

This End User License Agreement (“EULA”) is between **OpenText Software GmbH (“OT”)** and you (either as an individual, a single corporation, or other single legal entity that purchases the applicable Software) (“**Licensee**”), and is effective from the date of the applicable Transaction Document, as defined below (“**Effective Date**”).

OT and Licensee agree as follows:

1.0 Definitions

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

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

“**Confidential Information**” means information, whether or not in physical form, all oral communications, documents and other information, disclosed by a party to the other which: (a) is a trade secret or 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, and any other documents provided by OT setting out permitted uses of the Software;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.0 Ownership of the Software

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

3.0 License Grant

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

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

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

4.0 Authorized Copies

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

5.0 Restrictions

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

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

5.3 Derivative Works / Improvements. Licensee is prohibited from using the Software to create any change, translation, adaptation, arrangement, addition, modification, extension, upgrade, update, improvement, (including patentable improvements), new version, or other derivative work or functionally equivalent works 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 unconditionally and immediately upon creation 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. OT hereby accepts all such assignments. Licensee shall free of any charge or costs execute and procure that any of his subcontractors execute all documents and actions OT reasonably considers necessary to give effect to this section 5.3.

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. OT will issue a tax invoice where required by applicable law. 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 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.

6.8 Withholding Tax. Licensee is responsible for paying the full Fees to OT without any setoff or deduction. Should OT or Licensee be obligated by law to deduct and withhold any amounts ("**Withholding Tax**") from any payment or payments otherwise due and payable to the other party to this EULA and remit such Withholding Tax to any government, government department, body, or agency ("**Government**"), such remitting party may do so and shall be deemed to have paid to the other party to this EULA, for all purposes associated with this EULA, each such payment made or remitted to such Government. Each remitting party shall provide sufficient documentation to the other party to demonstrate proof of payment of such Withholding Tax. If OT is unable due to provisions of law to recover the full Withholding Tax, Licensee will increase the payments it makes to OT to ensure that the amount paid to OpenText corresponds to the fees payable under this EULA, unless OT failed to furnish the Licensee with a certificate of residence within a reasonable time of the written request.

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 by any party 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 no more 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 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 Software Warranty. OT warrants to Licensee that the Software at the time of first delivery to Licensee: (a) will be free of all known viruses; and (b) will be free from defects as to quality and title.

9.2 Supplementary performance in the event of defects in quality.

9.2.1 Warranty Exclusions. The warranty in sections 9.1-9.3 shall not apply to any defect in quality caused by (a) any change to the Software caused by Licensee, except where such changes were made by OT in relation to the provision of Support Services or Licensee proves that defects in quality which have arisen are not attributable to the change/modification and that error analysis and rectification by OT is not effected thereby; (b) Licensee's failure to provide an installation or operating environment for the Software according to the Documentation; (c) use of the Software on a software or hardware platform not approved by OT in writing; (d) software, hardware, firmware, data, or technology not licensed or approved by OT in writing; (e) any telecommunications medium used by Licensee; (f) Licensee's own computer system; or (g) failure of Licensee and/or user to comply with the Documentation.

9.2.2 If Licensee provides notification of defects in quality for which OT is liable as defects in quality, OT shall provide supplementary performance free of charge within an appropriate period.

9.2.3 Supplementary performance may be effected, at OT's option, by rectifying the defect in quality or by delivering new Software or Physical Media. OT may also provide an update, upgrade or more recent version of the Software for supplementary performance purposes, provided that this is reasonable for Licensee.

9.2.4 The defect in quality may also be remedied by means of written, electronic or text form (§§ 126a, b BGB) instructions on how to act, or instructions on how to act provided over the telephone, to Licensee by way of remote data transmission or dispatch of data carriers with corrective software. In these cases, in so far as this is 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 software 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.

9.3 Failure of supplementary performance in the event of defects in quality.

9.3.1 If a defect in quality cannot be rectified within an appropriate period or if supplementary performance or replacement delivery fails for other reasons, Licensee may at its option (a) demand a reduction of the Fees; or (b) withdraw from and/or terminate the EULA and/or (c) terminate the Support Services. In case of withdrawal or termination Licensee may assert a claim for compensation of damages or futile expenditures within the limitations of section 10 of this EULA. Withdrawal shall be excluded in case of insignificant defects in the Software.

9.3.2 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. The supplementary performance has also failed if supplementary performance is impossible due to objective or subjective reasons or if supplementary performance is refused by OT with grounds of reasonability or if the supplementary performance is unreasonably delayed.

9.4 Supplementary performance in the event of defects of title.

9.4.1 Warranty Exclusions. The warranty in this section 9.4 shall not apply for Claims to the extent (a) such Claim arises as a result of Licensee's use of the Software not in accordance with the provisions of this EULA and the applicable Documentation; (b) the alleged or actual infringement was caused by the use of a superseded version of the Software if the infringement would have been avoided by the use of a then-current release of the Software; (c) the alleged or actual infringement was caused by the modification of the Software by any party other than OT; (d) the alleged or actual infringement was caused by 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; and/or (e) such Claim arises as a result of 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 and fully indemnify OT against any claims, damages, costs, losses or expenses related or arising therefrom.

9.4.2 OT shall defend Licensee from any Claims to the extent such Claim arises solely as a result of Licensee's use of the Software in accordance with the License Documents. If the Software becomes subject to a Claim, OT will, in its absolute discretion, either (a) obtain a license for Licensee to continue using the Software; (b) replace the infringing portion of the Software as far as this is reasonable for Licensee in consideration of the purpose of this EULA; or (c) modify the infringing portion of the Software without reasonable degradation in functionality.

OT's obligations in this section are conditioned upon: (a) Licensee notifying OT in writing immediately but latest 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 and information 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 defense, 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.

9.5 Failure of supplementary performance in the event of defects of title. In case supplementary performance according to section 9.3.2 has failed or is not possible, Licensee may at its option (a) demand a reduction of the Fees; or (b) withdraw from and/or terminate the EULA and/or (c) terminate the Support Services. In case of withdrawal or termination Licensee may assert a claim for compensation of damages or futile expenditures within the limitations of section 10 of this EULA. In case of withdrawal from the EULA, OT will take back the infringing Software or the infringing portion of the Software and will refund the unamortized portion of the License Fees received by OT from Licensee under this EULA attributable to the infringing portion of the Software, based on a 3 year straight line amortization commencing on the date of first delivery of the Software to the Licensee.

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

9.6.1 Defects in quality and/or defects of title which occur shall be documented by Licensee in a manner comprehensible to OT (e.g. in the case of defects in quality by means of screenshots, error messages and defect records) and shall be reported in writing immediately after determination of any such defect.

9.6.2 The place of performance shall be the place where the Software has been installed as agreed. OT reserves the right to invoice Licensee for (a) additional costs which 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); (b) additional costs which arise as a result of Licensee culpably failing to comply with its obligations to cooperate in accordance with this EULA; (c) additional costs which are based on defects in quality in the Software which are asserted by Licensee but do not exist; (d) defects in quality in the Software which arise exclusively as a result of culpable faulty operation; and/or (e) additional costs based on non-observance of the Software Documentation in accordance with the respectively valid price list for the service.

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

9.6.4 Statute of limitation. In the event of wilful 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.

9.6.5 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 10 of this EULA.

10.0 Limitation of Liability

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

10.1 Unlimited liability. OT shall be liable without limitation (a) in the event of intentional acts; or (b) in the event of damage or loss arising from death or personal injury irrespective from the level of culpability; or (c) in case OT has issued a guarantee or (d) in case of fraudulent concealment of known defects.

10.2 Cardinal obligations, gross negligence.

10.2.1 OT shall be liable in case of a material breach of contractual obligations which jeopardize attainment of the contractual purpose (cardinal obligations) to the extent that OT acted gross negligently.

10.2.2 The parties agree that OT's liability for cardinal obligations under section 10.2 shall be limited in the aggregate to 200% of the Fees paid and payable by Licensee to OT during the 12 months immediately preceding the event causing the damage.

10.3 Cardinal obligations, simple negligence.

10.3.1 OT 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.

10.3.2 The parties agree that OT's liability for typically contractually foreseeable damages shall not exceed in the aggregate 100% of the Fees paid and payable by Licensee to OT during the 12 months immediately preceding the event causing the damage.

10.4 Other cases. Except for the liability specified in sections 10.1, 10.2 or 10.3, OT's liability shall be excluded.

10.5 Indirect and consequential damages. OT shall not be liable for consequential and indirect damages, except where required under sections 10.1, 10.2 or 10.3.

10.6 Statute of limitation. Section 9.6.4 applies accordingly to the limitation period with the proviso that the statutory limitation period applies to claims in accordance with section 10.1.

10.7 Contributory negligence and data backup. If damage or loss is attributable both to fault by OT and to fault by Licensee, Licensee must allow its contributory negligence to be taken into account. In particular, 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.

10.8 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, any liability of OT for damages or defaults in performance existing at the conclusion of this EULA or an order 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.

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

10.10 Liability for third parties acting. If OT's liability is excluded or limited, this also applies to the personal liability of OT's directors, employees, representatives and vicarious agents.

11.0 Termination

11.1 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.

11.2 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 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 this EULA which by their nature extend beyond termination or expiration of this EULA will remain in effect until fulfilled.

11.3 Termination or suspension of Support Services. Without limiting OT's rights under clause 11.1, OT may, in its sole discretion, terminate or suspend Support Services if Licensee fails to remedy a material breach within 30 days of notice by OT, including failure to pay an invoice.

12.0 Miscellaneous Provisions

12.1 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 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.

12.2 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.

12.3 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.

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

12.5 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.

12.6 Governing Law. This EULA is governed by the laws of Germany 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 Munich. The prevailing party in any litigation related to this EULA will be entitled to its reasonable attorneys' fees and court costs.

12.7 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.

12.8 Severability. If any provision of this EULA is or becomes invalid or unenforceable in whole or in part, the remaining provisions shall remain unaffected. The ineffective 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 the ineffectiveness or unenforceability. This shall apply accordingly in the event of any gap in this EULA.

12.9 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.

12.10 Press Release. With Licensee's prior approval, OT may refer to Licensee's relationship with OT in a public press release or marketing materials.

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

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

12.13 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.

12.14 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 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 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.

12.15 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.

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

12.17 Notices. Any notice under this EULA that must be given by a party in writing is deemed effective when sent either: (a) via certified or registered mail, postage prepaid, or (b) via express mail or nationally recognized courier service to the other party's address specified in this EULA or on the most recent Transaction Document. Notices to OT will also be sent to OT's general counsel at Werner-von-Siemens-Ring 20, 85630 Grasbrunn, Germany.

12.18 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.