



General Purchase Order Terms and Conditions

Updated: May 2023

1. **Applicability.** These terms and conditions as set forth below (the "Terms") together with this purchase order (collectively, "Order") is an agreement made by an applicable Mimecast entity on behalf of itself and its Affiliates (hereinafter referred to as the "Buyer") for the purchase of the goods, licenses and/or services specified on the face of this purchase order (the "Products") from the party to whom this purchase order is addressed to (the "Supplier"). For purposes of these Terms, an "Affiliate" means those persons or entities located in various countries worldwide, which directly or indirectly, individually or in combination, control, are controlled by, or are under common control with Buyer's ultimate parent company. These Terms prevail over any terms or conditions contained in any order form, proposal, form agreement or other documentation provided by Supplier, and expressly exclude any of Supplier's general terms and conditions of sale or any other document issued by Supplier in connection with this Order, even if executed by Buyer prior to the date of this Order. **NOTWITHSTANDING THE FOREGOING, IF THERE IS A SEPARATE EXECUTED WRITTEN AGREEMENT BETWEEN THE SUPPLIER AND BUYER THEN THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS OF SUCH WRITTEN AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS ORDER AND THE TERMS OF ANY SUCH WRITTEN AGREEMENT, THE TERMS OF THE WRITTEN AGREEMENT SHALL GOVERN AND CONTROL.**
2. **Blanket Order.** In the event that the Order is issued by Buyer to Supplier as a long-term purchase order for multiple purchases of the Products ("Blanket Order"), Buyer shall have an option, but not the obligation, to procure any or all Products specified in such Blanket Order. After its acceptance by the Supplier, any purchase by Buyer may be made against it periodically through separate subsequent purchase email(s) sent to Supplier confirming the actual order in accordance with requirements of the Buyer, on an as-and-when-required basis, without calling for a new purchase order. Supplier shall be entitled to invoice Buyer only for such amount of fees that has been confirmed by Buyer via accompanying purchase email from Buyer's authorized representative. Each such Blanket Order shall be subject to the Terms hereof.
3. **Shipment.** Supplier shall ensure that all Products are properly prepared for shipment to comply with carrier regulations. The fees paid by Buyer for the Products shall include packing, crating, or transportation, including cartage, unless otherwise stated in the Order. Supplier shall comply with all export and import laws of all countries involved in the sale of Products under this Order. Supplier assumes all responsibility for shipments of Products requiring any government import clearance.
4. **Delivery. Title and Risk.** Time is of the essence for delivery of the Products to the Buyer. Supplier will promptly notify Buyer if it is unable to comply with the delivery date specified in this Order. If Supplier fails to deliver on time, Buyer may purchase replacements elsewhere, and Supplier will be liable for actual and reasonable costs and damages Buyer incurs. In addition, Buyer reserves the right to cancel this Order if any agreed delivery date is not met or if prior to any such date, Buyer has reason to demand adequate assurance of due performance and such assurance is not forthcoming within 10 days after the date of Buyer's demand. If a delivery or completion date is not specified on this Order, a reasonable time will be allowed. Title and risk of loss remain with Supplier until Products purchased under this Order have been delivered to Buyer at the location specified in this Order or the services for the Product have been completed (if Supplier provides any installation, implementation or other services under this Order) and accepted by Buyer in accordance with these Terms.
5. **Inspection and Acceptance.** All Products are subject to final inspection and acceptance by Buyer at the destination notwithstanding any prior payment or inspection at the source. Acceptance of any Products by Buyer shall not be deemed to alter the obligations of Supplier or the rights of Buyer and its customers under the Warranties Section below or any other provision of this Order. Buyer shall notify Supplier if any Products delivered hereunder are rejected for being nonconforming, and, at Buyer's election and Supplier's risk and expense, such Products may be returned to Supplier. Supplier shall issue Buyer a credit for all costs and expenses with respect to such rejected Products or replace, or correct rejected Products, at Buyer's election. Supplier hereby agrees that these Terms shall apply to any repaired or replacement Products provided by Supplier hereunder.
6. **Warranties.**
 - 6.1 **Product Warranties.** Supplier warrants that all Products delivered hereunder will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer (if any); (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) have good title to the Products free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights nor violate any other third party rights. These warranties survive any delivery, inspection, acceptance or payment for the



Products by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the non-compliance of the Products with the foregoing warranties. If Buyer gives Supplier notice of non-compliance with Supplier's warranties set forth in this Section, Supplier shall, at its own cost and expense, promptly replace or repair the defective or non-conforming Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or non-conforming Products to Supplier and the delivery of repaired or replacement Products to Buyer. Supplier's warranties shall be enforceable by Buyer and Buyer's customer(s) or partners as applicable.

6.2 Additional Warranties. Further, Supplier warrants that Supplier: (i) has the right to enter into this Order; (ii) has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that Supplier needs to carry out its obligations under this Order; (iii) is in compliance with and shall comply with all applicable laws, regulations, orders, rules and codes of practice in the performance of Supplier's obligations hereunder and shall adhere to good industry standards and security practices; (iv) shall comply with all applicable trade sanctions and export control laws and regulations in the countries in which it operates (v) shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes, including, but not limited to, the UK Modern Slavery Act 2015, and shall have and maintain throughout the term of this Order its own policies and procedures to ensure compliance with such laws and shall ensure that any sub-contractors engaged by Supplier comply with the same. (vi) has not, has no obligation to and shall not offer, promise or make, directly or indirectly, any payment of money or anything of value to any third party in connection with any matter under this Order, without a prior written consent of Buyer that may be given only by the Buyer's Chief Compliance Officer, and shall comply with all applicable anti-bribery laws, including, without limitation, the US Foreign Corrupt Practices Act 1977, the UK Anti-Bribery Act 2010 and any other applicable anti-corruption laws and regulations that would be applicable to Supplier in the jurisdictions in which the Supplier operates; (vii) shall comply at all times with Buyer's Vendor Code of Conduct located here: <https://www.mimecast.com/legal/>; and (viii) shall not be in breach of any other third party agreements for which it is a party to by entering into the agreement under this Order. Any breach of the warranties set forth in this section 6.2 by Supplier shall be deemed a material breach of the Terms and shall entitle Buyer to terminate the Order.

7. **Changes.** Buyer shall have the right to make reasonable change requests (including, without limitation, additions and omissions) from time to time in the Products, their specifications, drawings, designs, quantity, packing instructions, destination, or delivery schedule. If any such change affects the price of the Products or the time required for Supplier's performance under this order, Supplier and Buyer may negotiate an equitable adjustment in the price or delivery schedule or both, provided that all claims for adjustments under this Section shall be made by Supplier to Buyer in writing within 30 days after Buyer makes the change to which the adjustment relates. No adjustment in the terms of this Order shall be binding upon Buyer unless Buyer has agreed in writing to the same.
8. **Price and Payment.** Buyer shall pay to Supplier the price for the Products as indicated on this Order upon receipt of a valid and accurate invoice from Supplier, which shall become due upon Buyer's acceptance of the Products in accordance with these Terms. All undisputed amounts of the fees shall be paid by Buyer within 45 days of receipt of such invoice. Unless otherwise provided in this Order, the price includes all applicable taxes and duties and all charges (including insurance) to deliver the Products under this Order. Buyer is not obligated to any minimum purchase or future purchase obligations under this Order.
9. **Insurance.** Supplier shall obtain and maintain during the term of the Order, at its own expense, all applicable and appropriate insurance covers (including, without limitation, professional, public or commercial general liability, employer's liability, workers' compensation, auto, errors and omissions or other additional insurance policy, as may be applicable for the Products) with reputable insurers that are reasonable and adequate to provide coverage for its obligations and liabilities under this Order. Upon Buyer's request, Supplier shall provide Buyer with a certificate of insurance from Supplier's insurer evidencing Supplier's compliance with its obligations under this Section. The certificate of insurance shall name Mimecast Ltd as an additional insured. Except where prohibited by law, Supplier shall require its insurer to waive all rights of subrogation in favour of Mimecast Ltd. Supplier shall provide thirty (30) days advance written notice to Mimecast Ltd of impending cancellation, non-renewal, or material change of Supplier's insurance coverage. The terms of this Section shall survive expiry or termination for whatever cause of this Order for a period of five (5) years.
10. **Intellectual Property Rights.**
 - 10.1 **Ownership.** Supplier agrees that all right, title and interest in all ideas, inventions, designs, works of authorship, improvements, discoveries, materials, work product and deliverables (including any deliverables specified in this Order) created, developed or reduced to practice by Supplier, either individually or in collaboration with others (a) in the course of providing services for Buyer prior to the date hereof, (b) in the course of providing the services hereunder, and (c) after the term of this Order if resulting or directly derived from any Buyer's Proprietary Information (as defined below), and any and all copyrights, trademarks, patent rights, trade secret rights and other intellectual property rights therein, whether now known or hereafter recognized in any jurisdiction (collectively, the "Work Product"), will be the sole and exclusive property of Buyer and Buyer will have the sole and exclusive worldwide right, title and interest in perpetuity to use and exploit all or any part of the Work Product. Supplier hereby waives any applicable moral rights in the Work Product. Supplier



will promptly disclose to Buyer any and all Work Product. Supplier agrees to keep and maintain adequate and current records (in the form of notes, sketches, drawings or in any other form that may be required by Buyer) of all Work Product and results thereof. All files, records, documents, drawings, specifications, equipment and similar items embodying the Work Product or related to Buyer's business, whether prepared by Supplier or otherwise coming into Supplier's possession, will be available to and remain the exclusive property of Buyer. Supplier acknowledges that Buyer's rights to the Work Product are exclusive to Buyer and include, but are not limited to, the right to use, adapt, reproduce, distribute, broadcast, display and make derivative works of the Work Product in any and all media and all formats now known or later developed.

10.2 Assignment. Supplier hereby irrevocably assigns and transfers to Buyer all of Supplier's right, title and interest in and to the Work Product. Supplier agrees to execute any assignments and other documents, and to otherwise assist Buyer at Buyer's expense, as Buyer may request to evidence, perfect or otherwise protect Buyer's ownership of the Work Product. Supplier hereby irrevocably designates and appoints Buyer as Supplier's attorney-in-fact, which appointment is coupled with an interest, to act for Supplier and execute, verify and file any such documents on Supplier's behalf and to do all other lawfully permitted acts to further the purposes of the preceding sentence with the same legal force and effect as if done by Supplier if Supplier fails to do so within five (5) business days of Buyer's reasonable request. In the event that, notwithstanding Section 16 for Relationship of the Parties, Supplier (or any of its authorized representatives, if applicable) is found by a court of competent jurisdiction to be an employee of Buyer, the parties acknowledge and agree that works of authorship and other intellectual property that would qualify fully for exemption from assignment under the provisions of Section 2870 of the California Labor Code will not constitute Work Product for the purposes of assignment under this Section.

10.3 Background IP License. Supplier hereby grants to Buyer a non-exclusive, royalty-free, fully paid-up, perpetual, irrevocable, worldwide right and license, with right of sublicense, under and to Supplier's Background IP (as defined below) to the extent necessary for Buyer to use, make, have made, copy, distribute, market, modify or otherwise exploit the Work Product or otherwise receive the benefit of the services that form part of the Products under this Order. For purposes of this Agreement, "Background IP" means any and all technology and intellectual property rights that do not constitute Work Product and that are owned by Supplier or are licensed by a third party to Supplier with a right to sublicense, and which exist prior to the date of this Agreement or which are developed independently by Supplier outside of the Services but are used in provision of the services or are applicable to the Work Product. The Work Product shall not include or incorporate any Background IP without the prior written consent of Buyer. To the extent practicable, Supplier agrees to specifically describe and identify in each services Order any material Background IP that Supplier intends to use to perform the applicable Services.

11. Confidentiality.

11.1 Unless the parties have executed an independent non-disclosure agreement setting out each party's confidentiality obligations in relation to the subject matter of this Order ("**NDA**"), the following confidentiality terms shall apply as set out in this Section. Supplier shall keep confidential all information designated by Buyer as confidential or which reasonably should be deemed to be confidential based on its subject matter or the circumstances of its disclosure, including, but not limited to, designs, processes, drawings, reports, data, know-how, trade secrets and other technical or proprietary information and the features of all parts, equipment, tools, and other Products furnished or disclosed to the Supplier by Buyer in connection with this Order ("**Buyer's Proprietary Information**"). Supplier shall not disclose such information to any third party without the written consent of Buyer and shall not use Buyer's Proprietary Information except as contemplated in this Order. Upon completion or termination of this Order, Supplier shall return all Buyer's Proprietary Information to Buyer or make such other disposition thereof as may be directed and approved by Buyer and shall certify to such return or destruction.

11.2 Insofar as the Supplier has access to confidential information subject to Sec. 203 of the German Criminal Code ("**StGB**") ("**professional secrets**") while performing services for Buyer, Supplier is subject to occupational duties of a person with professional secrets. Supplier is prohibited from disclosing such professional secrets without authorization to third parties. The parties are aware that they are subject to the same criminal law obligations (including e.g. Sec. 202a, 203, 204 StGB) as professional secrecy holders. A "**professional secret**" means any information, in particular a secret relating to a person's personal sphere of life or to a business or trade secret which was revealed or otherwise made known to a person subject to professional secrecy under Sec. 203 of the German Criminal Code (*Strafgesetzbuch - "StGB"*) (e.g. physicians, professional psychologists, lawyers, state recognized social workers).

12. Indemnification and Liability.

12.1 General Indemnification. Supplier shall defend, indemnify and hold harmless Buyer and its Affiliates, successors or assigns and their respective directors, officers, shareholders and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance



providers (collectively, "Losses") arising out of or occurring in connection with the Products purchased from Supplier or Supplier's gross negligence, or breach of the Terms. Supplier shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

12.2 Intellectual Property Indemnification. Supplier shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Products infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Supplier enter into any settlement without Buyer's or Indemnitee's prior written consent. In addition to the foregoing, Supplier shall, in addition to Supplier's indemnification obligations as set forth in this Section, at Buyer's option, either: (a) procure for Buyer the right to continue to use, market and sell the Product (as applicable); (b) modify the Product so that it is no longer infringing; (c) replace it with a non-infringing Product; or (iii) refund to Buyer fees paid to Supplier for the applicable Products.

12.3 LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL BUYER OR ITS AFFILIATES BE LIABLE FOR ANY LOST REVENUES, LOST PROFITS, INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES. IN NO EVENT SHALL BUYER'S LIABILITY TO SUPPLIER EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY BUYER TO SUPPLIER HEREUNDER. NOTHING IN THIS ORDER SHALL EXCLUDE OR LIMIT SUPPLIER'S LIABILITY FOR FRAUD, PERSONAL INJURY OR DEATH CAUSED BY ITS NEGLIGENCE, OR WILFUL MISCONDUCT.

13. Termination.

13.1 By Either Party. Either party shall have the right to cancel this Order by providing written notice upon the occurrence of any of the following events to the other party (in each case excluding where such event occurs for the purposes of a bona fide solvent re-organization): (i) the appointment of or the application to a court for the appointment of a liquidator, administrator, manager, administrative receiver or receiver; (ii) entering into of a scheme of arrangement or composition with or for the benefit of creditors; (iii) a resolution or proposed resolution to wind up; (iv) ceasing to carry on business; or (v) undergoing any procedure comparable or analogous to any of the foregoing under the laws of any competent jurisdiction. The parties shall also be entitled to cancel this Order by providing written notice if the other party is in material breach of any provision of this Order and (where possible) fails to remedy that breach within 30 (thirty) days of being given notice to do so by the other party. Should Buyer cancel this Order for material breach that has remained uncured at the end of the said notice period, Buyer may, at its option and without prejudice to any other rights or remedies it may have, take possession of the Products in whatever stage of completion they may be. If the Products are not completed, Buyer may contract with any other person(s) to complete the Products, and in such case, Supplier shall be liable for all costs, expenses, or damages of any kind whatsoever which Buyer has incurred or suffered. The rights and remedies of Buyer provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Order.

13.2 By the Buyer. Buyer may terminate at any time and for any reason all or any portion of this Order, with or without cause, by giving notice to Supplier in writing (email acceptable). In the event of termination without cause, Buyer shall pay to Supplier a reasonable price for properly performed services rendered prior to the termination date. If any hourly or other time-based rate for services is specified in this Order, such rate shall be used in determining a reasonable price. The foregoing states Buyer's entire liability for such termination without cause.

14. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God, war, riot, terrorist acts, fire, accident, curtailment of transportation, terrorism, civil disturbance, disaster, earthquake, hurricane, acts of any government authority, epidemic, pandemic, disease, public emergency or any other events or circumstances not within the reasonable control of such party, whether similar or dissimilar to any of the foregoing and whether or not reasonably foreseeable by the parties at the time of entering into this Agreement. Supplier shall use all reasonable efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Supplier from carrying out its obligations under this Order for a continuous period of more than 30 days, Buyer may terminate this Order immediately by giving written notice to Supplier. In case of such termination for a Force Majeure Event, Buyer will pay to Supplier a reasonable price for properly performed services rendered prior to the termination date. If Buyer has paid any amounts of price for any services or any other Products under this Order upfront or in advance of completion of the services by Supplier, Supplier shall make a refund of such pre-paid amounts of price on a pro-rata basis immediately.

15. Data Protection.

15.1 Definitions. The following definitions have the meanings set out below.

"**Standard Contractual Clauses**" means government approved contract mechanism for the cross-border transfer of Personal Data to Third Countries.

“**EU Standard Contractual Clauses**” means the standard contractual clauses approved by the European Commission in the Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council, as applicable, and available at: https://eur-lex.europa.eu/eli/dec_impl/2021/914/oj?uri=CELEX:32021D0914&locale=en.%20%20Module%20%20and%20Module%203

(referencing Module 1: Transfer Controller to Controller, Module 2: Transfer Controller to Processor or Module 3: Processor to Processor, as applicable to the Processing of Personal Data), and as may be amended or replaced from time-to-time.

“**UK Addendum**” means the UK Addendum to the EU Commission Standard Contractual Clauses issued by the UK’s Information Commissioner’s Office as may be amended or replaced from time to time, currently found at <https://ico.org.uk/media/for-organisations/documents/4019539/international-data-transfer-addendum.pdf>.

15.2 It is agreed by the parties that neither party intends to access, store, transfer, use or otherwise process any personal data of the other party in relation to this Order.

15.3 Notwithstanding the foregoing, in the event that any personal data is processed by Supplier under this Order, the Supplier shall: (i) comply with all applicable laws and regulations; (ii) process the personal data only on behalf of Buyer and in accordance with and for the purposes set out in Buyer’s instructions; (iii) not disclose, share, sell or otherwise make available the personal data to any third party (unless directed to do so by Buyer); (iv) implement appropriate security measures to protect the personal data from accidental or unlawful destruction, loss, alteration, or unauthorised disclosure or access; (v) notify Buyer without undue delay (and in no event more than 48 hours) in the event of a declared or reasonably suspected security breach or other incident that which affects the integrity, availability or confidentiality of personal data; and (vi) reasonably assist Buyer in responding to any requests from individuals exercising their rights under applicable law regarding their personal data or inquiries from any regulator.

15.4 If Supplier processes personal data in a “**Third Country**” (meaning a country outside of the scope of the applicable data protection laws of the European Economic Area, UK, South Africa, and/or Switzerland, excluding countries approved as providing adequate protection for personal data by the European Commission from time to time), and/or appoints an affiliate or third-party subprocessor to process personal data in a Third Country, Supplier shall comply, and procure that such parties comply, with the data importer obligations set out in the applicable Standard Contractual Clauses which are hereby incorporated into and form part of this Order. When Supplier is required to enter into the Standard Contractual Clauses with any relevant affiliate or third-party subprocessor, the parties will comply with Module 3 of such Clauses. Where the Standard Contractual Clauses between Buyer and Supplier identify optional provisions (or provisions with multiple options) the following shall apply:

- i. In Clause 7 (Docking Clause) (Module 2) – the Optional provision shall apply; the foregoing shall apply with respect to Table 2 of the UK Addendum;
- ii. In Clause 9(a) (Use of sub-processors) (Module 2, 3) – Option 2 shall apply (and the parties shall follow the process and timings agreed in the Agreement to appoint sub-processors); the foregoing shall apply with respect to Table 2 of the UK Addendum;
- iii. In Clause 11(a) (Redress) (Module 1, 2) – the Optional provision shall NOT apply; the foregoing shall apply with respect to Table 2 of the UK Addendum;
- iv. In Clause 17 (Governing Law) (Module 1, 2, 3)– the courts of Buyer’s EU Member State shall govern; Part 2, Section 15(m) of the UK Addendum shall apply;
- v. In Clause 18 (Choice of forum and jurisdiction) (Module 1, 2, 3) – the courts of Buyer’s EU Member State shall have jurisdiction; Part 2, Section 15(n) of the UK Addendum shall apply.

15.5 If Buyer deems necessary, the parties shall enter into a separate data processing agreement in connection with this Order (“**DPA**”), in which case the DPA shall govern Supplier’s processing of the personal data under this Order.

16. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

17. Record Keeping and Audit Rights. During the term of this Order and for two years thereafter, Supplier shall maintain complete and accurate books and records regarding its business operations relevant to Supplier’s performance of its obligations under this Order, including accounting records in accordance with sound accounting practices, to substantiate Supplier’s charges to Buyer hereunder and to otherwise verify Supplier’s compliance with the terms of this Order. Upon request, once per year during the term of this Order, upon reasonable prior written notice to Supplier and during regular business hours, Supplier shall make such books and records, and appropriate personnel, available to Buyer or its authorized representatives for inspection or audit in order to verify Supplier’s compliance with the terms of this Order. Notwithstanding the foregoing, the parties agree that Buyer may conduct an audit at any time, in the event



of: (i) audits required by a relevant regulatory authority; (ii) investigations of claims of fraud or fraudulent misrepresentations; or (iii) Buyer reasonably believes that an audit is necessary to address a material breach under this Order or the operational issue that poses a threat to Buyer's business. The parties agree that such audits shall be carried out by Buyer's employee(s) or an independent auditor (at Buyer's option) in possession of appropriate professional qualifications and bound by a duty of confidentiality. Buyer will pay the cost of such audits unless an audit reveals an overbilling of three percent or more, in which case Supplier shall reimburse Buyer for the cost of the audit. Supplier shall immediately upon notice from Buyer pay Buyer the amount of any overpayment revealed by any such audit, together with any reimbursement of any out-of-pocket expenses and the costs of such audit.

18. Assignment and Subcontracting. Supplier shall not assign this Order or any rights hereunder, nor delegate any duties, nor subcontract any work without the prior written consent of Buyer. Any attempts to do so in violation of this Section shall be null and void. Supplier shall enter into a written contract with each subcontractor it is authorized to retain under this Order, if any, and shall ensure that each such subcontractor is committed to comply with all of Supplier's obligations and responsibilities as set out in this Order. Supplier's use of a subcontractor will not relieve Supplier of its obligations under this Order or its responsibilities for the subcontractor's performance. Supplier shall remain fully responsible for all work performed by its subcontractors or any other third parties and shall indemnify and hold Buyer harmless for any payment required to be made to any such parties performing services hereunder on behalf of the Supplier. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under the Order without Supplier's prior written consent.

19. Publicity. Supplier will not use the Buyer name, logo, trademark, service mark, domain name, or social media account name or handle or any other Buyer brand features in any public announcement, marketing materials, press release or other form of publicity, and will not publicly advertise, market or otherwise make known to others any information relating to Buyer or this Order in each case without Buyer's prior written consent.

20. Equal Employment Opportunity.

20.1 In connection with the carrying out of Supplier's duties under this Order, Supplier shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status.

20.2 U.S. EEO Laws. If Supplier entity providing the services under this Order is located in the United States of America or any of US territories, the relevant terms below will apply:

(a) In the event the fees due to Supplier from Buyer meet or exceed \$10,000, Buyer will implement and maintain compliant practices consistent with the requirements of 41 CFR §§ 60-1.4(a), 60300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that Supplier will take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

(b) In the event the fees due to Supplier from Buyer meet or exceed \$150,000, Supplier will also comply with all the provisions set forth in 29 CFR Part 471, Appendix A to subpart A (Executive Order 13496).

21. Miscellaneous.

21.1 Entire Agreement. Unless the parties have entered into an applicable written agreement as executed between Supplier and Buyer, which shall govern in the event of any conflicting, additional or supplemental terms herein, this Order (including these Terms hereof), together with any documents incorporated herein, including, but not limited to, the applicable DPA and/or the NDA (if any), set forth the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order.

21.2 Amendment and Modification. No change, modification, addition or amendment to this Order is binding upon Buyer unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Buyer.

21.3 Waiver. No failure of either party to exercise or enforce any of its rights under this Order will act as a waiver of any of its rights. No waiver of any default by either party shall act as a waiver of a subsequent or different default.

21.4 Severability. Should any provision of these Terms be found unenforceable, such provision will be enforced to the fullest extent permitted by law and the remainder of this Order will remain in full force and effect.

21.5 Survival. The provisions of Sections 6 (Warranties), 9 (Insurance), 10 (Intellectual Property Rights), 11 (Confidentiality), 12 (Indemnifications and Liability), 15 (Data Protection), 16 (Relationship of the Parties), 17 (Record Keeping and Audit Rights), 19 (Publicity), 21 (Miscellaneous), and 22 (Governing Law) shall survive any termination or expiration of this Order and shall continue to bind the parties and their permitted successors and assigns.



21.6 Notices. All notices under this Order will be sent to the addresses set forth in the applicable purchase order and will be deemed effective upon delivery, in the case of personal delivery, at the time it is delivered at the premises of the party, in the case of a registered letter at the expiration of three (3) business days after posting and, in the case of electronic means, immediately on dispatch; provided that, if any document is sent by electronic means outside normal business hours, it shall be deemed to have been received on the next working day after delivery.

21.7 On-Site Requirements. Supplier will ensure that while on Buyer's premises, Supplier's personnel, agents and subcontractors will abide by any of Buyer's environmental, health, safety and security requirements.

22. Governing Law.

22.1 United States. If the Buyer entity receiving services under this Order is located in the United States of America, this Order and any disputes hereunder will be governed by the laws of the Commonwealth of Massachusetts, without regard to its conflict of law principles, and any litigation concerning this Order shall be submitted to and resolved by a court of competent jurisdiction in Boston, Massachusetts.

22.2 Canada. If the Buyer entity receiving services under this Order is located in Canada, this Order and any disputes hereunder shall be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein. Any legal action or proceeding arising out of or based upon this Order may be instituted in the courts of the province of Ontario, and each party irrevocably submits to the jurisdiction of such courts in any such action or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

22.3 United Kingdom. If the Buyer entity receiving services under this Order is located in the United Kingdom, this Order and any court proceedings shall be governed by the laws of England and Wales and held in England.

22.4 Germany. If the Buyer entity receiving services under this Order is located in Germany, this Order shall be governed by the laws of the Federal Republic of Germany, without regard to its conflict of law principles, and any litigation concerning this Order shall be submitted to and resolved by a court of competent jurisdiction in Frankfurt am Main, Germany.

22.5 The Netherlands. If the services under this Order are provided in the Netherlands, this Order shall be governed by and construed in accordance with Dutch law. The parties irrevocably agree that the courts of the Netherlands shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Order or its subject matter or formation (including, non-contractual disputes or claims).

22.6 France. If the Buyer entity receiving services under this Order is located in the Republic of France, this Order and any disputes hereunder will be governed by the laws of France, without regard to its conflict of law principles, and any litigation concerning this Order shall be submitted to and resolved by the Commercial Court of Paris.

22.7 Republic of South Africa. If the Buyer entity receiving services under this Order is located in South Africa, this Order and any disputes hereunder will be governed by the laws of the Republic of South Africa, without regard to its conflict of law principles. The parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg for the purpose of all or any legal proceedings arising from or concerning this Order.

22.8 Australia. If the Buyer entity receiving services under this Order is located in Australia, this Order and any arbitration and court proceedings shall be governed by the federal laws of Australia and the State of Victoria and held in Melbourne, Australia. Supplier hereby consents to the jurisdiction of such courts over Supplier and stipulates to the convenience, efficiency and fairness of proceeding in such courts, and covenant not to assert any objection to proceeding in such courts based on the alleged inconvenience, inefficiency or unfairness of such courts.

22.9 Singapore. If the Buyer entity receiving services under this Order is located in Singapore, this Order and any court proceedings shall be governed by the laws of England and Wales and held in England.

22.10 Israel. If the Buyer entity receiving services under this Order is located in Israel, this Order and any disputes hereunder will be governed by the laws of the State of Israel, without reference to principles and laws relating to the conflict of laws. The competent courts of the city of Tel Aviv shall have exclusive jurisdiction over any matter in connection with this Order.

22.11 India. If the Buyer entity receiving services under this Order is located in India, this Order and any disputes hereunder shall be governed by and construed in accordance with the laws of India. The courts in Bangalore, India shall have exclusive jurisdiction in relation to all disputes under this Agreement. For these purposes each party irrevocably submits to the jurisdiction of the courts in Bangalore, India and waives any objection to the exercise of the jurisdiction.

Notwithstanding the foregoing, Buyer may seek equitable, injunctive or declaratory relief to enforce any of its rights in Buyer's Proprietary Information in any court of appropriate jurisdiction.