

OpenText

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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

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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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9.7.1 Material defects. The warranty in section 9.1-9.3 shall not apply to any material defect caused by: (a) any change to the Software, except where such changes were made by OT in relation to the provision maintenance and support services or Licensee proves that defects 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 a suitable installation or operating environment for the Software; (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. OT does not warrant that the Software is error-free or will operate without interruption.

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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.

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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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