

## OPEN TEXT MARKETPLACE APPLICATION PROVIDER AGREEMENT

This OPENTEXT MARKETPLACE APPLICATION PROVIDER AGREEMENT (“**Agreement**”) is effective beginning with your initial use of the Marketplace between you (the “**Application Provider**”) and, as applicable, Open Text Corporation or its affiliates (“**OpenText**”). The purpose of this Agreement is to set forth terms and conditions applicable to use of the OpenText marketplace (the “**Marketplace**”) to distribute and market software applications and add-ons, related documentation and other materials. Before accessing the Marketplace, carefully read this Agreement which applies in addition to the OpenText terms of use for OpenText websites set forth at <https://www.opentext.com/about/legal/marketplace-website-terms-of-service> (“**Terms of Use**”). OpenText will only permit Application Provider to distribute Applications through the Marketplace when such Application Provider is verified to be in good standing as determined in the sole discretion of OpenText. To the extent there is any conflict between this Agreement and the Terms of Use, this Agreement shall control.

### 1. **Definitions.** Capitalized terms in this Agreement are defined as follows:

“**Application Provider Dashboard**” means the online tools or services provided by OpenText to each Application Provider, as updated by OpenText from time to time, details of which may be requested by email to MarketplaceAdmin@MicroFocus.com.

“**Applications**” means the software applications and add-ons, related documentation and other materials that Application Provider makes available via the Marketplace.

“**Application Provider Account**” means account issued to an Application Provider in connection with the distribution of Application Provider Applications via the Marketplace.

“**End User**” means any entity which Application Provider, via the Marketplace, allows to use or access its Applications or to whom Application Provider licenses its Applications.

“**Intellectual Property Rights**” means all patent rights, copyrights, trademark rights, rights in trade secrets, database rights, moral rights, and any other intellectual property rights (registered or unregistered) throughout the world.

“**Marks**” means any name, symbol, trademark, logotype, trade name, domain names, and insignia that each party owns. The trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as owned (or licensed) by such party from time to time.

“**Portal**” means the various website URLs listed in program guides or as provided by organization, located on OpenText domains, which contain links to copies of relevant program information, documents and terms.

“**Payment Account**” means the financial account issued by a Payment Processor to an Application Provider that authorizes the Payment Processor to collect and remit payments on the Application Provider's behalf for Applications sold via the Marketplace.

“**Payment Processor**” means any entity designated from time to time by OpenText to provide services that enable Application Providers with Payment Accounts to be paid for Applications distributed via the Marketplace.

“**Personal Data**” have the same meaning as in the applicable data protection laws (or their closest equivalent concept or term as defined under such laws including personal information or personally identifiable information (PII) or protected health information (PHI), etc)

**“Tax”** means any Federal, state, or local sales, use, value added, goods and services, or other similar transaction taxes. This term excludes telecommunication taxes and similar tax types, property taxes, and taxes based on Application Provider’s income, including income, franchise, business and occupation, and other similar tax types.

## **2. Pricing, Payments, and Taxes.**

- a. This Agreement covers both Applications that End Users can access for free and Applications that End Users pay a fee to access. In order for a fee to be charged and to be paid for Applications distributed via the Marketplace, Application Provider must have a valid Payment Account under a separate agreement with a Payment Processor, be approved by a Payment Processor for a Payment Account and maintain that account in good standing. If there is a conflict between Application Provider’s Payment Processor agreement and this Agreement, this Agreement will govern.
- b. Applications are displayed to End Users at prices that Application Provider establishes in its sole discretion. If OpenText believes that Taxes may be owed by Application Provider or OpenText on the sale of Applications, OpenText is authorized to include any such Taxes in the price charged to End Users. Application Provider may set the price for its Applications in the currencies permitted by the Payment Processor. OpenText may display the price of Applications to End Users in their native currency, but OpenText is not responsible to Application Provider for the accuracy of currency rates or currency conversion.
- c. OpenText will determine if an Application is taxable in an applicable jurisdiction and if so, the applicable Tax rate will be collected either by OpenText or the Payment Processor and remitted to the appropriate taxing authority for Applications sold to End Users. OpenText may update the countries, territories or other jurisdictions where it will determine and remit the Taxes with notice to Application Provider. In all other countries, territories, or jurisdictions, Application Provider is responsible for determining if an Application is taxable, the applicable rate of Tax to be collected, and for remitting the Taxes to the appropriate taxing authority. All Taxes will be deducted from the sales price of Applications sold and the remainder (sales price less Transaction Fee and Taxes, if any) will be remitted to Application Provider. Where OpenText collects and remits Taxes in applicable countries/territories, Application Provider and OpenText will recognize a supply from You to OpenText for Tax purposes, and Application Provider will comply with the relevant Tax obligations arising from this additional supply. Where either OpenText or the Payment Processor is required by applicable (local) legislation to withhold any taxes ("Withholding Taxes") on payments made or received by any of them, OpenText will also deduct an amount equal to such Withholding Taxes from the sales price. Withholding Taxes include, but are not limited to, withholding tax obligations on cross-border payments or imposed by telecommunications taxes.
- d. Application Provider may also choose to make Applications available for free. If the Application is free, Application Provider will not be charged a Transaction Fee. To avoid unexpected fees for End Users, Application Provider agrees that Applications that were initially offered free of charge to End Users will remain free of charge. Any additional charges will correlate with an alternative or supplemental version of the Application.
- e. Application Provider authorizes OpenText to give End Users refunds in accordance with the Marketplace refund policies as established by OpenText from time to time or the local versions made available to Application Provider. In all other respects, the Payment Processor’s standard terms and conditions regarding refunds will apply. End User refunds may be net of taxes previously charged to End Users for Application purchases.
- f. End Users shall be allowed unlimited reinstalls of each Application distributed via the Marketplace without any additional fee, provided however, that if Application Provider removes an Application from the Marketplace due to a Legal Takedown (as defined in Section 6(c)), those Application(s) will be removed from all portions of the Marketplace and users will no longer have a right or ability to reinstall the affected Applications.

## **3. Application Provider Obligations**

- a. Application Provider is responsible for:

- i. uploading its Applications to the Marketplace,
  - ii. providing required Application information and support to End Users, and
  - iii. accurately disclosing the permissions necessary for the Application to function on behalf of End Users.
  - iv. maintaining the confidentiality of any Marketplace Application Provider credentials,
  - v. all Applications that are uploaded using its Application Provider credentials.
- b. Application Provider is solely responsible for, and OpenText has no responsibility to Application Provider or any End User for, its Applications and for the consequences of Application Provider's actions, including any loss or damage which OpenText may suffer.
- c. End Users will be instructed to contact Application Provider regarding any defects or performance issues in
- d. As between Application Providers and OpenText, Application Provider will be solely responsible, and OpenText will have no responsibility, to undertake or handle support and maintenance of Application Provider's Applications and any complaints concerning such Applications.
- e. Application Provider will supply and maintain valid and accurate contact information that will be displayed in each of its Applications' detail page and made available to End Users for customer support and legal purposes.
- f. Application Provider agrees to respond to End User support inquiries within three (3) business days, and within 24 hours to any support or Application concerns stated to be urgent by OpenText. Failure to provide adequate information or support for Applications may result in less prominent Application exposure or removal of Application Provider's Applications from the Marketplace by OpenText.
- g. OpenText may limit the number of Application Provider Accounts issued to Application Provider.
- h. Application Provider may not use the Marketplace to distribute or make available any Application which has a purpose that facilitates the distribution of software outside of the Marketplace.
- i. Application Provider agrees to use the Marketplace only for purposes that are permitted by this Agreement and any applicable law, regulation, or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United States or other relevant countries).
- j. Application Providers will protect the privacy and legal rights of End Users of its Applications. Where an End Users provides an Application Provider with, or its Application accesses or uses, usernames, passwords, or other login information or any other Personal Data, Application Providers agrees that it will:
  - i. inform the End Users that the information will be available to the Application Provider;
  - ii. comply all applicable laws when processing Personal Data, and provide sufficient guarantees that the appropriate technical and organisational measures have been implemented in such a manner that processing will meet the requirements of the applicable laws;
  - iii. provide legally adequate privacy notice, protection and (if required to do so by law) obtain consent for those End Users;
  - iv. processes Personal Data only on documented instructions from OpenText or only use End User information for the limited purposes for which the End User has given permission to do so;
  - v. process Personal Data provided by End Users securely and only for as long as it is needed.

However, where an End User has separately agreed to allow Application Provider or its Application to process or use Personal Data directly related to the Application but not including other products or

applications, then the terms of that separate agreement will govern Application Provider's use of such information.

- k. Where an End User provides Application Provider with OpenText Account information, Application Provider's Application may only use that information to access that End User's OpenText Account when, and for the limited purposes for which, the End User has given permission to do so.
  - l. Application Provider will not engage in any activity with the Marketplace that interferes with, disrupts, damages, or accesses in an unauthorized manner the devices, servers, networks, or other properties or services of any third party including, but not limited to, OpenText.
  - m. Application Providers may not use user information obtained via the Marketplace to sell or distribute Applications outside of the Marketplace.
4. **End User Ratings.** The Marketplace allows End Users to rate and review Applications. Only End Users who download the applicable Application will be able to rate and review it on the Marketplace. Application ratings may be used by OpenText to determine the placement of Applications on the Marketplace. The Marketplace may also assign Application Providers with a composite score for any of its Applications that has not received End User ratings. A composite score will provide a representation of the quality of Application Provider's Application based on Application Provider's history and will be determined at OpenText's sole discretion. For new Application Providers without Application history, OpenText may use or publish performance measurements such as uninstall and/or refund rates to identify or remove Applications that are not meeting acceptable standards, as determined by OpenText in its sole discretion. OpenText reserves the right to display Applications to End Users in a manner that will be determined at OpenText's sole discretion. Application Providers may contact OpenText regarding any questions or concerns regarding user ratings.

## 5. Licensing

- a. Application Provider grants OpenText a nonexclusive, worldwide, and royalty-free license to: reproduce, perform, display, analyse, and use its Applications in connection with (a) the operation and marketing of the Marketplace; (b) the marketing of software and services that support the use of the Applications; (c) making improvements to the Marketplace and Application Provider Dashboard; and (d) auditing for compliance with this Agreement including, without limitation, Section 15(i) below.
- b. Application Provider grants OpenText a nonexclusive and royalty-free license to distribute, display and make its Applications available for viewing, download, and purchase in the manner indicated in the Application Provider Dashboard.
- c. Subject to (i) this Agreement, (ii) the OpenText Marketplace End User Participation Terms and (iii) any such end user license agreement that Application Provider may specify; Application Provider grants to each End User a nonexclusive, worldwide, and perpetual license to perform, display, and use the Application, solely for internal purposes. Where Application Provider specifies an end user license agreement applicable to its Application, such agreement must be consistent with all obligations arising hereunder.
- d. Subject to the terms and conditions of this Agreement, Application Provider grants to OpenText and its affiliates a nonexclusive, royalty-free license to display Application Provider Marks in connection with the distribution and sale of Application Provider's Application via the Marketplace or to otherwise fulfill its obligations under this Agreement. OpenText may allow Application Provider to use OpenText Marks to promote the sale of OpenText Products or for other marketing purposes under this Agreement, in accordance with OpenText's then-current trademark usage guide and the OpenText Trademark and Logo Usage Policy located at <https://www.opentext.com/about/trademark-and-logo-usage>. The OpenText

Marks, the programs and processes for securing approval to use them, and OpenText' terms of use will be provided to Application Provider upon request or posted on the Portal.

- e. The parties agree to display each other's Marks in a manner that preserves their value, and in accordance with any standards provided by the other party for display. Application Provider will not register or use any trade, company, business or internet domain name which contains OpenText Marks in whole or in part or any other name which is confusingly similar thereto.
- f. Application Provider agrees not to display OpenText Marks in any written or media material without prior written consent. Application Providers authorizes OpenText to use its Marks without consent for our internal use or for listing its Marks on OpenText domains or the Portal. Application Provider may request withdrawal of this authorization at any time with a written notice.
- g. Use of Marks shall not mean, or be implied to mean, and Application Provider will not expressly or impliedly represent, that there is or has been any transfer of ownership of the Marks between the parties.
- h. Any right of use either party may have regarding the other party's Marks pursuant to this Agreement will automatically end when this Agreement or the program or other means by which authorization was obtained terminates.

## **6. Applications Removals**

- a. Application Provider may remove its Applications from future distribution via the Marketplace at any time, but agrees to comply with this Agreement and the Payment Processor's Payment Account terms of service for any Applications distributed via the Marketplace prior to removal including, but not limited to, refund requirements.
- b. Removing an Application from future distribution via the Marketplace shall not:
  - i. affect the license rights of End Users who have previously purchased or downloaded such Applications;
  - ii. require removal of Application Provider Applications from devices or from any part of the Marketplace where previously purchased or downloaded applications are stored on behalf of End Users; or
  - iii. change Application Provider's obligation to deliver or support Applications or services that have been previously purchased or downloaded by End Users.
- c. Notwithstanding anything to the contrary, in no event will OpenText be obligated to maintain on any portion of the Marketplace (including, without limitation, the part of the Marketplace where previously purchased or downloaded applications are stored on behalf of users) any Application that Application Provider has removed from the Marketplace and provided written notice by OpenText that such removal was due to: (a) an allegation of infringement, or actual infringement, of any third party Intellectual Property Right; (b) an allegation of, or actual violation of, third party rights; or (c) an allegation or determination that such Application does not comply with applicable law (collectively "Legal Takedowns"). If an Application is removed from the Marketplace due to a Legal Takedown and an End User purchased such Application within a year before the date of takedown, at OpenText's request, Application Provider agrees to refund the End User all amounts paid by such End User for such Application.
- d. OpenText does not undertake any obligation to monitor the Applications or their content; however, OpenText reserves the right, at its sole discretion, to reject, remove, reclassify, suspend, or bar any Application and/or Application Provider from the Marketplace for any reason, including but not limited to, where OpenText becomes aware of and determines in its sole discretion that an Application or any portion thereof:
  - i. violates any applicable law;

- ii. violates this Agreement, applicable policies, or other terms of service, as may be updated by OpenText from time to time in its sole discretion;
  - iii. violates terms of other agreements specified herein; or
  - iv. creates liability for or has an adverse impact on OpenText or a third party.
- e. If Application Provider's Application contains elements that could cause serious harm to End User devices or data, OpenText may at its discretion disable the Application or remove it from devices on which it has been installed. If Application Provider Application is rejected, removed, or suspended from the Marketplace or from devices pursuant to this Section 6(e), then OpenText may withhold payments due to Application Provider.

## **7. Privacy**

- a. Application Provider acknowledges that OpenText may process Personal Data from Application Provider in connection with Application Provider's use of the Marketplace. OpenText may also collect, process and transfer Personal Data including End Users Personal Data during the course of usage of the website or the Marketplace. OpenText's privacy policy is as set out at <https://www.opentext.com/about/privacy>, which may be updated from time to time.
- b. Application Provider acknowledges and agrees that Application Provider and OpenText will each act as a separate, independent controller of End User's Personal Data shared by OpenText with Application Provider as part of its activity in the Marketplace (if any). Each of OpenText and Application Provider shall be independently responsible for compliance with each party's respective obligations as a controller with respect to Personal Data of End Users processed in the Marketplace.
- c. Application Provider is solely responsible for, and assumes all liability with respect to, its own collection, processing, storage, and transfer of any End User data, including Personal Data it may receive either via the Marketplace or directly from such End User..
- d. Application Provider is solely responsible for notifying its End Users of proper use of such data. OpenText is not responsible for End User Personal Data transferred to Application Provider or third party, or for any transmission, collection, disclosure, security, access, modification, use, or deletion of End User Personal Data transferred by or through the Marketplace to Application Providers or other third parties.
- e. Application Provider shall not provide any Personal Data to OpenText for processing by OpenText on behalf of Application Provider, unless otherwise agreed by the parties in writing in an applicable transaction document with applicable privacy terms.
- f. OpenText will not have access to protected health information unless the parties have an executed business associate agreement (BAA) in place for the applicable transaction. Application Provider is solely responsible for assessing its products and services for compliance with any applicable statutory or industry requirements.
- g. In order to continually innovate and improve the Marketplace, related products and services, and the End User and Application Provider experience across OpenText products and services, OpenText may collect usage statistics from the Marketplace including, but not limited to, information on how the Application and Marketplace are being used.
- h. The data collected is used in the aggregate to improve the Marketplace, related products and services, and the End User and Application Provider experience across OpenText products and services. Application Providers may have access to certain data collected by OpenText via the Application Provider Dashboard, including limited Personal Data from End Users, such as name, email address, and other like information associated with the End User account. Any such data may only be used for purposes of this Agreement and in accordance with OpenText' instructions. In any event, such data must be treated by Application Provider in accordance with OpenText' privacy policy (set forth at <https://www.opentext.com/about/privacy>), in

accordance with Application Provider's privacy policy and in accordance with applicable data protection laws.

#### **8. Terminating this Agreement**

- a. This Agreement will continue to apply until terminated, subject to the terms that survive pursuant to Section 15(j), by either Application Provider or OpenText as set forth below.
- b. Application Provider must remove all of its Applications and cease use of the Application Provider Dashboard and any relevant Application Provider credentials, and Marks prior to terminating this Agreement.
- c. OpenText may terminate this Agreement for any reason with thirty (30) days prior written notice. In addition, OpenText may, at any time, immediately suspend or terminate this Agreement if:
  - i. Application Provider have breached any provision of this Agreement, any non-disclosure agreement or other agreement relating to the Marketplace;
  - ii. OpenText is required to do so by law;
  - iii. Application Provider ceases being an authorized Application Provider, an Application Provider in good standing or barred from using OpenText software; or
  - iv. OpenText decides to no longer operate the Marketplace.
- d. After termination of this Agreement, OpenText will not distribute Application Provider's Application, but may retain and use copies of the Application for support of the Marketplace.

#### **9. Representations and Warranties**

- a. Application Provider represents and warrants that it has all Intellectual Property Rights in and to its Application(s) and is solely responsible for the data, text, audio, video, images, software, and other content that it submits or places into the Marketplace.
- b. Application Provider represents and warrants that it has the right to distribute and sublicense the use of any third-party material in the Application and that it will not submit material to the Marketplace that is subject to third party Intellectual Property Rights unless it is the owner of such rights or has permission from their rightful owner to submit the material.
- c. Application Provider represents and warrants that it and Its Application(s) will comply with all applicable laws
- d. Application Provider represents and warrants that Application Provider has full legal authority to enter into and to bind its employer or such entity to this Agreement.
- e. Application Provider represents and warrants that the information provided and maintained in the Application Provider Dashboard is and will be complete and accurate.

#### **10. DISCLAIMER OF WARRANTIES**

- a. APPLICATION PROVIDER UNDERSTAND AND EXPRESSLY AGREES THAT ITS USE OF THE APPLICATION PROVIDER DASHBOARD AND THE MARKETPLACE IS AT ITS SOLE RISK AND THAT THE APPLICATION PROVIDER DASHBOARD AND THE MARKETPLACE ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND.
- b. APPLICATION PROVIDER'S USE OF THE APPLICATION PROVIDER DASHBOARD AND THE MARKETPLACE AND ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE APPLICATION PROVIDER DASHBOARD AND THE MARKETPLACE IS AT ITS OWN DISCRETION AND RISK AND APPLICATION PROVIDER IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH USE.

- c. OPENTEXT FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

#### **11. LIMITATION OF LIABILITY**

- a. In no event shall OpenText or its suppliers and affiliates be liable for any loss or damage which may be incurred by Application Provider as a result of: (i) any reliance placed by Application Provider on the completeness, accuracy of the service or content made available through the Application Provider Account and associated services; (ii) for any permanent or temporary cessation in the provision of the Application Provider Account and associated services (or any features within the services); (iii) the deletion of, corruption of, or failure to store, any content and other communications data maintained or transmitted by or through Application Provider's use of the Application Provider Account or associated services; (iv) Application Provider's failure to provide OpenText with accurate account information; or (v) Application Provider's failure to keep Application Provider's password or account details secure and confidential. To the extent permitted by law, in no event shall OpenText, its subsidiaries', its affiliates' or its suppliers' total aggregate liability exceed the amounts paid by Application Provider to OpenText under this Agreement to OpenText in the twelve (12) month period immediately preceding the event giving rise to such claim. Nothing in this Section 11(a) shall limit either party's liability for: willful misconduct or fraudulent misrepresentation; unauthorized use of intellectual property; breach of license; breach of confidentiality (provided that liability with respect to Personal Data remains capped by this Section 11(a) unless prohibited by applicable law); death or bodily injury caused by negligence; non-payment of amounts owed; or any liability which may not be excluded or limited by applicable law.
- b. In no event will either party be liable for any indirect, special, incidental, consequential, punitive or similar damages; loss of profits, business, opportunity, savings, data or programs, (including, but not limited to, the cost of recovery or replacement of such data or programs); loss, damage or any costs due to interruption, delay or inability to use the Marketplace, whether arising out of or in connection with this Agreement, even if informed of the possibility of such damages in advance.
- c. The limitations and disclaimers in Section 11(a) and Section 11(b) apply to all causes of action, including but not limited to, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts. The remedies in this Agreement are the parties' exclusive remedies and the limitations of Sections 11(a) and 11(b) apply even if these remedies fail in their essential purpose.

#### **12. Indemnification.** To the maximum extent permitted by law, Application Provider agree to defend, indemnify, and hold harmless OpenText, its affiliates, and their respective directors, officers, employees and agents, and Payment Processors (which may include OpenText and/or third parties) and the Payment Processors' affiliates, directors, officers, employees, and agents from and against any and all third party claims, actions, suits, or proceedings, as well as any and all losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) arising out of or accruing from:

- a. Application Provider's use of the Marketplace (including the Dashboard) in violation of this Agreement;
- b. Infringement or violation of any Intellectual Property Right or any other right of any person by Application provider's Application(s);
- c. Violations of any law by Application Provider or its Applications;
- d. Failure of Application Provider to comply with the policies referenced in Section 15(i);
- e. Application Provider's distribution of Applications via the Marketplace; or
- f. Use of Application Provider's Applications by End Users.



13. **Ownership.** Notwithstanding anything to the contrary in this Agreement, each party and their respective supplier(s) owns and retains title to and ownership of all pre-existing Intellectual Property Rights, including all software programs, documentation, media, and related materials. OpenText does not transfer any portion of such title and ownership, or any of the associated goodwill to Application Provider. All rights which are not expressly granted are reserved. Except for the license rights granted in this Agreement, OpenText agrees that it obtains no right, title, or interest from Application Provider or its licensors under this Agreement.

**14. Changes to the Agreement.**

- a. OpenText may make changes to this Agreement at any time. Application Provider will be notified through the Application Provider Dashboard.
- b. Changes will not be retroactive. They will become effective, and will be deemed accepted by Application Provider: (a) immediately for those who become Application Providers after the notification is posted; or (b) for pre-existing Application Providers, on the date specified in the notice, which will be no sooner than 30 days after the changes are posted (except changes required by law which will be effective immediately).
- c. If Application Provider does not agree with the modifications to the Agreement, Application Provider may terminate its use of the Marketplace, which will be its sole and exclusive remedy. Application Provider agrees that its continued use of the Marketplace constitutes its agreement to the modified terms of this Agreement.

**15. Miscellaneous.**

- a. This Agreement, including any addenda Application Provider may have agreed to separately, constitutes the entire legal agreement between Application Provider and OpenText and governs Application Provider's use of the Marketplace and completely replaces any prior agreements between Application Provider and OpenText in relation to the Marketplace. The English language version of this Agreement will control and translations, if any, are non-binding and for reference only.
- b. Application Provider agrees that the failure or delay by OpenText to exercise or enforce any legal right or remedy contained in this Agreement (or which OpenText has the benefit of under any applicable law), such failure or delay will not be taken to be a waiver of OpenText's rights.
- c. If any court of law having the jurisdiction to decide on this matter rules that any provision of this Agreement is invalid, then that provision will be removed from this Agreement without affecting the rest of this Agreement and the remaining provisions of this Agreement will continue to be valid and enforceable.
- d. OpenText and Application Provider are independent contractors, and neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Each party reserves the right to develop or sell products and services that are similar to or compete with the products and services of the other party.
- e. Application Provider acknowledges and agrees that each of the affiliates of OpenText will be third party beneficiaries to this Agreement and that such other companies will be entitled to directly enforce and rely upon any provision of this Agreement that confers a benefit on (or rights in favor of) OpenText. Except as expressly provided in this Agreement, no other person or company will be third party beneficiaries to this Agreement.
- f. The Applications and the Marketplace may be subject to export control laws and import regulations of the United States, EU, Canada, UK and other jurisdictions. Application Provider will comply strictly with all regulations that apply to its distribution or use of Applications or the Marketplace, including without limitation (i) the Export Administration Regulations maintained by the U.S. Department of Commerce, and (ii) the trade and economic sanctions maintained by the U.S. Department of Treasury Office of Foreign Assets Control, and will not allow use of the Applications or the Marketplace in a manner that breaches or facilitates the breach of such regulations, restrictions on destinations, users, and end use. Application

Provider represents and warrants that it is not located in any country or on any list of US embargoed countries or Foreign Nationals of a U.S. embargoed country, U.S. Treasury Department's Specially Designated Nationals List or U.S. Department of Commerce Denied Persons List or Entity List.

- g. Except in the case of a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), the rights granted in this Agreement may not be assigned or transferred by either Application Provider or OpenText without the prior approval of the other party. Any other attempt to assign is void.
- h. If Application Provider experiences a change of control, OpenText may, at its sole discretion, elect to immediately terminate this Agreement.
- i. This Agreement, as well as any claims or causes of action, whether in contract, tort or statute, based on, arising under or relating hereto, will be governed and enforced pursuant to the laws of the State of Delaware, without giving effect to any conflict of law rule or other rule that could result in the application of laws of a different jurisdiction. The parties consent to exclusive jurisdiction of the state and federal courts of Delaware, except that OpenText will be allowed to apply for injunctive relief in any jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not apply. The prevailing party in any proceeding has the right to recover costs and reasonable attorneys' fees as awarded by the court or arbitrator. If Application Provider is accepting these Application Provider Terms on behalf of a United States government entity, then the foregoing provisions regarding governing law, venue and injunctive relief shall not be applicable.
- j. OpenText agrees and expects all Application Providers to agree to conduct business in strict legal compliance and with the highest ethical standards. Neither Application Provider nor its officers, employees, agents, or sub-contractors shall offer, promise, give, request, accept or agree to accept from any person (whether for themselves or on behalf of another) any advantage, gift, payment, consideration or benefit of any kind which could be intended to influence a decision or gain advantage or which could otherwise constitutes a bribe and/or an illegal or corrupt practice under the applicable laws of any country, either directly or indirectly in connection with this Agreement or OpenText's business. Additionally, Application Provider acknowledges and agrees not to provide OpenText with any proprietary or other information that is restricted from disclosure by a third party. By entering into this Agreement, Application Provider agrees to comply with the OpenText Supplier Code of Conduct, as updated from time to time, which describes the standards of conduct and ethics expected of all third parties OpenText does business with and is located at <https://www.opentext.com/about/supplier-information>.
- k. A breach of the OpenText Code of Conduct may be deemed a material breach of this Agreement. Without limiting OpenText's rights hereunder, if Application Provider breaches the OpenText Code of Conduct, OpenText may exclude Application Provider from OpenText programs, including special pricing and/or promotion programs and, if Application Provider is eligible to purchase Products directly from OpenText, OpenText may alter the level of discount available for such purchases.
- l. Sections 1 (Definitions), 6(e), 7(Privacy and Information), 8(d) (Terminating this Agreement), 9 (Representations and Warranties), 10 (Disclaimer of Warranties), 11 (Limitation of Liability), 12 (Indemnification), 13 (Ownership) and 15 (Miscellaneous) will survive any expiration or termination of this Agreement.