



Software Support Terms and Conditions

(Asia Pacific, except China and Japan)

Access and use of Support Services are provided by OpenText entity from which the Support Services is purchased (“**OT**”) in accordance with these Software Support Terms and Conditions (“**Support Agreement**”) and the then current Software Maintenance Program Handbook (“**SMPH**”) located at www.opentext.com/agreements. Licensee agrees that by purchasing Support Services, the terms of this Support Agreement govern. If there is any inconsistency between the provisions of this Support Agreement and any applicable Software Maintenance schedule, quotation or Renewal Notice (“**Schedule**”), the Schedule will prevail to the extent of the inconsistency. Capitalized terms referenced herein but not defined herein shall have the meaning ascribed in the Software Maintenance Program Handbook.

1. **Definitions.** The following terms shall have the following meaning:

“**Covered Software**” shall mean the licensed software for which maintenance services shall be provided including all documentation provided or made available;

“**Licensee**” means either an individual, a single corporation, or other single legal entity that purchases the applicable Support Services

“Indirect Losses” means an indirect or consequential loss (not being a loss which arises naturally as a result of a breach of this Agreement or other event the subject of the relevant claim). For purposes of this definition, the following will be considered indirect and consequential losses: (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 procurement amount.

“Local Law” means the laws of the state and/or country of the OT entity from which the Support Services are purchased;

“Maintenance Fees” shall mean the fees and other amounts due to OT for Support Services;

“Personal Information” refers to information or data about an individual who can be identified from that (a) information or data; or (b) data and other information to which an organisation has or is likely to have access.

“Privacy Law” any Act, regulation or other statutory instrument or proclamation under Local Law, which relates to the privacy or confidentiality of Personal Information about individuals and with which OT or the Licensee must comply;

“Support Services” means the software maintenance and support services described in the then current version of the SMPH available at www.opentext.com/agreements;

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

2. **Support Services.** Support Services will be provided by OT subject to Licensee’s compliance with its obligations under this Support Agreement and the applicable agreement under which Licensee licenses the Covered Software (**“License Agreement”**).
3. **Support Services Exclusions.** OT shall have no responsibility to provide Support Services to Licensee with respect to any problem with the Covered Software caused by: (a) any software, device, or other product not supplied by OT; (b) neglect, misuse, alteration, modification, and/or enhancement to the Covered Software by any party other than OT; (c) failure of Licensee to provide a suitable installation or operating environment for the Covered Software; (d) use of the Covered Software for a purpose other than the purpose for which it was designed; (e) use of the Software on a computer platform other than the platform authorized by OT (which may be specified in the Documentation accompanying the Covered Software); or (f) failure of Licensee to install any support software provided by OT.
4. **Determination of Support Services Term.** The initial Support Services Term shall commence on the date the Covered Software is provided by OT to Licensee. Renewal of the Support Services is automatic, unless either party provides notice ninety (90) days prior to the anniversary date. If Licensee cancels Support Services and then wishes to reinstate Support Services, Open Text may charge Licensee a reinstatement fee in addition to the Maintenance Fees.

5. **Payment of Maintenance Fees.** All amounts due are due and payable upon delivery of the applicable invoice to Licensee. Open Text shall be entitled to charge interest on all amounts overdue by more than thirty (30) days at the rate of one and one-half percent (1.5%) per month. Licensee will be obligated to pay the applicable entire annual Maintenance Fee with respect to the Covered Software licensed from OT, failing which OT may suspend some or all of the Support Services until payment has been received.
6. **Warranty.** Open Text warrants that the Support Services will be performed using reasonable skill and care consistent with generally accepted computer software industry practices. OTHER THAN THE EXPRESS SERVICES WARRANTY SET OUT ABOVE, OT DISCLAIMS ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO WARRANTIES RELATED TO TITLE, COMPATIBILITY WITH SOFTWARE OR HARDWARE, NON-EXISTENCE OF ERRORS, NON-EXISTENCE OF VIRUSES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
7. **Limitation of Liability.** To the maximum extent permitted under applicable law, in no event, shall OT be liable to Licensee, or any other party for any Indirect Losses, howsoever arising, whether related to the Covered Software or Support Services, even if OT has been advised of the possibility of such damages. The maximum permitted under applicable law, OT's total liability during any Support Services Term, whether arising in contract, negligence, tort, strict liability, or otherwise shall not exceed the total amount of maintenance fees paid by Licensee to OT during the current support services term. Nothing in this Support Agreement shall exclude or limit either party's liability for: (i) death or personal injury caused by negligence; (ii) fraud or deceit; or (iii) any other liability that cannot be excluded by Local Law.
8. **Covered Software.** All Covered Software provided to Licensee under this Support Agreement is licensed to Licensee on a non-exclusive, non-assignable, and non-transferable basis in accordance with the provisions of the License Agreement.
9. **Term and Termination.** The Support Agreement shall begin on the date of execution and shall continue until terminated in accordance with the provisions of this Support Agreement. If Licensee fails fully to remedy a material breach within thirty (30) days of notice by OT, including failure to pay an invoice, OT may terminate this Support Agreement upon the provision of written notice to Licensee. OT may immediately terminate this Support Agreement in the event that the License Agreement is terminated. Either party may terminate this Support Agreement 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. The provisions contained in Sections 5, 7, 9, 10, 11 and 12 of this Support Agreement shall survive any termination.

10. **Confidentiality.** Each party (a “**Disclosing Party**”) may disclose to the other party (a “**Receiving Party**”) information that is confidential and otherwise proprietary (“**Confidential Information**”). Subject to the exceptions listed below, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential or confirmed as confidential in writing within thirty (30) days of disclosure, as well as deliverables, Work Product and any information that, due to the circumstances under which it is disclosed, a reasonable person would infer as confidential. Confidential Information does not include 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 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. Each party agrees, for the period in which the Services are performed and for five (5) 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 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 the extent Confidential Information 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 so that it may seek an appropriate protective order or waive compliance with this section.
11. **Privacy.** OT will comply with its obligations under applicable Privacy Law regarding the collection, storage, use and disclosure of Personal Information disclosed to it while performing the Support Service. In order to provide the Support Services, Licensee acknowledges that it may be necessary for OT to disclose such Personal Information received from Licensee and/or its customers to OT’s Affiliates or third party service providers in other countries (including Canada, the United States of America, the Philippines, India and other overseas locations where OpenText is able to maintain strict control of the personal information), and Licensee hereby consents to such disclosure and warrants that (i) it has all necessary rights, licenses, authorisations and consents required for the use and disclosure of the Personal Information by OT in accordance with this Agreement; (ii) all use of the Personal Information by or on behalf of Licensee is compliant with applicable Privacy Laws and in accordance with the terms of this Support Agreement; and (iii) OT and any of OT’s personnel will not be in breach of applicable Privacy Laws as a result of using or disclosing the Personal Information in accordance with the terms of this Support Agreement. Notwithstanding the above, the disclosure of Personal Information shall not affect OT’s obligations under applicable Privacy Law, in relation to such Personal Information.

12. General Provisions.

- 12.1 **Assignment.** Licensee shall not assign, or transfer this Support Agreement or any right or obligation hereunder, including by operation of law or otherwise, without OT's prior written consent, which consent shall not be unreasonably withheld.
- 12.2 **Notices.** Any notice under this Support Agreement must be given in writing and 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 the applicable Order Form. Notices to OT should also be sent to the attention of the General Counsel.
- 12.3 **Governing Law.** This Agreement and any dispute concerning the Support Services delivered pursuant to this Agreement shall be governed by Local Law, excluding its conflicts or choice of law rules. If Customer or OpenText commence any litigation or proceeding against the other related to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney's fees and court costs.
- 12.4 **Waiver; Severability.** The waiver or failure of a party to exercise in any respect any right provided herein shall not be deemed a waiver of such right. If any provision of this Support Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, such provision shall be deemed severed from this Support Agreement but all remaining provisions shall continue in full force and effect.
- 12.5 **Headings.** The headings contained in this Support Agreement are intended for convenience or reference only and shall not control or affect the meaning or construction of any provisions of this Support Agreement.
- 12.6 **Third Party Rights.** This Support Agreement does not confer a benefit on, and is not enforceable by, any person or entity who is not a party to this Support Agreement.
- 12.7 **Entire Agreement.** This Support Agreement and the corresponding Software Maintenance Program Handbook is the complete and exclusive statement of the agreement between OT and Licensee. This Support Agreement may not be amended, except by written agreement.

About OpenText

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