

# GS-Open Legacy - License Agreement

PLEASE READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT, TOGETHER WITH THE OPENLEGACY PRIVACY POLICY (DEFINED BELOW) (COLLECTIVELY, "**AGREEMENT**") CAREFULLY BEFORE ACCESSING THE SOLUTION (DEFINED BELOW) AND RECEIVING ANY SERVICES PROVIDED HEREUNDER. THIS AGREEMENT CONSISTS OF THE TERMS AND CONDITIONS WHICH GOVERN YOUR ("**YOU**") ACCESS TO AND USE OF OPENLEGACY TECHNOLOGIES LTD'S ("**OPENLEGACY**", "**WE**", "**US**", OR "**OUR**") SOLUTION (AS DEFINED IN SECTION 1.2 BELOW) AND CONSTITUTES A BINDING AGREEMENT BETWEEN YOU AND OPENLEGACY. BY CLICKING "I ACCEPT" BELOW OR BY ACCESSING OR USING THE SOLUTION IN ANY WAY OR MANNER, YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO BIND SUCH ENTITY TO THIS AGREEMENT. IN ANY EVENT, REFERENCES HEREIN TO "YOU" MEANS YOU OR SUCH ENTITY (AS THE CASE MAY BE). IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU SHOULD NOT ACCESS OR USE THE SOLUTION IN ANY MANNER.

We may unilaterally change or add to the terms of this Agreement at any time. In the event of a material change, we shall notify you via email or by means of a prominent notice. You should check periodically and review changes to the Agreement at the following URL: <https://hub-support.openlegacy.com/en/article/gs-open-legacy-license-agreement>. By continuing to use the Solution and receiving any services provided hereunder following such modifications, you agree to be bound by such modifications.

**1. Definitions.** For purposes of this Agreement, the following capitalized terms shall have the following meaning:

- 1.1. "**Intellectual Property Rights**" means all worldwide, whether registered or not (a) patents, patent applications, and patent rights; (b) rights associated with works of authorship, including copyrights, copyright applications, copyright restrictions, mask work rights, mask work applications and mask work registrations; (c) trademarks, trade names, service marks, logos, domain names, goodwill, and trade dress; (d) rights relating to the protection of trade secrets and confidential information; (e) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; and (f) divisions, continuations, renewals, reissues and extensions of the foregoing (as applicable) now existing or hereafter filed, issued, or acquired.
- 1.2. "**Solution**" means the OpenLegacy proprietary SaaS product known as OpenLegacy Hub accessed by you from the web.

## 2. License and Support

- **2.1. License.** Subject to the terms and conditions of this Agreement (including without limitation compliance with all payment obligations) and during the Term, OpenLegacy shall grant you a limited, non-exclusive, non-transferable and non-sublicensable and fully revocable right to use the Solution internally, for its intended purpose and in accordance with the license metrics set forth in the Subscription Plan ("**License**"). The License solely permits your connectivity as set forth in the Subscription Plan.
- **2.2. Technical Pre-Requisites.** In order to use the Solution, you must first download: (i) command line interpreter; and (ii) other third party components, all as required by OpenLegacy. You must also have Java in order to use the Solution. If you choose to use a main frame function, you must comply with additional technical requirements as requested by OpenLegacy in order to access the Solution, including without limitation, to use an adapter provided by OpenLegacy. You are solely responsible for acquiring and maintaining all of the hardware, software and services necessary to access and make use of the Solution, including without limitation paying all fees and other costs related thereto.
- **2.3. Third Party Components.** The Solution includes third party software, files and components that are subject to the open source and third party license terms ("**Third Party Components**"). Your right to use such Third Party Components as part of, or in connection with, the Solution is subject to any applicable acknowledgements and license terms accompanying such Third Party Components contained therein or related thereto. If there is a conflict between the licensing terms of such Third Party Components and this Agreement, the licensing terms of the Third Party Components shall prevail in connection with the related Third Party Components. Such Third Party Components are provided on an "AS IS" basis without any warranty of any kind and shall be subject to any and all limitations and conditions required by such third parties. You hereby agree to such terms associated with the Third Party Components. Under no circumstances shall the Solution or any portion thereof (except for the Third Party Components contained therein) be deemed "open source" or "publicly available" software.
- **2.4 Support.** OpenLegacy shall provide support in accordance with the subscription plan you choose ("**Subscription Plan**") and subject to: (i) your payment in full of all applicable fees; and (ii) You providing OpenLegacy with remote access to your systems as requested by OpenLegacy. OpenLegacy's support regarding APIs generated through use of the Solution is subject to the support received by OpenLegacy from its third party hosting providers. OpenLegacy support excludes: (i) force majeure events; (ii) scheduled

maintenance; (iii) Your Internet service provider; (iii) any systemic Internet failures; (iii) any failure of Your own hardware, software or network connection; (iv) Your bandwidth restrictions; (v) Your acts or omissions; and (vi) any failures of OpenLegacy's third party hosting providers.

1. **Limitations on Use; Covenants.** You shall not (and shall not allow any third party) to: (i) sell, license (or sub-license), lease, assign, transfer, pledge, or share your account credentials and/or any of your rights under this Agreement with/to any third party; (ii) transfer, distribute, commercialize, scrap, copy all or any part of the Solution and/or the OpenLegacy IPR (as defined below); (iii) refer to the Solution by use of framing; (iv) make use of the Solution in any jurisdiction where same is illegal or which would subject OpenLegacy or its affiliates to any registration requirement within such jurisdiction or country; (v) use, or encourage, promote, facilitate or instruct others to use the Solution for any illegal use; (vi) transmit or upload any viruses, spyware or other harmful, infringing, illegal, disruptive or destructive content or files; (vii) access the Solution through or use with the Solution any unauthorized means, services or tools including without limitation any data mining, robots, or any other automated means or data gathering and extraction tools, including without limitation in order to extract for re-utilization of any parts of this Solution; (viii) perform any act that destabilizes, interrupts or encumbers the Solution or its servers or use automatic means, robots or crawlers, that enable sending more request messages to the servers of the Solution, in a given period of time, than a human can reasonably send in that time period by using the Solution; (ix) penetrate or circumvent or attempt to penetrate or circumvent any technical restrictions or limitations included in the Solution or its servers; (x) copy, modify, translate, reverse engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction), make any attempt to discover the source code of the Solution and/or any other software available on the Solution or create derivative works thereof; (xi) access or use the Solution for benchmarking or similar competitive analysis purposes or in order to build a competitive product or service; (xii) register any trademarks, trade names, domain names or symbols similar to OpenLegacy's trademarks and/or logos.
1. **Warranties and Representations.** Each party warrants and represents to the other party that it has the full corporate power and authority required to enter into this Agreement and to carry out its undertakings and obligations hereunder. You warrant and represent that you have, and will continue to have throughout the term, all licenses, permits and consents that are required for the conduct of your business.
2. **Ownership.** OpenLegacy or its licensors (as applicable) own all right, title, and interest in and to the Solution, including without limitation any and all data, computer code, UI, design and structure, and all modifications, enhancements and derivatives thereof and all Intellectual Property Rights related thereto ("**OpenLegacy IPR**"). You acknowledge that,

except for the limited license to the Solution set forth in Section 2 above, you did not and shall not acquire any rights in any part of the OpenLegacy IPR.

## **6. Fees; Audits**

- 6.1. You shall pay OpenLegacy all fees set forth in the Subscription Plan ("**Fees**") in accordance with the timetables and license metrics set forth therein. The Fees are non-refundable. All payments not made when due shall bear interest at the rate of 1.5% per month, or at the highest interest rate allowed by law, whichever is less, from the due date until paid. In addition and without derogating from any other right OpenLegacy has under law or contract, in the event you fail to make any payment when due, it shall constitute sufficient cause for OpenLegacy to immediately suspend its performance and grant of rights under this Agreement.
- 6.2. Except as expressly provided in this Agreement, each party shall bear its own costs and expenses incurred in the course of its performance of this Agreement. All amounts due to OpenLegacy under this Agreement shall be paid in accordance with the payment instructions set forth in the Subscription Plan to Open Legacy's account, free and clear from any withholdings and/or deductions of any amounts, including without limitations of any bank fees, taxes (including VAT), duties or levies whatsoever. All payments are exclusive of all charges, taxes and levies of any nature, all of which shall be borne solely by you.
- 6.3. You shall maintain accurate records necessary to verify use in compliance with this Agreement. Upon OpenLegacy's or its third party appointee's written request, you shall allow OpenLegacy or its third party appointee to audit you for purposes of ensuring your compliance with this Agreement. If your use exceeds the license scope and license metrics that you have paid for in accordance with the Subscription Plan, you shall immediately pay OpenLegacy the fees owed for such excess use, in addition to payment of reasonable costs incurred by OpenLegacy in connection with such audit.

## **7. Disclaimer.**

- 7.1. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, THE SOLUTION AND ANY SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND. OPENLEGACY DOES NOT PROVIDE ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, RELIABILITY, TIMELINESS AND/OR ACCURACY .
- 7.2. OPENLEGACY DOES NOT WARRANT THAT THE SOLUTION OR THE SERVERS ON WHICH IT IS HOSTED WILL BE UNINTERRUPTED OR ERROR-FREE AND DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOLUTION.

## 8. Confidential Information; Privacy

- 8.1. All data and information related to each party, its affiliates and its shareholders, employees, directors and agents and/or to its business, products and services are confidential information of the disclosing party ("**Confidential Information**"). "Confidential Information" does not include information: (i) that is or becomes part of the public domain through no act or omission of the receiving party; (ii) that is lawfully received by the receiving party from a third party without restriction on use or disclosure and without breach of this Agreement or any other agreement without knowledge by the receiving party of any breach of fiduciary duty, or (iii) that the receiving party had in its possession prior to the date of this Agreement. The receiving party agrees to protect the Confidential Information in accordance with good industry practices and keep confidential and not disclose, disseminate, allow access to or use any Confidential Information to any third party except as required for exercising its rights or fulfilling its obligations herein, including without limitation for the provision your use of the Solution. Either party shall restrict disclosure of Confidential Information to those of its employees and consultants with a reasonable need to know such information and which are bound by written confidentiality obligations no less restrictive than those set out herein. Without derogating from the foregoing, either party may disclose this Agreement in connection with a merger, sell or issuance of shares and sale of all or substantially all of such party's assets.
- 8.2. You acknowledge and agree that the Solution scans the system you allow OpenLegacy to access through use of the Solution. You hereby agree to and shall ensure that all users of the Solution in your organization agree to the terms of the OpenLegacy Privacy Policy available at: <https://hub-support.openlegacy.com/en/article/openlegacy-privacy-policy-privacy-policy>.

## 9. Indemnification

- 9.1. OpenLegacy shall indemnify and hold You harmless against any and all claims, damages, losses, expenses and costs, finally awarded in judgment and arising out of a third party allegation that the Solution infringes its Intellectual Property Rights. OpenLegacy indemnification obligation shall be subject to your provision of prompt written notice of the claim to OpenLegacy, rendering full control over the defense and settlement of the claim to OpenLegacy and that you shall provide reasonable assistance to OpenLegacy. OpenLegacy's indemnification obligation does not apply with respect to: (i) Solution that is modified or combined with other products or services, (ii) where you continue the alleged infringing activity after being notified thereof, (iii) use of the Solution not in accordance with this Agreement, or (iv) use of any version of the Solution other than the latest version provided by OpenLegacy.
- 9.2. You shall indemnify and hold OpenLegacy and its affiliates and their respective stockholders, directors and officers, employees and contractors harmless against any and

all claims, damages, losses, expenses and costs, arising out of or in connection with your use of the Solution including without limitation any code generated or uploaded through by you through use of the Solution.

**10. Limitation of Liability.** UNDER NO CIRCUMSTANCES WILL OPENLEGACY OR ITS AFFILIATES, SHAREHOLDERS, DIRECTORS, AGENTS, EMPLOYEES, LICENSORS OR SUPPLIERS (COLLECTIVELY "**AFFILIATE**") BE LIABLE UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT AND/OR THE SOLUTION EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOSS OF DATA. OPENLEGACY'S AND ITS AFFILIATES' AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SOLUTION OR OTHERWISE SHALL NOT EXCEED THE PAYMENTS ACTUALLY MADE TO OPENLEGACY BY YOU DURING THE SIX (6) MONTHS PRECEDING THE EVENT THAT GAVE RISE TO SUCH CLAIM.

**11. Term and Termination.**

- 11.1. Unless earlier terminated pursuant to Section 11.2 below, the term of the Agreement shall be for twelve (12) months starting on the Effective Date ("**Initial Term**"). The Term shall renew automatically, without notice, for successive one year periods (each a "**Renewal Term**") unless either party sends the other party a notice of non-renewal at least thirty (30) days prior to expiration (the Initial Term and Renewal Term shall be collectively known as "**Term**").
- 11.2. OpenLegacy may terminate this Agreement at any time for convenience upon thirty (30) days prior written notice to you.
- 11.3. Either party may terminate this Agreement by notice to the other: (i) upon the breach by the other party of any of its obligations hereunder and such other party's failure to cure such breach within thirty (30) days of such written notice; (ii) by delivering written notice to the other party upon the occurrence of any of the following events: (a) a receiver is appointed for either party or its property; (b) either party makes a general assignment for the benefit of its creditors; (c) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) days; or (d) either party is liquidated or dissolved.
- 11.4. Upon expiration or termination of this Agreement for any reason: (i) all of your rights and licenses hereunder shall immediately terminate and you shall immediately cease using the Solution (and delete it from all media); (ii) you will not be able to receive any data, reports, materials, APIs or other information derived from the Solution; (iii) you shall pay OpenLegacy all fees due; and (iv) you shall promptly erase/delete or return to OpenLegacy, at OpenLegacy's election, all of OpenLegacy's Confidential Information and OpenLegacy IPR held or controlled by you in any form or media. The following

Sections shall survive termination/expiration hereof: 1, 2.3, 3-8, 9.2, 10, 11.4 and 12 and any payment obligations accrued prior to expiration or termination hereof.

## 12. General.

(12.1) **Waiver; Remedies.** Failure of a party to insist upon the performance by the other party of any term hereof shall not be deemed a waiver of the rights of the first- mentioned party with respect thereto. All waivers must be in writing. (12.2) **Notices.** All notices and other communications required or desired to be communicated by one party to the other shall be in writing and shall be deemed delivered immediately when sent by email to the e-mail address below. (12.3) **Assignment.** You shall not assign or transfer any of your rights or obligations hereunder, whether by contract or by operation of law, except with OpenLegacy's prior written consent. Open Legacy may assign and transfer any rights and obligations under this Agreement at its sole discretion. (12.4) **Relationship of the Parties.** The relationship established between the parties by this Agreement is solely that of independent contractors. Neither party shall be deemed to be an agent or legal representative of the other party and no employee of either party shall be considered to be an employee of the other party for any purposes whatsoever. (12.5) **Entire Agreement; Modification.** This Agreement sets forth the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior discussions, agreements, representations and understandings between them. (12.6) **Governing Law and Jurisdiction.** This Agreement and any action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the State of Israel. The exclusive jurisdiction and venue of any action with respect to the subject matter of this Agreement shall be the courts of Tel Aviv, Israel and each of the parties hereto submits itself to the exclusive jurisdiction and venue of such courts for the purpose of any such action. The United Nations Convention for the International Sale of Goods is expressly excluded from this Agreement. (12.7) **Remedies.** Notwithstanding Section 12.6 above, you acknowledge that in the event of breach or threatened breach of any provision of this Agreement by you, OpenLegacy could suffer significant and irreparable harm that could not be satisfactorily compensated in monetary terms, and that the remedies at law available to OpenLegacy may otherwise be inadequate and OpenLegacy shall be entitled, in addition to any other remedies to which it may be entitled to under law or in equity, to the immediate *ex parte* issuance, without bond, of an equitable relief, including without limitation an injunctive relief, in any jurisdiction worldwide. You hereby acknowledge and agree that OpenLegacy shall not be required to post bond as a condition to obtaining or exercising any such remedies, and you hereby waive any such requirement or condition. (12.8) **Severability.** Any provision of this Agreement prohibited by, or unenforceable under, applicable law shall be ineffective to the extent of such prohibition and shall be replaced by an enforceable provision to the same or the nearest possible equivalent effect. Notwithstanding the foregoing, the other provisions hereof shall continue in effect unless the ineffectiveness of any provision shall substantially affect the consideration received by either party hereunder. (12.9) **Force Majeure.** OpenLegacy shall not be liable for delays or failures in performance resulting from causes beyond its reasonable control, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communication or utility failures, or casualties. (12.10) **Aggregate Data.** Notwithstanding anything to the contrary, OpenLegacy may use, retain and transfer aggregate and anonymized usage and transaction data in respect of the use of the Solution for

any purpose and without any restrictions or payment obligations . (12.11) **No Third Party Beneficiaries.** No provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than you and OpenLegacy any rights, remedies or other benefits under or by reason of this Agreement. (12.12) **Publicity.** Open Legacy may use your name and logos in order to refer to you as a customer on Open Legacy's website and in its marketing materials

If you have any further questions or require further clarification, please contact us by sending an e-

mail to: [support@openlegacy.com](mailto:support@openlegacy.com)

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