

OUTSOURCING CHANNEL MASTER LICENSE AGREEMENT
General Terms and Conditions
("GTCs")
外包通道主授權合約
一般條款與條件
(以下簡稱「GTC」)

1. DEFINITIONS

定義

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

「附加程式」係指使用 SAP API 新增全新和獨立功能，但不修改現有 SAP 功能之開發。

“Agreed Program Scope” shall have the meaning as defined in the Master Agreement.

「商定計劃範圍」應具備主合約中定義的含意。

“Agreement” means these General Terms and Conditions (“GTCs”), the Master Agreement, any Order Form, Exhibit, Schedule or Appendix referencing these GTCs and any Exhibit, Schedule or Appendix referenced by the foregoing. All such components are integral to the agreement, and collectively are referred to herein as the “Agreement”.

「合約」係指這些一般條款與條件（以下稱「GTC」）、引用這些 GTC 的主合約、訂購單、附錄、明細表或附件以及由前述項引用的附錄、明細表或附件。所有這些組成部分均為本合約的一部分，且在本文中合稱為「合約」。

“API” means SAP’s application programming interfaces, as well as other commands or instructions that allow other software products to communicate with or call on Software (for example, SAP enterprise services, BAPIs, Idocs, RFC, and ABAP customer exits) provided under this Agreement.

「API」係指 SAP 的應用程式設計介面，以及依本合約規定所提供，允許其他軟體產品與軟體（如：SAP 企業服務、BAPI、Idoc、RFC 和 ABAP 客戶接口）進行通訊，或呼叫軟體的其他指令或指示。

“Authorized Services” shall have the meaning as defined in the Master Agreement.

「授權服務」應具備主合約中定義的含意。

“Background Material” means any pre-existing works in which the Intellectual Property Rights are owned by either Party, which have been prepared by that Party outside the scope of this Agreement or which were licensed from a third party by that Party.”

「背景材料」係指其智慧財產權由雙方中的一方擁有之先前存在的作品，此作品在本合約範圍外由該方準備或由該方從第三方取得授權。

“Business Partner” means a third party that requires access to the Software solely in connection with the operation of the business of Customer or Customer Affiliate. Such third parties may include Customer’s customers, distributors, dealers, vendors, manufacturers, independent sales representatives and suppliers.

「業務夥伴」係指僅為營運客戶或客戶關係企業之業務而需要存取軟體的第三方。此第三方可能包括客戶的客戶、經銷商、代理商、廠商、製造商、獨立銷售代表和供應商。

“Confidential Information” means information reasonably identifiable as the confidential and proprietary information of SAP or Provider including but not limited to information that is related to: (a) the operations of the Disclosing Party; (b) the research and development or investigations of the Disclosing Party; (c) the business of any customer or partner of the Disclosing Party; (d) Disclosing Party’s properties, employees, finances, operations; (e) the following information regarding software and related documentation including, but not limited to, the Provider software used to provide the Authorized Services (for Provider), and the SAP Materials and SAP Interface (for SAP), (respectively, “Disclosing Party’s Software”): discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, techniques and processes relating to Disclosing Party’s Software; and (f) product offerings, content partners, product pricing, product availability, technical drawings, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, inventions (whether patentable or not), marketing plans, forecasts and strategies. Without limiting the meaning of the foregoing, the following information shall be deemed Confidential Information: (i) with respect to SAP and SAP SE (the licensor of the SAP Proprietary Information to SAP), the Software and Documentation, any other third-party software licensed with or as part of the Software, benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications; (ii) the business plans of the Disclosing Party and (iii) the algorithms, source codes and application software interface (including but not limited to SAP Interface) specifications algorithms, contained in Disclosing Party’s Software as well as programming techniques and programming concepts, methods of processing and

system designs embodied in Disclosing Party's Software.

「機密資訊」係指被合理識別為 SAP 或提供商之機密資訊和專屬資訊的資訊，包括但不限於與以下方面有關的資訊：(a) 披露方的運營；(b) 披露方的研發或調查；(c) 披露方任何客戶或合作夥伴的業務；(d) 披露方的財產、員工、財務、運營；(e) 涉及軟體和相關文件的以下資訊，包括但不限於，用於提供授權服務的提供商軟體（適用於提供商），以及 SAP 資料和 SAP 介面（適用於 SAP）（分別稱為「披露方的軟體」）：與披露方軟體相關的發現、發明、概念、設計、流程圖、文件、產品規格、技術和流程；以及 (f) 產品系列、內容合作夥伴、產品定價、產品可用性、技術製圖、工藝、創意、技術、公式、資料、圖式、商業秘密、專有技術、改善、發明（無論是否可取得專利）、行銷計畫、預測與策略。在不限制前述規定的前提下，以下資訊應視為機密資訊：(i) 就 SAP 和 SAP SE（SAP 之 SAP 專屬資訊授權人）來說，包括軟體與文件、取得授權或作為軟體一部分之任何其他第三方軟體、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；(ii) 披露方的業務計劃；以及(iii) 披露方軟體中包括的演算法、原始程式碼和應用程式軟體介面（包括但不限於 SAP 介面）規格演算法，以及披露方軟體中體現的編程技術和編程概念、處理方法和系統設計。

“Contract Year” shall have the meaning as defined in the Master Agreement.

「契約年」應具備主合約中定義的含意。

“Customer” means the entity that enters into a Customer Service Agreement with the Provider.

「客戶」係指與提供商訂立客戶服務合約的實體。

“Customer Affiliate(s)” shall have the meaning set forth in the Master Agreement.

「客戶關係企業」應具備主合約中所載的含意。

“Customer Service Agreement” shall have the meaning as defined in the Master Agreement.

「客戶服務合約」應具備主合約中定義的含意。

“Customer User” means an employee of Customer, a Customer Affiliate or Business Partner.

「客戶使用者」係指客戶、客戶關係企業或業務夥伴的員工。

“Data Center(s)” means the site or sites at which the Software will be hosted to provide the Authorized Services to Customers. Such site or sites shall at all times be owned or controlled by the Provider.

「資料中心」係指託管軟體以向客戶提供授權服務的站點。上述站點應始終由提供商擁有或控制。

“Disclosing Party” means a Party to this Agreement disclosing confidential or proprietary information to the Receiving Party.

「披露方」係指向接收方披露機密或專屬資訊的本合約之一方。

“Documentation” means SAP's documentation which is delivered or made available to Provider with the Software under this Agreement.

「文件」係指依本合約向提供商提交或提供之軟體隨附 SAP 文件。

“Excluded License” means an open source or other software license that requires, as a condition of license, use, modification, distribution or conveyance, that (a) the code be disclosed or distributed in source code form; (b) others have the right to modify or create derivative works of it; and/or (c) the code becomes redistributable at no charge.

「排除的授權」係指作為授權、使用、修改、分配或轉讓條件而具有下列要求之開放原始碼或其他軟體授權：(a) 代碼以原始程式碼形式披露或分配；(b) 其他人有權修改或建立其衍生作品；及/或 (c) 程式碼免費地變得可再分配。

“Fees” means all fees to be paid by Provider under this Agreement, including but not limited to the Net License Fees, Subscription Fees, Support Fees and any Floor Commitments as delineated in the Master Agreement and any Exhibit, Annex, Schedule or Order Form thereof.

「費用」係指提供商根據本合約支付的所有費用，包括但不限於，主合約及其任何附錄、附件、明細表或訂購單中所述之淨授權費用、訂閱費用、支援費用和任何最低承諾款項。

“Floor Commitment” shall have the meaning as defined in the Master Agreement.

「最低承諾款項」應具備主合約中定義的含意。

“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、營業秘密或機密權、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，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。

“**Licensed Level**” shall have the meaning as defined in the Use Terms.

「授權層級」應具備使用條款中定義的含意。

“**Logo**” shall have the meaning as defined in the Master Agreement.

「徽標」應具備主合約中定義的含意。

“**Net License Fees**” shall have the meaning as defined in the Master Agreement.

「淨授權費用」應具備主合約中定義的含意。

“**Marks**” shall have the meaning set forth below in Section 5.6 of the GTC’s.

「標誌」應具有以下 GTC 第 5.6 條所載的含義。

“**Master Agreement**” means the Outsourcing Channel Master License Agreement executed by the Parties that references and incorporates these GTCs.

「主合約」係指雙方執行之引用並整合這些 GTC 的外包通道主授權合約。

“**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).

「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（以下定義之）SAP 資料，對附加程式以外之軟體進行之任何其他變更。

“**Order Form**” shall have the meaning as defined in the Master Agreement.

「訂購單」應具備主合約中定義的含意。

“**Order Form Term**” means the duration, as defined in each Order Form, of the licenses granted under such Order Form.

「訂購單期限」係指如每個訂購單中定義之此類訂購單下授權的持續期間。

“**Party**” or “**Parties**” shall have the meaning as defined in the Master Agreement.

「一方」或「雙方」應具備主合約中定義的含意。

“**Price List**” shall have the meaning as defined in the Master Agreement.

「價格清單」應具備主合約中定義的含意。

“**Provider Affiliate**” means any legal entity in which the Provider, 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.

「提供商關係企業」係指提供商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。

“**Receiving Party**” means a Party receiving confidential or proprietary information from the Disclosing Party.

「接收方」係指從披露方接收機密或專屬資訊之一方。

“**Redistributable Files**” means the function modules and sample code files identified in the Documentation for inclusion and distribution with Provider created Add-ons.

「可再分配之檔案」係指文件中確定之供與提供商建立之附加程式一起納入和分配的功能模組和範例代碼檔案。

“**SAP Affiliate**” means any legal entity in which SAP SE, 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.

「SAP 關係企業」係指 SAP SE 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。

“**SAP Interface**” means any application interface developed by or with SAP or any SAP Affiliate that resides on or in the Software and which, when activated by the Provider’s software or tools, will give access to the Software.

「SAP 介面」係指由或連同 SAP 或 SAP 關係企業所開發、位於軟體之上或之內，且由提供商之軟體或工具激活後將存取軟體的任何應用程式介面。

“**SAP Materials**” means any software, programs, tools, systems, data, or other materials made available by SAP to Provider in the course of the performance under this Agreement including, but not limited to, the Software and Documentation.

「SAP 資料」係指 SAP 依本合約履約過程中向提供商提供的任何軟體、程式、工具、系統、資料或其他資

料，包括但不限於軟體和文件。

“SAP Support” shall have the meaning as defined in the Master Agreement.

「SAP 支援」應具備主合約中定義的含意。

“SAP Support Fees” shall mean those fees that are due and payable in accordance with the Order Forms executed under the Master Agreement for the support services rendered by SAP pursuant to the SAP Support valid for this Agreement.

「SAP 支援費用」係指據主合約下執行之訂購單、依對本合約有效之 SAP 支援由 SAP 提供之支援服務的到期應付費用。

“SAP Trademarks” shall have the meaning set forth below in Section 5.1 of the GTC’s.

「SAP 商標」應具有以下 GTC 第 5.1 條所載的含義。

“Screen Access” means Use of the Software solely through remote access and solely for the purpose of entering and accessing data and requesting Provider to process such data. For the sake of clarity, Screen Access shall not include the Software being installed on the hardware of the Customer.

「螢幕存取」係指僅透過遠端存取之軟體使用以及僅出於輸入和存取資料以及要求提供商處理此資料之目的軟體使用。為了清晰起見，螢幕存取不得包括安裝於客戶硬體上的軟體。

“Software” shall have the meaning as defined in the Master Agreement.

「軟體」應具備主合約中定義的含意。

“Subscription Fees” means the annual license fees for the Software licensed under an Order Form, which incorporate both the Net License Fee and the Support Fee.

「訂閱費用」係指訂購單下授權之軟體的年度授權費用，其中包括淨授權費用和支援費用。

“Term” shall have the meaning as defined in the Master Agreement.

「期限」應具備主合約中定義的含意。

“Third Party Software” shall have the meaning as defined in the Master Agreement.

「第三方軟體」應具備主合約中定義的含意。

“Use” or “Using” shall have the meaning as defined in the Master Agreement.

「使用」或「正在使用」應具備主合約中定義的含意。

“Use Terms” shall have the meaning as defined in Section 2.1 in the Master Agreement.

「使用條款」應具備主合約第 2.1 條中定義的含意。

“Wind Down” shall have the meaning as defined in the Master Agreement.

「緩衝」應具備主合約中定義的含意。

Other defined terms not included above shall have the meanings set forth herein.

以上未包括之其他定義的詞彙應具有本文所載的含意。

2. SCOPE OF RELATIONSHIP

關係範圍

2.1 **No exclusivity.** SAP and Provider agree to collaborate on a non-exclusive basis as detailed in this Agreement, to enable the provision of Authorized Services by Provider. Each Party is free to conduct business with other partners at its sole discretion.

非專屬性。 SAP 和提供商同意在非專屬基礎上協同合作（如本合約中詳述），以讓提供商能夠提供授權服務。SAP 可自行決定與其他夥伴一起開展業務。

2.2 Provider offers its services in its own name, at its own risk, and for its own account, to Customer. Provider conducts its own business with Customer and is not acting as an agent of SAP or in any other way representing SAP. Provider shall, in correspondence and otherwise in connection with the provision of services always clearly indicate that SAP is the copyright owner, author, and developer of the Software. 提供商以其自身名義、風險自擔並為其自身的帳戶向客戶提供服務。提供商與客戶一起開展其自身的業務，並且不會作為 SAP 的代理人或以任何其他方式代表 SAP。提供商應以書信或其他與提供服務相關的方式始終明確指明 SAP 是軟體的著作權擁有人、作者和開發者。

2.3 Provider shall advise Customer that SAP Support for the Software licensed under the Master Agreement can only be delivered by SAP to the Provider and that SAP will not provide direct support to the Customer for the Software utilized by the Provider to deliver any Authorized Services, even if the Customer is an existing SAP customer with a current SAP maintenance and support agreement for SAP software. If the Customer is an existing SAP customer, then Provider shall advise Customer that the Software utilized by the Provider to deliver any Authorized Services will not be covered by the Customer's current SAP maintenance and support agreement for SAP software.

提供商應通知客戶，主合約下授權之軟體的 SAP 支援僅可由 SAP 向提供商提供，SAP 不會向客戶針對提供商用於提供授權服務之軟體提供直接支援，即使客戶是有為 SAP 軟體訂立當前有效的 SAP 維護和支援合約的既有 SAP 客戶亦然。若客戶為既有的 SAP 客戶，則提供商應通知客戶，提供商用於提供授權服務之軟體不會受針對 SAP 軟體之客戶的目前 SAP 維護和支援合約涵蓋。

3. LICENSE GRANT

授權

3.1 Grant of License

授與授權

3.1.1 Subject to the terms and conditions of this Agreement and the specific limitations set forth in the Master Agreement and the Order Forms, SAP hereby grants Provider the non-exclusive right and license within the Agreed Program Scope to Use Software in the Data Center(s) solely as required for the provision of Authorized Services to its Customers for the duration of the applicable Order Form Term. 根據本合約的條款和條件以及主合約與訂購單中所載之特定限制，SAP 特此在商定計劃範圍內向提供商授與非專屬權利和授權，於僅依適用訂購單期間內向客戶提供授權服務之所需於資料中心內使用軟體。

3.1.2 Sub-Licenses. Provider shall be entitled to grant non-perpetual, non-exclusive and non-transferable sub-licenses to Customer for the applicable Order Form Term, limited to providing Customer Users Screen Access to the Software (the "Sub-Licenses").

再授權。提供商應有權在適用訂購單期間內向客戶授與非永久、非專屬和不可轉讓之再授權，限於向客戶使用者提供軟體的螢幕存取權限（以下稱「再授權」）。

3.1.3 No Provider internal use. Under the terms of this Agreement, Provider shall not be allowed to Use Software for its own internal operational needs or to provide Authorized Services to Provider, Provider Affiliates, any entity controlling Provider, or any entities controlled by a common entity as Provider. 不供提供商內部使用。根據本合約條款，提供商不得為其自身內部運營需要使用軟體，或向提供商、提供商關係企業、控制提供商的任何實體或與提供商受同一實體控制的任何實體提供授權服務。

3.1.4 SAP owns all rights and title, including all Intellectual Property Rights, in and to SAP software as made available by SAP to Provider. Provider is only granted a limited license to the Software as expressly stated in this Agreement.

SAP 擁有其向提供商提供之 SAP 軟體的權利和所有權，包括所有智慧財產權。提供商僅取得本合約中明確所述之軟體的有限授權。

3.1.5 The terms and conditions of this Agreement relative to "Software" apply to Third Party Software except (i) Provider 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 the document order of precedence, as otherwise stated in the Use Terms.

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) 提供商不得對第三方軟體做出修改及/或附加程式或以其他方式修改第三方軟體，除非由 SAP 明確授權；以及 (ii) 根據使用條款中另行載明之優先順序約束。

3.1.6 Provider has to license any Software which is required to provide Authorized Services to Customers, including, but not limited to any prerequisite defined in (i) the Use Terms, or (ii) the Price List. Authorized Services may be provided in conjunction with the SAP Software licensed to Customers by SAP or its affiliates or resellers pursuant to a Customer's license agreement for the Use of SAP Software. Any use by Provider, of such SAP Software licensed to Customer shall be in accordance with the Customers license obligations under the SAP license agreement for the use of such SAP Software and be subject to the respective Named User type and in accordance with the identified Licensed Level under that license agreement. Customer and Provider must comply with the provisions of the Use Terms at all times. 提供商必須授權向客戶提供授權服務所需之任何軟體，包括但不限於，(i) 使用條款或 (ii) 價格清單中定義的任何先決條件。授權服務可搭配 SAP 或其關係企業或轉售商依客戶使用 SAP 軟體之授權合約授權給客戶的 SAP 軟體一起提供。提供商對授權給客戶的此類 SAP 軟體之任何使用，應根據 SAP 授權合約下關於使用此 SAP 軟體之客戶授權義務，受各自具名使用者類型約束並根據該授權合約下確定的授權層級。客戶和提供商必須始終遵守使用條款的規定。

3.2 Third Party Access to the Software

第三方存取軟體

3.2.1 An authorized third party acting on behalf of the Provider may access the Software so long as: (i) such third party is accessing the Software solely on behalf of Provider to support Provider in its exercise of the rights set forth in Section 3.1 in conformance with the Agreement; (ii) such third party is subject to confidentiality

obligations that are at least as restrictive as those set forth in Section 9; and (iii) Provider is responsible for any breach of this Agreement caused by such third party.

代表提供商行事之授權第三方可存取軟體，前提是：(i) 此第三方僅代表提供商存取軟體，以根據本合約在提供商履行其在第 3.1 條中所具之權利時向其提供支援；(ii) 此第三方須承擔至少如第 9 條所載條款般嚴格之保密性義務；以及 (iii) 提供商對任何由此第三方造成之違反本合約的行為負責。

3.2.2 The Sub-Licenses may include the right to allow an authorized third party acting on behalf of the Customer to have Screen Access to the Software so long as: (i) such third party is utilizing the Screen Access solely for the consumption of Authorized Services on behalf of Customer to run Customer's internal business processes; (ii) such third party is subject to confidentiality obligations that are at least as restrictive as those set forth in Section 9; and (iii) Customer is responsible for any breach of the Customer Services Agreement caused by such third party.

再授權可包括允許授權第三方代表客戶行事以對軟體擁有螢幕存取權限之權利，前提是：(i) 此第三方使用螢幕存取，僅為代表客戶使用授權服務來執行客戶的內部業務程序；(ii) 此第三方須承擔至少如第 9 條所載條款般嚴格之保密性義務；以及 (iii) 客戶對任何由此第三方造成之違反本客戶服務合約的行為負責。

3.3 Reporting Obligations and Audit Rights

報告義務和稽核權利

3.3.1 Provider shall provide all information requested by SAP necessary to fulfill any obligations for payment of royalties to SAP's business partners arising as a result of licenses under this Agreement for Third Party Software or other software components.

提供商應提供 SAP 要求之源於本合約下第三方軟體或其他軟體元件之授權而需向 SAP 業務夥伴履行支付權利金之任何義務所需的所有資訊。

3.3.2 Upon SAP's reasonable request, Provider shall deliver to SAP a report, as defined by SAP, evidencing Provider's Use of the Software licensed under this Agreement, which shall be in addition to any other reporting obligations of Provider as set out in this Agreement.

在 SAP 的合理要求下，提供商應根據 SAP 的規定向 SAP 提供報告，證明提供商使用本合約下授權之軟體，這是作為本合約所載之提供商的任何其他報告義務的額外義務。

3.3.3 Subject to limitations under contract and law and without gathering or transmitting to SAP any content or other confidential information of Provider or Customer, SAP may implement the Software so that each system generates and transmits to SAP information related to Use of the Software by Provider and/or the Customers. Provider will support SAP in accordance with SAP's reasonable instructions, including but not limited to preparing a measurement log within four (4) weeks of SAP's request, such requests not to be made more often than on a quarterly basis. The measurement shall be carried out using only the unaltered SAP tools provided by SAP and the result of the measurement is to be transmitted to SAP promptly in unaltered form.

受契約和法律下限制之規範，並且在不收集或向 SAP 傳輸提供商或客戶的任何內容或其他機密資訊的前提下，SAP 可實作軟體，以使每個系統產生並向 SAP 傳輸提供商及/或客戶使用軟體的相關資訊。提供商將會根據 SAP 的合理指示向其提供支援，包括但不限於，在 SAP 要求後的四 (4) 週內準備測量記錄，此要求頻率不得超出每季度一次。測量應該僅使用 SAP 提供之未變更之 SAP 工具來執行，測量的結果須以未變更的形式立即傳輸給 SAP。

3.3.4 SAP shall be permitted upon fifteen (15) days prior notice 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 Software. Provider shall cooperate reasonably in the conduct of such audits. SAP 得在提前十五 (15) 天發出通知後稽核（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）軟體之使用狀況。提供商應合理配合進行此類稽核作業。

3.3.5 In the event a report or an audit reveals that (i) Provider underpaid license fees and/or SAP Support fees to SAP and/or (ii) the Use of the Software by Provider or Customer is in excess of the Licensed Level of the Order Forms executed under the Master Agreement, Provider shall pay such underpaid fees and/or for such excess usage based on SAP List of Prices and Conditions for Software and Support governing use in effect at the time of the audit, and shall execute an additional Order Form in accordance with the terms of this Agreement to effect the required licensing of any additional quantities or levels, but SAP's right to receive payment of those fees shall not be dependent upon signature of such Order Form. Reasonable costs of SAP's audit shall be paid by Provider 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 Provider's underpayment of license fees or SAP Support fees and usage in excess of the license quantities or levels or in breach of the license granted herein.

若報告或稽核中發現 (i) 提供商未向 SAP 支付足夠之授權費用及/或 SAP 支援服務費用，及/或 (ii) 提供商或客戶對軟體的使用超出了主合約下執行之訂購單的授權層級，則提供商應根據稽核當時適用之「SAP 價格清單與軟體和支援條款」，針對此類少付費用和/或超出使用支付費用，且應依照本合約條款簽署額外的訂購單，以使得任何額外數量或層級的必要授權生效。但 SAP 收取這些費用的權利不得依賴於對此訂購單的簽署。若稽核結果顯示使用狀況已超過授權數量或層級，則提供商應支付合理的 SAP 稽核費用。對於提供商未支付足夠之授權費用或 SAP 支援服務費用，以及使用超過授權數量或層級或違反在此授與的授權，SAP 保留相關所有其法律與衡平法之權利。

3.3.6 Use of the Software licensed hereunder may require third party software or hardware (including but limited to databases, operating systems and servers). Unless specifically licensed in the Master Agreement, this Agreement does not contain a license to use such additional materials.

本主合約下授權之軟體的使用可能需要第三方軟體或硬體（包括但不限於，資料庫、作業系統和伺服器）。除非主合約中特別授權，否則本合約不包括使用這些額外資料的授權。

4. CUSTOMER SERVICE AGREEMENT

客戶服務合約

4.1 To give effect to the obligations, limitations and liabilities contained in this Agreement, Provider agrees that prior to granting Customer access to the Authorized Services, Provider will enter into a Customer Service Agreement with Customer that includes (i) a grant of license to the Customer and its Customer Users which corresponds with and does not exceed Provider's rights as set out in Section 3 and (ii) a provision according to which SAP shall be entitled to claim damages or seek equitable relief as a third party beneficiary in case the Customer violates any of the license terms of the Customer Service Agreement. Nothing in this Agreement shall prevent SAP from pursuing an action for an infringement of SAP's intellectual property rights by the Customer.

為了落實本合約中包括的義務、限制和責任，提供商同意：在向客戶授與授權服務之存取權限前，提供商將與客戶訂立客戶服務合約，其中包括 (i) 向客戶及其客戶使用者授與授權，此授權應對應且不出第 3 條中所載之提供商權利，以及 (ii) 一條規定，據此規定在客戶違反客戶服務合約之任何授權條款的情況下，SAP 應有權作為第三方受益人要求損害賠償並尋求衡平救濟措施。本合約中並無任何內容可以防止 SAP 就客戶侵犯 SAP 的智慧財產權採取行動。

4.2 If requested by SAP, Provider will represent and warrant to SAP that Provider has entered into such a Customer Service Agreement with Customer, provided always that no contractual relationship will exist between SAP and any Customer except as set forth in Section 4.1 above or under any supplementary contract which SAP expressly agrees to enter into directly with a Customer in connection with the Authorized Services.

若 SAP 要求，提供商會聲明並向 SAP 保證，提供商已與客戶訂立了此客戶服務合約，前提始終是 SAP 和客戶之間不存在任何契約關係，以上第 4.1 條所載內容或根據 SAP 明確同意就授權服務直接與客戶訂立之任何補充契約除外。

5. TRADEMARK LICENSE

商標授權

5.1 To the extent usage is specifically allowed in the Master Agreement, SAP grants to Provider for the Term of the Agreement a revocable, nonexclusive, nontransferable license to use the Logo as set forth in the SAP Partner Logo Usage Guidelines in any countries allowed under the Agreed Program Scope and in accordance with the terms of this Section 5. This license to use the Logo includes the right to use the SAP corporate logo as part of the Logo (together "SAP Trademarks"). Provider is not permitted to grant sublicenses to SAP Trademarks.

在主合約內特別允許使用的範圍內，SAP 在合約期限內向提供商授與可撤銷、非專屬、不可轉讓之授權，在商定計劃範圍下允許的國家/地區中依 SAP 夥伴徽標使用指南並根據本第 5 條之條款使用徽標。此使用徽標之授權包括作為徽標一部分使用 SAP 企業徽標（合稱「SAP 商標」）之權利。提供商不可對 SAP 商標授與轉授權。

5.2 SAP will provide the most recent version of the SAP Partner Logo Usage Guidelines to Provider upon Provider's written request. SAP may, at its sole option, change the SAP Partner Logo Usage Guidelines but will provide the new version to Provider. Provider will conform its usage of the Logo to the new SAP Partner Logo Usage Guidelines immediately upon receipt. If Provider does not agree to the proposed changes, SAP shall be entitled to terminate Provider's right to use the Logo with immediate effect.

SAP 將會在提供商之書面要求後向提供商提供最新版本的 SAP 夥伴徽標使用指南。SAP 可單獨判定變更 SAP 夥伴徽標使用指南，但會向提供商提供新版本。提供商會在收到後立即根據新的 SAP 夥伴徽標使用指

南使用其徽標。若提供商不同意提議之變更，則 SAP 應有權終止提供商使用徽標的權利並立即生效。

- 5.3 Provider shall not contest the validity of SAP Trademarks or support the contesting of its validity and shall not derive any right against SAP through its permitted use of SAP Trademarks. In its use of SAP Trademarks, Provider shall indicate that the SAP Trademark is registered by and for SAP. In this context Provider acknowledges that SAP is the sole owner of rights in the SAP Trademarks Provider is permitted to use. Provider undertakes to make all those declarations and provide all those documents for the benefit of SAP as SAP may require in the prosecution of its rights in the SAP Trademarks. All advertising and sales material used by Provider for the Software must bear the notices prescribed by SAP concerning trademarks and other identifying marks. Provider must refrain from registering SAP's name (or any domain name incorporating name or trademarks) or SAP's logo (or any names, logos, domain names or trademarks which are confusingly similar to any of them) for itself or permitting third parties to using or otherwise exploiting SAP's name, logo or trademark (or any name, logo, trademark or domain name which are confusingly similar to any of them). Provider must, at SAP's choice, either transfer any rights regarding such logos, trademarks and domain names to SAP as soon as they arise or permit SAP to exploit them in any countries globally. Provider must afford SAP such assistance as may be necessary for SAP to obtain at SAP's expense the appropriate registrations for protection in any such country. Any provision adding to or differing from the above must be agreed in writing.

提供商不得異議 SAP 商標的有效性或對其有效性的異議提供相關支撐，且不得透過其獲許使用 SAP 商標的方式取得 SAP 的權利。在使用 SAP 商標時，提供商應表明 SAP 商標係由 SAP 註冊和為 SAP 註冊。在此情境下，提供商確認，SAP 是提供商被允許使用之 SAP 商標的權利的唯一擁有人。提供商承諾為 SAP 之利益發表所有這些聲明並提供所有這些文件，因為 SAP 在其進行 SAP 商標權相關起訴期間可能需要這些文件。提供商為軟體使用之所有廣告及銷售材料，必須具備 SAP 就商標及其他識別標誌所規定的聲明。提供商不得為自己註冊 SAP 的名稱（或包括名稱或商標的域名）或 SAP 的徽標（或與之混淆性相似的任何名稱、徽標、域名或商標）或允許第三方使用或以其他方式利用 SAP 的名稱、徽標或商標（或與之混淆性相似的任何名稱、徽標、商標或域名）。提供商必須依 SAP 之選擇，要麼在這些徽標、商標及域名出現時立即將其權利轉讓予 SAP，要麼允許 SAP 在全球任何國家/地區利用這些權利。提供商必須向 SAP 提供此必要協助，供 SAP 自費取得在此任何國家/地區取得適當的保護註冊。任何新增至或有別於以上部分之任何條款必須以書面形式約定。

- 5.4 Provider shall provide samples of its advertising copy and sales literature for the Authorized Services, in their original language and in English, as applicable, to SAP on its request. SAP reserves the right to review and approve all uses of SAP's Trademarks, service marks, or trade names in Provider's advertising and promotion of the Software and Authorized Services, prior to use. Such approval will not limit Provider's obligation to comply with all applicable laws and will not be deemed an endorsement or approval of any advertising content.

提供商應提供依 SAP 之請求，提供其授權服務之廣告複本及銷售資料範本的原語言及英語（若適用）版本。SAP 保留使用前審查及核准提供商廣告及促銷軟體和授權服務中使用 SAP 商標、服務標誌或商號的權利。此核准不會限制提供商遵守所有適用法律之義務，也不會被視為對任何廣告內容的認可或核准。

- 5.5 SAP shall have permission to list Provider with name and logo on its website and marketing material as an SAP partner in the business field as it relates to the Authorized Services without the requirement to seek Provider's written permission for each such listing, unless such permission is rescinded by Provider in writing.

SAP 應有權在其網站上和行銷資料中列示提供商名稱和徽標，顯示其為與授權服務相關的業務領域之 SAP 夥伴，而無需向提供商尋求此類每次列示的書面許可，除非此許可被提供商以書面形式取消。

- 5.6 Except as stated above, no Party has the right to use or display the other Party's names, trademarks, trade names, logos, or service marks ("Marks") without prior written approval. Notwithstanding the foregoing, nothing contained in this Agreement shall affect either Party's rights to use any trademarks, service marks or proprietary words or symbols of the other Party to properly identify the goods or services of such other Party to the extent permitted by applicable law or by written agreement between the Parties. 除以上所述外，未經事先書面核准，雙方中任意方都無權使用或顯示另一方之名稱、商標、商號、徽標或服務標誌（以下稱「標誌」）。儘管有上述規定，本合約中的任何內容都不得影響一方使用另一方的商標、服務標誌、專屬文字或符號以正確識別此另一方的貨物或服務之權利，惟以適用法律或雙方達成的書面合約允許的範圍為限。

- 5.7 Each Party agrees to promptly notify the other Party of any unauthorized use of the other Party's Marks or proprietary words or symbols of which it has actual knowledge. Each Party shall have the sole right and discretion to enforce any rights and claims regarding its Marks or unfair competition related thereto. Each Party agrees to provide the other Party with its reasonable cooperation and assistance at the requesting Party's expense with respect to any such infringement proceedings.

各方同意立即就其實際知悉的未經授權使用另一方標誌或專屬文字或符號的情況通知另一方。各方應擁有全權和自由裁量權，強制執行其標誌或與之相關的不公平競爭的任何權利和主張。各方同意向另一方就此侵權訴訟提供合理的配合和協助，費用由請求方承擔。

- 5.8 If at any time SAP determines that the laws or policies of any country are or become materially insufficient to protect its intellectual or proprietary rights in the Software, SAP may restrict or terminate Provider's rights to use the SAP Trademarks in or to that country, on written notice to Provider. Provider shall take all actions reasonably necessary to comply with and enforce any such restriction or termination.

若任何時候 SAP 確定，任何國家/地區的法律或政策變得嚴重不足以保護軟體的智慧或專屬權利，SAP 可在書面通知提供商的條件下限制或終止提供商在該國家/地區使用 SAP 商標的權利。提供商應採取所有合理必要的行措施遵守並實施此限制或終止。

6. REMUNERATION, PAYMENT TERMS, TAXES AND DELIVERY

報酬、支付條款、稅收和交付

- 6.1 **Fees.** Provider shall pay to SAP the Fees on such terms and in the amount as set forth in the Master Agreement or any Order Forms, Schedules or Exhibits thereof. Additionally, Provider commits to pay the Floor Commitments set forth in the Master Agreement, if any, such amounts to be invoiced pursuant to the terms of the Master Agreement. Provider can offset claims only if they are uncontested or awarded by final and binding court or arbitration panel order. Any Fees not paid when due shall accrue interest at the rate of 18% per annum, but not to exceed the maximum amount as allowed by the applicable law. Provider shall not be entitled to any refund of the Fees paid for under this Agreement.

費用：提供商應根據主合約或任何訂購單、其明細表或附錄的條款及金額向 SAP 支付費用。另外，提供商承諾支付主合約中所載之最低承諾款項（若有），並根據主合約條款對此金額開具發票。只有在索賠毫無爭議或由最終且具有約束力的法院或仲裁小組判令裁決時，提供商才能抵銷索賠。對於到期時未支付之任何費用，利息應以 18% 的年利率來累計，但不得超過適用法律允許之金額上限。提供商無權取得本合約下支付的費用的任何退款。

- 6.2 **Taxes.** All taxes, including, without limitation, VAT, GST, sales, use, property, excise, service, or similar taxes or customs duties, except income or corporation taxes of SAP, will be borne by Provider. If any such tax or duty has to be withheld or deducted from any payment under this Agreement, Provider will increase payment under this Agreement by such amount as shall ensure that after such withholding or deduction SAP shall have received an amount equal to the payment otherwise required. Income or corporation taxes of SAP will be borne by SAP. If Provider is required to withhold income or corporation tax or a similar tax from any payment to SAP under this Agreement Provider shall be entitled to withhold or deduct such tax from the gross amount to be paid. However, Provider shall use all endeavors to reduce any such withholding tax payable to the lowest possible rate subject to compliance with all applicable laws and double taxation treaties. Provider will in the case of any withholding of tax provide SAP a receipt from the relevant authority to which such withholding tax has been paid.

稅捐。所有稅收，包括但不限於，VAT、GST、銷售、使用、財產、貨物稅、服務或類似稅捐或關稅（SAP 的收入稅和公司稅除外），都將由提供商承擔。如依本合約任何此類稅款需從付款中提取或扣除，提供商應增加本合約下的付款，從而確保經提取或扣除之後 SAP 將能收到應有的付款。SAP 將負擔 SAP 的收入稅或公司稅。如果提供商需從支付給 SAP 的任何根據本合約的付款中提取所得稅或公司稅或類似稅款，則提供商應有權從將支付的總金額中提取或扣除此等稅款。然而，提供商應盡一切努力，依所有適用法律和雙重徵稅條約的規定，將任何此類扣稅減少到最低可能的比率。提供商將在任何扣繳稅款的情況下將向 SAP 提供向其交付此類扣繳稅款的機關的收據。

- 6.3 **Delivery of the Software and SAP Support.** SAP will deliver the Software and SAP Support by making it available for electronic download through the SAP ServiceMarketplace (<http://service.sap.com/swdc>) to Provider. Risk of loss passes at the time of such electronic delivery. Provider agrees not to request any physical delivery of Software or SAP Support and should it occur any such delivery will be rejected by Provider. Provider agrees and understands that the calculation of Taxes may be affected by the delivery method and delivery location of the Software and corresponding SAP Support.
- 軟體和 SAP 支援的交付。**SAP 將透過 SAP ServiceMarketplace (<http://service.sap.com/swdc>) 向提供商提供電子下載，以交付軟體和 SAP 支援。貨品損失之風險於上述電子交付時即行移轉。提供商同意不請求實體交付軟體或 SAP 支援，若出現此情況，此交付將被提供商拒絕。提供商同意並明白，稅項的計算可能受軟體的交付方式和交付地點以及相應的 SAP 支援影響。

7. TERM AND TERMINATION

期限和終止

- 7.1 **Term.** This Agreement is entered for the Term, unless earlier terminated as set forth herein or in accordance

with any right to terminate specified in the Master Agreement. The Term may be extended as mutually agreed by the Parties in writing or as specifically set forth in the Master Agreement. For the avoidance of any doubt, termination of the Agreement shall strictly apply to all licenses under the Agreement, Order Forms, Exhibits, its appendices, schedules, addenda and order documents and any partial termination of the Agreement by Provider shall not be permitted in respect of any part of the Agreement, its appendices, Exhibits, Annexes, schedules, addenda, or order documents.

期間：本合約在期限內有效，除非根據本合約所載或根據主合約中規定的終止權提前終止。此期限可根據雙方以書面形式共同商定或主合約中特別規定延長。為免任何疑義，本合約之終止應嚴格適用於本合約、訂購單、附錄、其附件、明細表、補述和訂購文件中之所有授權，且提供商不得針對本合約、其附言、附錄、附件、明細表、補述及訂購文件之任何部分加以部分終止。

- 7.2 Termination by SAP.** This Agreement and the licenses granted under this Agreement may be terminated by SAP in accordance with the following: (a) except for Provider's breach of its obligations under Sections 8, 9 or 12.1, thirty (30) days after SAP gives Provider notice of Provider's breach of any provision of the Agreement including more than thirty (30) days delinquency in Provider's payment of any money due hereunder, unless Provider has cured such breach during such thirty (30) day period; (b) immediately if (1) Provider commences negotiations with one or more of its creditors with a view to rescheduling major parts of its indebtedness or (2) Provider files for bankruptcy, has a petition for bankruptcy filed on its behalf which is not dismissed within sixty days of filing, becomes insolvent, or makes an assignment for the benefit of creditors; and/or (3) Provider breaches any of its obligations under Sections 8, 9 and/or 14.1 [Intellectual Property Ownership, Confidentiality, Assignment].
- 由 SAP 終止。本合約和本合約下授與之授權可由 SAP 根據以下規定終止：(a) 除了提供商違反其於第 8、9 或 12.1 條下之義務外，SAP 向提供商發出提供商違反合約任何規定（包括拖欠提供商依此合約應付款超過三十 (30) 天）之通知後三十 (30) 天終止，除非提供商已在此三十 (30) 天期間內對此違約作出了補救；(b) 在以下情況下立即終止 (1) 提供商開始與一個或多個債權人協商，目的在於重新安排其債務的主要部分，或 (2) 提供商申請破產、代表其提出破產申請而未在提交申請後六十天內駁回、變得無力償債或為債權人利益進行轉讓，及/或 (3) 提供商違反其於第 8、9 或 14.1 條下任何義務 [智慧財產所有權、保密、轉讓]。
- 7.3 Termination by Provider.** This Agreement may be terminated by Provider in accordance with the following: (a) except for SAP's breach of its obligations under Sections 8 or 9, thirty (30) days after Provider gives SAP notice of SAP's breach of any provision of the Agreement, unless SAP has cured such breach during such thirty (30) day period; (b) immediately if (1) SAP commences negotiations with one or more of its creditors with a view to rescheduling major parts of its indebtedness or (2) SAP files for bankruptcy, has a petition for bankruptcy filed on its behalf which is not dismissed within sixty days of filing, becomes insolvent, or makes an assignment for the benefit of creditors; and/or (3) SAP breaches its obligations under Sections 8 and/or 9 [Intellectual Property Ownership, Confidentiality].
- 由提供商終止。本合約可由提供商根據以下規定終止：(a) 除了 SAP 違反其於第 8 或 9 條下之義務外，提供商向 SAP 發出 SAP 違反合約任何規定之通知後三十 (30) 天終止，除非 SAP 已在此三十 (30) 天期間內對此違約作出了補救；(b) 在以下情況下立即終止 (1) SAP 開始與一個或多個債權人協商，目的在於重新安排其債務的主要部分，或 (2) SAP 申請破產、代表其提出破產申請而未在提交申請後六十天內駁回、變得無力償債或為債權人利益進行轉讓，及/或 (3) SAP 違反其於第 8 及/或 9 條下的義務 [智慧財產所有權、保密]。
- 7.4 Termination for change of control.** This Agreement may be terminated immediately by SAP upon written notice to Provider if Provider comes under direct or indirect control of any entity competing with SAP. If before such change Provider has informed SAP of such potential change of control without undue delay, the Parties agree to discuss solutions on how to mitigate such termination impact on Customer, such as stepping into the Customer contract by SAP or by any other Affiliate of Provider or any other form of transition to a third party provider.
- 基於控制變更的終止。若提供商受與 SAP 競爭之實體的直接或間接控制，則 SAP 可在向提供商發出書面通知後立即終止本合約。若在此變更前提供商已無不當拖延地通知了 SAP 此潛在的控制變更，則雙方同意就如何減輕此終止對客戶的影響討論解決方案，例如由 SAP 或提供商的任何其他關係企業進入客戶契約或透過任何其他形式過渡到第三方提供商。
- 7.5 Duties upon termination and surviving terms.** Upon any termination hereunder and subject to any Wind Down set forth in the Section "Term and Termination" of the Master Agreement, Provider and its Affiliates shall (i) immediately cease acquiring new Customers and marketing the Software as part of the Authorized Services under this Agreement; (ii) immediately cease Use of all SAP Materials and Confidential Information; (iii) ensure that each Customer ceases Use of all SAP Materials and SAP Confidential Information; and (iv) within thirty (30) days after any termination, irretrievably destroy or upon SAP's request deliver to SAP all copies of all SAP Materials and Confidential Information in every form, except to the extent it is legally required to keep such materials for a longer period in which case such return or destruction shall occur at the end of such period. Provider agrees to certify in writing to SAP that it and each of its Affiliates has

performed the foregoing. Notwithstanding the foregoing, Sections 1, 6, 7, 8.1, 8.3-8.8, 9, 10.2, 11, 12, 14.5, 14.6, 14.7 and 14.9 shall survive any termination. 終止後之義務以及繼續存在的條款。據本合約終止後並受主合約之「期限和終止」部分中所載之緩衝約束，提供商和其關係企業應 (i) 立即停止獲得新客戶並將軟體作為本合約下授權服務之一部分進行行銷；(ii) 立即停止使用所有的 SAP 資料和機密資訊；(iii) 確保每個客戶停止使用所有 SAP 資料和 SAP 機密資訊；以及 (iv) 在終止後三十 (30) 天內，不能挽回地銷毀或應 SAP 的請求下向 SAP 傳輸每種形式的所有 SAP 資料和機密資訊的所有複本；法律要求將此資料保持更長期間（此情況下應在此期間結束時退還或銷毀）的範圍除外。提供商同意向 SAP 以書面形式證明，提供商及其每個關係企業已履行前述義務。儘管有上述規定，本合約終止後，第 1、6、7、8.1、8.3-8.8、9、10.2、11、12、14.5、14.6、14.7 及 14.9 條仍將繼續延用。

7.6 Effect of Termination. In the event of any termination hereunder (i) Provider shall not be entitled to any refund of any payments made by Provider; (ii) any outstanding Fees (including any portion of the Floor Commitments) already invoiced or due prior to the termination of the Agreement remain or become immediately due and payable; (iii) except in case of a termination in accordance with Section 7.3 by Provider, any Fees which are unpaid by the Provider (based on the Fees payable for the Term as set forth in the Master Agreement) will become immediately due and payable, including any unfulfilled Floor Commitments for any Contract Year completed or commenced prior to the effective date of the termination. 終止之效力。在本合約下出現任何終止的情況下，(i) 提供商無權取得其付款的任何退款；(ii) 終止合約前已開具發票或到期之任何未償費用（包括最低承付款項的任何部分）保持或變得立即到期並應付；(iii) 除了由提供商根據第 7.3 條終止的情況外，提供商未支付的任何費用（基於主合約中所載之期限應付的費用）將變得立即到期並應付，包括終止生效日期前已完成或開始之契約年的任何未履行的最低承付款項。

8. INTELLECTUAL PROPERTY OWNERSHIP 智慧財產所有權

8.1 Software Ownership and Limited Rights. The Software, SAP Materials, and all Intellectual Property Rights embodied in the foregoing, shall be the sole and exclusive property of SAP, SAP SE or its SAP Affiliates, or its or their licensors, subject to any rights expressly granted to Provider in Section 8 hereof. Except for Modifications and Add-ons authorized under this Agreement, Provider is not permitted to create derivative works of the Software or SAP Materials. Any such unauthorized works developed by Provider, and any Intellectual Property Rights embodied therein, shall be the sole and exclusive property of SAP, SAP SE or any of its SAP Affiliates, as applicable, and Provider hereby assigns all rights in them (including moral rights) to such SAP entity. To the extent Intellectual Property Rights are not eligible to be transferred by operation of the law, SAP, SAP SE or any of its SAP Affiliates shall be granted exclusive rights to use to the widest extent lawfully possible. All rights in and to the Software and SAP Materials not expressly granted in this Agreement are reserved by SAP. Provider shall use commercially reasonable efforts to ensure that no Customer is violating the terms of its Customer Service Agreement, including without limitation ensuring that the use of the Software by its Customers has not exceeded the agreed Licensed Level. In the event Provider becomes aware that any Customer is violating its Customer Service Agreement in relation to the Software or any SAP Materials, Provider shall promptly notify SAP of such. Provider shall reasonably cooperate with SAP to enforce the terms of any such Customer Services Agreement with a Customer.

軟體所有權和有限權利。前述之軟體、SAP 資料和所有智慧財產權應為 SAP、SAP SE 或其 SAP 關係企業或其授權人之唯一、專屬財產，且受本合約第 8 條明示授與提供商之所有權利所規範。除本合約授權之修改和附加程式外，被授權人不得建立軟體或 SAP 材料的衍生成品。提供商開發之此類任何未經授權作品及其包含的任何智慧財產權應為 SAP、SAP SE 或其任何 SAP 關係企業（如適用）之唯一和專屬財產；且提供商特此將其中的所有權利（包括著作人格權）轉讓予此 SAP 實體。如果有關智慧財產權因法律運作而無法轉讓，則應授與 SAP、SAP SE 或其任何 SAP 關係企業專屬權利以在法律允許的最大範圍內使用。SAP 保留本合約中未明示授與之軟體和 SAP 資料的所有權利。提供商應以商業上合理的努力確保客戶不會違反其客戶服務合約的條款，包括但不限於其客戶對軟體的使用未超過議定的授權層級。如果提供商知悉任何客戶違反客戶服務合約而該違反與軟體或任何 SAP 資料有關，則提供商應立即通知 SAP 有關違反情況。提供商應合理配合 SAP 強制執行與客戶訂立的任何此類客戶服務合約之條款。

8.2 Modifications and Add-ons. Subject to the licensing of the required development rights under separate agreement, Provider shall be entitled to develop Modifications and Add-ons for the Software and shall be permitted to Use Modifications and Add-Ons with the Software in accordance with the license grant to the Software set forth in Section 3.1 herein. Provider shall promptly notify SAP if and when Provider is planning to develop Modifications or Add-ons to the Software. The notification provided by Provider shall include a high level description of the intended functionality and of the timeframe planned for such development. In addition, any Modifications or Add-ons must not i) unreasonably impair, degrade or reduce the performance or security of the Software; ii) enable the bypassing or circumventing of SAP license restrictions and/or

provide users with access to the Software to which such users are not directly licensed; and/or iii) permit mass data or metadata extraction from an SAP software to a non-SAP software for the purpose of replacing the Software as the data's system of record. With regards to the aforementioned item iii), Provider shall refer any Customer requiring such information to SAP. 修改和附加程式。根據單獨合約下開發權利的所需授權，提供商應有權為軟體開發修改和附加程式，並應可以根據本合約第 3.1 條中所載授與軟體之授權將修改和附加程式與軟體搭配使用。若（在）提供商計劃為軟體開發修改或附加程式（時），則提供商應立即就此通知 SAP。提供商提供的通知應包括預期功能以及為此開發所規劃之時間範圍的概觀描述。此外，任何修改或附加程式不得 i) 不合理地削弱、降低或削減本軟體的效能或安全；ii) 協助跨越或規避 SAP 授權限制和/或向未經直接授權的使用者提供存取軟體的權限；及/或 iii) 允許將大量資料或中繼資料從 SAP 軟體擷取至非 SAP 軟體，出於取代軟體為資料的記錄系統之目的。關於前述項目 iii)，提供商應將需要此資訊的任何客戶轉介給 SAP。

- 8.3 Modifications. The ownership of Modifications, and any Intellectual Property Rights embodied therein, shall vest in SAP, SAP SE or the applicable SAP Affiliate. Provider irrevocably assigns to SAP all Provider's rights, title and interest ("Assigned Intellectual Property Rights") in and to the Modifications, including the right to register or file proprietary rights based on the Modifications. Provider further agrees to provide to SAP promptly upon the SAP's request all pertinent facts and documents relating to such Modifications, and to perform promptly such lawful acts and to sign promptly such further applications, assignments, statements, and other lawful documents as SAP may reasonably request to effectuate fully this assignment. Provider hereby grants SAP a worldwide, non-exclusive, fully paid up, royalty free, perpetual and irrevocable license to any Provider contributed Intellectual Property Rights in any Provider Background Materials contained in the Modifications to make, have made, use, reproduce, display, distribute, create derivative works of, lease, sell, offer for sale, import, export or otherwise transfer through standard tiers of distribution such Provider Background Materials (a "Full License"), provided that such Provider Background Materials are used only in connection with the Modification or derivative works thereof. Subject to the extent of Provider's rights therein, Provider further grants SAP a Full License to any third-party materials incorporated in the Modification. To the extent Provider does not have sufficient rights to grant SAP a Full License to such third party materials, Provider covenants to use its best efforts to procure such rights for SAP in and to the third party materials incorporated in such Modifications. 修改。修改的擁有權以及其中體現的任何智慧財產權，應歸 SAP、SAP SE 或適用 SAP 關係企業所有。提供商不可撤銷地向 SAP 讓渡所有提供商之關於修改的權利、業權及權益（「讓渡的智慧財產權」），包括基於修改註冊或提交專屬權利的權利。提供商進一步同意，在 SAP 的要求下立即向 SAP 提供與此修改有關的所有相關事實和文件，以及立即執行此類合法行為並立即簽署此類進一步的申請、轉讓、聲明和 SAP 合理地要求來完全實行此轉讓的其他合法的文件。提供商特此就修改中所含任何提供商背景材料中之提供商貢獻之智慧財產權向 SAP 授與全球性、非專屬、完全付費、免版稅、永久及不可撤銷授權，以製作、安排製作、使用、複製、展示、散佈、創作其衍生作品、出租、出售、要約出售、進口、出口或透過標準分配層另行轉讓此提供商背景材料（「完整授權」），前提是此提供商背景材料僅與修改或其衍生作品結合使用。在本合約下提供商權利範圍內，提供商進一步向 SAP 授與併入修改中之任何第三方資料的完整授權。在提供商沒有充足權限向 SAP 授與此第三方資料的完整授權的範圍內，提供商立約承諾會盡最大努力為 SAP 採購併入此修改之第三方資料的權利。
- 8.4 Add-ons. The ownership of the Add-ons developed by Provider shall vest in Provider or the Customer as provided in the Customer Services Agreement subject to SAP's rights in and to the Software. Provider may copy and may include Redistributable Files in Add-ons. Any Provider created Add-ons that contain Redistributable Files must not be made (directly or indirectly) subject to an Excluded License. In the event Provider distributes or makes available Add-ons to third parties, Provider will indemnify SAP, SAP SE and their affiliated companies against any and all claims brought against them (individually or jointly) arising from Licensee's development and distribution of such Provider Add-on. In exchange for the right to develop Add-ons under this Agreement, Provider covenants not to assert any Intellectual Property Rights in Add-ons created by Provider against any SAP product, service, or future SAP development. 附加程式。提供商開發的附加程式的所有權應歸屬提供商或客戶服務合約中提供的客戶，受 SAP 之軟體權利所約束。提供商可複製並包括可再分配之檔案於附加程式中。任何提供商建立之包括可再分配之檔案的附加程式不得（直接或間接）受排除的授權約束。在提供商向第三方分發或提供附加程式的情況下，提供商將彌償 SAP、SAP SE 和其關係公司，使其免受源於被授權人開發和分發此提供商附加程式而對其（單獨或共同）提出的任何和全部索賠。作為根據本合約開發附加程式的交換，提供商立約承諾不會針對任何 SAP 產品、服務或未來 SAP 開發主張提供商建立之附加程式中的任何智慧財產權。
- 8.5 Reverse Engineering, Source Code. Provider shall not disassemble, reverse engineer or decompile, nor otherwise create or attempt to create the source code from the object code of the Software or SAP Materials in any manner, unless such action is indispensable in order to obtain information necessary to achieve

interoperability of the Software with an independently created computer program and Provider has not been provided such information, despite a written request, within a reasonable period of time. Information obtained through such action may not be used for purposes other than to achieve interoperability, and may not be given to third parties, unless this is necessary to establish interoperability, in particular is not to be used for the development, creation or marketing of programs similar to the Software. If Provider wishes to exercise any right to reverse engineer to ensure interoperability in accordance with applicable law, Provider shall first provide written notice to SAP and permit SAP, at its option, to make an offer to provide information and assistance reasonably required to ensure interoperability of the Software with other products for a fee to be mutually agreed upon (if any). 進行還原工程，原始程式碼。提供商不得以任何方式對軟體或 SAP 資料的物件程式碼進行反向組譯、還原工程或解譯，亦不得以其他方式從中建立或嘗試建立其原始程式碼；除非此類動作不可或缺，以便獲得實現軟體與單獨建立之電腦程式之間互通性所需的資訊，且提供商經過書面要求在合理時段內未獲提供此類資訊。透過此類動作取得的資訊不得用於實現互通性之外的用途，且除非是建立互通性所必需，否則不得提供予第三方，尤其不得用於開發、建立或行銷與軟體類似的程式。若提供商希望依相關法律，行使任何還原工程的權利以確保互通性，提供商應首先向 SAP 提供書面通知，並允許 SAP 斟酌提供所需資訊及合理協助，以確保軟體與其他產品之互通性；如有需要，得依雙方合意收取費用。

8.6 Except to the extent explicitly specified in this Section 8 or a written separate agreement between the Parties, nothing in this Agreement shall be construed, whether by implication, estoppel or otherwise, to transfer ownership rights in, or grant license rights to Background Materials to the other Party. 除本第 8 條或雙方訂立之單獨書面合約明確規定者外，本合約不得被詮釋（不論透過默示、不容反悔或其他方式）為轉讓對方的背景材料的擁有權或授予其授權。

8.7 **Feedback.** During the course of this Agreement, Provider agrees to provide and SAP will solicit Provider's input regarding Software, products, services, business or technology plans, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of software, products and/or services, or input as to whether Provider believes SAP's development direction is consistent with their own business and IT needs, the technology marketplace in general, and the like (collectively "Feedback"). Provider acknowledges and agrees that any information disclosed by SAP during discussions related to Feedback shall be considered SAP Confidential Information and shall be protected from disclosure in accordance with the terms of this Agreement. In order for SAP to utilize such Feedback, Provider grants to SAP a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right to sublicense to SAP's licensees and customers, under all relevant Provider intellectual property rights, to use, publish, and disclose such Feedback in any manner SAP chooses and to display, perform, copy, make, have made, use, sell, and otherwise dispose of SAP's and its sub-licensees' products or services embodying Feedback in any manner and via any media SAP chooses, without reference to the source. SAP shall be entitled to use Feedback for any purpose without restriction or remuneration of any kind with respect to Provider and/or its representatives. Provider acknowledges that the information related to Software or SAP, products, services, business or technology plans, disclosed to it under this Agreement, is only intended as possible strategies, developments, and functionalities of the SAP products or services and is not intended to be binding upon SAP to any particular course of business, product strategy, and/or development.

意見反應。在本合約期限內，提供商同意提供並且 SAP 可以請求提供商提供關於軟體、產品、服務、業務或技術計畫的意見，包括但不限於對於軟體、產品和/或服務可能的建立、修改、修正、改進或增強的註解或建議，或對於提供商認為 SAP 的發展方向是否與其自身業務和 IT 需要一致，總體技術市場和類似方面的意見（統稱「意見反應」）。提供商確認並同意，SAP 在與意見反應有關的討論過程中披露的任何資訊應視為 SAP 機密資訊，且應根據本合約的條款防止遭披露。為了 SAP 利用此類意見反應，提供商授與 SAP 非專屬、永久、不可撤銷、全球性、無須支付版稅的授權，以及 SAP 的被授權人和客戶轉授權的權利，從而根據提供商的所有相關智慧財產權，在未參考原始資源的情況，以 SAP 選擇的任何方式使用、發佈和披露此類意見反應，以及透過 SAP 選擇的任何方式和任何媒體顯示、執行、複製、製作、委託製作、使用、銷售和以其他方式處置 SAP 及其被轉授權人包含意見反應的產品或服務。SAP 應有權將意見反應用於任何目的，且不會有任何限制或會對提供商和/或其代表提供任何形式的報酬。提供商確認，根據本合約向其披露之與軟體或 SAP、產品、服務、業務或技術計畫相關的資訊僅用作 SAP 產品或服務的可能策略、發展和功能，而不會約束 SAP 的任何特定業務過程、產品策略和/或發展。

8.8 The Parties recognize that either Party has the right to develop independently software that would compete with the other Party's software without use of any Confidential Information disclosed to such other Party hereunder. Further, either Party shall be free to use for any purpose the residuals resulting from access to or work with confidential information disclosed hereunder. The term "residuals" means information in non-tangible form, which may be retained inadvertently in the unaided memory by persons who have had access

to the confidential information, including ideas, concepts, know-how or techniques contained herein, so long as such persons have not studied the information for the purpose of replicating the same from memory. Neither Party shall have any obligation to limit or restrict the assignment of such persons or to pay product fees for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either Party a license under the other Party's copyrights or patents. 雙方承認，任何一方在未使用另一方根據合約披露之任何機密資訊的情況下，均有權獨立開發與另一方軟體相競爭的軟體。此外，任何一方應有權將因存取或使用根據合約披露之機密資訊而獲得的殘留資訊用於任何用途。「殘留資訊」係指曾存取機密資訊的人員獨立記憶中無意所保留的無形資訊，包括其中包含的想法、概念、專有技術或技巧，只要此類人員並未出於複寫記憶中之相同資訊目的而刻意記憶有關資訊。雙方均沒有義務限制或約束此類人員轉移殘留資訊，或就因使用殘留資訊所產生的任何成果而支付產品費用。但是，前述規定不得視為向任何一方授與另一方版權或專利項下的授權。

9. CONFIDENTIALITY

保密

- 9.1. 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 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 other Party, 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 Party to any person other than its bona fide individuals whose access is necessary to enable Provider and Customers to exercise their rights and meet their obligations hereunder. To the extent that Customers or third parties are provided access to SAP Confidential Information, such access shall be subject to confidentiality terms that are at least as restrictive as those set forth here. 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 and neither Party shall use the other Party's Confidential Information for any purpose other than in connection with the Parties' performance under this Agreement. 使用機密資訊：除以達成本合約目的之必要，不得以任何形式重製機密資訊。另一方保密資訊之一切複製品仍應為揭露方之財產，且應保留原始呈現之任何和所有保密或專屬聲明或圖例。關於另一方之機密資訊，各方：(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) 不得將另一方之機密資訊披露給真正需要使用該機密資訊以使提供商或客戶能行使本合約下權利或履行義務之個人以外的任何人。在客戶或第三方取得 SAP 機密資訊存取權限的範圍內，此存取權限應符合至少達在此所載條款般嚴格之保密性條款。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。雙方中任一在簽署本合約前披露的機密資訊，都應受本合約下提供之保護，並且雙方中任一都不得出於雙方據本合約履行合約以外之目的使用另一方的機密資訊。
- 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：前述使用或公開機密資訊之規定將不適用於下列機密資訊：(a) 接受方自行獨立研發之資訊或從第三人合法取得之資訊，且該第三人對於該資訊並無機密義務；(b) 已公開之資訊，且接受方對於其公開並無過失；(c) 在揭露時，已知接受方已不在限制之列；或 (d) 接受方經揭露方事前書面同意而揭露之資訊。
- 9.3. Confidential Terms and Conditions. In addition to the foregoing limitations, neither Party shall disclose the terms or conditions of this Agreement without the prior written approval of the other Party (other than to those of the Party's Representatives who must know such information in order for the Party to perform under the Agreement or enforce its rights hereunder). As used herein, "Representatives" shall mean (i) employees of Receiving Party; (ii) attorneys, accountants, or other professional business advisors; and, additionally, (iii) employees of SAP and/or any of the SAP Affiliates, and (iv) employees of any entity who are directly involved in the performance of obligations under this Agreement. The Receiving Party shall be responsible for any breach of the terms of this Agreement caused by its Representatives. 保密條款與條件。除了前述限制外，雙方中任一都還不得在未經另一方的事先書面核准的情況下披露本合約的條款或條件（披露給必須瞭解此資訊以供其根據本合約執行或強制執行其權利的該方代表除外）。此處所用之「代表」係指 (i) 接收方的員工；(ii) 律師、會計師、或其他專業業務顧問；以及 (iii) SAP 和/或 SAP 關係企業的員工；及 (iv) 直接參與履行本合約項下義務之任何實體的員工。接收方應對其代表違反本合約條

款的任何行為承擔責任。

- 9.4 In the event that the Receiving Party or any of its Representatives are requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Confidential Information or any other information concerning the Disclosing Party, this Agreement, or the Parties' performance hereunder, the Receiving Party shall provide the Disclosing Party with prompt notice of such request or requirement in order to enable the Disclosing Party (i) to seek an appropriate protective order or other remedy; (ii) to consult with the Receiving Party with respect to the Disclosing Party's taking steps to resist or narrow the scope of such request or legal process; or (iii) to waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained in a timely manner, or the Disclosing Party waives compliance, in whole or in part, with the terms of this Agreement, the Receiving Party or its Representative shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally required to be disclosed and to require that all Confidential Information that is so disclosed will be accorded confidential treatment.

如果根據適用法律或法規或適用法律或法規或法律程式需要，要求接收方或其任何代表披露任何機密資訊或有關披露方、本合約或雙方履行合約的任何其他資訊，接收方應立即通知披露方此類要求或需求，以便披露方可 (i) 尋求適當的保護令或其他補救措施；(ii) 就披露方採取的步驟與接收方進行協商，以抵制此類要求或法律程序或縮小其範圍；或 (iii) 全部或部分豁免遵循本合約的條款。如果未及時獲取此類保護令或其他補救措施，或披露方全部或部分豁免遵循本合約的條款，則接收方或其代表應以商業上合理的努力僅披露法律要求披露的機密資訊部分，以及要求如此披露的所有資訊將給予保密處理。

- 9.5 **Publicity.** 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 Provider agrees that SAP may use Provider'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 Provider's business.

宣傳。任一方皆不得在未經另一方事先書面同意之情況下，在宣傳、廣告或類似活動使用另一方的名稱，惟提供商同意 SAP 得在客戶清單中使用提供商名稱或在各方同意之情況下，作為 SAP 行銷內容的一部分（包括但不限於參考呼叫和敘述、新聞證言、現場訪問、SAPPHIRE 參與）。SAP 將負起合理責任，避免參考活動不合理干擾提供商之業務。

10. PERFORMANCE WARRANTY

履約保證

- 10.1 **Warranty.** SAP warrants that the Software will substantially conform to the specifications contained in the Documentation for twelve (12) months following delivery of the Software. The warranty shall 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 SAP and which is provided through SAP Support or under warranty), Provider, Third Party Software or any software not provided by SAP. 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 Provider's business requirements. Provided Provider 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 for the applicable nonconforming Software in exchange for a return of such nonconforming Software. This is Provider's sole and exclusive remedy under this warranty. Provider is not entitled to imply any representation, warranty, undertaking, or guarantee, including, but not limited to, in any other published SAP description or advertisement of the Software, except to the extent that SAP has expressly confirmed such in writing.

保固：SAP 保證軟體在交付軟體後的十二 (12) 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) 未依文件使用軟體；或 (ii) 不合規係由修改或附加程式（非由 SAP 透過 SAP 支援服務或保固提供之修改或附加程式）或提供商、第三方軟體或 SAP 未提供的軟體導致。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提供商之所有業務需求。若提供商於保固期間採書面方式通知 SAP 關於軟體不合規之具體說明，且 SAP 已確認確有此類不合規存在，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) 退回相關不合規軟體的授權費用，以歸還此類不正常軟體。此為提供商依本保固所享有之唯一專屬補償。提供商無權（包括但不限於）在任何其他發佈之 SAP 軟體描述或廣告中暗示任何聲明、保固、承諾或保證，SAP 以書面形式對此進行明確確認的範圍除外。

- 10.2 **Express Disclaimer.** SAP AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, 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.

明示免責聲明。SAP 及其授權人免除其他一切明示或默示之擔保責任，包括但不限於任何適售性或特定目的適用性之默示保證，惟依法律規定不得有效放棄之默示保證義務不在此限。

10.3 Provider shall notify SAP in writing of any nonconformance in sufficient detail for SAP to analyze the claimed nonconformance. Provider shall give commercially reasonable assistance to SAP in analyzing and remediating any nonconformity.

提供商應足夠詳細地以書面形式通知 SAP 任何不合規情況，供 SAP 分析所聲稱的不合規。提供商應向 SAP 提供商業上合理的協助，以分析和糾正任何不合規。

11. THIRD PARTY CLAIMS

第三方索賠

11.1 Indemnification by SAP.

SAP 提供的補償。

(a) SAP shall defend Licensee against claims brought against Provider in the Territory where such claim (i) is brought by a third party owner of the intellectual property giving rise to the claim and (ii) alleges that Provider's distribution of the Software in accordance with the terms and conditions of this Agreement constitutes a direct infringement or misappropriation of a patent claim(s), copyright, SAP trademark or trade secret rights. SAP will pay damages finally awarded against Provider (or the amount of any settlement SAP enters into) with respect to such claims provided that: SAP 應保護提供商，使之免在區域內提出的索賠，其中此索賠 (i) 係由引起此索賠之智慧財產權的第三方擁有人提出，以及 (ii) 宣稱提供商據本合約條款與條件分配軟體構成了直接侵犯或濫用了專利權、著作權、SAP 商標或商業機密權。SAP 會就此索賠向提供商支付最終裁定的損害賠償金（或 SAP 達成的任何和解金額），前提是：

1. Provider notifies SAP in writing of any such alleged claim without undue delay, and 提供商未無故延誤以書面方式通知 SAP 任何此類聲稱的索賠，及
2. Provider authorizes SAP to have sole control over the defense or settlement any such claim, 提供商授權 SAP 獨立掌控任何此類索賠的抗辯或解決事宜，
3. Provider cooperates fully in the defense of such claim and provides SAP with all relevant information and reasonable support, and 提供商全力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，及
4. Provider shall not undertake any action in response to any infringement, or alleged infringement, of the Software that is prejudicial to SAP's rights. 提供商不得就任何不利於 SAP 權利之軟體侵權或聲稱之軟體侵權加以回應。

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.

若對軟體侵害或濫用第三方權利之主張終止，或軟體已被判定沒有侵害或濫用第三方權利，SAP 明確保留中止任何對請求之抗辯權利。

(b) SAP shall have no obligation under this Section 11.1 if the claim results from (i) Software or Documentation that has been altered by anyone other than SAP or (ii) failure to use a New Release promptly made available by SAP if such infringement or misappropriation could have been avoided by use of the New Release, or (iii) unlicensed activities. Further, SAP shall have no obligation under this Section 11.1 for a claim which could have been avoided (i) if the Provider had not used the Software or SAP Materials in combination or conjunction with any software, data or systems not provided by SAP; or (ii) if the Provider (or its Customer or End User) had not acted outside the scope of the licensed rights under this Agreement.

如果因 (i) 軟體或文件被 SAP 以外的任何人修改；或 (ii) 未立即使用 SAP 提供的新版本，而使用新版本，則可避免此類侵權或濫用；或 (iii) 未授權的活動而導致索賠，則 SAP 概不承擔第 11.1 條下的任何義務。另外，SAP 對本應可以透過下列方式避免的索賠不承擔第 11.1 條下的義務 (i) 若提供商未結合或搭配不是由 SAP 提供之軟體、資料或系統使用軟體或 SAP 資料；或 (ii) 若提供商（或其客戶或終端使用者）未超出本合約下授權權限範圍行事。

(c) If an infringement or misappropriation of the intellectual property rights of a third party by the Software in accordance with Section 11.1(a) above is alleged or, in the reasonable opinion of SAP, an infringement or misappropriation of the intellectual property rights of a third party is likely to occur or be alleged, SAP may, at its discretion: 如果第三方主張軟體根據上述第 11.1(a) 條侵害或濫用其智慧財產權，或 SAP 合理認為可能發生或被主

張侵害或濫用第三方的智慧財產權，則 SAP 可自行決定：

- (i) procure for Provider the continued right to use the Software at no additional charges to Provider, or
為提供商取得繼續使用軟體的權利，且不會向提供商收取任何額外費用，或
- (ii) modify the Software or substitute alternative substantially equivalent non-infringing programs and supporting Documentation for the Software, or
修改軟體，或以實質相同的非侵害替代程式和軟體的支援文件替代，或
- (iii) if none of the foregoing alternatives can be achieved at a reasonable cost, SAP may terminate the Agreement and refund the prices paid by Provider less an appropriate amount covering the period of actual use of the Software by the Provider.
如果無法以合理費用實現上述任何替代方案，則 SAP 可終止合約，並在扣除提供商實際使用軟體期間的相關款項後退還提供商已支付的價格。

- (d) THE PROVISIONS OF SECTION 11.1 STATE THE SOLE, EXCLUSIVE AND ENTIRE LIABILITY AND OBLIGATION OF SAP TO PROVIDER, AND PROVIDER'S SOLE REMEDY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS THAT MAY ARISE RELATED IN ANY WAY TO THE SOFTWARE, SAP MATERIALS, BUNDLED PRODUCTS, CLOUD SERVICES OR DOCUMENTATION. The liability limitations contained in Section 12 below shall apply to all claims made under Section 11.1.

第 11.1 條條文規定了對於可能產生、以任何方式與軟體、SAP 材料、搭配產品、雲端服務或文件相關之侵害第三方智慧財產權的任何索賠，SAP 對提供商的唯一、專屬和全部責任與義務，以及提供商的唯一補救措施。以下第 12 條包括的責任限制應適用於第 11.1 條進行的所有索賠。

- 11.2 Indemnification by Provider. If an action is brought against SAP by a third party arising from (a) any taxes and related costs, interest and penalties paid or payable by SAP, (b) Provider's representations not authorized by SAP, (c) Provider's breach of this Agreement, including but not limited to: (i) any breach or violation of applicable export laws or regulations; or (ii) action in excess of Provider's authority hereunder and arising out of any claims by any Customers or End Users; or (d) Provider's failure to comply with the terms of the Customer Service Agreement, (e) any agreement between Provider and its distributors, resellers or Customers, (f) a claim that any Provider Confidential Information infringes, misappropriates or violates any patent, copyright or trademark of any third party or Provider's combining (or its authorizing others to combine) the Software with any products not provided by SAP, or (g) a third party's assertion that Provider acted as SAP's agent or otherwise on its behalf, then Provider shall defend SAP, at Provider's expense, and shall pay any settlement amounts Provider authorizes and all damages, costs and attorneys' fees finally awarded against SAP in the action. Provider shall indemnify and hold harmless SAP from any damages and costs SAP incurs as a consequence of any infringement of intellectual property rights of third parties caused by any of the circumstances set forth in this Section or the use of the Software not in accordance with this Agreement.

提供商提供的補償。如果第三方因以下事項對 SAP 提起訴訟：(a) SAP 已付或應付的任何稅捐和相關費用、利息與罰款；(b) 未經 SAP 授權的提供商聲明，(c) 提供商違反本合約，包括但不限於：(i) 違反適用出口法律或法規；或 (ii) 超出提供商在本合約項下之授權和任何客戶或終端使用者索賠所產生的訴訟；或 (d) 提供商未能遵守客戶服務合約的條款；(e) 提供商與其經銷商、轉售商或使用者之間訂立的任何合約；(f) 任何提供商機密資訊侵犯、濫用或違反任何第三方的專利、著作權或商標或提供商將軟體與 SAP 提供的任何產品組合使用（或授權他人組合使用）之索賠；或 (g) 第三方宣告提供商作為 SAP 的代理人或代表其行事，則提供商應自擔費用為 SAP 加以辯護，並應支付提供商授權的任何和解款項，及 SAP 在訴訟中最終承擔的所有損害賠償、費用和律師費。對於因本條中所載的任何情形造成侵害第三方智慧財產權或未依據本合約使用軟體，致使 SAP 產生的任何損害和費用，提供商應補償 SAP 並使其不致因而遭受損害。

12. EXCLUSIONS AND LIMITATIONS OF LIABILITY

責任之排除條款和限制

- 12.1 Provider's Remedies. Provider's sole and exclusive remedies for any damages or loss in any way connected with the Software or SAP Support furnished by SAP and its licensors, including due to SAP's negligence or breach of any other duty, shall be, at SAP's option: (i) to bring the performance of the Software into substantial compliance with the functional specifications; (ii) re-performance of SAP Support; or (iii) return of an appropriate portion of any payment made by Provider with respect to the applicable portion of the Software or SAP Support.

提供商的糾正措施。提供商對以任何方式與 SAP 及其授權人提供之軟體或 SAP 支援相關的損害或損失（包括因 SAP 疏忽或違反任何其他職責）的唯一專屬糾正措施應該由 SAP 選擇：(i) 將軟體效能提升到與功能規格實質上相符；(ii) 重新履行 SAP 支援；或 (iii) 就軟體或 SAP 支援的適用部分退還提供商之付款的適當部分。

- 12.2 **Not Responsible.** SAP and its licensors will not be responsible under this Agreement (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by Provider or Customer, a Modification or Add-on, third-party software, or third party database. SAP AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM INHERENTLY DANGEROUS USE OF: (a) THE SOFTWARE AND/OR (b) THIRD-PARTY SOFTWARE LICENSED HEREUNDER.
無須承擔責任。 依本合約，SAP 及其授權人對於以下情況概不負責：(i) 若未根據文件使用軟體；(ii) 若缺陷係由提供商或客戶、修改或附加程式或第三方資料庫所導致。SAP 及其授權人就任何本身具危險性的 (a) 軟體用途，及/或依本文授權之 (b) 第三方軟體所生之索賠或損害，概不負責。
- 12.3 **Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL SAP OR ITS LICENSORS OR PROVIDER BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY (A) FOR AN AMOUNT OF DAMAGES, IN THE AGGREGATE, IN EXCESS OF THE LESSER OF NTD 20,000,000 OR THE LICENSE FEES PAID UNDER THE AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE DATE IN WHICH THE CLAIM ARISES OR (B) 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, OR EXEMPLARY OR PUNITIVE DAMAGES.
責任限制。 任何情況下，SAP 或其授權人或提供商概不會負責對彼此或任何其他人或實體承擔 (A) 超出 20,000,000 新台幣或索賠產生之日前十二 (12) 個月內據合約支付的授權費用中之較小者的損害總額，亦不負責 (B) 任何特殊、附帶、衍生性、間接損害、商譽或業務利潤之損失、作業停工、資料損失、電腦當機或故障，或者懲罰性或刑罰性損害的任何金額。
- 12.4 **Exclusions.** THE LIMITATIONS AND EXCLUSIONS IN SECTION 12.3 SHALL NOT APPLY TO (i) CASES OF GROSS NEGLIGENCE OR MALICIOUS INTENT (ii) UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION (iii) FEES OWED UNDER THIS AGREEMENT OR (iv) CLAIMS PURSUANT TO SECTION 11.2.
排除條款。 第 12.3 條中的限制和排除條款不得適用於 (i) 嚴重疏忽或惡意意圖的情況 (ii) 未經授權使用或披露機密資訊 (iii) 本合約下所欠的費用或 (iv) 根據第 11.2 條的索賠。
- 12.5 **Severability of Actions.** 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.
行動之分割。 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的條款，按雙方之意向，可分割及獨立於其他條款並將如是執行。

13. PROVIDER COMPLIANCE

提供商合規

- 13.1 Provider shall conduct its operations at all times in strict compliance with all applicable anticorruption laws including the US Foreign Corrupt Practices Act (FCPA), the U.K Bribery Act 2010, and SAP's then current local SAP Provider Code of Business Conduct. Such obligation shall also apply to the Provider's subcontractors, Affiliates, resellers and distributors. If Provider has in place or adopts policies which establish similar standards to the SAP Code of Business Conduct, Provider may comply with its own policies to fulfil the requirements of this Section.
提供商開展業務時應始終嚴格遵循所有適用的反腐敗法律，包括美國境外反貪污行為法、2010 年英國賄賂法以及 SAP 當時有效的本地 SAP 提供商商業行為準則。此義務還應適用於提供商的轉包商、關係企業、轉售商和經銷商。如果提供商擁有或採納相關政策，其中設定與 SAP 商業行為準則類似的標準，則提供商可遵循其自身的政策以滿足本條的要求。
- 13.2 Provider shall not obtain on SAP's behalf or provide to SAP any information which is not legally available in the Territory, or which is procurement-sensitive, proprietary, or classified, where there is reason to believe that possession of such information is unauthorized, illegal, or unethical.
提供商不得代表 SAP 獲取或向 SAP 提供在授權區域無法合法使用、或屬於獲取敏感、專屬或已分類的任何資訊，其中有理由相信擁有此類資訊屬於未經授權、違法或不道德。
- 13.3 Provider shall not make, offer or promise any payments or gifts directly or indirectly to any employee of potential Customers or End Users. Any business entertainment offered to potential Customers must comply with the spirit and letter of the limits established in the relevant then current local SAP Code of Business Conduct.
提供商不得向潛在客戶的任何員工或終端使用者直接或間接提供、給予或承諾提供任何付款或禮物。向潛在客戶提供的任何商務款待必須符合相關當時有效之本地 SAP 商業行為準則中所設限制的精神與條文。
- 13.4 Provider represents and warrants to SAP that Provider and any other person acting on the Provider's behalf have not directly or indirectly paid, offered or promised to pay, or authorized the payment of, and will not

directly or indirectly pay, offer or promise to pay, or authorize the payment of any monies or gifts or anything of value to any employee or representative of a Customer or prospect, or government official or employee, political party official or candidate, or officer or employee of any public international organization (or an immediate family member of such persons) for the purpose of influencing their acts or decisions in order to secure or retain business on behalf of SAP. 提供商向 SAP 聲明並擔保，提供商及代表提供商行事的任何其他人士未曾且將不會向客戶或潛在客戶的員工或代表、政府官員或僱員、政黨官員或候選人、或任何國際公共組織的官員或員工（或上述人員的直系家庭成員），提供、給予或承諾提供或授權支付任何款項、禮物或有價之物，意圖影響其行為或決定以代表 SAP 獲得或保留業務。

- 13.5 Provider represents and warrants that it is not listed by any government agency as debarred, suspended, or proposed for suspension or debarment or otherwise ineligible for government procurement programs. Provider certifies that neither it nor its employees or subcontractors are members of management or in a position to influence decisions related to work performed under the Agreement with respect to any Customer.

提供商聲明並擔保，任何政府機構均未將其列為禁止、暫停或建議暫停或禁止或無資格參與政府採購專案。提供商證明，其員工或轉包商均非管理層成員或能夠影響關於任何客戶與根據本合約履行之工作相關的決定。

- 13.6 SAP shall be entitled to require Provider to certify once per year that Provider is in compliance with the terms of this Section 13.

SAP 應有權要求提供商每年證明一次，提供商是否遵循第 13 條的條款。

14. GENERAL PROVISIONS

一般條款

- 14.1 Assignment. Provider 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 an SAP Affiliate.

轉讓。提供商不得在未經 SAP 事先書面同意下，指派、委派、抵押或以其他方式轉讓本合約，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 得轉讓此合約給其關係企業。

- 14.2 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 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.

可分性：本合約中如有一項或多項條款被裁定無效或不能執行者，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。

- 14.3 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。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。

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

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。

- 14.5 Regulatory Matters. The Software, Documentation and SAP Materials are subject to the export control laws of various countries, including without limit the laws of Ireland, the United States and Germany. Provider 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 or utilize Data Center(s) in such prohibited countries. Provider shall also be responsible for complying with all applicable governmental regulations of the country where Provider is registered, and any foreign countries with respect to the use of the Software, Documentation or other SAP Materials by Provider and/or its Affiliates.

法規事宜。軟體、文件和 SAP 資料應受各國出口管控法規所規範，包括但不限於愛爾蘭、美國與德國法規。提供商同意不會在未經 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軟體、文件或其他 SAP 資料，且不會將軟體、文件和 SAP 資料出口至上述法律禁止之國家、個人或實體，或在這些受禁國家/地區使用資料中心。提供商亦應負責遵守提供商註冊所在國家，以及任何境外國家

之所有關於提供商和/或其關係企業使用軟體、文件或其他 SAP 資料之適用政府法規。

14.6 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 without reference to its conflicts of law principles. The parties consent to the jurisdiction of any court sitting in Taipei City, Taiwan. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. Provider 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 Provider knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

準據法；限制期間。 本合約及任何衍生或與本合約有關之索賠及事項應受中華民國法律之管制，並據此詮釋，且不適用衝突法原則。雙方同意任何位於台灣台北市之法院的管轄權。不適用「聯合國國際貨物銷售合同公約」(United Nations Convention on Contracts for the International Sale of Goods)。提供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一 (1) 年內，提出關於本合約及其系爭事項之任何索賠。

14.7 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 Provider at the addresses first set forth in the Master Agreement. Each Party will send two copies to such address, one addressed to the other Party's signatory to the Master Agreement and the other to "General Counsel". Where in this section 14.7 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.

通知。 本合約所需或得提供之所有通知或報告皆應採書面形式，並於送達至 SAP 和提供商位於「主合約」開頭所載地址的各自營業處所時，視為已妥善送達。各方將會傳送兩份通知或報告至此地址，一份寄至另一方的主合約簽字人，另一份寄至「法律總顧問」。無論是本第 14.7 條或本合約其他地方要求書面形式時，傳真、書信往來或其他書面形式均可滿足此要求。

14.8 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。

14.9 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Provider, 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, except where a more stringent form (e.g. notarization) is required under applicable law. 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 Provider 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. This Agreement does not create any partnership, joint venture or principal and agent relationship.

完整協議。 本合約構成 SAP 及提供商間之唯一完整合約，已併入並取代先前所有之聲明、討論及書面文件，且雙方聲明對於信賴此類聲明、討論及書面文件之情事，概不負責。本合約僅由雙方透過書面方式簽署後加以修改，根據適用法律要求更嚴格形式（例如，公證）除外。本合約效力高於其他任何由提供商向 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。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。以電子方式傳送之簽章（傳真，或掃描後透過電子郵件傳送）應視為原稿簽章。本合約不會建立夥伴、合資企業或委託代理關係。

14.10 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.

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。