

# Software Subscription End User Licence Agreement (“EULA”)

TCES Connections™, TCES Community™, Pro-Cloud™, Pro-Cloud Bluelight™ and TCES Health Hire Express

This EULA was updated on 16 August 2019.

## Terms and Conditions

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING SOFTWARE SUBSCRIPTIONS FROM CSS. BY USING THE SOFTWARE SUBSCRIPTIONS FROM CSS, THE CUSTOMER AGREES TO AND ACCEPTS THIS AGREEMENT AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT. IF THE CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE THE SOFTWARE SUBSCRIPTIONS FROM CREATIVE SOFTWARE SOLUTIONS (EUROPE) LIMITED.

This Agreement contains the terms and conditions under which Creative Software Solutions (Europe) Limited “CSS” provides its Software and certain Support, on a subscription basis, to the Customer. This Agreement includes, and by this reference incorporates, CSS End User License Agreement, CSS General Terms and Conditions and the relevant Order Acknowledgement (jointly, the “**Agreement**”), all of which the Customer has read, understood and accepts. In the event of conflict or inconsistency among the documents, the order of precedence shall be as follows: (1) EULA, (2) Order Acknowledgement, (3) these Software Subscription Terms and Conditions, and (4) CSS General Terms and Conditions.

Terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms set out in CSS General Terms and Conditions and/or CSS End User License Agreement. Unless otherwise required by the context, words in plural shall also mean and include those in singular and vice versa.

## 1. Software subscriptions.

1.1 Provision of Software Subscriptions. Subject to the terms of this Agreement, CSS shall, during the agreed Subscription Period (as defined in Section 2.1.4 below), provide Customer with the Software Subscription specified in the Order Acknowledgement and in accordance with the included Support Plan. Unless otherwise agreed, the Subscription Period will commence 30 days after issuance of an Order Acknowledgement.

### 1.2 Use of Software and Software Subscriptions.

1.2.1. Customer will use the Software Subscription and Software only for Customer’s internal use.

1.2.2. Distributing the Software or any portion of the Software Subscription for the benefit of a third party is a material breach of the Agreement even though the open source licenses applicable to individual software packages may give Customer the right to distribute those packages (and this Agreement is not intended to interfere with Customer’s right under those individual licenses).

1.2.3. The Software Subscription may be used under the terms of this Agreement by third parties acting on Customer’s behalf, such as contractors, subcontractors or outsourcing vendors provided (i) Customer remains responsible for all Customer’s obligations under this Agreement and for the activities and omissions of the third parties and (ii) Customer obtains CSS’s written consent before Customer migrates Customer’s Software Subscriptions and Software off of Customer premises and, in the case of a migration to a third party cloud or hosting provider, Customer agrees to any additional terms that CSS from time to time may require.

1.2.4. Any unauthorized use of the Software Subscriptions is a material breach of this Agreement, such as (i) only purchasing or renewing Software Subscriptions based on some, but not all, of the total number of actual units of Software utilized by the Customer, (ii) providing Software access or Software maintenance to third parties, (iii) using the Support provided under the Software Subscriptions to provide support to third parties, and/or (iv) using Support provided under the Software Subscriptions to support or maintain any non-CSS Software products without purchasing Software Subscriptions for each instance of such non-CSS Product for which Customer uses Software Subscriptions. For the avoidance of doubt, use of the Software Subscriptions for their intended purpose shall not constitute unauthorized use.

1.2.5. The use case determines which Software Subscription is required and what fees are charged. If Customer use or deploy the Software in a manner contrary to a supported use case, Customer is responsible for purchasing the appropriate Software Subscription(s) to cover such usage.

1.2.6. By using a trial subscription, Customer represent that Customer will be using the Software Subscriptions for trial purposes only and Customer understand that CSS is relying on the accuracy of Customer representation in providing Customer with access to the trial subscription(s). If Customer use the CSS trial subscription(s) for any other purposes, Customer is in violation of this Agreement and is required to pay the applicable subscription fees in addition to any and all other remedies available to CSS under applicable law. Examples of such violations include, but are not limited to, using the Software Subscriptions provided under an trial subscription for production purposes, offering support to third parties, or complementing or supplementing third party support with Software Subscriptions received through a trial subscription.

1.2.7. CSS may at any time without notice or liability, limit availability to the Software Subscriptions in order to perform maintenance activities.

1.2.8 Customers must not copy the software provided by CSS in whole or part under any circumstances.

1.3. **End of Availability.** CSS may, at its discretion, decide to retire Software and/or Software Subscriptions from time to time ("**End of Availability**"). CSS shall post notice of End of Availability, including the last date of general commercial availability of the affected Software and the timeline for discontinuing Software Subscriptions, at <http://www.CSS.com/services/support/documentation/support-guidelines/> CSS shall have no obligation to provide Software Subscriptions for retired Software or to provide retired Software.

#### **1.4. Purchase Requirements.**

1.4.1. Except as otherwise provided for by CSS, Customer may purchase initial Software Subscriptions only for the most current, generally available release of the Software.

1.4.2. Customer must purchase and/or renew Software Subscriptions at the same Services Level for all of the Software in a given environment, such as Test, Development, or Production (i.e. Customer cannot purchase Production level support for only one license of Pro in its lab and purchase Basic level support for the other CSS Monitor licenses in that environment).

1.4.3. These Software Subscription Terms and Conditions will automatically update to fully correspond to CSS's from time to time current Software Subscriptions Terms and Conditions set forth at <http://CSS.com/terms-conditions/> upon any renewal of Software Subscriptions.

#### **1.5. Exclusions.**

1.5.1. Software Subscriptions do not cover problems caused by the following: (i) unusual external physical factors such as inclement weather conditions that cause electrical or electromagnetic stress or a failure of electric power, air conditioning or humidity control; neglect; misuse; operation of the Software with other media not in accordance with the manufacturer's specifications; or causes other than ordinary use; (ii) use of the Software that deviates from any operating procedures as specified in the applicable Manual; (iii) third party products, other than the interface of the Software with the third party products; (iv) Modified Code; (v) any customized deliverables created by CSS, CSS partners or third-party service providers specifically for Customer as part of consulting services. Customer may request assistance from CSS for such problems, for an additional fee.

1.5.2. In the event that CSS suspects that a reported problem may be related to Modified Code, CSS, may, in its sole discretion, (i) request that the Modified Code be removed, and/or (ii) inform Customer that additional assistance may be obtained by Customer directly from various product discussion forums or by engaging CSS's professional services group for

an additional fee.

**1.6. Customer Responsibilities.** CSS's obligations regarding Software Subscriptions are subject to the following:

1.6.1. Customer agrees to receive from CSS communications via e-mail, telephone, and other formats, regarding Software Subscriptions (such as communications concerning support coverage, Issues or other technical issues and the availability of new releases of the Software and training options).

1.6.2. Customer is solely responsible for the use of the Software by its personnel and shall properly train its personnel in the use and application of the Software.

1.6.3. Customer shall promptly report to CSS all problems with the Software, and shall implement any corrective procedures provided by CSS reasonably promptly after receipt.

1.6.4. Customer shall provide CSS with all information, access, and full good faith cooperation reasonably necessary to facilitate the provision of the Software Subscriptions, and will do anything that is identified in the relevant Order Acknowledgement as the Customer's responsibility. Customer's failure or delay in its performance of any of the foregoing relieves CSS of its obligations under this Agreement to the extent that such obligations are dependent upon Customer's performance.

1.6.5. Customer shall provide CSS a list of contacts (including names, email addresses and phone numbers) of those individuals authorized to open Support Requests on Customer's behalf. These authorized contacts must have the access and authority to administer or configure the Software as required by the nature of the Support Request.

1.6.6. Customer is solely responsible for protecting and backing up the data and information stored on the computers on which the Software is used and should confirm that such data and information is protected and backed up in accordance with any internal or regulatory requirements as applicable, before contacting CSS for Technical Support. CSS is not responsible for lost data or information in the event of errors or other malfunction of the Software or computers on which the Software is used.

1.6.7. If deemed necessary by CSS, Customer will have dedicated resources available to work 8:00am GMT to 6pm GMT to work on Issues (as defined in section 2.1 below).

1.6.8. Customer is solely responsible for maintaining procedures external to the Software for reconstruction of lost or altered files, data or programs to the extent that it deems necessary and for performing any such reconstruction.

1.6.9. Customer is responsible for obtaining and maintaining appropriate equipment and ancillary services needed to connect to, access or otherwise use the Software, including, without limitation, computers, computer operating systems, data storage, network devices and web browsers.

## 2. Support

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### 2.1 Definitions

2.1.1 "**Applicable Monthly Period**" means, for a calendar month in which a Service Credit is owed, the number of days that you are a subscriber for a Service.

2.1.2 "**Applicable Monthly Service Fees**" means the total fees actually paid by you for a Service that are applied to the month in which a Service Credit is owed.

2.1.3 "**Downtime**" is defined for each Service in the Services Specific Terms below.

2.1.4 "**Error Code**" means an indication that an operation has failed, such as an HTTP(S) status code in the 5xx range.

2.1.5 "**External Connectivity**" is bi-directional network traffic over supported protocols such as HTTP and HTTPS that can be sent and received from a public IP address.

2.1.6 "**Incident**" means (i) any single event, or (ii) any set of events, that result in Downtime.

2.1.7 "**Management Portal**" means the web interface, provided by CSS, through which customers may manage the Service.

- 2.1.8 **“Service Credit”** is the percentage of the Applicable Monthly Service Fees credited to you following the CSS claim approval.
- 2.1.9 **“Service Level”** means the performance metric(s) set forth in this SLA that CSS agrees to meet in the delivery of the Services.
- 2.1.10 **“Service Resource”** means an individual resource available for use within a Service.
- 2.1.11 **“Success Code”** means an indication that an operation has succeeded, such as an HTTP(s) status code in the 2xx range.
- 2.1.12 **“Support Window”** refers to the period of time during which a Service feature or compatibility with a separate product or service is supported.
- 2.1.13 **“The Helpdesk”** refers to a team of staff dedicated to resolving technical product issues.
- 2.1.14 **“Issue”** means a failure in the Software to operate substantially in accordance with the Manual.
- 2.1.15 **“Modified Code”** means any modification, addition and/or development of code scripts deviating from the predefined product code tree(s)/modules developed by op5 for production deployment or use. Configuration of Software options which are intended to be altered is not considered a modification of the Software.
- 2.1.16 **“Support Plan”** means the Support Plan included in the Software Subscription selected by the Customer and accepted by CSS in an Order Acknowledgement.
- 2.1.17 **“Services Period”** means the period for which Customer has purchased the Software Subscriptions and any subsequent renewal periods and shall commence on the date of purchase of the Software Subscriptions, unless otherwise is set out in an Order Acknowledgement.
- 2.1.18 **“Support”** means the provision of telephone or web-based technical assistance by CSS to Customer’s technical contact(s) with respect to technical product problems, in accordance with the Support Plan included in Software Subscription purchased by Customer.
- 2.1.19 **“Support Request”** means any written or electronically written request for any Support by a Customer

[Top of page](#)

### 3. Miscellaneous terms.

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**3.1. Termination.** In addition to what is set out in the General Terms and Conditions, CSS may terminate the Agreement and any and all Software Subscriptions at any time if (1) it is discovered that Customer is currently in breach of its Software license restrictions, pursuant to the EULA or (2) Customer is in material breach of this Agreement.

**3.2. Data Protection.** Customer acknowledges that correspondence and log files generated in conjunction with a request for Software Subscriptions may contain sensitive, confidential or personal information. Customer is solely responsible for taking the steps it considers necessary to protect such data, including obscuring the logs or otherwise guarding such information prior to sending it to CSS. For CSS’s privacy policy, see <https://csseurope.co.uk/documents/privacy-policy/>

[Top of page](#)

