

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

Rev. 1 May 2019

**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 Agreement may be used for Trade Use and/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 U.S. 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, Services or expenses. Supplier waives its right to pursue, any fees, costs, loss or damages from HPE in connection with any Licensed Product, 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 **Delivery and Acceptance – Licensed Products.** Supplier's delivery of Licensed Products to HPE or Customer shall be Delivered Duty Paid. Supplier shall deliver the Licensed Product electronically to locations chosen by HPE unless agreed otherwise by the parties in writing. Acceptance criteria for Services and/or Deliverables shall be set forth in the SOW or for Support and Maintenance in a Software Addendum. Acceptance of Licensed Products will be presumed unless HPE or Customer demonstrates within thirty (30) days after delivery that the Licensed Product does not conform to the specifications set forth in the documentation, specifications, manuals and any relevant data sheet or promotional literature provided by Supplier. Notwithstanding the foregoing, such acceptance is subject to the compliance of the Licensed Product(s) with the terms of the Agreement, including, without limitation, compliance with Section 13 "Warranties".

### **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 receiving party 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 receiving party 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 NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF THE OTHER (INCLUDING LOSS OF DATA, PROFITS OR REVENUE, COST OF CAPITAL OR DOWNTIME COSTS), OR FOR ANY EXEMPLARY OR PUNITIVE DAMAGES, ARISING OUT OF ANY PERFORMANCE OF THE AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 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. HPE can terminate the Agreement if Supplier is the subject of a merger or an acquisition or if Supplier assigns the Agreement to a third party without prior written agreement of HPE.
- 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. HPE can terminate the Agreement if Supplier is the subject of a merger or an acquisition or if Supplier assigns the Agreement to a third party without prior written agreement of HPE
- 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. Termination of the Agreement will occur without prejudice to any rights or legal proceedings available to HPE with respect to the Supplier.
- 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 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 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 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, 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 applicable 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 be responsible to pay the compensation of its Personnel allocations 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 under the Applicable Law, collective agreements, expansion decree, contractual obligations of Supplier under this Agreement, and any other agreement including employment agreement with Personnel and Supplier or its Subcontractor. Without derogating from the aforesaid generalities, the Supplier shall pay for Personnel pension pay, severance pay, vacation, sick pay, convalescence pay, National Insurance contributions, Keren-Hishtalmut (if agreed by the parties), travel fee, overtime fee, advance notice payment etc., and will affect all the payments due from it, including deductions, fully and in a timely manner including without limitation income tax, national insurance pay as well as health tax, meals and other benefit value. 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. In addition Supplier hereby undertakes to indemnify and compensate HPE for any expense, loss, damage and detriment incurred by it, including in consequence of any demand and/or claim of any of Personnel on the cause of employer-employee relations or in connection therewith.
- 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, Personnel 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 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>
- 11.13 Additional Requirement with regard to Personnel
- a) Personnel Confidentiality and IP Protection Undertakings. Supplier undertakes that each and every Personnel assigned to provide the Services under this Agreement, will provide HPE and Supplier an irrevocable undertakings in the wording attached as Exhibits A and B to this Agreement. For avoidance of any doubt, these undertakings does not release Supplier from its liabilities and obligations under this Agreement.
  - b) Section 14 of the Severance Pay Act. Supplier will uphold throughout the Agreement period, in relation to the Personnel at HPE, the terms and conditions included in the general authorization issued by the Secretary of Labor and Welfare, according to Section 14 of the Severance Pay Act, 1963 (henceforth :“the Severance Pay Act) on all the salary amount paid to the Personnel as required by the law. Under this, every Personnel that will end their work at HPE via Supplier will be entitled from Supplier to the full benefits Supplier allocated, under the directors insurance and/or pension fund including but not limited to the severance pay element, for the time they provided Services at HPE, under the terms in the abovementioned authorization.
  - c) End of Services by Personnel. When engagement of Personnel via Supplier will be ended, including without limitation in case of Transfer Event, Supplier shall pay and/or assign to Personnel all rights and benefits under the law and any applicable agreement including without limitation the salary, social benefits, annual leave days, Replenishing Pay advanced notice payments in addition to all applicable



payments under Section 11.13 (b) above – “Section 14 of the Severance Pay Act”. Supplier shall sign up the Personnel on waiver letter including acknowledgment of receipt of all rights by the Personnel for HPE’s satisfaction and provide HPE with copies of such signed waiver letters and sign any letters required by HPE representing that Supplier paid to Personnel according to this Agreement.

- d) “Transfer Event” option - In order to maintain the professional know-how, the security classification of the Services providers and the continuity of the Services, HPE will be entitled, at the end of 12 month employment of any Supplier’s Personnel, at any time and at its sole discretion, to employ Supplier’s Personnel directly and/or via another supplier of HPE (“Receiving Supplier”), at no cost. (i.e. “Transfer Event”). The Supplier shall not object to the transfer and shall have no claim against HPE with regards to such transfer. Should HPE proceed as aforementioned, Supplier will make every reasonable effort to terminate such Personnel employment in accordance with any applicable agreement and law and comply with all obligations according to this agreement including paragraph 11.13 (c) abovementioned. In addition and without derogation of any Supplier obligations according to this Agreement, Supplier will sign an Indemnification letter towards HPE and/or the Receiving Supplier, accordingly, including undertaking to indemnify, defend and compensate HPE and/or Receiving Supplier, accordingly for any expense, loss, damage and detriment incurred by it in consequence of any demand and/or claim of any Personnel on the cause of employer-employee relations or in connection therewith.

## 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 warrants that: (i) all Services will be performed by Supplier in a timely and 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, in conformance with the requirements of the Agreement and in compliance with all laws, rules and regulations applicable to the performance of its obligations under 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; (iv) the Services and/or Deliverables will be fit for the purpose specified in the Agreement; and; (v) 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. EXCEPT AS EXPRESSLY SET OUT IN THE AGREEMENT SUPPLIER EXCLUDES ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, AND ANY IMPLIED WARRANTY OF SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE TO THE EXTENT PERMITTED BY LAW.

13.4 Remedy for Breach.

(a) In the event of a breach of Section 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, fully paid-up, worldwide, perpetual and irrevocable, transferable 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, offer for sale, use, represent, execute, reproduce, make copies, modify, improve, optimize, adapt, display, communicate, distribute, make other versions of and disclose all items it will supply or make available to HPE and to sublicense others to do these things. Supplier represents and warrants that Supplier owns or holds all consents, authorizations, and rights that may be needed for Supplier to grant (or procure the grant of) in whatever country or region or under any legal system the license and rights of sub-section. Supplier represents warrants and undertakes that it shall not sue or seek to initiate any action against HPE, or the HPE group of companies under Supplier's intellectual property rights or similar proprietary rights anywhere in the world.

(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 and warrants 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. Supplier also waives any right of droit moral or any similar right with respect to the Deliverables and undertakes to sign up its employees and consultant of such a waiver. 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.

- 14.4 Irrevocable Undertaking. Supplier's grant of rights and assignment of the ownership in Intellectual Property Rights in the Agreement is irrevocable and without right of termination or rescission by Supplier and any party on its behalf and shall not be affected by the termination or expiration of the Agreement.

## **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 Subsidiaries, 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. In the event that the relationship between HPE and Supplier and/or Supplier's employees and contractors shall be claimed, regarded or determined by any third party, including any governmental and/or judicial and/or tax authority and/or the Personnel at any time hereafter as an employer-employee relationship, Supplier shall reimburse hold harmless and indemnify HPE for any expense and/or payment incurred by HPE or demanded of HPE in consequence of the raising of such claim or demand and/or as a result of such determination, immediately upon HPE's first demand. HPE shall be entitled to offset against any amount due to Supplier under any agreement between the parties the amounts to be paid to HPE according to this clause.
- 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 is governed by the laws of Israel, without giving effect to any choice of law rules. 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 Jurisdiction. Any dispute arising from the interpretation and execution of the Agreement that parties cannot amicably settle are submitted to the exclusive jurisdiction of the competent court of law of Tel Aviv, Israel, including the cases of extraordinary, interlocutory, interim and emergency proceedings.
- 17.6 Compliance with Applicable Law. Supplier warrants that it will comply with all Applicable Law in its performance under the Agreement. HPE will not be responsible for monitoring Supplier's nor Subcontractor's compliance with any Applicable Laws.
- 17.7 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.
- 17.8 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.

- 17.9 **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.
- 17.10 **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.
- 17.11 **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.
- 17.12 **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..
- 17.13 **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.
- 17.14 **Audit.** HPE reserves the right to audit, inspect, and make copies or extracts of Supplier's records and processes associated with Supplier's performance under this Agreement including without limitation payments made by Supplier to/for Personnel, at any time with twenty four hours prior notice to Supplier. Any audit or inspection will occur during Supplier's normal business hours. HPE's right to audit, inspect, and make copies or extracts of Supplier's records and processes shall continue for a period of five years following the termination or expiration of this Agreement. Without derogation the above, at the end of every year, Supplier shall submit, at HPE's request (i) an accountant authorization representing that Supplier's employees working at HPE were paid their salaries, and that the Supplier allocated the necessary funds required under the law and under this Agreement and Pension funds and (ii) a report from relevant insurance companies and pension funds representing that Supplier has allocated all necessary funds under section 11.13 (b) above and/or as otherwise prescribed by law.
- 17.15 **Audit Costs and Expenses.** If an audit reveals a discrepancy of 3% percent or more during the audited period, then Supplier shall also reimburse HPE for all costs of the audit, including without limitation and in addition to the costs of any third party auditors engaged by HPE.

## 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 which 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 (without limitation) present and future patents, trademarks, registered designs (including any applications for the foregoing and related rights including rights of inventions) copyrights, unregistered design rights, database rights (including rights of extraction), rights in semiconductor topographies and all rights or forms of protection offered by intellectual property. Law of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world, such as service marks, mask works, design models, and utility models.
- 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.

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, or (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 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.
- 18.29 “Transfer Event” means any transfer of engagement with Personnel subject to his/hers consent to HPE by employing this Personnel or engaging him/her directly or via another supplier of HPE (“Receiving Supplier”).

## EXHIBIT A

HPE [REDACTED] (“HPE”)

### Irrevocable Declaration and Undertaking

I the undersigned, \_\_\_\_\_, holder of ID \_\_\_\_\_, hereby declare and undertake, irrevocably, that:

1. I am an employee of the company [LEGAL ENTITY NAME OF SUPPLIER] (“Company”) in all respects.
2. I am aware that in the framework of my work at the Company, I may be sent to and/or stationed at HPE in order to provide various services and/or works in the Company’s name and behalf (“Services”).
3. I declare that I have the necessary qualifications for performing the Services.
4. I am aware that the relations between the Company and HPE are contractor-contractee relations, and that no employer-employee relations shall apply or be created between HPE and me, irrespective of the duration of the time I may spend at HPE and/or the degree of supervision of my work. Furthermore, throughout the period of my stay at HPE I shall continue to be an employee of the Company, according to the terms of employment detailed in my employment agreement with the Company.
5. I agree that my activity at HPE shall be accompanied by supervision and control on the part of HPE or whoever is appointed by it, apart from the regular supervision exercised over my work by the Company. To avoid doubt, said supervisory powers shall not create employer-employee relations between HPE and me, as they are intended as a means of protection of HPE’s rights, and they shall in no case be interpreted by me as creating employer-employee relations.
6. I am aware that HPE is not and shall not be my employer and that the Company is exclusively liable toward me with respect to any obligation or debt which an employer may owe its employees, including the payment of salaries and social benefits under any law/contract including my employment agreement with the Company or any collective agreement or collective arrangement or extension order or practice, mandatory payments applying to a salary from any source, payment of contributions to severance pay and/or provident funds and/or insurance funds of all kinds, National Insurance, income tax deductions and any levy and/or tax applying presently and/or in the future to an employer.
7. Accordingly, I hereby undertake that any claims, demands and/or contentions which I may have in connection with the provision of the Services or arising therefrom or in connection with the discontinuation of the Services or the discontinuation of my employment, for any reason whatsoever, shall be referred by me solely to the Company and not to HPE. I am aware that in the event that I sue HPE and/or any entity determines that employer-employee relations existed between HPE and me and/or HPE is required to make any payment for me beyond the amounts which it paid directly to the Company in respect of the Services which it received, my salary shall stand at the minimum wage in the economy and I shall pay HPE all the amounts of salaries and/or social benefits beyond the minimum wage, which I received from HPE throughout the term of my employment by the Company. The Company shall be entitled to offset against any amount due to me the amounts according to this clause, if it is able to prove that it transferred these amounts to HPE.



8. Without derogating from the aforesaid, I agree that unless I receive and confirm an official job offer, in writing, signed by HPE's Personnel Manager and CEO – employer-employee relations shall in no case be created between HPE and me and I shall not demand a declaration concerning the existence thereof.
9. In addition, I hereby undertake to keep in absolute confidence any information coming into my possession, directly or indirectly, in connection with HPE, its business, its activity, the Services provided by me and anything connected therewith or deriving therefrom. Furthermore, I undertake to keep in absolute confidence any invention, patent, software, knowledge, information, know-how and trade secret of HPE, that have been and/or may be conveyed to me by HPE and/or its designees and/or that may come to my knowledge in the framework of the performance of the Services and/or that may be created by me or with my assistance in the course of the performance of the Services. I am aware that the breach of this clause by me could cause HPE substantial damage.
10. I am aware that all the proprietary rights of any kind in knowledge and/or information and/or inventions and/or patents and/or designs and/or software and/or know-how and/or other product created in the course of the performance of the Services under this Agreement, shall remain under the full ownership of HPE, even if they were prepared in the framework of and/or pursuant to the Services to HPE, and I shall not be entitled to make any use thereof. I am aware that HPE agreed to enter into an agreement with the Company *inter alia* on the basis of my above declaration.
11. In any case of a contradiction between this Agreement and any other agreement applying to me, the provisions of this Agreement shall prevail.
12. Any alteration to this Agreement shall bind the parties only if it is made in writing and signed by both parties.

**As witness my hand:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## EXHIBIT B

### LETTER OF UNDERTAKING TO PRESERVE CONFIDENTIALITY, PROPRIETARY RIGHTS AND Non-COMPETITION

I the undersigned, \_\_\_\_\_, ID \_\_\_\_\_, hereby declare to HPE **[INSERT NAME OF CONTRACTING HPE LEGAL ENTITY]**. (“HPE”) that I am aware that during my assignment by the company **[LEGAL ENTITY NAME OF SUPPLIER]** (“Company”) to HPE’s sites for the purpose of providing services to and/or performing work for HPE (“Services and/or Work”), Information of HPE (as hereinafter defined) may be divulged to me and/or come to my knowledge or with regard to Work prepared and/or developed by me in the course of providing the Services, and I am aware that said Information is among HPE’s major and most vital assets, and therefore I declare and undertake as follows:

#### Confidentiality

1. I shall keep in absolute confidence and shall not disclose and/or transfer, directly or indirectly, to any person and/or entity whatsoever, including employees of HPE who do not require the Information for performing their job, any information that has and/or may come into my possession orally, in writing and/or in any other manner and/or by any other media, in the course of and/or in connection with providing the Services and/or Work, directly or indirectly, including Information created by me and/or Information received by me from others associated directly or indirectly with HPE.

“Information” in this Letter of Undertaking denotes – all the information and knowledge presently in my possession and/or coming into my possession in the future, in any way connected with and/or related to HPE and/or its business and/or activity and/or customers developed, created, modified or that will be developed created or modified by me in the future connected within any way and/or related to the Services provided to HPE by Company. Information includes, solely as an example and without derogating from these generalities, any information connected directly or indirectly with research and development involving existing or future products of HPE, inventions, hardware, software, production processes, discoveries, improvements, developments, designs, drawings, ideas, calculations, diagrams, formulas, data, customer lists, supplier lists, pricing, prices, plans, and any other information connected with HPE’s business and/or customers, including customers with whom HPE is in negotiations.

2. I shall not convey and/or transfer, directly or indirectly, to any person and/or entity whatsoever, any material, raw material, product, product part, document, diskette and/or Information, as defined above, or make any use, including duplication, production, sale, transfer, imitation, distribution, modification or copying, of all or a part of the Information, except as required for the performance of the Services and/or Work for HPE, and solely with HPE’s agreement and for its benefit.
3. I shall hand over to HPE any material and/or information held by me on any media, connected with the Services and/or Work and/or created in the course of the Services and/or Work, whenever the agreement with HPE is terminated and regardless of the reason for such termination, immediately upon the delivery of notice of termination or at any other time as directed by HPE.
4. I shall help HPE comply with its undertakings toward other suppliers, customers and/or third parties to preserve the confidentiality of the information provided by them to HPE and not to compete with them.

#### Proprietary Rights

5. All rights, including intellectual property rights of all kinds, in any invention, product, process, development, improvements, idea, work, formula, code, conclusion, discovery, finding and/or information, whether protectable as a patent or by copyright or not and whether registrable or not, created, developed, modified

and/or discovered by me, whether alone or together with others, in the course of and/or in connection with the Services and/or Work ("Service and/or Work Product"), shall be HPE's exclusive property.

The HPE shall have the exclusive proprietary rights in the Service and/or Work Product in Israel and the world, and I shall not be entitled to make any use of the Service and/or Work Product and shall not be entitled to any further consideration in respect thereof.

Without derogating from the aforesaid, I hereby waive and/or assign to HPE and undertake to waive and/or to assign in the future, all my rights in the Service and/or Work Product, including any moral right, insofar as I have or may have any such rights.

To avoid doubt, it is hereby clarified that HPE shall be entitled to use the Service and/or Work Product as it sees fit, without any restrictions whatsoever.

6. I shall assist HPE and cooperate with it in any reasonable way for the purpose of transferring the rights in the Service and/or Work Product to HPE and/or registering the rights in the Service and/or Work Product in HPE's name in any register in Israel and/or elsewhere and/or protecting and/or otherwise enforcing HPE's said rights, including the signing of conveyance documents and other documents and the giving of statements and/or oral testimony before authorities and judicial instances of all kinds.

It is hereby emphasized that this undertaking shall survive the termination of the provision of the Services and/or Work, provided that HPE shall bear the expenses associated with the fulfillment thereof.

7. I shall not convey and/or use, during the provision of the Services and/or Work, any material and/or information belonging to a third party, including material and information belonging to a former employer and/or a former recipient of services, unless I have received HPE's prior written agreement to do so.
8. I shall report to HPE any information pertaining to the Service and/or Work Product that has accumulated with me during the performance of the Services and/or Work.

### **No Competition**

9. I declare that there is no conflict of interest between the provision of the Services and/or Work to HPE and other services and/or work which I am performing or have performed in the past.
10. I declare that all my undertakings in the Agreement have been brought to my attention, and I hereby undertake to comply therewith.

### **Liability**

11. I am aware that the breach of all or any of my undertakings herein could cause HPE and/or its affiliated entities extremely serious and irreversible damage, for which monetary compensation is not an adequate remedy or relief, and therefore I agree, in the event of a breach of any of my undertakings herein, not to object to having a competent court issue a temporary injunction and/or other orders against me for the purpose of preventing and/or terminating such breach.
12. Without derogating from the aforesaid, I undertake to compensate and indemnify HPE for any damage caused to it or to its affiliated companies, including loss and/or injury to goodwill, due to the breach of any of my undertakings herein, apart from the right of such companies to take legal action against me in accordance with any law.

Date: \_\_\_\_\_

Signature \_\_\_\_\_