



## SAP SERVICES GENERAL TERMS AND CONDITIONS

### SAP 服務之一般條款與條件

These SAP Services General Terms and Conditions ("GTC") are effective as of the Effective Date of the relevant Order Form and are entered into by and between SAP Taiwan Co. Ltd.] with offices at 10F, No. 123, Songren Rd., Taipei, Taiwan R.O.C., (hereinafter "SAP") and Prime Contractor.

本 SAP 服務之一般條款與條件 (以下稱「GTC」) 係由 思愛普軟體系統股份有限公司，其營業處位於台灣台北市松仁路 123 號 10 樓(以下稱「SAP」) 與主要外包商共同訂立，於相關訂購單之生效日起生效。

### RECITALS

#### 立約緣由

WHEREAS, Prime Contractor has obtained or may obtain contracts to provide professional services to Customers who have acquired from SAP (or an SAP SE Affiliate, or an authorized SAP reseller) a license to use certain SAP Software or SAP Cloud Services.

鑑於主要外包商對獲得 SAP (或 SAP 關係企業或 SAP 授權經銷商) 授權可使用特定 SAP 軟體之客戶，業取得或得取得為其提供專業服務的契約。

WHEREAS, SAP provides certain services in Taiwan which Prime Contractor desires to obtain on the basis of certain Scope Documents as provided under an Order Form referencing and incorporating these GTC (each an "Order Form").

鑒於 SAP 於台灣提供特定服務，主要外包商則依引用及併入 GTC 之訂購單 (每一份皆稱「訂購單」) 所附特定範圍文件取得該服務。

WHEREAS, Prime Contractor as the prime contractor to the Customer wishes to involve SAP as a subcontractor for such services.

鑒於主要外包商作為客戶之首要外包商，希望納入 SAP 作為該服務之分包商。

NOW, THEREFORE, the parties agree as follows:

因此，雙方特此議定如下：

#### 1. Definitions.

##### 名詞定義

1.1 "Agreement" means an Order Form for Services governed by these GTC, including any documents attached to and/or referred to in the Order Form and/or GTC.

「合約」係指本 GTC 所規範之服務訂購單，包含訂購單及/或 GTC 中所隨附及/或所提及之任何文件。

1.2 "Affiliate" of a party means any legal entity in which and as long as a party, directly or indirectly, holds more than fifty percent (50%) of the entity's 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」係指一方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人組織。上述任何法人組織僅在持續持有上述股權利益時，方視為關係企業。

1.3 "Confidential Information" means, with respect to SAP, all information which SAP protects against unrestricted disclosure to others, including but not limited to: (a) the SAP Software, documentation, Work Product, SAP hosted or on-demand solution and other SAP materials, including without limitation the following information regarding the SAP Software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the software or SAP hosted or on demand services; (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 Prime Contractor, "Confidential Information" means all information which Prime Contractor or Customer protects against unrestricted disclosure to others and which: (i) if in tangible form, Prime Contractor or Customer clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Prime Contractor or Customer identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary to SAP within thirty (30) calendar days of any such disclosure.

「機密資訊」就 SAP 而言，係指 SAP 防止無限制向他人揭露之所有資訊，包括但不限於：(a) SAP 軟體、文件、工作成果、雲端資料、SAP 託管或隨選解決方案以及其他 SAP 資料，包括但不限於下列 SAP 軟體相關資訊：(i) 電腦軟體（目的程式碼和原始程式碼）、程式設計技術和程式設計概念、處理方法、軟體體現之系統設計或 SAP 託管或隨需服務；(ii) 評比結果、使用手冊、程式清單、資料結構、流程圖、邏輯圖、功能性規格、檔案格式；(iii) 軟體相關之發現、發明、概念、設計、流程圖、紀錄文件、產品規格、應用程式介面規格、技術和程序；(b) SAP 的研究、開發或調查；(c) 可提供的產品、內容夥伴、產品價格、產品可用性、技術繪圖、演算法、程序、構想、技術、公式、資料、簡圖、營業秘密、專業知識、改進、行銷計劃、預測和策略；(d) 任何第三方相關之所有資訊（提供予 SAP 的資訊必須遵守此類第三方之適用保密義務）。就主要外包商而言，「機密資訊」係指主要外包商或客戶防止無限制向他人揭露之所有資訊，和所有符合以下條件之資訊：(i) 主要外包商或客戶在揭露時明確認定為機密或專屬資訊之有形資訊；以及 (ii) 主要外包商或客戶在揭露時認定，以書面方式摘要為機密資訊，並於上述任何揭露開始的三十 (30)天內向 SAP 提供上述書面摘要之無形資訊(包括以口頭或為視覺方式揭露)。

- 1.4 "Consultants" means employees and third party contractors which SAP utilizes to provide Services to Prime Contractor.

「顧問」係指 SAP 用於向主要外包商提供服務的員工和第三方承包商。

- 1.5 "Customer" means the end customer of the Prime Contractor, with such Customer to be identified in the relevant Order Form.

「客戶」係指主要外包商之終端客戶，是類客戶將於相關訂購單中予以指定。

- 1.6 "Customer Data" means any content, materials, data and information that Prime Contractor or its authorized users enter into managed services or Customer-specific data that is derived from Prime Contractor's use of the managed services (e.g. Customer-specific reports) as long as such derivative work is not a component of the managed services itself or furnished by SAP under the Agreement. Customer Data shall not include any component of the Services or material provided by or on behalf of SAP.

「客戶資料」係指主要外包商或其授權使用者簽訂受管理服務所涉及的任何內容、材料、資料和資訊，或主要外包商使用管理服務所衍生之客戶專屬資料（例如客戶專屬報告），但該衍生作品不得是管理服務的構成要件，或由 SAP 依本合約提供的資料。客戶資料不包括服務的構成要件，或由 SAP 或代表 SAP 提供的任何資料。

- 1.7 "Deliverables" means those specific Work Products which are explicitly identified as a deliverable under the applicable Order Form for delivery to Prime Contractor.

「交付項目」係指明確列於相關訂購單交付予主要外包商的具體工作成果。

- 1.8 "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how 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、新式樣、實用新型或其他類似發明權、著作權、積體電路佈局設計權、營

業秘密、專業知識或機密權、商標、商號 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，無論其是否完善，是否當前存在或係將來提請、提交或取得。

- 1.9 “License Agreement” means the agreement between SAP (or an SAP SE Affiliate, or an authorized reseller of the SAP Software) and the Customer under which Customer procured or will procure the license rights to use SAP Software.  
「授權協議」係指 SAP (或 SAP SE 關係企業或 SAP 軟體授權經銷商) 與客戶之間的合約；客戶依此合約取得 SAP 軟體的使用授權。
- 1.10 “Order Form” means all written order forms for Services entered into by SAP and Prime Contractor containing the pricing and other specific terms and conditions applicable for each of the Services under an applicable Order Form.  
「訂購單」係指 SAP 與主要外包商簽訂之服務書面訂購單，其中包含相關訂購單所載各項服務的費用和其他特定條款與條件。
- 1.11 “SAP Software” means: (i) any and all software products licensed to Customer under the License Agreement as specified in software order forms (or other order forms, schedules or appendices as applicable) thereto; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to the respective support agreement or warranty obligation and (iii) any complete or partial copies of any of the foregoing.  
「SAP 軟體」係指 (i)「軟體訂購單」(或其他訂購單、明細表或附錄，如適用)所指定，依本授權合約授權予主要外包商之任何及所有軟體產品；(ii) 依個別支援服務合約或保固義務，透過無限制交付方式提供任何上述項目之新發行版本 (iii) 任何前述項目之完整或部分複本。
- 1.12 “Scope Document” means the document that is provided with and becomes part of the Order Form which further defines the scope of Services to be provided and other engagement specifics.  
「範圍文件」係指提供服務範圍及其他具體細節之文件，屬於訂購單之一部分。
- 1.13 “Services” mean those service(s) as further defined by those specific Scope Documents provided to Prime Contractor under an Order Form that references this GTC.  
「服務」係指特定範圍文件所定義，並依參照本 GTC 之訂購單向主要外包商所提供之服務。
- 1.14 “Taxes” means sales, VAT, GST, foreign withholding, use, property, excise, service or similar taxes now or hereafter levied all of which shall be for Prime Contractor’s account.  
「稅」係指當前或之後課徵之銷售、VAT、GST、境外預扣、使用、服務或類似稅捐，上述所有稅捐項目應適用於主要外包商帳戶。
- 1.15 “Work Product” means any work product or tangible results produced by or with SAP pursuant to this Agreement, including, but not limited to, works created for or in cooperation with Prime Contractor or Customer.  
「工作成果」係指任何依本合約或任何由 SAP 或與 SAP 一起創造的工作成果或可見成果，包括但不限於用於主要外包商或客戶或與其合用而完成的工作。
- 1.16 “Residuals” means information in non-tangible form which may be retained in the unaided memory by persons who have had access to the Confidential Information so long as such persons have not studied the information for the purpose of replicating the same from memory.  
「殘留資訊」係指曾存取機密資訊的人員獨立記憶保留的無形資訊，只要該人員非出於複製記憶中相同資訊目的而刻意記憶有關資訊。
- 1.17 “SAP SE” means SAP Societas Europaea, a German corporation, with offices located in Walldorf, Germany.  
「SAP SE」係指 SAP Societas Europaea，一家辦公地址位於德國沃爾多夫 (Walldorf) 的德國公司。
- 1.18 “SAP SE Affiliate” means a subsidiary of SAP SE.  
「SAP SE 關係企業」係指 SAP SE 的一家子公司。

## 2. **Provision of Services.**

### **服務的提供**

- 2.1. SAP will provide the Services in accordance with the Order Form.  
SAP 將依訂購單提供服務。
- 2.2. SAP may utilize third party contractors to perform SAP's duties. SAP shall be responsible for the performance of the Services of such third party contractors to the same extent as SAP is liable for its own Consultants.  
SAP 可能會使用第三方承包商來履行 SAP 的職責。SAP 應對此類第三方承包商履行服務時的表現負責，其負責的範圍與 SAP 為其自己的顧問負責的範圍一致。
- 2.3. If any Service, in whole or in part, cannot be provided by SAP due to a Prime Contractor issue or a Customer issue and Prime Contractor fails to provide SAP with reasonable advance notice, the time agreed to be spent by SAP resources on such Service will be billable to Prime Contractor.  
如果因為主要外包商或客戶的問題導致 SAP 無法提供全部或部分的任何服務，且主要外包商未能向 SAP 提出合理的事先通知，則雙方同意使用 SAP 資源為此類服務所花時間應由主要外包商負擔費用。
- 2.4. The selection of Consultants assigned or deployed to deliver Services is at SAP's sole discretion, and SAP reserves the right to replace any Consultant at any time at its sole discretion with a Consultant with equivalent skills.  
為交付服務所指派或部署之顧問的甄選由 SAP 自行決定，SAP 保留在自行裁量的基礎上隨時以具有同等技能之顧問替代任何顧問的權利。
- 2.5. Any services, Deliverables, and Work Products provided by SAP prior to the execution of an applicable Order Form or a Change Request are the sole property and Confidential Information of SAP and shall be governed by the terms of this Agreement. If no Order Form is completed, all Services, Work Products and Deliverables must be returned or deleted and must not be used.  
在簽署特定訂購單或變更請求之前，由 SAP 提供的任何服務和工作成果完全屬於 SAP，且為 SAP 的機密資訊，應受本合約條款約束。如果未簽署訂購單，則所有服務、工作成果和交付項目必須返回或刪除，不得使用。
- 2.6. All dates with respect to performance of the Services are estimated and time shall not be deemed of the essence.  
本服務履行時間皆為預估日期，時間非合約之實質要件。
- 2.7. Acceptance  
驗收

Acceptance of a Deliverable.

交付項目驗收

In an Order Form, where there are Deliverables, the parties may agree in such Order Form that such specific Deliverables can be subject to acceptance procedures.

對於內含交付項目之訂購單，雙方得於該訂購單中同意該特定交付項目可受驗收程序之規範。

Acceptance. If there is an Order Form with Deliverables and the Order Form expressly states that such Deliverables are subject to acceptance procedures, the following language applies, unless otherwise agreed upon in an Order Form:

驗收。除非訂購單中另有約定，否則當訂購單內含交付項目，且該訂購單明確列出該交付項目受驗收程序所規範時，應適用下列條文：

Deliverable Acceptance Procedure. Upon delivery by SAP of a completed Deliverable, Prime Contractor shall have 10 calendar days to accept or reject ("Acceptance Period") the Deliverable, due to a material defect using reasonable discretion, based on the acceptance criteria set forth in the Order Form for that Deliverable. A "material defect" means the Deliverable fails to substantially comply with the applicable and corresponding

acceptance criteria for that Deliverable set forth in the Order Form. If the relevant Deliverable passes the agreed acceptance criteria set forth in the Order Form, Prime Contractor shall accept the Deliverable. Acceptance will not be unreasonably withheld by Prime Contractor. If Prime Contractor notifies SAP that it has rejected the Deliverable due to a material defect, Prime Contractor shall provide written notice, within such 10 day period, specifying the basis of the defect. SAP shall have a reasonable period to cure and redeliver the Deliverable for an additional Acceptance Period. If Prime Contractor fails to reject any Deliverable within the Acceptance Period, in a written document specifying the defect, Prime Contractor shall be deemed to have accepted such Deliverable as of the 10th day of the Acceptance Period. Upon acceptance of a Deliverable, all Services associated with such Deliverable shall be deemed accepted and SAP shall have no further obligation with respect to an accepted Deliverable. A Deliverable shall not be made available for productive use, unless it has been accepted by Prime Contractor (either expressly or by passage of time). Where acceptance criteria is not specified in the Order Form for a Deliverable, such Deliverable will be deemed complete and accepted by Prime Contractor the day after SAP performs it or delivers it.

交付項目驗收程序。SAP 一旦交付完整交付項目，主要外包商有十 (10)天(「驗收期」) 依據交付項目訂購單所記載的驗收標準，決定接受交付項目，或根據合理判斷有重大瑕疵而拒絕交付項目。「重大瑕疵」係指交付項目實質上無法符合訂購單所載相關與相應之交付項目驗收標準。如果有關交付項目通過訂購單規定之約定驗收標準，主要外包商應接受交付項目。主要外包商不得無理保留交付項目不通過驗收。若主要外包商通知 SAP 由於重大瑕疵已拒絕交付項目，則主要外包商應於十天期間內提供書面聲明，並指出瑕疵根據。SAP 應在合理期間內彌補瑕疵，並在額外的驗收期之內重新交付交付項目。若主要外包商未在驗收期內拒絕任何交付項目並未以書面文件指出缺陷，則視為主要外包商在十 (10) 天驗收期過後接受該交付項目。一旦接受交付項目，即應視為接受與該交付項目關聯之所有服務，且 SAP 不再承擔已接受交付項目相關之進一步義務。除非交付項目通過主要外包商的驗收 (明確表示通過或逾時通過)，否則不得用於正式作業。若訂購單未指明交付項目驗收標準，則於 SAP 執行或提供後，該交付項目即視同完整並為主要外包商所接受。

### **3. Prime Contractor's General Responsibilities.**

#### **主要外包商的一般責任**

- 3.1. Prime Contractor is responsible for making the necessary arrangements to allow SAP to perform the Services.  
主要外包商需負責作出必要的安排讓 SAP 履行服務。
- 3.2. Prime Contractor shall provide and make available all Prime Contractor personnel that SAP reasonably requires in connection with performance of the Services and as may be further addressed in an applicable Order Form. Prime Contractor shall procure the availability of any Customer personnel that SAP reasonably requires in connection with performance of the Services.  
主要外包商應向 SAP 提供 SAP 為履行服務而合理要求，以及相關訂購單中提及需要的所有可用人員。主要外包商應確保客戶人力可用度，以因應 SAP 為履行服務之合理要求。
- 3.3. If the Services are performed at Prime Contractor's site or remotely on Prime Contractor's resources, Prime Contractor agrees to provide necessary access including, but not limited to, appropriate access to Prime Contractor premises, computer systems and other facilities. If the Services are performed at Customer's site or remotely on Customer's resources, Prime Contractor agrees to procure necessary access including, but not limited to, appropriate access to Customer premises, computer systems and other facilities.  
若服務履行地點位於主要外包商所在地或其遠端資源，則主要外包商同意提供必要之進入權限，包括但不限於主要外包商的辦公場所、電腦系統和其他設施的適當進入權限。若服務履行地點位於客戶所在地或其遠端資源，則主要外包商同意取得必要之進入權限，包括但不限於客戶的辦公場所、電腦系統和其他設施的適當進入權限。
- 3.4. Prime Contractor shall appoint a contact person to supply SAP with any necessary or relevant information and who shall have the authority to make decisions or obtain decisions from others expeditiously. Prime Contractor may instead appoint an employee of the Customer, however subject always to the condition that the employee of the Customer shall be given full authority to make decisions on behalf of the Prime Contractor in relation to this Agreement and as required by this section. In such a case, SAP shall be entitled to fully rely on the decisions of the employee of the Customer as an authorized representative of the Prime Contractor.

主要外包商應指定一名聯絡人為 SAP 提供任何必要或相關的資訊；該聯絡人應有權作出決定或從其他有權決定的人那裡快速獲知決定。主要外包商得改為指定一名客戶員工，惟依本條規定，該前提為客戶員工應就本協議相關內容取得代表主要外包商制定決策之完整授權。在此情況下，SAP 對於身為主要外包商授權代表人之客戶員工，應有權充分信賴其決策。

- 3.5. Prime Contractor ensures to have all necessary license rights including third party license rights required for the Services. Prime Contractor agrees to ensure that Customer has all necessary license rights including third party license rights required for SAP's performance of the Services. 主要外包商應確保其具有一切必要的授權，包括服務所需之第三方授權。主要外包商同意確保客戶具有一切必要的授權，包括 SAP 履行服務要求之第三方授權。

Before commencing live operation with any provided Service and/or Deliverable (including any Services provided to remedy a defect) Prime Contractor – who shall have a use right for test purposes only - should test the provided Services and Deliverables thoroughly for defect resolution and for suitability in the situation.

在開始實際操作任何提供之服務和/或交付項目（包含為修正瑕疵所提供之服務）前，其使用權利僅供測試目的之主要外包商應就提供之服務與交付項目進行完整測試，以便解決缺陷，同時確保測試情境下之適應性。

Prime Contractor is responsible for appropriate precautions against the possibility that the works may have or cause faults and take precautions including, for example, data backups, error diagnosis, and regular results monitoring (including data quality). Except where otherwise expressly stated in writing in each individual case, SAP Consultants are always entitled to act on the assumption that all data with which they come into contact has met these precautions.

主要外包商應負責進行諸如資料備份、錯誤診斷與一般結果監控（包含資料品質）等相關預防措施，以杜絕該作品發生或導致故障之可能性。除各方另以書面明定外，否則 SAP 顧問採取任何行動時有權假設其可能接觸之所有資料均已完成上述預防措施。

Contractual collaboration requires a high level of trust, interaction and willingness to agree. Except in emergencies, a limited time fixed by Prime Contractor pursuant to the law or this Agreement and/or an Order Form must not be less than 10 working days. If, from a failure to comply with any fixed time limit, a right accrues to Prime Contractor to be released from the Agreement and/or an Order Form (e. g. by rescission, termination, or claim for damages in lieu of performance) or to a price reduction for breach, SAP is entitled, after the expiration of the time limit, to give notice requiring Prime Contractor to exercise that right not later than two weeks after receiving the notice.

契約所訂協作需要高度信任、互動與合意意願。除發生緊急情況外，主要外包商依據法律或本合約和/或訂購單所訂定之固定限制時間不得少於十（10）個工作天。無法遵守固定時間限制時，主要外包商將可免除履行本合約和/或訂購單之義務（例如：透過解約、終止或損害索賠代替履約），或可獲得因違約所生之價格減免，SAP 則有權於時間限制到期後通知被主要外包商，要求其於接收通知後兩周內行使該權利。

#### **4. Change Request Procedures.**

##### **變更請求程序**

- 4.1. Either party can request changes to the Service in accordance with the change request form attached to the Order Form or provided by SAP from time to time ("Change Request"). 任一方均可依據附於訂購單或 SAP 不時提供之變更請求表（以下稱「變更請求」）要求變更服務。
- 4.2. SAP is not required to perform under a Change Request until agreed to and signed by the parties. SAP 在雙方同意並簽字之前無需執行變更請求。

#### **5. Satisfaction with Personnel.**

##### **對人員的滿意度**

If at any time Prime Contractor or SAP is dissatisfied with the material performance of an assigned Consultant or a Prime Contractor project team member, the dissatisfied party shall promptly report such dissatisfaction to the other party in writing and may request a replacement. In the case of SAP dissatisfaction with a Customer project team member, SAP shall report such dissatisfaction to the Prime Contractor. The other party shall use its reasonable discretion in accomplishing any such change (which also, in the case of SAP, shall be subject to staffing availability).

如果任何時間主要外包商或 SAP 對於一名指定的顧問或主要外包商的項目團隊成員不滿意，不滿的一方應及時以書面形式向另一方報告此不滿，並可以要求換人。若 SAP 對客戶專案團隊成員不滿意，則 SAP 應向主要外包商報告該不滿情形。另一方應在合理斟酌的基礎上完成任何該更換(SAP 在處理時需應視人手情況而定)。

## **6. Compensation of SAP.**

### **SAP 薪酬**

**6.1** SAP will provide an invoice specifying the fees for each of the Services in accordance with the terms of the Order Form. Payment is due thirty [30] days after the invoice is issued. If payment is not received by SAP within such thirty (30) days period, SAP may (without affecting any other rights or remedies that it has), (i) charge late payment interest in accordance with applicable law and/or (ii) suspend performance of the Services provided that it has given Prime Contractor at least seven (7) days' prior written notice of its intention to do so. SAP 將按照訂購單條款針對每項服務的費用開具發票。應於發票開出後三十 [30] 日內付款。若 SAP 未於該三十 (30) 天內收到費用，SAP 有權 (在不影響其他應有之權利或救濟)(i)依照適用法律請求逾期付款利息及/或(ii) 暫停執行服務但需給予主要外包商至少七(7)天之事前書面通知 SAP 之意圖。

**6.2** Fees and other charges described in the Agreement do not include Taxes. Any applicable direct pay permits or valid tax-exempt certificates must be provided to SAP prior to the execution of the Agreement. If SAP is required to pay Taxes, Prime Contractor shall reimburse SAP for such amounts. Prime Contractor hereby agrees to indemnify SAP for any Taxes and related costs (including those related to the long term assignment of SAP employees), interest and penalties paid or payable by SAP. This Section shall not apply to taxes based on SAP's income.

本合約中所述及費用及其他收費不含稅。簽署本合約之前，應向 SAP 提供所有適用之直接付款許可或有效免稅憑證。若 SAP 需要支付稅捐，則主要外包商應償還 SAP 上述金額。主要外包商同意補償 SAP 已支付或應付之任何稅金和相關成本 (包括 SAP 員工長期任務的相關成本)，及其利息和罰款。本條不適用依 SAP 收入所課徵之稅負。

**6.3** SAP's remuneration (or SAP's receipt of such remuneration) shall not in any way be conditioned upon the Prime Contractor receiving payment from the Customer.

SAP 之報酬 (或 SAP 對該報酬之收受) 不應受限於主要外包商是否收到客戶付款。

## **7. Term and Termination.**

### **期限和終止**

**7.1** Term of the GTC. The GTC shall remain in effect unless terminated earlier by either party in accordance with this Section. GTC 條款。於當事人任一方依第 7 條提前終止前，本 GTC 應持續有效。

**7.2** Termination of the GTC for Convenience. Either party may terminate this GTC for convenience upon thirty (30) days prior written notice to the other party. If the GTC is terminated for convenience prior to the completion of one or more Order Forms, such termination will not affect the continuation of any such Order Form as governed by the GTC.

任意終止 GTC。任一方皆得以三十 (30) 天前書面通知另一方後任意終止本 GTC。若本 GTC 於一份或數份訂購單完成前任意終止，依本 GTC 發出的訂購單不受 GTC 終止影響。

**7.3** Term of an Order Form or Service. Each Order Form and Service shall be effective on the effective date set forth in that Order Form, and shall remain in effect until end of term or completion of the Services in accordance with the Order Form, the respective Scope Document, or terminated earlier by either party in accordance with this Section 7. For the avoidance of doubt, the termination of

any particular Service in accordance with this Section 7 shall not cause or result in the termination of any other Services ordered under the same Order Form nor reduce Prime Contractor's liability for payments to SAP.

訂購單或服務期間。 各訂購單和服務應自訂購單所載生效日起生效，直至依訂購單或各範圍文件完成服務為止，或至任一方依第 7 條提前終止為止。未免疑義，依第 7 條規定終止任何特定服務，同一訂購單之其他服務不受影響，亦不減少應付予 SAP 之款項。

**7.4 Termination of an Order Form for Convenience.** Except as otherwise agreed in an Order Form, each Order Form (excluding fixed-price Services and excluding subscription based Services) may be terminated by either party (except for customer development projects which can only be terminated by SAP), upon thirty (30) days' prior written notice to the other party.

任意終止訂購單。 除非在訂購單中另有約定，每一訂購單（不包括固定價格服務與訂閱型服務），皆可由任一方（僅得由 SAP 終止之客戶開發專案除外）以三十（30）天事前書面通知另一方後任意終止。

**7.5 Termination of Agreement and/or an Order Form for cause.**

因故終止合約及/或訂購單。

Either party may terminate the GTC and/or an Order Form for cause:

任一方於下列各款情形之一發生時，得終止本 GTC 或任一訂購單：

7.5.1 upon thirty (30) days prior written notice of the other party's material breach of any provision (including more than thirty (30) days delinquency in Prime Contractor's payment of any money due hereunder or any Order Form) of the Agreement unless such party has cured such breach during such thirty (30) day period; or

以三十（30）天事前書面通知對方嚴重違反本合約（包括主要外包商拖欠任何訂購單中之費用費用超過三十（30）天），除非違約方在通知後三十（30）天內解決違約情事；或

7.5.2 immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise breaches materially its obligations in Confidential Information or assignment.

另一方提出破產申請，無償付能力，或為債權人利益轉讓其權利，或以其他方式嚴重違反機密資訊或指派義務，則可立即終止。

**7.6 Effect of Termination.** Prime Contractor shall be liable for all payments to SAP, including all fees and expenses for all Services incurred in the performance of such Services up to the date on which any termination takes effect. All Confidential Information of the other party provided in connection with this Agreement in the possession of such party shall, subject to any legal retention rights and upon request of the other party be returned to the disclosing party or destroyed with certification of such destruction from an individual of authority to bind the respective party. The obligation to return or destroy Confidential Information does not apply to Work Products that are provided by SAP to Prime Contractor, unless the Order Form or Agreement is terminated by SAP in accordance with section 7.5 herein.

終止之效力。 主要外包商應負擔應付予 SAP 的所有款項，包括所有服務的費用和支出，包括直至終止日時提供服務所產生的開支。對於另一方因與此合約所提供的機密資訊，持有該機密資訊之一方應依據任何法定保留權，於另一方要求時將這些資訊返回給對方或將其銷毀，並由可拘束該當事人之授權個人提出銷毀證明。返回或銷毀機密資訊之義務並不適用於由 SAP 提供給主要外包商之工作成果，除非訂購單或合約係由 SAP 依據本文件之第 7.5 條規定終止。

## **8. Intellectual Property Rights.**

### **智慧財產權**

**8.1** All title to and rights in the Services, Deliverables and Work Products, and all Intellectual Property Rights embodied therein, including techniques, knowledge or processes of the Services and/or Deliverables (whether or not developed for Prime Contractor'), shall be the sole and exclusively property of SAP and SAP SE. Prime Contractor agrees to execute and to ensure its third parties



execute such documentation as reasonably necessary to secure SAP's or SAP SE's title over such rights.

服務中的所有權利、交付項目和工作成果，以及其中所載的所有智慧財產權，包括服務的技術、知識或流程和/或交付項目（不論是否為主要外包商而開發），應為 SAP 和 SAP SE 的專有財產。主要外包商同意簽署，並在有合理必要性的情況下確保第三方簽署相關文件以確保 SAP 或 SAP SE 擁有此類權利。

- 8.2** Once all amounts due under an Order Form are paid in full and all claims have been satisfied, Prime Contractor is granted a non-exclusive, non-transferable license in SAP Deliverables and Work Product solely to permit Prime Contractor to sub-license such SAP Deliverables and Work Product to the Customer for the duration of the license granted to Customer under the License Agreement to run Customer's and its Affiliates' internal business operations to the same extent as Customer is granted a license to use the SAP Software, documentation and SAP Confidential Information in the License Agreement, so long as: (i) Prime Contractor complies with the terms of this Agreement; and (ii) Customer complies with the terms of the License Agreement.

一旦訂購單下的所有款項已全額支付，且所有主張均已滿足，主要外包商就 SAP 交付項目與工作成果所被授予非獨占、不可轉讓之授權，僅供主要外包商於授權有效期間內將該 SAP 交付項目與工作成果分轉授權予客戶，前開授權係依授權合約授予客戶，供其與關係企業之內部業務營運正常運作，如同客戶獲得使用授權合約中 SAP 軟體、紀錄文件及 SAP 機密資訊之權限，前述情形之前提如下：(i) 主要外包商遵守本合約之條款；及 (ii) 客戶遵守授權合約之條款。

- 8.3** Prime Contractor must immediately notify SAP in writing if any third party gains unauthorized access to SAP proprietary materials or Confidential Information. Prime Contractor shall take all reasonable steps to stop such unauthorized access. Prime Contractor shall also undertake such notification and informing duties on behalf of the Customer and shall ensure that the Customer takes all necessary steps to stop such unauthorized access.

若任何第三方未經授權存取 SAP 專有材料或機密資訊，主要外包商必須立即以書面通知 SAP。主要外包商應採取一切合理步驟制止這種未經授權的存取。同時，主要外包商除應代表客戶盡通知即告知義務，亦應確保客戶採取一切必要步驟制止該未經授權之存取。

## **9. Confidentiality.**

### **機密性**

- 9.1** Use of Confidential Information. Confidential Information shall not be reproduced in any form except as required by the receiving party to perform its obligations under 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.

使用機密資訊。除了為履行本合約之義務，所有機密資訊都不得以任何形式加以複製。機密資訊之複製皆為揭露方所有，該複製需載明其為專有和機密資訊及原始出處。關於他方之機密資訊，每一方：(a) 應採取一切合理步驟(定義如下)確保所有機密資訊嚴格保密；和 (b) 不得向為行使其於本合約項下的權利需要獲取保密資訊的善意個人以外的其他任何人揭露任何他方之機密資訊。此處使用的「合理步驟」是指接收方採取相關步驟，以保護自身所有類似的專有和機密資訊，然該保護不得低於合理的保護標準。任一方在簽署本合約前揭露之機密資訊，皆享有前述規定之約束。

- 9.2** 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。上述對機密資訊之使用或揭露限制，不適用於下列機密資訊：(a) 由接收方獨立開發，而未參照揭露方之機密資訊，或自具備提供上述機密資訊權利之第三人合法取得且不受任何限制；(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且不存在受限制之義務；或 (d) 揭露方以書面同意免除上述限制。

- 9.3 Confidential Terms and Conditions; Publicity.** Prime Contractor shall not disclose the terms and conditions of this Agreement including the pricing contained in an Order Form to any third party including the Customer (save for any practical, non-commercial terms required by SAP to be passed through to the Customer by the Prime Contractor). 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 Prime Contractor agrees that SAP may use Prime Contractor's name in customer listings and to analyze and leverage details from this Agreement (e.g., to forecast product demand), as part of SAP's marketing efforts (including without limitation reference calls and site visits at times mutually agreeable to the parties, press testimonials, site visits, SAPHIRE participation). SAP will make reasonable efforts to avoid having to reference activities that unreasonably interfere with Prime Contractor's business. Prime Contractor will take reasonable steps to procure similar rights for SAP in relation to the use of Customer's name and Customer information if required. Prime Contractor agrees that SAP may share such information with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Prime Contractor and Customer employee contact information with SAP as needed.

機密條款與條件；公開。主要外包商不得向包含客戶在內之任何第三方揭露本合約之條款與條件，包括訂購單所含的定價（SAP 要求主要外包商傳遞給客戶之任何可行、非商業條款除外）。任何一方皆不得在未經對方事先書面同意之情況下，在公開、廣告或類似活動場所使用其他方的名稱，惟主要外包商同意 SAP 得將主要外包商名稱列於客戶清單中使用，以及分別分析和利用本合約的細節（例如，預測產品的需求），作為 SAP 行銷內容的一部分（包括但不限於被引用於雙方同意之電話和現場訪問、新聞測試稿、現場訪問、SAPHIRE 參與）。SAP 得盡合理努力，避免不合理之引用活動干擾主要外包商之業務。主要外包商應採取合理步驟，於使用客戶名稱或客戶資訊時，為 SAP 取得類似權利（如有必要）。主要外包商同意 SAP 得為行銷或其他商業目的，與其關係企業共享該資訊，且客戶已完成必要之授權，與 SAP 分享主要外包商與客戶員工聯絡資訊。

## **10. Feedback.**

### **回饋**

Prime Contractor may be invited to participate in certain evaluations, presentations, meetings, surveys or discussions (collectively, "Discussions") for the purpose of informing Prime Contractor of SAP's business and technology direction, and to allow Prime Contractor (or as used herein includes Prime Contractor's affiliates), at its sole discretion, to provide SAP (or as used herein SAP SE or other SAP entity) with input, comments or suggestions from Prime Contractor, regarding SAP's business and technology direction and/or the possible creation, modification, correction, improvement or enhancement of the software, products and/or services of SAP, (collectively "Feedback"). Prime Contractor grants to SAP SE a non-exclusive, perpetual, irrevocable, worldwide, transferable, royalty-free license, with the right to sublicense through multiple tiers, under all relevant Prime Contractor Intellectual Property Rights, to use, publish, disclose, perform, copy, make, have made, use, modify, create derivative works, distribute, sell, offer for sale and otherwise benefit from Feedback in any manner and via any media. Content of Discussions may include areas outside the scope of Services and may relate to any SAP software, products, solutions and/or services. Confidential Information disclosed or made available by SAP or Prime Contractor during Discussions may only be used for the purpose of the Discussions and shall be protected from unauthorized use and disclosure in accordance with Section 9 of these GTC. Prime Contractor acknowledges that the information related to software, products, services, business or technology plans of SAP, disclosed during the Discussions, is only intended as

possible strategies, developments, and functionalities and is not intended to bind SAP to any particular course of business, product strategy, and/or development. In the event that Customer may be invited to participate in such Discussions and to provide Feedback, Prime Contractor shall make all reasonable efforts to assist SAP in acquiring Customer's written agreement to substantially similar terms, as a prerequisite to Customer participation. For clarity, Customer shall not participate in such Discussions unless such agreement is provided in writing.

主要外包商可能受邀參與特定評估、發表、會議、調查或討論（合稱「討論」），以使主要外包商了解 SAP 之業務及技術方向，並容許主要外包商（包括主要外包商之關係企業）自行決定是否針對 SAP 之業務及技術方向，及/或 SAP 軟體、產品及/或服務之可能製作、修改、修正、改良或升級方法，向 SAP（包括 SAP SE 或其他 SAP 實體）提供資訊、評論或建議（合稱「回饋」）。主要外包商在此針對一切相關之主要外包商智慧財產權，授予 SAP SE 非專屬、不可撤銷、可轉讓、免權利金之全球永久授權，得透過任何方式與媒體使用、發表、揭露、展現、複製、製造、委託製造、修改、散佈、銷售、提供銷售回饋，或依回饋製作衍生產品或以其他方式獲益，並有權透過多層架構進行轉授權。討論內容可能超過本服務範圍，亦可能與任何 SAP 軟體、產品、解決方案及 / 或服務相關。SAP 或主要外包商在討論過程中揭露或提供之機密資訊僅得用於討論目的，並應依本 GTC 第 9 條規定設有保護措施，以避免未經授權使用或洩露。主要外包商確認，於討論過程中揭露之 SAP 軟體、產品、服務、業務或技術計畫相關資訊，僅得做為可能策略、發展和功能，不得約束 SAP 之任何特定業務過程、產品策略和/或發展。若客戶可能受邀參與討論並提供回饋意見，則主要外包商應盡一切合理之努力，協助 SAP 取得其條款大致類似之客戶書面合約，作為客戶參與之先決條件。為免疑義，客戶不得參與該討論，但提供書面合約之情形除外。

## **11. Warranty.**

### **保固**

**11.1** SAP warrants that its Services shall be performed in a professional workman-like manner by Consultants with the skills reasonably required for the Services.

SAP 保證由具備服務合理必要技能的顧問，以專業方式履行服務。

SAP warrants that for ninety (90) days following provision of the Service the Deliverables will materially conform with the specifications for that Deliverable in accordance with the respective Scope Document. For clarity, the warranty period for Deliverables (if any) resulting from any subscription based Services will in no event exceed the termination date of the subscription based Services.

SAP 保證在服務提供之後的九十（90）天內，交付項目將在所有重要方面符合服務範圍文件記載之交付項目規格。為免除疑義，因訂閱型服務所衍生之交付項目之保固期（如有）在任何情況下均不超過訂閱型服務的終止日期。

SAP does not warrant error-free or uninterrupted operation of any Service or Deliverable or that SAP will correct all non-conformities. SAP does not warrant that the Deliverables are designed to meet all of Customer's business requirements.

SAP 不保證任何服務或交付項目無錯誤或不中斷運作，亦不保證 SAP 將改正所有不合規項目。SAP 並不保證交付項目可被設計成滿足所有客戶之商業需求。

Prime Contractor shall notify SAP within ninety (90) days of provision of the Service or Deliverable in writing of the alleged warranty breach and provide SAP with a precise description of the problem and all relevant information reasonably necessary for SAP in order to rectify such warranty breach.

主要外包商應於服務或交付項目所規定之九十（90）日內，以書面通知 SAP 保固瑕疵，並應對 SAP 提供問題的準確描述，以及使 SAP 能修正此類保固瑕疵的所有合理必要相關資訊。

**11.2** Provided Prime Contractor has notified SAP in accordance with section 11.1 of a warranty breach and SAP validates the existence of such warranty breach, SAP will, at its option:

如主要外包商已在服務保固期內根據第 11.1 條發出保固瑕疵的具體描述通知給 SAP，SAP 將從以下自行選擇

:

- i. re-perform the applicable Services or Deliverable; or 重新執行相關服務或交付項目；或
- ii. refund the fee paid or reallocate quota for the specific non-conforming Service or Deliverable.  
針對特定不合規定服務或交付項目退回已支付費用或重新分配費用比例

This is Prime Contractor's sole and exclusive remedy for a warranty breach.

此為主要外包商因保固瑕疵之唯一且專屬的補救措施。

The warranty shall not apply:

保固不適用於下列情況：

- a. if the Deliverables are not used in accordance with the Documentation; or  
未依照說明文件使用交付項目；或
- b. if the alleged warranty breach is caused by a modification to the Deliverable, Prime Contractor or third-party software.  
因修改交付項目或主要外包商或第三方軟體而引起之聲稱的保固瑕疵。

**11.3** SAP and its licensors disclaim all warranties express or implied or statutory, including without limitation, any implied warranties of merchantability or fitness for a particular purpose except to the extent that any warranties implied by law cannot be validly waived.

SAP 及其授權人免除一切明示、默示、法律規定之擔保責任，包括但不限於任何適售性之默示擔保或特定目的之適用性，且排除依法不具放棄效力之任何默示擔保。

## **12. Third Party Claims.**

### **第三方索賠**

**12.1** Claims Brought Against Prime Contractor. SAP shall defend (at its sole expense) Prime Contractor against claims brought against Prime Contractor by any third party alleging that Prime Contractor's pass-on of the Deliverable, in accordance with the terms and conditions of the Agreement, constitutes an infringement or misappropriation of a patent claim(s), copyright, or trade secret rights. SAP will indemnify Prime Contractor against all damages finally awarded by a court of competent jurisdiction against Prime Contractor (or the amount of any settlement SAP enters into) with respect to such claims. This obligation of SAP shall not apply if the alleged infringement or misappropriation results from: (a) use of the Deliverable in conjunction with any other software, services, or any product, data or apparatus that SAP did not provide; or (b) anything Prime Contractor or Customer provides including configurations, instructions or specifications; (c) a modification of the Deliverable by Prime Contractor or Customer or by a third party on behalf of Prime Contractor or (d) any use not permitted by the Agreement.

向主要外包商提出之索賠。任何第三方依據合約條款與條件主張主要外包商移轉交付項目時，侵犯或濫用其專利權、著作權或商業機密權，而針對主要外包商提出之索賠，SAP 應自行承擔費用為主要外包商提供抗辯。

SAP 應就上述索賠向主要外包商賠償最終判決之損害賠償金（或 SAP 達成的任何和解金額）。SAP 的這項義務不適用於聲稱之侵犯或濫用係起因於：(a) 將交付項目與 SAP 未提供的任何其他軟體、服務或任何產品、資料或裝置結合使用；或 (b) 主要外包商或客戶所提供的任何內容，包括組態、說明或規格；(c) 由主要外包商、客戶或第三方代表主要外包商對交付項目所做的修改，或 (d) 本合約所不允許的任何使用方式。

**12.2** Remedies. In the event of a claim under Section 12.1 is made or in SAP's reasonable opinion is likely to be made, SAP may, at its sole option and expense: (i) procure for Prime Contractor the right to continue using the Deliverable under the terms of the Agreement; or (ii) replace or modify the Deliverable to be non-infringing without material decrease in functionality. If SAP provides written notice to Prime Contractor that the foregoing options are not reasonably available, Prime Contractor shall be entitled to a refund for the infringing portion of the Deliverable subject to return or cessation of use of the refunded Deliverable.

救濟方式。若依第 12.1 條提出索賠，或依 SAP 合理意見可能提出索賠，則 SAP 得依其選擇並自行承擔費用：

- (i) 為主要外包商取得繼續依這些合約條款使用交付項目的權利；或
- (ii) 取代或修改交付項目成為非侵權但功能

未顯著減少的服務。若 SAP 向主要外包商發出書面通知，表示前述選項無法合理提供，則針對歸還或停止使用退款之交付項目，主要外包商有權取得交付項目受到侵權部分之退款。

**12.3 Claims Brought Against SAP.** Prime Contractor shall defend SAP and its affiliated companies against claims brought against SAP by any third party arising from or related to: (i) any Prime Contractor or Customer use of the Services in violation of any applicable law or regulation; (ii) an allegation that the Customer Data, Prime Contractor's use of the Services, Customer's use of the Services or anything Prime Contractor has provided to SAP including access to third party software or proprietary information violates, infringes or misappropriates the rights of a third party. The foregoing shall apply regardless of whether such damage is caused by the conduct of Prime Contractor, Customer, and/or its named users or by the conduct of a third party using Prime Contractor's or Customer's access credentials.

對 SAP 提出之索賠。 主要外包商應替 SAP 及其關係企業就任何第三方因下列事項或與之有關而對 SAP 提出之索賠進行抗辯：(i) 主要外包商對本服務的使用方式違反任何適用法律或規章；(ii) 主張客戶資料、主要外包商對於服務的使用、客戶對於服務的使用或主要外包商提供給 SAP 的任何內容，包括對第三方軟體或專屬資訊之存取違反、侵害或濫用第三方的權利。不論此類損害是否由主要外包商、客戶和/或其指定用戶的行為或使用主要外包商或客戶存取憑證的第三方之行為所致，上述規定均應適用。

**12.4 Procedure.** The obligations under this Section 12 are conditioned on: (a) the party against whom a third party claim is brought timely notifying the other party in writing of any such claim, provided however that a party's failure to provide or delay in providing such notice shall not relieve a party of its obligations under this Section 12 except to the extent such failure or delay prejudices the defense; (b) the party who is obligated hereunder to defend a claim having the right to fully control the defense of such claim; and (c) the party against whom a third party claim is brought reasonably cooperating in the defense of such claim. Any settlement of any claim shall not include a financial or specific performance obligation on or admission of liability by the party against whom the claim is brought, provided however that SAP may settle any claim on a basis requiring SAP to substitute for the Services any alternative substantially equivalent non-infringing services. The party against whom a third party claim is brought may appear, at its own expense, through counsel reasonably acceptable to the party obligated to defend claims hereunder. Neither party shall undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation that is prejudicial to the other party's rights.

程序。 第 12 條下的義務的前提要件為(a) 被第三方提出索賠之一方及時以書面形式就任何此類索賠通知另一方，若一方未提供或延遲提供此類通知，不得免除另一方其於第 12 條下的義務，但此類未提供或延遲提供通知不利於辯護的情況除外；(b) 有義務依本合約為索賠進行辯護的一方有權完全控制此類索賠的辯護；以及 (c) 被第三方提出索賠之一方在對此類索賠辯護的過程中須合理配合。任何索賠的解決方案不應包括構成被提出索賠方之財務或特定作為或承擔責任，但 SAP 可以透過要求 SAP 以實質上相當的非侵權服務取代本服務來解決索賠。被第三方提出索賠之一方應在費用自理的情況下透過有義務根據本合約對索賠進行辯護之一方所合理接受之律師參加訴訟。雙方皆不應在回應任何侵權或濫用或所聲稱的侵權或濫用時採取有損另一方權利的任何行為。

**12.5 Exclusive Remedy.** The provisions of this Section 12 state the sole, exclusive, and entire liability of the parties, their Affiliates and their licensors to the other party, and is the other party's sole remedy, with respect to third party claims covered hereunder and to the infringement or misappropriation of third-party intellectual property rights.

唯一補償。 第 12 條之條款載明雙方、其關係企業或其授權人對於另一方的唯一、專屬和全部責任，且就本條之第三方索賠以及侵犯或濫用第三方智慧財產權，對另一方的唯一補償。

### **13. Limitation of Liabilities.**

#### **責任的限制**

**13.1** Notwithstanding anything herein to the contrary, except for damages resulting from (i) unauthorized use or disclosure of Confidential Information (including Customer Data), or (ii)

damages resulting from death or bodily injury arising from either party's gross negligence or willful misconduct, or (iii) SAP's right to collect unpaid fees, under no circumstances and regardless of the nature of the claim shall either party (or their respective Affiliates or SAP's licensor's) be liable to each other to or any other person or entity under the Agreement for an amount of damages in excess of the fees paid for the applicable Services under the relevant Order Form or in the case of subscription based Services including managed services, the fees paid in the twelve (12) month period preceding the date of the incident giving rise to the liability, or, any special, incidental, consequential, or indirect damages, loss of good will or business profits, work stoppage or for exemplary or punitive damages.

即使本合約有任何其他相反規定，除因 (i) 未經授權使用或揭露保密資訊（包括客戶資料）所生之賠償責任，或 (ii) 任一方重大過失或故意不當行為導致人身傷亡之賠償責任，或 (iii) SAP 行使收取本合約未付費用權利的情形外，在任何情況下，不論索賠性質為何，任一方（或其各自關係企業或 SAP 的授權人）於本合約對另一方、任何其他人或實體所承擔的損害賠償金額，皆不超出依相關訂購單之相關服務所支付的費用，或在訂閱型服務（包含受管理服務）的情況下，則為產生損害索賠事件當日前十二（12）個月已支付的服務費用；亦不承擔任何特殊、附隨、衍生或間接性的損害、商譽或業務利潤的損失、作業停工、或懲罰性損害賠償。

#### **14. Assignment.**

##### **轉讓**

Prime Contractor 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 Work Products and Deliverables 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: (i) assign this Agreement to any of the SAP SE Affiliates or (ii) subcontract all or part of the work to be performed under this Agreement to a qualified third party.

主要外包商不得在未經 SAP 事先書面同意下，讓與、委派、抵押或轉讓本合約，或將本合約之任何權利義務或工作成果或交付項目或 SAP 機密資訊移轉至任何人，不論是否自願或依法律規定，包括資產銷售方式、合併與併購。SAP 得：(i) 將此合約轉讓給任何 SAP SE 關係企業或 (ii) 依本合約將全部或部分工作轉包給一個合格的第三方履行。

#### **15. General Provisions.**

##### **一般條款**

**15.1 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.

條款效力獨立。 本合約包含之一或多條條款對於各方應維持無效或在某方面無法執行，該無效性或無法執行性不得影響本合約之其他條款，且解釋本合約時不得包含該無效或無法執行之條款。

**15.2 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.

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。

**15.3 Electronic signature.** Signatures sent by electronic means (facsimile, scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures.

電子簽章。 以電子方式（傳真，掃描並透過電子郵件傳送，或透過法律允許之電子簽名服務進行簽名）傳送之簽名應視為原始簽名。

**15.4 Notice.** All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed to be duly given when delivered to the respective executive offices of SAP and Prime Contractor at the addresses first set forth in the applicable Order Form. Where in this Section 15.4 or elsewhere in this Agreement written form is required, that

requirement can be met by email, facsimile transmission, exchange of letters or other written form.

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 和主要外包商於相關訂購單驗收表載明之營業處所和通訊地址。無論是本第 15.4 條或本合約其他地方要求書面形式時，電子郵件、傳真、書信往來或其他書面形式均可滿足此要求。

**15.5 Independent Contractor.** The relationship of SAP and Prime Contractor established by this Agreement is that of an independent contractor and no employment, agency, trust, partnership or fiduciary relationship is created by this Agreement.

獨立承包商。 SAP 和主要外包商在本合約中建立的是一個獨立承包商的關係；本合約並非建立僱傭、代理、委託、合夥或信託關係。

**15.6 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。

**15.7 Governing Law.** 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 Taiwan, without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and Taiwan law, rules, and regulations, Taiwan rules, and regulations shall prevail and govern. All disputes hereunder shall be subject to the exclusive jurisdiction of the courts located in Taipei, Taiwan. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply. Prime Contractor 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) year from the date when Prime Contractor knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

準據法。本合約及任何衍生或與本合約有關之索賠及事項應以台灣法律為準據法，且不適用衝突法原則。若國外法律、規則和法規與台灣法律、規則和法規發生任何衝突，則應以台灣規則和法規為準。合約下的所有爭議應受位於台灣台北的法院專屬管轄。「聯合國契約公約有關國際貨物買賣」不適用於本合約。「統一電腦資訊交易法案」(Uniform Computer Information Transactions Act) 亦不適用。主要外包商必須自知悉或經合理調查後應能知悉導致索賠之事實起兩 (2) 年內，提出關於本合約及其系爭事項之任何索賠。

**15.8 Non-Solicitation.** Neither party shall knowingly solicit or hire, any of the other party's employees involved in the Services during the term of the applicable Order Form and for a period of six (6) months from the termination thereof, without the express written consent of the other party. This provision shall not restrict the right of either party to solicit or recruit generally in the media. Where legally enforceable, Prime Contractor shall put in place contractual provisions with the Customer that the Customer shall not knowingly solicit to hire any of SAP's employees involved in this Agreement during the term of this Agreement and for a period of six (6) months from the termination thereof, without the express written consent of SAP.

禁止招攬。在適用訂購單有效期間與其終止後之六 (6) 個月內，未經另一方明確書面同意，任一方皆不得有意徵求或聘僱另一方涉及本服務之相關員工擔任任何職位。本規定不得限制任何一方透過媒體進行一般性徵求或聘僱的權利。凡具有法律效力者，主要分包商應與客戶議定契約條款，在本合約有效期間與其終止後之六 (6) 個月內，未經 SAP 明確書面同意，客戶不得有意徵求或聘僱 SAP 涉及本合約之相關員工擔任任何職位。

**15.9 Entire Agreement; Written Form.** Each Agreement, as defined in an applicable Order Form, constitutes the complete and exclusive statement of the agreement between SAP and Prime Contractor with respect to the subject matter hereof and all previous representations, discussions and writings are merged in, and superseded by each such Agreement and the parties disclaim any

reliance on any such representations, discussions and writings. An Agreement may be modified only by a writing signed by both parties. An Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Prime Contractor to SAP.

完整合約；書面形式。 各合約（如相關訂購單所定義）構成 SAP 與主要外包商之間對於合約標的之相關業務關係的完全且唯一之合約聲明，先前所有陳述、討論和文書已合併，並由各該合約取代，雙方放棄對於任何此類陳述、討論和文書的依賴。合約僅得以雙方書面簽署之方式加以修改。本合約效力高於其他任何由主要外包商向 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。

**15.10** Hierarchy. In the event of any inconsistencies between these GTC and an Order Form, the Order Form shall take precedence over the GTC. The Scope Document prevails over any Order Form and GTC.

階層。 如本 GTC 與任一訂購單之間存在任何不一致之處，以訂購單為準。範圍文件優先適用於任何訂購單及 GTC。

**15.11** Regulatory Matters.

法規事宜：

The SAP Confidential Information inclusive of all Services, Work Product and Deliverables and other SAP Materials, are subject to the export control laws of various countries, including without limit the laws of the United States, Germany and Taiwan. Prime Contractor agrees that it will not, and will ensure that Customer agrees that it will also not, submit the SAP Services, Work Product, Deliverables, other SAP Materials or SAP Confidential Information to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Confidential Information to countries, persons or entities prohibited by such laws. Prime Contractor shall also be responsible for complying with all applicable governmental regulations and laws of the country where Prime Contractor is registered, and any foreign countries with respect to the use of the Confidential Information and provision of Customer Data by Prime Contractor and/or its subsidiaries, Customer and/or its subsidiaries, or authorized users. SAP 機密資訊，包括所有服務、工作成果、交付項目和其他 SAP 材料均受到不同國家的出口管制法律，包括但不限於美國、德國和台灣。主要外包商同意，並確保客戶也同意不會在未經 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而向任何政府機關提供 SAP 服務、工作成果、交付項目、其他 SAP 材料或 SAP 機密資訊，且不會將機密資訊出口至系爭法律所禁止之國家、個人或實體。主要外包商亦應負責遵守主要外包商註冊所在國家，以及任何境外國家之所有關於主要外包商和/或其子公司、客戶和/或其子公司或授權使用者使用機密資訊與客戶料條款之適用政府法規及法律。

**15.12** Survival.

後續效力：

Sections 7 (Term and Termination), 8 (Intellectual Property Rights), 9 (Confidentiality), 13 (Limitation of Liabilities), 15.7 (Governing Law), and 15.8 (Non-Solicitation) shall survive any termination of this Agreement.

第 7 條 (期間與終止)、第 8 條 (智慧財產權)、第 9 條 (機密性)、第 13 條 (責任限制)、15.7 (準據法) 及 15.8 (禁止招攬) 在本合約終止後仍持續有效。

## **16. System Security and Data Safeguards.**

### **系統安全和資料保障**

When SAP is given access to Prime Contractor or Customer's systems and data, SAP shall comply with Prime Contractor or Customer's (as applicable) reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. In connection with such access, Prime Contractor shall be responsible for providing SAP Consultants with user authorizations and passwords to access its systems and revoking such authorizations and terminating such access, as Prime Contractor deems appropriate from time to time. Prime Contractor shall ensure that Customer will be responsible for providing SAP Consultants with user authorizations and passwords to access its systems



and revoking such authorizations and terminating such access, as Customer deems appropriate from time to time. Prime Contractor shall not grant SAP access to Prime Contractor systems or personal information (of Prime Contractor or any third party) unless such access is essential for the performance of Services under the Agreement and Prime Contractor shall ensure that Customer agrees to the same in relation to Customer systems or personal information (of Customer or any third party). The parties agree that no breach of this provision shall be deemed to have occurred in the event of SAP non-conformance with the aforementioned safeguard but where no personal information has been compromised.

SAP 為主要外包商提供系統和資料的存取時，SAP 應當遵守主要外包商及客戶的合理行政、技術和實體安全保障要求（若適用），從而保護此類資料和並防止未經授權的存取。對於此類存取，主要外包商應負責向 SAP 顧問提供擁有使用者授權和密碼存取其系統並在主要外包商於不同時間認為適當時，撤銷授權、終止此類存取。主要外包商應確保客戶將負責向 SAP 顧問提供擁有使用者授權和密碼存取其系統並撤銷授權、終止此類存取的人力資源，以客戶在不同時間認為適當為宜。主要外包商不得授予 SAP 存取主要外包商的系統或個人資訊（屬於主要外包商或任何第三方），除非此類存取對於本合約服務提供是不可避免的；主要外包商亦應確保客戶對其系統或個人資訊（屬於客戶或任何第三方）同意前述相同規定。雙方同意，如發生 SAP 不符合上述保障要求，但並無個人資訊失密事件發生，則視為沒有違反此規定。

IN WITNESS WHEREOF, the parties have so agreed.

為證明起見，各方一致同意。