

**SAP PartnerEdge**  
**General Terms and Conditions for Open Ecosystem**  
**開放生態系統之一般條款與條件**  
**(“Open Ecosystem GTCS”)**  
**(以下稱「開放生態系統 GTC」)**

## Definitions and Interpretation

### 定義與釋義

#### 1. Definitions

##### 名詞定義

“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 Open Ecosystem Model.

「雲端服務」係指依照相關 SAP 開放生態系統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 Partner Agreement.

「控制變更」係指一方不再受到主要合作夥伴合約所載生效日時控制任一方之個人或實體之控制。

“**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 a Distributor, to 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 Open Ecosystem 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 OE Partner 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 OE 合作夥伴集團成員除外。

“**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 Open Ecosystem Partner 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，或關於開放生態系統合作夥伴認為 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 Open Ecosystem Model.

「**維護服務**」係指依照相關 SAP 開放生態系統模式所提供並詳細描述之 SAP 現行維護服務和/或支持。

“**OE Partner Group**” means any legal entity that has direct or indirect Control over the Open Ecosystem Partner 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.

「**OE 合作夥伴集團**」係指任何對於開放生態系統合作夥伴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。

“**OE Partner Product List**” means any product list(s) issued by SAP for the applicable SAP Open Ecosystem Model setting out the available software as further defined in the in the applicable SAP Open Ecosystem Model.

「**OE 合作夥伴產品名單**」係指任何 SAP 就相關 SAP 開放生態系統模式之可用軟體 (詳細定義於相關 SAP 開放生態系統模式) 所列之產品名單。

“**Program Requirements**” means that Open Ecosystem Partner has to fulfill certain program requirements as described in detail in the applicable SAP Open Ecosystem Model and the Open Ecosystem Program Guide.

「**計畫要求**」係指開放生態系統合作夥伴必須滿足之特定計畫要求，其詳列於相關 SAP 開放生態系統模式與開放生態系統計畫指南。

“**Representatives**” means:

“**代表**”係指：

- a) in case of Open Ecosystem Partner (i) employees, consultants and (sub)-contractors of any member of the OE Partner Group and (ii) attorneys, accountants or other professional business advisors of any member of the OE Partner Group, and  
對於開放生態系統合作夥伴：(i) OE 合作夥伴集團任何成員之員工、顧問、及分包商，以及 (ii) OE 合作夥伴集團任何成員之律師、會計師、或其他專業業務顧問，以及
- 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 OE Partner Product List as well as any SAP SDK which are provided by SAP or any other member of the SAP Group to a Distributor, to 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) OE 合作夥伴產品清單及任何 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)；(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 a Distributor, to 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。

“Third Party Software” means (i) any and all software products listed on the OE Partner Product List which are provided by SAP or any other member of the SAP Group to a Distributor, to 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) OE 合作夥伴產品清單所列、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）；(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 Open Ecosystem GTCS will have the meaning ascribed to them in other parts of the Agreement.

本開放生態系統 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 Open Ecosystem GTCS are for convenience only and are to be ignored in construing these Open Ecosystem GTCS.

本開放生態系統 GTC 之條款標題僅出於便利目的而採用，不得影響本開放生態系統 GTC 之解釋。

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

本開放生態系統 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何一方，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. Open Ecosystem Partner 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. Open Ecosystem Partner indemnifies SAP and any other member of the SAP Group in respect of any third-party claims against SAP arising from or relating to a third party's assertion that the Open Ecosystem Partner acted as agent, representative or otherwise on SAP's behalf.

開放生態系統合作夥伴以自身名義，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。任何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。如有任何第三方宣稱開放生態系統合作夥伴擔任 SAP 之代理人、代表或以其他方式代表之，導致第三方對 SAP 及任何 SAP 集團成員提出請求，開放生態系統合作夥伴應負賠償責任。

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、或授予特許權。

#### 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 Open Ecosystem Partner's name in customer and partner listings (including, without limitation, showing Open Ecosystem Partner'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 Open Ecosystem Partner's business. Open Ecosystem Partner agrees that SAP may share information on Open Ecosystem Partner with any other member of the SAP Group for marketing and other business purposes and that Open Ecosystem Partner 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開放生態系統合作夥伴之名稱、地址、聯絡資料、合作關係、專業領域及/或其方案）使用開放生態系統合作夥伴之名稱，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開放生態系統合作夥伴之業務。開放生態系統合作夥伴同意 SAP 得將開放生態系統合作夥伴之資訊，與 SAP 集團之任何其他成員分享，作為行銷與其他商業用途，且開放生態系統合作夥伴已得其員工之同意，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. Open Ecosystem Partner may provide or SAP may solicit Open Ecosystem Partner's Feedback. All Feedback is provided at the sole discretion of Open Ecosystem Partner. Unless the Parties have entered into a separate agreement that includes a comparable license from Open Ecosystem Partner to SAP regarding Feedback, Open Ecosystem Partner 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 Open Ecosystem Partner 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 Open Ecosystem Partner at its sole discretion, SAP acquires no title or interest in any pre-existing or independently developed data, information, or intellectual property of Open Ecosystem Partner under this Feedback License. Open Ecosystem Partner 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 Open Ecosystem Partner's Feedback is based on Feedback of an End User, Open Ecosystem Partner must ensure that the relevant End User grants to each member of the SAP Group a Feedback License.

開放生態系統合作夥伴之意見反應得由開放生態系統合作夥伴提供或由 SAP 徵求。所有意見反應皆係由開放生態系統合作夥伴自行決定而提供。除非雙方另以個別協議由開放生態系統合作夥伴就意見反應授與 SAP 類似權利，開放生態系統合作夥伴授與 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，從而根據開放生態系統合作夥伴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**」）。除開放生態系統合作夥伴按其自己之決定提供意見反應而授與上述使用權外，SAP 並未就開放生態系統合作夥伴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。開放生態系統確認，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。若開放生態系統合作夥伴之意見反應係依據終端使用者之意見回應，則開放生態系統合作夥伴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. Open Ecosystem Partner must inform SAP without undue delay if Open Ecosystem Partner becomes aware of any third party: (a) Using or otherwise having unauthorized access to any SAP Product including, without limitation, if Open Ecosystem Partner 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, Open Ecosystem Partner 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 Open Ecosystem Partner's and SAP Group's satisfaction.

開放生態系統合作夥伴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，包括但不限於開放生態系統合作夥伴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，開放生態系統合作夥伴必須：(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開放生態系統合作夥伴及 SAP 集團滿意的方式解決為止。

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

如發生下列情況，開放生態系統合作夥伴必須立即通知 SAP：(i) 開放生態系統合作夥伴之任何控制變更，及 (ii) 開放生態系統合作夥伴資產之重大部分、使用 SAP 材料之開放生態系統合作夥伴資產之重大部分，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 Open Ecosystem Partner meeting the Program Requirements for the first time and subject to Open Ecosystem Partner's compliance with all Program Requirements at all times during the term of this Agreement, SAP grants to Open Ecosystem Partner a revocable, non-exclusive, non-transferable license to use the SAP partner logo that SAP makes available to the Open Ecosystem Partner 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 Open Ecosystem Partner 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**"). Open Ecosystem Partner is not permitted to grant sublicenses to the SAP Logos.

於開放生態系統合作夥伴首次達到計劃要求，且在開放生態系統合作夥伴於本合約期間內隨時均遵循一切計劃要求之前提下，SAP 特此授與開放生態系統合作夥伴可撤銷、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) 條款而提供給開放生態系統合作夥伴與本合約有關之 SAP 夥伴標誌。前開使用 SAP 提供給開放生態系統合作夥伴、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」)。開放生態系統合作夥伴不得就 SAP 標誌為任何轉授權。

2. When using SAP Logos, Open Ecosystem Partner 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，開放生態系統合作夥伴必須遵守 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. Open Ecosystem Partner 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, Open Ecosystem Partner must indicate that the SAP Logos are registered trademarks of the SAP Group. In this context, Open Ecosystem Partner acknowledges that SAP Parent is the sole owner of rights in the SAP Logos. Open Ecosystem Partner 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.

開放生態系統合作夥伴不得就 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，開放生態系統合作夥伴應表明 SAP 標誌係 SAP 集團之註冊商標。在此情況下，開放生態系統合作夥伴確認，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，開放生態系統合作夥伴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. Open Ecosystem Partner 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。開放生態系統合作夥伴應合理配合 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 Open Ecosystem Partner for a SAP Product must bear the notices prescribed by SAP or any member of the SAP Group concerning trademarks and other identifying marks. Open Ecosystem Partner 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). Open Ecosystem Partner 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. Open Ecosystem Partner 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.

開放生態系統合作夥伴為 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。開放生態系統合作夥伴不得 (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)。開放生態系統合作夥伴必須依 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。開放生態系統合作夥伴必須向 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 Open Ecosystem Partner's marketing, advertising and other promotional materials. Open Ecosystem Partner must make no representations regarding the SAP Products except as consistent with SAP's Documentation or as SAP may otherwise approve in writing.

SAP 有權審查開放生態系統合作夥伴在行銷、廣告及其他宣傳資料所使用的 SAP 標誌。開放生態系統合作夥伴不得就 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 Open Ecosystem Model.

SAP 就 SAP 產品的交付義務，如適用的 SAP 開放生態系統合作夥伴模式所列。

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) Open Ecosystem Partner is in substantial breach of any part of this Agreement, including without limitation, the reasons set out in Part 1 – Article 7 (Termination for good cause);

開放生態系統合作夥伴嚴重違反本合約任何部分，包括但不限於第 1 部份 - 第 Article 7 條 (基於正當事由終止) 之事由；

b) 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)；

- c) 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；
- d) export restrictions as set out in Part 1 - Article 10 (Export Regulations);  
第 1 部份 - 第 Article 10 條所列之出口限制 (出口法規)；
- e) 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
- f) any other reason for suspension similar to those listed in subsection a) to e) above.  
與前述第 a) 款至第 e) 款所列類似之任何其他暫停事由。
3. SAP must inform Open Ecosystem Partner 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 必須立即知會開放生態系統合作夥伴。
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. 1b) and e) 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 1b) 款及第 e) 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 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) Open Ecosystem Partner and/or (ii) any member of the OE Partner 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) 開放生態系統合作夥伴及/或 (ii) OE 合作夥伴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 Open Ecosystem Partner's legitimate business interests. SAP will bear the costs of the audit unless the expert establishes a breach by the Open Ecosystem Partner in which case Open Ecosystem Partner 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 會將開放生態系統合作夥伴之合法業務利益納入考量。除該專業人士認定開放生態系統合作夥伴構成違約，應由開放生態系統合作夥伴負擔其費用外，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 Open Ecosystem Partner will use the time to eliminate proof for a breach.  
除 SAP 有理由足認開放生態系統合作夥伴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 Open Ecosystem Partner'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開放生態系統合作夥伴業務營運之方式進行。
5. Open Ecosystem Partner must make full disclosure to the expert, and ensure that (i) any member of the OE Partner Group involved in the performance of obligations under any part of this Agreement and any of (ii) Open Ecosystem Partner's Representatives cooperate fully and provide information, grant viewing access to all necessary and useful documents and permit the making of copies of them.  
開放生態系統合作夥伴必須對該專業人士為完整披露，並確保：(i) OE 合作夥伴集團內涉及履行本合約任何部分義務之任何成員，及 (ii) 開放生態系統合作夥伴之任何代表，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 Open Ecosystem Partner. 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 及開放生態系統合作夥伴之利益，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. Open Ecosystem Partner'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開放生態系統合作夥伴機密資訊，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 Open Ecosystem Model.  
額外之稽核要求 (如有適用) 係列載於相關的 SAP 開放生態系統模式內。

## Article 7 Termination for good cause 基於正當事由終止

1. The affected SAP Open Ecosystem Model may be terminated by either Party immediately upon written notice to the other Party if a Party does not comply with any provision of any part of this Agreement other than those referred to in this Article 7 no. 2a) (Breach of material provisions) unless the non-compliance is capable of remedy and is remedied within thirty days of the other Party giving notice.  
若任一方未遵守非屬本第 Article 7 條第 2a) 款 (違反重大規定) 之任何部分規定者，則任一方得以書面通知立即終止受影響之 SAP 開放生態系統模式，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 Open Ecosystem 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 開放生態系統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) 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 10 (Export Regulations), Part 1 - Article 12 (Compliance) and Part 2 - Article 3 (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 10 條 (出口法規)、第 1 部份 - 第 Article 12 條 (合規義務) 及第 2 部份 - 第 Article 3 條 (所有權、權利與權益之保留) 所訂之義務。

- b) 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**」)。

- c) 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**」）。

- d) 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。

- e) 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 8 Effect of Termination**

### **終止之效力**

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

終止之效力如適用於特定模式，係規定於各該 SAP 開放生態系統模式內。

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

若某一 SAP 開放生態系統模式被終止、解除或以他法停止：

- a) Open Ecosystem Partner right to:

開放生態系統合作夥伴之下列權利：

- i. hold itself out as partner of SAP under or in connection with such SAP Open Ecosystem Model; and

基於或關於該 SAP 開放生態系統合作夥伴模式，聲稱其自身為 SAP 合作夥伴之權利；及

- 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 Open Ecosystem Model,

基於或關於該 SAP 開放生態系統模式使用 SAP 商標之權利，包括但不限於其按第 Article 4 條（商標授權）之規定獲授權使用 SAP 標誌之權利，

immediately ends.

應立即停止。

- b) Open Ecosystem Partner must within thirty days irrevocably destroy or upon SAP's request deliver to SAP all copies of the SAP Logos and other SAP trademarks which Open Ecosystem Partner was authorized to use as set out in Article 4 (Trademark License) under or in connection with such SAP Open Ecosystem Model that are in the possession of Open Ecosystem Partner, any member of the OE Partner Group and/or any of Open Partner Group's Representatives, except to the extent Open Ecosystem Partner 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;

開放生態系統合作夥伴必須於三十天內以不可回復之方式銷毀，或應 SAP 要求歸還開放生態系統合作夥伴、OE 合作夥伴集團任何成員及/或開放合作夥伴集團之代表所持有，且開放生態系統合作夥伴依據第 Article 4 條（商標授權）、因相關 SAP 開放生態系統模式而獲授權使用之所有 SAP 標誌及其他 SAP 商標的所有複本；惟開放生態系統合作夥伴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 Open Ecosystem Partner must certify in writing to SAP within thirty days that Open Ecosystem Partner has fulfilled its obligations under this Article 8 (Effect of Termination) no. 2b).

開放生態系統合作夥伴正式授權代表須於三十日內以書面向 SAP 證明，開放生態系統合作夥伴已履行其在本第 Article 8 條（終止之效力）第 2b) 款所訂之義務。

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

若某一 SAP 開放生態系統模式被終止、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 irrevocably 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 8 (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 8 條（終止之效力）第 3b) 款所訂之義務。



unless the Receiving Party is permitted under any other SAP Open Ecosystem 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 開放生態系統模式而獲准使用機密資訊者，除外。

## Article 9 Changes to Terms 條款變更

1. Notwithstanding anything in this Agreement, SAP reserves the right to change the OE Partner Product List without prior written notice. Any change to the OE Partner Product List will become effective on the date indicated in the OE Partner Product 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 Open Ecosystem Partner.

縱使本合約有任何不同規定，SAP 保留不經書面通知而變更 OE 合作夥伴產品清單之權利。對於 OE 合作夥伴產品清單之任何變更，應於 OE 合作夥伴產品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開放生態系統合作夥伴之日。

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 Open Ecosystem Model, the Open Ecosystem GTCS, the Open Ecosystem Program Guide, the PartnerEdge Branding Guide 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 開放生態系統模式、開放生態系統 GTC、開放生態系統計劃指南、PartnerEdge 品牌指南、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 Open Ecosystem Partner at least:

SAP 將至少給予開放生態系統合作夥伴：

- a) if Open Ecosystem Partner is located in EMEA or APJ, three months; and  
若開放生態系統合作夥伴位於 EMEA 或 APJ，三個月；及
- b) if Open Ecosystem Partner is located in North America or Latin America, sixty days,  
若開放生態系統合作夥伴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，以知會開放生態系統合作夥伴有關如本第 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 Open Ecosystem Partner is located in EMEA or APJ, after three months; and  
若開放生態系統合作夥伴位於 EMEA 或 APJ，三個月後；及
- b) if Open Ecosystem Partner is located in North America or Latin America, after sixty days ("Change Period").  
若開放生態系統合作夥伴位於北美洲或拉丁美洲，六天後 ("變更期")。

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

若開放生態系統合作夥伴之正當利益因任何該等變更受到不利影響，開放生態系統合作夥伴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。如開放生態系統合作夥伴未在適用之變更期內終止，相關變更則視為已為開放生態系統合作夥伴所接受。

4. Any change that SAP reasonably believes to be beneficial to Open Ecosystem Partner may, at SAP's discretion, become effective upon notice by SAP. Such changes include, but are not limited to, program enhancements. Should Open Ecosystem Partner believe a change not to be beneficial, Open Ecosystem Partner must notify SAP in writing within five days of receipt of such notice that Open Ecosystem Partner does not agree with SAP's assumption and state the reasons why the change would not be beneficial to Open Ecosystem Partner. In such case, this Article 9 (Changes to Terms) no. 3 applies.

如按 SAP 之單方判斷，SAP 合理認為任何變更係有利於開放生態系統合作夥伴，該變更應於 SAP 通知之時生效。該等變更包括但不限於程式之增強。若開放生態系統合作夥伴認為變更並非有利，開放生態系統合作夥伴應於收到該通知後五日內，以書面知會 SAP，表明開放生態系統合作夥伴不同意 SAP 之假設並列出何以變更對開放生態系統合作夥伴並非有利。在此情況下，本第 Article 9 條 (條款變更) 第 3 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 Open Ecosystem Partner.

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，而毋須對開放生態系統合作夥伴負擔任何責任。

## Article 10 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. Open Ecosystem Partner 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, Open Ecosystem Partner is responsible for complying with all applicable Export Laws. Open Ecosystem Partner 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。開放生態系統合作夥伴同意不會在未經 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，開放生態系統合作夥伴應負責遵守一切適用的出口法律。開放生態系統合作夥伴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 Open Ecosystem Partner or directly to an End User, Open Ecosystem Partner 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. Open Ecosystem Partner

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 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，開放生態系統合作夥伴將按 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。開放生態系統合作夥伴確認，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、服務或其他服務予開放生態系統合作夥伴及/或終端使用者。

3. If Open Ecosystem Partner wants to deliver and/or grant access to any SAP Product or parts thereof directly to an End User, it is Open Ecosystem Partner'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 Open Ecosystem Partner's failure to obtain any such required authorization, approval or other consent. Open Ecosystem Partner 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 End User, this Article 10 (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 Open Ecosystem Partner'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 or Open Ecosystem Partner. Open Ecosystem Partner 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 Open Ecosystem Partner in case the export, re-export or import of a SAP Product or parts thereof to Distributor, End User or both is prohibited by any applicable Export Law.

若開放生態系統合作夥伴欲直接交付任何 SAP 產品或其部份予終端使用者及/或授與存取權，開放生態系統合作夥伴應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 就開放生態系統合作夥伴未能取得任何該等必要之授權、核可或其他認可，概不負責。開放生態系統合作夥伴確認，若 SAP 或 SAP 集團之任何其他成員就任何 SAP 產品或其部份，直接交付予終端使用者及/或授與存取權限，本第 Article 10 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。就 SAP 或 SAP 集團任何成員提供給經銷商或開放生態系統合作夥伴之所有 SAP 產品或其部分，凡經開放生態系統合作夥伴合理要求，SAP 將提供相關所需之資訊。開放生態系統合作夥伴確認，倘若任何適用之出口法律，禁止出口、轉出口或進口某項 SAP 產品或其部份予經銷商、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/或授與存取權予開放生態系統合作夥伴。

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 of 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，由於適用的出口法律未能辦理；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，由於適用的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 Open Ecosystem Partner 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開放生態系統合作夥伴，SAP 得以一個月之事前書面通知終止本合約之任何部份或全部。

#### **Article 11 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.

雙方應負責確保個人資料可被處理，並保護資料擁有者的權利。

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

開放生態系統合作夥伴必須確保各該終端使用者同意讓 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。若因開放生態系統合作夥伴未能取得任何終端使用者之同意，使 SAP 遭終端使用者索賠而產生任何損失，則開放生態系統合作夥伴應負責賠償。

#### **Article 12 Compliance Obligations** **合規義務**

1. Open Ecosystem Partner 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. Open Ecosystem Partner shall comply with SAP's Partner Code of Conduct, or Open Ecosystem Partner may comply with its own code of conduct if comparable standards are established. The Open Ecosystem Partner 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.

開放生態系統合作夥伴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。開放生態系統合作夥伴應遵守 SAP 之合作夥伴行為準則，或者，開放生態系統合作夥伴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開放生態系統合作夥伴列為禁止、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, Open Ecosystem Partner and anyone acting on Open Ecosystem Partner'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，開放生態系統合作夥伴及任何代表開放生態系統合作夥伴作為之人、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. Open Ecosystem Partner shall only have rights to delegate its obligations under this Agreement to subcontractors if expressly permitted under this Agreement. Open Ecosystem Partner shall require all subcontractors to agree to terms substantially similar to this Article 12 (Compliance Obligations) in writing. Open Ecosystem Partner 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 Open Ecosystem Partner's standard partner programs.

僅於本合約明文准許時，開放生態系統合作夥伴方有權將其基於本合約之義務委派予外包商執行。開放生態系統合作夥伴應使一切外包商以書面同意遵循與本第 Article 12 條 (合規義務) 規定類似之條款。除係依據開放生態系統合作夥伴之標準合作夥伴計劃外，開放生態系統合作夥伴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，開放生態系統合作夥伴應於支付前，取得 SAP 之事前書面核可。

4. Open Ecosystem Partner 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 Open Ecosystem 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.

開放生態系統合作夥伴不得代表 SAP 獲取或向 SAP 提供於約定地區 (如相關 SAP 開放生態系統明細表之定義) 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 13 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 Open Ecosystem Schedule.

除相關 SAP 開放生態系統明細表另有明文規定外，未經他方事前書面同意，任何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 13 (Transferability and Subcontracting) no. 1:

縱使本第 Article 13 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 Open Ecosystem Partner 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開放生態系統合作夥伴。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 Open Ecosystem Partner of such transfer. SAP and any member of the SAP Group may use third parties as sub-contractors for fulfilling any of their rights or obligations under any part of this Agreement. SAP will continue to be liable for such obligations.

SAP 得不待通知開放生態系統合作夥伴而委派、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 14 Miscellaneous** **雜項**

1. Retention of data. With regard to business transactions covered by any part of this Agreement, Open Ecosystem Partner 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, Open Ecosystem Partner 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，開放生態系統合作夥伴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, 開放生態系統合作夥伴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, 以及開放生態系統合作夥伴或其代表所持有之 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 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, 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 is 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 Open Ecosystem Partner 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 Open Ecosystem Partner 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 或開放生態系統合作夥伴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 或開放生態系統合作夥伴, 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 Open Ecosystem Agreement, any SAP Open Ecosystem 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 Open Ecosystem Agreement, any SAP Open Ecosystem 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。本開放生態系統主約、任何 SAP 開放生態系統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。本開放生態系統主約、任何 SAP 開放生態系統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 14 (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 14 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 Open Ecosystem Schedule; (b) the applicable SAP Open Ecosystem Model; (c) the Master Open Ecosystem Agreement; (d) the Open Ecosystem GTCS; (e) the Open Ecosystem Program Guide; and (f) the PartnerEdge Branding Guide.

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 開放生態系統明細表；(b) 適用之 SAP 開放生態系統模式；(c) 開放生態系統主約；(d) 開放生態系統 GTC；(e) 開放生態系統計劃指南；以及 (f) PartnerEdge 品牌指南。

12. Partner Terms. Any purchase order, shrink- or click-wrap or other document issued by Open Ecosystem Partner 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 Open Ecosystem Partner, 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。開放生態系統合作夥伴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。若本合約之規定與開放生態系統合作夥伴所發出任何訂購單、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 6 (Audit), Part 1 - Article 8 (Effects of Termination), Part 1 - Article 14 no. 1 (Retention of data), Part 1 - Article 14 no. 4 (Partial Invalidity), Part 1 - Article 14 no. 10 (Waiver of Jury Trial), Part 2 - Article 1 (Limitation of Liability), Part 2 - Article 2 (Performance Warranty), Part 2 - Article 3 (Reservation of title, rights and interest), Part 2 - Article 7 (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 6 條 (稽核)、第 1 部份 - 第 Article 8 條 (終止之效力)、第 1 部份 - 第 Article 14 條第 1 款 (資料保存)、第 1 部份 - 第 Article 14 條第 4 款 (部份無效)、第 1 部份 - 第 Article 14 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 (履約保證)、第 2 部份 - 第 Article 3 條 (所有權、權利與權益之保留)、第 2 部份 - 第 Article 7 (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 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。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 DAMAGES RESULTING FROM (a) UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION; (ii) FRAUD OR WILLFUL MISCONDUCT; AND (c) DEATH OR PERSONAL INJURY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR ARISING FROM EITHER PARTY'S WILLFUL MISCONDUCT,

損害排除；責任限制。即使本合約中有任何其他相反規定，除了損害是起因於 (a) 未經授權使用、披露機密資訊；(ii) 詐欺或不當行為；及 (c) 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，

UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM WILL SAP, ITS LICENSORS OR OPEN ECOSYSTEM PARTNER 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、其授權者或開放生態系統合作夥伴，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 OPEN ECOSYSTEM MODEL BY OPEN ECOSYSTEM PARTNER TO DISTRIBUTOR OR SAP FOR THE SOFTWARE DIRECTLY CAUSING THE DAMAGES; OR

如屬經銷軟體，開放生態系統合作夥伴基於相關 SAP 開放生態系統模式，就直接造成損害之軟體已付予經銷商或 SAP 的授權費用；或

ii. IN CASE OF THE DISTRIBUTION OF CLOUD SERVICES OR MAINTENANCE SERVICES, THE LICENSE FEES PAID UNDER THE RELEVANT SAP OPEN ECOSYSTEM MODEL BY OPEN ECOSYSTEM PARTNER TO DISTRIBUTOR OR 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，開放生態系統合作夥伴基於相關 SAP 開放生態系統模式，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經銷商或 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 OPEN ECOSYSTEM PARTNER'S LIABILITY TOWARDS SAP OR ITS LICENSORS IF OPEN ECOSYSTEM PARTNER 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.

倘若經查開放生態系統合作夥伴有下列任一情事，上述責任限制，就開放生態系統合作夥伴對 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 Open Ecosystem Partner. The license fees paid by Open Ecosystem Partner to Distributor or SAP 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 與開放生態系統合作夥伴之間的風險。開放生態系統合作夥伴向經銷商或 SAP 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 OPEN ECOSYSTEM MODEL BY OPEN ECOSYSTEM PARTNER TO DISTRIBUTOR OR 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 2 項所述除外損害規定之前提下，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 與其授權者皆毋須就任何超出開放生態系統合作夥伴基於相關 SAP 開放生態系統合模式，就直接造成損害之第三方軟體向經銷商或 SAP 已付之授權費用的金額負責。

4. Time bar. Open Ecosystem Partner 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 Open Ecosystem Partner knew, or should have known after reasonable investigations, of the facts given rise to the claim(s).

時間限制。開放生態系統合作夥伴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 Performance Warranty** **履約保證**

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

SAP 及其授權人免除關於任何 SAP 產品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、特定目的之適用性或未侵害第三方權利之默示擔保，但法定不得排除之默示擔保不在此限。

## **Article 3 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 Open Ecosystem Partner in the applicable SAP Open Ecosystem Model. Unless Open Ecosystem Partner is working under a valid SAP development license, Open Ecosystem Partner is not permitted to modify or otherwise make derivative works of any SAP Product. Any such unauthorized works developed by Open Ecosystem Partner, 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 開放生態系統模式所明示授權予開放生態系統合作夥伴之任何權利、所有權與權益為前提。除非開放生態系統合作夥伴係基於一項有效之 SAP 開發授權而作業，開放生態系統合作夥伴不得就任何 SAP 產品進行修改或以他法製作其衍生作品。開放生態系統合作夥伴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. Open Ecosystem Partner 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,

開放生態系統合作夥伴無權複製、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 Open Ecosystem Partner within a reasonable period of time, despite a prior written request by Open Ecosystem Partner. 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，而開放生態系統合作夥伴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開放生態系統合作夥伴，不在此限。經由此等作為取得之資訊不得：

- 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；
- 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
- 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 Open Ecosystem Partner wishes to exercise any right to reverse engineer to ensure interoperability in accordance with applicable law, Open Ecosystem Partner 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.

若開放生態系統合作夥伴欲依相關法律，行使任何還原工程的權利以確保互通性，開放生態系統合作夥伴應首先向 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. Open Ecosystem Partner must not change or remove SAP's copyright and authorship notices attached to or relating to any SAP Product.  
開放生態系統合作夥伴不得變更或移除 SAP 置於任何 SAP 產品的著作權及作者聲明。

**Article 4 Insurance**  
**保險**

1. While performing any work or providing products or services related to any part of this Agreement, Open Ecosystem Partner must maintain, at its own expense, for Open Ecosystem Partner and its personnel, insurance coverage in accordance with any applicable statutory requirements. In addition, Open Ecosystem Partner 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，開放生態系統合作夥伴必須按照任何相關的法律規定，自費為開放生態系統合作夥伴及其所屬人員投保保險。此外，開放生態系統合作夥伴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 Open Ecosystem Partner. The policy shall have a retroactive date on or before the Effective Date of the Master Open Ecosystem Agreement or the date of Open Ecosystem Partner's first delivery of products or professional service, whichever is earlier. Open Ecosystem Partner 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開放生態系統合作夥伴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\*)。該等保險應溯及自開放生態系統主約之生效日，或開放生態系統合作夥伴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。開放生態系統合作夥伴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 Open Ecosystem Partner's gross annual revenues associated with the SAP partnership exceed US\$1,000,000 (or equivalent in foreign currency), Open Ecosystem Partner is required to increase its policy limits in the following way:

\*若開放生態系統合作夥伴與 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)，開放生態系統合作夥伴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 \$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 \$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 \$10,000,000

2. Upon request, Open Ecosystem Partner 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 Open Ecosystem Partner'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 Open Ecosystem Partner's provision of products or services related to any part of this Agreement.

經要求，開放生態系統合作夥伴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開放生態系統合作夥伴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，並得為處理由於開放生態系統合作夥伴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 Open Ecosystem Partner 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開放生態系統合作夥伴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 5 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 6 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 Open Ecosystem 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開放生態系統主約

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：任一方向就地址、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 6 (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 6 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 14 (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 14 條 (雜項) 第 2 款所述之不可抗力；

b) any notice under or in connection with Part 1 - Article 7 (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; and

基於或關於第 1 部份 - 第 Article 7 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；以及

c) any confirmation given regarding destruction of the SAP Logos as well as any other confirmation under or in connection with Part 1 - Article 8 (Effect of Termination).

關於銷毀 SAP 標誌的任何確認，以及基於或關於第 1 部份 - 第 Article 8 條 (終止之效力) 所為的任何其他確認。

6. **Use of websites.** Except with regard to those notices and communications expressly mentioned in Part 2 - Article 6 (Notices) no. 5 above, SAP may satisfy its obligation under any part of this Agreement to deliver any information to the Open Ecosystem Partner 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 Open Ecosystem Partner 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 6 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) 上張貼欲提供予開放生態系統合作夥伴之資訊，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開放生態系統合作夥伴。

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 7 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 Taiwan 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) 均以台灣法律為準據法，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, Taiwan. The Parties agree that the courts of Taipei, 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**") 皆應以台灣台北為專屬管轄地。雙方同意位於台灣台北之法院，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。