

**opentext**<sup>™</sup>

The Information Company<sup>™</sup>

# Professional Services Programs Agreement

(Americas except Brazil and Mexico)

## Overview

OpenText provides specialty Optimize Service Programs through the Professional Services group. For the purposes of this Agreement, Optimize Service Programs include, but are not limited to, Optimize Services Program, Optimize Services Program with assigned Technical Lead, and Optimize Assist, (hereinafter, the “**Services**”).

OpenText will perform such Services to its customers (“Customer”) under the terms and conditions as set forth in this Agreement (“Agreement”) and corresponding Services handbook (“Handbook”), located at [www.opentext.com/agreements](http://www.opentext.com/agreements). In the event of a discrepancy between the terms in this Agreement and the terms of any other negotiated and signed agreement between Customer and OpenText, the terms of such negotiated, signed agreement shall govern, but only with respect to the terms under this Agreement.

This Agreement is OpenText's standard document used by thousands of customers who purchase Services from OpenText. Since this document is designed specifically to address delivery of our Services and includes guidelines and minimum terms and conditions required by OpenText in order to sell Services, this is the document that OpenText must use. Given the standard nature of the Services included in this Agreement, OpenText has not built any additional costs into the price quoted to handle custom contract or terms and conditions negotiations.

## Contact Information

### OpenText Optimize Services Programs

[Optimize@OpenText.com](mailto:Optimize@OpenText.com)

## Terms and Conditions

**General.** Customer agrees that by purchasing OpenText services, the following terms and conditions govern OpenText's provision of the Services in connection with Optimize Services Programs. Customer must provide any relevant Customer security policies or other policies to OpenText in advance of the delivery of the Services; OpenText will not be obligated to perform the Services unless Open Text is in agreement with such policies, and will not be responsible for any delays in scheduling or performance caused by time needed to review Customer's policies. Customer acknowledges that these services are acquired separately from any OpenText program licenses. Any Customer purchase order terms and conditions which purport to amend or modify terms herein are rejected by OpenText and shall have no effect on OpenText's obligation to provide Services as described in the applicable Handbook, located at [www.opentext.com/agreements](http://www.opentext.com/agreements).

**Intellectual Property Rights.** Both Customer and OpenText 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). OpenText will own any work product created in connection with the Services, including software, documentation, training or educational materials, inventions, innovations and developments ("**Work Product**"), except that OpenText will gain no ownership rights in any of Customer's previously existing intellectual property contained in the Work Product. With respect to Work Product or OpenText-owned intellectual property provided in connection with the Services, OpenText grants Customer a non-exclusive, non-transferable and non-assignable license for the sole purpose of

allowing Customer to make use of the Services for its own internal business purposes in the manner contemplated in this Agreement. Such license is subject to Customer's payment of all fees and expenses due for the Services. OpenText will not be restricted in its ability to reassign OpenText personnel who have provided services hereunder to similar engagements for other clients and may use any ideas, concepts, know-how and expressions embodied within the Work Product.

**LIMITATIONS.**

Unless otherwise agreed between the Parties in the maintenance agreement or EULA, OpenText warrants that it will perform the applicable Services described in the Order Form using reasonable skill and care consistent with generally accepted software industry practices. ("Services Warranty").

In order to receive warranty remedies, warranty claims must be reported by Customer to OPENTEXT in writing within 30 days of the delivery of the related Services. Any modification of the Services not authorized by OPENTEXT will cause immediate termination of the Services Warranty with respect to the modified Services. Customer's sole and exclusive remedy with respect to the Services Warranty will be that OPENTEXT shall re-perform the Services within a commercially reasonable period. At OPENTEXT's discretion, OPENTEXT may elect instead to issue a refund of the fees allocable to the portion of the Services which do not satisfy the Services Warranty.

OTHER THAN THE EXPRESS SERVICES WARRANTY SET OUT ABOVE, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS. UNLESS OTHERWISE AGREED TO IN WRITING IN A NEGOTIATED AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, OPENTEXT DISCLAIMS ANY AND ALL EXPRESSED, STATUTORY OR IMPLIED WARRANTIES.

UNLESS OTHERWISE AGREED TO IN WRITING IN A NEGOTIATED AGREEMENT, OPENTEXT'S TOTAL LIABILITY WHICH RELATES IN ANY WAY TO THE PROVISION OF THE SERVICES SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE FEES PAID BY THE CUSTOMER FOR THE APPLICABLE SERVICE UNDER THE RELATED ORDER FORM FROM WHICH THE LIABILITY ARISES. .

IN NO EVENT SHALL OPENTEXT BE LIABLE UNDER OR IN CONNECTION WITH THE DELIVERY OF SERVICES PURSUANT TO 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 OPENTEXT HAS BEEN ADVISED OF THE POSSIBILITY OF THE FOREGOING.

IF THE APPLICATION OF THIS SECTION IS LIMITED BY LAW, OPENTEXT'S LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

OpenText's obligation to address Customer's issues shall be strictly limited to those obligations described in this Agreement.

**Services Fees, Expenses and Applicable Taxes.** Customer agrees to pay OpenText: (a) the Services fees ("**Services Fees**") set forth in a quote issued by OpenText for the Services (and either signed by Customer or against which Customer has issued a purchase order) ("**Order Form**"), (b) the travel, accommodation, lodging and out-of-pocket expenses reasonably incurred by OpenText 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 OpenText's income ("**Applicable Taxes**").

**Validity Period of Services.** All Services purchased are valid for a period of one year from the date of purchase. There are no refunds or extensions. Any Services that remain unused after one year from date of purchase will be cancelled and void.

**Invoicing and Payment.** OpenText will invoice Customer in advance for Services Fees and may invoice Customer in arrears on a monthly basis for Expenses incurred. All invoices issued under this Agreement shall be payable thirty (30) days from the date of invoice. Overdue amounts shall accrue interest at the lesser of two percent (2%) per month or the maximum amount permitted by law. OpenText may, at its option, suspend any ongoing work until any overdue account is brought current.

**Purchase Orders.** If Customer's procedures require invoices be submitted against a purchase order, Customer will be responsible for issuing such purchase order prior to the commencement of the provision of the Services.

**Confidentiality.** 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; or (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 access to the Disclosing Party's Confidential Information. Each party agrees, for the period in which the Services are performed and for five (5) years after such period, 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 ensure that such Confidential Information is not disclosed, distributed or used in violation of the provisions of this Section. 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 promptly notifies the Disclosing Party so that it may seek an appropriate protective order or waive compliance with this section.

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

During the term of the provision of Services hereunder and for a period of eighteen (18) months after completion thereof, Customer agrees that they will not, either directly or indirectly, solicit for employment (either direct or indirect) or such other similar relationship, any employee of OpenText or other person providing the services on behalf of OpenText. 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.

**Governing Law.** This Agreement and any dispute concerning the Services delivered pursuant to this Agreement shall be governed by the laws of the State of Delaware, excluding its conflicts or choice of law rules. Notwithstanding the foregoing, if Customer is an entity based in Canada, this Agreement shall be governed by the laws of the Province of Ontario, excluding its conflicts or choice of law rules. If Customer or OpenText commence any litigation or proceeding against the other related to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney's fees and court costs.

**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, storms, 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.

**Export Laws.** Services may be subject to export control laws or regulations. It is the responsibility of Customer to obtain any licenses necessary to export, re-export, or import Services.

**Entire Agreement.** This Agreement and the corresponding Services Handbook sets forth the entire agreement between OpenText and Customer, and supersedes all prior related oral and written agreements and understandings between the parties with respect to the subject matter hereof.

**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.

**Notices.** Any notice under this Agreement must be given by a party in writing and will be deemed effective when sent via FedEx or other commercial courier to the other party's address specified at the beginning of this Agreement, addressed to General Counsel or Chief Legal Officer. Notices with respect to Services should be sent to the contact persons listed on the separate Order Form.

## About OpenText

OpenText enables the digital world, creating a better way for organizations to work with information, on premises or in the cloud. For more information about OpenText (NASDAQ: OTEX, TSX: OTC) visit [opentext.com](http://opentext.com).

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