

Note: for French, Portuguese and Spanish speakers, please read the 'Legal review and interpretation' section of the General Terms, below.

I. General Terms

[How this Agreement works](#)

1 Elements of this Agreement

The Agreement consists of General Terms, Tracks, Partner Types, Contracting Models, Product Specific Terms and Permission Statements, and where applicable, Transaction Documents and Deviations Schedules.

2 Definitions used in this Agreement

The following capitalised terms shall have the following meanings:

“Affiliate”	means any entity directly or indirectly controlled by, controlling, or under common control with, a party to this Agreement. If an entity ceases to meet these criteria, it shall cease to be an Affiliate.
“Affiliate Adherence Agreement”	means as defined below in these General Terms.
“Agreement”	means this OpenText Consolidated Partner Agreement.
“Applicable Taxes”	means the sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate governments arising in connection with the activities covered by this Agreement, except taxes imposed on OpenText's income.
“Change of Control”	means (a) the consummation of a reorganization, merger or consolidation, or sale or other disposition of substantially all of the assets of the ultimate parent company of a party to this Agreement, or (b) the acquisition by any individual, entity or group of beneficial ownership of more than fifty percent (50%) of either (i) the then-outstanding shares of common stock of the ultimate parent company of a party to this Agreement, or (ii) the combined voting power of the then-outstanding voting securities of the ultimate parent company of a party to this Agreement entitled to vote generally in the election of directors.
“Claim”	means any claim, suit, action, proceeding, investigation, allegation, or similar.
“Cloud Services”	means the services provided by OpenText under this Agreement and delivered using cloud computing technology.
“Code of Conduct”	means the OpenText code of business conduct and ethics, available Online.
“Contracting Model”	means for Partners who sell OpenText Products under the applicable Partner Type, sets of terms and conditions detailing additional rights and obligations when selling OpenText Products.
“Covered Country”	means each contracting party to The Patent Cooperation Treaty (currently published at http://www.wipo.int/pct/en/) and “Covered Countries” means more than one of them.
“Contract Year”	means a 12-month period of a Transaction commencing on the start date of the Transaction or an anniversary of such date.
“Deliverable”	means any Professional Services deliverable delivered by OpenText as part of Professional Services, including software, documentation, training or educational materials, inventions, innovations and developments, but excluding any of Partner's or End User's previously existing intellectual property contained in the Deliverable and excluding Software.
“Description”	means (a) for Cloud Services and Professional Services, the description of those services in the applicable Transaction Document or in the Supplemental Terms; (b) for Software, the applicable Metric and accompanying Documentation, (c) for Support Services, the then-current version of the applicable Support Handbook.
“Deviations Schedule”	means a set of amendments to the terms of this Agreement either entered into by Partner and OpenText or, where permitted under this Agreement, issued to Partner by OpenText unilaterally.
“Distributor”	means an OpenText partner who has entered into the Reseller Partner Type with OpenText and who has been permitted to sell OpenText Products to Value-Added Resellers.

“Documentation”	means in respect of the applicable OpenText Products, the written user documentation provided by OpenText or which OpenText makes available to its customers generally.
“DPA”	means the global “OpenText Data Processing Addendum” found Online, as amended or updated from time to time and as supplemented with data processing particulars instructed in writing by End User or Partner.
“End User”	means any third party that obtains OpenText Products as authorized in this Agreement, for use in its internal business operations, and not for resale or redistribution (and which doesn't include Partner or its Affiliates obtaining OpenText Products for internal enablement and demonstration purposes); references to “Customer” or “Licensee” in documents referred to in this Agreement shall also mean End User, unless the context denotes otherwise.
“End User Agreement”	means a set of terms for the use and delivery of the applicable OpenText Product which shall apply between OpenText and the End User, which terms are set out on the relevant Transaction Document or, if not, are available Online.
“Facilitating Payments”	means nominal payments of a small value to government employees to expedite or secure a service or routine.
“General Terms”	means the Module of this Agreement entitled “General Terms”, which terms apply to all OpenText partner activities.
“Improper Payments”	means include but are not limited to (a) bribes or kickbacks, the giving or receiving of anything of value, whether tangible or intangible (e.g., gifts of any kind, entertainment, commissions, travel expenses, charitable donations, political contributions, hiring an individual or relative) made or agreed to in order to secure an improper benefit or the improper performance of an activity, in whatever form, whether personal or business and (b) Facilitating Payments.
“Initial Term”	means as defined in the General Terms.
“Metric”	means the description of the conditions, limitations and restrictions and additional specific terms, metrics and options associated with the applicable license or subscription for an OpenText Product which govern its use, as set out in the applicable Metric Schedule.
“Metric Schedule”	means for each individual license or subscription to OpenText Products a description or document or web page describing the Metrics for the relevant OpenText Product in effect of the date of purchase of the applicable OpenText Product; a Metric Schedule is available Online.
“Module”	means any part of this Agreement described as a Module, including the General Terms, the Tracks, the Partner Types, the Contracting Models, the Product Specific Terms, a Permission Statement, Deviations Schedule, a Transaction Document, and any portion of a Module referred to in an Attachment.
“Online”	means (a) www.opentext.com/agreements , in the partners section; or (b) an online partner portal made available by OpenText; or (c) such other webpage notified by OpenText (in respect of data protection or privacy matters, such webpage is currently: https://www.opentext.com/about/opentext-privacy-center); or (iv) on request to OpenText.
“OpenText”	as the context requires, means either (a) the group of companies of which Open Text Corporation is the ultimate holding company (the “OpenText Group”), (b) any entity within the OpenText Group or (c) the OpenText Group entity which has entered into this Agreement with Partner (and “our” or “us” or “we” also refers to the OpenText Group entity which has entered into this Agreement with Partner).
“OpenText Indemnified Parties”	means any of OpenText, its Affiliates, licensors, contractors and sub-contractors, and any of their employees, officers or directors.
“OpenText Materials”	means any and all information contained on an OpenText partner portal or OpenText website as well as any OpenText marketing materials, trademarks, logos, proprietary documents, training documentation, guides, or other tangible or intangible OpenText property made available by OpenText.
“OpenText Partner Network”	means OpenText's ecosystem of partners (including reseller partners, service provider partners, technology partners and other partner types).
“OpenText Product”	means any Cloud Services, Deliverables, Professional Services, Software, Support Services, together with any related Documentation; and “OpenText Products” means more than one of them; references to “purchase of” OpenText Products or similar, throughout this Agreement, means the purchase of licenses or subscriptions to OpenText Products.

“Partner”	means the entity or organisation acting in a partner-capacity with OpenText and which has agreed to the terms of this Agreement and which has been appointed an OpenText partner under a Permission Statement.
“Partner Indemnified Parties”	means any of Partner or its Affiliates, licensors, contractors and sub-contractors, and any of their employees, officers or directors.
“Partner Type”	means any of the Modules under the heading “Partner Types” which sets out permitted activities of an OpenText partner.
“Permission Statement”	means a notice called “Permission Statement” (whether in electronic or paper or other form) and signed by an OpenText employee which is a senior director or Vice President and which (a) appoints Partner as an OpenText partner, (b) sets out whether certain terms of this Agreement (including which Tracks, Partner Types, and Contracting Models) apply to Partner and (c) sets out the scope of Partner’s permissions and details any particular privileges, rights, limitations, entitlements and obligations, of Partner as an OpenText partner.
“Product Specific Terms”	means any of the Modules under the heading “Product Specific Terms” which apply to different OpenText Products (whether general types of OpenText Products or individual OpenText Products).
“Professional Services”	means services related to Cloud Services and Software such as configuration, consulting, implementation, installation, learning and training services, and any other professional services.
“Program”	means a go-to-market or developmental or other program encompassing specific types of recognized partnership activities in which OpenText partners can participate when admitted by OpenText.
“Program Guide”	means any guide, catalog or other document developed for a Program that includes information regarding any additional terms, authorizations, benefits, conditions of participation or agreements that OpenText has designated are available through or required for participation in the Program or the purchase or use of an OpenText Product; a Program Guide may be Online or in electronic form.
“Sell-To Party”	means where Partner’s Partner Type involves the selling of OpenText Products, the party to whom Partner is permitted to sell to, either an End User or a Value-Added Reseller or other resellers, as set out in the applicable Permission Statement.
“Software”	means the executable version of the software made available pursuant to this Agreement and which OpenText licenses to end users and customers generally; “Software” includes Support Software; in each case it includes all copies made and refers to all of the software product or portions of it.
“Supplemental Terms”	means the description and/or additional product/service-specific terms for an OpenText Product which is provided or made available by OpenText and which will apply to a given license or subscription of OpenText Products and, where relevant, that corresponds to the applicable version of the OpenText Product made available by OpenText; such Supplemental Terms may be (a) incorporated by reference in a Transaction Document, and/or (b) notified by OpenText to Partner, including in a Permission Statement or the Program Guide or by email, and/or (c) made available Online.
“Support Handbook”	means the then-current version of the document describing OpenText support and maintenance services for a particular OpenText Product and which may be (a) incorporated by reference in a Transaction Document, and/or (b) notified by OpenText to Partner, including in a Permission Statement or the Program Guide or by email, and/or (c) made available Online.
“Support Services”	means the maintenance and support services provided by OpenText or its licensors or subcontractors and as described in the relevant Support Handbook.
“Support Software”	means all maintenance and support software, updates, upgrades, patches, fixes, modifications, ported versions, or new versions of the Software provided as part of Support Services, together with all related Documentation provided pursuant to such program.
“Term”	means the Initial Term and, if applicable, any Renewal Term.
“Track”	means any of the tracks set out in the “Partner Tracks” part of this Agreement; a Track sets out different terms and conditions applicable to Partner and OpenText depending on how Partner participates in the OpenText Partner Network.

“Transaction Document” or “TD”	means an order document for OpenText Products which: (a) is either, as the context requires, agreed upon by the parties to this Agreement or is entered into by OpenText and an authorised OpenText partner; (b) may be titled “Agreement”, “Order”, “Order Form”, “Order Schedule”, “Services Order Form”, “Statement of Work”, “Legal Quote”, “Renewal Quote”, “Renewal Notice” or comparable title, whether in physical or electronic form or online; (c) may include other documents which are incorporated by reference; and (d) incorporates this Agreement, including incorporation by reference to a URL on the Internet; and a “Transaction” is the order made for OpenText Products made under a Transaction Document.
“Use and Delivery Terms”	means terms and conditions for the use and delivery of the applicable OpenText Product, available Online.
“Value-Added Reseller”	means an OpenText authorized channel partner who typically buys OpenText Products from Distributors for the purpose of resale to End Users.
“Warranty Period”	means (a) for Cloud Services and Support Services, the length of the services subscription purchased from OpenText; (b) for Professional Services, 30 days from the date of first delivery; (c) for Software, 60 days from the date of first delivery.

3 Entering into this Agreement

A Permission Statement entered into by Partner and OpenText appoints Partner as an OpenText partner, provided that Partner has accepted the terms of this Agreement (either in a Permission Statement or online as part of Partner’s becoming an OpenText partner).

The parties agree that for a Permission Statement to be binding on OpenText, it must be signed by a Senior Director or a Vice President. Partner shall be considered an OpenText partner from the date the Permission Statement is issued.

4 Parties to this Agreement

The Agreement is entered into by the OpenText entity and Partner entity stated on the Permission Statement.

OpenText’s and Partner’s Affiliates may agree to do business in connection with the activities covered by this Agreement, provided that Partner’s Affiliate agrees to adhere to the terms of this Agreement in a manner acceptable to OpenText (an **“Affiliate Adherence Agreement”**) and passes OpenText’s pre-contract due diligence checks.

5 Applicability of the Modules

The Permission Statement sets out which Tracks, Partner Types and Contracting Models apply to Partner. If OpenText permits Partner to operate under a certain Track, Partner Type or Contracting Model or permits Partner to sell certain OpenText Products in a certain way, then, regardless of whether indicated in a Permission Statement, the relevant Track, Partner Type, Contracting Model and/or Product Specific Terms, shall apply to Partner.

The relevant Product Specific Terms shall apply to a Partner’s Permission Statement where the applicable OpenText Products are indicated in the Permission Statement or where Partner’s activities as an OpenText Partner involve any of those OpenText Products or where OpenText delivers any of those OpenText Products in respect of Partner’s activities as an OpenText partner.

6 Order of prevalence of the Modules

The Modules shall prevail amongst one another in the following order (with the highest order of prevalence first and the least prevalent, last): Deviations Schedule, Transaction Document, Permission Statement, Product Specific Terms, Contracting Models, Partner Types, Tracks, General Terms.

7 No other terms apply

The Agreement sets forth the entire agreement between the parties with respect to OpenText partner activities and supersedes 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 this Agreement, or which conflict with this Agreement, are null and void.

Notwithstanding anything in this Agreement to the contrary, if, prior to the effective date of this Agreement, Partner had been a partner or reseller of OpenText or of any predecessor or Affiliate of OpenText, then any provisions of any such agreement that either expressly or by implication survive the termination or expiration of such agreement, shall remain in full force and effect.

8 Term of this Agreement

8.1 General

The Agreement will begin and apply to a Permission Statement on the date the Permission Statement is accepted by both Partner and OpenText (whether through signature of a document or online acceptance or other method of acceptance indicated by OpenText).

The Agreement will continue for the period identified in the relevant Permission Statement or, if not specified, until the earlier of (a) when terminated or (b) when 24 months elapses during which time either (i) Partner has not processed any new Transactions

with OpenText or an OpenText authorized partner or (ii) OpenText has not received any revenue emanating Partner's activities as an OpenText partner.

8.2 Term of rights granted under a Permission Statement

Where a Permission Statement states an expiry date, Partner's and OpenText's rights and obligations under that Permission Statement, will end following that expiry date.

8.3 Survival of terms following termination

The following provisions, across all Modules, and any other provisions of this Agreement which by their nature extend termination or expiration of this Agreement, shall survive: all provisions across all Modules under the heading 'protections for the parties'.

9 Term of a Transaction

Any licenses or subscriptions to OpenText Products shall last for the term stated in the Transaction Document or the Description; where no term is stated for: (a) any Software licenses, then the term shall be perpetual, or (b) any Support Services subscriptions, then the term shall be for 12 months; and where no start date is stated in the Transaction Document or the Description, the term shall begin on the date a Transaction Document is accepted by all parties. The term described in the previous sentence shall be referred to as the "**Initial Term**" of a Transaction.

Any extension of a Transaction beyond the Initial Term shall be subject to OpenText's express written agreement and to any renewal terms and conditions in this Agreement, the relevant Supplemental Terms, Support Handbook, Transaction Document or Use and Delivery Terms (as applicable).

10 Which law applies

10.1 Which governing law and jurisdiction for disputes apply

The Agreement is governed by the laws of, and disputes arising out of or relating to this Agreement are subject to the exclusive domain of, the applicable jurisdiction of the OpenText entity which is party to this Agreement, as specified in the 'Applicable Governing Law' Attachment to this Agreement. This excludes: (a) such jurisdiction's conflicts or choice of law rules; and (b) the United Nations Convention on Contracts for the International Sale of Goods. In addition, the parties agree that the Uniform Computer Information Transaction Act or any version thereof, adopted by any jurisdiction, in any form ("UCITA"), shall not apply to this Agreement. To the extent that UCITA is applicable, the parties hereby opt out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein. Each party waives any right it may have to object to such venue, including objections based on personal jurisdiction or forum non conveniens (inconvenient forum).

In the event of a dispute, the prevailing party shall have the right to collect from the other party its reasonable costs and attorneys' fees incurred in enforcing this Agreement.

10.2 Length of time to bring a claim

No claim or action, regardless of form, arising from or relating to this Agreement or any partner activities, may be brought by either party more than two (2) years after the cause of action has accrued, except that an action for non-payment may be brought at any time.

10.3 Governing-Law Specific Terms

The 'Governing Law-Specific Terms' Attachment to this Agreement specifies terms that modify and/or add to the rest of this Agreement with respect to certain of the governing laws and exclusive jurisdiction listed in in the 'Applicable Governing Law' Attachment.

11 Modification to documents comprising the Agreement

The version of the Agreement which Partner accepts (either online or in a Permission Statement) shall apply to Partner and its activities as an OpenText Partner.

OpenText may amend, without needing Partner's consent: (a) any terms or documents set out Online or (b) any documents referred to in this Agreement, including the Use and Delivery Terms, the DPA, the Code of Conduct, the Supplemental Terms or the branding guidelines. Such updated versions shall take effect immediately upon their amendment and shall apply to the next transaction Partner enters into as an OpenText partner following the amendment. Partner agrees and acknowledges that it is incumbent on it to check to ensure it has the latest versions of such documents.

12 Giving up Agreement rights; changing the Agreement; transferring responsibilities

12.1 Waiver, Amendment

Other than where unilateral waiver or amendment is expressly provided for in this Agreement, any waiver or amendment of this Agreement must be in writing and signed by both parties. An amendment to the Agreement or any Module will be co-terminous with the then-current Term of this Agreement or that Module.

12.2 Assignment

Partner may not assign, transfer, or sublicense any portion of its interests, rights, or obligations under this Agreement by written agreement, merger, consolidation, change of control, operation of law, or otherwise, without the prior written consent of OpenText; OpenText shall not unreasonably withhold consent to an assignment to Partner's parent company or Affiliate.

OpenText may assign this Agreement (a) to its Affiliates without consent of Partner or (b) to any successor entity in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets or business to which this Agreement relates.

An assignment in contravention of this section is null and void. Except to the extent identified in this section, this Agreement will be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties.

13 Invalid parts of the Agreement

If any provision of this Agreement is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the provision will be severed from this Agreement and all remaining provisions will continue in full force.

14 Legal review and interpretation of the Agreement

Both parties have had an opportunity for legal review and negotiation of this Agreement. The Agreement will not be construed in favor of or against either party by reason of authorship. The headings and titles of parts or of clauses/sub-clauses in this Agreement, are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement. Any reference to this Agreement or any Module or other part of it, is to the Agreement/that part of it as amended.

The parties confirm and agree that this Agreement and all related documentation is and will be in the English language. Les parties aux présentés confirment leur volonté et conviennent que cette convention de même que tous les documents y compris tout avis qui s'y rattache, soient rédigés en langue anglaise. As partes confirmam e concordam que este Contrato e toda a documentação relacionada estão e estarão no idioma inglês. Las partes confirman y acuerdan que este Contrato y toda la documentación relacionada está y estará en idioma inglés.

15 How to communicate about the Agreement

All notices must be in writing, and considered given as of twenty-four (24) hours after sending by electronic means, overnight courier, hand delivery, or as of five (5) days after certified mailing. Delivery and receipt of notices are calculated based upon business days, excluding Saturday, Sunday, and public holidays.

Ordering and payment

16 Party from whom Partner purchases OpenText Products

Partner shall be entitled to purchase OpenText Products from either OpenText directly, and/or from an OpenText partner authorised to sell OpenText Products to OpenText partners in Partner's territory, as set out in a Permission Statement.

If Partner purchases from an OpenText partner, then the ordering and payment provisions of this Agreement shall not apply to it and instead shall be between Partner and such OpenText partner.

17 Ordering process

17.1 Identification of products

For purchases of OpenText Products (whether licenses, subscriptions or other bundle), the OpenText Product must be identified on a Transaction Document acceptable to OpenText or on a Permission Statement.

17.2 Order price

Where OpenText and Partner have not entered into a pricing agreement, Partner may commence the purchase process by requesting a quotation from OpenText. Where OpenText and Partner have entered into a pricing agreement, Partner may purchase OpenText Products under Transaction Documents at the prices set out in such agreement.

17.3 Use of OpenText systems

Partner agrees that as part of any purchases of OpenText Products, it may be required to follow various OpenText processes from time to time, such as such as deal registration or registering purchases on a portal or using particular payment or procurement platforms.

18 Binding nature of a Transaction

A Transaction constitutes Partner's binding obligation to the terms and conditions set forth therein (including payment of the fees). Partner cannot cancel, revoke or transfer the terms and conditions of or its obligation to pay the fees relating to the OpenText Product specified in a Transaction Document that has been accepted by OpenText.

19 Applicable Metric for OpenText Products

The applicable Metric for the OpenText Product which Partner has purchased (for example, number of users, or amount of storage or number of days of services), will be identified on the relevant Transaction Document. If there is no Metric identified, then the Metric for which OpenText has been paid fees for, will apply.

20 Fees due from Partner

Partner shall pay the fees set out in a Transaction Document or Permission Statement. Fees are non-refundable.

21 Annual price adjustment

Unless otherwise specified in the applicable Transaction Document, the fees and charges are subject to a percentage increase to be determined by OpenText which will be applied annually during the Term of a Transaction, at the beginning of each Contract Year; the current percentage is ten.

22 Payment terms

Partner shall pay all amounts due to OpenText under this Agreement within 30 days of the invoice date, without deduction, set-off or counterclaim. Any overdue amounts will bear interest at the rate of 1.5% per month (18% per annum) or the maximum rate allowed by the Applicable Governing Law, if less, until fully paid.

23 Disputed fees

If Partner has a bona fide dispute with any charge, it will make timely payment of all other charges not in dispute pending resolution of the disputed charge, which the parties agree to undertake promptly.

24 Payment of taxes

Unless explicitly stated otherwise, the payment amounts related to this Agreement do not include any Applicable Taxes. Payment of Applicable Taxes shall be Partner's sole responsibility, and Partner is responsible for paying the full fees due for OpenText Products under this Agreement regardless of any Applicable Taxes Partner is required to withhold or deduct. If OpenText is obligated to pay Applicable Taxes on behalf of Partner, Partner will reimburse OpenText in full promptly following receipt of OpenText's invoice. Partner is responsible for paying the gross fees due to OpenText regardless of any Taxes Partner or any other person is required to withhold or deduct.

Partner is responsible for providing OpenText with all tax registration numbers, including copies of applicable registration certificates. Partner is responsible for self-assessing any Applicable Taxes in accordance with applicable laws. Partner is responsible for applying withholding tax, withholding VAT, VAT withholding and/or similar taxes on payment to OpenText. Partner must apply the lowest possible withholding rate, i.e., taking into account available tax treaties, on receipt of a valid residency certificate from OpenText, as may be required to support a lower tax rate. Partner shall provide OpenText with copies of certificates proving that tax amounts withheld were paid to the applicable tax authorities in accordance with the applicable laws, in a timely manner. OpenText reserves the right to increase agreed prices to compensate for amounts that Partner will withhold for such reasons.

25 Provision of information to fulfil orders

Upon reasonable request from OpenText, Partner shall provide OpenText with order information required for OpenText to fulfil orders or comply with its legal obligations.

26 Pre-printed terms ineffective

All preprinted terms contained in any document produced by Partner to order OpenText Products from OpenText are fully rejected and shall have no legal effect.

What OpenText shall deliver**27 General****27.1 Which OpenText Products and Documentation**

OpenText shall deliver the OpenText Products set out on a Transaction Document or on an agreed written document entered into between Partner and OpenText or, in the case of OpenText Products for internal enablement and demonstration purposes in Partner's capacity as an OpenText partner, which OpenText elects to make available to Partner.

In respect of Documentation, OpenText shall deliver the Documentation which OpenText makes available to partners or End Users (as applicable) generally for the OpenText Product purchased.

27.2 Delivery to whom

OpenText shall deliver the OpenText Products to Partner or to the Sell-To Party, as set out in the applicable Partner Type. OpenText shall deliver the OpenText Products to the specific party named on a Transaction Document.

27.3 Delivery for how long

OpenText shall deliver the OpenText Products and Partner shall have rights with OpenText Products for (a) the Term of a Transaction or (b) where there is no Transaction, for such other term as agreed by the parties in writing.

27.4 Subject to payment

The provision by OpenText of any OpenText Product is always subject to OpenText having received the applicable fees for such OpenText Product.

28 Standard of delivery of OpenText Products**28.1** In accordance with the Use and Delivery Terms.

OpenText shall deliver OpenText Products in accordance with the applicable Use and Delivery Terms and Supplemental Terms.

28.2 General warranties

OpenText warrants that the applicable OpenText Product shall be delivered with reasonable skill and care and function for the Warranty Period in all material respects in accordance with the applicable Description.

28.3 Warranties where delivery is free of charge

Where OpenText makes any OpenText Products available to Partner free of charge, then OpenText warrants that the OpenText Products are delivered “as is”, with no warranty or condition of any kind, whether implied or express.

28.4 What OpenText does not warrant

OpenText does not warrant that the OpenText Products are error-free or will operate without interruption. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OPENTEXT AND OPENTEXT'S LICENSORS MAKE NO REPRESENTATIONS AND DISCLAIM ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES AND CONDITIONS, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COMPATIBILITY WITH SOFTWARE OR HARDWARE, NON-EXISTENCE OF ERRORS, NON-EXISTENCE OF VIRUSES OR THE ADEQUACY OF THE OPENTEXT PRODUCT TO PRODUCE A PARTICULAR RESULT.

If a jurisdiction applicable to this Agreement restricts the exclusion of certain implied warranties or conditions or limitations on how long an implied warranty may last, then each warranty which cannot be excluded is limited in time to the Warranty Period.

28.5 Exclusion of warranties

The warranties do not apply to any breach caused by: (a) any change made to the OpenText Products, except where the changes were made by OpenText (for example, through Support Services); (b) a failure to provide a suitable installation or operating environment for the OpenText Products; (c) use of the OpenText Products on or caused by, software, firmware, computer systems, data, technology or a hardware platform not approved by OpenText in writing; (d) any telecommunications medium used by the user; (e) failure to comply with the Documentation or Description; or (f) failure to report a warranty claim within the Warranty Period.

28.6 Partner's remedies where OpenText breaches a warranty

OpenText's entire liability, and Partner's sole remedy (a) for each breach by OpenText of the general warranties set out above for Cloud Services, Professional Services and Software, is for OpenText to correct or work around the portion of the OpenText Product giving rise to such breach within a commercially reasonable time, failing which, at OpenText's discretion, in the case of the initially-delivered OpenText Product, OpenText will refund all fees attributable to the portion of the OpenText Product giving rise to the breach; (b) for each breach by OpenText of the general warranties set out above for Support Services, is for OpenText to reperform the applicable Support Services.

Any OpenText liability under this section is conditioned on Partner notifying OpenText, in detail, of a breach of warranty, within the Warranty Period.

[Partner's rights with OpenText intellectual property](#)**29 General****29.1** As set out in this Agreement

The only rights granted to Partner are those expressly set out in this Agreement. OpenText reserves all rights not expressly granted in this Agreement. All rights, licenses and subscriptions granted, are subject to the terms and conditions set out in this Agreement. Partner shall only have rights to the OpenText Products either set out in a Permission Statement or a Deviations Schedule or purchased by Partner under a Transaction Document or made available to Partner under a Program or for internal enablement and demonstration purposes.

29.2 Limited by the Permission Statement

Partner's rights are limited to the parameters set out in the Permission Statement and are subject to the terms of this Agreement.

29.3 Non-exclusive, non-assignable

All of the rights granted to Partner under this Agreement are non-exclusive and non-transferable or non assignable.

29.4 No third party rights

The Agreement does not confer a benefit on, and is not enforceable by, any person or entity who is not a party to this Agreement.

29.5 No rights to bind the other party

The parties shall remain independent contractors at all times. This Agreement shall not create any employment, agency, franchise, joint venture or other similar legal relationship between OpenText and Partner. Neither party will have any authority to act on behalf of the other party, bind the other party, act as agent of the other party, or create any obligation or liability on the part of the other party, and neither party will represent to any third party that it has such authority.

30 Use of OpenText marks

OpenText grants Partner a license to use OpenText's logos or marks provided to Partner in connection with its partner activities, provided that such use must be in accordance with OpenText's then-effective branding guidelines available Online. Partner agrees to use OpenText's marks and logos in good taste, in a manner that preserves their value as OpenText marks, and in accordance with any standards provided by OpenText for display. Partner will not register or use any trade, company, business or internet domain name which contains OpenText's marks in whole or in part or any other name which is confusingly similar thereto.

31 Represent self as an OpenText partner

Partner shall have the right to represent itself as an OpenText partner for the Track, Partner Type, Permission Statement and any other privileges, applicable to Partner.

32 Copy OpenText Products and OpenText Materials

Partner shall have the right to make as many copies of OpenText Products and OpenText Materials only as expressly permitted or only as is strictly necessary to carry out and support Partner's permitted activities under this Agreement.

Partner's obligations with OpenText intellectual property

33 Not carry out prohibited acts

Partner shall not modify, transmit, post, upload, publish, translate, adapt, or create derivative works based on OpenText Products or OpenText Materials except as expressly permitted by OpenText in writing. Partner shall not remove any proprietary rights or other notices from OpenText Products or OpenText Materials. Partner shall not (and shall not permit any employee or other third party to) copy, use, analyze, reverse engineer, decompile, disassemble, translate, convert, or apply any procedure or process to the OpenText Products in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the OpenText Products or any trade secret information or process contained in the OpenText Products. Partner will not remove, modify, obscure, resize, or relocate any ownership, attribution, or branding notices from the OpenText Products or OpenText Materials.

34 No unauthorized warranties or representations

Partner shall not make or provide any unauthorized representations, warranties, conditions or guarantees regarding OpenText Products. Partner shall not make any representation to any party that OpenText has endorsed, warranted or guaranteed any Partner products or services without obtaining OpenText's prior written consent. OpenText shall have no responsibility to Partner, or to any other party or parties, for any breach by Partner of this section.

35 Compliance with export controls and economic sanctions

No portion of the OpenText Products shall be exported or re-exported into (or to a national or resident of): (a) any country subject to United Nations ("UN"), Canada, the European Union ("EU") or the United States ("US") embargo; or (b) to anyone on the US Treasury Department's list of Specially Designated Nationals, the US Commerce Department's Entity List, or the US Commerce Department's Denied Parties list, EU Sanctioned Party list, or any other relevant national or international lists that would prohibit the export, re-export, import or use of OpenText Products. Partner represents and warrants to OpenText that: (a) Partner is not located in, under the control of, or a national or resident of any country described in this section, nor a party named on any list described in this section; and (b) Partner shall not export, transfer, disclose or make available the OpenText Products to a national or resident of any country described in this section, nor a party named on any list described in this section. Additional export restrictions may apply to certain portions of the OpenText Products. Partner shall comply with all US, Canadian, EU, UN and other relevant export laws, regulations, and directives applicable to OpenText Products within Partner's possession or control. Partner accepts sole responsibility for its exports, re-exports, imports and use of OpenText Products, and undertakes to obtain, retain and abide by all information and updates on all relevant laws, regulations and requirements governing the export, re-export, import or use of OpenText Products. Partner shall also comply with all laws and regulations in Partner's jurisdiction and in any other jurisdiction related to the import, export, transfer, shipping, and use of OpenText Products within Partner's possession or control. Partner agrees to maintain an effective program to comply with this section during the term of this Agreement. Partner agrees to certify or recertify compliance with this section within 30 days of the date OpenText requests such action.

36 Conduct business appropriately

Partner shall conduct business in a manner which reflects favorably at all times on OpenText's products, goodwill and reputation, and not engage in any deceptive, misleading or unethical practices which are or might constitute a breach of the law or be detrimental to OpenText or its products.

Protections for the parties

37 Retain ownership of intellectual property

Each party, and its Affiliates and licensors shall retain all ownership rights to its intellectual property and any enhancements to such intellectual property. For clarity, OpenText's intellectual property includes all OpenText Products, OpenText Materials and Program Guides, which are a trade secret and confidential information. None of the OpenText Products, OpenText Materials or intellectual property, are being sold, in whole or in part.

38 Confirmation of ability to grant rights

Each party represents and warrants for the benefit of the other that: (a) it possesses full power and authority to enter into this Agreement, to fulfil its obligations under this Agreement, and to grant the rights, free of any liens or encumbrances, stated in this Agreement; and (b) the performance of this Agreement and of its obligations under this Agreement shall not breach any separate agreement by which that party is bound.

39 Keep information confidential

Each party shall ensure that information exchanged under this Agreement relating to Partner's activities as an OpenText partner shall be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement and may only be shared with employees, agents, or contractors, and those of its Affiliates, with a need to know such information.

Confidential information will be protected using a commercially reasonable degree of care to prevent unauthorized use or disclosure during the period the information remains confidential or a trade secret, and no less protective than the degree of care used by such party to protect its own confidential information of like importance. Each party agrees that all employees and consultants, and those of its Affiliates, to whom confidential information is disclosed, will have signed a confidentiality agreement in the form customarily used by such party prior to receiving such disclosure, and which is at least as protective as the terms of this section.

These obligations do not cover information: (a) that was known or becomes known to the receiving party without obligation of confidentiality; (b) that is independently developed by the receiving party, without use of or reference to the confidential information; (c) to the extent required to be disclosed by applicable law or a relevant governmental agency or pursuant to valid court or arbitration process to be disclosed in the context of any administrative or judicial proceeding and then only after notification to the other party and to the extent permitted by applicable law; or (d) is authorized by the disclosing party to disclose. The parties may publicize the existence but not the contents of this Agreement without prior written consent of the other.

Partner acknowledges that OpenText Products, OpenText Materials, and Program Guides constitute OpenText confidential or proprietary information and may be used only as expressly permitted by the terms of this Agreement, as is the fact that the disclosing party intends to develop or market any particular product; the designs, schematics, specifications and all other technical information of or concerning the OpenText Product or Partner product; any non-public information concerning the business or finances of the disclosing party; and any other information the disclosure of which might harm or destroy a competitive advantage of the disclosing party. Any authorized disclosure of OpenText Products must include proper copyright or proprietary notices.

40 Use of Partner marks; ability to make press releases

OpenText shall be entitled to use Partner's marks or logos for the purpose of showcasing that Partner is an OpenText partner (including but not limited to on OpenText's website or an online portal or as part of a sale of OpenText Products).

Otherwise, neither party may issue any press release publicly disclosing the name of the other party to this Agreement, nor the nature of this Agreement, nor using their marks without the prior written consent of the other party.

41 OpenText's data protection obligations to Partner

Partner acknowledges that OpenText may process personal data from Partner in connection with Partner's activities as a partner. OpenText's privacy policy is available Online.

42 Compliance with laws generally

Each party shall comply with all applicable laws and regulations in connection with its exercise of rights and performance of obligations under this Agreement.

43 Compliance with anti-corruption laws

43.1 General

Neither party shall engage in any deceptive or unethical practices that may be detrimental to the other. Each party shall comply with the Foreign Corrupt Practices Act of the U.S., the Bribery Act of the U.K., and any other applicable anti-corruption, anti-bribery and anti-fraud laws or regulations (collectively, the "Anti-Corruption Laws"). Partner shall not violate or knowingly let anyone violate the Anti-Corruption Laws with respect to this Agreement or the sale, licensing and use of the OpenText Products.

43.2 Partner warranties

Partner warrants that during the term of the Agreement none of Partner's principals, staff, officers or key employees are government officials, candidates of political parties, or other persons who might assert illegal or inappropriate influence on OpenText's behalf.

Partner further warrants that it (and Partner's principals, staff, officers or employees) shall:

- a) never, directly or indirectly, make or offer, or in any way agree to requests for, Improper Payments;
- b) never, directly or indirectly, solicit or receive or agree to accept Improper Payments;
- c) never use OpenText funds, assets or Employees for any unlawful purpose;
- d) shall review with OpenText any requests by customers for (i) excessive discounts or large commissions that are not in line with OpenText's guidelines, policies and price lists, (ii) inappropriate or unreasonable or illegal gifts, hospitality, expenses, or (iii) requests for payment of cash or payments to third party bank accounts;
- e) immediately notify OpenText in writing if a government official asks for or requests an Improper Payment in relation to this Agreement or any OpenText Products.
- f) report to OpenText any violations or potential violations of, or any concerns regarding compliance with the 'Compliance with anti-corruption laws' and 'Partner's obligations to keep records' sections of this Agreement, and with the OpenText Code of Conduct or any Anti-Corruption Laws.

43.3 Maintain a program of compliance

Partner agrees to maintain an effective program to comply with the Anti-Corruption Laws during the term of this Agreement. Partner agrees to certify or recertify compliance with this section within 30 days of the date OpenText requests such action. Partner agrees to comply with OpenText's Code of Conduct available Online.

Partner agrees to maintain appropriate policies and procedures to ensure compliance with applicable labor laws including, but not limited to, laws related to slavery, servitude and forced or compulsory labor, bonded labor, child or otherwise underage labor, anti-human trafficking, wages and benefits, working hours, an employee's right to leave one's employment, freedom of association, and collective bargaining.

Partners shall have in place policies that promote protection of the environment and sustainability.

43.4 Provision of information

Partner shall provide to OpenText, upon request, any information related to anti-corruption, anti-bribery and anti-fraud due diligence checks carried out on Partner or Partner's principals, staff, officers or key employees.

44 Partner's obligations to keep records

During the term of this Agreement and for 24 months after, Partner shall maintain full and accurate electronic books and records and other records sufficient for OpenText to confirm that Partner has complied with this Agreement. Upon request, Partner shall promptly submit such records to OpenText. Partner shall be entitled to redact any confidential information in those records unrelated to its activities as an OpenText partner.

45 Right of audit

OpenText shall have the right to audit Partner's books and records to verify compliance with the following:

- a) Partner's use of the OpenText Products and Partner's use of OpenText intellectual property, in compliance with this Agreement;
- b) Partner's compliance with the export laws provisions of this Agreement;
- c) Partner's compliance with its Partner Type obligations;
- d) compliance with Anti-Corruption Laws and the 'compliance with the anti-corruption laws' provisions of this Agreement;
- e) verify Partner has paid OpenText the correct fees in accordance with this Agreement.

46 Conduct of audits

OpenText shall have the right to carry out audits once per year, on 15 days' notice, other than in the case where OpenText has a reasonable suspicion that Partner is infringing OpenText's intellectual property rights, in which case OpenText shall have the right to provide at least 7 days' notice (and Partner agrees to schedule an audit as soon as possible following the 15-day or 7-day notice period). Audits will be conducted during regular business hours and will not interfere unreasonably with Partner's business. Partner will promptly and accurately complete and return (within 30 days of OpenText request) any self-audit questionnaires, along with a certification by an authorized representative of Partner confirming that Partner's responses to the questionnaire are accurate and complete. OpenText may audit Partner's computer systems (including servers, databases, and all other applicable software and hardware). Partner shall promptly and accurately respond to, database queries, location information, system reports, and other reports requested by OpenText and provide a certification by an authorized representative of Partner confirming that information provided by Partner accurately reflects Partner's usage of OpenText Products and that it has carried out its OpenText partner activities in compliance with this Agreement. Partner will allow OpenText to make copies of relevant Partner records relating to Partner's activity as an OpenText partner; Partner shall be entitled to redact any commercially sensitive information not relating to its OpenText partner activities. Partner shall cooperate reasonably with OpenText's audit team. OpenText shall comply with all applicable data protection laws.

47 Partner to remedy noncompliance

If any audit reveals that Partner has not complied with this Agreement, Partner shall promptly remedy each such noncompliance and Partner will be liable for OpenText's reasonable costs incurred to perform such audit. If any audit reveals that, or if at any time, Partner has not complied with any limitations or restrictions on its use of OpenText Products, Partner will be deemed to have acquired additional licenses or subscriptions at OpenText's then-current list price to bring Partner into compliance, and

Partner must immediately pay (a) the applicable license and support/subscription fees and taxes, for: (i) the period Partner was not in compliance; and (ii) the first year support fees on any additional Software licenses.

48 Partner general indemnities of OpenText

Partner shall defend the OpenText Indemnified Parties, and indemnify them and hold all of them harmless, from any Claims arising out or in connection with:

- a) Partner's non-compliance with Anti-Corruption Laws or the anti-corruption laws provisions of this Agreement;
- b) any Claim by a third party that OpenText's use of or activity in any way with, Partner's intellectual property, infringes the intellectual property rights of a third party; or
- c) any Claim by a third party that relates to a statement or warranty or condition about an OpenText Product made by Partner and not authorised by OpenText in writing.

Partner's obligations under this section include holding the OpenText Indemnified Parties harmless from the costs of any such Claim and indemnifying the OpenText Indemnified Parties against any damages awarded or fines imposed or settlement entered into or any reasonable costs of Claim incurred as a result of those Claims. Partner's obligations under this section are conditional on OpenText's satisfaction of its obligations under the 'conduct of Claims for indemnities' section below.

49 OpenText indemnities of Partner

OpenText shall defend the Partner Indemnified Parties from any Claim brought in a Covered Country by a third party which alleges that the Partner Indemnified Party's use of OpenText Materials or OpenText Products infringes the third party's intellectual property rights existing under the laws of the Covered Country, to the extent the Claim arises as a result of the Partner Indemnified Party's use of OpenText Materials or OpenText Products in accordance with this Agreement.

This defence will not apply to a Claim to the extent caused by:

- a) a failure to incorporate an update or upgrade or use an updated version that would have avoided the alleged infringement;
- b) the modification of the OpenText Material/OpenText Product by any party other than OpenText;
- c) the combination or use of the OpenText Materials/OpenText Product with software, hardware, firmware, data, technology or other property not licensed by OpenText or approved by OpenText in writing (and where such combination or use with, is the subject of the Claim); or
- d) unlicensed activities of the Partner Indemnified Parties. As to any such cause, OpenText assumes no liability for infringement.

OpenText's obligations under this section include holding the Partner Indemnified Parties harmless from the costs of any such Claim and indemnifying the Partner Indemnified Parties from any damages awarded or any settlement entered into or any reasonable costs of Claim incurred as a result of those Claims. OpenText's obligations under this section are conditional on Partner's satisfaction of its obligations under the 'conduct of Claims for indemnities' section below.

50 Conduct of Claims for indemnities

Each party's obligations to defend and indemnify are conditioned upon: (a) the indemnified party notifying the indemnifying party in writing promptly upon becoming aware of a Claim; (b) the indemnified party not making an admission against the indemnifying party's interests unless made pursuant to a judicial request or order; (c) the indemnified party not agreeing to any settlement of any Claim without the prior written consent of the indemnifying party; and (d) the indemnified party, at the request of the indemnifying party, providing all reasonable assistance to the indemnifying party in connection with the defense, litigation, and settlement by the indemnifying party of the Claim; and (e) the indemnifying party having sole control over the selection and retainer of legal counsel, and over the litigation or the settlement of each Claim.

51 Right to suspend provision of OpenText Products

OpenText shall be entitled to suspend provision of the OpenText Products or OpenText Materials to Partner in the following scenarios:

- a) Non-payment of fees by Partner to OpenText following a reminder, which fees have not been disputed by Partner or repeated failure to pay undisputed invoices on time in accordance with this Agreement's payment terms;
- b) Partner's non-compliance with applicable laws or the OpenText Code of Conduct in connection with its activities as an OpenText partner;
- c) Partner's infringement of OpenText's intellectual property rights in the OpenText Products or OpenText Materials.

OpenText shall use reasonable efforts to (i) provide Partner with reasonable notice prior to suspending and (ii) to minimise such suspension where reasonably possible.

52 Termination of this Agreement

52.1 Termination for convenience

Either party may terminate this Agreement or any Affiliate Adherence Agreement, or any Permission Statement, or any individual Track, Buy-from or Sell-To rights, Contracting Model or Partner Type within a Permission Statement, for convenience, by providing written notice to the other party at least 30 days prior to the date of termination.

52.2 Termination for cause

Either party may terminate this Agreement or Any Affiliate Adherence Agreement, or any Permission Statement, or any individual Track, Buy-from or Sell-To rights, Contracting Model or Partner Type within a Permission Statement, immediately upon notice to the other, in the event of any of the following:

- (a) Change of Control (except where the Change of Control has been accepted by the other party in writing);
- (b) the other party becomes insolvent or has a petition in bankruptcy being filed by or against the other party or for the appointment of a receiver or trustee of any property of the other party;
- (c) the other party making an assignment for the benefit of creditors;
- (d) the other party is dissolved, liquidated, terminated, or otherwise ceases its ongoing business operations;
- (e) any material breach by the other party of any of the terms and conditions of this Agreement which is not cured within 30 days or which is incapable of cure;
- (f) failure to pay an invoice not subject to a bona fide dispute following a reminder notice from OpenText or repeated failure to pay undisputed invoices on time in accordance with agreed payment terms; or
- (g) breach of the 'compliance with anti-corruption laws' provisions.

OpenText may terminate this Agreement or any Affiliate Adherence Agreement immediately upon Partner failure's to meet one of the requirements of OpenText's contractual/pre-contractual checks (whether anti-corruption, credit, or other) in OpenText's reasonable discretion (whether on a renewal or during the term of this Agreement).

52.3 Effect of termination

Immediately upon termination, OpenText shall stop holding Partner out as an OpenText partner and Partner shall stop representing itself as an OpenText partner and cease all activity with OpenText Products and OpenText Materials except as explicitly authorized by OpenText in writing. Partner shall promptly return or destroy any OpenText Products or OpenText Materials or OpenText confidential information in Partner's possession.

Within 15 days after termination, Partner shall ensure that an authorized representative of Partner certifies in writing that all such copies have been delivered to OpenText or destroyed.

OpenText shall retain the right to invoice Partner for any amounts incurred prior to termination, and termination shall not relieve Partner of its payment obligations as set out in this Agreement. Termination will not entitle Partner to a refund of any portion of prepaid annual Partner Program fees.

Any termination of this Agreement will also automatically result in termination of every Affiliate Adherence Agreement, Partner Type, Permission Statement and Track; however, the parties may terminate an Affiliate Adherence Agreement, Partner Type, Permission Statement or Track without terminating the entire Agreement. Termination of this Agreement shall not affect any Transactions where OpenText is delivering to End Users or which grant End User's rights to use or access rights to OpenText Products. Any Transactions entered into prior to the termination or expiration date of this Agreement, a Track, Partner Type or Permission Statement, that grant an End User use or access rights to OpenText Products shall continue in accordance with their terms to the end of their Initial Term and provided that Partner shall continue to meet its obligations with respect to such Transactions in accordance with its and this Agreement's terms.

Where an individual Permission Statement, or an individual Track, Buy-from or Sell-To rights, Contracting Model or Partner Type within a Permission Statement, is terminated, then this section shall apply to such terminated Module, with such changes as are required to be made. Termination of such Module shall not affect the term of a Transaction.

53 Termination of a Transaction

53.1 General

Except as set out in this section or in one of the other Modules in a section related to termination of a Transaction, neither party will be permitted to terminate a Transaction prior to the end of its term.

53.2 Termination by OpenText; effect of termination

OpenText shall be entitled to terminate a Transaction:

- (a) where permitted to terminate the provision of the OpenText Product under the applicable Use and Delivery Terms,
- (b) upon the occurrence of any one of the following:
 - (i) failure of Partner to pay fees or other charges relating to a Transaction when due;
 - (ii) if Partner ceases the conduct of active business;
 - (iii) if any proceedings under the applicable law bankruptcy code or other insolvency laws shall be instituted by or against Partner, or if a receiver shall be appointed for Partner or any of its assets; or
 - (iv) if Partner shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they come due.

On occurrence of any of the aforementioned events:

- I. OpenText may
 - (i) cease or suspend the provision of the OpenText Products; and/or
 - (ii) declare all accrued fees and other charges immediately due and payable;
- II. all Partner's rights in relation to OpenText Products and OpenText Materials for that Transaction shall immediately end.

Any such termination shall be without prejudice to any other rights or remedies which OpenText may have against Partner or the Sell-To Party with respect to any default. OpenText shall retain the right to invoice Partner for any amounts accrued and other fees payable, and termination shall not relieve Partner of its payment obligations as set out in this Agreement. Any remedy referred to in this section shall be cumulative and in addition to any other remedy referred to in this Agreement or available to OpenText at law or in equity.

53.3 Termination by Partner; effect of termination

Partner shall be entitled to terminate a Transaction upon the occurrence of any one of the following:

- (a) failure by OpenText to perform any material term or condition of the Use and Delivery Terms and such failure is not cured within 30 days of written notice from Partner;
- (b) if OpenText ceases the conduct of active business;
- (c) if any proceedings under the applicable law bankruptcy code or other insolvency laws shall be instituted by or against OpenText, or if a receiver shall be appointed for OpenText or any of its assets; or
- (d) if OpenText shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they come due.

Any such termination shall be without prejudice to any other rights or remedies which Partner may have against OpenText with respect to such default. Upon such termination, OpenText shall refund to Partner a prorated amount of any fees prepaid by Partner for unused Cloud Services for the period following the effective date of such termination; otherwise, no other fees or amounts shall be refunded by OpenText. OpenText shall retain the right to invoice Partner for any amounts incurred prior to termination, and termination shall not relieve Partner of its payment obligations as set out in this Agreement. Any remedy referred to in this section shall be cumulative and in addition to any other remedy referred to in this Agreement or available to Partner at law or in equity.

54 Provision of information

Partner shall cooperate with OpenText's reasonable requests to provide information or reports in connection with Partner's business activities as an OpenText partner.

55 Limitation of liability

55.1 Exclusion of damages

Notwithstanding any breach by the parties or termination of this Agreement, but subject always to the 'non-excluded liability' section below, neither party shall be liable to the other for (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 re-procurement amount.

55.2 Cap on liability in relation to Software

Where Partner have purchased Software licenses, either from OpenText under a Transaction Document or from an authorised OpenText partner then, subject to the 'non-excluded liability' section, each party's liability arising out of or in connection with this Agreement as it relates to such Software, shall not exceed the amount paid to OpenText under the relevant Transaction Document for such Software licenses. Where OpenText has made Software available free of charge, then, subject to the 'non-excluded liability' section, each party's liability arising out of or in connection with this Agreement as it relates to such Software, shall not exceed \$1000.

55.3 Cap on liability in relation to Support Services, Professional Services or Cloud Services

Where Partner have purchased Support Services, Professional Services or Cloud Services, then, subject to the 'non-excluded liability' section, each party's liability in an individual Contract Year arising out of or in connection with this Agreement as it relates to such services, shall not exceed the amount paid to OpenText for the relevant such services under the Transaction Document to which the liability relates, in that Contract Year. Where OpenText has made Support Services, Professional Services or Cloud Services available free of charge, then, subject to the 'non-excluded liability' section, each party's liability arising out of or in connection with this Agreement as it relates to such services, shall not exceed \$1000.

55.4 Cap on liability for general matters

Each party's liability in a Contract Year arising out of or in connection with this Agreement other than as it relates to OpenText Products shall not exceed the amount paid to OpenText by Partner during the Contract Year during which such liability arises.

55.5 Non-excluded liability

Nothing in this Agreement shall exclude or limit either party's liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or deceit;
- (c) any other liability that cannot be excluded by applicable law;
- (d) any indemnity under this Agreement;
- (e) infringement or misappropriation of the other party's intellectual property rights or use of the other party's intellectual property outside of the scope of the rights granted to that party under this Agreement;
- (f) breaches of the following sections: compliance with anti-corruption laws;
- (g) payment obligations.

55.6 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 Agreement to the extent due to causes beyond its reasonable control.

56 OpenText's right to make modifications

OpenText shall have the right to change the following at any time, with or without notice to Partner:

- (a) the design or specifications of any and all OpenText Products, including without limitation changes which are required for security or to facilitate performance in accordance with the Description;
- (b) the OpenText Materials available to Partner;
- (c) the OpenText Products available to Partner;
- (d) prices of OpenText Products.

In respect of (c) and (d), where OpenText has agreed in writing that Partner shall be entitled to certain OpenText Products at certain prices, OpenText shall have the right to change those products (remove or add to) and/or prices (increase or decrease), without Partner's consent, through issuing a Deviations Schedule to Partner (signed only by OpenText), such Deviations Schedule to take effect 30 days following the date of issue.

In addition, OpenText shall have the right to change the following, without Partner's consent, through issuing a Deviations Schedule to Partner (signed only by OpenText), such Deviations Schedule to take effect 30 days following the date of issue:

- I. the territory in which Partner conducts its OpenText partner activities;
- II. whether Partner purchase OpenText Products from OpenText or from another authorized OpenText partner.

II. Partner Tracks

A. Partner Program Track

How this Agreement works

1 Additional Modules making up this Agreement

The Program Guides applicable to the relevant Permission Statement shall also form part of this Agreement and shall prevail over all other elements of this Agreement other than Deviations Schedule and Transaction Documents (and the order of prevalence set out under the General Terms will be amended accordingly).

Ordering and payment

2 Partner discounts

Partner may purchase OpenText Products at the discounts set out in the Program Guides for the applicable Partner Type and applicable to Partner's Permission Statement and Program membership.

What OpenText shall deliver

3 Program Guides and partner portal.

OpenText shall make available to Partner:

- (a) Program Guides for the Partner Type and Program applicable to Partner;
- (b) The OpenText partner portal with any OpenText Materials uploaded to it (where such a portal exists).

Partner's rights with OpenText intellectual property

4 Use OpenText Materials

For so long as Partner is a particular Partner Type or member of a Program, Partner shall have the right to access and use any OpenText Materials made available as part of a Program and intended for that Partner Type and applicable to Partner's Permission Statement and the Program Partner is a member of, in order to support Partner's activities as an OpenText partner.

5 Rights granted for the applicable Partner Type and tier

Partner shall be entitled to exercise and benefit from, any rights granted for the applicable Partner Type and for the Programs of which Partner is a member, as set out in the Program Guides.

Partner's obligations with OpenText intellectual property

6 Adhere to requirements

Partner shall adhere to the requirements of and comply with any obligations set out in, the Program Guides, in conducting its activities as an OpenText partner.

Where OpenText imposed any conditions or requirements on Partner as part of permitting Partner to be a certain Partner Type or part of a Program, Partner shall continue to meet such requirements or satisfy such conditions. Partner agrees that Partner shall only be part of a Program or Partner Type, for so long as Partner adheres to any such obligations, requirements or conditions.

Protections for the parties

7 Additional right of OpenText to make modifications

OpenText shall have the right to change the following as they relate to Partner's participation in a Program, without Partner's consent, by email or by updating its websites or partner portals; such changes shall take effect 30 days from the date of such notification:

- (a) The conditions to join a Program
- (b) The terms for being in a Program
- (c) the content or availability of any Program Guides or the OpenText Materials or OpenText partner portal
- (d) Partner's tier within a Program
- (e) the OpenText Products available to Partner;
- (f) prices of OpenText Products

8 Additional rights of audit

OpenText's right to audit includes the right to audit whether Partner is still complying with any requirements for a particular Partner Type, Program or Program Guides.

9 Termination of participation in a Program and access to OpenText Materials

OpenText may terminate Partner's membership of a Program on 15 days' notice where Partner does not abide by the terms of a Program Guide or Partner no longer satisfies any conditions imposed on Partner being an OpenText partner or no longer meets any Program requirements.

OpenText may, acting reasonably, terminate Partner's access to an OpenText website or a partner portal or to any OpenText Materials where it deems its confidential information or intellectual property to be at risk.

Termination of this Agreement shall immediately terminate Partner's participation in a Program.

B. One-Time Transaction Track

How this Agreement works

1 Additional definitions

In addition to the definitions set out in the General Terms, the following defined terms shall apply to this Track:

"One-Time Transaction" means as defined in this Module, below.

Partner's rights with OpenText intellectual property

2 Rights for a single transaction only

Partner shall have the right to carry out a one-time transaction for the permitted Partner Types for the opportunity, Sell-To Party, and within the other parameters, all as set out in the relevant Permission Statement (a **"One-Time Transaction"**).

Partner's right to carry out that One-Time Transaction is for that opportunity only, and it expires either on the expiry date set out in the One-Time Transaction Permission Statement, or, if none is specified, on the last day of the calendar quarter in which the One-Time Transaction Permission Statement is issued by OpenText. In the event that Partner has not completed the One-Time Transaction on or before the expiry date, the right to carry out that One-Time Transaction shall terminate and Partner shall immediately return any unused OpenText Products or OpenText Materials or related software, documentation and media. As soon as the OpenText Products have been delivered for the opportunity, Partner's rights under that Permission Statement expire with immediate effect, and Partner's rights with OpenText intellectual property in relation to that Permission Statement, expire with immediate effect.

Partner shall have the right to represent itself as only being able to carry out that One-Time Transaction.

Notwithstanding what is set out under any other Module, Partner shall not have the right to renew a Transaction purchased under this Track beyond the Initial Term, at which point the Transaction shall terminate.

C. Framework Track

Partner's rights with OpenText intellectual property

1 Partner activities as part of a framework

Partner shall be entitled to carry out the activities permitted for it under the relevant Partner Type and other Modules specified in a Permission Statement, until this Module or the Agreement is terminated.

III. Partner Types**A. Demonstrator Partner Type***What OpenText shall deliver***1 Delivery to whom**

OpenText shall deliver the OpenText Products to Partner. OpenText is not obligated to provide any Support Services to Partner in respect of OpenText Products made available for internal enablement and demonstration.

*Partner's rights with OpenText intellectual property***2 For internal enablement and demonstration**

Partner may use the OpenText Products for:

- (a) internal enablement, in order to assist Partner in familiarizing itself with the OpenText Products to improve its ability to carry out its permitted OpenText partner activities;
- (b) demonstration purposes, including as part of sales presentations and demonstration, including to potential customers.

Partner may only load or use OpenText Products for use under this Module, on Partner-controlled environments and on OpenText supported configurations installed in accordance with Documentation and technical specifications as issued by OpenText.

OpenText Products made available for internal enablement and demonstration purposes may be subject to restrictions on quantities, capacities, or additional conditions set out in the applicable Program Guides or Transaction Document or Online or as notified by OpenText to Partner, and may be made available subject to payment of fees.

If the relevant OpenText Product made available under this Module, is or contains a development tool, Partner shall not develop any product with the development tool or distribute any product based on any portion of the OpenText Product; no other right to use or reproduce the OpenText Product is granted; if the development tool is licensed under an open source license, the terms of that license apply.

*Partner's obligations with OpenText intellectual property***3 Use in accordance with the Use and Delivery Terms**

Partner shall use the OpenText Products in accordance with the applicable Use & Delivery Terms, subject to the rights granted to Partner in respect of OpenText Products under this Module.

*Protections for the parties***4 Termination of this Module**

Any rights to OpenText Products for internal enablement and demonstration purposes are granted entirely at OpenText's discretion and may be terminated at any time, with or without notice, such termination to take immediate effect.

B. Reseller Partner Type*How this Agreement works***1 Additional definitions**

In addition to the definitions set out in the General Terms, the following defined terms shall apply to this Partner Type:

“**Renewal Term**” means each successive 12 month renewal terms on expiration of the Initial Term or subsequent Renewal Term.

2 Application of the Demonstrator Module

Where OpenText makes OpenText Products available to Partner, for it to familiarizing itself with the OpenText Products and/or demonstrate those to Sell-To Parties as part of its activities under this Partner Type, the Demonstrator Module shall also apply.

*What OpenText shall deliver***3 Delivery to whom**

OpenText shall deliver the OpenText Products to the End User.

*Ordering and payment***4 Partner's payment obligations separate to a Sell-To Party's**

Partner acknowledges that its payment obligations are to OpenText and shall apply regardless of whether a Sell-To Party has paid Partner for OpenText Products.

Partner's rights with OpenText intellectual property

5 Resell stand-alone

Partner shall have the right to resell licenses and/or subscriptions to OpenText Products stand-alone, including stand-alone but sold together with Partner's own value-added services/products, in its own name and on its own account. Partner shall have the right to resell to the Sell-To Parties indicated in a Permission Statement. As part of this resale right Partner shall have the right to advertise, market and promote OpenText Products. Partner shall be entitled to resell OpenText Products for which is has rights to resell under this Agreement, and which products it purchases either directly from OpenText under a Transaction Document or from an authorized OpenText partner. Partner is not entitled to grant any rights in respect of OpenText Products or OpenText Materials to any Sell-To Party that have not been validly granted to Partner.

6 Renew licenses/subscriptions

Partner may renew a Sell-To Party's term subscription to Cloud Services or Support Services beyond the Initial Term, where OpenText renewal terms and conditions are met (and so a Transaction for resale shall only renew, where OpenText renewal terms and conditions are met), which includes that this Agreement and this Module are still in force.

Either party may also give notice not to renew, provided it is given at least 90 days prior to the end of the then-current Renewal Term for Support Services and 60 days for Cloud Services. Where no such notice is given, a Transaction (and right to renew) shall automatically renew for successive 12 month Renewal Terms on expiration of the Initial Term or subsequent Renewal Term, unless terminated in accordance with this Agreement.

Renewals shall be subject to any renewal terms and conditions in the relevant Supplemental Terms, Support Handbook, Transaction Document or Use and Delivery Terms (as applicable).

7 Determine prices

Partner shall be entitled to set its own prices for resale of the OpenText Products.

8 Rights subject to payment and Metric

Partner's rights under this Partner Type are subject to payment of all relevant fees in accordance with this Agreement, and subject to the Metric and quantities granted by OpenText in the relevant Transaction Document.

Partner's obligations with OpenText intellectual property

9 Resell in accordance with the applicable Contracting Models

Partner shall resell OpenText Products in accordance with the applicable Contracting Models, as indicated in the relevant Permission Statement.

10 Resell in accordance with the applicable Metric and quantities

Partner shall resell the quantities of OpenText Products and on the basis of the applicable Metric, each as indicated in the relevant order for the OpenText Products entered into by OpenText.

11 Seek OpenText's consent for resale to government

Partner shall obtain OpenText's prior written consent in order to resell on any government framework.

12 Give OpenText credit

Partner shall in all marketing and sales related information and materials give OpenText and its licensors appropriate credit for the ownership of the OpenText Products and OpenText Materials.

13 Add value

Partner shall provide an added-value to Sell-To Party beyond which would be obtained if the Sell-To Party were to purchase the OpenText Products directly from OpenText.

Protections for the parties

14 Reporting to OpenText

Where requested by OpenText, Partner shall submit accurate, up-to-date, quarterly reports to OpenText during the term of this Module, in the form specified by OpenText from time to time, showing the quantity of OpenText Product(s) resold: (a) by Partner, (b) by location (using postal codes); and (c) by Sell-To Party.

15 Right to contact Sell-To Parties

OpenText shall be entitled to communicate directly with Sell-To Parties in connection with the provision of the OpenText Products. Prior to the expiration of a Sell-To Party's license or subscription to OpenText Products, OpenText shall be entitled to contact a Sell-To Party directly regarding the renewal of such license/subscription with OpenText.

16 Refund a Sell-To Party

If OpenText determines that OpenText owes a Sell-To Party a refund, payment or credit, Partner agrees to accept such amount from OpenText and forward at least the same amount to the applicable Sell-To Party.

17 Additional right to suspend provision of OpenText Products

OpenText shall be entitled to suspend provision of the OpenText Products in the following scenarios:

- (a) There has been non-payment of fees owed to OpenText following a reminder or repeated failure to pay undisputed invoices on time in accordance with agreed payment terms;
- (b) End User is in breach of applicable law or the Use and Delivery Terms, quantity or Metric restrictions or Supplemental Terms in its use of OpenText Products;
- (c) End User is infringing OpenText's intellectual property rights in respect of the OpenText Products;
- (d) In order to protect the provision of and prevent damage to, OpenText Products generally; or
- (e) Where requested by Partner in connection with non-payment by a Sell-To Party.

OpenText shall use reasonable efforts to (i) provide Partner with reasonable notice prior to suspending and (ii) to minimise such suspension where reasonably possible.

18 Additional effect of termination of the Agreement

Following termination of this Agreement, Partner shall be entitled to retain such reasonable number of copies of the OpenText Product and OpenText Materials as shall be necessary to fulfil Partner's obligations with respect to the OpenText Products to which End Users have been granted licenses/subscriptions.

Termination of this Agreement or any Module shall not affect any licenses or subscriptions to OpenText Products which Partner has resold to a Sell-To Party pursuant to this Partner Type. Any such licenses/subscriptions entered into prior to the termination or expiration date of this Agreement or Module, that grant an End User use or access rights to OpenText Products shall continue in accordance with their terms to the end of their Term and provided that Partner shall continue to meet its obligations with respect to such Transactions in accordance with its and this Agreement's terms.

19 Additional rights to terminate a Transaction

OpenText shall be entitled to terminate a Transaction where an End User materially breaches the Use and Delivery Terms, Metric or quantity restrictions or Supplemental Terms in its use of OpenText Products, which breach is not cured within 30 days or is incapable of cure; Partner shall ensure that all End User's rights in relation to OpenText Products end following OpenText's termination.

20 Additional rights of OpenText to make modifications

OpenText shall have the right to change the Contracting Model applicable to an OpenText Product, and the terms of a Contracting Model, by issuing a Deviations Schedule to Partner (signed only by OpenText), such Deviations Schedule to take effect 30 days following the date of issue.

C. Managed Service Provider Partner Type

How this Agreement works

1 Additional definitions

In addition to the definitions set out in the General Terms, the following defined terms shall apply to this Partner Type:

"End User" has the meaning given in the General Terms, and specifically in this Module refers to the legal entity who obtains Managed Services provided by the Partner for its own internal business operations and not for further remarketing, distribution, resale or commercialization (and which doesn't include Partner or Partner's Affiliates).

"Managed Services" means use of the OpenText Products to provide services in the regular course of its business (for example, managing or augmenting the information technology functions of other companies for a fee, such as, but not limited to, outsourcing, hosting, Infrastructure-as-a-Service, Platform-as-a-Service, Software-as-a-Service, delivering and/or managing OpenText Product applications to End User).

2 Application of the Demonstrator Module

Where OpenText makes OpenText Products available to Partner, for it to familiarizing itself with the OpenText Products and/or demonstrate those to Sell-To Parties as part of its activities under this Partner Type, the Demonstrator Module shall also apply.

What OpenText shall deliver

3 Delivery to whom

OpenText shall deliver the OpenText Products to Partner.

Ordering and payment

4 Partner's payment obligations separate to a Sell-To Party's

Partner acknowledges that its payment obligations are to OpenText and shall apply regardless of whether a Sell-To Party has paid Partner for licenses/subscriptions to OpenText Products.

Partner's rights with OpenText intellectual property

5 Sell as part of selling Managed Services

Partner shall have the right to sell licenses and/or subscriptions to OpenText Products as part of selling licenses and/or subscriptions of Managed Services. Partner shall have the right to sell to the Sell-To Parties indicated in a Permission Statement.

As part of this sale right Partner shall have the right to advertise, market and promote OpenText Products as part of its Managed Services.

Partner shall be entitled to sell OpenText Products permitted for its sale under the Agreement, and which products it purchases either directly from OpenText under a Transaction Document or from an authorized OpenText partner.

6 Brand with own labelling

Partner may brand the Managed Services using Partner's own or any other marks and using Partner's own labelling and packaging.

7 Determine prices

Partner shall be entitled to set its own prices for sale of the OpenText Products as part of Managed Services.

8 Use as part of the provision of Managed Services

Partner shall have the right to use OpenText Products to provide Managed Services to End Users. Where the OpenText Product is Software, this entails the right to install, use, and host the Software solely at Partner's facilities or on an independent third party datacenter controlled by Partner. Where the OpenText Product is Cloud Services, this entails the right for Partner to use and access Cloud Services. This right entails use of the OpenText Products in a non-production environment owned by Partner for the purposes of testing and providing support for the Managed Services.

9 Permit End Users to access

Partner shall be entitled to End Users to access the OpenText Products for the sole purpose of their receiving the Managed Services.

10 Subject to payment

Partner's rights under this Partner Type are subject to payment of all relevant fees in accordance with this Agreement, and subject to the Metric and quantities granted by OpenText in its order for the relevant OpenText Products to be sold/used as part of Managed Services.

Partner's obligations with OpenText intellectual property

11 Sell in accordance with the applicable Contracting Model.

Partner shall sell licenses/subscriptions to the OpenText Products as part of selling Managed Services, in accordance with the applicable Contracting Model, as indicated in the relevant Permission Statement.

12 Give OpenText credit

Partner must reproduce copyright notices on OpenText Products for any authorized copies.

13 Use obligations

Partner shall use the OpenText Products in accordance with the applicable Use & Delivery Terms, Metric and quantity restrictions and any Supplemental Terms.

Except for OpenText Product components that are necessary to enable Partner to provide the Managed Services, at no time will Partner download, or allow any OpenText Product to be downloaded, onto the End User's networks, systems, workstations or servers.

In such circumstances where the OpenText Product resides at a third party datacenter, Partner shall contractually obligate such third party datacenter to:

- (a) comply with terms and conditions at least as protective as those under the applicable Use and Delivery Terms, Metric and Supplemental Terms;
- (b) include a provision in such agreement that expressly allows OpenText to enforce its rights under such agreement; and
- (c) cooperate in good faith with OpenText in investigating instances of the datacenter's breach of such agreement.

In addition, Partner shall ensure that, upon termination of an agreement with a datacenter, all copies of any OpenText Product in possession of the datacenter (if any) are either completely removed from the datacenter's computing devices or are otherwise rendered unusable.

Partner agrees to maintain the confidentiality of its account, credentials, and any passwords necessary to use Cloud Services.

Should Partner or its Affiliates believe that there has been unauthorized use of its account, credentials, or passwords, Partner must immediately notify OpenText.

14 Provide support

Partner is solely responsible for providing all technical support for the Managed Services to its End Users. Any Support Services purchased by Partner for OpenText Products shall be for Partner's sole benefit, and Partner shall not extend access to any Support Services to its End Users.

Protections for the parties

15 Non-endorsement by OpenText

Partner shall not represent that OpenText in any way endorses Partner's Managed Services.

16 Refund a Sell-To Party

If OpenText determines that OpenText owes a Sell-To Party a refund, payment or credit, Partner agrees to accept such amount from OpenText and forward at least the same amount to the applicable Sell-To Party.

17 Additional Partner indemnity of OpenText

Partner shall defend the OpenText Indemnified Parties and indemnify them and hold all of them harmless, from any Claim from any Sell-To Party to whom Partner has sold OpenText Products under this Module (and such defense and indemnity will be governed by the 'Partner general indemnities of OpenText' in the General Terms).

18 Additional right to suspend provision of OpenText Products

OpenText shall be entitled to suspend provision of the OpenText Products in the following scenarios:

- (a) There has been a non-payment of fees owed to OpenText following a reminder or repeated failure to pay undisputed invoices on time in accordance with agreed payment terms;
- (b) Either Partner or End User are in breach of applicable law or the Use and Delivery Terms, Metric or quantity restrictions or Supplemental Terms in its use of OpenText Products;
- (c) Partner or End User are infringing OpenText's intellectual property rights in respect of the OpenText Products;
- (d) In order to protect the provision of and prevent damage to, OpenText Products generally;
- (e) Where requested by Partner in connection with non-payment by a Sell-To Party.

OpenText shall use reasonable efforts to (i) provide Partner with reasonable notice prior to suspending and (ii) to minimise such suspension where reasonably possible.

19 Additional effect of termination of the Agreement

Following termination of this Agreement, Partner shall be entitled to retain such reasonable number of copies of the OpenText Product and OpenText Materials as shall be necessary to fulfil Partner's obligations with respect to the OpenText Products to which End Users have been granted licenses/subscriptions.

Termination of this Agreement or any Module shall not affect any licenses or subscriptions to OpenText Products which Partner has resold to a Sell-To Party pursuant to a Transaction under this Partner Type. Any such licenses/subscriptions entered into prior to the termination or expiration date of this Agreement or any Module, that grant an End User use or access rights to OpenText Products shall continue in accordance with their terms to the end of the Term and provided that Partner continues to meet its obligations with respect to such Transactions in accordance with its and this Agreement's terms.

20 Additional right to terminate a Transaction

In the event Partner or an End User breaches the Use and Delivery Terms, Metric or quantity restrictions or Supplemental Terms in its use of OpenText Products, OpenText shall be entitled to terminate a Transaction where such breach is a material breach which breach is not cured within 30 days or is incapable of cure; Partner shall ensure that all End User's rights in relation to OpenText Products end following OpenText's termination.

21 Additional right of OpenText to make modifications

OpenText shall have the right to change the Contracting Model applicable to an OpenText Product, by issuing a Deviations Schedule to Partner (signed only by OpenText), such Deviations Schedule to take effect 30 days following the date of issue.

D. Global Systems Integrator Partner Type

Partner's rights with OpenText intellectual property

1 Designation as an authorised partner

Partner shall have the right to use the designation of an OpenText authorized services provider of the OpenText Products set out in the Permission Statement relating to this Partner Type, in connection with its promotion of services related to such products.

Partner's obligations with OpenText intellectual property

2 Maintain certification requirements

Partner shall maintain the training, certification, and resource requirements stipulated by OpenText, including maintaining the requisite number of competent technical representatives trained in the OpenText Products who are capable of answering customer services related questions and delivering OpenText Product services.

3 Identify practice leader

Partner shall identify and make available a qualified employee to serve as Partner's practice leader to coordinate Partner's performance, maintain proper certification levels, and to serve as a liaison between Partner and OpenText.

4 Provide business plans and reports

Partner shall cooperate with OpenText's reasonable requests to provide business plans, develop service targets, provide regular reporting, and otherwise collaborate regarding Partner services.

Protections for the parties

5 Cooperate on joint opportunities

The parties may agree from time to time participate in joint presentations, seminars, events/conferences, or specific joint sales opportunities. In the case of a joint bid, the parties shall cooperate in good faith as mutually agreed on a case-by-case basis, and shall enter into a separate teaming agreement specifying the relationship and respective rights and responsibilities of the parties in connection with the project.

6 Provide success stories

From time to time, OpenText may request Partner to provide reference customer stories and personnel references regarding successful configuration and/or implementation of the OpenText Products. Partner agrees to reasonably cooperate with such requests.

7 Subcontracting

In the event the parties desire to work together in a prime contractor and subcontractor relationship, such relationship will be pursuant to a Module which contains relevant terms and conditions, and a statement of work setting out the details of each project.

IV. Contracting Models

A. Flow-down Contracting Model

How this Agreement works

1 Application of Product Specific Terms

Any provisions in the Product Specific Terms Module which apply where Partner is selling under the Flow-down Contracting Model, shall be deemed incorporated into this Module.

Partner's rights with OpenText intellectual property

2 Grant rights that have been granted

Partner shall only have the right to grant to a Sell-To Party the rights it has been authorized to grant by OpenText.

3 Provide more extensive warranties

Partner shall be entitled to provide more extensive warranty coverage for Sell-To Parties, provided that Partner (a) ensures that OpenText has no responsibility for fulfilling the additional obligations and (b) Partner identifies it as a non-OpenText warranty.

Partner's obligations with OpenText intellectual property

4 Inclusion of terms in End User contract

For each purchase of licenses or subscriptions to OpenText Products by an End User, Partner shall ensure that, prior to allowing any End User to load, install, execute, copy, and/or access or use any OpenText Products:

- (a) the End User enters into an agreement which contains terms substantially similar to the Use and Delivery Terms, Metric and quantity restrictions and any Supplemental Terms,
- (b) the End User complies with such terms in its use of OpenText Products; and
- (c) OpenText is a third-party beneficiary to such terms.

5 Notify OpenText of any infringement

Partner shall notify OpenText if it becomes aware of any infringement by a Sell-To Party of OpenText's intellectual property rights and take all actions reasonably requested by OpenText in order to protect OpenText intellectual property.

Protections for the parties

6 Additional record keeping and audit rights

Partner shall keep records to show that it has complied with its obligations under this Module. Partner shall additionally keep records to evidence a confirmed Sell-To Party transaction pursuant to this Module. On request from OpenText, Partner shall provide those records to OpenText; OpenText shall be entitled to audit those records in accordance with the audit provisions of this Agreement.

7 Enforce rights and obligations

As between OpenText and Partner,

- (a) OpenText shall be entitled to (i) exercise and benefit from any rights, limitations or exclusions of OpenText under the Use and Delivery Terms, Metric and quantity restrictions and Supplemental Terms and (ii) enforce any obligations of End User under the Use and Delivery Terms, Metric and quantity restrictions and Supplemental Terms; where any rights, limitations or exclusions of OpenText under the Use and Delivery Terms or Supplemental Terms are stated to be granted by the End User or require End User to perform an obligation, Partner shall ensure that End User grants those rights to OpenText or shall enforce End User's obligation; and
- (b) Partner shall be entitled to (i) ensure the exercise of and benefit from any rights, limitations or exclusions of End User under the Use and Delivery Terms, Metric and quantity restrictions and Supplemental Terms and (ii) enforce any obligations of OpenText under the Use and Delivery Terms, Metric and quantity restrictions and Supplemental Terms, in the case of each (i) and (ii) for the benefit of the End User.

For the purpose of this Agreement, "rights, limitations or exclusions of OpenText" and "obligations of OpenText" includes rights, limitations, exclusions or obligations of "OT", "licensor" or any definition attributed to an OpenText Group entity or OpenText-acquired company; and "rights, limitations or exclusions of End User" and "obligations of End User" includes rights, limitations, exclusions or obligations of "Customer", "Licensee" or other such term denoting an End User.

Partner agrees that OpenText shall not be liable for any loss, damage, or Claim to the extent that such loss, damage, or Claim has already been compensated, settled, or otherwise addressed in connection with the same event, circumstance, or series of related events by any other party. Partner further agrees not to pursue or permit any third party to pursue duplicate or overlapping Claims against OpenText arising from the same facts or circumstances. In the event that multiple Claims are brought against OpenText in relation to the same event, the OpenText's total aggregate liability shall be limited to the extent necessary to prevent double recovery or duplication of damages.

8 Additional Partner indemnity of OpenText

If Partner breaches this Module, (a) Partner will be liable to OpenText for any resulting unlicensed use or misuse of OpenText Products by an End User, and (b) Partner shall defend and indemnify and hold harmless the OpenText Indemnified Parties for any resulting Claims (and such defense and indemnity will be governed by the 'Partner general indemnities of OpenText' in the General Terms).

B. Fulfilment Contracting Model

How this Agreement works

1 Additional definitions

The following capitalised terms shall have the following meanings:

"**Services Terms**" means as defined in this Module below.

2 Application of Product Specific Terms

Any provisions in the Product Specific Terms Module which apply where Partner is selling under the Fulfilment Contracting Model, shall be deemed incorporated into this Module.

What OpenText shall deliver

3 Warranties to End User only

Partner agrees that none of the 'standard of delivery' provisions under this Agreement shall apply where Partner is selling OpenText Products under the Fulfilment Contracting Model, and that Partner shall not enjoy or benefit from any warranties or conditions in respect of OpenText Products, since OpenText shall provide warranties or conditions to End User directly under the End User Agreement or Services Terms; to the maximum extent permitted by applicable law, OpenText disclaims all express, implied or statutory, warranties and conditions, whether written or oral, in respect of the OpenText Products.

Partner's rights with OpenText intellectual property

4 Grant rights that have been granted

Partner shall only have the right to grant to a Sell-To Party the rights it has been authorized to grant by OpenText.

5 Provide more extensive warranties

Partner shall be entitled to provide more extensive warranty coverage for Sell-To Parties, provided that Partner (a) ensures that OpenText has no responsibility for fulfilling the additional obligations and (b) Partner identifies it as a non-OpenText warranty.

Partner's obligations with OpenText intellectual property

6 End User acceptance of OpenText terms

For each purchase of licenses or subscriptions to OpenText Products by an End User, Partner shall ensure that, prior to allowing any End User to load, install, execute, copy, and/or access or use any OpenText Products, the End User:

- (a) Enters into with OpenText, or accepts, the relevant End User Agreement, Metric and Supplemental Terms and agrees that OpenText can enforce the End User Agreement, Metric and Supplemental Terms against End User; or
- (b) where OpenText has indicated to Partner that the OpenText Products contain click-to-accept terms ("Services Terms"), accepts such Services Terms.

Partner shall ensure that any agreement it enters into with End User, shall not contradict with the terms of the relevant End User Agreement, Metric Schedule and Supplemental Terms.

7 Notify OpenText of any infringement

Partner shall notify OpenText if it becomes aware of any infringement by a Sell-To Party of OpenText's intellectual property rights and take all actions reasonably requested by OpenText in order to protect OpenText intellectual property.

Protections for the parties

8 Additional record keeping and audit rights

Partner shall keep records to show that it has complied with its obligations under this Module. Partner shall additionally keep records to evidence a confirmed Sell-To Party transaction pursuant to this Module. On request from OpenText, Partner shall provide those records to OpenText; OpenText shall be entitled to audit those records in accordance with the audit provisions of this Agreement.

9 Additional rights to terminate a Transaction

OpenText shall be entitled to terminate a Transaction where permitted for OpenText to terminate the End User Agreement under its terms.

Where Partner has sold under the Fulfilment Contracting Model, Partner shall only be entitled to terminate a Transaction where End User has terminated the End User Agreement in accordance with its terms; the provisions dealing with termination of a Transaction under the General Terms and applicable Partner Type shall not apply where Partner has sold under the Fulfilment Contracting Model.

10 Additional rights of OpenText to make modifications

OpenText shall be entitled to amend, without the need for Partner's consent, the terms of the End User Agreements and Supplemental Terms, and any amended version shall apply to the next transaction that Partner enters into with a Sell-To Party.

11 Additional Partner indemnity of OpenText

If Partner breaches this Module, (a) Partner will be liable to OpenText for any resulting unlicensed use or misuse of OpenText Products by an End User, and (b) Partner shall defend and indemnify and hold harmless the OpenText Indemnified Parties for any resulting Claims (and such defense and indemnity will be governed by the 'Partner general indemnities of OpenText' in the General Terms).

C. Distributor Contracting Model

Partner's obligations with OpenText intellectual property

1 Pre-contract anti-corruption due diligence

During the term of this Agreement and prior to appointing any reseller, Partner shall implement and maintain a due diligence program in accordance with good industry practice which is designed to ensure that resellers and their respective directors, officers and employees (i) do not have any history of corrupt, bribery or fraudulent activities, and (ii) comply with Anti-Corruption Laws and the 'Compliance with anti-corruption laws', the 'Partner's obligations to keep records' and 'Right of audit' sections of the General Terms.

In the event that any aspect of the Partner's due diligence indicates that (I) there has been any prior history of corruption, bribery or fraudulent activities or (II) that the directors, officers or employees of a reseller have present or past relationships with government officials or other persons that would raise any inference of any risk of future corruption, bribery or fraudulent activities, or (III) there is a risk that the reseller will not comply with Anti-Corruption Laws and the 'Compliance with anti-corruption

laws', the 'Partner's obligations to keep records' and 'Right of audit sections of the General Terms, Partner shall not authorize such reseller to sell the OpenText Products and shall inform OpenText immediately.

2 Inclusion of terms in reseller agreement

Partner shall include in its agreement with reseller for the sale of OpenText Products, terms which are substantially similar to the following sections of the General Terms:

- (a) Rights with OpenText intellectual property
- (b) Obligations with OpenText intellectual property
- (c) Protections for the parties

Partner shall further include a provision in its reseller agreement that authorizes Partner to provide to OpenText on request any information obtained from the reseller related to Partner's due diligence checks of the reseller.

Partner shall ensure that it includes in its agreement with a reseller, the right for OpenText to enforce such terms against the reseller.

Partner shall ensure that resellers have the right to sell OpenText Products, only for the duration and extent that Partner has the right to sell to resellers.

Partner shall ensure that resellers comply with the terms referred to in this section.

3 Ensure compliance with Contracting Model

Partner shall ensure that a reseller complies with the terms of the relevant Contracting Model when selling OpenText Products and Partner shall not enter into an agreement with a reseller that contradicts the terms of the relevant Contracting Model.

Protections for the parties

4 Additional record keeping and audit rights

Partner shall keep records to show that it has complied with its obligations under this Module. Partner shall additionally keep records to evidence a confirmed Sell-To Party transaction pursuant to this Module. On request from OpenText, Partner shall provide those records to OpenText; OpenText shall be entitled to audit those records in accordance with the audit provisions of this Agreement.

5 Additional right to suspend provision of OpenText Products

OpenText shall be entitled to suspend provision of the OpenText Products in the following scenarios:

- (a) There has been a non-payment of fees owed to OpenText following a reminder or repeated failure to pay undisputed invoices on time in accordance with agreed payment terms;
- (b) Reseller's non-compliance with applicable laws in connection with the OpenText Products or OpenText Materials;
- (c) Reseller's infringement of OpenText's intellectual property rights in the OpenText Products or OpenText Materials.

OpenText shall use reasonable efforts to (i) provide Partner with reasonable notice prior to suspending and (ii) to minimise such suspension where reasonably possible.

6 Additional rights to terminate a Transaction

OpenText shall be entitled to terminate a Transaction where a reseller is in material breach of the following (which breach is not cured within 30 days or is incapable of breach):

- (a) The following sections of the General Terms of this Agreement:
 - a. Rights with OpenText intellectual property
 - b. Obligations with OpenText intellectual property
 - c. Protections for the parties
- (b) The obligation to provide to OpenText on request any information obtained from the reseller related to Partner's due diligence checks of the reseller.
- (c) The Contracting Model applicable to the relevant OpenText Product.

7 Additional Partner indemnity of OpenText

Partner will defend and indemnify and hold the OpenText Indemnified Parties harmless for any Claim arising out of Partner's breach of the 'Pre-contract anti-corruption due diligence' section in this Module (and such defense and indemnity will be governed by the 'Partner general indemnities of OpenText' in the General Terms).

V. Product Specific Terms

A. Cloud Services Product Specific Terms – general - where Partner is a Reseller

How this Agreement works

1 Applicability of Professional Services Product Specific Terms

Where OpenText is providing Cloud Services and part of those services involves OpenText configuring or implementing a cloud environment, the Product Specific Terms for Professional Services shall also apply.

Partner's rights with OpenText intellectual property

2 For a specific use case or matter

Where a Transaction Document states a use case or matter or similar limitation for which the OpenText Products can be used, Partner shall sell OpenText Products only for use with that use case or matter.

Protections for the parties

3 Processing End User personal data

Where OpenText's provision of the Cloud Services involves the Processing of Personal Data and the Data Protection Legislation applies to such Processing activity in a Controller-Processor context in respect of End User's use of the services, then the DPA shall apply to such Processing and OpenText shall process Personal Data in accordance with the DPA and the instructions given in writing from time to time and Partner shall comply with the obligations of "Partner" under the DPA. "Processing", "Personal Data", "Data Protection Legislation", "Controller" and "Processor" shall have the meaning given to them in the DPA.

4 Additional right to suspend provision of Cloud Services

OpenText may suspend provision of the Cloud Services to End User in order to prevent damage to OpenText or to OpenText's other customers and protect the provision of the services generally.

OpenText shall use reasonable efforts to (i) provide Partner or End User with reasonable notice prior to suspending and (ii) to minimise such suspension where reasonably possible.

B. Cloud Services Product Specific Terms – general – where Partner is a Managed Services Provider

How this Agreement works

1 Applicability of Professional Services Product Specific Terms

Where OpenText is providing Cloud Services and part of those services involves OpenText configuring or implementing a cloud environment, the Product Specific Terms for Professional Services shall also apply.

Partner's rights with OpenText intellectual property

2 For a specific use case or matter

Where a Transaction Document states a use case or matter or similar limitation for which the OpenText Products can be used, Partner shall sell and use and allow access and use of, OpenText Products only for use with that use case or matter.

Protections for the parties

3 Processing Partner or End User personal data

Where OpenText's provision of the Cloud Services involves the Processing of Personal Data and the Data Protection Legislation applies to such Processing activity in a Controller-Processor context in respect of Partner's or an End User's use of the services, then the DPA shall apply to such Processing and OpenText shall process Personal Data in accordance with the DPA and the instructions given in writing from time to time and Partner shall be (a) "Customer" under the DPA in respect of its Personal Data and (b) "Partner" under the DPA in respect of End User's Personal Data, and shall comply with the obligations of "Partner" and "Customer" under the DPA as applicable to End User's or its permitted use of the Cloud Services. "Processing", "Personal Data", "Data Protection Legislation", "Controller" and "Processor" shall have the meaning given to them in the DPA.

4 Additional right to suspend provision of Cloud Services

OpenText may suspend provision of the Cloud Services to Partner and/or End User in order to prevent damage to OpenText or to OpenText's other customers and protect the provision of the services generally.

OpenText shall use reasonable efforts to (i) provide Partner with reasonable notice prior to suspending and (ii) to minimise such suspension where reasonably possible.

C. Cloud Services Product Specific Terms – general – where Partner is selling under the Flow-down Contracting Model

Partner's obligations with OpenText intellectual property

1 End User entering into a data processing agreement

Where OpenText's provision of Cloud Services involves the Processing of Personal Data and the Data Protection Legislation applies to such Processing activity in a Controller-Processor context in respect of an End User's use of the services, Partner shall ensure that End User enters a data processing agreement substantially similar to the DPA and that the End User complies with such agreement. "Processing", "Personal Data", "Data Protection Legislation", "Controller" and "Processor" shall have the meaning given to them in the DPA.

2 Enforce rights and obligations

As between OpenText and Partner, (i) OpenText shall be entitled to (a) exercise and benefit from any rights, limitations or exclusions of OpenText under the DPA and (b) enforce any obligations of End User under the DPA and (ii) Partner shall be entitled to (c) exercise and benefit from any rights, limitations or exclusions of End User under the DPA and (d) enforce any obligations of OpenText under the DPA. For the purpose of this Agreement, “rights, limitations or exclusions of OpenText under the DPA” and “obligations of OpenText” includes rights, limitations, exclusions or obligations of “OT”, “licensor” or any definition attributed to an OpenText Group entity or OpenText-acquired company; and “rights, limitations or exclusions of End User” and “obligations of End User” includes rights, limitations, exclusions or obligations of “Customer”, “Licensee” or other such term denoting an End User.

3 Additional Partner indemnity of OpenText

Partner shall defend the OpenText Indemnified Parties and indemnify them and hold them harmless from any Claims arising out of or in connection with (i) Content that OpenText uses, processes and/or manages in connection with the Cloud Services; (ii) use of the Cloud Services; and/or (iii) breach of the Use and Delivery Terms for Cloud Services or Supplemental Terms; “Content” shall have the meaning given in the Use and Delivery Terms for Cloud Services (and such defense and indemnity will be governed by the ‘Partner general indemnities of OpenText’ in the General Terms).

4 Applicability of Professional Services Product Specific Terms

Where OpenText is providing Cloud Services and part of those services involves OpenText configuring or implementing a cloud environment, the Product Specific Terms for Professional Services shall also apply.

D. Professional Services – general – General Terms

Ordering and payment

1 Fees due

Where Partner has purchased Professional Services, then, in addition to the Professional Services fees set out in the Transaction Document or Permission Statement, Partner shall pay OpenText the travel, accommodation, lodging and out-of-pocket expenses reasonably incurred by OpenText in the course of providing the Services (“Expenses”). Unless otherwise set forth in the applicable Transaction Document, the Professional Services fees shall be calculated using a Time & Materials model. “Time & Materials” means that fees will be calculated, invoiced and paid as follows:

- (a) Services fees will be calculated by multiplying the number of hours/days worked by OpenText in respect of the Professional Services by the applicable hourly/daily rate set forth in the applicable Transaction Document, subject to any additional conditions as described in the Transaction Document (for example, changes in rates for work on weekends or outside of normal business hours);
- (b) milestones and acceptance criteria in the applicable Transaction Document shall only be used for project management purposes, and shall not affect OpenText’s ability to invoice Partner, and Partner’s obligation to pay;
- (c) Partner is obligated to pay for completed Professional Services as invoiced, regardless of whether all Professional Services in the Transaction Document have been completed;
- (d) any reference to “total estimated services fees and expenses”, “total fee”, “maximum fee”, “fee quote” or “quoted fee” (or other similar phrases) are a good faith estimate of the aggregate Professional Services fees which is provided for planning and budgeting purposes only, and shall not be interpreted to mean that all of the Professional Services will be provided for an aggregate Professional Services fee equal to or less than such estimate; and
- (e) Unless otherwise set forth in the applicable Transaction Document, OpenText may invoice in arrears on a monthly basis for Professional Services fees, Expenses incurred, and Applicable Taxes.

E. Professional Services – general – where Partner is a Reseller

Protections for the parties

1 Processing End User personal data

Due to the nature of the Professional Services provided by OpenText - designed to support the implementation, deployment and adoption of other OpenText Products, such as system configuration, user training and expert guidance - OpenText does not expect to process personal data in a processor capacity in this context. Partner shall not provide personal data unless this is strictly necessary for the provision of Professional Services. Where the parties agree that to perform a Professional Service it is strictly necessary and inevitable for OpenText to systematically process a vast amount of personal data under the written instructions of the Partner and/or the End User and it is mandatory under applicable data protection legislation for that such processing to be subject to a written agreement, the parties will take all necessary steps to put in place such an agreement.

F. Professional Services – general – where Partner is a Managed Services Provider

Protections for the parties

1 Processing Partner or End User personal data

Due to the nature of the Professional Services provided by OpenText - designed to support the implementation, deployment and adoption of other OpenText Products, such as system configuration, user training and expert guidance - OpenText does not expect to process personal data in a processor capacity in this context. Partner shall not provide personal data unless this is strictly necessary for the provision of Professional Services. Where the parties agree that to perform a Professional Service it is strictly necessary and inevitable for OpenText to systematically process a vast amount of personal data under the written instructions of the Partner and/or the End User and it is mandatory under applicable data protection legislation for that such processing to be subject to a written agreement, the parties will take all necessary steps to put in place such an agreement.

G. Professional Services – general – where Partner is selling under the Flow-down Contracting Model

What OpenText shall deliver

1 Carry out acceptance tests

If a Transaction Document specifies an acceptance test for an OpenText Product, OpenText will notify Partner or the End User when a Deliverable is ready for acceptance. OpenText shall and Partner shall ensure that the End User shall, then perform an agreed acceptance test (“**Acceptance Test**”) within an agreed time period with respect to each Deliverable (“Acceptance Period”) to verify that the OpenText Product functions materially in accordance with the written specifications as stated in the Transaction Document.

Acceptance occurs when the OpenText Product meets all material requirements of the Acceptance Test. Partner shall, or shall ensure that the End User shall, notify OpenText promptly in writing of acceptance. If the Acceptance Tests are not conducted and OpenText not notified, within the Acceptance Period or, if no Acceptance Period is specified, then within five (5) business days after delivery of the OpenText Product, the OpenText Product will be deemed accepted.

If OpenText is notified in writing within the Acceptance Period that the OpenText Product does not function in all material respects with the written specifications stated in the Transaction Document, and further describes the deficiencies in sufficient detail for OpenText to identify or reproduce them, OpenText will work diligently to correct and redeliver the affected OpenText Product.

Partner’s obligations with OpenText intellectual property

2 End User not providing personal data, entering into a data processing agreement

Partner shall ensure that End User shall not provide personal data in relation to any Professional Services provided by OpenText unless this is strictly necessary for the provision of Professional Services.

Where the parties agree that to perform a Professional Service it is strictly necessary and inevitable for OpenText to systematically process a vast amount of personal data under the written instructions of the Partner and/or the End User and it is mandatory under applicable data protection legislation for that such processing to be subject to a written agreement, Partner shall be responsible for ensuring that Partner and End User have in place any data processing agreement that is mandated by law that is consistent with the provisions and data processing particulars agreed with OpenText.

Protections for the parties

3 Additional Partner indemnity of OpenText

Partner shall defend the OpenText Indemnified Parties and indemnify them and hold them harmless from any Claims arising out of or in connection with (i) Content that OpenText uses, processes and/or manages in connection with the Professional Services; “Content” shall have the meaning given in the Use and Delivery Terms for Cloud Services (and such defense and indemnity will be governed by the ‘Partner general indemnities of OpenText’ in the General Terms).

H. Software – general – General Terms

What OpenText shall deliver

1 Additional Software warranty where fees paid

OpenText warrants that the Software will be free of all known viruses at the time of first delivery.

2 Remedies for additional Software warranty

Partner’s sole remedy and OpenText’s entire liability, where OpenText breaches the additional Software warranty set out above, is limited to requiring OpenText to deliver a replacement copy of the Software free of known viruses.

I. Software – general – where Partner is a Reseller

Partner’s obligations with OpenText intellectual property

1 Resale of Support Services

Partner shall resell the appropriate support package in accordance with the appropriate Support Handbook and ensure that a first-year Support Services subscription is purchased by End User when purchasing Software licenses.

Protections for the parties

2 Processing End User personal data

Due to the nature of the Support Services provided by OpenText, OpenText does not expect to process personal data in a processor capacity in this context. Partner shall not provide personal data unless this is strictly necessary for the provision of Support Services. Where the parties agree that to perform Support Services it is strictly necessary and inevitable for OpenText to systematically process a vast amount of personal data under the written instructions of the Partner and/or the End User and it is mandatory under applicable data protection legislation for that such processing to be subject to a written agreement, the parties will take all necessary steps to put in place such an agreement.

J. Software – general – where Partner is a Managed Services Provider

Protections for the parties

1 Processing Partner or End User personal data

Due to the nature of the Support Services provided by OpenText, OpenText does not expect to process personal data in a processor capacity in this context. Partner shall not provide personal data unless this is strictly necessary for the provision of Support Services. Where the parties agree that to perform Support Services it is strictly necessary and inevitable for OpenText to systematically process a vast amount of personal data under the written instructions of the Partner and/or the End User and it is mandatory under applicable data protection legislation for that such processing to be subject to a written agreement, the parties will take all necessary steps to put in place such an agreement.

K. Software – general – where Partner is selling under the Flow-down Contracting Model

Partner's obligations with OpenText intellectual property

1 End User not providing personal data, entering into a data processing agreement

Partner shall ensure that End User shall not provide personal data in relation to any Support Services provided by OpenText unless this is strictly necessary for the provision of Support Services.

Where the parties agree that to perform the Support Services it is strictly necessary and inevitable for OpenText to systematically process a vast amount of personal data under the written instructions of the Partner and/or the End User and it is mandatory under applicable data protection legislation for that such processing to be subject to a written agreement, Partner shall be responsible for ensuring that Partner and End User have in place any data processing agreement that is mandated by law that is consistent with the provisions and data processing particulars agreed with OpenText.

Protections for the parties

2 Additional Partner indemnity of OpenText

Partner shall defend the OpenText Indemnified Parties and indemnify them and hold them harmless from any Claims arising out of or in connection with the development of Licensee Software (as defined in the Use and Delivery Terms for Software) (and such defense and indemnity will be governed by the 'Partner general indemnities of OpenText' in the General Terms).

L. Cloud Services Product Specific Terms – On Demand Messaging (ODM) Services – General Terms

How this Agreement works

1 Additional definitions

The following capitalised terms shall have the following meanings:

“**ODM Services**” means the on-demand messaging services as set forth in the applicable Transaction Document.

2 Amendments to the Use and Delivery Terms for Cloud Services

Partner acknowledges that there are additional ODM Services specific terms in the Use and Delivery Terms for Cloud Services.

Ordering and payment

3 Fees

Charges for ODM Services are invoiced at the end of each billing cycle.

Partner agrees that any usage of the ODM Services not included in the Agreement will be billed at OpenText's then-current prevailing rates. Except for (i) the annual price adjustment as set forth in the General Terms, (ii) fee increases due to increases in charges by third-party carriers for number porting, and (iii) related fees and international telecommunications carrier charges, including number setup fees and monthly recurring fees; OpenText may not change the prices for the ODM Services at any time during the Initial Term of the applicable Transaction unless mutually agreed to by the parties in writing.

M. Cloud Services Product Specific Terms – eDiscovery Services – General Terms

How this Agreement works

1 Additional definitions

The following capitalised terms shall have the following meanings:

“eDiscovery Services” means the eDiscovery services set forth in the applicable Transaction Document.

2 Amendments to the Use and Delivery Terms for Cloud Services

Partner acknowledges that there are additional eDiscovery Services specific terms in the Use and Delivery Terms for Cloud Services.

N. Cloud Services Product Specific Terms – eDiscovery Services – where Partner is selling under the Flow-down Contracting Model

Protections for the parties

1 Additional Partner indemnity of OpenText

Partner shall defend the OpenText Indemnified Parties and indemnify them and hold them harmless from any Claims arising out of or in connection with any third party claims of invasion of privacy, any third party claims of legal malpractice, or unauthorised disclosure of personal or privileged information, or other content-related claims (such as but not limited to invasion of privacy) arising out of Customer's use of the eDiscovery Services (and such defense and indemnity will be governed by the 'Partner general indemnities of OpenText' in the General Terms).

O. Cloud Services Product Specific Terms – XM Services – General Terms

How this Agreement works

1 Additional definitions

The following capitalised terms shall have the following meanings:

“**Credit**” shall mean, when applicable, the non-refundable credits bought from time to time by the Partner for resale to End User for it to use the XM Services. Each Credit expires, unless otherwise indicated at time of purchase, after a twelve- month (12-month) period from its activation date.

“**XM Services**” means the shall mean the Core Fax (XM Cloud Fax) and XM SendSecure Cloud Services as set forth in the applicable Transaction Document.

2 Amendments to the Use and Delivery Terms for Cloud Services

Partner acknowledges that there are additional XM Services specific terms in the Use and Delivery Terms for Cloud Services.

Ordering and payment

3 Order processes and requirements

A purchase order issued by Partner in reference to this Agreement, may constitute a Transaction Document.

Following receipt of a Transaction Document, OpenText will check the terms of the Transaction Document (such as SKU, unit prices, payment terms and quantities) and shall inform Partner within five (5) business days of any modification requests for the Transaction Document to be accepted. Upon acceptance by OpenText, Transaction Documents shall be binding as to the OpenText Products ordered and place of delivery, but not as to any other term appearing on such Transaction Document such as Partner general terms and conditions of purchase. It is agreed that the only terms and conditions applicable are those of this Agreement.

4 Pricing arrangements

The pricing model set out in the applicable Permission Statement shall apply to Partner. OpenText may suggest to partner the Manufacturer's Suggested Retail Pricing or the Manufacturer's Suggested List Pricing, as applicable (hereinafter “MSRP/MSLP”; set out below) being understood, however, that Partner determines its own pricing and can sell the Services with a discount to be negotiated in good faith with its Channel Resellers. OpenText may change these pricing models from time to time in accordance with the General Terms.

5 Fees non-refundable

Partner acknowledges that its monthly plan service fees paid in advance, or when applicable, Credits purchased from time to time, are non-refundable, irrespective of the partial use or lack of use of the XM Services during the said month or the validity period of the Credits. In the event of termination for cause by End User, Credits purchased shall be nonrefundable and cancelled, irrespective of their validity period.

6 Payments terms

When the XM Services have been subscribed to by Partner by means of a Transaction Document, Partner shall pay OpenText the fees for the XM Services as indicated in the Transaction Document. These fees shall be invoiced monthly and be payable in accordance with the payment term following the receipt of said invoice, and Partner hereby acknowledges that it shall pay to OpenText the service fees for the current month and the usage fees for the previous month, and any additional charges, the whole as agreed by OpenText and Partner. Where applicable, should Partner select the automatic payment options, OpenText shall be entitled to automatically debit its account the amount of the charges incurred once the invoice has been transmitted.

When the XM Services have not been subscribed to through a Transaction Document, Partner shall purchase Credits.

7 Pricing Modifications.

Where OpenText is charging Partner for the services fees, then, in addition to (a) any annual price adjustment set forth in the General Terms, and (b) fee increases due to increases in charges by third-party carriers for number porting and related fees and international telecommunications carrier charges (subject to the paragraph relating to international telecommunications below), including number setup fees and monthly recurring fees; OpenText reserves the right to change prices upon a three-month (3-month) prior written notice to such effect given by OpenText, it being understood that, for XM Services subscribed through a Transaction Document, changes to the base service fees shall only apply from the date of renewal of the subscription term. As for any remaining Credits, when applicable, they will remain in effect until the end of their validity period. Should Partner not agree with the price revision, it shall be entitled to terminate the order by giving a written notice to such effect to OpenText, within thirty (30) days of the receipt of the price revision notice from OpenText, in which case, the order shall terminate upon the end of the subscription term when the XM Services are subscribed to through a Transaction Document, or at the date of notice when the XM Services were not subscribed through an order document.

In the event that the average fax page transmission is more than sixty (60) seconds, OpenText reserves the right to bill Partner a surcharge, based on the following calculation:

- $(\text{average transmission duration per page in seconds} - 60) / 60 * \text{price per transmitted page} * \text{number of pages sent or received}$
- This surcharge shall be billed on a monthly or quarterly basis based on current usage or, as the case may be, shall be debited from the Credits.

In regard to Core Fax (XM Cloud Fax), and with respect to the fees related to international telecommunications, such fees may vary from time to time, per the market conditions and thus OpenText will inform Partner of such changes. When the subscription to the XM Services was not made through an order document, the international telecommunications fees shall be paid with Credits.

Notwithstanding anything to the contrary herein, Partner shall be responsible for all additional applicable charges, if any, in regard to calls for which a fee is charged to the caller, such as chat lines, adult entertainment services, or internet-dialer operated services (collectively "Premium Numbers"). Without limiting the foregoing, OpenText does not warrant that calls made to Premium Numbers will be supported by the XM Services.

P. Cloud Services Product Specific Terms – XM Services – where Partner is a Reseller

Partner's rights with OpenText intellectual property

1 Determine prices

OpenText may suggest to Partner the Manufacturer's Suggested Retail Pricing or the Manufacturer's Suggested List Pricing, as applicable (hereinafter "MSRP/MSLP"; set out below) and Partner may use the fee MSRP/MSLP list provided to it by OpenText from time to time to promote the Services, it being understood, however, that Partner determines its own pricing and can sell the OpenText Products with a discount to be negotiated in good faith with the Sell-To Party.

2 No rights with End User accounts

Unless otherwise mutually agreed upon in writing between the parties, OpenText shall exclusively be in charge of creating, managing and disabling End User accounts, it being understood that Partner shall not be given any administrative rights on End User accounts nor will it have any rights on the life-cycle management of End User accounts.

Q. Cloud Services Product Specific Terms – XM Services – where Partner is a Managed Services Provider

Partner's rights with OpenText intellectual property

1 Determine prices

OpenText may suggest to Partner the Manufacturer's Suggested Retail Pricing or the Manufacturer's Suggested List Pricing, as applicable (hereinafter "MSRP/MSLP"; set out below) and Partner may use the fee MSRP/MSLP list provided to it by OpenText from time to time to promote the Services, it being understood, however, that Partner determines its own pricing and can sell the OpenText Products with a discount to be negotiated in good faith with the Sell-To Party.

2 Rights with End User accounts

For certain Cloud Services, OpenText may give Partner the right to have its customer accounts created as sub accounts to its master account and as such may be given administrative rights on said End User accounts, in which case the following shall apply:

- (a) ACCESS RIGHTS. Partner may be granted by End User, through a click-wrap form which can be found directly in the management portal of the Cloud Services, revocable administrator rights for the duration of the subscription for the applicable Cloud Services. Such rights may include, without limitation: (a) to configure account(s); (b) to configure or modify account preferences; (c) to add or delete users; (d) to add or delete fax numbers or email addresses; (e) to configure forwarding of faxes or emails; (f) to monitor fax folders or other folders or files sent or received via the Cloud Services; (g) to consult invoices and detailed records of faxes or files transmitted or received, as the case may be; and (h) any other

action that can be carried out by an account administrator. These rights are subject to any instructions given from time to time by End User to Partner.

- (b) **ADDITIONAL OBLIGATIONS.** In addition to its obligations under this Agreement, Partner shall take reasonable steps to prevent unauthorized disclosure of the End User's sensitive information with the same degree of care it uses to prevent unauthorized disclosure of its own sensitive information (and, in any case, not less than reasonable care). Partner shall communicate to OpenText all required information in order to set up the End User accounts according to instructions to that effect given to Partner by OpenText from time to time.
- (c) **ADDITIONAL PARTNER INDEMNITY OF OPENTEXT.** Partner shall defend the OpenText Indemnified Parties and indemnify them and hold all of them harmless, from any Claim arising out of administrative rights granted to Partner on an End User account pursuant to this Module (and such defense and indemnity will be governed by the 'Partner general indemnities of OpenText' in the General Terms).
- (d) **TERMINATION.** At any time and at its sole discretion, End User may revoke the rights granted in this Module to Partner, in whole or in part, by sending Partner a written notice to this effect. Such complete or partial revocation shall take effect ten (10) days following the date on which the written notice is received by Partner.

R. Cloud Services Product Specific Terms – XM Services – where Partner is selling under the Fulfilment Contracting Model

Partner's obligations with OpenText intellectual property

1 Acceptance of terms and conditions

Partner agrees that neither it nor any other reseller shall accept the Services Terms on End User's behalf and Partner shall defend the OpenText Indemnified Parties and indemnify them and hold all of them harmless, from any Claim arising out of a breach of this section (and such defense and indemnity will be governed by the 'Partner general indemnities of OpenText' in the General Terms).

VI. Attachments

A. To the General Terms - Applicable Governing Law

1 According to the OpenText entity which is party to this Agreement

As determined by the OpenText entities listed below (whichever entity is party to this Agreement pursuant to the General Terms), the governing law and exclusive jurisdiction governing this Agreement is as follows:

- (a) All OpenText entities incorporated in the United States of America and in the Americas (other than as otherwise set out below in this 'Applicable Governing Law' part)
 - Governing law: Laws of the U.S. and the State of Delaware
 - Exclusive jurisdiction: Courts in the U.S. and the State of Delaware concerning any action arising from or relating to this Agreement, the OpenText Products or OpenText Materials.
- (b) All OpenText entities incorporated in Canada.
 - Governing law: Laws of Canada and the Province of Ontario
 - Exclusive jurisdiction: Courts in the Province of Canada concerning any action arising from or relating to this Agreement, the OpenText Products or OpenText Materials.
- (c) All OpenText entities incorporated in Mexico.
 - Governing law: Laws of Mexico
 - Exclusive jurisdiction: Courts in the City of Mexico, Mexico concerning any action arising from or relating to this Agreement, the OpenText Products or OpenText Materials.
- (d) All OpenText entities incorporated in Brazil.
 - Governing law: Laws of Brazil
 - Exclusive jurisdiction: Courts in the central forum of the City of São Paulo, São Paulo, Brazil concerning any action arising from or relating to this Agreement, the OpenText Products or OpenText Materials.
- (e) All OpenText entities incorporated in Europe, the Middle East, and Africa (except where otherwise listed in this 'Applicable Governing Law' part).
 - Governing law: Laws of England and Wales
 - Exclusive jurisdiction: Courts in England concerning any action arising from or relating to this Agreement, the OpenText Products or OpenText Materials.
- (f) All OpenText entities incorporated in Australia and New Zealand
 - Governing law: Laws of New South Wales
 - Exclusive jurisdiction: Courts in New South Wales concerning any action arising from or relating to this Agreement, the OpenText Products or OpenText Materials.
- (g) All OpenText entities located in South-East Asia, East Asia and South Asia (except where otherwise listed in this 'Governing Law' section)
 - Governing law: Singapore law
 - Exclusive jurisdiction: Courts in Singapore concerning any action arising from or relating to this Agreement, the OpenText Products or OpenText Materials.
- (h) All OpenText entities incorporated in Japan
 - Governing law: Laws of Japan
 - Exclusive jurisdiction: Courts in Tokyo, Japan concerning any action arising from or relating to this Agreement, the OpenText Products or OpenText Materials.
- (i) All OpenText entities incorporated in France

- Governing law: Laws of France
 - EXCLUSIVE JURISDICTION: TRIBUNAL DE COMMERCE DE NANTERRE, FRANCE, CONCERNING ANY ACTION ARISING FROM OR RELATING TO THIS AGREEMENT, THE OPENTEXT PRODUCTS OR OPENTEXT MATERIALS.
- (j) All OpenText entities incorporated in Germany
- Governing law: Laws of Germany
 - Exclusive jurisdiction: Courts in Munich, Germany concerning any action arising from or relating to this Agreement, the OpenText Products or OpenText Materials.

B. To the General Terms - Governing Law-Specific Terms

1 Additional terms for certain countries

As determined by the applicable governing law pursuant to the General Terms, the following additional terms shall apply to and modify this Agreement, for the governing laws of the countries set out below:

Country: **Germany**

I. General Terms

1. Modification of Section 2 (Definitions used in this Agreement)

The definition of “Warranty Period” will be changed as follows:

Warranty Period” means (a) for Cloud Services and Support Services, the length of the services subscription purchased from OpenText; (b) for Professional Services which qualify as “work results” or “Work Products” in the sense of Section 631 of the German Civil Code 12 months from the date of acceptance; (c) for Software, 12 months from the date of first delivery.

2. Modification of Section 10.2 (Length of time to bring a claim)

Section 10.2 will be entirely replaced by the following provision:

In the event of wilful act or gross negligence of OpenText, in case of fraudulent misrepresentation, 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. All claims for damages or reimbursement of expenses which are based on defects of the OpenText Products shall become time-barred within one (1) year. §438 para. 1 No. 1 a) BGB remains unaffected by this provision. All other claims or actions, regardless of form, arising from the Agreement or any OpenText Products provided or to be provided hereunder become time-barred after two (2) years, except that an action for non-payment or infringement of intellectual property rights and trade secrets may be brought at any time. Statute of limitation shall commence at the time at which the Partner has become aware of the circumstances giving rise to the claim or, ought to have been aware (without acting with gross negligence).

3. Modification of Section 28 (Standard of delivery of OpenText Products)

Section 28 as well as any other sections in the Agreement related to OpenText Product warranty will be entirely replaced by the following provisions:

28.1 In accordance with the Use and Delivery Terms.

OpenText shall deliver OpenText Products in accordance with the applicable Use and Delivery Terms and Supplemental Terms.

28.2 General warranties

OpenText warrants that

- (a) the Software at the time of first delivery: (a) will be free of all known viruses; and (b) will be free from defects as to quality and title;
- (b) the work results or Work Products will have the qualities specified in the Transaction Documents and will be suitable for use in compliance with the provisions as defined in the Transaction Documents; and
- (c) the Support Services, Professional Services and Cloud Services will be rendered in a professional and workmanlike manner and will function in all material respects in conformance with the applicable Use and Delivery Terms and Supplemental Terms.

28.3 Partner's remedies where OpenText breaches a warranty for Software

- (a) The warranties do not apply to any defect in quality or title caused by: (a) any change made to the Software, except where the changes were made by OpenText (for example, through Support Services) or Partner proves that defects which have arisen are not attributable to the change/modification and that error analysis and rectification by OpenText is not effected thereby; (b) a failure to provide a suitable installation or operating environment for the Software according to the Documentation; (c) use of the Software on or caused by, software, firmware, computer systems, data, technology or a hardware platform not approved by OpenText in writing; (d) any telecommunications medium used by the user; (e) failure to comply with the Documentation or Description; or (f) failure to report a warranty claim within the Warranty Period.

- (b) The warranties do not apply for Claims to the extent (a) such Claim arises as a result of use of the Software not in accordance with the provisions of the applicable Use and Delivery Terms and Supplemental Terms 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 OpenText; (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 by OpenText or approved by OpenText in writing; and/or (e) such Claim arises as a result of unlicensed activities. As to any such cause, OpenText assumes no liability for infringement and Partner will hold OpenText harmless against any Claims and fully indemnify OpenText against any Claims, damages, costs, losses or expenses related or arising therefrom.

I. Supplementary performance in the event of defects in quality

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

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

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 Partner by way of remote data transmission or dispatch of data carriers with corrective software. In these cases, in so far as this is reasonable, OpenText shall also be authorized to provide instructions on how to act, on how to enable remote data transmission or remote access by OpenText to the defective Software and/or on how 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. In the event of a workaround, OpenText shall completely rectify the defect within the scope of any updating (update, upgrade or new version) of the Software.

If a defect in quality cannot be rectified within an appropriate period or if supplementary performance or replacement delivery fails for other reasons, Partner may at its option (a) demand a reduction of the Fees; or (b) withdraw from and/or terminate the applicable Use and Delivery Terms and Supplemental Terms and/or (c) terminate the Support Services. In case of withdrawal or termination Partner may assert a claim for compensation of damages or futile expenditures within the limitations of section 55 below of this VI. Attachments, B. To the General Terms – Governing Law-Specific Terms. Withdrawal shall be excluded in case of insignificant defects in the Software.

Supplementary performance has not failed until OpenText has been given at least 2 opportunities to effect supplementary performance or replacement delivery. After a failed second attempt of supplementary performance, OpenText 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. The supplementary performance has also failed if supplementary performance is impossible due to objective or subjective reasons or if supplementary performance is refused by OpenText with grounds of reasonability or if the supplementary performance is unreasonably delayed.

II. Supplementary performance in the event of defects of title

OpenText shall defend Partner from any Claims to the extent such Claim arises solely as a result of Partner's or End User's use of the Software in accordance with the applicable Use and Delivery Terms and Supplemental Terms. If the Software becomes subject to a Claim, OpenText will, in its absolute discretion, either (a) obtain a license for Partner or End User to continue using the Software; (b) replace the infringing portion of the Software as far as this is reasonable for Partner or End User in consideration of the purpose of the applicable Use and Delivery Terms and Supplemental Terms; or (c) modify the infringing portion of the Software without reasonable degradation in functionality.

OpenText's obligations in this section are conditioned upon: (a) Partner notifying OpenText in writing immediately but latest within 10 days of Partner becoming aware of a Claim; (b) Partner or End User not making an admission against OpenText's interests unless made pursuant to a judicial request or order; (c) Partner or End User not agreeing to any settlement of any Claim without the prior written consent of OpenText; and (d) Partner or End User, at the request of OpenText, providing all reasonable assistance and information to OpenText in connection with the defense, litigation, and settlement by OpenText of the Claim; and (e) OpenText having sole control over the selection and retainer of legal counsel, and over the defense, litigation or the settlement of each Claim. OpenText will indemnify Partner or End User from any judgment finally awarded or any final settlement in connection with any Claims, provided all the conditions of this section are satisfied.

In case supplementary performance according to this section 28.3 II has failed or is not possible, Partner may at its option (a) demand a reduction of the fees; or (b) withdraw from and/or terminate the applicable Use and Delivery Terms and Supplemental Terms and/or (c) terminate the Support Services. In case of withdrawal or termination Partner may assert a claim for compensation of damages or futile expenditures within the limitations of section 55 below of this VI. Attachments, B. To the General Terms – Governing Law-Specific Terms. In case of withdrawal from the applicable Use and Delivery Terms and Supplemental Terms, OpenText will take back the infringing Software or the infringing portion of the Software and will refund the unamortized portion of the fees received by OpenText from Partner under the applicable Use and Delivery Terms and Supplemental Terms 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 Partner or the respective End User.

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

Defects in quality and/or defects of title which occur shall be documented by Partner in a manner comprehensible to OpenText (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.

The place of performance shall be the place where the Software has been installed as agreed. OpenText reserves the right to invoice Partner for (a) additional costs which arise as a result of a reallocation of the Software by Partner or End User to a location other than the contractually agreed installation location (if this occurs); (b) additional costs which arise as a result of Partner culpably failing to comply with its obligations to cooperate in accordance with the applicable Use and Delivery Terms and Supplemental Terms; (c) additional costs which are based on defects in quality in the Software which are asserted by Partner 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.

Partner or End User are not authorized to rectify defects in the Software itself or have them rectified by any third party (replacement performance) unless (a) OpenText 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 the applicable Use and Delivery Terms and Supplemental Terms and/or (c) OpenText ultimately refuses to rectify the defects.

28.4 Partner's remedies where OpenText breaches a warranty for Professional Services which qualify as "work results" or "Work Products" in the sense of Section 631 of the German Civil Code

Should Partner or End User modify the work result or Work Product or arrange to have the work result or Work Product modified by third parties, any Claims based on defects in quality or defect of title shall lapse, unless Partner proves that the defects that occurred are not attributable to such modification and that the error analysis and rectification by OpenText will not be affected thereby.

I. Supplementary performance in the event of defects in quality

Should defects be reported to OpenText, which are subject to OpenText's liability for defects in quality, OpenText shall render subsequent performance free of charge within a reasonable period. In this respect, OpenText shall take into account the difficulty in rectifying the relevant defect in quality and its effect on the Partner. Defects in quality may also be rectified by way of written or telephonic instructions to Partner, through remote communications or the sending of data carriers bearing corrective software. In such cases, Partner shall be obliged to implement the relevant instructions. To the extent that this may reasonably be expected of Partner, it shall facilitate remote communications or upload the corrective software immediately following delivery thereof. A defect shall also be deemed rectified if it is circumvented, provided use of the work result or Work Product for the purpose contemplated under the applicable Use and Delivery Terms and Supplemental Terms is not adversely affected to a significant extent, and provided Partner may reasonably be expected to tolerate a circumvention. Subsequent performance may be rendered, at OpenText's choice, by rectifying the relevant defect or by rendering new delivery of the delivered programs.

OpenText shall bear the expenses necessary for purposes of subsequent performance, in particular transport, travel, work and materials costs. OpenText reserves the right to invoice the Partner additional costs that arise as a result of Partner transferring the work result or Work Product to a place other than that which was stipulated for delivery.

Should subsequent performance fail within a reasonable period, Partner shall grant OpenText a reasonable period for subsequent performance, unless Partner cannot reasonably be expected to tolerate such a grace period or OpenText refuses to render subsequent performance. Following expiry of such grace period, Partner must declare within a reasonable period whether it requires additional Professional Services or asserts the Claims set forth below.

Partner may, at its choice, either rescind the applicable Transaction Document or reduce the compensation. Partner may not rescind the applicable Transaction Document if the defect in the work result or Work Product is insignificant. In the event of rescission, OpenText may demand reasonable compensation for use based on the benefits derived from the work result or Work Product by Partner or End User. Such compensation shall be calculated on the basis of a four-year total period of use of the work result Work Product, less a reasonable reduction in accordance with the degree to which use of the work result Work Product was restricted as a result of the defect.

In addition to rescission or reduction of the compensation, Partner may demand compensatory damages instead of performance or reimbursement of fruitless expenses should fault be attributable to OpenText.

Partner may not itself rectify the defect and demand compensation for any expenses required therefore.

II. Supplementary performance in the event of defects of title

The parties indemnities for defects of title are described under section 49 and 50 of the General Terms.

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

Partner shall document for OpenText in a clear and reproducible manner any defects that occur and shall report same to OpenText in writing without undue delay following discovery thereof.

28.5 Partner's remedies where OpenText breaches a warranty for Cloud Services

OpenText does not warrant that the Cloud Services will be error-free or uninterrupted or that all failures of the Cloud Services will be remedied or that the Cloud Services meet Partner's or End User's requirements or expectations, or particular purpose. OpenText is not responsible for any issues related to the performance, operation or security of the Cloud Services arising from: (a) Content or the content of third parties or from services provided by third parties on behalf of Partner or End User; or (b) Partner's or End User's failure to provide appropriate operating environment according to the applicable Use and Delivery Terms and Supplemental Terms necessary for the Cloud Services in accordance with the Documentation. If in case of a default of the Cloud Services for which OpenText is responsible, Partner shall notify OpenText immediately, but at the latest within 2 weeks after becoming aware of the default by a written complaint describing the error in the Cloud Services. If no such complaint is lodged all Partner's warranty claims and rights arising from the respective default are excluded, insofar as they are recognizable for the Partner.

In response to a complaint pursuant to this Section 28.5, OpenText shall have the opportunity to remedy the default free of charge within an appropriate period. If the default of Cloud Services cannot be rectified within an appropriate period or finally fails after OpenText has been given at least 2 opportunities to effect rectification, Partner may at its option: (a) demand a reduction of the Fees; or (b) withdraw from and/or terminate solely the affected parts of the respective applicable Transaction Document. In case of withdrawal or termination Partner may assert a claim for compensation of damages or futile expenditures suffered within the limitations of section 55 below of this VI. Attachments, B. To the General Terms – Governing Law-Specific Terms. Withdrawal shall be excluded in case of insignificant defaults in the Cloud Services.

TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY, USUALLY ASSUMED CHARACTERISTICS AND FITNESS FOR A PARTICULAR PURPOSE.

28.6 Warranties where delivery is free of charge

With respect to OpenText Products provided free of charge and breaches of duty arising in connection thereof, OpenText's liability shall be limited to the degree of care exercised in own affairs, i.e. limited to damages arising out of wilful conduct and gross negligence, however it does not cover defects.

4. Modification of Section 55 (Limitation of Liability)

Section 55 will be entirely replaced by the following provisions:

Either party's total liability for any and all claims based on whatever reason shall be subject to all of the limitation of liability provisions set out herein.

55.1 Unlimited liability

Nothing in this Agreement shall exclude or limit either party's liability for:

- (h) death or personal injury caused by negligence;
- (i) fraud or deceit;
- (j) any other liability that cannot be excluded by applicable law;
- (k) any indemnity under this Agreement;
- (l) infringement or misappropriation of the other party's intellectual property rights or use of the other party's intellectual property outside of the scope of the rights granted to that party under this Agreement;
- (m) breaches of the following sections: compliance with anti-corruption laws;
- (n) payment obligations.

55.2 Cardinal obligations, gross negligence

- (a) Either party 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 either party acted gross negligently.
- (b) The parties agree that either party's liability for cardinal obligations under section 55.2 shall be limited as follows:

I. Cap on liability in relation to Software

Each party's liability arising out of or in connection with this Agreement as it relates to such Software, shall not exceed 200% of the amount paid to OpenText under the relevant Transaction Document for such Software licenses. Where OpenText has made Software available free of charge, then, subject to the 'Unlimited liability' section, each party's liability arising out of or in connection with this Agreement as it relates to such Software, shall not exceed €1,000.

II. Cap on liability in relation to Support Services, Professional Services and Cloud Services

Where Partner have purchased Support Services, Professional Services or Cloud Services, then, subject to the 'Unlimited liability section, each party's liability in an individual Contract Year arising out of or in connection with this

Agreement as it relates to such services, shall not exceed in the aggregate to 200% of the amount paid to OpenText for the relevant such services under the Transaction Document to which the liability relates, in that Contract Year. Where OpenText has made Support Services, Professional Services or Cloud Services available free of charge, then, subject to the 'Unlimited liability' section, each party's liability arising out of or in connection with this Agreement as it relates to such services, shall not exceed €1,000.

III. Cap on liability for general matters

Each party's liability in a Contract Year arising out of or in connection with this Agreement other than as it relates to OpenText Products shall not exceed in the aggregate to 200% of the amount paid to OpenText by Partner during the Contract Year during which such liability arises.

55.3 Cardinal obligations, simple negligence

- (a) Either party 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.
- (b) The parties agree that either party's liability for cardinal obligations under section 55.3 shall be limited as follows:

I. Cap on liability in relation to Software

Each party's liability arising out of or in connection with this Agreement as it relates to such Software, shall not exceed 100% of the amount paid to OpenText under the relevant Transaction Document for such Software licenses. Where OpenText has made Software available free of charge, then, subject to the 'Unlimited liability' section, each party's liability arising out of or in connection with this Agreement as it relates to such Software, shall not exceed €1,000.

II. Cap on liability in relation to Support Services, Professional Services and Cloud Services

Where Partner have purchased Support Services, Professional Services or Cloud Services, then, subject to the 'Unlimited liability section, each party's liability in an individual Contract Year arising out of or in connection with this Agreement as it relates to such services, shall not exceed in the aggregate to 100% of the amount paid to OpenText for the relevant such services under the Transaction Document to which the liability relates, in that Contract Year. Where OpenText has made Support Services, Professional Services or Cloud Services available free of charge, then, subject to the 'Unlimited liability' section, each party's liability arising out of or in connection with this Agreement as it relates to such services, shall not exceed €1,000.

III. Cap on liability for general matters

Each party's liability in a Contract Year arising out of or in connection with this Agreement other than as it relates to OpenText Products shall not exceed in the aggregate to 100% of the amount paid to OpenText by Partner during the Contract Year during which such liability arises.

55.4 Other cases

Except for the liability specified in sections 55.1, 55.2 or 55.3, either party's liability shall be excluded.

55.5 Indirect and consequential damages

Either party shall not be liable for consequential and indirect damages, except where required under sections 55.1, 55.2 or 55.3.

55.6 Contributory negligence and data backup

If damage or loss is attributable both to fault by both parties, the parties must allow their contributory negligence to be taken into account. In particular, OpenText is not 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 OpenText, OpenText shall be liable only for the costs of copying the data in any backup copies and for reconstructing the data which would have been lost even if backup copies had been created at adequate regular intervals.

- 55.7 If and to the extent that the OpenText Product is considered to be leased and subject to the legal regulations of German rental law, any liability for damages or defaults in performance existing at the conclusion of this Agreement or a Transaction Document is excluded to the extent that OpenText acts or refrains from acting without fault (ohne Verschulden). Insofar § 536a Abs. 1 Alt. 1 BGB shall not apply.

55.7 Product Liability Act

Liability under the Product Liability Act is not affected.

55.8 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 Agreement to the extent due to causes beyond its reasonable control.

V. Product Specific Terms**G. Professional Services – general – where Partner is selling under the Flow Down Contracting Model**

Section 1 (Carry out acceptance tests) will be entirely replaced by the following provisions:

4 Carry out acceptance tests

Acceptance shall only be applicable for Deliverables which qualify as work results or Work Products in the sense of Section 631 of the German Civil Code that are to be provided under a Transition Document for Professional Services.

If a Transaction Document specifies an acceptance test for a work result or Work Product, OpenText will notify Partner or the End User when such work result or Work Product is ready for acceptance. OpenText shall and Partner shall ensure that the End User shall, then perform an agreed acceptance test ("**Acceptance Test**") within an agreed time period with respect to each work result or Work Product ("**Acceptance Period**") to verify that the work result or Work Product functions materially in accordance with the written specifications as stated in the Transaction Document.

If a Transaction Document concern several individual work result or Work Product that may be used by the End User independently of one another (e.g. upgrade of several projects), acceptance shall be taken of such individual services separately and independently of one another. Should partial services be defined in the Transaction Document agreements (e.g. project milestones), acceptance shall be taken thereof separately. Total performance of a given Transaction Document shall be deemed accepted upon acceptance of all individual or partial work result or Work Product. In the event that final acceptance is agreed to in a Transaction Document, objections may be raised in relation to individual and partial work result or Work Product that have already been accepted only where these effect the integrative interaction of the individual and partial work result or Work Product.

Acceptance occurs when the work result or Work Product meets all material requirements of the Acceptance Test. Partner shall, or shall ensure that the End User shall, notify OpenText promptly in writing of acceptance. If the Acceptance Tests are not conducted and OpenText not notified, within the Acceptance Period defined in the Transaction Document or, if no Acceptance Period is specified, then within five (5) business days after delivery of the work result or Work Product, the work result or Work Product will be deemed accepted. The same shall apply if the Partner or End User commences operations with parts of or complete partial work result or Work Product.

If OpenText is notified in writing within the Acceptance Period that the work result or Work Product does not function in all material respects with the written specifications stated in the Transaction Document and further describes the deficiencies in sufficient detail for OpenText to identify or reproduce them, OpenText will work diligently to correct and redeliver the affected work result or Work Product. OpenText shall again provide the work result or Work Product for (partial) acceptance.

The parties shall prepare a record of acceptance, declaring or refusing unconditional acceptance. In the event of a refusal, the record of acceptance shall specify for each objection all grounds preventing acceptance and shall provide details of relevant evidence thereof. Both parties shall confirm the record of acceptance by executing same.

Acceptance may not be refused where defects ascertained reduce use of the work result or Work Product to only an insignificant degree. Such insignificant errors shall be rectified by OpenText within the framework of the warranty.

H. Software – general – General Terms

Sections 1 (Additional Software warranty where fees paid) and 2 (Remedies for additional Software warranty) shall be each be replaced with the following: Deliberately left blank.