

**SAP PartnerEdge**  
**General Terms and Conditions for Distribution**  
**經銷之一般條款與條件**  
**("Distribution GTCS")**  
**(「經銷 GTC」)**

**Definitions and Interpretation**

**定義與釋義**

1. Definitions

名詞定義

**"Add-on"** means any development that adds new and independent functionality to the Software, but does not modify existing SAP functionality, and is developed using APIs.

「**Add-on (附加程式)**」係指新增對 SAP 軟體的全新和獨立功能，但不修改現有 SAP 功能而使用 API 所為之任何開發。

**"API"** means SAP application programming interfaces or other SAP code that allow other software products to communicate with or call on the Software or Cloud Service (for example, SAP Enterprise Services, BAPIs, Idocs, RFCs and ABAP calls or other user exits).

「**API**」係指 SAP 應用程式設計介面或其他 SAP 程式碼，允許其他軟體產品與軟體或雲端服務 (如：SAP Enterprise Service、BAPI、Idoc、RFC 和 ABAP 呼叫或其他使用者出口 (User Exit)) 進行通訊或呼叫。

**"Associated Company"** means any legal entity of which a person or company has direct or indirect Control and only as long as a person or company maintains direct or indirect Control.

「**關係企業**」係指對於任何法律實體具有直接或間接控制權的任何人士或公司，但僅針對上述直接或間接控制的持續期間。

**"Cloud Services"** means SAP's then-current cloud services offered under and described in detail in the applicable SAP Distribution Model.

「**雲端服務**」係指依照相關 SAP 經銷模式所提供並詳細描述之 SAP 現行雲端服務。

**"Confidential Information"** means all information which the Disclosing Party (as defined below) protects against unrestricted disclosure to others, furnished by the Disclosing Party or its Representatives to the party receiving the information ("**Receiving Party**") or its Representatives under or in connection with any part of this Agreement that (i) the Disclosing Party or its Representatives identifies as confidential and/or proprietary at the time of disclosure and/or (ii) should reasonably be understood to be confidential given the nature of the information, the circumstances surrounding its disclosure or both, including but not limited to information that is related to:

「**機密資訊**」係指披露方 (定義如下) 防止向他人不受限制地披露、披露方或其代表依據或因本合約任何部分而向資料接收方 (以下稱「**接收方**」) 或其代表提供的資訊：(i) 披露方或其代表在披露時指出為機密及/或專屬，及/或 (ii) 鑒於資訊的性質及披露週圍的情況，應被合理地視為機密，包括但不限於與以下方面有關的資訊：

a) software, cloud services, maintenance services, other services and in each case other related documentation ("**Disclosing Party's Software**") including, without limitation, the following information regarding Disclosing Party's Software:

軟體、雲端服務、維護服務、其他服務、以及各種情況下之相關文件 (以下稱「**披露方軟體**」)，包括但不限於以下披露方軟體相關資料：

i. computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in Disclosing Party's Software;

電腦軟體 (目標代碼與原始程式碼)、編程技術和編程概念、處理方法、披露方軟體中體現的系統設計；

ii. benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats relating to Disclosing Party's Software, and

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、披露方軟體相關檔案格式；以及

iii. discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to Disclosing Party's Software;

發現、發明、概念、設計、流程圖、文件、產品規格、應用程式介面規範、披露方軟體相關技術和程序；

b) the research and development or investigations of the Disclosing Party;

披露方的研發或調查；

c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, inventions (whether patentable or not), marketing plans, forecasts and strategies. the business plans or operations of the Disclosing Party;

產品系列、內容合作夥伴、產品定價、產品可用性、技術製圖、演算法、工藝、創意、技術、公式、資料、圖式、營業秘密、專有技術、改善、發明 (無論是否可取得專利)、行銷計劃、預測與策略、披露方之業務計劃或營運；

d) the business of any customer or partner of the Disclosing Party;

披露方之任何客戶或合作夥伴的業務；

e) Disclosing Party's properties, employees, finances, operations;

披露方的財產、員工、財務、營運；

f) with respect to SAP, the SAP Products; and

與 SAP 與 SAP 產品相關者；以及

g) any information about or concerning any third party (which information was provided to the Disclosing Party subject to an applicable confidentiality obligation to the third party).

任何第三人相關之所有資訊 (提供予披露方的資訊必須遵守此類第三人之適用保密義務)。

**"Control"** means the power to direct or cause the direction of the affairs of an entity whether by means of direct or indirect ownership of fifty per cent (50%) or more of the voting rights or similar rights of ownership or by means of having the power to direct the management or directors whether conferred by constitutional documents, shareholder agreement or other document regulating the affairs of an entity.

「**控制**」係指有權主導或控制一家實體的事務，無論是藉由直接或間接持有達百分之五十 (50%) 或更高比例具有表決權或類似權利之所有權、或是藉由組織章程文件、股東協議書或管理一家實體事務的其他文件，而可主導其事務或董事的權力，皆屬之。

**"Change of Control"** means that a Party is no longer under Control by the same persons or entities that had Control on the Effective Date set out in the Master Distribution Agreement.

「**控制變更**」係指一方不再受到主要經銷合約所載生效日時控制任一方之個人或實體之控制。

**"Distributor Group"** means any legal entity that has direct or indirect Control over the Distributor and only as long as that legal entity maintains direct or indirect Control ("**Parent Companies**") as well as all Associated Companies of the Parent Companies.

「**經銷集團**」係指任何對於經銷商具有直接或間接控制權之法律實體（以下稱「**母公司**」）以及其所有關係企業，但僅針對上述直接或間接控制的持續期間。

**"Documentation"** means SAP's then-current technical and/or functional documentation which is delivered or made available by SAP or any other member of the SAP Group to Distributor, to an Open Ecosystem Partner or to an End User (either directly or indirectly via Distributor and/or Open Ecosystem Partner) together with the Software, Cloud Services and/or Maintenance Services under any part of this Agreement.

「**紀錄文件**」係指 SAP 或 SAP 集團其他成員向分銷商、向開放生態系統合作夥伴或向最終用戶提供（直接或間接地透過經銷商及/或開放生態系統合作夥伴），隨同本合約規定之軟體、雲端服務及/或維護服務提交或提供之 SAP 當時技術及/或功能紀錄文件。

**"End User"** means a person or entity to which Open Ecosystem Partner distributes, positions or provides access to a SAP Product in compliance with the applicable SAP Distribution Model and which has been or will be granted a license right by SAP to use a SAP Product but excluding any member of the Distributor Group.

「**終端使用者**」係指開放生態系統合作夥伴散佈、放置、或提供符合其相應的 SAP 分銷模式之下的 SAP 產品存取權，且已獲得或將獲得 SAP 授權使用 SAP 產品之個人或實體，但經銷集團成員除外。

**"Export Law"** means all constitutions, laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits restrictive measures, trade sanctions, embargos and other legally binding requirements of all federal, country, international, state and local governmental authorities relating to export, re-export or import.

「**出口法律**」係指所有聯邦、國家、國際、州立與當地政府機關有關出口、轉口或進口之一切章程、法律、條款、法規、條例、命令、判決、規章、規則、許可、限制措施、貿易制裁、禁運與其他具有法律拘束力之規定。

**"Feedback"** means input regarding the SAP Products, services, business or technology plans, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of the SAP Products and/or services, or input as to whether Distributor believes SAP's development direction is consistent with their own business and IT needs.

「**意見反應**」係指關於 SAP 之軟體、產品、服務、業務或技術計劃的意見，包括但不限於對於 SAP 軟體、產品和/或服務可能之建立、修改、修正、改進或增強之評論或建議，或關於經銷商認為 SAP 之發展方向是否與其自身業務和 IT 需要一致之意見。

**"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 (mask work right)、營業秘密或機密權、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地區/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。

**"Maintenance Services"** means SAP's then-current maintenance and/or support services offered under and described in detail in the applicable SAP Distribution Model.

「**維護服務**」係指依照相關 SAP 經銷模式所提供並詳細描述之 SAP 現行維護服務和/或支持。

**"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 or Cloud Service 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 or Cloud Service (other than an Add-on) utilizing or incorporating any SAP Materials.

「**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、增強或變更軟體或雲端服務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 SAP 資料，對附加元件以外之軟體或雲端服務進行之任何其他變更。

**"Open Ecosystem Partner"** means any person or entity to which Distributor is authorized to market, position and distribute certain SAP Products as further defined in the applicable SAP Distribution Model.

「**開放生態系統合作夥伴**」係指經銷商獲授權對其行銷、放置及經銷如相關 SAP 經銷模式所述之若干 SAP 產品之人士或實體。

**"Price List"** means any price list(s) issued by SAP for the applicable SAP Distribution Model setting out the available software, services and the prices or fees as further defined in the in the applicable SAP Distribution Model.

「**價格清單**」係指針對適用之 SAP 經銷模式，列出適用之軟體、服務與適用之 SAP 經銷模式所述之價格或費用，而由 SAP 所發出之任何價格清單。

**"Program Requirements"** means that Distributor has to fulfill certain program requirements as described in detail in the applicable SAP Distribution Model and the Distribution Program Guide.

「**計劃要求**」係指經銷商必須滿足之特定計劃要求，其詳列於相關 SAP 經銷模式與經銷計劃指南。

**"Representatives"** means:

「**代表**」係指：

- a) in case of Distributor (i) employees, consultants and (sub)-contractors of any member of the Distributor Group and (ii) attorneys, accountants or other professional business advisors of any member of the Distributor Group, and  
對於經銷商：(i) 經銷商集團任何成員之員工、顧問、及分包商，以及(ii) 經銷商集團任何成員之律師、會計師、或其他專業業務顧問；及
- b) in case of SAP (i) employees, consultants and (sub)-contractors of any member of the SAP Group and (ii) attorneys, accountants or other professional business advisors of any member of the SAP Group  
對於 SAP：(i) SAP 集團任何成員之員工、顧問、及分包商，以及 (ii) SAP 集團任何成員之律師、會計師、或其他專業業務顧問；

who are in both cases actively and directly involved in the performance of obligations under any part of this Agreement or who otherwise need to know the Confidential Information for the purpose of Party's performance under any part of this Agreement and are put under obligations of confidentiality substantially similar to those set forth in Part 1 - Article 2 (Confidentiality).

且雙方之上述人員積極、直接參與履行本合約項下義務，或在其他方面需要瞭解機密資訊以便該方履行本合約，且負有實質上類似於本合約第一部分 - 第 Article 2 條 (保密) 所載的保密責任。

**"SAP Group"** means SAP Parent and any of its Associated Companies.

「**SAP 集團**」係指 SAP 母公司與其任何關係企業。

**"SAP Group Software"** means (i) any and all software products listed on the Price List as well as any SAP SDK which are provided by SAP or any other member of the SAP Group to Distributor, to an Open Ecosystem Partner or to an End User (either directly or indirectly via Distributor and/or Open Ecosystem Partner) under any part of this Agreement all as developed by or for the SAP Group; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to Maintenance Services or warranty obligation by any member of the SAP Group;

and (iii) any complete or partial copies or replacements of any of the foregoing.

「**SAP 集團軟體**」係指 (i) 價格清單及任何 SAP SDK 所列、由 SAP 集團所自行或委託他人開發之所有軟體產品，並由 SAP 或 SAP 集團之其他成員向分銷商、向開放生態系統合作夥伴或向終端使用者提供（直接地或間接地透過經銷商及/或開放生態系統合作夥伴）(ii) 依據維護服務或 SAP 集團成員之擔保義務，藉由不受限制之出貨所提供之任何新發行版本、更新、或版本；及 (iii) 前述任何一項的完整或部分複本或替代品。

“**SAP Materials**” means any software, programs, tools, systems, data, or other materials made available by SAP or any other member of the SAP Group to Distributor, to an Open Ecosystem Partner or to an End User (either directly or indirectly via Distributor and/or Open Ecosystem Partner) prior to or in the course of the performance under any part of this Agreement including, but not limited to, the other SAP Products.

「**SAP 材料**」係指 SAP 或 SAP 集團任何成員於本合約履約之前或過程中向分銷商、向開放生態系統合作夥伴或向最終用戶提供（直接地或間接地透過經銷商及/或開放生態系統合作夥伴）任何軟體、程式、工具、系統、資料或其他資料，包括但不限於其他 SAP 產品。

“**SAP Parent**” means SAP SE, a European Company (Societas Europaea, SE) established under the laws of Germany and the European Union, registered with the commercial register of the local court of Mannheim, Germany, under HRB 719915, with registered office in Walldorf, Germany, and business address at Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany.

「**SAP 母公司**」係指 SAP SE，一家歐洲公司 (Societas Europaea, SE)，依德國及歐盟法律設立，於 Mannheim 商業登記處之登記編號為 HRB 719915，登記營業處所位於德國 Walldorf，址設 Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany。

“**SAP Partner Code of Conduct**” means SAP Group’s global policy document that provides a set of informative guidelines to enable partners to comply with good business practices which is published on SAP’s partner-dedicated website.

「**SAP 合作夥伴行為準則**」係指 SAP 集團的全球政策文件，提供全套的資訊相關指南，用以確保合作夥伴遵守 SAP 合作夥伴專用網站所載的良好商業規範。

“**SAP Product**” means Software, Documentation, SAP Materials, Cloud Services and Maintenance Services.

「**SAP 產品**」係指軟體、紀錄文件、SAP 材料、雲端服務及維護服務。

“**SAP SDK**” means SAP software development kit that includes tools such as APIs, source code, redistributable files and instructions.

「**SAP SDK**」係指 SAP 軟體開發套件，包括 API、原始程式碼、可轉散發檔案和指示等工具。

“**Software**” means SAP Group Software as well as Third Party Software.

「**軟體**」係指 SAP 集團軟體及第三方軟體。

“**Taxes**” means all taxes (including, without limitation, VAT, GST, sales, use, property, excise, service, withholding or similar taxes), levies, custom duties and similar charges and any related interest and penalties now or hereafter levied.

「**稅捐**」係指當前或之後課徵之所有稅金 (包括但不限於 VAT、GST、銷售稅、使用稅、財產稅、貨物稅、服務稅、預扣稅或類似稅捐)、徵收、關稅及類似收費以及任何相關之利息和罰款。

“**Third Party Software**” means (i) any and all software products listed on the Price List which are provided by SAP or any other member of the SAP Group to Distributor, to an Open Ecosystem Partner or to an End User (either directly or indirectly via Distributor and/or Open Ecosystem Partner) under any part of this Agreement all as developed by or for companies other than the SAP Group; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to Maintenance Services or warranty obligation by any member of the SAP Group; and (iii) any complete or partial copies or replacements of any of the foregoing.

「**第三方軟體**」係指 (i) 價格清單所列、由 SAP 集團以外之公司所自行或委託他人開發之所有軟體產品，並由 SAP 或 SAP 集團之其他成員向分銷商、向開放生態系統合作夥伴或向終端使用者提供 (直接或透過經銷商及/或開放生態系統合作夥伴)；(ii) 依據維護服務或 SAP 集團成員之擔保義務，藉由不受限制之出貨所提供之任何新發行版本、更新、或版本；及 (iii) 前述任何一項的完整或部分複本或替代品。

“**Use**” means to activate the processing capabilities of the Software, Cloud Services and/or Maintenance Services, load, execute, access, employ the Software, Cloud Services and/or Maintenance Services, or display information resulting from such capabilities.

「**使用**」係指啟用軟體、雲端服務及/或維護服務的處理能力，載入、執行、存取、採用該軟體雲端服務及/或維護服務，或展示這些能力產生的資訊。

2. Any terms not defined in these Distribution GTCS will have the meaning ascribed to them in other parts of the Agreement.

本經銷 GTC 未定義之所有詞彙應具備本合約其他部分為其定義的含意。

3. The headings in these Distribution GTCS are for convenience only and are to be ignored in construing these Distribution GTCS.

本經銷 GTC 之條款標題僅出於便利目的而採用，不得影響本經銷 GTC 之解釋。

4. Any reference in these Distribution GTCS to a defined document is a reference to that defined document as amended, varied, novated or supplemented from time to time.

本經銷 GTC 所指之任何特定文件，包含該文件不時修訂、更改、替代、或補充內容。

5. Where the context so admits, the singular includes the plural and vice versa.

倘文義允許，表達單數之字詞包括複數情形，反之亦然。

**PART 1 – General Terms and Conditions**  
**第 1 部分 – 一般條款與條件**

**Article 1 Non-Exclusivity; Freedom of Action**  
**無排他性；行動自主權**

1. The Parties' obligations under any part of this Agreement are non-exclusive. SAP is not precluded from marketing, licensing, positioning, providing and distributing SAP Products through other partners. Nothing in this Agreement prohibits or restricts either Party's right to develop, make, use, market, license, position, provide and distribute software, cloud services, maintenance services, subscription services or other services, documents, materials or other products similar to or competitive with those of the other Party as long as it does not thereby breach its confidentiality obligations or any other part of this Agreement.

雙方於本合約項下義務無排他性。SAP 得透過其他合作夥伴對 SAP 產品進行行銷、授權、放置、提供或散佈。本合約中任何內容都不應解釋為禁止或限制任一方，對於軟體、雲端服務、維護服務、訂閱服務、其他服務/文件/材料、或與另一方相似或競爭之產品或服務，進行開發、製造、使用、行銷、授權、放置、提供或經銷之權利，但以該方為該等行為並未違反其保密義務及本合約為限。

2. Distributor acts in its own name, at its own risk and for its own account for the performance of any activities arising under any part of this Agreement. The Parties are therefore independent contractors and do not act as agents or representatives of each other. Neither Party is entitled to hold itself out as representing the other Party or to make any statement or give any undertaking on behalf of the other Party

經銷商以自身名義，履行本合約中任何內容所生之行為，並自行負擔相關風險與義務。雙方當事人均為獨立契約當事人，非他方之代理人或代表。任一方不得冒充代表另一方、或替另一方作出任何聲明或承諾。

3. This Agreement must not be construed as creating a partnership, joint venture, agency relationship or granting a franchise under any applicable laws.

本合約不得依任何相關法律解釋為形成夥伴關係、合資關係、委託代理關係、或授與特許權。

**Article 2 Confidentiality**  
**保密條款**

1. Confidential Information must not be used or reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of a party disclosing the information ("**Disclosing Party**") remains the property of the Disclosing Party and must contain any and all confidential or proprietary notices or legends which appear on the original.

除以達成本合約目的之必要外，不得以任何形式使用或複製機密資訊。披露資訊方（以下稱「**披露方**」）之任何機密資訊，其一切複製仍應為披露方之財產，且必須保留原始呈現之所有機密或專屬聲明或警語。

2. The Receiving Party must (a) take all Reasonable Steps (as defined below) to keep all Confidential Information strictly confidential; (b) not disclose any Confidential Information to any person other than its Representatives; (c) not use Confidential Information for any purpose other than in connection with the Parties' performance under any part of this Agreement; and (d) not disclose to any person (other than its Representatives) any information about the Agreement, or the terms or conditions or any other facts relating thereto, including, without limitation, the fact that Confidential Information has been made available to the Receiving Party or its Representatives.

接收方必須 (a) 採取一切合理步驟 (如下定義) 嚴格確保所有保密資訊維持保密；(b) 不得向其代表以外之任何人披露任何機密資訊；(c) 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；且 (d) 不得向任何人 (其代表除外) 披露有關合約的任何資訊，或條款或條件或與之相關的任何其他事實，包括但不限於已向接收方或其代表提供機密資訊的事實。

"Reasonable Steps" means those steps the Receiving Party takes to protect its own similar proprietary and confidential information, which must not be less than a reasonable standard of care.

「合理步驟」係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。

3. The Receiving Party will be responsible for any breach of the terms of this Agreement by it or its Representatives.

接收方必須對自身或其代表違反本合約條款的任何行為承擔責任。

4. Confidential Information of either Party disclosed prior to execution of the Agreement is subject to the protections afforded hereunder.

本合約締結前已披露之當事人機密資訊，亦受本合約之保護。

5. The above restrictions on the use and disclosure of the Confidential Information do not apply to any Confidential Information that:

關於使用及披露機密資訊的上述限制不適用於以下任何機密資訊：

a) is independently developed by Receiving Party without reference to or use of 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;

由接收方獨立開發且未參考或使用披露方的機密資訊，或合法從有權提供此類機密資訊的第三方獲得且無任何限制；

b) has become generally available to the public without breach of this Agreement by Receiving Party;

已普遍對公眾開放且非因接收方違反本合約致使；

c) at the time of disclosure was known to the Receiving Party free of restriction; or

接受方於資訊披露時已知且不受限制；

d) the Disclosing Party agrees in writing is free of such restrictions.

披露方以書面方式同意無此類限制；

6. Neither Party will use the name of the other Party in publicity, advertising, or similar activity, without the prior written consent of the other Party. However, any member of the SAP Group may use Distributor's name in customer and partner listings (including, without limitation, showing Distributor's name, address, contact details, partner engagements, areas of expertise and/or offerings on SAP's websites or online marketplaces) or, at times mutually agreeable to the Parties, as part of the SAP Group's marketing efforts (including without limitation reference calls and stories, press testimonials, site visits, SAPPHIRE participation). The SAP Group will make reasonable efforts to avoid having the reference activities unreasonably interfere with Distributor's business. Distributor agrees that SAP may share information on Distributor with any other member of the SAP Group for marketing and other business purposes and that Distributor has secured permission from its employees to allow SAP to share business contact information with any other member of the SAP Group.

未經另一方的事先書面同意，雙方中任何一方皆不得在公共場合、廣告或類似活動中使用另一方的名稱。然而，任何 SAP 集團成員有權在客戶及合作夥伴清單中 (包括但不限於於 SAP 網站或線上行銷平台上顯示經銷商之名稱、地址、聯絡資料、合作關係、專業領域及/或其方案) 使用經銷商之名稱，作為 SAP 集團行銷內容的一部分 (包括但不限於參考引用和敘述、新聞測試稿、現場採訪、SAPPHIRE 參與)。SAP 集團將負起合理責任，避免不合理之上述活動干擾經銷商之業務。經銷商同意 SAP 得將經銷商之資訊，與 SAP 集團之任何其他成員分享，作為行銷與其他商業用途，且經銷商已得其員工之同意，准許 SAP 得將商業上聯絡資訊，分享予 SAP 集團之任何其他成員。

7. In the event that the Receiving Party or any of its Representatives are requested pursuant to, or required by, applicable law, regulation, court order, regulatory agency or other 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 must 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 will 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.

如果根據相關法律、法規、法院命令、主管機關或其他法律程序，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，接收方必須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救濟途徑；(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救濟途徑，或披露方全部或部分豁免遵循本合約的條款，則接收方或其代表將以商業上合理的努力，僅就依法要求披露的機密資訊部分進行披露，以及要求如此披露的所有資訊將給予保密處理。

8. Distributor may provide or SAP may solicit Distributor's Feedback. All Feedback is provided at the sole discretion of Distributor. Unless the Parties have entered into a separate agreement that includes a comparable license from Distributor to SAP regarding Feedback, Distributor grants to each member of the SAP Group a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right to sublicense to any licensee, customer and end user of the SAP Group, under all relevant Distributor intellectual property rights, to use, publish, and disclose such Feedback and to display, perform, copy, make, have made, use, sell and otherwise dispose of the SAP Group's and its sublicensees' products or services embodying Feedback in any manner and via any media any member of the SAP Group chooses, without reference to the source ("**Feedback License**"). Except for the license granted above to use Feedback provided by Distributor at its sole discretion, SAP acquires no title or interest in any pre-existing or independently developed data, information, or intellectual property of Distributor under this Feedback License. Distributor acknowledges that the Feedback is only provided for information purposes but is not intended to be binding upon SAP to any particular course of business, product strategy, service strategy and/or development. If Distributor's Feedback is based on Feedback of an End User, Distributor must ensure that the relevant End User grants to each member of the SAP Group a Feedback License.

經銷商得提供或 SAP 得徵求經銷商之意見反應。所有意見反應皆係由經銷商自行決定而提供。除非雙方另以個別協議由經銷商就意見反應授與 SAP 類似權利，經銷商授與 SAP 集團所有成員非專屬、永久、不可撤銷、全球性、無須支付版稅的授權，以及向 SAP 的被授權人、客戶、及 SAP 集團之終端使用者轉授權的權利，從而根據經銷商的所有相關智慧財產權，在未參考原始資源的情況下，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（以下稱「**意見反應授權**」）。除經銷商按其自己之決定提供意見反應而授與上述使用權外，SAP 並未就經銷商基於本意見反應授權之任何既有或獨立開發之數據、資訊或智慧財產，取得任何所有權或利益。經銷商確認，意見反應僅作資訊用途，不具約束 SAP 任何特定業務過程、產品策略、服務策略和/或發展之作用。若經銷商之意見回應係依據終端使用者之意見回應，則經銷商必須確保相關終端使用者授與 SAP 集團所有成員意見反應授權。

9. The Receiving Party will not be in violation of this Agreement due to the use of any Residuals (defined below) resulting from authorized access to or work with Confidential Information of the Disclosing Party.

對於接收方因授權存取或使用披露方之機密資訊而產生之殘留資訊（定義如下），接收方不得因使用該殘留資訊而被視為違反本合約。

"Residuals" means information in non-tangible form which may be incidentally retained in the unaided memory of Representatives of the Receiving Party who have had access to the Confidential Information, so long as such persons have not studied the information for the purpose of replicating the same from memory; provided, however, that in no event will Residuals include any information that a reasonable person would know was Confidential Information of the Disclosing Party.

「**殘留資訊**」係指偶然且在未藉助任何協助之情況下，保留於接收方對於機密資訊具有存取權之代表，其記憶中之無形資訊，且該等代表並非出於欲複製相同內容之目的而刻意研讀該資訊，惟殘留資訊並不包括合理人士可得而知屬披露方機密資訊之資訊。

Nothing in this Article 2 (Confidentiality) no. 9 will be deemed to grant any right, title or interest in or to (i) the Disclosing Party's Confidential Information (except for Parties' performance under any part of this Agreement) and/or (ii) any Intellectual Property Right of the Disclosing Party. Neither Party will have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of Residuals.

本第 Article 2 條（保密）第 9 款之任何規定，均不得視為授與任何下列相關權利、所有權、或利益：(i) 披露方之機密資訊（雙方為履行本合約之任何部分者除外），及/或 (ii) 披露方之任何智慧財產權。雙方均無義務限制或約束此等人員之工作範圍，或就因使用殘留資訊所產生的任何成果而支付權利金。

### Article 3 Covenants 契約

1. Distributor must inform SAP without undue delay if Distributor becomes aware of any third party: (a) Using or otherwise having unauthorized access to any SAP Product including, without limitation, if Distributor becomes aware of any End User exceeding licensed levels; and/or (b) marketing, licensing, positioning, providing and distributing any SAP Product without authorization. In such case, Distributor must: (a) assist SAP and any other member of the SAP Group in every reasonable way in the pursuance of their respective rights and, upon consultation with the relevant member of the SAP Group, immediately take all steps for the protection of those rights; and (b) temporarily stop marketing, licensing, positioning, providing and distributing SAP Products to any such third party unless and until such ambiguity is resolved to Distributor's and SAP Group's satisfaction.

經銷商若得悉任何第三方進行下列行為時，必須立即通知 SAP：(a) 使用或以未經授權方式存取任何 SAP 產品，包括但不限於經銷商得悉任何終端使用者超越授權程度，及/或 (b) 未經授權而對 SAP 產品進行行銷、授權、放置、提供及散佈。此等狀況下，經銷商必須：(a) 以一切合理方式協助 SAP 及任何其他 SAP 集團成員執行其權利，並在與相關 SAP 集團成員協商後，立即採取一切措施保護其權利；及 (b) 暫時停止向上述任何第三方銷售、授權、放置、提供及散佈 SAP 產品，除非且直到此類不確定性以令經銷商及 SAP 集團滿意的方式解決為止。

2. Distributor must inform SAP immediately (i) of any Change of Control regarding Distributor and (ii) in case of a material part of Distributor's assets or a material part of Distributor's assets utilizing any SAP Material or both being sold or otherwise transferred.

如發生下列情況，經銷商必須立即通知 SAP：(i) 經銷商之任何控制變更，及 (ii) 經銷商資產之重大部分、使用 SAP 材料之經銷商資產之重大部分，或以上兩者均遭出售或以其他方式移轉。

### Article 4 Trademark License 商標授權

1. Upon Distributor meeting the Program Requirements for the first time and subject to Distributor's compliance with all Program Requirements at all times during the term of this Agreement, SAP grants to Distributor a revocable, non-exclusive, non-transferable license to use the SAP partner logo that SAP makes available to the Distributor in connection with this Agreement in the Territory in accordance with the terms of this Article 4 (Trademark License). This license to use the SAP partner logo that SAP makes available to the Distributor in connection with this Agreement includes the right to use the SAP corporate logo as part of the SAP partner logo (both referred to as "**SAP Logos**"). Distributor is not permitted to grant sublicenses to the SAP Logos.

於經銷商首次達到計劃要求，且在經銷商於本合約期間內隨時均遵循一切計劃要求之前提下，SAP 特此授與經銷商可撤銷、非專屬、不可轉讓之權利，得使用當時約定地區內 SAP 依據本第 Article 4 條（商標授權）條款而提供給經銷商與本合約有關之 SAP 夥伴標誌。前開使用 SAP 提供給經銷商、與本合約有關之 SAP 夥伴標誌授權，包括對於包含在 SAP 夥伴標誌內之 SAP 企業標誌使用權（合稱「**SAP 標誌**」）。經銷商不得就 SAP 標誌為任何轉授權。

2. When using SAP Logos, Distributor must adhere to all requirements and obligations of the PartnerEdge Branding Guide, including, without limitation, observe SAP's directions concerning the colors and size of the SAP Logos.

於使用 SAP 標誌時，經銷商必須遵守 PartnerEdge 品牌指南，包括但不限於：SAP 對於 SAP 標誌之顏色與大小之指示。

3. Distributor must not contest the validity of the SAP Logos or support the contesting of their validity and must not derive any right against SAP or any other member of the SAP Group through its use of the SAP Logos. When using SAP Logos, Distributor must indicate that the SAP Logos are registered trademarks of the SAP Group. In this context, Distributor acknowledges that SAP Parent is the sole owner of rights in the SAP Logos. Distributor undertakes to make all those declarations and provide all those documents for the benefit of SAP or any other member of the SAP Group as SAP, SAP Parent or any other member of the SAP Group may require in the prosecution of its rights in the SAP Logos.

經銷商不得就 SAP 標誌的有效性提出異議或支持該異議，且不得透過其對 SAP 標誌之使用權，取得任何不利於 SAP 或 SAP 集團任何其他成員之權利。在使用 SAP 標誌時，經銷商應表明 SAP 標誌係 SAP 集團之註冊商標。在此情況下，經銷商確認，SAP 母公司是 SAP 標誌權利的唯一所有者。為 SAP 或 SAP 集團任何其他成員之利益，如於 SAP、SAP 母公司或 SAP 集團任何其他成員就其針對 SAP 標誌起訴期間可能需要者，經銷商承諾為一切該等聲明及提供一切該等文件。

4. SAP Group has the sole and exclusive right to protect and defend the SAP Logos at its sole discretion, cost and expense. Distributor will reasonably cooperate with SAP and any other member of the SAP Group, at SAP Group's expense, in the defense and protection of the SAP Logos and will promptly notify SAP of the use of any mark infringing any of the SAP Logos of which it has knowledge.

SAP 集團應具有保護和捍衛 SAP 標誌的唯一、專屬權利，且自行承擔相關費用。經銷商應合理配合 SAP 和 SAP 集團任何其他成員，並由 SAP 集團承擔相關費用捍衛和保護 SAP 標誌，且如果得知任何 SAP 標誌的使用侵犯任何商標，應立即通知 SAP。

5. All advertising and sales material used by Distributor for a SAP Product must bear the notices prescribed by SAP or any member of the SAP Group concerning trademarks and other identifying marks. Distributor must refrain from (i) registering SAP's name, any name of any other member of the SAP Group (including, in both cases any domain name or trademarks), SAP Parent's logo and/or any logo of any other member of the SAP Group (including, in both cases, any names, logos, domain names or trademarks which are confusingly similar to any of them) for itself or (ii) permitting third parties to use or otherwise exploit SAP's name, logo or trademark and/or any name, logo or trademark of any other member of the SAP Group (including, in both cases, any name, logo, trademark or domain name which are confusingly similar to any of them). Distributor must, at SAP's choice, either transfer any rights regarding such name, logos, trademarks and domain names to SAP or any other member of the SAP Group as soon as they arise or permit SAP and any other member of the SAP Group to exploit them. Distributor must afford SAP and any other member of the SAP Group such assistance as may be necessary for SAP or any other member of the SAP Group to obtain at SAP Group's expense the appropriate registrations for protection in any chosen country.

經銷商為 SAP 產品所使用之一切廣告及銷售材料，必須標明 SAP 或 SAP 集團任何其他成員就商標及其他識別標誌所發表的聲明。經銷商不得 (i) 為自己註冊 SAP 的名稱、SAP 集團任何其他成員的任何名稱 (於前開兩種情況下，包括任何域名或商標)、SAP 母公司的標誌和/或 SAP 集團任何其他成員的任何標誌 (於前開兩種情況下，包括與之混淆相似的任何名稱、標誌、域名或商標)；或 (ii) 允許第三方使用或以其他方式利用 SAP 的名稱、標誌或商標和/或 SAP 集團任何其他成員的名稱、標誌或商標 (於前開兩種情況下，包括與之混淆相似的任何名稱、標誌、商標或域名)。經銷商必須依 SAP 之選擇，於此等名稱、標誌、商標及域名的權利出現時盡速轉讓予 SAP，或允許 SAP 及 SAP 集團任何其他成員利用該等權利。經銷商必須向 SAP 及 SAP 集團任何其他成員提供此必要協助，供 SAP 或 SAP 集團任何其他成員取得在任何選定之地區/國家取得適當的保護註冊，費用由 SAP 集團負擔。

6. SAP reserves the right to review the use of the SAP Logo in Distributor's marketing, advertising and other promotional materials. Distributor must make no representations regarding the SAP Products except as consistent with SAP's Documentation or as SAP may otherwise approve in writing.

SAP 有權審查經銷商在行銷、廣告及其他宣傳資料所使用的 SAP 標誌。經銷商不得就 SAP 產品發表任何聲明，除非符合 SAP 文件，或經 SAP 另行書面核准。

#### **Article 5 SAP's obligation to deliver SAP 的交付義務**

1. SAP's obligations concerning the delivery of the SAP Products are outlined in the applicable SAP Distribution Model.

SAP 就 SAP 產品的交付義務，如適用的 SAP 經銷模式所列。

2. Notwithstanding SAP's acceptance of an order, SAP will be entitled to suspend the delivery of any or all SAP Products, the applicable license key or both where and for as long as any of the following adverse conditions is present:

縱使 SAP 已接受某項訂購單，倘若有下列任一項不利情況存在，SAP 仍有權暫停交付任何 SAP 產品、相關授權碼 (或二者)：

a) Distributor does not pay on the due date any amount payable to SAP under or in connection with the applicable SAP Distribution Model (including, without limitation, the Program Fee) at the place at and in the currency in which it is expressed to be payable;

經銷商未於到期日、在其應付款之處所、按其付款時所應使用之貨幣，將基於或與適用之 SAP 經銷模式有關、應付予 SAP 之任何款項 (包括但不限於：計劃費用) 支付予 SAP。

b) Distributor is in substantial breach of any part of this Agreement, including without limitation, the reasons set out in Part 1 - Article 9 no. 1b) and no. 2 (Termination for good cause);

經銷商嚴重違反本合約任何部分，包括但不限於第 1 部份 - 第 Article 9 條第 1b) 款及第 2 款 (基於正當事由終止) 之事由；

c) delivery is inappropriate or impossible due to technical problems not in SAP Group's responsibility (for example, unresolved defect notices, product liability risks, software production problems, provided these events are not attributable to the SAP Group);

由於非屬 SAP 集團之責的技術問題，致使交付係屬不適宜或不可能 (例如：未能解決之瑕疵通知、產品責任風險、軟體生產問題；惟以此等事由非可歸責於 SAP 集團為限)；

d) Distributor, Open Ecosystem Partner or End User or both cannot be relied upon to observe SAP's rights or the rights of any other member of the SAP Group in any or all SAP Products;

就 SAP 或 SAP 集團任何其他成員於任何 SAP 產品內之權利，無法信任經銷商、開放生態系統合作夥伴或終端使用者 (或二者) 會確實遵守；

e) export restrictions as set out in Part 1 - Article 13 (Export Regulations);

第 1 部份 - 第 Article 13 條所列之出口限制 (出口法規)；

f) SAP determines that the laws or policies or both of any country are or become insufficient to protect any Intellectual Property Rights in any SAP Product; or

SAP 認為，任何國家/地區的法律或政策目前或將變得不足以保護 SAP 產品之任何智慧財產權；或

g) any other reason for suspension similar to those listed in subsection a) to f) above.

與前述第 a) 款至第 f) 款所列類似之任何其他暫停事由。

3. SAP must inform Distributor without undue delay if SAP suspends the delivery of any or all SAP Products or applicable license key or both due to the reasons set out in this Article 5 (SAP's obligation to deliver) no. 2.

若由於本第 Article 5 條 (SAP 的交付義務) 第 2 款之規定而使 SAP 暫停任何 SAP 產品、適用之授權碼或該二者之交付，SAP 必須立即知會經銷商。

4. SAP's right to suspend the delivery does not mean that any part of this Agreement is terminated. If in case of this Article 5 (SAP's obligation to deliver) no. 1c) and f) suspension of delivery continues for a period of more than three consecutive months, either Party may terminate any order concerning the affected SAP Product with one month's prior written notice to the other Party.

SAP 暫停交付之權利，並非意味著本合約之任何部分即告終止。若本第 Article 5 條 (SAP 的交付義務) 第 1c) 款及第 f) 款所述之暫停交付持續達到超過連續三個月，任一方得向他方以一個月之前書面通知，終止受影響之 SAP 產品之任何訂購單。

## **Article 6 Prices and Fees** **價格與費用**

1. **Price/Fee.** The prices or fees for the Software and Cloud Services depend on the applicable SAP Distribution Model and are set forth therein.  
價格/費用。軟體及雲端服務之價格或費用，須視適用之 SAP 經銷模式規定而定。
2. **Maintenance Fee.** The fee for Maintenance Services depends on the applicable SAP Distribution Model and is, if applicable, set forth therein.  
維護費用。維護服務之費用，須視適用之 SAP 經銷模式而定，且如有適用，係規定在 SAP 經銷模式內。
3. **Program Fee.** If applicable, Distributor agrees to pay to SAP the annual program fee(s) as set out in the Distributor Program Guide and the RSPI ("Program Fee"). With regard to the first invoice, the Program Fee will be calculated by SAP from the Effective Date of the relevant SAP Distribution Schedule to 31 December of the respective calendar year. Subsequent Program Fees will be calculated from 1st January to 31 December and must be paid by the Distributor annually in advance.

計劃費用。如有適用，經銷商同意按經銷計劃指南及 RSPI 所述，支付年度計劃費用予 SAP (「計劃費用」)。針對第一筆發票，SAP 將自相關 SAP 經銷明細表之生效日起，至其相關日曆年度之十二月三十一日止，核計計劃費用。後續之計劃費用，將自一月一日起計至十二月三十一日止，並應由經銷商逐年預付。

4. **Net Prices.** The prices of the Price List are net prices. Fees and other charges described in any part of this Agreement do not include federal, state or local sales, VAT, GST, foreign withholding, use, property, excise, service, or similar taxes now or hereafter levied, all of which are for Distributor's account.

淨價。價格清單所列之價格，乃屬淨價。本合約任何部分所述之費用和其他收費不包括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經銷商帳戶。

## **Article 7 Invoices and Payment** **發票和付款**

1. SAP is not obliged to issue an individual invoice for each individual order by Distributor but is entitled to issue collective invoices.  
SAP 並無針對經銷商之個別訂購單開立個別發票之義務，反之，SAP 有權開立整合式發票。
2. Distributor has to pay to SAP any fee as well as any other amount due to SAP under any part of this Agreement within the Payment Period as set out in Part 2 – Article 6 (Payment Period). All amounts due to SAP under any part of this Agreement have to be paid in the currency indicated in Part 2 - Article 7 (Currency).  
經銷商必須於第 2 部份 - 第 Article 6 條 (付款期限) 所述之付款期限內，將任何費用以及基於本合約任何部份應付予 SAP 之任何其他費用，支付予 SAP。基於本合約任何部份應付予 SAP 之一切款項，應按第 2 部份 - 第 Article 7 條 (貨幣) 所示之貨幣支付。
3. Payment will be considered to have been made when the payment is received by SAP in the bank account designated by SAP for such payments.  
SAP 指定用於此付款的銀行帳戶收到付款時，視為已完成付款。
4. Distributor may offset claims only if they are uncontested or finally and bindingly awarded by a court of law.  
只有在索賠毫無爭議或由最終且具有約束力的法院裁決時，經銷商方得抵銷索賠。
5. If Distributor fails to pay any fee or any other amount payable by it on its due date, interest will accrue at the Default Interest Rate set out in Part 2 - Article 8 (Default Interest Rate). However, the assertion of further damages is not excluded.  
若經銷商未於到期日支付任何費用或任何其他應付款項，都會產生利息，該利息係按第 2 部份 - 第 Article 8 條 (預設利率) 所訂之預設利率計算。但是，不排除進一步損害賠償的認定。
6. If Distributor fails to pay any fee or other amount payable by it on its due date, SAP may at its sole discretion:  
若經銷商未能於到期日支付任何費用或其應付之其他款項，SAP 得單方決定：
  - a) suspend Distributor's rights to market, provide, position and distribute any or all SAP Products until such time as any outstanding amount has been received by SAP;  
暫停經銷商行銷、提供、放置和經銷任何 SAP 產品之權利，直到 SAP 收清任何未結款項為止；
  - b) suspend Distributor's right to use the SAP Logo;  
暫停經銷商使用 SAP 標誌之權利；
  - c) require full payment from Distributor for any amount due by Distributor to SAP; and  
要求經銷商付清其所積欠 SAP 之任何款項；及
  - d) avail itself of any other rights or remedies existing under any part of this Agreement, in law or in equity.  
根據本合約、法律或衡平法上任何部份現有的任何其他權利或救濟途徑，為自身謀求利益。
7. Distributor acknowledges and agrees that all fees to be collected by it are for its own account. For avoidance of doubt, any fees due to SAP under any part of this Agreement are not contingent upon payments from third parties (including, without limitation, End Users).  
經銷商確認並同意其所收取之一切費用，乃是為了其自身而收取。為免疑義，基於本合約任何部份應付予 SAP 之任何費用，並不取決於第三方 (包括但不限於：終端使用者) 有否付款。
8. SAP may require Distributor to settle any invoice in full prior to SAP's delivery under the respective order if:  
如有下列任一情事，SAP 得要求經銷商於 SAP 就個別訂購單為交付前，全額結清任何發票：
  - a) Distributor is at that time in arrears with a substantial amount payable to SAP;  
經銷商當時拖欠應付予 SAP 之龐大數額；
  - b) in the preceding twelve months, Distributor failed - several times or for a substantial amount - to settle invoices in full when due and owing;  
於過去十二個月內，經銷商未能 (多次或達到一筆龐大之數額) 全額結清已到期且應付之發票；
  - c) there is no prior business relationship with Distributor;  
與經銷商未曾有過商業關係；

d) Delivery is to be made outside of Territory; or  
交付將於約定地區外進行；或

e) Distributor's registered office is outside of the Territory.  
經銷商之註冊地址位於約定地區外。

9. SAP may require all distributors in a country (including Distributor) to settle any invoice in full prior to SAP's delivery of an SAP Product if this is - in SAP's reasonable discretion - needed to safeguard SAP's justified financial interests.

若按 SAP 之合理判斷，為保護 SAP 之正當財務利益而有必要，SAP 得要求位於某一國家/地區之所有經銷商 (包括本合約之經銷商) 於 SAP 交付 SAP 產品前，全額結清任何發票。

#### **Article 8 Audit 稽核**

1. In the event SAP has justified reasons to believe that a breach of any part of this Agreement has occurred or will most likely occur, SAP has the right to perform an audit of such activities and records of (i) Distributor and/or (ii) any member of the Distributor Group involved in the performance of obligations under any part of this Agreement.

若 SAP 有正當理由足認已發生或極可能發生違反本合約任何部份之情事，SAP 有權就屬於下列人士之活動與紀錄，執行稽核：(i) 經銷商及/或 (ii) 經銷商集團內涉及履行本合約任何部份義務之任何成員。

2. The audit will be conducted by an independent expert appointed by SAP. By choosing the expert, SAP will take into account Distributor's legitimate business interests. SAP will bear the costs of the audit unless the expert establishes a breach by the Distributor in which case Distributor has to bear the costs.

該稽核將由 SAP 所指派的獨立專業人士來進行。於選定該專業人士時，SAP 會將經銷商之合法業務利益納入考量。除該專業人士認定經銷商構成違約，應由經銷商負擔其費用外，SAP 應自行負擔稽核之費用。

3. SAP will provide one week's advance notice of an audit unless SAP has reasons to believe that Distributor will use the time to eliminate proof for a breach.

除 SAP 有理由足認經銷商將利用該期間銷毀違約之證據外，SAP 將於稽核一周前，預為通知。

4. The audit will take place during normal business hours and SAP will instruct its auditor to conduct the audit in such a manner that it will not unreasonably interfere with Distributor's business operations.

該稽核將於正常營業時間內進行，且 SAP 將指示其稽核員採用不會不合理干擾經銷商業務營運之方式進行。

5. Distributor must make full disclosure to the expert, and ensure that (i) any member of the Distributor Group involved in the performance of obligations under any part of this Agreement and any of (ii) Distributor's Representatives cooperate fully and provide information, grant viewing access to all necessary and useful documents and permit the making of copies of them.

經銷商必須對該專業人士為完整披露，並確保：(i) 經銷商集團內涉及履行本合約任何部分義務之任何成員，及 (ii) 經銷商之任何代表，與其充分合作並提供資訊，授與其對一切必要及有用文件之審閱權限，並允其就該等文件進行備份。

6. The expert will be bound in writing to confidentiality for the benefit of SAP and the Distributor. The expert will undertake not to disclose information to SAP, except for the purpose of providing a report of the audit and, in case of a breach of any part of this Agreement, any information establishing such a breach.

該專業人士將為 SAP 及經銷商之利益，受書面之保密義務拘束。該專業人士將承諾不披露資訊予 SAP，但為提供稽核報告之目的、或有違反本合約任何部分之情事時，提供構成該違約之任何資訊者，不在此限。

7. Distributor's Confidential Information disclosed during the audit will not be used by SAP for any purpose other than to verify and proof if a breach of any part of this Agreement has occurred.

於稽核過程中所披露之經銷商機密資訊，不會被 SAP 用於查驗及證明是否有發生違反本合約任何部份之情事以外的用途。

8. Additional audit requirements are, if applicable, set out in the applicable SAP Distribution Model.

額外之稽核要求 (如有適用) 係列載於相關的 SAP 經銷模式內。

#### **Article 9 Termination for good cause 基於正當事由終止**

1. The affected SAP Distribution Model may be terminated by either Party immediately upon written notice to the other Party in the following cases: 於下列情況下，受影響之 SAP 經銷模式得由任一方向他方以書面通知立即終止：

a) Non-Payment. Distributor does not pay on the due date any amount payable to SAP under or in connection with the applicable SAP Distribution Model (including, without limitation, the Program Fee) at the place at and in the currency in which it is expressed to be payable unless payment is made within thirty days of the due date.

未付款。經銷商未於到期日、在其應付款之處所、按其付款時所應使用之貨幣，將基於或與適用之 SAP 經銷模式有關、應付予 SAP 之任何款項 (包括但不限於：計劃費用)，支付予 SAP，但款項已於到期日後三十日內交付者，除外。

b) Breach of other provisions. A Party does not comply with any provision of any part of this Agreement other than those referred to in this Article 9 no. 1a) (Non-Payment), 2a) (Repeated Non-Payment) and 2b) (Breach of material provisions) unless the non-compliance is capable of remedy and is remedied within thirty days of the other Party giving notice.

違反其他規定。任一方未遵守本合約非屬本第 Article 9 條第 1a) 款 (未付款)、第 2a) 款 (重複發生之未付款) 及第 2b) 款 (違反重大規定) 之任何部份規定者，惟該未遵守如屬可予補正，並已於他方通知後三十日內補正者，除外。

2. Any or all SAP Distribution Models may be terminated by either Party for good cause immediately upon written notice to the other Party. Such good cause exists in particular, without limitation, in each of the events or circumstances set out below:

任何 SAP 經銷模式得由任一方基於正當事由向他方以書面通知立即終止。該正當事由 (包括但不限於) 於下述情況下，即屬成立：

a) Repeated Non-Payment. Distributor does repeatedly not pay on the due date any amount payable to SAP at the place and in the currency in which it is expressed to be payable.

一再發生之未付款。經銷商一再未能於到期日、在其應付款之處所、按其付款時所應使用之貨幣，支付其應付予 SAP 之任何款項。

b) Breach of material provisions. A Party does not comply with material provisions of any part of this Agreement. Material provisions are in particular the obligations under Part 1 - Article 2 (Confidentiality), Part 1 - Article 13 (Export Regulations), Part 1 - Article 15 (Compliance) and Part 2 - Article 4 (Reservation of title, rights and interest).

違反重大規定。任一方未能遵守本合約任何部份之重大規定。重大規定特別係指基於第 1 部份 - 第 Article 2 條 (保密)、第 1 部份 - 第 Article 13 條 (出口法規)、第 1 部份 - 第 Article 15 條 (合規義務) 及第 2 部份 - 第 Article 4 條 (所有權、權利與權益之保留) 所訂之義務。

c) Insolvency. The other Party (i) is unable, is deemed unable or admits its inability to pay its debts as they fall due, (ii) suspends or threatens to suspend making payments on any of its debt or, by reason of actual or anticipated financial difficulties, (iii) commences negotiations with one or



more of its creditors with a view to rescheduling any of its indebtedness or (iv) is over-indebted (value of assets is less than its liabilities taking into account contingent and prospective liabilities) ("Insolvent").

破產。另一方：(i) 未能、或被視作未能、或承認其未能償還已到期之債務者；(ii) 由於實際或預期之財務困難，而就其任何債務暫停付款或有暫停付款之虞者；(iii) 開始與一個或多個債權人協商，以重新排定其任何債務的付款日者；或 (iv) 過度負債者 (資產價值低於其負債，而該負債須將其或有及潛在負債計入) (下稱「破產」)。

- d) Insolvency Proceedings. An application has been filed or any other step is taken for the initiation of insolvency, bankruptcy, composition or similar proceedings against the other Party, any such application has been rejected for lack of assets, any enforcement against the other Party could not be carried out or any execution measures have been initiated against the other Party which have not been set aside within one month (e.g. setting aside of a seizure or an attachment) ("Insolvency Proceedings").

破產程序。針對另一方提出展開無力償債、破產或和解協議或類似程序之聲請或已採取任何其他行動，而任何該等聲請因已無資產而遭到駁回，無法對另一方進行任何強制執行，或是針對另一方展開任何執行措施且未於一個月內加以排除 (例如：除去扣押或查封) (「破產程序」)。

- e) Cessation of business. The other Party suspends or ceases to carry on all or a material part of its business.

停止營運。另一方暫停或停止其營運之全部或重要部份。

- f) Change of ownership. In the event of a Change of Control if the business interests of the other Party are materially affected (for example, if a direct competitor of a Party becomes a direct or indirect majority shareholder).

所有權變更。於發生控制變更時，另一方之營業利益受到重大影響 (例如：任一方之直接競爭對手成為其直接或間接之主要股東)。

## Article 10 Effect of Termination

### 終止之效力

1. Model-specific effects of termination are set out in each SAP Distribution Model.

終止之效力如適用於特定模式，係規定於各該 SAP 經銷模式內。

2. If a SAP Distribution Model is terminated, rescinded or ended in any other way:

若某一 SAP 經銷模式被終止、解除或以他法停止：

- a) Distributor's right to:

經銷商之下列權利：

- i. hold itself out as distributor of SAP under or in connection with such SAP Distribution Model;

基於或關於該 SAP 經銷模式，聲稱其自身為 SAP 經銷商之權利；

- ii. use the SAP trademarks, including, without limitation, the SAP Logos which he was authorized to use as set out in Article 4 (Trademark License) under or in connection with such SAP Distribution Model; and

基於或關於該 SAP 經銷模式使用 SAP 商標之權利，包括但不限於：其按第 Article 4 條 (商標授權) 之規定獲授权使用 SAP 標誌之權利；及

- iii. use the Documentation and other marketing programs and other materials and all copies, reproductions, summaries, or extracts thereof or based thereon of any member of the SAP Group distributed under or in connection with such SAP Distribution Model,

使用 SAP 集團任何成員基於或關於該 SAP 經銷模式所發送之文件及其他行銷專案和其他資料，與該等文件、專案及資料之所有影本、複本、摘要或摘錄之權利；

immediately ends.

應立即停止。

- b) Distributor must within thirty days irretrievably destroy or upon SAP's request deliver to SAP all copies of the:

經銷商應於三十日內將下列各項以不可回復之方式銷毀，或依 SAP 之要求將所有複本送交 SAP：

- i. Software products distributed under the relevant SAP Distribution Model;

依相關 SAP 經銷模式散佈之軟體產品；

- ii. SAP Logos and other SAP trademarks which Distributor was authorized to use as set out in Article 4 (Trademark License) under or in connection with such SAP Distribution Model; and

經銷商基於或關於該 SAP 經銷模式，而按第 Article 4 條 (商標授權) 之規定，獲授权使用之 SAP 標誌及其他 SAP 商標；及

- iii. all Documentation and other marketing programs and materials and all copies, reproductions, summaries, or extracts thereof or based thereon of any member of the SAP Group distributed under or in connection with such SAP Distribution Model,

SAP 集團任何成員基於或關於該 SAP 經銷模式所發送之所有文件及其他行銷專案和資料，與該等文件、專案及資料之所有影本、複本、摘要或摘錄；

that are in the possession of Distributor, any member of the Distributor Group and/or any of Distributor Group's Representatives, except to the extent Distributor is legally required to keep a copy for a longer period in which case such return or destruction shall occur at the end of such period;

前述各項，以其現為經銷商、經銷商集團之任何成員及/或經銷商集團之任何代表所持有者為限，惟經銷商依法須在更長之期限內保存一份複本者，除外 (而在該情形下，應於該期限屆滿時，進行銷毀)；

- c) a duly authorized representative of the Distributor must certify in writing to SAP within thirty days that Distributor has fulfilled its obligations under this Article 10 (Effect of Termination) no. 2b).

經銷商正式授權代表須於三十日內以書面向 SAP 證明，經銷商已履行其在本第 Article 10 條 (終止之效力) 第 2b) 款所訂之義務。

3. If a SAP Distribution Model is terminated, rescinded or ended in any other way:

若某一 SAP 經銷模式被終止、解除或以他法停止：

- a) the Receiving Party's right to use the Confidential Information immediately ends;

接受方使用機密資訊之權利，應立即停止；

- b) the Receiving Party must within thirty days irretrievably destroy or upon Disclosing Party's request deliver to Disclosing Party all Confidential Information of the Disclosing Party and all copies, reproductions, summaries, or extracts thereof or based thereon in the Receiving Party's possession, custody or control or in the possession, custody or control of any Representative of the Receiving Party, except to the extent Receiving Party is legally required to keep a copy for a longer period in which case such return or destruction shall occur at the end of such period. However,

(i) if a legal proceeding has been instituted to seek disclosure of the Confidential Information, such material shall not be destroyed until the proceeding is settled or a final judgment with respect thereto has been rendered and (ii) the Receiving Party shall not, in connection with the foregoing obligations, be required to identify or delete Confidential Information held in archive or back-up systems in accordance with general systems archiving or backup policies; and

接受方應於三十日內，將其或其代表所持有、保管或控制之所有披露方機密資訊及其影本、複本、摘要或摘錄，以不可回復之方式銷毀，或依披

露方之要求送交披露方；惟接受方依法須在更長之期限內保存一份複本者，除外（而在該情形下，應於該期限屆滿時，辦理歸還或銷毀）。然而，(i) 若已提起法律程序尋求機密資訊之披露，則在該程序和解或作出最終裁決前，此等資料不得銷毀；及 (ii) 就上述義務而言，接受方無須根據一般系統封存或備份政策識別或刪除保留在存檔或備份系統中的機密資訊；及

- c) a duly authorized representative of the Receiving Party must certify in writing to the Disclosing Party within thirty days of Disclosing Party's written request that the Receiving Party has fulfilled its obligations under this Article 10 (Effect of Termination) no. 3b), 接受方正式授權代表須於三十日內以書面向披露方證明，接受方已履行其在本第 Article 10 條 (終止之效力) 第 3b) 款所訂之義務，

unless the Receiving Party is permitted under any other SAP Distribution Model that has not been terminated, rescinded or ended in any other way to use the Confidential Information.

但接受方基於任何其他尚未終止、解除或以他法停止之 SAP 經銷模式而獲准使用機密資訊者，除外。

4.

5. Termination does not relieve Distributor from its obligation to pay any fees that remain unpaid.

終止本合約並不免除經銷商支付任何尚未付清費用之責任。

#### **Article 11 Tax 稅捐**

All Taxes will be borne by the Distributor. If any Tax has to be withheld or deducted from any payment under or in connection with any part of this Agreement, Distributor must increase the payment to SAP to ensure that after the withholding or deduction SAP receives an amount equal to the payment SAP would have received if the Tax had not to be withheld or deducted.

經銷商將負擔所有稅捐。若針對基於或有關本合約任何部份之任何款項，須預扣或扣除任何稅捐，經銷商應增加支付此金額予 SAP，從而確保經預扣或扣除之後，SAP 仍能收到與該稅捐未被預扣或扣除時等額之款項。

Distributor shall communicate to SAP its VAT or GST identification number(s) attributed by (i) the country where Distributor has established its business, and/or (ii) any other country where Distributor has established a fixed establishment, to which any SAP Product under this Agreement is provided. SAP shall consider the SAP Products under this Agreement to be for Distributor's business use and provided to the location(s) of the Distributor in accordance with the provided VAT or GST identification number(s).

經銷商應向 SAP 告知其歸屬於下列國家/地區的 VAT 或 GST 識別號：(i) 經銷商設立企業所在的國家/地區；及/或 (ii) 經銷商建立固定機構 (且本合約下之任何 SAP 產品乃是提供予該機構) 所在的其他任何國家/地區。SAP 應將本合約下之 SAP 產品用於經銷商的業務目的，並依所提供之 VAT 或 GST 識別號，將此產品提供給經銷商的營業據點。

#### **Article 12 Changes to Terms 條款變更**

1. Notwithstanding anything in this Agreement, SAP reserves the right to change the Price List without prior written notice. Any change to the Price List will become effective on the date indicated in the Price List or if no such date is indicated, upon the earliest of (i) it being published on SAP's partner-dedicated website or (ii) it otherwise being provided by a member of the SAP Group to the Distributor. With regard to any order for a SAP Product, the Price List that was effective on that point in time when Distributor places a completely and correctly filled-out order for the relevant SAP Product with SAP is decisive. Existing quotes provided by SAP to Distributor will be honored for the time that the quote is valid or in case the quote does not contain a validity date for the time during which the quote can reasonably be expected to be accepted.

縱使本合約有任何不同規定，SAP 保留不經書面通知而變更價格清單之權利。對於價格清單之任何變更，應於價格清單所列之日期生效，或者，如無該日期，於下列較早發生之日：(i) 其在 SAP 之合作夥伴專用網站公佈之日；或 (ii) 其經 SAP 集團之任何成員以他法提供予經銷商之日。針對任一 SAP 產品之任何訂購，價格清單應於經銷商就相關 SAP 產品開立已填寫完整與正確之訂單時 (該時點由 SAP 決定) 生效。SAP 所提供予經銷商之現有報價單，將於該報價單仍為有效之時，或如該報價單並無效期，則於該報價單可合理認為會被接收之時間內遵循。

2. SAP reserves the right to change any or all parts of this Agreement (in particular by replacing parts of it with an updated version), including, without limitation, any SAP Distribution Model, the Distribution GTCS, the Distributor Program Guide, the PartnerEdge Branding Guide, the RSPI and any other guide or agreement concluded under or in connection with any part of this Agreement as may be reasonably required and consistent with SAP's practices.

SAP 保留變更本合約任何或所有部份之權利 (特別是：以更新版本取代其部份內容)，包括但不限於：任何 SAP 經銷模式、經銷 GTC、經銷商計劃指南、PartnerEdge 品牌指南、RSPI、以及基於或關於本合約任何部份而按合理需要及為與 SAP 實務保持一致而與 SAP 締訂之任何其他指南或合約。

3. SAP will give Distributor at least:

SAP 將至少給予經銷商：

- a) if Distributor is located in EMEA or APJ, three months; and  
若經銷商位於 EMEA 或 APJ，三個月；及
- b) if Distributor is located in North America or Latin America, sixty days,  
若經銷商位於北美洲或拉丁美洲，六天；

prior notice in writing or in any other documented form of changes to any or all parts of this Agreement as set out in this Article 12 (Changes to Terms) no. 2. Unless otherwise stated in the notice, the notice will become effective:

之事前書面或任何其他紀錄形式之通知，以知會經銷商有關如本第 Article 12 條 (條款變更) 第 2 款所述對於本合約之任何或所有部份之變更。除該通知內另有規定外，通知應於下列時點生效：

- a) if Distributor is located in EMEA or APJ, after three months; and  
若經銷商位於 EMEA 或 APJ，三個月後；及
- b) if Distributor is located in North America or Latin America, after sixty days ("Change Period").  
若經銷商位於北美洲或拉丁美洲，六天後 ("變更期")。

If the justified interests of Distributor are negatively affected by any of these changes, Distributor is entitled to terminate the affected part of this Agreement with effect to the expiration of the applicable Change Period. If Distributor does not terminate within the applicable Change Period, the changes are deemed to be accepted by Distributor.

若經銷商之正當利益因任何該等變更受到不利影響，經銷商有權終止本合約受影響之部份，而該終止應自變更期滿時生效。如經銷商未在適用之變更期內終止，相關變更則視為已為經銷商所接受。

4. Any change that SAP reasonably believes to be beneficial to Distributor may, at SAP's discretion, become effective upon notice by SAP. Such changes include, but are not limited to, increased discounts, promotions and program enhancements. Should Distributor believe a change not to be beneficial, Distributor must notify SAP in writing within five days of receipt of such notice that Distributor does not agree with SAP's assumption and state the reasons why the change would not be beneficial to Distributor. In such case, this Article 12 (Changes to Terms) no. 3 applies.

如按 SAP 之單方判斷，SAP 合理認為任何變更更有利於經銷商，該變更應於 SAP 通知之時生效。該等變更包括但不限於：提高折扣、促銷及程式之增強。若經銷商認為變更並非有利，經銷商應於收到該通知後五日內，以書面知會 SAP，表明經銷商不同意 SAP 之假設並列出何以變更對經銷商並非有利。在此情況下，本第 Article 12 條 (條款變更) 第 **Error! Reference source not found.** 款，應予適用。

5. SAP may elect to discontinue the distribution of any or all components or functionality of any or all of the SAP Products and to cancel any or all orders for the discontinued SAP Product without liability to Distributor. However, SAP will return any fee prepaid by Distributor for the discontinued SAP Product, including, without limitation, prepaid license fees for discontinued Software, Maintenance Services and/or Cloud Services less an appropriate amount covering the period of actual use of the discontinued SAP Product by the End User.

SAP 得選擇不再散佈任何或所有 SAP 產品之任何或所有元件或功能，並取消該停止之 SAP 產品之任何或所有訂單，而毋須對經銷商負擔任何責任。惟 SAP 將返還經銷商就停止之 SAP 產品所預付之任何費用，包括但不限於：就停止之軟體、維護服務及/或雲端服務預付之授權費，但應扣除終端使用者就停止之 SAP 產品之實際使用期間的適當相應數額。

### Article 13 Export Regulations 出口法規

1. SAP Products and parts of SAP Products (e.g. new versions, releases, updates, upgrades, patches, fixed or correction of a software product) are subject to Export Laws of various countries, including, without limitation, the laws of the United States, the EU, Ireland and Germany. Distributor agrees that it will not submit any SAP Product or parts thereof to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP and that it will not export, re-export or import any SAP Product or parts thereof to countries, persons or entities prohibited by any applicable Export Law. In that context, Distributor is responsible for complying with all applicable Export Laws. Distributor will take all necessary actions and precautions to ensure that any permitted distributor, reseller, end user and other customer complies with the Export Law.

SAP 產品與 SAP 產品之任何部份 (例如：任一軟體產品之新版本、發行版本、更新、升級、更新程式、修復或更正) 皆應受到不同國家出口法律之規範，包括但不限於：美國、歐盟、愛爾蘭與德國之法律。經銷商同意不會在未經 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，向任何政府機關提供任何 SAP 產品或其任何部份，且不會將任何 SAP 產品出口、轉出口或進口至任何適用之出口法律所禁止之國家、個人或實體。在該情況下，經銷商應負責遵守一切適用之出口法律。經銷商將採取一切必要之作為及預防措施，來確保任何獲准之經銷商、轉售商、終端使用者及其他客戶遵守出口法律。

2. If SAP or any other member of the SAP Group wants to deliver and/or grant access to any SAP Product or parts thereof to Distributor, Open Ecosystem Partner or directly to an End User, Distributor will support SAP and any other member of the SAP Group in obtaining any required authorization, approval or other consent from the competent authorities by providing any necessary or useful declarations or other necessary or useful information, e.g. End User certificates, as may be requested by SAP or any other member of the SAP Group. Distributor acknowledges that the delivery of and/or granting of access to any or all SAP Products or parts thereof may be subject to the prior obtaining of export or import authorizations or both from the competent authorities and that this process may (i) considerably delay or prevent the delivery of and/or granting of access to any or all SAP Products or parts thereof; (ii) impact SAP's ability or the ability of any other member of the SAP Group to provide Maintenance Services, Cloud Services Subscription Services, Services or other services and (iii) lead to SAP or any other member of the SAP Group having to limit, suspend or terminate Distributor's, Open Ecosystem Partner's and/or End User's access to Maintenance Services, Cloud Services Subscription Services, Services or other services.

SAP 或 SAP 集團之任何其他成員如欲就任何 SAP 產品或其任何部分，交付予經銷商、開放生態系統合作夥伴或直接交付予終端使用者及/或授與存取權限，經銷商將按 SAP 或 SAP 集團之任何其他成員之要求，協助 SAP 或 SAP 集團之任何其他成員，向具有管轄權之主管機關，取得任何必要之授權、核可或其他認可，並提供任何必要或有用之聲明或其他必要或有用之資訊，例如：終端使用者之證書。經銷商確認，就任何 SAP 產品或其部份之交付及/或授與存取權，可能須取決於是否已自有管轄權之主管機關取得出口或進口授權 (或二者)，而該程序可能：(i) 大幅延誤或導致任何 SAP 產品或其部份無法交付及/或無法授與存取權限；(ii) 對 SAP 或 SAP 集團之任何其他成員提供維護服務、雲端服務訂閱服務、服務或其他服務的能力造成影響；及 (iii) 導致 SAP 或 SAP 集團之任何其他成員必須限制、中斷或終止提供維護服務、雲端服務訂閱服務、服務或其他服務予經銷商、開放生態系統合作夥伴及/或終端使用者。

3. If Distributor wants to deliver and/or grant access to any SAP Product or parts thereof directly to an Open Ecosystem Partner or an End User, it is Distributor's sole responsibility to obtain any required authorization, approval or other consent from the competent authorities to comply with any applicable Export Law. SAP assumes no responsibility or liability for Distributor's failure to obtain any such required authorization, approval or other consent. Distributor acknowledges, that in case SAP or any other member of the SAP Group delivers and/or grants access to any SAP Product or parts thereof directly to an Open Ecosystem Partner or an End User, this Article 13 (Export Regulations) no. 2 applies especially, without limitation, regarding the provision of Maintenance Services, Cloud Services, Subscription Services, Services or other services. SAP will, upon Distributor's reasonable request, provide any required information regarding a SAP Product or parts thereof originally provided by SAP or any other member of the SAP Group to Distributor. Distributor acknowledges that SAP or any other member of the SAP Group may not be able to deliver and/or grant access to a SAP Product or parts thereof to the Distributor in case the export, re-export or import of a SAP Product or parts thereof to Open Ecosystem Partner, End User or both is prohibited by any applicable Export Law.

若經銷商欲直接交付任何 SAP 產品或其部份予開放生態系統合作夥伴或終端使用者及/或授與存取權，經銷商應就向具有管轄權之主管機關，取得任何必要之授權、核可或其他認可，以遵循任何適用之出口法律，自行承擔全部責任。SAP 就經銷商未能取得任何該等必要之授權、核可或其他認可，概不負責。經銷商確認，若 SAP 或 SAP 集團之任何其他成員就任何 SAP 產品或其部份，直接交付予開放生態系統合作夥伴或終端使用者及/或授與存取權限，本第 Article 13 條 (出口法規) 第 2 款，應特別適用於 (且不以此為限) 有關維護服務、雲端服務、訂閱服務、本服務或其他服務之提供。於經銷商合理要求時，就 SAP 或 SAP 集團之任何其他成員原本所提供之 SAP 產品或其部份，SAP 將提供與其有關之任何必要資訊予經銷商。經銷商確認，倘若任何適用之出口法律，禁止出口、轉出口或進口某項 SAP 產品或其部份予開放生態系統合作夥伴、終端使用者或其二者，SAP 或 SAP 集團之任何其他成員可能無法交付 SAP 產品或其部份及/或授與存取權予經銷商。

4. Neither SAP nor any other member of the SAP Group assumes any responsibility or liability:

SAP 或 SAP 集團之任何其他成員，均不會承擔以下各款情況所致生的責任或義務：

- for any delay caused in the delivery and/or granting of access to any or all SAP Products or parts thereof due to export or import authorizations or both having to be obtained from the competent authorities;  
由於必須自具有管轄權之主管機關取得出口、進口或進出口授權，而導致任何 SAP 產品或其任何部份之交付及/或授與存取權限遭到任何延誤；
- if any required authorization, approval or other consent for the delivery of and/or granting of access to any or all SAP Products or parts thereof cannot be obtained from the competent authorities;  
倘若任何 SAP 產品或其部份之交付及/或授與存取權限，需要取得必要之授權、核可或其他認可，卻未能自具有管轄權之主管機關取得；
- if the delivery of and/or granting of access to any or all SAP Products or parts thereof is prevented due to applicable Export Laws; and  
倘若任何 SAP 產品或其部份之交付及/或授與存取權限，由於適用之出口法律未能辦理；及
- if access to Maintenance Services, Cloud Services Subscription Services, Services or other services has to be limited, suspended or terminated due to applicable Export Law.  
倘若維護服務、雲端服務、訂閱服務、本服務或其他服務，由於適用之出口法律必須受到限制、中斷或終止。

5. SAP may terminate any or all part of this Agreement with one month's prior written notice if SAP or any relevant member of the SAP Group may not deliver or grant access to the SAP Products to Distributor due to an embargo, trade sanction or other comparable restrictive measure, which is expected to be in place for six months or longer.

倘若由於預估可能持續達六個月或更久的禁運、貿易制裁或其他類似禁止措施，SAP 或 SAP 集團之任何相關成員可能無法交付 SAP 產品或授與存取權予經銷商，SAP 得以一個月之前書面通知終止本合約之任何部份或全部。

#### **Article 14 Data Protection** **資料保護**

1. Both Parties use information technology to store and process data concerning their business relationships. They must observe any applicable data protection laws.

雙方使用資訊技術，來儲存及處理與雙方商業關係有關之資料。雙方必須遵守任何適用之資料保護法律。

2. Both Parties are responsible for permitting the personal data to be processed and for protecting the rights of the data owner.

雙方應負責確使個人資料可被處理，並保護資料擁有者的權利。

3. Distributor must ensure that each Open Ecosystem Partner consents to the processing of its personal data by SAP for the purposes of fulfilling SAP's obligations under this Agreement. Distributor will indemnify SAP from any loss incurred by SAP out of any Open Ecosystem Partner's claim if Distributor fails to obtain such consent from an Open Ecosystem Partner.

經銷商必須確使各該開放生態系統合作夥伴同意讓 SAP 為履行 SAP 於本合約下之義務的目的，而為開放生態系統合作夥伴處理其個人資料。若經銷商未能自開放生態系統合作夥伴取得該同意，因而導致 SAP 遭到開放生態系統合作夥伴索賠，經銷商應賠償 SAP 因此致生之任何損失。

#### **Article 15 Compliance Obligations** **合規義務**

1. Distributor shall conduct operations in compliance with applicable laws, rules and regulations in exercising rights and obligations under any part of this Agreement. Laws may include but not be limited to the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and local anticorruption legislation that may apply. Distributor shall comply with SAP's Partner Code of Conduct, or Distributor may comply with its own code of conduct if comparable standards are established. The Distributor is not listed by any government agency as debarred, suspended, proposed for suspension or debarment or otherwise determined to be ineligible for government procurement programs.

經銷商應於行使本合約任何部份下之權利及履行義務時，遵守所有適用的法律、規則和規定，以開展其營運。法律包括但不限於：美國境外反貪污行為法 (U.S. Foreign Corrupt Practices Act)、英國賄賂法 (U.K. Bribery Act) 及可能適用之當地反貪腐法規。經銷商應遵守 SAP 之合作夥伴行為準則，或者，經銷商亦得適用其自身之行為準則 (倘若其所設立之標準與 SAP 之準則相類似)。任何政府機構均未將經銷商列為禁止、暫停、或建議暫停或禁止、或無資格參與政府採購專案。

2. In exercising rights and obligations under any part of this Agreement, Distributor and anyone acting on Distributor's behalf shall not make, offer, promise or authorize payment of anything of value directly or indirectly to any of the following Prohibited Parties for the purpose of unlawfully influencing their acts or decisions:

於行使本合約任何部份下之權利及履行義務時，經銷商及任何代表經銷商作為之人、不得對下列任一禁止對象給予、支付或承諾提供或授權支付任何款項或有價之物，意圖非法影響其行為或決定：

- a) Employees, consultants, or representatives of the customer or prospect,  
客戶或潛在客戶之員工、顧問或代表；
- b) Government officials or employees,  
政府官員或員工；
- c) Political party officials or candidates,  
政黨官員或候選人；
- d) Officers or employees of any public international organization,  
任何國際公共組織的官員或員工；
- e) Immediate family member of such persons (or any other person) for the benefit of such persons.  
為上述人員 (或任何其他人士) 之利益的直系家庭成員。

Business entertainment conducted for the fulfillment of any part of this Agreement must be appropriate, transparent, compliant with policies of the guest's company, and absent of any appearance of an attempt to influence business decisions.

為履行本合約任何部份所為之商業款待，必須適當、透明並符合被款待公司之政策，且不得有任何企圖影響商業決定之情況。

3. Distributor shall only have rights to delegate its obligations under this Agreement to subcontractors if expressly permitted under this Agreement. Distributor shall require all subcontractors to agree to terms substantially similar to this Article 15 (Compliance Obligations) in writing. Distributor must obtain SAP's prior written consent before paying any third party a commission, finder's fee, referral fee, success fee, or any similar payment for activities for purposes of securing business on behalf of SAP under any part of this Agreement, except pursuant to Distributor's standard partner programs.

僅於本合約明文准許時，經銷商方有權將其基於本合約之義務委派予外包商執行。經銷商應使一切外包商以書面同意遵循與本第 Article 15 條 (合規義務) 規定類似之條款。除係依據經銷商之標準合作夥伴計劃外，經銷商為根據本合約任何部份而代表 SAP 取得業務之活動，如需支付任何佣金、介紹費、轉介費、成交費或任何類似費用予任何第三方，經銷商應於支付前，取得 SAP 之事前書面核可。

4. Distributor shall not obtain on SAP's behalf or provide to SAP any information which is not legally available in the Territory (as defined in the relevant SAP Distribution Schedule), or which is procurement-sensitive, proprietary, or classified, where there is reason to believe that possession of such information is unauthorized, illegal, or unethical.

經銷商不得代表 SAP 獲取或向 SAP 提供於約定地區 (如相關 SAP 經銷明細表之定義) 無法合法取得、或屬於獲取敏感、專屬或機密的任何資訊 (倘若有理由相信擁有此類資訊屬於未經授權、違法或不道德)。

#### **Article 16 Transferability and Subcontracting** **轉讓與分包**

1. Neither Party may without the other Party's prior written consent assign, novate, delegate, pledge, subcontract or otherwise transfer any part of this Agreement or any of its rights or obligations under any part of this Agreement to any third party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation, unless expressly otherwise agreed in the relevant SAP Distribution Schedule.

除相關 SAP 經銷明細表另有明文規定外，未經他方事前書面同意，任一方不得將本合約之任何部份或其基於本合約任何部份之任何權利或義務 (無論係自願或透過法律運作，包括藉由出售資產、合併或整併，皆然) 讓與、更新、委派、抵押、轉包或以他法轉讓予任何第三方。

2. Notwithstanding this Article 16 (Transferability and Subcontracting) no. 1:

縱使本第 Article 16 條 (轉讓與分包) 第 1 款有任何不同之規定：

- a) SAP is free to assign, novate, pledge or otherwise transfer any part of this Agreement (in whole or in part) to any member of the SAP Group and in case of a Change of Control to the new persons or entities having Control over SAP. SAP will notify Distributor of such transfer or intention to transfer without undue delay. Upon such transfer being effective, SAP will no longer be party to the transferred part of the Agreement, but only the SAP entity acting as transferee.  
SAP 得將本合約之任何部份(無論全部或一部)自由讓與、更新、委派、抵押、轉包或以他法轉讓予 SAP 集團之任何成員，而倘若發生控制變更，則可轉讓予對於 SAP 具有控制權之新的人士或實體。SAP 會從速將該轉讓或意圖轉讓知會經銷商。於該轉讓生效時，SAP 就本合約所出讓之部份不再屬於合約當事人，僅有作為受讓方之 SAP 實體，方為合約當事人。
- b) SAP may delegate, subcontract or otherwise transfer any of its rights or obligations under any part of this Agreement (in whole or in part) to any member of the SAP Group without notifying the Distributor of such transfer. SAP and any member of the SAP Group may use third parties as subcontractors for fulfilling any of their rights or obligations under any part of this Agreement. SAP will continue to be liable for such obligations.  
SAP 得不待通知經銷商而委派、轉包或以他法轉讓其在本合約任何部份下之任何權利或義務(無論全部或一部)予 SAP 集團之任何成員。SAP 及 SAP 集團之任何成員，得使用第三方擔任外包商，以履行其基於本合約之任何權利或義務。SAP 會持續為該等義務負責。

## Article 17 Miscellaneous 雜項

1. Retention of data. With regard to business transactions covered by any part of this Agreement, Distributor must retain any records for a period of ten years starting on 1st of January of the year following the year during which the data were transmitted or otherwise transferred, or for the minimum period prescribed by applicable law, whichever is longer. In addition, Distributor must maintain during the term of any part of this Agreement and for three years thereafter current, complete and accurate reports on the number and location of all copies of the SAP Products it has distributed as well as on all of SAP's Confidential Information in its possession or in the possession of its Representatives.

資料保存。關於本合約任何部份所涵蓋之商業交易，經銷商必須自資料傳輸或以他法移轉之年度的次年 1 月 1 日起十年或相關法律所訂之最低年限(取其較長者)內，保存其任何紀錄。此外，經銷商必須於本合約任何部份之期間及其後三年內，就其已經銷之 SAP 產品之所有複本之數量與地點，以及經銷商或其代表所持有之 SAP 機密資訊，保存一份最新、完整且正確之報告。

2. Force Majeure. If the performance of any part of this Agreement or any obligation under it (other than for the payment of amounts due hereunder) is prevented, restricted or interfered with by reason of any act of God, act of government, strike or labour dispute, failure of transportation, fire or flood or other casualty, internet or telecommunications failure, or failure of subcontractors or suppliers arising from a like cause or from any other cause beyond the reasonable control of the affected Party, the affected Party will be excused from such performance for so long as and to the extent that such force prevents, restricts or interferes with that Party's performance provided the affected Party:

不可抗力。若本合約任何部份之履行或其下之任何義務(但本合約下已到期之付款義務，除外)由於天災、政府作為、罷工或勞資爭議、運輸中斷、火災、洪水或其他事故、網路或通訊中斷、或外包商或供應商發生類似事件、或由於任何其他超出受影響之一方可合理控制之理由，而未能履行、受到限制或干擾，受影響之一方於該不可抗力妨礙、限制或干擾該方履行之期間及限度內，得免負履行之義務，惟該受影響之一方應：

- a) provides prompt written notice of such interference, the nature of such interference and the expected duration of such interference to the other Party; and  
就該事由、該事由之性質及預估影響之期間，立即以書面知會他方；及
- b) resumes performing its obligations hereunder promptly following the removal of such interfering condition.  
於該事由排除後，盡速繼續履行其在本合約下之義務。

The existence of any of the conditions described as Force Majeure above, does not mean that any part of this Agreement is terminated. If any of these conditions continues for a period of more than three consecutive months, either Party may terminate any order concerning the affected SAP Product with one month's prior written notice to the other Party.

上述任一不可抗力情事之發生，並不當然意味著本合約之任何部份即告終止。若任何此等情事持續達到超過連續三個月，任一方得向他方以一個月之事前書面通知，終止受影響之 SAP 產品之任何訂購單。

3. Remedies and Waiver.  
救濟與棄權。

a) No waiver will be valid against any Party hereto, unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.  
除作成書面並經該棄權所欲執行之一方簽署(在此情形下，其效力僅及於該書面所明示之內容)外，任何棄權對本合約任一方均非有效。

b) The waiver by either Party of a breach of, non-compliance with or default in any of the provisions of this Agreement by the other Party may not be construed as a waiver of any succeeding breach, non-compliance or default of the same or other provisions; nor will any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder be operated as a waiver thereof; nor will any single or partial exercise of any right, power or privilege prevent any further or other exercise thereof or the exercise of any other right, power or privilege.

任一方放棄追究另一方違反、未遵守或不履行本合約之任何條款，不得解釋為放棄追究另一方後續違反、未遵守或不履行相同或其他條款；任一方在執行或利用自身於本合約下享有或可能享有的任何權利、權力或權限方面若有延遲或遺漏，不得視為放棄對另一方違反、未遵守或不履行行為的追究；對於任何權利、權力或權限之任何單一或部份之行使，不得妨礙就該權利、權力或權限之任何進一步或其他部份之行使，亦不得妨礙任何其他權利、權力或權限之行使。

c) Where this Agreement expressly states that particular acts or omissions of SAP or Distributor pursuant to a particular term or condition of this Agreement are a "material breach," that designation is for purposes of specificity and clarity. Such designation is not a waiver by SAP or Distributor to claim that other acts or omissions under other terms or conditions of this Agreement are material breaches.

如本合約明白列出 SAP 或經銷商之特定作為或不作為，根據本合約特定條款或條件，構成「重大違約」，該等規定旨在明確及釐清條款而設。該等規定並非代表 SAP 或經銷商，放棄其主張本合約下其他條款與條件之其他作為或不作為構成重大違約之權利。

4. Partial Invalidity. If any provision of this Agreement is or becomes wholly or in part illegal, invalid or unenforceable, the illegality, invalidity or unenforceability of such provision will not affect the other provisions of this Agreement, which will remain in full force and effect. The illegal, invalid or unenforceable provision will be replaced by a valid and enforceable provision which approximates as closely as possible the intent of the invalid or unenforceable provision. This will also apply in cases of contractual gaps.

部份無效。若本合約條款已(變得)完全或部分非法、無效或不可強制執行，此條款的非法性、無效性或不可強制執行性不得影響本合約的其他條款，這些其他條款仍將保持完全效力。非法、無效或不可強制執行之條款將由有效且可強制執行的條款替代，該有效且可強制執行的條款應儘量貼近無效或不可強制執行條款之意圖。此亦適用於存在契約差距之情況。

5. Entire Agreement. This Agreement constitutes the complete and exclusive understanding of the Parties with respect to the subject matter hereof, and supersedes all prior sales proposals, negotiations, agreements and other representations, discussions or communications, whether oral or written, including but not limited to, any letters of understanding the Parties may have executed in contemplation of this Agreement. Each Party acknowledges that it is entering into the Agreement as a result of its own independent investigation and not as a result of any representation of the other Party not

contained herein.

完整合意。本合約構成雙方間就標的事項唯一且完整之合意，並取代先前所有口頭或書面之銷售提案、協商、合意及其他聲明、討論或溝通，包括但不限於雙方為籌畫本合約已簽署之任何意向書。各方確認，本合約之訂立係根據其自身的獨立調查，而非因本文中未包含另一方的任何聲明而為之。

6. **Costs and Expenses.** Each Party will bear its own costs, charges, fees and expenses (including fees for legal or other advisers).  
費用與開支。各方將負擔其自己之費用、支出、花費及開支 (包括律師或其他顧問之費用)。

7. **Counterparts.** The Master Distribution Agreement, any SAP Distribution Schedule and any other part of this Agreement may be signed in one or more counterparts, each of which will be considered an original but all of which together form one and the same instrument and will be treated as if the signatures on the counterparts were on a single copy. The Master Distribution Agreement, any SAP Distribution Schedule and any other part of this Agreement may be validly executed by means of transmission of signed facsimile, pdf or any other documented form for which a process has been provided by SAP. Signatures sent by fax, pdf, email or other electronic means for which a process has been provided by SAP will be deemed original signatures.

合約份數。本經銷主約、任何 SAP 經銷明細表及本合約之任何其他部份得簽署一式一份或數份，每份均為正本，並共同構成一份完整文書，如同所有簽名均簽在同一正本上。本經銷主約、任何 SAP 經銷明細表及本合約之任何其他部份，得透過傳送經署名之傳真、pdf 或由 SAP 提供流程之任何其他紀錄方式為之。以傳真、pdf、電子郵件或由 SAP 提供流程之任何其他電子方式傳送之簽名，應視為原始簽名。

8. **Effective Date.** If a Party signs a part of this Agreement but fails to date its signature, the date that the other Party receives the signing Party's signature will be deemed to be the date on that the signing Party signed that part of the Agreement.

生效日期。若一方先行簽署本合約之一部，但未於簽署時將其簽名之日期記入，另一方收到簽署方已署名之合約正本之日，應視為係該簽署方在本合約該部分署名之日。

9. **Amendments.** Any modification, amendment or supplement to this Agreement (including this Article 17 (Miscellaneous) no. 9 must be made in writing or in any other documented form for which a process has been provided by SAP.

修訂。對本合約的任何修改、修訂或補充 (包括本第 Article 17 條 (雜項) 第 9 款)，必須以書面形式或由 SAP 提供流程之任何其他可紀錄形式為之。

10. **WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION COMMENCED UNDER OR IN CONNECTION TO ANY PART OF THIS AGREEMENT.**

放棄陪審團審理。於本合約下或與其任何部份有關之任何訴訟中，各方茲此放棄其得請求由陪審團審理之任何權利。

11. **Priority of Agreements.** The following descending order of precedence will apply, in the event of any conflict or inconsistency between parts of the Agreement: (a) the applicable SAP Distribution Schedule; (b) the applicable SAP Distribution Model; (c) the Master Distribution Agreement; (d) the Distribution GTCS; (e) the Distributor Program Guide; (f) the PartnerEdge Branding Guide; and (g) the RSPI.

適用順序。若本合約各部份間有任何抵觸或不一致，應按下列次序決定其優先順序：(a) 適用之 SAP 經銷明細表；(b) 適用之 SAP 經銷模式；(c) 經銷主約；(d) 經銷 GTC；(e) 經銷計劃指南；(f) PartnerEdge 品牌指南；及 (g) RSPI。

12. **Partner Terms.** Any purchase order, shrink- or click-wrap or other document issued by Distributor is for administrative convenience only. In the event of any conflict between the provisions of this Agreement and any pre-printed terms contained in any purchase order, shrink- or click-wrap or other document issued by the Distributor, the provisions of this Agreement prevail and govern and any new additional, conflicting or inconsistent terms and conditions in the purchase order, shrink- or click-wrap or other document will be inapplicable.

合作夥伴條款。經銷商所發出的任何訂購單、產品隨附之點選同意合約或其他文件，僅是為了方便行政管理。若本合約之規定與經銷商所發出任何訂購單、產品隨附之點選同意合約或其他文件內之預先印制條款有任何抵觸，應以本合約之規定為準，且訂購單、產品隨附之點選同意合約或其他文件內，任何新增的額外、抵觸或不一致之條款與條件，概不適用。

13. **Survival.** Part 1 - Article 2 (Confidentiality), Part 1 - Article 8 (Audit), Part 1 - Article 10 (Effects of Termination), Part 1 - Article 17 no. 1 (Retention of data), Part 1 - Article 17 no. 4 (Partial Invalidity), Part 1 - Article 17 no. 10 (Waiver of Jury Trial), Part 2 - Article 1 (Limitation of Liability), Part 2 - Article 2 (Third Party Claims), Part 2 - Article 3 (Performance Warranty), Part 2 - Article 4 (Reservation of title, rights and interest), Part 2 - Article 12 (Governing Law and Jurisdiction) of will survive any termination of any part of this Agreement.

條款存續。第 1 部份 - 第 Article 2 條 (保密)、第 1 部份 - 第 Article 8 條 (審計)、第 1 部份 - 第 Article 10 條 (終止之效力)、第 1 部份 - 第 Article 17 條第 1 款 (資料保存)、第 1 部份 - 第 Article 17 條第 4 款 (部份無效)、第 1 部份 - 第 Article 17 條第 10 款 (放棄陪審團審理)、第 2 部份 - 第 Article 1 條 (責任限制)、第 2 部份 - 第 Article 2 條 (第三方索賠)、第 2 部份 - 第 Article 3 條 (履約保證)、第 2 部份 - 第 Article 4 條 (所有權、權利與權益之保留)、第 2 部份 - 第 Article 12 (準據法和管轄權)，應於本合約之任何部份終止後，繼續有效。

## **PART 2 – Country specific Terms and Conditions**

### **第 2 部分 - 國家/地區特定之條款與條件**

#### **Article 1 Limitation of Liability 責任限制**

1. **Not Responsible.** SAP and its licensors will not be responsible under any part of this Agreement (i) if a SAP Product is not used in accordance with the Documentation or (ii) if the defect or liability is caused by Distributor, Open Ecosystem Partner and/or End User, a Modification or Add-on (other than a Modification or Add-on made by a member of the SAP Group which is provided through Maintenance Services or under warranty) or third-party software. SAP AND ITS LICENSORS WILL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM INHERENTLY DANGEROUS USE OF ANY OF THE SAP PRODUCTS DISTRIBUTED, POSITIONED OR PROVIDED UNDER OR IN CONNECTION WITH ANY PART OF THIS AGREEMENT.

無須承擔責任。依本合約之任何部分，SAP 及其授權人對於以下情況概不負責：(i) 未遵循文件使用 SAP 產品；(ii) 因經銷商、開放生態系統合作夥伴及/或終端使用者之修改或附加程式 (非由 SAP 集團之任何成員透過維護服務或保固內提供之修改或附加程式) 或第三方軟體所導致之瑕疵或責任。SAP 及其授權者就基於或有關本合約任何部份而經銷、放置或提供之任何 SAP 產品，因其本身具危險性之用途所生之索賠或損害，概不負責。

2. **Exclusion of Damages; Limitation of Liability.** ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR:  
損害排除；責任限制。縱使本合約有任何相反規定，除了：

a) **DAMAGES RESULTING FROM (i) UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION; (ii) FRAUD OR WILLFUL MISCONDUCT; AND (iii) DEATH OR PERSONAL INJURY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR ARISING FROM EITHER PARTY'S WILLFUL MISCONDUCT; OR**  
損害是起因於 (i) 未經授權使用、披露機密資訊；(ii) 詐欺或不當行為；及 (iii) 因任一方之重大過失或不當行為而造成的死亡或人身傷害；或

b) **SAP'S RIGHT TO COLLECT FEES OWNED UNDER OR IN CONNECTION WITH ANY PART OF THIS AGREEMENT,**

SAP 基於或關於本合約任何部分收取其應得費用之權利；

UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM WILL SAP, ITS LICENSORS OR DISTRIBUTOR BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT IN EXCESS OF:

在任何情況下，且無論任何索賠之性質為何，SAP、其授權者或經銷商，皆無須對他方或任何其他人士或實體就任何超出以下數額之金額負責：

- i. IN CASE OF THE DISTRIBUTION OF SOFTWARE, THE LICENSE FEES PAID UNDER THE RELEVANT SAP DISTRIBUTION MODEL BY DISTRIBUTOR TO SAP FOR THE SOFTWARE DIRECTLY CAUSING THE DAMAGES; OR  
如屬經銷軟體，經銷商基於相關 SAP 經銷模式就直接造成損害之軟體已付予 SAP 之授權費用；或
- ii. IN CASE OF THE DISTRIBUTION OF CLOUD SERVICES OR MAINTENANCE SERVICES, THE LICENSE FEES PAID UNDER THE RELEVANT SAP DISTRIBUTION MODEL BY DISTRIBUTOR TO SAP IN THE TWELVE MONTHS PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM FOR THE CLOUD SERVICES OR MAINTENANCE SERVICES DIRECTLY CAUSING THE DAMAGES,  
如屬經銷雲端服務或維護服務，經銷商基於相關 SAP 經銷模式就直接造成損害之雲端服務或維護服務的事件發生前十二個月內所支付予 SAP 之授權費用；

OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ATTORNEYS' FEES, COURT COSTS, INTEREST OR EXEMPLARY OR PUNITIVE DAMAGES.

亦不就任何附隨、衍生或間接之損害，或商譽或利潤之損失、作業停工、資料喪失、電腦當機或故障、律師費、庭審費、利息、懲戒性或懲罰性之損失賠償負責。

THE ABOVE MENTIONED LIMITATIONS OF LIABILITY WILL NOT APPLY REGARDING DISTRIBUTOR'S LIABILITY TOWARDS SAP OR ITS LICENSORS IF DISTRIBUTOR IS FOUND TO HAVE (i) MADE UNAUTHORIZED COPIES OF A SAP PRODUCT, (ii) MISAPPROPRIATED A SAP PRODUCT, OR (iii) DISTRIBUTED, POSITIONED OR PROVIDED A SAP PRODUCT TO A THIRD PARTY IN VIOLATION OF ANY PART OF THIS AGREEMENT.

倘若經查經銷商有下列任一情事，上述責任限制，就經銷商對 SAP 或其授權者應負之責任，並無適用：(i) 就任何 SAP 產品製作未經授權之複本；(ii) 盜用任何 SAP 產品；或 (iii) 違反本合約任何部份而將任何 SAP 產品經銷、放置或提供予任何第三方。

The provisions of this Agreement allocate the risks between SAP and Distributor. The license fees paid by Distributor reflect this allocation of risk and the limitations of liability herein. 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.

本合約條款分配 SAP 與客戶之間的風險。經銷商支付之授權費用反映此一風險分配及其責任限制。雙方當事人明確理解並同意，本合約每一提供的責任限制、不擔保聲明或損害排除條款，按雙方之意向，獨立於其他條款並將如是執行。

3. Exclusions and Limitations for Third Party Software. SUBJECT TO THE EXCLUSION OF DAMAGES STATED IN Article 1 (LIMITATION OF LIABILITY) NO. 2 AND WITH RESPECT TO THIRD PARTY SOFTWARE, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM WILL SAP OR ITS LICENSORS' BE LIABLE FOR AN AMOUNT IN EXCESS OF THE LICENSE FEES PAID UNDER THE RELEVANT SAP DISTRIBUTION MODEL BY DISTRIBUTOR TO SAP FOR THE THIRD PARTY SOFTWARE DIRECTLY CAUSING THE DAMAGES.

第三方軟體之例外狀況與限制。在不違反第 Article 1 條 (責任限制) 第 項所述除外損害規定之前提下，2 且就第三方軟體而言，在任何情況下，且無論任何索賠之性質為何，SAP、其授權者，皆毋須就任何超出經銷商基於相關 SAP 經銷模式就直接造成損害之第三方軟體已付之授權費用的金額負責。

4. Time bar. Distributor must initiate a cause of action for any claim(s) arising out of or relating to any part of this Agreement and its subject matter within one year from the date when Distributor knew, or should have known after reasonable investigations, of the facts given rise to the claim(s).

時間限制。經銷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年內，提出關於本合約任何部份及其系爭事項之任何索賠。

5. Extension to group members. Any limitations to the liability and obligations of SAP according to this Article 1 (Limitation of Liability) will also apply for the benefit of any member of the SAP Group and their respective licensors.

延伸至集團成員。依據本第 Article 1 條 (責任限制)，對於 SAP 責任與義務的限制，還應適用於 SAP 集團之任何成員及其各自授權人的利益。

## Article 2 Third Party Claims 第三人索賠

### 1. Infringement and Defense of Distributor

經銷商之侵權及防禦

a) SAP will, at its sole discretion, either defend Distributor against or settle any claim brought against Distributor in the Territory if such claim (i) is brought by any owner of the Intellectual Property Right specified below giving rise to the claim and (ii) alleges that the distribution of the Software, Cloud Services or both by the Distributor, in accordance with the terms and conditions of any part of this Agreement, constitutes a direct infringement or misappropriation of such owner's patent claim(s), copyright, trademark or trade secret right. SAP will pay damages finally awarded against Distributor (or the amount of any settlement SAP enters into) with respect to such claims.

若約定地區內發生對經銷商提出之索賠，SAP 得依其決定是否為經銷商辯護或和解，但限於其中此等索賠：(i) 係由下列智慧財產權所有人提出，以及 (ii) 宣稱經銷商依據本合約任何部份之條款與條件而經銷雲端服務、軟體或二者，構成直接侵犯或濫用此等所有人之專利權、著作權、商標或營業秘密權。SAP 會就此索賠支付最終裁決應由經銷商承擔的損害賠償金 (或 SAP 達成的任何和解金額)。

b) This obligation of SAP does not apply if the alleged infringement or misappropriation results from:

若宣稱之侵權或濫用是由於下列任一情事所引起，則 SAP 之上述義務，並無適用：

i. Use or distribution of the Software or Cloud Services in conjunction with any software or service other than the SAP Products;

將軟體或雲端服務與任何非 SAP 產品之軟體或服務的共用或經銷；

ii. Use or distribution of the Software in conjunction with an apparatus other than a Designated Unit (defined as information technology devices (e.g. hard disks or central processing units) identified by Distributor pursuant to any part of this Agreement in the order for the Software placed for a specific End User that has been previously approved by SAP or otherwise officially made known to the public as appropriate for Use or interoperation with the Software);

將軟體與指定單元 (其定義為經銷商根據本合約任何部份確定之資訊技術裝置 (例如，硬碟或中央處理單元)，且先前業已經 SAP 核准或已正式為大眾所知曉，可為特定終端使用者置入軟體而根據適當情況與軟體結合使用或互操作) 以外的任何裝置的共用或經銷；

iii. failure to promptly use an update provided by a member of the SAP Group if such infringement or misappropriation could have been avoided by use of the update; and/or

該侵權或濫用若使用 SAP 集團之任何成員所提供之任何更新即可避免，但卻未能盡速使用該更新；及/或

iv. unlicensed activities by Distributor, Open Ecosystem Partner, End User and/or a third party, including alterations of the Software, Cloud Services or both (other than alterations of the Software, Cloud Services or both made by a member of the SAP Group).

經銷商、開放生態系統合作夥伴、終端使用者及/或任何第三人未經授權之行為，包括修改軟體、雲端服務或其二者（但由 SAP 集團之任何成員就軟體、雲端服務或其二者所為之修改，除外）。

- c) This obligation of SAP will also not apply if Distributor fails to timely notify SAP in writing of any such claim; however Distributor's failure to provide or delay in providing such notice shall not relieve SAP of its obligations under this Article 2 (Third Party Claims) except to the extent SAP is prejudiced by Distributor's failure to provide or delay in providing such notice.

如果經銷商未及時以書面方式通知 SAP 此類索賠，則此 SAP 義務亦不適用；但若經銷商未提供或延誤提供此類通知，並未因而造成 SAP 由於經銷商未提供或延誤提供此類通知而受到損害，則 SAP 於此第 Article 2 條（第三方索賠）下的責任，不得免除。

- d) SAP is permitted to control fully the defense and any settlement of any such claim as long as such settlement does not include a financial obligation on or admission of liability by the Distributor. In the event Distributor declines SAP's proffered defense or otherwise fails to give full control of the defense to SAP's designated counsel, then Distributor waives SAP's obligations under this Article 2 (Third Party Claims) no. 1. Distributor must reasonably cooperate in the defense of such claim and provide SAP with all relevant information and reasonable support. Distributor may appear in any proceedings concerning such claim or legal dispute, 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 relevant Software, Cloud Services or both is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. SAP may settle or mitigate damages from any claim or potential claim by (i) procuring for the Partner the right to continue distributing the Software, Cloud Services or both; or (ii) substituting alternative substantially equivalent non-infringing programs, services and supporting documentation for the Software, Cloud Services or both. Distributor must not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software, Cloud Services or both that is prejudicial to SAP's rights.

SAP 獲許主導控制任何此類索賠的抗辯和任何和解事宜，只要該和解不涉及經銷商的財務負擔或承認責任。若經銷商拒絕 SAP 提供之抗辯，或無法讓 SAP 指定律師主導控制抗辯事宜，則經銷商即屬放棄 SAP 在本合約第 Article 2 條第 1 款下之責任。經銷商應合理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。經銷商可自費參與關於上述索賠或法律爭議的任何程序，並得委託 SAP 合理認可之律師負責。若不再對相關軟體、雲端服務主張侵害或盜用或被判定不構成侵權或盜用，SAP 明確表示保留中止任何對請求之抗辯事宜之權利。SAP 可經由下列方式就任何索賠或潛在索賠進行和解或減輕其損害：(i) 為合作夥伴取得繼續經銷軟體、雲端服務或其二者之權利；(ii) 替換為與軟體、雲端服務或其二者實質上相同的未侵權程式、服務及支援文件。經銷商不得採取任何措施，回應不利 SAP 權利之軟體、雲端服務或其二者的侵害或盜用情事或主張。

- e) The liability limitations contained in Article 1 (Limitation of Liability) apply to all claims made under this Article 2 (Third Party Claims) no. 1. Any limitations to the liability and obligations of SAP according to this Article 2 (Third Party Claims) no.1 will also apply for the benefit of any member of the SAP Group and their respective licensors.

第 Article 1 條（責任限制）所述之責任限制，適用於本第 Article 2 條（第三方索賠）第 1 款下所為之一切索賠。依據本第 Article 2 條（第三方索賠）第 1 款，對於 SAP 責任與義務的任何限制，還應適用於 SAP 集團之任何成員及其各自授權人的利益。

- f) THE PROVISIONS OF THIS Article 2 (THIRD PARTY CLAIMS) NO. 1 STATE THE SOLE, EXCLUSIVE AND ENTIRE LIABILITY AND OBLIGATION OF SAP AND ITS LICENSORS TO DISTRIBUTOR, AND IS DISTRIBUTOR'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

本第 Article 2 條（第三方索賠）第 1 項之規定，為 SAP 及其授權人對經銷商所負之單一、唯一及全部之責任與義務，亦為經銷商有關侵害或濫用第三人智慧財產權之唯一救濟途徑。

2. Indemnification by Distributor. If an action is brought against any member of the SAP Group by a third party (including tax or other authorities) arising from or relating to:

經銷商提供之賠償。若任何第三方（包括稅務或其他主管機關）由於或關於以下情事對 SAP 集團之任何成員提起任何訴訟：

- a) any Taxes that are levied against any member of the SAP Group even though they should, according to any part of this Agreement or applicable law, have been born by the Distributor in the first place;  
對於 SAP 集團之任何成員課徵任何稅捐，即便依據本合約任何部份或相關法律，本應由經銷商負擔者；
- b) any member of the Distributor Group breaching Part 1 - Article 13 (Export Regulations) or Part 1 - Article 15 (Compliance Obligations) or both;  
經銷商集團之任何成員違反第 1 部份 - 第 Article 13 條（出口法規）或第 1 部份 - 第 Article 15 條（合規義務）或其二者；
- c) any agreement between Distributor and its Open Ecosystem Partners, distributors, resellers or End Users;  
經銷商及其開放生態系統合作夥伴、經銷商、轉售商或終端使用者間之任何合約；
- d) any claim that a product or service which is provided by any member of the Distributor Group other than the SAP Products infringes, misappropriates or violates any Intellectual Property Right of any third party;  
對於經銷商集團任何成員所提供 SAP 產品以外之產品或服務，侵害、盜用或違反任何第三方之智慧財產權而提起之任何索賠；
- e) an allegation that the Distributor's, Open Ecosystem Partner's or End User's use of the SAP Products in violation of any part of this Agreement violates, infringes or misappropriates the rights of a third party; and  
對於經銷商、開放生態系統合作夥伴或終端使用者，基於違反本合約任何部份之方式而使用 SAP 產品，指控該使用侵害、盜用或違反任何第三方之智慧財產權；
- f) a third party's assertion that the Distributor acted as agent, representative or otherwise on SAP's behalf,  
第三方指控經銷商以 SAP 之代理人、代表或以其他身分代表 SAP 而作為；

Distributor will defend the affected member of the SAP Group, at Distributor's expense, and will pay any settlement amounts Distributor authorizes and all damages, costs and fees (including, without limitation, attorneys' fees and costs of litigation) finally awarded against such member of the SAP Group in the action.

經銷商會自費為受影響之 SAP 集團成員出面代為辯護，並支付經銷商所授權之任何和解數額及於該等訴訟中終局判定應由該 SAP 集團成員支付之一切損害、成本與費用（包括但不限於：律師費及訴訟費）。

### Article 3 Performance Warranty 履約保證

1. In case of an Sell On Premise Distribution Model and any other SAP Distribution Model concerning the sale or distribution of Software that is not expressly mentioned in this Part 2 - Article 3 (Performance Warranty) the following warranty applies:

對於銷售內部部署之經銷模式及任何其他 SAP 經銷模式，如其與銷售或經銷未明列於本第 2 部份 - 第 Article 3 條（履約保證）之軟體有關，下列保證，應予適用：

- a) SAP warrants that the Software will substantially conform to the specifications contained in the Documentation for six months following Delivery of the Software. The warranty does not apply: (i) if the Software is not used in accordance with the Documentation; (ii) if the nonconformance is caused by a Modification or Add-on (other than a Modification or Add-on made by a member of the SAP Group which is provided through Maintenance Services or under warranty), Distributor, Open Ecosystem Partner, End User, another third party, third-party software, third party



database or any other software not distributed by SAP; or (iii) to any unlicensed activity of Distributor, Open Ecosystem Partner and/or End User. 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 Distributor's, Open Ecosystem Partner's and/or End User's business requirements.

SAP 保證軟體在交付軟體後的六個月內，將實質符合文件規定之功能規格。此保固不適用於以下情況：(i) 未依紀錄文件使用軟體；(ii) 此等不正常之情況係因經銷商、開放生態系統合作夥伴、終端使用者、任何第三方、第三方軟體、第三方資料庫、或任何其他非由 SAP 散佈之修改或附加程式 (非由 SAP 集團成員透過 SAP 維護或保固提供之修改或附加程式) 所導致；(iii) 經銷商、開放生態系統合作夥伴及/或終端使用者任何未經授權的行為。SAP 不保證軟體作業不受中斷、軟體不致出現未對效能構成實質影響之輕微瑕疵或錯誤，亦不保證軟體包含之應用程式符合經銷商、開放生態系統合作夥伴及/或終端使用者之所有業務需求。

- b) Provided Distributor 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: (i) repair or replace the nonconforming Software, or (ii) refund the license fees paid for the applicable nonconforming Software in the two latter cases (replacement and refund) in exchange for a return of such nonconforming Software. This is Distributor's sole and exclusive remedy under this warranty. Distributor's written notification of any nonconformance must include sufficient detail for SAP to analyse the alleged nonconformance. Distributor must provide and ensure that End User also provides commercially reasonable assistance to SAP in analysing and remediating any nonconformance of the Software.

若經銷商於保固期間採書面方式通知 SAP 關於軟體異常之具體說明，且 SAP 已確認確有此類異常情事存在，則 SAP 將自行選擇 i) 修復或取代不正常之軟體，或 ii) 在後面兩種情況下 (替換及退款) 退回相關異常軟體之已收授權費用，以要求歸還該異常軟體。此為經銷商依本保固所享有之唯一專屬救濟。經銷商對於任何異常所為之書面通知，必須包含足夠的詳細資訊，俾利 SAP 得據以分析其所聲稱之異常。經銷商必須提供、並應確保終端使用者亦提供商業上合理之協助予 SAP，以分析和糾正軟體之任何異常。

- c) SAP may fulfill its warranty obligations directly vis-à-vis Distributor's affected End Users. In such case and to the extent that SAP fulfills its warranty obligations directly vis-à-vis Distributor's affected End Users, Distributor will not have any claim against SAP out of this Part 2 – Article 3 (Performance Warranty). If SAP refunds the license fees paid by Distributor to SAP or the license fees paid by End User to Distributor for the nonconforming Software directly to the End User, Distributor will have not claim against SAP regarding the refund of the license fees paid by it to SAP but in the latter case (refund of license fees paid by End User to Distributor) will have to repay to SAP the difference between the license fee paid by End User to Distributor to the license fee paid by Distributor to SAP (Distributor's margin).

SAP 得直接對經銷商受影響之終端使用者履行其保固義務。在此情況下，並在 SAP 直接對經銷商受影響之終端使用者履行其保固義務之限度內，經銷商不得對 SAP 提出基於本第 2 部份 - 第 Article 3 條 (履約保證) 之任何索賠。若 SAP 就異常之軟體直接向終端使用者退還經銷商所付予 SAP 之授權費用或終端使用者所付予經銷商之授權費用，經銷商不得再對 SAP 就退還授權費用為任何索賠，但在後一情況下 (退還終端使用者所付予經銷商之授權費用)，則應將終端使用者支付予經銷商之授權費用與經銷商支付予 SAP 之授權費用之差額 (經銷商之利潤) 償還予 SAP。

- d) Express Disclaimer. SAP AND ITS LICENSORS DISCLAIM ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES WITH RESPECT TO ANY SAP PRODUCT EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY 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 及其授權人排除關於任何 SAP 產品的一切其他明示或默示之聲明、擔保、條件或保證責任，包括但不限於任何適售性、品質或特定目的適用性之默示擔保，但法定不得排除之默示擔保不在此限。

2. In case of an Sell Cloud Distribution Model the following warranty applies:

下列保證適用於銷售雲端經銷模式：

SAP AND ITS LICENSORS DISCLAIM ALL REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES WITH RESPECT TO THE CLOUD SERVICES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

SAP 及其授權人排除關於任何雲端服務的一切明示或默示之聲明、擔保、條件或保證責任，包括但不限於任何適售性、品質或特定目的適用性之默示擔保，但法定不得排除之默示擔保不在此限。

#### Article 4 Reservation of title, rights and interest

##### 所有權、權利與權益之保留

1. The SAP Products and SAP's Confidential Information and all title, rights and interest, especially, without limitation, any Intellectual Property Rights embodied in the SAP Products and SAP's Confidential Information are the sole and exclusive property of the SAP Group or their licensors, subject to any rights, title or interest expressly granted to Distributor in the applicable SAP Distribution Model. Unless Distributor is working under a valid SAP development license, Distributor is not permitted to modify or otherwise make derivative works of any SAP Product. Any such unauthorized works developed by Distributor, and any Intellectual Property Rights embodied therein, will be the sole and exclusive property of SAP or any other member of the SAP Group as requested by SAP.

SAP 產品與 SAP 機密資訊和 SAP 產品與 SAP 機密資訊內所含之一切權利、所有權與權益 (特別是且不限於：任何智慧財產權)，皆為 SAP 集團或其等授權人之唯一且專屬財產，但以不違反相關 SAP 經銷模式所明示授權予經銷商之任何權利、所有權與權益為前提。除非經銷商係基於一項有效之 SAP 開發授權而作業，經銷商不得就任何 SAP 產品進行修改或以他法製作其衍生作品。經銷商開發之任何上述未授權作品及其本身之智慧財產權，皆應如 SAP 所要求歸 SAP 或 SAP 集團任何其他成員所專有。

2. Distributor is not entitled to copy, translate, disassemble, decompile, reproduce or reverse engineer any SAP Product nor create or attempt to create the source code from the object code of a SAP Product in any manner or take any other measure for the purposes of obtaining the source code of a SAP Product,

經銷商無權複製、轉譯、反組譯、反編譯任何 SAP 產品或進行還原工程，亦不得以任何方式從 SAP 產品之目的碼建立或試圖建立來源碼，或採取任何其他措施以取得任何 SAP 產品之來源碼，

unless such action is indispensable to obtain information necessary to achieve interoperability of a SAP Product with an independently created computer program and SAP or any other member of the SAP Group has not provided such information to Distributor within a reasonable period of time, despite a prior written request by Distributor. Information obtained through such action may not be:

但該作為如係為取得能使 SAP 產品與一套獨立開發之電腦程式互通之必要資訊所不可或缺者，而經銷商雖已為事前書面請求，但 SAP 或 SAP 集團之任何其他成員未於合理期限內提供該等資訊予經銷商，不在此限。經由此等作為取得之資訊不得：

- a) used for purposes other than to achieve interoperability of the independently created computer program; 供作與一套獨立開發之電腦程式互通以外之用途加以使用；
- b) given to third parties, unless this is necessary to establish interoperability of the independently created computer program; and 除為與一套獨立開發之電腦程式互通而有必要外，交付予任何第三方；及

c) used for the development, creation or marketing of computer programs similar to the relevant SAP Product or for any other act which infringe SAP's Intellectual Property Rights.

用於開發、建立或行銷與相關 SAP 產品相似之電腦程式，或用於侵害 SAP 智慧財產權之任何其他作為。

3. If Distributor wishes to exercise any right to reverse engineer to ensure interoperability in accordance with applicable law, Distributor must provide prior 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 a SAP Product with other independently created computer program for a fee to be mutually agreed upon.

若經銷商欲依相關法律，行使任何還原工程的權利以確保互通性，經銷商應首先向 SAP 提供書面通知，並允許 SAP 自行決定提供所需資訊及合理協助，以確保 SAP 產品與其他獨立開發之電腦程式之互通性；如有需要，得依雙方合意收取費用。

4. Distributor must not change or remove SAP's copyright and authorship notices attached to or relating to any SAP Product.

經銷商不得變更或移除 SAP 置於任何 SAP 產品的著作權及作者聲明。

5. SAP retains:

SAP 保有：

a) any title, rights and/or interest expressly granted to Distributor in the applicable SAP Distribution Model; and  
相關 SAP 經銷模式內所明文授與經銷商之任何權利、所有權及/或權益；及

b) title in any disc or other data media on which a SAP Product is delivered to Distributor under or in connection with the applicable SAP Distribution Model,

基於或關於相關 SAP 經銷模式所交付予經銷商、內含任一 SAP 產品之任何光碟片或其他資料儲存媒體之所有權；

(a) and b) together the "Reserved Assets")

(第 a) 與 b) 款合稱「保留資產」)

until all of SAP's claims against Distributor in connection with the concerned business relationship with an Open Ecosystem Partner and End User under or in connection with the applicable SAP Distribution Model ("Secured Claims") are fully and finally satisfied and discharged.

直到 SAP 對經銷商有關和開放生態系統合作夥伴及終端使用者間基於或關於適用之 SAP 經銷模式之系爭商業關係的一切索賠（「既有索賠」），已完全及終局滿足及解除。

6. As long as Distributor is not in breach of his contractual obligations under any part of this Agreement affecting the applicable SAP Distribution Model especially as long as Distributor's payment of any or all of the Secured Claims is not delayed, Distributor is entitled to pass on or ask SAP to pass on the Reserved Assets in the proper and ordinary course of business.

只要經銷商並未違反其在本合約任何部份下之合約義務，以致對適用之 SAP 經銷模式構成影響（特別是只要經銷商並未遲延任何既有索賠之付款），經銷商有權按適當及正常之營業程序移轉或要求 SAP 移轉保留資產。

7. The creation of pledges, liens or other security interest over as well as the assignment as security of the Reserved Assets is not permitted.

不得就保留資產設定任何抵押權、留置權或其他擔保利益，亦不得將保留資產指定作為擔保品。

8. Distributor undertakes to inform SAP immediately of any attachment of the Reserved Assets by any third party and will forward to SAP any documents (including, without limitation any attachment order) useful or necessary for a defense against the attachment. Distributor will immediately inform such attaching creditor about SAP's title, right or interest in the Reserved Assets.

經銷商應於任何第三人就保留資產為扣押時立即知會 SAP，並會將就該扣押進行防禦有用或必要之任何文件（包括但不限於任何扣押命令）提交給 SAP。經銷商會立即知會該扣押債權人 SAP 就保留資產擁有所有權、權利或利益。

9. Distributor hereby assigns to SAP any existing as well as any future, contractual as well as non-contractual claim against any Open Ecosystem Partner or any other third party that arises or will arise in connection with the distribution of the Reserved Assets ("Assigned Claims") and SAP accepts such assignment. Distributor will be entitled to collect the Assigned Claims and to exercise any ancillary rights and claims in connection with these in the ordinary course of business (but will by doing so act with the care of a prudent merchant). Such entitlement to collect the Assigned Claims and to exercise ancillary rights and claims in connection with these is immediately terminated if SAP gives notice to the contrary which SAP is entitled to do if Distributor is in breach of his contractual obligations under any part of this Agreement affecting the applicable SAP Distribution Model, in particular if Distributor's payment of any or all of the Secured Claims is delayed.

經銷商茲此將未來對於開放生態系統合作夥伴或任何其他第三方就保留資產之經銷而生或將發生之合約及非合約索賠轉讓予 SAP（「轉讓索賠」）而 SAP 亦接受該轉讓。經銷商有權按正常營業程序（但應以謹慎小心之營業人的注意義務而作為）就轉讓索賠執行收款，並行使與其相關之任何附屬權利及索賠。若經銷商違反其在本合約任何部份下之合約義務，以致對適用之 SAP 經銷模式構成影響（特別是經銷商遲延任何既有索賠之付款），SAP 有權通知經銷商不得再就轉讓索賠執行收款，或行使與其相關之任何附屬權利及索賠，而經銷商執行該等事項之權利應於 SAP 通知時立即終止。

10. If Distributor is in breach of his contractual obligations under any part of this Agreement affecting the applicable SAP Distribution Model, in particular if Distributor's payment of any or all of the Secured Claims is delayed, SAP is entitled at Distributor's expense to rescind from any order for SAP Products concerning the affected SAP Distribution Model and to demand return of any or all of the Reserved Assets granted or delivered under or in connection with the affected SAP Distribution Model.

若經銷商違反其在本合約任何部份下之合約義務，以致對適用之 SAP 經銷模式構成影響（特別是經銷商遲延任何既有索賠之付款），SAP 有權以經銷商之費用就與受影響之 SAP 經銷模式有關之 SAP 產品，解除其任何訂購單，並要求返還基於或關於受影響之 SAP 經銷模式而授與或交付的任何保留資產。

11. SAP will notify the Distributor of its intention to rescind from any order for SAP Products and to demand return of any or all of the Reserved Assets by giving one week's prior written notice. Such notice period is not necessary, if (i) Distributor has generally ceased to make payments, (ii) Distributor is Insolvent or is subject to Insolvency Proceedings or (iii) there is reason to believe that observance of such notice period would adversely affect the retention of title, right or interest constituted with regard any or all of the Reserved Assets.

SAP 如欲解除 SAP 產品之任何訂購單，並要求返還任何或全數保留資產，SAP 會以一週之前書面通知告知經銷商。如有下列任一情事，則該通知期即非屬必要：(i) 經銷商已普遍停止付款；(ii) 經銷商破產或正進行破產程序；或 (iii) 有理由足信遵循該通知期可能不利於保有關於任何或全部保留資產既有之所有權、權利或權益。

## Article 5 Insurance 保險

1. While performing any work or providing products or services related to any part of this Agreement, Distributor must maintain, at its own expense, for Distributor and its personnel, insurance coverage in accordance with any applicable statutory requirements. In addition, Distributor must maintain the following insurance with financially stable insurance companies permitted to do business in the jurisdictions where the work, products or services will be provided:

於履行本合約有關之任何工作或提供產品或服務時，經銷商必須按照任何相關的法律規定，自費為經銷商及其所屬人員投保保險。此外，經銷商必須向財務狀況穩定、且獲准得在工作、產品或服務所會提供之地區營業之保險公司，投保下列保險：

- a) commercial general liability with a limit of US\$1,000,000 per occurrence and US\$2,000,000 in general aggregate including, but not limited to, coverage for bodily injury, property damage, products and completed operations, premises/operations, and contractual liabilities; and  
 a) 商業綜合保險 (每一事故理賠上限為 US\$1,000,000，而總累計理賠上限為 US\$2,000,000)，其保險範圍包括但不限於：人身傷害、財產損害、產品及完工責任、公共意外責任及契約責任；及
- b) professional liability (errors & omissions) with a limit of US\$1,000,000\* per claim and in the aggregate covering claims arising out of errors or omissions in connection with products or services provided by Distributor. The policy shall have a retroactive date on or before the Effective Date of the Master Distribution Agreement or the date of Distributor's first delivery of products or professional service, whichever is earlier. Distributor shall use commercially reasonable efforts to maintain such coverage for at least two years following final delivery of products or services.  
 b) 專業責任保險 (錯誤與疏漏) (每一索賠及就所有保險範圍內因經銷商所提供之產品或服務的錯誤或疏漏之總累計理賠上限為 US\$1,000,000\*)。該等保險應溯及自經銷主約之生效日，或經銷商首次交付產品或提供專業服務之日 (以孰先發生者為準) 起生效。經銷商應盡商業上合理努力，於最後交付產品或提供服務後至少兩年內持續投保該等保險。

\*In the event that Distributor's gross annual revenues associated with the SAP partnership exceed US\$1,000,000 (or equivalent in foreign currency), Distributor is required to increase its policy limits in the following way:

\*若經銷商與 SAP 合作關係有關之年度營收總額超過 US\$1,000,000 (或其他外國貨幣之等值數額)，經銷商應按下述方式增加其保險的理賠上限：

Revenue 營收	Professional Liability Policy Limit 專業責任保險理賠上限
US\$1,000,001 - US\$5,000,000 US\$1,000,001 - US\$5,000,000	US\$3,000,000 per claim 每一索賠 US\$3,000,000
US\$5,000,001 - US\$10,000,000 US\$5,000,001 - US\$10,000,000	US\$6,000,000 per claim 每一索賠 US\$6,000,000
US\$10,000,001 and above US\$10,000,001 以上 (含)	US\$10,000,000 per claim 每一索賠 US\$10,000,000

2. Upon request, Distributor must provide SAP with a properly executed certificate of insurance evidencing existence of required coverages and will notify SAP no less than thirty days in advance, of any reduction or cancellation. SAP's failure to monitor compliance or to object to noncompliance or unsatisfactory compliance with any terms of the aforementioned requirements does not modify or waive Distributor's obligations in any way. Policies specified above may be maintained with limits listed in other foreign currencies, as long as they are equivalent to the amounts required herein. SAP reserves the right to review the insurance requirements at any point in time and make changes in order to address additional exposures, which may exist as a result of Distributor's provision of products or services related to any part of this Agreement.

經要求，經銷商必須提供一份經適當簽署之保險憑證予 SAP，證明其投保已涵蓋所需之保障範圍，並會於降低保額或中斷投保時，以事前至少三十日之通知，知會 SAP。就未遵守或未滿足前述規定，SAP 如未能予以監控或提出異議，並不以任何方式構成對經銷商該等義務之修改或棄權。投保上述保險時，其理賠限額得採與本條所述之金額等值之外國貨幣計算。SAP 保留在任何時刻就保險規定進行審查之權利，並得為處理由於經銷商所提供關於本合約任何部份之產品或服務所致生的額外風險，予以變更。

3. None of the requirements contained herein as to types or limits are intended to, and shall not in any manner, limit, qualify or quantify the liabilities and obligations assumed by Distributor under any part of this Agreement.

本條所述關於險種或理賠上限之規定，並非有意、且不得以任何方式就經銷商基於本合約任何部份所承擔之責任與義務，進行限縮、減輕或量化。

#### Article 6 Payment Period 付款期限

Payment period means thirty days of SAP's invoice date ("Payment Period"), unless expressly otherwise agreed on between Distributor and SAP in an order form or other order document.

除經銷商與 SAP 於任何訂購單或其他訂單文件另行明文規定外，付款期限係指自 SAP 發票日起算三十日之期間 (「付款期限」)。

#### Article 7 Currency 貨幣

All payments under this Agreement must be made in New Taiwan Dollar, unless expressly otherwise agreed on between Distributor and SAP in an order form or other order document.

除經銷商與 SAP 於任何訂購單或其他訂單文件另行明文規定外，本合約下之一切款項應以新台幣支付。

#### Article 8 Default Interest Rate 預設利率

The default rate of interest per year is 3% above the Prime Rate of Citibank, Taipei Branch applicable per annum ("Default Interest Rate").

每年之預設利率為花旗銀行台北分行基本放款利率加碼百分之三之年利率 (「預設利率」)。

#### Article 9 Index 指數

Index means the Consumer Price Index for the applicable twelve (12) month period as released by the Directorate General of Budget Accounting and Statistics ("Index").

指數係指臺灣主計處發佈適用 12 個月期間之消費者物價指數 (「指數」)。

#### Article 10 Other Mandatory Local Terms 其他當地強制規定

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。

#### Article 11 Notices 通知

1. Notice in writing. Any notice or other communication under or in connection with any part of this Agreement must be made in writing and, unless otherwise explicitly stated, may be made by fax or letter and must be addressed as set out in Article 5 (Contact Details) of the Master Distribution Agreement (or to such other changed address, fax number or addressee as a Party may designate e.g. by changing the details in the partner

relationship management system).

書面通知。基於或關於本合約任何部份之任何通知或其他通訊，應以書面為之，且除另有明文規定外，得以傳真或信函送達至經銷主約第 5 條所述 (通訊資料) 之收件地址、傳真號碼或收件人 (或至一方所指定之其他不同地址、傳真號碼或收件人 - 例如於合作夥伴管理系統變更其通訊資料)。

2. **Delivery.** Any notice or other communication made or delivered by one Party to another under or in connection with any part of this Agreement will only be effective when received in legible form.

交付。基於或關於本合約任何部份而由一方向他方為任何通知或其他通訊，僅可在其收受時屬清晰可閱形式，方為有效。

3. **Change of address:** Each Party must give the other prompt notice of any change of address, fax number or addressee.

地址變更：任一方如就地址、傳真號碼或收件人有任何變更，應盡速通知他方。

4. **Electronic communication.** Any notice or other communication under or in connection with any part of this Agreement except for those notices and communications expressly mentioned in this Part 2 - Article 11 (Notices) no. 5 below may be made by email or other electronic means if and as long as the Parties:

電子通訊。除本第 2 部份 - 第 Article 11 條 (通知) 第 5 款所明定之通知與通訊外，基於或關於本合約任何部份而為之任何通知或其他通訊，得採電子郵件或其他電子方式傳送，只要雙方：

a) agree that this is to be an accepted form of communication;

同意此為可為雙方所接受之通訊方式；

b) notify each other of their email address and/or any other information required to enable the sending and receipt of information by that means; and 相互知會他方其電子郵件地址及/或使用該方式為確保傳送及接收所需之任何其他資訊；及

c) notify each other promptly of any change to their email address or any other required information supplied by them.

如由其所提供之電子郵件地址及/或任何其他所需資訊有變更時，盡速知會他方。

5. **Exceptions to electronic communication.** The following notices or communications may not be made by email or other electronic means:

電子通訊之除外規定。下列通知或通訊不得以電子郵件或其他電子方式傳送：

a) any notice concerning termination of an order given due to (i) suspension of delivery as set out in Part 1 - Article 5 (SAP's obligation to deliver) no. 4 or (ii) Force Majeure as set out in Part 1 - Article 17 (Miscellaneous) no. 2;

由於下列任一情事而與終止任一訂購單有關之任何通知：(i) 如第 1 部份 - 第 Article 5 條 (SAP 的交付義務) 第 4 款所述之暫停交付；或 (ii) 如第 1 部份 - 第 Article 17 條 (雜項) 第 2 款所述之不可抗力；

b) any notice under or in connection with Part 1 - Article 9 (Termination for good cause) and any other notice of termination for convenience or termination for good cause under or in connection with any part of this Agreement;

基於或關於第 1 部份 - 第 Article 9 條 (基於正當事由終止) 所為之任何通知和基於或關於本合約任何部份因任意或正當事由所為之任何其他終止通知；

c) any confirmation given regarding destruction of the SAP Products, other data and media, the SAP Logos as well as any other confirmation under or in connection with Part 1 - Article 10 (Effect of Termination);

關於銷毀 SAP 產品、其他資料及媒體、SAP 標誌的任何確認，以及基於或關於第 1 部份 - 第 Article 10 條 (終止之效力) 所為的任何其他確認；

d) any notice by which Distributor notifies SAP of a claim brought against Distributor as set out in Part 2 - Article 2 (Third Party Claims) no. 1c); and 有關經銷商知會 SAP 向經銷商提起如第 2 部份 - 第 Article 2 條 (第三方索賠) 第 1c) 款所述之任何索賠通知；及

e) any notice concerning the nonconformance of the Software as set out in with Part 2 - Article 3 (Performance Warranty) no. 1b)b).

有關如第 2 部份 - 第 Article 3 (履約保證) 第 1b)b) 款所述之任何軟體異常通知。

6. **Use of websites.** Except with regard to those notices and communications expressly mentioned in Part 2 - Article 11 (Notices) no. 5 above, SAP may satisfy its obligation under any part of this Agreement to deliver any information to the Distributor who herewith accepts this method of communication by posting this information onto an electronic partner-dedicated website (e.g. the SAP PartnerEdge Portal). SAP will supply Distributor with the address of and any relevant password for the partner-dedicated website.

網站之使用。除關於上述第 2 部份 - 第 Article 11 條 (通知) 第 5 款所明定之通知與通訊外，SAP 得藉由在某一電子合作夥伴專用網站 (例如：SAP PartnerEdge 入口網站) 上張貼欲提供予經銷商之資訊，而履行其在本合約任何部份下之義務，經銷商資此同意該通知方式。SAP 會將合作夥伴專用網站之網址及任何相關密碼提供給經銷商。

7. **Language.** Any notice given in connection with the Agreement must be in either English, or Chinese and English.

語言。關於本合約之任何通知必須為英文，或中文及英文。

## Article 12 Governing Law and Jurisdiction

### 準據法和管轄權

1. This Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement and its subject matter are governed by the laws of Republic of China to the exclusion of the international law of conflicts and the United Nations Convention on Contracts for the International Sale of Goods.

本合約及因本合約和其標的事項所生或與之有關之任何索賠 (包括任何非契約索賠) 均以中華民國法律為準據法，而不適用國際法衝突原則及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) 之規定。

2. The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement (including any dispute regarding the existence, validity or termination of this Agreement) ("**Dispute**") is Taipei City, Taiwan. The Parties agree that the courts of Taipei City, Taiwan are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

因本合約所生或與其有關之一切爭議 (包括關於本合約之存在、有效性或終止之任何爭議) (「**爭議**」) 皆應以台灣台北市為專屬管轄地。雙方同意位於台灣台北市之法院，乃是解決爭議最為適當及便利之法院，因此雙方均不會就此為任何異議。