

# OPEN IT SOFTWARE LICENSE AND SERVICES

## MASTER AGREEMENT

<b>Current version no.:</b>	10.6
<b>Version dated:</b>	28. February 2023
<b>Previous version nr.:</b>	10.5
<b>Replaced version dated:</b>	10. November 2022

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## INTRODUCTION

A Customer ordering Products or Services from Open iT under the Open iT Order Form (“**Order Form**”) or as specified in an Open iT Quotation (“**Quotation**”) agreed to by Customer will be bound by this **Open iT Software License and Services Master Agreement** (hereinafter referred to as “**Master Agreement**”).

In the case Customer does not accept these terms, or wants other terms, this will have to be specified and mutually agreed upon in writing in Sec. 4 (Customer Specific Terms) of the **Order Form**, the **Quotation** or otherwise specified in writing between Customer and Open iT.

The Master Agreement will apply from when Customer has submitted and signed the Order Form or accepted the Quotation. The Master Agreement will be between Customer and the Open iT entity listed on the Order Form (Open iT Entity) or Quotation.

Open iT may revise the Master Agreement from time to time, where renewals and/or additional purchases may be subject to the revised Master Agreement.

This Master Agreement may cover one or more of the following types of Open iT Products and Services to be delivered by Open iT to Customer (hereinafter referred to as “**Deliverables**”):

- A. Open iT Software delivered as a software license (perpetual license or time-limited license) and related Documentation (“**Software License**”), which may include Open iT Maintenance and Software Support Services (“**Support Services**”) as described in Section 1 of Attachment 1.
- B. Open iT Software delivered as a Hosted Service and related Documentation (“**Hosted Service**”), which includes maintenance of the software and operating systems housed on the Hosting Provider and Service Level Commitment as described in Section 2 of Attachment 1 (“**SLA**”).
- C. Open iT Professional Services (“**Professional Services**”) which may include Open iT Software Installation, Configuration, Customization and Training, hereinafter referred to as (“**Technical Services**”), or assistance in running the Open iT Software License, which may include analysis and strategic consulting giving advice to Customers on how to procure, (re)negotiate, and optimize a portfolio of IT assets hereinafter referred to as (“**Managed Services**”).

The software and related services covered by this Master Agreement (“**Deliverables**”) are specified in an Order Form that is signed by both parties, or in a Quotation signed by Customer.

The date on which the software and services are scheduled to be made available to the Customer is referred to as the “**Product Effective Date**” and is specified in the applicable Order Form or Quotation.

### 1. DEFINITIONS:

TERM	DEFINITION
Addendum	Addition to Order Form in case of additional or new Deliverables
Agreement	This document with Attachment 1, Order Form or Quotation
Agreement Date	Date of Open iT countersignature on the Order Form or Customer acceptance of Quotation

TERM	DEFINITION
Application Service Levels	The uptime level for the Open iT application running on the Host Provider's infrastructure
Attachment 1	Attachment included in the Master Agreement specifying Support Procedures, and Service Level Agreements
Availability Guarantee	The guaranteed uptime level for the Host Provider infrastructure
Customer	Customer and any majority owned subsidiary of Customer
Customer Data	Customer data on application usage collected by Open iT Software
Customer Specific Provisions	Provisions agreed to either replacing current provisions in the Master Agreement, or provisions in addition to the current provisions.
Deliverables	Products and Services delivered by Open iT to Customer
Duration	Period between Product Effective Date and Termination Date or Renewal Date
Host Provider	Company providing cloud hosting services for Open iT on behalf of Customer
Hosted Service	Cloud hosting service arranged for and provided by Open iT
Hosted Service Fee	The cost of the cloud hosting service
License Capacity	The maximum allowed number of monthly users of applications metered by Open iT
License Fee	Cost for the Licensed Product
Licensed Product	Software License and Documentation
Managed Services	Additional services offered in running the Software and analyzing usage data after installation, normally further specified in a Scope of Work
Master Agreement	This document
On-prem	Refers to Software installed in a Customer-owned and operated environment
Open iT	Any Open iT company in the Open iT Group of companies (parent, subsidiary, or affiliated company (same parent))
Order Form	Form specifying Deliverables, prices and all terms specific to Customer that is signed by both Customer and Open iT
Product Effective Date	Start date for Deliverables
Products	Software Licenses or other tangible products delivered by Open iT
Professional Services	Technical Services and/or Managed Services
Quotation	Offer from Open iT specifying Deliverables, prices and other terms specific to Customer signed by Customer

TERM	DEFINITION
Renewal Date	Date on which a recurring subscription or support service is to be renewed
Scope of Work	Document further specifying Technical or Managed Services
Services	<b>Non-tangible deliverables</b> provided by Open iT
Software Documentation	Online or printed user manuals for the Software
Software License	The right to use the Open iT product
Subscription	A time-limited Software License
Subscription Fee	Cost of time-limited Software Licenses
Support Fee	Cost of Support Service
Support Service	Open iT's provision of Maintenance and Support for the Software
Technical Services	Additional services offered when installing or implementing Open iT Software
Termination Date	End-date of Deliverables
Third Party	Entity other than Customer or Open iT
Updates	Periodic updates to new major and minor new versions of the Software
Usage Count	Sum of the number of applications being metered, analyzed, or optimized for Open iT Software that has such limitations on the number of applications
User	A distinct physical user in the customer environment using applications being metered by Open iT Software
User Count	Sum of the actual number of distinct physical users for application being metered, analyzed, or optimized
Warranty Period	Period where Open iT has an obligation to rectify Deliverables free of charge for Customer if Support Service is not included in the purchase

## 2. SOFTWARE LICENSE

2.1. In accordance with and subject to the terms and conditions of this Master Agreement, Open iT grants to Customer a non-transferable, and non-exclusive license to install and/or use, the version of the Open iT Software (the “**Software License**”) in an amount not to exceed to the licensed capacity (“**License Capacity**”) and for the term or duration (“**Duration**”) set forth in the Order Form or Quotation, solely and exclusively for Customer’s internal business purposes and for none other. Customer hereby accepts the Software License granted in this Section 2, and any license or rights granted under any other provision of this Master Agreement, subject to all trademark rights, copyrights, patents, or other intellectual property rights owned or otherwise assertible by Open iT.

2.2. The Software License includes related printed and online or electronic guides and manuals and other materials (collectively, the “**Documentation**”) provided or made available to Customer by Open iT and including any updates to such Software License and Documentation (“**Updates**”) that may be provided or made available to Customer by Open iT from time to time during the term hereof. The Software and Documentation,



together with any Updates thereto, are sometimes hereinafter collectively referred to as the “**Licensed Products**.”

2.3. Documentation relating to the Software License is available to Customer online at no additional charge. Customer may purchase printed copies of such Documentation at Open iT’s prevailing rates at the time of purchase.

2.4. Customer may use the Software License only to process Customer’s own data or that of its majority-owned subsidiaries/affiliates or parent. Customer may use the Software License in a cloud or hosted environment owned or operated by the Customer, or by a Third Party, only to process Customer’s own data. Customer may not use the Software License to process data of a third party offered as a cloud or hosted service unless specifically agreed to in the Order Form or Quotation.

2.5. The Software is made available to Customer on a maximum number of users’ basis. A “**User**” is defined as a unique physical user having access to applications metered, analyzed, or optimized by the Software. License Capacity is defined as the maximum number of unique users of applications that are metered, analyzed, or optimized within a month during the duration of the Agreement.

2.6. The user count (“**User Count**”) is defined as the actual number of unique users of applications being metered, analyzed, or optimized similarly within a month during the duration of the Agreement.

2.7. For some Licensed Products there are limitations on the number of applications that can be metered, analyzed, or optimized. Then the usage count (“**Usage Count**”) refers to the number of applications metered, analyzed, or optimized under the Agreement.

2.8. The License Capacity for the Software may only be increased or decreased pursuant to a new signed or amended Order Form.

### **3. RESTRICTIONS ON SOFTWARE LICENSE USE**

3.1. Customer acknowledges and agrees that the Licensed Products comprise valuable trade secrets and confidential, proprietary information of Open iT. Customer shall keep confidential and protect the Licensed Products (including all copies) and the contents thereof from unauthorized access, use, copying, publication, disclosure, or distribution. Customer shall use the same degree of care (but in no event less than a reasonable degree of care) to protect the Licensed Products as it uses to protect its own trade secrets and confidential, proprietary information of similar importance.

3.2. Customer may make reasonable copies of the Licensed Products for archival and backup purposes. In addition, Customer may copy the Software License as reasonably necessary to use the same for its intended purpose and may copy the on-line Documentation as reasonably necessary to support its authorized users. Each such copy shall include Open iT’s product identification, copyright notice and other proprietary rights notices. Customer may not copy the Licensed Products or any part thereof except as provided in this Master Agreement. Any copy or copies of the Licensed Products made by Customer in accordance with this Agreement shall remain the sole and exclusive property of Open iT.

3.3. Customer shall not reverse engineer, disassemble, decompile, create any derivative works or otherwise attempt to derive the Licensed Products source code from the object code or otherwise. Customer shall not alter, maintain, enhance, adapt, or otherwise modify, or create or sell derivative works based on, the



Licensed Products. Customer shall not sublicense, rent, lease, lend, transfer, resell, reprint, or otherwise distribute the Licensed Products to any third party, and shall keep the Licensed Products free and clear of all claims, liens and encumbrances.

3.4. Customer shall not release or publish the results of any performance or benchmarking tests or functional evaluation or any other analysis relating to the Software without the written permission of Open iT which may be withheld or denied in Open iT's sole discretion.

3.5. Additional restrictions on the use of the Software License, or specific Software components, may be set forth in Order Form.

#### **4. SOFTWARE LICENSE OWNERSHIP**

Open iT represents that it has all rights required for the Software License, and all portions thereof, to Customer and otherwise to fulfill its obligations under the terms of this Master Agreement. As between Open iT and Customer, title to all copies of the Licensed Products and all associated intellectual property rights (including copyright, trade secret, trademark, patent, or other proprietary rights) remains with Open iT and/or its parent/affiliates. Customer may not remove any product identification, copyright notice, or other proprietary rights notice from the Licensed Products.

#### **5. INDEMNITY**

5.1. Open iT will defend any action brought by a third party against Customer to the extent that such action is based on a claim that the Licensed Products or any part thereof, used within the scope of the license granted herein, infringe a copyright, trade secret or United States/WIPO patent; and agrees to pay costs and damages finally awarded in such action, provided that Customer promptly notifies Open iT in writing of any such claim and permits Open iT to have sole control of the defense or settlement of any such claim or claims.

5.2. The foregoing shall not apply to, and Open iT shall have no liability for, any claim of infringement based upon (i) use of anything other than a current, unaltered, released version of the Licensed Products, (ii) use of the Licensed Products in combination with other non-Open iT products, processes, data or materials, (iii) services performed using the Licensed Products, or modifications or derivative works thereof for Customer by a third party independent consultant not contracted by Open iT, or (iv) use of the Licensed Products other than in accordance with this Master Agreement.

5.3. In the case of any actual or possible claim of intellectual property infringement, Open iT shall be entitled, at its option, either to make modifications to the Licensed Product to make it non-infringing; or to terminate the license for the Licensed Product by payment to Customer in an amount equal to the License Fee paid by Customer for the Licensed Product giving rise to the claim less two per cent (2%) per month for each month elapsed from the Effective Date to the date of termination of the license. For time-based subscriptions, the payment to Customer will be prorated from the Effective Date to the date of termination of the Subscription.

5.4. Open iT and Customer acknowledge that the damages resulting from an intellectual property infringement claim will be difficult or impossible to ascertain and therefore the foregoing constitutes Open iT's sole liability and Customer's sole remedy for any intellectual property infringement. In no event shall Open iT be liable for incidental, consequential, punitive, special, exemplary, speculative, or indirect damages arising





out of the use of the Licensed Products or damages for loss of opportunity or lost profit or lost savings. Any warranties of non-infringement are hereby expressly disclaimed.

5.5. Customer hereby agrees to indemnify, defend, and hold Open iT harmless from and against any and all claims, actions, losses, damages, liabilities, costs or expenses suffered or incurred by Open iT as a result of any breach by Customer of its obligations under this Master Agreement. The provisions of this subparagraph 5.5 shall survive the expiration or termination of this Master Agreement.

## 6. SOFTWARE SUPPORT SERVICES

6.1. Customers that have purchased a perpetual license of Open iT Products under this agreement may elect to purchase Support Services for those licenses. Customers that have purchased time-limited licenses (“**Subscriptions**”) of Open iT Products will have Support Services included in the Subscription Fees.

6.2. Upon payment of the applicable Support Fees specified in the Order Form or Quotation, or if Support Services are included in the Subscription, Open iT will provide Customer with such services in accordance with provisions in Attachment 1, Section 1: **Open iT Procedures for Support Services**.

6.3. Open iT will also provide Customer with periodic Updates to the Deliverables without additional charge to Customer where Support Services are included in the Deliverables. Updates may include (a) new releases or version updates generally made available on an annual basis near the end of the calendar year; and (b) maintenance releases generally made available periodically throughout the calendar year. Open iT reserves the right to charge Customer for Updates which constitute upgrades to the Deliverables hereunder which include additional or enhanced functionality from the Deliverables purchased hereunder. Customer may only obtain Updates for the specific Deliverables for which Customer has paid the relevant Fees.

6.4. Support Services do not include installation, consulting, configuration, training, customization or managed services, or additional deliverables that Open iT may provide in addition to the Deliverables offered under this Agreement.

6.5. Support Services will be rendered from the Product Effective Date for the Duration of the Agreement, or to the renewal date (“**Renewal Date**”) specified in the Order Form or Quotation.

6.6. If support is not included in the Product, Support Services are renewable, thereafter, on an annual basis. Customer shall notify Open iT of termination of renewal in writing at least thirty (30) days prior to the Renewal Date in order to be a valid termination.

## 7. SOFTWARE LICENSE VERIFICATION AND AUDIT

7.1. Open iT may from time to time ask Customer to run certain scripts or reports to verify how many licenses the Customer is using in order to check for compliance with the provisions of this Master Agreement.

7.2. If a verification reveals that Customer’s User Count or Usage Count for the Licensed Products exceeds the License Capacity for which Customer has paid License Fees, Customer shall pay any outstanding amounts to Open iT within ten (10) days following receipt of such invoice.

## 8. CLOUD HOSTING SERVICES

8.1. The Software Licenses can be installed on-premise in Customer's environment or in a cloud installation provided by Customer or in an Open iT arranged third-party cloud platform.

8.2. If Open iT provides the hosting platform, this will be specified in Section 6 (Hosted Service Terms) of the Order Form. The offering of the Software on the hosted platform is hereinafter referred to as Hosted Service.

8.3. Hosted Service will include a fee for the Hosted Service in addition to the License Fee. The Hosted Service Fee is a separate line item in the Order Form or Quotation.

8.4. For a Hosted Service, Open iT's policy regarding data retention and access for reporting is current calendar year plus two (2) historical years of metered data. Customer's direct access to data older than the standard policy of current plus two (2) years metered data may be subject to additional fees.

## 9. PROFESSIONAL SERVICES

9.1. Open iT Professional Services ("**Professional Services**") may include technical assistance in Open iT Product installation, configuration, customization, and training ("**Technical Services**"), as well as assistance to Customer in the running of Products that may – inter alia - cover regular health checks on the Open iT installation, usage analysis, management advice with respect to procurement, (re)negotiation, and management of IT assets ("**Managed Services**") specified in Order Form Section 7 (Managed Services) if applicable.

9.2. Open iT may provide Customer with related Technical Services in conjunction with installation, configuration, customization, and training related to the Deliverables, at Customer's request and subject to additional fees. These services will be provided in accordance with the specifications given in the Order Form or Quotation. Technical Services may be further specified in a Scope of Work or Work Order to be agreed between the Parties.

9.3. Open iT may provide Customer with related Managed Services in conjunction with running the Software Licenses once installed or implemented, at Customer's request, and subject to additional fees. Managed services will be provided in accordance with specifications given in the Order Form or Quotation. Managed Services may be further specified in a Scope of Work or Work Order to be agreed upon between Customer and Open iT.

9.4. When providing agreed Professional Services, Customer may wish to change, add or remove tasks from the agreed Scope of Work or Work Order. In the case of such changes or additions in the scope, Open iT will use commercially reasonable efforts in accommodating the changes or additions within the agreed Scope of Work.

9.5. In some cases, Customer may wish to make changes or additions to Professional Services that cannot be accommodated within the original Scope of Work and agreed fee for such Professional Services. Such changes for adding work will then be agreed in writing between Customer and Open iT. The mutually agreed additions will be made as a revised or additional Order Form or Quotation, or as a mutually agreed written document executed by Open iT and Customer.



## 10. STANDARD OF CARE FOR ALL PROFESSIONAL SERVICES

Open iT warrants that Professional Services will be performed by qualified personnel. No other representation, express or implied, and no warranty or guarantee is included or intended in this Master Agreement, or in any report, opinion, deliverable, work product, document or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any Professional Services performed or any related work product. This paragraph sets forth the only warranties provided by Open iT concerning the Professional Services and related work product. This warranty is made expressly in lieu of all other warranties, express or implied, including any implied warranties of fitness for a particular purpose, merchantability, non-infringement, title or otherwise.

## 11. COOPERATION

Customer will cooperate with Open iT in taking actions and executing documents, as appropriate, to achieve the objectives in this Master Agreement, Order Form, Quotation, Scope of Work or Work Order. Customer agrees that Open iT's performance is dependent on Customer's timely and effective cooperation with Open iT. Accordingly, Customer acknowledges that any delay by Customer may result in Open iT being released from an obligation or scheduled deadline or in Customer having to pay extra fees for Open iT to meet a specific obligation or deadline despite the delay.

## 12. APPLICABLE FEES

12.1. In consideration of the license granted to Customer hereunder, Customer shall pay to Open iT the software license fees ("**License Fees**") specified in the signed Order Form or Quotation, which are License Fees exclusive of taxes.

12.2. If Support Services are not included in the Product, Customer shall pay to Open iT the support fees ("**Support Fees**") as specified in the signed Order Form or Quotation, which are Support Fees exclusive of taxes. For all term (time-limited) software licenses ("**Subscriptions**"), Support Services are included in the License Fee, and there is no additional cost for support.

12.3. Support Fees are based upon the type of support ordered – Standard or Premium Support – which is specified in the signed Order Form or signed Quotation. Standard Support (24/5) is calculated at 20% of the undiscounted License Fees, while Premium Support (24/6) is calculated at 25% of undiscounted License Fees, unless other terms are agreed and specified in the Order Form or Quotation.

12.4. Support Fees are subject to change upon any annual renewal of support services. Open iT will notify Customer of new terms in writing at least sixty (60) days prior to the Renewal Date. Open iT may adjust Support Fees with the annual change in the Consumer Price Index. See Section 25 for further specification.

12.5. If Customer has agreed that Open iT shall arrange for and provide Hosted Services where the Software will be installed, then Customer shall pay to Open iT the applicable fees for such hosted services ("**Hosted Services Fees**") which are specified in the signed Order Form or Quotation, which are Hosted Services Fees exclusive of taxes.

12.6. If Customer has ordered Professional Services, Customer shall pay to Open iT the service fees ("**Professional Services Fees**") specified in the signed Order Form or Quotation, which are Services Fees exclusive of taxes.

12.7. If not otherwise specified in the Order Form or Quotation, applicable fees are due and payable Net Thirty (30) days after receipt of Open iT's invoice. Overdue payments shall bear interest at the rate of twelve percent (12%) per annum on the amount outstanding from the date when the payment was due until the date payment in full is received by Open iT.

### 13. CONSUMER PRICE INDEX ADJUSTMENT OF FEES

13.1. Fees for Renewal of Support and Subscription Licenses and other recurring Fees may be adjusted for increases in the Consumer Price Index ("CPI"). The CPI increase is defined as the change in CPI from the latest CPI available at the last (previous) Agreement Date and the latest available CPI figure at the time of the current Renewal or adjustment.

13.2. The adjustment formula will be: The latest current CPI minus the latest CPI figure in effect at the previous Agreement Date, divided by latest CPI figure in effect for the current Agreement date.

13.3. The CPI definition to be used is as follows:

13.3.1. **For invoices in USD currency:** For purposes hereof, the term "CPI" shall mean the Consumer Price Index- All items in US City Average Urban Wage Earners and Clerical Workers, not seasonally adjusted (CPI-W 1982-84=100, Series ID CWUR0000SA0), published by the Bureau of Labor Statistics of the United States Department of Labor.

13.3.2. **For invoices in Euro currency:** For purposes hereof, the term "CPI" shall mean the "Harmonized Index of Consumer Prices (HICP) for the Euro Area (online data code: TEICP000), published monthly by Eurostat. ([Statistics | Eurostat \(europa.eu\)](https://ec.europa.eu/eurostat)).

13.3.3. **For invoices in GBP currency:** For purposes hereof, the term "Index" shall mean the Consumer Price Index - CPIH-All items (2015=100), published by Office for National Statistics, UK.

13.3.4. **For invoices in NOK currency:** For purposes hereof, the term "Index" shall mean the Consumer Price Index- CPI All-item index (2015=100), published by Statistics Norway.

13.3.5. **For invoices in other currencies.** In case of invoices in other currencies, the most applicable CPI for the currency in question should be used.

### 14. PURCHASE OF ADDITIONAL DELIVERABLES

From time-to-time Customer may wish to purchase additional Products or Services. This should be done pursuant to a new or revised Order Form or Quotation, or other mutually acceptable written document executed by Customer and Open iT. All such Deliverables shall be subject to and governed by this Master Agreement unless the Parties mutually agree otherwise in writing.

### 15. LIMITED WARRANTY

15.1. If the Deliverables includes Support Services, then the Support Service provisions will replace this Limited Warranty as described in 15.2. The provisions in Sec. 15.3 will still apply.

15.2. Open iT warrants that, for a period of sixty (60) days after the Software License has been made available to Customer (the "**Warranty Period**"), the Software License will substantially conform to Open iT's

then current published specifications set forth in the Documentation provided to Customer with the Software License. Open iT's sole responsibility, and Customer's exclusive remedy, in the event of a problem during the Warranty Period, is for Open iT to use commercially reasonable efforts to correct such problems, to replace the Software License with a functionally equivalent solution. The above remedy is available only if Open iT is notified by Customer in writing promptly upon discovery of any problems, and the Software License has not been (a) altered, or modified by any party other than Open iT; (b) subjected to negligence, or computer or electrical malfunction; or (c) used, adjusted, or installed other than in accordance with instructions furnished by Open iT. Upon Open iT's compliance with its obligations set forth in this subparagraph 15.2, Customer shall indemnify, defend and hold Open iT harmless of any claims, actions, causes of action, losses, damages, costs and expenses suffered or incurred by Open iT as a result of claims in connection with the use of any malfunctioning copy(ies) of the Software License.

15.3. THE FOREGOING WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF, AND OPEN IT HEREBY DISCLAIMS ALL CLAIMS, ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE LICENSE. EXCEPT FOR THE FOREGOING WARRANTIES, CUSTOMER ACCEPTS THE SOFTWARE LICENSE ON AN "AS IS" BASIS. OPEN IT DOES NOT WARRANT OR REPRESENT THAT (a) THE SOFTWARE LICENSE WILL MEET CUSTOMER'S NEEDS OR REQUIREMENTS, (b) THE SOFTWARE LICENSE WILL BE FREE FROM ERRORS, OMISSIONS, DEFECTS, (c) THE OPERATION OF THE SOFTWARE LICENSE WILL BE UNINTERRUPTED, OR (d) DEFECTS IN THE SOFTWARE LICENSE IS CORRECTABLE OR WILL BE CORRECTED. FURTHERMORE, OPEN IT DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE LICENSE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY OPEN IT SHALL CREATE A WARRANTY OR IN ANY WAY AMEND THIS SECTION. THERE ARE NO WARRANTIES OF THE SOFTWARE LICENSE WHICH EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS SECTION. WITHOUT LIMITATION OF THE FOREGOING, OPEN IT MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SOFTWARE LICENSE IS IN COMPLIANCE WITH ANY FEDERAL, STATE OR LOCAL LAWS, RULES OR REGULATIONS. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

## **16. LIMITATION OF LIABILITY**

16.1. EXCEPT FOR CLAIMS OF BREACH OF CONFIDENTIALITY AND THIRD-PARTY CLAIMS OF INFRINGEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOSS OF PROFITS, SAVINGS, LOSS OF BUSINESS OR GOODWILL, OR LOSS OF DATA OR USE OF DATA OR OF ANY SPECIAL, EXEMPLARY, CONSEQUENTIAL, SPECULATIVE, PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OF REPUDIATION OF CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

16.2. EXCEPT AS PROVIDED IN SECTION 15 OF THIS AGREEMENT, OPEN IT'S LIABILITY FOR DAMAGES TO CUSTOMER OR ANY THIRD PARTY ARISING FROM THE USE OF THE SOFTWARE LICENSE OR PROFESSIONAL SERVICES OR ANY PART THEREOF OR OTHERWISE ARISING FROM OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY, SHALL BE LIMITED TO THE LESSER OF (a) THE AGGREGATE FEES PAID BY CUSTOMER FOR LICENSED SOFTWARE, SUPPORT SERVICE, HOSTED SERVICE, OR PROFESSIONAL SERVICES OR THE PART THEREOF GIVING RISE TO SUCH DAMAGES, OR (b) ACTUAL DAMAGES SUSTAINED BY CUSTOMER.

## **17. FORCE MAJEURE**

Neither Open iT nor Customer shall be responsible for delays or failures (including any delay by Open iT to make progress in the execution of any Support Services or Professional Services) if such delay arises out of causes beyond its control. Such causes may include, but are not restricted to, acts of God, war, or of the public enemy, terrorism, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, earthquakes, electrical outages, computer or communications failures, severe weather, and acts or omissions of third parties, including, but not limited to, subcontractors and other suppliers of Open iT.

## **18. ASSIGNMENT**

Subject to the section on Transferability of this Agreement either party may assign this Agreement in whole or in part with the prior written approval of the other party, in which approval will not be unreasonably withheld. Any such attempted assignment without prior written consent shall be null and void. Notwithstanding the foregoing, either party may assign its right, title and interest in this Agreement to any company with which it may merge or consolidate, or which acquires substantially all of the business and assets of such party.

## **19. TRANSFERABILITY**

19.1. If Customer sells or otherwise transfers the assets or equity ownership of any Customer business unit or part thereof, Customer shall have the right to transfer and assign all of its right, title, and interest in and to such Software License provided that the transferee agrees to assume all of Customer's rights and obligations under this Master Agreement including the specifications in the Order Form or Quotation with respect to such Products and Services.

19.2. Upon notification from Customer to Open iT, if Customer elects to at the time of renewal to continue its use of the Products and Services in the event of a sale or transfer as described above, then Open iT shall deliver to the transferee Open iT's then current standard Open iT Software License and Services Master Agreement including terms specified in the applicable Order Form, with the fees specified in Open iT's then current standard price list for the use of the Products and Services by such transferee, but only for use in conjunction with the transferred Customer assets or equity interest.

19.3. If all of Customer's rights under this Master Agreement are assigned to the divested entity (or another transferee), then Customer shall have the right to continue to use the Software License for a reasonable period of time not to exceed six (6) months from the date of the assignment at no additional charge to Customer during the transition period subject to this Master Agreement. After such transition period, Customer's right to use the Software License shall be subject to execution of a new Order Form or Quotation on Open iT's then standard terms and conditions or on terms mutually agreeable to Open iT and Customer. Notwithstanding the foregoing, Open iT shall not be obligated to enter into a new Master Agreement with specifications in the Order Form or Quotation with Customer or to provide Software License or Hosted Services and/or Support Services or Professional Services to Customer solely by reason of this provision.

## **20. TERMINATION**

20.1. Open iT may terminate the Agreement with Customer and the service(s) or license(s) granted hereunder if Customer is in material breach of any provision of this Master Agreement (including, without limitation, confidentiality and payment), and fails to cure such breach within fourteen (14) days after receiving

of written notice thereof from Open iT. In addition, Open iT may terminate the Agreement by written notice to Customer if Customer becomes insolvent, becomes the subject of any voluntary or involuntary proceeding under the applicable Bankruptcy Codes or state or national insolvency proceeding and such proceedings are not terminated within sixty (60) days of its commencement, or Customer ceases to be actively engaged in business.

20.2. Immediately upon termination of this Agreement and the service(s) or license(s) granted hereunder, Customer shall cease all use of the Software Licenses. In such event, Customer will certify in writing to Open iT that all copies or partial copies of the Software License and related Documentation have been returned to Open iT or, if not returned, have been deleted from Customer's system and destroyed. Open iT shall not be liable to Customer for damages of any kind, including indirect, exemplary, special, incidental, speculative, punitive or consequential damages (including, but not limited to, lost profits, lost savings or loss of business opportunity), on account of termination of this Agreement or the service(s) rendered or license(s) granted hereunder.

## 21. CUSTOMER DATA

21.1. Customer possesses and retains all right, title, and interest in and to Customer Data on usage, and Open iT's use and possession thereof is solely on Customer's behalf. Open iT: (i) shall not access, process, or otherwise use Customer Data other than necessary to facilitate performance under this agreement and (ii) shall not give any third part access to Customer Data.

21.2. Most Deliverables are based upon collection of Customer Data that is extracted from a variety of sources in the operation of an IT system. It is the responsibility of the Customer that the collection, processing and reporting of Customer Data is in compliance with all applicable laws and regulations, as well as any corporate privacy policy of the Customer.

21.3. Open iT may use the Customer Data collected and uploaded to an Open iT server to assist with issue resolution, support, analysis, internal testing, performance improvement, and reports and product enhancement. All unmasked data will be kept secured and strictly confidential.

21.4. Open iT is offering a discounted version of the Software License for customers that are willing to share their usage data with Open iT for Open iT to perform statistical analysis to improve analytical capabilities and provide more accurate reporting. Customer can also elect to share anonymized Customer Data with other Open iT customers for benchmarking purposes.

21.5. If Customer shares its own anonymized data, Customer may likewise get access to anonymized data from other customers that have accepted similar sharing provisions, and thereby gain understanding of their own usage in relation to similar companies. Customers that choose this option are entitled to a discount on their purchase. If this option is chosen, this is specified and described in the Order Form or Quotation.

## 22. SHARING OF ANONYMIZED CUSTOMER DATA

This section applies if Customer has agreed to share its own usage data for benchmarking purposes.

22.1. **Open iT Benchmarking.** Open iT is offering a discount for Customers that agree to share their anonymized usage data with Open iT and with other Open iT customers for benchmarking purposes.

22.2. **Reciprocity.** When Customer shares its own anonymized data, Customer will likewise get access to anonymized data from other customers that have accepted similar sharing provisions, and thereby gain understanding of their own usage in relation to similar companies.

22.3. **Discount.** There will be a discount for Customer that allows for sharing of Customer Data. The discount will be agreed between Customer and Open iT and will be reflected in the Fees specified in the Order Form or Quotation.

22.4. **Anonymization techniques.** Open iT has several ways to mask usernames; one option for data anonymization is when Customer Data is collected, where the anonymization process is irreversible, i.e. actual usernames cannot later be retrieved. Another option is anonymization at the processing level; where it is possible to reveal the username at a later stage but will require skills and reprocessing of the data to get the real name behind the masked data. And finally, anonymization at the reporting interface level, where the process is reversible, i.e. anonymization can later be turned off to reveal actual usernames. Open iT and Customer will separately agree on the anonymization technique to be used.

### **23. NON-HIRE OF EMPLOYEES**

During the term of the Master Agreement and for one (1) year after the Termination Date, Customer will not employ Open iT's employees who are directly known to Customer as a result of providing Products and Services under this Master Agreement, without Open iT's prior written consent which consent may be withheld, conditioned, or delayed in Open iT's sole discretion. The preceding restriction does not apply to individuals who apply or respond to a general advertisement of a job opening that has been published or posted by Customer.

### **24. SEVERABILITY**

Invalidity or unenforceability of one or more provisions of this Master Agreement shall not affect any other provision of this Master Agreement.

### **25. HEADINGS**

The headings of articles and sections herein are included solely for convenience, and if there is any conflict between such headings and the text of the Master Agreement, the text shall control.

### **26. GOVERNING LAW**

As default this Master Agreement shall be governed by and construed in accordance with the governing law where the relevant Open iT supplying entity is located. For Open iT, Inc. that will be Texas law, for Open iT Norge AS it will be Norwegian law, and so forth. If the Parties agree to other jurisdictions, then this will be specified in the Order Form or Quotation, or as separately agreed between the Parties.

### **27. ENTIRE AGREEMENT**

This Master Agreement together with the Order Form or Quotation including any Attachments, Addenda or Exhibits, states the entire agreement between the parties and supersedes all previous contracts, proposals, oral or written, and all other communications between the parties respecting the subject matter hereof, and supersedes any and all prior understandings, representations, warranties, agreements or contracts (whether



oral or written) between Customer and Open iT respecting the subject matter hereof. This Master Agreement may only be amended by attachments, addenda or other mutually agreed documents in writing executed by the parties hereto. Any terms or conditions in any purchase order submitted by Customer to Open iT that conflict with the terms of this Master Agreement including terms in the Order Form or Quotation shall be void and of no effect.

## **28. WAIVER**

The failure of any party hereto to enforce at any time any of the provisions in this Master Agreement or to require at any time performance by the other party of any of the provisions of this Master Agreement, or any part hereof, shall not be construed to be a waiver of said provision or to affect the right of any party to enforce each and every provision in accordance with this Master Agreement.

## **29. ATTORNEYS' FEES**

In the event that litigation or arbitration is instituted between the parties in connection with any controversy or dispute arising from, under or related to this Master Agreement, the judgment shall include a reasonable sum to be paid to the prevailing party for and on account of attorneys' fees and costs incurred in such litigation or arbitration, including those incurred on appeal.

## **30. NOTICES**

30.1. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given pursuant to the provisions of this Master Agreement (collectively "**Notice**" or "**Notices**") shall be in writing and shall be deemed to have been given for all purposes on the earlier of receipt or (i) three (3) business days after having been sent by the relevant national mail service, by registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at its address as stated in the Order Form or Quotation, or (ii) one (1) business day after having been sent by a recognized air courier service.

30.2. For the purposes of this Section 30, any party may substitute its address by giving fifteen (15) days' notice to the other party in the manner provided above. Any Notice may be given on behalf of any party by its counsel.

## **31. RIGHTS NOT EXCLUSIVE**

31.1. Customer's rights hereunder with respect to the Software Licenses; Hosted Services or Professional Services are not exclusive, and nothing contained herein shall be deemed to prevent Open iT from exercising all of its rights in and with respect to the Software License, Hosted Service and Professional Services including, without limitation, the right to license or sell Software Licenses, Hosted Services and Professional Services to such persons as Open iT deems appropriate and the right to market or distribute the Software License in any manner deemed appropriate by Open iT in its sole and absolute discretion.

31.2. Customer understands, acknowledges and agrees that, notwithstanding anything contained in this Master Agreement, Open iT may establish Resellers, marketing representatives, as well as dealers, distributors and agents to distribute Software Licenses around the world, and may make direct sales, licensing or other distribution of the Software Licenses, subject to certain sanction restrictions, to any entity at any price.

### **32. INDEPENDENT CONTRACTOR**

This Master Agreement is not intended by the parties to constitute or create a joint venture, partnership or formal business organization of any kind. Accordingly, the rights and obligations of the parties shall be only those expressly set forth herein. Neither party shall have authority to bind the other except to the extent authorized herein. Both parties shall perform under the provisions set forth herein as independent contractors, and neither party shall act as an agent of the other and neither party shall be considered an employee of the other party for any purpose.

### **33. COMPLIANCE WITH LAWS**

Customer shall comply with all applicable laws and regulations. Customer warrants that it will not permit or knowingly assist or participate in the transfer of the Software Licenses to countries or to users not approved to receive technical information under applicable local, state or federal laws and export restrictions.

### **34. SURVIVAL OF TERMS**

Sections 3 (Restrictions on Software License Use), 5 (Indemnity), 10 (Standard of Care for Professional Services), 16 (Limitation of Liability), 17 (Force Majeure) and 23 (Non-Hire of Employees), shall survive the expiration or termination of this Master Agreement for any reason.

### **35. SIGNATURE ON ORDER FORM OR QUOTATION**

By signing the Order Form or Quotation, Customer has accepted the Master Agreement to govern the purchase of Open iT Products and Services. If Customer does not agree with any provision in this Master Agreement, then such objection is referenced in writing in the Order Form or Quotation, and if relevant, special provisions ("**Customer Specific Provisions**") are described and agreed to in writing.

## ATTACHMENT 1

1. **STANDARD PROCEDURES FOR OPEN IT SUPPORT SERVICES**
2. **SERVICE LEVEL COMMITMENT FOR THE HOSTED SERVICES**
3. **ADDITIONAL SOFTWARE COMPONENTS**

### 1. STANDARD PROCEDURES FOR OPEN IT SUPPORT SERVICES

#### Open iT Support

Open iT Support is responsible for any issues with the Open iT Software that are related to the running of the Software itself, and installation and/or configuration if that has been performed by Open iT personnel. Open iT Support will use commercial reasonable efforts to expeditiously resolve each issue to the satisfaction of the Customer. Open iT Support will act on any issues reported by Customer (each “**Support Request**”). Open iT Support will respond to Customer’s submission of a Support Request within 4 business hours after submission.

Likewise, Open iT Support will help the Customer in solving issues related to the running of the Software that is determined to be caused by factors external to the Software (e.g., configuration errors by Customer, factors related to the hardware environment, etc.), but does not have a contractual obligation to resolve such issues.

Open iT Support exists to improve Customer’s experience with Software. Open iT Support will do its best to resolve all issues in a timely and expedient fashion.

Open iT Support comes with two options Standard Support and Premium Support. All Subscriptions are offered with Standard Support included. Standard Support is generally provided on a 24/5 basis (excluding Saturdays/Sundays) and Premium Support on 24/6 (excluding Sundays), with response times as detailed below:

#### Support Levels

Open iT definitions of Support Levels are as follows:

Table 1:

<b>Level 1 (1st line Support)</b>	<b>Level 2 (2nd line Support)</b>	<b>Level 3 (3rd line Support)</b>	<b>Level 4 (Development &amp; QA)</b>
<ul style="list-style-type: none"> <li>• Customer assistance</li> <li>• General problem investigation &amp; reproduction</li> <li>• Patch distribution</li> </ul>	<ul style="list-style-type: none"> <li>• Advanced problem investigation &amp; reproduction</li> <li>• Configuration workarounds, patch distribution and installations</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary patches</li> <li>• Code level workarounds</li> <li>• Bug reproduction and logging</li> </ul>	<ul style="list-style-type: none"> <li>• Patch development &amp; testing</li> <li>• Patch packaging</li> </ul>

## Problem Severity and Response Times

Open iT Support categorizes issues by severity as follows:

Table 2:

Severity 1: Fatal	Severity 2: Serious	Severity 3: Medium	Severity 4: Minor
<ul style="list-style-type: none"> <li>Irreversible loss of data collection from tier-1 applications</li> <li>Causing non- Open iT applications or system to fail.</li> </ul>	<ul style="list-style-type: none"> <li>Major functionality does not work</li> <li>No workaround.</li> </ul>	<ul style="list-style-type: none"> <li>Functionality does not work</li> <li>Major defect has workaround</li> </ul>	<ul style="list-style-type: none"> <li>Minor functionality defect</li> <li>Request for information or enhancement</li> </ul>

Open iT Support assigns response times for issues based on their severity. The response times in the chart shown below indicate the targets for providing an initial action plan, and progress updates:

Table 3:

Severity	Initial Action Plan		Progress Updates	
	Standard	Premium	Standard	Premium
1	Within 4 hours	Within 1 hour	Every 2 days	Every 2 days
2	1 Day	1 Day	Every 5 days	Every 5 days
3	3 Days	3 Days	Every 10 days	Every 10 days
4	3 Days	3 Days	Every 10 days	Every 10 days

“Within 4 hours” mean within 4 effective business hours. A response can normally be expected within the same business day, but if an issue is reported late in the day, the response will be on the next business day counting 4 effective business hours. (For an issue reported late on a Friday the obligation (for Standard Support) is to respond within 4 effective business hours on Monday morning).

### What Information to Provide in a Support Request

To expedite the problem resolution process, Customer needs to provide the following information when first contacting Open iT Support.

- A sense of the urgency/ priority of the issue. This priority must be as accurate as possible as Support treats urgent requests very seriously.
- Version numbers of the Open iT Software and the Operating System.
- Accurate, concise, technical English description of the problem, including steps necessary to reproduce a problem, if known.
- Console/screen output showing the problem.
- Relevant configuration files.
- Error logs.

Failure to provide the above information can result in unnecessary delays in resolving the problem.

### Reporting issues by e-mail

1. Customer sends email to [support@openit.com](mailto:support@openit.com) with a short description and severity of the issue in the subject of the mail.
2. The request is logged into the Open iT Support database, and a request ID is generated.
3. Customer receives an automatic reply message indicating the request ID, and a questionnaire asking Customer to supply additional info (e.g., severity) if it has not been provided. If Customer does not receive this auto reply message, Customer's Support Request has not been logged into the Open iT Support database, and the original request should be resent or Customer can contact Support by phone.
4. Customer will receive an initial action plan via email or call from 1st line Support.
5. Subsequently, the same 1st line Support engineer will work with Customer until the problem is resolved or until the problem needs to be escalated to 2nd line Support.
6. If the problem needs to be escalated to a 2nd line Support engineer, Customer will be notified of the escalation. A problem is typically escalated to 2nd line Support if the problem requires code level investigation.
7. 2nd line Support will work with Development to resolve the problem. The same 2nd line Support engineer will work with Customer until the problem is resolved.
8. The Support Request is closed when it is mutually agreed upon by Support and Customer that the issue has been resolved, or if there is no response from Customer to request for additional information within 5 days.

### Reporting issues by phone

Call the local Open iT office (given in Section 2 of Order Form) to initiate a Support Request or to follow up on an open Support Request. During office hours, a 1st line Support engineer will normally be available to provide Support assistance. If a Support engineer is not immediately available, Customer will be contacted within 2 hours of submitting a Support Request by phone.

### Supported Versions

Support is available to the current and past versions based on their release status<sup>1</sup> as indicated in the via the weblink referenced in the following paragraph. “**Full Support**” is available for an official released version for one year following the release of a newer version. “**Critical Bug Fix Support**” will be available for an official released version for two years following the release of a newer version. After this period of time, Supplier has is no obligation to provide Support for an official released version.

The Open iT Web Customer Area, has an overview of supported **versions** and **patches** available for download. If there is a problem with access to the Customer Area, please contact [sales@openit.com](mailto:sales@openit.com) for username and password.

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<sup>1</sup> For Early Availability (EA) versions, Open iT is not obligated to support the EA version after the superseding official released version has been released.

## Open iT delivered as a Hosted Service

If Customer reaches the Open iT Portal on the hosted platform but are not able to access Customer Data on usage, then this is defined as an Open iT support issue, for which the response times for Open iT Support Procedures (detailed above) will apply.

### 2. SERVICE LEVEL COMMITMENT FOR HOSTED SERVICES (IF APPLICABLE)

If Open iT is providing Hosted Services, the hosting service provider will be identified on the applicable Order Form (the “Hosting Provider”).

The Service Level Agreements (“**SLAs**”) offered for Hosted Services will reflect the service level of the Host Provider.

The Service Level Commitments outlined below represent the hosted service level guarantee concerning up-time and availability (“Availability Guarantee”) offered by Microsoft Azure as the Hosting Provider. (SLAs for Amazon Web Services (AWS) may deviate from these SLAs).

The Hosted Services will be available to Customer on a 24x7 basis and the Availability Commitment Level is greater than 99.98%.

Calculation of Uptime / Availability:

Customer shall measure uptime performance during a calendar month based on the following calculation:

$$\frac{\text{Available Minutes} - \text{Unscheduled Downtime}}{\text{Available Minutes}}$$

Calculation of the Availability Commitment Level excludes downtime due to Scheduled Maintenance and Emergency Maintenance.

- “Scheduled Maintenance” is defined as the period of time used to apply required patches to the IT infrastructure to ensure the continued security, availability, and performance of the system. Customer will be provided a minimum of two (2) weeks advance notice of Scheduled Maintenance.
- “Emergency Maintenance” is downtime associated with the application of required IT infrastructure patches that are unplanned.

Customer will be given notice of Scheduled Maintenance at least two weeks in advance which will be used to apply required patches to the IT infrastructure to ensure the continued security, availability, and performance of the system.



Open iT shall provide Customer remedies for any Open iT failure to meet the Availability Guarantee during any single calendar month (“**Service Period**”). Open iT shall provide a Service Credit to Customer as described below:

<b>Availability Guarantee Service Credit</b>	
98 % — 99.98%	5% of Monthly Charge
95 % — 97.99%	10% of Monthly Charge
Below 95%	25% of Monthly Charge

Open iT will apply any Service Credits only against future amounts due for Hosted Service Fees. Service Credits will not entitle Customer to any refund or payment from Open iT. If Service Credits are issued for two (2) consecutive months or for three (3) months during any six (6) month period, Customer shall have the right to terminate for material breach without further notice.

To receive Service Credits, Customer must submit a claim by opening an Open iT support ticket, that identifies this as an “SLA Credit Request”. The ticket should specify the dates and times of each unavailability incident that Customer is claiming.

If the Monthly Uptime Percentage of such request is confirmed by Open iT and is less than the Availability Guarantee, then Open iT will record this as a Service Credit.

At the end of the Service Period, the Service Credits will be added up. If Customer decides to do an annual renewal, the accumulated Service Credits will be deducted from the new annual renewal fee. If Customer will not renew, the Service Credits will be lost.

A link to the Host Provider’s specification of service levels (“**SLAs**”) is also provided in the Order Form if a Hosted Service is ordered.

Service Credits apply only to unavailability of the Hosted Service. If Customer reaches the Open iT Portal on the hosted platform but are not able to access Customer Data on usage, then this is defined as an Open iT support issue, for which the response times for Open iT Support Procedures (detailed above) will apply.

### **3. ADDITIONAL SOFTWARE COMPONENTS (IF APPLICABLE)**

#### **Customer On-prem installation**

The Open iT Software License may require additional third-party software components for its operation. Such components, if not made available by Customer, shall be provided and installed by Open iT under the terms provided by the component’s original software vendor to the licensor (Company).

A copy of the original software vendor End User License Agreement is provided as a separate document.

**Additional technical comments on the MS-SQL Server runtime restrictions:**

- (a) The MS-SQL Server Runtime license needs to be assigned to a physical server but can be executed in any Virtual Machine running on that server.
- (b) The MS-SQL Server Runtime license cannot be assigned to a different physical server more frequently than every 90 days. There are exceptions to this rule, see the attached Microsoft EULA.
- (c) According to Microsoft's commercial policies, License Mobility (i.e. dynamic virtual machines) can only be acquired by enrolling a product license in the "Software Assurance Program". ISV licenses, such as the MS-SQL Server Runtime, do not qualify for joining that program.

**Hosted Service installation**

For a hosted environment, the MS-SQL license is included on the instance/vm.

Microsoft Azure: <https://azure.microsoft.com/en-us/pricing/licensing-faq/>

Amazon Web Services: <https://docs.aws.amazon.com/sql-server-ec2/latest/userguide/sql-server-on-ec2-licensing-options.html>