PROFESSIONAL SERVICES AGREEMENT
專業服務合約

This Professional Services Agreement ("Agreement") is effective as of the Effective Date of the relevant SOW and is entered into by and between SAP and Licensee.
本專業服務合約（以下稱「合約」）由 SAP 與被授權人共同訂立，於相關 SOW 之生效日起生效。

RECITALS
列舉說明

WHEREAS, Licensee licensed from SAP (or an SAP AG Affiliate, or an authorized reseller of the SAP Software), the right to use SAP Software pursuant to a License Agreement. For purposes of this Agreement, Licensee may alternately mean a legal entity that has a right under such License Agreement to use the SAP Software as an Affiliate or Subsidiary.
其中，被授權人依授權合約從 SAP（或 SAP AG 的關係企業或 SAP 軟體的授權轉銷商）獲得使用 SAP 軟體的授權。本合約中，被授權人也可以指一個依此類授權合約有權以關係企業或子公司的身份使用 SAP 軟體的法律實體。

WHEREAS, SAP provides certain Services in Taiwan which Licensee desires to obtain on the basis of certain Statements of Work executed by the parties which reference and incorporate this Agreement (each a "SOW"). The SOWs more fully describe the scope, duration, and fees for the Services.
其中，SAP 依由雙方簽署的各工作說明書 (「SOW」) 在台灣提供被授權人要求之特定服務；每一份「SOW」都引用並包含了一份本合約。SOW 更充分地描述了服務的範圍、持續時間和費用。

NOW, THEREFORE, in consideration of the mutual promises and obligations in this Agreement, the sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:是故，為使本合約之相互承諾及義務於此充分被認可，雙方當事人願受法律意義上之拘束，並同意如下條款，以資共同遵守：

1. Definitions
名詞定義

1.1. "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 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; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the software; (b) the research and development or investigations of SAP; (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies; and (d) any information about or concerning any third party (which information was provided to SAP subject to an applicable confidentiality obligation to such third party). With respect to Licensee, "Confidential Information" means all information which Licensee protects against unrestricted disclosure to others and which (i) if in tangible form, Licensee clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Licensee identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary within thirty (30) calendar days of any such disclosure.
「機密資訊」就 SAP 而言，係指 SAP 防止無限制向他者揭露之所有資訊，包括但不限於：(a) SAP 軟體、紀錄文件、工作成果和其他 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 (Object Code) 和原始程式碼 (Source Code)）、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；(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) 任何第三人相關之所有資訊（提供予 SAP 的資訊必須遵守此類第三人之適用保密義務）。就被授權人而言，「機密資訊」係指被授權人防止無限制向他者揭露之所有資訊，和所有符合以下條件之資訊：(i) 被授權人在揭露時明確認定為機密或專屬資訊之有形資訊；(ii) 被授權人在揭露時認定，以書面方式歸結為機密資訊，並於上述任何揭露開始的三十 (30) 個曆日內提供上述書面歸結結論之（包括以口頭或為視覺方式揭露之）無形資訊。

1.2. "Consultants" means employees and third party contractors which SAP utilizes to provide Services to Licensee.
「顧問」係指 SAP 用於向被授權人提供服務的員工和第三方承包商。

1.3. "Deliverables" mean such Work Products, if applicable, which are specific outputs that SAP provides to Licensee, provided such output must be clearly and expressly labeled as a "Deliverable" in the applicable SOW.
「交付項目」係指 SAP 提供給被授權人的具體產出中在適用 SOW 中清楚、明確地標示為「交付項目」的此類工作成果（如果有的話）。

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

1.5. "License Agreement" means the agreement between SAP (or an SAP AG Affiliate, or an authorized reseller of the SAP software) under which Licensee procured the license rights to use SAP software.
「授權合約」係指與 SAP（或 SAP AG 的關係企業或 SAP 軟體的授權轉銷商）之間的合約；被授權人依此合約採購了使用 SAP 軟體的授權權利。

1.6. "SAP AG" means SAP Aktiengesellschaft, a German corporation, with offices located in Walldorf, Germany.
「SAP 公司」係指 SAP Aktiengesellschaft，一家辦公地址位於德國沃爾多夫 (Walldorf) 的德國公司。

1.7. "SAP AG Affiliate" means a subsidiary of SAP AG.
「SAP AG 關係企業」係指 SAP AG 的一家子公司。

1.8. "SAP Software" means (i) any and all software products licensed to Licensee under the License Agreement as specified in Software Order Forms (or other order forms, schedules or appendices as applicable) thereto; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective support agreement and (iii) any complete or partial copies of any of the foregoing.
「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）所特定，依本授權合約授權予被授權人之任何及所有軟體產品；(ii) 依個別支援服務合約，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。

1.9. "Services" means professional services, provided by SAP to Licensee under a SOW that references this Agreement.
「服務」係指由 SAP 依引用了本合約的 SOW 所提供的專業服務。

1.10. "Taxes" means federal, state or local sales, VAT, GST, foreign withholding, use, property, excise, service or similar taxes now or hereafter levied all of which shall be for Licensee's account.
「稅」係指當前或之後課徵之聯邦、州或當地銷售、VAT、GST、境外預扣、使用、財產、貨物稅、服務或類似稅捐，上述所有稅捐項目應適用於被授權人帳戶。

1.11. "Work Product" means any work product or tangible results produced by or with SAP pursuant to this Agreement or any SOW, including, but not limited to, works created for or in cooperation with Licensee.
「工作成果」係指任何依本合約或任何 SOW 由 SAP 或與 SAP 一起創造的工作成果或有形的結果，包括但不限於用於被授權人或與其合用而完成的工作。

2. Provision of Services.
服務的提供。

2.1. SAP will provide the Services in accordance with the SOW.
SAP 將依 SOW 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 Licensee issue and Licensee fails to provide SAP with reasonable advance notice, the time agreed to be spent by SAP resources on such Service will be billed to Licensee.
如果因為被授權人的問題導致 SAP 無法提供全部或部分的任何服務，且授權人未能向 SAP 提出合理的事先通知，則雙方同意由 SAP 資源為此類服務所花時間應由被授權人付帳。

2.4. Notwithstanding the foregoing, any services and work products provided by SAP to Licensee prior to the execution of this Agreement or a specific SOW or a Change Request are the sole property and Confidential Information of SAP and shall be governed by the terms of this Agreement, in particular Secs. 9 (Confidentiality) and 12 (Limitation of Liability). If no agreement is completed, all services, work products and deliverables must be returned or deleted and must not be used.
儘管有上述規定，在簽署本合約或某特定 SOW 或變更請求之前由 SAP 為被授權人提供的任何服務和工作成果完全屬於 SAP，是 SAP 的機密資訊，應受本合約專門章節的條款的約束。9 (機密性) 和 12 (責任限制)。如果未能達成合約，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。

2.5. Acceptance of Deliverables. If there is a SOW with Deliverables and the SOW expressly states that such Deliverables are subject to acceptance procedures, upon delivery by SAP of a completed Deliverable, Licensee shall have ten (10) working 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 SOW 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 SOW. If the relevant Deliverable passes the agreed acceptance criteria set forth in the SOW, Licensee will accept the Deliverable. Acceptance will not be unreasonably withheld by Licensee. If Licensee notifies SAP that it has rejected the Deliverable due to a material defect, Licensee shall provide written notice, within such ten (10) day period, specifying the basis of the deficiency. SAP shall have a reasonable period to cure such deficiency and redeliver the Deliverable for an additional

Acceptance Period. If Licensee fails to reject any Deliverable within the Acceptance Period, in a written document specifying the deficiency, Licensee shall be deemed to have accepted such Deliverable as of the tenth (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 Licensee's productive use, unless it has been accepted by Licensee (either expressly or by passage of time). Where acceptance criteria is not specified in the SOW for a Deliverable, such Deliverable will be deemed complete and accepted by Licensee the day after SAP performs it or delivers it.
接受交付項目。如果存在一個附帶有交付項目的 SOW，且 SOW 中明確指出此類交付項目需要通過驗收流程，當由 SAP 交付一個完成的交付項目時，被授權人應在十 (10)個工作天 (「驗收期」) 內驗收或拒絕交付項目；驗收根據對應於此交付項目的 SOW 中規定之驗收標準進行，以合理的判斷確定是否存在重大瑕疵。「重大瑕疵」係指交付項目未能實質性符合 SOW 中規定的交付項目驗收標準。如果有關交付項目通過了 SOW 中規定的約定驗收標準，被授權人將接受交付項目。被授權人不得無理截留交付項目不通過驗收。若被授權人通知 SAP 由於重大瑕疵已拒絕交付項目，則被授權人應在上述十 (10) 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此類瑕疵，並在額外的驗收期之內重新交付交付項目。若被授權人未在驗收期內拒絕任何交付項目並以書面文件指出瑕疵，則視為被授權人在十 (10) 天驗收期過後接受該交付項目。被授權人接受交付項目，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。除非交付項目通過被授權人的驗收 (明確表示通過或逾時通過)，否則不得用於被授權人的正式作業。如用於交付項目的 SOW 中未指定驗收標準，此類交付項目將在 SAP 執行或交付該項目之後一天視為已完成並通過被授權人的驗收。

3. Licensee's General Responsibilities.
被授權人的一般責任。

3.1. Licensee is responsible for making the necessary arrangements to allow SAP to perform the Services.
被授權人需負責作出必要的安排讓 SAP 履行服務。

3.2. Licensee shall provide and make available all Licensee personnel that SAP reasonably requires in connection with performance of the Services and as may be further addressed in an applicable SOW.
被授權人應向 SAP 提供 SAP 為履行服務而合理要求，以及適用 SOW 中提及需要的所有可用人員。

3.3. If the Services are performed at Licensee's site, Licensee agrees to provide necessary access to its site including, but not limited to, appropriate access to Licensee premises, computer systems and other facilities.
如果在被授權人所在地提供服務，被授權人同意提供其所在地的存取，包括但不限於被授權人的辦公場所、電腦系統和其他設施的存取。

3.4. Licensee 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.
被授權人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。

4. Change Request Procedures.
變更申請手續。

4.1. During the term of a SOW, either party can request changes to a SOW in accordance with the change request form attached to the applicable SOW ("Change Request"). Both parties agree to act in good faith to address and mutually agree to any requested Change Requests within a reasonable period of time.
在 SOW 的有效期內，任何一方可以依據適用 SOW 所附變更申請表（「變更申請」）的請求對 SOW 進行變更。雙方一致同意誠信行事，在合理的時間期限內對變更請求進行處理。

4.2. SAP will not perform under a Change Request until agreed to and signed by the parties.
SAP 將直到雙方同意並簽字後再執行變更請求。

5. Satisfaction with Personnel.
對人員的滿意度。

If at any time Licensee or SAP is dissatisfied with the material performance of an assigned Consultant or a Licensee project team member, the dissatisfied party shall promptly report such dissatisfaction to the other party in writing and may request a replacement. 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).
如果任何時間被授權人或 SAP 對於一名指定的顧問或被授權人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這種不滿，並可以要求換人。另一方應在合理斟酌的基礎上完成任何該類變化（SAP 在處理時需應視人手情況而定）。

6. Compensation of SAP.
SAP 的 補償。

6.1. All Services will be provided by SAP on a time and materials (plus expenses) basis unless otherwise agreed by the parties in the SOW.
除非雙方於 SOW 中另有約定外，所有 SAP 提供之服務將以時計價。

6.2. Unless otherwise agreed in writing, the Services will be invoiced in accordance with the fees or rates listed in or referenced in the SOW, or Schedules and Exhibits thereto, as applicable.
除非另有書面約定，該服務將按照 SOW（或如有需要，按其中的明細表或附錄）中列出或提及的費用或費率開具發票。

6.3. SAP is entitled to require payment in advance if there are any grounds to doubt that Licensee will render payment punctually including Licensee's filing for bankruptcy or similar proceeding.
SAP 如對被授權人能否準時付款有理由（如被授權人正在申請破產或類似流程）表示懷疑，則有權要求預付款。

6.4. Fees and other charges described in this 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 this Agreement. If SAP is required to pay Taxes, Licensee shall reimburse SAP for such amounts. Licensee hereby agrees to indemnify SAP for any Taxes and related costs, 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。執行本合約之前，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，則被授權人應償還 SAP 上述金額。被授權人據此同意補償 SAP 任何稅捐與相關費用、利息，以及 SAP 支付或應付之罰款。本條不適用於在 SAP 的收入的基礎上所徵的稅。

7. Term and Termination.
期限和終止。

7.1. Term of the Agreement. This Agreement shall be effective as of the Effective Date, specified above, and shall remain in effect unless terminated earlier by either party in accordance with this Section 7.
合約的期限。此合約將於上述指定的生效日開始生效，並且除非任何一方依據本條提早將其終止，否則將持續有效。

7.2. Termination of the Agreement for Convenience. Either party may terminate this Agreement for convenience upon thirty (30) days' prior written notice to the other party. If this Agreement is terminated for convenience prior to the completion of one or more SOWs, such termination will not affect the continuation of any such SOW or the applicability of the provisions of this Agreement to any such SOW for the remaining term of that SOW.
任意終止。任何一方都可以透過提前三十 (30) 天書面通知另一方的方式任意終止本合約。如果本合約在一個或多個 SOW 終止之前被任意終止，此類終止不會影響任何這類 SOW 的延續狀態或本合約對於任何此類 SOW 在該 SOW 結束之前的適用性。

7.3. Term of a SOW. Each SOW shall be effective on the effective date set forth in that SOW, and shall remain in effect until completion of the Services or terminated earlier by either party in accordance with this Section 7.
SOW 的期限。每一個 SOW 應從該 SOW 中規定的生效日起開始生效，且在服務完成之前或任一方依據本條將該 SOW 終止之前將持續有效。

7.4. Termination of a SOW for Convenience. Except as otherwise agreed in a SOW, each SOW (excluding fixed-price SOWs) may be terminated by either party upon thirty (30) days' prior written notice to the other party. If there is more than one SOW referencing this Agreement, a SOW may be terminated for convenience in accordance with the terms of this section without terminating this Agreement or the other SOWs.
SOW 的任意終止。除非在 SOW 中另有約定，每一個 SOW（不包括固定價格 SOW）都可由任一方面透過提前三十 (30) 天前以書面形式通知另一方的方式加以終止。如果有一個以上 SOW 引用了本合約，任一 SOW 可依據本條任意地終止而不會終止此合約或其他 SOW。

7.5. Termination of Agreement and/or a SOW for Cause.
違約之終止。

Either party may terminate this Agreement and/or a SOW for cause:
任何一方當事人於下列各款情形之一發生時，得終止本合約或一個 SOW：

7.5.1. Upon thirty (30) days' prior written notice of the other party's material breach of any provision of the Agreement or SOW, as applicable, including more than thirty (30) days delinquency in Licensee's payment of any money due hereunder or any SOW, unless Licensee has cured such breach during such thirty day period; or
提前三十 (30) 天書面通知對方嚴重違反本合約或 SOW 中的任何條款（如適用），包括被授權人拖欠本合約或任何 SOW 任何費用超過三十 (30) 天，除非被授權人在此 30 天以內解決了違約問題；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. Licensee shall be liable for all payments to SAP, including fees for all Services, including expenses, incurred in the performance of such Services up to the date on which any termination of a SOW or the Agreement takes effect. In the event of termination of a SOW or the Agreement, all Confidential Information of either party provided in connection with this Agreement or SOW, as applicable, in the possession of either party shall be returned to the other party or destroyed with certification of such destruction from an individual of authority to bind the respective party.
終止之效力。被授權人應當承擔 SAP 公司的所有款項，包括所有服務的收費，包括直至 SOW 或合約終止日時提供這些服務所產生的開支。當 SOW 或合約終止時，對於任一方因與此合約或 SOW 相關的原因所提供的機密資訊（如果有的話），佔有該資訊的另一方應將這些資訊返回給對方或將其銷毀，並提供一個個人或機構進行該銷毀的證明，從而約束相關方。

8. Work Product.
工作成果。

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 Licensee), shall be the sole and exclusively property of SAP and SAP AG. Licensee agrees to execute and to ensure its third parties

execute such documentation as reasonably necessary to secure SAP's or SAP AG'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（不論是否為被授權人而開發），應為 SAP 和 SAP AG 的獨佔財產。被授權人同意簽署，並在有合理必要性的情況下確保第三方簽署這些文件，從而確保 SAP 或 SAP AG 擁有此類權利。

8.2. Once all amounts due under a SOW are paid in full and all claims have been satisfied, Licensee is granted a non-exclusive, non-transferable license for the duration of the license granted under the License Agreement, so long as Licensee complies with the terms of the License Agreement and this Agreement) to use any Deliverables and Work Products provided to it by SAP under a relevant SOW under this Agreement in order to run Licensee's and its Affiliates' internal business operations, and otherwise to the same extent as Licensee is granted a license to use the SAP Software, documentation and SAP Confidential Information in the License Agreement.
一旦一份 SOW 下的所有款項已全額支付，且所有主張均已滿足，被授權人被授予非獨佔、不可轉讓的授權用於在依據授權合約擁有授權的這段期限，在被授權人符合授權合約與本合約條款的前提下使用由 SAP 依本合約下相關 SOW 的要求提供的任何交付項目和工作成果，用於被授權人和其關係企業的內部業務運營，或以其他方式依授權合約以獲得授予一份授權的相同程度使用 SAP 軟體、文件和 SAP 機密資訊。

8.3. Licensee must immediately notify SAP in writing if any third party gains unauthorized access to the property or information to or in which SAP retains title or rights and shall take all reasonable steps to stop such unauthorized access and also inform the third party of SAP's rights.
如有任何第三方得以未經授權存取 SAP 保留有權利的財產或資料時，被授權人必須立即書面通知 SAP 並應採取一切合理步驟制止這種未經授權的存取，並將 SAP 的權利告知該第三方。

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 and/or a SOW. 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。除了為履行本合約和/或 SOW 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，每一締約方： (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)不得透露任何他方之機密資訊予其他任何人於其真正需要使用該機密資訊之個人以使它能行使本合約所規範之權利如下。此處使用的「合理步驟」是指接收方採取相關步驟，以保護自身也有類以的專有和機密資訊，該保護不得低於合理的保護標準。任何一方之機密資訊於本合約前所揭露予他方者，該機密資訊皆受本合約之保護。

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.
機密資訊之例外。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。(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; Publicity. Licensee shall not disclose the terms and conditions of this Agreement or the pricing contained therein to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that SAP may use Licensee's name in customer listings and to analyze and leverage details from this Agreement and/or SOWs respectively (e.g., to forecast product demand), or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHIRE participation). SAP will make reasonable efforts to avoid having the reference activities unreasonably interfere with Licensee's business.
機密條款與條件；公開。被授權人不得向任何第三人揭露本合約之條款與條件，或其中所含的定價。任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，惟被授權人同意 SAP 得在各方默示同意之情況下在客戶清單中使用被授權人名稱，以及分別分析和利用本合約和/或各 SOW 的細節（例如，預測產品的需求），或作為 SAP 行銷內容的一部分（包括但不限於參考引用和敘述、新聞測試稿、現場訪問、SAPPHIRE 參與）。SAP 將負起合理責任，避免不合理之參考活動干擾被授權人之業務。

10. Warranty
保固

10.1. Warranty
保固

SAP warrants that its Services shall be performed in a professional workman-like manner and with the skills reasonably required for ninety (30) days following completion of the Service. Unless it is expressly confirmed in writing by SAP, no communication of any kind can be construed as imposing on SAP any other or more onerous duty or liability than is set forth in this Agreement.
SAP 保證在服務完成之後的三十 (30) 天內其服務應以專業工人的方式及合理要求的技能得以履行。除非由 SAP 明確書面確認，任何形式的溝通都不得解釋為對 SAP 委以未於合約所規定的任何其他或更繁重的責任或法律責任。

10.2. Provided Licensee notifies SAP in writing with a specific description of the Services warranty breach within the warranty period and SAP validates the existence of such warranty breach, SAP will, at its option:
如被授權人書面將在服務保固期內違反保證的具體描述通知給 SAP，SAP 將從以下自行選擇：

10.2.1. Re-perform the applicable Services ; or
重新執行適用的服務；或

10.2.2. Refund the fee paid for the applicable Services
退還為適用服務所支付的費用

This is Licensee's sole and exclusive remedy for a warranty breach.
這是因為違反保固給予被授權人的唯一、專屬的補救措施。

10.3. 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。

11. Indemnification
補償

11.1. Subject to Section 12, SAP shall defend Licensee against claims brought against Licensee in Taiwan by any third party alleging that Licensee's use of the Work Product, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of a patent claim(s), copyright or trade secret rights, and SAP will pay damages finally awarded against Licensee (or the amount of any settlement SAP enters into) with respect to such claims. This obligation of SAP shall not apply if the alleged infringement or misappropriation results from use of the Work Product in conjunction with any other software, an apparatus other than a Designated Unit, failure to use an update provided by SAP if such infringement or misappropriation could have been avoided by use of the update, or unlicensed activities. This obligation of SAP also shall not apply if Licensee fails to timely notify SAP in writing of any such claim. SAP is permitted to control fully the defense and any settlement of any such claim as long as such settlement shall not include a financial obligation on Licensee. In the event Licensee declines SAP's proffered defense, or otherwise fails to give full control of the defense to SAP's designated counsel, then Licensee waives SAP's obligations under this Section 11. Licensee shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to SAP. SAP expressly reserves the right to cease such defense of any claim(s) in the event the Work Product is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. SAP may settle any claim on a basis requiring SAP to substitute for the Work Product alternative substantially equivalent non-infringing programs and supporting documentation. Licensee shall not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Work Product that is prejudicial to SAP's rights.
（本條說明亦受以下第 12 條約束）SAP 應替被授權人就任何第三人於台灣內主張因被授權人依本合約條款和條件使用工作成果而構成對其專利權請求、著作權或營業秘密權之直接侵害或盜用提出對被授權人之請求進行抗辯，並補償被授權人最終承擔之損害（或 SAP 支付和解之任何金額）。惟如所主張之侵害係肇因於被授權人將工作成果與任何其他軟體搭配使用、使用於「指定機器」以外之裝置、或因 SAP 提供之更新得避免前述之侵害或盜用情事而被授權人未使用此更新，或係因被授權人之未授權活動，則 SAP 前述責任不適用。若被授權人未及時針對上述任何請求以書面通知 SAP，前述 SAP 責任亦不適用。SAP 獲許主導控制抗辯和任何和解事宜，只要該和解不涉及被授權人之財務負擔。若被授權人拒絕 SAP 提供之抗辯，或無法讓 SAP 指定律師主導控制抗辯事宜，則被授權人得依本合約第 11 節放棄 SAP 之責任。被授權人應全程自費參與上述請求之抗辯事宜，並得委託 SAP 合理認可之律師負責。若對工作成果侵害或盜用第三人權利之主張終止或暫時中止，SAP 明確表示保留中止任何對請求之抗辯事宜之權利。SAP 得以實質同等非侵權程式和支援紀錄文件作為替代工作成果，就請求達成和解。被授權人不得採取任何措施，回應不利 SAP 權利之工作成果侵害或盜用之情事或主張。

11.2. SAP's duty to defend and indemnify for a third party's claim of a violation or infringement of the third party's proprietary right does not apply to: (a) anything Licensee provides which is incorporated into the Work Products; or (b) a Licensee modification of the Work Products which SAP did not provide, either directly or indirectly; or (c) the combination, operation, or use of the Work Products with any product, data, or apparatus that SAP did not provide; or (d) as a result of SAP's compliance with the instructions, directives, or specifications of the Licensee.
SAP 就第三方因其專有權利受到侵犯提出的申訴進行的保護和賠償的責任並不適用於：(a) 被授權人所提供已併入工作成果的

任何東西；或 (b) 被授權人對 SAP 並未直接或間接提供的工作成果的修改；或 (c) 工作成果與任何 SAP 未提供的產品、資料或裝置的結合、操作或使用，或 (d) SAP 公司為與被授權人的指示、指令或規格相符合而得出的任何結果。

11.3. THE PROVISIONS OF THIS SECTION 11 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF SAP AND ITS LICENSORS TO LICENSEE, AND IS LICENSEE'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.
此第 11 條之規定為 SAP 及其授權人對被授權人所負之單一、唯一及全部之責任，亦為被授權人有關侵害第三人智慧財產權之唯一救濟途徑。

12. Limitation of Liabilities
責任的限制

ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION AND SAP'S RIGHT TO COLLECT UNPAID FEES, UNDER NO CIRCUMSTANCES SHALL SAP, ITS CONSULTANTS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID FOR THE APPLICABLE SERVICES UNDER THE RELEVANT SOW, AS APPLICABLE, DIRECTLY CAUSING THE DAMAGES OR BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY 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, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES. The provisions of this Agreement and the fees under a specific SOW allocate the risks between SAP and Licensee.
除非有任何與此相反的規定，除了因未經授權使用、披露機密資訊以及 SAP 為了收取未付費用的權利的情況，在任何情況下 SAP 及其顧問或被授權人依相關 SOW，都不需要負責超出適用服務的費用的直接損失，或對於對方每一人或任何其他人或實體（如適用）負擔任何特殊、附隨、衍生、或間接性之損害、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，任何其他商業損失或者懲罰性或刑罰性損害的任何金額。本合約的條款以及特定 SOW 下的費用規定分配 SAP 與被授權人之間的風險。

13. Assignment
指派

Licensee may not, without SAP's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the 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 AG affiliates or (ii) subcontract all or part of the work to be performed under this Agreement or a relevant SOW to a qualified third party.
被授權方不得在未經 SAP 事先書面同意下，指派、委派、抵押或傳送本合約，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 may (i) assign this Agreement to any of the SAP AG affiliates or (ii) subcontract all or part of the work to be performed under this Agreement or a relevant SOW to a qualified third party. SAP 可能 (i) 將此合約指派給任何 SAP AG 關係企業或 (ii) 依本合約或有關 SOW 將全部或部分工作轉包給一個合格的第三方履行。

14. General Provisions
一般條款

14.1. Severability.
分割。

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.
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，此類無效性或無法執行性不得影響本合約之其他條款，且建構本合約時不得包含此類無效或無法執行之條款。

14.2. No Waiver.
未棄權。

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.
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。

14.3. Notice.
通知。

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 Licensee at the addresses first set forth above. Where in this Section 14.3 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.
本合約所需或提供之所有通知或報告皆應採書面形式，且依適當方式提供至 SAP 和被授權人記於以上之通訊地址的個別執行處。無論是本第 14.3 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。

14.4. Independent Contractor.
獨立承包商。

The relationship of SAP and Licensee established by this Agreement is that of an independent contractor and no employment, agency, trust, partnership or fiduciary relationship is created by this Agreement.
SAP 和被授權人在本合約中建立的的是一個獨立承包商的關係；本合約並不建立雇傭、代理、委託、合夥或信託關係。

14.5. Force Majeure.
不可抗力。

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.
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。

14.6. Governing Law.
準據法。

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 (R.O.C.), without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and Republic of China (R.O.C.) law, rules, and regulations, Republic of China (R.O.C.) law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).
本合約及其相關衍生請求和附屬內容應受中華民國（以下稱「R.O.C.」）法律之規範，無須參考其法律準則衝突。如在國外法律、法規、規章和中華民國 (R.O.C.) 法律、法規、規章之間發生任何衝突，以中華民國 (R.O.C.) 法律、法規、規章為準。「聯合國契約公約有關國際貨物買賣」不適用於本合約。不適用「統一電腦資訊交易法案」(Uniform Computer Information Transactions Act)。被授權人必須自知悉或經合理調查後應能知悉導致索賠之事實起一 (1) 年內，提出關於本合約及其系爭事項之任何索賠。

14.7. Non-Solicitation.
禁止招攬。

Neither party shall knowingly solicit or hire, any of the other party's employees involved in a SOW during the term of the applicable SOW 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.
在一項 SOW 條款有效期間與其終止後之六 (6) 個月期間，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適用 SOW 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。

14.8. Time.
時間。

Time shall not be deemed of the essence.
時間並非絕不可變。

14.9. Entire Agreement; Written Form; Hierarchy.
完整合約；書面形式；層次。

14.9.1. This Agreement, including all applicable SOWs and Schedules thereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties, whether written or oral, relating to the same subject matter.
本合約，包括所有適用 SOW 及其明細表，構成雙方就本合約主要相關事項的完整合約，並取代雙方涉及同一主要相關事項的所有先前的合約，無論其為書面還是口頭。

14.9.2. No modifications, amendments, or supplements to this Agreement shall be effective for any purpose unless in writing and signed by the authorized signatories of the parties. The foregoing provision also applies to any waiver of the written-form requirement. Where in this Section and elsewhere in this Agreement or a SOW written form is required, that requirement can be met by facsimile transmission, exchange of letters, or other written form (excluding emails).
對本合約的任何修改、修訂或補充，無論其目的如何，如未形成書面形式並經雙方授權簽字人簽署，均為無效。上述規定也適用於任何要求免除書面形式的請求。無論是本第 條和本合約或一份 SOW 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（不包括電子郵件）。

14.9.3. In the event of any inconsistencies between the Agreement and a SOW, the SOW shall take precedence over the Agreement. However, the SOW must explicitly reference the provision of the Agreement that it amends and state that it supersedes such provision.

如合約與 SOW 之間存在任何不一致之處，以 SOW 為準。然而，必須在 SOW 中明確地引用該合約中被 SOW 修訂的條款並陳述已經取代了此條款。

14.9.4. No conflicting or other conditions, including Licensee's general terms and conditions, form any part of the Agreement or SOW, even where SAP has performed Services without expressly rejecting such conditions. Any purchase order or other document issued by Licensee is for administrative convenience only. If, for reasons related to Licensee's internal arrangements or otherwise, Licensee's conditions of purchase or other standard terms are included by insertion, reference, enclosure, attachment or otherwise in Licensee's acceptance of SAP's offer (for example, in Licensee's purchase order), Licensee cannot rely on those conditions or terms and they are not incorporated in and do not form any part of the Agreement or SOW, and failure to expressly exclude them does not imply their acceptance.
任何衝突條件或其他條件，包括被授權人的一般條款和條件，都不構成合約或 SOW 的任一部分，即使 SAP 已經在未明確拒絕這種條件的情況下提供了服務也是如此。被授權人所發出的任何訂購單或其他文件僅是為了方便行政管理。如果因為被授權人的內部安排或其他原因，被授權人的購買或其他標準條款透過插入、引用、包含、附件或其他方式被包括進被授權人對於 SAP 報價的接納文件（例如，被授權人的訂購單），被授權人也不能依靠這些條件或條款；它們不能構成合約或 SOW 的任一部分，而未能將它們明確排除在外也不暗示它們被接受。

14.10. Regulatory Matters.
法規事宜。

The SAP Confidential Information inclusive of all Work Product and Deliverables are subject to the export control laws of various countries, including without limit the laws of Republic of China (R.O.C.). Licensee agrees that it will not submit the 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. Licensee shall also be responsible for complying with all applicable governmental regulations of the country where Licensee is registered, and any foreign countries with respect to the use of the Confidential Information by Licensee and/or its subsidiaries
包括所有工作成果和交付項目在內的 SAP 機密資訊受各國出口管制法律（包括但不限於中華民國 (R.O.C.) 的法律）的約束。被授權人同意不會在未經 SAP 事先書面同意之情況下，基於授權考量或其他法規核准考量而向任何政府機關提供 SAP 機密資訊，且不會將機密資訊出口至上述法律禁止之國家、個人或實體。被授權人亦應負責遵守被授權人註冊所在國家，以及任何境外國家之所有關於被授權人和/或其子公司使用機密資訊之適用政府法規。

14.11. Survival.
後續效力

Sections 7 (Term), 8 (Work Product), 9(Confidentiality), 12 (Limitation of Liabilities), 14.6 (Governing Law), and 14.7 (Non-Solicitation) shall survive any termination of this Agreement.
第 7 條（條款）、第 8 條（工作成果）、第 9 條（機密性）、第 12 條（責任限制）、14.6（準據法）、14.7（禁止招攬）在本合約終止後依然有效。

15. System Security and Data Safeguards.
系統安全和資料保障。

When SAP is given access to Licensee's systems and data, SAP shall comply with Licensee's reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. In connection with such access, Licensee 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 Licensee deems appropriate from time to time. Licensee shall not grant SAP access to Licensee systems or personal information (of Licensee or any third party) unless such access is essential for the performance of Services under the Agreement. 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 為被授權人提供系統和資料的存取時，SAP 應當遵守被授權人的合理行政、技術和實體安全保障要求，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，被授權人應負責向 SAP 提供擁有使用者授權和密碼存取其系統並撤銷授權、終止此類存取的顧問，以被授權人在不同時間認為適當為宜。被授權人不得授予 SAP 存取被授權人的系統或個人資訊（屬於被授權人或任何第三方），除非此類存取對於依合約提供服務是必不可少的。雙方同意，如發生 SAP 不符合上述保障要求，但也沒有個人資訊失密事件發生的情況，則可認為沒有違反這一規定。

16. Governing Language. This Agreement shall be executed in both Chinese and English Language. In the event of any inconsistency or contradiction in meaning, interpretation or dispute between the Chinese and English Language, herein the English version of the Agreement shall prevail.
準據語言。本合約應併用中文及英文簽署。若本文之英文及中文版本間產生任何意義、解釋、爭議之不一致或牴觸，則應以合約之英文本為主。