opentext™

End User License Agreement ("EULA")

The OpenText End User License Agreement and applicable Transaction Documents (defined below) form the complete agreement (together, the "**Agreement**") regarding each transaction under which Licensee may order the Software and associated Support (defined below). The Agreement is effective on the earlier of: (i) the date of the last signature on the applicable Transaction Document; or (ii) the date of Licensee's online acceptance of the applicable Transaction Document ("**Effective Date**"). If Licensee is an individual that uses or accesses the Software on behalf of a company or other legal entity, the individual represents that they have the authority to bind that company or other legal entity to the Agreement. As used herein, "**OT**" means the OpenText entity providing the Software listed in the applicable Transaction Document.

1. Definitions.

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

1.2 "**Confidential Information**" means any information disclosed by one party to the other party where: (i) identified as confidential at time of disclosure; or (ii) the circumstances of disclosure reasonably indicate such information should be treated as confidential.

1.3 "**Licensee**" means the legal entity or individual that accepts the Agreement and is identified in the applicable TD.

1.4 "**Documentation**" means the user documentation provided or made available by OT for use of the Software. Documentation includes, as applicable, License Model Schedule(s), Third Party Notifications, user guides, technical documents and operating manuals, and release notes made generally available by OT.

1.5 "**License Model**" means the conditions, rights, and restrictions that govern the licensed use of the Software, as set out in the applicable License Model Schedule.

1.6 "**License Model Schedule**" means the License Model applicable to each individual licensed Software product as set out in the relevant version of the document(s) titled "**License Model Schedule**" or "**Additional License Authorization (ALA)**" posted at https://www.opentext.com/agreements.

1.7 "**Software**" means the software products and Documentation, licensed to Licensee under this Agreement as purchased pursuant to a TD, including all permitted copies made by Licensee, and including all updates, upgrades, patches, fixes, modifications, or new versions of the Software that Licensee receives pursuant to Support, unless such update contains, comes with, or is otherwise specifically governed by a different end user license agreement.

1.8 "**Support**" means the operational and technical support services applicable to the Software, as described below and in the TD.

1.9 "**Third Party Notifications**" means the document entitled Third Party Notifications available at www.opentext.com/agreements, or license attributions in a file accompanying Software or in the Documentation.

1.10 "**Transaction Document**" or "**TD**" means one or more documents providing the specifics of the transaction for the provision of Software and Support, such as charges and a description of and information about the Software and Support which: (i) is agreed by the parties; (ii) may be titled "Order", "Order Form", "Product Order", "Renewal Notice", "Schedule", or comparable title; (iii) includes Documentation and may include other documents which are attached or incorporated by reference by the applicable TD; and (iv) is governed by the Agreement, including by incorporation by reference to a URL on an OT website.

2. Ordering. An order for Software or Support may be placed by Licensee or a Licensee Affiliate. Licensee or the Licensee Affiliate accepts the applicable TD by signing, ordering, using, or making a payment. OT accepts the order by confirming the order or enabling access to the applicable Software. For purposes of this Agreement, Software is deemed delivered when it is first made available for download by, or physically delivered to, Licensee.

3. Software Term. The licenses granted in Section 4 will begin on the Effective Date and are perpetual unless otherwise specified in the TD.

4. Licensing.

4.1 License. Except as otherwise provided in the TD, or as described in Section 4.3 (Evaluations), Licensee is granted a non-transferable, worldwide, nonexclusive, internal business use license to download, install and use the Software and Documentation as set out in this Agreement and subject to the License Models and the Documentation.

4.2 Use Restrictions**.** Notwithstanding the foregoing, the license provided herein does not permit the Licensee to, and Licensee shall not:

4.2.1 assign, transfer, distribute, sublicense, or encumber the Software by any means to any party;

4.2.2 modify, unbundle, or create derivative works based on the Software, decrypt, disassemble, reverse engineer, or attempt to discover the source code of the Software, except to the extent permitted by applicable law;

4.2.3 use the Software, in whole or in part, to create a competitive offering;

4.2.4 commercialize, or use the Software for outsourcing, hosting, service bureau or like use, or permit access by, or use for the benefit of, any third party;

4.2.5 make unauthorized copies of the Software and Documentation;

4.2.6 remove or alter any proprietary notices, labels, or marks on or in any copy of the Software or Documentation;

4.2.7 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; or

4.2.8 publicly disclose the results of testing or benchmarking of the Software to any third party without OT's prior written consent.

4.3 Evaluations. OT may provide the Software to Licensee for a limited time to try available functionality on a "**Trial**" basis (such as beta, evaluation, no-charge, or pre-release previews). Trial Software is licensed for internal evaluation and testing purposes only, and not for any development, production, distribution or commercial purpose. Licensee receives a non-transferable, worldwide, nonexclusive, non-sublicensable, evaluation license to download, install, execute and use the Software identified in the applicable TD. The term of the Trial will be 30 days starting from the date access is provided, unless OT authorizes a different period in writing. The evaluation license terminates automatically at the end of the Trial, and Licensee is required to delete and destroy (or, at OT's option, return) all copies of such Software and confirm its compliance in writing within 30 days of the end of the Trial. The Trial term for any pre-release or beta versions of Software ("**Pre-Release Software**") shall be for 60 days starting on the date Software is delivered by OT, unless OT authorizes a different period in writing. Trial Software is provided "as is" and there are no warranties, service level agreements, or support provided. Licensee agrees to promptly report to OT all problems (including errors, failures, nonconforming results, and unexpected performances) with the Trial, and the Pre-Release Software and to timely respond to queries from OT regarding the outcomes of Licensee's Trial. OT may choose not to release a final version of the Pre-Release Software or, even if released, to alter prices or Software characteristics. OT's entire liability for all claims related to the Trial will not exceed U.S. $5,000.00 (or equivalent in local currency), regardless of the basis of the claim.

4.4 Third Party and Open Source Software. Third party software and open source software, owned and licensed by third parties, may be made available subject to their respective license terms and conditions, which shall control in the event of any conflict with this Agreement. Information about third party software or open source license terms applicable to the Software may be found in the TD or Documentation.

5. OT Support and Maintenance.

5.1 OT Support and Maintenance Program. All Support provided to Licensee is governed by this Agreement and the then-current version of the applicable software maintenance program handbook (or other applicable software maintenance and support terms) as published at https://www.opentext.com/agreements or provided at Licensee's request. Support is provided for a 12-month period beginning on the date the Software is delivered by OT to Licensee, or the anniversary thereof.

5.2 Support Exclusions. OT shall have no responsibility to provide Support to Licensee with respect to any problem with the Software caused by: (i) Licensee's failure to install any update or upgrade provided by OT that would have avoided the alleged infringement; or (ii) any circumstance that qualifies as a Warranty exclusion in Section 7.3.

6. Fees, Payment and Taxes.

6.1 Fees. Licensee shall pay OT the fees and charges specified in the TD for its use of the Software and Support including any applicable overage and other charges and fees; plus any sales, use, consumption, goods and services, or value-added taxes except taxes imposed on OT's income including, but not limited to, withholding taxes ("**Applicable Taxes**"). Except as otherwise provided in the Agreement, all fees are non-refundable. Licensee's right to the Software and Support is contingent on Licensee paying applicable charges as specified in the TD. Licensee is responsible for acquiring additional license entitlements in advance of any increase in its use.

6.2 Payments. Payments are due 30 days from the date of invoice. Invoices shall be issued as set forth in the TD. Fees and other charges owed by Licensee and not paid when due shall accrue interest at the rate of one and one-half percent (1.5%) per month or, if lower, the highest rate permitted by the governing law defined in Section 14.2. If Licensee provides notice to OT that it has a bona fide dispute with any charge, it will still make timely payment of all undisputed charges pending resolution of the disputed charge, which the parties agree to undertake promptly. If any undisputed invoiced amounts remain unpaid for 30 days after such notice, OT may (reserving all other legal remedies and rights) terminate the Agreement per Section 12.1. Licensee shall bear all of OT's costs of collection of overdue fees, including reasonable attorneys' fees.

6.3 Taxes. All prices, fees and charges are exclusive of Applicable Taxes which shall be assumed and paid by Licensee on provision of a tax invoice. Licensee is responsible for providing OT with all Tax Registration Numbers and copies of applicable Registration Certificates. Licensee is responsible for self-assessing any Applicable Taxes in accordance with applicable laws. Licensee is responsible for applying withholding tax, and/or similar taxes on payment to OT. Licensee must apply the lowest possible withholding rate, taking into account available tax treaties, on receipt of a valid residency certificate from OT, as may be required to support a lower tax rate. Licensee shall provide OT with copies of certificates proving that tax amounts withheld were paid to the applicable tax authorities in accordance with the applicable laws, in a timely manner. OT reserves the right to increase agreed prices to compensate for amounts that Licensee will withhold for such reasons.

7. Warranties.

7.1 Limited Warranty. OT warrants that the (a) Software will be free of known viruses at the time of first delivery; (b) Software will perform substantially in accordance with its accompanying Documentation for 60 days from the date of first delivery; and (c) Support will be delivered with reasonable skill and care in substantial conformance with the TD.

7.2 Warranty Disclaimer. THE FOREGOING IS A LIMITED WARRANTY, AND EXCEPT AS SET FORTH HEREIN AND TO THE EXTENT PERMITTED BY LAW, OT DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS WITH RESPECT TO THE SOFTWARE AND SUPPORT, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF USAGE, TRADE PRACTICE, PERFORMANCE OR COURSE OF DEALING. OT DOES NOT WARRANT THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, THAT OPERATION WILL BE UNINTERRUPTED, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE, OR WORK IN COMBINATION WITH ANY OTHER SOFTWARE, APPLICATIONS, OR SYSTEMS, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. LICENSEE ASSUMES THE RESPONSIBILITY TO TAKE ADEQUATE PRECAUTIONS IN HIGH RISK APPLICATIONS AGAINST DAMAGE TO ITS CONTENT OR OPERATIONS THAT COULD BE CAUSED BY SOFTWARE DEFECTS, INTERRUPTIONS, OR MALFUNCTIONS. OT HAS NO RESPONSIBILITY FOR CLAIMS MADE OUTSIDE THE WARRANTY PERIOD.

7.3 Warranty Exclusions. The warranties in Section 7.1 (Limited Warranty) do not apply if the defects result from: (i) failure to use the Software in accordance with Documentation; (ii) Licensee's equipment or network; (iii) modification of the Software not authorized in writing by an authorized OT signatory; (iv) service by any unauthorized person; (v) other software used by Licensee not provided by OT, or for which the use of the Software is not designed or licensed; or (vi) any other cause occurring after first delivery of the Software or media to Licensee, unless caused by OT. The warranties in Section 7.1 do not apply to (i) any free-of-charge Software or updates provided after the warranty period; or to (ii) open source software or third party software except as expressly provided in the TD or Documentation.

7.4 Warranty Remedy. Licensee's sole remedy under the foregoing warranty is the correction of errors in the affected portion of the Software after written notice from Licensee to OT describing such errors in detail or, at the election of OT, a pro rata refund of the fees paid by Licensee for the affected portion of the Software giving rise to the warranty claim. Licensee's sole remedy for Support is for OT to reperform the applicable Support.

8. Confidentiality. Confidential Information exchanged between the parties in connection with the Agreement may only be used for the purpose of fulfilling obligations or exercising rights under or in connection with the Agreement, and without the disclosing party's consent may only be shared with their employees, Affiliates, professional advisers, agents, or contractors with a need to know such information to support that purpose, and who are contractually bound to protect its confidentiality. Confidential Information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for three (3) years from date of receipt. These obligations do not cover information that: (i) becomes publicly available without breach of the Agreement; (ii) was known or becomes known to the receiving party without a duty of confidentiality; (iii) is disclosed with the disclosing party's prior written consent; (iv) is independently developed by the receiving party; or (v) where disclosure is required by law, by a court or a regulatory body. Should the receiving party be required to reveal Confidential Information under legal or governmental process, the receiving party will provide reasonable prior notice to the disclosing party (where lawfully permitted) so that disclosing party may request a protective order, if available. Each receiving party is responsible for any actions of its employees, Affiliates, professional advisers, agents and contractors in breach of this Section 8.

9. Ownership. OT and its Affiliates and licensors own all right, title, and interest, in and to the Software and the Documentation. Licensee's only rights to the Software and Documentation are the rights and licenses expressly stated in the Agreement and no other rights are implied or granted. None of the Software is being sold. OT's copyright or other proprietary notices must remain on the Documentation and the Software. As between Licensee and OT, the source code of the Software is a trade secret of OT, its Affiliates and licensors. If modification of any Software is permitted under a license from OT, such modification shall be for the sole purpose of using the Software in accordance with this Agreement and OT will solely own all modified portions and Licensee irrevocably assigns to OT in perpetuity all worldwide intellectual property and any other proprietary rights in and to any modifications of the Software.

10. Indemnification.

10.1 Indemnification. OT will indemnify and defend Licensee from any claim, suit, action, or proceeding brought against Licensee in a court of competent jurisdiction by a third-party that alleges an infringement by the Software of a third-party's patent or copyright ("**Infringement Claim**") to the extent it arises from Licensee's use of the Software in accordance with the provisions of the Agreement, by paying amounts finally awarded by a court against Licensee or included in a settlement approved by OT, and reasonable Infringement Claim defense costs incurred prior to notifying OT of the Infringement Claim (after approval by OT in writing).

10.2 Requirements. To obtain OT's defense against and payment of Infringement Claims, Licensee must: (i) notify OT in writing promptly after Licensee becoming aware of an Infringement Claim; (ii) supply information reasonably requested by OT and provide reasonable assistance to OT in connection with the defense of the Infringement Claim; (iii) allow OT to control the defense and settlement of the Infringement Claim; (iv) not agree to any settlement without OT's written pre-approval or make any admission against OT's interests; and (v) not be in material breach of the Agreement to the extent the breach caused the claim. OT will obtain Licensee's prior consent for any settlement that includes an admission of Licensee's liability.

10.3 Remedies. If the Software becomes, or in OT's opinion may become, the subject of an Infringement Claim, OT may replace or modify the affected Software to be non-infringing and have materially equivalent functionality or procure for Licensee the right to continue using it through the end of the current Software term. If neither alternative is reasonably available, OT may terminate the Software license and refund to Licensee (i) the unamortized value of the amount paid for the affected Software on a three-year basis from date of delivery or (ii) the balance of any pre-paid amount for the affected Software not available for Licensee's continued access and use if the Software is under a term-limited license. OT's entire liability and Licensee's sole and exclusive remedy with respect to any Infringement Claim shall be limited to OT's defense obligations and remedies set forth in this Section 10.

10.4 Exclusions. OT has no responsibility for Infringement Claims to the extent based on: (i) modification of the Software or developments made by any party other than OT; (ii) Licensee's failure to install any update or upgrade provided by OT that would have avoided the alleged infringement; the combination or use of the Software with items not provided by OT; (iii) Licensee's unauthorized use of the Software; or (iv) open-source software, or third party software regardless of whether it is embedded in the Software.

11. Limitation of Liability.

11.1 Limitation on Amount of Liability. Except as set forth in Section 4.3 (Evaluations) and Section 11.3 (Unlimited Liabilities), the maximum aggregate liability of either party for all events (or series of connected events) will not exceed the fees paid in the relevant TD

11.2 Limitation on Liability In no event will either party be liable for: (i) indirect, incidental, special, consequential, or punitive damages; or (ii) lost revenues, profits, savings, or goodwill, or costs of recovery or replacement of data or the cost of substitute Software, except where such liability cannot be excluded or limited by applicable law.

11.3 Unlimited Liabilities. Nothing in Section 11.1 shall exclude or limit either party's liability for: (i) its willful misconduct or fraudulent misrepresentations; (ii) its obligations under Section 10 (Indemnification); (iii) its infringement or unauthorized use of the other party's intellectual property rights; (iv) its payment obligations under the Agreement; or (v) matters for which liability cannot be excluded or limited by applicable law.

11.4 Scope. The limitations and disclaimers in this Section 11 apply to all causes of action, including but not limited to, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts. The remedies specified in the Agreement are the parties' exclusive remedies regardless of the basis of the claim.

12. Termination.

12.1 For Cause. A party may terminate the Agreement or any TD for material breach by the other party if the other party fails to cure such breach within 30 days after written notice. In addition, OT may, in its sole discretion, terminate or suspend Support if Licensee fails to remedy a material breach within 30-days of notice by OT, including failure to pay an invoice.

12.2 Actions upon Termination. Upon any termination of the Agreement or the effective date of expiration of a TD: (i) OT shall cease to make the Software available; (ii) Licensee's right to use the Software will end and Licensee shall immediately pay all accrued fees and charges; (iii) Licensee will immediately either return to OT or destroy all copies of the Documentation; and (iv) each party shall destroy or promptly return all copies, partial copies, and any documentation or materials evidencing the other party's Confidential Information.

12.3 Survival. The following provisions shall survive termination or expiration of the Agreement: Sections 4 (Licensing), 6 (Fees, Payment and Taxes), 7 (Warranties), 8 (Confidentiality) 9 (Ownership), 10 (Indemnification), 11 (Limitation of Liability), and any provisions that by their nature should survive termination.

13. Compliance.

13.1 Verification. During the term of this Agreement and for 24 months thereafter, Licensee will maintain accurate records sufficient for OT to confirm that Licensee has complied with its licenses. 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. 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 Agreement. Licensee shall cooperate with OT and provide such records to OT and certify its compliance with this Agreement. OT may suspend Support in the event that Licensee does not reasonably cooperate with OT under this Section 13.

13.2 Non-compliance. If Licensee is determined not to be in compliance with the Software license, Licensee will be deemed to have confirmed its requirement for the additional licenses from OT at OT's then-current list price to bring Licensee into compliance, OT may invoice and Licensee must immediately pay all applicable license fees and taxes, plus applicable Support fees for the period Licensee was not in compliance with the Software license. OT may invoice Licensee for fees and taxes payable by Licensee due to use of the Software in excess of the number or type of Software licenses granted in the TD.

14. Miscellaneous.

14.1 Entire Agreement; Amendment; Waiver. The Agreement represents the entire agreement of the parties, and supersedes any course of dealing, discussions, or representations between the parties. Licensee's purchase orders do not supersede or amend the Agreement or any TD. Any amendment of the Agreement must be in writing and signed by both parties. No waiver constitutes a waiver of any prior or subsequent breach.

14.2 OT Contracting Entity; Governing law; Venue.

14.2.1 Governing law; Venue. The Agreement is governed by the laws of the applicable jurisdiction of the OT Contracting Entity as specified below excluding: (a) such jurisdiction's conflicts or choice of law rules; and (b) the United Nations Convention on Contracts for the 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 that UCITA is applicable, the parties hereby opt out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein.

If the OT contracting entity is domiciled in:	**The governing law is:**	**Venue lies exclusively in courts sitting in:**
The United States of America	Delaware and controlling United States federal law	Delaware, USA
Canada	Ontario and controlling Canada federal law	Toronto, Ontario, Canada
Mexico	Mexico	City of Mexico, Mexico
Brazil	Brazil	City of São Paulo, São Paulo, Brazil.
Any country in the Americas except where otherwise listed in this table	Delaware and controlling United States federal law	Delaware, USA
England	England and Wales	England and Wales
France	France	Tribunal De Commerce De Nanterre, France
Germany	Germany	Munich, Germany
Any country in Europe, the Middle East, or Africa except where otherwise listed in this table	England and Wales	England and Wales
Australia or New Zealand	New South Wales, Australia and controlling Australian federal law	New South Wales, Australia
India	India	Bengaluru (Bangalore), India
China	China	China
Japan	Japan	Tokyo, Japan
Any country in Asia, East Asia or South Asia (other than India, Japan, China, Australia, or New Zealand)	Singapore	Singapore
All other countries	Delaware and controlling United States federal law	Delaware, USA

14.2.2 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).

14.2.3 In the event of a dispute between the parties, the prevailing party shall have the right to collect from the other party its reasonable costs and attorneys' fees incurred in enforcing the Agreement.

14.3 Governing Law Specific Terms. The Governing Law Supplemental Terms found at Exhibit A specifies certain country-specific terms that modify and/or add to this Agreement where applicable.

14.4 Interpretation. In the event of any conflict or inconsistency among the documents that constitute the Agreement, the following order of precedence applies: (i) the TD; (ii) other documents incorporated by the applicable TD; and (iii) this EULA.

14.5 Relationship of the Parties. The relationship of the parties created by the Agreement is that of independent contractor and not that of employer/employee, principal/agent, partnership, joint venture or representative of the other. Neither party is authorized to make any representation, contract or commitment on behalf of the other party.

14.6 Third Party Rights. No right or cause of action for any third party is created by the Agreement or any transaction under it.

14.7 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 Agreement.

14.8 Resellers. OT's obligations with respect to products or services supplied by OT and procured by Licensee from an authorized OT reseller are limited to the terms and conditions in this Agreement and the Documentation. With purchases from a reseller, the applicable pricing and payment terms are as set out in the separate agreement between Licensee and the reseller, and any terms in this Agreement related to OT pricing, invoicing, and payments shall not apply. OT is not responsible for the acts or omissions of the reseller, or for any other products or services that it supplies to Licensee.

14.9 Assignment. Neither party may assign or otherwise transfer the Agreement (or any of its rights or obligations) under the Agreement, in whole or in part, without the prior written consent of the other. However, transfers or assignments by OT to an Affiliate, or in conjunction with the sale of the portion of OT's business that includes Software or Support, are not restricted.

14.10 Publicity. Neither party will use in any advertising, publicity, promotion, marketing, or other similar activity, any name, trade name, or trademark, of the other party without that party's prior written consent.

14.11 Export Laws. The Software and Documentation may be subject to export control laws of Canada, the United States, the European Union, or other countries. Licensee agrees to comply with all applicable export and import regulations, including, but not limited to the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the U.S. Treasury Office of Foreign Assets Control and end-user and destination restrictions issued by the U.S. and other governments, and will not allow use of the Software in a manner that breaches or facilitates the breach of such regulations. Licensee shall not provide access to the Software, Documentation or Content to any end user or region or country where transactions are prohibited by trade control sanctions or blocking measures.

14.12 Force Majeure. Neither party will be liable for delay or failure to fulfill its non-monetary obligations due to causes beyond its reasonable control, including but not limited to acts of God, natural disasters, epidemics or other public health emergencies, terrorism, unavailability of third-party communication facilities or energy sources, riots, or war.

14.13 Notices. All notices must be in writing and given by nationally recognized courier service or electronic transmission and addressed to the Law Department at the address specified in the TD, unless a party designates in writing a different address, and shall be effective when received.

14.14 Legal Review and Interpretation. Both parties have had an opportunity for legal review of the Agreement. The parties agree that the Agreement result from negotiation between the parties. The Agreement will not be construed in favor of or against either party by reason of authorship. The headings used in this Agreement 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). If any provision of the 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, and the remaining provisions of the Agreement shall remain in effect.

14.15 Commercial Computer Software. The Software is “commercial computer software” and use, duplication, or disclosure by the United States government is subject to the restrictions set forth in this Agreement and applicable law.

14.16 Hardware. Where OT provides Software embedded in an appliance or provides hardware to Licensee for use in conjunction with Software, additional hardware terms and conditions as provided in the TD will apply. Except as expressly provided in a TD, OT disclaims all warranties, conditions and liabilities with respect to the hardware.

14.17 Governing Language. The Agreement shall be prepared and interpreted in the English language. Any translation is for the purpose of convenience only, and any language inconsistency or difference of interpretation arising from language translation will be resolved in favor of the English language version. (For Canada: 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. (Translation: The parties confirm that this Agreement and all related documentation is and will be in the English language)).

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EXHIBIT A
TO THE
END USER LICENSE AGREEMENT

GOVERNING LAW SPECIFIC TERMS

This Exhibit specifies terms that modify the EULA when the relevant governing law specified below applies to the EULA.

Governing Law: **Laws of Germany**

1. **Modification of Section 4.3 (Evaluations)**

Section 4.3 (Evaluations) shall be amended as follows:

OT may provide the Software to Licensee for a limited time to try available functionality on a "**Trial**" basis (such as beta, evaluation, no-charge, or pre-release previews). Trial Software is licensed for internal evaluation and testing purposes only, and not for any development, production, distribution or commercial purpose. Licensee receives a non-transferable, worldwide, nonexclusive, non-sublicensable, evaluation license to download, install, execute and use the Software identified in the applicable TD. The term of the Trial will be 30 days starting from the date access is provided, unless OT authorizes a different period in writing. The evaluation license terminates automatically at the end of the Trial, and Licensee is required to delete and destroy (or, at OT's option, return) all copies of such Software and confirm its compliance in writing within 30 days of the end of the Trial. The Trial term for any pre-release or beta versions of Software ("**Pre-Release Software**") shall be for 60 days starting on the date Software is delivered by OT, unless OT authorizes a different period in writing. Trial Software is provided "as is" and there are no warranties (except in cases where OT fraudulently conceals a defect, or in cases where OT provides written guarantees), service level agreements, or support provided. Licensee agrees to promptly report to OT all problems (including errors, failures, nonconforming results, and unexpected performances) with the Trial, and the Pre-Release Software and to timely respond to queries from OT regarding the outcomes of Licensee's Trial. OT may choose not to release a final version of the Pre-Release Software or, even if released, to alter prices or Software characteristics. OT shall be liable without limitation (i) in the event of intentional acts; (ii) in the event of damage or loss arising from death or personal injury irrespective of the level of culpability; (iii) in case OT has issued a written guarantee; or (iv) in case of fraudulent concealment of defects. In all other cases OT's entire liability for all claims related to the Trial will not exceed U.S. $5,000.00 (or equivalent in local currency), regardless of the basis of the claim.

2. **Modification of Section 7 (Warranties)**

Section 7 (Warranties) shall be entirely replaced by the following provisions:

7. Warranties.

7.1 Limited Warranty. OT warrants that the (i) Software will be free of known viruses at the time of first delivery; (ii) Software will be free from defects as to quality and title (iii) Software will perform substantially in accordance with its accompanying Documentation during the warranty period; and (iv) Support will be delivered with reasonable skill and care in substantial conformance with the TD.

7.2 Supplementary performance in the event of defects in quality.

7.2.1 If Licensee provides notification of defects in quality, OT shall provide supplementary performance free of charge within an appropriate period.

7.2.2 Supplementary performance may be performed, at OT's option, by rectifying the defect in quality or by delivering new Software. OT may also provide an update, upgrade or a more recent version of the Software for supplementary performance purposes, if this is reasonable for Licensee. Licensee sole remedy for Support is for OT to reperform the applicable Support

7.2.3 Defects in quality may also be remedied by means of instructions on how to act, by way of remote data transmission or dispatch of data carriers with corrective software. To the extent reasonable, Licensee is obliged to implement instructions on how to act, to enable remote data transmission or remote access by OT to the defective Software and/or to input corrective software immediately after it is delivered. A technical workaround also constitutes rectification of a defect in quality if it does not considerably impair the use of the Software for the contractually envisaged purpose and the workaround is reasonable for Licensee. In the event of a workaround, OT shall completely rectify the defect within the scope of any updating (update, upgrade or new version) of the Software.

7.3 Supplementary performance in the event of defects of title. In the event of defects in title OT shall, at its choice, either: (i) obtain a right for Licensee to continue using the Software; or (ii) replace or modify the Software without unreasonable degradation in functionality; or (iii) withdraw from the licensing of the Software affected by the defect in title and terminate the Support for the Software affected by the defect in title and, upon Licensee's return to OT of that portion of the Software, refund the portion of the fees received by OT and attributable to the affected portion of the Software.

7.4 Common provisions for defects in quality and defects of title.

7.4.1 Defects shall be documented by Licensee in a manner comprehensible to OT and shall be reported in writing immediately after determination of any such defect.

7.4.2 The place of performance shall be the place where the Software has been installed as agreed. OT reserves the right to invoice Licensee for additional costs which (i) arise as a result of a reallocation of the Software by Licensee to a location other than the contractually agreed installation location (if this occurs); (ii) arise as a result of Licensee culpably failing to comply with its obligations to cooperate in accordance with the Agreement; (iii) are based on defects in the Software which are asserted by Licensee but do not exist; (iv) are based on defects in the Software which arise exclusively as a result of culpable faulty operation; and/or (v) are based on non-observance of the Documentation.

7.4.3 Licensee is not authorized to rectify defects in the Software itself or have them rectified by any third party (replacement performance) unless (i) OT has been given adequate opportunity to effect supplementary performance and the defect has not been rectified; (ii) a right to effect self-remedy exists in accordance with other provisions of the Agreement and/or (iii) OT ultimately refuses to rectify the defects.

7.4.4 If a defect cannot be rectified within an appropriate period or if supplementary performance or replacement delivery fails for other reasons, Licensee may at its option (i) demand a reduction of the fees (Minderung) paid under the applicable TD; or (ii) withdraw from the licensing of the Software affected by the defect and terminate the Support for the Software affected by the defect, or (iii) in case of a term license, terminate the licensing of the Software as well as the Support for the Software affected by the defect. In case of withdrawal or termination, Licensee may assert a claim for compensation of damages or futile expenditures within the limitations of Section 11 of this EULA. OT will take back the Software affected by the defect. In case of withdrawal, OT may demand reasonable compensation for use based on the benefits derived from the Software by Licensee. Such compensation shall be calculated as follows: Fees paid and/or payable for the Software in accordance with the TD and Applicable Taxes divided by a total usage period of 3 years, multiplied by the actual usage period by Licensee, minus an appropriate reduction corresponding to the extent to which the use of the Software was restricted due to the defect. In case of termination of a term license, OT will refund the prepaid fees received by OT from Licensee for the Software affected by the defect on a pro rata basis for the remaining term. Withdrawal or termination shall be excluded in case of insignificant defects in the Software.

7.4.5 The warranties in Section 7.1 shall not apply to defects caused by: (i) Licensee's use of the Software not in accordance with the provisions of the Agreement and the applicable Documentation; (ii) Licensee's equipment or network; (iii) the modification of the Software by any party other than OT not authorized in writing by an authorized OT signatory; (iv) service by any unauthorized person; (v) 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; (vi) any unlicensed activities of the Licensee and/or (vii) any other cause occurring after first delivery of the Software, unless caused by OT. The warranties in Section 7.1 do not apply to any free-of-charge Software (except in cases where OT fraudulently conceals a defect, or in cases where OT provides written guarantees).

7.4.6 Supplementary performance has not failed until OT has been given at least 2 opportunities to effect supplementary performance or replacement delivery. After a failed second attempt of supplementary performance, OT shall only be granted further attempt(s) of supplementary performance if reasonably required due to the complexity of the matter, unless further attempt(s) are unreasonable for the Licensee.

7.4.7 Statute of limitation. In the event of willful act or gross negligence of OT, in case of malicious concealment of a defect, physical injury, guarantees (Article 443 of the German Civil Code BGB) and claims in accordance with the Product Liability Act (Produkthaftungsgesetz), the statutory limitation periods apply. Other claims based on defects in quality or defects of title in the Software become time-barred after 12 months. Statute of limitation shall start with delivery of the Software.

7.4.8 Compensation or reimbursement of futile expenditure. In the event of a claim OT shall provide compensation or reimburse futile expenditure on the basis of a defect within the limitations outlined in Section 11 of this EULA.

7.4.9 The above provisions of Section 7.4 shall apply accordingly to updates, upgrades, patches, fixes, modifications, or new versions of the Software that Licensee receives pursuant to Support, provided, however, that the right to withdraw according to Section 7.4.4 shall be replaced by the right to terminate the Support for the Software affected by the defect.

3. Modification of Section 10 (Indemnification)

Section 10 (Indemnification) shall be modified as follows:

10. Indemnification.

10.1 Indemnification. OT will indemnify and defend Licensee from any claim, suit, action, or proceeding brought against Licensee in a court of competent jurisdiction by a third-party that alleges an infringement by the Software of a third-party's patent or copyright ("**Infringement Claim**") to the extent it arises from Licensee's use of the Software in accordance with the provisions of the Agreement, by paying amounts finally awarded by a court against Licensee or included in a settlement approved by OT, and reasonable Infringement Claim defense costs incurred prior to notifying OT of the Infringement Claim (after approval by OT in writing).

10.2 Requirements. To obtain OT's defense against and payment of Infringement Claims, Licensee must: (i) notify OT in writing promptly after Licensee becoming aware of an Infringement Claim; (ii) supply information reasonably requested by OT and provide reasonable assistance to OT in connection with the defense of the Infringement Claim; (iii) allow OT to control the defense and settlement of the Infringement Claim; (iv) not agree to any settlement without OT's written pre-approval or make any admission against OT's interests; and (v) not be in material breach of the Agreement to the extent the breach caused the claim. OT will obtain Licensee's prior consent for any settlement that includes an admission of Licensee's liability.

10.3 Exclusions. OT has no responsibility for Infringement Claims to the extent based on: (i) modification of the Software or developments made by any party other than OT; (ii) Licensee's failure to install any update or upgrade provided by OT that would have avoided the alleged infringement; (iii) the combination or use of the Software with items (such as software, hardware, firmware, data, or technology) not provided by OT; or (iv) Licensee's unauthorized use of the Software.

10.4 Statute of limitation. Any claim by Customer under this Section 10 shall become time-barred upon the earlier of: (i) 12 months after Customer becomes aware of the circumstances giving rise to the claim or would have become aware if Customer had not shown gross negligence; or (ii) 3 years after delivery of the Software.

4. Modification of Section 11 (Limitation of Liability)

Section 11 (Limitation of Liability) shall be entirely replaced by the following provisions:

11. Limitation of Liability

Either party's total liability for any and all claims shall be subject to the limitation set out herein:

11.1 Unlimited liability. Either party shall be liable without limitation (i) in the event of intentional acts; or (ii) in the event of damage or loss arising from death or personal injury irrespective of the level of culpability; (iii) in case either party has issued a written guarantee (iv) in case of fraudulent concealment of known defects;(v) its obligations under Section 10 (Indemnification); (vi) its infringement or unauthorized use of the other party's intellectual property rights; or (vii) its payment obligations under the Agreement.

11.2 Cardinal obligations, gross negligence.

11.2.1 Either party shall be liable in case of a material breach of contractual obligations which jeopardizes attainment of the contractual purpose (cardinal obligations) to the extent that either party acted grossly negligent.

11.2.2 The parties agree that either party's liability for cardinal obligations under section 11.2.1 shall be limited in the aggregate to 200% of the Fees paid and payable by Licensee to OT under the relevant TD.

11.3 Cardinal obligations, simple negligence.

11.3.1 Either party shall be liable for a breach of cardinal obligations in case of only simple negligence up to the limited extent that is typically contractually foreseeable.

11.3.2 The parties agree that either party's liability for typically contractually foreseeable damages shall not exceed in the aggregate 100% of the Fees paid and payable by Licensee to OT under the relevant TD.

11.4 Other cases. Except for the liability specified in Sections 11.1 - 11.3, either party's liability shall be excluded.

11.5 Indirect and consequential damages. Either party shall not be liable for consequential and indirect damages, except where required under sections 11.1 - 11.3.

11.6 Statute of limitation. Section 7.4.7 applies accordingly to the limitation period with the proviso that the statutory limitation period applies to claims in accordance with section 11.1.

11.7 Data backup. Licensee is responsible for regular backup of its data and to protect its operating environment for the Software (software or hardware platform, software, hardware, firmware, data, or technology) against any sort of malware (virus, worms, trap door, back door, etc.) according to the current state of the art. In the event of a loss of data based on the fault of OT, OT shall be liable only for the costs of copying the data in the backup copies to be created by Licensee and for reconstructing the data which would have been lost even if backup copies had been created at adequate regular intervals.

11.8 If and to the extent that the time limited term license is considered to be leased and subject to the legal regulations of German rental law, OT's liability for damages or defaults in performance existing at the conclusion of the relevant TD is excluded to the extent that OT acts or refrains from acting without fault (ohne Verschulden). Insofar § 536a Abs. 1 Alt. 1 BGB shall not apply.

11.9 Product Liability Act. Liability under the Product Liability Act is not affected.

5. Modification of Section 12 (Termination)

Section 12 (Termination) shall be entirely replaced by the following provisions:

12. Termination

12.1 Termination for Cause. A party may terminate the Agreement or any TD for material breach by the other party if the other party fails to cure such breach within 30 days after written notice. In addition, OT may, in its sole discretion, terminate or suspend Support if Licensee fails to remedy a material breach within 30-days of notice by OT, including failure to pay an invoice.

12.2 Effect of Termination or Expiration.

12.2.1 Termination of the Agreement or any TD shall not affect the validity of Software license orders already concluded (including Support) and the granting of rights of use for these Software licenses, unless there is a reason for termination by OT for which future use of the purchased Software licenses can be prohibited under applicable law.

12.2.2 Upon early termination or expiration of a term license: (i) all Software licenses will immediately terminate; (ii) Licensee will immediately cease all use of the Software; and (iii) Licensee must either deliver to OT or irrevocably 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 the Agreement or the respective TD which by their nature extend beyond termination or expiration of the Agreement or the respective TD will remain in effect until fulfilled.

12.3 Survival. The following provisions shall survive termination or expiration of the Agreement: Sections 4 (Licensing), 6 (Fees, Payment and Taxes), 7 (Warranties), 8 (Confidentiality) 9 (Ownership), 10 (Indemnification), 11 (Limitation of Liability), and any provisions that by their nature should survive termination.

6. Modification of Section 14.14 (Legal Review and Interpretation**)**

Section 14.14 (Legal Review and Interpretation) will be modified as follows:

14.14 Legal Review and Interpretation. Both parties have had an opportunity for legal review of the Agreement. The parties agree that the Agreement result from negotiation between the parties. The Agreement will not be construed in favor of or against either party by reason of authorship. The headings used in this Agreement 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). If any provision of the Agreement is or becomes invalid or unenforceable in whole or in part, the remaining provisions shall continue in full force. The invalid or unenforceable provision shall be replaced by such valid and enforceable provision which comes closest to what the parties would have agreed if they had known of such invalidity or unenforceability. This shall apply accordingly in the event of any omission in the Agreement.