

OpenText

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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 (“**Licensee**”), and is effective on the last signature date (“**Effective Date**”).

OT and Licensee agree as follows:

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“**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 of which OT is aware existing under the laws of the Covered Countries;

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6.2 Orders through an OT Reseller. Software Licenses ordered through a Reseller are governed by this EULA. The License Model will be set out between Licensee and Reseller in an order document. 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 upon to the customer..

6.4 Invoicing And Payment. OT may invoice Licensee for License Fees in accordance with Appendix A, Section 8I of DIR Contract No. DIR-TSO-3392. All License Fees due to OT by Licensee are due and payable in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3392. Taxes will shall be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-3392. All License Fees and Taxes due to OT under this EULA are payable U.S. currency. 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 access to 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 provided to Licensee under an OT maintenance or support program is governed by this EULA. The provision of maintenance and support services by OT will be governed by the then-current version of the applicable OT Software Maintenance Program Handbook (available upon request or at www.opentext.com/agreements).

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 (no less than 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. 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 with 7 days prior notice of each audit. 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, as reflected in Appendix C of DIR Contract No. DIR-TSO-3392, to bring Licensee into compliance, and Licensee must pay: (i) the applicable License Fees and (b) maintenance and support fees covering (i) the period Licensee was not in compliance with the Software License; and (ii) the first year maintenance and support fees on any additional Software Licenses. Compliance with the License Documents is the sole responsibility of Licensee.

9.0 Limited Warranties

9.1 Limited Software Warranty. OT warrants to Licensee that Software: (a) will be free of all known viruses at the time of first delivery; and (b) will perform substantially in accordance with its accompanying Documentation for 60 days from the date of first delivery. 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 Payee will refund all License Fees attributable to the portion of the Software giving rise to the breach.

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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. Indemnification shall be handled in accordance with Appendix A, Section 10A 3 of DIR-TSO-3392.

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, or (b) replace or modify the Software without unreasonable degradation in functionality.

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 BE 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 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. 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 Terminations shall be handled in accordance with Appendix A, Section 11B 1) and 2) of DIR Contract No. DIR-TSO-3392.

12.2 Effect of Termination or Expiration. Subject to record retention laws and policies, 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.

13.0 Miscellaneous Provisions

13.1 Confidentiality. To the extent allowable under the Texas Public Information Action, 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. Assignments shall be handled in accordance with Appendix A, Section 4D of DIR Contract No. DIR-TSO-3392.. 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.. 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 Texas excluding its conflicts law rules. Any dispute arising out of this EULA will be subject to the exclusive venue of the state courts located in Travis County, Texas. The Uniform Computer Information Transactions Act, or any version, adopted by any state, does not apply to this EULA. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

13.7 Force Majeure. Force. Majeure shall be handled in accordance with Appendix A, Section 11C of DIR Contract No. DIR-TSO-3392.

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.¹

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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. 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.

13.16 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 parties confirm that this Agreement and all related documentation is and will be in the English language.

13.17 Notices. Any notice shall be handled in accordance with Appendix A, Section 12 of DIR Contract No. DIR-TSO-3392

13.18 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.

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