

BUSINESS OBJECTS SOFTWARE END-USER VALUE LICENSE AGREEMENT ("Agreement")

BUSINESS OBJECTS 軟體終端用戶授權合約書

(「合約書」)

This Agreement is made by and between **SAP TAIWAN Co., LTD,** a Taiwanese corporation, with offices at 18F, Suite D, No. 156, Ming Sheng E. Rd Sec. 3, Taipei, Taiwan R.O.C. ("<u>SAP</u>"), and Licensee.

This Agreement contains three parts: this Software License Agreement, the applicable on-line schedules referenced herein, and the signed Order Schedule. All three parts are integral to this Agreement. Licensee agrees that the online schedules may be updated by SAP from time to time without notice to Licensee, but no change will apply to Licensee retroactively.

本合約係由下列訂約人簽訂並生效:

思愛普軟體系統股份有限公司,為位於台北市民生東路三段 156 號 18 樓 D 室之台灣公司 (以下簡稱 SAP),及被授權人。

合約書由三部份構成:合約書、合約書提及的適用的在綫附件、以及簽字的訂單附錄。三部份共同構成合約書。被授權人同意在线附件可能 SAP 在不通知被授權人的情形下不时更新、但对被授權人不會發生過往適用。

NOW, THEREFORE, SAP and Licensee agree as follows:

因此, SAP及被授權人雙方茲同意如下:

1. DEFINITIONS.

- 1. <u>定义</u>
- 1.1 "Affiliate" means a corporation in the Territory of which Licensee owns more than fifty percent of the voting securities. This entity will be considered an Affiliate for only such time as such equity interest is maintained.
- 1.1 關係企業:係指位于區域內且被授權人持有超過 50%有表決權之股份的公司,前述公司只在被授權人持續持有上述股權利益時,才視爲關係企業。
- 1.2 "Business Partner" means an entity that requires access to the Software in connection with the operation of Licensee's and authorized Affiliates' business, such as customers, distributors and suppliers.
- 1.2 業務相關夥伴:係指與被授權人及其被授權之關係企業之業務經營有關,而需利用軟體之實體,例如顧客、經銷商及供應商。
- 1.3 "Designated Unit" means each individual computer in which the Software is installed.
- 1.3 指定機器:係指每一台安裝有軟體之單個電腦
- 1.4 "Documentation" means SAP's documentation which is delivered to Licensee under this Agreement.
- 1.4 <u>文</u>件: 係指依本合約書交付予被授權人之 SAP 之文件。
- 1.5 "Modification" means a change to the Software that changes the delivered source code or an enhancement to the Software that is made using SAP tools or utilizing or incorporating SAP Proprietary Information.
- 1.5 <u>修</u>改:係指涉及改變已交付之原始程式碼或使用 SAP 工具或運用或結合 SAP 專有資訊之軟體內容提昇 所致之軟體變更。
- 1.6 "Named Users" means any combination of users licensed under this Agreement.
- 1.6 指定用戶:係經本合約授權之用戶總稱。
- 1.7 "Proprietary Information" means: (i) with respect to SAP and SAP AG (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 concepts, techniques, ideas, and know-how embodied and expressed in the Software and (iii) information reasonably identifiable as the confidential and proprietary information of SAP or Licensee or their licensors excluding any part of the SAP or Licensee Proprietary Information which: (a) is or becomes publicly available through no act or failure of the other party; or (b) was or is rightfully acquired by the other party from a source other than the disclosing party prior to receipt from the disclosing party; or (c) becomes independently available to the other party as a matter of right.

- 1.7 <u>專有資訊:</u>係指(1)就 SAP 及 SAP AG(授權 SAP 專有資訊予 SAP之授權人)而言,係指軟體與文件、併同軟體被授權或屬於軟體一部分之第三人軟體、評比結果、使用手冊、程式清單、資料結構、流程圖、選輯圖、功能明細; (2)涵蓋或表現於軟體中之觀念、技術、概念與專門知識; 及(3)可合理認定為 SAP 或被授權人,或其授權人之機密、專有資訊,但不包括下列 SAP 或被授權人之專有資訊: (a)非因他方之行為或疏失而成為公眾可得而知者;或(b)自揭露資訊之一方獲取資訊之前,他方已從其他來源正當取得該資訊;或(c)他方自行行使權利取得者。
- 1.8 "Software" means (i) all software specified in agreed upon Order Schedules hereto, developed by or for SAP and/or its affiliated entities, and delivered to Licensee hereunder; (ii) any new releases thereof made generally available pursuant to Maintenance; and (iii) any complete or partial copies of any of the foregoing.
- 1.8 <u>軟體:</u>係指(1)所有記載於本合約之附錄中,為或由 SAP 及/或 SAP AG 所開發,而依本合約規定交付予被授權人之軟體,(2)任何依據維修保固規定而一般可取得之新發行版本,及(3)任何前述軟體之全部或部分之複本。
- 1.9 "Territory" means the Republic of China and such other countries as agreed upon in advance in writing by the parties.
- 1.9 授權區域:係指中華民國及經雙方事先以書面同意之其他國家。
- 1.10 "<u>Use</u>" means to directly or indirectly activate the processing capabilities of the Software, load, execute, access, utilize, store, employ the Software, or display information resulting from such capabilities.
- 1.12 <u>使用</u>: 係指直接或間接驅動軟體之處理功能,載入、執行、存取、使用、儲存、運用軟體或顯示經該 處理功能取得之資訊。
- 2. LICENSE GRANT.
- 2. 授權
- 2.1 License.
- 2.1 授權內容
- (a) SAP grants, a non-exclusive, perpetual (unless terminated in accordance with Section 5 herein) license to Use the Software, Documentation, other SAP Proprietary Information, at specified site(s) within the Territory to run Licensee's internal business operations and to provide internal training and testing for such internal business operations and as further set forth in Appendices hereto. This license does not permit Licensee to (i) sub-license or rent the Software, or Documentation or (ii) use the SAP Proprietary Information to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training). Business Partners may have screen access to the Software solely in conjunction with Licensee's Use and may not Use the Software to run any of their business operations. Licensee acknowledges that the terms in the Product Use Rights Schedule found at www.sap.com/company/licenses apply to Licensee's Use of the Software.
- (a) SAP 授予被授權人非獨家且永久性之授權(除非依第五條之規定予以終止),於授權區域內之特定地點,為進行被授權人之內部作業及該內部作業之內部訓練與測試,以及本合約附錄另行約定之內容,使用SAP 所提供之軟體、文件、及其他 SAP 專有資訊。本授權不包含同意被授權人: (1) 再授權或出租軟體、或文件或(2) 使用 SAP 專有資訊提供服務予第三人(例如委外業務處理、為第三人服務或訓練第三人)。業務相關夥伴惟有在與被授權人協同使用時得有限度地透過螢幕接觸到軟體,且不得將軟體運用於其作業上。被授權人同意在 www.sap.com/company/licenses 發佈的產品使用權利附錄適用於被授權人的軟體使用。
- (b) Licensee agrees to install the Software only on hardware identified by Licensee pursuant to this Agreement that has been previously approved by SAP in writing or otherwise officially made known to the public as appropriate for Use or interoperation with the Software (the "Designated Unit"). Any individuals that Use the Software including employees or agents of Affiliates and Business Partners, must be licensed as Named Users. Use may occur by way of an interface delivered with or as a part of the Software, a Licensee or third-party interface, or another intermediary system.



- (b) 被授權人同意僅將軟體安裝於被授權人依本合約特定且經 SAP 事前書面同意或者經正式公告為適合使 用或適合與軟體合併使用之硬體設備(「指定機器」)。被授權人不得與非被授權人或非被授權之關係 企業出於使用軟體之目的而共用指定機器。任何利用軟體之個人,包括關係企業與業務相關夥伴之雇員 或代理人,必須經授權成為指定用戶。使用軟體可能係經由與軟體一同交付或為軟體之一部分之介面, 或經由被授權人或第三人之介面或其他中介系統。
- 2.2 <u>Affiliate Use</u>. An Affiliate may Use the Software provided that: (i) the Affiliate executes SAP's standard Affiliate Use Agreement; and (ii) a breach of such Affiliate Use Agreement by Affiliate shall be considered a breach by Licensee hereunder
- 2.2 <u>授權關係企業使用軟體</u>: 關係企業可於符合下列條件時使用軟體: (1)該關係企業同意依關係企業使用附錄之格式受本合約條款拘束 (2)該關係企業違反前開關係企業使用附錄之規定應視為被授權人違反本授權合約書。
- 2.3 <u>Business Partner Access</u>. Business Partner may have screen access to the Software provided: (i) Licensee accepts responsibility for the acts or omissions of such Business Partners as if they were Licensee's acts or omissions; (ii) Licensee shall indemnify SAP, its officers, employees, agents and subcontractors, from and against all claims, liabilities, losses, damages, judgments, awards and costs (including reasonable legal fees and expenses) suffered by SAP arising from breach of this Agreement by any such Business Partner as if effected by Licensee..
- 2.3 <u>業務相關夥伴接觸軟體</u>:業務相關夥伴得接觸軟體,條件是:(i)被許可方同意對該業務相關夥伴之作為和不作為承擔責任,如同該等作為或不作為系被授權人本身之作為或不作為;(ii)被授權人應賠償並保障使 SAP,其官員、雇員、代理和承包商免除由任何該業務相關夥伴違反本授權合約書而遭受之任何索賠、責任、損失、賠償、判決、裁決和費用(包括合理的法律費用),如同該損失或損害系由被授權人所造成。

3. Verification.

3.. 查核權

SAP shall be permitted to audit (at least once annually and in accordance with SAP standard procedures) the usage of the SAP Proprietary Information._In the event an audit reveals that Licensee underpaid License and/or Enterprise Support services Fees to SAP, Licensee shall pay such underpaid fees based on SAP's list of prices and conditions in effect at the time of the audit.

SAP 應被允許查核 SAP 專有資訊之使用(至少一年一次並符合 SAP 標準作業程序)。如查核顯示被授權人少付 SAP 授權費用及/或維護費,被授權人應依查核當時有效之費率及條件支付該少付金額。

4. PRICE AND PAYMENT.

- 4. 價格及付款
- 4.1 <u>License Fees</u>. Licensee shall pay to SAP license fees for the Software and maintenance fees on the terms in Appendices hereto. Fees for Services will be paid as set forth in the Professional Services Schedule hereto. Any fees not paid when due shall accrue interest at the rate of 3% above the Prime Rate of CitiBank, Taipei branch applicable per annum until the date of payment, but not to exceed the maximum amount as allowed by law. Enterprise Support Services are provided as set forth in the applicable schedule found at the SAP licenses web site (http://www.sap.com/company/licenses).
- 4.1 授權費用:被授權人應依本合約附錄之規定支付 SAP 軟體授權費用與維修費用。服務費依本合約之「專業服務附錄」支付。被授權人未付已到期款項應依花旗銀行台北分行基本放款利率加碼百分之三之年利率加計直到支付日為止之遲延利息,惟該利息不得超過法律所允許之最高額度。企業級支持服務根據 SAP網站 (http://www.sap.com/company/licenses)發佈的適用的附錄提供。
- 4.2 <u>Taxes.</u> Fees and other charges described in this Agreement do not include federal, state or local sales, foreign withholding, use, property, excise, service, or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Licensee's account. 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.
- 4.2 <u>稅捐</u>:本合約所載之費用及其他收費均不包括國家、州或地方之銷售、國外扣繳、使用、財產、消費、服務或其他現在或將來課徵之類似稅賦(以下簡稱「稅賦」),所有稅賦應由被授權人負擔。如 SAP被要求支付任何稅賦,SAP應向被授權人請求償付該稅賦之金額。被授權人於茲同意補償 SAP任何稅賦及其相關費用、利息及罰金之支付。

5. <u>TERM</u>

5. 期間



- 5.1. Term. This Agreement and the license granted hereunder shall become effective as of the date first set forth above and shall continue in effect thereafter unless terminated upon the earliest to occur of the following: (i) thirty days after Licensee gives SAP written notice of Licensee's desire to terminate this Agreement, for any reason, but only after payment of all License and Enterprise Support services Fees then due and owing; (ii) thirty days after SAP gives Licensee notice of Licensee's material breach of any provision of the Agreement (other than Licensee's breach of its obligations under Sections 6 or 10, which breach shall result in immediate termination), including more than thirty days delinquency in Licensee's payment of any money due hereunder, unless Licensee has cured such breach during such thirty day period; (iii) immediately if Licensee files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors.
- 5.1 <u>期間</u>:本合約及依本合約給予之授權應自雙方簽署本合約之日起生效,其效力並應持續至下列所述事件最早發生以致合約終止時為止:(i)被授權人基於任何理由給予 SAP 終止本合約之書面通知後三十日,但應於付清所有已到期未支付之授權費用及維修費用之後;(ii)被授權人重大違反本合約之任何規定(第6條或第10條之違約除外,該違約發生時將導致本合約立即終止),包括被授權人積欠任何到期款項超過三十日,經 SAP 以書面通知被授權人後三十日,除非被授權人已於該三十日期間內補正該違約;(iii)如被授權人提出破產聲請,無支付能力,或為債權人之利益而為轉讓,本合約立即終止。
- 5.2 <u>End of Term Duties</u>. Upon any termination hereunder, Licensee and its Affiliates and Business Partners shall immediately cease Use of all SAP Proprietary Information. Within thirty (30) days after any termination, Licensee shall deliver to SAP or destroy all copies of the SAP Proprietary Information in every form. Licensee agrees to certify in writing to SAP that it and each of its Affiliates and Business Partners has performed the foregoing. Sections 3, 4, 6, 7.2, 8, 9, 11.4, 11.5 and 11.6 shall survive such termination. In the event of any termination hereunder, Licensee shall not be entitled to any refund of any payments made by Licensee.
- 5.2 <u>終止後之責任</u>:本合約終止時,被授權人及其關係企業應立即停止使用所有 SAP 專有資訊。本合約終止 後三十日內,被授權人應將任何形式之 SAP 專有資訊複本送還 SAP,或全數銷毀之。被授權人同意以 書面向 SAP 確認被授權人及其關係企業均已履行前述義務。本合約終止後,第 3 條、4 條、6 條、7.2 條、8 條、9 條、11.4 條、11.5 條、及 11.6 條之規定應繼續有效。依本合約規定終止時,被授權人無權 取回其已支付之任何款項。

6. PROPRIETARY RIGHTS

- 6. 專有權
- 6.1 Protection of Proprietary Information: Licensee shall not copy, translate, disassemble, or decompile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software. Except for the rights set forth below, Licensee is not permitted to make derivative works of the Software and ownership of any unauthorized derivative works shall vest in SAP. SAP and Licensee agree to take all reasonable steps and the same protective precautions to protect the Proprietary Information from disclosure to third parties as with its own proprietary and confidential information. Neither party shall, without the other party's prior written consent, disclose any of the Proprietary Information of the other party to any person, except to its bona fide individuals whose access is necessary to enable such party to exercise its rights hereunder. Each party agrees that prior to disclosing any Proprietary Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 6 with respect to the Proprietary Information.
- 6.1 <u>專有資訊之保護</u>:被授權人不得複製、翻譯、分解或解譯,亦不得以還原工程(reverse engineering)或其他方法將軟體之目的程式碼(Object Code)轉換或試圖轉換成原始程式碼(Source Code)。除以下所規定之權利外,被授權人不得製造軟體之衍生著作,且未經授權之衍生著作之所有權屬於 SAP。SAP 及被授權人雙方同意採取合理步驟及與保護其自有專有機密資訊相同之預防措施,以避免洩漏專有資訊予第三人。未經他方事先書面同意,任一方不得向任何第三人揭露他方之專有資訊,但為使其行使本合約所定權利而必須接觸專有資訊之該方善意第三人不在此限。雙方同意,在揭露他方之專有資訊予任何第三人時,應取得該第三人之書面承諾,承諾其將受與第 6 條有關專有資訊相同條款之拘束。
- Modifications: Licensee may make Modifications to the Software, and shall be permitted to use Modifications with the Software in accordance with this Agreement. Licensee shall comply with SAP's registration procedure prior to making changes to the source code. All Modifications and all rights associated therewith shall be the exclusive property of SAP and SAP AG. Licensee agrees to execute those documents reasonably necessary to secure SAP's rights in the foregoing. SAP retains the right to independently develop enhancements to the Software and Licensee agrees not to take any action that would limit SAP's sale, assignment, licensing or use of its own Software or Modifications or enhancements thereto.
- 6.2 被授權人得修改軟體,並應被允許依本合約之規定使用軟體與修改之軟體。在修改原始程式碼前,被授權人應遵守 SAP 之註冊程序。被授權人所為之軟體修改以及與該修改相關之權利皆應為 SAP 與 SAP



AG 所專有。被授權人同意簽署為確保 SAP 前述權利合理所需之文件。SAP 保留自行開發軟體增進功能之權利,且被授權人同意不採取任何限制 SAP 銷售、轉讓、授權或使用 SAP 軟體或修改軟體或軟體增進功能之行為。

7. PERFORMANCE WARRANTY.

7. 履約保證

- 7.1 Warranty. SAP warrants that the Software will substantially conform to the functional specifications contained in the Documentation for six months following delivery. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by a Modification, Licensee, third-party products, or third party database. SAP does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Licensee's business requirements.
- 7.1 保证: 保固: SAP 保證於交付軟體後之六(6)個月內,軟體實質上符合文件中規定之功能規格。保固不適用於以下情形: (1)未依文件所載使用軟體;或(2)瑕疵係由修改、被授權人、第三人產品或第三人資料庫所造成。SAP 不保證軟體能不間斷運作,亦不保證軟體完全沒有不會重大影響其功能之小瑕疵或錯誤,亦不保證軟體之應用程式係為符合被授權人之一切業務要求而設計。
- 7.2 <u>Express Disclaimer</u>. 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.
- 7.2 <u>保證除外條款</u>: SAP 與其授權人不為其他明示或默示保證,包括但不限於任何適合銷售或是適合於特定 用途之默示保證,惟依法律規定不得有效免除之默示保證義務不在此限。

8. INDEMNIFICATION.

8. 補償

- 8.1 Indemnification of Licensee. SAP shall indemnify Licensee against all claims, liabilities, and costs, including reasonable attorneys' fees, reasonably incurred in the defense of any claim brought against Licensee in the Territory by third parties alleging that Licensee's Use of the Software and Documentation infringes or misappropriates any patent in the Territory of which SAP is aware; a copyright; or trade secret rights, provided that: such indemnity shall not apply if the alleged infringement results from Use of the Software in conjunction with any other software, an apparatus other than a Designated Unit, or unlicensed activities and so long as Licensee promptly notifies SAP in writing of any such claim and SAP is permitted to control fully the defense and any settlement of such claim as long as such settlement shall not include a financial obligation on Licensee. Licensee shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to SAP. SAP may settle any claim on a basis requiring SAP to substitute for the Software and Documentation alternative substantially equivalent non-infringing programs and supporting documentation. Licensee shall not undertake any action in response to any infringement or alleged infringement of the Software and Documentation.
- 8.1 <u>對被授權人之補償: SAP</u> 應補償被授權人因第三人於授權區域內主張被授權人使用軟體與文件侵害或盜用任何 SAP 所知悉在授權區域內之專利、或著作權、或營業秘密而產生之一切請求、責任及為抗辯而發生之合理費用,包含合理之律師費;惟如所主張之侵害係肇因於被授權人將軟體與任何其他軟體合併使用、使用於指定機器以外之裝置或未經授權之行為,則前述補償規定不予適用,且被授權人應立即以書面通知 SAP,並允許 SAP 主導控制所有抗辯及和解,只要該和解不涉及被授權人之財務負擔。被授權人應全力配合抗辯,並得以自己之費用聘請 SAP 可合理接受之律師出庭。SAP 得由 SAP 以實質上相同但未侵權之程式及文件替換軟體及文件之方式達成和解。被授權人不應就任何軟體或文件之侵權或可能之侵權行為加以回應。
- 8.2 THE PROVISIONS OF THIS SECTION 8 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 OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.
- 8.2 **第8條**之規定為 SAP 及其授權人對被授權人所負之單一、唯一及全部之責任,亦為被授權人有關侵害 第三人智慧財產權之唯一補償。

9. <u>LIMITATION OF LIABILITY</u>.

- 9. 責任限制
- 9.1 <u>Licensee's Remedies</u>. Licensee's sole and exclusive remedies for any damages or loss in any way connected with the Software or Services furnished by SAP and its licensors, whether 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 Services; or (iii) return of an appropriate portion of any payment made by Licensee with respect to the applicable portion of the Services.

- 9.1 <u>被授權人之救濟途徑</u>:任何與 SAP 或其授權人提供之軟體或服務有關之任何損害或損失,不論係因 SAP 之過失或違約,被授權人之唯一救濟途逕為 SAP 所選擇之下列方式之一:(1)使軟體之運作實質符合規格功能;(2)重新提供服務;(3)就服務之適當部分,退還相當於該服務部分之被授權人已付之適當部分款項;(4)以授權軟體之適當部分分五年攤銷為基準,退還相當於該軟體之被授權人已付之適當部分款項。
- 9.2 Not Responsible. SAP will not be responsible under this Agreement if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by Licensee, a Modification, 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 THE SOFTWARE AND/OR THIRD-PARTY SOFTWARE LICENSED HEREUNDER.
- 9.2 <u>無須承擔之責任:</u> SAP 就下列事項不負賠償責任: (1) 軟體之使用未依據文件之規定; 或(2) 瑕疵係由被授權人、修改、第三人軟體或第三人資料庫所造成。軟體的開發或依本合約之授權,並非為針對使用於核電,航空,公共交通,醫療器械或任何其他具有危險性之應用。雙方同意,該軟體和第三方軟體應用於商業或其他行政目的時,如果不影響這些設備之操作或維護時,不視為供作危險性應用。SAP 及其授權人對於將軟體及/或其他經授權使用之第三人軟體,供作具危險性之使用,所導致之損害或主張不負賠償責任。
- 9.3 Limitation of Liability. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF PROPRIETARY INFORMATION, UNDER NO CIRCUMSTANCES SHALL SAP, ITS LICENSORS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE PAID LICENSE FEES OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES.
- 9.3 <u>責任限制:</u>儘管本合約有相反之規定,除因未經授權使用或洩露專有資訊之情形外,SAP、SAP 之授權人或被授權人依本合約對於他方或其他個人或組織之損害賠償責任,就超過已收取授權費用之損害,或特殊、偶發、衍生或間接損害、商譽損失或營業利潤、停工、資料損失、電腦無法運轉或功能錯誤,或其他懲罰性賠償金,概不負責。
- 9.4 <u>Severability of Actions.</u> 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.
- 9.4 <u>執行之可分性</u>: SAP 及被授權人雙方均了解本合約中有關責任限制、保證除外,及損害賠償之排除各條 規定,均為獨立且可分割之條款,並得單獨執行。

10. ASSIGNMENT.

10. 轉讓

Licensee may not, without SAP's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the SAP Proprietary 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 its affiliates.

未經 SAP 事先之書面同意,被授權人皆不得讓與、委託、抵押或以其他形式轉讓本合約,或被授權人於本合約下之權利或義務或 SAP 之專有資訊予任何人,無論係出於自願或基於法律規定,包括出售資產、合併或結合。SAP 得移轉本合約予 SAP AG。

11. ARBITRATION.

Except for the right of either party to apply to a court of competent jurisdiction for an injunction or other equitable relief available under applicable law to preserve the status quo or prevent irreparable harm pending the selection and confirmation of a panel of arbitrators, and for the right of SAP to bring suit on an open account for any payments due SAP hereunder, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Taiwan, in accordance with the Rules of Conciliation and Arbitration of the ICC, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Arbitration shall be conducted in the English



language by a panel of three (3) members, one member selected by SAP, one member selected by Licensee and the third member, who shall be chairman, selected by agreement between the other (2) members. The chairman shall be a solicitor, and the other arbitrators shall have a background or training in computer law, computer science, or marketing of computer industry products. The arbitrators shall have the authority to grant injunctive relief in a form substantially similar to that which would otherwise be granted by a court of law. The parties agree that the arbitration proceedings and the outcome shall be kept strictly confidential and that obligations under this Section 11 shall survive termination or expiration of this Agreement.

11. 仲裁

除於任何一方選任及確定仲裁庭期間,為保持現狀或防止遭受不可彌補之損害而向有管轄權之法院聲請假處分或其他依據所適用之法律以獲得相關救濟措施,以及 SAP 依本合約規定就到期之款項用向法院提起訴訟之權利外,任何基於或與本合約有關之任何爭議、主張或違約請求,應於台灣依據國際商會仲裁規則(the Rules of Conciliation and Arbitration of the ICC)以仲裁方式解決。有管轄權之法院可就仲裁人所作仲裁判斷作出司法判決。仲裁應由三人組成之仲裁庭使用英語進行。SAP 與被授權人雙方應各選任一名仲裁人,第三名成員應為主任仲裁人,由前兩名仲裁人合意選任而得。主任仲裁人應為律師,其他仲裁人應具有電腦法律、電腦科學或電腦產品行銷方面之知識背景或培訓經驗。仲裁人有權授予形式上與普通法院之禁止命令相似之禁制性救濟方法。雙方同意對仲裁程序及結果嚴格保密,且雙方對第 11 條規定之義務,於本合約終止或屆滿後仍然有效。

12. GENERAL PROVISIONS

12 总则

- 12.1 <u>Severability</u>. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.
- 12.1 <u>可分性:</u>本合約中如有一項或多項條款被認為無效或不能執行者,該無效或不能執行不影響本合約其他 條款之效力,且解釋本合約時,應視為從未包含該等無效或不能執行之條款。
- 12.2 <u>No Waiver</u>. If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.
- 12.2 <u>未棄權</u>:任一方對本合約任一條款之違約拋棄請求,該拋棄行為不應被視為已拋棄任何先前或嗣後對同一條款或其他條款之違約請求。
- 12.3 <u>Counterparts</u>. This Agreement may be signed in four counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.
- 12.3 合約份數:本合約簽署一式兩份,每份均為正本,共同構成一份合約。
- 12.4 Export Control Notice. The Software, Documentation and Proprietary Information are being released or transferred to Licensee in the People's Republic of China. The Software, Documentation and Proprietary Information are subject to applicable local and foreign export control laws. Licensee acknowledges its obligation to ensure that its exports of the SAP Proprietary Information from the People's Republic of China are in compliance with the U.S. and German export control laws as well as other applicable export control laws. Licensee shall also be responsible for complying with all applicable governmental regulations of the Territory as well as foreign countries with respect to the use of the Proprietary Information by Licensee and/or its Affiliates within or outside of the People's Republic of China. Licensee agrees that it will not submit the Software to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP.
- 12.4 <u>出口管制通知:</u> 軟體、文件與專有資訊係於台灣向被授權人揭露或交付。軟體、文件、與專有資訊應遵守當地或外國之相關出口管制法律。被授權人應負責確保其自台灣出口 SAP 專有資訊符合美國與德國之出口管制法律以及其他相關出口管制法律。被授權人應負責使自己及其關係企業於台灣內、外使用 SAP專有資訊應遵守授權區域以及外國之相關政府法律或規定。如未事先經 SAP 書面同意,被授權人同意不為授權之考量或為取得法令許可,提供軟體予任何政府單位。
- 12.5 <u>Confidential Terms and Conditions.</u> Licensee shall not disclose the terms and conditions of this Agreement or the pricing contained therein to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that SAP may use Licensee's name in customer listings or as part of SAP's marketing efforts.



- 12.5 <u>秘密性</u>:被授權人不得洩漏本合約條款及價格與任何第三人。未經他方事先書面同意,任何一方不得於公開場合、廣告或類似活動中使用另一方之名稱,惟被授權人茲同意 SAP 得將被授權人名稱列於客戶名單中或將其作為行銷活動之一部分。
- 12.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Republic of China without reference to its conflicts of law principles. Licensee consents to the jurisdiction of any court sitting in the Territory for all claims, suits, or actions arising under this Agreement (including claims for payments due hereunder) or in connection with Licensee's use or possession of the Software and SAP or SAP AG Proprietary Information and for enforcement of any award by an arbitrator(s) under Section 11 above. The provisions of this Subsection 11.6 shall survive the termination or expiration of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement.
- 12.6 <u>管辖法律</u>: <u>準據法</u>: 本合約以中華民國法為準據法,而不適用台灣有關選擇準據法之相關規定。在遵守前述第11條之前提下,被授權人同意區域內任何法院就本合約(包括請求給付款項)所生,或有關被授權人使用或持有軟體及 SAP 或 SAP AG 專有資訊之所有主張、訴訟或行動,及前述第11條仲裁判斷之執行,均有管轄權。本11.6條規定於本合約終止或屆滿後仍繼續有效。聯合國契約公約有關國際貨物買賣(United Nations Convention on Contracts for the International Sale of Goods)規定於本合約不適用。
- 12.7 <u>Notices</u>. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of SAP and Licensee at the addresses first set forth above.
- 12.7 <u>通知</u>: 依照本合約作成或按本合約所為之通知或報告均應以書面為之,且於分別送達 **SAP** 及被授權人首 頁所揭行政辦公處所後,視為已正式送達。
- 12.8 <u>Force Majeure</u>. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.
- 12.8 <u>不可抗力</u>: 因超過履約之一方得合理控制之原因造成對本合約任何條款之遲延履行或未履行者(到期款項之支付義務除外),應不構成違約。前述條款之履行期限應延長至與妨礙履約事由存續時間相等之期間。
- 12.9 <u>Entire Agreement</u>. This Agreement and each Schedule and Appendix hereto constitute the complete and exclusive statement of the agreement between SAP and Licensee, and all previous representations, discussions, and writings are merged in, and superseded by, this Agreement. This Agreement may be modified only by a writing signed by authorized representatives of both parties. Account executives, sales people or consultants are not authorized representatives. This Agreement and each Appendix hereto shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to SAP.
- 12.9 <u>完整合約:</u>本合約及其各附錄為構成 SAP 及被授權人之間完整且唯一之合約,已併入並取代先前所有之聲明、討論及書面文件。本合約內容非經雙方授權之代表簽署書面合約不得修改。執行人員、銷售人員以及諮詢顧問不屬於授權代表。任何被授權人提供予 SAP 之訂單或其他文件中倘出現任何附加條款或與本合約相衝突或不一致之條款時,應以本合約及其各附錄為準。
- 12.10 <u>Governing language</u> This Agreement may be executed in the English language alone or may be executed in both the Chinese and English languages. In the event that both the Chinese and English versions are executed, and there are different interpretations of the same provision or actual contradictions, the meanings of the English version shall prevail.
- 12.10 <u>語言</u>: 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。