# ONE IDENTITY™

# EMEA *Software Transaction Agreement*

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS PRODUCT. BY DOWNLOADING, INSTALLING OR USING THIS PRODUCT, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT DOWNLOAD, INSTALL OR USE THIS PRODUCT. IF YOU HAVE A SIGNED AGREEMENT WITH PROVIDER THAT IS SPECIFICALLY REFERENCED IN AN ORDER THAT IS EXECUTED BETWEEN YOU AND PROVIDER, THEN THAT SIGNED AGREEMENT WILL SUPERSEDE THIS AGREEMENT.**

This EMEA Software Transaction Agreement (the "*Agreement*") is made between you, the Customer ("*Customer*" or "*You*") and the Provider, as defined below.

**1.    Definitions.**  Capitalized terms not defined in context shall have the meanings assigned to them below:

(a)    "*Affiliate*" means any legal entity controlling, controlled by, or under common control with a party to this Agreement, for so long as such control relationship exists.

(b)    "*Appliance*" means a computer hardware product upon which the Software is pre-installed and delivered.

(c)    "*Documentation*" means the then current user manuals and documentation that Provider makes available for the Software either through the electronic download of the Software or from the Support Site, and all copies of the foregoing.

(d)    "*Effective Date*" means the date that Customer accepts the Agreement.

(e)    *"License Type"* means the model by which the Software is licensed (e.g., by server, by mailbox, by managed user) as indicated in the applicable Order and defined in the Product Guide.

(f)    *"Maintenance Services"* means Provider's then current maintenance and support offering specified in the applicable Order and made available to Customer as stated in the *Maintenance Services* section below.

(g)    An *"Order"* is defined in Section 2 (Ordering).

(h)    *"Partner"* means a reseller or distributor that is under contract with Provider or another authorized party and is authorized via such contract to resell the Products and/or Maintenance Services.

(i)    *"Product(s)"* means the Software and/or Appliance(s) provided to Customer by Provider.

(j)    *"Product Guide"* means the document available at https://oneidentity.com/docs/Product_Guide.pdf that contains the Product Terms.

(k)    *"Product Terms"* means the terms associated with each License Type and any other terms associated with an individual Product. The Product Terms for Products in a Signed Order or a Governing Quotation shall be as stated in the Signed Order or Governing Quotation. If no Product Terms are stated in the Signed Order or Governing Quotation, if the Order is placed with a purchase order ("*PO*") only, if the Products are purchased from a Partner, then the Product Terms for such Products shall be as stated in the Product Guide as of the date of the Order or purchase.

(l)    *"Provider"* means One Identity Software International DAC, with its principal place of business located at City Gate Park, Mahon, Cork, Ireland. If an Order is placed through and approved by an Affiliate of Provider, then that Affiliate shall be the Provider under this Agreement.

(m)    *"Software"* means any and all software that is provided or made available to Customer under this Agreement as well as any new versions and releases of such software that are made available to Customer pursuant to this Agreement, and, where applicable, all copies of the foregoing. Software includes On-Premises Software and SaaS Software (as defined in *Appendix A Software License Terms*), along with software that is delivered on an Appliance.

(n)    "*Support Site*" means Provider's website defining support, available at https://support.oneidentity.com/essentials/support-guide and https://support.oneidentity.com.

(o)    "*Use*" means Customer's installation, deployment, access of or provision of access to, or operation of a Product.

**2.    Ordering.**  Customer may place an order for Products through (i) an ordering document signed by Customer and Provider ("*Signed Order*"), (ii) a Provider quotation referenced on a PO that states that it is governed exclusively by such quotation ("*Governing Quotation*"), (iii) an order placed through a Partner, or (iv) a Customer PO submitted to Provider (each of which is referred to herein as an "*Order*"). Each Order shall be Customer's irrevocable commitment to purchase and pay for the Products and/or Maintenance Services stated in the Order and each Order placed with Provider shall be subject to approval by Provider in writing or by performance. Customer may place Orders for professional services and training under Provider's then current professional services terms.

**3.    Software License.**  Subject to Customer's compliance with the terms of this Agreement, Provider grants to Customer, and Customer accepts from Provider, a non-exclusive, non-transferable (except as otherwise set forth herein) and non-sublicensable license to Use the quantities of each item of Software licensed from Provider or a Partner within the parameters of the Product Terms associated with the applicable Software and License Type referenced in the Order and as described in Appendix A (a *"License"*). Except for MSP Licenses (as defined in Appendix A), Customer shall only Use the Software to support the internal business operations of itself and its worldwide Affiliates.

**4.    Restrictions.**  Customer may not, nor allow any third party to (a) Use the Software except as licensed hereunder, (b) reverse engineer, decompile, or otherwise seek to access the source code of the Software, except to the extent these restrictions are prohibited by applicable law and then only upon advance written notice to Provider, (c) copy, modify, create derivative works of, or remove proprietary notices from the Products or Documentation, (d) resell, sublicense, distribute or rent the Products or Documentation, (e) use the Software to provide a hosted or managed service to third parties, except for MSP Licenses, (f) use the Products or Documentation to create or enhance a competitive offering or for any other purpose which is competitive to Provider, or (g) conduct security or vulnerability tests of the Software, interfere with its operation or circumvent any access, licensing or copying restrictions.

**5.    Proprietary Rights.**  Customer understands and agrees that (i) the Products are protected by copyright and other intellectual property laws and treaties, (ii) Provider, its Affiliates and/or its licensors own the copyright, and other intellectual property rights in the Products, (iii) the Software is licensed, and not sold, (iv) this Agreement does not grant Customer any rights to use Provider's trademarks or service marks, and (v) Provider reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement.

**6.    Title, Risk of Loss and Delivery.** Provider, its Affiliates and/or its licensors own the title to all Software. Title and risk of loss to an Appliance shall pass from Provider to Customer upon shipment (unless the Appliance is rented, leased or loaned to Customer). Delivery of or access to Products shall be by electronic download, access credentials, or FCA (Provider's Dublin office) ICC Incoterms (2020).

**7.    Payment and Taxes.** Customer agrees to pay to Provider (or, if applicable, Partner) the fees specified in each Order, Customer will be invoiced promptly following delivery of, or granting of access to, the Products or prior to the commencement of any renewal Maintenance Period or renewed Software term.  Customer shall make all payments due to Provider in full within thirty (30) days from the date of each invoice or such other period (if any) stated in a Signed Order.  Provider reserves the right to charge Customer a late penalty of 1.5% per month (or the maximum rate permitted by law, whichever is less) for any amounts payable to Provider by Customer that are not subject to a good faith dispute and that remain unpaid after the due date until such amount is paid. Amounts payable under this Agreement shall be paid in full without set-off or deduction by the Customer, and such amounts shall not be subject to any other limitations or exclusions, whether under this Agreement or otherwise arising in law.

The fees stated in an Order may not include taxes. If Provider is required to pay sales, use, property, GST, value-added, other taxes based on the purchase or use of Products or Maintenance Services provided under this Agreement, then such taxes shall be billed to and paid by Customer. This Section does not apply to taxes based on Provider's income.

**8.    Term and Termination.**

(a)    **Termination.** This Agreement or the Licenses granted hereunder may be terminated by (i) mutual written agreement of Provider and Customer, (ii) either party for a material breach of this Agreement by the other party that the breaching party fails to cure to the non-breaching party's reasonable satisfaction within thirty (30) days following its receipt of notice of the breach ("***Breach***"), and (iii) Provider for a Breach by a Third Party User or MSP Client.

(b)    **Effect of License Termination.** Upon termination of this Agreement or expiration or termination of a License for any reason, all rights granted to Customer for the applicable Software shall immediately cease and, Customer shall immediately: (i) cease using the applicable Software and Documentation, (ii) remove all copies, installations, and instances of the applicable Software from all Customer computers and any other devices on which the Software was installed, and ensure that all applicable Third Party Users and Clients do the same, (iii) return the applicable Software to Provider together with all Documentation and other materials associated with the Software and all copies of any of the foregoing, or destroy such items, (iv) cease using the Maintenance Services associated with the applicable Software, (v) pay Provider or the applicable Partner all amounts due and payable up to the date of termination and shall not be entitled to any refund, and (vi) give Provider a written certification, within ten (10) days, that Customer, Third Party Users and Clients, as applicable, have complied with all of the foregoing obligations.

(c)    **Survival.** Any provision of this Agreement that requires or contemplates continued performance after (i) termination of this Agreement, (ii) a termination or expiration of a License, or (iii) the expiration of a SaaS Term, is enforceable against the other party and their respective successors and assignees notwithstanding such termination or expiration, including, without limitation, the *Restrictions*, *Export, Payment*, *Taxes*, *Effect of License Termination*, *Survival, Warranty Disclaimer, Indemnity, Limitation of Liability*, *Confidential Information*, *Compliance Verification*, and *General* sections of this Agreement. Termination of this Agreement or a License shall be without prejudice to any other remedies that the terminating party may have under law, subject to the limitations and exclusions set forth in this Agreement.

**9.    Export.** The Products and Maintenance Services are subject to the export control laws, rules, regulations, restrictions, sanctions and national security controls of the United States, Europe, and other applicable countries and regions ("***Export Controls***") and each party agrees to abide by the Export Controls. Customer hereby agrees to use the Products and Maintenance Services in accordance with the Export Controls, and shall not Use, export, re-export, sell, lease or otherwise transfer the Products or any copy, portion or direct product of the foregoing in violation of the Export Controls.  Customer is solely responsible for obtaining all necessary licenses or authorizations relating to the Use, export, re-export, sale, lease or transfer of the Products and for ensuring compliance with the requirements of such licenses or authorizations.

**10.    Maintenance Services.** If ordered, Maintenance Services are provided in accordance with Provider's then current Support Guide available on Provider's Support Site, which describes the Maintenance Services, including support offering levels, severity levels, response times, and contact information. The time period during which Customer is entitled to receive Maintenance Services is a "***Maintenance Period***."

The Support Guide is incorporated in this Agreement and subject to change at Provider's discretion; however, Provider will not materially reduce the level of technical support services provided during a paid support period. As part of the Maintenance Services Provider will (i) make available new releases and corrections of the Software when Provider makes them generally available to its supported customers at no additional license fee, and (ii) provide technical support for issues that are demonstrable in the currently supported release(s) of the Software. Maintenance Services fees are due and payable annually in advance of a support period. Except for non-perpetual Licenses (for which the Maintenance Period is equal to the duration of the License) and unless otherwise stated in the Order, each License includes an initial Maintenance Period beginning on the date of the initial delivery of the Software following an Order and lasting for twelve (12) months thereafter.

The Maintenance Period for perpetual Licenses will automatically renew for additional terms of 12 months, at the prices stated on a Maintenance Services renewal Quotation provided by Provider, unless the renewal has been cancelled by either party with at least sixty (60) days prior written notice (email is sufficient). Maintenance Services must be ordered for all copies of each licensed Product and may not be purchased for a subset of licenses of a Product only. The procedure and fees for reinstating Maintenance Services for Software after it has lapsed is posted on the Support Site.

**11.    Warranties and Remedies.** Except as otherwise set forth in Section *Country Unique Terms* Provider warrants as follows:

(a) **Software Warranty and Remedies.** Provider warrants that, during the applicable Warranty Period, the operation of the Software, as provided by Provider, will substantially conform to its Documentation (the "**Software Warranty**"). For On-Premises Software, the warranty shall be for ninety (90) days following the initial delivery of the Software pursuant to an Order; and for SaaS Software shall be the duration of the SaaS Term (the "**Warranty Period**"). Provided Customer notifies Provider of any breach of the foregoing warranty within the Warranty Period, Provider shall at its option (i) correct or provide a workaround for reproducible errors in the Software that caused the breach within a reasonable time considering the severity of the error and its effect on Customer or (ii) refund the license fees paid for the applicable nonconforming On-Premises Software in exchange for a return of such nonconforming On-Premises Software or provide a credit of the fees allocable to the period during which the SaaS Software was not operating in substantial conformance with the applicable Documentation. These are Customer's sole and exclusive remedies and Provider's sole obligation for any such breach of the Software Warranty.

(b) **Appliance Warranties**. Appliances are warranted in accordance with the warranty document delivered with the Appliance and/or included on the hardware manufacturers' website.

(c) **Warranty Exclusions**. The warranties set forth in this section shall not apply to any non-conformance (i) that Provider cannot recreate after exercising commercially reasonable efforts to attempt to do so; (ii) caused by misuse of the applicable Product or by using the Product in a manner that is inconsistent with this Agreement or the Documentation; or (iii) arising from the modification of the Product by anyone other than Provider.

(d) **Warranty Disclaimer.** The express warranties and remedies set forth in this section or in a Signed Order or Governing Quotation are the only warranties and remedies provided by Provider hereunder. To the maximum extent permitted by applicable law, all other warranties or remedies are excluded, whether express or implied, oral or written, including any implied warranties of merchantability, interoperability, fitness for any particular purpose, non-infringement, satisfactory quality, and any warranties arising from usage of trade or course of dealing or performance. Provider does not warrant uninterrupted or error-free operation of the Products.

(e) **High-Risk Disclaimer.** The Products are not fault-tolerant and are not designed or intended for use and may not be used in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life support machines, or any other potentially life critical uses (collectively, "**High Risk Activities**"). Provider shall not be liable for any claims by Customer in respect of or which relate directly or indirectly to High Risk Activities.

**12. Indemnity.**

(a) **Provider Software Indemnity**. Provider shall indemnify Customer from any claim, suit, action, proceeding brought by a third party (a "**Third Party Claim**") to the extent it is based on an allegation that the Software directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the country in which Provider has authorized Customer to use the Software, including the country to which the Software is delivered to Customer, or misappropriates a trade secret in such country. Provider shall have no obligation hereunder to indemnify Customer as described under this section against any Third Party Claim resulting from (1) Use of the Software other than as authorized by this Agreement, a Signed Order, or a Governing Quotation; (2) a modification of the Software other than by Provider, (3) Customer's Use of any release of the Software after Provider has provided a non-infringing update at no charge, or (4) Use of the Software in conjunction with other products, services, or data not supplied by Provider if the infringement would not have occurred but for such use. If, as a result of a Third Party Claim or an injunction, Customer must stop using any Software (the "**Infringing Software**"), Provider shall at its expense and option either (1) obtain for Customer the right to continue using the Infringing Software, (2) replace the Infringing Software with a functionally equivalent non-infringing product, (3) modify the Infringing Software so that it is non-infringing, or (4) terminate the License for the Infringing Software and (A) for On-Premises Software, accept the return of the Infringing Software and refund the license fee paid for the Infringing Software, prorated over a sixty (60) month period from the date of initial delivery of such Software following an Order, or (B) for SaaS Software, discontinue Customer's right to access and use the Infringing Software and refund the unused prorated portion of any license fees pre-paid by Customer for such Software. This section states Provider's entire liability and its sole and exclusive indemnification obligations with respect to a Third Party Claim and Infringing Software.

(b) **Export Compliance Indemnity**. Either party shall indemnify the other from and against a Third Party Claim arising from their own party's violation of section *Export*.

(c) **Customer Data Indemnity**. Customer shall indemnify Provider against a Third Party Claim arising from its Customer Data responsibilities under *Appendix A Software as a Service*.

(d) **Indemnification Obligations**. Indemnification for a Third Party Claim shall exclusively consist of the following: indemnifying party shall (1) defend or settle the Third Party Claim at its own expense, (2) pay any judgments finally awarded against indemnified party under a Third Party Claim or any amounts assessed against indemnified party in any fines or settlements of a Third Party Claim, and (3) reimburse indemnified party for the reasonable administrative costs or expenses, including without limitation reasonable attorneys' fees, it necessarily incurs in responding to the Third Party Claim. Indemnifying party's obligations are conditioned upon indemnified party (i) giving prompt written notice of the Third Party Claim to the indemnifying party, (ii) permitting indemnifying party to retain sole control of the investigation, defense or settlement of the Third Party Claim as long as such settlement shall not include a financial obligation on or admission of liability by indemnified party, and (iii) providing indemnifying party with cooperation and assistance as indemnifying party may reasonably request in connection with the Third Party Claim.

**13. Limitation of Liability.** Except as otherwise set forth in Section *Country Unique Terms* Customer or its Affiliates or Provider, its Affiliates or suppliers shall be liable as follows:

(a) **Liability Cap**. Subject to Section 13(b) and (c), the maximum aggregate and cumulative liability of either party under this Agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed (i) the fees paid and/or owed (as applicable) by Customer for the Products that are the subject of the breach; or (ii) for Maintenance Services or a Product subject to recurring fees, the liability shall not exceed the annualized amount paid and/or owed (as applicable) for such Maintenance Service or Product during the twelve (12) months immediately preceding the breach.

(b) **Exclusion of Damages**. Subject to Section 13(c), neither party shall be liable for any (i) loss of income, revenue, business, contracts or actual or anticipated profits; (ii) loss of anticipated savings; (iii) loss of goodwill or reputation; (iv) loss of, damage to or corruption of data; (v) recovery of data or programs; (vi) indirect, incidental, special or consequential loss or damage of any kind; howsoever arising, whether such loss

or damage was foreseeable or in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, or otherwise.

(c)     **Exclusions from Liability Cap**. Nothing in this Agreement shall exclude or limit a party's liability for (i) any amounts due and payable to Provider under this Agreement; (ii) any breach of the *Restrictions* section; (iii) indemnity obligations under the *Indemnity* section; (iv) death or personal injury resulting from negligence; (v) willful misconduct or fraud; and (vi) any liability to the extent liability may not be excluded or limited as a matter of applicable law.

## 14.     Confidential Information

(a)     **Definition**. "***Confidential Information***" means information or materials disclosed by one party ("***Disclosing Party***") to the other party ("***Receiving Party***") that are not generally available to the public and which, due to their character and nature, a reasonable person under like circumstances would treat as confidential, including, without limitation, financial, marketing, and pricing information, trade secrets, know-how, proprietary tools, knowledge and methodologies, the Software (in source code and/or object code form), information or benchmark test results regarding the functionality and performance of the Software, any Software license keys provided to Customer, and the terms and conditions of this Agreement.

Confidential Information shall not include information or materials that (i) are generally known to the public, other than as a result of an unpermitted disclosure by the Receiving Party after the Effective Date; (ii) were known to the Receiving Party without an obligation of confidentiality prior to receipt from the Disclosing Party; (iii) the Receiving Party lawfully received from a third party without that third party's breach of agreement or obligation of trust; or (iv) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information.

(b)     **Obligations.** The Receiving Party shall (i) not disclose the Disclosing Party's Confidential Information to any third party, except as permitted in subsection (c) below, and (ii) protect the Disclosing Party's Confidential Information from unauthorized use or disclosure by exercising at least the same degree of care it uses to protect its own similar information, but in no event less than a reasonable degree of care. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Disclosing Party's Confidential Information and will cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights. For the avoidance of doubt, this section shall apply to all disclosures of the parties' Confidential Information as of the Effective Date, whether or not specifically arising from a party's performance under this Agreement.

(c)     **Permitted Disclosures**. Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent to any of its Affiliates, directors, officers, employees, consultants, contractors or representatives (collectively, the ***"Representatives"***), but only to those Representatives that (i) have a "need to know" in order to carry out the purposes of this Agreement or to provide professional advice in connection with this Agreement, (ii) are legally bound to the Receiving Party to protect information such as the Confidential Information under terms at least as restrictive as those provided herein, and (iii) have been informed by the Receiving Party of the confidential nature of the Confidential Information and the requirements regarding restrictions on disclosure and use as set forth in this section. The Receiving Party shall be liable to the Disclosing Party for the acts or omissions of any Representatives to which it discloses Confidential Information which, if done by the Receiving Party, would be a breach of this Agreement. Additionally, it shall not be a breach of this section for the Receiving Party to disclose the Disclosing Party's Confidential Information as may be required by operation of law or legal process, provided that the Receiving Party provides prior notice of such disclosure to the Disclosing Party unless expressly prohibited from doing so by a court, arbitration panel or other legal authority of competent jurisdiction.

## 15.     Data Protection.

(a)     **Data Privacy.** Each party shall comply with all laws and regulations applicable to the processing of personal data in connection with any transactions related to this Agreement, such as but not limited to, the California Consumer Privacy Act as amended by the California Privacy Rights Act, the General Data Protection Regulation, or the UK Data Protection Act, including any implementation act(s) related thereto, or any other applicable laws regulations and other legal requirements related to (a) privacy and data security, and (b) the use, collection, retention, storage, security, disclosure, transfer, disposal and other processing of personal data ("***Privacy Laws***"). Each party is responsible for obtaining any necessary authorizations and consents prior to disclosing personal data to the other party or to any third party. The terms "controller", "personal data" and "processing" used in this section shall have the meaning set out in the applicable Privacy Laws. Either party may use personal data consisting of ordinary business contact data (e.g., name, phone number, email address, etc.) in its capacity as a controller strictly in accordance with applicable Privacy Laws in the normal course of business but only for the purpose of administration of the party's business relationship and performance of their obligations under this Agreement.

(b)     **General Security**. Details on Provider's information security practices, data incident response policies, technical and organizational measures, and software development security practices are available at: https://www.oneidentity.com/legal/security.aspx (collectively "***Security Site***"). Customer agrees that Provider may modify its Security Site so long as it does not materially decrease the overall level of protection provided.

## 16.     License Verification.

(a)     **Reporting**. Customer shall maintain and use systems and procedures that allow Customer to accurately and completely track, document, and report Customer's Use of each Product in the quantities and versions used in compliance with the Product Terms and this Agreement and allow Provider to audit the same (an "***Audit***"). Audits may be performed by Provider or its designated agents. Provider shall provide at least ten (10) days prior written notice to Customer before the start of an Audit and will conduct the Audit during normal business hours. Customer shall provide and will require its Clients and Third Party Users to provide, their full cooperation and assistance with such audit and provide access to the applicable records and computers.

(b)     **Confidentiality**. Provider agrees that any Customer information gathered during the performance of an audit shall be Customer's Confidential Information under this Agreement. Customer agrees that it will not require any further confidentiality or nondisclosure agreements to be executed by Provider or its designated agents in connection with the Audit. Prior to the Audit, Provider shall ensure that its agents are subject to confidentiality obligations at least as protective as those set forth herein.

(c)    **Excess Use**. If an Audit indicates that Customer's installations, deployment, access of or provision of access to, or operation of each Product exceeds the quantity of licenses owned or is otherwise not in compliance with the scope of the license granted ("*Overuse*"), then Customer shall pay for all Overuse quantities at Provider's then current list price plus any interest on past due amounts and prior Maintenance Service fees. If the Overuse is more than five percent (5%) of Customer's license entitlements, then Customer shall reimburse Provider for Provider's reasonable cost of performing the Audit. Strict performance by Customer in accordance with this provision is an express condition to all or any licenses granted in this Agreement.

**17.    Country Unique Terms**. If You purchased the Products in any country set forth in this Section *Country Unique Terms*, this section sets forth specific provisions that apply thereto, as well as certain exceptions to specific terms and conditions in this Agreement, as detailed below:

(a)    **Austria** or **Germany**: (A) Notwithstanding anything otherwise set forth in section *11.a) Software Warranty and Remedies* (i) Provider warrants that any Appliance provided by Provider substantially conforms to the Documentation applicable to such Appliances and the Warranty Period and remedies for On-Premises Software shall apply mutatis mutandis to such Appliance, however, in case of third party products after Customer first contacted the manufacturer and the elimination of the defect failed; (ii) in Subsection a) the Warranty Period for the Software Warranty for On-Premises Software shall be changed from ninety (90) days to one (1) year and with regard to the remedies, if a replacement or error correction definitely fails, Customer may exercise its statutory warranty rights (price reduction, rescission, damage compensation subject to the following section *Limitation of Liability*); and (iii) for non-perpetual licenses the provisions in Subsection a) as it applies to On-Premise Software shall apply mutatis mutandis, except that the Warranty Period shall be for the duration of the relevant license term and the right to terminate for cause replaces the right to rescind the Agreement. (B) The following replaces section *13. Limitation of Liability* in its entirety: (i) The Parties accept unlimited liability for acts or omissions based on willful misconduct or gross negligence. (ii) In case of slight negligence, the parties are only liable in case of a violation of essential contractual duties in a manner that endangers the contract's purpose or in case of a violation of duties that are indispensable for the proper execution of the contract. Liability for slight negligence is then limited to contract-typical, foreseeable damages. (iii) For claims according to the preceding section (ii) liability is further limited to the fees paid and/or owed (as applicable) by Customer for the Products that are the subject of the breach; for Maintenance Services or a Product subject to recurring fees, liability is further limited to the amount paid and/or owed (as applicable) for such Maintenance Service or Product during the twelve (12) months preceding. (iv) This applies to all claims for damages independent of their legal basis, including tort claims. (v) The following claims remain unaffected from the preceding limitations of liability: claims based on (1) the product liability act; (2) a breach of an express guarantee; (3) personal injury, or death; (4) any amounts due and payable to Provider under this Agreement; (5) any breach of the *Restrictions* section; and (6) indemnity obligations under the *Indemnity* section. (vi) These limitations of liability analogous to claims against Provider's Affiliates and suppliers and disbursements.

(b)    **Italy** or **Switzerland***:* The duration of the Warranty Period in section *11.a) Software Warranty and Remedies,* for the Software Warranty as it applies to On-Premises Software shall be changed from ninety (90) days to one (1) year.

(c)    **France***:* In addition to other rights and remedies for non-payment of invoices as specified in section *7. Payment and Taxes*, automatic collection fees, amounting to €40, may also be applied by Provider.

**18.    General.**

(a)    **Governing Law and Venue.** If Customer purchased the Products in Austria, Belgium, Denmark, England, Finland, France, Germany, Italy, Ireland, Luxembourg, Netherlands, Norway, Poland, Spain, Sweden or Switzerland then this Agreement shall be governed by and construed in accordance with the laws of such country. If Customer purchased the Products in any other country in Europe, the Middle East or Africa then the laws of England apply. Any conflict of laws principles that would require the application of laws of a different country are excluded. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the courts of the country whose laws apply to this Agreement. Each party hereby agrees to submit to the jurisdiction of such courts. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement, regardless of the countries in which the parties do business or are incorporated.

(b)    **Assignment.** Neither party may, in whole or part, assign or transfer any of its rights or obligations under this Agreement or an Order, whether voluntarily, by contract, by operation of law or by merger (whether that party is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action or order, or otherwise, without the prior written consent of the other party except (i) in connection with a merger, acquisition or sale of all or any portion of such party's assets or business, provided that such party's successor entity or third party assumes in writing all of such party's obligations under this Agreement and agrees in writing to be bound by this Agreement, (ii) that Provider may without the consent of Customer assign or transfer the Agreement to Provider's Affiliates, and (iii) if Customer purchased the Licenses in the European Economic Area (EEA) or Switzerland, that Customer may transfer to a third party (the "*Transferee*") its perpetual Licenses purchased, provided that Customer (1) ceases using the applicable Software, Documentation and associated Maintenance Services, (2) entirely removes all copies, installations, and instances of the applicable Software from all Customer computers and any other devices on which the Software was installed, and ensures that all applicable Third Party Users do the same and gives Provider upon request a written certification that Customer and its Third Party Users, as applicable, have complied with all of the foregoing obligations, (3) makes available to Transferee the license terms of this Agreement and the Order that apply to the transferred License, and (4) immediately notifies Provider in writing of the transfer and of the name and address of the Transferee. Any attempted assignment or transfer in violation of the foregoing, including but not limited to any transfer of any License that Customer acquired by any means other than under a license purchase contract (for example non-perpetual licenses or SaaS Software), or a transfer of Maintenance Services associated with the transferred Licenses, will be null and void. Notwithstanding the foregoing, the parties agree that Provider may use subcontractors to perform all or part of its obligations hereunder.

(c)    **Severability**. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible by law to affect the intent of the parties and the remaining provisions of this Agreement will remain in full force and effect. Notwithstanding the foregoing, the terms of this Agreement that limit, disclaim, or exclude warranties, remedies or damages are intended by the parties to be independent and remain in effect despite any failure or unenforceability thereof. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.

(d)    **Notices.** All notices provided hereunder shall be in writing and addressed to the legal department of the respective party or to such other address as may be specified in an Order or in writing by either of the parties to the other in accordance with this section. Except as may be expressly permitted herein, notices may be delivered personally, sent to an email address specified by the receiving party, sent via a nationally

recognized courier or overnight delivery service, or mailed by first class mail, postage prepaid.  All notices, requests, demands or communications shall be deemed effective upon personal delivery or, if sent by mail, four (4) days following deposit in the mail in accordance with this paragraph. Provider may also send operational notices via the SaaS Software, Documentation, or make available on the Support Site.

(e)    **Disclosure of Customer Status.** Provider may include Customer in its listing of customers and, upon written consent by Customer, announce Customer's selection of Provider in its marketing communications.

(f)    **Waiver.** Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

(g)    **Injunctive Relief.** Each party acknowledges and agrees that in the event of a material breach of this Agreement, including but not limited to a breach of the *Software License, Restrictions* or *Confidential Information* Sections of this Agreement, the non-breaching party shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies.

(h)    **Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, and third party utility or Internet failures. For added certainty, this section shall not operate to change, delete, or modify any of the parties' obligations under this Agreement (e.g., payment), but rather only to excuse a delay in the performance of such obligations.

(i)    **Headings.** Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement will not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used in this Agreement it will be construed in each case to mean "including, but not limited to."

(j)    **Legal Fees**.  If any legal action is brought to enforce obligations related to payment, compliance verification, or a violation of intellectual property rights, the prevailing party shall be entitled to recover its reasonable attorneys' fees, full costs and other collection expenses, in addition to any other relief it may be awarded.

(k)    **Entire Agreement.** This Agreement contains the total agreement between the two parties regarding the subject matter covered herein and supersedes any other agreements, written, oral, expressed, or implied, including any confidentiality agreement between the parties. Unless there is a prevailing signed Agreement between the Parties, all Orders are governed solely and exclusively by this Agreement and any additional or varying terms stated on a Signed Order or a Governing Quotation. In the event of a conflict between the terms of this Agreement and the terms contained in a Signed Order or Governing Quotation, the terms of a Signed Order or Governing Quotation shall control. For all other Orders, the terms of this Agreement shall exclusively control. Neither this Agreement, nor an Order, may be modified or amended except by a written agreement executed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement or an Order and Customer agrees that all additional or inconsistent terms that may be contained in any purchase order or other documentation submitted by Customer in connection with an Order are not applicable. Customer agrees that all of Customer's licenses for such Product, regardless of license date, will be governed by the version of the Software Transaction Agreement and applicable Product Terms in effect on the date of the most recent license purchase.

**APPENDIX A: SOFTWARE LICENSE TERMS**

(1) **On-Premises Software.** If Software is delivered to Customer for (i) Customer's installation and use on its own equipment or (ii) pre-installed by Provider on an Appliance ("**On-Premises Software**"), the License term shall be perpetual (unless otherwise stated on the Order) and shall also include the right to (i) make a reasonable number of additional copies of the On-Premises Software to be used solely for non-productive archival or passive disaster recovery purposes, provided such copies are kept in a secure location and are not used for production purposes unless the associated primary copy of the On-Premises Software is no longer being used for production purposes, and (ii) make and use copies of the Documentation as reasonably necessary to support Customer's authorized users in their Use of the On-Premises Software. Each License for On-Premises Software shall only be installed by Customer in the country in which the On-Premises Software is initially delivered to Customer.

(2) **Software as a Service.** If an Order provides Customer with a right to access and use Software installed on equipment hosted by Provider or its suppliers ("**SaaS Software**"), the License for such SaaS Software shall be granted for the duration of the term stated in the Order (the "**SaaS Term**"), as such SaaS Term may be extended by automatic or agreed upon renewals. If any item of On-Premises Software to be installed on Customer's equipment is provided in connection with SaaS Software, the License duration for such Software shall be for the corresponding SaaS Term, and Customer shall promptly install any updates to such Software as may be provided by Provider. "**SaaS Environment**" means the systems to which Customer is provided access in connection with its use of the SaaS Software.

(a) **Availability**. Provider will make commercially reasonable efforts to make the SaaS Software available twenty-four hours a day, seven days a week except for scheduled maintenance, the installation of updates, those factors that are beyond the reasonable control of Provider, Customer's failure to meet any minimum system requirements communicated to Customer by Provider, and any breach of this Agreement by Customer that impacts the availability of the SaaS Software. Provider shall provide reasonable advance notice to Customer of any scheduled maintenance. Provider can limit or suspend Customer's access to the SaaS Software if it is sufficiently probable that the continued use of the SaaS Software may result in harm to the SaaS Software, other Provider customers, or the rights of third parties in such a way that immediate action is required to avoid damages or Customer is in breach of the Agreement. If circumstances allow and if reasonably practicable, Provider will give Customer notice so that Customer may seek to promptly avoid the issue and avoid suspension.

(b) **Customer Data**. Customer represents and warrants that it (i) has all rights necessary to use any data, content or materials that Customer (including its users) submits or includes from third-party platforms to the SaaS Environment ("**Customer Data**") without violating third-party intellectual property, privacy or other rights and grants Provider the right to access, transmit, process and use Customer Data to provide and support the SaaS Software as set out in the Agreement, and (ii) will use industry-standard measures to avoid introducing viruses, malicious code or similar harmful materials into the SaaS Environment. Between the parties, Customer is responsible for the content and accuracy of Customer Data.

(c) **Data Processing.** If Provider processes any personal data on behalf of the Customer through the Customer's use of the SaaS Software then Provider's standard data processing addendum at https://www.oneidentity.com/legal/dpa.aspx, or such separate terms as mutually agreed in writing, will apply to such data processing and will become a part of this Agreement. For clarity, any data protection or security agreement relating to data processed under this Agreement will always be considered a part of this Agreement and not a stand-alone agreement.

(d) **Cooperation.** Customer shall cooperate with Provider's reasonable investigation of SaaS Environment outages, security issues, and any suspected breach of this *Software as a Service* section.

(3) **MSP License.** If an Order indicates that Software is to be used by Customer as a managed service provider, Customer shall be granted a License to use such Software and the associated Documentation to provide Management Services (an "**MSP License**"). "**Management Services**" include, without limitation, application, operating system, and database implementation, performance tuning, and maintenance services provided by Customer to its customers (each, a "**Client**" or an "**MSP Client**"). If an Order indicates that an MSP License will be used to support a specific Client, Customer may not Use the MSP License to support any Client other than the Client named on the Order.

(a) *Customer Responsibilities.* Customer shall ensure that (i) each Client only uses the Software and Documentation as part of the Management Services provided to it by Customer, (ii) such use is subject to the restrictions and limitations contained in this Agreement, including, but not limited to those in the *Restrictions* and *Export* sections of this Agreement, and the applicable Order, and (iii) each Client cooperates with Provider during any compliance review that may be conducted by Provider or its designated agent. Customer agrees that the acts and omissions of its Clients in connection with their use of the Software and Documentation shall be deemed the acts and omissions of Customer.

(b) *Client Support*. Customer shall be solely responsible for supporting its Client, including but not limited to, conducting all activities required to install the Software and for providing any training to its Client and any system integrators regarding the installation, use and operation of the Software. Customer will provide Management Services to its Client in a manner that does not degrade the goodwill and reputation of Provider or the Software and will not undertake any action that would impair or disrupt Provider's relationship with its customers or potential customers. Customer will make no representations or warranties related to the Software in excess of Provider's representations or warranties contained in this Agreement. At the conclusion of any Management Services engagement with a Client, Customer shall promptly remove any Software installed on its Client's computer equipment or require the Client to do the same.

(c) *Perpetual MSP License Assignment.* In the event Customer acquires a perpetual MSP License, Customer may assign the Software to its Client for the Clients' internal use, provided that Customer obtains Provider's prior written consent for the assignment and the Client agrees to be bound by Provider's then current license agreement. Customer understands and agrees that Customer shall have no right to charge a fee to its Client(s) for such an assignment and that following such an assignment, Customer shall have no further rights to use the assigned Software, and the applicable License shall terminate in accordance with the terms of this Agreement. Any attempted transfer or assignment of the Software to a Client in violation of the foregoing shall be null and void.

(4) **Evaluation License.** If an Order indicates that Software is to be used by Customer for evaluation purposes, or if Software is otherwise obtained from Provider for evaluation purposes, Customer shall be granted a License to Use such Software and the associated Documentation solely for Customer's own non-production, internal evaluation purposes (an "**Evaluation License**"). Each Evaluation License shall be granted for an evaluation period of up to thirty (30) days from the date of delivery of the On-Premises Software or from the date that access is granted to the SaaS Software, plus any extensions granted by Provider in writing (the "**Evaluation Period**"). There is no fee for an Evaluation License

during the Evaluation Period, however, Customer is responsible for any applicable shipping charges or taxes which may be incurred, and any fees which may be associated with Use beyond the scope permitted herein. Customer will only be granted one Evaluation License per release of any item of Software. Notwithstanding anything otherwise set forth in this Agreement, Customer understands and agrees that Evaluation Licenses are provided "AS IS" and that Provider does not provide warranties or Maintenance Services for Evaluation Licenses.

(5)   **Freeware License.** If Customer downloads a freeware version of Software from a Provider website, the terms of Use of such Software shall be governed by the applicable Freeware definition set forth in the Product Guide (a "*Freeware License*"). Notwithstanding anything otherwise set forth in this Agreement, Customer understands and agrees that Freeware Licenses are (i) provided "AS IS", (ii) Provider does not provide warranties or Maintenance Services for Freeware Licenses, and (iii) Freeware Licenses are for internal use only and may not be distributed to any third party.

(6)   **Use by Third Parties**. Customer may allow its services vendors, outsourcing providers, and contractors (each, a "*Third Party User*") to Use the Software and Documentation, provided that Customer ensures that (i) the Third Party User's access to or use of the Software and Documentation is subject to the restrictions and limitations contained in this Agreement, including, but not limited to those in the *Export* Section, and the applicable Order(s), (ii) the Third Party User cooperates with Provider during any compliance review that may be conducted by Provider or its designated agent, and (iii) the Third Party User promptly removes any Software installed on its computer equipment upon the completion of the Third Party's need to access or use the Software as permitted by this Section. Customer agrees that the acts and omissions of its Third Party Users related to this Agreement, the Software, and Orders shall be deemed the acts and omissions of Customer.

(7)   **Open Source**. Software distributed to Customer (if any) may include third-party open source software ("*Open Source*") as listed in the Documentation or by Provider upon request. If Customer elects to use the Open Source on a stand-alone basis, that use is subject to the applicable Open Source license and not this Agreement.