opentext™

PROFESSIONAL SERVICES AGREEMENT (UK)

This Professional Services Agreement ("**Agreement**") is between Open Text UK Limited ("**OT**") and Customer Legal Entity Name ("**Customer**"), and is made as of *Pick up PSA Effective Date* ("**Effective Date**").

WHEREAS, OT provides consulting, installation, implementation, configuration and other services and Customer wishes to obtain such services;

NOW THEREFORE, in consideration of the mutual promises contained herein and of other good and valuable consideration, OT and Customer agree as follows:

1. Scope of Services.

1.1 Professional Services. The terms of this Agreement shall govern the professional services provided by OT to Customer ("**Services**") as described in a statement of work ("**SOW**") signed by both parties and referencing this Agreement.

1.2 Order of Precedence. In the event of any conflict or inconsistency between the Agreement and a SOW, the SOW will prevail to the extent it specifically references the parties' intent to override the Agreement.

1.3 Change Orders. SOWs may be amended or modified by written change orders signed by both parties, and thereafter the Services set out in such SOW will be deemed to include the Services described in such change order.

1.4 Provision of Services. The manner and means used by OT to perform the Services are in the sole discretion and control of OT. OT may make use of subcontractors to perform any of its obligations under this Agreement, but OT will remain responsible for the performance of its subcontractors.

1.5 Customer Policies. In advance of the relevant engagement, Customer shall provide OT with copies of any applicable Customer security or other policies. OT will not perform Services unless OT agrees to comply with such policies. OT will not be liable for any delays caused by time needed to review policies, or non-performance to the extent caused by OT inability to comply with any such policies.

1.6 Fees; Schedules; Completion Dates. Dates related to performance described in an SOW are intended as an estimate only, and are not binding completion dates. Changes in scope or circumstances beyond OT's control may necessitate adjustment of previously provided fee and schedule estimates.

1.7 Licensing of OT Software. Under this Agreement, OT is not providing or licensing to Customer any OT software programs or products, except for the deliverables ("**Deliverables**") specified in a SOW. Customer may acquire licenses for other OT software products only under the terms of a separate software license agreement between the parties.

1.8 Customer Cooperation. Customer and OT shall cooperate in good faith to complete the Services in a timely and professional manner. Customer acknowledges that failure to adhere to schedules or complete tasks within Customer's control, or failure to provide timely access to facilities, equipment, technology or complete and accurate information may delay completion of the Services and OT shall not be liable for any delays or inability to complete the Services to the extent caused by Customer's non-compliance with this Section.

1.9 Affiliate SOWs. For the purposes of this Agreement, "**Affiliate(s)**" means any entity controlled by, controlling, or under common control with a party to this Agreement. Control shall exist through ownership, directly or indirectly, of a majority of the outstanding equity capital and of the outstanding shares or other securities entitled to vote generally in elections of directors or similar officials. If an entity ceases to meet these criteria, it shall cease to be an Affiliate under this Agreement. The parties agree that an Affiliate of either party may negotiate and sign a SOW which references this Agreement and is governed by this Agreement. Customer's Affiliates shall be considered the Customer for the purposes of such SOW. In the event that a Customer Affiliate breaches the provisions of such a SOW or breaches the provisions of this Agreement, the Customer shall be liable to OT as if such breach were committed directly by the Customer.

1.10 Right to Perform Services for Others. Subject to OT's compliance with the confidentiality provisions stated herein, nothing in this Agreement shall restrict or limit OT or any OT Affiliate from providing services which may be similar to the Services to any other entity in any industry.

2. Intellectual Property Rights and Ownership.

2.1 Intellectual Property Rights. Each party will retain all ownership rights to its previously existing intellectual property (including but not limited to trademarks, copyrights, patent rights, trade secrets, confidential or proprietary information, techniques, methods, software, technology, plans, designs, and business processes). OT will retain all ownership rights to any work product created in connection with this Agreement, including software, documentation, training or educational materials, inventions, innovations and developments ("**Work Product**"), excluding any of Customer's previously existing intellectual property contained in the Work Product.

2.2 License granted to Customer. With respect to the Work Product or other OT-owned intellectual property provided under a SOW, OT grants Customer a non-exclusive license for the sole purpose of allowing Customer to make use of the Services

and Work Product for its own internal business purposes in the manner contemplated in the applicable SOW. Such license is subject to Customer's payment of all fees and expenses under the related SOW.

3. Limited Warranty.

3.1 Limited Warranty. OT warrants that the Services provided hereunder will be performed using reasonable skill and care consistent with generally accepted computer software industry practices ("**Services Warranty**").

3.2 DISCLAIMER. TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, OTHER THAN THE EXPRESS SERVICES WARRANTY SET OUT ABOVE, OT DISCLAIMS ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS, INCLUDING BUT NOT LIMITED TO WARRANTIES AND CONDITIONS RELATED TO COMPATIBILITY WITH SOFTWARE OR HARDWARE, NON-EXISTENCE OF ERRORS, NON-EXISTENCE OF VIRUSES, MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

3.3 Warranty Claims. In order to receive warranty remedies under the Services Warranty, warranty claims must be reported by Customer to OT in writing within thirty (30) days of the delivery of the related Services. Any modification of the Services not authorized by OT will cause immediate termination of the Services Warranty with respect to the modified Services.

3.4 Warranty Remedy. Customer's sole and exclusive remedy with respect to the Services Warranty will be that OT shall correct the breach of the Services Warranty within a commercially reasonable period of time. At OT's discretion, OT may elect to instead issue a refund of the fees allocable to the portion of the Services which do not satisfy the Services Warranty.

4. Services Fees; Expenses.

4.1 Services Fees; Expenses; Applicable Taxes. Customer agrees to pay OT: (a) the Services Fees set forth in the applicable SOW ("**Services Fees**"); (b) the travel, accommodation, lodging and out-of-pocket expenses reasonably incurred by OT in the course of providing the Services ("**Expenses**"); and (c) any applicable sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate governments arising out of the provision of Services, except taxes imposed on OT's income ("**Applicable Taxes**").

4.2 Time & Materials Model. Unless otherwise set forth in the applicable SOW, the Services Fees shall be calculated using a Time & Materials model. For the purposes of this Agreement, "**Time & Materials**" means that Services Fees will be calculated, invoiced and paid as follows:

4.2.1 Services Fees will be calculated by multiplying the number of hours/days worked by OT in respect of the Services by the applicable hourly/daily rate set forth in the applicable SOW, subject to any additional conditions as described in the SOW (for example, changes in rates for work on weekends or outside of normal business hours);

4.2.2 milestones and acceptance criteria in the applicable SOW shall only be used for project management purposes, and shall not affect OT's ability to invoice the Customer, and Customer's obligation to pay;

4.2.3 Customer is obligated to pay for completed Services as invoiced, regardless of whether all Services in the SOW have been completed; and

4.2.4 any reference to "total estimated services fees and expenses", "total fee", "maximum fee", "fee quote" or "quoted fee" (or other similar phrases) are a good faith estimate of the aggregate Services Fees which is provided for planning and budgeting purposes only, and shall not be interpreted to mean that all of the Services will be provided for an aggregate Services Fee equal to or less than such estimate.

4.3 Invoicing and Payment. OT may invoice Customer as set forth in the applicable SOW for Services Fees, Expenses incurred, and Applicable Taxes. All invoices issued under this Agreement shall be payable net thirty (30) days from the date of invoice. Overdue amounts shall accrue interest at the lesser of two percent (2.0%) per month or the maximum amount permitted by law. OT may, at its option, suspend any ongoing work until any overdue account is brought current.

4.4 Acceptance. If an SOW specifies that an acceptance test applies for a specific Deliverable, OT will notify Customer when the Deliverable is ready for acceptance. Customer will then perform a mutually agreed acceptance test ("A**cceptance Test**") within an agreed upon time period specified in the applicable SOW (the "**Acceptance Period**") to verify that the deliverable functions in accordance with the written specifications of the applicable Schedule. OT will have the right to be present during the Acceptance Test. Acceptance will occur when the Deliverable meets all material requirements of the Acceptance Test. Customer will notify OT promptly in writing of Customer's acceptance. If Customer does not conduct the Acceptance Test and notify OT within the agreed upon time period, or, if no time period is specified, within five (5) business days after delivery of the Deliverable, the Deliverable will be deemed accepted. If Customer notifies OT within the Acceptance Period that the Deliverable does not function in all material respects with the written specifications of the applicable SOW, and describes the deficiencies in sufficient detail for OT to identify or reproduce them, OT will work diligently to correct and redeliver the affected Deliverable.

5. Term and Termination.

5.1 Term. The term of this Agreement ("**Term**") shall commence on the Effective Date and will continue until terminated in accordance with the terms herein.

5.2 Termination of Agreement. Either party may terminate this Agreement by providing written notice of termination to the other party, with the effective date of such termination to be the later of: (i) the date when all SOWs have been terminated, each in accordance with their respective terms and conditions; or (ii) thirty (30) days after such termination notice has been received.

5.3 SOW Term. The term of each SOW ("**SOW Term**") shall be set forth in the applicable SOW.

5.4 Termination for Convenience of a SOW. Either party may terminate an individual SOW for convenience by providing written notice to the other party indicating their intention to terminate at least thirty (30) days in advance of the termination date.

5.5 Termination for Default. Either party may terminate this Agreement for default if the other party commits a material breach of the Agreement, provided (i) the non-breaching party provides the breaching party with written notice of breach and a thirty (30) day period to cure the breach ("**Cure Period**"), and (ii) the breaching party fails to cure the breach by the end of the Cure Period. Any termination of this Agreement shall be without prejudice to each right or remedy which the non-breaching party may possess against the breaching party under this Agreement, at law, in equity, or otherwise.

5.6 Effect of Termination.

5.6.1 SOW. Upon termination of a SOW: (i) OT shall cease to perform the affected Services; (ii) OT may immediately invoice and Customer shall immediately pay all Service Fees, Expenses and Applicable Taxes owed under the terminated SOW; and (iii) Customer shall promptly return to OT all OT software.

5.6.2 Agreement. Upon termination of this Agreement: (i) OT shall cease to perform all Services; (ii) OT may immediately invoice and Customer shall immediately pay all Service Fees, Expenses and Applicable Taxes owed under the terminated SOWs; and (iii) Customer shall promptly return to OT all OT software.

5.7 Surviving Sections. The obligations of any party that have been incurred prior to the effective date of termination (including, without limitation, the obligations of Customer regarding payment of Services Fees, Expenses, and Applicable Taxes), and other provisions of this Agreement that by their nature extend beyond the expiration or termination of this Agreement (including, without limitation, the Limitation of Liability Sections of this Agreement), shall continue in full force and effect notwithstanding the expiration or termination of this Agreement and whether or not an invoice has been rendered with respect thereto.

6. Confidentiality. By virtue of this Agreement, each party (a "**Disclosing Party**") may disclose to the other party (a "**Receiving Party**") information that is confidential and otherwise proprietary ("**Confidential Information**"). Subject to the exceptions listed below, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential or confirmed as confidential in writing within thirty (30) days of disclosure, as well as Deliverables, Work Product and any information that, due to the circumstances under which it is disclosed, a reasonable person would infer as confidential. Confidential Information does not include any information that: (a) is or becomes a part of the public domain through no act or omission of the Receiving Party; (b) was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (d) is independently developed by the Receiving Party by employees or agents without use of the Disclosing Party's Confidential Information. Each party agrees, for the term of this Agreement and for five (5) years after its termination, to hold the other party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties (other than professional advisers who are bound by appropriate obligations of confidentiality) unless authorized to do so by the Disclosing Party, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each party agrees to take reasonable steps to protect the other party's Confidential Information to prevent such Confidential Information from being disclosed, distributed or used in violation of the provisions of this Agreement. The foregoing prohibition on disclosure of Confidential Information shall not apply to the extent Confidential Information is required to be disclosed by the Receiving Party as a matter of law or by order of a court or by a regulatory body, provided that the Receiving Party (unless legally prohibited) promptly notifies the Disclosing Party so that it may seek an appropriate protective order. OT does not intend to have access to personally identifiable information ("**PII**") of Customer in providing services. To the extent OT has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. OT will use any PII to which it has access strictly for purposes of delivering the services ordered.

7. Limitation of Liability; Infringement Indemnity.

7.1 DISCLAIMER OF DAMAGES / LOSSES. IN NO EVENT SHALL OT BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING IN NEGLIGENCE) FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, NOR FOR LOSS OF PROFITS, LOSS OF REVENUE, INTERRUPTION OF BUSINESS, LOST OR DAMAGED DATA, OR COSTS OF REPROCUREMENT OF SUBSTITUTE SERVICES, EVEN IF OT HAS BEEN ADVISED OF THE POSSIBILITY OF THE FOREGOING.

7.2 LIMITATION OF LIABILITY. DURING EACH TWELVE (12)-MONTH PERIOD DURING THE TERM OF THIS AGREEMENT COMMENCING ON THE DATE THIS AGREEMENT IS SIGNED BY BOTH PARTIES AND THEN ON EACH ANNIVERSARY THEREOF (EACH SUCH 12 MONTH PERIOD BEING A "CONTRACT YEAR"), IN NO EVENT SHALL OT'S LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY SOW EXCEED THE AMOUNT OF FEES PAID

BY CUSTOMER UNDER THE APPLICABLE (OR MOST CLOSELY RELATED) SOW DURING SUCH CONTRACT YEAR IN WHICH THE CLAIM ACCRUES, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

7.3 NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT OT'S LIABILITY FOR: (I) DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE; (II) FRAUD OR DECEIT; OR (III) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED BY APPLICABLE LAW.

7.4 Infringement Indemnity.

7.4.1 Indemnity. OT will defend Customer from any claims, suits, actions or proceedings brought against Customer in a court of competent jurisdiction in a Covered Country (defined below) by a third party which allege an infringement of the third party's patent, copyright, or trade secret rights of which OT is aware existing under the laws of a Covered Country ("**Infringement Claim**"), to the extent the Infringement Claim arises solely as a result of Customer's use of the Work Product in accordance with this Agreement and the applicable SOW, and provided the alleged infringement was not caused by: (a) Customer's detailed technical specifications; (b) the modification of the Work Product by any party other than OT; (c) the combination or use of the Work Product with software, hardware, firmware, data, or technology not licensed to Customer by OT or approved by OT in writing; or (d) unauthorized use of the Work Product by Customer. For the purpose of this Section, "**Covered Country**" means each contracting party to The Patent Cooperation Treaty (currently published at http://www.wipo.int/pct/en/).

7.4.2 Exclusions. OT's obligations in the this Section are conditioned upon: (a) Customer notifying OT in writing within ten (10) days of Customer becoming aware of an Infringement Claim; (b) Customer not making any admission against OT's interests unless made pursuant to a judicial request or order; (c) Customer not agreeing to any settlement of any Infringement Claim without the prior written consent of OT; (d) Customer, at the request of OT, providing all reasonable assistance to OT in connection with the defense, litigation, and settlement by OT of the Infringement Claim; and (e) OT having sole control over the selection and retainer of legal counsel, and over the litigation or the settlement of each Infringement Claim. OT will indemnify Customer from any judgment finally awarded, for which all avenues of appeal have been exhausted, or any final settlement in connection with any Infringement Claims, provided all the conditions of this Section are satisfied.

7.4.3 Customer's Continued Use. If the Work Product becomes the subject of an Infringement Claim, OT will, in its absolute discretion, either (a) obtain a license for Customer to continue using the Work Product, (b) replace or modify the Work Product without unreasonable degradation in functionality, or (c) terminate the license to the infringing portion of the Work Product and refund the portion of the fees received by OT and attributable to the infringing portion of the Work Product. OT's entire liability and Customer's sole and exclusive remedy with respect to any Infringement Claims are limited to the remedies set out in this Section.

8. Miscellaneous Provisions.

8.1 Non-Solicitation. Customer agrees that at any point during the term of the related SOW and for twelve (12) months thereafter, it will not, either directly or indirectly (for example, through a third party recruiter) solicit for employment or similar relationship, any employee or contractor of OT who has performed Services for Customer. The foregoing shall not apply if such individuals respond without Customer's encouragement to Customer's general recruitment activities including employment advertisements, job postings, or similar, provided they do not specifically target such individuals.

8.2 Independent Contractors. OT and Customer are independent contractors. Neither OT nor Customer shall have any authority to bind the other in any manner.

8.3 Waiver. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver of any provision of this Agreement is binding on either party unless set out in a mutually signed written waiver.

8.4 Assignment. Neither this Agreement nor any SOW may be assigned or transferred by Customer, in whole or in part, whether by operation of law, change of control or in any other manner, without OT's prior written consent.

8.5 Vienna Convention. All provisions of the United Nations Convention on Contracts for The International Sale of Goods are hereby rejected by the parties and excluded from this Agreement in their entirety.

8.6 Governing Law. This Agreement shall be governed by the laws of England excluding its conflicts or choice of law rules. Except for a request by OT for injunctive or other equitable relief, any dispute arising out of this Agreement will be subject to the exclusive jurisdiction of the courts of England. If Customer or OT commence any litigation or proceeding against the other related to this Agreement, the prevailing party shall be entitled to an award of its reasonable legal fees and court costs.

8.7 Force Majeure. Except for (i) payment obligations, or (ii) any obligations relating to the protection of or restrictions applicable to the other party's Confidential Information or intellectual property, neither party shall be liable to the other or in breach of this Agreement due to any failure or delay in performance of its obligations to the extent the failure or delay arises (and only for the duration that the affected party is precluded from performing) as a result of acts of God, fire, disaster, explosion, vandalism, adverse weather conditions, labor disputes or disruptions, epidemics, wars, national emergencies, civil disturbances, shortages of materials, actions or inactions of government authorities, terrorist acts, border delays, failures or

interruptions of utilities or telecommunications equipment or services, system failures or any other cause that is beyond the reasonable control of that party.

8.8 Severability. Should any provision of this Agreement be deemed contrary to applicable law or unenforceable by any court of competent jurisdiction, the provision shall be considered severed from this Agreement but all remaining provisions shall continue in full force.

8.9 Export Laws. The Services (which for purposes of this Section include related Deliverables) may be subject to export control laws of the United States or other countries. Customer agrees to comply strictly with all applicable export regulations including, but not limited to (i) the Export Administration Regulations maintained by the U.S. Department of Commerce, and (ii) the trade and economic sanctions maintained by the U.S. Department of Treasury Office of Foreign Assets Control, and will not allow use of the Services in a manner that breaches or facilitates the breach of such regulations. Customer has the responsibility to obtain licenses to export, re-export, or import Services, including deemed exports. The Services shall not be used by anyone: (a) located in U.S. embargoed countries or by any Foreign National of a U.S. embargoed country; or (b) included on the U.S. Treasury Department's list of Specially Designated Nationals; or (c) included on the U.S. Department of Commerce's Denied Persons or Entity List. By using the Services, Customer represents and warrants that neither Customer nor any person provided access to the Service by Customer is located in any such country or on any such list..

8.10 Press Release. Customer agrees OT may use and disclose Customer's name and the nature of this Agreement and associated SOWs in OT public press releases and marketing materials.

8.11 Entire Agreement. This Agreement, together with each written schedule, SOW, change order, amendment or addendum to this Agreement signed by OT and Customer, sets forth the entire agreement between OT and Customer, and supersedes all prior related oral and written agreements and understandings between the parties with respect to the subject matter hereof. It is expressly agreed that if Customer issues a purchase order or other document in connection with this Agreement, such document will be deemed to be for Customer's internal use only and any provisions contained therein shall not amend or be used in interpreting this Agreement. This Agreement shall only be amended by a written document signed by OT and Customer stating such document is an amendment or an addendum hereto. The headings used in this Agreement are for convenience only and do not in any way limit or otherwise affect the meaning of any terms of this Agreement. In the event any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect.

8.12 Third Party Rights. No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person or entity who is not a party to this Agreement; provided that either party's Affiliate which enters into a SOW shall be deemed a party to the Agreement for the purposes of that SOW.

8.13 Calculation of Dates. For the purposes of this Agreement, a day shall mean a calendar day.

8.14 Counterparts. This Agreement may be executed (by original or facsimile) by the parties in one or more counterparts, each of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each party and delivered to the other party

8.15 Notices. Communications related to the performance of Services under a SOW should be sent to the contact persons listed in the relevant SOW. All notices under this Agreement or any SOW will be given by electronic means (email or fax), by overnight courier services, or by mail to a party at its address set forth above, or such other address as it may substitute by notice to the other party, and will be effective upon receipt.

For OT:	For Customer:
Open Text UK Limited 420 Thames Valley Park Drive RG6 1PT, Reading, England	Customer Legal Entity Name Address Address
Attn: General Counsel	Attn: Customer Contact Person

Open Text UK Limited	Customer Legal Entity Name
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____