

# OpenText

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#### **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) 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.

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**11.2 LIMITATION OF LIABILITY.** OT'S AGGREGATE LIABILITY TO LICENSEE WILL NOT EXCEED THE TOTAL AMOUNT OF LICENSE 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 LIMITATIONS SET OUT IN THIS SECTION SHALL APPLY TO THE MAXIMUM EXTENT PERMISSIBLE, WITH THE OTHER PROVISIONS REMAINING IN FULL FORCE AND EFFECT. 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.** Either party may terminate this EULA if the other party: (a) becomes insolvent; (b) requests or has declared for it, bankruptcy or judicial reorganization; or (c) has a receiver or receiver manager appointed with respect to it or any of its assets. Either party may terminate this EULA for default in the event the other party breaches any provision of this EULA, provided that (i) the aggrieved party sends the defaulting party written notice of the breach and provides a period of 10 days for curing the breach ("Cure Period"); and (ii) the defaulting party fails to cure the breach by the end of the Cure Period.

**12.2 Effect of Termination or Expiration.** Except in the case of termination for default in accordance with subsection 12.1 based on a breach of this EULA by OT, upon any termination of this EULA or 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 Effect of Termination Based on breach by OT.** In the event of a termination for default under section 12.1 based on breach of this EULA by OT: a) licenses granted by OT herein shall not terminate, and b) any terms in this EULA which by their nature extend beyond termination or expiration of this EULA will remain in effect until fulfilled (including, for the avoidance of doubt, sections 1, 2, 3, 4, 5, 8, 9.2, 9.3, 9.4, 11 and 13).

## **13.0 Miscellaneous Provisions**

**13.1 Confidentiality.** Information exchanged under this EULA will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this EULA and may only be shared with employees, agents, or contractors with a need to know such information. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure during the period the information remains confidential or a trade secret. These obligations do not cover information that (a) was known or becomes known to the receiving party without obligation of confidentiality; (b) is independently developed by the receiving party or (c) is required to be disclosed by law or a governmental agency.

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**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 section 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 laws of the Federal Republic of Brazil excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods. Except for a request by OT for injunctive or other equitable relief, any dispute arising out of this EULA will be subject to the exclusive jurisdiction of the courts located in the City of São Paulo, State of São Paulo. The prevailing party in any litigation related to this EULA will be entitled to its reasonable attorneys' fees and court costs.

**13.7 Force Majeure.** 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.

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**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.

**13.15 Third Party Rights.** Except as otherwise expressly set out in this EULA and/or in the applicable License Model, this EULA does not confer a benefit on any person or entity who is not a party to this EULA. This EULA is not enforceable by any person or entity who is not a party to this EULA.

**13.16 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).

**13.17 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 4300 Avenida Brigadeiro, 13<sup>th</sup> Floor, Faria Lima, São Paulo, Brazil 04578.

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