



End User Subscription Agreement

TERMS AND CONDITIONS DOCUMENT

JANUARY 2022

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COUNTERPART CLOUD END-USER SUBSCRIPTION AGREEMENT (EMEA)

This End-User Subscription Agreement (“EUSA”), together with any applicable Counterpart order confirmation form that references this EUSA (collectively, the “agreement”), is between Counterpart Solutions Limited (hereinafter referred to as “Counterpart”), a company registered in England and Wales: Building 3, North London Business Park, London N11 1NP, UK.

Under registered company number 11008193. (“*Counterpart*”), and the customer identified on the online order confirmation form (“*customer*”). This agreement constitutes the entire agreement between the *customer* and Counterpart regarding the subscription software products (“*licensed subscription software*”) and the maintenance and support and professional services that are listed on the order confirmation form. By installing or using the licensed subscription software, the customer acknowledges that it has read and agrees to all of the terms and conditions contained in this agreement.

1. GRANT OF LICENSE AND SUBSCRIPTION

1.1 Subscription License.

The Licensed Subscription Software, which includes all configurable and executable application content or “Blueprints,” is licensed to Customer for use subject to the terms of this Agreement.

Counterpart hereby grants to Customer and Customer fully accepts, upon delivery, a non-exclusive, non-transferable right to access and use only the executable version (no source code) of the Licensed Subscription Software, during the term of the Subscription Service, as described below (the “Subscription Service”). This is not a perpetual use license; rather, Customer is using the Licensed Subscription Software pursuant to the Subscription Service and for a limited duration. Customer is allowed only the number of concurrent users of the Licensed Subscription Software as shown on the Counterpart Order Confirmation Form. If Customer wishes to expand the number or type of use of authorised concurrent users covered by the subscription, Customer can purchase appropriate subscription. Customer’s authorised concurrent users of the Licensed Subscription Software can include Customer, its subsidiaries and affiliates, and their employees and authorised representatives, agents and contractors.

1.2 Subscription Service Term.

This Agreement is effective at the earliest of the dates that the Customer first uses the Licensed Subscription Software or the date set forth on the Counterpart Order Confirmation Form (the “Effective Date”). Customer’s right to use the Licensed Subscription Software continues until this Agreement is terminated or the Subscription Service expires. The Subscription Service is offered on no less than an



annual basis and will commence and be invoiced in advance of each term in accordance with the Order Confirmation Form. Counterpart will invoice Customer for Subscription Service renewal fees at least sixty (60) days prior to the end of each term. Customer's payment of the invoice will constitute notice of Customer's election to renew this Agreement and the Subscription Service. Subscription fees increase as Customer adds additional concurrent user licenses. Either party may terminate this Agreement upon written notice to the other party if the other party fails to cure a material breach of this Agreement within thirty (30) days of written notice of the breach from the terminating party. Upon any termination, Customer agrees to remove all Licensed Subscription Software from its computers, destroy all copies of the Licensed Subscription Software, and, upon request from Counterpart, certify in writing its compliance. Upon termination by Customer for an uncured breach by Counterpart, Counterpart will pay Customer a pro rata refund of any prepaid but unused Subscription Fees.

1.3 Intellectual Property Rights.

Copyright and other intellectual property laws protect the Licensed Subscription Software. Counterpart retains all rights, title and interest in and to the Licensed Subscription Software. Customer agrees that this is a license only and that no title passes to Customer. If Customer makes or installs copies of the Licensed Subscription Software as provided in this Agreement, the original and all copies of the Licensed Subscription Software may not leave Customer's control and are owned by Counterpart. Customer retains all rights to its data.

1.4 Restrictions.

To the maximum extent permitted by applicable law, This Agreement shall be governed by the laws of England. Customer may not resell or otherwise transfer for value the Licensed Subscription Software without the written consent of Counterpart. Customer may not export, ship, transmit, or re-export the Licensed Subscription Software in violation of any applicable law or regulation, including, without limitation, the Export Administration Regulations issued by the United States Department of Commerce and the United States trade embargoes and economic sanctions administered by the U.S. Treasury Department, Office of Foreign Assets Control, or any such similar law or regulation issued by such other governmental entity which may have jurisdiction over such export. Customer agrees not to: (i) modify, decompile, disassemble or reverse engineer the object code portions of the Licensed Subscription Software; (ii) distribute, rent, lease or lend the Licensed Subscription Software; or (iii) use the Licensed Subscription Software except as expressly permitted under this Agreement.

2. INDEMNIFICATION

2.1 Counterpart shall defend, indemnify and hold Customer harmless against all third party claims, suits, proceedings, costs, damages, losses and expenses (including reasonable attorneys' fees), and judgments incurred, claimed or



sustained by Customer arising out of or related to any allegation that any portion of the Licensed Subscription Software (including any updates, error corrections, or upgrades thereto), when used solely in the manner and for the purpose for which it was licensed hereunder, violates any patent, copyright, trade secret, trademark, or other third party intellectual property right. If a claim is filed in a court or other administrative proceeding seeking to enjoin the use of the Licensed Subscription Software, Counterpart shall either: (i) at Counterpart's cost, procure for Customer the right to continue to use the relevant portion of the Licensed Subscription Software; (ii) replace, at Counterpart's cost, the relevant portion of the Licensed Subscription Software with a substitute product that functions substantially in accordance with the applicable specifications for that portion of the Licensed Subscription Software; or (iii) at Counterpart's cost, modify the Licensed Subscription Software so that it does not infringe or misappropriate, provided that the Licensed Subscription Software, as modified, continues to perform substantially in accordance with the applicable specifications.

2.2 Counterpart's indemnification obligation pursuant to the above shall not apply to the extent any infringement claim is found to be caused by (i) Customer's use of the Licensed Subscription Software in a manner that is not provided for under this Agreement or Counterpart's user documentation; or (ii) Customer's use, operation or combination of all or any component or portion of the Licensed Subscription Software with all or any portion of other Subscription Software, equipment or systems not provided or required by Counterpart. As a condition precedent to any liability of Counterpart, if Customer receives notice of any infringement claims for which indemnification may be available under the above, Customer must promptly notify Counterpart in writing of the infringement claim.

2.3 Counterpart will have the right to control the defence, select counsel, and direct the course of resolution, including settlement of any infringement claim (but only if the settlement does not include an admission of liability by Customer, does not involve more than the payment of money and grants Customer a full and unconditional release from all liability with respect to the claim). In addition to the defence provided by Counterpart, Customer may elect to retain its own counsel, but Counterpart will not be responsible for any fees or expenses of such counsel.

3. WARRANTIES & DISCLAIMERS

3.1 Limited Warranties.

Each party represents and warrants to the other that it has the legal power to enter into this Agreement. Counterpart further represents and warrants that: (i) it has the right to grant to Customer the license to use the Licensed Subscription Software as set forth in this Agreement without violating any rights of any third party and that, to the best of Counterpart's knowledge, the Licensed Subscription Software does not infringe or otherwise violate any intellectual property rights of any third party; (ii) the Licensed Subscription Software shall operate in material compliance with Counterpart's user documentation; (iii) all services provided by Counterpart pursuant to this Agreement relating to the Licensed Subscription Software will be performed in



a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Counterpart's industry; and (iv) the Licensed Subscription Software shall be delivered free of any virus or otherwise malicious code, or any code or command intended to bring down the Licensed Subscription Software or Customer's computers/networks automatically or upon command or otherwise impair their use.

3.2 Limited Remedy.

In the event of any breach of warranty, Customer's sole and exclusive remedy shall be for Counterpart to either correct or replace, at no additional charge to Customer, any portion of the Licensed Subscription Software or services found to be defective or, if Counterpart is unable to correct or replace the defect, refund any prepaid but unused Subscription Service fees paid by Customer; and in the event Counterpart introduces any virus or such disabling code or commands into the Licensed Subscription Software or any of Customer's equipment, make commercially reasonable efforts to restore any and all data or programming lost by Customer as a result of such virus or disabling code.

3.3 Disclaimer.

To the maximum extent permitted by applicable law, the warranties set forth in section 3 are exclusive and in lieu of all other warranties, oral or written, expressed or implied. Counterpart does not warrant that the operation of the licensed subscription software will be uninterrupted or error free. Except as set forth in this section 3, Counterpart makes no warranty or representation, either expressed or implied, with respect to the licensed subscription software, its quality, performance, merchantability, or fitness for a particular purpose.

4. LIMITATION OF LIABILITY; EXCLUSION OF DAMAGES

4.1 Limitation of Liability.

To the maximum extent permitted by applicable law and except for Customer's payment obligations under this Agreement and Counterpart's obligation to indemnify Customer under Section 2, each party's entire liability under this Agreement shall be limited to the amount paid by Customer for the Subscription Service during the most recent twelve (12) month period, which shall not include any amount paid for related or Professional Services.

4.2 Exclusion of Consequential and Related Damages.

To the maximum extent permitted by applicable law, in no event shall either party be liable to the other for lost profits, loss of use or indirect, special, incidental or consequential damages, whether in contract, tort or any other theory of liability, even if advised of the possibility of such damages, except to the extent that any third-party claim subject to indemnification under section 2 includes such damages. In



particular, and without limitation, Counterpart shall have no liability for any data stored or processed with the licensed subscription software.

5. MAINTENANCE & SUPPORT AND SERVICES

5.1 General.

The Subscription Service includes Maintenance and Support of the Licensed Subscription Software. Failure to pay any amount due under this Agreement may result in suspension of Maintenance and Support. If Maintenance and Support is interrupted as a result of expiration or termination, Customer may be charged a reinstatement fee equal to the cost of Maintenance and Support for the period from the date of expiration or termination to the date of renewal.

5.2 Maintenance.

“Maintenance” entitles Customer to receive updates, upgrades, patches, bug fixes and new releases or versions of the Licensed Subscription Software, including updated documentation, as Counterpart may provide from time to time without requirement of a separate license agreement, and without additional charge other than payment of the Subscription fee. Maintenance shall be applied to the Licensed Subscription Software for all customers using a Subscription Service; and Customer will not be able to decline or defer Maintenance.

5.3 Support.

“Support” entitles Customer to technical assistance with Customer’s ongoing use of the Licensed Subscription Software, Monday through Friday, 8:30 a.m. to 17:30 p.m. (GMT). Counterpart will provide support for the most current version of the Licensed Subscription Software and one prior version, including interim releases between the two versions; for example, upon release of version 3.x Counterpart will support version 3.x and 2.x. Counterpart may provide limited support for older versions. Counterpart will use its best efforts to answer Customer’s specific questions and provide support in accordance with Counterpart’s service and support guidelines. Support does not include any third party products that are not part of the Licensed Subscription Software.

5.4 Professional Services.

Where provided by and purchased from Counterpart, “Professional Services” may include training, implementation, installation, on-site assistance, customisation, and configuration of the Licensed Subscription Software. The total “Professional Services” fee quoted on the Counterpart Order Confirmation Form, if any, is an estimate of the number of days required based on Counterpart’s current understanding of Customer’s stated implementation requirements. A statement of work shall be mutually agreed upon prior to commencement of any Professional Services.



6. CONFIDENTIALITY

6.1 Definition.

As used in this Agreement, “Confidential Information” means any information, whether oral or written, designated by a party as confidential or that reasonably should be understood to be confidential or proprietary in nature. Customer’s Confidential Information shall include Customer data stored or processed with the Licensed Subscription Software. Counterpart’s Confidential Information shall include the Licensed Subscription Software. Confidential Information of each party shall include the terms of this Agreement (but not the fact of its existence), as well as each party’s business and marketing plans, financial data, employee data, product plans and designs, and technical information. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public other than by breach of this Agreement; (ii) was known to the receiving party prior to its disclosure; (iii) becomes known to the receiving party after proper disclosure from a third party not under an obligation of confidentiality; or (iv) was disclosed to the minimum extent necessary to comply with a lawful court order or government law or regulation, provided that in the case of (iv) the disclosing party shall provide the other party with advance written notice thereof and reasonably cooperate with the other party to limit disclosure and obtain protective orders or other relief as appropriate.

6.2 Protection.

Each party agrees to hold the other party’s Confidential Information in strict confidence and to treat such other party’s Confidential Information with at least the same degree of care employed with respect to its own Confidential Information (but in no event less than reasonable care). Neither party shall (i) use the other party’s Confidential Information for its own account or in any manner not contemplated by this Agreement; nor (ii) disclose the other party’s Confidential Information to a third party without the prior written consent of the other party. Both parties shall limit access of each other’s Confidential Information to those of its employees, contractors and agents who have a need for such access and who are bound to confidentiality obligations substantially similar to those set forth in this Section. This Section shall survive termination or expiration of the Agreement (for any reason) for a period of three (3) years.

7. MISCELLANEOUS

7.1 Severability.

If any of the terms, or portions thereof, of this Agreement are invalid or unenforceable under any applicable statute or rule of law, the court shall reform the Agreement to include an enforceable term as close to the intent of the original term as possible; all other terms shall remain unchanged.

7.2 Entire Agreement.

This Agreement constitutes the entire agreement between Customer and Counterpart relating to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, proposals and negotiations, whether written or oral. Any additions to, or modifications of, this Agreement shall be binding upon the parties only if in writing and executed by a duly authorised representative of Customer and Counterpart. Terms and conditions of any corresponding purchase order or other document relating to the licensed subscription software that add to or conflict with the terms contained in this agreement shall be deemed material and are rejected.

7.3 Waiver.

The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further or future right under this Agreement.

7.4 Past Due Accounts.

Any invoices not paid within the agreed payment terms and not disputed in good faith may be subject to a settlement surcharge as detailed within the invoice issued. Counterpart may withhold any applicable license key or password until all amounts due for the licensed subscription software are fully paid.

7.5 Assignment.

This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective successors and permitted assigns. A party may not assign any of its rights, obligations, or responsibilities under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld, except that neither a change in control in the assigning party nor assignment to any entity (other than a competitor of the other party) that controls, is controlled by or is under common control with the assigning party, shall be deemed an assignment in violation of the foregoing; provided, however that the assigning party gives the other party thirty (30) days advance written notice of any such change in control or assignment.

7.6 Choice of Law.

This Agreement is governed under the laws of England, without regard to its conflicts of laws principles and both parties submit to the exclusive jurisdiction of the courts of England. The United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded, will not govern this Agreement.

7.7 Third Parties.

A third party to this Agreement shall have no right to enforce any term of this Agreement and no consent of any third party shall be required for any cancellation or variation of the Agreement. Counterpart may authorise certain third parties, such as value-added resellers or solutions partners (“Partners”), to distribute the Licensed Subscription Software. Partners are not authorised to modify this Agreement or the rights granted to Customer with regard to the Licensed Subscription Software. If Customer purchases Support Services or Professional Services to be performed by the Partner, the terms of any agreement between Customer and Partner for such services shall govern, and Counterpart shall not be liable or responsible for Partner’s performance under such agreement.

7.8 Taxes.

Unless otherwise stated on an Order form, Counterpart’s fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including without limitation value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, “Taxes”). Customer is responsible for paying all Taxes associated with its purchases under this Agreement. If Counterpart has the legal obligation to remit or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to, and paid by Customer, unless Customer provides Counterpart with a valid tax exemption certificate authorised by the appropriate taxing authority. For the avoidance of doubt, Counterpart is solely responsible for taxes assessable against Counterpart based on its income, property or employees.

8. ACCEPTANCE

By providing a signature accepting Counterpart Software and Services Quotation (SSQ) on the SSQ form, the Customer agrees to be bound by the terms and conditions of this EUSA and the Terms and Conditions of the SSQ. This EUSA is incorporated into the SSQ terms and conditions by reference. In the event there is any disagreement between the terms and conditions of the SSQ and this EUSA, the terms of this EUSA shall take precedence.