

# OPENTEXT

## OPEN TEXT PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is between the Open Text entity signing the Agreement ("OT") and Animal Health and Veterinary Laboratories Agency ("Customer"), and is made as of the 8<sup>th</sup> day of November, 2013 ("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:

### **1.0 Scope of Services**

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

**1.2 Order of Precedence.** In the event of any conflict or inconsistency between the Agreement and a SOW, the terms of the Agreement shall prevail.

**1.3 Change Orders.** SOWs may be amended or modified by written supplementary change orders signed by both parties, and thereafter the Services set out in such SOW shall be deemed to include the Services described in such supplementary 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, provided that the use of any such subcontractors shall not limit or restrict OT's obligations towards Customer.

**1.5 Customer Policies.** In advance of the relevant engagement, Customer will 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 or non-performance to the extent caused by time needed to review any such policies or inability to comply with the policies.

**1.6 Schedules and Delivery Dates.** OT shall use commercially reasonable efforts to meet the schedules and delivery dates set forth in the applicable SOW but does not guarantee to do so.

**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 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 agree to cooperate in good faith to achieve completion of 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 such 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.

## **2.0 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**"), except any elements of such Work Product that are directly derived from Customer's previously existing intellectual property.

**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, 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 the applicable SOW. Such license is subject to Customer's payment of all fees and expenses under the related SOW.

## **3.0 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.** Other than the express Services Warranty set out above, OT disclaims all other express, implied or statutory warranties, including but not limited to warranties related to title, compatibility with software/hardware, non-existence of errors, non-existence of viruses, merchantability or 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 Open Text shall 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 issue a refund of the fees allocable to the portion of the Services which do not satisfy the Services Warranty.

## **4.0 Services Fees and Expenses**

**4.1 Services Fees, Expenses and Applicable Taxes.** For the Services provided by OT, 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 under this Agreement, 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 shall be calculated, invoiced and paid based on the following concepts:

- a) Services Fees shall 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,
- b) milestones and acceptance criteria set out in the applicable SOW shall only be used for project management purposes, and shall not affect OT's ability to invoice the Customer for applicable Services Fees and Expenses,
- c) Customer is obligated to pay for completed Services as invoiced, regardless of whether all Services in the SOW have been completed, and
- d) any reference to "total estimated services fees and expenses", "total fee", "maximum fee", "fee quote" or "quoted fee" (or other similar phrases) shall be deemed to be a good faith estimate of the aggregate Services Fees which is provided for planning and budgeting purposes only, and shall not be deemed to be a binding guarantee 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.** Unless otherwise set forth in the applicable SOW, OT shall be permitted to invoice Customer in arrears on a monthly basis for Services Fees, Expenses incurred, and Applicable Taxes.

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 (2.0%) 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 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. The parties agree that any purchase order terms and conditions which purport to amend or modify terms of this Agreement, or which conflict with this Agreement, shall have no force and effect.

## **5.0 Term and Termination**

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

**5.2 Termination for Convenience.** Either party may terminate this Agreement or any individual SOW for convenience by providing written notice to the other party indicating their intention to terminate. This Agreement or the individual SOW (as the case may be) will automatically terminate thirty (30) days following the delivery of such notice.

**5.3 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 each 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.

**5.4 Effect of Termination.** Upon the termination of this Agreement, any SOW that is not expressly terminated at the same time in accordance with the terms herein shall continue to be governed by this Agreement as if this Agreement had not been terminated. In addition, upon termination of a SOW, OT may immediately invoice Customer for all applicable Services Fees, Expenses incurred and Applicable Taxes related to the Services provided by OT up to the date of termination, and Customer shall pay such invoice in accordance with the terms of this Agreement.

**5.5 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 and Expenses), and other provisions of this Agreement that by their nature extend beyond the expiration or termination 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.

## **6.0 Confidentiality**

**6.1 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; 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 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 ensure that such Confidential Information is not 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 promptly notifies the Disclosing Party so that it may seek an appropriate protective order or waive compliance with this section.

#### **7.0 Limitation of Liability**

**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.** 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, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

**7.3 EXCLUSIONS FROM LIMITATIONS.** NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE; (B) FRAUD OR DECEIT; OR (C) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED BY APPLICABLE LAW.

#### **8.0 Right to Perform Services for Others**

**8.1 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 from providing services which may be similar to the Services to any other entity in any industry.

#### **9.0 Miscellaneous Provisions**

**9.1 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 in the event 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.

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

**9.3 Waiver, Amendment, Assignment.** 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. 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. This Agreement may be assigned by OT to an Affiliate of OT or to a successor-in-interest/title of OT without consent. This Agreement shall not be assigned by Customer, in whole or in part, and whether by operation of law, change of control or in any other manner, without OT's prior written consent.

**9.4 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.

**9.5 Governing Law.** This Agreement shall be governed by the laws of England and Wales, excluding its conflicts or choice of law rules. Except for injunctive relief required by either party to protect its intellectual property (which may be sought in any relevant jurisdiction), all related litigation shall occur in the courts located in such jurisdiction. 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 attorneys fees and court costs.

**9.6 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, storm, adverse weather conditions, strikes, labor disputes or disruptions, epidemics, wars, national emergencies, riots, civil disturbances, shortages of materials, actions or inactions of government authorities, terrorist acts, lockout, work stoppages or other labor difficulties, 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.

**9.7 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.

**9.8 Export Laws.** Services may be subject to export control laws, including the U.S. Export Administration Act and its associated regulations. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Services.

**9.9 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.

**9.10 Entire Agreement.** This Agreement, together with each written schedule, SOW, amendment or written addendum to this Agreement signed by OT and Customer, sets forth the entire agreement between OT and Customer with respect to the subject matter hereof, and supersedes all prior related oral and written agreements and understandings between the parties.

**9.11 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.

**9.12 Legal Review and Interpretation.** It is acknowledged that this Agreement was initially prepared by OT. Both parties, however, have had an opportunity for legal review of all terms. The parties therefore agree that, in interpreting any issues which may arise, any rules of construction related to who prepared the Agreement shall be inapplicable, each party having contributed or having had the opportunity to clarify any issue. In addition, 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.

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

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

**Open Text UK Limited**

**Animal Health and Veterinary Laboratories Agency**

Name:

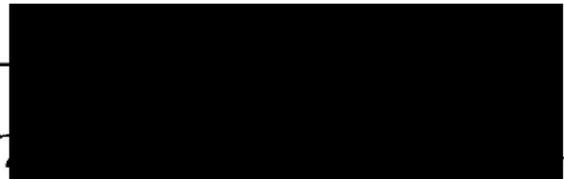


Title:

Date:

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Name:



Title:

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