

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	IP BUSINESS SALE AGREEMENT
CONVEYING PARTY DATA	
Name	Execution Date
OPEN TEXT S.A.	07/01/2016
RECEIVING PARTY DATA	
Name:	OT IP SUB, LLC
Street Address:	1959 UPPER WATER STREET
Internal Address:	SUITE 900
City:	HALIFAX
State/Country:	CANADA
Postal Code:	B3J 2X2
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	15442372
CORRESPONDENCE DATA	
Fax Number:	
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
Phone:	512-637-9220
Email:	dnarvaiz@sprinklelaw.com
Correspondent Name:	SPRINKLE IP LAW GROUP/OPEN
Address Line 1:	1301 W. 25TH STREET, SUITE 408
Address Line 4:	AUSTIN, TEXAS 78705
ATTORNEY DOCKET NUMBER:	OPEN1900-4
NAME OF SUBMITTER:	ARI AKMAL
SIGNATURE:	/ARI AKMAL/
DATE SIGNED:	02/24/2017
Total Attachments: 12	
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IP BUSINESS SALE AGREEMENT

This IP BUSINESS SALE AGREEMENT (the “Agreement”), dated as of July 1, 2016 (the “Effective Date”), is made by and between Open Text S.A., a public limited liability company (*société anonyme*), existing under the laws of the Grand Duchy of Luxembourg, having its registered office at 40, avenue Monterey, L-2163 Luxembourg and registered with the Luxembourg Trade and Companies Register under number B. 154208 (“Vendor”) and OT IP Sub, LLC, a Delaware limited liability company (“Purchaser”).

RECITALS

WHEREAS, Vendor currently conducts the IP Business (as defined below) and is currently the sole member in Purchaser;

WHEREAS, all of the assets of Vendor other than the Excluded Assets (as defined below) are used exclusively or primarily in the IP Business, and all of the liabilities of Vendor other than the Excluded Liabilities (as defined below) relate to the IP Business;

WHEREAS, Vendor wishes to sell all of its assets, other than the Excluded Assets, to Purchaser, on a going concern basis, and Purchaser desires to receive the same from Vendor for a price equal to the fair market value thereof, which will be paid by Purchaser’s assumption of Vendor’s liabilities as further described herein, other than the Excluded Liabilities, and Purchaser’s issuance of four hundred thousand (400,000) additional membership interests in Purchaser to Vendor (the “Additional Purchaser Membership Interests”), on the terms and subject to the conditions set forth herein;

WHEREAS, concurrent with such sale, OT US Sub 1, LLC, a limited liability company organized under the laws of the State of Delaware, United States of America (the “New Member”), is contributing to Purchaser, pursuant to that certain IP LLC Cash Contribution Agreement (the “Cash Contribution Agreement”), ten thousand dollars (USD 10,000), subject to adjustment in accordance with the terms of the Cash Contribution Agreement (the “Contributed Cash”), in exchange for one (1) membership interest in Purchaser (the “New Member Membership Interest”); and

WHEREAS, Vendor, in its capacity as the sole member of Purchaser prior to the contribution contemplated by the IP LLC Cash Contribution Agreement, has authorized Purchaser’s acceptance of the IP Business Assets and the issuance of the Additional Purchaser Membership Interests to Vendor.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth herein, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

In addition to the capitalized terms defined elsewhere in this Agreement, the following capitalized terms in this Agreement have the following meanings:

“Agreed Percentage” means a percentage determined by dividing (a) the number of membership interests of Recipient held by Contributor by (b) the total number of issued membership interests of Recipient, which shall equal four hundred thousand two (400,002), in each case as of the Effective Date and immediately following the consummation of the transactions contemplated by this Agreement and the IP LLC Cash Contribution Agreement.

“Excluded Assets” means (a) the assets owned or licensed by Vendor primarily or exclusively related to the Fulfillment Business and (b) all shares and other ownership interests owned by Vendor in companies and other legal entities as described on Schedule 1.

“Excluded Liabilities” all Liabilities of Vendor that relate primarily or exclusively to the Excluded Assets or the Fulfillment Business.

“Fulfillment Business” means the business of Vendor of fulfilling customer orders itself and providing customer related support.

“Intellectual Property” means all intellectual property rights, including (a) all copyrightable works, all copyrights, in any jurisdiction, whether registered or unregistered, and all applications, registrations and renewals thereof, (b) all inventions and invention disclosures (whether patentable or unpatentable and whether or not reduced to practice), patents and patent applications, in any jurisdiction, together with all reissuances, divisions, continuations, continuations-in-part, extensions, and reexaminations thereof, (c) all know-how, confidential and proprietary information, and trade secrets, including designs, specifications, processes, methods, customer lists, and pricing and cost information, (d) all computer software (including source and object codes, data and related documentation), (e) all trademarks, service marks, trade names, brand names, trade dress, Internet domain names and other identifiers of source or origin, together with all renewals, registrations and applications for registration thereof, in any jurisdiction, and all common-law rights and goodwill associated therewith, and (f) all copies and tangible embodiments of the foregoing in whatever form or medium.

“IP Business” means that certain business related to the ownership and distribution of Intellectual Property to affiliates of Vendor (outside of Canada) for incorporation or usage in products or services provided by affiliates of Vendor (outside of Canada) to customers. For the sake of clarity, the IP Business does not include the Fulfillment Business.

“IP Business Assets” means all assets owned or licensed by Vendor, including without limitation those assets owned or licensed by Vendor that are described on Schedule 2.

“IP Business Personnel” means each of the employees whose primary business functions are related to leadership functions of the IP Business.

“Liabilities” means any direct or indirect liability, indebtedness, claim, loss, damage, demand, deficiency, assessment, penalty, obligation or responsibility of any kind or nature, whether fixed or unfixed, choate or inchoate, primary or secondary, liquidated or unliquidated, secured or unsecured, asserted or unasserted, due or to become due, accrued, absolute, known or unknown, contingent or otherwise.

“Lien” means any lien (statutory or otherwise), pledge, hypothecation, security interest, encumbrance, claim or charge of any kind whatsoever, except such that has been previously disclosed by Vendor to Purchaser.

“Net Asset Value” means the value of the IP Business Assets less the value of the Assumed Liabilities.

ARTICLE II SALE OF THE ASSETS; CONSIDERATION

2.1. Sale of IP Business; Payment of the Purchase Price.

(a) For a purchase price as set forth below, on the terms and conditions set forth in this Agreement, Vendor hereby sells, transfers and delivers to Purchaser, and Purchaser hereby purchases, receives and accepts from Vendor, all of Vendor’s right, title and interest in, to and under the IP Business Assets, on a going concern basis, in each case as and to the extent owned by Vendor as of the Effective Date, free and clear of all Liens. Vendor is retaining, and not selling, all of the Excluded Assets.

(b) The purchase price for the IP Business Assets shall be equal to the fair market value of the IP Business Assets (the “Purchase Price”), which will be paid by (i) Purchaser’s assumption of the Assumed Liabilities together with (ii) Purchaser’s issuance of the Additional Purchaser Membership Interests to Vendor.

2.2. Assumed Liabilities. In consideration of the sale of the IP Business Assets pursuant to Section 2.1, on the terms and conditions set forth in this Agreement, Vendor hereby transfers and assigns to Purchaser, and Purchaser hereby assumes and shall hereafter pay, perform and discharge as and when due, all Liabilities of Vendor (other than the Excluded Liabilities), including any such Liabilities relating to or arising out of the IP Business Assets, whether arising prior to or following the Effective Date (the “Assumed Liabilities”). Vendor is retaining the Excluded Liabilities.

2.3. Additional Consideration for Receipt of the IP Business Sale. In addition to the assumption of the Assumed Liabilities, as additional consideration for the sale of the IP Business Assets to Purchaser, Purchaser is issuing and delivering to Vendor the Additional Purchaser Membership Interests, free and clear of all Liens.

2.4. Further Assurances. Without additional consideration, Vendor shall execute and deliver such other instruments of transfer and documents related thereto and take such other action as may be necessary or reasonably requested by Purchaser in order to more effectively transfer to Purchaser, and to place Purchaser in possession and control of, the IP Business Assets and Assumed Liabilities, or to enable Purchaser to exercise and enjoy all rights and benefits of

Vendor with respect thereto. In addition, Purchaser shall take such actions as may be necessary or reasonably requested by Vendor in order to assure Purchaser's assumption of the Assumed Liabilities.

ARTICLE III REPRESENTATIONS AND WARRANTIES

3.1. Vendor Representations and Warranties. Except as has been previously been disclosed by Vendor to Purchaser: Vendor hereby represents and warrants to Purchaser that, as of the Effective Date, Vendor holds all right, title and interest in and to the IP Business Assets that are owned by Vendor, free and clear of all Liens. By execution and delivery of this Agreement, Purchaser shall receive good and marketable title to the IP Business Assets that are owned by Vendor, free and clear of all Liens.

3.2. Mutual Representations and Warranties. Each party hereby represents and warrants to the other, as of the Effective Date, as follows:

(a) Such party has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery by such party of this Agreement and the performance by it of its obligations hereunder has been duly and validly authorized by such party;

(b) All corporate action on the part of such party necessary for the authorization, execution, and delivery of this Agreement, and the performance of all of its obligations hereunder, has been taken. This Agreement has been duly and validly executed and delivered by such party and constitutes the legal, valid and binding obligation of such party enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general applicability relating to or affecting creditors' rights and by general equitable principles (regardless of whether enforcement is sought in a proceeding of law or in equity);

(c) The execution, delivery and performance of this Agreement will not contravene any existing applicable law or regulation or authorization to which it is subject, any of its constitutive documents or any contract or agreement to which it is party; and

(d) There is no litigation, arbitration or administrative proceeding that is taking place, pending or to the knowledge of such party threatened against it which could have a material adverse effect on its business, assets or financial condition; other than any of the foregoing that has been previously disclosed by such party to the other party.

3.3. No Other Representations or Warranties. Except for the representations and warranties expressly set forth herein, each party disclaims all other representations or warranties, including any implied or statutory representations and warranties, such as merchantability or fitness for a given purpose.

ARTICLE IV
COVENANTS

4.1. Transfer Related Covenants. Subject to the terms and conditions of this Agreement, each party shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper and/or advisable under applicable law or otherwise to promptly consummate and make effective the transactions contemplated by this Agreement.

4.2 Employment Matters.

(a) The parties shall reasonably cooperate in transferring the employment of each of the IP Business Personnel from Vendor to Purchaser, effective as of the Effective Date.

(b) Nothing in this Agreement is intended to or shall be deemed to amend any employment contract of any IP Business Personnel or any provision of any employee benefit plan or other fringe benefit of any party hereto and is not intended to and shall not require any party to continue any employee benefit plan or other fringe benefit beyond the time when it otherwise lawfully could be terminated or modified. Nothing herein expressed or implied by this Agreement shall confer upon any employee or consultant of any party hereto or any legal representative of such person any rights or remedies, including, without limitation, any right to continued employment or to severance.

4.3 Enforcement of Rights under Cash Contribution Agreement. In the event that following the date hereof an adjustment is made to the fair market value of Purchaser, Purchaser hereby agrees to enforce its rights pursuant to Section 3 of the Cash Contribution Agreement to the fullest extent permissible thereunder to cause a corresponding adjustment to be made to the amount paid by New Member for the New Membership Interest (either in the form of an additional cash payment by New Member to Purchaser, or by Purchaser to New Member) such that the amount of Contributed Cash, as so adjusted, equals the Agreed Percentage of the fair market value of Purchaser.

ARTICLE V
MISCELLANEOUS

5.1. Amendments and Waivers; Rights and Remedies. No course of dealing among the parties hereto and no delay on the part of any party hereto in exercising any rights hereunder shall operate as a waiver of the rights hereof. No single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No provision hereof may be waived otherwise than by a written instrument signed by the party or parties so waiving such provision as contemplated herein. No waivers of or exceptions to any term, condition or provision of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision. No amendment to this Agreement shall be valid unless in writing and executed by all parties hereto. All remedies conferred upon each such person by this Agreement shall be cumulative and none is exclusive, and such remedies may be exercised concurrently or consecutively at such person's option.

5.2. Assignment. This Agreement may not be assigned without the prior written consent of the other party. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, nothing in this Agreement is intended to give any person not named herein the benefit of any legal or equitable right, remedy or claim under this Agreement, except as expressly provided herein.

5.3. Headings; Interpretation. The headings of the sections of this Agreement have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof. The words “include,” “includes” or “including” shall be deemed to be followed by the phrase “without limitation.” The parties have participated jointly in the negotiation and drafting of this Agreement with counsel sophisticated in investment transactions. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

5.4. Expenses. Each party hereto shall bear its own expenses incident to the preparation, negotiation, execution and delivery of this Agreement and the performance of its obligations hereunder; provided, that nothing in this Section 5.4 shall relieve any party hereto of any liability resulting from such party’s breach of this Agreement

5.5. Governing Law and Jurisdiction. This Agreement shall be construed in accordance with the internal laws of the State of New York without reference to its conflict of laws principles.

5.6. Counterparts. This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument.

5.7. Severability. If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement and such provision shall be interpreted to the fullest extent permitted by law.

5.8. Notices. All notices, demands, requests, consents, approvals or other communications (collectively, “Notices”) required or permitted to be given hereunder or which are given with respect to this Agreement shall be in writing and shall be personally served, delivered by reputable air courier service with charges prepaid, transmitted by hand delivery, or delivered by email, addressed as notified by one party to the other from time to time. Notice shall be deemed given on the date of service or transmission if personally served or served via email. Notice otherwise sent as provided herein shall be deemed given on the next business day following delivery of such notice to a reputable air courier service. Any party may change its address for Notice by Notice given in accordance with the foregoing. No objection may be made to the method of delivery of any Notice actually and timely received.

5.9. Entire Agreement. This Agreement and all certificates and instruments delivered pursuant hereto or thereto constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreement, representations, understandings, negotiations and discussions between the parties, whether oral or written, with respect to the subject matter hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the duly authorized representatives of the undersigned have executed this IP Business Sale Agreement as of the date first set forth above.

OPEN TEXT S.A.

By: 
Name: Gordon A. Davies
Title: Director

By: _____
Name: John Doolittle
Title: Director

OT IP SUB, LLC

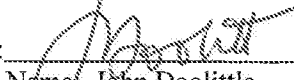
By: _____
Name: Steve Murphy
Title: President

Signature Page to IP Business Sale Agreement -- Step 5B(i)

IN WITNESS WHEREOF, the duly authorized representatives of the undersigned have executed this IP Business Sale Agreement as of the date first set forth above.

OPEN TEXT S.A.

By: _____
Name: Gordon A. Davies
Title: Director

By:  _____
Name: John Doolittle
Title: Director

OT IP SUB, LLC

By: _____
Name: Steve Murphy
Title: President

Signature Page to IP Business Sale Agreement – Step 5B(i)

PATENT
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IN WITNESS WHEREOF, the duly authorized representatives of the undersigned have executed this IP Business Sale Agreement as of the date first set forth above.

OPEN TEXT S.A.

By: _____
Name: Gordon A. Davies
Title: Director

By: _____
Name: John Doolittle
Title: Director

OT IP SUB, LLC

By: 
Name: Steve Murphy
Title: President

SCHEDULE 1

Excluded Assets

1. Shares of StreamServe SARL BV

SCHEDULE 2

IP Business Assets

1. All Intellectual Property primarily or exclusively used in or related to the IP Business;
2. All goodwill relating to the IP Business;
3. All information and records of Vendor primarily or exclusively used in or related to the IP Business, including all business and technical information of or owned by Vendor including, but not limited to, customer lists, general future customer renewal and maintenance entitlements (independent of specific distribution rights provided to affiliates), relationships, general future and designs, concepts, compilations of information, methods, techniques, procedures and processes, whether or not patentable, that is not generally known to other persons who are not subject to an obligation of non-disclosure and that derives actual value from not being generally known to other persons; and
4. The right to employ the IP Business Personnel and all employment contracts with the IP Business Personnel.

Schedule 2 to IP Business Sale Agreement – Step 5B(i)