

This End User License Agreement (“**EULA**”) is between the OpenText entity specified in the signature block below (“**OT**”) and the licensee specified in the signature block below or the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, as applicable (“**Licensee**”) and is effective on the last signature date (“**Effective Date**”).

OT and Licensee agree as follows:

### **1.0 Definitions**

“**Affiliate**” means any entity controlled by, controlling, or under common control with a party to this EULA. Control exists through ownership, directly or indirectly, of a majority of the outstanding equity capital and of the voting interests of the subject entity. If an entity ceases to meet these criteria, it will cease to be an Affiliate under this EULA;

“**Claim**” means claims, suits, actions or proceedings brought against Licensee in a court of competent jurisdiction in a Covered Country by a third party which allege an infringement of the third party’s patent, copyright, or trade secret rights existing under the laws of the Covered Country;

“**Confidential Information**” means information, whether or not in physical form, all oral communications, documents and other information, disclosed by a party to the other which: (a) is by its nature or circumstances surrounding its disclosure is, or could reasonably be expected to be regarded as, confidential to the disclosing Party; (b) is marked or otherwise designated “confidential” by the disclosing Party; or (c) the disclosing Party informs the receiving Party is confidential or a trade secret;

“**Covered Countries**” means each contracting party to The Patent Cooperation Treaty (currently published at <http://www.wipo.int/pct/en/>) and “**Covered Country**” means one of them;

“**Documentation**” means user guides, operating manuals, and release notes in effect as of the date of delivery of the applicable Software, made generally available by OT;

“**Fees**” means Licensee Fees and/or Maintenance Fees, as applicable;

“**License Documents**” means this EULA including any addenda, the License Model Schedule, all Transaction Documents (including pricing information), Documentation, the document entitled Third Party Notifications (as applicable) available at [www.opentext.com/agreements](http://www.opentext.com/agreements), and any other documents provided by OT setting out permitted uses of the Software;

“**License Fees**” means all non-refundable fees payable by Licensee to OT with respect to the granting of Software Licenses;

“**License Model**” means the description of the conditions, limitations and restrictions associated with the Software License which govern the use of the Software, as set out in the applicable License Model Schedule;

“**License Model Schedule**” for each individual Software License means the version of the document(s) entitled “License Model Schedule” applicable to the licensed Software posted at <http://www.opentext.com/agreements> in effect on the date of the applicable Transaction Document;

“**Physical Media**” means the physical media or hardware containing or enabling Software;

“**Reseller**” means an authorized OT reseller;

“**Software**” means the software products, Documentation, and Support Software licensed to Licensee under this EULA, including all copies made by Licensee and may, where the meaning so implies, refer to all of the Software or portions thereof;

“**Software License**” means a license for the Software granted under this EULA to the Licensee;

“**Maintenance Fees**” means the non-refundable fees payable annually by Licensee to OT for Support Services;

“**Support Handbook**” means the then current version of the software maintenance program handbook published at [www.opentext.com/agreements](http://www.opentext.com/agreements);

“**Support Services**” means the software maintenance and support services described in the Support Handbook;

“**Support Services Term**” means each twelve (12) month period beginning on the date the Software is delivered by OT to Licensee (which may be accomplished by making the Software available by electronic download) or the anniversary thereof.

“**Support Software**” means all maintenance and support software, updates, upgrades, patches, fixes, modifications, ported versions, or new versions of the Software provided to Licensee as part of Support Services, together with all related Documentation provided to Licensee pursuant to such program;

“**Taxes**” means the sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate governments arising out of granting of licenses and delivery of Software or the delivery of Support Services, under this EULA, except taxes imposed on OT’s income;

“**Third Party Software**” means software products owned and licensed directly by third parties to the Licensee;

“**Transaction Document**” includes: a) a written order schedule signed by both parties which references this EULA, b) a quotation issued by OT and signed by the Licensee, c) an invoice issued by OT, d) a renewal notice issued by OT or an Affiliate for Support Services, or e) any other document that references this EULA and is agreed to by OT in writing. If and to the extent of any inconsistency between two or more Transaction Documents, the priority of the Transaction Documents will be interpreted in the order listed above. All Transaction Documents are governed by this EULA.

### **2.0 Ownership of the Software**

**2.1 Ownership.** None of the Software is being sold. All ownership, intellectual property, and other rights and interests in the Software remain solely with Open Text Corporation, its Affiliates or its licensors. The source code of the Software is a trade secret of Open Text Corporation, its Affiliates or its licensors, and is their confidential information.

### **3.0 License Grant**

**3.1 Grant of License.** Except as otherwise stated in the License Documents and subject to Licensee's payment of the License Fees and Taxes in full, OT grants to Licensee a non-transferable (except as provided herein), worldwide, nonexclusive, perpetual (unless stated to be a time limited term), internal business use license (unless otherwise stated in the License Model Schedule) to download, install and execute the Software identified in the applicable Transaction Document in object code only, subject to the License Models, restrictions, quantities, conditions, and limitations stated in the License Documents. OT reserves all rights not expressly granted to Licensee in a written document signed by both parties.

**3.2 Applicable License Models.** The License Model and any restrictions for the Software will be stated in the Transaction Document. If no License Model or restrictions are specified in the Transaction Document, the License Model (and any capacities) for which OT has been paid License Fees will apply.

**3.3 Allocation of Licenses to Affiliates.** Unless prohibited under the applicable License Document, the Licensee may allocate Software Licenses to its Affiliates, provided: (a) the Licensee remains responsible for the Affiliate's compliance with the License Documents; and (b) the Licensee is liable for any breach of the License Documents by an Affiliate.

### **4.0 Authorized Copies**

**4.1 Software and Documentation.** Licensee may make as many copies of the Software necessary for it to use the Software as licensed. Each copy of the Software made by Licensee must contain the same copyright and other notices that appear on the original copy. Licensee will not modify the Documentation. Documentation may: (a) only be used to support Licensee's use of the Software; (b) not be republished or redistributed to any unauthorized third party; and (c) not be distributed or used to conduct training for which Licensee, or any other party, receives a fee. Licensee will not copy any system schema reference document related to the Software.

### **5.0 Restrictions**

**5.1 General Restrictions.** Except as provided in the License Documents, Licensee will not and will not permit any other party to: (a) assign, transfer, give, distribute, reproduce, transmit, sell, lease, license, sublicense, publicly display or perform, redistribute or encumber the Software by any means to any party; (b) rent, loan or use the Software for service bureau or time-sharing purposes, or permit other individuals or entities to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server or wireless or Internet-based device, or in any other way allow third parties to access, use, and/or exploit the Software; (c) use the Software, in whole or in part, to create a competitive offering; (d) charge a fee to any party for access to or use of the Software; (e) use the Software in a manner inconsistent with the License Documents.

**5.2 Further Restrictions.** Licensee will not disclose results of any benchmark or other performance, evaluation, or test run on or related to the Software. Licensee acknowledges that the Software is not fault-tolerant and not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance and consequently will not use the Software for (a) the on-line control of aircraft, air traffic, aircraft navigation, or aircraft communications; (b) in the design, construction, operation or maintenance of any nuclear facility; (c) medical or surgical applications; or (d) any other application in which failure could cause personal injury or death. Except as expressly permitted under applicable law, Licensee will not modify, adapt, translate, reverse engineer, decompile, disassemble, decrypt, port, emulate the functionality, reverse compile, reverse assemble, or otherwise reduce or attempt to discover any source code or underlying structures, ideas, or algorithms of the Software or any confidential information or trade secret.

**5.3 Derivative Works / Improvements.** Licensee is prohibited from using the Software to create any change, translation, adaptation, arrangement, addition, modification, extension, upgrade, update, improvement, (including patentable improvements), new version, or other derivative work of or to the Software. Notwithstanding the foregoing, if any of the Software is provided to the Licensee in source code format (or any other format that can be modified), the Licensee may modify such portion of the Software for the sole purpose of using the Software in accordance with this EULA and OT will solely own all modified portions and Licensee will irrevocably assign to OT in perpetuity all worldwide intellectual property and any other proprietary rights in and to any modifications of the Software.

**5.4 Interfacing and Interactive Software.** Licensee may not permit any software products not licensed by OT to interface or interact with the Software, unless accomplished through the use of application program interfaces provided by OT.

### **6.0 Ordering Software Licenses**

**6.1 Direct Orders.** If Licensee orders Software directly from OT, the Software must be identified on a Transaction Document acceptable to OT.

**6.2 Orders through an OT Reseller.** Software Licenses ordered through a Reseller are governed by the license grant set out in this EULA and the License Model description set out in the License Model Schedule. The License Model will be stated in an order document between Licensee and Reseller. If Reseller does not notify Licensee of the correct License Model, then the License Model for which OT has been paid License Fees will apply.

**6.3 Risk of Loss and Shipping Terms.** The Software is deemed delivered on the earlier of (a) when it is made available by OT for electronic download, or (b) when OT delivers the Software on Physical Media. Title to the Physical Media and all risk of loss for the Physical Media will pass to Licensee when delivered by OT to the shipping dock of the OT shipping facility.

**6.4 Invoicing and Payment.** OT of the GSA Schedule contract reseller acting on behalf of OT as applicable may invoice Licensee for Fees upon delivery of Software and annually in advance for the applicable Support Services Term. All Fees due to OT by Licensee are due and payable upon thirty (30) days from Licensee's receipt of an invoice from OT. OT shall state separately on invoices taxes excluded

from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k). All Fees and Taxes due to OT under this EULA are payable in the currency specified in the Transaction Document. All Fees and Taxes due to OT which are not paid in full within 30 days following its due date will bear interest at a rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. This subsection does not apply if Software is purchased through an OT Reseller.

**6.5 Over Usage.** OT may invoice Licensee for Fees and Taxes payable by Licensee due to use of or authorization to access the Software in excess of the number or type of Software Licenses granted by OT.

**6.6 Licensee Affiliate Orders.** Licensee's Affiliates that order Software Licenses are bound by the terms and conditions of this EULA as if it were the Licensee. Licensee and its Affiliates are jointly and severally liable to OT for any breach of this EULA.

**6.7 OT Affiliate Orders.** OT Affiliates may fulfill orders pursuant to a Transaction Document in which case the OT Affiliate is bound by all of the terms and conditions of this EULA as if it were OT.

## **7.0 OT Support and Maintenance.**

**7.1 OT Support and Maintenance Program.** All Support Software and Support Services provided to Licensee are governed by this EULA and the then-current version of the applicable Support Handbook.

**7.2 Support Services Exclusions.** OT shall have no responsibility to provide Support Services to Licensee with respect to any problem with the Software caused by: (a) any software, device, or other product not supplied by OT; (b) neglect, misuse, alteration, or modification, to the Software other than by OT; (c) use of the Software for a purpose other than the purpose for which it was designed; (d) use of the Software on a computer platform other than the platform authorized by OT (which may be specified in the Documentation accompanying the Software); or (e) failure of Licensee to install any Support Software provided by OT.

## **8.0 Audits and Noncompliance.**

**8.1 Audit.** During the term of this EULA and for 24 months after, Licensee will maintain electronic and other records sufficient for OT to confirm that Licensee has complied with this EULA. Licensee will promptly and accurately complete and return (within 30 days of OT request) any self-audit questionnaires, along with a certification by an authorized representative of Licensee confirming that Licensee's responses to the questionnaire accurately and fully reflect Licensee's usage of the Software. Furthermore, OT may once per year audit Licensee's records and computer systems (including servers, databases, and all other applicable software and hardware) to ensure Licensee has complied with this EULA. Licensee shall cooperate with OT's audit team and promptly and accurately respond to, database queries, location information, system reports, and other reports requested by OT and provide a certification by an authorized representative of Licensee confirming that information provided by Licensee accurately reflects Licensee's usage of the Software.

**8.2 Conduct.** Audits will be conducted subject to Government security requirements during regular business hours and will not interfere unreasonably with Licensee's business. OT will provide Licensee prior notice of each audit. Such audit shall be scheduled as soon as reasonably possible but in no event more than 7 days subsequent to the notice. Licensee will allow OT to make copies of relevant Licensee records. OT will comply with all applicable data protection regulations.

**8.3 Noncompliance.** If Licensee is not in compliance with the Software Licenses, Licensee will be deemed to have acquired additional Software Licenses at OT's then-current list price in accordance with the GSA Schedule Pricelist to bring Licensee into compliance, and Licensee must immediately pay (a) the applicable License Fees and Taxes, and (b) Maintenance Fees for: (i) the period Licensee was not in compliance with the Software License; and (ii) the first year Maintenance Fees on any additional Software Licenses. Compliance with the License Documents is the sole responsibility of Licensee.

## **9.0 Limited Warranties**

**9.1 Limited Warranty.** OT warrants to Licensee that: (a) Software will be free of all known viruses at the time of first delivery; and (b) Software will perform substantially in accordance with its accompanying Documentation for 60 days from the date of first delivery; and (c) Support Services will be delivered with reasonable skill and care. OT's entire liability, and Licensee's sole remedy, for each breach by OT of the warranty in: (i) clause (a) is limited to requiring OT to deliver a replacement copy of the Software to Licensee free of known viruses; and (ii) clause (b) is limited to requiring OT to correct or work around the portion of the Software giving rise to such breach within a commercially reasonable time, failing which, in the case of the initially-delivered Software, OT will refund all License Fees attributable to the portion of the Software giving rise to the breach; and (iii) clause (c) is for OT to re-perform the applicable Support Services.

**9.2 Warranty Exclusions.** The warranties do not apply to any breach caused by: (a) any change to the Software, except where the changes were made by OT through Support Software; (b) Licensee's failure to provide a suitable installation or operating environment for the Software; (c) use of the Software on or caused by software, firmware, computer systems, data, technology or a hardware platform not approved by OT in writing; (d) any telecommunications medium used by Licensee; (e) failure of Licensee or user to comply with the Documentation; or (f) failure of Licensee to report a warranty claim within the warranty period. OT does not warrant that the Software is error-free or will operate without interruption.

**9.3 WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION, OT AND OT'S LICENSORS MAKE NO REPRESENTATIONS AND DISCLAIM ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES AND CONDITIONS, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THE ADEQUACY OF THE SOFTWARE TO PRODUCE A PARTICULAR RESULT.**

**9.4 Inability to Exclude Warranties.** If a jurisdiction applicable to this EULA restricts the exclusion of certain implied warranties, limitations on how long an implied warranty may last, or the exclusion or limitation of incidental, consequential, or special damages: (a) each

warranty which cannot be excluded is limited in time to 60 days from the date of first delivery of the Software; and (b) OT's total liability to Licensee for breach of all such warranties are limited to the amount stated in the Limitation of Liability section.

## **10.0 OT Infringement Indemnity**

**10.1 Infringement Claims.** OT will have the right to intervene to defend Licensee from any Claim, to the extent the Claim arises solely as a result of Licensee's use of the Software in accordance with the License Documents. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. This defense will not apply to a Claim to the extent caused by: (a) Licensee's failure to incorporate a Software update or upgrade that would have avoided the alleged infringement; (b) the modification of the Software by any party other than OT; (c) the combination or use of the Software with software, hardware, firmware, data, or technology not licensed to Licensee by OT or approved by OT in writing; or (d) unlicensed activities of the Licensee. As to any such cause, OT assumes no liability for infringement and Licensee will hold OT harmless against any infringement claims arising therefrom.

**10.2 Exclusions.** OT's obligations in this section are conditioned upon: (a) Licensee notifying OT in writing within 10 days of Licensee becoming aware of a Claim; (b) Licensee not making an admission against OT's interests unless made pursuant to a judicial request or order; (c) Licensee not agreeing to any settlement of any Claim without the prior written consent of OT; and (d) Licensee, at the request of OT, providing all reasonable assistance to OT in connection with the defense, litigation, and settlement by OT of the Claim; and (e) OT having sole control over the selection and retainer of legal counsel, and over the litigation or the settlement of each Claim. OT will indemnify Licensee from any judgment finally awarded or any final settlement in connection with any Claims, provided all the conditions of this section are satisfied.

**10.3 Licensee's Continued Use.** If the Software becomes the subject of a Claim, OT will, in its absolute discretion, either (a) obtain a license for Licensee to continue using the Software, (b) replace or modify the Software without unreasonable degradation in functionality or (c) terminate the Software License to the infringing portion of the Software and refund the unamortized portion of the License Fees received by OT and attributable to the infringing portion of the Software, based on a 3 year straight line amortization. OT's entire liability and Licensee's sole and exclusive remedy with respect to any Claims are limited to the remedies set out in the OT Infringement Indemnity section.

## **11.0 Limitation of Liability**

**11.1 EXCLUSION OF DAMAGES. NOTWITHSTANDING ANY BREACH BY OT (INCLUDING FUNDAMENTAL BREACH) OR TERMINATION OF THIS EULA, OT IS NOT LIABLE TO LICENSEE OR TO ANY OTHER PARTY FOR: (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLARY, OR PUNITIVE DAMAGES; OR (B) ANY LOST SALES, LOST REVENUE, LOST PROFITS, LOST OR CORRUPTED DATA, OR REPROCUREMENT AMOUNT.**

**11.2 LIMITATION OF LIABILITY. OT'S AGGREGATE LIABILITY TO LICENSEE WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO OT UNDER THE RELEVANT TRANSACTION DOCUMENT. THE PARTIES WOULD NOT HAVE ENTERED INTO THIS EULA WITHOUT THIS SECTION.**

**11.3 DISCLAIMER. THE LIMITATIONS IN THIS SECTION APPLY: (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, EQUITY, AT LAW, STRICT PRODUCT LIABILITY, OR OTHERWISE; (C) EVEN IF OT IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (D) EVEN IF LICENSEE'S REMEDIES FAIL IN THEIR ESSENTIAL PURPOSE. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW. IF THE APPLICATION OF THIS SECTION IS LIMITED BY LAW, OT'S LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW.**

## **12.0 Termination**

**12.1 Termination for Default.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this EULA must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, OT shall proceed diligently with performance of this EULA, pending final resolution of any request for relief, claim, appeal, or action arising under the EULA, and comply with any decision of the Contracting Officer.

**12.2 Effect of Termination or Expiration.** Upon any termination of this EULA, or license granted pursuant to this EULA, or upon expiration of a term license: (a) all Software Licenses will immediately terminate; (b) Licensee will immediately cease all use of the Software; and (c) Licensee must either deliver to OT or destroy all copies of Software, Documentation, and OT confidential information in Licensee's possession or control. Within 15 days after termination, an authorized representative of Licensee must certify in writing that all copies have been delivered to OT or destroyed. Any terms in this EULA which by their nature extend beyond termination or expiration of this EULA will remain in effect until fulfilled.

**12.3 Termination or suspension of Support Services.** Without limiting OT's rights under clause 12.1, OT may, in its sole discretion, terminate or suspend Support Services if Licensee fails to remedy a material breach within thirty (30) days of notice by OT, including failure to pay an invoice.

## **13.0 Miscellaneous**

**13.1 Confidentiality.** Each party (a "Disclosing Party") may disclose to the other party (a "Receiving Party") any Confidential Information. Each party agrees, for the period of this EULA and for three (3) years after such period, to hold the other party's Confidential

Information in strict confidence, not to disclose such Confidential Information to third parties (other than to Affiliates and to professional advisers who are bound by appropriate obligations of confidentiality) unless authorized to do so by the Disclosing Party, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each party agrees to take reasonable steps to protect the other party's Confidential Information to ensure that such Confidential Information is not disclosed, distributed or used in violation of the provisions of this section. The foregoing prohibition on disclosure of Confidential Information shall not apply to any information that: (a) is or becomes a part of the public domain through no act or omission of the Receiving Party; (b) was in the Receiving Party's lawful possession without confidentiality obligation prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; or (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (d) is independently developed by the Receiving Party by employees or agents without access to the Disclosing Party's Confidential Information (e) is required to be disclosed by the Receiving Party as a matter of law or by order of a court or by a regulatory body, provided that the Receiving Party promptly notifies the Disclosing Party (where lawfully permitted to do so) so that Disclosing Party may intervene to contest such disclosure requirement and/or seek an appropriate protective order or waive compliance with this section. OT recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by OT.

**13.2 Automated Verification.** The Software may contain or require a license key to prevent unauthorized installation or to enforce limits of the Software License, and may contain devices or functionality to monitor Licensee's compliance with this EULA.

**13.3 Developer Tools.** OT is not responsible or liable for Licensee's development or use of additional software code or software products ("**Licensee Software**") using software developer tools licensed by OT and Licensee will defend and indemnify OT against any claims, damages, costs, losses or expenses related to the development or use of the Licensee Software.

**13.4 Independent Contractors.** OT and Licensee are independent contractors. Neither party has any authority to bind the other in any manner.

**13.5 Waiver, Amendment, Assignment.** Any amendment of this EULA must be in writing and signed by both parties. Licensee may not assign, transfer, or sublicense any portion of its interests, rights, or obligations under this EULA by written agreement, merger, consolidation, change of control, operation of law, or otherwise, without the prior written consent of OT. Neither party will be deemed to have waived any of its rights under this EULA by lapse of time or by any statement or representation other than by a written waiver by a duly authorized representative. No waiver of a breach of this EULA will constitute a waiver of any prior or subsequent breach of this EULA. An assignment in contravention of this subsection will be null and void. Except to the extent identified in this subsection, this EULA will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

**13.6 Governing Law.** This EULA is governed by the Federal laws of the United States, and (b) the United Nations Convention on Contracts for the International Sale of Goods..

**13.7 Force Majeure.** Excusable delays shall be governed by FAR 552.212-4(f) .

**13.8 Severability.** If any provision of this EULA is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the provision will be severed from this EULA and all remaining provisions will continue in full force.

**13.9 Export Laws.** The Software, including Documentation, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee will comply strictly with all regulations and has the responsibility to obtain any licenses required to export, re-export, or import Software or Documentation.

**13.10 Press Release.** With Licensee's prior approval, OT may refer to Licensee's relationship with OT in a public press release or marketing materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

**13.11 Attribution Notices.** Licensee will not remove, modify, obscure, resize, or relocate any ownership, attribution, or branding notices from the Software.

**13.12 Resale of Third Party Software.** The use of any Third Party Software resold by OT to the Licensee will be governed by a license agreement between the Third Party Software owner and the Licensee. OT does not provide any warranties related to the Third Party Software. OT has no liability or obligation to the Licensee related to the Third Party Software.

**13.13 US Government End Users-Restricted Rights Legend.** If the Software is being licensed directly or indirectly on behalf of the United States government, the following applies. For civilian agencies and departments: the Software was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with the Rights in Data Clause of FAR 52.227-14 and its successors, and it is unpublished and all rights are reserved under the copyright laws of the United States.

**13.14 Entire License Agreement.** The License Documents set forth the entire agreement between the parties with respect to this subject matter, and supersede all other related oral and written agreements and communications between the parties. Neither party has relied upon such other agreements or communications. Any purchase order terms which purport to amend or modify terms of the License Documents, or which conflict with the License Documents are void and shall have no legal effect notwithstanding the fact the purchase order terms being later in time or OT issuing an invoice to Licensee after receiving such purchase order from Licensee.

**13.15 Transaction Documents and Order of Priority.** OT and Licensee may agree in a Transaction Document to special provisions which amend or vary a party's rights or obligations under this EULA (including any addenda), the License Model Schedule, Documentation, the document entitled Third Party Notifications available at [www.opentext.com/agreements](http://www.opentext.com/agreements) or any other documents provided by OT setting out permitted uses of the Software. In the event of an inconsistency between: (i) special provisions agreed in a Transaction Document, (ii) this EULA (including any addenda), (iii) the License Model Schedule, Documentation, the document entitled Third Party Notifications available at [www.opentext.com/agreements](http://www.opentext.com/agreements) or any other documents provided by OT setting out permitted uses of the Software, the documents shall be interpreted in that order to the extent of the inconsistency.

**13.16 Third Party Rights.** This EULA does not confer a benefit on, and is not enforceable by, any person or entity who is not a party to this EULA.

**13.17 Legal Review and Interpretation.** Both parties have had an opportunity for legal review of the License Documents. The parties agree that the License Documents result from negotiation between the parties. The License Documents will not be construed in favor of or against either party by reason of authorship. The headings used in this EULA are for convenience only. The term section refers to all subsections below a section heading (i.e. 3.0) and the term subsection refers to sequentially numbered subsections following a section (i.e. 3.1).

**13.18 Notices.** Any notice under this EULA that must be given by a party in writing is deemed effective when sent either: (a) via certified or registered mail, postage prepaid, or (b) via express mail or nationally recognized courier service to the other party's address specified in this EULA or on the most recent Transaction Document. Notices to OT will also be sent to OT's general counsel at 2440 Sand Hill Road, Suite 302, Menlo Park, CA 94025.

# OpenText Prime Protect

## Software Maintenance Program Handbook

### **1. Introduction**

Welcome to Open Text Corporation’s OpenText Prime Protect Software Maintenance Program. This handbook provides you with information about the policies and processes designed with your support needs in mind. Please use this as a guide to help you get the most out of your investment in OpenText solutions.

The OpenText Prime Protect Software Maintenance Program Handbook (the “Handbook”) describes the OpenText Prime Protect Software Maintenance Program services offered for OpenText software licensed from OpenText and for which you have purchased the support services described herein. We also offer fee-based enhanced support programs that allow organizations to extend their support coverage depending on their business needs. They are available to any current subscriber of the OpenText Prime Protect Software Maintenance Program and may be described in section 5 of the Handbook.

You can also refer to <https://www.opentext.com/support> to find more information or contact your local OpenText customer support office for documentation on these additional programs.

## 1.1 Definitions

“**Additional Program**” refers to fee-based enhanced programs, which may be outlined in Section 5 herein.

“**Classification**”, “**Classified**” or “**Classify**” refers to the OpenText designated priority of the Support Request.

“**Covered Software**” shall mean the licensed software for which maintenance services shall be provided under this Handbook including all documentation provided or made available.

“**Customer Service Portal**” refers to the OpenText online access point for links to and information regarding OpenText customer support, available to OpenText Prime Protect customers.

“**Current Maintenance**” – a defined period of time from the release date of the Covered Software which includes:

- Unlimited number of Support Request submissions
- Product Patches and/or Releases
- The ability to request enhancements or new features and report Errors
- Access to the Customer Service Portal (Documentation, technical articles, discussion forums, webinars and events)
- Requires customer active software maintenance and annual renewal

“**Days**” refers to business days, which are 5 days x 8 hours Monday through Friday, except for regional statutory holidays.

“**Documentation**” refers to user guides, operating manuals, and release notes in effect as of the date of delivery of the applicable Covered Software, made generally available to OpenText’s end users by OpenText.

“**Error**” refers to any verifiable and reproducible failure of the Covered Software to perform substantially in accordance with its accompanying Documentation, as applicable, for such Covered Software.

“**Expiration**” shall mean the ending of a Term whether occurring through termination or cancellation. “**Initial Term**” refers to the twelve months beginning on the Start Date.



“**OpenText**” refers to Open Text Corporation and/or its subsidiaries/affiliates offering the maintenance and support services as described in this OpenText Prime Protect Software Maintenance Program Handbook, as applicable.

“**Product Patch**” refers to an additional software program to correct an Error of the Covered Software.

“**Points of Contact**” or “**POC**” refers to your designated individual employees who are authorized to contact the OpenText support team.

“**Production Mode**” refers to the use of the Covered Software as intended by its accompanying Documentation, by your users as part of business or service operations. Production Mode does not include development, quality assurance, demonstration, testing, staging or training environments.

“**Release**” refers to the finalized and released software.

“**Resolution**” refers to taking the necessary action to correct an Error such that the Covered Software is operating in accordance with the Documentation. This could include, but is not limited to, creating a new or applying an existing Workaround (provided that OpenText will pursue a permanent fix, if commercially reasonable), or Update.

“**Response Time**” refers to the amount of time that is measured from the time a Support Request is received by OpenText until the time when a technically qualified member of OpenText responds to you for the purpose of commencing the work necessary to achieve Resolution of the Support Request.

The response time for an SR is determined by its Classification, the OpenText support program(s) the customer subscribes to, and the time when the SR was submitted to OpenText during a business day.

“**Start Date**” refers to the initial date for the commencement of customer’s OpenText Prime Protect Software Maintenance Program which is on the date the Covered Software is initially shipped or otherwise made available from OpenText to you.

“**Subsequent Term**” refers to the 12-month term commencing on the first anniversary of the Start Date and each subsequent 12-month term commencing on an anniversary of the Start Date.

“**Support Request**” or “**SR**” refers to the initiation of a record or “ticket” documenting the details of the service request or incident.

“**Support Services**” refers to the following activities: an initiation of a Support Request, OpenText’s response to the Support Request, and a Resolution of the Support Request.

“**Sustaining Maintenance**” refers to the stage of the product lifecycle following the expiration of Current Maintenance. During this phase of the product support lifecycle, the following Support Services are available\*:

- Access to the Customer Service Portal (Documentation, technical articles, discussion forums, webinars and events). \*The terms and length of phases of the product support lifecycle may vary depending on the product and Release. Please refer to the Customer Service Portal product page for specific lifecycle terms.

“**Term**” refers to either the Initial Term or a Subsequent Term.

“**Update**” shall mean any Product Patch or Release of the Covered Software, which will be provided by OpenText to the customer in accordance with this Handbook.

“**we**” or “**our**” refers to OpenText.

“**Workaround**” is a manner of addressing an Error by bypassing the problem in the system (software technical bypass). A Workaround is typically a temporary fix and OpenText may subsequently correct the Error in the Covered Software and / or the programs through an Update.

“**you**”, “**your**” or “**customer**” mean the entity registered as the licensee of the Covered Software and is purchasing OpenText Prime Protect Software Maintenance Program services.

## 2. Support Services

### 21 General

#### 21.1 Hours and OpenText Support Services Location Information

Support Services are available 7x24 for Critical and High support requests (as defined in section 2.3.2 of this SMPH). For Moderate and Low Support Requests, Support Services are available 5x8 \*Monday through Friday, except for regional statutory holidays. Support Services hours are based on the country where the customer is located and purchased the Covered Software. Hours, support locations and additional contact information for the OpenText Prime Protect Software Maintenance Program are publicly available and maintained at our corporate website at <https://www.opentext.com/support/contact/opentext>.

Support Services are delivered from a support location in the same region as where the customer is located and purchased the Covered Software, or from an alternate support location as determined by OpenText. Where an alternative support location is used by OpenText, regional statutory holidays for such alternative support location shall not impact the Support Services hours for customer.

Communication relating to an SR will be made in English, unless, at OpenText's discretion, the support center responsible for processing is able to offer communication in another language as a convenience to the customer. OpenText may not be able to provide any information in a language other than English in the event an SR is transferred to a different support center.

\*For customers in the Middle East, Support Services are available 8 hours a day, 5 days a week, Sunday through Thursday, except for regional statutory holidays, for moderate and low Support Requests.

## **21.2 Point(s) of Contact**

Support Services are provided to your Point of Contact (POC). The POCs must have knowledge of, and the administrator permissions for, the Covered Software sufficient to provide OpenText customer support with the information and undertake actions required to achieve a resolution of the SR as described below.

POCs are generally the administrators and other members of your technical staff.

A unique support renewal contract for the Covered Software will be assigned to each software maintenance and support order you place with OpenText. You may designate up to six POCs for each support renewal contract. The POCs may only contact OpenText customer support in accordance with section 2.1.1.

## **21.3 Software Updates**

Releases to Covered Software will be made available to you as part of the OpenText Prime Protect Software Maintenance Program at no additional charge if and when such Releases are generally released to all OpenText Prime Protect Software Maintenance Program subscribers. To receive such Releases, the OpenText Prime Protect Software Maintenance Program must be subscribed to at time of Release and request. Subscribers are notified about new Releases in regular information bulletins and via the Customer Service Portal.

You are encouraged to run the most recent Release of the Covered Software. In most instances, OpenText will support each Release of the Covered Software for a period of sixty (60) months

after the Release is generally made available to OpenText's customers (Current Maintenance). The terms and length of phases of the product support lifecycle may vary depending on the Covered Software and Release. Please refer to the Customer Service Portal product page for specific lifecycle terms. After the expiration of the Current Maintenance term, the Covered Software enters the Sustaining Maintenance phase of the product lifecycle. When Covered Software is considered to be in Sustaining Maintenance, no new Product Patches and Releases are released for general use.

Migration to a Current Maintenance Release may be required in order to address an issue. If you are unable to update to a subsequent Release under Current Maintenance, OpenText may offer extended support and maintenance options at an additional cost. Please contact your Renewals Specialist or local OpenText customer support office for more information.

## **22** Initiation of a Support Request

Support Services are provided under the OpenText Prime Protect Software Maintenance Program to address incidents reported by subscribers associated with performance or usage issues. Performance and usage issues are situations where the Covered Software is not performing substantially in accordance with the accompanying user Documentation. Generally speaking, performance and usage issues may be caused by: 1) software Error or defect (related to the design, coding or architecture of the Covered Software); 2) usage or configuration Error (related to usage of the Covered Software or the installation, configuration or setup of the Covered Software); or 3) environmental Error (related to the subscriber's network, hardware and operating systems).

SRs for Support Services to address any issues should be initiated by a POC using the Customer Service Portal located at <https://support.opentext.com/>. These customer self-service tools will automatically initiate an SR and send you an associated tracking number.

You are encouraged to:

- Provide OpenText customer support with the information it reasonably needs to Classify and log the SR (see 2.3.2).
- Wherever possible, use the SR number for each communication with OpenText customer support.

## 2.3 OpenText Response to a Support Request

### 2.3.1 Support Request Dispatch

Support Requests will be dispatched as follows:

- a. If the SR involves OpenText Covered Software, then a SR will be forwarded to OpenText customer support for Classification and Resolution (described below).  
If the source of the SR is unclear, the ticket will be forwarded to OpenText customer support for further investigation and, once the source of the SR is determined, it will be dispatched as described above in section 2.3.1 (a).
- b. If the source of the SR is your hardware, operating system, database, web server, browser software or other non-OpenText application, OpenText may, where possible, attempt to provide a Workaround (described below) and/or may, where possible, report the problem to the appropriate vendor for Resolution. If the SR involves a product that is developed by a third party, the SR may be referred to that third party.
- c. Any software and/or hardware provided by and installed by OpenText (as agreed by you) to assist with the delivery of the Support Services that is not purchased by you must be removed and returned to OpenText upon termination of the program or related delivery component.

### 2.3.2 Support Request Classification and Response Times

SR Classification	SR definition	Target Response Time
	Each SR will be Classified by OpenText customer support as listed below. OpenText will consider, in good faith, your request to reclassify an SR.	Response Times are targets and cannot be guaranteed in all circumstances by OpenText.
1-Critical	An SR will be Classified as a critical incident if the Production system is down, the Covered Software is inoperable and where there is critical business impact	1 business hour or less, 7x24  Critical incidents must be logged by phone to OpenText directly.
2- High	An SR will be Classified as a high incident if it results in production performance degradation, restricted use of the Covered Software, and where there is high business impact	2 business hours, 7x24
3-Moderate	An SR will be Classified as moderate where an issue impacts non-production environment, relates to use of or a configuration inquiry for the Covered Software, a minor software defect or a feature request  Access to the Customer Service Portal remains available 7x24	4 business hours, 5x8
4-Low	An SR will be Classified as Low for administration or general inquiries, or where there is no material business impact	8 business hours 5x8

Escalation: You may request an escalation at any time through the Customer Service Portal or phone. Please see Section 3.0 for limitations to the OpenText Prime Protect Software Maintenance Program.

## **2.4** Resolution of Support Request

OpenText customer support shall attempt to address each SR, regardless of Classification, through the offering of technical advice, by locating an existing Workaround or by creating a new Workaround using the process described below in this Section 2.4. In the event of an outage and depending on the cause and duration of the outage, OpenText may require the customer to restore from backup in order to return the system to a production state.

Once production service is restored, the SR Classification is downgraded and root cause analysis may continue, as requested, during regular regional support hours of operation.

If a Product Patch is provided to you to resolve an SR, distribution of the Product Patch will be carried out through the next scheduled Release.

### **2.4.1** Resolution of Critical SRs

For SRs Classified by OpenText as Critical which have been caused by defects in the Covered Software, if the technical advice provided by OpenText customer support has not resolved the SR, and if no Workaround can be found or created to resolve the SR, OpenText customer support will use commercially reasonable efforts to develop a Product Patch to address the SR and provide it to you.

### **2.4.2** Resolution of High SRs

For SRs Classified by OpenText as High, OpenText may develop a Product Patch or may address this in a future Release.

### **2.4.3** Resolution of Moderate SRs

For SR's Classified by Open Text as Moderate may be included in a future Release.

## **2.4.4** Conditions of a Support Request Resolution

OpenText customer support shall attempt to address each SR, regardless of Classification; OpenText will have no obligation to provide a Resolution for your SR as described above unless:

- You are running a Release of the Covered Software which is under Current Maintenance and you have installed and implemented all of the most recently available relevant Updates, or you do so at the request of OpenText customer support. OpenText customer support will make that request if it reasonably believes that the installation and implementation is necessary to achieve Resolution of your SR; AND,
- You are using the Covered Software on hardware and with third-party software approved by OpenText or as specified in the Documentation; AND,
- The SR has, as determined by OpenText, not been caused by you, including, but not limited to your use and/or configuration of: (a) development tools, including SDK; (b) a third-party resource; and (c) the operating environment in which the Covered Software is implemented, including, among other things, the operating system, database, other applications, services, or programs, communication networks, or hardware; AND,
- Your POC is available to actively participate with OpenText on diagnosis, testing, and Resolution. OpenText reserves the right to suspend its obligations under this Handbook during any time(s) in which a competent POC is unavailable for such participation; AND,
- You have provided OpenText with all of the information necessary to allow OpenText to reproduce the SR.

## **3.** **Limitations**

The following limitations apply to the OpenText Prime Protect Software Maintenance Program:

- The OpenText Prime Protect Software Maintenance Program as described in this Handbook only applies to the Covered Software as is described in the OpenText Documentation, and does not apply to any modifications, deliverables, or services provided by OpenText’s professional services staff or by third-party resources which results in the alteration or extension of the Covered Software. Customer may engage OpenText’s professional services for fee-based assistance under separate agreement.
- OpenText reserves the right to modify any portion of this Handbook at its sole discretion and without prior notice; however, you will be notified of any such modifications (if such modifications result in a material reduction of service) in a timely manner by way of email, written notice or a posting on the Customer Service Portal.
- Nothing in this Handbook purports to exclude, restrict or modify, any condition, warranty or guarantee implied by applicable law (“Implied Terms”) where to do so would have the effect of rendering all or any part of this Handbook void or otherwise unenforceable. To the maximum extent permitted by applicable law, OpenText’s liability for breach of any Implied Terms is limited to the resupply of the OpenText Prime Protect Software Maintenance services.

- OpenText’s obligation to address SRs and/or performance issues shall be strictly limited to those obligations described in this Handbook.
- The OpenText Prime Protect Software Maintenance Program does not provide for dedicated assistance with issues encountered as a result of implementing major changes to the technical architecture of the Covered Software (for example, Updates to the application, underlying database, addition of new hardware, etc.). OpenText offers: (1) remote or onsite assistance from an OpenText Customer Support representative who is assigned to your organization for the duration of a maintenance activity or SR to observe, participate in conference calls or web sessions, or provide assistance with your maintenance activities (“Dedicated Support”); and (2) an assigned support representative with expertise in your planned maintenance activity that will be on call only in the event you need assistance (“Standby Support”). Dedicated Support or Standby Support are fee- based services that must be pre-arranged for these types of activities. Please contact your local OpenText customer support office for more information.
- OpenText Prime Protect Software Development Kit (SDK) Support will provide assistance with SRs relating only to: (a) the installation (b) the configuration of an OpenText developer application (for example, Integrated Development Environment (“IDE”)) or related software required to establish a suitable development or programming environment that is consistent with those environments or applications which have been supported; and (c) the analysis of error messages related to the OpenText developer application. SDK support for debugging code, assistance with writing coding, code reviews, or any general programming assistance is not included as part of the OpenText Prime Protect Software Maintenance Program, but can be provided through separate agreement at an additional charge.
- The provision of license keys is excluded from the Response Times described in Section 2.3.2 of this OpenText Prime Protect Software Maintenance Program. Additionally, license keys from third- party vendors are requested of the third-party vendor and provided by the third-party vendor to either OpenText or the Customer as determined by OpenText. License keys may not be available for products and/or releases no longer under Current Maintenance.
- The software lifecycle for third-party products resold by OpenText is established by third-party vendors only. Third-party software is excluded from Section 2.1.3 .
- OpenText is not responsible for providing Support Services for third-party products resold by OpenText to the extent that addressing SRs is dependent on unresolved issues with third-party products including, but not limited to, unavailability of third-party support.
- All licenses and related modules must be supported under the same software maintenance program (e.g., Prime Protect, extended support and maintenance programs (to the extent available), etc).



## 4. Term and Renewal

### 4.1 Initial Term and Renewal

The Initial Term for OpenText Prime Protect Software Maintenance Program is twelve months beginning on the Start Date. The OpenText Prime Protect Software Maintenance Program may be renewed for a Subsequent Term on an annual basis, commencing each anniversary of the Start Date, by executing a written order. Before the commencement of a Term, you will be obligated to pay the applicable entire annual OpenText Prime Protect Software Maintenance Program fee with respect to the Covered Software which you have licensed from OpenText, failing which OpenText may suspend some or all of the OpenText Prime Protect Software Maintenance Program services until payment has been received. Such suspension shall not relieve you from your obligation to pay the applicable OpenText Prime Protect Software Maintenance Program fee. All fees paid for the OpenText Prime Protect Software Maintenance Program are non-refundable.

### 4.2 Reductions

All requests to renew OpenText Prime Protect Software Maintenance Program on a fewer number of licenses or modules for Covered Software than is currently covered under maintenance and support must be submitted in writing to OpenText no less than 90 calendar days prior to the expiration of the then-current Term.

Acceptance of any such requests is at OpenText's sole discretion. If OpenText accepts such a request, OpenText shall only provide Updates and software support for the number and type of licenses included in your then remaining Covered Software being renewed under maintenance and support. The maintenance charges for the remaining Covered Software shall be re-priced. In such an event, the fees applied to each license may differ from any earlier Terms (for example, previously granted fee discounts are not applicable).

Any renewal of maintenance and support for Covered Software must result in all of Customer's licenses of such Software product and related modules being covered by a maintenance and

support plan. If you cancel maintenance and support for a portion of any Software product or related modules, you will be required to cancel the licenses for the unsupported software

### **4.3 Lapse and Reinstatement**

If you terminate or cancel, as applicable, a Term of the OpenText Prime Protect Software Maintenance Program for the Covered Software, you may, upon agreement by OpenText, subsequently purchase OpenText Prime Protect Software Maintenance Program services for said Covered Software. However, in addition to the fee for the new Term, which shall be a minimum of 12 months, you will need to pay the fees that would have been payable had you continued the OpenText Prime Protect Software Maintenance Program uninterrupted.

Future reinstatement of software not cancelled as a part of a reduction as described in Section 4.2 is subject to payment of back-maintenance fees and lapsed month surcharges.

OpenText will confirm fees for reinstatement at the time the request is made for reinstatement.

### **4.4 Expiration**

Upon Expiration of the Term of an OpenText Software Maintenance Program, you acknowledge and agree that any and all agreements between you and Open Text related to the OpenText Software Maintenance Program shall automatically terminate, irrespective of whether these agreements were documented in this Handbook or a EULA or any other document. Upon Expiration of your OpenText Software Maintenance Program, you will no longer be able to receive assistance from the OpenText support team or have access to the Customer Service Portal. Should you at any point in time after Expiration choose to subscribe again to an OpenText Software Maintenance Program, you will do so under the then-current OpenText Software Maintenance Program commercial and support services delivery terms, and OpenText shall not be obligated to comply with any agreements that were entered into prior to the Expiration date related to such OpenText Software Maintenance Program.

## 5. Additional Programs

Additional Programs are fee-based enhanced support programs that allow organizations to extend their support coverage depending on their business needs, and are available to any current subscriber of the OpenText Prime Protect Software Maintenance Program.

## **5.1 Additional POCs**

Additional POCs is a subscription-based option to extend the number of your designated individual employees who are authorized to contact OpenText customer support and open SRs. If you elect to purchase this option:

- Fees for Additional POCs are annual
- The Additional POC period shall be for 12 months unless otherwise agreed by OpenText and the customer in writing.
- The terms in this Handbook shall apply to the program deliverables defined herein for the Additional POCs.

## **5.2 Onsite Assistance**

Onsite support is available as a fee-based service for OpenText products and solutions. This service may include, but is not limited to, Workarounds or assistance with configuration changes as part of the Resolution of an open SR.

## **6. Privacy**

For the purpose of this section, Personal Data shall have the same meaning as in the applicable data protection law. To the extent you provide Personal Data to us as part of our provision of the Support Services, we will comply with the requirements of data protection law applicable to it for the processing of personal data. We have implemented technical and organizational measures to protect your Personal Data and ensure a level of security appropriate to the risk. Customers' Personal Data shall not be used by us, our affiliates or our business partners, vendors and agents working on our behalf for any other purpose other than as required under this SMPH, the underlying contract and permitted or required by law.

Support Services are not intended for processing Personal Data. Customers should ensure that they do not include Personal Data when receiving our Support Services other than contact and account information. We process contact and account information in accordance with the OpenText Privacy Policy attached hereto

**[www.opentext.com/contact](http://www.opentext.com/contact)**

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## Introduction

THIS CYBERSECURITY END USER LICENSE AGREEMENT, TOGETHER WITH ANY EXHIBITS AND ADDENDA (EACH, WHERE APPLICABLE, AND COLLECTIVELY, THE “**EULA**”), GOVERNS LICENSEE’S LICENSE TO, AND USE OF, THE APPLICABLE SOFTWARE (AS DEFINED BELOW), IN ADDITION TO ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE. IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THIS AGREEMENT AND ANY TERMS PRESENTED TO YOU DURING YOUR USE OR INSTALLATION OF THE SOFTWARE, THE TERMS OF THIS AGREEMENT SHALL GOVERN AND CONTROL.

BY PLACING AN ORDER REFERENCING THIS EULA, LICENSEE AND THE OPENTEXT ENTITY SET FORTH ON THE APPLICABLE TRANSACTION DOCUMENT (“**OT**”, “**WE**”, OR “**US**”) ARE ENTERING INTO A LEGALLY BINDING CONTRACT AS OF THE EFFECTIVE DATE AND LICENSEE AGREES TO BE BOUND BY AND ABIDE BY THIS EULA.

IF YOU ARE ENTERING INTO THIS EULA ON BEHALF OF A LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS EULA. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS EULA, YOU MUST NOT DOWNLOAD, INSTALL OR USE THE LICENSED SOFTWARE OR ANY OTHER DOCUMENTATION OR SUPPORT SOFTWARE.

IF YOU ARE ENTERING INTO THIS EULA ON BEHALF OF A LICENSEE FOR WHOM YOU ARE INSTALLING, CONFIGURING, AND/OR MANAGING THE SOFTWARE, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH LICENSEE TO THE EULA. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF THE LICENSEE DOES NOT AGREE WITH THIS EULA, NEITHER YOU NOR THE LICENSEE SHALL DOWNLOAD, INSTALL OR USE OR AUTHORIZE ANY DOWNLOAD, INSTALLATION OR USE OF THE SOFTWARE.

OT and Licensee agree as follows:

### 1.0 Definitions

“**Affiliate**” means any entity controlled by, controlling, or under common control with a party to this EULA. Control exists through ownership, directly or indirectly, of a majority of

the outstanding equity capital and of the voting interests of the subject entity. If an entity ceases to meet these criteria, it will cease to be an Affiliate under this EULA;

**“Claim”** means claims, suits, actions or proceedings brought against Licensee in a court of competent jurisdiction in a Covered Country by a third party which allege an infringement of the third party’s patent, copyright, or trade secret rights existing under the laws of the Covered Country;

**“Confidential Information”** means information, whether or not in physical form, all oral communications, documents and other information, disclosed by a party to the other which: (a) is by its nature or circumstances surrounding its disclosure is, or could reasonably be expected to be regarded as, confidential to the disclosing Party; (b) is marked or otherwise designated “confidential” by the disclosing Party; or (c) the disclosing Party informs the receiving Party is confidential or a trade secret;

**“Covered Countries”** means each contracting party to The Patent Cooperation Treaty (currently published at

[https://www.wipo.int/pct/en/pct\\_contracting\\_states.html](https://www.wipo.int/pct/en/pct_contracting_states.html)) and **“Covered Country”** means one of them;

**“Documentation”** means user guides, operating manuals, and release notes in effect as of the date of delivery of the applicable Software, made generally available by OT;

**“Fees”** means License Fees and/or Maintenance Fees, as applicable;

**“Hardware”** means physical devices sold or leased to Licensee by OT or a Reseller sourcing physical devices from OT;

**“Leased Hardware Addendum”** means the addendum available attached hereto containing all applicable terms related to leased Hardware;

**“Licensee”** means the legal entity or individual granted a Software License by OT under this EULA;

**“License Documents”** means this EULA, the License Model Schedule, the Transaction Document, Documentation, the document entitled “Third Party Notifications” (as applicable) available at [www.opentext.com/agreements](http://www.opentext.com/agreements), and any other documents provided by OT setting out permitted uses of the Software;

**“License Fees”** means all non-refundable fees payable by Licensee to OT with respect to the granting of Software Licenses;

**“License Model”** means the description of the conditions, limitations and restrictions associated with the Software License which govern the use of the Software, as set out in the applicable License Model Schedule;

**“License Model Schedule”** for each individual Software License means the version of the document(s) entitled “License Model Schedule” applicable to the licensed Software posted at <https://www.carbonite.com/legal/license-model-schedule> in effect on the date of the applicable Transaction Document;

**“Maintenance Fees”** means the non-refundable fees payable annually by Licensee to OT for Support Services;

**“Physical Media”** means the physical media or hardware containing or enabling Software;

**“Reseller”** means an authorized OT reseller;

**“Software”** means the software products, Documentation, and Support Software licensed to Licensee under this EULA, including all copies made by Licensee and may, where the meaning so implies, refer to all of the Software or portions thereof;

**“Software License”** means a license for the Software granted under this EULA to the Licensee;

**“Support Handbook”** means the then current version of the software maintenance program handbook published at <https://www.carbonite.com/legal/software-support-and-maintenance-handbook>;

**“Support Services”** means the software maintenance and support services described in the Support Handbook;

**“Support Services Term”** means either: (a) the period of time listed in the Transaction Document for Support Services; or (b) where the Transaction Document does not state a term for Support Services, the twelve (12) month period beginning on the date the Software is delivered by OT to Licensee (which may be accomplished by making the Software available by electronic download) or the anniversary thereof;

**“Software Specific Terms Addendum”** means the addendum attached hereto containing Software specific terms modifying the License and terms of this EULA for the applicable Software;

**“Support Software”** means all maintenance and support software, updates, upgrades, patches, fixes, modifications, ported versions, or new versions of the Software provided to Licensee as part of Support Services, together with all related Documentation provided to Licensee pursuant to such Support Handbook



**“Taxes”** means the sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate governments arising out of granting of licenses and delivery of Software or the delivery of Support Services, under this EULA, except taxes imposed on OT's income;

**“Third Party Software”** means software products owned and licensed directly by third parties to the Licensee;

**“Transaction Document”** includes: a) a written order schedule between OT and Licensee (or a Reseller, as applicable) which references this EULA; b) a quotation issued by OT and signed by the Licensee (or Reseller, as applicable); c) an invoice issued by OT; d) a renewal notice issued by OT or an Affiliate for Support Services; or e) any other document that references this EULA and is agreed to by OT in writing. If and to the extent of any inconsistency between two or more Transaction Documents, the priority of the Transaction Documents will be interpreted in the order listed above. All Transaction Documents are governed by this EULA.

## 2.0 Ownership of the Software

**2.1 Ownership.** None of the Software is being sold. All ownership, intellectual property, and other rights and interests in the Software remain solely with Open Text Corporation, its Affiliates or its licensors. The source code of the Software is a trade secret of Open Text Corporation, its Affiliates or its licensors, and is their confidential information.

## 3.0 License Grant

**3.1 Grant of License.** Except as otherwise stated in the License Documents and subject to Licensee's payment of the License Fees and Taxes in full, OT grants to Licensee a non-transferable (except as provided herein), worldwide, nonexclusive, perpetual (unless stated to be a time limited term), internal business use license (unless otherwise stated in the License Model Schedule) to download, install and execute the Software identified in the applicable Transaction Document in object code only, subject to the License Models, restrictions, quantities, conditions, and limitations stated in the License Documents. OT reserves all rights not expressly granted to Licensee in a written document signed by both parties.

**3.2 Applicable License Models.** Restrictions for the Software may be stated in the Transaction Document. The License Model applicable to the Software purchased by

Licensee will set forth any additional restrictions not specified in the Transaction Document which are incorporated herein and set forth in the License Model Schedule.

**3.3 Allocation of Licenses to Affiliates.** Unless prohibited under the applicable License Document, the Licensee may allocate Software Licenses to its Affiliates, provided: (a) the Licensee remains responsible for the Affiliate's compliance with the License Documents; and (b) the Licensee is liable for any breach of the License Documents by an Affiliate.

**3.4 Additional License Specific Terms.** The License granted herein may be subject to additional Software specific terms which are incorporated herein and set forth in the Software Specific Terms Addendum attached hereto.

**3.5 Leased Hardware Addendum.** The leasing of Hardware provided by OT or a Reseller sourcing the Hardware from OT to Licensee is governed by additional terms which are incorporated herein and set forth in the Leased Hardware Addendum attached hereto.

#### 4.0 Authorized Copies

**4.1 Software and Documentation.** Licensee may make as many copies of the Software necessary for it to use the Software as licensed. Each copy of the Software made by Licensee must contain the same copyright and other notices that appear on the original copy. Licensee will not modify the Documentation. Documentation may: (a) only be used to support Licensee's use of the Software; (b) not be republished or redistributed to any unauthorized third party; and (c) not be distributed or used to conduct training for which Licensee, or any other party, receives a fee. Licensee will not copy any system schema reference document related to the Software.

#### 5.0 Restrictions

**5.1 General Restrictions.** Except as provided in the License Documents, Licensee will not and will not permit any other party to: (a) assign, transfer, give, distribute, reproduce, transmit, sell, lease, license, sublicense, publicly display or perform, redistribute or encumber the Software by any means to any party; (b) rent, loan or use the Software for service bureau or time-sharing purposes, or permit other individuals or entities to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server or wireless or Internet-based device, or in any other way allow third parties to access, use, and/or exploit the Software; (c) use the Software, in whole or in part, to create a

competitive offering; (d) charge a fee to any party for access to or use of the Software; or (e) use the Software in a manner inconsistent with the License Documents.

**5.2 Further Restrictions.** Licensee will not disclose results of any benchmark or other performance, evaluation, or test run on or related to the Software. Licensee acknowledges that the Software is not fault-tolerant and not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance and consequently will not use the Software for: (a) the on-line control of aircraft, air traffic, aircraft navigation, or aircraft communications; (b) in the design, construction, operation or maintenance of any nuclear facility; (c) medical or surgical applications; or (d) any other application in which failure could cause personal injury or death. Except as expressly permitted under applicable law, Licensee will not modify, adapt, translate, reverse engineer, decompile, disassemble, decrypt, port, emulate the functionality, reverse compile, reverse assemble, or otherwise reduce or attempt to discover any source code or underlying structures, ideas, or algorithms of the Software or any confidential information or trade secret.

**5.3 Derivative Works / Improvements.** Licensee is prohibited from using the Software to create any change, translation, adaptation, arrangement, addition, modification, extension, upgrade, update, improvement, (including patentable improvements), new version, or other derivative work of or to the Software. Notwithstanding the foregoing, if any of the Software is provided to the Licensee in source code format (or any other format that can be modified), the Licensee may modify such portion of the Software for the sole purpose of using the Software in accordance with this EULA and OT will solely own all modified portions and Licensee will irrevocably assign to OT in perpetuity all worldwide intellectual property and any other proprietary rights in and to any modifications of the Software.

**5.4 Interfacing and Interactive Software.** Licensee may not permit any software products not licensed by OT to interface or interact with the Software, unless accomplished through the use of application program interfaces provided by OT.

**5.5 Ownership of Feedback.** During the term of the Software License, Licensee may provide OT reports, comments, suggestions or ideas relating the Software, Support Services, Documentation, and Software Handbook, including (without limitation) improvements or modifications thereto (“**Feedback**”). OT owns all right, title and interest, including all related intellectual property rights, in and to Feedback, including any derivative works of each of the foregoing, and OT reserves all rights to use, modify and allow others to use such materials. OT and its licensors also reserve all other rights not expressly granted to Licensee in this Agreement. Licensee agrees that the provision of

Feedback does not give Licensee any intellectual property rights or any other right, title, or interest in or to any aspects of the foregoing materials, even if such Feedback leads OT to create new or modified software or Support Services. Licensee agrees to provide OT any assistance reasonably required to document, perfect, and maintain OT's rights in and to such materials.

## 6.0 Ordering Software Licenses

**6.1 Direct Orders.** If Licensee orders Software directly from OT, the Software must be identified on a Transaction Document acceptable to OT.

**6.2 Orders through an OT Reseller.** Software Licenses ordered through a Reseller are governed by the license grant set out in this EULA and the License Model description set out in the License Model Schedule. If Reseller does not notify Licensee of the correct License Model, then the License Model for which OT has been paid License Fees will apply.

**6.3 Risk of Loss and Shipping Terms.** The Software is deemed delivered on the earlier of: (a) when it is made available by OT for electronic download, or (b) when OT delivers the Software on Physical Media. Title to the Physical Media and all risk of loss for the Physical Media will pass to Licensee when delivered by OT to the Licensee.

**6.4 Invoicing and Payment.** In the event that Licensee purchases Software License(s) from a Reseller: (a) orders and payments for such Software License shall be through the Reseller and the terms of this subsection shall not apply to such purchase, (b) any refunds to which Licensee is entitled hereunder shall be remitted to the Reseller from whom Licensee purchased the Software License, and (c) Reserved. OT may invoice Licensee for Fees and Taxes upon delivery of Software and annually upon execution of a written order for the applicable Support Services Term. All Fees due to OT by Licensee are due and payable within ten (10) business days of Licensee's receipt of an invoice from OT. OT shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k). All Fees and Taxes due to OT under this EULA are payable in the currency specified in the Transaction Document. All Fees and Taxes due to OT which are not paid in full within thirty (30) days following its due date will bear interest at an interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

**6.5 Over Usage.** Licensee acknowledges and agrees that it is liable for additional Fees and Taxes payable due to use of or authorization to access the Software in excess of the number or type of Software Licenses granted by OT.

**6.6 Licensee Affiliate Orders.** Licensee's Affiliates that order Software Licenses are bound by the terms and conditions of this EULA as if it were the Licensee. Licensee and its Affiliates are jointly and severally liable to OT for any breach of this EULA.

**6.7 OT Affiliate Orders.** OT Affiliates may fulfill orders pursuant to a Transaction Document in which case the OT Affiliate is bound by all of the terms and conditions of this EULA as if it were OT.

## 7.0 OT Support and Maintenance

**7.1 OT Support and Maintenance Program.** All Support Software and Support Services provided to Licensee are governed by this EULA and the then-current version of the applicable Support Handbook which is attached hereto and incorporated herein.

**7.2 Support Services Exclusions.** OT shall have no responsibility to provide Support Services to Licensee with respect to any problem with the Software caused by: (a) any software, device, or other product not supplied by OT; (b) neglect, misuse, alteration, or modification, to the Software other than by OT; (c) use of the Software for a purpose other than the purpose for which it was designed; (d) use of the Software on a computer platform other than the platform authorized by OT (which may be specified in the Documentation accompanying the Software); (e) breach by Licensee of any term of this EULA, or (f) failure of Licensee to install any Support Software provided by OT.

## 8.0 Audits and Noncompliance

**8.1 Audit.** During the term of this EULA and for twenty-four (24) months after, Licensee will maintain electronic and other records sufficient for OT to confirm that Licensee has complied with this EULA. Licensee will promptly and accurately complete and return (within thirty (30) days of OT request) any self-audit questionnaires, along with a certification by an authorized representative of Licensee confirming that Licensee's responses to the questionnaire accurately and fully reflect Licensee's usage of the Software. Furthermore, OT may once per year and subject to Government security requirements audit Licensee's records and computer systems (including servers, databases, and all other applicable software and hardware) to ensure Licensee has complied with this EULA. Licensee shall cooperate with OT's audit team and promptly and

accurately respond to, database queries, location information, system reports, and other reports requested by OT and provide a certification by an authorized representative of Licensee confirming that information provided by Licensee accurately reflects Licensee's usage of the Software.

**8.2 Conduct.** Audits will be conducted during regular business hours and will not interfere unreasonably with Licensee's business. OT will provide Licensee prior notice of each audit. Such audit shall be scheduled as soon as reasonably possible but in no event more than seven (7) days subsequent to the notice. Licensee will allow OT to make copies of relevant Licensee records. OT will comply with all applicable data protection regulations.

**8.3 Noncompliance.** If Licensee is not in compliance with the Software Licenses, Licensee will be deemed to have acquired additional Software Licenses at OT's then-current list price to bring Licensee into compliance, and Licensee must immediately pay (a) the applicable License Fees and Taxes, and (b) Maintenance Fees for: (i) the period Licensee was not in compliance with the Software License; and (ii) the pro-rated first year Maintenance Fees on any additional Software Licenses.

## 9.0 Limited Warranties

**9.1 Limited Warranty.** OT warrants to Licensee that: (a) Software will be free of all known viruses at the time of first delivery; (b) Software will perform substantially in accordance with its accompanying Documentation for sixty (60) days from the date of first delivery; and (c) Support Services will be delivered with reasonable skill and care. OT's entire liability, and Licensee's sole remedy, for each breach by OT of the warranty in: (i) clause (a) is limited to requiring OT to deliver a replacement copy of the Software to Licensee free of known viruses; (ii) clause (b) is limited to requiring OT to correct or work around the portion of the Software giving rise to such breach within a commercially reasonable time, failing which, in the case of the initially-delivered Software, OT will refund all License Fees attributable to the portion of the Software giving rise to the breach; and (iii) clause (c) is for OT to re-perform the applicable Support Services.

**9.2 Warranty Exclusions.** The warranties do not apply to any breach caused by: (a) any change to the Software, except where the changes were made by OT through Support Software; (b) Licensee's failure to provide a suitable installation or operating environment for the Software; (c) use of the Software on or caused by software, firmware, computer systems, data, technology or a hardware platform not approved by OT in writing; (d) any telecommunications medium used by Licensee; (e) failure of Licensee or user to comply

with the Documentation; (f) Licensee's breach of this EULA; or (g) failure of Licensee to report a warranty claim within the warranty period. OT does not warrant that the Software is error-free or will operate without interruption.

**9.3. WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION, OT AND OT'S LICENSORS MAKE NO REPRESENTATIONS AND DISCLAIM ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES AND CONDITIONS, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THE ADEQUACY OF THE SOFTWARE TO PRODUCE A PARTICULAR RESULT.**

**9.4 Inability to Exclude Warranties.** If a jurisdiction applicable to this EULA restricts the exclusion of certain implied warranties, limitations on how long an implied warranty may last, or the exclusion or limitation of incidental, consequential, or special damages: (a) each warranty which cannot be excluded is limited in time to sixty (60) days from the date of first delivery of the Software; and (b) OT's total liability to Licensee for breach of all such warranties are limited to the amount stated in the Limitation of Liability section.

## 10.0 OT Infringement Indemnity

**10.1 Infringement Claims.** OT will have the right to intervene to defend Licensee from any Claim, to the extent the Claim arises solely as a result of Licensee's use of the Software in accordance with the License Documents. This defense will not apply to a Claim to the extent caused by: (a) Licensee's failure to incorporate a Software update or upgrade that would have avoided the alleged infringement; (b) the modification of the Software by any party other than OT; (c) the combination or use of the Software with software, hardware, firmware, data, or technology not licensed to Licensee by OT or approved by OT in writing; or (d) unlicensed activities of the Licensee. As to any such cause, OT assumes no liability for infringement and Licensee will hold OT harmless against any infringement claims arising therefrom. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

**10.2 Exclusions.** OT's obligations in this section are conditioned upon: (a) Licensee notifying OT in writing within ten (10) days of Licensee becoming aware of a Claim; (b) Licensee not making an admission against OT's interests unless made pursuant to a judicial request or order; (c) Licensee not agreeing to any settlement of any Claim without the prior written consent of OT; (d) Licensee, at the request of OT, providing all reasonable

assistance to OT in connection with the defense, litigation, and settlement by OT of the Claim; and (e) OT having sole control over the selection and retainer of legal counsel, and over the litigation or the settlement of each Claim. OT will indemnify Licensee from any judgment finally awarded or any final settlement in connection with any Claims, provided all the conditions of this section are satisfied.

**10.3 Licensee's Continued Use.** If the Software becomes the subject of a Claim, OT will, in its absolute discretion, either: (a) obtain a license for Licensee to continue using the Software; (b) replace or modify the Software without unreasonable degradation in functionality; or (c) terminate the Software License to the infringing portion of the Software and refund the unamortized portion of the License Fees received by OT and attributable to the infringing portion of the Software, based on a three (3) year straight line amortization. OT's entire liability and Licensee's sole and exclusive remedy with respect to any Claims are limited to the remedies set out in the OT Infringement Indemnity section 10.0.

#### 11.0 Limitation of Liability

**11.1 EXCLUSION OF DAMAGES. NOTWITHSTANDING ANY BREACH BY OT (INCLUDING FUNDAMENTAL BREACH) OR TERMINATION OF THIS EULA, OT IS NOT LIABLE TO LICENSEE OR TO ANY OTHER PARTY FOR: (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLARY, OR PUNITIVE DAMAGES; OR (B) ANY LOST SALES, LOST REVENUE, LOST PROFITS, LOST OR CORRUPTED DATA, OR REPROCUREMENT AMOUNT.**

**11.2 LIMITATION OF LIABILITY. OT'S AGGREGATE LIABILITY TO LICENSEE WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO OT UNDER THE RELEVANT TRANSACTION DOCUMENT. THE PARTIES WOULD NOT HAVE ENTERED INTO THIS EULA WITHOUT THIS SECTION.**

**11.3 DISCLAIMER. THE EXCLUSIONS IN SECTION 11.1 AND LIMITATIONS IN SECTION 11.2 APPLY: (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, EQUITY, AT LAW, STRICT PRODUCT LIABILITY, OR OTHERWISE; (C) EVEN IF OT IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (D) EVEN IF LICENSEE'S REMEDIES FAIL IN THEIR ESSENTIAL PURPOSE. IF THE APPLICATION OF THIS SECTION IS LIMITED BY LAW, OT'S LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM**



**LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.**

12.0 Termination

**12.1 Termination for Breach.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, OT shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

**12.2 Effect of Termination or Expiration.** Upon any termination of this EULA, or license granted pursuant to this EULA, or upon expiration of a License Term (as defined below): (a) all Software Licenses will immediately terminate; (b) Licensee will immediately cease all use of the Software; (c) Licensee must either deliver to OT or destroy all copies of Software, Documentation, and OT confidential information in Licensee's possession or control; and (d) OT will cease to provide any Support Services to Licensee. Within fifteen (15) days after termination, an authorized representative of Licensee must certify in writing that all copies have been delivered to OT or destroyed. Any terms in this EULA which by their nature extend beyond termination or expiration of this EULA will remain in effect until fulfilled.

**12.3** Reserved.

**12.4 Termination upon Expiration of License Term.** Where the Transaction Documents or License Model Schedule provide that the Software License is for a specific time limited term ("**License Term**"), this EULA will automatically terminate as of the last day of the License Term.

13.0 Miscellaneous

**13.1 Confidentiality.** Each party (a "**Disclosing Party**") may disclose to the other party (a "**Receiving Party**") any Confidential Information. Each party agrees, for the period of this EULA and for three (3) years after such period, to hold the other party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties (other than to Affiliates and to professional advisers who are bound by appropriate obligations of confidentiality) unless authorized to do so by the Disclosing Party, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each party agrees to take reasonable steps to protect the other party's

Confidential Information to ensure that such Confidential Information is not disclosed, distributed or used in violation of the provisions of this section. The foregoing prohibition on disclosure of Confidential Information shall not apply to any information that: (a) is or becomes a part of the public domain through no act or omission of the Receiving Party; (b) was in the Receiving Party's lawful possession without confidentiality obligation prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; (d) is independently developed by the Receiving Party by its employees or agents without access to the Disclosing Party's Confidential Information; or (e) is required to be disclosed by the Receiving Party as a matter of law or by order of a court or by a regulatory body, provided that the Receiving Party promptly notifies the Disclosing Party (where lawfully permitted to do so) so that Disclosing Party may intervene to contest such disclosure requirement and/or seek an appropriate protective order or waive compliance with this section. OT recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

**13.2 Automated Verification.** The Software may contain or require a license key to prevent unauthorized installation or to enforce limits of the Software License and may contain devices or functionality to monitor Licensee's compliance with this EULA.

**13.3 Developer Tools.** OT is not responsible or liable for Licensee's development or use of additional software code or software products ("**Licensee Software**") using software developer tools licensed by OT and Licensee will defend and indemnify OT against any claims, damages, costs, losses or expenses related to the development or use of the Licensee Software.

**13.4 Independent Contractors.** OT and Licensee are independent contractors. Neither party has any authority to bind the other in any manner.

**13.5 Waiver, Amendment, Assignment.** Any amendment of this EULA must be in writing and signed by both parties. Licensee may not assign, transfer, or sublicense any portion of its interests, rights, or obligations under this EULA by written agreement, merger, consolidation, change of control, operation of law, or otherwise, without the prior written consent of OT. Neither party will be deemed to have waived any of its rights under this EULA by lapse of time or by any statement or representation other than by a written waiver by a duly authorized representative. No waiver of a breach of this EULA will constitute a waiver of any prior or subsequent breach of this EULA. An assignment in contravention of this subsection will be null and void. Except to the extent identified in this subsection, this

EULA will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

**13.6 Governing Law.** This EULA is governed by the Federal laws of the United States, excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods.

**13.7 Force Majeure.** In accordance with GSAR Clause 552.212-4(f), except for payment and confidentiality obligations, or protection of intellectual property, neither party is responsible for any delay or failure in performance of this EULA to the extent due to causes beyond its reasonable control.

**13.8 Severability.** If any provision of this EULA is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the provision will be severed from this EULA and all remaining provisions will continue in full force.

**13.9 Export Laws.** The Software may be subject to export control laws of the United States or other countries. Licensee agrees to comply strictly with all applicable export regulations, including, but not limited to: (a) the Export Administration Regulations maintained by the U.S. Department of Commerce and (b) the trade and economic sanctions maintained by the U.S. Department of Treasury Office of Foreign Assets Control, and will not allow use of the Software in a manner that breaches or facilitates the breach of such regulations. Licensee has the responsibility to obtain any licenses required to export, re-export, or import the Software, including deemed exports. The Software shall not be used by anyone: (i) located in U.S. embargoed countries or by any Foreign National of a U.S. embargoed country; (ii) included on the U.S. Treasury Department's list of Specially Designated Nationals; or (iii) the U.S. Department of Commerce's Denied Persons or Entity List. By using the Software, Licensee represents and warrants that neither Licensee nor any person provided access to the Software by Licensee is located in any such country or on any such list.

**13.10 Press Release.** OT may include Licensee's name in a list of OT customers, whether online or in promotional materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

**13.11 Attribution Notices.** Licensee will not remove, modify, obscure, resize, or relocate any ownership, attribution, or branding notices from the Software.

**13.12 Resale of Third Party Software.** The use of any Third Party Software resold by OT to the Licensee will be governed by a license agreement between the Third Party Software owner and the Licensee. OT does not provide any warranties related to the Third Party

Software. OT has no liability or obligation to the Licensee related to the Third Party Software.

**13.13 US Government End Users-Restricted Rights Legend.** If the Software is being licensed directly or indirectly on behalf of the United States government, the following applies. For civilian agencies and departments: the Software was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with Rights in Data clause of FAR 52.227-14 and its successors, is unpublished, and all rights are reserved under the copyright laws of the United States. For units of the Department of Defense, the Software is "commercial computer software" and "commercial computer software documentation" under the Rights in Computer Software and Computer Software Documentation clause of DFAR 227.7202-3 (a) and its successors, and all use, duplication or disclosure is subject to the license and restrictions set forth in this EULA.

**13.14 Entire License Agreement.** The License Documents set forth the entire agreement between the parties with respect to this subject matter and supersede all other related oral and written agreements and communications between the parties. Neither party has relied upon such other agreements or communications. Notwithstanding any purchase order accepted by OT, any purchase order terms which purport to amend or modify terms of the License Documents, or which conflict with the License Documents are void and shall have no legal effect notwithstanding the fact the purchase order terms being later in time or OT issuing an invoice to Licensee after receiving such purchase order from Licensee. Where Licensee purchases the Software License directly from OT, not providing a purchase order does not relieve Licensee from the responsibility to make timely payments as set forth in the EULA.

**13.15 Transaction Documents and Order of Priority.** OT and Licensee may agree in a Transaction Document to special provisions which amend or vary a party's rights or obligations under this EULA, the License Model Schedule, Documentation, the document entitled Third Party Notifications attached hereto and available at <https://www.carbonite.com/legal/products-and-services-terms/> or any other documents provided by OT setting out permitted uses of the Software. In the event of an inconsistency between: (i) special provisions agreed in a Transaction Document, (ii) this EULA, (iii) the License Model Schedule, Documentation, the document entitled Third Party Notifications attached hereto and available at <https://www.carbonite.com/legal/products-and-services-terms/> or any other documents provided by OT setting out permitted uses of the Software, the documents shall be interpreted in that order to the extent of the inconsistency.

**13.16 Third Party Rights.** This EULA does not confer a benefit on, and is not enforceable by, any person or entity who is not a party to this EULA.

**13.17 Legal Review and Interpretation.** Both parties have had an opportunity for legal review of the License Documents. The parties agree that the License Documents result from negotiation between the parties. The License Documents will not be construed in favor of or against either party by reason of authorship. The headings used in this EULA are for convenience only. The term section refers to all subsections below a section heading (i.e. 3.0) and the term subsection refers to sequentially numbered subsections following a section (i.e. 3.1).

**13.18 Notices.** Any notice under this EULA that must be given by a party in writing is deemed effective when sent either: (a) via certified or registered mail, postage prepaid, or (b) via express mail or nationally recognized courier service to the other party's address specified in this EULA or on the most recent Transaction Document. Notices to OT will also be sent to OT's general counsel at Open Text Inc. at 2440 Sand Hill Road, Suites 301 & 302, Menlo Park, CA 94025.

**13.19 Hardware.** IF HARDWARE IS IDENTIFIED ON A TRANSACTION DOCUMENT, THE OWNERSHIP AND USE OF THE HARDWARE WILL BE GOVERNED BY APPLICABLE TERMS (FOR SALE OR LEASE) ATTACHED HERETO.



## License Model Schedule for Carbonite, Webroot, and Zix Products

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### 1. Definitions

In the event of any conflict between definitions found in this license model schedule for Carbonite, Webroot, and Zix Products (“**License Model Schedule**”) and definitions found in the EULA, as defined below, the definitions found in this License Model Schedule will control to the extent of any inconsistency. Any capitalized term used in this License Model Schedule for which a definition is not provided herein, shall have the meaning set forth in the EULA.

- A) “**Client**” means any personal computer, workstation, laptop computer, desktop computer, netbook computer, tablet computer, smart phone, mobile communication device, point-of-sale device (such as a cash register), computer used as a scanning station, or other similar computer or device on which the Software is loaded, executed, or displayed.
- B) “**CPU**” means a single central processing unit (a single processing core).
- C) “**Multiplexing**” means using software or hardware that reduces the Software’s ability to distinguish or detect the number of individuals or Clients directly or indirectly accessing or utilizing the Software (sometimes called "multiplexing" or "pooling" software or hardware).
- D) “**Program**” means a packaged collection of instructions written in any computer programming language that instruct a computer how to process data based on information inputs.
- E) “**Program Instance**” means a single copy of the Software which has been installed onto a single Server. Multiple Program Instances of the Software shall mean that the Software has been installed onto multiple Servers or installed on one Server multiple times.
- F) “**Server**” means a single physical network server computer loaded with a single instance of an operating system. If the Licensee has two or more instances of an operating system loaded on a single physical network server computer, the number of network server computers shall be deemed to be equal to the number of total operating system instances loaded on the physical server, or a virtual server which is a software implementation of a single network server computer that executes Software in a manner identical to a physical network server computer, comprised of one copy of an operating system along with one or more software processes running in an isolated partition within the network server computer. In no event shall a single Server have more than 32 CPUs.
- G) “**Transaction**” means a single instance of any documents, writings or records created, adapted or processed by the Software and shall include, any reports, facsimiles, text messages, data sheets, files, indexes, financial statements, invoices, credit notes, statements of account, tickets, expense records, payroll records, orders, delivery notes, income tax returns, receipts, deposit slips, banking records, or time slips, the data for which is input to, output from, created, processed, or manipulated in some way by, the Software.

### 2. General License Types.

Any of the descriptions in this Section 2 may be used by OT, at its sole option, to describe a License Model in a License Document or any marketing material. Any License Model that includes one of the descriptions in this Section will be licensed under the terms, conditions and limitations applicable to the standard version of a License Model, subject to the terms, conditions and limitations described herein.

## A. Non-Production Licenses

The applicable standard production License Model, except that the functionality within the Software, is not placed into production use and use of the Software is restricted to system testing, development, backup, failover, hot standby or cold standby purposes. This does not include load balancing or other system configurations whereby other system resources proactively support production use. Notwithstanding the above, if Software licensed under a production version of the License Model goes offline and the licensed non-production use is backup, failover, or standby, Licensee is permitted to use Software licensed under a non-production License Model for production purposes until the Software licensed under the production License Model is brought back online. Any other use of Software that is not explicitly included within the definition of Non-Production Licenses requires a production license.

## B. Evaluation Licenses

The applicable standard License Model except that (unless the parties otherwise agree in a Transaction Document):

- (i) Licensee may install and execute the Software on a single Server;
- (ii) Licensee may allow no more than five individuals (may be employees or contractors of Licensee) to access and use the Software;
- (iii) Licensee may only access and use the Software to evaluate and test the Software, and not to support its general business operations;
- (iv) The Software License shall be for a period of 60 days from the date the Software is first made available to Licensee. At the end of such period, Licensee must cease all use of the Software, remove all copies of the Software from all Servers and Clients, as well as all other information technology systems, and destroy such copies;
- (v) The Software is licensed “as-is” and all warranties listed in the EULA are void in respect of the Evaluation License; and
- (vi) Any obligation in the EULA for OT to defend and/or indemnify Licensee is void in respect of the Evaluation License.

## C. eBusiness Licenses

The applicable standard License Model except that Licensee may only allow Software Licenses to be used by individuals who are employees of Licensee’s customers or business partners, and not by individuals who are employees or contractors of Licensee or its Affiliates.

## D. Limited Use Licenses

The applicable standard License Model except that individuals who have been permitted access to the Software under this License Model may only access and use the functionality and features specifically identified in the applicable Transaction Document and Documentation and may not access or use any other functionality existing within the Software.

## E. Read Only License Model

The applicable standard License Model except that:

- (i) The individual who has been allocated the Software License may only search, save search parameters, browse, view, print and download data and contents of the Software system and the individual may not upload, add, edit, move, arrange or otherwise modify data and content located within the Software system (“**Read Only**”);
- (ii) The license must be assigned or allocated to a user when the user is first entered into the system and a user allocated any other type of license may not have the allocation changed to Read Only unless the user is first deleted from the system and then reentered as Read Only;
- (iii) Licensee must restrict such user’s access to Read Only functionality; and

- (iv) Access to functionality other than Read Only (even if the additional functionality is not used) requires additional licensing.

## **F. Runtime Licenses**

The relevant applicable standard production License Model except the Software may only be accessed or used by other software and not directly or indirectly by a human being.

## **3. Additional Terms and Conditions**

Unless specified in a particular License Model, Software may only be used for Licensee's internal business purposes.

## **4. Carbonite Availability, Carbonite Recover, and Carbonite Migrate License Model**

**The following terms and conditions apply to the Carbonite Recover, Availability, and Migrate products licensed to Licensee:**

- A. Licensee must purchase an individual Software License for each Server upon which the Software is installed or uploaded into the Server's memory.
- B. The Software may be accessed and used by an unlimited number of individual employees or contractors of Licensee or its Affiliates.

## **5. Carbonite Endpoint License Model**

**The following terms and conditions apply to the Carbonite Endpoint products licensed to Licensee:**

- A. Licensee must purchase and allocate an additional Software License for: a) each individual Client on which the Software is loaded or executed, and b) each individual Client which has access to (or is authorized to access) the Software.
- B. Licensee may only allocate Software Licenses to Clients owned by Licensee or its Affiliates.
- C. The allocation of Software Licenses is permanent and Software Licenses cannot be shared or exchanged between Clients. Notwithstanding the foregoing, a Software License may be re-allocated to another Client in the event that the original Client is permanently decommissioned or in the event the Client is permanently re-deployed to a task where access to the Software is no longer available.
- D. The Software may not be used by more than one individual under a single Software License.
- E. Multiplexing is prohibited.
- F. The Software may only be loaded and executed or accessed from Clients to which a Software License has been allocated.

## **6. Carbonite Safe Backup and Carbonite**



## Recovery License Model

**The following terms and conditions apply to the Carbonite Endpoint products licensed to Licensee:**

- A. Licensee may use the Software to create an index of documents with the restriction that the total size of the index must not exceed the maximum number of gigabytes identified in the applicable Transaction Document or Documentation.
- B. The Software Licenses may not be allocated to any other party.
- C. The Software may only be loaded and executed on computers or other IT hardware that is owned by Licensee.
- D. The Software may be loaded and executed on an unlimited number of Servers, CPUs or Program Instances.

## 7. ZixEncrypt and Webroot Email Encryption powered by Zix License Model

**The following terms and conditions apply to the ZixEncrypt products and Webroot Email Encryption Powered by Zix products licensed to Licensee:**

- A. The Licensee must purchase and allocate an individual Software License for each individual email mailbox which interfaces with the Software.
- B. The Licensee may allocate Software Licenses to email mailboxes associated with employees or contractors of a) Licensee, b) Licensee's Affiliates, and c) Licensee's customers and business partners.
- C. The allocation of Software Licenses is permanent and Software Licenses cannot be shared or exchanged between email mailboxes. Notwithstanding the above, Software Licenses may be re-allocated to another individual email mailbox if the original email mailbox no longer interfaces with the Software.
- D. Licensee must keep a record of all email mailboxes which have been allocated Software Licenses.
- E. The Software may be loaded and executed on an unlimited number of Servers, CPUs, or Program Instances.

## 8. Hosted Application Generated Email Encryption License Model

**The following terms and conditions apply to the ZixEncrypt AGEE products and Webroot Email Encryption Powered by Zix AGEE products licensed to Licensee:**

- A. During the period set forth in the Transaction Document, Licensee may use the Software to process a number of Transactions no greater than the maximum number of Transactions licenses

granted to Licensee.

- B. Licensee is responsible to ensure that the Software is configured to make a permanent record of all Transactions processed by the Software during the period set forth in the Transaction Document, in accordance with the Documentation made available by OT. If a record is not kept or if any required data is deleted or removed from the system, OT may, in its sole discretion, reasonably estimate usage and the estimate will be conclusively deemed to be Licensee's actual use.
- C. Unless a more restrictive License Model is also applicable, the Software may be loaded and executed on an unlimited number of Servers, CPUs, or Program Instances.
- D. If the number of Transactions during any period set forth in the Transaction Document exceeds the maximum number of Transactions licensed, Licensee must purchase the applicable additional Software Licenses to cover the total number of Transactions.

# opentext™

The Information Company

# OpenText

Software Maintenance Program Handbook for Carbonite and Zix Products

## 1. Introduction

Welcome to Open Text Corporation's OpenText (OT) Software Maintenance Program for Carbonite and Zix Products (the "Program"). This handbook provides you with information about the policies and processes designed with your support needs in mind. Please use this as a guide to help you get the most out of your investment in OT solutions.

The OT Software Maintenance Program Handbook for Carbonite and Zix Products (the "Handbook") describes the Program services offered for OT software licensed from OT and for which you have purchased the support services described herein.

You can also refer to [www.opentext.com/agreements](http://www.opentext.com/agreements) to find more information, or contact your local OT customer support office for documentation on these additional programs.

## 1.1 Definitions

“**Classification**”, “**Classified**” or “**Classify**” refers to the OT designated priority of the Support Request.

“**Covered Software**” shall mean the licensed software for which maintenance services shall be provided under this Handbook including all documentation provided or made available.

“**Customer Service Portal**” refers to the OT online access point for links to and information regarding OT customer support, available to OT customers.

“**Current Maintenance**” – a defined period of time, which varies from product to product, from the release date of the Covered Software which includes:

- Unlimited number of Support Request submissions
- Product Patches and/or Releases
- The ability to request enhancements or new features and report Errors
- Access to the Customer Service Portal (Documentation, technical articles, discussion forums, webinars and events)
- Requires customer active software maintenance and annual renewal

“**Days**” refers to business days, which are 5 days x 8 hours Monday through Friday, except for regional statutory holidays.

“**Documentation**” refers to user guides, operating manuals, and release notes in effect as of the date of delivery of the applicable Covered Software, made generally available to OT’s end users by OT.

“**Error**” refers to any verifiable and reproducible failure of the Covered Software to perform substantially in accordance with its accompanying Documentation, as applicable, for such Covered Software.

“**Expiration**” shall mean the ending of a Term whether occurring through termination or cancellation.

“**Initial Term**” refers to the twelve months beginning on the Start Date.

“**OT**” refers to Open Text Corporation and/or its subsidiaries/affiliates offering the maintenance and support services as described in this Handbook, as applicable.

“**OT Partner**” refers to any authorized third party that sold the Covered Software to you.

“**Product Patch**” refers to an additional software program to correct an Error of the Covered Software.

“**Points of Contact**” or “**POC**” refers to your designated individual employees who are authorized to contact the OT support team.

“**Production Mode**” refers to the use of the Covered Software as intended by its accompanying

Documentation, by your users as part of business or service operations. Production Mode does not include development, quality assurance, demonstration, testing, staging or training environments.

“**Release**” refers to the finalized and released software.

“**Resolution**” refers to taking the necessary action to correct an Error such that the Covered Software is operating in accordance with the Documentation. This could include, but is not limited to, creating a new or applying an existing Workaround (provided that OT will pursue a permanent fix, if commercially reasonable), or Update.

“**Response Time**” refers to the amount of time that is measured from the time a Support Request is received by OT until the time when a technically qualified member of OT responds to you for the purpose of commencing the work necessary to achieve Resolution of the Support Request. The response time for an SR is determined by its Classification, the OT support program(s) the customer subscribes to, and the time when the SR was submitted to OT during a business day.

“**Start Date**” means either: (a) the date stated by the transaction documentation where support services provided for the Covered Software begins; or (b) where the transaction documentation does not provide any date related to the start of the support services, the date the Covered Software is delivered by OT to you (which may be accomplished by making the Covered Software available by electronic download).

“**Subsequent Term**” refers to the 12-month term commencing on the first anniversary of the Start Date and each subsequent 12-month term commencing on an anniversary of the Start Date.

“**Support Request**” or “**SR**” refers to the initiation of a record or “ticket” documenting the details of the service request or incident.

“**Support Services**” refers to the following activities: an initiation of a Support Request, OT’s response to the Support Request, and a Resolution of the Support Request.

“**Sustaining Maintenance**” refers to the stage of the product lifecycle following the expiration of Current Maintenance. During this phase of the product support lifecycle, the following Support Services are available\*:

- Access to the Customer Service Portal (Documentation, technical articles, discussion forums, webinars and events).

\*The terms and length of phases of the product support lifecycle may vary depending on the product and Release. Please refer to the Customer Service Portal product page for specific lifecycle terms.

“**Term**” refers to either the Initial Term or a Subsequent Term.

“**Update**” shall mean any Product Patch or Release of the Covered Software, which will be provided by OT to the customer in accordance with this Handbook.

“**we**” or “**our**” refers to OT.

“**Workaround**” is a manner of addressing an Error by bypassing the problem in the system (software

technical bypass). A Workaround is typically a temporary fix and OT may subsequently correct the Error in the Covered Software and / or the programs through an Update.

“you”, “your” or “customer” mean the entity that licensed the Covered Software from OT and is purchasing Program services.

## 2. Support Services

### 2.1 General

#### 2.1.1 Hours and OT Support Services Location Information

Support Services are available 7x24 through the Customer Service Portal. Support Services hours are based on the country where the Covered Software is installed. Hours, support locations and additional contact information for the Program are publicly available and maintained at our corporate website for each product type as follows: (a) support for Zix products can be found at [support.zixcorp.com](http://support.zixcorp.com) and (b) support for Carbonite products can be found at [carbonite.com/customer-support](http://carbonite.com/customer-support). Where you have purchased the Covered Software from an OT Partner, in most instances and unless specifically stated otherwise by an OT Partner, you shall contact the OT Partner for each Support Request. The OT Partner is responsible for providing you its Support Services operating hours and contact information in addition to any other terms and conditions related to the OT Partner's Support Services.

Support Services are delivered from a support location in the same region as the Covered Software is installed or from an alternate support location as determined by OT. Where an alternative support location is used by OT, regional statutory holidays for such alternative support location shall not impact the Support Services hours for customer.

Communication relating to an SR will be made in English, unless, at OT's discretion, the support center responsible for processing is able to offer communication in another language as a convenience to the customer. OT may not be able to provide any information in a language other than English in the event an SR is transferred to a different support center.

#### 2.1.2 Point(s) of Contact

Support Services are provided to your Point of Contact (POC). The POCs must have knowledge of, and the administrator permissions for, the Covered Software sufficient to provide OT customer support with the information and undertake actions required to achieve a resolution of the SR as described below. POCs are generally the administrators and other members of your technical staff.

#### 2.1.3 Software Updates

Releases to Covered Software will be made available to you as part of the Program at no additional charge if and when such Releases are generally released to Program subscribers. To receive such Releases, the Program must be subscribed to at time of Release and request. Subscribers are

notified about new Releases in regular information bulletins and via the Customer Service Portal.

You are encouraged to run the most recent Release of the Covered Software. In most instances, OT will support each Release of the Covered Software for a period of at least twenty-four (24) months after the Release is generally made available to OT's customers (Current Maintenance). The terms and length of phases of the product support lifecycle may vary depending on the Covered Software and Release. Please refer to the Customer Service Portal product page for specific lifecycle terms. After the expiration of the Current Maintenance term, Carbonite Availability, Migrate and Server Back Up products enter into a period on limited maintenance ("**Limited Maintenance**"), while all other products enter the Sustaining Maintenance term. During the Limited Maintenance term, You will receive the benefits provided during the Current Maintenance term, except for the following features:

- No new features will be added to those products in the Limited Maintenance term; and
- The only code changes made to products in Limited Maintenance term are for Security Level 1 Security Requests.

After the expiration of the Current Maintenance term or the Limited Maintenance term, as the case may be for certain products, the Covered Software enters the Sustaining Maintenance phase of the product lifecycle. When Covered Software is considered to be in Sustaining Maintenance, no new Product Patches and Releases are released for general use.

Migration to a Current Maintenance Release may be required in order to address an issue. If you are unable to update to a subsequent Release under Current Maintenance, OT may offer extended support and maintenance options at an additional cost. Please contact your Renewals Specialist or local OT customer support office for more information.

## 2.2 Initiation of a Support Request

Support Services are provided under the Program to address incidents reported by subscribers associated with performance or usage issues. Performance and usage issues are situations where the Covered Software is not performing substantially in accordance with the accompanying user Documentation. Generally speaking, performance and usage issues may be caused by: 1) software Error or defect (related to the design, coding or architecture of the Covered Software), 2) usage or configuration Error (related to usage of the Covered Software or the installation, configuration or setup of the Covered Software), or 3) environmental Error (related to the subscriber's network, hardware and operating systems).

SRs for Support Services to address any issues should be initiated by a POC using the applicable Customer Service Portal for the Covered Software located at either [www.carbonite.com/customer-support](http://www.carbonite.com/customer-support) or [www.support.zixcorp.com](http://www.support.zixcorp.com). These customer self-service tools will automatically initiate an SR and send You an associated tracking number.

You are encouraged to:

- Provide OT customer support with the information it reasonably needs to Classify and log the SR

(see 2.3.2).

- Wherever possible, use the SR number for each communication with OT customer support.

## 2.3 OT Response to a Support Request

### 2.3.1 Support Request Dispatch

Support Requests may be dispatched as follows:

- If the SR involves OT Covered Software, then an SR will be forwarded to OT customer support for based on the required support tier (described below) and then forwarded to the appropriate OT support personnel for Classification and Resolution (described below).
- If the source of the SR is unclear, the ticket will be forwarded to OT customer support for further investigation and, once the source of the SR is determined, it will be dispatched as described above in section 2.3.1 (a).
- If the source of the SR is your hardware, operating system, database, web server, browser software or other non-OT application, OT may, where possible, attempt to provide a Workaround (described below) and/or may, where possible, report the problem to the appropriate vendor for Resolution. If the SR involves a product that is developed by a third party, the SR may be referred to that third party.
- Any software and/or hardware provided by and installed by OT (as agreed by you) to assist with the delivery of the Support Services that is not purchased by you must be removed and returned to OT upon termination of the program or related delivery component.

### 2.3.2 Support Request Classification and Response Times

Support Tiers	Overview	Key Responsibilities
First Line Support	Basic help desk resolution and front-line service desk delivery	<ul style="list-style-type: none"> <li>• First call resolution</li> <li>• Triage of technical issues</li> <li>• Resolution of known issues</li> <li>• Identifying severity and escalating</li> </ul>
Second Line Support	In-depth technical support with technicians who know the product and systems	<ul style="list-style-type: none"> <li>• Symptom Identification</li> <li>• Provide Break-fix/Corrective support</li> <li>• Troubleshooting the product</li> <li>• System/Network Tuning</li> </ul>
Third Line Support	Expert technical knowledge to support product and service problems.	<ul style="list-style-type: none"> <li>• In-depth technical resolution</li> <li>• Defect Detection and Analysis</li> <li>• Software Development</li> <li>• Testing and Releasing Patches</li> </ul>

SR Classification	SR definition	Target Response Time
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	Each SR will be Classified by OT customer support as listed below. OT will consider, in good faith, your request to reclassify an SR.	Response Times are targets and cannot be guaranteed in all circumstances by OT.
Security Level 1	Production system is down, or the Covered Software is functionally inoperable.	2 Hours  Security Level 1 incidents must be logged by phone to OT directly.
Security Level 2	A performance issue that has a significant impact on normal operations of the Covered Software or materially restricts Your use of the Covered Software (system is operational, but performance may be impacted).	4 Hours
Security Level 3	A performance issue that has a minor impact on normal operations of the Covered Software, or a minor defect in the functionality of the Covered Software that does not materially restrict Your use of the Covered Software.  As a rule, SRs reported via email and/or for non-production systems are classified at this level.	4 business hours
Security Level 4	A performance issue that is a non-critical question or issue that does not affect the performance or functionality of the Covered Software.	48 Hours

Escalation: You may request an escalation at any time through the Customer Service Portal or phone.

Please see Section 3.0 for limitations to the OT Software Maintenance Program

## 24 Resolution of Support Request

OT customer support shall attempt to address each SR, regardless of Classification, through the offering of technical advice, by locating an existing Workaround or by creating a new Workaround using the process described below in this Section 2.4. In the event of an outage, and depending on the cause and duration of the outage, OT may require the customer to restore from backup in order to return the system to a production state.

Once production service is restored, the SR Classification is downgraded and root cause analysis may continue, as requested, during regular regional support hours of operation.

If a Product Patch is provided to you to resolve an SR, distribution of the Product Patch will be carried out through the next scheduled Release.

### 2.4.1 Resolution of Critical SR's

For SR's Classified by OT as critical which have been caused by defects in the Covered Software, if the technical advice provided by OT customer support has not resolved the SR, and if no Workaround can be found or created to resolve the SR, OT customer support will use commercially reasonable efforts to

develop a Product Patch to address the SR and provide it to you.

## 2.4.2 Resolution of Serious SR's

For SR's Classified by OT as serious, OT may develop a Product Patch or may address this in a future Release.

## 2.4.3 Resolution of Normal SR's

Resolution of SR's Classified as normal may be included in a future Release.

## 2.4.4 Conditions of a Support Request Resolution

OT customer support shall attempt to address each SR, regardless of Classification; OT will have no obligation to provide a Resolution for your SR as described above unless:

- You are running a Release of the Covered Software which is under Current Maintenance and you have installed and implemented all of the most recently available relevant Updates, or you do so at the request of OT customer support. OT customer support will make that request if it reasonably believes that the installation and implementation is necessary to achieve Resolution of your SR; AND,
- You are using the Covered Software on hardware and with third party software approved by OT or as specified in the Documentation; AND,
- The SR has, as determined by OT, not been caused by you, including, but not limited to your use and/or configuration of: (a) development tools, including SDK; (b) a third party resource; and (c) the operating environment in which the Covered Software is implemented, including, among other things, the operating system, database, other applications, services, or programs, communication networks, or hardware; AND,
- Your POC is available to actively participate with OT on diagnosis, testing, and Resolution. OT reserves the right to suspend its obligations under this Handbook during any time(s) in which a competent POC is unavailable for such participation; AND,
- You have provided OT with all of the information necessary to allow OT to reproduce the SR.

## 3. Limitations

The following limitations apply to the OT Software Maintenance Program:

- The OT Software Maintenance Program as described in this Handbook only applies to the Covered Software as is described in the OT Documentation, and does not apply to any modifications, deliverables, or services provided by OT's professional services staff or by third party resources which results in the alteration or extension of the Covered Software. Customer may engage OT's professional services for fee-based assistance under separate agreement.
- OT reserves the right to modify any portion of this Handbook at its sole discretion and without prior notice; however, you will be notified of any such modifications (if such modifications result in a

material reduction of service) in a timely manner by way of email, written notice or a posting on the Customer Service Portal.

- Nothing in this Handbook purports to exclude, restrict or modify, any condition, warranty or guarantee implied by applicable law (“Implied Terms”) where to do so would have the effect of rendering all or any part of this Handbook void or otherwise unenforceable. To the maximum extent permitted by applicable law, OT’s liability for breach of any Implied Terms is limited to the resupply of the Program services.
- OT’s obligation to address SR’s and/or performance issues shall be strictly limited to those obligations described in this Handbook.
- The Program does not provide for dedicated assistance with issues encountered as a result of implementing major changes to the technical architecture of the Covered Software (for example, Updates to the application, underlying database, addition of new hardware, etc.). OT offers: (1) remote or onsite assistance from an OT Customer Support representative who is assigned to your organization for the duration of a maintenance activity or SR to observe, participate in conference calls or web sessions, or provide assistance with your maintenance activities (“Dedicated Support”); and (2) an assigned support representative with expertise in your planned maintenance activity that will be on call only in the event you need assistance (“Standby Support”). Dedicated Support or Standby Support are fee-based services that must be pre-arranged for these types of activities. Please contact your local OT customer support office for more information.
- The provision of license keys is excluded from the Response Times described in Section 2.3.2 of this Program. Additionally, license keys from third party vendors are requested of the third party vendor, and provided by the third party vendor to either OT or the Customer as determined by OT. License keys may not be available for products and/or releases no longer under Current Maintenance.
- The software lifecycle for third party products resold by OT is established by third party vendors only. Third party software is excluded from Section 2.1.3.
- OT is not responsible for providing Support Services for third party products resold by OT to the extent that addressing SRs is dependent on unresolved issues with third party products including, but not limited to, unavailability of third party support.
- All licenses and related modules must be supported under the same software maintenance program (e.g. extended support and maintenance programs (to the extent available)).

## 4. Term and Renewal

### 4.1 Initial Term and Renewal

Unless otherwise set forth in the applicable order documentation for the Covered Software, the Initial Term for Program is twelve months beginning on the Start Date. Where provided in any order documentation for autorenewal of Program, the Program may be renewed for a Subsequent Term on an annual basis, commencing each anniversary of the Start Date by executing a written order for the renewal term. Before the commencement of a Term, you will be obligated to pay the applicable entire

annual Program fee with respect to the Covered Software which you have licensed from OT. Such suspension shall not relieve you from your obligation to pay the applicable Program fee.

## 4.2 Reductions

All requests to renew Program on a fewer number of licenses or modules for Covered Software than is currently covered under maintenance and support must be submitted in writing to OT no less than 90 calendar days prior to the expiration of the then-current Term.

Acceptance of any such requests is at OT's sole discretion. If OT accepts such a request, OT shall only provide Updates and software support for the number and type of licenses included in your then remaining Covered Software being renewed under maintenance and support. The maintenance charges for the remaining Covered Software shall be re-priced at the applicable then current GSA Schedule Pricelist rate. In such an event, the fees applied to each license may differ from any earlier Terms (for example, previously granted fee discounts are not applicable).

Any renewal of maintenance and support for Covered Software must result in all of Customer's licenses of such Software product and related modules being covered by a maintenance and support plan. If you cancel maintenance and support for a portion of any Software product or related modules with a term-based license, you will be required to cancel the licenses for the unsupported software.

## 4.3 Lapse and Reinstatement

If you terminate or cancel, as applicable, a Term of the Program for the Covered Software, you may, upon agreement by OT, subsequently purchase OT Software Maintenance Program services for said Covered Software for a fee to be determined by OT at time of request. However, in addition to the fee for the new Term, which shall be a minimum of 12 months, you will need to pay the fees that would have been payable had you continued the OT Software Maintenance Program uninterrupted..

Future reinstatement of software not cancelled as a part of a reduction as described in Section 4.2 is subject to payment of back-maintenance fees and lapsed month surcharges.

OT will confirm fees for reinstatement at the time the request is made for reinstatement.

## 4.4 Expiration

Upon Expiration of the Term of an OT Software Maintenance Program, you acknowledge and agree that any and all agreements between you and Open Text related to the OT Software Maintenance Program shall automatically terminate, irrespective of whether these agreements were documented in this Handbook or a EULA or any other document. Should you at any point in time after Expiration choose to subscribe again to an OT Software Maintenance Program, you will do so under the then-current OT Software Maintenance Program commercial and support services delivery terms, and OT shall not be obligated to comply with, any agreements that were entered into prior to the Expiration date related to such OT Software Maintenance Program.

## 5. Privacy

OT will comply with the requirements of data protection law applicable to it for the processing of personal data. We have implemented technical and organizational measures to protect your personal data and ensure a level of security appropriate to the risk. Customers' personal data shall not be used by OT, its affiliates or its business partners, vendors and agents working on our behalf for any other purpose other than as required under this Handbook, the underlying contract and permitted or required by law. If OT requires access to personal data to provide Support Services, Customer will provide personal data to OT only to the extent reasonably required.

Personal data may be processed in other countries. The transfer to other countries shall be in accordance with applicable data protection legislation which may include an adequacy decision by applicable regulators (including Privacy Shield certification) or appropriate safeguards. Appropriate safeguards may include OT and third parties entering into the EU standard contractual clauses for the transfer of personal data. For more information, please refer to the attached OT privacy policy available at [www.opentext.com/about/privacy](http://www.opentext.com/about/privacy)

[www.opentext.com/contact](http://www.opentext.com/contact)

THIS SOFTWARE SPECIFIC TERMS ADDENDUM SETS FORTH THE ADDITIONAL TERMS AND CONDITIONS THAT APPLY TO LICENSEE'S USE OF, AND LICENSE TO, THE APPLICABLE SOFTWARE LISTED BELOW. CAPITALIZED TERMS NOT DEFINED IN THESE SOFTWARE SPECIFIC TERMS HAVE THE MEANING GIVEN TO THEM IN THE EULA.

### **1.0 Email Encryption Powered by Zix ("ZixEncrypt")**

**1.1 Right to Access.** During the License Term and subject to all of the restrictions set forth in the EULA related to the Software, OT grants to Licensee a non-exclusive, non-sublicensable, non-transferable right to access and use the online portal hosted by OT for the storage and communication of encrypted messages processed by the ZixEncrypt Software solely for Licensee's internal business purposes and by your third-party message recipients (the "**Services**"). Licensee are responsible and liable for: (a) Licensee's use of the Services, including any violation or breach of the EULA; (b) any use of the Services or actions taken through use of Licensee's Access Credentials; and (c) Licensee's authorized employees and independent contractors ("**End Users**") and message recipients compliance with the terms of this EULA.

**1.2 Accounts and Access Credentials.** Use of the Services may require Licensee or Licensee's End Users to create an account ("**Account**") connected to access credentials (including, but not limited to, usernames and passwords) ("**Access Credentials**"). An Account is not required by Licensee or Licensee's End Users to operate the ZixEncrypt Software, however, it may be required to fully access the Services. Licensee and Licensee's End Users are solely responsible for taking reasonable security measures to protect Licensee's Access Credentials and agree not to share any End User's Access Credentials. Licensee must notify OT immediately upon discovery of any unauthorized use of Licensee's Access Credentials or unauthorized access to, or use of, any Account. Licensee is responsible for compliance with this EULA by Licensee's End Users and for any and all (i) acts or omissions of Licensee's End Users with respect to the Services; (ii) activities that occur under any of Licensee's End User's Accounts; (iii) any actions, or unauthorized use, by Licensee's Access Credentials. The actions of Licensee's End Users with respect to the Services shall be binding on Licensee.

**1.3 Licensee Content.** Licensee grants OT a non-exclusive, worldwide, royalty-free, fully-paid license to use Licensee's data and other information uploaded, generated, stored or transmitted by Licensee into the Services and/or through the Software ("**Licensee Content**"): (a) to perform OT's obligations under this EULA; (b) as authorized or instructed by Licensee; (c) to provide, maintain and improve the Services; and/or (d) as required by applicable law. As between Licensee and OT, Licensee's Content belongs to Licensee, and OT makes no claim to any right of ownership in Licensee Content. Licensee represents and warrants to OT that Licensee is the owner of all rights to Licensee Content, or that Licensee has the right to reproduce, distribute, transfer and/or provide Licensee Content to OT for the purposes of this EULA. Licensee remains solely responsible at all times for Licensee Content and for ensuring that Licensee Content complies with the EULA and with all legal and regulatory obligations applicable to Licensee Content.

**1.4 Licensee's Obligations for Licensee's Content.** Licensee represents and warrants that: (a) Licensee owns or has a valid license to all of Licensee Content; (b) Licensee has all necessary consents, authorizations and/or legal permissions required to permit the processing of Licensee Content under this EULA; and (c) none of Licensee Content: (i) is subject to the International Traffic in Arms Regulations maintained by the Department of State; (ii) infringes any intellectual property, proprietary, contractual or privacy rights of any party; (iii) contains software viruses or any other computer code, files or programs that interrupts, destroy or limits the functionality of any computer software or hardware or telecommunications equipment; (iv) constitutes unsolicited or unauthorized advertising, promotional materials, commercial activities and/or sales, "junk mail", "spam", "chain letters", "pyramid schemes", "contests", "sweepstakes", or any other form of solicitation; (v) is unlawful, harmful, threatening, abusive, harassing, tortious, violent, defamatory, vulgar, obscene, pornographic, libelous or otherwise objectionable; or (vi) in the sole of judgment of OT, is objectionable or which restricts or inhibits any other person from using or enjoying the Services, or which may expose OT or its customers to any harm or liability of any kind. OT has the right, but not the obligation, to monitor Licensee's use of the Services to determine Licensee's compliance with this EULA. Unless otherwise agreed in writing, the Services and the Software shall not be used to encrypt application-generated (bulk) emails. Additionally, OT reserves the right to display a short message on all outbound encrypted emails.

**1.5 Retention and Deletion of Licensee Content.** OT shall have no obligation to retain, delete or return Licensee Content to Licensee except as provided in this EULA. Unless otherwise stated in this EULA, OT will delete all of Licensee Content no later than 30 days following the expiration or termination of the License Term.

**1.6 Privacy and Data Protection Laws.** OT will provide the Services in accordance with privacy and data protections laws, to the extent applicable. To the extent that OT processes personal data on Licensee's behalf in performing the Services: (a) OT shall implement reasonable and appropriate technical and organizational measures designed to protect personal data against unauthorized or unlawful processing; (b) OT shall not collect, sell or use such personal data except as necessary to perform the Services, or as otherwise permitted by the applicable laws; and (c) where an individual submits a verifiable request to OT to exercise their privacy rights relating to their personal data in respect of Licensee as the named customer, OT shall forward these requests to Licensee's email address on file with OT as soon as reasonably practicable. To the extent that OT requires personal data to provide the Services, Licensee will provide personal data only to the extent reasonably required. Licensee is responsible for implementing and maintaining privacy protections and security measures for components that Licensee provides or controls, as well as complying with Licensee's obligations under this EULA or otherwise required by law including (without limitation) any requisite consents required to share or manage such personal data. To the extent that the provision of the Services by OT involves the processing of personal data subject to applicable Data Protection Legislation (as defined in the Open Text Data Processing Addendum attached hereto and available at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-data-processing-addendum-en.pdf> and which may be non-materially updated from time to time (the "**DPA**")), the terms of the DPA shall apply and be deemed incorporated herein automatically. Where the applicable Data Protection Legislation refers solely to US State Privacy Laws (as defined in the DPA), only the provisions of the DPA required under applicable US State Privacy Law shall apply. If Licensee is a "Covered Entity" (as such is defined in 45 CFR § 160.103) and Licensee uses certain OT Services to transmit, store, or otherwise process Protected Health Information (as such is defined in 45 CFR § 164.501), so that OT is acting as a "Business Associate" (as such is defined in 45 CFR § 160.103) in

relation to the same, the terms of the OT Business Associate Agreement here attached hereto and at <https://www.carbonite.com/legal/business-associate-agreement> shall apply and be deemed incorporated herein automatically.

These Commercial Hardware Terms of Sale (“**Terms of Sale**”) govern the purchase of Hardware by Purchaser.

By placing an order using a Transaction Document referencing these Terms of Sale, for any purchase of Hardware (the first date on which any such action occurs, the “**Effective Date**”), Purchaser and the Open Text entity set forth on the applicable Transaction Document (“**OT**”) are entering into a legally binding contract as of the Effective Date and Purchaser agrees to be bound by and abide by the terms of these Terms of Sale.

If you are entering into these Terms of Sale on behalf of a legal entity, you represent and warrant that you have the authority to bind such entity and its Affiliates to these Terms of Sale. If you do not have such authority, or if you do not agree with these Terms of Sale, you must not purchase any Hardware.

OT and Purchaser agree as follows:

### **1.0 Definitions**

**1.1 “Affiliate”** means any entity controlled by, controlling, or under common control with a party to these Terms of Sale. Control exists through ownership, directly or indirectly, of a majority of the outstanding equity capital and of the voting interests of the subject entity. If an entity ceases to meet these criteria, it will cease to be an Affiliate under these Terms of Sale.

**1.2 “Claim”** means claims, suits, actions, or proceedings brought against Purchaser in a court of competent jurisdiction in a Covered Country by a third party which allege an infringement of the third party’s patent, copyright, or trade secret rights existing under the laws of the Covered Country.

**1.3 “Confidential Information”** means information, whether or not in physical form, all oral communications, documents and other information, disclosed by a party to the other which: (a) is by its nature or circumstances surrounding its disclosure is, or could reasonably be expected to be regarded as, confidential to the Disclosing Party; (b) is marked or otherwise designated “confidential” by the Disclosing Party; or (c) the Disclosing Party informs the Receiving Party is confidential or a trade secret.

**1.4 “Covered Countries”** means each contracting party to The Patent Cooperation Treaty (currently published at [https://www.wipo.int/pct/en/pct\\_contracting\\_states.html](https://www.wipo.int/pct/en/pct_contracting_states.html)) and “**Covered Country**” means one of them.

**1.5 “Documentation”** means user guides, operating manuals, and release notes in effect as of the date of delivery of the applicable Hardware, made generally available by OT.

**1.6 “Fees”** means all fees payable by Purchaser to OT for the sale of the Hardware.

**1.7 “Hardware”** means physical devices sold to Purchaser by OT or a Reseller sourcing physical devices from OT.

**1.8 “Purchaser”** means the legal entity or individual taking title to the Hardware by purchasing the Hardware from OT or a Reseller subject to these Terms of Sale.

**1.9 “Purchase Documents”** means these Terms of Sale, the Transaction Document, and any other Documentation attached hereto.

**1.10 “Reseller”** means an authorized OT reseller.

**1.11 “Taxes”** means the sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate governments arising out of the purchase of Hardware, under these Terms of Sale, except taxes imposed on OT’s income.

**1.12 “Transaction Document”** includes: a) a written order schedule between OT and Purchaser (or a Reseller as applicable) which references these Terms of Sale, b) a quotation issued by OT and signed by the Purchaser (or Reseller as applicable), c) an invoice issued by OT, or d) any other document that references these Terms of Sale and is agreed to by OT in writing. If and to the extent of any inconsistency between two or more Transaction Documents, the priority of the Transaction Documents will be interpreted in the order listed above. All Transaction Documents are governed by these Terms of Sale.

### **2.0 Product Delivery**

**2.1 Shipment; Risk of Loss and Possession.** Unless otherwise agreed in writing and signed by both parties, OT shall arrange for shipment of the ordered Hardware to the ship-to address indicated in the Transaction Document (“**Shipping Destination**”), through a common carrier designated by OT. Unless otherwise stated by OT in writing, in accordance with GSAR Clause 552.212-4(j), possession of all Hardware passes to Purchaser (a) from all OT deliveries to the European Union and the United Kingdom are DAP to Shipping Destination and (b) all OT deliveries from outside the European Union and the United Kingdom are EXW OT’s warehouse or, for drop shipments, EXW the manufacturer’s warehouse (INCOTERMS 2023). OT’s delivery dates are estimates only and subject to OT’s timely receipt of supplies. OT is not liable for delays in delivery or for partial or early deliveries.

**2.2 Acceptance.** In accordance with GSAR Clause 552.212-4(a), All Hardware will be deemed to be accepted upon delivery of the Hardware to the Shipping Destination. Purchaser will accept all deliveries of Hardware



regardless of when those deliveries are made and regardless of whether the delivery is a partial delivery or made in full. Purchaser may not cancel any Transaction Document based on delayed or partial delivery. Purchaser shall notify OT within twenty-one (21) days of receipt of final delivery of Hardware where Purchaser believes any Hardware included in the Transaction Document is missing, wrong, or damaged, and shall ensure that the intended installation site meets the specifications as per the Documentation. Notwithstanding such acceptance, Purchaser retains all rights and remedies under the warranty terms stated below.

**2.3 Title.** Title in the Hardware shall pass to Purchaser once OT has received payment in full, including of all applicable delivery charges. If OT fails to deliver the Hardware, OT's liability is limited to the cost of obtaining replacement Hardware of a similar description and quality. Notwithstanding the foregoing, OT will not be liable to the extent that any failure to deliver was caused by force majeure (as described in Section 12.5 of these Terms of Sale), or because Purchaser failed to provide adequate delivery instructions or any other instructions that are relevant to the supply of Hardware.

### **3.0 Ordering Hardware**

**3.1 Orders.** The Hardware must be identified on a Transaction Document acceptable to OT.

**3.2 Invoicing and Payment.** OT or its authorized reseller as applicable will invoice Purchaser for Fees and Taxes upon delivery of the Hardware. All Fees and Taxes due to OT by Purchaser are due and payable within thirty (30) days upon Purchaser's receipt of an invoice from OT in the currency specified in the Transaction Document. OT or its authorized reseller as applicable shall state separately on invoices taxes excluded from the fees, and the Purchaser agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k). All Fees and Taxes due to OT which are not paid in full within thirty (30) days following its due date will bear interest at a rate of 1.5% per month (18% per annum) or the maximum amount allowed by law, if less, on the unpaid portion until fully paid.

**3.3 Purchaser Affiliate Orders.** Purchaser's Affiliates that order Hardware are bound by the terms and conditions of these Terms of Sales if it were the Purchaser. Purchaser and its Affiliates are jointly and severally liable to OT for any breach of these Terms of Sale.

**3.4 OT Affiliate Orders.** OT Affiliates may fulfill orders pursuant to a Transaction Document in which case the OT Affiliate is bound by all of the terms and conditions of these Terms of Sale as if it were OT.

### **4.0 Warranty**

The applicable "**Hardware Warranty**" for the Hardware shall be stated on the Transaction Document and shall be for the stated duration on the Transaction Document (the "**Hardware Warranty Period**"). All warranty claims shall be time-barred if not raised during the Hardware Warranty Period. At least thirty (30) days prior to the expiration of the then current Hardware Warranty Period, OT may contact Purchaser with an offer to extend the Hardware Warranty for an additional period of time as determined in OT's sole discretion. Purchaser acknowledges and agrees that OT is under no obligation to offer to extend the Hardware Warranty and that any extension of the Hardware Warranty is subject to payment of the applicable additional fees by Purchaser.

### **5.0 Warranty Limitations**

**5.1 Pass Through Warranties.** Purchaser acknowledges that OT is not the manufacturer of the Hardware. To the extent legally and contractually permitted, OT shall pass through to Purchaser any transferable Hardware warranties, indemnities, and remedies provided to OT, including those for intellectual property infringement.

**5.2 No Other Warranties.** OTHER THAN THE WARRANTIES SET FORTH IN SECTION 4.0, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OT AND ITS AFFILIATES: (I) MAKE NO OTHER EXPRESS WARRANTIES; (II) DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT; AND (III) DISCLAIM ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE. OT makes no independent warranty with respect to services performed by OT or any third party. No information or suggestions (oral or in a record) given by OT, its agents, Affiliates, suppliers, employees, or agents, shall create a warranty or condition or expand the scope of this Hardware Warranty. Unless otherwise stated in a written agreement between OT and Purchaser, OT makes no representation or warranty with respect to any software installed on the Hardware and will have no liability in connection therewith.

**5.3 Sole Remedy.** Purchaser's sole remedies for breach of OT's Hardware Warranty are, at OT's sole choice: (i) repair of the Hardware; (ii) replacement of the Hardware; or (iii) refund of Purchaser's purchase price for the Hardware. The applicable Hardware Warranty Period is not extended if OT repairs or replaces warranted Hardware or any parts thereto.

### **6.0 Returns**

**6.1 Returns Procedure.** Purchaser may make warranty claims to OT only with a return material authorization ("RMA") number issued by OT. Purchaser must notify OT by calling technical support describing Hardware defects discovered through normal use within the Hardware Warranty Period. OT will only issue an RMA if the defect is created solely by OT or the original manufacturer, and only if Purchaser meets the notice requirement. Upon receiving the RMA,

Purchaser must return the Hardware to OT in compliance with OT's instructions in the RMA, including in original shipping cartons or equivalent, along with acceptable proof of purchase. Purchaser shall pay the replacement cost for any parts that are returned to OT later than thirty (30) days after issuance of an RMA and receipt of a proper invoice.

**6.2 Returns Exceptions.** OT will not grant RMAs for damage, shortage, or other discrepancy created by Purchaser, the carrier or freight provider, or any other third party; provided, however, OT will grant RMAs for damages or shortages arising prior to receipt of title by Purchaser for the Hardware even where such damage was caused by a carrier or freight provider. OT may assess all Hardware returned by Purchaser via RMA. If OT determines such Hardware is not eligible for return, OT will send such Hardware back to Purchaser on freight collect basis or hold such Hardware for Purchaser's collection and on account at Purchaser's expense.

#### **7.0 Restrictions on Use of Hardware Device**

The Hardware is not for use in life support systems, human implantation, nuclear facilities, or any other application where the Hardware's failure could lead to loss of life or property damage. If Purchaser uses the Hardware for use in such applications, Purchaser acknowledges that (a) any such use or non-compliance is at Purchaser's sole risk, (b) OT and its suppliers are not liable, in whole or in part, for any claim or damage arising from such use, and (c) Purchaser shall indemnify, defend and hold OT, its licensors and suppliers harmless from any claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use, including if applicable: (i) OT's compliance with Purchaser's designs, specifications, or instructions, (ii) modification of any Hardware by anyone other than OT, or (iii) use of the Hardware in combination with other products or in violation of this section.

#### **8.0 Environment Compliance**

Where applicable, Purchaser is responsible for all obligations and liabilities under the European Union's (i) Waste Electrical and Electronic Equipment Directive (2012/19/EU), (ii) Packaging Waste Directive (94/62/EC), and (iii) Batteries Directive (2006/66/EC), all as amended and all related national implementation measures in effect from time to time.

#### **9.0 Reserved**

#### **10.0 Support Services**

Standard support of Hardware includes: (i) assistance related to questions on the installation and operational use of the Hardware; (ii) identification of Hardware-related issues; and (iii) facilitating engagement of the Hardware manufacturer, which is responsible for providing support for all Hardware-related issues in accordance with the terms of such Hardware manufacturer's support terms and conditions. OT is not responsible for updating or upgrading operating systems used with the Hardware.

#### **11.0 Limitation of Liability**

**11.1 EXCLUSION OF DAMAGES. NOTWITHSTANDING ANY BREACH BY OT OF THESE TERMS OF SALE, OT IS NOT LIABLE TO PURCHASER OR TO ANY OTHER PARTY FOR: (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLARY, OR PUNITIVE DAMAGES; OR (B) ANY LOST SALES, LOST REVENUE, LOST PROFITS, LOST OR CORRUPTED DATA, OR RECUREMENT AMOUNT.**

**11.2 LIMITATION OF LIABILITY. OT'S AGGREGATE LIABILITY TO PURCHASER WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO OT UNDER THE RELEVANT TRANSACTION DOCUMENT. THE PARTIES WOULD NOT HAVE ENTERED INTO THESE TERMS OF SALE WITHOUT THIS SECTION.**

**11.3 DISCLAIMER. THE LIMITATIONS IN SECTIONS 11.1 AND 11.2 APPLY: (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, EQUITY, AT LAW, STRICT PRODUCT LIABILITY, OR OTHERWISE; (C) EVEN IF OT IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (D) EVEN IF PURCHASER'S REMEDIES FAIL IN THEIR ESSENTIAL PURPOSE. IF THE APPLICATION OF THIS SECTION IS LIMITED BY LAW, OT'S LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.**

#### **12.0 Miscellaneous**

**12.1 Confidentiality.** Each disclosing party (a "Disclosing Party") may disclose to the other party (a "Receiving Party") any Confidential Information. Each Receiving Party agrees, for the period of these Terms of Sale and for three (3) years after such period, to hold the Disclosing Party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties (other than to Affiliates and to professional advisers who are bound by appropriate obligations of confidentiality) unless authorized to do so by the Disclosing Party, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each Receiving Party agrees to

take reasonable steps to protect the Disclosing Party's Confidential Information to ensure that such Confidential Information is not disclosed, distributed, or used in violation of the provisions of this section. The foregoing prohibition on disclosure of Confidential Information shall not apply to any information that: (a) is or becomes a part of the public domain through no act or omission of the Receiving Party; (b) was in the Receiving Party's lawful possession without confidentiality obligation prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; (d) is independently developed by the Receiving Party by employees or agents without access to the Disclosing Party's Confidential Information; or (e) is required to be disclosed by the Receiving Party as a matter of law or by order of a court or by a regulatory body, provided that the Receiving Party promptly notifies the Disclosing Party (where lawfully permitted to do so) so that Disclosing Party may intervene to contest such disclosure requirement and/or seek an appropriate protective order or waive compliance with this section. Each Receiving Party is responsible for any actions of its Affiliates, employees, and agents in breach of this Section 12.1. OT recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

**12.2 Independent Contractors.** OT and Purchaser are independent contractors. Neither party has any authority to bind the other in any manner.

**12.3 Waiver, Amendment, Assignment.** Any amendment of these Terms of Sale must be in writing and signed by both parties. Purchaser may not assign, transfer, or sublicense any portion of its interests, rights, or obligations under these Terms of Sale by written agreement, merger, consolidation, change of control, operation of law, or otherwise, without the prior written consent of OT. Neither party will be deemed to have waived any of its rights under these Terms of Sale by lapse of time or by any statement or representation other than by a written waiver by a duly authorized representative. No waiver of a breach of these Terms of Sale will constitute a waiver of any prior or subsequent breach of these Terms of Sale. An assignment in contravention of this subsection will be null and void. Except to the extent identified in this subsection, these Terms of Sale will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

**12.4 Governing Law.** These Terms of Sale are governed by the Federal laws of the United States, excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods.

**12.5 Force Majeure.** In accordance with GSAR Clause 552.212-4(f), Except for payment and confidentiality obligations neither party is responsible for any delay or failure in performance of these Terms of Sale to the extent due to causes beyond its reasonable control.

**12.6 Severability.** If any provision of these Terms of Sale is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the provision will be severed from these Terms of Sale and all remaining provisions will continue in full force.

**12.7 Export Laws.** The Hardware may be subject to export control laws of the United States or other countries. Purchaser agrees to comply strictly with all applicable export regulations, including, but not limited to: (a) the Export Administration Regulations maintained by the U.S. Department of Commerce and (b) the trade and economic sanctions maintained by the U.S. Department of Treasury Office of Foreign Assets Control, and will not allow use of the Hardware in a manner that breaches or facilitates the breach of such regulations. Purchaser has the responsibility to obtain any licenses required to export, re-export, or import the Hardware, including deemed exports. The Hardware shall not be used by anyone: (i) located in U.S. embargoed countries or by any Foreign National of a U.S. embargoed country; (ii) included on the U.S. Treasury Department's list of Specially Designated Nationals; or (iii) the U.S. Department of Commerce's Denied Persons or Entity List. By using the Hardware, Purchaser represents and warrants that neither Purchaser nor any person provided access to the Hardware by Purchaser is located in any such country or on any such list.

**12.8 Press Release.** OT may include Purchaser's name in a list of OT customers, whether online or in promotional materials.

**12.9 Attribution Notices.** Purchaser will not remove, modify, obscure, resize, or relocate any ownership, attribution, or branding notices on the Hardware.

**12.10 Entire Purchase Agreement.** The Purchase Documents set forth the entire agreement between the parties with respect to this subject matter and supersede all other related oral and written agreements and communications between the parties. Neither party has relied upon such other agreements or communications. Notwithstanding any purchase order accepted by OT, any purchase order terms which purport to amend or modify terms of the Purchase Documents, or which conflict with the Purchase Documents are void and shall have no legal effect notwithstanding the fact the purchase order terms being later in time or OT issuing an invoice to Purchaser after receiving such purchase order from Purchaser. Where Purchaser purchases the Hardware directly from OT, not providing a purchase order does not relieve Purchaser from the responsibility to make timely payments as set forth in these Terms of Sale.

**12.11 Third Party Rights.** These Terms of Sale do not confer a benefit on, and is not enforceable by, any person or entity who is not a party to these Terms of Sale.

**12.12 Legal Review and Interpretation.** Both parties have had an opportunity for legal review of the Purchase Documents. The parties agree that the Purchase Documents result from negotiation between the parties. The Purchase Documents will not be construed in favor of or against either party by reason of authorship. The headings

used in these Terms of Sale are for convenience only. The term section refers to all subsections below a section heading (i.e. 3.0) and the term subsection refers to sequentially numbered subsections following a section (i.e. 3.1).

**12.13 Notices.** Any notice under these Terms of Sale that must be given by a party in writing is deemed effective when sent either: (a) via certified or registered mail, postage prepaid, or (b) via express mail or nationally recognized courier service to the other party's address specified in these Terms of Sale or on the most recent Transaction Document. Notices to OT will also be sent to OT's general counsel at 385 Interlocken Crescent Suite 800 Broomfield, CO 80021 USA.



## Leased Hardware Addendum

This Leased Hardware Addendum sets forth the additional terms and conditions that apply to a hardware device(s) that is leased to Lessee from OT and will be supplied in conjunction with OT Product(s) pursuant to an applicable Order (“**Hardware Device(s)**”). Capitalized terms not defined in this Leased Hardware Addendum have the meaning given to them in either: (a) the Cybersecurity End User License Agreement (“**EULA**”), where this Leased Hardware Addendum supplements the use of Software (as defined therein) provided to Lessee with a Hardware Device and attached hereto; or (b) the Cloud Terms and Conditions (“**Cloud Terms**”), where this Leased Hardware Addendum supplements the use of Cloud Services (as defined therein) provided to Lessee with a Hardware Device and attached hereto (each of the EULA or the Cloud Terms, an “**Underlying Agreement**”).

### 1. DEFINITIONS

“**Delivery**” means when the Hardware Device(s) is delivered by a carrier to the delivery location specified in the applicable Order, or to a location otherwise agreed between OT and Lessee which may include to an OT authorized partner.

“**Leased Location**” means the location where Lessee shall store and utilize the Hardware Device identified by Lessee in the Order and approved by OT. If not identified in the Order, then, unless otherwise agreed to in writing by OT, Lessee shall store and utilize the Hardware Device only at premises owned or operated by Lessee in the country in which Lessee is incorporated.

“**Lease Period**” means the term of the lease set forth in the Order, which shall be referenced as either: (a) the “Subscription Term”, where the Underlying Agreement is the Cloud Terms; or (b) the “License Term”, where the Underlying Agreement is the EULA.

“**Lessee**” means either: (a) “You”, where the Underlying Agreement is the Cloud Terms; or (b) “Licensee”, where the Underlying Agreement is the EULA.

“**Manuals**” means the applicable documentation made available by the manufacturer and/or supplier of the Hardware Device(s) relating to the operation and maintenance of the Hardware Device(s) together with any applicable warranties and limitations for the applicable Hardware Device(s).

“**Order**” means either: (a) “Order Documentation”, where the Underlying Agreement is the Cloud Terms; or (b) “Transaction Documents”, where the Underlying Agreement is the EULA.

“**OT Products**” means either: (a) the combined definition of “Cloud Services” and “Client-Side Software”, where the Underlying Agreement is the Cloud Terms; or (b) the “Software”, where the Underlying Agreement is the EULA.

### 2. TERMS APPLICABLE TO LEASED HARDWARE DEVICES

**2.1 Lease Terms.** Subject to the terms of the Underlying Agreement and this Leased Hardware Addendum, for the Lease Period, OT hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from OT, the Hardware Device(s). Lessee acknowledges that all fees for the Hardware Device(s) are guaranteed, except as otherwise provided in this Leased Hardware Addendum.

**2.2 Title.** The Hardware Device(s) is not sold to the Lessee and no transfer of title in the Hardware Device(s) is effectuated. Lessee acknowledges and agrees that the Hardware Device shall not be deemed to be a fixture of any part of Lessee’s premises.

**2.3 Delivery; Risk of Loss.** In accordance with GSAR Clause 552.212-4(j), Risk of loss, theft, damage or destruction of the Hardware Device(s) passes to Lessee upon Delivery to Lessee or a third party agent of Lessee. When Lessee receives the Hardware Device(s), Lessee agrees to inspect such Hardware Device(s) promptly and advise OT immediately if the Hardware Device(s) is not in good working order. Lessee must keep the Hardware Device(s) adequately insured to protect both OT’s and Lessee’s respective interests in the Hardware Device(s) during the Lease Period. The Hardware Device shall remain at the Leased Location at the sole risk of the Lessee during the Lease Period and during any additional lease term which the Hardware Device is in the possession, custody or control of the Lessee. The return of any Hardware Device to OT is at the sole risk of the Lessee pursuant to the terms in Section 5. No loss, theft, damage, or destruction of the Hardware Device during such time shall relieve Lessee of the obligation to pay the applicable fees or to comply with any other obligation under this Leased Hardware Addendum. OT’s delivery dates are estimates only and subject to OT’s timely receipt of supplies. OT is not liable for delays in delivery or for partial or early deliveries. Lessee will accept all deliveries of a Hardware Device(s) regardless of when those deliveries are made and regardless of whether the delivery is a partial delivery or made in full in accordance with GSAR Clause 552.212-4(a). Lessee may not cancel any Order based on delayed or partial delivery of a Hardware Device(s) except in accordance with GSAR Clause 552.212-4(l) or (m).

## **2.4 Warranties.**

OT WARRANTS THAT THE HARDWARE DEVICE(S) WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH HARDWARE DEVICE(S) WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING OT IS PROVIDING THE HARDWARE DEVICE(S) TO LESSEE "AS-IS". LESSEE ACKNOWLEDGES THAT OT DOES NOT MANUFACTURE OR SUPPLY THE HARDWARE DEVICES(S) NOR DOES OT REPRESENT THE MANUFACTURER OR SUPPLIER. OT MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE MERCHANTABILITY, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. OT DOES NOT WARRANT THAT THE HARDWARE DEVICE(S) WILL OPERATE UNINTERRUPTED OR WILL BE FREE FROM DEFECTS OR ERRORS, OR THAT ANY HARDWARE DEVICE(S) WILL MEET (OR ARE DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS.

TO THE EXTENT PERMITTED BY THE MANUFACTURER OR SUPPLIER, PROVIDED NO EVENT OF DEFAULT HAS OCCURRED AND THIS AGREEMENT IS STILL IN EFFECT, OT SHALL MAKE AVAILABLE TO LESSEE THE BENEFIT OF ALL MANUFACTURER AND/OR SUPPLIER WARRANTIES WITH RESPECT TO THE HARDWARE DEVICES(S) PROVIDED TO OT BY THE SUPPLIER AND/OR MANUFACTURER OF THE HARDWARE DEVICES(S) (SUBJECT TO ANY RESTRICTIONS, LIMITATIONS OR EXCLUSIONS SET OUT THEREIN) FOR THE LEASE PERIOD.

IN ORDER FOR LESSEE TO UTILIZE THE BENEFIT OF ANY APPLICABLE MANUFACTURER AND/OR SUPPLIER WARRANTY MADE AVAILABLE TO OT, LESSEE ACKNOWLEDGES AND AGREES THAT ANY ISSUES RELATING TO THE OPERATION OF THE HARDWARE DEVICE(S) SHALL BE RAISED THROUGH OT SUPPORT WHO SHALL LIAISE WITH THE APPLICABLE MANUFACTURER AND/OR SUPPLIER.

## **3. LESSEE'S RESPONSIBILITY FOR HARDWARE DEVICE(S).**

**3.1 Maintenance.** Lessee agrees to: (a) store, operate and maintain the Hardware Device(s) in a manner and under the environmental conditions specified in the Manuals so that the Hardware Device(s) remains in good operating condition and appearance (ordinary wear and tear excepted); (b) comply with all requirements necessary to enforce all warranty rights; and (c) not allow anyone other than OT or an OT authorized agent to service the Hardware Device(s). In the event the Hardware Device(s) requires repair or replacement pursuant to a valid warranty claim, OT will, in its sole discretion, repair or replace the Hardware Device(s) at OT's expense, provided, however, that if the Hardware Device(s) is in need of repair or replacement as a result of Lessee's actions, omissions, or violation of the Underlying Agreement or this Leased Hardware Addendum.

### **3.2 Restrictions on Use of Hardware Device.**

**3.2.1** Lessee shall only use the Hardware Device(s): (a) to utilize the OT Products (and their functionalities) subject to the terms of the Underlying Agreement and this Leased Hardware Addendum; and (b) for its own use at the Leased Location. No other use of the Hardware Device(s) is permitted.

**3.2.2** Lessee shall not: (a) transfer the Hardware Device(s) to any other location or third party, or otherwise grant access to third parties to use the Hardware Device(s) for any purpose, including, but not limited to, use of the Hardware Device(s) to provide a hosted service to third parties; or (b) sell, lease, sub-lease, abandon, or give away the Hardware Device(s) or permit any unauthorized third party to access or use the Hardware Device(s). The Hardware Device may not be used separate and apart from the OT Products.

**3.2.3** The Hardware Device is not licensed for and Licensee shall not use the Hardware Device: (a) in any way prohibited by law, regulation, or governmental order or decree; (b) to distribute spam or malware in a way that could harm the Hardware Device(s) or impair anyone else's use of it in any way; (c) in any way intended to work around the Hardware Device(s)'s technical limitations; (d) with any unsupported hardware or software; (e) in life support systems, human implantation, or nuclear facilities; (f) in any other application where the Hardware Device's failure could lead to loss of life or property damage; or (g) an environment, a manner, or for a purpose for which the Hardware Device(s) were not designed or is otherwise specified in the Manuals or applicable manufacturer and/or supplier warranty.

### **3.3 Misuse of Hardware Device.**

**3.3.1** IF LESSEE USES THE HARDWARE DEVICE OTHER THAN AS SPECIFICALLY SET OUT IN THIS AGREEMENT, LESSEE ACKNOWLEDGES THAT (A) SUCH USE SHALL INVALIDATE, AND RELIEVE OT FROM ANY AND ALL LIABILITY TO LESSEE FOR, ANY WARRANTIES, REMEDIES OR ANY OTHER OT OBLIGATIONS SET OUT IN THIS LEASED HARDWARE ADDENDUM; (B) ANY SUCH USE OR NON-COMPLIANCE IS AT LESSEE'S SOLE RISK, (C) OT, ITS LICENSORS AND SUPPLIERS ARE NOT LIABLE, IN WHOLE OR IN PART, FOR ANY CLAIM OR DAMAGE ARISING FROM SUCH USE, (D)Reserved; AND (E) OT SHALL BE ENTITLED TO ANY (OR ALL) OF THE REMEDIES SET OUT IN SECTION 4 (REMEDIES).

**3.3.2** LICENSEE IRRECOVERABLY WAIVES AND RELEASES OT FROM ANY LIABILITY RELATING TO (A) OT'S COMPLIANCE WITH LESSEE'S DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS, (B) MODIFICATION OF ANY HARDWARE DEVICE BY ANYONE OTHER THAN OT OR ITS AUTHORIZED AGENTS,

OR (C) USE OF THE HARDWARE DEVICE IN COMBINATION WITH OTHER PRODUCTS OR IN VIOLATION OF THIS LEASED HARDWARE ADDENDUM.

#### **4. REMEDIES.**

If Lessee is in default of any of the terms of the Underlying Agreement or this Leased Hardware Addendum, including (without limitation) Section 3.2, OT shall have the right to exercise any one or more of the following remedies: (a) Reserved; (b) require Lessee, at its expense, to return the Hardware Device in good repair (pursuant to the terms in Section 5) by delivering the Hardware Device, packed and ready for shipment, to such place as OT may specify; (c) cancel or terminate this Order and may retain any and all prior payments paid by Lessee in accordance with the Contract Disputes Act; (d) reserved; and (e) to pursue any other remedy available at law, by statute or equity. No right or remedy conferred upon or reserved to OT is intended to be exclusive, but each shall be cumulative and in addition to any other right or remedy referred to herein or available to OT at law or equity.

#### **5. RETURN OF HARDWARE DEVICE(S).**

**5.1 Upgrades.** During the Lease Period, if Lessee upgrades the Hardware Device(s) or OT requires that a Hardware Device(s) be replaced, promptly following delivery to Lessee of the replacement Hardware Device(s), Lessee shall return (subject to the terms set out in Section 5.3) the original Hardware Device(s) at OT's cost in accordance with the instructions provided by OT. For the avoidance of doubt, the terms of this Leased Hardware Addendum and the Underlying Agreement shall continue to govern any replacement Hardware Device(s).

**5.2 Return Conditions.** At the expiration or earlier termination of the Lease Period, Lessee shall, at Lessee's sole expense and cost: (a) delete all of Lessee's content stored on the Hardware Device and (b) promptly return the Hardware Device(s) in an undamaged condition (ordinary wear and tear excepted) within ten (10) calendar days of expiration or termination of the Lease Period (the "**Return Period**"). Where Lessee upgrades the Hardware Device during the Lease Period in accordance with Section 5.1, OT will bear the cost of the return of the original Hardware Device and shipment of the upgraded version of the Hardware Device. Lessee is solely responsible for deleting any Lessee generated content stored on the Hardware Device prior to returning the Hardware Device to OT.

**5.3 Returned Hardware Devices.** Lessee acknowledges and agrees that OT will not be responsible for any use or disclosure of any stored Lessee generated content that remains on any returned Hardware Device and irrecoverably waives and releases OT from any liability relating thereto. Except as otherwise provided herein, Lessee will be responsible for the (a) cost of shipping and handling in connection with the return of the Hardware Device to OT and (b) risk of loss associated with the Hardware Device until such Hardware Device arrives at OT's designated shipping destination. OT reserves the right to invoice Lessee for the replacement cost of a new version of the Hardware Device of similar functionality and specification if OT does not receive the Hardware Device by the end of the Return Period.

#### **6. ENVIRONMENTAL COMPLIANCE.**

Where applicable, Lessee is responsible for all obligations and liabilities under the European Union's (a) Waste Electrical and Electronic Equipment Directive (2012/19/EU), (b) Packaging Waste Directive (94/62/EC), and (c) Batteries Directive (2006/66/EC), all as amended and all related national implementing measures in force from time to time.

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**1.5 Retention and Deletion of Licensee Content.** OT shall have no obligation to retain, delete or return Licensee Content to Licensee except as provided in this EULA. Unless otherwise stated in this EULA, OT will delete all of Licensee Content no later than 30 days following the expiration or termination of the License Term.

**1.6 Privacy and Data Protection Laws.** OT will provide the Services in accordance with privacy and data protections laws, to the extent applicable. To the extent that OT processes personal data on Licensee's behalf in performing the Services: (a) OT shall implement reasonable and appropriate technical and organizational measures designed to protect personal data against unauthorized or unlawful processing; (b) OT shall not collect, sell or use such personal data except as necessary to perform the Services, or as otherwise permitted by the applicable laws; and (c) where an individual submits a verifiable request to OT to exercise their privacy rights relating to their personal data in respect of Licensee as the named customer, OT shall forward these requests to Licensee's email address on file with OT as soon as reasonably practicable. To the extent that OT requires personal data to provide the Services, Licensee will provide personal data only to the extent reasonably required. Licensee is responsible for implementing and maintaining privacy protections and security measures for components that Licensee provides or controls, as well as complying with Licensee's obligations under this EULA or otherwise required by law including (without limitation) any requisite consents required to share or manage such personal data. To the extent that the provision of the Services by OT involves the processing of personal data: (a) if such personal data is subject to applicable Data Protection Legislation (as defined in the Data Processing Addendum attached hereto and available at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-data-processing-addendum-en.pdf> and which may be non-materially updated from time to time (the "**DPA**")), the terms of the DPA shall apply and be deemed incorporated herein automatically; and (b) if such personal data is subject to the Applicable State Privacy Laws (as defined in the U.S. State Privacy Addendum attached hereto and available at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-us-state-privacy-addendum-legal-document-en.pdf> and which may



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Carbonite Availability or Carbonite Migrate for Windows

=====

AutoMapper

Version: 4.2.1

License: MIT

Exhibit: 1

<https://github.com/AutoMapper/AutoMapper/blob/master/LICENSE.txt>

Castle.Core

Version: 4.3.1

License: Apache License 2.0

Exhibit: 2

<http://www.apache.org/licenses/LICENSE-2.0.html>

Command Line Parser Library

Version: 1.9.71

License: MIT

Exhibit: 1

<https://github.com/commandlineparser/commandline/blob/master/License.md>

Google Protocol Buffers

Version: 3.8.0

License: Google Inc. All rights reserved.

Exhibit: 26

<https://github.com/google/protobuf/blob/master/LICENSE>

ICSharpCode.SharpZipLib.dll

Version: 0.85.4.369

License: MIT

Exhibit: 1

<https://github.com/icsharpcode/SharpZipLib/blob/master/LICENSE.txt>

Microsoft ASP.NET Web API 2.2 Client Libraries

Version: 5.2.3

License: © Microsoft Corporation. All rights reserved.

Exhibit: 3

[http://www.microsoft.com/web/webapi/eula/net\\_library\\_eula\\_ENU.htm](http://www.microsoft.com/web/webapi/eula/net_library_eula_ENU.htm)

Microsoft ASP.NET Web API 2.2 Core Libraries

Version: 5.2.3

License: © Microsoft Corporation. All rights reserved.

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[http://www.microsoft.com/web/webapi/eula/net\\_library\\_eula\\_ENU.htm](http://www.microsoft.com/web/webapi/eula/net_library_eula_ENU.htm)

Microsoft ASP.NET Web API 2.2 OWIN

Version: 5.2.3

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Microsoft ASP.NET Web API 2.2 OWIN Self Host

Version: 5.2.3

License: © Microsoft Corporation. All rights reserved.

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[http://www.microsoft.com/web/webapi/eula/net\\_library\\_eula\\_ENU.htm](http://www.microsoft.com/web/webapi/eula/net_library_eula_ENU.htm)

Microsoft.IdentityModel.Logging

Version: 1.0.0

License: MIT

Exhibit: 1

<https://github.com/AzureAD/azure-activedirectory-identitymodel-extensions-for-dotnet/blob/master/LICENSE.txt>

Microsoft.IdentityModel.Tokens

Version: 5.0.0

License: MIT

Exhibit: 1

<https://github.com/AzureAD/azure-activedirectory-identitymodel-extensions-for-dotnet/blob/master/LICENSE.txt>

Microsoft.Owin

Version: 3.0.1

License: © Microsoft Corporation. All rights reserved.

Exhibit: 3

[http://www.microsoft.com/web/webpi/eula/net\\_library\\_eula\\_enu.htm](http://www.microsoft.com/web/webpi/eula/net_library_eula_enu.htm)

Microsoft.Owin.Host.HttpListener

Version: 3.0.1

License: © Microsoft Corporation. All rights reserved.

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[http://www.microsoft.com/web/webpi/eula/net\\_library\\_eula\\_enu.htm](http://www.microsoft.com/web/webpi/eula/net_library_eula_enu.htm)

Microsoft.Owin.Hosting

Version: 3.0.1

License: © Microsoft Corporation. All rights reserved.

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[http://www.microsoft.com/web/webpi/eula/net\\_library\\_eula\\_enu.htm](http://www.microsoft.com/web/webpi/eula/net_library_eula_enu.htm)

Microsoft.Owin.Security

Version: 3.0.1

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Microsoft.Owin.Security.Jwt

Version: 3.0.1

License: © Microsoft Corporation. All rights reserved.

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[http://www.microsoft.com/web/webpi/eula/net\\_library\\_eula\\_enu.htm](http://www.microsoft.com/web/webpi/eula/net_library_eula_enu.htm)

Microsoft.Owin.Security.OAuth

Version: 3.0.1

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[http://www.microsoft.com/web/webpi/eula/net\\_library\\_eula\\_enu.htm](http://www.microsoft.com/web/webpi/eula/net_library_eula_enu.htm)

Microsoft.SqlServer.SqlManagementObjects

Version: 150.18118.0

License: © Microsoft Corporation. All rights reserved.

Exhibit: 6

<https://docs.microsoft.com/sql/relational-databases/server-management-objects-smo/smo-license-terms>

WSE 3.0 (Microsoft Web Services)

Version: 3.0.0.0

Exhibit: 28

License: © Microsoft Corporation. All rights reserved.

<https://www.microsoft.com/en-us/download/details.aspx?id=14089>

Json.NET

Version: 9.0.1

License: MIT

Exhibit: 1

<https://raw.githubusercontent.com/JamesNK/Newtonsoft.Json/master/LICENSE.md>

OWIN

Version: 1.0

License: Apache License 2.0

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<https://github.com/owin-contrib/owin-hosting/blob/master/LICENSE.txt>

OwinRequestScopeContext

Version: 1.0.1

License: MIT

Exhibit: 1

<http://opensource.org/licenses/MIT>

Reactive Extensions - Core Library

Version: 2.2.5

License: Apache License 2.0

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<http://go.microsoft.com/fwlink/?LinkID=261272>

Reactive Extensions - Interfaces Library

Version: 2.2.5

License: Apache License 2.0

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Reactive Extensions - Query Library

Version: 2.2.5

License: Apache License 2.0

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Reactive Extensions - Main Library

Version: 2.2.5

License: Apache License 2.0

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Reactive Extensions - Platform Services Library

Version: 2.2.5

License: Apache License 2.0

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Reactive Extensions - Testing Library

Version: 2.2.5

License: Apache License 2.0

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Reactive Extensions - WPF Helpers

Version: 2.2.5

License: Apache License 2.0

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<http://go.microsoft.com/fwlink/?LinkID=261272>

Reactive Extensions - XAML Support Library

Version: 2.2.5

License: Apache License 2.0

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SonarAnalyzer for C#

Version: 1.15.0

Copyright: Copyright © 2015-2016 SonarSource SA

<https://raw.githubusercontent.com/SonarSource-VisualStudio/sonaranalyzer-csharp/master/LICENSE>

SonarLint

Version: 2.0.0

Copyright: Copyright © 2015-2016 SonarSource SA

<https://raw.githubusercontent.com/SonarSource-VisualStudio/sonaranalyzer-csharp/master/LICENSE>

SSH.NET

Version: 2016.1.0

License: MIT

Exhibit: 1

<https://github.com/sshnet/SSH.NET/blob/master/LICENSE>

Swashbuckle.Core - Swagger for WebApi

Version: 5.3.2

License: The 3-Clause BSD License

Exhibit: 7

<http://opensource.org/licenses/BSD-3-Clause>

JSON Web Token Handler For the Microsoft .Net Framework 4.5

Version: 4.0.2.206221351

License: MIT

Exhibit: 1

<https://github.com/AzureAD/azure-activedirectory-identitymodel-extensions-for-dotnet/blob/master/LICENSE.txt>

System.Windows.Interactivity v4.0 for WPF

Version: 2.0.20525

License: © Microsoft Corporation. All rights reserved.

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[http://www.microsoft.com/web/webpi/eula/net\\_library\\_eula\\_enu.htm](http://www.microsoft.com/web/webpi/eula/net_library_eula_enu.htm)

Task Parallel Library for .NET 3.5

Version: 1.0.2856.0

License: © Microsoft Corporation. All rights reserved.

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<http://go.microsoft.com/fwlink/?LinkID=186234>

Thinkecture.IdentityModel



Version: 3.6.1

License: BSD 3-Clause "New" or "Revised" License

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<https://github.com/IdentityModel/Thinkecture.IdentityModel/blob/master/LICENSE>

Thinkecture.IdentityModel.Core

Version: 1.4.0

License: BSD 3-Clause "New" or "Revised" License

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<https://github.com/IdentityModel/Thinkecture.IdentityModel/blob/master/LICENSE>

Boost

Version: 1.80

License: Boost Software License

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<https://www.boost.org/users/license.html>

OpenSSL

Version: 1.1.1s

License: OpenSSL and SSLeay

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<https://www.openssl.org/source/license-openssl-ssleay.txt>

WTL

Version: 10.0.10320

License: Common Public License Version 1.0 (CPL)

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<https://github.com/ngugc/WTL/blob/master/CPL.TXT>

zlib

Version: 1.2.13

License: ZLIB

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[https://www.zlib.net/zlib\\_license.html](https://www.zlib.net/zlib_license.html)

Visual C++ 2019 Runtime

Version: 14.29.30139.0

License: Microsoft. All Rights Reserved.

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<https://visualstudio.microsoft.com/license-terms/vs2022-cruntime/>

dbatools

Version: 0.9.834

License: MIT

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<https://github.com/sqlcollaborative/dbatools/blob/prerelease/LICENSE>

Microsoft .NET Framework

Version: 4.8.0

License: Microsoft. All Rights Reserved.

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[https://www.microsoft.com/net/dotnet\\_library\\_license.htm](https://www.microsoft.com/net/dotnet_library_license.htm)

Microsoft AtIIServer

Version: 9.0.70425.Alpha

License: Microsoft Limited Permissive License (Ms-LPL)

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Carbonite Availability or Carbonite Migrate for Linux/DTRS

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Aop Alliance

Version: 1.0

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<http://aopalliance.sourceforge.net/>

Apache Commons Exec

Version: 1.1

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Apache Commons Logging

Version: 1.1.1

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Apache CXF

Version: 3.5.3

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Apache Http Components

Version: 4.4

License: Apache License 2.0

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Apache Neethi

Version: 3.0.2

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Apache Oltu

Version: 1.0.0

License: Apache License 2.0

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<https://oltu.apache.org/license.html>

Apache Santuario

Version: 1.5.5

License: Apache License 2.0

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<http://svn.apache.org/viewvc/santuario/xml-security-java/tags/1.5.5/LICENSE?revision=1335606&view=markup>

Apache XML Schema

Version: 2.0.3

License: Apache License 2.0

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ASM

Version: 3.3.1

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<https://gitlab.ow2.org/asm/asm/blob/master/LICENSE.txt>

### Commons Beanutils

Version: 1.8.3

License: Apache License 2.0

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[http://svn.apache.org/viewvc/commons/proper/beanutils/tags/BEANUTILS\\_1\\_8\\_3/LICENSE.txt?revision=928490&view=markup](http://svn.apache.org/viewvc/commons/proper/beanutils/tags/BEANUTILS_1_8_3/LICENSE.txt?revision=928490&view=markup)

### Commons CLI

Version: 1.2

License: Apache License 2.0

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[https://git-wip-us.apache.org/repos/asf?p=commons-cli.git;a=blob\\_plain;f=LICENSE.txt;hb=refs/tags/cli-1.2](https://git-wip-us.apache.org/repos/asf?p=commons-cli.git;a=blob_plain;f=LICENSE.txt;hb=refs/tags/cli-1.2)

### Commons Codec

Version: 1.5

License: Apache License 2.0

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<http://svn.apache.org/viewvc/commons/proper/codec/tags/commons-codec-1.5/LICENSE.txt?revision=1086786&view=markup>

### Commons Daemon

Version: 1.0.9

License: Apache License 2.0

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[http://svn.apache.org/viewvc/commons/proper/daemon/tags/COMMONS\\_DAEMON\\_1\\_0\\_9/LICENSE.txt?revision=1243428&view=markup](http://svn.apache.org/viewvc/commons/proper/daemon/tags/COMMONS_DAEMON_1_0_9/LICENSE.txt?revision=1243428&view=markup)

### Commons Exec

Version: 1.1

License: Apache License 2.0

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[http://svn.apache.org/viewvc/commons/proper/exec/tags/EXEC\\_1\\_1/LICENSE.txt?revision=1024365&view=markup](http://svn.apache.org/viewvc/commons/proper/exec/tags/EXEC_1_1/LICENSE.txt?revision=1024365&view=markup)

#### Commons IO

Version: 2.0.1

License: Apache License 2.0

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<https://mvnrepository.com/artifact/commons-io/commons-io/2.0.1>

#### Commons Lang

Version: 2.6

License: Apache License 2.0

Exhibit: 2

<https://mvnrepository.com/artifact/commons-lang/commons-lang/2.6>

#### Concurrent Trees

Version: 2.1.0

License: Apache License 2.0

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#### CqEngine

Version: 1.2.6

License: Apache License 2.0

Exhibit: 2

<http://www.apache.org/licenses/LICENSE-2.0>

#### Eclipse Persistence

Version: 2.5.1

License: EPL, EDL

Exhibit: 12

<https://www.eclipse.org/legal/epl-v10.html>

Exhibit: 13

<http://www.eclipse.org/org/documents/edl-v10.php>

EhCache

Version: 2.5.1

License: Apache License 2.0

Exhibit: 2

<http://www.apache.org/licenses/LICENSE-2.0>

Esapi (OSGi version)

Version: 2.1.0.1

License: GNU 2-Clause

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<https://opensource.org/licenses/bsd-license.php>

Geronimo Javamail 1.4 Spec

Version: 1.7.1

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GlassFish Jersey Media

Version: 2.22.1

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<https://javaee.github.io/glassfish/LICENSE>

Google Guava

Version: 25.1

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<https://github.com/google/guava/blob/master/COPYING>

Google Guice

Version: 4.2.2

License: Apache License 2.0

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Google Guice Extensions AssistedInject

Version: 4.2.2

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Google Protocol Buffers

Version: 2.4.0a

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<https://github.com/google/protobuf/blob/master/LICENSE>

Gson

Version: 2.8.2

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Jasypt

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<http://www.jasypt.org/license.html>



## Adoptium Runtime Environment

Version: 8u312-linux-x64

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## JavaServlet(TM) Specification

Version 4.0.1

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<https://oss.oracle.com/licenses/CDDL+GPL-1.1>

## JAXB

Version: 2.2.6

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<https://raw.githubusercontent.com/javaee/jaxb-v2/master/LICENSE>

## jaxb2-basics

Version: 0.9.4

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<https://opensource.org/licenses/bsd-license.php>

## Jetty

Version: 9.4.14.v20181114

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<https://github.com/eclipse/jetty.project/blob/jetty-9.4.x/LICENSE>

## Jetty Orbit

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<https://mvnrepository.com/artifact/org.eclipse.jetty.orbit/javax.servlet/3.0.0.v201112011016>

JNA

Version: 3.5.1. 3.5.1.dt352.1

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<https://github.com/twall/jna/blob/master/LICENSE>

Joda Time

Version: 2.3

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<https://github.com/JodaOrg/joda-time/blob/master/LICENSE.txt>

Jersey

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<https://jersey.github.io/license.html#/cpe>

Jersey

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<https://jersey.java.net/license.html>

Lambdaj

Version: 2.3.3

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<https://github.com/ooxi/lambdaj/blob/master/LICENSE>

Libpam4j

Version: 1.11

License: MIT

Exhibit: 1

<https://github.com/kohsuke/libpam4j/blob/master/LICENSE.txt>

Log4j

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Mbassador

Version: 1.1.9

License: MIT

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<https://github.com/bennidi/mbassador/blob/master/LICENSE>

Microsoft JDBC Driver

Version: 4.0 (March 2012)

License: Microsoft. All Rights Reserved.

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<https://docs.microsoft.com/en-us/sql/connect/jdbc/download-microsoft-jdbc-driver-for-sql-server?view=sql-server-2017>

OpenSAML

Version: 2.5.1-1

License: Apache License 2.0

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<https://mvnrepository.com/artifact/org.opensaml/opensaml/2.5.1-1>

OpenSAML OpenWS

Version: 1.4.2-1

License: Apache License 2.0

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<https://mvnrepository.com/artifact/org.opensaml/openws/1.4.2-1>

OpenSAML Xml Tooling

Version: 1.3.2-1

License: Apache License 2.0

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<https://mvnrepository.com/artifact/org.opensaml/xmltooling/1.3.2-1>

Resteasy

Version: 3.0.11.Final

License: Apache License 2.0

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<https://github.com/resteasy/Resteasy/blob/master/License.html>

SLF4J

Version: 1.6.6, 1.7.10

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<https://github.com/qos-ch/slf4j/blob/master/LICENSE.txt>

SSHJ

Version: 0.10.0

License: Apache License 2.0

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<https://github.com/shikhar/sshj/blob/master/LICENSE>

## Standard C++ Library

Version: 4.1.1

License: GPLv2 with exceptions

Exhibit: 20

[https://github.com/mirrors/gcc/blob/gcc-4\\_1-branch/libstdc%2B%2B-v3/include/stdc%2B%2B.h](https://github.com/mirrors/gcc/blob/gcc-4_1-branch/libstdc%2B%2B-v3/include/stdc%2B%2B.h)

## STGT

Version: 1.0.23-2

License: GPLv2

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<https://github.com/fujita/tgt>

<http://www.gnu.org/licenses/gpl-2.0.html>

## Swagger

Version: 1.5.0

License: Apache License 2.0

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<https://swagger.io/license/>

## Waffle

Version: 1.5

License: EPL

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<https://github.com/Waffle/waffle/blob/master/LICENSE>

## Woodstox

Version: 4.2.0

License: Apache License 2.0

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<https://mvnrepository.com/artifact/org.codehaus.woodstox/woodstox-core-asl/4.2.0>

## WSDL4J

Version: 1.6.3

License: CPL 1.0

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<https://sourceforge.net/projects/wsdl4j/>

WSS4J

Version: 1.6.12

License: Apache License 2.0

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[http://svn.apache.org/repos/asf/webservices/wss4j/tags/1\\_6\\_12/LICENSE.txt](http://svn.apache.org/repos/asf/webservices/wss4j/tags/1_6_12/LICENSE.txt)

XML Resolver

Version: 1.2

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<http://xerces.apache.org/xml-commons/licenses.html>

ESMTP

Version: 1.0.4

License: LGPL V2.1

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<http://esmtplib.sourceforge.net/index.html>

OpenSSL

Version: 1.1.1q

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[https://github.com/openssl/openssl/blob/OpenSSL\\_1\\_1\\_0-stable/LICENSE](https://github.com/openssl/openssl/blob/OpenSSL_1_1_0-stable/LICENSE)

zlib

Version: 1.2.11

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Ubuntu

Version: 18.04.1

Exhibit: 22

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Exhibit: 1

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Exhibit: 21

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Exhibit: 22

Developer terms and conditions

Valid since 10 July 2018

Canonical Terms of Service

This Agreement covers the provision of Services by Canonical Group Limited registered in England company number 6870835 ("Canonical", "us", "we" or "our") through the Developer Site to you as an individual or an entity ("you" or "your"). Your use of the Services and distribution of your App(s) will be governed by this Agreement along with Canonical's Privacy Policy. Please read this Agreement carefully before you register for a Developer Account. If you register for a Developer Account and use the Services on behalf of a company or other entity, you represent that you have the full legal authority to bind the company to this Agreement and you are agreeing to this Agreement on behalf of that company. To register for a Developer Account and use the Services, you must be at

least 13 years old. If you are between age 13 and 18, you confirm that you have your parent's or legal guardian's consent and that they have read and agreed to this Agreement.

## 1. Definitions

**App(s):** one or more applications or content items owned by you which you submit through the Developer Site and any associated screen shots and marketing materials provided by you, these may be Snappy Ubuntu apps.

**Client Software:** any utilities provided by Canonical which enable end users to discover, install, and remove software including Apps.

**Developer Site:** Canonical's websites for uploading and managing Apps, including <https://dashboard.snapcraft.io/snaps/>.

**Services:** Canonical's services for distributing, publishing, discovery, installation, and removal of your Apps and payment collection.

**Term:** the term of this Agreement, as set out in Clause 10.

**Ubuntu:** any versions of the Linux-based operating system known as Ubuntu.

## 2. Your App

Once you are accepted for a Developer Account, you may submit Apps to the Developer Site.

Canonical or its partners may publish the Apps you submit through the Client Software, but is not obligated to do so.

You are the owner of the Apps and are solely and entirely responsible for your Apps and the distribution of your Apps through the Client Software.

You agree that Apps you submit to the Developer Site do not infringe any intellectual property right of any third party or any applicable law or regulation, and will not contain any material from a third party, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to distribute the material.

Canonical expressly disclaims any and all liability in connection with your App. Except with respect to open source software, you will indemnify Canonical against any third party claim resulting from Canonical's publishing of your App through the Client Software.

Canonical may remove your App from the Client Software or Developer Site at any time and for any reason.

You may remove your App from the Client Software at any time, through the Developer Site. Removing an App from the Client Software will prevent new discovery and installation, but will not remove the App from the computers of those users who have previously installed it.

## 3. Your obligations

Prior to submitting an App, you must first test the App.

Your Apps must comply with these terms and conditions and any additional terms and policies made known by Canonical from time to time.

You will set the price, if any, that end users will be charged for your Apps.

You are responsible for determining applicable taxes in connection with distributing your App, and you shall pay applicable taxes to the applicable tax authorities.

You will include the licence applicable to users of your App with your App. If you require an agreement to be displayed to the end user, you will configure your App to display it upon installation or first run of the App. Your

App may include third party open source software so long as you comply with all applicable third party open source software licenses. This Agreement shall not override any open source software licence terms.

If your advertisements and marketing materials for your App mention any distribution channel, you may include the Ubuntu logo provided in the Developer Site by Canonical and a statement that the App is available through Ubuntu.

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#### 4. Pricing, fees and payment

If you elect to distribute your App through the Client Software without charge, the payment terms of this Agreement will not apply with respect to the free App.

If you elect to distribute your App through the Client Software for a charge, we will collect fees from end users that purchase your App at the price you set. Within 30 days of the end of each calendar quarter, we will provide you with a report of the number of copies of each of your Apps sold and the amount of any payment due, which shall be the fee multiplied by the number of copies sold less any applicable taxes and our commission. Our commission is 20-30% of the total fees charged for the sale of your App, less any applicable fees and taxes, depending on how your App is made available by Canonical.

In some cases (e.g. content such as magazines), we may mutually agree to a different commission rate which will be incorporated into this Agreement through an amendment.

We may display and collect the fees for your Apps in different currencies. We will convert payments made in other currencies to the currency in which you set your price at the applicable exchange rate utilised by Canonical which is in effect on the day of our payment to you.

#### 5. Licence

Without abridging or limiting any open source licences therein, you hereby grant to Canonical and its group companies, for the Term, a worldwide, non-exclusive licence to install, deploy, reproduce, and run your Apps for the purposes of testing and evaluation and to reproduce and distribute your Apps to end users through the Client Software. You hereby grant to Canonical and its group companies, for the Term, a licence to use any trade marks and branding you provide as part of the App in the Client Software and in associated uses such as use in marketing materials and advertising relating to the App, the Developer Site, or the Client Software for only those purposes strictly necessary for distribution of the App in the Client Software.

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Canonical will not provide any end user support for your App.

#### 7. Trial versions

You may distribute a no-charge trial version of any App through the Client Software through the Developer Site. However, if you charge for another version of the App through the Client Software (e.g. a "full" version) or upgrading from the trial version, then the commercial terms in this Agreement apply.

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#### 10. Term and termination

We look forward to providing you with Services for as long as you wish to have them. However, there are some circumstances under which this Services may be terminated. This Agreement begins when you accept its terms and conditions by creating a Developer Account and will continue in force unless terminated in accordance with this Clause 10. You may terminate this Agreement at any time by closing your Developer Account. We may terminate this Agreement immediately if you breach its terms or on 30 days' notice by email at any time. Upon termination for any reason, we will remove your Apps from the Client Software in no more than 30 days from the end of the notice period. Unless terminated for your breach, we will provide a final report and payment after the calendar quarter during which this Agreement was terminated.

#### 11. Changes to the Services or this Agreement

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#### 12. Additional terms and payment

Some services may be subject to additional terms or may require payment of fees. In that event, you will be given an opportunity to review and agree to such terms and fees before using those services.

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Jean-loup Gailly      Mark Adler  
jloup@gzip.org      madler@alumni.caltech.edu

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Exhibit: 24

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Exhibit: 34

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This license governs use of the accompanying software. If you use the software, you accept this license. If you do not accept the license, do not use the software.

#### 1. Definitions

The terms "reproduce," "reproduction," "derivative works," and "distribution" have the same meaning here as under U.S. copyright law.

A "contribution" is the original software, or any additions or changes to the software.

A "contributor" is any person that distributes its contribution under this license.

"Licensed patents" are a contributor's patent claims that read directly on its contribution.

## 2. Grant of Rights

(A) Copyright Grant- Subject to the terms of this license, including the license conditions and limitations in section 3, each contributor grants you a non-exclusive, worldwide, royalty-free copyright license to reproduce its contribution, prepare derivative works of its contribution, and distribute its contribution or any derivative works that you create.

(B) Patent Grant- Subject to the terms of this license, including the license conditions and limitations in section 3, each contributor grants you a non-exclusive, worldwide, royalty-free license under its licensed patents to make, have made, use, sell, offer for sale, import, and/or otherwise dispose of its contribution in the software or derivative works of the contribution in the software.

## 3. Conditions and Limitations

(A) No Trademark License- This license does not grant you rights to use any contributors' name, logo, or trademarks.

## PREAMBLE

THESE CLOUD TERMS AND CONDITIONS (THE “**TERMS**”), TOGETHER WITH ANY EXHIBITS, ADDENDA, OR ORDER DOCUMENTATION (EACH, WHERE APPLICABLE, AND COLLECTIVELY, THE “**AGREEMENT**”), GOVERN YOUR ACCESS AND USE OF THE APPLICABLE SERVICES (AS DEFINED BELOW).

BY PLACING AN ORDER REFERENCING THESE TERMS, YOU AND THE OPENTEXT ENTITY SET FORTH ON THE APPLICABLE ORDER DOCUMENTATION (“**OT**”, “**WE**”, OR “**OT CONTRACTING ENTITY**”) ARE ENTERING INTO A LEGALLY BINDING CONTRACT AS OF THE EFFECTIVE DATE, AND YOU AGREE TO BE BOUND BY AND ABIDE BY THIS AGREEMENT. THE TERMS OF THIS AGREEMENT GOVERN YOUR USE OF THE SERVICES. IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THIS AGREEMENT AND ANY TERMS PRESENTED TO YOU DURING YOUR USE OR INSTALLATION OF THE CLIENT-SIDE SOFTWARE, THE TERMS OF THIS AGREEMENT SHALL GOVERN AND CONTROL.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A LEGAL ENTITY OR ON BEHALF OF A BENEFICIARY (AS DEFINED BELOW), YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND/OR ANY BENEFICIARY (AS APPLICABLE) TO THIS AGREEMENT, IN WHICH CASE THE TERMS “**YOU**” AND “**YOUR**” AS USED HEREIN WILL REFER TO ORDERING ACTIVITY UNDER GSA SCHEDULE CONTRACTS IDENTIFIED IN THE PURCHASE ORDER. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS AGREEMENT, YOU MUST NOT USE OR AUTHORIZE ANY USE OF THE SERVICES.

OT MAY NON-MATERIALLY MODIFY THIS AGREEMENT FROM TIME TO TIME. IF OT MAKES ANY MATERIAL CHANGES TO THIS AGREEMENT, AS DETERMINED BY OT AT ITS SOLE DISCRETION, OT WILL PROVIDE YOU WITH PRIOR WRITTEN NOTICE (INCLUDING, WITHOUT LIMITATION, BY POSTING THE REVISED AGREEMENT WITH A BANNER NOTIFICATION ON ITS WEBSITE OR IN THE SERVICES AND/OR BY SENDING AN EMAIL TO THE LAST EMAIL ADDRESS PROVIDED BY YOU). BY AGREEING TO THE NON-MATERIALLY MODIFIED AGREEMENT OR CONTINUING USE OF THE SERVICES AFTER THE EFFECTIVE DATE OF THE MODIFIED AGREEMENT, YOU AGREE TO THE TERMS OF THE MODIFIED AGREEMENT.

## 1. DEFINITIONS

“**App Store**” means a third-party digital distribution platform where an individual can find and install Client-Side Software on their device.

“**Applicable Taxes**” means the sales, use, consumption, goods and services, value-added and similar taxes applicable to the Services, except taxes imposed on OT’s income.

“**Beneficiary**” means a third-party organization for which an MSP provides managed services in accordance with Exhibit 1 for such organization’s own internal business use.

“**Client-Side Software**” means the applicable object-code software that must be downloaded and installed for purposes of using the Services which may include client software for an individual personal computer, mobile device, server, or network.

“**Cloud Services**” means the services, as described in the Order Documentation, provided to You by OT under this Agreement and delivered online using cloud computing technology. Cloud Services may also include the use of Client-Side Software on a subscription basis.

“**End User**” means one of Your authorized employees or independent contractors. In the case of an MSP, End User shall also include Your Beneficiaries’ authorized employees or independent contractors.

“**Evaluation Services**” means Services, or a feature or functionality thereof, that are offered by OT under this Agreement on a limited-use basis, including without limitation, for trial, testing, evaluation, or similar purposes. For the avoidance of doubt, Evaluation Services do not include not-for-resale licenses that may be provided to OT partners.

“**Feedback**” means any suggestions, reports, requests, feedback, recommendations, or other ideas provided by You or any End User relating to the Cloud Services, Evaluation Services, No Fee Services, Client-Side Software, and/or Service Documentation.

“**Fees**” means the fees and charges specified in the Order Documentation and any applicable overage or excess use charges not included in the Order Documentation.

“**High Risk System**” means any system, device, or network that the failure of which could lead directly to death, personal injury, or catastrophic personal damage. High Risk Systems include, but are not limited to, critical infrastructure, industrial plants, aircraft, train, boat, or vehicle navigation or communications systems, weapons systems, air traffic control systems, nuclear facilities, hazardous environments, hazardous systems, hazardous applications or life support or emergency operations.

**“Intellectual Property Rights”** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

**“Marks”** means all trademarks, service marks, trade dress, trade names, domain names, corporate names, brand names, product names, proprietary logos, proprietary symbols, and other indicia of origin provided by a party to the other from time to time in connection with this Agreement.

**“Managed Services Provider”** or **“MSP”** means a third party that provides network, application, system, e-management services and/or other managed services through and/or in conjunction with the authorized use of the Services subject to the terms of this Agreement.

**“No Fee Services”** means Services and related Client-Side Software (if any) offered by OT under this Agreement and provided without a fee being charged to You, inclusive of any Services offered on a beta basis as a limited release.

**“Order Documentation”** means any written order, quotation, or similar transactional document, in electronic or paper form, that is provided by OT, a Reseller, or an App Store regarding Your subscription to the Services. Order Documentation may include an OT checkout payment page or the email confirmation that OT sends for the purchase or other order document or communication made available to You regarding the Services.

**“Promotions”** means promotional prices, bundled subscriptions, or any other discounts or offers, offered for a limited or specified period in relation to a specified Subscription Term for a Service, or specific combination(s) of Services.

**“Reseller”** means a third party authorized by OT to resell or distribute the Services.

**“Resultant Data”** means information, code, software, executables, object code, dynamic linked libraries, drivers and/or data that is derived by or through the Services from processing Your data but is sufficiently distinct from Your data (including personal data), so that Your data cannot be reverse engineered or otherwise identified from the inspection, analysis or further processing of such information or data alone. Resultant Data may include anonymized, aggregated, or de-identified data.

**“Services”** means the Cloud Services and related Client-Side Software (if any) OT makes available to You under this Agreement, inclusive of updates of the Services provided at no cost to users.

**“Service Documentation”** means any manuals, instructions, or other documents or materials that OT provides or makes available to You that describe the configuration, integration, operation, or use of the applicable Service.

**“Subscription Term”** means the period of time set forth on the applicable Order Documentation for the Services or, if not on the applicable Order Documentation, the period of time otherwise communicated to You in writing by or on behalf of OT, and any subsequent renewal terms.

## 2. THE SERVICES

**2.1 Right to Access.** Subject to Your compliance with the terms of this Agreement, OT grants You, during the Subscription Term, a revocable, non-exclusive, non-sublicensable, non-transferable right to access and use the elements of the Services solely for Your internal business purposes, in accordance with this Agreement, and not for resale or, except to the extent specifically permitted under this Agreement, to provide services to or on behalf of a Beneficiary. You are responsible and liable for: (a) Your use of the Services, including any violation or breach of this Agreement; (b) any use of the Services or actions taken through use of Your Access Credentials; and (c) Your End User’s compliance with the terms of this Agreement.

**2.2 License to Client-Side Software.** If the Services include Client-Side Software, the terms of this Section 2.2 will apply. Subject to Your compliance with the terms of this Agreement, OT hereby grants You, during the Subscription Term, a revocable, non-exclusive, non-sublicensable, non-transferable license to: (a) download, reproduce and use the Client-Side Software specified on the applicable Order Documentation in such quantities as are set forth on such Order Documentation, as necessary, for Your internal business purposes and solely as a component of the Services; and (b) download and reproduce a reasonable number of copies of the Service Documentation (if any is provided) as necessary to use the Services. For the avoidance of doubt, OT does not grant You a right to modify, publicly display, publish or distribute the Service Documentation. The license granted pursuant to this subsection does not include use by any third party, and You will not permit any such use, except to the extent specifically permitted under this Agreement. Copies of the Client-Side Software created or transferred pursuant to this Agreement are licensed, not sold, and You receive no title to or ownership of such copies. Furthermore, You receive no rights to the Client-Side Software other than those specifically granted in this Section 2.2.



**2.3 Service Specific Terms and Service Levels.** The use of the Services may be subject to additional service-specific terms which are attached hereto. Furthermore, the Services shall be provided according to the service level addendum attached hereto.

**2.4 Support.** Support for the Services will be provided in accordance with the OT's support terms which are attached hereto.

**2.5 Evaluation Services and No Fee Services.** If You choose to use any Evaluation Services or No Fee Services made available to You by OT, You may do so only: (a) subject to the limitations defined for such Services; and (b) in good faith for its intended purpose during the Evaluation Period. Unless otherwise agreed in writing, the "**Evaluation Period**" shall be for a period of 30 days beginning on the day You first access or use the Evaluation Services or No Fee Services. Notwithstanding the foregoing, OT reserves the right to terminate any Evaluation Services or No Fee Services at any time in its sole discretion, including, without limitation, causing the Evaluation Period to co-term for all End Users at the same time. Unless You submit Order Documentation or otherwise convert the Evaluation Services and/or No Fee Services (as applicable) to a paid subscription within the Evaluation Period, the Evaluation Services and/or No Fee Services (as applicable) will expire at the end of the Evaluation Period. When the Evaluation Period expires, the Evaluation Services and/or No Fee Services terminates, or this Agreement is terminated, You will no longer have access to the Evaluation Services and/or No Fee Services (as applicable) or to any data in the Evaluation Services and/or No Fee Services (as applicable). Unless otherwise agreed to by OT, production data (including, without limitation, personal data) may not be utilized with the Evaluation Services or No Fee Services. Even if agreed to by OT, any use of the Evaluation Services and/or No Fee Services (as applicable) with production data is at Your own risk. In connection with use of any Evaluation Services or No Fee Services, You specifically agree that: (i) Evaluation Services and No Fee Services are provided "AS-IS" and without support, indemnification or warranty of any kind, express or implied; and (ii) any security, compliance, service level, and privacy commitments made by OT in connection with the Agreement are not applicable to the Evaluation Services or No Fee Services. OT AND ITS AFFILIATES SHALL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO ANY EVALUATION SERVICES, NO FEE SERVICES AND RELATED CLIENT-SIDE SOFTWARE, UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE OT'S TOTAL AGGREGATE LIABILITY (EXCLUDING INDIRECT DAMAGES, FOR WHICH OT EXPRESSLY DISCLAIMS ALL LIABILITY) ARISING OUT OF OR RELATING TO EVALUATION SERVICES AND/OR NO FEE SERVICES IS \$1,000 USD (OR THE EQUIVALENT IN LOCAL CURRENCY).

**2.6 Changes.** As reasonably necessary to reflect changes in its business, technology and service offerings, OT may change its rules of operation, access procedures, the Services, or the Service Documentation. If a change has a material adverse effect on Your use of the affected Services, OT will give reasonable advance written notice (including, without limitation, by posting information concerning the changes via a banner notification on its website or in the Services, and/or by sending an email to the last email address provided by You) prior to implementing such change. In the event that We discontinue or materially diminish functionality of a Service that You have contracted for, You shall be entitled to a pro rata refund for any fees paid not used.

**2.7 Leased Hardware.** In the event the Services described in your Order Documentation include the use of a Hardware Device (as defined in the Leased Hardware Addendum), Your use of the Hardware Device is pursuant to the Leased Hardware Addendum attached hereto.

### 3. YOUR RESPONSIBILITIES

**3.1 Accounts and Access Credentials.** Use of the Services may require You or Your End Users to create an account (“**Account**”) connected to access credentials (including, but not limited to, usernames and passwords) (“**Access Credentials**”). You and Your End Users are solely responsible for taking reasonable security measures to protect Your Access Credentials and agree not to share any End User’s Access Credentials. You must notify OT immediately upon discovery of any unauthorized use of Your Access Credentials or unauthorized access to, or use of, any Account. You are responsible for compliance with this Agreement by Your End Users and for any and all (i) acts or omissions of Your End Users with respect to the Services; (ii) activities that occur under any of Your End User’s Accounts; and (iii) any actions, or unauthorized use, by Your Access Credentials. The actions of Your End Users with respect to the Services shall be binding on You.

**3.2 Restrictions on Use.** As a condition to Your use of the Services, You must not, nor permit any End User or third party to: (a) copy, modify or create derivative works of the Services or Service Documentation (except You may reproduce copies of the Service Documentation to the extent allowed under Section 2.2 (License to Client-Side Software)); (b) except for the limited rights granted to MSPs under Exhibit 1, rent, lease, lend, sell, resell, sublicense, assign, distribute, publish, transfer, or otherwise make available any portion of the Services to any third party, including on the internet or in connection with any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c) reverse engineer, disassemble, decompile, or otherwise attempt to derive or gain

access to any source code of the Services (except to the extent such restriction is expressly prohibited by applicable law); (d) input, upload, transmit, or otherwise provide to or through the Services, any information or materials that are unlawful or injurious, or contain, transmit, or activate any malicious or harmful code; (e) damage, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services or OT's provision of services to any third party, in whole or in part; (f) remove, delete, alter, or obscure any copyright, trademark, patent, or other intellectual property or proprietary rights notices in or relating to the Services or Service Documentation; or (g) access or use the Services or Service Documentation (if applicable): (i) to attempt to gain unauthorized access to, test the vulnerability of, or otherwise interfere with or disrupt the Services or any other account, website, computer system, network, device, data or server connected to the Services, (ii) in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, (iii) in a manner that violates, or causes the breach of, any applicable law, (iv) for purposes of competitive analysis of the Services, or for benchmarking or stress testing of the Services, or the development, provision, or use of a competing software service or product, (v) on or in a High Risk System, (vi) to upload, post, or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes" or any other form of solicitation, (vii) in a manner intended to circumvent any technical restrictions or usage limits of the Services, or (viii) for a purpose or in a manner not permitted by this Agreement. If You are an MSP, the terms and conditions set forth in [Exhibit 1](#) also apply to Your use of the Services.

#### 4. CONTENT

**4.1 Your Content.** You grant OT a non-exclusive, worldwide, royalty-free, fully-paid license to use Your data and other information uploaded, generated, stored or transmitted by You into the Services ("**Your Content**"): (a) to perform OT's obligations under this Agreement; (b) as authorized or instructed by You; (c) to provide, maintain and improve the Services; and/or (d) as required by applicable law. As between You and OT, Your Content belongs to You, and OT makes no claim to any right of ownership in Your Content. You represent and warrant to OT that You are the owner of all rights to Your Content, or that You have the right to reproduce, distribute, transfer and/or provide Your Content to OT for the purposes of this Agreement. You remain solely responsible at all times for Your Content and for ensuring that Your Content complies with the Agreement and with all legal and regulatory obligations applicable to Your Content.

**4.2 Your Obligations for Your Content.** You represent and warrant that: (a) You own or have a valid license to all of Your Content; (b) You have all necessary consents, authorizations and/or legal permissions required to permit the processing of Your Content under this Agreement; and (c) none of Your Content: (i) is subject to the International Traffic in Arms Regulations maintained by the Department of State; (ii) infringes any intellectual property, proprietary, contractual or privacy rights of any party; (iii) contains software viruses or any other computer code, files or programs that interrupts, destroy or limits the functionality of any computer software or hardware or telecommunications equipment; (iv) constitutes unsolicited or unauthorized advertising, promotional materials, commercial activities and/or sales, “junk mail”, “spam”, “chain letters”, “pyramid schemes”, “contests”, “sweepstakes”, or any other form of solicitation; (v) is unlawful, harmful, threatening, abusive, harassing, tortious, violent, defamatory, vulgar, obscene, pornographic, libelous or otherwise objectionable; or (vi) in the sole of judgment of OT, is objectionable or which restricts or inhibits any other person from using or enjoying the Services, or which may expose OT or its customers to any harm or liability of any kind.

**4.3 Retention and Deletion of Your Content.** OT shall have no obligation to retain, delete or return Your Content to You except as provided in this Agreement. For Evaluation Services or No Fee Services, Your Content may be deleted by OT without any retention period or notice. Provided You are not in material breach of this Agreement and are current with payment obligations, and subject to the functionality of the Services, You may access, export or delete Your Content at any time prior to the expiration or termination of the Subscription Term at Your sole expense. Unless otherwise stated in this Agreement, OT may delete all of Your Content after 30 days following the expiration or termination of the Subscription Term. Nonetheless, OT may retain Your Content or Confidential Information in accordance with its standard backup or record retention policies or as required by Law, subject to [Section 7](#) (Confidentiality) and any DPA.

**4.4 Third Party Providers.** You acknowledge that the performance of the Services may include transmission of Your Content to third parties in the course of the performance of the Services (e.g., transmission of Your Content to third-party providers as part of the Services consisting of electronic data interchange services), and that OT is not responsible for any disclosure of Your Content by any such third parties.

## 5. INTELLECTUAL PROPERTY OWNERSHIP

**5.1 Ownership of Client-Side Software, Cloud Services, Resultant Data and Feedback.** OT owns all right, title and interest, including all related Intellectual Property

Rights, in and to: (i) the Cloud Services, (ii) the Service Documentation, (iii) Client-Side Software, (iv) Resultant Data, and (v) Feedback, including any derivative works of each of the foregoing, and OT reserves all rights to use, modify and allow others to use such materials. OT and its licensors also reserve all other rights not expressly granted to You in this Agreement. You agree that Your provision of Feedback does not give You any Intellectual Property Rights or any other right, title, or interest in or to any aspects of the foregoing materials, even if such Feedback leads OT to create new Cloud Services, Client-Side Software or Service Documentation. You agree to provide OT any assistance reasonably required to document, perfect, and maintain OT's rights in and to such materials. You may not remove OT's copyright or other proprietary notices from the Service Documentation or any part of the Services.

**5.2 Open-Source Software.** The Client-Side Software may leverage and/or link with components subject to the terms and conditions of open-source software ("**Open-Source Software**") licenses. You acknowledge that Your use of each Open-Source Software component is subject to the open-source license applicable to such component. OT makes no representations or warranties with regard to such Open-Source Software and assumes no liability that may arise from the use of Open-Source Software.

## 6. PRIVACY

**6.1 Privacy and Data Protection.** OT will provide the Services in accordance with privacy and data protections laws, to the extent applicable. OT's Privacy Policy is attached hereto.

**6.2 Technical and Organizational Measures.** To the extent that OT processes personal data on Your behalf in performing the Services: (a) OT shall implement reasonable and appropriate technical and organizational measures designed to protect personal data against unauthorized or unlawful processing; (b) OT shall not collect, sell or use such personal data except as necessary to perform the Services, or as otherwise permitted by the applicable laws; and (c) where an individual submits a verifiable request to OT to exercise their privacy rights relating to their personal data in respect of You as the named customer, OT shall forward these requests to Your email address on file with OT as soon as reasonably practicable.

**6.3 Personal Data.** To the extent that OT requires personal data to provide the Services, You will provide personal data only to the extent reasonably required. You are responsible

for implementing and maintaining privacy protections and security measures for components that You provide or control, as well as complying with Your obligations under this Agreement or otherwise required by law including (without limitation) any requisite consents required to share or manage such personal data.

**6.4 Security Reports.** Upon Your written request and where available, OT shall provide You with summaries of third-party audit reports and/or certifications applicable to the Services (eg., SOC1, Type II; SOC2, Type II audit reports and/or ISO 27001 certificate).

**6.5 Data Processing Addendum.** To the extent that the provision of the Services by OT involves the processing of personal data: (a) if such personal data is subject to applicable Data Protection Legislation (as defined in the Data Processing Addendum attached hereto and which may be non-materially updated from time to time (the “DPA”)), the terms of the DPA shall apply and be deemed incorporated herein automatically; and (b) reserved.

**6.6 Business Associate Agreement.** If You are a “Covered Entity” (as such is defined in 45 CFR § 160.103) and You use certain OT Services to transmit, store, or otherwise process Protected Health Information (as such is defined in 45 CFR § 164.501), so that OT is acting as a “Business Associate” (as such is defined in 45 CFR § 160.103) in relation to the same, the terms of the OT Business Associate Agreement attached hereto shall apply and be deemed incorporated herein automatically.

## 7. CONFIDENTIALITY

**7.1 Confidentiality and Use; Exclusions.** “Confidential Information” means any information disclosed by one party (the “Disclosing Party”) to the other party (the “Receiving Party”) which: (a) is marked as confidential or proprietary by the Disclosing Party; or (b) the Receiving Party should reasonably understand to be confidential. Each Disclosing Party may disclose to the Receiving Party Confidential Information pursuant to the Agreement. Each Receiving Party agrees, for the term of the Agreement and for three (3) years after such term, to hold Disclosing Party’s Confidential Information in strict confidence, not to disclose such Confidential Information to third parties (other than to affiliates and to professional advisers who are bound by appropriate written obligations of confidentiality) unless authorized to do so by Disclosing Party, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each Receiving Party agrees to take reasonable steps to protect Disclosing Party’s Confidential Information from being disclosed, distributed or used in violation of the provisions of this Section. The foregoing prohibition on disclosure of Confidential Information shall not apply to any information that: (i) is or becomes a part of the public domain through no act or

omission of Receiving Party; (ii) was in Receiving Party's lawful possession without confidentiality obligation prior to the disclosure and had not been obtained by Receiving Party either directly or indirectly from Disclosing Party; (iii) is lawfully disclosed to Receiving Party by a third party without restriction on disclosure; (iv) is independently developed by Receiving Party or its employees or agents without use of Disclosing Party's Confidential Information; or (v) is required to be disclosed by Receiving Party as a matter of law or by order of a court or by a regulatory body, provided that Receiving Party promptly notifies Disclosing Party (where lawfully permitted to do so) so that Disclosing Party may intervene to contest such disclosure requirement and/or seek a protective order or waive compliance with this Section. Each Receiving Party is responsible for any actions of its affiliates, employees and agents in breach of this Section. OT recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor

## 8. FEES, PAYMENTS AND TAXES

**8.1 Fees.** You are responsible for paying OT or a Reseller, as applicable, the Fees without setoff or deduction. In the event You pay the Fees to a Reseller, You are obligated to ensure that such Reseller pays all amounts due to OT for the Services You purchased through such Reseller. Unless otherwise stated in this Agreement or any Order Documentation: (a) OT or a Reseller, as applicable, will invoice You in advance for the Fees for the Subscription Term; (b) all Fees are guaranteed ; and (c) quantities purchased cannot be decreased within a Subscription Term. OT reserves the right to raise existing pricing on the twelve-month anniversary of the commencement of the applicable Subscription Term in accordance with the then current GSA Schedule Pricelist and EPA Clause.

**8.2 Excess Usage.** If You exceed the storage capacity, seats, licenses or other quantities, as outlined in the applicable Order Documentation, or otherwise exceed Your authorized usage of the Services ("**Excess Usage**"), You agree to pay the applicable Fees for such Excess Usage. In the event OT does not receive payment for such Fees, OT reserves the right to suspend or throttle use of the Services, so that You are using the Services in accordance with the quantities indicated in the applicable Order Documentation.

**8.3 Payment; Taxes.** Unless otherwise stated in the applicable Order Documentation, (a) payment is due thirty (30) days from receipt of applicable invoice and (b) OT shall state separately on invoices taxes excluded from the fees, and the You agree either to pay the

amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k).

**8.4 Credit History.** Acceptance of any order and applicability of the payment terms above are subject to a review of Your credit history and rating. If Your credit history does not meet OT's acceptance criteria, OT may (i) reject the order or (ii) require You to make deposits and upfront payments until an acceptable credit history is established.

**8.5 Payment by Credit Card.** OT may accept credit card payment for certain services. OT may update Your credit card information provided by payment service providers, and following such update, You authorize OT to continue to charge Your credit card account for Your use of the Services. Such credit card payment is not available for all Services.

**8.6 Audit.** You acknowledge and agree OT shall have the right to audit You strictly with respect to Your usage of the Services in order to ensure compliance with the commercial terms of this Agreement or any applicable Order Documentation. Audits may be conducted by OT personnel or by an independent third-party auditor appointed by OT.

**8.7 Late Payment.** Any portion of the Fees that is not paid when due will accrue interest at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

**8.8 Promotions.** From time to time, OT may, in its sole discretion, offer Promotions subject to promotional terms disclosed during Your sign-up, or in other materials provided to You. OT reserves the right to modify, discontinue, revoke, or terminate such promotional offers at any time in OT's sole discretion.

## 9. TERM; TERMINATION

**9.1 Term.** The length of time that You are authorized to use the Services will be the applicable Subscription Term. Except as otherwise set forth in the applicable Order Documentation, all subscriptions to the Services may be renewed by executing a written order for the renewal term. If no renewal term is identified in the Order Documentation, each renewal term shall be the same length of time as the initial term of the subscription. If You terminate during the Subscription Term, (a) You will continue to have access to the applicable Service through the end of the then-current Subscription Term, (b) You shall be required to pay all Fees through the then-current Subscription Term, and (c) reserved.



**9.2 Termination.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, OT shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

**9.3 Suspension.** In addition to all other remedies and rights available to OT at law, in equity, or otherwise, OT may, at any time and in its sole discretion, temporarily suspend Your or any End User's access to all or any part of the Services for, including but not limited to, the following reasons: (a) a threat to the security or integrity of the Services; (b) reserved; or (c) reserved. OT shall use commercially reasonable efforts to: (i) provide You with prior notice of any suspension; and (ii) resume providing access to the Services as soon as reasonably possible after the event giving rise to the suspension is cured. OT will have no liability for any damage, liabilities, losses (including any loss of profits), or any other consequences that You may incur as a result of a suspension.

**9.4 Effect of Expiration or Termination.** Upon expiration or earlier termination of a Subscription Term or this Agreement for any reason, all rights, licenses, and authorizations granted to You and Your End Users will immediately terminate and You and Your End Users must immediately: (a) stop using the Services; (b) delete the Client-Side Software; and (c) if applicable, return any equipment provided to You by OT in connection with the Services back to OT, or, at OT's option, provide access to Your equipment and premises for OT to remove such equipment. In addition, all Fees that You owe OT at termination or expiration, if any, will become due and payable to OT on the effective date of termination. If this Agreement terminates or expires, OT may delete Your Content at any time after 30 days from the date of termination or expiration.

**9.5 Survival.** The following provisions of this Agreement shall survive termination or expiration of the Agreement: Sections 2.5 (Evaluation Services and No Fee Services); 3.2 (Restrictions on Use); 4 (Content); 5 (Intellectual Property Ownership); 7 (Confidentiality); 8 (Fees, Payments and Taxes); 10 (Warranties); 11 (Indemnification); 12 (Limitation of Liability); and any other provisions that by their nature should survive termination or expiration.

## 10. WARRANTIES

**10.1 Limited Warranty.** OT warrants that the Services, when used as permitted in this Agreement, will operate substantially as described in the Order Documentation. The above

warranty will not apply: (i) if the Services are not used in compliance with this Agreement; (ii) if any modifications are made to the Services by You or any third party; (iii) to defects due to accident, abuse or improper use by You; or (iv) to any Evaluation Services or No Fee Services.

**10.2 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED “AS IS” AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, OT, ON BEHALF OF ITSELF, ITS AFFILIATES AND ITS SUPPLIERS, EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY. THERE IS NO WARRANTY THAT THE SERVICES WILL BE ERROR FREE; THAT ACCESS WILL BE CONTINUOUS OR UNINTERRUPTED; BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, NETWORKS OR DATABASES; OR THAT THE SERVICES WILL MEET YOUR BUSINESS REQUIREMENTS. ALL OPEN-SOURCE SOFTWARE AND OTHER THIRD-PARTY SOFTWARE ARE PROVIDED “AS IS”.

**10.3 Remedy.** OT’s sole obligation and Your sole remedy under the foregoing limited warranty are strictly and exclusively limited to either the correction of any errors in the affected Services which are made known to OT by written notice from You describing such errors in detail or, at the election of OT, a pro rata refund of the Fees paid by You for the particular portion of the Services which is in error.

**10.4 App Store Purchases.** If You purchase the Services via an App Store, You agree that: (a) OT makes no representations or warranties regarding such App Store; (b) OT hereby disclaims all representations and warranties with regard to such App Store; and (c) as between OT and You, You are solely responsible for its compliance with the App Store’s terms and conditions, and OT takes no responsibility or liability for any breach by You of any of those terms and conditions.

## 11. INDEMNIFICATION

**11.1 Infringement Indemnity.** Provided You are not in material breach of this Agreement and are current with payment obligations, OT will have the right to intervene to defend at its own expense any claim brought against You by a third party that alleges that the Services directly infringe that third party’s U.S. patents or copyrights, or misappropriates any of that third party’s trade secrets recognized as such under the Uniform Trade Secret law (“**Infringement Claim**”), and OT will indemnify You from those costs and damages finally awarded against You by a court of competent jurisdiction or agreed to in a monetary settlement with respect to such Infringement Claim subject to satisfaction of all the

conditions of this Section. The defense will not apply to an Infringement Claim to the extent caused by: (a) modification of the Services by any party other than OT; (b) the combination or use of the Services with software, hardware, firmware, data, or technology not provided by OT to You; (c) any use of the Services not in accordance with this Agreement and Service Documentation; or (d) any use of any release of the Services other than the most current release made available to You. As to any such Infringement Claim referenced under the preceding items (a), (b), (c) or (d), OT assumes no liability for infringement, and You will hold OT harmless against any claims arising therefrom. OT will not defend, indemnify or hold You harmless from any Infringement Claims or other liabilities, damages or losses arising in connection with any Evaluation Services or No Fee Services. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

**11.2 Conditions to Defense.** OT's obligations in this Section are conditioned upon: (a) You notifying OT in writing within 10 days of You becoming aware of an Infringement Claim; (b) You not making an admission against OT's interests; (c) You not agreeing to any settlement of an Infringement Claim without the prior written consent of OT; (d) You providing reasonable assistance to OT in connection with the defense, litigation, and settlement by OT of the Infringement Claim; and (e) OT's sole control over legal counsel, litigation and settlement of each Infringement Claim.

**11.3 Mitigation and Sole Remedy.** If the Services become, or in OT's opinion may become, the subject of an Infringement Claim, OT will, at no expense to You: (a) obtain a right for You to continue using the Services; (b) modify the Services so they become non-infringing but still provide substantially the same functionality as the infringing Services; or (c) terminate the Services and refund the unused portion of any prepaid fees received by OT from You. OT's entire liability and Your sole and exclusive remedy with respect to any Infringement Claim shall be limited to the remedies set forth in this Section 11.

**11.4 Reserved.**

## 12. LIMITATION OF LIABILITY

**12.1 Disclaimer of Consequential Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL OT OR ITS AFFILIATES OR LICENSORS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (A) INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (B) LOSS OF GOODWILL OR

REPUTATION; (C) INTERRUPTION OR DELAY OF THE SERVICES; (D) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA OR BREACH OF DATA OR SYSTEM SECURITY; (E) COST OF REPLACEMENT GOODS OR SERVICES; OR (F) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER OT WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**12.2 Liability Cap.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE AGGREGATE LIABILITY OF OT AND ITS AFFILIATES FOR ALL CLAIMS IN CONNECTION WITH ANY ORDER DOCUMENTATION EXCEED THE TOTAL AMOUNT OF FEES PAID TO OT UNDER THE APPLICABLE ORDER DOCUMENTATION GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION 12.2 APPLY WHETHER SUCH CLAIMS ARISE UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.

### 13. DISPUTE RESOLUTION

Please read the following arbitration agreement in this Section 13 (the "**Arbitration Agreement**") carefully. It requires You to arbitrate disputes with OT and limits the way You can seek relief from OT. Please contact [smbclegal@opentext.com](mailto:smbclegal@opentext.com) within thirty (30) days of acceptance of this Agreement to opt-out of this Arbitration Agreement.

**13.1 Reserved.**

**13.2 Reserved.**

**13.3 Reserved.**

## 14. GENERAL PROVISIONS

**14.1 Entire Agreement.** This Agreement represents the entire agreement of the parties, and supersedes any prior or current understandings, whether written or oral, with respect to the subject matter of this Agreement. Any purchase order terms which purport to amend or modify terms of this Agreement, or which conflict with this Agreement, are void. It is expressly agreed that if You issue a purchase order or other document in connection with this Agreement, such document will be deemed to be for Your internal administrative convenience only and shall not be a condition of payment. Not providing a purchase order or equivalent does not relieve You of the obligation to make timely payments as set forth in the applicable Order Documentation and this Agreement.

**14.2 Order of Precedence.** In the event of a conflict between the components of this Agreement, the Order Documentation will prevail over these Terms.

**14.3 Waiver.** Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by a written waiver by a duly authorized representative. No waiver constitutes a waiver of any prior or subsequent breach.

### **14.4 Governing Law; Time Limit.**

**14.4.1 Governing Law; Venue.** This Agreement is governed by the Federal laws of the United States excluding: (a) such jurisdiction's choice or conflicts of law rules; and (b) the United Nations Convention on Contractors for International Sale of Goods. In addition, the parties agree that the Uniform Computer Information Transaction Act or any version thereof, adopted by any jurisdiction, in any form ("**UCITA**"), shall not apply to the Agreement. To the extent the UCITA is applicable, the parties hereby opt out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein.

**14.4.2** Each party waives any right it may have to object to such venue, including objections based on personal jurisdiction or forum non conveniens (inconvenient forum).

**14.4.3** In the event You opt-out of the Arbitration Agreement or any part of a dispute or claim is required to proceed in a court of law, the parties consent to the exercise of exclusive jurisdiction as specified in Exhibit 2 for any claim relating to this Agreement.

**14.4.4 Time Limit.** No action, regardless of form, arising from this Agreement may be brought by either party more than six (6) years after the cause of action has accrued, except that an action for non-payment may be brought at any time.

**14.5 Governing Law Specific Terms.** Exhibit 3 specifies terms that modify and/or add to this Agreement with respect to certain of the governing law and exclusive jurisdiction listed in Exhibit 2.

**14.6 Relationship of the Parties.** The relationship of the parties created by this Agreement is that of independent contractor. This Agreement will not be construed to create or imply any partnership, agency, joint venture or employment relationship between the parties. Neither party is authorized to make any representation, contract or commitment on behalf of the other party.

**14.7 Assignment.** There are no third-party beneficiaries to this Agreement. You may not assign or otherwise transfer any of Your rights or obligations under this Agreement, in whole or in part, without the prior written consent of OT. Any assignment in breach of this Section is null and void. Except to the extent identified in this Section, the Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

**14.8 Export Laws.** The Services (which for the purposes of this Section include any Client-Side Software, Service Documentation and technical data stored or transmitted via the Services) may be subject to export control laws of the United States or other countries. You agree to comply strictly with all applicable export regulations, including, but not limited to: (a) the Export Administration Regulations maintained by the U.S. Department of Commerce and (b) the trade and economic sanctions maintained by the U.S. Department of Treasury Office of Foreign Assets Control, and will not allow use of the Services in a manner that breaches or facilitates the breach of such regulations. You have the responsibility to obtain any licenses required to export, re-export, or import the Services, including deemed exports. The Services shall not be used by anyone: (i) located in U.S. embargoed countries or by any Foreign National of a U.S. embargoed country; (ii) included on the U.S. Treasury Department's list of Specially Designated Nationals; or (iii) the U.S. Department of Commerce's Denied Persons or Entity List. By using the Services, You represent and warrant that neither You nor any person provided access to the Services by You is located in any such country or on any such list.

**14.9 Force Majeure.** OT does not control the flow of data to or from the Services. Rather, such flow depends in large part on the performance of internet services and technology provided or controlled by third parties and the public internet infrastructure, as well as on other events beyond OT's control. At times, the action or inaction of parties or systems not controlled by OT or other events beyond OT's control can impair, disrupt, or delay OT's ability to provide the Services or Your ability to access the Services. Notwithstanding anything to the contrary in this Agreement, in accordance with GSAR Clause 552.212-4(f),

OT disclaims, and You shall not hold OT responsible for, any and all liability resulting from or related to such actions or events, including, without limitation, acts of God, acts of governmental authority, unavailability of third-party communication facilities or energy sources, fires, transportation delays, epidemics or other public health emergencies, or any cause beyond the reasonable control of OT.

**14.10 U.S. Government End Users – Restricted Rights Legend.** The Services and Service Documentation provided to the U.S. Government are “Commercial Items”, as that term is defined at 48 C.F.R. 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, within the meaning of 48 C.F.R. 12.212 or 48 C.F.R.227.7202, as applicable. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein, as provided in FAR 12.212, and DFARS 227.7202-1(a), 227.7202-3(a), 227.7202-4, as applicable.

**14.11 Notices.** Except as otherwise specified in this Agreement, all notices sent to OT are required to be in writing and are considered effective five (5) days after mailing, when sent via certified mail, return receipt requested and postage prepaid to: 385 Interlocken Crescent, Suite 800, Broomfield, Colorado 80021, Attention: Legal Department, with a copy sent via e-mail (which does not constitute notice) to [smbclegal@opentext.com](mailto:smbclegal@opentext.com). Except as otherwise specified in this Agreement, all notices to You under this Agreement shall be sent and deemed effective: (a) upon being sent electronically to Your email address provided in connection with Your use of the Services, (b) upon publication to You via an in-product messaging, or (c) five (5) days after mailing, when sent via certified mail, return receipt requested and postage prepaid to Your address on any Order Documentation. It is Your responsibility to notify OT or require the Reseller to notify OT (as applicable) of any change to Your email address.

**14.12 Publicity.** OT may include Your name in a list of OT customers, whether online or in promotional materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

**14.13 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**14.14 Legal Interpretation; Governing Language.** This Agreement will not be construed in favor of or against either party by reason of authorship. The parties confirm that this Agreement and all related documentation is and will be in the English language. Les parties aux présentes confirment leur volonté que cette convention de même que tous les documents y compris tout avis qui s'y rattache, soient rédigés en langue anglaise. Unless otherwise required by applicable law, all versions of this Agreement in any other language are for accommodation only and will not be binding upon the parties. Any inconsistency arising due to translation into another language or a difference of interpretation between two or more languages will be resolved in favor of the English language version. All communications and notices to be made or given pursuant to this Agreement must be in the English language.



## **BUSINESS ASSOCIATE AGREEMENT**

If Customer has entered into an agreement for the provision of services with an OpenText entity (a “Services Agreement”) and Customer is a Covered Entity (as defined below) and uses the services set forth in the Services Agreement to transmit, store, or otherwise process Protected Health Information (“PHI”), so that such OpenText entity is acting as a Business Associate (as defined below) in relation to the same, the terms of this Business Associate Agreement (“BAA”) shall be deemed incorporated into the Services Agreement upon its execution. If there is any conflict between a provision in this BAA and a provision in the Services Agreement, this BAA will control.

### **RECITALS**

**WHEREAS**, Covered Entity and Business Associate want to protect the privacy and security of PHI in compliance with the applicable requirements of the Health Information Portability and Accountability Act of 1996 (“HIPAA”) and the HITECH Act of 2009 (“HITECH”); and

**WHEREAS**, the Privacy Rule requires Covered Entity and Business Associate to enter into a written contract containing satisfactory assurances that the Business Associate will appropriately safeguard such PHI; and

**WHEREAS**, HITECH requires the Business Associate to have in place certain reporting procedures.

**NOW THEREFORE**, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

#### **I. DEFINITIONS**

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule and HITECH currently in effect or as amended from time to time. Examples of specific definitions:

- A. **Business Associate**. “Business Associate” shall have the same meaning as “business associate” in 45 CFR § 160.103.
- B. **Covered Entity**. “Covered Entity” shall have the same meaning as “covered entity” in 45 CFR § 160.103.
- C. **Designated Record Set**. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR § 164.501.

- D. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- E. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- F. Protected Health Information. “Protected Health Information” or “PHI,” shall have the same meaning as the term “protected health information” in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- G. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.501.
- H. Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

## **II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- A. To the extent Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to:
  - 1. Not use or disclose PHI other than as permitted or required by this Agreement or as Required By Law.
  - 2. Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
  - 3. Appoint and authorize a Privacy Officer to monitor the Business Associate’s compliance with this Agreement and provisions of HIPAA and HITECH.
  - 4. Cooperate with Covered Entity to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
  - 5. Report to Covered Entity within sixty (60) days of discovery any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware, and include such detail as may be available concerning the nature of the unauthorized use or disclosure, together with any remedial steps taken by Business Associate to prevent further nay disclosure or recurrence.

6. Ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
  7. Make internal practices, books, and records, including policies and procedures and PHI, available to the Covered Entity or to the Secretary in a time and manner specified by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
  8. Document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
  9. Provide to Covered Entity or an Individual, in a time and manner reasonably specified by Covered Entity, information collected in accordance with Section II.A.7. above of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- B. In connection with the performance of its services, activities, and/or functions to or on behalf of Covered Entity, Business Associate may disclose information, including PHI, to other business associates of Covered Entity which have been identified by Covered Entity in writing. Likewise, Business Associate may use and disclose information, including PHI, received from other business associates of Covered Entity, as if this information was received from, or originated with, Covered Entity.

### **III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- A. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- B. Specific Use and Disclosure Provisions.
1. Except as otherwise limited in this Agreement:

- a. Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate;
  - b. Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
  - c. Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
2. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

#### **IV. OBLIGATIONS OF COVERED ENTITY**

- A. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions. To the extent that the following limitations, changes, or restrictions may affect Business Associate's use or disclosure of PHI, Covered Entity shall notify Business Associate of any:
  1. Limitation(s) in its notice of privacy practices in accordance with 45 CFR § 164.520;
  2. Changes in, or revocation of, permission by Individual to use or disclose PHI; and
  3. Restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.
- B. Permissible Requests by Covered Entity. Except as may be set forth in Section III.B. of this Agreement, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

## V. TERM AND TERMINATION

- A. Term. This Agreement shall be effective upon execution, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in Article V of this Agreement.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Services Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
  2. Immediately terminate this Agreement and the Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- C. Effect of Termination.
1. Except as provided in Section V.C.2. of this Agreement, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## VI. MISCELLANEOUS

- A. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. All amendments shall be in writing and signed by both Parties.
- B. Survival. The respective rights and obligations of Business Associate under Section V.C. of this Agreement shall survive the termination of this Agreement.
- C. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- D. Assignment. Neither Party may assign its rights, nor may it delegate its duties, under this Agreement without the prior written consent of the other Party.
- E. No Third Party Rights. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that nothing in this Agreement is intended, nor shall it be construed, to confer upon any person or entity other than the Parties hereto and their respective successors and assigns, any rights remedies, obligations or liabilities whatsoever.
- F. Waiver. Any waiver or any provision of this Agreement shall be in writing and signed by the Parties against whom it is sought to be enforced. Any such waiver shall not operate or be construed as a waiver of any other provision of this Agreement or a future waiver of the same provision.
- G. Applicable Law. The validity, enforceability and interpretation of this Agreement shall be governed by the same laws as are applicable to the Services Agreement and by the Privacy Rule.
- H. Limitation of Liability. Any claims arising under this Agreement shall be subject to the conditions and limitations set forth in the Services Agreement.
- I. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- J. Severability. The provisions of this Agreement shall be severable, and if any provision shall be determined to be invalid, void or unenforceable, in

whole or in part, by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

- K. Notice. Any notices or other communications required to be given under this Agreement shall be given in accordance with the notice provision of the Services Agreement. In the absence of such a provision, all such notices or other communications shall be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid, to the individuals at the addresses indicated below. Notice shall be deemed effective upon receipt.
- L. Independent Contractors. The Parties to this Agreement are independent contractors. None of the provisions of this Agreement are intended to create, nor shall they be interpreted or construed to create, any relationship between Covered Entity and Business Associate other than that of independent contractors. Except as otherwise expressly set forth herein, neither Party hereto, nor any of its representatives, shall be deemed to be the agent, employee or representative of the other Party.
- M. Construction with Services Agreement. The terms of the Services Agreement shall remain in full force and effect, except as amended by this Agreement. If there is a conflict between the terms of this Agreement and the terms of the Services Agreement, the terms of this Agreement shall control.
- N. Entire Agreement. This Agreement supplements and is made a part of the Services Agreement. This Agreement, together with the Services Agreement and any and all exhibits, schedules and attachments thereto, constitutes the entire agreement between the Parties, and supersedes all other agreements, express or implied, oral or written, between the Parties related to the subject matter of the Services Agreement and this Agreement.

## Open Text Data Processing Addendum

### Parties

This Data Processing Addendum (“DPA”) is between:

- A. The Open Text entity (“OT”) having entered into the Principal Agreement (as defined below) acting on its own behalf; and
- B. the other party to the Principal Agreement (“Customer”).

OT and Customer hereinafter separately referred to as “Party” and jointly as “Parties”.

### **1. Background; Definitions.**

#### 1.1 Background.

1.1.1 This DPA (including its Appendices and incorporations by reference) supplements and forms part of the agreement between OT and Customer under which OT shall carry out certain Services (“Principal Agreement”) provided that the Services include the Processing of Personal Data and Data Protection Legislation applies to Customer’s use of the Services.

1.1.2 This DPA is in addition to, and does not relieve, remove, or replace either party’s obligations under the Data Protection Legislation.

1.1.3 None of the terms and conditions of the Principal Agreement shall be waived or modified by this DPA but if there is any conflict between any of the provisions of this DPA and the provisions of the Principal Agreement in relation to the Processing of Personal Data, the Parties agree the provisions of this DPA shall prevail to the extent of any such conflict.

1.1.4 If there is any conflict between the provisions of this DPA and the provisions of the Standard Contractual Clauses, the provisions of the Standard Contractual Clauses shall prevail to the extent of any such conflict. For the avoidance of doubt, where this DPA further specifies Sub-processor and audit rules in Sections 2.3 and 2.11, such specifications also apply in relation to, and satisfy Customer rights under the respective provisions of the Standard Contractual Clauses.

1.1.5 The terms used in this DPA shall have the meanings set forth in this DPA. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Principal Agreement.

1.1.6 If the Customer is an Ordering Activity under GSA Schedule Contracts, it shall only be required to comply with the Federal law of the United States and expressly does not agree to comply with any provision of this Data Processing Agreement, EU Law, or law of an EU Member State that is inconsistent with the Federal law of the United States.

#### 1.2 Definitions.

1.2.1 In this DPA, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly.

A. “Affiliate” means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with a company, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of management and the policies of an entity, whether through ownership of voting securities, by contract or otherwise.

B. “Data Protection Legislation” means, (i) the GDPR (and any laws of Member States of the European Economic Area (“EEA”) implementing or supplementing the GDPR), (ii) UK Data Protection Law and (iii) data protection or privacy laws of Switzerland, in each case, to extent applicable to the Processing of Personal Data under this DPA and the Principal Agreement.

C. “EEA Standard Contractual Clauses” means the EEA Controller to Processor SCCs and EEA Processor to Processor SCCs.

D. “EEA Controller to Processor SCCs” means the clauses set out at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-eea-controller-to-processor-clauses-module-2-en.pdf> (and also sometimes referred to as Appendix 4) which are incorporated into this DPA by reference, as may be amended, updated or replaced from time to time.

E. “EEA Processor to Processor SCCs” means the clauses set out at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-eea-processor-to-processor-clauses-module-3-en.pdf> (and also sometimes referred to as Appendix 5) which are incorporated into this DPA by reference, as may be amended, updated or replaced from time to time.

F. “GDPR” means EU General Data Protection Regulation 2016/679.

G. “Restricted Transfer” means a transfer of Personal Data which, subject to the paragraph below, is:



(1) from an exporter subject to GDPR which is only permitted in accordance with GDPR if a Transfer Mechanism is applicable to that transfer (“EEA Restricted Transfer”);

(2) from an exporter subject to UK Data Protection Law which is only permitted in accordance with UK Data Protection Legislation if a Transfer Mechanism is applicable to that transfer (“UK Restricted Transfer”); and/or

(3) from an exporter subject to Data Protection Legislation applicable in Switzerland which is only permitted under that law if a Transfer Mechanism is applicable to that transfer (“Swiss Restricted Transfer”).

Transfers of Personal Data will not be considered a Restricted Transfer where:

(a) the jurisdiction to which the personal data is transferred has been approved by the European Commission under Article 45 of the GDPR or, as applicable, an equivalent provision under UK or Swiss Data Protection Law, as ensuring an adequate level of protection for the processing of Personal Data (an “Adequate Country”); or

(b) the transfer falls within the terms of a derogation as set out in Article 49 of the GDPR, equivalent under Swiss Data Protection Law or the UK GDPR (as applicable).

H. “Services” means the services or products and other activities to be supplied to or carried out by or on behalf of OT for the Customer pursuant to the Principal Agreement.

I. “Standard Contractual Clauses” means each of the EEA Standard Contractual Clauses and the UK Standard Contractual Clauses.

J. “Sub-processor” means any third party (including any OT Affiliate) appointed by or on behalf of OT as a sub-contractor to Process Personal Data on behalf of any Customer or Customer Affiliate in connection with the Principal Agreement.

K. “Technical and Organisational Measures” means the technical and organisational measures set out at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-technical-and-organizational-measures-en.pdf> (and also referred to as Appendix 3) which are incorporated into this DPA by reference, as may be amended, updated or replaced from time to time.

L. “Transfer Mechanism” means the Standard Contractual Clauses or any other appropriate safeguards under article 46 of the GDPR or equivalent under Swiss or UK Data Protection Law applicable to a relevant transfer of Personal Data that has the effect of permitting that transfer.

M. “UK Data Protection Law” means UK GDPR (as defined in the UK Data Protection Act 2018) and the UK Data Protection Act 2018.

N. “UK Controller to Processor SCCs” means the UK International Data Transfer Addendum which is made up of the provisions set out at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-uk-international-data-transfer-addendum-en.pdf> (and also referred to sometimes as Appendix 6) which are incorporated into this DPA by reference, as may be amended, updated or replaced from time to time, incorporating the EEA Controller to Processor SCCs.

O. “UK Processor to Processor SCCs” means the UK International Data Transfer Addendum which is made up of the provisions set out at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-uk-international-data-transfer-addendum-en.pdf> (and also referred to sometimes as Appendix 6) which are incorporated into this DPA by reference, as may be amended, updated or replaced from time to time, incorporating the EEA Processor to Processor SCCs.

P. “UK Standard Contractual Clauses” means the UK Controller to Processor SCCs and UK Processor to Processor SCCs.

1.2.2 The terms “Controller”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Processing”, and “Processor”; shall have the same meaning as in the applicable Data Protection Legislation. The terms “Member State”, “Supervisory Authority” and “Union” shall have the same meaning as in the GDPR. The terms “data exporter” and “data importer” have the meaning set out in the applicable Standard Contractual Clauses. “including” shall mean including without limitation.

## **2. Data Processing Obligations.**

### **2.1 Controller and Processor of Personal Data, Appointment of Processor and Purpose of Processing.**

2.1.1 OT will comply with all applicable requirements of the Data Protection Legislation to the extent it imposes obligations upon OT as a Data Processor and expects Customer to also comply with Data Protection Legislation.

2.1.2 This DPA applies to the extent Customer is the Controller and OT is the Processor. It also applies to the extent that Customer is a Processor and OT is acting as a (sub) Processor. Where the Customer is a Processor, the Customer confirms that its instructions, including appointment of OT as a Processor or (sub) Processor, have been authorized by the relevant Controller.

2.1.3 Appendix 1 of this DPA sets out the scope, nature and purpose of Processing by OT, the duration of the Processing and the types of Personal Data and categories of Data Subjects.

## 2.2 OT's obligations with respect to the Customer.

2.2.1 OT will, in relation to any Personal Data it will be Processing under the Principal Agreement and this DPA:

- A. process such Personal Data solely for the purpose of providing the Services;
- B. process such Personal Data in accordance with documented and commercially reasonable instructions from the Customer, subject to and in accordance with the terms of the Principal Agreement;
- C. ensure that the persons authorized by it to process such Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and have received appropriate training on their responsibilities; and
- D. limit access of OT personnel to the Personal Data undergoing processing to what is necessary for provision of the Services.

2.2.2 Customer agrees that the Principal Agreement (including this DPA) are its complete documented instructions to OT for the Processing of Personal Data. Additional instructions, if any, require prior written agreement between the Parties. Where in the opinion of OT an instruction from the Customer infringes Data Protection Legislation, it shall inform the Customer thereof (but such communication shall not constitute legal advice by OT). However, such obligation shall not relieve the Customer from its own responsibility for compliance with Data Protection Legislation.

2.2.3 Where OT is required under applicable law to process Personal Data other than on documented instructions from the Customer, including with regard to transfers of Personal Data to a third country or an international organisation, OT shall use its reasonable endeavours to inform the Customer of that legal requirement before Processing, unless such information is prohibited by law on important grounds of public interest.

## 2.3 Sub-processing.

2.3.1 Customer provides OT a general authorization to engage Sub-processors. Sub-processors may include: (i) OT's global Affiliate companies as exist from time to time (and their vendors); and/or (ii) any of the sub-contractors that OT engages in connection with the provision of certain Processing activities as at the date of this Agreement. The Parties agree that the sub-processors listed at (i) and (ii) is the 'agreed list' for sub-processors in relation to Clause 9(a) of the EEA Standard Contractual Clauses and for the UK Standard Contractual Clauses.

2.3.2 OT shall Inform the Customer at least 14 days before OT appoints a new or replacement Sub-processor to give the Customer opportunity to reasonably object to the changes. OT must receive the notice of objection in writing from the Customer within 14 days of OT informing it of the proposed changes. The Parties agree that the name of the new or replacement Sub-processor together with details of the processing activities it will carry out and the location of such activities is the information the Customer requires to exercise such right. "Inform" shall include by posting the update on a website (and providing Customer with a mechanism to obtain notice of that update), by email or in other written form. The parties confirm that this mechanism is not required where the new or replacement Sub-processor is an OT global Affiliate company.

2.3.3 The Parties agree that the Customer's right to be object shall be as set out in this Section 2.3.3 and Section 2.3.4. Any objection raised by the Customer pursuant to Section 2.3.2 must be where the Sub-processor demonstrably fails to offer the same or a reasonably comparable level of protection as that previously applicable to the relevant Processing of Personal Data.

2.3.4 If Customer has a reasonable and legitimate reason to object to the new Sub-processor pursuant to Section 2.3.3, and OT is not able to provide an alternative Sub-processor, or the Parties are not otherwise able in good faith to achieve an alternative resolution, Customer may terminate the respective part of the Services where the new Sub-processor is to be used by giving written notice to OT no later than 30 days from the date that OT receives the Customer's notice of objection and such termination shall take effect no later than 90 days following OT's receipt of Customer's notice of termination. If Customer does not terminate within this 30-day period, Customer is deemed to have accepted the new Sub-processor. Any termination under this Section 2.3.4 shall be deemed to be without fault by either Party and shall be subject to the terms of the Principal Agreement (including any documents agreed pursuant to it).

2.3.5 OT confirms that it has entered or (as the case may be) will enter into a written agreement with its third-party company Sub-processors incorporating terms which are substantially similar to those set out in this DPA.

2.3.6 As between the Customer and OT, OT shall remain fully liable for all acts or omissions of any Sub-processor appointed by it pursuant to this Section 2.3 (unless the Sub-processor acted in accordance with instructions directly or indirectly received from Customer).

2.4 Data Subjects' Right to Information. It is the Customer's (or the party acting as Controller) responsibility to inform the Data Subject(s) concerned of the purposes and the legal basis for which their Personal Data will be processed at the time the Personal Data is collected.

## 2.5 Exercise of Data Subjects' Rights.

2.5.1 Taking into account the nature of the Processing, OT shall assist the Customer insofar as this is possible and reasonable for the fulfilment of the Customer's obligation under Data Protection Legislation to respond to requests

for exercising the Data Subject's rights of: access, rectification, erasure and objection, restriction of processing, data portability, not to be subject to a decision based solely on automated processing.

2.5.2 Where the Data Subjects submit requests to OT to exercise their rights, OT shall forward these requests by email to a Customer email address on file with OT. If Customer wishes for OT to forward Data Subject requests to a specific email address, it shall notify OT of such address. OT shall not respond to a Data Subject request unless and to the extent instructed by Customer to do so.

## 2.6 Notification of Personal Data Breach.

2.6.1 OT shall notify the Customer of a Personal Data Breach without undue delay after OT becoming aware of it by email to a Customer email address on file with OT, along with any necessary documentation to enable the Customer, where necessary, to notify this breach to the Data Subject and / or the competent Supervisory Authority.

2.6.2 If available and taking into account the nature of the Processing, the notification in accordance with Section 2.6.2 shall at least:

- A. describe the nature of the Personal Data Breach including where possible, the categories and approximate number of Data Subjects concerned, and the categories and approximate number of Personal Data records concerned;
- B. communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
- C. describe the likely consequences of the Personal Data Breach; and
- D. describe the measures taken or proposed to be taken by OT to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.

2.6.3 Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.

2.6.4 The Customer (or the party acting as Controller) is responsible to notify the Personal Data Breach to the Supervisory Authority, and to the Data Subjects, when this is required by the applicable Data Protection Legislation.

## 2.7 Assistance lent by OT to the Customer regarding Compliance with Customer's Obligations under the Data Protection Legislation.

2.7.1 Where requested by the Customer and to the extent required by Data Protection Legislation, OT shall, taking into account the nature of processing and the information available to OT, provide reasonable assistance to the Customer:

- A. in carrying out data protection impact assessments; or
- B. should the Customer need prior consultation with a Supervisory Authority.

## 2.8 Security Measures.

2.8.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Customer and OT shall both be responsible to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.

2.8.2 OT agrees to implement the Technical and Organizational Measures in respect of the Services.

2.8.3 Customer is responsible for implementing and maintaining privacy protections and security measures for components that Customer or any Customer Affiliate provides or controls. Customer shall apply the principle of data minimisation and limit OT access to systems or Personal Data to only where essential for the performance of Services. Where OT is performing Services on premises of the Customer (or of any Customer Affiliate or sub-contractor, agent or similar) or in connection with access to any of their systems and data, Customer shall be responsible for providing OT personnel with user authorizations and passwords to access those systems, overseeing their use of those passwords and terminating these as required. Customer shall not store any Personal Data in a non-production environment unless it has production environment equivalent controls in place.

2.9 Data Return or Destruction. Where OT has stored Personal Data as part of the Services: at the end of the Service(s) upon Customer's written instruction, OT may (i) offer a data return service or (ii) following a reasonable data retention period delete the Personal Data unless applicable law requires further storage of the Personal Data. OT may charge a fee for any data return services.

2.10 The Data Protection Officer. OT has designated a data protection officer in accordance with Data Protection Legislation. They can be contacted by email via [DPO@opentext.com](mailto:DPO@opentext.com).

2.11 Inspections and Audits.

2.11.1 The right of audit, including inspections, which the Customer may have under Data Protection Legislation and under the Standard Contractual Clauses, are as set out in this Section 2.11.

2.11.2 Upon written request from Customer OT shall, where available, provide a copy of the latest Service Organization Control (SOC) audit report and/or other third-party audit reports or information to demonstrate the processing activities of OT relating to the Personal Data is in compliance with its obligations under this DPA.

2.11.3 Customer may request evidence of OT's relevant policies and other related documents to verify that OT is complying with its obligations under this DPA.

2.11.4 Customer may conduct an on-site inspection at OT's premise either by itself or by an independent third-party auditor (not to include a competitor of OT) where the information under Sections 2.11.2 and 2.11.3 has failed to verify compliance by OT of its obligations under this DPA or such an inspection is formally required by the Supervisory Authority.

2.11.5 General Procedure: The following shall apply to each of Sections 2.11.2, 2.11.3 and 2.11.4.

2.11.6 Unless otherwise mandated by a Supervisory Authority, Customer shall: (a) give OT at least 30 days' prior written notice of its intention to conduct an audit, including inspection, under this Section 2.11; and (b) agree with OT the frequency and duration of these, which shall not extend beyond two consecutive business days nor be more than once per contract year.

2.11.7 Any audit, including inspections, must be conducted during local business hours, not unreasonably disrupt OT business operations and not burden the provision of services by OT to its customers. Customer shall limit these to remote audits or meetings with senior representatives of OT as far as possible and will avoid or minimise the need for an audit (including inspection), without limitation by using current certifications, other audit reports or combining them with others under the Principal Agreement. Additionally, these rights are subject to limitations set out in the Principal Agreement. Any audit, including inspections, shall be subject to OT's relevant policies and procedures.

2.11.8 Conditions of confidentiality and the scope of an audit, including inspection, shall be agreed in advance between OT and Customer. Customer shall provide OT the results of any audit, including inspection. Customer bears all expenses related to inspections and audits.

## 2.12 Customer Information and related Restrictions.

2.12.1 Instructions by Customer related to the Processing of Personal Data must be provided in writing duly signed by an authorised representative of Customer.

2.12.2 Customer is responsible to have all necessary consents and notices in place and confirms it is entitled to lawfully transfer the Personal Data to OT.

## **3. International Transfers.**

3.1 Personal Data may be processed in the EEA, the United Kingdom and Switzerland (each a "Designated Country") and in countries outside of a Designated Country ("Other Countries") by OT or its Sub-processors. The transfer to Other Countries shall be in accordance with Data Protection Legislation (to the extent it applies).

3.2 The Parties shall have in place a Transfer Mechanism in respect of any Restricted Transfer:

3.2.1 In the event of an EEA Restricted Transfer where Personal Data is transferred from Customer as data exporter acting as a Controller or Processor (as applicable), to OT as data importer acting as a Processor, the Parties shall, as part of this DPA, comply with the EEA Controller to Processor SCCs where the Customer acts as a Controller and the EEA Processor to Processor SCCs where the Customer acts as a Processor.

3.2.2 In the event of a UK Restricted Transfer, where Personal Data is transferred from Customer as data exporter acting as a Controller or Processor (as applicable) to OT as data importer acting as a Processor, the Parties shall, as part of this DPA, comply with the UK Controller to Processor SCCs where the Customer acts as a Controller and the UK Processor to Processor SCCs where the Customer acts as a Processor.

3.2.3 In the event of a Swiss Restricted Transfer, whereby Personal Data is transferred from Customer as data exporter, acting as a Controller or Processor (as applicable), to OpenText as data importer acting as a Processor, the Parties shall, as part of this DPA, comply with the corresponding module of the EEA Standard Contractual Clauses.

3.2.4 The Standard Contractual Clauses will not apply to a Restricted Transfer to the extent that OT has adopted Binding Corporate Rules for Processors or an alternative recognised compliance standard for lawful Restricted Transfers.

3.3 Where pursuant to the Standard Contractual Clauses OT attempts to redirect a request from a public authority, including judicial authorities ("Government Request") to the Customer, and/or determines that a requirement to challenge or appeal a Government Request regarding Customer's Personal Data exists, Customer agrees to participate in and support such challenge as reasonably requested. Where possible, the Customer itself will seek a protective order or other appropriate remedy in response to the Government Request.

#### **4. General Provisions.**

4.1 Execution of this DPA. Where requested by Customer, OT and Customer shall execute this DPA in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. For the purposes hereof, a facsimile or scanned copy of this DPA, including all pages hereof, shall be deemed an original.

4.2 The Parties agree that with respect to the period on and after the date that this DPA comes into effect between the Parties (or if earlier, the mandatory date when the relevant Standard Contractual Clauses must apply), this DPA shall replace and supersede any existing data processing addendum, attachment, exhibit or standard contractual clauses that Customer and OT may have previously entered into in connection with the Services.

#### **5. For Partner Agreements.**

5.1 If the Principal Agreement relates to the resale or supply of Services with a Partner under an OT partner programme or a partner agreement, with OT acting as the Partner's sub-processor under that arrangement with no direct contractual relationship to the direct and indirect customers of the Partner which are entitled to use the Services such as the End User or, in the case of a Partner who is an MSP, the Beneficiary, (as defined in the Principal Agreement) (hereinafter "Using Parties"), then the following provisions shall apply:

5.1.1 All references to "Customer" in this DPA shall mean the "Partner";

5.1.2 Section 2.8.3 of this DPA shall be amended to read as follows: "Partner shall procure implementation and maintenance of privacy protections and security measures for components that Partner or any Using Parties (including Affiliates of any of these) provides or controls. Partner shall apply the principle of data minimisation and limit OT access to systems or Personal Data to only where essential for the performance of Services (and procure the same from Using Parties). Where OT is performing Services on premises of the Partner or Using Parties (or of an Affiliate, sub-contractor, agent or similar of any of these) or in connection with access to any of their systems and data, Partner shall be responsible for procuring provision to OT personnel of user authorizations and passwords to access those systems, oversight of their use of those passwords and termination of these as required. Partner shall not store any Personal Data in a non-production environment unless it has production environment equivalent controls in place (and procure the same from Using Parties)."

## APPENDIX 1

### DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA

See Appendix 2 of this DPA for each of following: *Subject matter and duration of the Processing of Personal Data, the nature and purpose of the Processing of Personal Data, the types of Personal Data to be processed, special categories of data (if appropriate) and the categories of Data Subject to whom the Customer Personal Data relates.*

## APPENDIX 2

### DESCRIPTION OF TRANSFER

#### Categories of data subjects whose personal data is transferred

Data Subjects may include employees, contractors, business partners or other individuals having Personal Data stored, transmitted to, made available to, accessed or otherwise processed by OT.

#### Categories of personal data transferred

Customer determines the categories of Personal Data which are processed by OT in connection with the Services in accordance with the terms of the Principal Agreement (and documentation governed by it). Customer submits Personal Data for processing after careful evaluation of compliance with applicable laws. The Personal Data may include the following categories of data: name, phone numbers, e-mail address, time zone, address data, company name, plus any application-specific data.

**Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.**

None.

The choice and type of Personal Data that will be processed using the OT Services remains solely within the discretion and choice of the Customer. In selecting the Personal Data of any categories, the Customer shall ensure that such Personal Data is suitable for processing with and through the Services in compliance with applicable data protection laws. OT disclaims all liabilities in relation to the selection of data for use with the Services.

**The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).**

Transfers shall be made on a continuous basis.

#### Nature of the processing

OT offers its Services, and in doing so, OT requires to process Personal Data.

The Personal Data is subject to the basic processing activities as set out in the Principal Agreement which may include:

- (a) use of Personal Data to provide the Services;
- (b) storage of Personal Data;
- (c) computer processing of Personal Data for data transmission; and
- (d) other processing activities to deliver the Services.

#### Purpose(s) of the data transfer and further processing

See "nature of processing" above.

**The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period**

The duration of the Processing of the Personal Data is set out in the Principal Agreement (and documentation governed by it) and this DPA.

#### Subject matter, nature and duration of the processing for transfer to (sub-) processors

As above.

**OT partner programs and partner agreements:** Where section 5 of the DPA applies: for the purposes of these Appendices 1, 2 and 3, categories of Personal Data shall also include that of Using Parties (as defined in section 5 of the DPA). In Appendix 3, "Customer systems" refers to those of the Partner and Using Parties. Notwithstanding the foregoing, this shall not release the Partner of its obligations, either in these Appendices, the Annexes, the DPA or otherwise, and the Partner shall remain responsible for the decisions, acts and omissions of Using Parties, and shall procure that Using Parties comply with the provisions of these Appendices.

## SERVICE LEVEL ADDENDUM

Last Updated: January 17, 2023

This Service Level Addendum (“**SLA**”) sets forth the service levels provided by OT for the Services listed in Section 2 below. Capitalized terms not defined in this SLA have the meaning given to them in the Cloud Terms and Conditions.

### **1. Definitions.**

- a. “**Downtime**” means the total number of minutes in a calendar month during which the Services are unavailable or inoperable, except for any exclusions mentioned in Section 4 of this SLA, as determined by OT.
- b. “**Uptime Percentage**” means the total number of minutes in a calendar month minus Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month, as determined by OT.

### **2. Applicable Services.**

This SLA applies to the following Services:

- a. Carbonite Information Archiving (formerly known as Zix Information Archiving)
- b. Webroot Advanced Email Encryption (formerly known as Zix Email Encryption)
- c. Carbonite Cloud-to-Cloud Backup (formerly known as CloudAlly Cloud-to-Cloud Backup)
- d. Webroot Business Endpoint Protection
- e. Webroot DNS Protection
- f. Webroot Security Awareness Training

### **3. Availability.**

For as long as You are subscribed to the Services in accordance with the Cloud Terms and Conditions, OT will use commercially reasonable efforts to ensure that the Services will be available and operational at an Uptime Percentage of at least 99.5%, as measured over any calendar month (the “**Service Level Target**”).

### **4. Service Level Target Exclusions.**

The Service Level Target shall exclude Downtime resulting from:

- a. Third party service (including, without limitation, Amazon Web Services) outages or other causes beyond OT’s reasonable control;
- b. Configuration, maintenance or correction of third-party software, hardware or communications facilities;
- c. Scheduled maintenance, or emergency maintenance;
- d. Your use of an unsupported version of the Services;
- e. Force Majeure; or
- f. Your use of the Services other than in accordance with the Cloud Terms and Conditions.

### **5. Remedy.**

If OT fails to meet the Service Level Target in any calendar month, and if You have met Your obligations under the Cloud Terms and Conditions, You may notify OT of such failure and OT will make commercially reasonable efforts to resolve the issue. If OT is unable to remedy a material issue, You may terminate Your subscription upon five (5) days’ written notice and OT shall refund a pro rata portion of Your prepaid subscription Fees for the period following the effective date of termination. The remedy specified in this Section 5 of the SLA is Your sole and exclusive remedy for a failure by OT to meet the Service Level Target or for any other claim related to unavailability of the Services.



