

On-Premises Non-Production License for Cloud Services Customers

The following terms are incorporated into the Cloud Services Agreement:

Terms and Conditions Applicable to Software – Developer’s License (non-production)

These terms are specifically to govern the Customers use of the on-premises Developer’s License as outlined in the applicable schedule (“License Schedule”) and contains the terms and conditions under which Company will provide Customer with the object code form of the Software product described in the applicable schedule (the “Software”) for internal testing purposes, and not for use in production during the term. “Software” includes any related licensed materials (for example, updates or documentation) provided to Customer by Company.

1. **License and Ownership.** (a) *Limited License.* Subject to the terms and conditions of this License Schedule, and during the period for which Customer has paid subscription fees, Company hereby grants Customer a nonexclusive, nontransferable limited right to install and use the Software on up to the number of machines (restricted to a single user per machine) for which Customer has paid subscription fees, internally only, during the subscription term, solely to develop and support Cloud Services. The Software may not be used as a staging, user acceptance testing (UAT), quality assurance (QA), or test environment, and neither production use nor “hot standby” processing capabilities are allowed. (b) *Updates.* Company will provide Customer with those corrected or modified versions of the Software, including enhancements, modifications, error corrections, fixes, patches, and new releases (collectively, “Updates”) which Company makes generally available to customers. Company’s preferred method of delivery for Updates is via a download from Company’s web site. However, Company may select other methods for delivering Updates such as, but not limited to, via CD-ROM or magnetic media. (c) *Prohibited Uses.* Customer may not, without written permission from Company, (i) use the Software except as expressly authorized in this License Schedule (ii) copy, modify, merge or transfer copies of the Software; (iii) disassemble, decompile or “unlock,” reverse engineer, or in any manner decode the Software for any reason; (iv) sublicense, lease, sell, distribute, rent, lend, or otherwise transfer the Software; or (v) remove or alter any marks or designations indicating the ownership of copyrights, trademarks or other intellectual property rights contained in the Software. (d) *Ownership.* Company (or its licensors) owns all rights, title and interest in and to the Software, including but not limited to copyright, patent, trade secret, and any other intellectual and proprietary rights in the Software, and any changes, modifications or corrections thereto. Customer’s rights to use the Software are specified in this License Schedule, and Company retains all rights not expressly granted to Customer in this License Schedule.

2. **Subscription Fees.** Customer agrees to pay subscription fees in the amount specified in the “Software Subscription Fees” section for use of the Software as permitted in this License Schedule. All subscription fees and payment terms are subject to the Fees and Payment Terms section of the Agreement.

3. **Warranty; Warranty Disclaimer.** IN THE EVENT THAT THE SOFTWARE IS NOT OPERATING PROPERLY, CUSTOMER’S SOLE REMEDY IS NOTIFY COMPANY OF SUCH DEFECT, AND TO RETURN THE NON-OPERATING SOFTWARE TO COMPANY. UPON NOTIFICATION OF THE ABOVE, COMPANY WILL PROVIDE CUSTOMER WITH A NEW COPY OF THE SOFTWARE. COMPANY DOES NOT WARRANT THAT THE SOFTWARE WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. COMPANY EXPRESSLY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

4. **Indemnification.** (a) *Indemnification Obligation.* Company will defend Customer from and against all claims, suits or actions arising out of or resulting from any action against Customer that is based on any third-party claim that the Software infringes that party’s United States patents, copyrights, or trade secrets, and will pay the amount of any final judgment awarded (including reasonable attorney’s fees and costs) or final settlement made with respect to such claim. To qualify for indemnification under this License Schedule, Customer agrees to (i) promptly notify Company in writing of the existence of any such action; (ii) grant Company sole authority and control for the defense or settlement of such action; and (iii) provide Company with all reasonable assistance for the defense or settlement of such action. In addition to Company’s obligation of indemnification, if the Software becomes or, in Company’s opinion, is likely to become the subject of a claim of infringement, Company may, at its option, either procure for Customer the right to continue using the Software or replace or modify the Software to make it non-infringing, both at Company’s expense. If Company determines that neither of the foregoing alternatives is commercially reasonable, Company may terminate the license for the Software. In that event, Company will refund to Customer the annual subscription fees paid Company for such Software prorated based on the amount of time remaining in the subscription term. (b) *Exceptions.* Company’s indemnification obligations will not apply to any claim of infringement resulting from: (i) the combination of the Software with other products or services (to the extent that the claim is based upon such combination); (ii) use of the Software if it has been modified or otherwise changed by a party other than Company if such claim would not have arisen without such modification or change; (iii) use of the Software in a manner not authorized by this License Schedule or provided for in the Documentation; or (iv) use of other than the most current release of the Software, if such claim would have been avoided by use of the most current release. (iii) *Entire Obligation.* The foregoing states the entire obligation and liability of Company with respect to any third-party claim.

5. **Limitation of Liability.** Company’s liability is limited to the amount of any actual direct damages or loss, up to the total payments made by Customer to Company during the prior twelve months. In no event will Company be liable for any special, incidental, indirect, exemplary, punitive, or consequential damages, including but not limited to those for business interruption or loss of profits, even if Company knew or should have known of the possibility of such damage. In no event will

Company be liable for (a) third party claims against Customer for losses or damages (other than those for which Company indemnifies Customer as set forth in the Indemnification section of the Agreement or damages for bodily injury (including death), or damage to real property or tangible personal property to the extent caused by Company's negligent or intentional acts or omissions) or (b) loss of, or damage to, Customer's records or data. This limit also applies to any of Company's suppliers. It is the maximum for which Company and its suppliers are collectively responsible.

6. **Effect of Termination.** Upon any termination, Customer agrees to permanently discontinue all use of the Software and will promptly return the Software to Company (or destroy and certify destruction of the Software); and each party agrees to destroy (and certify destruction of) all Confidential Information received from the other. The terms of any other Sections that by their nature are intended to extend beyond termination will survive termination of this License Schedule for any reason.

7. **Miscellaneous.** The United Nations Convention on the International Sale of Goods will have no application to this License Schedule. The parties also agree that, regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this License Schedule must be filed within twelve months after such claim or cause of action arose or be forever barred. If any provision of this License Schedule is held to be unenforceable, that provision will be removed, and the remaining provisions will remain in full force. The Software may be subject to United States export control laws and export or import regulations in other countries. Customer agrees to strictly comply with all such laws and regulations and acknowledges that Customer has the responsibility to obtain such licenses to export, re-export, or import as may be required. No breach of this License Schedule will be deemed waived unless the waiver is in writing and signed by an authorized representative of the waiving party.