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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;

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

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“**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.

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**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.

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**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 may invoice Licensee for Fees and Taxes upon delivery of Software and annually in advance for the applicable Support Services Term. All Fees and Taxes due to OT by Licensee are due and payable upon Licensee's receipt of an invoice from OT. Fees do not include Taxes which are the responsibility of Licensee. If OT is obligated to pay Taxes on behalf of Licensee, Licensee will reimburse OT in full promptly following receipt of OT's invoice. 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 of 1.5% per month (18% per annum) or the maximum amount allowed by law, if less, on the unpaid portion until fully 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 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 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. If Licensee has failed to comply with the License Documents, Licensee will reimburse all reasonable costs incurred by OT in performing the audit. 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.

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## **10.0 OT Infringement Indemnity**

**10.1 Infringement Claims.** OT will 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.

**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**

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**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. 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; or (b) has a receiver or receiver manager appointed with respect to it or any of its assets. Without prejudice to each right or remedy of a non-breaching party, either party may terminate this EULA for material breach by written notice, effective 10 days after notice unless the other party first cures the breach.

**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.

**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 laws of the Province of Ontario, 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 of Ontario. 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.

**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.

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

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**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 subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause of FAR 52.227-19 and its successors, and it 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. 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 275 Frank Tompa Drive, Waterloo, Ontario Canada N2L 0A1.

**13.19 Hardware.** IF HARDWARE IS IDENTIFIED ON A TRANSACTION DOCUMENT, THE SALE AND USE OF THE HARDWARE WILL BE GOVERNED BY TERMS OTHER THAN THIS EULA. OT DISCLAIMS ALL WARRANTIES AND LIABILITY WITH RESPECT TO THE HARDWARE.

**13.20 Governing Language.** Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents et avis qui s'y rattachent ou qui s'y rattacheront, soient rédigés en langue anglaise. The parties confirm that this Agreement and all relate documentation is and will be in the English language.