



**State of Oklahoma
Office of State Finance
Information Services Division**

**Notice of Statewide Contract
Award**

Contract Title: Enterprise Project Portfolio Management (EPPM) Software

Statewide Contract #: ITSW007 - EPPM

Contract Issuance Date: 02/13/2012

Total Number of Vendors: 1 (For details see: Vendor Information Sheet)

Contract Period: 02/13/2012 – 02/12/2013

Agreement Period: 02/13/2012 – 02/12/2023

Authorized Users: All State Agencies, Boards, Commissions and Institutions, Cities, Counties, School Districts and Municipalities may avail themselves of this contract.

Contract Priority: Mandatory

Type of Contract: Firm, Fixed Price

OSF Contact: Gary Rowland

Phone: 1 - 405 - 521 - 4898

Title: Procurement Specialist

Fax: 1 - 405 - -

Email: gary.rowland@osf.ok.gov

Contract Intent: The State of Oklahoma established this Statewide solution for Enterprise Project Portfolio Management (EPPM) Software to provide visibility into the current state of Information Technology (IT) initiatives, resource and spend through a centralized collection of data from multiple state agencies. This solution is positioned so that every agency in the State of Oklahoma can use it.



State of Oklahoma
Office of State Finance
Information Services Division

Awarded Vendor Information

PAGE 1 OF 1

Vendor Name: Results Positive

Vendor ID#: 332087

Vendor Address: Address: 85 W. Combs Rd. Ste 101-407

City: Queen Creek

State: AZ

Zip Code: 85140

Contact Person Scott Leopard
Name:

Phone #: 1- 482 - 226- 7731

Title: Business Development Manager

Fax #: 1- - -

Email: sleopard@resultspositive.com

Website: www.resultspositive.com

Authorized Location: ☐ Locations list attached as (*attachment title*)

☐

Address:

City:

State:

Zip Code:

Contract ID #: 3133

Delivery:

**Minimum
Order:**

P/Card Accepted: X ☐ Yes

☐ No

Other:



Dispatch via Print

Vendor ID 0000335287
RESULTS POSITIVE INC
85 W COMBS RD STE 101-407
QUEEN CREEK AZ 85140-9154

[illegible]

Tax Exempt? Y Tax Exempt ID:736017987

Line #	Item ID/Item Desc	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
1	1000028154 EPPM License Fee - Information Technology	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.01000	EA	0001	
2	1000028155 EPPM License Support - Information Technology	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.01000	EA	0001	
3	1000028156 EPPM Consulting Services - Information Technology	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.01000	EA	0001	
4	1000028157 EPPM Implementation Services - Information Technology	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.01000	EA	0001	
5	1000028158 EPPM Training - Information Technology	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.01000	EA	0001	

COMMENTS:

Contract Period: 02/13/2012 - 02/12/2013
Agreement Period: 02/13/2012 - 02/12/2023

Final = The price is final after adjustments
Hard = Apply adjustments regardless of other adjustments
Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



State of Oklahoma
Office of State Finance
Information Services Division

Information Technology
Software Agreement

Enterprise Portfolio Project Management ITSW007 for Information Technology Portfolio Project Management

THIS CONTRACT is made by and between the State of Oklahoma (the "State"), and Results Positive, Inc. (the "Contractor")

NOW THEREFORE, in consideration of the terms, and conditions of this Contract, the parties agree as follows:

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A. GENERAL PROVISIONS

The following provisions shall apply where applicable to the contract.

A.1. Contract Intent

To establish a Statewide solution for Enterprise Project Portfolio Management (EPPM) Software to provide visibility into the current state of Information Technology (IT) initiatives, resource and spend through a centralized collection of data from multiple state agencies. This contract defines the intent, deliverables, terms and conditions that govern this agreement.

The contract will be described as ITSW007 EPPM.

A.2. Definitions

As used herein, the following terms shall have the following meaning unless the context clearly indicates otherwise:

- A.2.1. "Acquisition" means items, products, materials, supplies, services and equipment a State agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act;
- A.2.2. "Addendum" means a written modification to a contract.
- A.2.3. "Acceptance" means the time the agency accepts to product as installed and performing as claimed. Warranties will begin upon acceptance.
- A.2.4. "Business Entity" means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, limited liability limited partnership, sole proprietorship, joint stock company, consortium, or other legal entity recognized by statute;
- A.2.5. "COTS" means Commercial off the Shelf.
- A.2.6. "Contract" means the final agreement under which the services and/or products shall be governed.
- A.2.7. "Contractor" means the Business Entity with whom the State enters into this contract, in this case, Results Positive, Inc.
- A.2.8. "Government Entities" means State Agencies, Boards, Commissions, Authorities, Oklahoma Counties, Cities, Schools, Hospitals, Regents of Higher Education, Colleges, Universities, Municipalities, or political subdivisions;
- A.2.9. "HP" means Hewlett Packard.
- A.2.10. "State" means the government of the State of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of Oklahoma. References to "State" in this document refer to the Office of State Finance.
- A.2.11. "State Agency" includes any office, officer, bureau, board, counsel, court, commission, institution, unit, division, body, or house of the executive or judicial branches of the State government, whether elected or appointed, excluding only political subdivisions of the State.
- A.2.12. "State CIO" is the State Chief Information Officer, as used herein the CIO has the same authority as the State Purchasing Director for all IT and Telecommunications purchasing and are used interchangeably.

A.3. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

- A.3.1. The contractor and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants:
 - A.3.1.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State of Oklahoma or local department or agency;
 - A.3.1.2. Have not within a three-year period preceding this solicitation been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - A.3.1.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph A.2.1.2. of this certification; and
 - A.3.1.4. Have not within a three-year period preceding this contract had one or more public (Federal, State or local) contracts terminated for cause or default.

- A.3.2.** Where the contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation herein.

A.4. Contracts Subject To Public Disclosure

Unless otherwise specified in the Oklahoma Open Records Act, Central Purchasing Act, or other applicable law, documents and information contains or referenced herein are public records and subject to disclosure. Contractor claiming any portion of this contract as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. The State CIO shall make the final decision as to whether the documentation or information is confidential.

A.5. Contract Modification

- A.5.1.** The contract is under the authority of the IT State Purchasing Director. The contract may be modified only through a written Contract Modification, signed by the State.
- A.5.2.** Any change to the contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Office of State Finance in writing, or made unilaterally by the contractor, is a breach of the contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Contract Modifications, shall be void and without effect, and the contractor shall not be entitled to any claim under a contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the contract.

A.6. Delivery, Inspection and Acceptance

- A.6.1.** Unless otherwise specified in the solicitation or awarding documents, all deliveries shall be F.O.B. Destination. The contractor shall prepay all packaging, handling, shipping and delivery charges and firm prices quoted in the contract shall include all such charges. All products and/or services to be delivered pursuant to the contract shall be subject to final inspection and acceptance by the State at destination. "Destination" shall mean delivered to the receiving dock or other point specified in the purchase order. The State assumes no responsibility for goods until accepted by the State at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the contractor until accepted by the receiving agency. The contractor shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.
- A.6.2.** Contractor shall be required to deliver products and services as offered on or before the required date. Deviations, substitutions, or changes in products and services shall not be made unless expressly authorized in writing by the State.

A.7. Invoicing and Payment

- A.7.1.** Contractor shall be paid upon submission of an accurate and proper invoice(s), as defined by Title 62 O.S. §34.73, to the agency, at the prices stipulated on the contract. Failure to provide accurate invoices may result in delay of processing invoices for payment. Pursuant to 74 O.S. §85.44B, invoices shall be paid in arrears after products have been delivered or services provided. Invoices shall contain the purchase order number, a description of the services provided, and the dates of those services.
- A.7.2.** Interest on late payments made by the State of Oklahoma is governed by Title 62 O.S. §34.71 and 62 O.S. §34.72.

A.8. Tax Exemption

State agency acquisitions are exempt from sales taxes and federal excise taxes.

A.9. Audit and Records Clause

- A.9.1.** As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with the State, the contractor agree any pertinent State or Federal agency shall have the right to examine and audit all records relevant to execution and performance of the contract.
- A.9.2.** The contractor is required to retain records relative to the contract for the duration of the contract and for a period of seven (7) years following completion and/or termination of the contract. If an audit, litigation, or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

A.10. Non-Appropriation Clause

The terms of any contract and any Purchase Order issued for multiple years under the contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other contract document, the procuring agency may terminate its obligations under the contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The Requesting (procuring) Agency's decisions as to whether sufficient appropriations are available shall be accepted by the contractor and shall be final and binding.

A.11. Choice of Law

Any claims, disputes, or litigation relating to the solicitation, or the execution, interpretation, performance, or enforcement of the contract shall be governed by the laws of the State of Oklahoma.

A.12. Choice of Venue

Venue for any action, claim, dispute, or litigation relating in any way to the contract shall be in Oklahoma County, Oklahoma.

A.13. Termination for Cause

- A.13.1. The contractor may terminate the contract for default or other just cause with both a 30-day written request and upon written approval from the State. The State may terminate the contract for default or any other just cause upon a 30-day written notification to the contractor.
- A.13.2. The State may terminate the contract immediately, without a 30-day written notice to the contractor, when violations are found, when conditions preclude the 30-day notice, or when the State determines that, an administrative error occurred prior to contract performance.
- A.13.3. If the contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

A.14. Termination for Convenience

- A.14.1. The State may terminate the contract, in whole or in part, for convenience if the State CIO determines that termination is in the State's best interest. The State shall terminate the contract by delivering to the contractor a Notice of Termination for Convenience specifying the terms and effective date of contract termination. The contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the State.
- A.14.2. If the contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the contractor.

A.15. Insurance

The contractor shall maintain and provide proof to the State of the following insurance during the term of this agreement:

- A.15.1. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- A.15.2. Commercial General Liability Insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage.

A.16. Employment Relationship

This contract does not create an employment relationship. Individuals performing services required by this contract are not employees of the State of Oklahoma. The contractor's employees shall not be considered employees of the State of Oklahoma for any purpose, and accordingly shall not be eligible for rights or benefits accruing to State employees.

A.17. Compliance with the Oklahoma Taxpayer and Citizen Protection Act Of 2007

The contractor, any subcontractors, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employment Verification Program (E-Verify) available at www.dhs.gov/E-Verify.

A.18. Compliance with Applicable Laws

The products and services supplied under the contract shall comply with all applicable Federal, State, and local laws and the contractor shall maintain all applicable licenses and permit requirements.

A.19. Gratuities

The right of the contractor to perform under this contract may be terminated, by written notice, if the State determines that the contractor, or its agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to any State employee directly involved in this contract. Furthermore, a contractor convicted of such violation may also be suspended or debarred.

A.20. Mutual Responsibilities

The State and contractor agree that under this Agreement:

- A.20.1. Neither party grants the other the right to use any trademarks, trade names, or other designations in any promotion or publication without express written consent by the other party.
- A.20.2. This is a non-exclusive agreement and each party is free to enter into similar agreements with others.
- A.20.3. Each party grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.
- A.20.4. Where approval, acceptance, consent, or similar action by either party is required under this agreement, such action shall not be unreasonably delayed or withheld.

A.21. Confidentiality

- A.21.1. Pursuant to Title 62 O. S. §34.12.(C.). "The Office of State Finance and all agencies of the executive branch of the State shall not be required to disclose, directly or indirectly, any information of a State agency which is declared to be confidential or privileged by State or Federal statute or the disclosure of which is restricted by agreement with the United States or one of its agencies, nor disclose information technology system details that may permit the access to confidential information or any information affecting personal security, personal identity, or physical security of State assets."

If required for the performance of this contract, the above information may be given to the contractor after the contract is awarded in accordance with the requirements of this section.

- A.21.2. The contractor shall maintain strict physical security of all data and records entrusted to it. If certain functions are sub-contracted in accordance with the terms expressed herein, the contractor shall insure that the sub-contractor maintains strict physical security of all data and records transmitted to the sub-contractor.
- A.21.3. The contractor shall never turn data or records over to a third party unless specifically authorized to do so by the DCS, the State's CIO, the State Agency Director, or in compliance with a valid court order.

A.22. Unauthorized Obligations

At no time during the performance of this contract shall the contractor have the authority to obligate the State for payment of any goods or services over and above the awarded contract. If the need arises for goods or services over and above the contract for this project, contractor shall cease the project and contact the state for approval prior to proceeding.

A.23. Electronic and Information Technology Accessibility

Pursuant to Title 74, Section 85.7d. and OAC 580:16-7-56 electronic and information technology procurements, solicitations, agreements, and contracts shall comply with applicable Oklahoma Information Technology Accessibility Standards issued by the Oklahoma Office of State Finance.

EIT Standards may be found at www.ok.gov/DCS/Central_Purchasing/index.html or http://www.ok.gov/OSF/documents/isd_itas.doc.

1) For Information Technology or Communications Products, Systems and Applications not requiring development and/or customization. The contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

The contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications not requiring development and/or customized by the contractor from any claim arising out of the contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards.

2) For Information Technology or Communications Products, Systems or Applications requiring development and/or customization. The contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application developed and/or customized by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request. Additional requirements and documentation may be required and compliance shall be necessary on the contractor's part. Such requirements shall be stated in documents such as State Bids, Request for Proposals, Contracts, Agreements, Purchase Orders, and Amendments.

The contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications from the contractor, from any claim arising out of the contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards. However, the contractor shall no longer have an obligation to indemnify the State for liability resulting from products, systems or applications developed and/or customized that are not in compliance with applicable Oklahoma Information Technology Accessibility Standards ("Standards") after the State has tested and confirmed that the product, system or application meets the accessibility requirements in the Standards.

A.24. Patents and Copyrights

If in the performance of this contract, contractor uses any Product covered by a third party's patent or copyright, it is mutually agreed and understood without exception that the contractor's contract prices shall include all royalties or costs charged by the third party arising from the use of such patent or copyright. If such royalties or costs are not covered in the contractor contract price, contractor's obligations are as outlined immediately below.

- A.24.1.** If a third party claims that a product the contractor provides to an Procuring Agency infringes that party's patent or copyright, the contractor shall defend the State against that claim at contractor's expense and pay all costs, damages, and attorney's fees that a court finally awards, provided the State: (i) promptly notifies the contractor in writing of the claim; and (ii) to the extent authorized by the Attorney General of the State of Oklahoma, allows the contractor to control, and cooperates with the contractor in, the defense and any related settlement negotiations; provided however, that if the Attorney General of the State of Oklahoma does not authorize the contractor to have sole control of the defense and any related settlement negotiations, then to the extent allowed by Oklahoma law, contractor shall have no obligation to indemnify the State of Oklahoma under this Section.

If such a claim is made or appears likely to be made, the State agrees to permit contractor to enable the State to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If the contractor determines that none of these alternatives is reasonably available, the State agrees to return the product to the contractor upon written request. Contractor shall then give the State a refund equal to the net book value for the product, provided the State has followed applicable accounting principles. Net book value is the original cost of the product amortized over three (3) years using the straight-line accounting method of depreciation.

- A.24.2.** Contractor has no obligation regarding any claim based on any of the following: (i) anything the State provides which is incorporated into a product; (ii) modification of a product by any party other than contractor, contractor's representative or contractor's sub-contractor, or any State employee acting at the contractor's direction, or a program's use in other than its Specified Operating Environment; (iii) the combination, operation, or use of a product with other products not provided by contractor as a system, or the combination, operation or use of a product with any product, data, or apparatus that contractor did not provide; or (iv) infringement by a non-contractor product alone, as opposed to its combination with products contractor provides to the State as a system.

A.25. Assignment

Contractor's obligations under this contract may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the State.

A.26. Severability

If any provision for this contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

A.27. Failure to Enforce

Failure by the State at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the State to enforce any provisions at any time in accordance with its terms.

A.28. Licensed Software

- A.28.1.** Under no circumstances shall the contractor be required to install or maintain software packages that it has reason to believe are not properly licensed.
- A.28.2.** All software/software licensing previously installed by the agency remains the responsibility of the agency. Software used by the contractor in performance of this contract is the responsibility of the contractor.

A.29. Conflict of Interest

In addition to any requirements of law or through a professional code of ethics or conduct, the contractor and the contractor's employees performing services for the State are required to disclose any outside activities or interests that conflict or may conflict with the best interests of the State. Further, such employees shall not plan, prepare, or engage in any activity that conflicts or may conflict with the best interests of the State of Oklahoma during the period of this agreement without prior written approval of the State. Prompt disclosure is required under this paragraph if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees, other third-party individuals, or entities holding contracts with the State.

A.30. Limitation of Liability

To the extent any limitation of liability is construed by a court of competent jurisdiction to be a limitation of liability in violation of Oklahoma law, such limitation of liability shall be void.

A.31. Offshore Services

No offshore services are provided for under this contract.

A.32. Failure to Provide

The contractor's repeated failure to provide defined services, without reasonable basis as determined by the State, shall constitute a material breach of the contractor's obligations, which may result in cancellation of the contract.

A.33. Agency Policies

The contractor's employees and/or sub-contractors must adhere to the agency policies pertaining to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. It is up to the contractor to review and relay agency policies covering the above to the consulting staff.

A.34. Compliance with Technology Policies

The contractor agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at: www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG_osf_12012008.pdf

A.35. Right to Renegotiate

Prior to exercising the State's right to cancel a contract, the State may renegotiate an existing contract with a contractor for the purpose of obtaining more favorable terms for the State, provided that the term of the contract is not modified.

A.36. Publicity

The award of this contract to contractor is not in any way an endorsement of contractor or contractor's services by the State and shall not be so construed by contractor in any advertising or publicity materials. Contractor agrees to submit to the State all advertising, sales promotion, and other publicity matters relating to this contract wherein the State's name is mentioned or language used from which the connection of the State's name therewith may, in the State's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of the State. Nor shall contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of the State.

A.37. Contract Term, Renewal and Extension Option

- A.37.1. The initial contract period shall begin on the effective date and shall extend through One (1) Year unless renewed, extended, or terminated in accordance with applicable contract provisions. The contractor shall not commence work, commit funds, incur costs, or in any way act to obligate the State until so notified in writing of the approval of the contract. The authorized State representative is the only individual who can transmit that approval to the contractor.
- A.37.2. Under Oklahoma law, the State may not contract for a period longer than one (1) year. By mutual consent of the parties hereto, it is intended that there shall be ten (10) options to renew, each for duration of one (1) year.
- A.37.3. The State, at its sole option, may choose to exercise an extension beyond the final renewal option period, at the contract compensation rate for the extended period. If this option is exercised, the State shall notify the contractor in writing prior to contract end date.

A.38. Contractors and Sub-Contractors Obligations

- A.38.1. The contractor may use sub-contractors in support of this contract; however, the contractor shall remain solely responsible for the performance of this contract.

- A.38.2.** All payments for products or services shall be made directly to the contractor. If sub-contractors are to be used, the sub-contractors shall be identified in the Proposal and shall include the nature of the services to be performed. The State reserves the right to approve any and all sub-contractors providing services under this contract.
- A.38.3.** All contractor and sub-contractor changes after award, including changes of the actual employees performing services on this contract, are subject to approval by the State. No payments shall be made to the contractor for services performed pursuant to this contract by unapproved employees of a sub-contractor.
- A.38.4.** Contractor's employees or agents, if any, who perform services for the State under this agreement shall also be bound by the provisions of this agreement. At the request of the State, contractor shall provide adequate evidence that such persons are their employees or agents. In accordance with the section on "Employment Relationship", the State shall not be responsible to contractor's employees for any employee benefit or any obligation relating to employment, including health insurance benefits, workers' compensation insurance, paid vacation, or any other employee benefit.

A.39. Warranties

Contractor warranties should begin on the date of final acceptance by the State.

A.40. Authorized Users

During the term of this contract, any government entities, as defined herein, may utilize this contract. The Oklahoma statutes state that counties, school districts, and municipalities of Oklahoma may avail themselves of the contract subject to the approval of the contractor. For purposes of the operation of this contract, counties, school districts, and municipalities shall have the same benefits and responsibilities as a state agency. Under this contract, the State of Oklahoma bears no liability for the actions of counties, school districts and municipalities and the privities of contract exists solely between the contractor and the county, school board or municipality.

A.41. Commercial Off-The-Shelf (Cots) Software

In the event that provider specifies additional terms and conditions or clauses that conflict with this contract in an electronic license agreement notice, the additional terms and conditions or conflicting clauses shall not be binding on the State, and the provisions of this contract shall prevail.

A.42. Ordering

Any services to be furnished under this contract shall be ordered by the issuance of written purchase orders by the State agencies and authorized entities. There is no limit on the number that may be issued. Delivery to multiple destinations may be required. All orders are subject to the terms and conditions of this contract. Any purchase order dated prior to expiration of this contract shall be performed. In the event of conflict between a purchase order and this contract, the contract shall have precedence.

A.43. Administrative Fee

The Office of State Finance (OSF) imposes, and contractors and resellers agree to pay, a fee in the sum of ½ of 1 percent of the combined total quarterly expenditures under this contract. This fee amount is to be noted on the quarterly "Contract Usage Report" and paid by the contractor, to OSF within 30 calendar days from the completion of the quarterly reporting period stated under the section titled "Contract Usage Reporting".

The check should be mailed to:

Office of State Finance
Finance Unit
3812 N. Santa Fe
Suite 290
Oklahoma City, Oklahoma 73118-8500
Attention: CFO

The checks for administrative fees are to have the following information on the check stub:

Statewide contract #,
Quarter and Year reporting,
e.g. SW207 4th qtr, 2011

A.44. Contract Usage Reporting Requirements

Results Positive shall provide quarterly usage reports, indicating the purchase order of the acquiring agency, the dollar amounts

sold to all entities through this contract, plus grand totals, which include but are not limited to State Agencies, Counties, Cities, Schools, Hospitals, Municipalities, or political subdivisions.

Results Positive shall receive a "Sample Report" prior to the first quarter due date.

A.44.1. Reporting Requirements

Reports shall be submitted quarterly regardless of quantity.

Usage Reports shall be delivered, by email to StatewideContractReports@osf.ok.gov within 30 calendar days upon completion of the quarterly reporting period cited below.

Contract quarterly reporting periods shall be:

January 1 through March 31

April 1 through June 30

July 1 through September 30

October 1 through December 31

A.44.2. Failure to provide usage reports may result in cancellation or suspension of contract. It is the Results Positive's responsibility to notify the contracting officer of any delay in providing this report as defined.

B. EXHIBITS

B.1. Pricing

B.1.1. HP PPM SaaS License Pricing Matrix:

Additional license costs per seat for SaaS PPM

- a) Incremental cost per seat determined by current deployed aggregate
- b) Priced as an annual subscription
- c) Subscription prices recalculated each year

Description	Product Number	Unit Price
HP SaaS PPM Advance 25-49 Usr	TB221AAE	\$960
HP SaaS PPM Advance 50-99 Usr	TB222AAE	\$816
HP SaaS PPM Advance 100-249 Usr	TB223AAE	\$674
HP SaaS PPM Advance 250-499 Usr	TB224AAE	\$433
HP SaaS-PPM TM OcUsr1-1K	T8264AAE	\$61
HP SaaS-PPM TM OUsr1001-10K	T8267AAE	\$45

B.1.2. HP PPM Perpetual On Premise License Pricing Matrix:

License costs defined if an agency desires a separate on-premise license model for their PPM deployment.

- a) The pricing matrix below assumes greater than 50 total licenses (if the aggregate license count is less than 25 when purchased, the foundation price is significantly lower)
- b) Only 1 foundation license is required
- c) Prices for licenses are one time and support prices are annual
- d) State Taxes are not included in pricing

Description	Product Number	License Unit Price	9x5 Support Annual Price
HP PPM Foundn 25+ Usrs SW E-LTU	T5581AAE	\$59,500	\$13,96
HP PPM Portf Mgr Nmd Usr Suite SW E-LTU	T7374AAE	\$1,050	\$24
HP PPM Proj Mgr Nmd Usr Suite SW E-LTU	T7375AAE	\$700	\$16
HP PPM Team Mem Nmd Usr Suite SW E-LTU	T7376AAE	\$105	\$25
HP PPM Admin & Config Nmd Usr SW E- LTU	T7372AAE	\$3,500	\$81

B.1.3. Assessment

High level assessment of as-is portfolio, and project processes, organization structures, technical solutions and reporting artifacts and requirements. Assessment and associated discussions will also include overview of HP PPM Portfolio and Project Management best practices and customer near term and long-term solution plans.

- a) Key customer resource availability required
- b) SOW required prior to engagement
- c) Travel expenses are reduced or eliminated from cost when work is done remotely

IT Governance and PPM Assessment	Rate	4 Days
On-Site Service to determine org maturity and roadmap	Consulting	\$8,750
	Travel & Expense	\$2,000
	Total	\$10,750

B.1.4. Consulting Services

On-Site Service to help state agency set up a PMO structure, blueprint, business gap analysis, road map, project management, Agile, ITIL, IT governance, Data Migration/Conversion into HP PPM, Integrations, and management report construction.

- a) Will need pre-visit discovery call to determine length of engagement needed
- b) SOW required prior to engagement
- c) Travel expenses are reduced or eliminated from cost when work is done remotely

Consulting Services	Rate	1 Day	2 Days	3 Days	4 Days	Weekly
On-Site Service for general consulting	Consulting	\$1,400	\$2,800	\$4,200	\$5,600	\$7,000
	Travel & Expense	\$1,200	\$1,400	\$1,600	\$1,800	\$2,000
	Total	\$2,600	\$4,200	\$5,800	\$7,400	\$9,000

B.1.5. PPM Implementation

On-Site delivery of setup for PPM solution with out of the box capability to enable adoption and successful usage of HP Project & Portfolio management

- a) Solution design meetings
- b) Rapid start of standard implementation available
- c) Implementation and User Acceptance Testing
- d) Training
- e) SOW required prior to engagement
- f) Travel expenses are reduced or eliminated from cost when work is done remotely

Implementation Services	Rate	8 weeks (Rapid Start)	12 weeks (Standard)
On-Site Service for out of the box PPM implementation	Consulting	\$56,000	\$84,000
	Travel & Expense	\$17,500	\$24,000
	Total	\$76,000	\$108,000

B.1.6. Training

On-Site Instructor Led Training - Project Portfolio Management - One-day and Three-day focused sessions, on-site delivery:

- a) 10 student maximum per session for three-day sessions
 - 1. Product Training targeted for Subject Matter Experts and Trainers
 - 2. Admin & Config Training targeted for customer administrators
- b) 30 student maximum for one-day sessions
- c) All materials included for students
- d) SOW required prior to engagement
- e) Travel expenses are reduced or eliminated from cost when work is done remotely

On-Site Training	Rate	Three-Day Product Training	Three-Day Admin & Configuration Training	One-Day, Single PPM Module Training (Choice of Portfolio, Project, Demand, Resource, or Time)
On-Site Instructor led trainings	Consulting	\$7,500	\$7,500	\$2,500
	Travel & Expense	\$1,800	\$1,800	\$1,200
	Total	\$9,300	\$9,300	\$3,700

HP Computer Based Training - Project Portfolio Management:

There are 6 SCORM compliant interactive end user computer based training modules.

- a) HP CBT training modules are acquired through training credits
- b) Training credits may be purchased through ResultsPositive

Description	Product Number	# of Users Hosted	Hosted User Access Time	Training Credits Required	Cost of Training Units
PPM 9.1 Demand Management	PPM01EUT	10	3 Months	20	\$5,
PPM 9.1 Demand Management	PPM01EUT	50	6 Months	60	\$15,
PPM 9.1 Portfolio Management	PPM03EUT	10	3 Months	20	\$5,
PPM 9.1 Portfolio Management	PPM03EUT	50	6 Months	60	\$15,
PPM 9.1 Program Management	PPM04EUT	10	3 Months	20	\$5,
PPM 9.1 Program Management	PPM04EUT	50	6 Months	60	\$15,
PPM 9.1 Project Management	PPM05EUT	10	3 Months	20	\$5,
PPM 9.1 Project Management	PPM05EUT	50	6 Months	60	\$15,
PPM 9.1 Resource Management	PPM02EUT	10	3 Months	20	\$5,
PPM 9.1 Resource Management	PPM02EUT	50	6 Months	60	\$15,
PPM 9.1 Time Management EUT	PPM06EUT	10	3 Months	20	\$5,
PPM 9.1 Time Management EUT	PPM06EUT	50	6 Months	60	\$15,

B.2. HP Agreements

The terms and conditions of this contract take precedence over any language contained in the following HP agreements.

ITSW865 EPPM Software Contract

- a) HP Pass Through Terms – Version #4 – (see Appendix A)
- b) HP SaaS Addendum to HP Pass Through Terms – Version # 2 – (see Appendix B)

C. SIGNATURE BLOCK

IN WITNESS WHEREOF, the parties having read and understood the foregoing sections, expressly agree to these terms and conditions as evidence by their respective dated signatures below:

The signature below, by a duly authorized representative of the contractor, acknowledges agreement to comply with the specification stated herein.

Results Positive, Inc.

Signature:  _____

Printed Name: Jon Turner _____

Printed Title: President _____

Signature Date: 1/20/2012 _____

Oklahoma Office of State Finance

Signature:  _____

Printed Name: Alex Z. Pettit
Chief Information Officer _____

Printed Title: _____

Signature Date: Feb 3, 2012 _____



D. APPENDICES

D.1. Appendix A – HP Pass Through Terms SO01Pass revision January 20, 2009 Version 4

HP's obligations with respect to HP Branded Products or services procured by an end-user customer (hereinafter "Customer") from authorized HP Business Partners are limited to the terms and conditions in these HP PASS THROUGH TERMS ("Terms") and the specific Software license or warranty information included with the Products. HP is not responsible for the acts or omissions of HP Business Partners, for any obligations undertaken or representations that they may make, or for any other products or services that they supply to Customer.

A. HP BASE TERMS

1. DEFINITIONS

- a. *Affiliate* of a party means an entity controlling, controlled by, or under common control with, that party.
- b. *Deliverable* means the tangible work product resulting from the performance of Support, excluding Products and Custom Products.
- c. *Hardware* means computer and related devices and equipment, related documentation, accessories, parts, and upgrades.
- d. *HP Business Partner* means those select companies authorized by HP to promote, market, support, and deliver certain Products and services.
- e. *HP Branded* means Products and Support bearing a trademark or service mark of Hewlett-Packard Company or any Hewlett-Packard Company Affiliate.
- f. *Product* means the HP Branded version of Hardware and Software available and listed in HP's standard price list at the time of HP Business Partner's acceptance of the Customer order and including products that are modified, altered, or customized, by HP, to meet Customer requirements ("Custom Products").
- g. *Software* means machine-readable instructions and data (and copies thereof), and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures.
- h. *Software License Information ("SLI")* is license information that is specific to a Software Product. SLI may be found in a file in the Software Product's directory or as information that accompanies the Software Product or in HP quotations. SLI is available upon request.
- i. *Specification* means technical information about Products published in HP Product manuals, user documentation, and technical data sheets in effect on the date HP or HP Business Partner delivers Products to Customer.
- j. *Statement of Work* means an executed document so titled that describes the Custom Support to be performed by HP under the Support Terms section.
- k. *Support* means Hardware maintenance and repair, Software maintenance, training, installation and configuration, and other standard support services provided by HP and includes "Custom Support" which is any agreed non-standard Support as described in a Statement of Work.
- l. *Transaction Document(s)* means an accepted Customer order (excluding pre-printed terms) and in relation to that order valid HP quotations, HP published technical data sheets or service descriptions, HP limited warranty statements delivered with or otherwise made available to Customer with Products, and mutually executed Statement of Work, all as provided by HP Business Partner and supported by HP, or other mutually executed documents that reference these HP PASS THROUGH TERMS.
- m. *Version* means a release of Software that contains new features, enhancements, and/or maintenance updates, or for certain Software, a collection of revisions packaged into a single entity and, as such, made available by HP to its customers (also called a "Release").

2. WARRANTY PROVISIONS

- a. Warranty Statements. HP limited warranty statements for Hardware, Software and Support, as applicable, are contained in their respective sections of these Terms. The limited warranties in these Terms are subject to the terms, limitations, and exclusions contained in the limited warranty statement provided for the Product in the country where that Product is located when the warranty claim is made. A different limited warranty statement may apply and be quoted if the Product is purchased as part of a system.
- b. Transfer. Warranties are transferable to another party for the remainder of the warranty period subject to HP license transfer policies and any assignment restrictions.
- c. Delivery Date. Warranties begin on the date of delivery of the Product to Customer, or for Hardware on the date of installation if installed by HP. If Customer schedules or delays such installation by HP more than thirty (30) days after delivery, Customer's warranty period will begin on the 31st day after delivery.
- d. Exclusions. HP is not obligated to provide warranty services or Support for any claims resulting from:
 1. Improper site preparation, or site or environmental conditions that do not conform to HP's site specifications;
 2. Customer's non-compliance with Specifications or Transaction Documents;
 3. improper or inadequate maintenance or calibration;
 4. Customer or third-party media, software, interfacing, supplies, or other products;
 5. modifications not performed or authorized by HP;
 6. virus, infection, worm or similar malicious code not introduced by HP; or
 7. abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HP's control.
- e. Non-HP Branded Products and Support. HP provides third-party products, software, and services that are not HP Branded "AS IS" without warranties of any kind, although the original manufacturers or third party suppliers of such products, software and services may provide their own warranties.
- f. Disclaimer. THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THESE TERMS ARE EXCLUSIVE. NO OTHER WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY HP OR MAY BE INFERRED FROM A

COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT ALLOWED BY LOCAL LAW HP DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

3. INTELLECTUAL PROPERTY INFRINGEMENT

- a. Third-Party Claims. HP will defend or settle any third party claims against Customer alleging that HP Branded Products or Support (excluding Custom Products and Custom Support) provided under these Terms infringes intellectual property rights in the country where they were sold, if Customer:
 - 1. promptly notifies HP of the claim in writing;
 - 2. cooperates with HP in the defense of the claim; and
 - 3. grants HP sole control of the defense or settlement of the claim.
- b. HP will pay infringement claim defense costs, HP-negotiated settlement amounts, and court-awarded damages.
- c. Remedies. If such a claim appears likely, then HP may modify the HP Branded Products or Support, procure any necessary license, or replace the affected item with one that is at least functionally equivalent. If HP determines that none of these alternatives is reasonably available, then HP will issue Customer a refund equal to:
 - 1. the purchase price paid for the affected item if within one year of delivery, or the Customer's net book value thereafter; or
 - 2. If the claim relates to infringing Support, the lesser of twelve (12) months charges for the claimed infringing Support or the amount paid by Customer for that Support.
- d. Exclusions. HP has no obligation for any claim of infringement arising from:
 - 1. HP's compliance with Customer or third party designs, specifications, instructions, or technical information;
 - 2. modifications made by Customer or a third party;
 - 3. Customer's non-compliance with the Specifications or the Transaction Documents;
 - 4. Customer's use of the Product with products, software, or services that are not HP Branded; or
 - 5. Any open source or freeware software.
- e. Sole and Exclusive. This sub-section A.3 states HP's entire liability for claims of intellectual property infringement.

4. INTELLECTUAL PROPERTY RIGHTS

No rights in copyright, patents, trademarks, trade secrets, or other intellectual property are granted by either party to the other except as expressly provided under these Terms. Customer will not register or use any mark or internet domain name that contains HP's trademarks (e.g., "HP", "hp" or "Hewlett-Packard").

5. RESTRICTED USE

Products, Support, and Deliverables are not specifically designed, manufactured, or intended for use as parts, components, or assemblies for the planning, construction, maintenance, or direct operation of a nuclear facility. Customer is solely liable if Products, Support, or Deliverables purchased by Customer are used for these applications and will indemnify and hold HP harmless from all loss, damage, expense, or liability in connection with such use.

6. LIMITATION OF LIABILITY AND REMEDIES

- a. Limitation of Liability. Except for the amounts in sub-section A.3 above and damages for bodily injury (including death) HP's total aggregate liability is limited to the amount paid by Customer for:
 - 1. the Product; or
 - 2. Support during the period of a material breach up to a maximum of twelve (12) months;that in each case is the subject of the claim.
- b. Disclaimer. EXCEPT FOR CLAIMS BY A PARTY FOR INFRINGEMENT OF THEIR INTELLECTUAL PROPERTY RIGHTS AGAINST THE OTHER PARTY, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL COSTS OR DAMAGES OF ANY KIND OR FOR ANY DOWNTIME COSTS; LOST BUSINESS, REVENUES, OR PROFITS; FAILURE TO REALIZE EXPECTED SAVINGS; LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA; OR SOFTWARE RESTORATION WHETHER OR NOT THAT PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH COSTS, EXPENSES, OR DAMAGES.
- c. Legal Theory. TO THE EXTENT ALLOWED BY LOCAL LAW, THESE LIMITATIONS WILL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE.

7. GENERAL

- a. Internal Use. Products and Support acquired by Customer under these Terms are solely for Customer's own internal use and not for resale or sub-licensing.
- b. Force Majeure. Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control; however, this provision will not apply to Customer's payment obligations.
- c. Assignment. Customer may not assign, delegate or otherwise transfer all or any part of its rights or obligations under these Terms without prior written consent from HP. Any such attempted assignment, delegation, or transfer will be null and void. Assignments of HP Software licenses are subject to compliance with HP's Software license transfer policies.
- d. Export and Import. Customer who exports, re-exports, imports or otherwise transfers Products, technology, or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. HP may suspend performance under these Terms: 1) if the Customer is in violation of any applicable laws or regulations, and 2) to the extent necessary to assure compliance under the U.S. or other applicable export or similar regulations.
- e. Governing Law. Disputes arising from these Terms will be governed by the law of the jurisdiction of the principal place of business of the HP Affiliate accepting the order to which the dispute relates and the courts of that locale will have jurisdiction, except that HP may, at its option, bring suit for collection in the country where the Customer Affiliate that placed the order is

located. Customer and HP agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms. Claims arising or raised in the United States will be governed by the laws of the State of California, excluding rules as to choice and conflict of law.

- f. **Notices.** All notices that are required under these Terms will be in writing and will be considered effective upon receipt.
- g. **Entire Agreement.** These Terms represent the entire agreement between HP and Customer regarding Customer's purchase of Products and Support, and supersedes and replaces any previous communications, representations, or agreements, or Customer's additional or inconsistent terms, whether oral or written. In the event any provision of these Terms is held invalid or unenforceable the remainder of the Terms will remain enforceable and unaffected thereby.
- h. **Waiver.** Neither party's failure to exercise or delay in exercising any of its rights under these Terms will constitute or be deemed a waiver or forfeiture of those rights.
- i. **Order of Precedence.** Unless otherwise agreed or provided herein, documents will apply in the following descending order of precedence:
 - 1. SLI;
 - 2. these Terms;
 - 3. the Statement of Work (if applicable);
 - 4. all Transaction Documents.
- j. **Independent Contractor.** HP is an independent contractor in the performance under these Terms and neither HP nor any HP personnel are employees or agents of Customer. Nothing in these Terms will be construed as creating a joint venture, partnership or employment relationship between the parties, nor will either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.

B. HP HARDWARE TERMS

1. RISK OF LOSS

When HP delivers to Customer directly, risk of loss or damage, and title to Hardware, will pass to Customer and acceptance will occur upon delivery to the "ship to" address or, if special shipping arrangements are agreed to by HP, upon delivery to Customer's carrier or designee.

2. INSTALLATION

If HP provides installation services, Customer will make available facilities that meet HP published site guidelines that will be provided to Customer upon request. Upon delivery, Customer will place each item of Hardware in its designated location. Installation is billed at HP's published installation charges unless quoted as part of the Hardware purchase price. Installation by HP is complete when the Hardware passes HP's standard installation and test procedures.

3. HARDWARE LIMITED WARRANTY

HP warrants HP Branded Hardware against defects in materials and workmanship under normal use during the warranty period and that it will materially conform to its Specifications for the time specified in the applicable Transaction Documents. HP Branded Hardware may contain used parts that are equivalent to new in performance and reliability and are warranted as new.

4. OPERATION

HP does not warrant that the operation of Hardware will be uninterrupted or error free, or that Hardware will operate in Hardware and Software combinations other than as expressly required by HP in the Product Specifications or that Hardware will meet requirements specified by Customer. Customer may only use firmware embedded in the Hardware to enable the Hardware to function in accordance with its Specifications.

5. EXCLUSIVE REMEDIES

Upon notice of a valid warranty claim during the warranty period and if provided reasonable access to the HP Branded Hardware, HP will, at its option, repair a defect in the HP Branded Hardware, or correct a material non-conformance to Specifications, or replace such Hardware with Hardware of equal or better functional performance. If HP is unable, within a reasonable time, to complete the repair or correction, or replace such HP Branded Hardware, Customer will be entitled to a refund of the purchase price paid upon prompt return of such Hardware to HP. Subject to the terms in Customer's specific Product warranty statement Customer will pay expenses for return of such Hardware to HP. HP will pay expenses for shipment of repaired or replacement Hardware to Customer. This sub-section states HP's entire liability for Hardware warranty claims.

C. HP SOFTWARE LICENSE TERMS

1. LICENSE GRANT

HP grants Customer a non-exclusive, non-transferable license to "Use", in object code form, the Version or Release of the HP Branded Software delivered from an HP accepted order. For purposes of these Terms, unless otherwise specified in the SLI, "Use" means to install, store, load, execute, and display one copy of the Software on one device at a time for Customer's internal business purposes. Customer's Use of such Software is subject to these license terms, the applicable Use restrictions and authorizations, and applicable licensed locations for the Software specified in SLI (the "Software License"). The usage terms specified in the SLI for HP Branded Software will not be materially more restrictive than the Use defined in this sub-section C1. For non-HP Branded Software, the third party supplier's license terms and use restrictions found in the SLI will solely govern its use.

2. OWNERSHIP

This Software License confers no title or ownership and is not a sale of any rights in the Software. Third-party suppliers are intended beneficiaries under these Terms and independently may protect their rights in the Software in the event of any infringement. All rights not expressly granted to Customer are reserved solely to HP or its suppliers.

3. ACCEPTANCE

Customer accepts Software upon delivery.

4. UPGRADES

Software Versions or maintenance updates, if available, may be ordered separately or may be available through Software Support. HP

reserves the right to require additional licenses and fees for Software Versions or separately purchased maintenance updates or for Use of the Software in conjunction with upgraded Hardware or Software. When Customer obtains a license for a new Software Version through Software Support or purchases an upgrade license to a new Version, Customer's Software License for the earlier Version shall terminate. Software Versions are subject to the license terms in effect on the date that HP delivers or makes the Version available to Customer.

5. LICENSE RESTRICTIONS

- a. Use Restrictions. Customer may not exceed the number of licenses, agents, tiers, nodes, seats, or other Use restrictions or authorizations agreed to and paid for by Customer. Some Software may require license keys or contain other technical protection measures. Customer acknowledges that HP may monitor Customer's compliance with Use restrictions and authorizations remotely, or otherwise. If HP makes a license management program available which records and reports license usage information, Customer agrees to appropriately install, configure and execute such license management program beginning no later than one hundred and eighty (180) days from the date it is made available to Customer and continuing for the period that the software is used.
- b. Copy and Adaptation. Unless otherwise permitted by HP, Customer may only make copies or adaptations of the Software for archival purposes or when copying or adaptation is an essential step in the authorized Use of the Software. If Customer makes a copy for backup purposes and installs such copy on a backup device, unless otherwise provided in the SLI, Customer may not operate such backup installation of the Software without paying an additional license fee, except in cases where the original device becomes inoperable. If a copy is activated on a backup device in response to failure of the original device, the Use on the backup device must be discontinued when the original or replacement device becomes operable. Customer may not copy the Software onto or otherwise Use or make it available on, to, or through any public or external distributed network. Licenses that allow Use over Customer's intranet require restricted access by authorized users only.
- c. Copyright Notice. Customer must reproduce all copyright notices that appear in or on the Software (including documentation) on all permitted copies or adaptations. Copies of documentation are limited to internal use.
- d. Designated System. Notwithstanding anything to the contrary herein, the Software License for certain Software, as identified in SLI, is non-transferable and for use only on a computer system owned, controlled, or operated by or solely on behalf of Customer and may be further identified by HP by the combination of a unique number and a specific system type ("Designated System") and such license will terminate in the event of a change in either the system number or system type, an unauthorized relocation, or if the Designated System ceases to be within the possession or control of Customer.
- e. OS Software. Operating system Software may only be used when operating the associated Hardware in configurations as approved, sold, or subsequently upgraded by HP or an authorized HP business partner.
- f. Changes. Customer will not modify, reverse engineer, disassemble, decrypt, decompile, or make derivative works of the Software. Where Customer has other rights mandated under statute, Customer will provide HP with reasonably detailed information regarding any intended modifications, reverse engineering, disassembly, decryption, or decompilation and the purposes therefore.
- g. Use for Service Provision. Extending the Use of Software to any person or entity other than Customer as a function of providing services, (i.e.; making the Software available through a commercial timesharing or service bureau) must be authorized in writing by HP prior to such use and may require additional licenses and fees.
- h. Consultant Use and Access. Subject to these Terms, Customer may permit a consultant or subcontractor to Use Software at the licensed location for the sole purpose of providing services to Customer. Customer will be responsible and directly liable to HP for consultants' compliance with these Terms.

6. LICENSE TERM AND TERMINATION

Unless a different time period for the license is specified in the applicable SLI or quotation, the Software License granted to Customer will be perpetual, provided however that HP may terminate the Software License upon notice for failure to comply with these Terms. Immediately upon termination of the Software License or upon expiration of any individual limited term license, Customer will destroy the Software and all copies of the Software subject to the termination or expiration or return them to HP. Customer shall remove and destroy or return to HP any copies of the Software that are merged into adaptations, except for individual pieces of data in Customer's database. Customer may retain one copy of the Software subsequent to termination solely for archival purposes only. At HP's request, Customer will certify in writing to HP that Customer has complied with these requirements.

7. LICENSE TRANSFER

Customer may not sublicense, assign, transfer, rent, or lease the Software or the Software License to any other party except as permitted in this section. Except as provided in sub-section C.5.d above, HP Branded Software licenses are transferable subject to HP's prior written authorization and payment to HP of any applicable fees or compliance with applicable third party terms. Upon transfer of the Software License, Customer's rights under the License will terminate and Customer will immediately deliver the Software and all copies to the transferee. The transferee must agree in writing to the terms of the Software License, and, upon such agreement, the transferee will be considered the "Customer" for purposes of the license terms. Customer may transfer firmware only upon transfer of the associated Hardware.

8. U.S. FEDERAL GOVERNMENT USE

If the Software is licensed for use in the performance of a U.S. Government prime contract or subcontract, Customer agrees that, consistent with FAR 12.211 and 12.212, commercial computer Software, computer Software documentation and technical data for commercial items are licensed under HP's standard commercial license.

9. COMPLIANCE

Customer agrees that HP may audit Customer's compliance with the Software License terms. Any such audit would be at HP's expense, require reasonable notice, and would be performed during normal business hours. If an audit reveals underpayments then Customer will immediately pay HP such underpayments together with the costs reasonably incurred by HP in connection with the audit and seeking compliance with this sub-section.

10. WARRANTY

HP Branded Software will materially conform to its Specifications. If a warranty period is not specified for HP Branded Software, the warranty period will be ninety (90) days from the delivery date.

11. VIRUS WARRANTY

HP warrants that any physical media containing HP Branded Software will be shipped free of viruses.

12. WARRANTY LIMITATION

HP does not warrant that the operation of Software will be uninterrupted or error free, or that Software will operate in Hardware and Software combinations other than as expressly required by HP in the Product Specifications or that Software will meet requirements specified by Customer.

13. EXCLUSIVE REMEDIES

If notified of a valid warranty claim during the warranty period, HP will, at its option, correct the warranty defect for HP Branded Software, or replace such Software. If HP is unable, within a reasonable time, to complete the correction, or replace such Software, Customer will be entitled to a refund of the purchase price paid upon prompt return of such Software to HP. Customer will pay expenses for return of such Software to HP. HP will pay expenses for shipment of repaired or replacement Software to Customer. This sub-section C.13 states HP's entire liability for warranty claims.

14. IMPLIED LICENSE

There are no implied licenses.

D. HP SUPPORT TERMS

1. SUPPORT SERVICES

- a. Description of Support. HP will deliver Support according to the description of the offering, eligibility requirements, service limitations, and Customer responsibilities described in the relevant Transaction Documents.
- b. Cancellation. Customer may cancel Support orders or delete Products from Support upon thirty (30) days written notice, unless otherwise stated in a Transaction Document. HP may discontinue Support for Products and specific Support services no longer included in HP's Support offering upon sixty (60) days written notice, unless otherwise stated in a Transaction Document. If Customer cancels prepaid Support, HP will refund Customer a pro-rata amount for the unused prepaid Support, subject to any restrictions or applicable early termination fees as set forth in a Transaction Document.
- c. Return to Support. If Customer allows Support to lapse, HP may charge Customer additional fees to resume Support or require Customer to perform certain hardware or software upgrades. Such fees may be set forth in a Transaction Document or provided to Customer at the time of the request to return to Support.
- d. Local Availability. Customer may order Support from HP's current Support offerings. Some offerings, features, and coverage (and related Products) may not be available in all countries or areas. In addition, delivery of Support outside the applicable HP coverage areas may be subject to travel charges, longer response times, reduced restoration or repair commitments, and reduced coverage hours.
- e. Relocation. Relocation of any Products under Support is the responsibility of Customer, and is subject to local availability as detailed in sub-section D.1.d, and may result in changes to Support fees. Reasonable advanced notice to HP may be required to begin Support for some Products after relocation. For Software Products, any relocation is also subject to the license terms for such Software. Customer may be required to execute amended or new Transaction Documents as a result of relocation.
- f. Multi-vendor Support. HP provides Support for certain non-HP Branded Products. The relevant Transaction Document will specify availability and coverage levels, and governs delivery of multi-vendor Support, whether or not the non-HP Branded Products are under warranty. HP may discontinue Support of non-HP Branded Products if the manufacturer or licensor ceases to provide support for such Products.
- g. Service Providers. HP reserves the right and Customer agrees to HP's use of HP-authorized service providers to assist in the delivery of Support.
- h. Modifications. Customer will allow HP, at HP's request and at no additional charge, to modify Products to improve operation, supportability, and reliability, or to meet legal requirements.
- i. Support Warranty. HP warrants that it will perform Support using generally recognized commercial practices and standards.
- j. Exclusive Remedies. HP will re-perform Support not performed in accordance with the warranty herein. This sub-section D.1.j states HP's entire liability for Support warranty claims.

2. PRICING, INVOICING, AND ADDITIONAL SERVICES

- a. Pricing. Except for prepaid Support or as otherwise stated in a Transaction Document, HP may change Support prices upon sixty (60) days written notice.
- b. Additional Services. Additional services performed by HP at Customer's request that are not included in Customer's purchased Support will be chargeable at the applicable published service rates for the country where the service is performed.
- c. Invoicing. Invoices for Support will be issued in advance of the Support period. HP Support invoices and related documentation will be produced in accordance with HP system standards. Additional levels of detail requested by Customer may be chargeable.

3. SITE AND PRODUCT ACCESS

Customer shall provide HP access to the Products covered under Support; and if applicable, adequate working space and facilities within a reasonable distance of the Products; access to and use of information, customer resources, and facilities as reasonably determined necessary by HP to service the Products; and other access requirements described in the relevant Transaction Document. If Customer fails to provide such access, resulting in HP's inability to provide Support, HP shall be entitled to charge Customer for the Support call at HP's published service rates. Customer is responsible for removing any Products ineligible for Support, as advised by HP, to allow HP to perform Support. If delivery of Support is made more difficult because of ineligible Products, HP will charge Customer for the extra work at HP's published service rates.

4. HARDWARE PRODUCT SUPPORT

- a. Minimum Configuration. Customer must purchase the same level of Hardware Support and for the same coverage period for: all Products within a minimum supportable system unit (i.e. all components within a server, storage, or network device) to allow for proper execution of standalone and operating system diagnostics for the configuration.
- b. Eligibility. For initial and on-going Support eligibility Customer must maintain all Hardware Products at the latest HP-specified configuration and revision levels and in HP's reasonable opinion, in good operating condition.
- c. Loaner Units. HP maintains title and Customer shall have risk of loss or damage for loaner units if provided at HP's discretion as

part of Hardware Support or warranty services and such units will be returned to HP without lien or encumbrance at the end of the loaner period.

- d. Maximum Use Limitations. Certain Hardware Products have a maximum usage limit, which is set forth in the manufacturer's operating manual or the technical data sheet. Customer must operate such Products within the maximum usage limit.
- e. Compatible Cables and Connectors. Customer will connect Hardware Products covered under Support with cables or connectors (including fiber optics if applicable) that are compatible with the system, according to the manufacturer's operating manual.
- f. Support for Accessories. HP may provide Hardware Support for cables, connectors, interfaces, and other accessories if Customer purchases Support for such accessories at the same Hardware service level purchased for the Products with which they are used.
- g. Consumables. Hardware Support does not include the delivery, return, replacement, or installation of supplies or other consumable items (including, but not limited to, operating supplies, magnetic media, print heads, ribbons, toner, and batteries) unless otherwise stated in a Transaction Document.
- h. Replacement Parts. Parts provided under Hardware Support may be whole unit replacements or be new or functionally equivalent to new in performance and reliability and warranted as new. Replaced parts become the property of HP, unless HP agrees otherwise and Customer pays any applicable charges.

5. SOFTWARE PRODUCT SUPPORT

- a. Eligibility. Customer may purchase available Software Support for HP Branded Software only if Customer can provide evidence it has rightfully acquired an appropriate HP license for such Software. HP will be under no obligation to provide Support due to any alterations or modifications to the Software not authorized by HP or for Software for which Customer cannot provide a sufficient proof of a valid license. Unless otherwise agreed by HP, HP only provides Support for the current Version and the immediately preceding Version of HP Branded Software, and then only when HP Branded Software is used with hardware or software included in HP-specified configurations at the specified Version level.
- b. Documentation. If Customer purchases a Software Support offering that includes documentation updates, along with the right to copy such updates, Customer may copy such updates only for Products under such coverage. Copies must include appropriate HP trademark and copyright notices.

6. USE OF PROPRIETARY SERVICE TOOLS FOR SUPPORT

HP will require Customer's use of certain hardware and/or software system and network diagnostic and maintenance programs ("Proprietary Service Tools"), as well as certain diagnostic tools that may be included as part of the Customer's system, for delivery of Support under certain coverage levels. Proprietary Service Tools are and remain the sole and exclusive property of HP, are provided "as is," and include, but are not limited to: remote fault management software, network Support tools, Insight Manager, Instant Support, and Instant Support Enterprise Edition (known as "ISEE"). Proprietary Service Tools may reside on the Customer's systems or sites. Customer may only use the Proprietary Service Tools during the applicable Support coverage period and only as allowed by HP. Customer may not sell, transfer, assign, pledge, or in any way encumber or convey the Proprietary Service Tools. Upon termination of Support, Customer will return the Proprietary Service Tools or allow HP to remove these Proprietary Service Tools. Customer will also be required to:

- a. allow HP to keep the Proprietary Service Tools resident on Customer's systems or sites, and assist HP in running them;
- b. install Proprietary Service Tools, including installation of any required updates and patches;
- c. use the electronic data transfer capability to inform HP of events identified by the software;
- d. if required, purchase HP-specified remote connection hardware for systems with remote diagnosis service; and
- e. provide remote connectivity through an approved communications line.

7. CUSTOMER RESPONSIBILITIES

- a. Data Backup. To reconstruct lost or altered Customer files, data, or programs, Customer must maintain a separate backup system or procedure that is not dependent on the Products under Support.
- b. Temporary Workarounds. Customer will implement temporary procedures or workarounds provided by HP while HP works on permanent solutions.
- c. Hazardous Environment. Customer will notify HP if Customer uses Products in an environment that poses a potential health or safety hazard to HP employees or subcontractors. HP may require Customer to maintain such Products under HP supervision and may postpone service until Customer remedies such hazards.
- d. Authorized Representative. Customer will have a representative present when HP provides Support at Customer's site.
- e. Product List. Customer will create and maintain a list of all Products under Support including: the location of the Products, serial numbers, the HP-designated system identifiers, and coverage levels. Customer shall keep the list updated during the applicable Support period.

8. ACCESS TO HP SOLUTION CENTER AND IT RESOURCE CENTER

- a. Designated Callers. Customer will identify a reasonable number of callers, as determined by HP and Customer ("Designated Callers"), who may access HP's customer Support call centers ("Solution Centers").
- b. Qualifications. Designated Callers must be generally knowledgeable and demonstrate technical aptitude in system administration, system management, and, if applicable, network administration and management and diagnostic testing. HP may review and discuss with Customer any Designated Caller's experience to determine initial eligibility. If issues arise during a call to the Solution Center that, in HP's reasonable opinion, may be a result of a Designated Caller's lack of general experience and training, the Customer may be required to replace that Designated Caller. All Designated Callers must have the proper system identifier as provided in the Transaction Documents or by HP when Support is initiated. HP Solution Centers may provide support in English or local language(s), or both.
- c. HP IT Resource Center. HP IT Resource Center is available via the worldwide web for certain types of Support. Customer may access specified areas of the HP IT Resource Center. File Transfer Protocol access is required for some electronic services. Customer employees who submit HP Solution Center service requests via the HP IT Resource Center must meet the qualifications set forth in sub-section D.8.b above.
- d. Telecommunication Charges. Customer will pay for its own telecommunication charges associated with using HP IT Resource Center, installing and maintaining ISDN links and Internet connections (or HP-approved alternatives) to the HP Solution Center, or

D.2. Appendix B – HP SaaS Addendum to HP Pass Through Terms

This HP SaaS Addendum to HP Pass Through Terms (this "Addendum") becomes part of the HP Pass Through Terms (SO01PASS). In the event of any conflict between the terms of this Addendum and the terms of the HP Pass Through Terms, the terms of this Addendum will prevail for any subject matter relating to the Services. All capitalized terms not defined in this Addendum will have the meaning set forth in the HP Pass Through Terms.

1. Definitions

- a. **"HP Software"** for purposes of this Addendum, means the HP Software products accessed by Customer and used by HP in connection with providing the Services. HP Software shall be identified in the statement of work or data sheet (either one a **"Transaction Document"**).
- b. **"Services"** shall mean access to the HP Software, support, and related professional services HP provides to Customer, as described in the Transaction Document, and other exhibits or attachments that may be made a part of this Addendum.

2. Overview of Services

- a. **Description of Services.** HP will perform the Services described in the relevant Transaction Document to Customer for its internal business purposes. Acceptance of Services occurs upon HP's performance of the Services, unless stated differently in the Transaction Document.
- b. **Engagement Term.** The term of the SaaS engagement will be in the relevant Transaction Document or HP quotation (the **"SaaS Term"**). Prior to the end of the renewal of the SaaS Term, the parties may agree upon a renewal term, and the associated terms and pricing for such renewal.
- c. **Cancellation and Rescheduling.** Customer may not cancel an order, but shall have the one-time right to reschedule the Transaction Document start date without charge (for a date that is no more than three (3) months after the originally scheduled Transaction Document start date) upon no less than three (3) business days written notice prior to the date delivery is scheduled to begin. Customer shall forfeit any days rescheduled with less than three (3) business days' notice.
- d. **Access.** Customer may access and use the HP Software remotely as set forth in the Transaction Document during the SaaS Term.

If Customer has a pre-existing license to such HP Software, the price of the Services shall reflect such purchase and such pre-existing licenses shall be deemed to be used in relation to the Services. During the SaaS Term, Customer may not use such HP Software installed on Customer infrastructure except in connection with receipt of the Services.

If Customer licenses perpetual or term licenses for the HP Software in connection with the Services during the SaaS Term, such licenses shall be deemed to be used in relation to the Services. Additionally, if Customer licenses perpetual licenses: (a) at any time during the SaaS Term and at expiration of the SaaS Term, the Customer may have access to a physical copy of the HP Software and (b) unless the Customer and HP sign an agreement to renew the Services or the Customer has an existing agreement for the licensing of Software from HP, the current version of HP Single Order Terms for Software (which can be provided upon request), shall govern Customer's use of the HP Software.

3. Customer Obligations

Customer acknowledges that HP's ability to perform the Services is contingent upon Customer's timely performance of its obligations and cooperation, as well as the accuracy and completeness of any information and data provided to HP. Customer hereby grants HP a non-exclusive, royalty-free license to use, copy, make derivative works of, distribute, display, perform, and transmit Customer's data and pre-existing materials, such as diagrams or work flows (collectively, **"Customer Materials"**) provided to HP to the extent necessary for HP to perform its obligations under this Addendum. Any third-party materials provided by Customer to HP must be set forth in a statement of work and Customer will obtain approvals required from third parties for HP to use, display, or modify such materials (collectively, the **"Required Consents"**) to the extent necessary to perform the Services.

4. Warranties and Disclaimer

- a. **HP Warranties.** HP warrants that it will perform the Services in a good and workmanlike manner in accordance with currently accepted industry standards and practices for services of a similar nature.
- b. **Warranty Disclaimer.** The warranties and any associated remedies expressed or referenced in this Addendum are exclusive. No other warranty written or oral is expressed or implied by HP or may be inferred from a course of dealing or usage of trade. To the extent allowed by local law, HP disclaims all implied warranties or conditions including any implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. HP does not warrant that the Services will be uninterrupted or error free.

5. Confidentiality

- a. **Identification of Confidential Information.** In connection with the Services described in the Transaction Document, either party may receive technical information, information about product plans and strategies, promotions, customer lists, and related technical, financial, or business information. Subject to the exclusions in sub-section 5.d below, the receiving party will treat such information as "Confidential Information" if one of the following apply:
 1. If tangible and directly provided by the disclosing party to the receiving party, the information is marked as confidential at the time of disclosure,
 2. If disclosed electronically, visually or orally, the disclosing party states or otherwise indicates that the information is confidential, or
 3. If, considering the nature of the information and circumstances of its disclosure, a reasonable person would understand it to be confidential, such information will be deemed to be confidential.
- b. **Confidentiality Obligations.** Confidential Information may be used by the receiving party only with respect to the performance of its obligations under this Addendum and the relevant Transaction Document, and only by the employees of the receiving party and its employees, agents or contractors who have a need to know such information for purposes of this Addendum and the relevant Transaction Document. The receiving party will protect, and cause its employees, agents, and contractors to protect, the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the receiving party uses to protect its own confidential information of a like nature. Notwithstanding the foregoing, the parties may disclose this Addendum and the relevant Transaction Document and other Confidential Information to which it has access hereunder to professional advisers, financial

institutions, and other third parties in connection with a party's tax filings, reports, claims, audits, and litigation, so long as each of them execute a confidentiality agreement containing terms and conditions no less restrictive than those set forth in this section 5, provided that the party disclosing Confidential Information to such third parties shall remain responsible to the other party to this Addendum in the event of a failure by such third parties to comply with the restrictions set forth in this section 5.

- c. **Period of Confidentiality.** The receiving party's confidentiality obligation will be for a period of three (3) years after the date of disclosure.
- d. **Exclusions.** The confidentiality obligations of the parties will not extend to information that: (1) was in the receiving party's possession before receipt from the disclosing party; (2) is or becomes publicly known without breach by the receiving party; (3) is rightfully received by the receiving party from a third party without a duty of confidentiality; (4) is independently developed or learned by the receiving party; (5) is disclosed by the receiving party with the disclosing party's prior written approval; or (6) is required to be disclosed by the recipient by a governmental agency or law.

6. PRIVACY AND DATA PROTECTION LAWS

- a. **Access.** The parties acknowledge that, in most cases, the nature of the Services to be provided pursuant to this Addendum is not intended to require HP to directly access to Customer's Personally Identifiable Information ("PII") in order to deliver the Services; however such access is possible given the structure of the HP systems and network. In the event HP is required to access the Customer PII, HP agrees to use or disclose Customer PII only: (a) in furtherance of or in connection with performing Services pursuant to this Addendum; (b) pursuant to a lawful subpoena, service of process, or otherwise required or permitted by law; (c) as directed or instructed by Customer; or (d) with the prior informed consent of the data subject about whom the PII pertains.
- b. **Data Controller.** Customer shall remain the data controller of its PII at all times. As the data controller, Customer recognizes that it has the responsibility to evaluate the sufficiency of the security provided by HP as a part of its Services for any PII entered into HP Software. HP does not monitor what data Customer enters into the HP Software. Additionally, Customer acknowledges that HP may store and could or may access business contact information and the data Customer enters into the HP Software from countries other than the country from which Customer entered such data.
- c. **"Personally Identifiable Information (PII)"** means information which can be used to distinguish or trace an individual's identity – either alone or when combined with other personal or identifying information which is linked or linkable to a specific individual.

7. Intellectual Property Protection

- a. **HP Defend and Settle.** HP shall defend and settle any claim against Customer alleging that Customer's receipt of the Services infringes any third party's patent, copyright, trademark or trade secret rights, provided Customer: (a) promptly notifies HP in writing of the claim; (b) Customer cooperates with HP in such defense and settlement; and, (c) Customer grants HP sole authority to control the defense and any related settlement. HP shall pay infringement claim defense costs (including reasonable attorney's fees), settlement amounts, and any court-awarded damages. HP shall have no obligation for any claim of infringement to the extent arising from: i) the authorized use by HP at any time of Customer Materials and any data received by HP from Customer ii)) HP's compliance with or use of Customer information, technology, designs, specifications, or any instructions iii) any hardware, software, or materials supplied under another agreement or by third parties. This sub-section 7.a states HP's entire liability for claims of intellectual property infringement.
- b. **Customer Defend and Settle.** Customer will defend and settle any third party claims against HP relating to (i) Customer's failure to obtain and maintain the Required Consents or ii) HP's use of Customer Materials, provided HP: (a) promptly notifies Customer in writing of the claim; (b) HP cooperates with Customer in such defense and settlement; and (c) HP grants Customer sole authority to control the defense and any related settlement. Customer shall pay third party claim defense costs (including reasonable attorney's fees), settlement amounts, and any court-awarded damages. This sub-section 7.b states Customer's entire liability for such claims.

8. Limitation of Liability

- a. **Aggregate Liability.** Except for the amounts in section 7 above, and damages for bodily injury, HP's total aggregate liability is limited to the amount of fees paid by Customer for the Services under the affected Transaction Document, up to a maximum of twelve (12) times the monthly average of the amounts paid there under.
- b. **Disclaimer.** Except for damages included in a final settlement or court award of an intellectual property claim pursuant to section 7, in no event will either party be liable for any incidental, indirect, special, or consequential costs, expenses, or damages of any kind, or for any downtime costs; lost business, lost revenues, or lost profits; failure to realize expected savings; loss or unavailability of or damage to data; or software restoration, whether or not that party was aware or should have been aware of the possibility of such costs, expenses, or damages. The foregoing will apply regardless of the basis of liability, including negligence, misrepresentation, breach of any kind, or any other claims in contract, tort, or otherwise.

9. General

- a. **Background Checks.** HP conducts background checks in accordance with HP's policies and procedures.
- b. **Similar Services.** Nothing in this Addendum will prohibit HP from providing Services similar to those provided hereunder to other customers.
- c. **Non-Solicitation.** Customer agrees not to solicit, or make offers of employment to, or enter into consultant relationships with, any HP employee involved, directly or indirectly, in the performance of the relevant Transaction Document to which this Addendum is attached for one (1) year after the date such employee ceases to perform Services under the relevant Transaction Document to which this Addendum is attached. Customer shall not be prevented from hiring any such employee who responds to a general hiring program conducted in the ordinary course of business and not specifically directed to such HP employees.
- d. **Publicity.** Neither party will publicize nor disclose to any third party without the consent of the other party either the price or other terms of this Addendum or the fact of its existence and execution, except as may be necessary to comply with other obligations stated in this Addendum.
- e. **Dispute Resolution.** HP and Customer shall each appoint an account representative of suitable experience to be its primary contact to be responsible for performance of this Addendum. The parties will work together in good faith to resolve any disputes arising under this Addendum.

