

Protocollo N°: CM-046-3/ 2021

Spett.le

**Comune di Firenze**

Via Reginaldo Giuliani, 250  
50141 Firenze (FI)

c.a. Dott. Leonardo Ricci

c.a. Dott.ssa Caterina Graziani

c.a. Dott. Filippo Corsi

Milano,

6 Dicembre 2021

Oggetto: Offerta Sottoscrizione Supporto&Manutenzione WSO2 erogato da WSO2

Come da accordi intercorsi, Le inoltriamo la nostra migliore offerta per i servizi di cui all'oggetto. Voglia ritenerci a Vostra disposizione per qualsiasi chiarimento.

Cogliamo l'occasione per porgere distinti saluti.

Profesia s.r.l.  
Matteo Moretti  
Presidente del CDA





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## 1. Introduzione

Profesia è unico Platinum Integration Partner e Distributore esclusivo WSO2 per il mercato italiano.

La presente offerta inerisce alla fornitura del servizio Supporto&Manutenzione WSO2 erogato da WSO2.

I servizi richiesti sono relativi agli ambienti WSO2 del Comune di Firenze (il cliente).

## 2. Sottoscrizione Supporto Enterprise erogato da WSO2

WSO2 offre un servizio di Sottoscrizione annuale per avere Supporto di livello Enterprise durante tutto il ciclo di vita del progetto.

Il Servizio di Supporto include, in particolare:

- WSO2 Updates (patch sicurezza, bug fixes, enhancements) tramite tool WUM WSO2 Update Manager e altri canali. Questo permette di avere la piattaforma sempre aggiornata senza correre rischi di disservizi o sicurezza.
- Supporto 24x7x365 per qualunque incidente su produzione o non-produzione, con SLA enterprise e senza limiti sul numero di ticket. Ogni soluzione viene rilasciata con un nuovo update specifico. Il cliente potrà accedere direttamente al Support Portal WSO2 in modo autonomo per aprire segnalazioni in caso di problemi. E' inoltre a disposizione l'Account Manager WSO2 assegnato al cliente.
- Supporto per 1 giorno lavorativo per query generiche sull'utilizzo del prodotto
- Query Support (ulteriore basket di ore per richieste non relative a problemi del prodotto, i.e. domande sull'utilizzo del prodotto, architettura, ...) per un totale di 1h ogni 900 euro di subscription
- Accesso a tutti i contenuti riservati ai Subscribers
- Il supporto è calcolato sui core e sulle Transazioni massime mensili (chiamate entranti verso API Gateway e/op Enterprise Integrator) dei soli ambienti di Produzione ed include supporto e manutenzione senza costi ulteriori per:
  - Control Plane (moduli licenziati in base ai Core di produzione)
    - bursting della produzione fino al 25% in più (di cores) per un totale di 3 giorni cumulativi nell'anno di sottoscrizione supporto
    - fino a 3 ambienti di non produzione (i.e. dev, test, QA) senza limiti di core, uno dei quali può essere ospitato nel WSO2 Cloud
    - illimitati notebook individuali sviluppatori (le richieste per questi ricadono nel query supporto e non sono soggette agli SLA)

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**W** www.profesia.it





- moduli Analytics dei vari prodotti
  - istanze passive in configurazioni active/passive
- API Gateway ed Enterprise Integrator (moduli licenziati in base alle Transazioni massime mensili)
  - bursting della produzione fino al 25% in più (di transazioni) durante 1 mese del periodo di sottoscrizione supporto
  - istanze passive
  - sistemi di non produzione
- I T&Cs del supporto WSO2 sono disponibili al capitolo 7 e ai link seguenti:
  - <https://wso2.com/licenses>
  - <https://wso2.com/licenses/support-policy>
  - <https://wso2.com/licenses/eula>

### 3. Reperibilità fuori orario lavorativo erogata da Profesia

Con l'acquisto della Subscription di casa madre WSO2 e dei servizi Profesia il Cliente è abilitato anche a chiamare il servizio reperibilità Profesia in orari non lavorativi solo per emergenze bloccanti gravi di produzione che non sia riuscito a risolvere autonomamente e/o con il supporto del vendor WSO2. L'eventuale intervento di Profesia verrà poi fatturato a consuntivo attingendo al basket di giornate della consulenza.

Sulla base dello storico, si prevede un numero di chiamate fuori orario molto limitato, e per ogni chiamata si consiglia la pianificazione di un'attività ordinaria (che il cliente può decidere di svolgere anche autonomamente) per risolvere la causa del problema e l'attivazione dove possibile di un sistema automatico e proattivo che eviti che si il problema si ripresenti o che invii un alert per gestirlo come attività ordinaria.

Nel caso in cui il numero di chiamate superasse i 5 casi nell'anno allora si concorderà comunque un'attività di consulenza per risolvere le cause alla fonte.

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## 4. Offerta economica

### 4.1. Sottoscrizione Supporto WSO2 per 1 anno

Prodotto	Servizio	Tipo	Costo Annuale per Unità	Unità	Durata	Totale
WSO2 API Manager Control Plane ( Developer Portal + Publisher Portal + Traffic Manager)	Supporto per ambiente di <u>Produzione</u>	Sottoscrizione	12.500,00 € / core	4 core attivi (+ 4 core passivi)	1 anno	50.000,00 €
WSO2 API Manager Gateway e Enterprise Integrator	Supporto per ambiente di <u>Produzione</u>	Sottoscrizione	4.500,00 € / 10 M. Transazioni al mese	2 (20 M. Transazioni/ mese)	1 anno	9.000,00 €
WSO2 Identity Server as Key Manager (Utenti esterni)	Supporto per ambiente di <u>Produzione</u>	Sottoscrizione	18.900,00 € / core	4 core attivi (+ 4 core passivi)	1 anno	75.600,00 €
WSO2	Query support allo sviluppo			74 ore	1 anno	
					TOTALE	134.600,00 €
					SCONTO UNA TANTUM RISERVATO AL CLIENTE	50%
					TOTALE	67.300,00 €

**Rinnovo Sottoscrizione - EULA WSO2 clausola 5.f.** La sottoscrizione al servizio Supporto&Manutenzione WSO2 oggetto della presente offerta **si rinnova automaticamente per periodi aggiuntivi pari a un anno** a meno che il Cliente non comunichi per iscritto a WSO2 che desidera rinnovare per un periodo più lungo oppure terminare la sottoscrizione **con un preavviso di almeno 90 giorni prima della fine del Periodo di Sottoscrizione**. Al rinnovo, le tariffe unitarie aumentano del 5%, salvo diversa disposizione dell'Ordine.

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Le tariffe sopra riportate sono valide per acquisti sino alla scadenza della presente offerta.

**Tutti i prezzi s'intendono al netto di IVA**

**Le descritte condizioni economiche non saranno più valide oltre la data di scadenza della presente offerta.**

**Le descritte condizioni economiche sono subordinate alle condizioni di pagamento concordate al punto 5 della presente offerta.**

## **5. Fatturazione e pagamento**

Fatturazione: alla ricezione dell'Ordine.

Pagamento: bonifico bancario, 30gg dalla data di inizio della sottoscrizione

## **6. Validità dell'offerta**

La presente offerta è valida fino al 22/12/2021.

### **Per accettazione integrale della presente offerta**

Luogo e Data

Nome

Firma

Timbro

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## 7. WSO2 SOFTWARE LICENSE EULA 3.1

Please find latest EULA version at link <https://wso2.com/licenses/eula>

This WSO2 Software License Agreement (the “**Agreement**”) is entered into by you and the applicable WSO2 entity, as described below. If you are an individual accepting this Agreement on behalf of a company or other legal entity, you represent that you are authorized to bind the entity to the terms of this Agreement and “**You**” or “**Your**” will refer to the entity bound to this Agreement, not to you as an individual.

By using or accessing the Software, signing this Agreement or any document that references this Agreement (such as an Order), or by clicking “I agree to the Terms” (or similar button or checkbox) upon downloading or installing the Software, You indicate Your assent to be bound by this Agreement. If You do not agree to this Agreement, do not use or access the Software.

### 1. Definitions

- a. “**Order**” is a document submitted by You authorizing the purchase of the Products requested by You, the Support Plan, associated fees, and any additional terms.
- b. “**Products**” means collectively Software, Support and/or other Services obtained by You from WSO2 subject to the terms of this Agreement.
- c. “**Software**” means the computer programs developed and owned by WSO2 to which this License Agreement is attached, however you obtain or access them. Software includes security patches, updates, or other modifications to the Software supplied by WSO2.
- d. “**Services**” means training, consulting and other services, other than Support, specified in an Order.
- e. “**Support**” means support provided by WSO2 to a Subscriber for the Software according to the terms of the WSO2 Support Services described in Section 4.1.
- f. “**Support Plan**” means the service level specified in an Order, from among the levels defined in the Support Services Policy.
- g. “**Subscription**” is a commercial offering from WSO2 consisting of a license to use, and access to Support for, the Software, for a specific period of time.
- h. “**Subscription Period**” is the commencement date and duration of a Subscription, as specified in an Order.

### 2. License Grant

- a. **FreeLicense for Non-commercial, Educational, or Trial use.** WSO2 hereby grants You a worldwide, non-exclusive, royalty-free, non-transferable, non-sublicensable, terminable





license to use the Software for Non-commercial, Educational, or Trial purposes. Non-commercial, as used in this Agreement, means personal use whereby no commercial advantage or monetary compensation is sought or received for use of the Software or for works, data or services that use the Software. Educational or Trial Use, as used in this Agreement, means use for the purpose of learning to use the Software, teaching others to use the Software, evaluating or demonstrating Software capabilities, or for scholarly or artistic purposes.

- b. **License for commercial use.** If You purchase a Subscription from WSO2 or one of its authorized Resellers, WSO2 hereby grants to You, as “**Subscriber**”, a worldwide, non-exclusive, non-transferable, non-sublicensable, renewable license to use the Software for the duration of the Subscription Period. This license is limited to the specific Software configuration or limit defined in the Order. The Order will specify the scope of the Subscription purchased by Subscriber, including: (1) product versions; (2) production or non-production use; (3) usage limits (e.g. cores or transaction limits); and (4) any other license parameters.

### 3. Copyright.

All right, title and interest, including but not limited to intellectual property rights such as copyrights, in and to the Software and any copies thereof, are owned by WSO2 or its suppliers. All right, title and interest, including but not limited to intellectual property rights such as copyrights, in and to the content which may be accessed through use of the Software is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. All rights not expressly granted are reserved by WSO2.

### 4. Conditions of Use.

A license granted to You by this Agreement is valid only if You adhere to the following conditions.

- a. **Maintenance of Copyright Notices.** You shall not remove or alter any copyright or license notices that appear in or on the Software.
- b. **Modification.** You shall not modify, alter, decompile, decrypt, disassemble, translate, or reverse engineer the Software.
- c. **Distribution.** You shall not sublicense, transfer, lease, rent, or otherwise distribute or make available the Software to any third party.
- d. **SaaS.** Unless authorized by WSO2, You shall not make the Software available as commercial Software-as-a-Service.
- e. **Compliance with Applicable Laws.** You shall comply with all applicable laws regarding use of the Software.





## 5. Subscription Terms and Conditions

If You purchase a Subscription, the following terms and conditions apply.

- a. **Support.** WSO2 will provide Subscriber with Support for the Software during the Subscription Period according to the Support Plan indicated in the applicable Order, and subject to the WSO2 Support Policy set forth at <https://wso2.com/licenses/support-policy>. Each Subscription includes Query Support subject to a maximum hours limit as indicated in the Order. Limits can be increased subject to additional fees. The maximum hours limit is reset upon renewal for a subsequent annual period; unused hours cannot be rolled over into the next annual period.
- b. **Technical Currency.** WSO2 will provide Subscriber with all new versions of the Software that it generally releases, including all updates, security updates, improvements, enhancements and bug fixes. All new versions of the Software are provided subject to the terms of the Agreement.
- c. **Online Services.** A Subscription may include online services. Use of these online services is governed by the WSO2.com Terms of Use at <https://wso2.com/terms-of-use>, the WSO2 Privacy Policy at <https://wso2.com/privacy-policy>, and the WSO2 Cloud Terms of Use at <https://wso2.com/cloud/terms-of-use>.
- d. **Increases in Software Use.** Subscriber may increase its use of the Software during the Subscription Period beyond the scope specified in the applicable Orders, provided that Subscriber promptly notifies WSO2 of the additional use and pays the applicable Fees.
- e. **Bursting Use.** Subscriber may temporarily exceed the Subscription limits, at no extra Fee, within the bursting limits for the Product ("**Authorized Bursting Use**"). If Subscriber increases its use beyond Authorized Bursting Use, it must notify WSO2, increase the allowed usage limits retroactively to the period where limits were exceeded, and pay the applicable Fees. For products limited to a maximum number of cores, Authorized Bursting Use allows up to 3 days (discrete 24-hour periods) within an annual Subscription period during which the core count may exceed the Subscription limit by no more than 25%. For products limited to a maximum number of monthly transactions, Authorized Bursting Use allows transactions up to 25% over the monthly cap, within a single calendar month per annual Subscription period.
- f. **Subscription Renewal.** Subscriptions automatically renew for additional periods equal to one year unless Subscriber notifies WSO2 in writing that it wishes to renew for a longer period, or to end the Subscription at least 90 days prior to the end of the Subscription Period. Upon renewal, unit fees increase by 5%, unless provided otherwise in an Order. Renewal of promotional or one-time priced Subscriptions will be at WSO2's applicable price list in effect at the time of the discount was granted. Fees for renewal are due according to the Fees and Payment terms of this Agreement.
- g. **Termination for Change in Services.** WSO2 may change the terms of Support or Services from time to time without affecting the validity of this Agreement. In the event of any

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material changes, WSO2 will attempt to provide Subscriber notice by sending an email to the point of contact address provided by Subscriber. In the event of a material and adverse change to the terms of Support or Services, Subscriber has the right to terminate this Agreement upon 30 days notice to WSO2 at the following email address: [support@wso2.com](mailto:support@wso2.com). In the event of such termination, WSO2 shall reimburse Subscriber a pro rata amount of any fees actually prepaid by Subscriber.

- h. **Remedies.** WSO2'S SOLE OBLIGATION AND SUBSCRIBER'S SOLE REMEDY FOR WSO2'S BREACH OF ANY REPRESENTATIONS, WARRANTIES OR OBLIGATIONS OF THIS AGREEMENT IS TO (I) IN THE CASE OF A DEFECTIVE OR FAULTY BUG FIX, PATCH OR THE LIKE, DELIVER TO SUBSCRIBER A CORRECTED VERSION WHICH ALLOWS FOR PROPER INSTALLATION; OR (II) IF OPTION (I) IS NOT RELEVANT OR IS DEEMED NOT TO BE COMMERCIALY FEASIBLE BY WSO2, TERMINATE THIS AGREEMENT AND REFUND A PRO RATA PORTION OF THE FEES PAID BY SUBSCRIBER.
- i. **Audit.** Upon WSO2's request with reasonable notice, Subscriber will permit technical and operational audits of Subscriber related to the subject matter of this Agreement. Audits may include verifying Subscriber's usage of the Software conforms to the usage limits purchased by Subscriber. Audits shall be carried out within Subscriber's regular business hours and WSO2 will honor confidentiality and data protection requirements. If non-compliance is discovered in an audit, Subscriber will be responsible for all costs associated with carrying out such audit. In addition, where such audit reveals Subscriber has exceeded the usage subscribed-for, Subscriber shall pay WSO2 prorated fees for the excess usage at the same rate(s) designated in the most proximate Order. If the date excess usage began cannot be determined to WSO2's satisfaction, excess usage shall be deemed to have commenced on the start date of the Subscription.

## 6. WSO2 Consulting Services

- a. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year after its termination, neither party will directly or indirectly (a) solicit for hire or engagement any of the other party's personnel who were involved in the provision or receipt of Services under this Agreement or (b) hire or engage any person or entity who is or was employed or engaged by the other party and who was involved in the provision or receipt of Services under this Agreement until one hundred eighty (180) calendar days following the termination of the person's or entity's employment or engagement with the other party. For purposes herein, "solicit" does not include broad-based recruiting efforts, including without limitation help wanted advertising and posting of open positions on a party's internet site. If You hire or engage directly or indirectly any personnel of WSO2 in violation of this section, You will pay WSO2 a contractual penalty equal to three times the monthly billing rate (assuming 168 hours per month) for such personnel.





## 7. Reseller Orders

This Section applies if You purchase Products through an authorized reseller of WSO2 ("**Reseller**").

- a. Instead of paying WSO2, You will pay the applicable amounts to the Reseller, as agreed between You and the Reseller. WSO2 may suspend or terminate Your Subscription if WSO2 does not receive the corresponding payment from the Reseller.
- b. Instead of an Order submitted to WSO2, Your order details will be as stated in the order placed with WSO2 by the Reseller on Your behalf, and the Reseller is responsible for the accuracy of any such order as communicated to WSO2.
- c. If You are entitled to a refund under this Agreement, then unless otherwise specified by WSO2, WSO2 will refund any applicable fees to the Reseller and the Reseller will be solely responsible for refunding the appropriate amounts to You.
- d. Resellers are not authorized to modify this Agreement or make any promises or commitments on WSO2's behalf, and WSO2 is not bound by any obligations to You other than as set forth in this Agreement.
- e. The amount paid or payable by the Reseller to WSO2 for Your use of the applicable Software under this Agreement will be deemed the amount actually paid or payable by You to WSO2 under this Agreement for purposes of calculating the liability cap in Section 13.

## 8. Publicity and Feedback

- a. **WSO2 Logos.** WSO2 products may include features for theming the product user interfaces. You will retain the "WSO2" or "powered by WSO2" logos in conformance with WSO2 Logo Usage Guidelines at <https://wso2.com/brand>.
- b. **Publicity.** You may state publicly that You are a user of the Products. Any identification or use of a party's brand, logo, or trademark shall conform with the trademark use guidelines provided by one party to the other. WSO2 may reference you as a Customer and use Your logo on the WSO2 website. You will participate in a success story/case study related to WSO2.
- c. **Feedback.** If You provide any suggestions, corrections, or feedback regarding the Products, WSO2 may use that information without obligation to You, and You hereby irrevocably assign to WSO2 all right, title, and interest in the suggestions, corrections, or feedback.

## 9. Fees and Payment

1. **Purchase Orders.** Any pre-printed terms on any purchase order that is issued by You that are in addition to or in conflict with the terms of this Agreement are null and void.

## 10. Term & Termination

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1. **Termination.** This Agreement terminates when:
  - a. Your Subscription terminates,
  - b. when You cease using the Software, or
  - c. if You do not have an active Subscription, 90 days after WSO2 notifies You that it wishes to terminate the Agreement.
2. **Termination for Cause.** Either party may terminate this Agreement on written notice to the other if the other party fails to comply with this Agreement after it has been notified in writing of the nature of the failure and been provided with 30 days after receiving the written notice to cure the failure.
3. **Effect of Termination.** Upon termination of this Agreement:
  - a. the rights granted by one party to the other immediately cease;
  - b. all fees owed by Subscriber are immediately due upon receipt of the final invoice; and
  - c. You will delete the Software immediately.
4. **Survival.** Sections 6.5, 9.1, 11.2, 13, and 15.9, and those provisions intended by their nature to survive termination of this Agreement survive termination. Section 14 will survive termination of this Agreement for 3 years.

## 11. Limited Warranties

1. **Warranties for Subscriber.** If You are a Subscriber, WSO2 warrants that:
  - a. the Software will perform substantially in accordance with its documentation (located at <https://docs.wso2.com>);
  - b. it will perform Support and Consulting Services in a diligent and workmanlike manner consistent with industry standards; and
  - c. to its knowledge, the Software does not, at the time of delivery to you, include malicious mechanisms or code for the purpose of damaging or corrupting the Software.

Subscriber's exclusive remedy for WSO2's material breach of warranty is to have WSO2 resolve such breach as provided in the WSO2 Support Services Policy, or at WSO2's option and upon Subscriber's deletion of the Software, refund the unused portion of any fees paid for the Subscription.

2. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL SERVICES, SOFTWARE, AND SUPPORT PROVIDED BY WSO2 ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. NO WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY WSO2 OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. NOTHING STATED IN THIS AGREEMENT IMPLIES THAT THE





OPERATION OF ANY SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ERRORS WILL BE CORRECTED.

## 12. Indemnification

If You are a Subscriber, the provisions of this section apply to You.

1. Subject to the provisions of this Section 12, and commencing from the start of the Subscription Period, WSO2 will defend at its expense any suit brought against Subscriber, and will pay any settlement WSO2 makes or approves, or any direct damages (excluding amounts awarded for reputation harm or business impact) finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Products misappropriate any trade secret recognized under the Uniform Trade Secrets Act or infringe any copyright or United States patent valid within the Subscription Period (an “**IP Claim**”). WSO2’s indemnification obligations are limited to US \$7,000,000.
2. If any portion of the Software or the Services becomes, or in WSO2’s opinion is likely to become, the subject of an IP Claim, WSO2 may, at WSO2’s option: (i) procure for Subscriber the right to continue using the Products; (ii) replace the Products with non-infringing software or services which do not materially impair the functionality of the Products; (iii) modify the Products so that it becomes non-infringing; or (iv) terminate this Agreement and refund any fees actually paid by Subscriber to WSO2 for the remainder of the Term then in effect, and upon such termination, Subscriber will immediately cease all use of the Software, documentation, and Services.
3. Notwithstanding anything to the contrary herein, WSO2 has no obligation with respect to any IP Claim based upon (i) any open source software components included in the Software; (ii) any use of the Software or the Services not in accordance with this Agreement or as specified in the documentation; (iii) any use of the Software in combination with other products, equipment, software or data not supplied by WSO2; or (iv) any modification of the Software by any person other than WSO2 or its authorized agents. This Section states the sole and exclusive remedy of Subscriber and the entire liability of WSO2, or any of the officers, directors, employees, shareholders, contractors or representatives of either party, for IP Claims.
4. The indemnifying party’s obligations as set forth above are expressly conditioned upon complying with each of the following: (i) the indemnified party must promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (ii) the indemnifying party will have sole control of the defense or settlement of any claim or suit; and (iii) the indemnified party must cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

## 13. Limitation of Liability

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EXCEPT FOR DAMAGES FOR BODILY INJURY (INCLUDING DEATH), WSO2'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES PAID BY YOU DURING THE PERIOD OF A MATERIAL BREACH UP TO A MAXIMUM OF ONE YEAR. IF YOU HAVE PAID NO FEES, OR ARE A NON-COMMERCIAL, EDUCATIONAL, OR TRIAL LICENSEE, WSO2'S MAXIMUM AGGREGATE LIABILITY TO YOU IS \$100.

IN NO EVENT WILL WSO2 OR ITS AFFILIATES BE LIABLE FOR ANY INCIDENTAL INDIRECT, SPECIAL, OR CONSEQUENTIAL COSTS OR DAMAGES INCLUDING, WITHOUT LIMITATION, DOWNTIME COSTS; LOST BUSINESS, REVENUES, GOODWILL, OR PROFITS; FAILURE TO REALIZE EXPECTED SAVINGS; LOSS OF OR DAMAGE TO DATA; OR SOFTWARE RESTORATION, REGARDLESS OF WHETHER ANY OF THE FOREGOING ARE FORESEEABLE, AND REGARDLESS OF WHETHER WSO2 HAS BEEN NOTIFIED OF THE POSSIBILITY OF ANY OF THE FOREGOING. THESE LIMITATIONS APPLY REGARDLESS OF THE BASIS OF LIABILITY; INCLUDING NEGLIGENCE; MISREPRESENTATION; BREACH; LIBEL; INFRINGEMENT OF PUBLICITY, PRIVACY, OR INTELLECTUAL PROPERTY RIGHTS; OR ANY OTHER CONTRACT OR TORT CLAIM.

## 14. Confidentiality

1. **Definition.** "**Confidential Information**" means any information, documentation, system, or process disclosed by a party or a party's Affiliate that is:
  - a. designated as confidential (or a similar designation) at the time of disclosure;
  - b. disclosed in circumstances of confidence; or
  - c. understood by the parties, exercising reasonable business judgment, to be confidential.

Confidential Information expressly includes proposals or price quotes created by WSO2 for You, Orders, and any changes or amendments to this Agreement.

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party to this Agreement.

2. **Exclusions.** Confidential Information does not include information that:
  - a. was lawfully known or received by the receiving party prior to disclosure;
  - b. is or becomes part of the public domain other than as a result of a breach of this Agreement;
  - c. was disclosed to the receiving party by a third party, provided such third party, or any other party from whom such third party receives such information, is not in breach of any confidentiality obligation in respect to such information; or
  - d. is independently developed by the receiving party as evidenced by independent written materials.
3. **Nondisclosure.** Each party shall treat as confidential all Confidential Information of the other party, shall not use Confidential Information except as set forth in this Agreement,

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and shall use best efforts not to disclose Confidential Information to any third party. Without limiting the foregoing, each of the parties shall use at least the same degree of care that it uses to prevent the disclosure of its own Confidential Information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other party under this Agreement. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information.

4. **Return of Confidential Information.** Upon expiration or termination of this Agreement, each party shall return or destroy all Confidential Information received from the other party.
5. **Remedies.** Any breach of the restrictions contained in this section is a breach of this Agreement that may cause irreparable harm to the non-breaching party. Any such breach shall entitle the non-breaching party to injunctive relief in addition to all other legal remedies.

## 15. General

1. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect.
2. **Force Majeure.** Neither party will be liable for performance delays or for non-performance due to causes beyond its reasonable control; however, this provision will not apply to Subscriber's payment obligations.
3. **Headings.** The headings in this Agreement are inserted for convenience only and do not affect its interpretation.
4. **Assignment.** You may not assign this Agreement, whether by operation of law, merger or reorganization or otherwise, without the prior written consent of WSO2; any attempted assignment in violation of the foregoing will be void. WSO2 may assign its rights and delegate its duties under this Agreement without Your written consent in connection with a reorganization, reincorporation, merger, or sale of all, or substantially all of the shares or assets of WSO2 or the business of WSO2 to which this Agreement relates.
5. **Export Compliance / Sanctions.** The Software may be subject to export laws and regulations of the United States and other jurisdictions. The parties represent that each of them is not named on any U.S. Government denied-party list. You will not use the Software in violation of any U.S. export law or regulation.
6. **Complete Agreement.** This Agreement, and any terms, policies, or writings referenced within it, constitutes the final and complete agreement between the parties with respect to the Products, and supersedes any prior or contemporaneous representations or agreements, whether written or oral.
7. **Notices.** Notice may be directed to WSO2 at [legal@wso2.com](mailto:legal@wso2.com).

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8. **WSO2 Contracting Entity, Governing Law, and Venue.** The WSO2 entity entering into this Agreement, the law that will apply in any dispute arising out of this Agreement, and the venue for any dispute depend on where You are domiciled.

If You are domiciled in:	The WSO2 entity entering into this Agreement is:	Governing law is:	Method of dispute resolution is:
United Kingdom, Europe (except for Germany)	WSO2 UK Limited, a company incorporated under the laws of England	English	Arbitration in London, United Kingdom, in accordance with the rules of the International Chamber of Commerce ("ICC")

9. **Agreement to Governing Law and Dispute Resolution.** Each party agrees to the applicable governing law above, and to the exclusive method of dispute resolution. Where the applicable dispute resolution procedure is arbitration, the award rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered in any court of competent jurisdiction. Nothing in the above provision prevents either party from applying to a court of competent jurisdiction for equitable or injunctive relief. Any dispute or other action arising out of this Agreement must be brought within one year of the date the cause of action accrued. An action for nonpayment may be brought within two years of the date of last payment.