

**GLOBAL PROCUREMENT  
STANDARD TERMS AND CONDITIONS FOR CANADA**

Rev. 03 August 2020

**1. TERMS AND CONDITIONS**

1.1 These Global Procurement Standard Terms and Conditions (“GP Standard Terms”) are attached to the Global Procurement Master Terms Agreement (“Master Terms”) between the parties. All Products and/or Services provided by the Supplier under the Master Terms may be used for Trade Use or for HPE’s internal business operations, unless agreed otherwise by the parties in the corresponding SOW or Purchase Order.

**2. FINANCIAL TERMS**

2.1 Prices. All prices for Products and/or Services will be specified in a SOW, and will be inclusive of all travel and per diem costs unless otherwise set forth therein.

2.2 Taxes. HPE shall pay or reimburse Supplier for Value Added Tax, GST, PST, Sales and Use or any similar transaction taxes imposed on the sale of Products and/or Services sold to HPE under this Agreement provided the taxes are statutorily imposed either jointly or severally on HPE. HPE shall not pay or reimburse Supplier for any taxes which are statutorily imposed on Supplier including but not limited to taxes imposed on Supplier’s net or gross income, capital, net worth, property, or any employment related taxes on Supplier or Supplier’s Personnel.

Where Services are performed and/or Products are produced, sold or leased by Supplier in the same country as that of use by HPE, an Affiliate of HPE, or HPE Customer, then invoicing and payment shall be by and between such local country entities of the parties, unless otherwise agreed upon by the parties in writing.

If HPE or an Affiliate of HPE is required by law to make any deduction or to withhold from any sum payable hereunder, then the sum payable by HPE or such Affiliate of HPE upon which the deduction is based shall be paid to Supplier net of such legally required deduction or withholding.

2.3 Invoice Submission. No invoice can be dated prior to the date Products and/or Services are delivered to HPE or a Customer, unless the SOW or other exhibit to the Agreement sets forth acceptance criteria, in which case no invoice can be dated prior to acceptance by HPE. Supplier agrees to invoice HPE within thirty (30) days after it has the right to invoice under the terms of the Agreement. In no event may Supplier submit invoices, or any corrections thereof, later than one hundred eighty (180) days after the date which an invoice may first be submitted and such timely submission is a pre-condition to any HPE payment obligation. Each invoice will be submitted to the address set forth in the Purchase Order or as otherwise instructed by HPE when electronic invoicing applies.

2.4 Payment Terms. All invoices provided to HPE related to the purchase of Products and/or Services will be accumulated for a period from the 29th day of a calendar month to the 28th day of the following calendar month (“Accumulation Period”). HPE will initiate payment for conforming invoices, collected during the Accumulation Period, on the first business day of the month nearest to sixty-five (65) days following the end of the Accumulation Period. Any prompt payment discount will be calculated from the date a conforming invoice is received by HPE. Payment will be in Canada currency unless otherwise stated. Payment will not constitute acceptance of Products and/or Services or impair HPE’s right to inspect. Acceptance shall be when HPE deems the Products and/or Services to meet its specified criteria (“Acceptance”). HPE, at its option, and without prior notice to Supplier, shall have the right to set off or deduct from any Supplier’s invoice, any credits, refunds or claims of any kind due HPE.

2.5 Invoice Requirements. Regardless of the method used to transmit an invoice to the HPE designated recipient, a conforming invoice minimally includes: (i) Supplier’s name and invoice date, (ii) the specific Purchase Order number if applicable, (iii) description including serial number as applicable, price, and

quantity of the Products and/or Services actually delivered or rendered, (iv) credits (if applicable), (v) name (where applicable), title, phone number, and complete mailing address and remit address (which may be different from the mailing address) of responsible official to whom payment is to be sent, (vi) other substantiating documentation or information as may reasonably be required by HPE from time to time, and (vii) in such a form so as to meet local tax requirements to ensure deductibility and tax recovery, where applicable. Supplier agrees to separately identify on the invoice the taxable and non-taxable purchases, the types of tax, the applicable tax rate, the amount of tax charged and the taxing authorities.

2.6 Expenses. HPE will not reimburse Supplier for any expense incurred by Supplier unless the expense is reasonable, pre-approved by HPE in writing, and itemized on an invoice within sixty (60) days of the date on which the expense was originally incurred.

2.7 Electronic Invoicing. Except as may be prohibited by Applicable Laws, Supplier will implement an electronic invoicing process upon request by HPE and at Supplier's sole expense, to submit invoices electronically to HPE or HPE's third-party service provider in the electronic format specified by HPE or such third-party service provider. Supplier acknowledges and agrees that use of such process may entail disclosure of information to the service provider about the purchasing relationship between HPE and the Supplier, provided that such service provider is bound by HPE to confidentiality obligations as to Supplier's information substantially similar to those provided under these terms. If Supplier fails to implement the electronic invoicing process within a reasonable time (not to exceed ninety (90) days) after HPE's request, HPE may withhold payment on any invoice not received electronically until such time as Supplier submits the invoice electronically.

### 3. ORDERING, DELIVERY AND ACCEPTANCE TERMS

3.1 Reseller Certificate. Any purchase order issued by HPE under the Agreement for Trade Use purposes will reference a reseller certificate number where applicable.

3.2 Purchase Order Requirement. Supplier will not commence delivery of any Products and/or Services for HPE or incur any related expenses unless it has received an HPE purchase order expressly authorizing such deliveries or expenses. Supplier waives its right to pursue, any fees, costs, loss or damages from HPE in connection with any Services or expense that were commenced or incurred prior to receipt of an HPE purchase order.

3.3 Changes. Upon notice to Supplier, HPE may change any requirement in a SOW relating to undelivered Services or Deliverables. If such change affects the price or schedule, the Supplier will promptly advise HPE of any changes that it deems necessary, the parties will promptly negotiate an equitable charge and amend the SOW. HPE will have no obligation to Supplier for any unauthorized changes to a SOW.

3.4 Title and Risk of Loss. Supplier's delivery of Products to HPE or Customer shall be Delivered Duty Paid.

### 4. RIGHTS GRANTED – LICENSED PRODUCT

4.1 If Products and/or Services include software, firmware or documentation, Supplier grants to HPE a non-exclusive, perpetual, royalty free, worldwide license to use, reproduce, display, prepare derivative works of the documentation and distribute such works, software, firmware or documentation directly or as integrated into HPE products, and to sublicense such rights to third parties. Requirements of Third Party Licenses. Supplier shall identify all licenses and deliver to HPE all materials required to meet the requirements of any licenses for third party software that is included in the Products. Supplier shall deliver to HPE the source code for any software licensed under a license that has a source availability requirement (such as the GNU General Public License). If the source code is not included with the material that Supplier has previously delivered, Supplier shall deliver within seven (7) days after HPE's request the source code for any software licensed under an open source license that has a source availability requirement. Supplier grants HPE the right to duplicate and distribute the materials as necessary.

### 5. DATA SECURITY AND PRIVACY

- 5.1 Supplier will implement and maintain privacy and security measures to protect HPE Data, Services and Products in accordance with the current Data Network Security Schedule & Privacy Schedule on the HPE Supplier Portal. ([https://h20168.www2.hpe.com/supplierextranet/Data\\_Security\\_and\\_Privacy.do](https://h20168.www2.hpe.com/supplierextranet/Data_Security_and_Privacy.do)) HPE reserves the right to modify the content of the Supplier Portal and any website or web addressed referenced therein. Any terms not defined within this document will rely on the definition in the Data Network Security Schedule or Privacy Schedule.
- 5.2 If Supplier is providing Services related to HPE Products which are integrated into HPE Products, Supplier will also comply with HPE'S Supplier Compliance Requirements set forth in the HPE Supplier Portal (<https://h20168.www2.hpe.com/supplierextranet/index.do>)
- 5.3 Supplier shall only collect, store, transfer, share, view, access or otherwise process ("process") HPE Data and access information systems to the extent and manner necessary to provide the Services, software or Products, in accordance with HPE's instructions, including as set out in this Agreement or an SOW. Any access to or use of HPE Information Systems or processing of HPE Data by or on behalf of Supplier for any other purpose shall be deemed a material breach of the Agreement by Supplier. Supplier shall not sell, rent, transfer, distribute, disclose, copy, alter, or remove HPE Data, HPE Information System, or Product unless authorized in writing by HPE. Supplier shall ensure all processing of HPE Data and provisioning of Services and Products complies with all Applicable Laws. If Supplier cannot process HPE Data or provide Services or Products in accordance with such Applicable Laws and these terms then Supplier shall immediately notify HPE in writing.
- 5.4 Supplier shall develop, implement and maintain a comprehensive information security program with information security industry standard safeguards, such as ISO 27001/2, to protect HPE Data against security breach and to provide secure Services or Products.
- 5.5 Supplier shall comply with the security breach notification requirements set out in the Data Network Security Schedule and Privacy Schedule.

## 6. CONFIDENTIAL INFORMATION

HPE Confidential Information. "Confidential Information" means any information or data disclosed that (i) is marked at the time of disclosure as proprietary or confidential, (ii) is concerning or related to HPE's or Customer's products (including the discovery, invention, research, improvement, plans, roadmaps, development, manufacture, or sale thereof), processes, or general business operations (including sales costs, profits, pricing methods, organization, and employee lists), and any information obtained through access to any HPE Information Systems, HPE or Customer technical data, HPE or Customer's customers, the Agreement, any and all pricing information whether or not in the Agreement, (iii) is or concerns any Customer provided information; or (iv) if orally disclosed, is identified at the time of disclosure as proprietary or confidential and is described as such in a written summary delivered to the Supplier within thirty (30) days of disclosure.

- 6.1 HPE Confidential Information Obligations. Supplier will protect, and will ensure its Personnel protect, Confidential Information to prevent the unauthorized use, dissemination, disclosure or publication of Confidential Information. Supplier may disclose Confidential Information only to those of its Personnel who have a need to know and who are under an obligation of confidentiality at least as restrictive as that contained herein. Each such recipient of Confidential Information will be advised of the Supplier's obligations under the Agreement. Confidential Information received may be used only to fulfill the purposes of the Agreement. If the Supplier or any of its Affiliates is requested or required by subpoena, court order, or similar process or applicable governmental regulation to disclose any Confidential Information, the Supplier will provide HPE with prompt notice of such request or obligation so that HPE may seek an appropriate protective order or procedure if it elects to do so. Obligations regarding Confidential Information will survive termination of the Agreement and survive perpetually.
- 6.2 "Supplier Confidential Information" means mutually agreed pricing set forth in this Agreement. HPE will not disclose Supplier Confidential Information to any third party (excluding agents or contractors

performing services on behalf of HPE) without Supplier's written consent. Notwithstanding any other provision in this Agreement, HPE's obligation not to disclose such Supplier Confidential Information will terminate two (2) years after the expiration or earlier termination of the Agreement (or any renewal thereof).

- 6.3 **Exclusions.** The foregoing confidentiality obligations will not apply to Confidential Information that (a) is already known to the receiving party prior to disclosure by the disclosing party; (b) is or becomes a matter of public knowledge through no fault of the receiving party; (c) is rightfully received from a third party by the receiving party without a duty of confidentiality; (d) is independently developed by the receiving party; (e) is disclosed under operation of law; or (f) is disclosed by the receiving party with the prior written approval of the disclosing party.
- 6.4 **Access to Information Systems.** Access, if any, to HPE's or Customer's Information Systems is granted solely to provide the Services and/or Deliverables, and is limited to those specific HPE or Customer Information Systems, access locations, time periods and personnel as are separately agreed to by HPE and Supplier from time to time. HPE or Customer may require Supplier's employees, Subcontractors or agents to sign individual agreements prior to access to HPE's or Customer's Information Systems. Access is subject to HPE and/or Customer business control and information protection policies, standards and guidelines as may be modified from time to time. Supplier agrees to access Information Systems only from specific locations approved for access by HPE. For access outside of HPE or Customer premises, HPE will designate the specific network connections to be used to access Information Systems.

## 7. LIMITATION OF LIABILITY

- 7.1 EXCEPT AS SET FORTH BELOW IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (NOR FOR LOSS OF DATA, PROFITS OR REVENUE, COST OF CAPITAL OR DOWNTIME COSTS), NOR FOR ANY EXEMPLARY OR PUNITIVE DAMAGES, ARISING FROM ANY CLAIM OR ACTION, INCIDENTAL OR COLLATERAL TO, OR DIRECTLY OR INDIRECTLY RELATED TO OR IN ANY WAY CONNECTED WITH, THE SUBJECT MATTER OF THE AGREEMENT, WHETHER SUCH DAMAGES ARE BASED ON CONTRACT, TORT, STATUTE, IMPLIED DUTIES OR OBLIGATIONS, OR OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, ANY PURPORTED LIMITATION OR WAIVER OF LIABILITY SHALL NOT APPLY TO SUPPLIER'S OBLIGATION UNDER THE INDEMNIFICATION, CONFIDENTIAL INFORMATION OR PERSONAL DATA SECTIONS OF THE AGREEMENT OR EITHER PARTY'S LIABILITY TO THE OTHER FOR PERSONAL INJURY, DEATH OR PHYSICAL DAMAGE TO PROPERTY CLAIMS.
- 7.2 EXCEPT AS FURTHER PROVIDED BELOW, NEITHER PARTY'S LIABILITY TO THE OTHER PARTY ARISING OUT OF ANY PERFORMANCE OF THIS AGREEMENT OR IN FURTHERANCE OF THE PROVISIONS OR OBJECTIVES OF THIS AGREEMENT SHALL EXCEED THE GREATER OF (a) \$2,000,000.00 (TWO MILLION DOLLARS) OR (b) FIVE (5) TIMES THE 'APPLICABLE FEES' GIVING RISE TO SUCH DAMAGES. FOR THE PURPOSES OF THIS SECTION, 'APPLICABLE FEES' INCLUDES ALL FEES THAT ARE i) PAID, ii) PAYABLE, OR iii) THAT WOULD HAVE BEEN PAID HAD SUPPLIER FULLY PERFORMED ALL OF ITS OBLIGATIONS UNDER THE AGREEMENT.
- 7.3 NOTWITHSTANDING THE FOREGOING, ANY PURPORTED LIMITATION OR WAIVER OF LIABILITY SHALL NOT APPLY TO SUPPLIER'S OBLIGATION UNDER THE INDEMNIFICATION, CONFIDENTIAL INFORMATION, DATA SECURITY AND PRIVACY SECTIONS OF THE AGREEMENT OR EITHER PARTY'S LIABILITY TO THE OTHER FOR PERSONAL INJURY, DEATH OR PHYSICAL DAMAGE TO PROPERTY CLAIMS.

## 8. INDEMNIFICATION

- 8.1 **Indemnification.** Supplier will defend, indemnify, protect and hold harmless HPE, their Customers and Authorized Users, from and against any and all third party claims, losses, liens, demands, attorneys' fees,



damages, liabilities, costs, expenses, obligations, causes of action, or suits, (collectively "Claims") to the extent that such Claims are caused by (i) any negligent act or omission or willful misconduct of Supplier or its Personnel; (ii) the breach of the Agreement by Supplier or their Personnel (iii) property loss, damage, personal injury or death, caused by Supplier or its Personnel, or (iv) any Claim that Intellectual Property provided by Supplier under the Agreement infringes or misappropriates any third party Intellectual Property Right.

- 8.2 Supplier shall not be responsible for liability under this Section to the proportionate extent that the Claim arose from the negligence, recklessness or willful misconduct of HPE as determined by a court of competent jurisdiction to which HPE has been a party.
- 8.3 HPE shall defend, indemnify and hold harmless Supplier, and its officers, directors, employees, and authorized agents from all claims, suits liabilities, damages, costs and expenses (including reasonable attorney's fees), arising out of a third party claim or proceeding relating to claimed infringements of any third party intellectual property right to information or materials provided by HPE to Supplier in writing or electronic format ("HPE Content"), provided Supplier reasonably used such HPE Content as specified in this Agreement, and that it would not have been reasonable for Supplier to implement or use the HPE Content in such a way as to avoid such claims.
- 8.4 HPE's foregoing defense and indemnification obligations will not apply to the extent the claim of infringement is caused by (a) any alteration, modification or revision of the HPE Content not expressly authorized or produced by HPE, its agents or contractors; (c) Supplier's use of the HPE Content in a manner specifically prohibited under the Agreement or any applicable Statement of Work; or (d) Supplier's use of the HPE Content in combination with any product or information not owned, specified, developed or provided by HPE if HPE did not approve of such use.
- 8.5 Injunction Remedies. If the use of any Licensed Products, Deliverables or any part thereof alone or in combination with other equipment, software, method or service is enjoined, Supplier shall, at its sole expense and option: (i) procure for HPE and Customer the right to continue using the Licensed Products and/or Deliverables; (ii) replace the Licensed Products and/or Deliverables with a non-infringing version of equivalent function and performance; or (iii) modify the Licensed Products and/or Deliverables to be non-infringing without detracting from function or performance. If one of the foregoing remedies are not reasonably available, Supplier shall promptly refund to HPE all fees paid for the enjoined Licensed Products and/or Deliverables, reimburse HPE for any costs incurred by HPE as a result of such injunction, in addition to any other available remedies.
- 8.6 Exclusions. Notwithstanding the foregoing, Supplier will have no responsibility for Claims arising from unauthorized modifications of the Licensed Products and/or Deliverables made by HPE, or use of the Licensed Products and/or Deliverables in combination with any equipment, software or services not provided by Supplier or HPE, provided such IP Claim would not have arisen but for such modification or combination, provided such combination is not reasonably inferable from the nature of the Licensed Products and/or Deliverables, any SOW to the Agreement, any Software Addendum, or Supplier's specifications, written designs or documentation.
- 8.7 Notice. HPE will give Supplier prompt notice of any Claim. If Supplier assumes defense of such Claim without reservation of rights, HPE will provide Supplier the authority, information and reasonable assistance (at Supplier's expense) necessary to defend. Should Supplier not diligently pursue resolution of such Claim or fails to provide HPE with reasonable assurance that it will diligently pursue resolution, then HPE may, without in any way limiting its other rights and remedies, defend the Claim and collect all costs of doing so from Supplier. Any settlement or compromise Supplier desires to enter into will be subject to HPE's prior approval. HPE and any other indemnitee may, in its or their discretion, participate in the defense of such Claim.

## 9. TERMINATION

- 9.1 Termination for Cause. Either party may terminate any Statement(s) of Work and/or Purchase Order(s)

hereunder, by written notice to the other if either party breaches (i) any provision of such Statement(s) of Work and/or Purchase Order(s) or (ii) any provision of the Agreement with respect to such Statement(s) of Work and/or Purchase Order(s), and in either case such breach is not cured within thirty (30) days, or a lesser time if based on requirements of a Prime Agreement, after written notice thereof is received by the breaching party.

- 9.2 Termination without Cause. HPE reserves the right to terminate the Agreement or any Statement(s) of Work and/or Purchase Order(s), in whole or in part, without liability at any time, without cause, upon fourteen (14) days prior written notice to Supplier.
- 9.3 Effect of Termination - Services. Upon termination of any Statement(s) of Work and/or Purchase Order(s), Supplier will immediately provide HPE with any and all work in progress or completed prior to the termination date. As HPE's sole obligation to Supplier resulting from such termination, HPE will pay Supplier an equitable amount as determined by HPE for the partially completed work in progress and the agreed to price for the completed Services and/or Deliverables provided and accepted prior to the date of termination.
- 9.4 Return of Materials. Upon termination of the Agreement or completion of Supplier's performance under an SOW, whichever occurs first, Supplier shall promptly return to HPE all materials and or tools provided by HPE or Customer under the Agreement and all written Confidential Information provided by HPE or Customer to Supplier.

## 10. EXPORT AND IMPORT COMPLIANCE

- 10.1 HPE and Supplier will comply with all applicable export, import and trade-related laws and regulations of Canada and the United States and other nations. To this effect, Supplier warrants that: (i) if necessary and upon HPE's request, it will provide HPE with technical specifications concerning commodities, software, technology or services covered by the Agreement sufficient for HPE to determine the appropriate export and import classification of such items under applicable regulations; (ii) to the best of the Supplier's knowledge, the Supplier is not listed on any Canadian or U.S. Government international trade sanctions lists and that Supplier will give immediate notice to HPE in the event that it is so listed; and (iii) Supplier agrees that before releasing, transferring, or exporting any restricted products, software, technology, technical data or technical assistance to Country Groups D:1, E:1 and E:2 as identified in Supplement No. 1 to Part 740 of the U.S. Export Administration Regulations (see <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>): (i) Supplier will obtain any required US (and Canadian) government authorization; and (ii) if any such restricted software, technology, technical data or technical assistance is provided by HPE, Supplier will obtain written authorization from HPE, and (iii) the Supplier agrees to be the exporter of record and assumes responsibility in complying with all applicable export laws including U. S. export and re-export laws and regulations.

## 11. SOW PROJECT TERMS

- 11.1 Prime Agreement. HPE and Supplier agree that the terms and conditions set forth in the Prime Agreement between HPE and Customer which are applicable to the Services and/or Deliverables ("Flow Downs") shall be binding on Supplier. These Customer Flow Downs and any additional or clarifying details will be set forth in the SOW.
- 11.2 Travel, Permits, Visas, Licenses and Inspections. Supplier will secure and pay for all licenses, permits and inspections necessary for completion of the Services. Upon HPE's request, Supplier will deliver to HPE copies of all permits, written approvals, licenses and inspections promptly after their receipt by Supplier. Supplier shall ensure that all Personnel assigned to work under this Agreement comply with the immigration and work permits laws of the countries where the Services are performed and shall therefore hold the necessary visas, work permits or the like. Supplier shall promptly upon request of HPE provide evidence of compliance with this provision and shall hold harmless and indemnify HPE from and against any consequences of any non-compliance related thereto.

- 11.3 Supplier Certifications and Training. Supplier certifies that Personnel are trained appropriately to perform the Services and, possess the necessary certifications and/or licenses to deliver the Services.
- 11.4 Performance to Schedule. Time is of the essence with respect to all Services and/or Deliverables hereunder.
- 11.5 Supplier Materials and Resources. Unless supplied by HPE, the Customer, or other named third party, it is required that Supplier possess all necessary and appropriate written materials, software, equipment, tools, drawings or schematics, or any other material resources necessary to deliver the Services set forth in the SOW. HPE will not provide any material resources or facilities, unless specifically identified in the SOW.
- 11.6 Hazardous Materials. If provision of Services involves the use, handling, maintaining, removal, transport, or other such actions related to hazardous materials, the Supplier will be responsible for such actions. Supplier must manage any and all hazardous materials in a safe and workmanlike manner, consistent with accepted industry standards and practices and, in accordance with any and all Federal, Provincial, Municipal, or Local laws, codes, or regulations. Supplier will be responsible for the provision, maintaining, and currency of, any permits or licenses required and related to hazardous materials.
- 11.7 Personnel. All Personnel shall be subject to the direction, supervision, and control of Supplier. Supplier will be fully responsible for the acts and safety of Personnel while rendering Services to or for HPE, its officers and employees. Supplier shall enforce strict discipline and good order among its Personnel and shall ensure that all Personnel comply with all applicable provisions of the Agreement. Supplier shall not employ Personnel unfit or unskilled in the work assigned to them. For the avoidance of doubt, Personnel are not employees of HPE. Supplier shall provide for and pay the compensation of its Personnel and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. HPE shall not be liable to Supplier or to its Personnel for Supplier's failure to perform its compensation, benefit, or tax obligations. Supplier shall indemnify, defend and hold HPE harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.
- 11.8 Subcontractors. Supplier will not subcontract any Services and/or Deliverables to other persons or entities without the prior written approval of HPE. Supplier agrees to impose on its Subcontractors the same obligations imposed upon Supplier under the Agreement with respect to safety, security, confidentiality, Personal Data, insurance and insurance certificates, indemnification, HPE's Accessibility Requirements, HPE's Contingent Worker Code of Conduct and HPE's Social and Environmental Responsibility Policy. Supplier shall be responsible and liable for all acts of its Personnel. Compensation for subcontracted services will be included in the fees and costs billed by Supplier according to Section 2 (Financial Terms) of the Agreement.
- 11.9 Background Checks. To the extent allowed by Applicable Law, Supplier will not permit any Personnel to work at any Site unless such Personnel has passed a criminal background check, as specified herein, within the twelve months prior to said Personnel providing Services at any Site. This is an ongoing requirement and Personnel must be checked and pass this criminal background check on a yearly basis. The criminal background check will cover all jurisdictions where Personnel resided or worked during for the following time periods: (i) Criminal background check for felony and misdemeanor records for the past 7 years (or for a lesser time period if restricted by law); (ii) Driving record check for the past 3 years (or for a lesser time period if restricted by law) if driving is a requirement of the Covered Individual's job assignment. Unless otherwise prohibited by Applicable Law, Personnel with a conviction(s) for any of the following crimes, will not be permitted to work at any Site: crimes against persons; crimes involving weapons, explosives or arson; crimes involving the use/misuse of a computer/network; crimes involving trade secret/proprietary information theft, burglary, theft, embezzlement, corruption, bribery, forgery, fraud, receiving stolen property; or crimes involving the possession, manufacture, transportation or sale of illegal drugs and controlled substances.

- 11.10 Prior Employment. Individuals whose prior employment ended as a result of involuntary termination for misconduct on any HPE or Customer premises are not permitted on the Site and Supplier shall not knowingly assign such individual to perform any Services under a SOW without prior written authorization from HPE. Personnel assigned to a SOW must not have been regular employees of HPE at any time during the twelve (12) month period immediately prior to the assigned Personnel's first day of work on the applicable SOW. Personnel who are former HPE employees who left HPE as part of an early retirement program must wait for a required period of 24 months after termination from HPE prior to being assigned on the applicable Statement of Work.
- 11.11 Contingent Worker Code of Conduct. Supplier will comply with HPE's Contingent Worker Code of Conduct as made available at: <https://h20195.www2.hpe.com/v2/getdocument.aspx?docname=c04797632>
- 11.12 Social and Environmental Responsibility. Supplier will comply with HPE's Supply Chain Social and Environmental Responsibility Policy including establishment of management systems described therein, and the HPE Electronic Industry Code of Conduct available at: <https://h20195.www2.hpe.com/V2/GetDocument.aspx?docname=A00029574ENW>

## 12. CUSTOMER INTERACTIONS

- 12.1 Customer Contact. During the delivery phase of a Project Supplier may have direct communication with a Customer, limited solely to those communications necessary to affect provision of Services and/or Deliverables.
- 12.2 New and Follow-On Business. If while delivering Services Supplier becomes aware of the existence of potential follow-on work or additional opportunities specifically related to the Services, Supplier will disclose such information to HPE.
- 12.3 Supplier Sales Efforts. Supplier may maintain and/or pursue direct business opportunities with the Customer; provided, however, when Supplier personnel are engaged in the provision of Services under the Agreement, such personnel may not engage in activities which in the reasonable opinion of HPE are solicitation of future business from the Customer.

## 13. WARRANTIES

- 13.1 Services Warranty. Supplier represents, warrants and covenants that: (i) all Services will be performed by Supplier in a professional manner, consistent with the standard of skill and care exercised by the best professionals within Supplier's industry on projects of comparable scope and complexity, in a similar location, and in conformance with the requirements of the Agreement; (ii) Supplier is sufficiently experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform its Services in compliance with the terms of the Agreement; (iii) it is under no obligation or restriction, nor will it assume any such obligation or restriction, which would in any way interfere with or be inconsistent with, or present a conflict of interest concerning, the provision of Services under the Agreement; and (iv) All materials and equipment supplied to HPE, if any, and any associated workmanship, will be free from errors, faults, and defects and in conformance with the requirements of the Agreement for a period of twelve (12) months following completion of all Services. If any longer warranty is specified for any materials, equipment or workmanship under any plans or specifications, or under any subcontract, or in connection with any manufactured unit that is installed, the longer warranty period will govern. Supplier will ensure that all materials and equipment that carry a manufacturer's warranty are registered with the manufacturer in HPE's name, as further provided in the Agreement.
- 13.2 HPE Accessibility Requirements. Supplier warrants that Licensed Products, Services and/or Deliverables provided under the Agreement shall comply with Applicable Laws and Information Technology Accessibility Standards required to conform with Section 508 of the Rehabilitation Act (36 C.F.R. § 1194), and other applicable accessibility standards and regulations globally as specified in HPE Accessibility Requirements available at <https://www.hpe.com/us/en/about/accessibility-aging.html> to the maximum extent practicable.



13.3 Disclaimer. SUPPLIER HEREBY DISCLAIMS AND HPE EXPRESSLY WAIVES ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13.4 Remedy for Breach.

(a) In the event of a breach of Section 13.1 (Services Warranty) and Section 13.2 (HPE Accessibility Requirements), HPE may elect to exercise its rights under Section 9 (Termination), or allow Supplier to immediately re-perform any and all portions of the Services which HPE or Customer find to be defective or non-conforming without charge to HPE or Customer.

## 14. INTELLECTUAL PROPERTY RIGHTS

14.1 Retained Rights. Each Party will retain all right, title, and interest in and to its own Pre-Existing Intellectual Property irrespective of any disclosure of such Pre-Existing Intellectual Property to the other party, subject to any licenses granted herein.

14.2 Pre-Existing Intellectual Property.

(a) Supplier will not use any Supplier or third party Pre-Existing Intellectual Property in connection with the Agreement unless Supplier has the right to use it for HPE's or Customer's benefit. If Supplier is not the owner of such Pre-Existing Intellectual Property, Supplier will obtain from the owner any rights as are necessary to enable Supplier to comply with the Agreement and for HPE to comply with the Prime Agreement.

(b) Supplier grants HPE a non-exclusive, royalty-free, worldwide, perpetual and irrevocable license in Supplier and third party Pre-existing Intellectual Property, to the extent such Pre-existing Intellectual Property is incorporated into a Deliverable, with the license including the right to make, have made, sell, use, reproduce, modify, adapt, display, distribute, make other versions of and disclose the property and to sublicense others to do these things.

(c) Supplier will not incorporate any materials from a third party, including Open Source or freeware, into any Deliverable unless (i) Supplier clearly identifies the specific elements of the Deliverable to contain third party materials in the SOW, (ii) Supplier identifies the corresponding third party licenses and any restrictions on use thereof in the SOW, (iii) approval is given by HPE as evidenced by a signed SOW (or other written and fully executed agreement) and (iv) in the case of Open Source materials, approval by HPE shall include approval in accordance with HPE's Open Source review processes. Supplier represents, warrants and covenants that Supplier has complied and shall continue to comply with all third party licenses (including all open source licenses) associated with any software components that will be included in the Deliverables or any other materials supplied by Supplier. Supplier shall indemnify HPE against any losses and liability incurred by HPE and HPE's Customers due to failure of Supplier to meet any of the requirements in any of the third party licenses.

14.3 Ownership of Deliverables. Subject to Supplier and third party rights in Pre-Existing Intellectual Property, all Deliverables and all Intellectual Property Rights pertaining thereto will belong to HPE, and Supplier hereby assigns such rights to HPE. Supplier agrees that HPE will own all patents, inventor's certificates, utility models or other rights, copyrights or trade secrets covering the Deliverables and will have full rights to use the Deliverables without claim on the part of Supplier for additional compensation and without challenge, opposition or interference by Supplier and Supplier will cause each of its Personnel to waive their respective moral rights therein. Supplier will sign any necessary documents and will otherwise assist HPE, at HPE's expense, in securing, maintaining and defending copyrights or other rights to protect the Deliverables in any country. Supplier, its agents, employees, and Subcontractors will deliver the Deliverables to HPE upon the earlier of the expiration/termination of the Agreement or HPE's request.

## 15. INSURANCE

15.1 During performance of the SOW, Supplier will maintain in full force and effect, at Supplier's expense, Workers' Compensation insurance as required by any Applicable Law or regulation, having jurisdiction

over Supplier's employees. If Workers' Compensation is through a Social Scheme, Supplier agrees to be in full compliance with such laws thereof. Supplier will maintain Employer's Liability insurance in amounts not less than the local currency equivalent of U.S. \$1,000,000 each accident for bodily injury by accident and U.S. \$1,000,000 each employee for bodily injury by disease. Where permitted by law, such policies will contain a waiver of the insurer's subrogation rights against HPE, its Affiliates, officers, directors and employees. In addition, Supplier will maintain, at its expense, Comprehensive General Liability insurance. Such policy or policies limits shall be U.S. \$1,000,000 per occurrence (combined single limit) or \$1,000,000 each occurrence, \$1,000,000 aggregate for products and completed operations, and \$2,000,000 general aggregate). Supplier will maintain Automobile Liability Insurance to include coverage for liability, arising out of owned, hired and non-owned autos. The limit of liability shall not be less than \$1,000,000 combined single limit for each accident. Each Comprehensive General Liability and Automobile Liability policy shall name HPE, its Affiliates, officers, directors, and employees as additional insureds. It is agreed the insurance afforded such additional insureds shall apply as primary insurance and that any other insurance carried by HPE shall be excess only and shall not contribute with this insurance. All policies shall provide that the coverage hereunder shall not be cancelled without at least thirty (30) days prior written notice to HPE. If "claims made" policies are provided, Supplier shall maintain such policies, including unimpaired aggregate limits at the above stated minimums, for at least three years after the expiration of the Term. Upon demand by HPE, Supplier shall promptly supply HPE with certificates of insurance of such policies. In no event will the coverage or limits of any insurance maintained by Supplier under the Agreement, or the lack or unavailability of any other insurance, limit or diminish in any way Supplier's obligations or liability to HPE hereunder.

## 16. SITE SECURITY AND SAFETY

- 16.1 Security Requirements. Supplier Personnel must at all times adhere to the Site security and safety requirements of HPE and/or the Customer. Such requirements will be communicated by or provided to the Supplier by the HPE Project Manager specified in the SOW.

## 17. GENERAL PROVISIONS

- 17.1 Anti-Corruption Laws. HPE advises Supplier that HPE is subject to the US Foreign Corrupt Practices Act ("FCPA"), the UK Bribery Act ("UKBA"), as well as other global anti-corruption laws. These laws prohibit the payment or promise of payment of anything of value by HPE or its Affiliates, either directly or indirectly, to the representative of a commercial entity or an official of a foreign government, foreign political party, party official, or candidate for foreign office, for the purpose of influencing any act or decision in their official capacity, or inducing that official to use their influence with a foreign government to assist HPE or its Affiliates, in obtaining, retaining, or directing business to any person, or in securing any improper business advantage. Supplier agrees that it will not take any action which could cause HPE to be in violation of the FCPA, UKBA or any other applicable anti-corruption law or regulation. Supplier will promptly notify HPE if it becomes aware of any such violation and indemnify HPE for any losses, damages, fines or penalties that HPE may suffer or incur as a result of any such violation. In case of breach of the above, HPE may suspend or terminate the Agreement at any time without notice or liability.
- 17.2 Independent Contractors. Supplier will act solely as an independent contractor. Nothing contained herein will be construed to create the relationship of principal and agent, employer and employee, partners or joint venturers.
- 17.3 Assignment. Notwithstanding anything to the contrary in the Agreement and except as set forth in this Section 17.3, neither party may, directly or indirectly, in whole or in part, neither by operation of law or otherwise, assign or transfer this Agreement or delegate any of its obligations under this agreement without the other party's written consent. Any attempted assignment, transfer or delegation without such prior written consent will be void and unenforceable. Notwithstanding the foregoing, HPE, or its permitted successive assignees or transferees, may assign or transfer this Agreement or delegate any rights or obligations hereunder without consent: (1) to any entity controlled by, or under common control with, HPE, or its permitted successive assignees or transferees; or (2) in connection with a merger,

reorganization, transfer, sale of all or some assets or product lines, divestiture of one or more business units or change of control or ownership of HPE, or its permitted successive assignees or transferees. In the event that during the term of this Agreement, HPE divests itself of less than all of its assets or products lines, then the resulting divested entity or entities, and any successor in interest to such entities may also receive the benefits and rights that HPE does under this Agreement, including but not limited to any entitlement to rate discounts the same as if it were still a part of HPE, and the spending by HPE and the divested entity or entities shall count towards any volume discount as if they remained one entity. Without limiting the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

- 17.4 Choice of Law. The Agreement shall be interpreted and governed by the laws of the Province of Ontario and Canada. Supplier and HPE expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement or to the transactions processed under the Agreement.
- 17.5 Compliance with Applicable Law. The Agreement and all matters or issues collateral thereto shall be construed in accordance with the laws of the Province of Ontario and Canada, applicable therein. Without limiting the foregoing, Supplier and HPE irrevocably and unconditionally: (a) agree that any suit, action, or other legal proceeding (collectively referred to herein as “Proceedings”) arising out of or relating to the Agreement or any transaction hereunder must be brought in the Courts of Ontario, in the City of Toronto, (a) consents to the exclusive jurisdiction of each such court in any such Proceedings; (c) waives any objection which it may have to the laying of the venue of any such Proceedings in any of such courts; and (d) waives any right that it may have to assert the defence of forum non-conveniens in any such Proceedings. Supplier and HPE expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement or to the transactions processed under the Agreement. The parties confirm that it is their wish that the Agreement, as well as all other documents relating hereto, including all notices, have been and will be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s’y rattachent, soient rédigés en langue anglaise.
- 17.6 Non-Restrictive Relationship. Nothing in the Agreement shall be construed so as to preclude HPE or any of its Affiliates from independently developing or from acquiring, marketing or providing similar products or services that may perform the same or similar functions as the Services and/or Deliverables.
- 17.7 Notices. All notices required under the Agreement will be in writing and will be sent to the address of the recipient specified in the SOW. Any such notice may be delivered by hand, by overnight courier or by first class pre-paid letter, and will be deemed to have been received: (i) if delivered by hand - at the time of delivery; (ii) if delivered by overnight courier - 24 hours after the date of delivery to courier with evidence of delivery from the courier; (iii) if delivered by first class mail – three (3) business days after the date of mailing.
- 17.8 Publicity. Supplier shall not publicize or disclose the terms or existence of the Agreement, nor shall Supplier use the name(s), trademark(s), or tradename(s) of HPE, its Affiliates, except as follows: i) With the prior written consent of HPE; or ii) as may be necessary for Supplier to perform its obligations under the Agreement; or iii) as may otherwise be required by law. HPE may impose, as a condition of its consent, any restrictions which HPE deems appropriate, in its sole discretion. Supplier shall provide 10 days written notice to HPE prior to disclosure under subsections (ii) or (iii) above.
- 17.9 Waiver. Neither party's failure to exercise or delay in exercising any of its rights under the Agreement shall constitute or be deemed to constitute a waiver, forfeiture, or modification of such rights. Waiver of a breach of the Agreement shall not be deemed a waiver of any future breach. Any waiver must be in writing and signed by each party's representative.
- 17.10 Severability. If any term or provision of the Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Agreement shall not be affected. In such event, the parties will negotiate a valid, enforceable substitute provision that most nearly effects the parties' original intent in

entering into the Agreement or provide an equitable adjustment in the event no such provision can be added.

- 17.11 Surviving Provisions. The following sections shall survive the termination or expiration of the Agreement: Section 4 (Rights Granted – Licensed Product), Section 5 (Data Security and Privacy), Section 6 (Confidential Information), Section 7 (Limitation of Liability), Section 8 (Indemnification), Section 10 (Export and Import Compliance), Section 13 (Warranties), Section 14 (Intellectual Property Rights), Section 15 (Insurance), Section 17 (General Provisions), any Customer Flow Down imposing additional obligations on Supplier as to these terms, any provision that by its language or context implies its survival, and all licenses granted to HPE for Deliverables..
- 17.12 Entire Agreement. The Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements and representations whether oral or written. No supplement, modification or amendment of the Agreement will be binding unless in a writing which states that it is an amendment of the Agreement, and which is signed by an authorized representative of each party who is authorized to amend the Agreement. For purposes of the Agreement, a “writing” shall specifically exclude any click-wrap, shrink-wrap or similar terms which accompany the Licensed Product.

## 18. DEFINITIONS

- 18.1 "Affiliate" means, with regard to a given party, any company or legally recognizable entity that directly or indirectly: (a) controls that party; (b) is controlled by that party; or (c) is under common control with that party, where control is defined as possession of the power to direct or cause the direction of the management and policies of a legally recognizable entity, through direct or indirect majority ownership or minimum percentage ownership that would grant the party a controlling interest in such entity. An entity will be deemed an Affiliate only so long as such control exists.
- 18.2 “Applicable Law” means all constitutions, laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits and legally binding requirements of all federal, country, international, state and local governmental authorities applicable to either party’s performance under the Agreement.
- 18.3 “Authorized Users” means HPE, its Affiliates, and its and their respective joint venturers, employees, agents, consultants, contractors and service companies.
- 18.4 "Customer" means an HPE customer to whom HPE has agreed to provide goods or services.
- 18.5 “Days” will mean calendar days.
- 18.6 “Deliverables” means the tangible items to be provided by Supplier to HPE or Customer(s) in satisfaction of Supplier’s obligations to HPE pursuant to a SOW.
- 18.7 “Delivered Duty Paid” means (i) Supplier shall deliver the Licensed Products to HPE cleared for import; (ii) Supplier owns Licensed Products in transit; (iii) title and risk of loss pass to HPE upon delivery of Licensed Products to the destination specified in the Purchase Order; (iv) Supplier pays and bears all costs, including but not limited to freight, shipping, duties, and taxes, required to deliver Licensed Products to the destination identified in the Purchase Order; (v) Supplier is liable for any loss or damage due to Supplier’s failure to preserve, package, handle or pack Licensed Products; and (vi) Supplier is responsible for insuring all Licensed Products until risk of loss passes to HPE.
- 18.8 “HPE” throughout the Agreement (with the exception of Section 2 (Financial Terms), means HPE Company and its Affiliates. Within Section 2 (Financial Terms), “HPE” means the HPE entity identified on the Purchase Order as being responsible for payment.
- 18.9 “Information Systems” means information systems including, but not limited to, net-services, computers, computer systems, communication systems and other information systems; and means of access to such systems including, but not limited to, passwords, tokens, keys, logon scripts or other authentication



information.

- 18.10 "Intellectual Property Rights" or "Intellectual Property" means all rights in patents, copyrights, moral rights, trade secrets, mask works, trademarks, service marks and other intellectual property rights.
- 18.11 "Internal Use" means use on a worldwide basis by HPE and all Authorized Users for internal information processing services and computing needs, including but not limited to, any failover use or any home, remote, travel, or incidental use.
- 18.12 "License Term" means a perpetual or stated fixed term period beginning with the effective date as specified in the Software Addendum.
- 18.13 "Licensed Product" means Supplier's software program(s), in object code only, listed and described in a Software Addendum, in all available versions, platforms, languages, and all associated documentation, bug fixes, updates, upgrades or new versions thereof provided, or required to be provided by the Agreement, to HPE by Supplier.
- 18.14 "Open Source" means any software having license terms that require, as a condition of use, modification, or distribution of the software that such software or other software combined or distributed with such software be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, and (iii) redistributable at no charge.
- 18.15 "Outsourcing Services" means a service whereby HPE (i) assumes the responsibility for day-to-day operations and management of all or a portion of a Customer's data processing operations; or (ii) performs facility management, systems integration or similar services; or (iii) hosts and delivers, or otherwise provisions, the Licensed Product to the Customer; or (iv) HPE provides access to or use of the Licensed Product as a service; or (v) provides business process outsourcing services to the Customer; all regardless of whether the Licensed Product is located at the Customer's site or a third party location or HPE facility, is licensed by the Customer or by HPE, and whether used on Customer, HPE or third party owned equipment.
- 18.16 "Personnel" means workers employed or contracted by Supplier or its Subcontractors for the provision of Services and/or Deliverables to HPE hereunder.
- 18.17 "Pre-Existing Intellectual Property" means any Intellectual Property that has been conceived or developed by either party or any third party before Supplier renders any services under the Agreement or that is conceived or developed at any time wholly independently of the Deliverables.
- 18.18 "Prime Agreement" means a proposed or signed agreement and/or SOW or Support between HPE and a Customer regarding a Project.
- 18.19 "Product" means hardware and/or Licensed Product provided or to be provided by Supplier pursuant to the Agreement.
- 18.20 "Project" means a defined opportunity for which HPE may procure Services and/or Deliverables from Supplier under one or more Prime Agreements.
- 18.21 "Purchase Order" means a written (electronic, hardcopy or fax) purchase order issued by HPE to Supplier referencing the Agreement.
- 18.22 "Services" means the services provided, or contracted to be provided, by Supplier as defined in an SOW including any Deliverables or Support and Maintenance for Licensed Products as defined in a Software Addendum.
- 18.23 "Site" means any HPE, third party, or Customer location where Services are to be provided.
- 18.24 "Software Addendum" means an attachment to the Agreement that describes the Licensed Product and Support and Maintenance (if required).
- 18.25 "SOW" or "Statement of Work" means a document signed by HPE and Supplier that describes the

Services and/or Deliverables to be provided by Supplier to HPE and related business terms.

- 18.26 “Subcontractor” means any and all third parties that have direct contracts with Supplier or with any other subcontractor to perform a portion of the Services under the Agreement.
- 18.27 “Support and Maintenance” means the support and maintenance terms for the Licensed Product that Supplier is required to provide as specified in the Software Addendum.
- 18.28 “Trade Use” means resale by HPE to Customers, use by HPE on behalf of Customers, use by Customers, and any related use by contractors performing services to HPE or on its behalf to Customers.