



End User License Agreement

February 2021

END USER LICENSE AGREEMENT

PLEASE READ THESE TERMS CAREFULLY. BY DOWNLOADING OR SUBSCRIBING TO OR OTHERWISE USING OZCODE LTD. (THE "**COMPANY**")'S SOFTWARE SOLUTION IDENTIFIED IN THE ORDER (AS DEFINED BELOW) (THE "**SOLUTION**"), YOU ACCEPT ALL OF THE TERMS OF THIS END USER LICENSE AGREEMENT ("**AGREEMENT**"). IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT DOWNLOAD, SUBSCRIBE OR OTHERWISE USE THE SOLUTION ANY USE OF THE SOLUTION IS AND SHALL BE, SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.

1. **License Grant and Restrictions.**

1.1 **License.** Subject to the terms and conditions of this Agreement and the terms and conditions of an order signed by both parties (the "**Order**"), the Company hereby grants you during the applicable subscription term specified in the Order, and you accept, a limited, non-exclusive, non-sublicensable, non-transferable and fully revocable license to use the Solution during the Term internally, solely for its intended purposes and in accordance with the terms of this Agreement and with any specific use limitations specified in the Order. All rights in the Solution are expressly reserved by the Company and its licensors.

1.2 **Prohibited Uses.** Except as expressly permitted herein, you shall not, directly or indirectly: (i) use, modify, incorporate into or with other software, or create a derivative work of any part of the Solution; (ii) sell, resell, license (or sub-license), lease, assign, transfer, pledge, or share your rights under this Agreement with or to anyone else; (iii) copy or reproduce, distribute or publish the Solution; (iv) use or permit the Solution to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise; (v) disclose, publish or otherwise make publicly available the results of any benchmarking of the Solution, or use such results for your own competing software development activities; (vi) modify, disassemble, decompile, reverse engineer, revise or enhance the Solution or attempt to reconstruct or discover any source code or underlying ideas or algorithms of the Solution; (vii) remove or otherwise alter any of the Company's trademarks, logos, copyrights, notices or other proprietary notices or indicia, if any, fixed or attached to the Solution; (viii) ship, transfer, or export the Solution or use the Solution in any manner that is prohibited by law, including without limitation, to sell, distribute, download or export the Solution: (a) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Lebanon or Syria, (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals, (c) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. or Israeli government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval, or (d) otherwise in violation of any export or import restrictions, laws or regulations of the U.S. or Israel or any foreign agency or authority. You agree to the foregoing and warrant that you are not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list; (ix) exceed any use limitations or other restrictions which are specified in the Order; (x) contest Company's Intellectual Property Rights (as defined below) to the Company IPR (as defined below); (xi) place the Solution onto a server so that it is accessible via a public network or use the Solution for service bureau purposes; (xii) utilize the Solution including without limitation any related point of presence, servers and network, in any way which will result in the violation or circumvention of any applicable laws or regulations including, without limitation, those enforcing censorship, privacy, government authority restrictions or other; (xiii) use the Solution for any purpose other than as permitted by this Agreement; (xiv) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Solution, such as features that restrict or monitor use of the Solution; or (xv) cause or permit any third party to do any of the foregoing. You are solely responsible for acquiring and maintaining all of the hardware, software and services necessary to access and make use of the Solution, including without limitation paying all fees and other costs related to internet access, server or cloud account subscription and maintenance.

1.3 **Lawful Use:** You hereby declare and agree that you shall only use the Solution in a manner that complies with all applicable laws in the jurisdiction in which you use the Solution, including, but not limited to, applicable restrictions concerning the protection of privacy and intellectual property, including copyrights and any other intellectual property rights.

2. **Consideration.** The consideration for the license granted hereunder, will be in accordance with the payment terms, subscription and licensing plans and license metrics specified in the Order. Unless otherwise specified in the Order, (i) you will pay all amounts due under this Agreement in U.S. Dollars, and (ii) all amounts invoiced hereunder are due and payable within thirty (30) days of the date of the invoice. All amounts payable under this Agreement are exclusive of sales, use, value-added, withholding, and other taxes and duties. You shall pay all taxes and duties assessed in connection with this Agreement by any authority. If any such tax or duty has to be withheld or deducted from any payment under this Agreement, you shall gross-up the payment under this Agreement by such amount to ensure that after such withholding or deduction the Company shall receive an amount equal to the payment otherwise

required. All payments not made when due shall bear interest at the rate of 1.5% per month, or at the highest interest rate allowed by law, whichever is less, from the due date until paid.

3. **Confidentiality.** You may have access to certain non-public or proprietary information or materials of Company whether in tangible or intangible form ("**Confidential Information**"). Without derogating from the foregoing, the Solution and terms of the Order shall be deemed as Confidential Information. You shall use the Confidential Information solely for the purpose of performing your obligations and/or exercising your rights under this Agreement and you shall not disclose or make available the Confidential Information to any third party, except to your employees that have a need to know such information and that are bound by obligations at least as protective as provided herein. You shall take measures at a level at least as protective as those taken to protect your own confidential information of like nature (but in no event less than a reasonable level) to protect the Confidential Information. You will promptly notify Company in writing in the event of any actual or suspected unauthorized use or disclosure of any Confidential Information.
4. **Title & Ownership; Anonymous Data.** The Solution and the related documentation are licensed and not sold. The Company and/or its licensors or designees are and shall retain all right, title, interest and ownership of all Intellectual Property Rights in and to the Solution and related documentation and Confidential Information as well as any modifications, improvements and derivatives thereof ("**Company IPR**"). "**Intellectual Property Rights**" means any and all right, title and interest in and to patents, inventions, discoveries, copyrights, works of authorship, trade secrets, trademarks, service marks, trade dress, technical information, data, know-how, show-how, designs, drawings, utility models, topography and semiconductor mask works, specifications, formulas, methods, techniques, processes, databases, software, code, algorithms, architecture, records, documentation, and other similar intellectual or industrial property, in any form and embodied in any media, whether capable of protection or not, whether registered or unregistered, and including all applications, registrations, renewals, extensions, continuations, divisions or reissues thereof. This Agreement does not convey to you an interest in or to the Company IPR but only a limited revocable right to use the Solution in accordance with the terms of this Agreement. Nothing in this Agreement constitutes a waiver of the Company IPR under any law and you undertake not to contest Company's ownership in the Company IPR. If you contact the Company with feedback data (e.g. questions, comments, ideas, suggestions or the like) regarding the Solution (collectively, "**Feedback**") such Feedback shall be deemed Company IPR. Company may, at no cost, freely use such Feedback, for any purpose whatsoever and you hereby assign all right, title and interest in and to all Feedback to Company upon creation thereof.

The Company may collect, disclose, publish, store and use in any other manner any anonymous and non-identifiable information which is derived from your use of the Solution ("**Anonymous Information**"), in order to provide and improve the Company's Solution and related services and for any business purposes. The Company is and shall remain the owner of the Anonymous Information which shall be deemed Company IPR.

5. **Disclaimer of Warranty.**
 - 5.1 THE SOLUTION IS PROVIDED "AS IS", WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, SECURITY AND NON-INFRINGEMENT. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOLUTION REMAINS WITH YOU.
 - 5.2 COMPANY DOES NOT WARRANT THAT THE SOLUTION WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT ERRORS/BUGS ARE REPRODUCIBLE OR THAT ERRORS/BUGS ARE REPAIRABLE AND DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOLUTION IN TERMS OF THEIR CORRECTNESS, USEFULNESS, ACCURACY, RELIABILITY, OR OTHERWISE. YOU SHALL BE RESPONSIBLE FOR TAKING ALL PRECAUTIONS YOU BELIEVE ARE NECESSARY OR ADVISABLE TO PROTECT YOU AGAINST ANY CLAIM, DAMAGE, LOSS OR HAZARD THAT MAY ARISE BY VIRTUE OF ANY USE OF OR RELIANCE UPON THE SOLUTION AND FOR VERIFYING ANY OUTPUT RESULTING FROM USE OF THE SOLUTION.
6. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW: (A) THE COMPANY AND/OR ITS AFFILIATES, SHAREHOLDERS, SUPPLIERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES AND/OR LICENSORS (COLLECTIVELY, "**AFFILIATES**") SHALL NOT BE LIABLE WHETHER UNDER CONTRACT, TORT OR OTHERWISE, TO YOU OR ANY THIRD PARTY FOR ANY LOSS OR DAMAGE, INCLUDING, WITHOUT LIMITATION, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND

(INCLUDING BUT NOT LIMITED TO, ANY LOSS OR DAMAGE TO BUSINESS EARNINGS, LOSS OF BUSINESS, LOSS OF BUSINESS OPPORTUNITIES, LOST PROFITS OR GOODWILL, BUSINESS INTERRUPTION AND/OR LOST OR DAMAGED DATA OR DOCUMENTATION), SUFFERED BY ANY PERSON OR ENTITY, INCLUDING WITHOUT LIMITATION ARISING FROM AND/OR RELATED WITH AND/OR CONNECTED TO THE SOLUTION PROVIDED BY THE COMPANY (IF ANY) AND/OR ANY USE OF OR INABILITY TO USE THE SOLUTION PROVIDED BY THE COMPANY (IF ANY), EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) IN NO EVENT SHALL THE COMPANY'S AND ITS AFFILIATES' TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FROM ALL CLAIMS OR CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL PAYMENTS ACTUALLY MADE TO THE COMPANY FOR THE SOLUTION, IF ANY, DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT THAT GAVE RISE TO THE CLAIM.

7. **Third Party Software.** The Solution may use or include third party software, files and components that are subject to open source and third party license terms ("**Third Party Components**"). Your right to use such Third Party Components as part of, or in connection with the Solution is subject to any applicable acknowledgements and license terms accompanying such Third Party Components contained therein or related thereto. If there is a conflict between the licensing terms of such Third Party Components and this Agreement, the licensing terms of the Third Party Components shall prevail in connection with the related Third Party Components. You hereby agree to such terms associated with the Third Party Components.
8. **Term and Termination.** The term of this Agreement shall be as set forth in the Order and may be terminated earlier in accordance with this Section ("**Term**"). The Company may terminate this Agreement immediately without notice if you fail to comply or breach any provision of this Agreement. Upon termination of this Agreement: (i) the license granted to you in this Agreement shall expire and you, upon termination, shall discontinue all further use of the Solution; (ii) you shall promptly remove the Solution from all hard drives, networks and other storage media and destroy all copies of the Solution in your possession or under your control; (iii) any sums paid by you until the date of termination are non-refundable, and you shall not be relieved of your duty to discharge in full all due sums owed by you to the Company under this Agreement, which sums shall become immediately due and payable on the date of termination of the Agreement; and (iv) you shall, at Company's election, erase or return to Company all Confidential Information in your possession or under your control. Sections 1.2, 2-6 and 8-10 shall survive any termination of this Agreement.
9. **Privacy.** The Company's privacy practices are governed by Company's Privacy Policy available at <https://oz-code.com/EULA>, which is an integral part of this Agreement.
10. **Miscellaneous.** This Agreement shall be construed and governed in accordance with the laws of the State of New York and the competent courts of New York shall have exclusive jurisdiction in any conflict or dispute arising out of this Agreement. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. This Agreement represents the complete agreement concerning the license granted herein and the subject matter hereof and may be amended as set forth in the preamble to this Agreement above or by a written agreement executed by both parties. To the extent any conflict arises between the terms and conditions of this Agreement and those contained in the Order, the terms and conditions contained in this Agreement shall prevail. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. You may not assign your rights or obligations under this Agreement without the prior written consent of the Company. The Company may assign or transfer its rights and/or obligations under this Agreement without restriction or notification.