

OPENCELL TRIAL ENVIRONMENT AGREEMENT

OPENCELL SAS ("OPENCELL") GRANTS TO YOU, AS THE INDIVIDUAL, COMPANY, OR OTHER LEGAL ENTITY THAT WILL USE THE OPENCELL TRIAL ENVIRONMENT IDENTIFIED ABOVE (COLLECTIVELY, "YOU" OR "YOUR"), THE RIGHT TO ACCESS AND USE SUCH TRIAL ENVIRONMENT ON THE CONDITION THAT YOU ACCEPT ALL TERMS OF THIS EVALUATION AGREEMENT ("AGREEMENT").

THIS AGREEMENT IS MADE AND ENTERED INTO AS OF THE DATE OPENCELL GIVES YOU ACCESS TO THE TRIAL ENVIRONMENT ("EFFECTIVE DATE"). BY ACCESSING OR USING THE TRIAL ENVIRONMENT, YOU CONFIRM THAT YOU HAVE READ AND ACCEPT ALL TERMS OF THIS AGREEMENT. CAPITALIZED TERMS HAVE THE MEANINGS INDICATED IN SECTION 8 AND ELSEWHERE IN THIS AGREEMENT.

1. Definitions.

"Affiliate" means a company, corporation, individual, partnership or other legal entity that directly or indirectly controls, is controlled by, or is under common control with a Party to this Agreement. For purposes of this definition, "control" means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity;

"Feedback" means any comments or suggestions made by You to Opencell or its Affiliates in connection with this Agreement regarding the Trial Environment, any Opencell Confidential Information or Opencell Technology;

"Trial Environment" means one or more Tenant Instances of Opencell's non-production subscription service environment

"Party" and "Parties" means a party to this Agreement – i.e., Opencell or You;

"Personal Identifiable Information" (aka "PII") means information that is identifiable to an individual, or when used in conjunction with other information, can identify an individual. Examples of PII include, but are not limited to: name, address, phone number, email address, personal identification number (e.g. social security number, driver's license number, taxpayer identification number, etc), financial data (e.g., credit card number), medical information, biometric data, race, etc;

"User(s)" means Your employees, representatives, consultants, contractors or agents who are authorized to use the Trial Environment and have been supplied user identifications and passwords by You (or by Opencell at Your request);

"Your Data" means any data, information or content that You or Your Users process using the Trial Environment in accordance with this Agreement; and "Opencell Technology" means all of Opencell's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to You by Opencell in connection with this Agreement

2. Grants of Rights.

Subject to the terms and conditions of this Agreement, Opencell hereby grants You a non-exclusive, non-transferable, non-assignable, worldwide, limited right (without the right to sublicense) to access and use the Opencell Trial Environment identified above, including its associated documentation and information (collectively, the "Trial Environment"), during the Agreement Term (defined below) solely for Your internal, non-production evaluation of the Trial Environment (the "Purpose"). The foregoing access and use right is limited to a single Tenant Instance (defined below) of the Trial Environment. All rights not expressly granted to You are reserved by Opencell and its licensors.

3. Limitations on Use and Your Responsibilities.

3.1. You must not: (a) commercially exploit the Trial Environment by licensing, sublicensing, selling, reselling, transferring, assigning or distributing it or otherwise making it available to any third party in any way; (b) modify or make any derivative works based upon the Trial Environment; (c) reverse engineer the Trial Environment; (d) use any information regarding the Trial Environment to build a product or service that competes with the Trial Environment or any other Opencell technology; or (e) submit any PII to or store any PII in the Trial Environment.

3.2. You must not access or use the Trial Environment to: (a) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (b) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or in violation of third party privacy rights; (c) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (d) interfere with or disrupt the integrity or performance of the Trial Environment or the data contained therein; or (e) attempt to gain unauthorized access to the Trial Environment or their related systems or networks.

3.3. You are responsible for all activity occurring under Your User account. You must: (a) notify Opencell promptly of any unauthorized use of any password or account or any other known or suspected breach of security with respect to the Trial Environment; and (b) report to Opencell promptly, and use reasonable efforts to promptly stop, any copying, distribution or other misuse of the Trial Environment or any Opencell Technology of which You or Your Users become aware.

4. Term and Termination.

The term of this Agreement (“Agreement Term”) commences on the Effective Date and ends thirty (30) days after the Effective Date, or any earlier date Opencell chooses in its sole discretion, unless Opencell agrees to extend Your access to the Trial Environment (in which case the Agreement Term will terminate whenever Opencell chooses to terminate Your access to the Trial Environment). Section 1, 3, 4, 5, 6, 7 and 8 will survive any expiration or termination of this Agreement.

5. Confidentiality and Feedback.

5.1. As used herein, “Confidential Information” refers to non-public technical, commercial, financial or other information concerning the business and affairs of the Party to this Agreement that discloses such information hereunder (each a “Disclosing Party”) to the Party that receives such information hereunder (each a “Receiving Party”), including, without limitation, any cost or pricing information, contractual terms and conditions, marketing or distribution data, and business methods or plans, which a reasonable person in the relevant industry should understand to be confidential based on the nature of the information and all relevant context. For the avoidance of doubt, Confidential Information with respect to You includes Your Data, and with respect to Opencell includes non-public technical information regarding the Trial Environment, and the results of any evaluation of the Trial Environment performed by or on behalf of You for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

5.2. Confidential Information does not include information that: (a) becomes generally available to the public other than as a result of a disclosure by the Receiving Party; (b) was available to the Receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party or in connection with the performance by the Disclosing Party of its obligations under this Agreement; (c) becomes lawfully available to the Receiving Party on a non-confidential basis from an independent third party; or (d) is independently developed by the Receiving Party without use of any of Disclosing Party’s Confidential Information.

5.3. The Receiving Party must not use any of the Disclosing Party’s Confidential Information for any purpose other than carrying out the Purpose. Except to the extent expressly permitted by this section, each Receiving Party shall not disclose to any third party any Confidential Information of the Disclosing Party received in anticipation of, or in connection with the performance of, this Agreement, without the prior written consent of the Disclosing Party. For purposes of the preceding sentence, however, “third party” does not include any Affiliates, employees, attorneys, accountants, other professional advisors, as long as (a) the Receiving Party is responsible for any non-compliance with this Agreement by such person or entity, and (b) such person or entity (i) has a commercially reasonable need for access to such Confidential Information in connection with the Purpose, and (ii) is under contractual confidentiality obligations substantially equivalent to Section 5.

5.4. A disclosure by the Receiving Party of any of the Disclosing Party’s Confidential Information (a) in response to a valid order or other legal process issued by a court or other governmental body having jurisdiction, (b) as otherwise required by law, or (c) necessary to establish the rights of either Party under this Agreement will not be a breach of this Agreement if, to the extent legally permitted, the Receiving Party gives the Disclosing Party prompt written notice and reasonable cooperation so the Disclosing Party may seek to prevent or limit such disclosure. 4.5 Each Receiving Party’s confidentiality obligations with respect to the Disclosing Party’s Confidential Information shall remain in effect for three (3) years after the expiration or termination of this Agreement.

5.5. You grant Opencell a non-exclusive, perpetual, worldwide, transferable, royalty-free license (including the right to sublicense) to make, use, copy, develop, distribute, offer to sell and sell Feedback as a component of the Trial Environment. Opencell and its Affiliates may also use information regarding Your use of the Trial Environment under this Agreement solely for purposes of enhancing and supporting the Opencell Service and marketing it to you more effectively.

6. Warranty Disclaimer and Limitation of Liability.

6.1. WARRANTY DISCLAIMER. THE TRIAL ENVIRONMENT IS PROVIDED “AS IS.” OPENCELL AND ITS AFFILIATES AND LICENSORS DO NOT PROVIDE ANY WARRANTY WITH RESPECT TO THE TRIAL ENVIRONMENT OR OPENCELL TECHNOLOGY UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED). WITHOUT LIMITING THE PRECEDING SENTENCE: (A) OPENCELL DOES NOT WARRANT THAT THE TRIAL ENVIRONMENT (OR ANY RELATED PROFESSIONAL SERVICES OR DELIVERABLES) IS OR WILL BE ERROR-FREE, MEET YOUR REQUIREMENTS, OR BE TIMELY OR SECURE; (B) OPENCELL’S TRIAL ENVIRONMENT MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS; AND (C) OPENCELL AND ITS AFFILIATES AND LICENSORS ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, DATA LOSS OR OTHER DAMAGE IN CONNECTION WITH THIS AGREEMENT.

6.2. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE: (A) IN NO EVENT WILL OPENCELL’S AND ITS AFFILIATES’ AND LICENSORS’ TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT (OR ANY RELATED PROFESSIONAL SERVICES OR DELIVERABLES) EXCEED TWO HUNDRED EUROS (200€); AND (B) IN NO EVENT WILL OPENCELL OR ITS AFFILIATES OR LICENSORS

BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, OPPORTUNITIES, DATA OR USE) ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE TRIAL ENVIRONMENT IN CONNECTION WITH THIS AGREEMENT, EVEN IF OPENCELL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Indemnity.

You will defend, indemnify and hold harmless Opencell and its Affiliates and licensors, and their respective Affiliates, officers, directors, employees, attorneys and representatives from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable legal fees, costs and expenses) to the extent arising out of or in connection with a claim alleging that Your breach of this Agreement violated any rights of a third party. Opencell must (a) promptly give notice of any such claims to You, (b) give You sole control of the defense and settlement of the claims (but You may not settle such claims unless such settlement unconditionally releases Opencell and its Affiliates, licensors, officers, directors, employees, attorneys and representatives of all liability and does not adversely affect Opencell's interests), and (c) give You reasonable cooperation and information in connection with such defense and indemnification.

7. General.

This Agreement is governed by the laws of France without regard to their conflicts of law rules, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or a Trial Environment are subject to the exclusive jurisdiction of the state and federal courts located in Paris, France. Neither Party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party. This Agreement may be modified only if authorized representatives of both Parties consent in writing. Failure to enforce any provision of this Agreement will not constitute a waiver thereof or of any other provision; any waiver to be effective must be signed by an authorized officer of both Parties. If any provision of this Agreement is held illegal, invalid, or unenforceable, that provision will be deemed amended to achieve an economic effect as near as possible to that provided by the original provision and the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected.

8. Notices.

All legal notices (e.g., claimed breach or termination of this Agreement) required to be provided under this Agreement must be delivered in writing (a) in person, (b) by nationally recognized overnight delivery service, or (c) by certified mail to the other Party at its corporate headquarters.