓練及測試。系爭授權並不允許被授權人（不限於以下之限制）(i) 除依第 2.2 條提供給關係企業之情形外，使用 SAP 資料提供服務予第三人（例如委外業務處理、服務處申請或訓練第三人）；(ii) 除依第 2.2 條散布給關係企業之情形外，出租、貸款、再出售、再授權或散布 SAP 資料；(iii) 散布或公開關鍵編碼；(iv) 除依本合約書條款明確允許外，進行任何與 SAP 資料相關之使用或行為；(v) 即便被授權人得存取其他

軟體零件，使用非載明於軟體訂購單之軟體零件。業務相關夥伴僅能透過螢幕存取方式，並與被授權人使用相關者使用軟體，且不得使用該軟體進行任何業務相關夥伴之商業營運活動。

2.1.2 Licensee agrees to install the Software only on information technology devices (e.g. hard disks or central processing units) identified by Licensee pursuant to this Agreement that has been previously approved by SAP in writing or otherwise officially made known to the public as appropriate for Use or interoperation with the Software (the "Designated Unit") and which are located at Licensee's facilities and are in Licensee's direct possession. Where SAP has agreed in writing, the information technology devices may also be located in the facilities of an Affiliate or services providers and be in the Affiliate's or services providers' direct possession. Licensee must hold the required licenses as stated in the Use Terms 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. At that time, Licensee shall comply with Section 5.2 of this Agreement with respect to such previously licensed Software.

2.1.2 被授權人同意僅將軟體安裝於被授權人依本合約特定且經 SAP 事前書面同意或者經正式公告為適合使用或適合與軟體合併使用之科技設備（例如硬體或中央處理機器裝置，以下簡稱「指定機器」），且該設備位於被授權人場所並為被授權人直接佔有。倘 SAP 書面同意，該資訊科技設施亦得設置於關係企業場所，並由其直接佔有。被授權人必須具備如使用條款所述之必要授權，包括員工、關係企業代理人及業務相關夥伴。得藉由傳遞或為軟體一部分之界面、被授權人或第三人界面或另一中介系統加以使用。倘被授權人取得替換先前經授權軟體之授權軟體，先前授權軟體於本合約中之權利將於替換軟體在生產系統中使用時結束。此時，被授權人須符合本合約書第 5.2 條與先前授權軟體相關之規定。

2.1.3 The terms and conditions of this Agreement relative to "Software" apply to Third Party Software except as otherwise stated in the Software Use Rights Schedule.

2.1.3 除於軟體使用權目錄中載明者外，本合約與軟體相關之條款約定適用於第三方軟體。

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 agree 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 agreement for SAP software licenses and/or support services with SAP SE, any SAP SE affiliate (including SAP) or any other distributor of SAP software, the Software shall not be Used to run such affiliate's or subsidiary's business operations and such affiliate or subsidiary shall not receive any support services under this Agreement even if such separate agreement has expired or is terminated, unless otherwise agreed to in writing by the parties.

2.2 關係企業使用軟體 關係企業依第 2.1.1 條允許使用軟體、文件及其他 SAP 資料，以經營內部商業營運，須符合下列情況：(i) 被授權人確保關係企業書面同意遵守本合約之條款 (ii) 該關係企業違反本合約之規定應視為被授權人違反本授權合約書。若被授權人之關係企業或子公司與 SAP SE、任何 SAP SE 關係企業（包括 SAP），或任何其他 SAP 軟體批發商間，針對 SAP 軟體授權及/或支援服務訂有個別合約時，除另有契約雙方之書面同意外，即便系爭個別契約已屆期或終止，該軟體不應被使用於經營該關係企業或子公司之商業營運，且該關係企業或子公司 亦不應接受本合約書中之任何支援服務。

2.3 Outsourcing Services. With SAP's prior written consent, Licensee may permit services providers to access the Software solely for the purpose of providing facility, implementation, systems, application management or disaster recovery services to Licensee in connection with the business of Licensee for which the Software is herein licensed provided: (i) Licensee and such services provider execute a written agreement that includes provisions requiring such services provider's compliance with the terms of this Agreement prior to such access, including without limitation non-disclosure of SAP Confidential Information; (ii) Licensee shall hold the required licenses as stated in the Use Terms for all employees of such services provider authorized to access the Software; (iii) such services provider shall be permitted to Use the Software solely to install and configure the Software in accordance with the business of Licensee as set forth herein (or in the case of a disaster recovery vendor, to provide disaster recovery services only); (iv) under no circumstances may such services provider Use the Software to operate or provide processing services to Licensee or any other party, or in connection with such services provider's own business operations; (v) Licensee shall be responsible for any additional Software, migration tools, or third party software needed to effect such transition; and (vi) Licensee expressly agrees to indemnify SAP, its officers, employees, agents and subcontractors from and against all claims, liabilities, losses, damages and costs (including reasonable attorney fees) suffered by SAP arising from a breach by the services provider of the conditions of this Agreement. Upon SAP request, Licensee shall provide written confirmation to SAP that items (i)-(iv) are fulfilled.

2.3 委外服務 經 SAP 事前書面同意，針對該授權軟體相關之被授權人事業活動，被授權人得允許服務提供者僅為提供設備、建置、系統、應用管理、災難修復服務予被授權人之目的存取軟體，惟須：(i) 被授權人與該服務提供者於系爭存取動作前訂立書面契約，包括要求該服務提供者遵守本合約書條款，包括但不限於不揭露 SAP 機密資訊；(ii) 被授權人應為經授權存取軟體之系爭服務提供者員工具備使用條款中必需之授權；(iii) 該服務提供者應僅得依本合約所述之被授權人事業使用該軟體，以安裝或裝配系爭軟體（若為災難修復商，僅能提供災難修復服務）；(iv) 該服務提供者不得在任何情況下使用該軟體，而對被授權人或任何其他第三人操作或提供處理服務，或使用在與該服務提供者自身事業營運相關之情形；(v) 被授權人應負責提供系爭過渡期所需之任何其他軟體、遷移工具或第三方軟體；及(vi) 被授權人明確同意對 SAP、其職員、勞工、代理人及轉包商因系爭服務提供者違反本合約書條款所衍生之所有請求、責任、損失、損害及成本（包括合理律師費用）加以賠償。按 SAP 之要求，被授權人應提供書面確認予 SAP，以證明前述(i)至(vi)條款皆為符合。

3. VERIFICATION. 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 to SAP and/or (ii) that Licensee has Used the Software in excess of the license quantities or levels stated in the Software Order Form, Licensee shall pay such underpaid fees and/or for such excess usage based on SAP List of Prices and Conditions Software and Support governing use in effect at the time of the audit, and shall execute an additional Software Order Form in accordance with the terms of this Agreement 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.

3 驗證 SAP 應得查證 SAP 資料之使用情況，至少每年一次並且根據 SAP 標準程式，並包括實地及遠端查證。被授權人應合理配合進行該查證動作。倘該查證結果顯示(i) 被授權人少付授權費用及/或 SAP 支援服務費用予 SAP 及/或(ii) 被授權人使用該軟體之情形已超過軟體訂購單所載之授權數量或層級，被授權人應支付短付之費用及/或針對超過使用部分依據查證時適用之「SAP 軟體與支援價格表及條款」支付費用，且雙方應依據本合約條款簽訂其他軟體

訂購單以取得其他額外數量或層級部分之必要授權。若查證結果顯示軟體使用情形已超過授權數量或層級時，被授權人應負擔 SAP 之合理查證成本。針對被授權人短付之授權費用或 SAP 支援服務費用，及超出授權數量或層級部分，SAP 保留在法規及衡平法下所享有之權利。

4. PRICE AND PAYMENT.

4. 價格與付款

4.1 Fees. Licensee shall pay to SAP license fees for the Software and fees for SAP Support on the terms in Software Order Forms hereto. Any fees not paid when due shall accrue interest at the rate of 3% above the Prime Rate of Citibank, Taipei Branch applicable per annum, but not to exceed the maximum amount as allowed by law. Licensee fees include costs of initial delivery and packaging for physical shipment. 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.

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5. TERM.

5. 期間

5.1. Term. This Agreement and the license granted hereunder shall become effective as of the date first set forth in the applicable Software Order Form and shall continue in effect thereafter unless terminated upon the earliest to occur of the following:

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被授權人於此確認並承諾其不應將軟體應用於本身即屬於危險性之用途，包括但不限於大規模殺傷性武器，或與生產生化武器之開發有關之活動，或任何核爆炸活動，或任何不安全之核能利用活動。被授權人特此同意另行提供上述書面確認，並遵守相關出口管制機構不時要求之其他類似規定

9.2 Exclusion of Damages; Limitation of Liability. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION OR DEATH OR PERSONAL INJURY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL SAP, ITS LICENSORS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE PAID LICENSE FEES 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 BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ATTORNEYS' FEES, COURT COSTS, INTEREST OR EXEMPLARY OR PUNITIVE DAMAGES. The provisions of this Agreement allocate the risks between SAP and Licensee. The license fees reflect this allocation of risk and the limitations of liability herein.

9.2 損害免除、責任限制: 儘管本合約有相反之規定，除因未經授權使用、洩露機密資訊，或因任一方故意或重大過失造成人身傷亡情形外，不論主張之性質，SAP、SAP 之授權人或被授權人依本合約對於他方或其他個人或組織之損害賠償責任，就超過針對造成損害之軟體而已收取授權費用之損害，

或 特殊、偶發、衍生或間接損害、商譽損失或營業利潤、停工、資料損失、電腦無法運轉或功能錯誤、律師費用、法院費用、利息，或其他懲罰性賠償金，概不負責。本合約條款分配 SAP 與被授權人之間的風險。授權費用反映此一風險分配及其責任限制。

10. CONFIDENTIALITY

Y

10. 保密

10.1. Use of Confidential Information. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other 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 other, each 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 hereunder. 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.

10.1 機密資訊之使用 除為達成本合約意旨外，機密資訊不應以任何形式予以重製。任何其他機密資訊之重製皆為揭露方之財產，且應包含任何及所有出現於原本上之機密及專有通知或圖示。關於其他機密資訊，每一當事人：(a)應採取如下定義之合理步驟嚴格確保該機密資訊之機密性；及(b)不應揭露任何機密資訊與任何人，但其接觸係為履行本合約權利所必要之善意自然人不在此限。本條所稱之「合理步驟」係指接受方為保障自身類似財產及機密資訊所採取之措施，但不得低於合理注意標準。於本合約書簽署前所揭露之任何一方機密資訊，皆享有前述提供之保障。

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.

10.2 例外 上述關於機密資訊之使用或揭露部分之限制不適用於下列情況之任何機密資訊 (a)未參考揭露方機密資訊而由接受方獨立開發者，或係合法從有權提供系爭機密資訊之第三人處取得且不受限制者；(b)接受方未違反本合約，且該機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)揭露方書面同意不受上開限制。

10.3 Confidential Terms and Conditions; Publicity. Licensee shall not disclose the terms and conditions of this Agreement or the pricing contained therein to any third party. 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 SAP may use Licensee's name in customer listings or, at times mutually agreeable to the parties, as part of SAP'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.

10.3 機密條款與條件、公開: 被授權人不得洩漏本合約條款與條件或價格予任何第三人。未經他方事先書面同意，任何一方不得於公開場合、廣告或類似活動中使用另一方之名稱，惟被授權人茲同意 SAP 得將被授權人名稱列於客戶名單中，或雙方偶爾同意之時間，或將其作為行銷活動之一部分（包括但不限於參考電話及店家、媒體推薦書、現場採訪、SAPPHIRE 參與）。SAP 將盡合理努力避免參考活動不當影響被授權人之事業。

11. ASSIGNMENT. Licensee may not, without SAP's prior written consent, assign, delegate, pledge, 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 this Agreement to any of its affiliates.

11. 轉讓: 未經 SAP 事前書面同意，被授權人皆不得讓與、委託、抵押或以其他形式轉讓本合約，或被授權人於本合約下之權利或義務或 SAP 資料或 SAP 機密資訊予任何人，無論係出於自願或基於法律規定，包括出售資產、合併或結合。SAP 得移轉本合約予其任何關係企業。

12. GENERAL PROVISIONS.

12. 一般條款

12.1 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 invalid or unenforceable in any respect, such 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.

12.1 可分性: 本合約中如有一項或多項條款被認為無效或不能執行者，該無效或不能執行不影響本合約其他條款之效力，且解釋本合約時，應視為從未包含該等無效或不能執行之條款。

12.2 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.

12.2 未棄權: 如任一方對本合約任一條款之違約拋棄請求，該拋棄行為不應被視為已拋棄任何先前或嗣後對同一條款或其他條款之違約請求。

12.3 Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

12.3 合約份數: 本合約簽署一式兩份，每份均為正本，共同構成一份合約。

12.4 Regulatory Matters. The Software, Documentation and SAP Materials are subject to the export control laws of various countries, including without limit the laws of the United States and Germany. Licensee agrees that it will not submit the Software, Documentation or other SAP Materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Software, Documentation and SAP Materials to countries, persons or entities prohibited by such laws. Licensee shall also be responsible for complying with all applicable governmental regulations of the country where Licensee is registered, and any foreign countries with respect to the use of the Software, Documentation or other SAP Materials by Licensee and/or its Affiliates.

12.4 管制事項 軟體、文件與 SAP 資料應遵守許多國家之出口管制法律，包括但不限於美國與德國法律。如未事先經 SAP 書面同意，被授權人不同意不

為授權之考量或為取得法令授權，提供軟體、文件或其他 SAP 資料予任何政府單位，且不出口該軟體、文件及 SAP 資料至系爭法律所禁止之國家、個人或組織。被授權人亦應負責遵守被授權人登記國政府法律，以及與被授權人及/或其關係企業使用該軟體、文件或其他 SAP 資料相關之任何外國政府法律。

12.5 Governing Law; Limitations Period. This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of Republic of China ("ROC"), without reference to its conflicts of law principles. The parties consent to the jurisdiction of any court sitting in Taipei City, Taiwan. In the event of any conflicts between foreign law, rules, and regulations, and ROC law, rules, and regulations, ROC law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within two (2) years from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

12.5 準據法、期間限制 本合約及任何與本合約相關之主張及事項皆以中華民國法為準據法，而不適用有關選擇準據法之相關規定。雙方同意任何位於台灣台北市之法院的管轄權。若外國法律、規定、規則與中華民國法律、規定、規則發生衝突時，中華民國法應優先適用。聯合國契約公約有關國際貨物買賣(United Nations Convention on Contracts for the International Sale of Goods)規定於本合約不適用。被授權人應就任何衍生或有關本合約之主張提出請求權基礎，並於被授權人知悉，或經合理調查後應知悉之日起兩年內提出系爭請求之內容。

12.6 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 any Software Order Form. Where in this section 12.6 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.

12.6 通知: 依照本合約作成或按本合約所為之通知或報告均應以書面為之，且於分別送達 SAP 及被授權人於任何軟體訂購單首頁所揭行政辦公處所後，視為已正式送達。按本合約第 12.6 條或其他條款須製作書面表格者，該書面要求得藉由傳真傳遞、信件或其他書面文件交換。

12.7 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.

12.7 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。

12.8 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 may be modified only by a writing signed by both parties. 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. Signatures sent by electronic means (facsimile or scanned and sent via e-mail) shall be deemed original signatures.

12.8 完整合約 本合約構成 SAP 及被授權人之間完整且唯一之合約，已併入並取代先前所有之聲明、討論及書面文件，且雙方放棄依循任何此種聲明、討論及書面文件。本合約僅得以雙方書面簽署方式加以變更。本合約內容非經雙方授權之代表簽署書面合約不得修改。任何包含於軟體中之點選使用者合約倘出現任何附加、與本合約相衝突或不一致之條款時，應以本合約為準。以電子型式傳送簽名者應視為簽名原本。

12.9 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 Software Order Form; (ii) the Schedules; (iii) the Use Terms; and (iv) the GTC.

12.9 適用順序 倘本合約書之內容條款有衝突或不一致時，應依下列順序適用：(i)該軟體訂購單；(ii)附錄；(iii)使用條款，及(vi) GTC。

12.10 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.

12.10 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。