SAP PartnerEdge
General Terms and Conditions for Open Ecosystem – Build
面向开放生态体系"构建"的一般条款和条件
("Build Open Ecosystem GTC")
（以下简称"构建开放生态体系 GTC"）

1. DEFINITIONS

定义

Capitalized terms are defined in the Glossary. Other capitalized terms not defined in the Glossary may be defined elsewhere in this Build Open Ecosystem GTC.

术语见术语表中的定义。未在术语表中定义的其他以粗体显示的术语可能会在本"构建开放生态体系 GTC"中的其他地方予以定义。

2. ENGAGEMENT MODEL

合作模式

2.1. Subject to Open Ecosystem Member's compliance with all Program Requirements at all times during the term of this Build Open Ecosystem Model, including the Program Guide and Communication Guide as set forth in the Program Guide, SAP will provide to Open Ecosystem Member services as described in the Program Guide. Subject to Section 11, SAP may change, add or stop the Build Open Ecosystem services or elements thereof upon prior written notice to the Open Ecosystem Member, e.g. via web-based publication of an applicable Open Ecosystem Program Guide which will be incorporated herein by reference. Each Party agrees to cooperate reasonably with the other Party under the Agreement.

鉴于开放生态体系成员在本构建开放生态体系模式期限内始终符合所有计划要求，包括计划指南以及计划指南中规定的沟通指南，SAP 将向开放生态体系成员提供计划指南中所述的服务。根据第 11 节的规定，SAP 可在事先书面通知开放生态体系成员的情况下，更改、增加或停止构建开放生态体系服务或相关要素，例如通过网络发布适用的开放生态体系计划指南，该计划指南将以引用的方式纳入本协议。各方同意依据协议与另一方合理开展协作。

2.2. The Agreement does not grant Open Ecosystem Member:

本协议不授予开放生态体系成员以下权利：

a) any right to use or access any SAP Software or Cloud Service for testing, development, demonstration or production use. Any use of Software or Cloud Service by Open Ecosystem Member for testing, development, demonstration or production purposes is subject to the conclusion of a separate Development Agreement or applicable partner agreement.

使用或访问任何 SAP 软件或云服务进行测试、开发、演示或生产使用的任何权利。开放生态体系成员出于测试、开发、演示或生产目的的使用软件或云服务，须另行签订开发协议或适用的合作伙伴协议。

b) any rights or benefits under the SAP PartnerEdge partner program (except for SAP PartnerEdge Open Ecosystem - Build member benefits as described in the Program Guide) except as otherwise specified in the Open Ecosystem Program Guide.

SAP PartnerEdge 合作伙伴计划项下的任何权利或利益（计划指南中所述的 SAP PartnerEdge 开放生态体系"构建"成员权益除外），开放生态体系计划指南中另有规定的除外。

2.3. Open Ecosystem Member may delegate the performance of the Open Ecosystem Member's duties to suitably qualified personnel of an Affiliate. Notwithstanding such delegation by the Open Ecosystem Member of its duties, Open Ecosystem Member shall remain directly liable to SAP. Under no circumstances shall the Open Ecosystem Member or its Affiliates be entitled to hold itself out to be an authorized SAP partner or having any other direct relationship to SAP.

开放生态体系成员可以委托关联企业中合适的合格人员履行其职责。尽管开放生态体系成员能够进行此类职责委托，开放生态体系成员仍应直接对 SAP 负责。在任何情况下，开放生态体系成员或其关联企业均无权自称为授权的 SAP 合作伙伴，亦不得自称与 SAP 具有任何其他直接关系。

3. ORDERS, PAYMENT AND TAXES

订单、付款和税费

3.1. Orders, Fees and Payment

订单、费用和付款

a) Open Ecosystem Member will pay to SAP all applicable fees due within thirty days of date of invoice. SAP may provide invoices to an email address provided by Open Ecosystem Member. Unpaid fees will accrue interest at the maximum legal rate. Open Ecosystem Member purchase orders are for administrative convenience and not a condition of payment.

开放生态体系成员应在开具发票之日起三十（30）天内向 SAP 支付所有应付的适用费用。SAP 可向开放生态体系成员提供的电子邮件地址发送发票。未支付费用按法律规定的最高利率计收利息。开放生态体系成员采购订单仅为便于管理，不构成付款条件。

b) If the Program Guide specifies that any annual fee is required to be paid by Open Ecosystem Member, the first invoice of such annual fee will be calculated by SAP on a pro rata basis for the year ending December 31 of the respective calendar year. Subsequent annual fee will be calculated from 1st January to 31 December and is payable annually in advance.

若计划指南规定开放生态体系成员需要支付任何年费，则 SAP 将在相应日历年结束时的 12 月 31 日按比例计算此类年费的首张发票金额。后续年费的计算期间为每年的 1 月 1 日至 12 月 31 日，并且按年提前支付。

c) If Open Ecosystem Member fails to make its payment on the due date, SAP may suspend Open Ecosystem Member's rights under the Agreement, including without limitation, the right to use Software or Cloud Service by Open Ecosystem Member under a Development Agreement separately signed between SAP and Open Ecosystem Member, until payment is made.

如开放生态体系成员未能在付款到期日前付款，SAP 可暂停开放生态体系成员在协议项下的权利，包括但不限于开放生态体系成员依据 SAP 与开放生态体系成员单独签署的开发协议使用软件或云服务的权利，直至完成付款。

3.2. Taxes

税款

Open Ecosystem Member and SAP will comply with all applicable tax laws and regulations. All amounts payable by Open Ecosystem Member to SAP do not include, service, use, property, excise, service, customs duties, value added or similar transaction taxes ("Tax(es)") now or hereafter levied. Open Ecosystem Member will bear such taxes with the exception of income or corporation taxes attributable to SAP. If Open Ecosystem Member is required to withhold income or corporation tax or a similar tax from any payment to SAP under this Agreement, Open Ecosystem Member will be entitled to withhold or deduct such tax from the gross amount to be paid. However, Open Ecosystem Member will reduce any such withholding tax payable to the lowest possible rate subject to compliance with all applicable laws and double taxation treaties. Open Ecosystem Member will in the case of any withholding of tax provide SAP a receipt from the relevant authority to which such withholding tax has been paid and all other information and documents in order to enable SAP to apply for a tax credit against its income tax. Should the Open Ecosystem Member fail to furnish SAP such receipt within a reasonable period, Open Ecosystem Member will be liable to pay SAP the amount so deducted upon demand.

开放生态体系成员和 SAP 应遵守所有适用的税法和法规。开放生态体系成员向 SAP 支付的所有金额不包括现在或将来征收的服务税、使用税、财产税、消费税、关税、增值税或类似交易税（以下简称"税费"）。除 SAP 应缴纳的所得税或公司税以外，开放生态体系成员还应承担此类税费。如开放生态体系成员必须从本协议项下支付给 SAP 的任何付款中预扣所得税、公司税或类似税费，开放生态体系成员应有权从应付总额中预扣

或扣减此类税费。但开放生态体系成员应在遵循所有适用法律和双重税务条约的前提下，将任何此类应付预扣税降低至尽可能最低的比率。如需要预扣任何税费，开放生态体系成员应向 SAP 提供征收此类预扣税的相关权利机构开具的收据，以及支持 SAP 申请税收抵免其所得税所需的所有其他信息与文档。若开放生态体系成员未能在合理期限内向 SAP 提供此类收据，开放生态体系成员应负责按要求向 SAP 支付所扣减的金额。

4. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

知识产权和保密性

4.1. SAP Ownership

SAP 所有权

SAP, SAP SE, their Affiliates, or licensors own all Intellectual Property Rights in and related to the SAP Products, SAP Materials, Documentation, Modifications, design contributions, related knowledge or processes, and any derivative works of them conceived or created by SAP (collectively, "SAP IP"). All rights to the SAP IP not expressly granted to Open Ecosystem Member are reserved by SAP, SAP SE, their Affiliates and licensors. Open Ecosystem Member will not remove, delete or alter any Intellectual Property Rights notices appearing on the SAP Materials.

SAP、SAP SE 及其关联企业或许可方拥有 SAP 产品、SAP 材料、文档、修改、设计贡献、相关知识或流程以及 SAP 构思或创造的该等内容的任何衍生作品中所含的及相关的全部知识产权（统称"SAP IP"）。SAP、SAP SE 及其关联企业和许可方保留未明确授予开放生态体系成员的所有 SAP IP 权利。开放生态体系成员不得移除、删除或篡改 SAP 材料上显示的任何知识产权声明。

4.2. SAP Logo; Communication; Trademarks

SAP 标识；沟通；商标

a) This Agreement does not grant Open Ecosystem Member any right to use any SAP logo or Trademark.
本协议未授予开放生态体系成员使用任何 SAP 标识或商标的任何权利。

b) Communication of your relationship with SAP must conform to the Communication Guide.
传达与 SAP 的关系时必须遵守沟通指南的规定。

c) Open Ecosystem Member agrees not to register any Trademark (in whole or in part), or any mark confusingly similar to a Trademark. Open Ecosystem Member will not contest the validity of SAP logos. Open Ecosystem Member will reasonably cooperate with SAP, at SAP's expense, in the defense and protection of the SAP logos. Open Ecosystem Member acknowledges the value of the goodwill in the Trademarks, including the SAP logos, and that SAP is the exclusive beneficiary of such goodwill.
开放生态体系成员同意不注册任何商标的全部或部分，或与商标类似的会造成混淆的任何标识。开放生态体系成员不得对 SAP 标识的有效性提出质疑。开放生态体系成员应合理配合 SAP 保护 SAP 标识，费用由 SAP 承担。开放生态体系成员承认商标（包括 SAP 标识）的商誉价值，以及 SAP 为该等商誉的唯一受益人。

4.3. Confidential Information

保密信息

a) Use of Confidential Information
保密信息的使用

i. The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in this Section 4.3. Open Ecosystem Member will not disclose the Agreement or the pricing to any third party.

接收方应按照与保护自己的保密信息相同的严格程度保护披露方的全部保密信息，且此类措施至少应具备合理的谨慎态度。接收方不得向为行使本协议项下的权利或履行本协议项下的义务而需要获取保密信息，并承担与第 4.3 节规定的条款大体类似的保密义务的员工、代表或授权用户以外的任何人员披露披露方的任何保密信息。开放生态体系成员不得向任何第三方披露协议或定价。

ii. Confidential Information of either party disclosed prior to execution of the Agreement will be subject to this Section 4.3.

任何一方在签署本协议之前披露的保密信息均受到本节（第 4.3 节）规定的约束。

iii. In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.

如提起与保密信息相关的法律诉讼，接收方应配合披露方并遵守适用于保密信息处理的法律（费用均由披露方承担）。

b) Exceptions. The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

例外规定。有关保密信息的使用或披露的限制条款不适用于以下任何保密信息：

iv. is independently developed by the receiving party without reference to the disclosing party's Confidential Information,

在未使用披露方的保密信息的情况下，由接收方独立开发的信息；

v. is generally available to the public without breach of the Agreement by the receiving party,

在接收方未违反本协议的情况下，为公众所知的保密信息；

vi. at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or

在披露之时已为接收方所知且不受保密限制的保密信息；或

vii. the disclosing party agrees in writing is free of confidentiality restrictions.

披露方书面同意免除保密限制的信息。

c) Publicity. Neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Open Ecosystem Member agrees that SAP may use Open Ecosystem Member's name in customer or partner listings or quarterly calls with its investors or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including reference calls and stories, press testimonials, site visits, SAPPHIRE participation). Open Ecosystem Member agrees that SAP may share information of Open Ecosystem Member with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Open Ecosystem Member employee contact information with SAP SE and its Affiliates.

公开。未经另一方事先书面同意，任何一方不得将对方的名称用于公开活动中，但开放生态体系成员同意 SAP 将开放生态体系成员的名称用于客户或合作伙伴名单或与投资者举行的季度电话会议中的，或作为 SAP 的营销工作（包括推荐电话与品牌故事、新闻推荐、现场拜访、参加 SAPPHIRE 大会）的一部分以双方一致同意的次数进行使用的除外。开放生态体系成员同意，SAP 可出于营销和其他业务目的与其关联企业分享有关开放生态体系成员的信息，且开放生态体系成员自身已获得与 SAP SE 及其关联企业分享开放生态体系成员员工联系信息的相应授权。

d) Feedback. Open Ecosystem Member may participate in evaluations or discussions (collectively, "Discussions") with SAP where Open Ecosystem Member may provide suggestions or input regarding SAP's business or technology (collectively "Feedback"). Open Ecosystem Member grants to SAP and its Affiliates a non-exclusive, perpetual, irrevocable, worldwide, non-transferable (except to SAP Affiliates), royalty-free license, with the right to sublicense, use, publish, modify, and otherwise benefit from Feedback in any manner.

反馈。开放生态体系成员可与 SAP 一起参与评估或讨论（统称"讨论"），就 SAP 的业务或技术提供建议或意见（统称"反馈信息"）。开放生态体系成员授予 SAP 及其关联企业非独占的、永久性的、不可撤销的、全球范围内的、不可转让的（SAP 关联企业除外）、免特许权使用费的许可，使之有权通过任何方式分许可、使用、发布、修改或以其他方式从反馈信息中获益。

4.4. Independent Development

独立开发

Either party has the right to independently develop software or services that would compete with the other party's software or services without the use of the other party's Confidential Information. Either party will be free to use for any purpose the Residuals resulting from access to or work with the Disclosing Party's Confidential Information. Neither party will have any obligation to limit or restrict the assignment of such persons or to pay fees or royalties for any work resulting from the use of Residuals. However, nothing in this subsection will be deemed to grant to either party a license under the other party's copyrights or patents.

各方有权在不使用另一方保密信息的情况下，独立开发与另一方的软件或服务相竞争的软件或服务。无论出于任何目的，各方均有权自由使用因接触或使用披露方的保密信息而引发的残留信息。任何一方均没有义务限制或约束该等人员的指派，或为因使用残留信息而引起的任何工作支付费用或特许权使用费。但是，该小节的任何内容不得视为向一方授予另一方版权或专利权下的许可。

5. TERM AND TERMINATION

期限和终止

5.1. Term

期限

The Agreement commences from the effective date and remains in full force and effect until and including 31 December of the same year. Thereafter its term is automatically extended for subsequent periods of one year.

协议自上述生效日期起生效，效力持续至同年 12 月 31 日（包括当日）。此后，该期限将自动延长一年。

5.2. Termination

终止

A party may terminate the Agreement:

任何一方均可在以下情况下终止本协议：

a) upon thirty days written notice of the other party's material breach of the SAP Build Open Ecosystem GTC, unless the breach is cured during such thirty-day period; or

在书面通知另一方其实质性违反 SAP 构建开放生态体系 GTC 的三十（30）天后，除非该违反行为于上述三十（30）天期间内予以纠正；或

b) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 4.3 or 10.5.

如另一方进入破产申请程序、无力偿还债务或者为债权人利益进行分配，或实质性违反了第 4.3 节或第 10.5 节中的规定，则可立即予以终止。

c) Either Party may terminate the Agreement for convenience with written notice three months prior to the end of the initial term or the then current renewal term.

任何一方均可在初始期限或届时有效的续租期限结束前三（3）个月发出书面通知后任意终止协议。

d) Upon Open Ecosystem Member joining any SAP PartnerEdge Build partner program (other than the SAP Build Open Ecosystem program) by executing the applicable SAP PartnerEdge Build agreements ("PartnerEdge Build Agreements"), Open Ecosystem Member agrees that its SAP Build Open Ecosystem membership, as well as this SAP Build Open Ecosystem GTC, and any documents incorporated by reference therein will be terminated automatically upon the effective date of the PartnerEdge Build Agreements.

开放生态体系成员通过签署适用的 SAP PartnerEdge, Build [构建]协议（以下简称"PartnerEdge 构建协议"）加入任何 SAP PartnerEdge, Build [构建]合作伙伴计划（SAP 构建开放生态体系计划除外）后，开放生态体系成员同意其 SAP 构建开放生态体系成员资格以及本 SAP 构建开放体系系统 GTC，以及以引用方式纳入其中的任何文档都将在 PartnerEdge 构建协议生效之日自动终止。

Termination will not relieve Open Ecosystem Member from its obligation to pay fees that remain unpaid. Open Ecosystem Member agrees that communications to third parties and any publications/press releases regarding such termination will be mutually agreed in writing prior to distribution.

协议的终止不应免除开放生态体系成员支付未付费用的义务。开放生态体系成员同意，就此类终止与第三方以及任何出版物/新闻稿发布进行的通讯行为，应在发布之前经协议双方书面同意。

5.3. Effect of Expiration or Termination

有效期届满或终止的效力

Upon termination of the Agreement:

协议终止后：

a) Open Ecosystem Member's right to (i) use SAP Materials and all Confidential Information, (ii) receive any benefits under the Agreement, or (iii) identify itself as an SAP Build Open Ecosystem member will end;

开放生态体系成员 (i) 使用 SAP 材料和所有保密信息，(ii) 享受协议项下的任何利益，或 (iii) 自称 SAP 构建开放生态体系成员的权利将终止；

b) Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement;

披露方的保密信息将按协议要求退还或销毁；

c) The parties agree that communications to any third party and any publications/press releases regarding such termination will be mutually agreed upon, in writing, prior to distribution; and

协议双方特此同意，在向任何第三方以及任何出版物/新闻稿发布有关此类终止的通知之前，双方应就此达成一致的书面同意。

5.4. Survival

存续

Sections 1, 4.1, 4.3, 5.1 - 5.4, 8.1 and 9-11 will survive the expiration or termination of the Agreement.

第 1、4.1、4.3、5.1-5.4、8.1 和 9-11 节的规定在协议有效期届满或终止之后继续有效。

6. IMPORT AND EXPORT CONTROLS

进出口管制

6.1. Export Compliance

出口合规性

a) SAP Confidential Information is subject to export control laws of various countries, including the laws of the United States and Germany ("Export Regulations"). Open Ecosystem Member will not submit SAP Confidential Information to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export SAP Confidential Information to countries, persons or entities if prohibited by export laws. Open Ecosystem Member will take all precautions to ensure that any authorized user permitted under the Agreement to use SAP Confidential Information complies with the Export Regulations.

SAP 保密信息受到不同国家/地区的出口管制法律的限制，包括美国和德国的法律（"出口条例"）。未经 SAP 事先书面同意，开放生态体系成员不得为获得许可或其他法定审批而向任何政府部门提交 SAP 保密信息，也不得向出口法律禁止的国家/地区、个人或实体出口 SAP 保密信息。开放生态体系成员应采取一切预防措施，确保协议允许的任何授权用户使用 SAP 保密信息时遵守出口条例。

b) Export Assistance. Open Ecosystem Member will support SAP in obtaining any required export and import authorization and/or approval by providing such information as requested by SAP. The availability of the Cloud Materials may require prior export and/or import authorizations and this process may delay or prevent the delivery of Cloud Materials.

出口协助。开放生态体系成员应提供 SAP 所要求的信息，以支持 SAP 获取任何必要的出口与进口授权和/或批准。若要使用云材料，可能需要事先获得出口和/或进口授权，获得授权的流程可能会延迟或妨碍云材料的交付。

7. MEMBER'S COMPLIANCE OBLIGATIONS

会员的合规义务

7.1. Compliance Obligations.

合规义务。

Open Ecosystem Member will conduct operations in compliance with applicable laws, rules and regulations in exercising its rights and obligations under 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. Open Ecosystem Member will comply with SAP's Partner Code of Conduct, or its own code of conduct if comparable standards are established. Open Ecosystem Member confirms that it is not listed by any government agency as debarred, suspended, or proposed for suspension or debarment or otherwise determined to be ineligible for government procurement programs.

开放生态体系成员在开展经营活动时，应遵守适用的法律法规，行使和履行本协议下的权利和义务。法律包括但不限于美国的《海外反腐败行为法》、英国的《反贿赂法案》以及当地可能适用的反腐败法。开放生态体系成员应遵守 SAP 合作伙伴业务行为守则，或者如果开放生态体系成员制定了类似的标准，也可以遵循自己的业务行为守则。开放生态体系成员确认，其未被任何政府部门列为政府采购项目的排除、暂停单位，亦未被提议为暂停或排除单位或被列入政府采购项目不合格名单。

7.2. Prohibited Parties

被禁止方

In exercising rights and obligations under this Agreement, Open Ecosystem Member and anyone acting on Open Ecosystem Member's behalf will 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:

行使和履行本协议下的权利和义务时，开放生态体系成员和代表其行事的任何人均不得出于以不合法的手段影响下述任何被禁止方的行为或决策之目的，直接或间接给付、提供、承诺给付、或委托给付任何有价物品：

a) Employees, consultants, or representatives of the customer or prospective customer,

客户或潜在客户的员工、顾问或代表，

b) Government officials or employees,

政府官员或雇员，

c) Political party officials or candidates,

政党官员或候选人，

d) Officers or employees of any public international organization,

任何国际公共组织的官员或雇员，

e) Immediate family member of such persons (or any other person) for the benefit of such persons

或为对此类人员授利而对其直系亲属（或任何其他人）进行任何给付

Business entertainment conducted for the fulfilment 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.

为履行本协议而提供的业务招待必须合理、透明、符合客人企业的相关政策，且不得有任何试图影响业务决策的表现。

7.3. Delegation

委托

Open Ecosystem Member will only have rights to delegate its obligations under this Agreement to subcontractors if expressly permitted under this Agreement. Open Ecosystem Member will require all subcontractors to agree in writing to terms substantially similar to this Section 7. Open Ecosystem Member 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 this Agreement, except pursuant to Open Ecosystem Member's standard partner programs.

仅在本协议明确许可的情况下，开放生态体系成员才有权将其在本协议下的义务委托给分包商。开放生态体系成员应要求所有分包商以书面形式同意与本节（第 7 节）实质上相似的条款。除遵守开放生态体系成员的标准合作伙伴计划外，在依据本协议，出于为 SAP 获取业务之目的而向任何第三方支付佣金、中介费、介绍费、成交费或任何类似费用之前，开放生态体系成员必须事先征得 SAP 的书面同意。

7.4. Information

信息

Open Ecosystem Member will not obtain on SAP´s behalf or provide to SAP or its Affiliates any information which is not legally available in the Territory, or which is procurement-sensitive, proprietary, or classified, where there is reason to believe that possession of such information is unauthorized, illegal, or unethical.

开放生态体系成员不得以 SAP 的名义获取或向 SAP 或其关联企业提供在地域内不能合法取得的信息，或有理由认定是未经授权、非法或不道德占有的敏感信息、专有信息或分类信息。

8. WARRANTIES AND DISCLAIMER

保证和免责声明

8.1. Disclaimer

免责声明

Neither SAP nor its subcontractors make any representation or warranties and SAP and its subcontractors disclaim all representations, warranties, terms, conditions or statements, which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded to the fullest extent permitted by law including the implied conditions, warranties or other terms as to merchantability, suitability, originality, or fitness for a particular use or purpose. Further, except as expressly provided in the Agreement, neither SAP nor its subcontractors make any representations, warranties, terms, conditions or statements of non-infringement or results to be derived from the use of or integration with any products or services, or that the operation of any products or services will be secure, uninterrupted or error free.

SAP 及其分包商均未作出任何声明或保证，且 SAP 及其分包商均不承认任何声明、保证、条款、条件或声明，这些声明、保证、条款、条件或声明可能在双方之间产生效力，或通过成文法、普通法或其他方式隐含或纳入本协议或任何附带合同中，所有这些在法律允许的最大范围内被排除在外，包括关于适销性、适用性、独创性或对特定用途或目的的适用性的默示条件、保证或其他条款。此外，除非协议中另有明确规定，SAP 和其分包商均未就使用任何产品或服务或与任何产品或服务集成的非侵权或从中获得的结果作出任何陈述、保证、条款、条件或声明，也未保证任何产品或服务的运营将是安全的、不间断的或无误的。

9. LIMITATION OF LIABILITY

责任限制

9.1. Unlimited Liability

无限责任

Neither party will exclude or limit its liability for damages resulting from:

任何一方均不得排除或限制其就以下各项引起的损害所应承担的责任：

a) unauthorized use or disclosure of Confidential Information;

未经授权使用或披露保密信息；

b) breach or violation of SAP and its Affiliates' Intellectual Property Rights;

违反 SAP 及其关联企业的知识产权；

c) death or bodily injury arising from either party's negligence or willful misconduct;

因任一方的过失或有意过错而引起的死亡或人身伤害；

d) any failure by Open Ecosystem Member to pay any fees due under the Agreement;

开放生态体系成员未能支付协议项下的任何应付费用；

e) breach of the obligations imposed by s.12, Sale of Goods Act 1893, as amended by the Sale of Goods and Supply of Services Act 1980; and

违反《1893 年货物买卖法》（在《1980 年货物售卖和服务提供法》中修订）第 12 节中规定的义务；和

f) any other liability which cannot be excluded or limited by applicable law.

根据适用法律不能排除或限制的任何其他责任。

9.2. Liability Cap

责任限额

a) Subject to Sections 9.1 and 9.3, and regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty, claims by third parties arising from any breach of the Agreement), the maximum aggregate liability of either party (or its parent, respective Affiliates or subcontractors) to the other or any other person or entity for all events (or series of connected events) arising out of the Agreement will not exceed the annual Program Fee paid by Open Ecosystem Member to SAP for one calendar year.

根据第 9.1 和 9.3 节的规定，不论责任依据为何（是否因违反合同，侵权行为（包括但不限于疏忽）、虚假陈述、违反法定义务、违反保证、因违反协议而产生的第三方索赔），任何一方（或其母公司、各自的关联企业或分包商）因协议产生的所有活动（或一系列相关活动）对另一方或任何其他个人或实体的最高责任总额不得超过开放生态体系成员在一个日历年内向 SAP 支付的年度计划费用。

9.3. Exclusion of Damages

损害免除赔偿

Subject to Section 9.1:

依据第 9.1 节：

a) regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty, claims by third parties arising from any breach of this Agreement), under no circumstances shall either party (or their respective Affiliates or SAP's subcontractors) be liable to the other party or any third party for any loss or damage (whether or not the other party had been advised of the possibility of such loss or damage) in any amount, to the extent that such loss or damage is (i) incidental, consequential, special, punitive or indirect; or (ii) for any loss of profits, loss of business, loss of business opportunity, loss of goodwill, loss resulting from work stoppage or loss of revenue or anticipated savings, data loss, computer failure or malfunction, whether any such loss or damage is direct or indirect and even if advised of the possibility of such damages, and

无论责任依据为何（是否因违反合同而产生的责任、侵权行为（包括但不限于疏忽）、虚假陈述、违反法定责任、违反保证、因违反本协议而引起的第三方索赔），在任何情况下，任何一方（或其各自的关联企业或 SAP 的分包商）均不对任何金额的损失或损害向另一方或任何第三方承担责任（无论另一方是否已被告知此类损失或损害的可能性），包括此类损失或损害是 (i) 偶然的、后果的、特殊的、惩罚性的或间接的；也不对 (ii) 任何利润损失、业务损失、商业机会丧失、商誉损失、因停工而造成的损失或收入损失

或预期节省损失、数据丢失、计算机故障承担赔偿责任，无论此类损失或损害是直接还是间接的，且即使已经被告知出现上述损害的可能性，以及

b) SAP will not be liable for any damages caused by any SAP Product provided for no fee.

SAP 不就因任何免费提供的 SAP 产品而引起的任何损害承担责任。

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH PROVISION OF THIS BUILD OPEN ECOSYSTEM GTC WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OR WARRANTIES OR EXCLUSION OF DAMAGE IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.

协议双方均明确理解并一致同意：本构建开放生态体系 GTC 中有关责任限制、免责声明或保证或损害赔偿免除的各项条款均可分割，且独立于任何其他条款，不受本协议项下其他条款的影响。

9.4. Risk Allocation

风险分配

The Agreement allocates the risks between SAP and Open Ecosystem Member. The fees payable under this Agreement reflect this allocation of risk and limitations of liability.

协议在 SAP 与开放生态体系成员之间进行了风险分配。本协议项下的应付费用反映了前述风险分配和责任限制。

10. MISCELLANEOUS

其他条款

10.1. Severability

可分割性

If any provision of the Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.

如本协议的任何条款被裁定为无效或不可执行，则该无效或不可执行不会影响协议的其他条款。

10.2. Waivers

弃权

A waiver or non-enforcement against any breach of the Agreement or obligation under the Agreement is not deemed a waiver of any other breach or obligation.

对任何违反协议或协议项下义务的行为放弃追究的权利不应视为对任何其他违反协议或协议义务的行为放弃追究的权利。

10.3. Electronic Signature

电子签名

Electronic signature that comply with applicable law are deemed original signatures.

符合适用法律的电子签名应视为原始签名。

10.4. Notices. Electronic Communication. Any notice or other communication sent to SAP must be made in writing. Such notice or communication may be made by mail, email or other electronic means. SAP may satisfy its obligation under the Build Open Ecosystem GTC to deliver any information to the Open Ecosystem Member by posting this information on the SAP electronic partner-dedicated website (e.g. the SAP PartnerEdge Portal). SAP will supply Partner with the address of and any relevant password for the partner-dedicated website.

通知。电子沟通。向 SAP 发送的任何通知或其他沟通均须采用书面形式。此类通知或沟通可通过邮件、电子邮件或其他电子方式进行。SAP 可通过在 SAP 面向合作伙伴的电子网站（如 SAP PartnerEdge Portal）上发

布信息履行其在构建开放生态体系 GTC 项下向开放生态体系成员提供此类信息的义务。SAP 将为合作伙伴提供面向合作伙伴的网站的网址和相关密码。

10.5. Assignment

转让

Without SAP's prior written consent, Open Ecosystem Member may not assign or transfer the Agreement (or any of its rights or obligations) to any party. A Change of Control of Open Ecosystem Member will be deemed an assignment of this Agreement. Open Ecosystem Member will provide to SAP written notice at least sixty (60) days prior to any proposed assignment or transfer. Any attempted assignment or transfer of this Agreement in violation of this Section is void. SAP may assign the Agreement to SAP SE or any of its Affiliates.

未经 SAP 事先书面同意，开放生态体系成员不得向任何一方转让协议（或其任何权利或义务）。开放生态体系成员的控制变更将视为对本协议的转让。开放生态体系成员应提前至少六十（60）日向 SAP 发出关于任何转让提议的书面通知。任何试图违反本节规定转让本协议的行为均无效。SAP 可将协议转让给 SAP SE 或其任一关联企业。

10.6. Subcontracting

分包

SAP may subcontract its performance under the Agreement to third parties. SAP is responsible for breaches of the Agreement caused by its subcontractors.

SAP 可将协议项下的履行分包给第三方。SAP 应对其分包商违反协议的行为承担责任。

10.7. Relationship of the Parties

双方关系

The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement

协议双方为独立的签约方，且协议不构成协议双方间任何的合作伙伴、特许、合资、代理、信托或雇佣关系

10.8. Force Majeure

不可抗力

Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

因超出履行协议一方合理控制原因而造成对本协议的迟延履行的（到期款项之支付义务除外），不应构成对本协议的违约。这种情况下，应延长协议的履行期限，延长时间应等于妨碍履约的情形的存续时间。

10.9. Entire Agreement

完整协议

This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Open Ecosystem Member in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are superseded by the Agreement. Each party acknowledges that in entering into the Agreement it has not relied on any representation, discussion or other writings except those expressly set out in the Agreement. Each party waives all rights and remedies which, but for this section, might otherwise be available to it in respect of any such representation, discussion or other writings. The Agreement may be modified solely in writing signed by both parties, except as expressly permitted under this Build Open Ecosystem GTC. This Agreement will prevail over terms and conditions of any Open Ecosystem Member-issued purchase order, which will have no force and effect, even if SAP accepts or does not otherwise reject the purchase order.

本协议构成 SAP 与开放生态体系成员就本协议主旨所达成的有关双方商业关系的协议的完整且唯一的声明。之前的所有声明、磋商与文书（包括任何保密协议）均由本协议取代。各方均承认，在订立协议时，除了协议中明确规定的内容外，并未依赖任何声明、磋商与文书。各方放弃其在任何此类声明、磋商与文书中可能享有的一切权利和补救措施（本节规定的除外）。除非本构建开放生态体系 GTC 明确允许，本协议惟经双方书面签署方可进行修改。本协议的效力应高于开放生态体系成员签发的任何采购订单中的条款和条件；此类条款和条件不具备任何效力，即使 SAP 接受或未以其他形式拒绝该采购订单，也是如此。

10.10. Non-Exclusivity

非排他性

This is a non-exclusive relationship. Each party may have similar agreements with others.

这是非排他性关系。各方可与他人签订类似协议。

10.11. Governing Law

管辖法律

This Agreement will be construed, and the legal relations between the parties hereto will be determined, in accordance with the laws of Ireland. In the event of any conflicts between foreign law, rules, and regulations, and Irish law, rules, and regulations, Irish law, rules, and regulations will prevail and govern. The exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement is Ireland. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement. Either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

本协议将根据爱尔兰法律进行解释，并据此确定本协议双方之间的法律关系。外国法律、条例和法规与爱尔兰法律、条例和法规产生任何冲突时，应以爱尔兰法律、条例和法规为准。因本协议引起或与本协议相关的所有争议的专属管辖地位于爱尔兰。《联合国国际货物销售合同公约》和《统一计算机信息交易法案》（若实施）不适用于本协议。对于与协议及其主旨相关的任何索赔，任何一方须在知晓或经合理调查后应当知晓引发索赔的事由之日起的一（1）年内提出诉讼理由。

10.12. Priority of Agreements

协议的优先顺序

The following descending order of precedence will apply, in the event of any conflict or inconsistency between parts of the Agreement: (a) the Build Open Ecosystem GTC; (c) the Open Ecosystem Program Guide; and (d) the Open Ecosystem Communication Guide.

协议各部分之间产生任何冲突或不一致时，适用以下按降序排列的优先顺序：(a) 构建开放生态体系 GTC；(b) 开放生态体系计划指南；(c) 开放生态体系沟通指南。

11. CHANGES TO TERMS

条款变更

11.1. Terms

条款

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, this Build Open Ecosystem GTC, Program Guide, Communication Guide, and any other guide applicable to the Agreement as may be reasonably required and consistent with SAP's practices.
SAP 保留变更本协议任何或所有部分（尤其是使用更新版本替换部分内容）的权利，包括但不限于本构建开放生态体系 GTC、计划指南、沟通指南以及应 SAP 实践的合理要求适用于协议的任何其他指南。

11.2. For any changes to any parts of the Agreement permitted under Section 11.1, SAP will give Partner at least three months prior notice in writing and in such format as permitted under Section 10.4.

对于第 11.1 节中允许的任何协议部分的任何变更，SAP 应至少提前三（3）个月以第 10.4 节允许的格式向合作伙伴发出书面通知。

11.3. Unless otherwise stated in the notice, the notice will become effective after three months ("Change Period"). If the justified interests of Partner are negatively affected by any of these changes, Partner is entitled to terminate the affected part of this Agreement with effect to the expiration of the applicable Change Period. If Partner does not terminate within the applicable Change Period, the changes are deemed to be accepted by Partner.

除非通知中另有规定，否则通知将在三（3）个月后生效（"变更期间"）。若合作伙伴的正当利益因上述任何变更而受到不利影响，则合作伙伴有权终止本协议受影响的部分，终止生效时间为适用的变更期限届满之时。合作伙伴未在前述时间内终止的，视为合作伙伴接受变更内容。

11.4. Any change that SAP reasonably believes to be beneficial to Open Ecosystem Member 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 Open Ecosystem Member believe a change not to be beneficial, Open Ecosystem Member must notify SAP in writing within five days of receipt of such notice that Open Ecosystem Member does not agree with SAP's assumption and state the reasons why the change would not be beneficial to Open Ecosystem Member. In such case, Section 11.3 applies.

对于 SAP 有合理理由认为有利于开放生态体系成员的任何变更，SAP 可自行决定于 SAP 发出通知时生效。前述变更包括但不限于增加折扣、促销与计划改进。若开放生态体系成员认为变更对其不利，其必须在收到此类变更通知的五（5）日内以书面形式告知 SAP 其存有异议，并阐明变更将对其不利的理由。在此类情况下，适用第 11.3 节的规定。

Glossary

术语表

1.1 **"Affiliate"** of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.

一方的"关联企业"是指一方直接或间接拥有百分之五十（50%）以上股份或表决权的任何法人实体。任何法人实体只要持有百分之五十（50%）以上的股份或表决权，就应被视为关联企业。

1.2 **"Agreement"** means the Build Open Ecosystem GTC and documents incorporated into the Build Open Ecosystem GTC.

"协议"是指构建开放生态体系 GTC 和纳入构建开放生态体系 GTC 的文档。

1.3 **"Build Open Ecosystem"** refers to the SAP PartnerEdge open ecosystem, build specialization.

"构建开放生态体系"是指 SAP PartnerEdge 开放生态体系中专门从事构建业务的合作伙伴。

1.4 **"Change of Control"** of a party means a transaction or series of transactions (i) where 50% or more of the entity's shares or voting rights of a party ("Control") is acquired by persons or entities other than those who Control such party on the Effective Date of the Agreement, or (ii) resulting in the sale of all or substantially all of a party's assets.

一方的"控制变更"是指符合以下条件的交易或系列交易：(i) 在协议的生效日期，一方（"控制方"）50%或以上股份或表决权被控制方以外的个人或实体所获得，或 (ii) 因出售一方全部或几乎全部资产而导致。

1.5 **"Cloud Service"** means any distinct, subscription-based, hosted, supported and operated on-demand solution generally made available by SAP to its customers or partners.

"云服务"是指 SAP 向其客户或合作伙伴普遍提供的任何独有的、按需租用的、托管式支持和运行解决方案。

1.6 **"Communication Guide"** means the SAP PartnerEdge Open Ecosystem: Font Treatment and Communication Guidelines which is published on SAP's partner-dedicated website

"沟通指南"是指 SAP PartnerEdge 开放生态体系字体处理和沟通指南，该指南发布在 SAP 面向合作伙伴的网站上。

1.7 **"Confidential Information"** means:

"保密信息"是指：

a) with respect to Open Ecosystem Member: (i) the Open Ecosystem Member product, (ii) Open Ecosystem Member marketing and business requirements, (iii) Open Ecosystem Member implementation plans, and/or (iv) Open Ecosystem Member financial information, and

就开放生态体系成员而言：(i) 开放生态体系成员产品，(ii) 开放生态体系成员的市场营销和业务需求，(iii) 开放生态体系成员实施计划，和/或 (iv) 开放生态体系成员的财务信息，以及

b) with respect to SAP: (i) the SAP Product, Documentation, and SAP Materials, and (ii) information regarding SAP research and development, product offerings, pricing and availability.

就 SAP 而言：(i) SAP 产品、文档和 SAP 材料，以及 (ii) 与 SAP 研发、产品供应、定价和可用性有关的信息。

c) With respect to both Parties: Confidential Information of either SAP or Open Ecosystem Member also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure; or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.

就双方而言，SAP 或开放生态体系成员的保密信息还包括披露方防止向他人不受限制地进行披露的信息，其中包括：(i) 披露方或其代表在披露时规定具有保密性的信息；或 (ii) 根据其性质或披露时的情形理应被视为具有保密性的信息。

1.8 **"Documentation"** means SAP's then-current technical and functional documentation for SAP Product as well as any roles and responsibilities descriptions, if applicable, which is made available to Open Ecosystem Member with the SAP Product.

"文档"是指 SAP 随 SAP 产品一起提供给开放生态体系成员的针对 SAP 产品的届时最新的技术性和功能性文档以及任何角色和责任的说明（如适用）。

1.9 **"Development Agreement"** means an SAP test, demonstration and/or development agreement that provides for the terms and conditions of test, demonstration and/or development use of Software or Cloud Service.

"开发协议"是指提供软件或云服务测试、演示和/或开发用途方面的条款和条件的 SAP 测试、演示和/或开发协议。

1.10 "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.

"知识产权"是指因成文法或习惯法或通过合约产生的任何类型的专利权、外观设计权、实用新型或其他类似发明权利、著作权、掩膜作品权、商业秘密或保密权、商标、商号和服务标识及任何其他无形财产权，包括在任何国家/地区对前述任何一项权利的申请与注册，无论此类权利是否完整、现有抑或在此后申请、颁发或取得。

1.11 "Program Guide" means the SAP PartnerEdge Program Guide for Members of the Open Ecosystem which is published on SAP's partner-dedicated website.

"计划指南"是指面向开放生态体系成员的 SAP PartnerEdge 计划指南，该指南发布在 SAP 面向合作伙伴的网站上。

1.12 "Program Requirements" means the Open Ecosystem Member has to fulfill the program requirements described in the Program Guide.

"计划要求"是指开放生态体系成员必须满足的计划指南中规定的计划要求。

1.13 "Residuals" means information in non-tangible form, which may be retained inadvertently in the unaided memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained herein, so long as such persons have not studied the information for the purpose of replicating the same from memory.

"残留信息"是指曾经访问保密信息的人员无心保留在独立记忆中的无形信息，其中包括本协议所涉及的理念、概念、专有知识或技术，但此人员不得出于从记忆中复制该等无形信息的目的，研究此类信息。

1.14 "SAP" means Business Objects Software Limited, T/S SAP Solutions.

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1.15 "SAP Materials" means any materials, software and APIs provided or developed by SAP (independently or with Open Ecosystem Member's cooperation) prior to or in the course of performance under the Agreement and any information, materials or feedback provided by Open Ecosystem Member to SAP relating to the Software, Documentation or Cloud Service. SAP Materials do not include any Open Ecosystem Member Confidential Information.

"SAP 材料"是指 SAP 在履约之前或期间（独立或与开放生态体系成员合作）提供或开发的任何材料、软件和 API，以及开放生态体系成员向 SAP 提供的与软件、文档或云服务相关的任何信息、材料或反馈。SAP 材料不包括任何开放生态体系成员保密信息。

1.16 "SAP Partner Code of Conduct" means SAP and its Affiliates' global policy document that provides a set of informative guidelines to enable members and partners to comply with good business practices which is published on SAP's partner-dedicated website.

"SAP 合作伙伴业务行为守则"是指 SAP 及其关联企业在 SAP 面向合作伙伴的网站上发布的指导成员和合作伙伴遵守良好业务实践的全球性政策文档。

1.17 "SAP Products" means Software, Documentation, SAP Materials, Cloud Service and/or SAP Support.

"SAP 产品"是指软件、文档、SAP 材料、云服务和/或 SAP 支持。

1.18 "Software" means any software products developed by or for SAP, SAP SE and/or any of their affiliated companies and made generally available to its customers and partners.

"软件"是指由 SAP、SAP SE 和/或其任何关联企业开发或为之开发并普遍提供给其客户和合作伙伴的任何软件产品。

1.19 "Territory" is all the countries in the world, subject to Section 6 of this SAP Build Open Ecosystem GTC and such other excluded country as set forth in the Program Guide (Import and Export Control).

"地域"是指受本 SAP 构建开放生态体系 GTC 第 6 节约束的全球所有国家/地区，以及计划指南（进出口管制）中规定的此类其他排除的国家/地区。

1.20 "Trademarks" means the trademarks, service marks, trade names, service names, proprietary words, symbols and other logos of SAP, SAP SE, and their respective Affiliates or licensors.

"商标"是指 SAP、SAP SE 及其各自的关联企业或许可方的商标、服务标志、商号、服务名称、专有词汇、符号和其他标识。