



Software Support Terms and Conditions

(Americas except Brazil and Mexico)

Access and use of Software Support services are provided by Open Text (“**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;

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

“**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 LOSS OF PROFITS, LOSS OF REVENUES, LOST INCOME, OR REPLACEMENT COSTS, NOR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, HOWSOEVER ARISING, WHETHER RELATED TO THE COVERED SOFTWARE OR SUPPORT SERVICES, EVEN IF OT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. 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.
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 and 10 of this Support Agreement shall survive any termination.
10. **General Provisions.**
 - 10.1 **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.
 - 10.2 **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.
 - 10.3 **Governing Law.** This Support Agreement and each party's performance hereunder shall be governed by the laws of the Province of Ontario, Canada, excluding its conflicts and choice of law rules. If Licensee or OT 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.
 - 10.4 **Limitation of Actions.** No action, regardless of form, arising out of this Support Agreement may be brought more than one (1) year after the cause of action has arisen.

- 10.5 **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.
- 10.6 **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.
- 10.7 **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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