

This Master Standard Solutions Agreement ("Agreement") is entered into as of the Effective Date by and between HPE and Supplier. This Agreement consists of the following terms and conditions, including any Category Addenda, Order Forms, attachments and exhibits.

1. Structure of Agreement.

- 1.1. Generally. This Agreement sets forth the terms under which HPE and any HPE Affiliate (each an "HPE Entity") will purchase and license Solutions from Supplier and any Supplier Affiliate. Solutions are purchased or licensed exclusively under this Agreement and all Solutions delivered to HPE, regardless of whether identified in an Order Form, shall be considered Solutions under this Agreement. Supplier shall not provide HPE with any Solution, and HPE shall not be obligated to pay for any Solution, unless HPE has issued a PO for such Solution.
- 1.2. Eligible Purchasers. In the event an HPE Entity desires to purchase under this Agreement, it may do so by issuance of an Order Form or PO under this Agreement to Supplier or Supplier Affiliate. By receiving such Order Form or PO, Supplier or Supplier Affiliate shall be deemed to accept such Order Form or PO under the terms and conditions of this Agreement. In addition to the terms of this Agreement, the HPE Entity Purchasing Guidelines ("Purchasing Guidelines") shall also apply between the parties to an Order Form, which Purchasing Guidelines are available at the Supplier Portal (<https://supplierportale.it.hpe.com/supplierextranet/index.do>) under the heading "Global Procurement Resources" and then "Purchasing Guidelines", as they may be updated by HPE from time to time. As reasonably determined by an HPE Entity, a separate Regional Implementation Agreement ("RIA") or Local Implementation Agreement ("LIA") may be executed, by one or more HPE Entities for purchasing under this Agreement from Supplier or Supplier Affiliate, if required to comply with Applicable Law, custom or circumstances. The HPE Entity executing an Order Form or issuing a PO will be solely responsible for its obligations under such document according to the terms and conditions of this Agreement and the applicable terms and conditions applying in the country where such HPE Entity is registered, as detailed in the Purchasing Guidelines, or applicable RIA or LIA.
- 1.3. Order of Precedence. Except for Order Forms or POs that clearly state that they are governed by another written agreement between the parties, this Agreement and its Category Addenda apply to all Order Forms and POs even if they do not specifically reference this Agreement. In the event of a conflict between this Agreement and any Category Addenda, Order Form or PO, the order of precedence shall be as follows: (i) this Agreement, (ii) the applicable Category Addendum, (iii) the Order Form, and (iv) the PO. Notwithstanding the foregoing, the terms of a Category Addendum or Order Form may prevail for purposes of that Category Addendum or Order Form if: (a) the Category Addendum or Order Form expressly identifies and supersedes or modifies a provision in this Agreement or the Category Addendum, and (b) in the case of an Order Form, such Order Form is signed by an authorized signatory of HPE. The Purchasing Guidelines shall also apply and such Purchasing Guidelines shall prevail over any conflicting terms in this Agreement.

2. Financial Terms.

- 2.1. Prices. All prices for Solutions will be specified in an Order Form and will be inclusive of all travel and per diem costs unless otherwise set forth therein.
- 2.2. Payment Terms. Unless otherwise provided in the Purchasing Guidelines, all invoices provided to HPE related to the purchase of Solutions 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 (1st) 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 Solutions or impair HPE's right to inspect. Acceptance shall be when HPE deems the Solution 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 invoice, any credits, refunds or claims of any kind due HPE.
- 2.3. 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 PO number if applicable, (iii) description including serial number as applicable, price, and quantity of the Solutions 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.

- 2.4 **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 Solutions 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 Personnel. Where Services are performed and/or Solutions are produced, sold or leased by Supplier in the same country as that of use by HPE, an HPE Entity, or 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 HPE Entity is required by Applicable Law to make any deduction or to withhold from any sum payable hereunder, then the sum payable by HPE or such HPE Entity upon which the deduction is based shall be paid to Supplier net of such legally required deduction or withholding.
- 2.5 **Invoice Submission.** No invoice can be dated prior to the date Solutions are delivered to HPE or a Customer, unless the Order Form or other exhibit to this 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 this Agreement. In no event may Supplier submit invoices, or any corrections thereof, later than one hundred eighty (180) days after the date on 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 PO or as otherwise instructed by HPE when electronic invoicing applies.
- 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 Law, Supplier shall 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 Supplier, provided that such service provider is bound by HPE to confidentiality obligations as to Supplier's information substantially similar to those provided under this Agreement. 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. Intellectual Property.

- 3.1 **Retained Rights.** Each Party will retain all right, title, and interest in and to its own Pre-Existing IP irrespective of any disclosure of such Pre-Existing IP to the other party, subject to any licenses granted herein.
- 3.2 **Ownership.** Deliverables shall constitute original works of Supplier and its Personnel. HPE shall exclusively own Deliverables as of the date of their creation. Subject to Supplier Pre-Existing IP, Deliverables are "work made for hire" under copyright law and all other Intellectual Property rights therein will be owned exclusively by HPE. To the extent that any Deliverable is not considered a "work made for hire", Supplier shall and hereby does irrevocably assign and transfer all of its right, title, and interest in and to the Deliverables, including all Intellectual Property therein, to HPE. Supplier shall ensure that its Personnel and Subcontractors engaged under this Agreement shall comply with the requirements of this Section. Where applicable, or at the request of HPE, Supplier shall deliver an executed, written assignment to HPE of the Deliverables and all Intellectual Property therein including, without limitation, those developed by its Personnel or Subcontractors, inside or outside of the U.S.
- 3.3 **License to Pre-Existing IP.** If and to the extent that any Pre-Existing IP or a portion thereof is incorporated in the Deliverables or is otherwise necessary for the use of the Deliverables, Supplier hereby grants to HPE a perpetual, irrevocable, non-exclusive, worldwide, royalty-free, fully paid-up license, with the right to sublicense through multiple tiers, to use, make, sell, distribute, execute, adapt, translate, reproduce, display, perform, modify, and create derivative works of Supplier's Pre-Existing IP in connection with the Deliverables in which they are incorporated, and authorize others to do any, some, or all of the foregoing.
- 3.4 **Supplier's Use of Intellectual Property.** 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 Order Form, (ii) Supplier identifies the corresponding third-party licenses and any restrictions on use thereof in the Order Form, (iii) approval is given by HPE as evidenced in the Order Form, 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 or materials that will be included in the Deliverables.

- 3.5 License to HPE Materials. To the extent HPE provides Supplier with access to, any software, specifications, documentation, data, hardware, tools, know-how, methodologies, processes and/or any other materials, information or Intellectual Property owned, leased and/or licensed by HPE (“HPE Materials”), Supplier shall have the right to use such HPE Materials solely for HPE’s benefit and solely for the purpose of performing its obligations to HPE under this Agreement. Except for the limited license to use HPE Materials to provide Solutions under this Agreement, Supplier is granted no right, title, or interest in any HPE Materials.

4. Confidential Information.

- 4.1 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, this Agreement, any and all pricing information whether or not in this Agreement, (iii) is or concerns any Customer provided information, or (iv) if orally disclosed and not qualifying as Confidential Information under any of subsections (i) through (iii) above, is identified at the time of disclosure as proprietary or confidential and is described as such in a written summary delivered to Supplier within thirty (30) days of disclosure.
- 4.2 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 Supplier’s obligations under this Agreement. Confidential Information received may be used only to fulfill the purposes of this Agreement. If 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, 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 this Agreement and survive perpetually.
- 4.3 Supplier Confidential Information. “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 this Agreement.
- 4.4 Exclusions. The foregoing confidentiality obligations will not apply to Confidential Information that: (i) is already known to the receiving party prior to disclosure by the disclosing party, (ii) is or becomes a matter of public knowledge through no fault of the receiving party, (iii) is rightfully received from a third party by the receiving party without a duty of confidentiality, (iv) is independently developed by the receiving party, (v) is disclosed under operation of law, or (vi) is disclosed by the receiving party with the prior written approval of the disclosing party.
- 4.5 Access to Information Systems. Access, if any, to HPE’s or Customer’s Information Systems is granted solely to provide the Solutions, 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.

5. Indemnification.

- 5.1 Indemnification by Supplier. Supplier will defend, indemnify, and hold HPE, its Affiliates, and their respective successors, directors, officers, employees, and agents (each, an “HPE Indemnified Party”) harmless from and against all Claims to the extent such Claims arise out of or relate to:
- (a) Supplier’s negligent or willful acts or omissions resulting in bodily injury or death to any person or loss, disappearance, or damage to tangible or intangible property,
 - (b) Supplier’s infringement, misuse, or misappropriation of any third-party Intellectual Property rights,
 - (c) Supplier’s breach of any confidentiality, privacy, or data protection obligations under this Agreement,
 - (d) Supplier’s tax obligations or non-compliance with Applicable Law, or

- (e) actions by Supplier Personnel against HPE for wages, fringe benefits, other compensation, or similar claims, and claims challenging Supplier's right to dismiss its Personnel.

Supplier will not be liable under this Section 5.1 (Indemnification by Supplier) to the comparative extent that Claims result from:

- (1) an HPE Indemnified Party's negligent or willful acts, or
- (2) Supplier's strict compliance with HPE's express instructions that could not be reasonably performed in a non-infringing manner.

5.2 Indemnification by HPE. HPE will defend, indemnify, and hold Supplier, its Affiliates, and their respective successors, directors, officers, employees, and agents (each a "Supplier Indemnified Party") harmless from and against all Claims to the extent that such Claims arise out of or relate to:

- (a) HPE's negligent or willful acts or omissions resulting in bodily injury or death to any person or loss, disappearance, or damage to tangible or intangible property,
- (b) HPE's violation of Supplier's Intellectual Property rights, or
- (c) HPE's non-compliance with Applicable Laws.

5.3 Infringement Remedies. If an infringement Claim is made or appears likely to be made about a Solution, Supplier shall, in addition to Supplier's indemnification obligations, at its sole expense and option: (i) procure for HPE and Customer the right to continue using the Solution, (ii) replace the Solution with a non-infringing version of equivalent function and performance, or (iii) modify the Solution 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 infringing Solution, reimburse HPE for any costs incurred by HPE as a result of such infringement, in addition to any other available remedies.

5.4 Exclusions. Notwithstanding the foregoing, Supplier will have no responsibility for Claims arising from unauthorized modifications of the Solution made by HPE, or use of the Solution in combination with any equipment, software or services not provided by Supplier or HPE, provided such Claim would not have arisen but for such modification or combination, provided such combination is not reasonably inferable from the nature of the Solution, any Order Form, Category Addendum, or Supplier's specifications, written designs or documentation.

5.5 Notice. The indemnified party will: (i) provide the indemnifying party with reasonably prompt notice of Claims, (ii) permit the indemnifying party through mutually acceptable counsel to answer and defend Claims, and (iii) provide the indemnifying party with reasonable information and assistance to help the indemnifying party defend Claims at the indemnifying party's expense. An indemnified party may employ separate counsel and participate in the defense of a Claim at its own expense. Neither party will stipulate, admit, or acknowledge fault or liability by the other without their prior written consent. The indemnifying party will not settle any Claim or publicize any settlement without the other party's prior written consent.

6. Limitation of Liability.

6.1 AS PERMITTED BY APPLICABLE LAW AND SUBJECT TO THE REMAINDER OF THIS SECTION 6, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF DATA, REVENUE, OR PROFITS), WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF THIS AGREEMENT REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, OR OTHERWISE, AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. ADDITIONALLY, NEITHER PARTY'S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY WILL EXCEED THE GREATER OF:

- (a) \$2,000,000.00 US, OR
- (b) TWO TIMES THE ACTUAL FEES PAID BY HPE IN THE 12-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE.

6.2 THE LIMITATIONS ON LIABILITY IN SECTION 6.1 DO NOT APPLY TO LIABILITY ARISING FROM:

- (a) A PARTY'S DUTY TO INDEMNIFY THE OTHER UNDER THIS AGREEMENT,
- (b) A BREACH OF A PARTY'S CONFIDENTIALITY, PRIVACY, AND DATA PROTECTION OBLIGATIONS UNDER THIS AGREEMENT,
- (c) INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH THIS AGREEMENT, OR
- (d) EITHER PARTY'S LIABILITY TO THE OTHER FOR PERSONAL INJURY, DEATH OR PHYSICAL DAMAGE TO PROPERTY CLAIMS.

7. Term and Termination.

- 7.1 Term. This Agreement commences on the Effective Date and will continue for the Term indicated on the first page of this Agreement unless it is:
- (a) terminated earlier according to its terms, or
 - (b) extended by a written and signed amendment.
- 7.2 Termination without Cause. HPE reserves the right to terminate this Agreement or any Order Form, in whole or in part, without liability at any time, without cause, upon fourteen (14) days prior written notice to Supplier, or such other period of time as may be set forth in an Order Form.
- 7.3 Termination for Cause. Either party may terminate this Agreement or any Order Form, by written notice to the other if either party breaches any provision of this Agreement or Order Form, 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.
- 7.4 Effect of Termination. Any expiration or earlier termination of this Agreement shall not, however, be deemed to terminate, alter or otherwise modify the term of any Order Form entered into by the parties, which shall remain in effect in accordance with its terms. Upon termination of any Order Form, 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 Solutions provided and accepted prior to the date of termination. Supplier will assist HPE with a post-termination transition at HPE's request. Supplier's assistance will not exceed ninety (90) calendar days. HPE will pay Supplier for its assistance at a rate no greater than the rate set forth in any Order Form for comparable services.
- 7.5 Temporary Suspensions. HPE shall have the right to temporarily suspend the performance of Services under an Order Form as a part of an HPE mandated temporary suspension (each, a "Temporary Suspension"); provided, however, that (i) HPE shall provide Supplier with advance notice of each Temporary Suspension as soon as possible, (ii) Supplier shall not be obligated (but shall use commercially diligent efforts at no additional cost to HPE) to retain the availability of its Personnel to resume providing Services upon the expiration of the Temporary Suspension, and (iii) in the event that the Temporary Suspension becomes permanent, as determined in the sole discretion of HPE, then the relevant Order Form shall be deemed to be terminated without cause pursuant to this Section 7 (Term and Termination). For purposes of this Section only, in addition to the methods of notice permitted in this Agreement, notice of temporary suspension may also be provided via electronic mail and voice mail to: (a) the person identified in this Agreement to receive notices, or (b) under this Agreement notices may instead be sent to the applicable project managers identified in each Order Form.
- 7.6 Return of Materials. Upon termination of this Agreement or completion of Supplier's performance under an Order Form, whichever occurs first, Supplier shall promptly return to HPE all materials and/or tools provided by HPE or Customer under this Agreement and all written Confidential Information provided by HPE or Customer to Supplier.

8. Export and Import Compliance. 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 this Agreement sufficient for HPE to determine the appropriate export and import classification of such items under applicable regulations, (ii) to the best of Supplier's knowledge, 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>): (a) Supplier will obtain any required US government authorization, (b) if any such restricted software, technology, technical data or technical assistance is provided by HPE, Supplier will obtain written authorization from HPE, and (c) 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.

9. Terms for Services and Projects.

- 9.1 Prime Agreement. To the extent that Supplier is providing Solutions as part of HPE's performance under a Prime Agreement with an Customer, HPE and Supplier agree that the terms and conditions set forth in the Prime Agreement between HPE and Customer which are applicable to the Solutions ("Flow Downs") shall be binding on Supplier. These Flow Downs and any additional or clarifying details will be set forth in the Order Form.
- 9.2 Travel, Permits, Visas and Licenses. Supplier will secure and pay for all licenses, permits and inspections necessary for completion or delivery of the Solutions. 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.

- 9.3 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 Supplier by the HPE project manager specified in the Order Form.
- 9.4 Performance to Schedule. Time is of the essence with respect to all Solutions hereunder.
- 9.5 Supplier Materials and Resources. Unless supplied by HPE, Customer, or other named third party, Supplier shall possess all necessary and appropriate written materials, software, equipment, tools, drawings or schematics, or any other material resources necessary to deliver the Solutions set forth in an Order Form. HPE will not provide any material resources or facilities, unless specifically identified in an Order Form.
- 9.6 Hazardous Materials. If provision of Solutions involves the use, handling, maintaining, removal, transport, or other such actions related to hazardous materials, 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 Applicable Law. Supplier shall be responsible for the provision, maintaining, and currency of, any permits or licenses required and related to hazardous materials.
- 9.7 Supplier Personnel.
- (a) 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.
- (b) Supplier Responsibilities. 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 providing Services. Supplier shall enforce strict discipline and good order among its Personnel and shall ensure that all Personnel comply with this 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.
- (c) Removal of Personnel. Supplier shall remove personnel immediately from providing Services to HPE, if HPE in its discretion is dissatisfied with such Personnel's performance. HPE will not be liable for any cost associated with removal of Personnel. At HPE's request, Supplier will promptly fill the vacancy created by such removal with new Personnel reasonably acceptable to HPE. HPE will not be responsible for any payment for Services not performed during any vacancy.
- 9.8 Subcontractors. Supplier will not subcontract any Solutions 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 this Agreement. Supplier shall be responsible and liable for all acts of its Subcontractors and its Personnel. Compensation for subcontracted services will be included in the fees and costs billed by Supplier.
- 9.9 Drug Testing and Background Checks. To the extent allowed by Applicable Law and to the extent Supplier Personnel perform Services at a Site, Supplier will not permit any Personnel to work at any Site unless such Personnel have passed a criminal background check, as specified herein, within the twelve (12) months prior to such Personnel providing Solutions 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 Applicable Law), (ii) driving record check for the past 3 years (or for a lesser time period if restricted by Applicable Law) if driving is a requirement of the Personnel'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: (a) crimes against persons; crimes involving weapons, explosives or arson, (b) crimes involving the use/misuse of a computer/network, (c) crimes involving trade secret/proprietary information theft, burglary, theft, embezzlement, corruption, bribery, forgery, fraud, receiving stolen property, or (d) crimes involving the possession, manufacture, transportation or sale of illegal drugs and controlled substances. To the extent allowed by Applicable Law and to the extent any drug testing requirements are made part of this Agreement or any Order Form, Supplier shall, at the reasonable request of HPE and at Supplier's own expense, comply with such drug testing requirements.
- 9.10 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. If any Personnel has been an employee of HPE in the past, Supplier must obtain HPE's prior written authorization prior to assigning any such Personnel to perform Services.

9.11 Customer Interactions.

- (a) Customer Contact. During the delivery phase of a Project, Personnel engaged in the provision of Solutions under this Agreement must limit direct communication with a Customer solely to those communications necessary to affect provision of Solutions.
- (b) New and Follow-On Business. If, while delivering Solutions, Supplier becomes aware of the existence of potential follow-on work or additional opportunities specifically related to the Solutions, Supplier will disclose such information to HPE.
- (c) Supplier Sales Efforts. Supplier may maintain and/or pursue direct business opportunities with the Customer; provided, however, when Personnel are engaged in the provision of Solutions under this Agreement, such Personnel may not engage in activities which involve solicitation of future business from the Customer.

10. Representations and Warranties.

- 10.1 Representations and Warranties. Supplier represents, warrants and covenants during the Term of this Agreement: (i) Supplier is duly-organized and validly-existing under the Applicable Laws of the jurisdiction of its incorporation and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof and the person entering into this Agreement on behalf of Supplier is authorized to do so, (ii) Supplier and the Solutions comply with all Applicable Law, (iii) this Agreement and the Solutions do not breach any other agreement to which Supplier is a party or bound, (iv) Supplier will, at the time of delivery of any Solution, have all the rights and licenses in such Solution necessary to allow HPE to own, use and/or receive such Solution without additional restrictions or charges, including having in place appropriate written agreements with its Personnel and Subcontractors, (v) to the best of Supplier's knowledge, Solutions do not infringe or misappropriate any copyright, patent, trademark, trade secret, or any other Intellectual Property Rights of any third party, (vi) Solutions do not contain any material defect and conform to all specifications and descriptions set forth in the applicable Order Form, (vii) Services performed by Supplier and its Subcontractors will comply with the highest standards of care practiced in the industry except to the extent higher standards of performance are required hereunder, but in no event less than a good, professional and workmanlike manner standard, (viii) Supplier and its Subcontractors will be properly licensed, certified or accredited and have sufficient skills, knowledge, and training to deliver the Solutions, (ix) Supplier has complied and shall continue to comply with all obligations, terms and conditions imposed under any applicable Open Source software license terms and that no HPE software shall be subject to an obligation to be provided to the open source community as a result of Supplier's activities under this Agreement, and (x) the Solutions shall not contain any harmful code, time bombs, viruses, worms, backdoors or similar software which may cause damage to any product or data, nor shall it contain any time-sensitive code or other disabling devices, key lock or code that has potential or capability of causing any unplanned interruption of the operation of the Solutions or that might allow unauthorized access to data or to the Solutions. Supplier shall promptly notify HPE of any fact, event or circumstance that would make any representation or warranty provided by Supplier untrue or inaccurate in any respect.
- 10.2 Disclaimer. SUPPLIER HEREBY DISCLAIMS AND HPE EXPRESSLY WAIVES ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 10.3 Acceptance. Upon receipt of a Solution, HPE will have the right to inspect and reject the Solution if it does not conform to its specifications or acceptance criteria, if any. If HPE identifies any problem with a Solution (a "Nonconformity"), including any breach of the warranties set forth above, then HPE shall notify Supplier, providing reasonable detail to allow Supplier to duplicate the Nonconformity. Supplier shall correct the Nonconformity in accordance with the timeframes set forth in the applicable Order Form, and if no timeframe is provided, then within thirty (30) days of notice of the Nonconformity. If Supplier does not correct the Nonconformity within the applicable timeframe, then HPE may receive a full refund of amounts paid for the defective Solution. The remedy set forth in this Section is not HPE's sole or exclusive remedy for Supplier's breach of its representations, warranties and covenants.

11. Data Security and Privacy. To the extent that Supplier Processes HPE Personal Data as a Processor or Controller, Supplier will implement and maintain privacy and security measures to protect HPE Personal Data and Solutions in accordance with, and the parties shall comply with, the current Privacy Schedule (the "Privacy Schedule") and Data Network Security Schedule (the "DNSS") available on the Supplier Portal at the following location (https://supplierportale.it.hpe.com/supplierextranet/Data_Security_and_Privacy.do), as they may be updated by HPE from time to time. Any terms not defined in this Section will rely on the definition in the Privacy Schedule and DNSS. To the extent that: (i) any Details of the Processing of Personal Data attachment ("DPPD Attachment") is attached to this Agreement or any Order Form, then the terms of such DPPD Attachment shall describe the additional Processing details for Supplier's provision of the Solution or (ii) a Privacy Schedule and/or DNSS is attached to this Agreement or any Order Form, then the terms of such Privacy Schedule and/or DNSS shall describe the Processing details for Supplier's provision of the Solution. Signature to and dating of this Agreement shall constitute all required signatures for and dates the Standard Contractual Clauses, as applicable, that are referred to in

the Privacy Schedule.

12. Insurance. During performance of any Order Form, 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 Personnel. If Workers' Compensation is through a Social Scheme, Supplier agrees to be in full compliance with such Applicable Law. Supplier will maintain Employer's Liability insurance in amounts not less than the local currency equivalent of \$1,000,000 US each accident for bodily injury by accident and \$1,000,000 US each employee for bodily injury by disease. Where permitted by Applicable 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 \$1,000,000 US per occurrence (combined single limit) or \$1,000,000 US each occurrence, \$1,000,000 US aggregate for products and completed operations, and \$2,000,000 US 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 US combined single limit for each accident. Each Comprehensive General Liability and Automobile Liability policy shall include HPE and its Affiliates 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 (3) 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 this Agreement, or the lack or unavailability of any other insurance, limit Supplier's obligations or liability to HPE hereunder.

13. Audit. Supplier shall keep and maintain complete and accurate books, records and accounts with respect to Supplier's performance under this Agreement ("Supplier Records") during the Term and for five (5) years thereafter or the period prescribed by Applicable Law if longer ("Audit Period"). During the Audit Period, HPE and/or third-party agents (collectively "Auditor") may audit Supplier, upon notice and in a non-disruptive fashion, to ensure compliance with Applicable Laws, this Agreement and the Supplier Standards. Supplier shall cooperate fully with the Auditor or its designees in connection with any audit functions or inspections, including without limitation providing Auditor with access to Supplier Records and Supplier's facilities reasonably required to allow Auditor to verify Supplier's compliance with this Agreement and permitting the Auditor to photocopy Supplier Records for audit evidence. Supplier will reimburse HPE for overpayments discovered by Auditors. If Supplier overcharged HPE 5% or more during an audited period, it will immediately refund HPE all overpayments plus pay interest at 0.5% per month on such overcharge.

14. Force Majeure. Except for business continuity and disaster recovery obligations under this Agreement or an Order Form, neither party is liable for failing to perform its obligations under this Agreement due to acts of God, natural disasters, war, civil disturbance, or government action where the cause is beyond the party's reasonable control ("Force Majeure Event"). In the case of a Force Majeure Event, the nonperforming party will be excused from further performance or observance of the obligations so affected for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any party so delayed in its performance will immediately notify the party to whom performance is due and describe at a reasonable level of detail the circumstances causing such delay. As soon as the nonperforming party is able to resume performance of its obligations, it will do so and will promptly give the other party notice of such resumption. All amounts payable to Supplier hereunder will be equitably adjusted in a manner such that HPE is not required to pay any amounts for Solutions that HPE is not receiving. Performance time under this Agreement will be considered extended for a period of time equivalent to the time lost because of any delay that is excusable pursuant to this Section.

15. Business Continuity Plan. Supplier shall maintain a business continuity and disaster recovery plan (the "BCP") that includes procedures for disaster recovery which are adequate to ensure continuity of operation of Supplier's business processes (or the business processes of any third party on whom Supplier relies) so as to ensure that there is no disruption to all or any part of its business which would cause Supplier not to be able to perform its duties and obligations under this Agreement. Supplier agrees to deliver a copy of its executive summary of the BCP for the Solutions upon request or material modification to the BCP, and will meet with HPE representatives to review it. Future updates or revisions to the BCP shall be no less protective than the then current plan. Additional services provided by Supplier may be subject to additional business continuity and disaster recovery requirements and these additional requirements will be addressed in the applicable Order Form.

16. Federal Acquisition Rules. If Supplier is a U.S. federal contractor or covered subcontractor, Supplier shall comply with 41 CFR 60-1.4 and 29 CFR part 471, Appendix A to Subpart A, FAR 52.219-8, FAR 52.219-9, 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a). The latter two regulations prohibit discrimination against qualified individuals on the basis of protected veteran status and disability and require affirmative action to employ and advance in employment protected veterans and qualified individuals with disabilities. To the extent HPE utilizes Solutions to perform its obligations under a U.S. Government or Department of Defense prime contract or subcontract, Supplier certifies it will comply with the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses listed in the Supplier Handbook.

17. General Provisions.

17.1 Supplier Standards. Supplier shall institute processes, procedures, and controls in order to ensure compliance with the

compliance terms applicable to its business dealings with HPE including, but not limited to, the HPE Supplier Code of Conduct, trade and logistics requirements, HPE supplier requirements for safe and legal products, cybersecurity and secure supply chain requirements, social and environmental responsibility requirements, environmental safety requirements, and governmental compliance requirements set forth in the Supplier Handbook (collectively, the “Supplier Standards”). Supplier shall comply with the Supplier Standards as they may be updated by HPE from time to time.

- 17.2 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. In case of breach of the above, HPE may suspend or terminate this Agreement or any Order Form at any time without notice or liability.
- 17.3 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.
- 17.4 Assignment. Notwithstanding anything to the contrary in this Agreement and except as set forth in this Section, 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: (i) to any entity controlled by, or under common control with, HPE, or its permitted successive assignees or transferees, or (ii) 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, 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.
- 17.5 Choice of Law. This Agreement shall be interpreted and governed by the laws of the HPE Entity that is a party to this Agreement, as such governing law is specified in the Purchasing Guidelines, without regard to principles of conflicts of law. To the extent an HPE Entity executing an Order Form is different than the HPE Entity signing this Agreement, then for purposes of interpreting and/or resolving any dispute related to such Order Form, the parties to the Order Form shall follow any dispute resolution procedures set forth in the Purchasing Guidelines for the applicable HPE Entity, and: (i) the HPE Entity and Supplier (or Supplier Affiliate) irrevocably submit and consent to the exclusive jurisdiction of the corresponding courts listed in the Purchasing Guidelines, and (ii) this Agreement will be governed by the corresponding laws of the jurisdiction listed in the Purchasing Guidelines without regard to principles of conflicts of law.
- 17.6 Compliance with Applicable Law. Supplier warrants that it will comply with all Applicable Law in its performance under this 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 this 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 Solutions.
- 17.8 Notices. All notices required under this Agreement will be in writing and will be sent to the address of the recipient specified (i) with respect to an HPE Entity, the address set forth in Purchasing Guidelines or, if not specified in the Purchasing Guidelines, then as specified in the Order Form and (ii) with respect to Supplier, the address set forth on the cover page of this Agreement. 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, or (iii) if delivered by first class mail, three (3) business days after the date of mailing.
- 17.9 No Publicity; Use of Trademarks. Supplier shall not publicize or disclose the terms or existence of this Agreement, nor shall Supplier use or obtain any right or interest in the name(s), trademark(s), or tradename(s) of HPE or its Affiliates, except as follows: (i) with the prior written consent of HPE, (ii) as may be necessary for Supplier to perform its obligations under this Agreement, or (iii) as may otherwise be required by Applicable Law. HPE may impose, as a condition of its consent, any restrictions which HPE deems appropriate, in its sole discretion. Supplier shall provide ten (10) days written notice to HPE prior to disclosure under subsections (ii) or (iii) above. Supplier hereby grants to HPE a non-exclusive, worldwide license, at

no charge to HPE, to copy, display, perform, and distribute screen displays and packaging of the Solutions and accompanying documentation and to copy, display, perform, distribute, import and modify such images solely in connection with HPE's marketing, sales, support and training efforts under this Agreement. Supplier agrees that HPE may, in its discretion, and at no charge use: (a) Supplier's name, (b) the Solution name(s), and (c) Supplier trademarks in identification of the Solutions offered to a Customer and as part of HPE's promotional, marketing and sales related activities, at all times protecting any existing copyrights, trademarks or other markings affixed to the Solutions.

- 17.10 **Waiver.** Neither party's failure to exercise or delay in exercising any of its rights under this Agreement shall constitute or be deemed to constitute a waiver, forfeiture, or modification of such rights. Waiver of a breach of this 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 this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this 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 this Agreement or provide an equitable adjustment in the event no such provision can be added.
- 17.12 **Surviving Provisions.** The provisions of this Agreement which by their terms require performance after the termination or expiration of this Agreement or have application to events that may occur after the termination or expiration of this Agreement, will survive such termination or expiration. All indemnity obligations and indemnification procedures will survive the termination or expiration of this Agreement.
- 17.13 **Counterparts.** The parties may execute this Agreement or an Order Form in any number of counterparts. Each counterpart is an original and all counterparts constitute one agreement binding both parties. Facsimile and electronic signatures will be binding for all purposes.
- 17.14 **Entire Agreement.** This 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 this Agreement will be binding unless in a writing which states that it is an amendment of this Agreement, and which is signed by an authorized representative of each party who is authorized to amend this Agreement. However, HPE may unilaterally modify certain policies and documentation as expressly set forth in this Agreement. For purposes of this Agreement, a "writing" shall specifically exclude any click-wrap, shrink-wrap or similar terms which accompany the Solution. The use of electronic or pre-printed forms, such as purchase orders, acknowledgments, or Supplier order forms, is for convenience only and all terms and conditions stated thereon, except as specifically set forth in this Agreement, are void and of no effect to the extent they conflict with this Agreement.

18. Definitions.

- 18.1 "**Affiliate**" means a corporation or other business entity anywhere in the world in which a party to this Agreement owns or controls, directly or indirectly, an equitable interest representing the right to elect the majority of the directors or persons performing similar functions or, if the law of the applicable jurisdiction does not permit such majority interest, then the maximum allowable under such law.
- 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 this 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 "**Category Addendum**" or "**Category Addenda**" means the Hardware Category Addendum, Software Category Addendum, SaaS Category Addendum, Marketing Category Addendum, Agency Contractor Category Addendum and any other category addendum that references or is attached to this Agreement.
- 18.5 "**Claims**" means any and all: (i) third-party claims, actions, demands, lawsuits, or proceedings, and (ii) damages, costs (including reasonable fees of attorneys and other professionals), or liabilities of any kind (including any fine, penalty, judgement, or order issued by a governmental, regulatory, or judicial body), in each case arising out of or relating to that third-party claim, action, demand, lawsuit, or proceeding.
- 18.6 "**Customer**" means an HPE customer to whom HPE has agreed to provide goods or services.
- 18.7 "**Deliverables**" means all Intellectual Property and other materials uniquely made, authored, conceived, reduced to practice, created or developed for HPE under this Agreement, including without limitation any and all software, software features, computer files, reports, documents, processes, technologies, designs, marketing and advertising assets, works of art, drawings, plans, educational and training materials, records, forms, specifications, templates, methodologies, charts, flow charts, user interfaces, templates, menus, buttons, icons, tools, data, algorithms, ideas, concepts, know-how and methods or other manifestations of efforts of Supplier, regardless of their form, as may be set forth in greater detail in an Order Form. For

the avoidance of doubt, none of the following are Deliverables: (i) Hardware, Software, SaaS, Services or Supplier Pre-Existing IP as provided to HPE that have not been specifically customized for HPE, or (ii) technology or Intellectual Property made available to HPE as part of generally-available maintenance Services for a Solution.

- 18.8 “Hardware” means equipment, materials and other physical goods, including any software or firmware embedded therein and any tools, maintenance, support, installation and documentation required for their use.
- 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, logos, designs, trade dress, domain names, social media account names, rights of publicity, and other personal, proprietary, and 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 “Order Form” means a Hardware Order Form, Software Order Form, SaaS Order Form, or any other order form that references or is attached to this Agreement, and all other POs, SOWs, schedules, exhibits, specifications and other attachments that reference this Agreement. An Order Form may also consist of a PO alone.
- 18.13 “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/or (iii) redistributable at no charge.
- 18.14 “Personnel” means workers employed or contracted by Supplier or its Subcontractors for the provision of Solutions to HPE under this Agreement.
- 18.15 “Pre-Existing IP” means any Intellectual Property owned, created, developed, leased and/or licensed by a party prior to, outside of or independently from this Agreement, including without limitation technology, tools, methods, algorithms, application programming interfaces, know-how and data. Pre-Existing IP shall include techniques and skills that are specific to Supplier’s business and generic in nature with respect to any customer of Supplier, including common configurations and generic templates that are not specifically related to any Solution provided to HPE, HPE Materials, or any HPE Confidential Information.
- 18.16 “Prime Agreement” means a proposed or signed agreement and/or SOW between HPE and a Customer regarding a Project.
- 18.17 “Project” means a defined opportunity for which HPE may procure Solutions from Supplier under one or more Prime Agreements.
- 18.18 “PO” or “Purchase Order” means a written (electronic, hardcopy or fax) purchase order issued by HPE to Supplier referencing this Agreement.
- 18.19 “Reseller” means an entity that has a contractual relationship with HPE whereby it procures products from HPE under HPE’s reseller or channel partner programs inclusive of distributors, and then redistributes to other resellers or directly to Customers.
- 18.20 “SaaS” means a centrally-hosted software application that is owned, managed and maintained by Supplier, or for which Supplier is ultimately responsible, and delivered to HPE over the internet or other network (software-as-a-service) and any tools, maintenance, support, installation and documentation required for its use.
- 18.21 “Services” means any services, including professional services, consulting services, information technology services, marketing services and any other services and any Deliverables provided in connection with such Services.
- 18.22 “Site” means any HPE, third party, or Customer location where Services are to be provided.
- 18.23 “Software” means a computer program (whether in source code, object code or any other form) and any tools, maintenance, support, installation and documentation required for its use.
- 18.24 “Solution” means any Hardware, Software, SaaS (or other “as-a-service” solution), Deliverables and other Services purchased or licensed by HPE under this Agreement.
- 18.25 “SOW” or “Statement of Work” means a document signed by HPE and Supplier that describes the Solutions 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 this Agreement.
- 18.27 “Supplier Handbook” means the Supplier Compliance Warranties/Supplier Handbook located at the Supplier Portal under the

heading “Supplier Resources.”

18.28 “Supplier Portal” means the HPE Supplier Portal located at: <https://supplierportale.it.hpe.com/supplierextranet/index.do>.

18.29 “Term” means the Initial Term and any Renewal Term, if any.

18.30 “XaaS” or “Everything as a Service” means a service whereby HPE provides consumption and/or subscription-based solutions to Customers (which may include the use of HPE internal leasing through an HPE Affiliate) or any other services-based offering.