END-USER LICENSE

IMPORTANT NOTICE: CAREFULLY READ AND BE SURE YOU UNDERSTAND THIS END USER LICENSE AGREEMENT (EULA) BEFORE USING THIS SOFTWARE. OPEN-XCHANGE GMBH (OX) IS WILLING TO LICENSE THE SOFTWARE (AS DEFINED BELOW) TO YOU AS A CONSUMER OR AS AN ENTREPRENEUR ("YOU/CUSTOMER") ONLY IF YOU ACCEPT ALL OF THE PROVISIONS OF THIS EULA AND ITS RELATED TERMS AND CONDITIONS. BY USING THE SOFTWARE, BY DOWNLOADING THE SOFTWARE OR BY OTHERWISE INDICATING ASSENT, YOU ACCEPT THIS EULA AND THIS EULA WILL BECOME A LEGAL AND ENFORCEABLE CONTRACT BETWEEN OX AND YOU INDIVIDUALLY, IF YOU ARE A CONSUMER OR BETWEEN OX AND YOUR BUSINESS ENTITY, IF YOU ARE AN ENTREPRENEUR. IF YOU DO NOT AGREE TO THESE PROVISIONS, THEN REFRAIN FROM DOWNLOADING OR USING THE OX SOFTWARE.

If you are located outside the United States of America, (i.e. especially in Germany or the rest of the European Union), note the additional provisions of Section XVII which will apply to you.

I. Terms

This EULA refers to OX's grant of a license to any OX Software and any related user Documentation, to you. This EULA shall also apply to all Updates and Upgrades, insofar as OX provides such Updates and/or Upgrades after installation of the Software.

II. Definitions

1. **App Suite** – means a modular software package created and released by OX, consisting out of different Software parts. OX App Suite is designed for Telco's, Hosters and Providers that delivers a wide range of cloud based services (e.g. email server, storage, encryption, etc.).

2. **Business Customer** – means any natural person, legal entity or partnership, having legal capacity that is not engaged in personal usage in ordering or receiving OX Software while performing its commercial or independent professional or other work.

3. **Consumer** - means any natural person who is provided with any Software from OX for personal use.

4. **Customer** - means a Consumer and/or Entrepreneur.

5. **Device** - means any device that is able to process data with the assistance of a programmable calculation specification, this also includes any mobile devices, i.e. tab- lets, smartphones.

6. **Documentation** - means all written materials, in printed or electronic form, describing the features of the OX Software and/or Updates and Upgrades and that are designed to assist you in effectively utilizing the OX Software, Updates and/or Upgrades.

7. **License** - means the right to use the OX Software subject to this EULA and the Terms and Conditions applicable as of date of conclusion of the relevant agreement. The License shall stipulate the nature and scope of the right to use the OX Software including Updates and/or Upgrades if provided.

8. **License Term** - means the period for which a License to the OX Software has been granted. The License Term commences as soon as you have received the OX Software, but no later than the beginning of use of the OX Software.

9. **Release** – means the date at which any OX Software, Update or Upgrade has been made publically available for download in a stable and ready-to-market condition, irrespective where it has been made available (OX website at **www.open-xchange.com/**, mobile or stationary third-party app-stores, etc.).

10. **OX** - means Open-Xchange GmbH, a limited liability company, with its primary place of business at Olper Hütte 5f, 57462 Olpe, Germany.

11. **OX Software** - means all OX's officially released stationary and/or mobile applications, software and computer programs in their object code format, including any and all Updates and Upgrades thereto that OX makes available, provides and for which OX has granted a license to Customer under this EULA.

12. **Terms and Conditions** - mean the contractual terms agreed upon between Customer and OX, if any. As noted below, these Terms and Conditions apply in addition to, and supplement the provisions of, this EULA.

13. **Updates and Upgrades** - mean the updating of the OX Software. Classification of the updating as an Update or Upgrade is at OX's sole discretion.

14. **Update Service** - means the ongoing updating of OX Software through Updates

15. **Use** - means Customer's conduct to install, use, access, run, or otherwise read the Software into and out of memory in accordance with the documentation and the license grant from OX.

III. The Software

This EULA applies to the OX Software that is being provided to Customer, no matter whether it is provided to Customer within the package of OX App Suite or as a stand-alone solution, and no matter which channel the OX Software is distributed through. The OX Software for the terms of this EULA includes only the parts supplied to Customer.

IV. License Grant

OX grants to Customer the non-exclusive, non-transferable, revocable right without limitation in place and time to install and use the OX Software in object-code form only, under the terms of this EULA and, in case Customer has to pay license fees, only after the complete payment of such fees. Customer may copy the OX Software for Customer's own use (i.e., for use by one

individual) and for backup and archival purposes. Any use, copying, or distribution of the OX Software not authorized by this Agreement may result in the immediate termination of the license granted by this Agreement.

V. Open Source or Third Party Software

Portions of the OX Software may use, include third party software, other copyrighted material or Open Source Software. Acknowledgements, licensing terms and disclaimers for such material are contained in separate agreements. Customer's use of such material is governed by the terms of the applicable agreements and can be found on the OX web site, as listed under: **www.open-xchange.com/terms-and-conditions/**

VI. Restrictions

No Publication. Except as otherwise specifically set forth in this Agreement, Customer may not distribute, disclose, display, transmit, publish, resell, sublicense or otherwise transfer OX Software, nor allow the distribution, disclosure, display, transmission, publication, resale, sublicense or transfer of the OX Software, to any person, entity or other third party.

Limited Copies. Customer may not copy or allow copies of the OX Software to be made for any reason, except for Customer's own use (i.e., one individual) and for back-up and archival purposes.

No Modifications or Derivative Works. Customer may not make any changes or modifications in the OX Software, nor may Customer create derivative works of the OX Software. Customer may not decompile, disassemble, decrypt, extract or otherwise reverse engineer the OX Software. Customer may not remove, alter, cover, or distort any copyright, trademark or other proprietary rights notice placed by OX in or on the OX Software or its documentation.

No Unlawful Use. Customer may not use the OX Software in any unlawful manner or for any unlawful purpose.

Special Risk Environments. Customer shall not use the OX Software in special risk areas that require error-free, permanent operation of relevant systems and in which the failure of the OX Software may result in a direct risk for life, body or health or in substantial damages to property or the environment (high risk activities and high availability activities, including but not limited to the operation of nuclear facilities, weapon systems, aviation navigation or communication systems, life support systems and equipment, machine and production processes of pharmaceuticals and food production). OX does not warrant or guarantee that the OX Software is fit for use in special risk areas.

Action against unlawful use. OX reserves all rights to bring action to prohibit or stop any unauthorized use of OX Software, including but not limited to, claims for injunctive relief and damages. Unauthorized use may lead to criminal prosecution under the relevant laws.

VII. Term and Termination

The term of the License granted under the EULA to the Customer shall commence on the day the Customer has obtained or at latest on the day when Customer starts using the OX Software ("Effective Date") and continue indefinitely ("License Term") unless terminated upon the occurrence of one or more of the following events:

- By OX, if Customer fails to pay any fees, charges or taxes due to OX hereunder, provided written notice of such alleged default has been given to Customer and Customer has not cured such default within ten (10) days after receipt of such notice.

- By OX, if License is in default or breach of any material provision of this Agreement, provided written notice of such alleged default has been given to Customer and Customer has not cured such default within fourteen (14) days after receipt of such notice.

- By OX, under the conditions of Section X.

Upon the expiration or termination of Customer's license, Customer agrees to discontinue any and all uses of the OX Software and its documentation and to destroy all copies of the OX Software on Customer's end devices, disks and other digital storage devices.

VIII. Trademarks

OX is the sole owner of the OX trademark in the United States, the European Union and certain other countries. Customer may not use any OX trademark without OX's prior written consent, which OX may withhold in its sole discretion.

IX. Copyrights

Customer acknowledges that the OX Software and its documentation are protected by copyright and other laws and that OX and its licensors own and retain all rights in and to the Software and its documentation. Customer has no rights in the OX Software or its documentation except as set forth in this Agreement and in any other written agreement Customer may have with OX.

X. Infringement

In the event that a third party brings a legal action against OX alleging that use of the Software infringes a patent, copyright or trade secret, OX reserves the right to modify or replace the OX Software in a manner that retains the same functionality and ease of use of the OX Software in all material respects, or to procure a license therefor. If OX determines that no such alternative is reasonably available, OX may terminate this Agreement and the license created by this Agreement and Customer will cease all use of the OX Software. OX will have no liability to Customer as a result of such termination.

XI. Backups

Customer agrees regularly to back up the data Customer derives from Customer's use of the OX Software. Customer acknowledges that any failure to do so may significantly decrease Customer's ability to mitigate any harm or damage arising from any problem or error in the OX Software.

XII. No Warranties

OX delivers the OX Software on an "as is" basis. Any reliance upon the OX Software is at Customer's own risk. OX is not responsible for any consequence of Customer's use of or reliance upon the OX Software.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OX DISCLAIMS ALL WARRANTIES; EITHER EXPRESS, IMPLIED OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. OX ALSO EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES RELATING TO NONINFRINGEMENT OF THIRD PARTY RIGHTS, SATISFACTORY QUALITY, OR ABILITY TO INTEGRATE THE OX SOFTWARE WITH OTHER PRODUCTS.

XIII. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL OX BE LIABLE FOR ANY SPEICAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITECE DAMAGES WHATSOEVER ARISING OUT OF THIS EULA OR THE USE OF OR INABILITY TO USE THE OX SOFTWARE (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST INFORMATION, LOST PROFITS OR BUSINESS INTERRUPTION, LOSS OF

DATA OR WORK STOPPAGE), EVEN IF OX HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL OX BE LIABLE FOR DAMAGES IN CONTRACT, TORT, OR OTHERWISE IN EXCESS OF THE AMOUNTS RECEIVED BY OX FROM CUSTOMER FOR CUSTOMER'S USE OF THE OX SOFTWARE DURING THE ONE-YEAR PERIOD IMMEDIATELY PRECEEDING THE DATE THE CAUSE OF ACTION ARISES.

In no event may Customer bring an action against OX more than one year after the cause of action arises. Some jurisdictions do not allow limitations on implied warranties or the exclusion or limitation of incidental or consequential damages, so the above limitations and exclusions may not apply to Customer. In such jurisdictions, OX's liability is limited to the greatest extent permitted by law.

XIV. Privacy

By entering into this EULA, you agree that the OX Privacy Policy, as it exists at any relevant time, shall be applicable to you. See **www.open-xchange.com**.

XVI. Miscellaneous

No Transfer of Rights. Customer may not transfer, sublicense or assign the rights granted under this Agreement to any other person or entity, except that if Customer is a Customer with multiple licenses, Customer may change the end-users authorized by it to use the OX Software from time to time.

U.S. Export Control Regulations. Neither the Customer nor any end-user may export, re-export or deliver the OX Software, in whole or in part, to any person or entity where such export, re-export or delivery violates any U.S. export or national security control law or regulation. Customer represents and warrants that neither Customer nor any end-user authorized by it to use the OX Software is acting on behalf of any person, entity, or country subject to U.S. export or national security controls.

Only Agreement. This EULA and the Terms and Conditions, as defined above and incorporated herein, set forth all of your rights to use the OX Software and make up the entire agreement between the parties. This EULA and the Terms and Conditions supersede any other communications, representations or advertising relating to the OX Software that is the subject of this EULA.

Waivers. No delay or failure to exercise any right or remedy provided for in this Agreement will be deemed to be a waiver.

Severability. If any provision of this Agreement is held invalid or unenforceable, for any reason, by any arbitrator, court or governmental agency, department, body or tribunal, the remaining provisions will remain in effect.

Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York, U.S.A., without regard to conflicts of laws principles.

Jurisdiction. Both Customer and OX irrevocably consent to the non-exclusive jurisdiction of the United States District Court for the Southern District of New York in any legal action or proceeding arising out of or relating to this Agreement or the transactions it contemplates

XVII. Provisions for Licenses under European and German Law

This section applies to you if you are located in any other jurisdiction than the United States. Your license is governed by the laws of Germany and any any legal action or proceeding with respect to this Agreement will be brought into the Courts of Hamburg, Germany.

1. Section XII (No Warranties) shall be replaced in its entirety by the following provisions:

   a) Unless expressly agreed otherwise, the OX Software shall be in line with the current state-of-the-art technology and shall conform to all relevant product information and specifications provided by OX. OX does not warrant that the OX Software under the agreement will meet any purposes beyond the fulfilment of OX'S obligations under the agreement.

   b) Customer shall be advised that based on the current state of the art technology program errors cannot be excluded with complete certainty in spite of exercising greatest conscientious care and diligence

   c) If OX has provided Customer with the OX Software against payment but for a limited period of time, defects in the OX Software, shall be rectified by OX within a reasonable period after notification of the defect. The rectification of defects shall be effected, at OX's choice, by way of repair or substitute delivery free of charge. Customer shall only be entitled to an extraordinary termination of the agreement due to the failure to grant use in accordance with the agreement if OX has been given sufficient opportunity to rectify the defect and such attempt has failed. It shall be assumed that the repair or substitute delivery has failed only if OX has been given sufficient opportunity to effect a repair or substitute delivery without achieving the desired result or if the repair or substitute delivery was unjustifiably refused by OX. If rectification of a defect in the form of repair or subsequent delivery is only possible for OX at unreasonable expenses, OX may refuse to rectify the defect and refer Customer to its right to rescind or terminate the agreement.

d) Customer shall notify OX without undue delay if a third party asserts claims against Customer based on infringement of intellectual property rights by the OX Software. Should there be any information of such, whether in written documents or correspondence or in other forms, Customer shall provide these to OX without undue delay.

2. Section XII (Limitation of liability) shall be replaced in its entirety by the following provision:

Notwithstanding the legal nature of the relevant claim, the following shall apply to Customer's damage claims and claims for expenses incurred in vain:

a) Unlimited Liability

   i. For damages with respect to injury to health, body or life caused by OX, OX is fully liable.

   ii. OX is fully liable for damages caused willfully or by the gross negligence by OX. The same applies to damages which result from the absence of a quality which was guaranteed by OX or to damages which result from malicious action by OX.

   iii. OX's liability based on the German Product Liability Act remains unaffected.

b) Limited Liability

   i. If damages, except for such cases covered by Section XVII.2.a, with respect to a breach of a contractual core duty are caused by slight negligence, OX is liable only for the amount of the damage which was typically foreseeable. Contractual core duties, abstractly, are such duties whose fulfillment enables proper performance of an agreement in the first place and whose performance a contractual party regularly may rely on.

   ii. For the purposes of this Section, "foreseeable damages" shall mean an amount that does not exceed in the aggregate the amount payable to OX by the Customer in the 12 months period prior to the damage causing event.

   iii. With the exception of cases (a) of willful misconduct, (b) gross negligence or (c) where OX fraudulently misrepresents the OX Software, OX is not liable for any features, functions, functionalities or Services designated alpha or beta and/or which are provided free of charge. Liability without fault for initial defects is excluded.

   iv. Any further liability of OX is excluded.

v. The limitation period for claims for damages against Company expires after one (1) year, except for such cases covered by Sections XVII.2.a.

c) The foregoing limitations of liability also apply with regard to all OX's representatives, including but not limited to its directors, legal representatives, employees, subcontractors and other vicarious agents.

XVIII. Further Information

Open-Xchange GmbH is based in Olpe, Germany. For further Information about Open-Xchange's licensing policies or products, contact OX at:

E-mail:**info@open-xchange.com**

Web:**www.open-xchange.com**

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(27 September 2023)