

# [@CONTRACTNAME@]

This Software Maintenance Agreement, dated [@STARTDATE@] **(the "Agreement**") is between [@INTERNALPARTY@]. ABN 98 071 903 010, Level 6, 80 Pacific Highway, North Sydney, New South Wales 2060 Australia (“**Open Text**”) and [@EXTERNALPARTY@], 56 Wallaby way, Sydney, Australia(“**Licensee**”)

**Recitals**

Open Text owns or controls certain proprietary computer programs and related documentation;

Open Text and Licensee have entered into a written software license agreement wherein Open Text has granted to Licensee certain non exclusive, non assignable, non transferable, object code licenses to use the specific computer software and documentation described in such License Agreement ("**Licensed Software**");

Open Text offers its licensees the opportunity to purchase certain maintenance services for the Licensed Software;

Licensee wishes to purchase maintenance services from Open Text related to the Licensed Software for the period hereinafter described;

NOW THEREFORE, in consideration of the mutual covenants contained herein, Open Text and Licensee agree as follows:

1. **Definitions.**

The following defined terms shall have the following meaning:

"**Anniversary Date**" means the calendar date each year on which each Subsequent Maintenance Year shall begin. The Anniversary Date shall be the calendar date immediately following the end of the First Maintenance Year and shall remain the same during the Term;

"**SMP Handbook**" means Open Text's then current "Software Maintenance Program Handbook", a copy of the current version of such is attached hereto as Schedule "B" to this Agreement. Open Text may modify the SMP Handbook from time to time at its discretion;

"**First Maintenance Year**" means that period of time commencing on the date of the Covered Software is shipped by OTC to the Licensee and ending three hundred and sixty (365) calendar days thereafter;

"**License Agreement**" means a written software license agreement entered into between Open Text and Licensee wherein Open Text has granted to Licensee certain non exclusive, non assignable, non transferable, object code licenses to use the specific computer software and documentation described in such License Agreement;

“**Licensed Software**” means each computer program licensed by Open Text to Licensee pursuant to the License Agreement, including all documentation provided, or made available, by Open Text to Licensee under the License Agreement. The term “Licensed Software” shall also include all bug fixes, error corrections, maintenance releases, updates, new releases, and other computer software supplied by Open Text to Licensee pursuant to this Agreement, as well as all documentation supplied by Open Text to Licensee pursuant to this Agreement;

"**Maintenance Services**" means, in relation to the Licensed Software, the particular standard services described in the then current SMP Handbook, or if the parties expressly agree, as described in an alternate or additional written document attached as an exhibit to this Agreement which is signed by the parties;

"**Maintenance Fees**” shall mean those fees, applicable taxes, and other amounts due to Open Text from Licensee pursuant to this Agreement for the provision by Open Text to Licensee of Maintenance Services related to the Licensed Software;

**"Subsequent Maintenance Year**" means, during the Term, each twelve (12) month period beginning on an Anniversary Date and ending three hundred and sixty five (365) calendar days thereafter, or as otherwise agreed by the parties;

"**Term**" means the term of this Agreement, as described in Section 14 of this Agreement.

1. **Open Text To Offer Maintenance Services During The Term.**

Subject to the provisions of this Agreement, Open Text agrees to offer the Licensee the opportunity to purchase Maintenance Services from Open Text during the: (a) First Maintenance Year; and/or (b) during each Subsequent Maintenance Year occurring during the Term.

Open Text agrees to provide Maintenance Services to the Licensee in accordance with the provisions of this Agreement, provided that Licensee properly fulfills its obligations to Open Text under: (a) the License Agreement; and (b) this Agreement; and (c) under each other agreement entered into between Open Text and Licensee at any time or times.

1. **All Maintenance Services To Be In Accordance With SMP**

**Handbook.**

All Maintenance Services purchased, from Open Text, by Licensee pursuant to this Agreement shall be provided by Open Text solely in accordance with the provisions of the then current SMP Handbook. Open Text shall have no obligation to Licensee to provide any maintenance, support, and/or other assistance to the Licensee related to the Licensed Software beyond that stated in the SMP Handbook, howsoever arising.

1. **Maintenance Services Exclusions.**

Open Text shall have no responsibility to provide Maintenance Services to the Licensee with respect to any problem or problems with the Licensed Software caused by: (a) incorporation into, or attachment to, the Licensed Software of any feature, software, device, or other product not supplied by Open Text; (b) accident, transportation, neglect, misuse, alteration, modification, and/or enhancement to the Licensed Software caused by any party other than Open Text; (c) failure of the Licensee to provide a suitable installation or operating environment for the Licensed Software; (d) use of the Licensed Software for any purpose other than the purpose for which it was designed; (e) use of the Software on any computer platform other than the platform authorized by Open Text; (f) failure of the Licensee to install and incorporate any Maintenance release provided by Open Text which corrects such problem or problems; (g) third party software whether supplied by Open Text as part of the Licensed Software or otherwise; (h) incorporation into, or attachment to, the Licensed Software of any feature, software, device, method of installation, method of configuration, or other product supplied by Open Text’s consulting services organization; and/or (i) any breach by Licensee of any of the provisions of the License Agreement and/or this Agreement.

Open Text reserves the right to advise Licensee from time to time to use Open Text's consulting services organization for additional assistance in resolving problems with the Licensed Software which fall outside the scope of this Agreement. All such consulting services requested by Licensee will be subject to Open Text's then current consulting fees and terms and conditions.

Maintenance Services shall only be provided with respect to the specific Licensed Software, which OTC and the Licensee have agreed in writing (the “**Covered Software**”), and for no other software.

1. **Determination Of Maintenance Year and Subsequent Maintenance Years.**

The First Maintenance Year shall commence on the date the Covered Software is shipped by OTC to the Licensee and shall end three hundred and sixty five (365) calendar days thereafter. Each Subsequent Maintenance Year during the Term shall begin on the Anniversary Date and end three hundred and sixty five (365) calendar days thereafter, or as otherwise agreed by the parties.

1. **First Year Maintenance Services.**

The Licensee agrees to purchase Maintenance Services from Open Text for the First Maintenance Year for all Licensed Software.

1. **Subsequent Years Maintenance Services.**

Unless the Licensee provides written notice to the contrary to OTC at least 90 days prior to the Anniversary Date, the Licensee shall be deemed to have purchased Maintenance Services from Open Text for the Subsequent Maintenance Year that shall be governed by the terms of this Agreement.

If Licensee at any time or times elects not to purchase Maintenance Services from Open Text for any Subsequent Maintenance Year and Licensee later wishes to resume its purchase of Maintenance Services from Open Text, Open Text reserves the right to charge the Licensee for Open Text's then standard maintenance upgrade fees in order to bring the Licensed Software up to the maintenance standard then supported by Open Text. All such maintenance upgrade fees shall be in addition to the normal Maintenance Fees charged by Open Text to the Licensee for the Subsequent Maintenance Year in which Licensee wishes to resume Licensee's purchase of Maintenance Services from Open Text.

1. **Licensee Contact Point.**

Licensee shall identify in writing to Open Text one primary and two alternate Point of Contact to act as the primary technical liaison responsible for communicating with Open Text on all Maintenance Services communications. Each Licensee contact shall have sufficient technical expertise, training, and/or experience for Licensee to properly perform Licensee's obligations to Open Text hereunder.

1. **Payment Of Maintenance Fees.**

Licensee agrees to pay to Open Text in a proper and timely manner all Maintenance Fees as set out in Schedule A to this Agreement, or in the event that the parties do create a Schedule A, as set out in applicable invoice delivered by Open Text to the Licensee. All amounts due with respect to the First Maintenance Year are due and payable upon delivery of the applicable invoice to the Licensee. Open Text shall be permitted to deliver the invoice relating to the entire First Maintenance Year Maintenance Fee any time on or after the date of this Agreement. All amounts due with respect to Subsequent Maintenance Years are due and payable upon delivery of the applicable invoice to the Licensee. Open Text shall be permitted to deliver the invoice relating to the entire Subsequent Maintenance Year Maintenance Fee any time within the 60-day period preceding the commencement of said Subsequent Maintenance Year. Open Text shall be entitled to charge interest on all amounts overdue by more than 30 days at the rate of one and one-half percent per month until such time as Open Text receives full payment from Licensee of such overdue amounts. In addition, any failure of Licensee to pay any amounts within thirty days of the date when they became due shall allow Open Text to suspend the provision of any or all Maintenance Services until such time as all overdue amounts have been paid.

1. **Limited Warranty.**

Open Text warrants to the Licensee that Open Text will supply the Maintenance Services substantially in accordance with the provisions of the then current SMP Handbook and this Agreement. Open Text's entire liability, and Licensee sole remedy, for breach by Open Text of foregoing warranty shall be limited to Open Text, at Open Text's option: (i) correcting such breach; or (ii) refunding a pro rata share to Licensee of the Maintenance Fees received by Open Text for the Maintenance Year in which the breach occurred.

The terms of this Agreement are in lieu of all other conditions, warranties or other terms concerning the supply or purported supply of, failure to supply or delay in supplying the Maintenance Services which might but for this clause have effect between Open Text and Licensee or would otherwise be implied into or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded (including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or as to the use of reasonable skill and care).

Open text does not warrant that the Licensed Software is, or will be, error free, that all errors will be corrected, that the Licensed Software will run, or operate, on all hardware, or will identify any or all viruses.

All Licensed Software, media and/or documentation provided by Open Text to Licensee under this agreement are provided by Open Text on an “as is” basis.

1. **Limitation Of Liability**

**A.** Nothing in this Agreement shall exclude or limit Open Text's liability for: (i) fraud or the tort of deceit; (ii) death or personal injury caused by negligence; or (iii) any liability which cannot be excluded by law.

**B.** Subject to paragraph 11A, Open Text and its related persons shall have no liability to Licensee or any third party whether in contract, tort (including negligence) or otherwise for any of the following losses or damage (whether such losses or damages were foreseeable, known or otherwise):

(i) loss of revenue, (ii) loss of actual or anticipated profits (including loss of profits on contracts), (iii) loss of the use of money, (iv) loss of anticipated savings, (v) loss of business, loss of opportunity, (vii) loss of goodwill, (viii) loss of reputation, (ix) loss or damage or corruption of data, or (x) any indirect or consequential loss or damage howsoever caused (including, for the avoidance of doubt where such loss or damage is of the type specified in this paragraph 11B).

**C.** Subject to paragraph 11A, Open Text's total liability arising out of or in connection with this Agreement in any Year of this Agreement shall in no event exceed the amount that is 125% of the Maintenance Fees payable for that Year.

1. **Licensed Software Is Licensed Not Sold.**

All of the Licensed Software provided to Licensee pursuant to this Agreement is licensed to Licensee on a non-exclusive, non-assignable, and non-transferable basis in accordance with the provisions of the License Agreement and is not being sold. Subject to the terms of the non exclusive licenses granted to Licensee within the License Agreement, all title, ownership, license, intellectual property, and other rights of every nature and kind in, and to, Licensed all Software supplied by Open Text to Licensee pursuant to this Agreement shall remain with Open Text.

1. **Changes In The Software Maintenance Program.**

Open Text reserves the right: (a) to make changes in the Software Maintenance Program from time to time during the Term upon the provision of notice to the Licensee (notwithstanding the preceding notice shall not be required in the event that the change has the effect of increased the level or quality of services enjoyed by the Licensee); and (b) to discontinue the provision of Maintenance Services under this Agreement, either in whole, with respect to any and/or all of the Licensed Software and to terminate this Agreement at any time after the expiry of the First Maintenance Year upon the provision of sixty (60) calendar days prior written notice to Licensee. If such discontinuance and termination occurs part way through a Subsequent Maintenance Year for which Licensee has already paid all applicable Maintenance Fees to Open Text, Open Text shall rebate such Maintenance Fees to Licensee for such Subsequent Maintenance Year on a pro rata basis.

1. **Term Of This Agreement.**

Unless earlier terminated in accordance with the provisions of this Agreement, the Term of this Agreement shall begin on the date of execution of this Agreement by Open Text and Licensee and shall continue in full force and effect until terminated pursuant to section 15 of this Agreement.

1. **Termination Of This Agreement.**

If Licensee breaches any material provision of this Agreement, Open Text may give written notice of such breach to the Licensee. Without limiting the generality of the foregoing, any failure of Licensee to pay any Maintenance Fees to Open Text when due and payable to Open Text in accordance with the provisions of this Agreement shall be considered to be a breach of a material provision of this Agreement.

If the Licensee fails fully to cure or remedy each such material breach within thirty (30) calendar days of such notice by Open Text, or if the breach by its nature cannot be cured or remedied by Licensee, Open Text may immediately terminate this Agreement upon the provision of written notice of termination to the Licensee.

In addition to the foregoing, Open Text may immediately terminate this Agreement in the event that the License Agreement is terminated for any reason. Similarly, Open Text may immediately terminate this Agreement in the event that the Licensee: (i) becomes insolvent; or (ii) files any assignment in bankruptcy; or (iii) is petitioned into bankruptcy; (iv) is placed into receivership whether voluntary or otherwise, or has a receiver, receiver-manager, or trustee appointed with respect to it or its assets; or (v) seeks the benefit of any statute providing any form of relief or protection from its creditors; or (vi) seeks to liquidate, or dissolve for financial reasons.

The provisions contained in Sections 1, 6, 7, 9, 10, 11, 12, 14, 15, 16, and 17 of this Agreement shall survive any termination or expiry of this Agreement and shall continue in full force and effect notwithstanding any such termination or expiry of this Agreement.

1. **General Provisions.**

**Assignment.**

Licensee shall not assign, or transfer this Agreement or any right or obligation of Licensee under this Agreement, to anyone, including any parent, subsidiary or affiliate of Licensee, or as part of the sale of all or any portion of its business, or pursuant to any merger, consolidation or reorganization, without Open Text's prior written consent, which consent shall not be unreasonably withheld.

**Notices.**

All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or ten (10) calendar days being after deposited in the Australian mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows (or to such other address designated in writing by the recipient)

To Open Text: Open Text Pty Ltd. Level 6, 80 Pacific Highway, North Sydney, New South Wales 2060 Australia ("OTC")

Attention: James Thompson

To Licensee: Innovate Software Pvt. Ltd, 56 Wallaby way, Sydney, Australia

Attention: Mike Philter

Notwithstanding the above, notice required pursuant to section 13(a) of this Agreement may be delivered by email, phone, regular post, courier, verbal notice or posting of a general notice on the Open Text Knowledge Center.

**Governing Law and Jurisdiction.**

This Agreement shall be governed by the laws of New South Wales and the parties shall submit to the exclusive jurisdiction of the Australian.

**Limitation of Actions.**

No action, regardless of form, arising out of this Agreement may be brought by Open Text or Licensee more than one (1) year after the cause of action has arisen.

**Waiver.**

The waiver or failure of Open Text or Licensee to exercise in any respect any right provided herein shall not be deemed a waiver of such right, of any other or future right hereunder, unless such waiver is contained in a written waiver executed by the party negatively affected by such waiver.

**Severability.**

If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, such invalid, illegal, or unenforceable provision shall be deemed severed from this Agreement but all remaining provisions shall continue in full force and effect.

**Headings.**

The headings contained in this Agreement are intended for convenience or reference only and shall not control or affect the meaning or construction of any provisions of this Agreement.

**No Export of Software.**

The Software provided under this Agreement may be subject to certain export or re-export laws in the United States of America and/or Canada, and Licensee shall comply with all such laws, where applicable.

1. **Complete And Entire Agreement.**

Open Text and Licensee acknowledge that they have each read and understood all of the provisions of this Agreement and agree to be legally bound by its provisions. This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. The parties acknowledge that no representation, undertaking or promise was given orally or in writing in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement. Each party acknowledges that it has not relied on any representation, undertaking or promise in entering into this Agreement except as expressly stated in this Agreement. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this Agreement (unless such untrue statement was made fraudulently or was as to a fundamental matter including as to a matter fundamental to that party’s ability to perform its obligations under this Agreement, in which case liability for such untrue statement as to a fundamental matter shall be subject to the limitation contained in Clause 11) and that party's only remedies shall be for breach of contract as provided in this Agreement. In the event of a conflict or inconsistency between the terms of this Agreement and the attached Schedules, the terms of this Agreement shall prevail to the extent of such conflict or inconsistency. There are no third party beneficiaries to this Agreement. This Agreement may not be amended, modified or altered except by written instrument duly executed by Open Text and Licensee. This Agreement shall be read in conjunction with the provisions of the License Agreement previous entered into between Open Text and the Licensee.

**[@EXTERNALPARTY@]**

By:

Name: [@EXTERNALCONTACT@]

Title: CTO

Date: 23rd October, 2011

**[@INTERNALPARTY@]**

By

Name: [@INTERNALCONTACT@]

Title: CIO

Date: 23rd October,2011

**This Is Schedule "A" to the Software Maintenance Agreement Entered Into Between**

**Open Text Pty Ltd., (“Open Text”) and \_**Innovate Software Pvt. Ltd  **(“Licensee”)**

1. **Maintenance Fee**

The following are the Maintenance Fees payable under this Agreement for the provision of Maintenance Services by Open Text for the period or period hereinafter defined:

(a) First Maintenance Year

(b) First Subsequent Maintenance Year

Innovate Software Pvt. Ltd**\_**

By: (Signature)

Name: [@EXTERNALCONTACT@]

Title: CTO

Date: 23rd October, 2011

**OPEN TEXT PTY LTD.**

By (Signature)

Name: [@INTERNALCONTACT@]

Title: CIO

Date: 23rd October,2011

**This Is Schedule "B" to the Software Maintenance Agreement Entered Into Between**

**Open Text Pty Ltd. (“Open Text”) and**  Innovate Software Pvt. Ltd  **(“Licensee”)**

**This Is Schedule "C " to the Software Maintenance Agreement Entered Into Between**

**Open Text Pty Ltd. (“Open Text”) and** Innovate Software Pvt. Ltd  **(“Licensee”)**

Competition and Consumer Act 2010

The Licensee may have rights and be entitled to certain guarantees under Australian Consumer Law which cannot be excluded. In such cases, the contents of this Schedule C shall apply.

Open Text’s goods come with guarantees that cannot be excluded under the Australian Consumer Law. Licensee is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Licensee is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

Services

Where any services (as opposed to Software being licensed) are provided to the Licensee, including Maintenance Services the Licensee’s remedy is limited to receiving the supply of the service again within 90 days of having originally received the services.

Sections 10 and 11 inclusive of this Agreement are subject to the consumer guarantee provisions of the Competition and Consumer Act 2010.

For any warranty or consumer guarantee issue, please contact OT at the address shown at the beginning of this Software Maintenance Agreement or by telephone on +1-800-499-6544.