

# OpenText

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#### **7.0 OT Support and Maintenance.**

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## **8.0 Audits and Noncompliance.**

**8.1 Audit.** During the term of this EULA and for 24 months after, Licensee will maintain electronic and other records sufficient for OT to confirm that Licensee has complied with this EULA. Licensee will promptly and accurately complete and return (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

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**9.3.1** If a material defect cannot be rectified within an appropriate period or if supplementary performance or replacement delivery fails for other reasons, Licensee may at its option demand a reduction of the remuneration or withdraw from the EULA. Withdrawal is excluded in case of only insignificant defects in the Software.

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**9.4 Supplementary performance in the event of defects of title.** OT shall defend Licensee from any Claims, suits, actions or proceedings brought against Licensee in a court of competent jurisdiction by a third party which allege an infringement of such third party's patent, copyright, or trade secret rights of which OT is aware existing under the laws of the Covered Countries, and compensate the Licensee with regard to any judgment finally awarded, for which all avenues of appeal have been exhausted, or any final settlement in connection with any such Claims, provided all of the conditions set out above related to the defense of such Claims are satisfied. Upon Licensee's request, the parties may agree with due regard to costs incurred and risks the inclusion of additional countries in the list of the Covered Countries.

The defense and compensation in accordance with the previous paragraph requires that (a) Licensee immediately notifies OT in writing of Licensee first becoming aware of each such Claim and its reasons; (b) Licensee will grant OT sole control over the litigation and all associated actions (including choice and engagement of an attorney) with respect to such Claim as far as reasonable; (c) Licensee provides all reasonable assistance, information and authority to OT required to enforce the aforementioned actions; and (d) Licensee does not make any admission against OT's interests and does not agree to any settlement of any Claim without the prior written consent of OT.

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**9.6.4** Compensation or reimbursement of futile expenditure. In any 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.

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**11.1 Termination for Default.** Either party may terminate this EULA if the other party: (a) becomes insolvent; and (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 upon expiration of a term license: (a) all Software Licenses will immediately terminate; (b) Licensee will immediately cease all use of the Software; and (c) Licensee must either deliver to OT or destroy all copies of Software, Documentation, and OT confidential information in Licensee's possession or control. Within 15 days after termination, an authorized representative of Licensee must certify

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**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 section will be null and void. Except to the extent identified in this subsection, this EULA will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

**12.6 Governing Law.** This EULA is governed by the laws of Switzerland excluding its conflicts or choice of law rules. Place of jurisdiction is Baden (AG). The prevailing party in any litigation related to this EULA will be entitled to its reasonable attorneys' fees and court costs. The Uniform Computer Information Transactions Act, or any version, adopted by any state, does not apply to this EULA.

**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.

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**12.15 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).

**12.16 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 legal counsel at Bäderstrasse 27, CH-5400 Baden, Switzerland.

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