

## OpenText Cloud Services Terms of Service

These Cloud Services Terms of Service (“Terms”) apply to the Services and will be binding on Customer and OT when OT makes any of these available for Customer’s use. The term “OT” means Open Text Corporation or its Affiliates providing the Services.

### 1. Right to Use

- 1.1 Services.** Subject to Customer’s compliance with these Terms, OT grants to Customer during the Service Period a limited, non-exclusive, non-transferable and revocable right to access and use solely for Customer’s own benefit the Services purchased by Customer, or that Customer has otherwise been authorized to use.
- 1.2 Software.** Subject to Customer’s compliance with these Terms, OT grants to Customer during the Service Period a limited, non-exclusive, non-transferable and revocable license to use Related Software, if any, provided by OT as part of a Service. Customer acknowledges that certain third-party software may be provided with the Services or Related Software and that the license terms accompanying that code will govern its use during the Service Period.
- 1.3 Restrictions.** For clarity, the rights granted in this Section do not allow Customer or End Users to use the Services or Related Software to offer services to multiple, unrelated persons, such as for outsourcing, service bureau, or other similar business operations.

### 2. Customer’s Obligations

- 2.1 Acceptable Use.** Customer is solely responsible for its End Users’ compliance with these Terms and OT’s Cloud Services Acceptable Use Policy. OT’s Cloud Services Acceptable Use Policy is available upon request. OT reserves the right to remove or refuse to post Customer’s Content at any time for violations of the Cloud Services Acceptable Use Policy or applicable law.
- 2.2 Restrictions.** Except as specifically permitted otherwise, Customer will not, nor will Customer permit another person, including End Users, to:
- Rent, lease, lend, resell, or transfer the Services or Related Software or any part of them to any third parties;
  - Copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or work around technical limitations in the Services or Related Software, except as permitted by applicable law;
  - Disable, tamper with, or otherwise attempt to circumvent any billing or monitoring mechanism related to the Services;
  - Remove, obscure, or alter any trademark, copyright, or other proprietary rights notices displayed in the Services or Related Software; or
  - Disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of the Services done by or on behalf of Customer.
- 2.3 Updates.** Customer agrees that any Related Software Customer may have installed on Customer’s infrastructure may periodically check with OT for Updates. Customer agrees that OT may automatically download and install any Updates to the Services and Related Software on Customer’s devices.
- 2.4 Account.** Customer may need to register with OT to use the Services. If so, Customer agrees to keep its registration information accurate, complete and up to date as long as Customer continues to use the Services. Customer agrees to pay the fees associated with its use of the Services.
- 2.5 Credentials.** Customer is responsible for keeping its passwords secure. Customer is solely responsible for any activity that occurs under its user names and Accounts. OT is not responsible for any misuse of customer’s passwords. If Customer loses the passwords or encryption keys for its Accounts, Customer may not be able to access its Content.
- 2.6 Credential Security.** Customer must notify OT immediately of any unauthorized use of Accounts or any other security breach related to the Services. If OT determines that a security breach has occurred or is likely to occur then OT may suspend Accounts and require Customer to change user names and passwords.

### 3. Customer’s Content

- 3.1 OT Right to Use.** OT may use Content only to provide to the Services. OT may also use information derived from Content in aggregated form to assist OT in improving the Services. Customer hereby grants OT a worldwide, royalty-free, nonexclusive license to use Content for the above purposes without any compensation to Customer or others.
- 3.2 Rights in Content.** Customer is solely responsible for any Content and will secure and maintain all rights in any Content necessary for OT to provide the Services without violating the rights of any third party or otherwise obligating OT to Customer or to any third party.

- 3.3 Customer Responsibility.** OT will not assume any obligations with respect to Content, or Customer's use of the Services, other than as specifically provide in these Terms or as required by applicable law.
- 4. Confidential Information**
- 4.1 Use and Protection.** Each party will use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with these Terms or any Order and will not disclose the other's Confidential Information to third parties without authorization of the owner and as provided below. Each party will take reasonable steps to protect the other's Confidential Information. These steps must be at least as protective as those the party takes to protect its own Confidential Information from disclosure to any third parties.
- 4.2 Length of Obligation.** Except as permitted above, neither party will use or disclose the other's Confidential Information for three years after termination or expiration of these Terms unless applicable law requires a longer period of protection. Confidential software code will remain Confidential Information in perpetuity.
- 4.3 Authorized Disclosure.** Notwithstanding the foregoing, the receiving party may disclose Confidential Information to its Affiliates for the purpose of operating its business, fulfilling its obligations or exercising its rights hereunder as long as such Affiliates comply with these Terms and to a third party as required by applicable law, provided the receiving party has given the disclosing party prompt notice if permissible under applicable law.
- 4.4 Ownership of Confidential Information.** All Confidential Information disclosed under these Terms will remain the property of the disclosing party and be promptly returned to the disclosing party, or destroyed by the receiving party, when requested in writing by the disclosing party. The disclosing party does not grant any licenses under its Intellectual Property Rights in the Confidential Information to the receiving party.
- 5. Intellectual Property Rights.** Except as expressly set forth in these Terms neither party grants to the other any rights to the other's property. As between the parties, Customer retains all Intellectual Property Rights in Content, and OT retains all rights, including Intellectual Property Rights, in the Services and Related Software.
- 6. Feedback.** For any Feedback Customer provides to OT about the Services or Related Software, Customer hereby irrevocably assigns to OT all Intellectual Property Rights Customer may have in such Feedback. If any such rights in Feedback are not assignable to OT for any reason, Customer hereby grants to OT, its Affiliates and their successors a non-exclusive, worldwide, royalty-free, fully paid, sub\_licensable, perpetual and irrevocable license, under all of Customer's Intellectual Property Rights in the Feedback, for OT and its Affiliates to implement and use the Feedback.
- 7. Payment Terms.** The following terms will apply unless Customer has different payment terms with the entity from whom it purchases the Services.
- 7.1 Billing and Payments**
- 7.1.1. Online Billing.** If Customer uses a credit card for payment and has chosen an automatically renewing Service then Customer authorizes OT to automatically renew Customer's Service Period and charge the then-current renewal fees to the credit card associated with the Account unless Customer notifies OT before expiration of Customer's current Service Period that Customer does not want to renew. Purchases completed online shall be transacted prior to Customer receiving access to Customer's Account.
- 7.1.2. Purchase Orders.** If Customer submits an Order referencing a OT quote then the Order will be accepted upon OT issuing an e-mail or other written communication to Customer accepting such Order or enabling Customer's Account and providing Customer with access to the Services, whichever occurs first. OT will submit invoices against the Order for ongoing consumption of Services, and Customer will establish a mechanism for payment of the invoices.
- 7.1.3. Invoices.** Customer will pay the invoices in full and in the same currency stated in the invoice within thirty (30) days after the invoice date, with interest accruing thereafter at the lesser of 1.5% per month or the highest lawful rate. Customer must not offset for claims any payments due and owing to OT other than those arising under these Terms that are disputed under Section 7.2, below.
- 7.1.4. Taxes.** The charges due under this Agreement are exclusive of and Customer must pay or reimburse OT for all value added, sales, use, excise, withholding, personal property, goods and services and other taxes, levies, customs and duties resulting from the Order, except for taxes based on OT's net income. If Customer requires OT to withhold taxes, then Customer must forward any withholding receipts to OT.
- 7.2 Billing Disputes.** To the fullest extent permitted by law, Customer waives all claims relating to payments or fees unless Customer provides its claim to OT in writing within thirty (30) days after charged or invoice is due.
- 8. Changes to Services and Terms**
- 8.1** OT reserves the right to make Updates or modify the Services or related Documentation at any time. OT may provide notice of changes by posting information concerning the change (i) via email; (ii) on OT's website (iii) by

notification directly through the Services (e.g. on a Services login page); or (iv) by other industry standard notification system such as social media. OT will give sixty (60) days written notice prior to implementing a change that has a material impact on the manner in which the Services are provided. The change notice will identify the reason for the change and describe the impact on Customer's receipt and use of the affected Services. OT will consult with Customer to identify ways to mitigate the impact of any such change.

## 9. Pre-GA and Evaluation Services

9.1 If Customer chooses to use any Pre-GA or Evaluation Services, Customer may do so only to evaluate functionality, performance, compatibility and reliability during the specified period. In connection with such use, Customer specifically agrees that:

- Pre-GA and Evaluation Services are provided "AS-IS" and without support;
- Any security, compliance, service level, and privacy commitments made by OT in connection with these Terms are not applicable to Pre-GA and Evaluation Services;
- OT may change or discontinue Pre-GA and Evaluation Services at any time and makes no commitment to make them generally available;
- Pre-GA Services are Confidential Information of OT;
- Pre-GA Services are experimental, provided for testing purposes only, and may not be used in production; and
- Customer will comply with testing guidelines provided by OT and will make reasonable efforts to provide Feedback.

9.2 Services and Related Software that Customer accesses or uses for evaluation purposes, or otherwise free of charge, are subject to the applicable terms of Section 9.1.

## 10. Privacy

10.1 **Privacy Policy.** Customer agrees that OT's collection, use and disclosure of Customer's personal information, Content provided to OT or any other data Customer provides to OT or places within the Services or Related Software will be governed by OT's Privacy Policy located at <http://www.opentext.com/who-we-are/copyright-information/site-privacy>, these Terms, and the laws generally applicable to OT as a provider of the Services.

10.2 **Customer's Compliance.** Customer agrees to be solely responsible for compliance with laws, including any laws that apply to Customer's business or industry, applicable to any information or data, Content placed in the Services, and Customer's use of the Services.

## 11. Term and Termination

11.1 **Term.** These Terms will remain in effect until expiration of the last Service Period, including any extensions, or the termination of these Terms, whichever is earlier.

11.2 **Termination by Customer.** Customer may terminate these Terms at any time by giving thirty (30) days' written notice. Any such termination will not be effective, however, until all active and prepaid Service Periods have expired and Customer has completely stopped using the Services. Service Periods for paid Services expire as stated in the applicable Order, and Customer cannot terminate any Service Periods for convenience prior to expiration.

11.3 **Non-Renewal by OT.** OT may elect not to renew any or all of Customer's Service Periods by giving notice at least ninety (90) days prior to the expiration of any then-current Service Period.

11.4 **Regulatory Changes.** In any country where any current or future government regulation or requirement applies to OT or causes OT to believe these Terms or the Services may be in conflict with any such regulation or requirement, OT may change the Services or terminate these Terms and any Service Periods. OT will use reasonable efforts to notify Customer if it believes it must exercise its rights under this paragraph.

11.5 **Suspension.** OT may suspend Customer's use of the Services if:

- It is reasonably needed to prevent unauthorized access to Content or the content of other OT customers;
- Customer fails to respond to a claim of alleged infringement within a reasonable time;
- Customer does not pay amounts due under an Order; or
- Customer or an End User violates these Terms.

A suspension does not extend the Service Period, will apply to the minimum necessary part of the Services and will be in effect only while the condition or need exists. Customer and OT remain obligated to comply with these Terms during a suspension. OT will give notice before implementing the suspension except where it is reasonable to suspend Customer's use immediately. If Customer does not address the reasons for the suspension within ninety (90) days after suspension then OT may terminate the Service Period, rights to use the Services, and delete Content without following the process described in Section 11.6 (Customer's Content upon Termination).

11.6 **Customer's Content upon Termination.** Customer may extract or delete Content at any time prior to the expiration or termination of the applicable Service Period. When a Service Period expires or terminates, Content

that Customer has not previously deleted or removed will be retained for at least ninety (90) days so that Customer can extract it, except for Pre-GA and Evaluation Services where Content may be deleted immediately without any retention period. Customer remains responsible for all storage and other applicable charges during this retention period. Following the expiration of this retention period, OT will delete all Content, including any cached or backup copies. After the retention period, Customer agrees that OT has no additional obligations to continue to hold, export, or return Content and that OT has no liability whatsoever for deletion of Content pursuant to these Terms.

## 12. No Warranty

**12.1 Disclaimer.** OT AND ITS SUPPLIERS PROVIDE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, FOR THE SERVICES, RELATED SOFTWARE, EVALUATION SERVICES, OR PRE-GA SERVICES. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW PROVIDES OTHERWISE.

**12.2** Any warranties, guarantees, or conditions that OT cannot disclaim under applicable law will last for the minimum duration required by applicable law or one year from the date of Service Period origination, whichever is longer.

## 13. Limitation of Liability

**13.1 Limitation on Indirect Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY, NOR OT'S SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES, WILL BE LIABLE UNDER THESE TERMS FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING LOSS OF USE OF THE SERVICES, LOST PROFITS, GOODWILL, OR DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSSES (EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT PROVIDE A COMPLETE REMEDY), RESULTING FROM THE USE OR INABILITY TO USE THE SERVICES OR RELATED SOFTWARE OR IN ANY WAY RELATING TO THESE TERMS.

**13.2 Limitation on Direct Liability.** WITH RESPECT TO PAID SERVICES, CUSTOMER AGREES THAT THE AGGREGATE LIABILITY OF OT, ITS SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES FOR ANY AND ALL CLAIMS IN CONNECTION WITH THESE TERMS WILL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. WITH RESPECT TO UNPAID SERVICES, EVALUATION SERVICES, RELATED SOFTWARE AND PRE-GA SERVICES, NEITHER OT, NOR OT'S SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES, WILL BE LIABLE UNDER THESE TERMS FOR DIRECT DAMAGES. CUSTOMER AGREES THAT THIS DAMAGES LIMITATION IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN CUSTOMER AND OT. The limitation of liability in this Section 13.2 applies to the fullest extent permitted by applicable law, but does not apply to the parties' obligations set forth in Section 14 (Defense of Claims).

**13.3 Reservation of Rights.** Nothing in these Terms will limit OT's rights under applicable law.

## 14. Defense of Claims

Customer agrees to defend, indemnify, and hold harmless OT, its suppliers, and channel partners from and against any claims, liabilities, damages, losses and expenses, including reasonable attorney fees and costs, in connection with:

- Customer's or End Users' use of the Services;
- Customer's or End Users' breach of these Terms;
- Customer's or End Users' breach of the Acceptable Use Policy;
- Customer's or End Users' violation of any third party right, including any Intellectual Property Right;
- Any claim that use of Content caused damage to a third party; or
- Any work product created using the Services and use of any such work product by Customer or a third party.

The foregoing obligations are subject to OT (a) notifying Customer promptly in writing of such claim; (b) granting Customer sole control over the defense and settlement thereof; and (c) reasonably cooperating in response to a Customer request for assistance, at Customer's expense. Customer will pay the amount of any resulting adverse final judgment or settlement to which Customer agrees. OT's right to defense and payment of judgments or settlements under this Section is in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such rights. This indemnity obligation will survive the termination or expiration of all Service Periods and these Terms.

## 15. General



- 15.1 Notices.** All notices must be in writing and addressed: in the case of OT to the address set forth in the Agreement, and in the case of Customer, to the address set forth in the applicable order or online registration. A copy shall also be sent to OT's General Counsel, 275 Frank Tompa Drive, Waterloo, ON N2L 0A1, Canada. Notice will be deemed given when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt.
- 15.2 Assignment.** Customer may not assign or transfer these Terms, either in whole or in part, directly or by operation of law, or delegate duties or assign any of Customer's rights.
- 15.3 Severability.** If a court of competent jurisdiction determines that any provision of these Terms is unenforceable, then the unenforceable portion will be changed and interpreted to best accomplish the objectives of the provision within the limits of applicable law. Invalidity of a portion of these Terms will not render the entire agreement invalid.
- 15.4 Waiver.** Failure to enforce any provision of these Terms will not constitute a waiver of that provision or of the right to enforce that provision at a subsequent time.
- 15.5 Relationship of the Parties.** Customer and OT are independent contractors. These Terms do not create an agency, partnership, or joint venture.
- 15.6 No Third-Party Beneficiaries.** There are no third-party beneficiaries to these Terms.
- 15.7 Governing Law; Time Limit.** These Terms are governed by the laws of the state of Delaware, U.S.A. without reference to its choice or conflicts of law rules. The parties consent to the exercise of exclusive jurisdiction by the state or federal courts in the State of Delaware for any claim relating to the Terms. No action, regardless of form, arising from the Terms or any Services provided or to be provided hereunder may be brought by either party more than one (1) year after the cause of action has accrued, except that an action for non-payment may be brought at any time.
- 15.8 Entire Agreement.** These Terms and the documents referenced within comprise the entire agreement concerning this subject matter and supersede any prior or concurrent communications.
- 15.9 Survival.** All provisions of these Terms that expressly state that they survive, or which by their nature should survive, do survive termination or expiration of these Terms.
- 15.10 U.S. Export Jurisdiction.** The Services and Related Software may be subject to the export and import laws of the United States and other countries. Customer agrees to comply with all export and import laws and regulations. Customer acknowledges that the Services and Related Software may not be exported or re-exported to any U.S. embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List. Customer represents and warrants that Customer is not located in any such country or on any such list. Customer agrees that Customer will not use the Services and Related Software for any purposes prohibited by U.S. law, including the development, design, manufacture or production of missiles, or for development of nuclear, chemical or biological weapons. Customer acknowledges that the Services and Related Software are not designed to handle data or include services subject to International Traffic in Arms Regulations and agrees not to store, transmit, or introduce any such information into the Services or the Related Software.
- 15.11 International Availability.** Availability of the Services, including specific features and language versions, varies by country. Information on availability is located in the Supplemental Terms, if any.
- 15.12 Force Majeure.** Neither party will be liable for any failure in performance under these Terms due to causes beyond its reasonable control such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, cyber terrorism, acts of God, and acts or omissions of Internet traffic carriers. This section will not, however, apply to Customer's payment obligations under these Terms.
- 15.13 Publicity.** Customer is permitted to state publicly that it uses the Services. If Customer wants to display or distribute any OT trademarks in connection with Customer's use of the Services, Customer must obtain written permission from OT. OT may include Customer's name in a list of OT customers, whether online or in promotional materials. OT may also verbally reference Customer as a user of the Services. Neither party needs approval if it is repeating a public statement that is substantially similar to a previously-approved public statement.
- 15.14 Order of Precedence.** Any inconsistency or incompatibility in or between these Terms and any other documents referenced within these Terms will be resolved by giving precedence in the following order:
- OT Acceptable Use Policy; then;
  - The quote to Customer; then
  - Supplemental Terms, if any; then
  - These Terms, and, finally;
  - OT Privacy Policy
- 15.15 Updates.** These Terms will also apply to any enhancements or new features added to the Services and any revised versions of Related Software.

## 16. Definitions

- 16.1 Account** means Customer's registration, payment and other information related to Customer's use of the Services and Related Software. Customer must have a current Account to access and use the Online Services.
- 16.2 Affiliate** means a legal entity that is controlled by, controls, or is under common control with OT or Customer, respectively. "Control" means more than 50% of the voting power or ownership interests.
- 16.3 Confidential Information** means any information that is marked "confidential" or "proprietary" or any other similar term or, if disclosed orally, is identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, is summarized, appropriately labeled and provided in tangible form. It does not include information that is, or becomes, publicly available without a breach of these Terms; was lawfully known to the receiver of the information without an obligation to keep it confidential; is received from another source who can disclose it lawfully and without an obligation to keep it confidential; is independently developed; or information that identifies or can reasonably be used to identify an individual.
- 16.4 Content** means digital data including text, sound, software, images, video, electronic documents, electronic materials, and other encoded content, that Customer or End Users use with the Services or provide to OT in connection with Customer's use of the Services.
- 16.5 Customer** means the entity identified in an Order or anyone who uses Pre-GA or Evaluation Services.
- 16.6 Documentation** means these Terms and all written, electronic, online, and other documentation provided or made available by OT to Customer under the Agreement, including Documentation relating Services or configurations.
- 16.7 End User** means Customer's employees, contractors and similar personnel authorized by Customer to use the Services.
- 16.8 Evaluation Services** means generally available services offered by OT under these Terms and provided on a limited-use basis as described in Section 9.1 before Customer decides to purchase, and Related Software, if any.
- 16.9 Feedback** means suggestions or comments provided by Customer or End Users to OT that are related to the Services or Related Software.
- 16.10 Intellectual Property Rights** means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.
- 16.11 Pre-GA Services** means the Services (or portions of Services) and Related Software that OT identifies as beta or pre-release and that are not made generally available for use.
- 16.12 Order** means a purchase order or similar document issued by Customer for the purchase of Services.
- 16.13 Related Software** means software provided by OT in connection with the Services for the sole purpose of enabling Customer to use the Services. Related Software may include development software and tools, and software to be installed on End User devices for the purpose of using the Services. Related Software excludes software that OT makes available under separate terms or pursuant to a separate agreement.
- 16.14 Services** mean the OT LEAP services, OT Supplier Exchange service and any other OT product or service offered under these Terms from time to time.
- 16.15 Service Period** means the time period that Customer is permitted to use the Services that Customer ordered.
- 16.16 Supplemental Terms** means additional terms and conditions, if any, made available to Customer that applies to a Service.
- 16.17 Updates** mean the periodic software changes that OT makes to the Services or Related Software. Updates are designed to improve, enhance and further develop the Services and may take the form of bug fixes, enhanced functions, new software modules and completely new versions.