

## Purchase Order Terms

The following purchase order terms (“**PO Terms**”) are attached to the generated purchase order form (“**PO Form**”). The PO Form may incorporate by reference certain exhibits to provide additional details regarding the Products and Services procured (“**Exhibits**”), and such Exhibits are incorporated into the PO Form by this reference. The PO Terms and PO Form are collectively referred to as the “**PO**” and apply to purchases made by the Wells Fargo entity owning the accounting unit (“**AU**”) described in the PO Form (“**Purchaser**”) and the company providing Products or Services (“**Seller,**” and together with Purchaser, the “**Parties**”).

**I. PO Structure.** This PO includes terms regarding Seller’s Products or Services. In the event of a conflict between the PO Terms and the PO Form, **THE FOLLOWING ORDER OF PRECEDENCE AND INTERPRETATION GOVERNS THE PO DOCUMENTS: (1) THE PO FORM, (2) THEN THESE PO TERMS WITH RESPECT TO PRODUCT AND SERVICE SPECIFIC TERMS IN THESE PO TERMS, ONLY (FOR EXAMPLE, HARDWARE TERMS SET FORTH IN SECTION 16 APPLY TO HARDWARE PROCURED ON THE ASSOCIATED PO FORM). IN ADDITION, IF A MASTER AGREEMENT (OR OTHER SIMILAR CONTRACT THAT IS STRUCTURED AS A MASTER AGREEMENT BETWEEN THE PARTIES), INCLUDING ANY DOCUMENTS THAT ARE INCORPORATED BY REFERENCE INTO SUCH MASTER AGREEMENT (“MASTER AGREEMENT”), IS IN EFFECT BETWEEN PURCHASER AND SELLER GOVERNING THE PROCUREMENT OF THE PRODUCTS OR SERVICES DESCRIBED IN THIS PO, THEN THE TERMS OF THAT MASTER AGREEMENT GOVERN PURCHASER’S PURCHASES UNDER THIS PO AND, EXCEPT FOR SECTION 2 (ACCEPTANCE OF THIS PO) OF THESE PO TERMS, THE PO TERMS HAVE NO LEGAL FORCE AND EFFECT; AND IN THE EVENT OF A CONFLICT BETWEEN THE PO FORM AND THE MASTER AGREEMENT, THE PO FORM WILL PREVAIL.** Seller agrees that it will only look to Purchaser to enforce the performance of all duties and obligations (including any payment or indemnification obligations) herein. Seller acknowledges and agrees that no Affiliate of Purchaser is a guarantor of any other Purchaser Affiliate’s duties or obligations. Any unilateral terms or conditions on any materials that Seller regularly uses (e.g., including terms or conditions (a) that Purchaser is required to accept in the ordering process or prior to using or during the use of the Products or Services, such as browse-wrap or click-wrap terms or conditions; or (b) on pre-printed materials, order forms, or invoices), regardless if issued, presented, or clicked through before, contemporaneous with, or after Seller’s acceptance of this PO, will be null and void and of no consequence whatsoever in interpreting the Parties’ legal rights and responsibilities as they pertain to Products or Services provided in connection with this PO.

**II. Acceptance of this PO.** This PO commences upon Seller’s acceptance, which is effective upon the earlier of Seller’s commencement of performance under this PO, or 5 days after Seller’s receipt of this PO unless Seller objects in writing within such 5 days. Any additional terms will be deemed rejected unless agreed to in writing by an authorized representative of Purchaser.

### **III. Definitions.**

**A. “Affiliates”** means Wells Fargo & Company, and any present or future company that Controls, is Controlled by, or is under common Control with Wells Fargo & Company, including any subsidiary of Wells Fargo & Company as defined under 12 U.S.C. §1841(d).

**B. “Authorized Services Location”** means a specific physical location outside of the United States of America and its territories (“**United States**” or “**U.S.**”) set forth in the applicable PO where Offshore Activities, or portions thereof, may be provided pursuant to the terms of this PO.

**C. “Authorized User”** means any individual or entity that is authorized by Purchaser to use the Products and Services in the PO Form, including Purchaser, its Affiliates, and their respective officers, directors, employees, agents and contractors.

**D. “Business Operations”** means all business activities of Purchaser and its Affiliates, including the processing of its own data or its customer

transactions, including for corporate customers on behalf of their customers or entities that are not affiliated with Purchaser or its Affiliates.

**E. “Confidential Information”** means information supplied in confidence by one Party (“**Disclosing Party**”) to the other Party, its subcontractors or agents (“**Receiving Party**”), which may be disclosed to the Receiving Party or otherwise acquired by the Receiving Party in its performance under this PO. Confidential Information (i) includes all information which a reasonable person would consider confidential under the context of disclosure or due to the nature of the information itself, and may include technical and non-technical information, Intellectual Property Rights, know-how, designs, techniques, plans or any other information relating to any research project, work in process, future development, marketing or business plans or financial or personnel matters relating to either Party or its present or future products, sales, suppliers, customers, employees, investors or affiliates, (ii) for Purchaser includes Customer/Consumer Information and any information developed, collected and compiled by Seller in the course of providing the Products or the Services, and (iii) may be communicated: (a) in a written or other tangible form which is clearly marked with a “confidential” or “proprietary” legend or other comparable legend; (b) orally or visually which is identified as confidential at the time of disclosure and confirmed in writing within a reasonable time; or (c) in a request for information/proposal, or in anticipation of an agreement for procurement of Seller’s products or services. Exceptions to the term “Confidential Information” are set forth in **Section 8.A.2 (Exclusions)**.

**F. “Control”** (including with its correlative meanings, “**Controlled by**”, “**Controlling**”, and “**under common Control with**”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies, whether through ownership of securities or partnership or other ownership interests, by contract or otherwise.

**G. “Correction”** means a modification to the Products, including the repair or replacement by Seller of non-operative or non-conforming parts, to resolve an Error.

**H. “Customer/Consumer Information”** means any and all information or data that is provided by, through or on behalf of Purchaser or any Affiliate to Seller or any Seller Personnel, or is otherwise acquired by Seller or any Seller Personnel in the course of providing Products, Deliverables, or performing Services under this PO that relates to any: (i) current, prospective or former customer (whether an individual, business entity, governmental unit, or otherwise) of Purchaser or any Affiliate, (ii) consumer of Purchaser or any Affiliate, (iii) nonpublic personal information of Purchaser or any Affiliate regarding its customers or consumers (within the meaning of Title V of the Gramm-Leach-Bliley Act and its implementing regulations, or any similar provision under any other Law), (iv) information subject to the Fair Credit Reporting Act and any regulations or guidelines adopted thereunder or any similar provision under any other Law), or (v) information from which a customer or consumer’s identity can be ascertained, either from the information itself or by combining the information with information from other sources. “Customer/Consumer Information” includes financial information, medical or health-related information. Examples are credit history, income, financial benefits, information in an application, loan or claim information, health information such as medical records, names or lists of individuals derived from nonpublic personally identifiable information or otherwise derived from Purchaser or an Affiliate, or the identification of an individual as a customer or as an individual claimant under a financial product or service provided by Purchaser or an Affiliate.

**I. “Deliverable”** means (i) any inventions, ideas, methods, processes, designs, drawings, calculations, data, reports, computer programs (both source and object code), computer files, concepts, works of authorship or information of any nature and all supporting documentation and materials specifically made or prepared by Seller or Seller Personnel during the provision of the Services; (ii) all changes, modifications, updates, or enhancements made by Seller or Seller Personnel to any of the foregoing in subsection (i); and (iii) all derivative works from any of the foregoing in subsections (i) or (ii). For the avoidance of doubt, neither of the following are

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Deliverables: (x) a pre-existing Seller Product or Service that has not been modified specifically for Purchaser during the performance of Services, or (y) a Seller Material that has not been incorporated into a Deliverable or that has not been modified specifically for Purchaser during the performance of the Services.

**J. "Delivery Date"** means the date set forth in this PO for delivery of the Products or Services.

**K. "Documentation"** means any and all (i) materials created by or on behalf of Seller that describe or relate to the functional, operational or performance capabilities the Products, regardless of whether such materials be in written, printed, electronic or other format; (ii) user, training, operator, system administration, technical, support and other manuals, including, but not limited to, functional specifications, help files, flow charts, logic diagrams, programming comments; (iii) any specifications set forth in this PO; and (iii) updates, changes, and corrections to any of the foregoing made during the term of this PO. With respect to subsections (i) and (ii) above, if Seller is not the original equipment manufacturer, then such subsections will also include the original manufacturer's standard published documentation, as such documentation relates to the Products.

**L. "End of Service Date"** means the date after which Seller will no longer furnish Maintenance Services for the Products or any products substantially similar to the Products, which date will not occur earlier than the expiration of the Minimum Period as defined in this PO.

**M. "Error"** means a failure of the Products to conform to the Documentation or any performance standards in this PO. Error classifications will be determined solely by Purchaser in its reasonable judgment. An Error is a "Class 1 Error" if it (i) renders use of the Products commercially unfeasible, impossible, or seriously impractical; (ii) seriously reduces its value to Purchaser; or (iii) impacts Purchaser's ability to comply with laws or regulations for which proper operation of the Products would otherwise create compliance by Purchaser. An Error is a "Class 2 Error" if it makes continued use of the Products materially inconvenient and substantially reduces its value to Purchaser. All other Errors are "Class 3 Errors", including all Documentation shortcomings and deviations and non-material Errors that do not have the potential for the regulatory or economic consequences inherent in Class 1 Errors or Class 2 Errors.

**N. "Excess Quantity"** means Purchaser's Use in Production Environments that materially exceeds the aggregate licensed capacity or other authorized Use limitation in this PO.

**O. "Hardware"** means the equipment more particularly described in this PO and all Corrections and Updates to that equipment. The Hardware may contain or include certain software code, such as firmware, required for the Hardware to function in accordance with the Documentation, which is provided by Seller with the Hardware, and is maintained as an integral part of the Hardware.

**P. "Hazardous Materials"** means materials that (i) are or contain dangerous goods, chemicals, contaminants, pollutants; (ii) are defined as hazardous by applicable local, state, national or international laws, regulations or standards; or (iii) through Purchaser's use of the Products or Services in accordance with the Documentation, including combination with other hardware and software, may become hazardous, as described in this definition.

**Q. "Installation Date"** means the date upon which Purchaser has accepted the installation of Products and any configuration Services provided by Seller in writing, which may be made via email.

**R. "Installation Location"** means the location set forth in this PO where the Products will be initially installed, or the location to which the Products are subsequently moved by Purchaser.

**S. "Intellectual Property Rights"** means, on a worldwide basis, all patents (including originals, divisionals, continuations, continuations-in-part, extensions, foreign applications, utility models and re-issues), patent

applications, copyrights (including all registrations and applications therefore), trade secrets, service marks, trademarks, trade names, trade dress, trademark applications and registrations, internet domain names, and all other proprietary and intellectual property rights, including moral rights.

**T. "Law"** means any and all applicable national, federal, state, provincial and local laws, regulations, ordinances, and judicial decisions in courts and tribunals of competent jurisdiction, including within the United States or the country(ies) where Offshore Activities are provided, and includes any subsequent amendments, modifications and revisions to such Law. The concept of "Law" also includes any and all unilateral, bilateral, or multinational treaty, convention or agreement (and all related legislation and directives) enforceable by and between the United States and those countries in which Offshore Activities are performed or Authorized Services Locations are located, and which apply to the Products or Services provided under this PO.

**U. "Licensed Products"** means the Software and Documentation.

**V. "Maintenance Services"** means Services provided for the maintenance and support of the Products. Maintenance Services include Preventive Maintenance and Remedial Maintenance.

**W. "Mark" or "Marks"** will mean those portions of the Purchaser Materials, Purchaser's Identity or Purchaser Intellectual Property Rights that may be commonly used with marketing efforts, including without limitation "Wells Fargo" and any of its Affiliates' company name(s) or trade name(s), Wells Fargo's and its Affiliates' logos, trademarks, service marks, design marks, and all trade dress associated with the foregoing, as depicted in any catalogues or materials owned by Purchaser. The specific Mark(s) licensed to Seller will be set forth in this PO.

**X. "Minimum Period"** has the meaning given in **Section 15.E (Maintenance Services)** below.

**Y. "Non-Production Environment"** means any configuration of computer hardware and Software Used for one or more of the following activities in furtherance of the Business Operations: archival, training, testing, development, disaster recovery, business continuity, or other non-production purposes.

**Z. "Offshore Activities"** means all Products and Services provided by Seller from outside the United States.

**AA. "Platform"** means the combination of computing equipment on which the Licensed Products are installed, and may include desktops, laptops, servers, mainframes, or other equipment, as well as the operating systems operating on such equipment.

**BB. "Preventive Maintenance"** means Services provided by Seller on a scheduled basis in order to keep the Products operating in accordance with the Documentation and any performance standards set forth in this PO, including calibration, testing, adjustments, cleaning, lubrication, replacement of worn, defective or questionable parts, and minor circuit updating and modifications.

**CC. "Product(s)"** means the products, including the Hardware and Licensed Products provided by Seller under this PO.

**DD. "Production Environment"** means any configuration of computer hardware and Software Used to process data for Business Operations for other than Non-Production Environment activities.

**EE. "Professional Services"** means technical, consulting, training, configuration, development, customization, installation or other Services, but not including generally available maintenance services for specific Products (e.g., hardware or software) procured by Purchaser. All Professional Services provided by Seller will be set forth in this PO, including, if necessary, in an Exhibit A.

**FF. "Purchaser Materials"** means materials owned or licensed by Purchaser, including computer software (in object or source code form), scripts, programming code, technical data, Confidential Information, trademarks, service marks and other materials.

**GG. "Remedial Maintenance"** means Services to correct an Error.

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**HH. "Restricted Information"** means the highest level of classification for Purchaser Confidential Information, the disclosure of which would likely result in severe damage to Purchaser, or its customers or team members (e.g., code of the day, symmetric encryption keys, passwords, etc.).

**II. "Scheduled Installation Date"** means the date set forth in this PO upon which Seller will commence installation and any configuration Services pursuant to **Section 16.A (Installation)** below.

**JJ. "Seller Materials"** means any technology or intellectual property, and updates, upgrades, modifications, enhancements, and derivative works of or to the foregoing, developed by Seller or Seller Personnel prior to or during the provision of Products or Services, without the use of Purchaser's Confidential Information, Purchaser's Intellectual Property Rights or the Purchaser Materials, and which are embodied in Seller's generally-available products or services. In any Dispute, the burden of proof will be on Seller to show that the portion of the Deliverable qualifies as Seller Materials.

**KK. "Seller Personnel"** means Seller and its officers, directors, employees, agents and subcontractors of any kind.

**LL. "Services"** means the services provided by Seller under this PO.

**MM. "Software"** means all (i) computer programs, databases, and related products together with all files required for proper operation thereof and all associated tools, utilities, programs, and files that Seller provides to Purchaser pursuant to a PO or that Purchaser procures from a third party provider (e.g., a reseller or a distributor) pursuant to a separate agreement, including any Free and Open Source Software ("FOSS"); (ii) Corrections and Updates that Seller provides to Purchaser pursuant to a PO or that Purchaser procures from a third party provider pursuant to a separate agreement; and (iii) modifications to the foregoing provided by Seller to Purchaser under this PO. Unless set forth to the contrary in this PO, the Software will be furnished to Purchaser in object code form, however, Seller will provide source code for (x) those portions of the Software that Seller customarily provides in source code form to licensees (e.g., application programming interfaces ("APIs") of the Software, or manipulable code in XML or AJAX), (y) Software that is licensed by Seller from a third party and Seller's license to such Software requires Seller to distribute the source code (e.g., FOSS), or (z) in relation to a source code release.

**NN. "Update"** means (i) any and all modifications, changes or updates to the Products, including manufacturers' engineering changes, that (a) improve the general utility, efficiency and operating performance of the Products without altering its basic function; or (b) incorporate any fixes or bypasses for known errors; (ii) software enhancements offered to Seller's other customers, including any and all modifications to or versions or releases of the Software, including version changes to each side of the decimal point (e.g., X.5, and also 5.x); and (iii) software products provided or offered by Seller in the future that include the same or similar functionality as the Software, regardless of the name or characterization that Seller may assign to such software products.

**OO. "Use"** means to make beneficial use of the Products, as required for Authorized Users to employ the Products, including to use, execute, copy, distribute, perform, display the Products, and create derivative works from the Products, in all environments, including both Production Environments and Non-Production Environments, without restriction as to site or location, for Business Operations.

**PP. "Warranty Period"** means the time period commencing upon Purchaser's acceptance of the Products and expiring twelve (12) months thereafter, unless otherwise defined in this PO.

## **M. Performance under PO**

### **A. Generally.**

**1. Assurances.** Seller will ensure that (a) all Seller Personnel who provide Products or Services comply at all times with the terms of this PO, and (b) it has signed written agreements with Seller Personnel in furtherance of Seller's obligations hereunder. Purchaser will have the right to accept or reject Seller Personnel, in its sole discretion, for any reason or no reason, including on the basis that the proposed Seller Personnel is a subcontractor rather than an

employee of Seller. Each Seller Personnel will work for the period of time requested by Purchaser.

### **2. Seller Personnel.**

**(a) Individuals.** Subject to the terms of this PO, Seller may not use any individual in the provision of Products or Services who is not an employee of Seller unless otherwise authorized or approved by Purchaser in writing. Subsections (i)-(iii) below related to Services performed in the United States; but for individuals performing Services outside the United States, additional/different restrictions will be set forth in any applicable country-specific Exhibits. :

(i) Seller represents and warrants that all Seller Personnel providing Products or Services under this PO are legally authorized to work in the country in which the Products or Services are being provided.

(ii) Seller may not use any individual who is in the United States pursuant to the B-1 category of visa (or any successor legislation or regulations, or any similar provision under any Law) in the provision of Products or Services.

(iii) If the Products or Services relate to encryption technologies (hardware or software) provided by Purchaser to Seller of greater than 56-bit encryption, then Seller will not utilize any individual who is not a U.S. national in the provision of such Products or Services, absent Purchaser's prior written consent.

**(b) Dependent Providers.** Seller will disclose to Purchaser promptly after issuance of this PO, the names, principal places of business, and the locations where Seller's Dependent Providers (as defined below) perform Services, which must be approved by Purchaser. Seller will provide Purchaser with no less than ninety (90) days' written notice of any intent to change such Dependent Providers, and will obtain Purchaser's prior written approval before implementing any such change. "Dependent Providers" are Seller's subcontractors, suppliers or agents (i) upon which Seller relies for significant commodities or services, the failure of which would render it impossible or infeasible for Seller to provide the Products or Services, or (ii) to whom any Customer/Consumer Information or any Restricted Information will be transferred.

**(c) Replacement.** Upon request, Seller will remove any and all non-satisfactory Seller Personnel, as determined in the sole discretion of Purchaser, and replace such Seller Personnel with another or others who are reasonably satisfactory to Purchaser. This replacement will occur as quickly as possible, but in no event more than five (5) working days after receiving Purchaser's request. If replaced Seller Personnel have been granted access to the Purchaser computing systems or networks, Seller will immediately terminate that access. Seller will not charge Purchaser a fee to make such replacement, and the replacement will be provided to Purchaser at the same or lower rate as that of the Seller Personnel being replaced. The period of time required by the replacement Seller Personnel to become familiar with the Products or Services being provided under this PO will not be charged to Purchaser. If Purchaser requests that Seller Personnel be replaced on a project due to unsatisfactory performance or lack of requisite skills, and Purchaser makes such request within ten (10) business days after such unsatisfactory Seller Personnel commenced providing Services for Purchaser or Purchaser's first opportunity to inspect Deliverables or Services provided by that Seller Personnel, whichever is later, Seller will not charge Purchaser for the Deliverables or Services provided by the unsatisfactory Seller Personnel. Seller will not assign any Seller Personnel whose work Purchaser has previously deemed unsatisfactory to provide Products or Services under this PO.

**3. Location.** Except for those Offshore Activities set forth in **Section 4.D.2 (Exceptions)** below, Seller warrants that Seller and Seller Personnel will not provide Offshore Activities at a location that is not an Authorized Services Location. Seller Personnel's provision of Offshore Activities at a location that is not an Authorized Services Location will be deemed a material breach of the PO and (i) Purchaser, at its sole option, may immediately terminate for cause the PO, in whole or in part, in written notice to Seller; (ii)

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Purchaser may require that the Offshore Activities be provided within the United States or from the Authorized Services Location(s) and Seller will immediately comply with any such requirement; or (iii) the Parties will execute an amendment to the PO to incorporate Purchaser's requirements with respect to the provision of Offshore Activities from a new Authorized Services Location. In addition, if Seller subcontracts the Offshore Activities or any portion thereof, and such subcontracting compels Purchaser, pursuant to the IS Standards (as defined below), to perform additional Risk Assessment(s) (as defined below), Seller will bear all reasonable costs associated with conducting such Risk Assessments.

**B. Non-Exclusive.** The procurement of Products or Services is on a non-exclusive basis. Neither Purchaser nor its Affiliates guarantees to Seller any minimum amount of Products or Services, other than as may be agreed in a PO. Subject to Seller's obligations within this PO, including **Section 8 (Confidentiality)**, Seller and Seller Personnel may contract to perform similar services for third parties during the term of this PO.

**C. Non-Solicitation.** Seller will not directly solicit for employment any employee of Purchaser, during the term of the relevant PO or for three (3) months after the term of this PO. For the avoidance of doubt, Seller is not prohibited from employing an individual who approaches it about employment opportunities or who applies for a position in response to a posting, employment advertisement or other general solicitation of employment, or whose résumé is posted by the individual to an employment web site that is searchable by Seller, whether during this PO term or thereafter.

### D. Offshore Activities.

**1. Prior Approval Required.** Subject to the terms of **Section 4.D.2 (Exceptions)** below, Seller will not provide Offshore Activities under the PO, whether directly or a via any agent or subcontractor, without the prior written consent of Purchaser. If Purchaser agrees to provide such consent, it will provide such consent by listing the Authorized Services Location(s) in the PO, the Attachment or in the PO where the Offshore Activities are described. This consent may be withheld or withdrawn in Purchaser's sole discretion.

**2. Exceptions.** The restrictions in **Section 4.D.1 (Prior Approval Required)** will not apply to (a) Seller's efforts to develop or modify its commercially available software at a location outside the United States, provided that the development or modification is not specifically funded by Purchaser and does not include or reflect any Purchaser Confidential Information; (b) Seller's manufacture of commercially available goods at a location outside the United States; or (c) Seller's standard telephone or email technical support of its products or services from a location outside the United States which does not require: (1) access to Purchaser Confidential Information, (2) access to or connectivity with Purchaser's computing environments, or (3) direct communication with any Purchaser customer or consumer.

**E. Vendor Management.** As a regulated entity, Purchaser is obligated to oversee its use of third-party service providers, to assess and mitigate associated risks, and to provide information to its regulators to prove its use of third-party service providers complies with Law and its regulatory obligations. To comply with such obligations, Purchaser may from time to time submit to Seller requests for information or documentation to evidence that the Products or Services are being provided in a manner consistent with this PO, including an annual attestation that Seller's handling, maintenance, transportation, and protection of Purchaser's Confidential Information is in compliance with the IS Standards (as defined in **Section 7 (Security)** below) or Seller's BCP obligations (pursuant to **Section 14.P (Business Continuity Plan)** below). Seller will comply with such requests in a timely fashion. Purchaser will endeavor to consolidate such requests to minimize the disruption to Seller.

**F. Mandated Changes to Products and Services.** If Law requires Purchaser to adopt specific standards with respect to its service providers or to the Products or Services, Seller will conform to such standards ("**Mandated Changes**"). Seller will bear the costs associated with the Mandated Changes,

unless Purchaser agrees to do so in writing. If the Parties are unable to agree upon the costs associated with the Mandated Changes, Purchaser may terminate this PO, in whole or in part, and such termination will be effective as of the date specified in a termination notice provided by Purchaser. In such event, Purchaser will pay for all Products or Services provided up to the date of termination that have been accepted by Purchaser (if any).

**G. Anti-Corruption.** If in the course of providing the Products or Services Seller acts as Purchaser's intermediary or agent with unrelated third parties (including individuals associated with U.S. and foreign governmental entities), or if Seller is otherwise required to do so in this PO, then Seller represents and warrants to Purchaser that: (i) Seller and Seller Personnel are currently complying, and have at all times complied, with the Foreign Corrupt Practices Act of 1977, as amended ("FCPA"), and, to the extent applicable to Seller either directly or because of Seller's engagement with Purchaser, any other Law of any non-United States jurisdiction relating to anti-corruption or bribery, including the United Kingdom Bribery Act of 2010, as amended (collectively with the FCPA, "Anti-Corruption Laws"); (ii) in accordance with the risks of its business type and the locations in which it operates, Seller has implemented an anti-corruption compliance program that includes internal controls, policies and procedures, management oversight, monitoring, audit, governance and training, to ensure compliance with the Anti-Corruption Laws ("Anti-Corruption Program"); (iii) after Seller's reasonable inquiry, or alternatively, based on compliance with its Anti-Corruption Program (which has been in existence for at least five years prior to the date of this PO), neither Seller nor Seller Personnel have during the five years prior to the date of this PO: (a) taken any direct or indirect action that would result in a violation of Anti-Corruption Laws, including making, offering or authorizing any bribe, facilitation or other payment, gift, entertainment, rebate, or any other thing of value to any government official or employee, political party or official, or candidate, a public international organization, a commercial entity or individual, whether tangible or intangible, to secure an improper advantage, or (b) been under, an administrative, civil or criminal investigation, in connection with alleged or possible violations of Anti-Corruption Laws, nor (c) received notice from, or made a voluntary disclosure to, any governmental entity, including the U.S. Department of Justice or the U.S. Securities and Exchange Commission regarding alleged or possible violations of any Anti-Corruption Laws, (iv) its financial records are sufficiently accurate and complete to demonstrate its compliance with the Anti-Corruption Laws, represent actual bona fide transactions, and have been maintained in accordance with sound business practices, including the maintenance of adequate internal accounting controls. If Seller suspects any breach of this provision or violation of applicable Anti-Corruption Laws by Seller Personnel, to the fullest extent permitted by Law, Seller will promptly notify Purchaser in writing of its suspicions and cooperate with Purchaser in the resolution of issues raised.

**H. Customer Interactions.** If the Services or Products require Seller Personnel to interact with customers or prospective customers of Purchaser or its Affiliates, Seller agrees to comply with the following requirements:

**1. Complaints.** In handling complaints, Seller will comply with Law and Wells Fargo policy in place from time to time for the affected Products and Services, which includes the obligation to notify the Purchaser designated contact listed in the PO Form immediately of any customer complaint received and work with Purchaser to timely investigate and resolve any such complaint. If there are changes to such policy during the term this PO, Purchaser will modify notify Seller and Seller will have a reasonable period of time to adjust its practices accordingly. Seller will cooperate with Purchaser and assist in Purchaser's attempts to resolve the noted complaint, and will provide to Purchaser any requested information in relation to such complaint.

**2. Do Not Call/Solicit Requests.** If Seller receives any oral or written requests or direction from customers or prospective customers of Purchaser or its Affiliates to not: (a) receive marketing material by mail, (b) receive phone calls, (c) receive emails, (d) receive contest solicitations, or (e)

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receive interactive ads, Seller will communicate such requests to the applicable Purchaser contact in this PO no later than two (2) business days after receipt of any such request.

**3. Surveys.** Purchaser will have the right to (a) conduct customer/consumer satisfaction surveys to measure satisfaction with Seller's performance of Services, and (b) include the results of such survey results in its periodic evaluation of Seller's performance under the PO. If Purchaser informs Seller of any material concerns raised by customers based on the surveys, Seller will promptly submit to Purchaser a plan for corrective action to address such concerns, and, once approved by Purchaser, will promptly implement such plan.

### **V. Intellectual Property Rights**

**A. License to Purchaser Materials.** During the term of a PO, Purchaser may provide Seller with Purchaser Materials for use in the provision of Products and Services, and for that term, Purchaser hereby grants to Seller a non-exclusive, non-transferable, non-assignable license to use the Purchaser Materials solely in the provision of such Products and Services. All right, title and interest in and to the Purchaser Materials and any modifications to the Purchaser Materials, including derivative works, are and will remain with Purchaser.

### **B. Ownership of Deliverables.**

**1. Purchaser's Ownership.** Subject to Seller's ownership of any Seller Materials incorporated into the Deliverables, Seller and Purchaser agree that Purchaser is the owner of the Deliverables and all Intellectual Property Rights therein. All Intellectual Property Rights in and to each item of the Deliverables will vest in Purchaser on the date such Deliverables are created, conceived, reduced to practice (actually or constructively), or reduced to a tangible medium of expression, whichever occurs first. Without limiting the foregoing, Seller and Purchaser agree that if any Deliverables are copyrightable and fall within the definition of a "work made for hire" under 17

U.S.C. §101 and §201(b) in the United States or analogous provisions of other Law, such Deliverables will be considered "works made for hire" and all copyrights and copyright registrations related to such Deliverables will be the sole and exclusive property of Purchaser. Seller will affix to all Deliverables an appropriate proprietary rights notice, which, in the absence of further direction from Purchaser, will read as follows: "Copyright © 2012 Wells Fargo Bank, N.A. All rights reserved." (unless another copyright notice is communicated by Purchaser). If the year of first publication of the work is other than 2012, Seller will substitute the correct year of first publication. To the extent that all Intellectual Property Rights in any Deliverables do not vest in Purchaser, Seller hereby irrevocably grants and assigns to Purchaser, without reservation, all of Seller's worldwide ownership right, title and interest in and to all Deliverables and all present and future Intellectual Property Rights in such Deliverables, without compensation other than as specified in this PO, and irrevocably waives all Intellectual Property Rights in and to all Deliverables. Seller agrees to execute documents and to assist Purchaser in every reasonable way requested by Purchaser, at Purchaser's expense, to protect and defend the Intellectual Property Rights in and to the Deliverables as Purchaser deems appropriate. Notwithstanding the foregoing, Seller (on its own behalf as well as on behalf of Seller Personnel) hereby irrevocably appoints Purchaser as attorney in fact (coupled with an interest) to execute any instruments for such purpose. The foregoing powers of attorney and the obligations to assist and execute will survive termination of this PO for any reason. Seller will include and enforce appropriate provisions in all agreements with Seller Personnel to enable Purchaser to acquire or exercise such rights. Seller irrevocably agrees not to directly or indirectly contest Purchaser's ownership of the Deliverables and the corresponding Intellectual Property Rights.

**2. Further License.** To the extent that any Seller Materials are incorporated into the Deliverables, or Seller or any other third party retains any Intellectual Property Rights in any Deliverables, whether by contract or under any Law,

and such rights are not otherwise granted to Purchaser herein ("**Retained Rights**"), Seller grants to Purchaser (or agrees to obtain for Purchaser, at Seller's expense) a royalty-free, perpetual, irrevocable, worldwide and nonexclusive license to make, have made, sell, use and disclose, reproduce, modify, prepare derivative works from, distribute, publicly perform and publicly display the materials that are the subject of the Retained Rights, with full rights to authorize others to do so, without the obligation of Purchaser to identify, or to seek the consent of, such Seller Personnel.

**3. Waiver.** Further, if, by operation of Law, Seller Personnel are deemed to retain any right in any Deliverables or Intellectual Property Rights in such Deliverables, Seller hereby waives, and agrees to cause Seller Personnel to waive, all such rights. However, if waiver is not permissible under Law or does not grant to Purchaser the exclusive right to make, have made, sell, use and disclose, reproduce, modify, prepare derivative works from, distribute, publicly perform or publicly display the Deliverables, Seller hereby agrees not to assert, and to compel Seller Personnel to refrain from asserting, claims with regard to any Retained Rights, in any manner whatsoever.

**C. Third-Party Intellectual Property.** If any third-party intellectual property is to be incorporated within the Deliverables, Seller will identify in reasonable detail such intellectual property to Purchaser promptly after issuance of this PO. Seller will be responsible for supplying such intellectual property and the appropriate licenses thereto, per **Section 5.B (Ownership of Deliverables)**, above. Any third-party intellectual property not originally listed in this PO will require Purchaser's written consent before incorporation within a Deliverable; such consent may be withheld at Purchaser's sole discretion. At Purchaser's request, Seller will provide copies of all applicable licenses and other agreements pertaining to the third-party intellectual property. Seller will only incorporate free or open source software code (collectively, "**FOSS**") into the Deliverable if Purchaser is made aware of such FOSS prior to the issuance of the PO and has given its prior written consent, or procured Purchaser's prior written consent. In each case, Purchaser's approval to incorporate FOSS is contingent upon Seller providing Purchaser with sufficient information to evaluate the risks associated with the use of FOSS, including at a minimum, the applicable license. In the event that Purchaser rejects Seller's request to incorporate FOSS into the Deliverables, the Parties will meet to discuss and agree upon the changes, if any, that are needed to the PO to accommodate Purchaser's decision. Any incorporation of third-party intellectual property, whether proprietary or FOSS, requires the prior written consent of the authorized executive within the affected Purchaser line of business.

**D. Seller's Materials.** Seller retains all Intellectual Property Rights in and to the Seller Materials, except for those made using Purchaser's Confidential Information, Purchaser's Intellectual Property Rights, or the Purchaser Materials. Seller, pursuant to all of its Intellectual Property Rights in the Seller Materials, hereby grants to Purchaser the right and license (which is fully paid-up, unless otherwise indicated in the applicable Exhibits) to use the Seller Materials as required to receive the Products and Services for Purchaser's and its Affiliates' Business Operations (including with its other service providers), including the use of any software that may be required to access and use the Seller Materials, or use the Products or Services, via the Internet or otherwise. Notwithstanding the foregoing, there may be circumstances where Purchaser requests that Seller modify the Seller Materials or create other Deliverables. The Parties will address the requested Seller Materials modification or Deliverables, fees for such Services, and ownership of the Deliverables or modified Seller Materials in this PO.

**E. Purchaser Materials.** All Intellectual Property Rights in and to the Purchaser Materials, along with Purchaser's or its agents' improvements to that technology and any derivative works in such Purchaser Materials (as between Purchaser and Seller), are owned by Purchaser, and will remain the sole and exclusive property of Purchaser. Any Seller suggestions or recommendations for improvements or modifications to the Purchaser Materials ("**Feedback**") will be deemed to be the Confidential Information of

## Purchase Order Terms

Purchaser and owned by Purchaser, without the need for Purchaser to pay Seller any royalties or other compensation of any kind whatsoever for use by Purchaser of the Feedback. However, if, by operation of Law, Seller Personnel are deemed to retain any right in or to any Feedback, Seller hereby waives, and agrees to cause Seller Personnel to waive, all such rights. If this waiver is not permissible under Law or does not otherwise grant to Purchaser the exclusive right to make, have made, sell, use and disclose, reproduce, modify, prepare derivative works from, distribute, perform or display the Feedback, Seller hereby assigns and agrees to cause Seller Personnel to assign to Purchaser all Intellectual Property Rights in such Feedback, without the obligation of Purchaser to identify or seek the consent of Seller Personnel.

**F. Data and Output.** Purchaser is and will remain the owner of all data and material stored in the Seller Materials input by Purchaser and all output generated by the Seller Materials through Purchaser's use of the Seller Materials under the PO, including any reports, scripts, calculations or other materials.

### **VI. Pricing and Payment**

#### **A. Payment Terms.**

- 1. General.** Seller will invoice Purchaser for Products or Services at the rates set forth in this PO. Seller will pass through any third-party Services or Products without an increase in cost or mark-up to Purchaser. Unless a different currency is set forth in a PO, all amounts invoiced will be in United States dollars unless indicated to the contrary in a PO.
- 2. Invoices.** Seller will provide invoices to Wells Fargo within thirty (30) days of the provision of Products or Services to Wells Fargo and will comply with all invoicing procedures set forth in this PO. Seller will ensure all invoices are accurate and correspond to the compensation agreed upon in the PO, include appropriate PO identification and AU number and are delivered to the proper individual or business unit, as set forth in the PO.
- 3. Payment.** Purchaser will pay all undisputed amounts set forth in an invoice complying with the requirements of this **Section 6 (Pricing and Payment)** within thirty (30) days of its receipt; provided, however, that Purchaser may reject non-compliant invoices or portions thereof and Purchaser will not be liable for payment until receipt of a compliant invoice. Notwithstanding any such noncompliance, or any disputed amount on an invoice, Seller will continue to perform all of its obligations under this PO. Any disputed portion of an invoice will be resolved in accordance with **Section 14.K (Dispute Resolution)**. Once the Dispute is resolved, Purchaser will pay any amount owing to Seller within thirty (30) days after the final resolution and Seller's submission of a compliant invoice. No payment made by Purchaser will be considered as Purchaser's acceptance of satisfactory performance of Seller's obligations or of substandard or non-conforming Products or Services, or as a release to Seller of its full responsibility under this PO. Seller's late submission of invoices, especially following a calendar year, may result in significant delays in payment of those invoices by Purchaser, and in no event will Purchaser be liable for the payment of any invoice received more than one hundred and twenty (120) days after accrual of the charges covered by such invoice.
- B. Rates and Overtime.** Except as provided in a PO, the compensation rates for a PO will be fixed for the duration of that PO. To the extent that this PO provides for an increase in compensation rates, Seller may implement such increase not more than once in any twelve (12) month period, and then by not more than three (3) percent over the rate in effect at the time of the increase, and only after Seller gives Purchaser at least ninety (90) days' prior written notice of such rate increase. Seller will comply with all Law with respect to the payment of fees (including overtime) to Seller Personnel, but Seller will not charge Purchaser additional amounts for overtime unless the applicable Exhibit or related PO provides for a specific overtime rate, and Purchaser approves each instance of overtime in writing, in advance. Notwithstanding anything to the contrary regarding service levels or performance standards relating to the Products or Services, Seller will not pay volume-based or other

incentives to Seller Personnel in a manner that encourages undue haste or lack of diligence regarding the Products or Services provided.

**C. Expenses.** Unless specified in an Exhibit or in this PO, and authorized by Purchaser in advance, Purchaser will not reimburse Seller for expenses incurred by Seller. To the extent that Purchaser agrees to reimburse expenses in an Exhibit or PO, such expenses will be reimbursed (i) in accordance with the Approved Expense Reimbursement Policy set forth below; and (ii) as reflected in a compliant invoice.

Approved Expense Reimbursement Policy:

1. Seller will invoice fees for out-of-pocket expenses to Purchaser on a monthly basis.
2. Itemization and receipts are required for all expenses.
3. Travel time is not billable.
4. Purchaser may require Seller personnel to use lodging and travel arranged through Purchaser's offices. Out-of-pocket expenses must be approved in advance by Purchaser, and the following guidelines apply to these types of expenses:
  - (a) Lodging. For less than one month, a single hotel/motel room at prevailing commercial rates within a reasonable distance from job location.
  - (b) Per Diem. Meals and incidental expenses at actual cost, not to exceed IRS guidelines, determined by geography.
  - (c) Airline Fares. At actual cost for commercial coach or economy class (with copy of airline ticket).
  - (d) Ground Transportation. At actual cost, not to exceed IRS guidelines, determined by geography. Commercial shuttle services or hotel transportation to and from the airport should be used whenever practicable. Taxi service should only be used if such transportation is not available, or in emergency situations.
  - (e) Auto Rental. Auto rental should only be used with Purchaser's prior approval, at actual and reasonable cost for commercial standard size automobile, including operating expenses, if any.

**D. Taxes.** On its invoices, Seller will itemize amounts for any and all sales, use, excise, value-added, or goods and services taxes due under any Law associated with the Products or Services rendered by Seller under this PO (but specifically excluding taxes in the nature of ordinary personal property taxes assessed against or payable by Seller, taxes based upon Seller's net income, Seller's corporate franchise taxes and the like) (collectively, the "Taxes"), and, Vendor will, upon request, provide Wells Fargo with the necessary tax certification (e.g., W-8 or W-9) and any required supporting documentation to certify Vendor's tax status or the tax status of the Products or Services (as applicable), as may be required by Law. If Vendor provides Services in any state with income tax withholding requirement, Seller will provide Wells Fargo with the appropriate state income tax registration form. Unless Vendor provides Wells Fargo with a valid tax certificate documentation that allows for a withholding exemption for the Services performed in a particular state (for example, California FTB Form 590), Wells Fargo will apply state withholding as required by applicable Law. Purchaser will pay or reimburse Seller for all Taxes and Seller will remit those amounts to the appropriate taxing authority, and keep appropriate records of the assessment and payment of the Taxes. Seller will be exclusively liable for any penalties, interest and other charges of any jurisdiction and any other fees or costs arising from Seller's failure (i) to assess, or timely assess, any applicable Taxes (although Purchaser will remain liable for the underlying Taxes that Seller should have assessed), or (ii) to remit any amounts for Taxes it has collected from Purchaser. Seller agrees to cooperate with Purchaser in its efforts to lawfully minimize any Taxes, including by electronically delivering any software or related materials. If Purchaser has paid Taxes to Seller, Seller will cooperate with Purchaser and its Affiliates in pursuing any refund claims that Purchaser may reasonably make in connection with those Taxes.

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**E. Most Favored Rates.** The amounts charged by and terms offered by Seller to Purchaser will be Seller's lowest price, special terms, conditions, rebates or other allowances of any nature provided to any customer of a similar size and nature. If Seller provides or sells any similar product or services to any third party on such terms more favorable than the business terms set forth herein, Seller will notify this to Purchaser and adjust its price to the lower price for any to-be-invoiced items and for all future invoices.

### **VII. Security**

**A. Security Standards.** Seller's information security program ("Info Security Program") has been designed and implemented, and during the term of this PO will continue to be designed and implemented, to: (i) reasonably and adequately mitigate the risks identified by either of the Parties related to the Services and the Purchaser Confidential Information disclosed to Seller, and (ii) maintain adequate controls and safeguarding practices to reasonably and adequately protect the Services and the Purchaser Confidential Information in the following areas: security policy; organization and administration of information security (including the use of safeguards such as encryption or other technologies against the destruction, loss, or alteration of, or unauthorized disclosure of or access to Purchaser data in the possession of Seller Personnel, including while transmitted or in transport, or while being stored, processed or managed on Seller equipment ("Data Safeguards")); asset management; human resources security; physical and environmental security; communications and operations management; access control; information systems acquisition, development and maintenance; information security incident management; business continuity management; and compliance, (iii) include provisions describing and reporting on its own risk assessments, risk management, control, and training of Seller Personnel in compliance with Seller's Info Security Program, security oversight regarding subcontractor arrangements, and the process for the annual certification of the Seller's Info Security Program, all in a manner consistent with Purchaser's own information security standards in place from time to time for the same or similar services (collectively, the "IS Standards").

**1. Review.** Seller will disclose those portions of its Info Security Program to Purchaser relative to the Services at issue no later than the Effective Date of this PO, and will disclose any changes thereto to Purchaser no later than ten (10) days after the effective date of such changes.

**2. Modifications.** Notwithstanding, during the term of this PO, Seller will not modify its Info Security Program in a manner that would degrade or adversely impact Purchaser Confidential Information, or discontinue any Data Safeguards, without Purchaser's prior written approval, which may be withheld for any reason.

### **B. Risk Assessments.**

**1. Assessments.** Purchaser reserves the right to conduct (i) an initial risk assessment prior to receipt of Products or Services under this PO, (ii) additional periodic risk assessments, at least annually thereafter, and (iii) risk assessments upon material modification of Products or Services, in order to identify the risks associated with the Products or Services to be provided, and, depending on the results of such risk assessments, Purchaser may also conduct site audits, source code audits or other evaluations of Seller's Info Security Program related to the Products or Services (collectively, "Risk Assessments"). Seller Personnel will cooperate with Purchaser in such Risk Assessments, which will be conducted using the IS Standards as the basis for evaluation.

**(a) Network Connections.** If a network connection is established between Purchaser and the computing environment(s) used by Seller and Seller Personnel to provide Products or Services, Purchaser may perform Risk Assessments of such computing environment(s) based on a mutually-agreed schedule, but at least annually. Seller will maintain an alert status regarding the security of such computing environments, including all vulnerabilities and security patches or corrective actions, by subscribing to an industry-recognized service, such as CERT (Computer Emergency Response

Team) or CIAC (Call Center Industry Advisory Council).

**(b) Penetration Testing.** Seller will permit Purchaser to conduct appropriately-scoped penetration testing on a mutually-agreeable schedule, or will furnish Purchaser with reports (including a description of any material vulnerabilities) prepared by a nationally-known independent auditor of such testing of its systems, which testing must occur on at least an annual basis.

**2. Risks.** The Risk Assessments will be conducted by Purchaser or its designee (who will be a nationally known security firm) at such times as Purchaser deems reasonably appropriate. Should any Risk Assessment reveal material security risks in Purchaser's reasonable determination, Purchaser will promptly so notify Seller, and Seller will (i) respond to Purchaser in writing within five (5) days with Seller's plan to promptly eliminate the risks, and (ii) immediately thereafter, eliminate such risks. In addition, Purchaser may remove access by Seller Personnel to the Purchaser network until Seller satisfactorily complies with the IS Standards.

**C. Systems/Facilities Access.** If Seller Personnel are given access to any Purchaser physical location, computing equipment, applications (e.g., e-mail, word processing, spreadsheet, presentation, database software, etc.), or the Purchaser computer network, Seller will ensure that Seller Personnel comply with Purchaser's policies and procedures for such use and access (e.g., mobile devices require hard-disk encryption, such as PointSec). Further, if Seller is to be provided access to Purchaser's computing environment or other restricted access area or is permitted to telecommute to provide Services, Seller will ensure such individuals provide all data Purchaser requires and execute all documents (such as a systems access agreement) Purchaser requires for such access. Except as may be specifically set forth in an Exhibit or this PO, Seller represents and warrants that: (i) it will not alter or disable any hardware or software security programs residing on Purchaser's hardware or systems, and (ii) it will not allow unauthorized ingress or egress into or out of Purchaser's networks. If Seller breaches the foregoing obligation, Purchaser may immediately terminate such access. Seller agrees that it will prohibit Seller Personnel from possessing weapons or firearms of any kind on Purchaser's premises.

### **D. Review of Control Standards.**

**1. Internal Monitoring.** In the event Seller processes, possesses, or maintains Purchaser's Confidential Information at a non-Purchaser site, Seller, at its cost, will: (a) periodically test and validate key controls related to safeguarding such information; (b) establish and maintain appropriate application and system logs to capture testing information; (c) ensure that all facilities used in the provision of Products or Services are in compliance with this PO.

**2. Independent/Third Party Review.** In the event Seller processes, possesses, or maintains Purchaser's Confidential Information at a non-Purchaser site, Seller, at its cost, will: (a) procure a mutually-acceptable third-party independent audit/evaluation that tests and validates Seller's key controls in relation to the safekeeping of such Confidential Information (e.g., a Type II SAS 70 (provided such reports have not been superseded by the SSAE 16) or SSAE 16 report, or other generally-accepted control assessment in the financial services industry) at each such site; (b) permit Purchaser to include Purchaser-specific audit criteria in such review; and (c) update this audit report annually (or more frequently as agreed by the Parties), and provide Purchaser with such updated reports.

**3. Seller Personnel.** If Seller uses any non-employee entities to provide Products or Services under this PO, Seller will, at least annually, conduct its own audits to test the adequacy of Seller Personnel's control environments.

### **E. Equipment.**

**1. Purchaser.** If Seller connects to any Purchaser network, Purchaser may, in its sole discretion, require Seller to use Purchaser-owned or-leased computer equipment and software ("Purchaser Equipment"). The Purchaser Equipment will remain the property of Purchaser, and Seller will acquire no right, title, or interest in the Purchaser Equipment.

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**2. Seller.** Seller-supplied equipment must meet the specifications in the IS Standards and this PO. Except as otherwise indicated in this PO, the equipment supplied by Seller will remain the property of Seller and Purchaser will acquire no right, title or interest in it.

**F. Additional Requirements.** The terms of **Section 7 (Security)** may be updated and revised by Purchaser from time to time.

### **VIII. Confidentiality**

#### **A. Mutual Obligations.**

**1. Standards.** Confidential Information of the Disclosing Party will be maintained in confidence by the Receiving Party. The Receiving Party will safeguard the Confidential Information of the Disclosing Party using the same degree of care as it uses to safeguard its own Confidential Information of a like kind, but in no case less than a reasonable degree of care. The Receiving Party will ensure (a) access to the Disclosing Party's Confidential Information is limited to those of its employees, officers, subcontractors and agents with a need to know such Confidential Information for the performance of its obligations under this PO, and (b) use of the Disclosing Party's Confidential Information for any purpose other than to fulfill its obligations under this PO is strictly prohibited.

**2. Exclusions.** Except for Customer/Consumer Information (which will always remain Confidential Information), Confidential Information will not include information to the extent that: (a) such information is or becomes publicly available other than through any act or omission of the Receiving Party in breach of this PO; (b) such information was provided to the Receiving Party by a third party who was not under an obligation to the Disclosing Party with respect to such information; or (c) such information was in the possession of the Receiving Party at the time of the disclosure, or was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information. The burden of proof that Confidential Information falls into any one of the above exclusions will be borne by the Party claiming such exemption(s).

**3. Ownership.** The Confidential Information of the Disclosing Party is and will remain the sole and exclusive property of the Disclosing Party and the Receiving Party will have no right in or to the Disclosing Party's Confidential Information.

#### **B. Seller Obligations.**

**1. Generally.** Seller will only provide Purchaser's Confidential Information to Seller Personnel after Seller has (a) informed each individual or legal entity of the confidential nature of the information and of the obligation to maintain the confidentiality of the Confidential Information, and (b) procured a written agreement with each such Seller Personnel on terms no less restrictive of Purchaser's Confidential Information than as set forth in this PO. In the event that Seller fails to timely pursue its remedies under such written agreements with Seller Personnel, Seller hereby grants to Purchaser a direct right of action to enforce such agreements in Seller's stead. Further, Seller will cooperate with Purchaser to provide all reasonable assistance to Purchaser in any such efforts to permit Purchaser to actively pursue claims available to Seller under the written agreements between Seller and Seller Personnel.

**2. Safeguards.** Except as specified in this PO, Seller will not commingle the Confidential Information of Purchaser with the information of any other person or entity. Seller warrants that it will take all steps necessary to ensure fulfillment of these obligations and will take all reasonable measures, including court proceedings, to restrain Seller Personnel from unauthorized disclosure or use of Purchaser's Confidential Information. Unless otherwise instructed by Purchaser, Seller will retain all Purchaser Confidential Information in the original source format provided by Purchaser, in addition to any other Purchaser-authorized format into which Seller may manipulate such information. If requested by Wells Fargo to do so, Vendor agrees to use Wells Fargo-procured encryption technology to transmit Confidential Information between the Parties, and will follow Wells Fargo's directions for

the use of such encryption technology.

**C. Legal Proceedings.** In the event a subpoena or other legal process is served upon the Receiving Party that, pursuant to the requirement of Law or a governmental agency with jurisdiction over the Receiving Party, compels disclosure of the Disclosing Party's Confidential Information, the Receiving Party will notify the Disclosing Party promptly (unless such notice is prohibited by such Law), and will cooperate with the Disclosing Party, at the Disclosing Party's expense, in any lawful effort to contest the legal validity or scope of such subpoena or other legal process.

**D. Third-Party Proprietary Information.** No Party will disclose any information to the other Party that is proprietary or confidential information, or trade secret, of a third party, except as permitted by the license or other terms of use under which the Disclosing Party received such information from the third party. Each Party will take all reasonable steps to ensure the fulfillment of this obligation.

**E. Injunctive Relief.** Each Party acknowledges it would be difficult to fully compensate for damages that may result from the breach or threatened breach of the provisions of this **Section 8 (Confidentiality)**, and, accordingly, the Disclosing Party will be entitled to seek injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, to enforce such provisions. This provision with respect to injunctive relief will not, however, diminish the Disclosing Party's right to seek other legal, contractual or equitable remedies, or to claim and recover damages.

**F. Publicity.** Except when disclosure is compelled pursuant to **Section 8.C (Legal Proceedings)**, or when expressly authorized pursuant to the terms of this PO, Seller will not disclose the existence or terms of this PO or the business relationship between Purchaser and Seller to any third party without prior written approval by the authorized executive within Purchaser's affected line of business. This consent may be withheld in Purchaser's sole discretion. This restriction includes use of Purchaser's name, likeness or logo ("**Purchaser's Identity**"). By way of example and not limitation, Seller will not mention its relationship to or with Purchaser, and will not use Purchaser's Identity, directly or indirectly, in conjunction with any other clients of Seller, any client list, advertisements, websites, news releases or releases to any professional or trade publications, or in any document that Seller plans to file with the Securities and Exchange Commission without the aforementioned approval. In addition, Seller must obtain the prior approval of Purchaser's Corporate Communications department for any press release that Seller seeks to issue that contains Purchaser's Identity. The Parties agree that Seller will pay to Purchaser an amount equal to the greater of Five Thousand U.S. Dollars (\$5,000.00) or one percent (1%) of the total amount paid under this PO for each day that Seller, by act or omission, breaches the terms of this **Section 8.F (Publicity)**, without prejudice to other remedies available to Purchaser at equity or in Law.

#### **G. Background Checks.**

**1. General.** Seller represents and warrants that it will have a third-party background check provider conduct a criminal background check on each Seller Personnel prior to performing certain Services, as explained in subsection 2 below. The scope of each individual's background check must

(a) search available court records for crimes committed since the age of 18 (although timeframes for determining eligibility may not reach back that far; see explanations at [www.wellsfargo.com/about/corporate/supplier/background-check](http://www.wellsfargo.com/about/corporate/supplier/background-check) for more detailed information), (b) check the Social Security number (SSN) of the Seller Personnel to help ensure his/her identity is accurate, and (c) when requested by Purchaser, verification of work authorization through the Federal E-Verify program. The SSN check must include an examination of state and year of issuance to verify the SSN is in a valid range and is not in the Social Security Death Index. For non-U.S. locations where SSN is not used, a check of a government-issued identity card (such as passport or visa) must be performed to ensure valid identity.



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**2. Application of Background Check Results.** Seller represents and warrants:

**(a) Dishonesty Check.** Where Services require or reasonably permit access to (i) Restricted Information or Confidential Information, including Customer/Consumer Information, or (ii) Purchaser's computer networks, information systems, databases or secure applications under circumstances that would permit modifications thereto, Seller will ensure that no Seller Personnel who have been convicted of any criminal offense involving dishonesty, a breach of trust, or money laundering, or who have entered into a pre-trial diversion or similar program in connection with a prosecution for such offense, will perform such Services; and/or

**(b) Other Serious Crimes Check.** Where Services require or may involve unsupervised access within the non-public areas of a Purchaser facility, Seller will ensure that no Seller Personnel who have been convicted of a felony involving violence or harassment, or certain repeated misdemeanors involving violence or harassment, will perform such Services.

**(c)** A list of the crimes relating to the checks described above, along with additional explanatory information, may be accessed at the following link: <https://www.wellsfargo.com/about/corporate/supplier/background-check>.

**3. Additional Requirements:** In addition, Purchaser in its sole discretion may require background checks for other Services, and this will be noted in this PO. In the event that the Services described above are to be performed by individuals located outside the United States, Purchaser may impose different background check requirements on such individuals to ensure that the Seller obtains a background check that most closely resembles the check described in this provision, and which is consistent with the Law in such non-U.S. jurisdiction(s); these requirements will be communicated to Seller. Upon request, Seller will provide written evidence that all Seller Personnel providing the Services described above have undergone criminal background checks and are eligible to provide such Services (but not the actual results of the checks themselves).

**4. Right to Terminate.** If Seller breaches any aspect of this **Section 8.G (Background Checks)**, Purchaser has the right, in its sole and absolute discretion, to terminate all or part of this PO immediately, without further liability.

**H. Notification.** In the event Seller becomes aware of any violation of Law relating to data protection by Seller Personnel, or any actual or suspected security breach that compromises, or could compromise, Purchaser's Confidential Information, including Customer/Consumer Information (e.g., physical trespass on a secure facility, computing systems intrusion/hacking, loss/theft of a PC (laptop or desktop), or loss/theft of printed materials) (collectively, a "**Breach**"), Seller will immediately notify Purchaser security personnel of such Breach at the following twenty-four (24) hour phone number: 877-494-9355 (within U.S., its territories and Canada) or 00-1-480-437-7599 (from other international locations) (or other number provided by Purchaser to Seller from time to time), and will immediately investigate and remedy the Breach, in cooperation with or as directed by such Purchaser security personnel. Subject to the terms of **Section 8.C (Legal Proceedings)** above, Seller agrees that it will not inform any third party of such Breach without Purchaser's prior written consent; provided that if disclosure is compelled, Seller will obtain Purchaser's approval regarding the content of such disclosure to minimize the adverse impact to Purchaser, its clients and customers. Seller will maintain records of known and suspected security breaches in accordance with commercially-accepted industry practices, and if not prohibited by Law, will make such records available upon Purchaser's request. Purchaser may suspend or terminate the access, processing, or storage of Purchaser's Confidential Information by Seller, or take other appropriate action, pending resolution of any Breach.

**I. Disclosure to Regulators.** Notwithstanding anything herein to the contrary, Purchaser may disclose any information, including Seller's Confidential Information, in response to a request from any federal or state

bank examiner, or other regulatory official with authority over Purchaser or its Affiliates.

### **IX. Warranties**

**A. Compliance.** Seller represents and warrants that Seller and Seller Personnel will comply with all Law in connection with performance under this PO. If Seller becomes aware of any non-compliance or claim of non-compliance by Seller or Seller Personnel, Seller will immediately notify Purchaser in writing, and immediately remedy such non-compliance.

**B. Performance; Products and Services.** Seller represents and warrants that (i) it will provide competent Seller Personnel with sufficient skill, knowledge and training, (ii) Seller Personnel will provide Products and Services in a diligent and professional manner, consistent with the standards of the financial services industry, and (iii) it will provide the Products, Services and any Deliverables in accordance with the terms of this PO. Except as may be authorized in this PO or a PO as set forth in **Section 4.D.1 (Prior Approval Required)** or as otherwise authorized in **Section 4.D.2 (Exceptions)**, Seller warrants that the performance of the Services will take place solely within the United States.

**C. Relationship.** Seller represents and warrants that: (i) Seller is solely responsible for the acts and omissions of Seller Personnel in relation to the Products and Services provided under this PO; (ii) Seller is an independent contractor and Seller Personnel assigned to provide Products and Services under this PO will not be, nor be deemed to be for any purpose, employees or agents of Purchaser; (iii) Seller is solely responsible, at its own expense, for complying with all Law, and the requirements of any governmental authority having jurisdiction relating to Seller's engagement of personnel, including immigration, payroll and income taxation, workers compensation, disability and unemployment insurance, certification and documentation, specifically, the Immigration Reform and Control Act of 1986 and the L-1 Visa Reform Act of 2004; (iv) Seller will not take any action that would permit any Seller Personnel to claim benefits from Purchaser under Purchaser's employee benefit plans, or under unemployment or workers' compensation Law, and acknowledges Purchaser has no obligation whatsoever to provide Seller Personnel with liability or health insurance, or any other benefits provided to Purchaser employees; (v) during the course of the PO Seller will maintain, at Seller's expense, all necessary certifications and documentation with regard to Seller Personnel such as I-9 forms, and all necessary insurance, including workers' compensation, disability, and unemployment insurance; (vi) Seller is solely responsible for the payment of compensation to Seller Personnel, including the payment, withholding and transmittal of all applicable taxes and insurance, unemployment contributions and workers' compensation contributions; and (vii) Seller assumes full responsibility for processing unemployment and workers' compensation claims involving Seller Personnel.

**D. Authority.** Seller represents and warrants to Purchaser that (i) the execution, delivery and performance pursuant to the terms and conditions of this PO has been duly authorized by all requisite corporate action on the part of Seller, and Seller has full power and authority to grant the rights and licenses granted by this PO to Purchaser with respect to the Products, Services and any Deliverables; (ii) this PO constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms; (iii) Seller's performance or compliance with this PO will not conflict with, result in a breach of, constitute a default under, or require the consent of any third party under any obligation (including license, sublicense, lease, contract, or agreement) or instrument to which Seller is bound or to which Seller's properties are subject; and (iv) there are no pending or threatened lawsuits, actions or any other legal or administrative proceedings against Seller which, if determined against Seller, would have a material adverse effect on Seller's ability to perform its obligations under this PO. Without limiting the generality of the foregoing, Seller represents and warrants that it has obtained or will obtain all applicable permits and licenses related to export, re-export, or transfer, whether direct or indirect, in any jurisdiction as may be required in connection with providing the Products or Services

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hereunder, including with respect to Purchaser Confidential Information furnished to Seller, and any Deliverable(s) furnished by Seller to Purchaser, and further that Seller will not export, re-export, ship or divert or cause to be exported, re-exported, shipped or diverted, directly or indirectly, any Purchaser Confidential Information or Deliverable to any country for which the United States Government, any agency thereof, or any other sovereign government, requires an export license or other governmental approval without first obtaining such license and approval.

**E. Intellectual Property Warranty.** Seller represents and warrants to Purchaser that the Products, Services, Deliverables or Seller Materials, and Purchaser's use thereof, do not and will not infringe or otherwise violate the Intellectual Property Rights of any third party.

**F. Virus.** Seller represents and warrants that: (i) the computing environments used by Seller Personnel to provide the Products or Services are free from all generally-known viruses, worms, Trojans and other "malware," and that Seller Personnel have deployed antivirus software, and (ii) any Products, Deliverables or Seller Materials provided by Seller to Purchaser will be free from: (a) any computer code or instructions that may disrupt, damage or interfere with Purchaser's use of its computer and/or telecommunication facilities (e.g., malicious code, viruses, etc.), and (b) devices capable of automatically or remotely stopping the code from operating (e.g., passwords, fuses, time bombs, etc.).

**G. Term.** All representations and warranties are continuous in nature and will be deemed provided on the Effective Date and throughout the term of this PO.

### **X. Indemnification**

**A. General.** Seller will defend, indemnify and hold harmless Purchaser and its Affiliates and their respective employees, officers, directors, agents, assigns and successors-in-interest (each an "Indemnified Party") against any and all claims, suits, actions, proceedings or demands ("Claims"), judgments, losses, payments, costs (including costs related to the provision of notices to customers and/or consumers, and ongoing credit monitoring services), expenses (including expenses related to investigation and reasonable attorneys' fees), damages, settlements, liabilities, fines and penalties of the Indemnified Party ("Costs") arising from or relating to (i) the breach by Seller or Seller Personnel of any of its obligations, covenants, representations or warranties under this PO; (ii) death, personal injury, bodily injury or any real or personal property damage caused or incurred by Seller or Seller Personnel; (iii) the infringement, misappropriation or other violation of Intellectual Property Rights; (iv) the negligent acts or omissions or willful misconduct of Seller or Seller Personnel; (v) employment-related Claims brought by Seller Personnel against any Indemnified Party; or (vi) a Breach under Section

8.H (Notification).

**B. Intellectual Property Remedy.** If use of the Products, Services or Deliverables is ever modified, restricted or prohibited as a result of any infringement, misappropriation or other violation of Intellectual Property Rights, then promptly after such event (but no more than thirty (30) days after notice of a finding of violation), Seller will, at Seller's expense, either (i) obtain for Purchaser the right to continue to use the Products, Services or Deliverables as provided for in this PO; or (ii) replace the Products, Services or Deliverables with products or services that comply with this PO, having the same features and functionality, and the use of which is not modified, restricted or prohibited; or, if neither of the foregoing is reasonably available to Seller (iii) refund all amounts paid by Purchaser under this PO for the applicable Products, Services or Deliverables.

**C. Process.** The Indemnified Party will provide Seller: (i) reasonably prompt written notice of any Claim or Costs; (ii) control over the defense or settlement of any such Claim, provided that Seller may not settle such Claim or admit liability on the part of the Indemnified Party without the Indemnified Party's prior written consent, which consent must not be unreasonably withheld, and

provided that the Indemnified Party has the right to participate in the defense of such Claim at its expense and through counsel of its choosing; and (iii) non-financial assistance at Seller's request to the extent reasonably necessary for the defense of any such Claim. However, if the Seller fails to timely or adequately defend the Claim, in Purchaser's sole reasonable determination, the Indemnified Party may, at its option, conduct the defense of any Claim arising under this **Section 10 (Indemnification)**, and Seller agrees to cooperate in such defense, provided the Indemnified Party reasonably consults with Seller on any related settlement. A failure by an Indemnified Party to provide reasonably prompt written notice of the existence of any Claim or Costs will only affect Seller's obligation to pay Costs to the extent such failure materially prejudices Seller's ability to reduce Costs or defend a Claim. Notwithstanding the foregoing, in the event that an Indemnified Party pays any amount asserted immediately prior to the due date for payment of such amount in order to prevent penalties or adverse consequences, the payment of such amount will not be deemed a breach under this **Section 10 (Indemnification)** and will be recoverable by the Indemnified Party as a Cost without reference to the ultimate disposition of the Claim.

### **XI. Limitation of Liability**

**TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND EXCEPT FOR DAMAGES OR COSTS (AS DEFINED ABOVE) ARISING FROM OR IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR COSTS ARISING OUT OF OR RELATED TO THE MASTER AGREEMENT, EVEN IF THE PARTIES HAVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS AND WHETHER OR NOT SUCH DAMAGES OR COSTS ARE FORESEEABLE. STATUTORY DAMAGES AWARDED UNDER ANY LAW (E.G., INCREASED AWARDS UNDER THE COPYRIGHT ACT, LANHAM ACT. OR PATENT ACT) WILL BE DEEMED TO BE DIRECT AND COMPENSATORY, AND NOT PUNITIVE OR EXEMPLARY DAMAGES.**

### **XII. Insurance**

**A. Minimum Coverage Amounts.** Without limiting Seller's liability to Purchaser or its Affiliates under other sections of this PO, Seller, at its sole cost and expense, will maintain, secure and keep in force during the term of this PO, insurance coverages as required by Law, and which are adequate to cover Seller's potential liability, with limits no less than as set forth below. Seller will also ensure that all non-employee Seller Personnel maintain insurance coverages substantially consistent with what is set forth below. This insurance coverage may be sourced from insurance companies, government self-insurance pools, or government self-retention funds.

1. Commercial general liability or umbrella liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), independent contractors' liability, personal injury, advertising injury, and contractual liability, with limits of **\$2 million** per occurrence/aggregate. Note: products/completed operations coverage must be maintained for a minimum of three (3) years past the end of this PO,

2. Automobile/umbrella liability insurance, including owned (if any), hired, and non-owned automobiles, covering Seller in the performance of Services hereunder with limits of **\$1 million per accident**,

3. Workers' compensation or other programs as allowed by Law; coverage must include employer's liability insurance of not less than **\$500,000**, or else an equivalent "stop gap" endorsement to Seller's general liability insurance,

4. Errors and Omissions, also known as professional liability insurance, covering Seller with a limit of not less than **\$1 million** per loss; if coverage is on a "claims-made" basis, equivalent coverage must be maintained in force for a minimum of three (3) years after the termination of this PO. Coverage will include all acts, errors, omissions or negligent acts in the delivery of Products and Services under this PO, and if applicable, network risks (including coverage for unauthorized access, failure of security, breach-of-

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privacy perils, notification costs and regulatory defenses), and

5. Commercial crime, including dishonesty coverage for Seller, and if relevant, computer crime and wire transfer coverage, with **\$1 million** per claim/aggregate; coverage must apply to loss or damage to Purchaser (or to third parties for whom Services are performed).

**B. Further Requirements.** Any deductible or self-insured retention amount or other similar obligation under the policies listed above will be the sole responsibility of Seller. This insurance must be placed with insurers rated "A-" or better by A.M. Best (or non-U.S. equivalent, if applicable). Insurers with less than an "A-" rating are unacceptable without Purchaser's prior written consent. Purchaser and its Affiliates, officers, and employees will be endorsed as an additional insured on the commercial general liability policy (and auto liability policy, if an auto is used in the performance of Services provided for in this PO), including any excess (umbrella) policies to the extent applicable. The insurance coverages required above, through a policy or endorsement, will include: (i) a provision that the policy and endorsements relevant to this PO may not be canceled or modified without thirty (30) days' prior written notice to Purchaser; and (ii) a provision that Seller's insurance coverage will be primary and non-contributory with respect to any insurance, self-insurance or self-retention maintained by Purchaser, and that any insurance, self-insurance or self-retention maintained by Purchaser will be for Purchaser's interest only. The legal defense provided to Purchaser under the policies/endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for Purchaser is necessary. Seller will furnish a certificate of insurance to Purchaser prior to the commencement of Services, showing compliance with the provisions of this **Section 12 (Insurance)**.

### **XIII. Term and Termination**

**A. General.** This PO and any Exhibits commence on the Effective Dates thereof, and continue in full force and effect until terminated by either Party as set forth below.

#### **B. Termination for Cause.**

1. Purchaser may terminate for cause this PO, in whole or in part, if Seller breaches any provision of this PO, and then, if the breach is capable of cure, fails to cure such breach(es) within thirty (30) calendar days of receiving written notice from Purchaser specifying in reasonable detail the nature of such breach(es).

2. Purchaser may terminate for cause this PO, in whole or in part, if Seller does any of the following, and such termination will be effective as of the date specified in a termination notice provided by Purchaser pursuant to the terms of **Section 14.A (Notice)**.

3. Suffers a material adverse change in its financial condition that affects its ability to perform hereunder, becomes or is declared insolvent, is the subject of any bankruptcy or other proceeding relating to its liquidation or insolvency, including a reorganization, admits that it is generally unable to pay its debts as they become due, or makes an assignment for the benefit of creditors;

4. Breaches any of its obligations under **Section 7 (Security)**, **Section 8 (Confidentiality)** or **Section 9.E (Intellectual Property Warranty)**; or

5. Experiences a change of Control. In such event, Seller will give written notice to Purchaser of such change of Control within five (5) days of Seller's execution of any letter of intent, memorandum of understanding or similar document that Seller is entitled by Law to make known to Purchaser, or upon Seller's execution of a definitive transaction agreement regarding such change of Control. This notice will set forth the proposed transaction with sufficient detail to enable Purchaser to reasonably determine whether or not to terminate this PO.

6. Seller may terminate any PO for cause if Purchaser breaches a material provision of that PO or its relevant Attachment and then fails to remedy or cure such breach within thirty (30) calendar days of receiving written notice from Seller specifying in reasonable detail the nature of such

breach. Notwithstanding the foregoing, in no event may Seller terminate any PO under which licenses have been granted to Purchaser unless Purchaser has materially breached the license use restrictions and such breach has a material adverse effect on Seller which Purchaser cannot cure with the payment of license fees.

**C. Termination Required by Third Parties.** If a court of competent jurisdiction, federal or state bank examiner, or other regulatory official with authority over Purchaser or its Affiliates issues a final order or judgment holding that this PO or all or a part of the Products or Services offered hereunder are objected to by such examiners/officials, or are in violation of any Law (each, a "**Judgment**"), Purchaser will have the right to terminate those portions of this PO that contravene such Judgment by providing Seller with written notice of its intent to do so, which termination will be effective as of the date specified in such notice.

**D. Termination for Convenience.** Purchaser may terminate all or a part of this PO at any time without cause and for its convenience by providing at least thirty (30) days' prior written notice to Seller. Purchaser may terminate a PO, in whole or in part, under this PO without cause by furnishing Seller with no less than five (5) days' written notice (or payment in lieu thereof). In any event, Purchaser will pay for all Products or Services provided up to the date of termination which have been accepted by Purchaser (if applicable). The Parties agree that this provision may be modified in any PO, but only with respect to the matters in such PO. Seller's right to terminate a PO without cause, if any, will be specified in this PO.

#### **E. Obligations upon Termination.**

**(a) Confidential Information.** Subject to each Party's obligation to maintain records in accordance with this PO or Law, in the event this PO is terminated in whole or in part by either Party, each Party will promptly do the following with the other party's Confidential Information:

(a) return it to the other Party, or (b) irretrievably destroy all Confidential Information of the other Party in its (or its subcontractors) possession, including any information stored on computing equipment, and provide to the other Party an officer's certificate attesting to such return or destruction. In the event that the Confidential Information of the Disclosing Party has been commingled by the Receiving Party with its own Confidential Information such that it cannot feasibly be separated for return or destruction, such commingled data will be protected by the Receiving Party as its own Confidential Information. Seller will not withhold any of Purchaser's Confidential Information as a means of resolving any Dispute.

**(b) Equipment.** Except as may be specified, Seller will immediately return to Purchaser any Purchaser Equipment provided to Seller when this PO terminates.

**(c) Transition Services.** Notwithstanding any Dispute between the Parties, Seller will provide to Purchaser termination assistance as reasonably requested in order to provide an orderly transition. In connection with this transition assistance, Seller will: (a) will transfer all records, files (in the formats requested by Purchaser, including computer tapes and diskettes), and the latest versions of any materials in progress upon the date of termination, (b) cooperate with Purchaser in the transition from Seller to a third party or Purchaser, (c) maintain the service levels provided in this PO during the transition period, and (d) utilize the same Seller Personnel providing the Products or Services prior to the notice of termination to provide the transition assistance. Transition assistance will be compensated at the rates set forth in this PO. If this transition has not been completed by the estimated termination date, Seller will, at the request of Purchaser, continue to provide the Products and Services on a month-to-month basis for up to twelve (12) months from the estimated date of termination, and will continue to be compensated at the rates set forth in this PO.

**(d) Refund of Pre-paid Fees.** In the event this PO is terminated by any Party in whole or in part, for any reason whatsoever, Seller will return to Purchaser any prepaid fees for undelivered Products or unperformed Services within thirty (30) days of the termination of this PO.

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**F. Termination of Seller Access.** Upon termination of this PO in whole or part for any reason, Seller will immediately terminate the corresponding physical and logical access to all Purchaser facilities and computer systems or networks to which Seller Personnel may have access.

**G. Survival of Certain Provisions.** Those provisions of this PO which would require that they survive the termination of this PO in whole or part in order to give them full force and effect will survive the termination of this PO in whole or part for any reason, regardless of the date, cause or manner of such termination, including **Sections 3 (Definitions); 5 (Intellectual Property Rights); 8 (Confidentiality); 10 (Indemnification); 11 (Limitation of Liability); and 14 (General Provisions) and Sections 4.C (Non-Solicitation), 6.D (Taxes), 13.E (Obligations upon Termination), 13.F (Termination of Seller Access); and 13.G (Survival of Certain Provisions upon Termination).** In addition, all rights of action arising from or related to this PO that accrue during the term of this PO, and any remedies for such claims, both legal and equitable, will survive such termination.

### **XIV. General Provisions**

**A. Notice.** All notices required or contemplated to be sent hereunder will be deemed sufficient and delivered if in writing one (1) business day after being sent by a nationally-recognized overnight courier with package tracking capabilities, or three (3) business days after being sent postage prepaid by certified or registered mail, return receipt requested. Notice regarding the activities under this PO that is delivered via facsimile or electronic mail is sufficient to meet the notice requirement, provided it is:

(i) confirmed as received by the other Party, or (ii) an original (hard copy) follows it, as set forth above, in a timely manner.

**B. Assignment.** Seller will not assign or delegate, in whole or part, by operation of Law or otherwise, including in the event of a merger, acquisition, divestiture or other change of Control, any of its rights or obligations under this PO without Purchaser's prior written consent. Any assignment or delegation or attempted assignment or delegation contrary to this **Section 14.B (Assignment)** will be null and void.

**C. No Third Party Beneficiaries.** Except as stated in this PO, Seller and Purchaser intend that this PO will not benefit or create any right or cause of action in or on behalf of any person or entity other than the Parties.

**D. Modification and Waiver.** No modification of this PO is effective unless signed by Seller and Purchaser, and no waiver of any breach of this PO will be effective unless in writing and signed by an authorized representative of the non-breaching Party. No waiver of any breach of this PO, and no course of dealing between the Parties, will be construed as a waiver of any subsequent breach of this PO.

**E. Severability.** The provisions of this PO are severable. If a court or arbitrator holds any provision of this PO invalid, illegal or unenforceable, then the validity, legality or enforceability of the remaining provisions will in no way be affected or impaired thereby. If a court or arbitrator holds any such provision to be invalid or unenforceable, the adjudicating entity will replace that provision with a provision that is valid and enforceable, and most nearly reflects the intent of the original provision.

**F. Interpretation.** Each Party acknowledges and agrees that this PO resulted from an "arms length" negotiation, and will not be construed in favor of or against a Party by reason of the identity of the drafter or the extent to which any party or its advisors participated in its preparation. Section headings, and cross-document section references within and among this PO, and Exhibits, are provided for convenience only and are not to be used to definitively construe or interpret this PO. The term "including" as used in this PO means "including, but not limited to."

**G. Consents.** Except as expressly agreed by the Parties in this PO, wherever either Party's approval, consent or satisfaction is required, such approval, consent or satisfaction may not be unreasonably or arbitrarily withheld or delayed.

**H. Governing Law.** This PO will be governed by and interpreted in

accordance with the Law of Minnesota, excluding any applicable conflict of Law provisions. The parties agree that the U.N. Convention for the International Sale of Goods will have no force or effect on this PO.

**I. Remedies upon Default.** Unless specifically set forth in this PO, in the event of breach by either Party, the non-breaching Party will be entitled to exercise any and all rights and remedies available to it at Law or in equity, whether concurrently or separately, and the exercise of one remedy will not be deemed an election of such remedy or preclude the right to exercise any other remedy. Without limiting the generality of the foregoing, either Party may offset any fees it owes to the other Party against amounts it is otherwise owed.

**J. Dispute Resolution.** Subject to the terms of **Section 8.E (Injunctive Relief)** and **Section 14.J (Remedies Upon Default)** set forth above, any action, dispute, claim or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, or under any Law, now existing or hereafter arising under or in connection with, or in any way pertaining to, this PO ("**Dispute**") will be resolved expeditiously, amicably, and at the level within each Party's organization most knowledgeable about the Dispute, in accordance with the procedures outlined below. The Parties do not intend for the procedures outlined below to supplant the routine handling of inquiries and complaints through informal contact with customer service representatives or other designated personnel of the Parties.

**1. General.** The complaining party's representative will notify the other party's representative in writing of the Dispute, and the non-complaining party will exercise good faith efforts to resolve the matter as expeditiously as possible. In the event that such matter remains unresolved ten (10) days after the delivery of the complaining party's written notice, senior representatives of each party will confer in an effort to resolve the Dispute. If they are unable to reach a resolution of the Dispute, it will be resolved by binding arbitration in accordance with the terms of this **Section 14.K (Dispute Resolution)**, except as otherwise set forth below. A party who fails or refuses to submit to arbitration following a lawful demand by any other party will bear all costs and expenses incurred in compelling arbitration of any Dispute.

**2. Governing Rules.** Arbitration proceedings in the United States will be administered by the American Arbitration Association ("**AAA**") or such other administrator as agreed by the parties. United States-based arbitrations will be conducted in accordance with the AAA Commercial Arbitration Rules. If there is any inconsistency between the terms hereof and any such rules, the terms herein will control. All Disputes submitted to arbitration will be resolved in accordance with the Federal Arbitration Act (Title 9 of the United States Code). The arbitration will be conducted at a mutually-agreed upon location in the jurisdiction whose Law governs this PO ("**Arbitration Location**"), or as selected by the AAA or other administrator if no agreement can be reached; the parties hereby waive any claim of *forum non conveniens*. All statutes of limitation applicable to any Dispute will apply to any arbitration proceeding. All discovery activities will be expressly limited to matters directly relevant to the Dispute being arbitrated. Judgment upon any award rendered in an arbitration may be entered in any court having jurisdiction; provided however, that nothing contained herein will be deemed to be a waiver, by any party that is a bank, of the protections afforded to it under 12 U.S.C. §91 or any similar Law. For Offshore Activities, if arbitration is to be held outside the United States, the Attachment for Offshore Activities in such country will so specify, and the governing Law, Arbitration Location and any other applicable rules will be as set forth in such Attachment for Offshore Activities.

**3. No Waiver; Provisional Remedies.** No provision hereof will limit the right of any party to obtain provisional or ancillary remedies, including injunctive relief, attachment or the appointment of a receiver, from a court of competent jurisdiction in the Arbitration Location or elsewhere, whether before, after or during the pendency of any arbitration or other proceeding. The exercise of any such remedy will not waive the right of any party to compel arbitration or reference hereunder.

**4. Arbitrator Qualifications and Powers; Awards.** Arbitrators must be

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active members of the official licensing organization for attorneys (Bar or equivalent) in the Arbitration Location or retired judges of the judiciary of the Arbitration Location, with expertise in the substantive Law applicable to the subject matter of the Dispute. Arbitrators are empowered to resolve Disputes by summary rulings in response to motions filed prior to the final arbitration hearing. Arbitrators (a) will resolve all Disputes in accordance with the substantive Law of the Arbitration Location, without regard to such jurisdiction's conflict of Law provisions, (b) may grant any remedy or relief that a court of the Arbitration Location could order or grant and such ancillary relief as is necessary to make effective any such award (but in no event will the arbitrator have the authority to award damages that exceed the scope of this PO), and (c) will have the power to award recovery of all costs and fees, to impose sanctions and to take such other actions as they deem necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, and the Rules of Civil Procedure in the Arbitration Location. Any Dispute in which the initial amount in controversy is Five Million Dollars (\$5,000,000) or non-United States currency equivalent or less may be decided by a single arbitrator. Any Dispute in which the initial amount in controversy exceeds Five Million Dollars (\$5,000,000) or non-United States currency equivalent will be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations.

**5. Judicial Review.** Notwithstanding anything herein to the contrary, in any arbitration relating to the ownership of intellectual property rights or in which the amount in controversy exceeds Five Million Dollars (\$5,000,000) or non-United States currency equivalent, the arbitrators will be required to make specific, written findings of fact and conclusions of Law.

**6. Miscellaneous.** To the maximum extent practicable, the arbitrators and the Parties will take all action required to conclude any arbitration proceeding within one hundred and eighty (180) days of the filing of the Dispute. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business, by Law, or to the extent necessary to exercise judicial review rights as set forth herein. This arbitration provision will survive termination, amendment or expiration of this PO or any relationship between the parties.

**K. Fees.** In all Disputes, the prevailing Party is entitled to recover its reasonable legal counsel fees (including, if applicable, reasonable charges for in-house counsel), court costs and other legal expenses from the non-prevailing Party.

**L. Financial Solvency; Material Changes.** Upon Purchaser's written request, Seller will furnish an audit report prepared by independent certified accountants, or such other financial information acceptable to Purchaser, for the purposes of demonstrating its financial condition. If Seller's audit reports are publicly available, in lieu of providing written copies thereof, Seller may inform Purchaser of where and when they may be obtained. Such reports must contain Seller's financial condition within a commercially reasonable timeframe. In addition, Seller agrees to provide all necessary consents to Purchaser obtaining Seller's financial statements and other Seller financial information from the financial institution(s) with which Seller has a lending, depository or other relationship to further Purchaser's examination.

### **M. Records.**

**1. Products or Services.** Subject to the terms of this PO, Seller will retain any and all records and procedures related to Seller and Seller Personnel's finances, facilities, system and procedures, whether stored in electronic or hard copy, as they pertain to the provision of Products or Services under this PO, including all information obtained or created in the course of performance hereunder ("**Records**") in accordance with the longer of Purchaser's records retention guidelines (as communicated to Seller and as modified from time to time), including provisions regarding the timely destruction of such Records, or as is required by Law (including the Sarbanes-Oxley Act and the Gramm-Leach-Bliley Act or non-United States

Law equivalent), unless Purchaser has requested in writing that Seller hold any such records for a longer period of time. The Parties agree that such Records will be maintained in English.

**2. Personnel.** With regard to: (a) the hire, tenure and conditions of employment of employees, their hours of work, the rates of and the payment of their wages; (b) the keeping of Records and the making of reports; and (c) the payments, collection or deduction of federal, state and local taxes and contributions, Seller will keep and have available all necessary Records and make all payments, reports, collections and deductions, and otherwise do any and all things so as to fully comply with all Law in regard to said matters so as to fully relieve Purchaser from and protect it against responsibility or liability therefore. If applicable, Seller will file all reports required by Law with respect to each subcontractor assigned to Purchaser, including a FORM 1099-MISC in the United States.

### **N. Audit.**

Purchaser, as well as its examiners and representatives of Purchaser's regulatory agencies in any jurisdiction, and their respective auditors ("**Auditors**"), will have the right to monitor, audit, examine and inspect any and all Records, and facilities and procedures as they pertain to Seller Personnel's performance hereunder and compliance with the terms hereof (each, an "**Audit**"). Purchaser's regulators, or designated representatives, will have the right to ask for and to receive directly from Seller and Seller Personnel any Records. Seller will notify Purchaser as soon as possible of any formal request by an authorized governmental agency to examine Records maintained by Seller, if Seller is permitted to make such a disclosure to Purchaser under Law. Purchaser agrees that Seller is authorized to provide such described Records, upon advance written notice to Purchaser if allowed by Law, when formally required to do so by an authorized governmental agency. At Purchaser's request, Seller will provide documentation that its internal controls and procedures regarding Products or Services provided are sufficient to ensure Purchaser's compliance with Law.

**1. Process.** The Auditors will be granted reasonable access to such Records, facilities and procedures, and Seller Personnel will cooperate fully with the Auditors and provide them with such assistance as they may reasonably request to conduct the Audits. Except to the extent provided by Law, the Parties agree that (i) Audits may only occur during normal business hours at the locations where Seller Personnel provide Products or Services or retain Records, and only after reasonable notice to Seller (not less than five (5) business days' notice); (ii) Audits will be conducted in a manner that is designed to minimize any adverse impact on normal business operations;

(iii) Auditors will comply with the reasonable standard safety and security procedures of Seller Personnel in conducting any such Audits; and (iv) any Records accessed by Auditors in the performance of any such Audit will be deemed to be the Confidential Information of Seller; however, the results of the Audit will be the property of Purchaser, or the Auditor, as applicable.

**2. Critical Weakness.** If an Audit identifies a critical control weakness or risk that could adversely impact Seller's ability to provide the Products or Services as agreed, comply with Law, or meet Seller's business continuity capabilities, Purchaser will promptly inform Seller in writing of such control weakness. Seller will have ten (10) business days to respond to this written notice, and thirty (30) days to remedy the weakness, at its cost. Any such remediation must be independently verified to Purchaser's reasonable satisfaction, at Seller's cost. This verification may be done by Seller's own internal audit group if Purchaser agrees that such group is independent from the division providing the Products or Services, or may also be done by a third-party auditor that is reasonably acceptable to Purchaser.

**3. Fees Charged.** In the event that the Audit report reveals Purchaser has been overbilled, Seller will, at Purchaser's option, either reimburse the overcharged amount or apply such amount as a credit to current or future invoices. If the overbilled amount exceeds five percent (5%) of the total amounts charged during the time period audited, Seller will bear all

## Purchase Order Terms

Purchaser costs (internal and external) in relation to such Audit. If the Audit reveals undercharging of fees, Seller will issue an invoice to Purchaser for such amounts.

**4. Improvement Requested.** If the Audit reveals that Seller Personnel's provision of Products or Services is not materially unsatisfactory but could nonetheless be improved in specific ways, Seller and Purchaser shall mutually agree to and implement such recommendations as soon as commercially feasible without cost to Purchaser.

**O. Business Continuity Plan.** Seller will provide business continuity, disaster recovery, and backup capabilities and facilities, through which Seller will be able to perform its obligations hereunder (including service level agreements in the Attachments or POs) with minimal disruptions or delays. Seller represents and warrants that it will comply with, provide, and adequately fund its business continuity plan ("BCP") commensurate with the sensitivity of the Products and Services provided by the Seller. Seller agrees to deliver a copy of its executive summary of the BCP for the Products and Services upon request, and will meet with Purchaser representatives to review said BCP. Seller will maintain and exercise the BCP at regular intervals (no less frequently than annually), and will provide Purchaser with documented results of the BCP tests that relate to the Products and Services provided hereunder. In addition, Seller will provide Purchaser with sufficient notice to allow Purchaser to participate in and/or monitor its BCP exercises. Seller will promptly revise its BCP to conform to new governmental regulations, if applicable. If Seller becomes aware that it is not in compliance with its BCP, Seller will (i) notify Purchaser in writing immediately, and (ii) cure any such non-compliance within ten (10) calendar days thereafter. If the non-compliance cannot be cured within such period, Seller will use its best efforts to cure that non-compliance as soon as practicable. Notwithstanding the foregoing, the Parties agree that if any non-compliance is not cured within ten (10) calendar days after notice is provided, Purchaser will have the right to terminate this PO in whole or in part, effective immediately upon written notice to Seller.

### P. Technology.

**1. Website Access.** In order to comply with the Americans with Disabilities Act (ADA), Purchaser requires that Seller agree to and comply with the following requirements: (i) for websites, electronic documents, e-messaging, social media and mobile properties which Seller builds for, develops, or sends on behalf of Purchaser, Seller must adhere to the Level A and Level AA technical checkpoints outlined in the Web Content Accessibility Guidelines (WCAG) 2.0, and (ii) for videos that advertise Purchaser products and services that are created or developed by Seller for display online, on a mobile device, or on television, such videos must be closed caption-enabled with a time-coded transcript of the video supplied by Seller to Purchaser. Seller agrees to perform design, development, video, and media-related Services in compliance with such guidelines. In addition, Purchaser requires that Seller agree to and comply with applicable design and user-experience standards outlined in Purchaser's Corporate Online and Mobile policy.

**2. Domain Names.** Moreover, in the event that Seller registers a domain name on behalf of Purchaser as set forth in a PO, Seller acknowledges that Purchaser will have the option, in its sole discretion, to register and maintain such Internet domain names that reflect Purchaser's Identity (as defined in **Section 8.F (Publicity)**, above). If Seller has registered a domain name or registers a domain name in the future in a manner contrary to this section or **Section 8.F (Publicity)**, the terms of this provision will serve as sufficient evidence for the domain name registrar to transfer ownership of such domain name to Purchaser. In addition, in the event that Seller uses Purchaser's Identity in any of its domain names, whether at the top-level domain name or elsewhere, Purchaser will have the right, in its sole discretion, to require Seller to mask or eliminate such use, or conform it to Purchaser's policies regarding domain name protocols, by providing Seller with notice of such requirement. Moreover, Seller will not be entitled to use Purchaser's Identity in any Seller web site domain after the conclusion of

Services without the prior written consent of an authorized executive within the affected Purchaser line of business. This consent may be withheld in Purchaser's sole discretion.

**3. Export.** If Seller-furnished technology or equipment contains 56-bit or higher encryption (or is subject to the federal Export Administration Regulations ("EAR")), then Seller warrants and agrees that Seller has researched and accurately determined all Export Control Classification Numbers ("ECCN") classifying that technology or equipment under the EAR, and that a true and complete list of those ECCNs is attached hereto as an exhibit. Seller further warrants and agrees that the above-described technology or equipment is licensed for export pursuant to the EAR (either because it is categorized as "No License Required" or as a "License Exception"), and that any exceptions to that license (e.g., embargoed destinations) are listed in an attached exhibit. To the extent Seller-furnished technology or equipment is updated or modified during the term of this PO, Seller will update the list of ECCNs classifying that technology or equipment, and the Parties will amend the exhibit accordingly. If Seller has not previously been able to accurately determine a comprehensive list of ECCNs classifying any Seller-furnished technology or equipment at issue, and Purchaser indicates that it intends to export that technology or equipment, Seller will promptly qualify the technology or equipment for export by complying with the EAR as applicable and will report to Purchaser all Commodity Classification Automated Tracking System numbers associated with that technology or equipment. Seller will keep Purchaser reasonably apprised of its progress in doing so. If Seller does not qualify the technology or equipment at issue for export, Seller will reimburse Purchaser for its actual costs in conducting all necessary research and procuring licenses or authorizations that Purchaser reasonably deems necessary for export of the technology or equipment at issue.

**Q. Equal Employment Opportunity Act and Affirmative Action.** Seller represents that it is an equal opportunity employer and agrees, as applicable, to abide by the terms of the Equal Employment Opportunity Act of 1964 and Section 503, Public Law 93-112, and the regulations at 41

C.F.R. Part 60-741; and by the terms of Executive Order 11246, as amended, and the regulations at 41 C.F.R. Parts 60-1 through 60-60, and Section 402, Public Law 93-508, and the regulations at 41 C.F.R. Part 60-250 and Part 60-300.5.

**R. Minority, Woman, and Disabled Owned Business Enterprises.** Purchaser encourages all third party service providers to use minority, woman, and disabled owned business enterprises as suppliers and subcontractors to the fullest extent possible, while maintaining efficient performance. Seller will support this program, and make good faith efforts to utilize such business enterprises.

**S. Balance of Trade.** Seller acknowledges that Purchaser and its Affiliates offer commercial financial services such as treasury management, commercial deposit, commercial lending, international services and other commercial financial services. In consideration of the execution of this PO, Seller will allow Purchaser and its Affiliates to market such products and services to Seller and Seller's affiliates. To facilitate these efforts, Seller will provide Purchaser with a list of affiliates and key personnel contact information (e.g., Corporate Treasurer and Chief Financial Officer). This information will only be used for the purpose of marketing, as set forth in this section. In addition, Seller will use good faith efforts to offer Purchaser and its Affiliates the opportunity to participate in all bidding opportunities for provision of financial services, and will allow Purchaser to respond to requests for proposal and requests for information. Upon request, Seller will provide Purchaser with a report on the total number of opportunities extended to Purchaser or its Affiliates. Notwithstanding the foregoing, the Parties acknowledge that any provision of financial products or services by Purchaser or its Affiliates will not influence or obligate Purchaser to procure any amount of Products or Services from Seller under this PO, except as set forth in a PO.

**T. Execution.** To facilitate execution, the documents that constitute this PO may be executed by one or more of the Parties in the form of an "Electronic

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Record” (as such term is defined (i) pursuant to the process set forth in the Electronic Signatures in Global and National Commerce Act at 15 U.S.C. §7001 et seq (“ESIGN Act” or (ii) this PO may be executed in as many counterparts as may be required to reflect all Parties’ assent; all counterparts will collectively constitute a single agreement. An “Electronic legible facsimile eSignature (as defined in ESIGN) that can be authenticated will constitute an original and binding signature of a Party. The fact that a document is in the form of an Electronic Record and/or is signed using an Electronic Signature will not, in and of itself, be grounds for invalidating such document.

**U. Entire Agreement.** This PO and any Master Agreement represents the entire understanding of the parties regarding the Products and Services, and supersedes all prior or contemporaneous understandings or negotiations, whether oral or written implied or express.

### **XV. Products and Services Generally**

#### **A. DELIVERY**

##### **1. Delivery.**

**(a) Timing.** Except as set forth below, Seller will deliver the Products on the Delivery Date. Purchaser may, without additional charge, (a) postpone the Delivery Date by providing Seller with written notice thereof no less than five (5) days prior to the scheduled Delivery Date; or (b) reschedule the Delivery Date within a reasonable time period of the cancelled Delivery Date. Delivery for Software will be pursuant to **Section 17.B (Delivery)**, below.

**(b) Title and Risk of Loss.** Unless otherwise set forth in this PO, all delivery terms will be Free on Board (F.O.B.) at the location designated by Purchaser in this PO. The Products will be packed and shipped in accordance with any instructions set forth in this PO and good commercial practices will be used to ensure that the Products are not damaged during transport. Purchaser will reasonably cooperate with Seller in any Seller interactions with carriers regarding Products damaged during shipping. Title and risk of loss to the Products will remain with Seller until acceptance of the Products by Purchaser pursuant to **Section 15.B (Acceptance)**, below, except that Purchaser will be responsible for any damage caused by its personnel while the Products are in Purchaser’s possession pending acceptance. Title to the Products will vest in Purchaser upon acceptance of the Products. Upon acceptance, Seller will furnish to Purchaser a bill of sale or such other documentation evidencing the same as reasonably requested by Purchaser. For the avoidance of doubt, title in any replacement parts will vest in Purchaser upon the completion by Seller of the proper installation of such parts in the Products.

#### **B. ACCEPTANCE**

##### **1. Acceptance**

Purchaser will have the right to evaluate the Products, Services and Deliverables for compliance with the terms of this PO, including any additional tests, specifications or acceptance criteria described in this PO. Purchaser will provide a written acceptance or rejection to Seller within ninety (90) days after the Installation Date of the Products (“**Acceptance Period**”), unless otherwise set forth in this PO. If accepted, the acceptance date for the Products will be the first business day following the date upon which Purchaser accepts the Products. Purchaser’s failure to respond within such timeframe will not be deemed to be an acceptance of Products.

##### **2. Non-Conformance.**

If Purchaser rejects the Products, Purchaser will notify Seller in writing with a description of the reasons for this rejection, as described in the preceding section. Seller, at its own cost and expense, will correct the non-conformities identified by Purchaser within ten (10) days following its receipt of Purchaser’s rejection notice, and will provide conforming Products to Purchaser. For the avoidance of doubt, Seller may not alter the specifications or reduce functionality of the Hardware as expressed in the Documentation in order to resolve any such non-conformance. Upon receipt, Purchaser will have thirty (30) days to re-evaluate and accept or reject the corrected Products, in writing. Seller will assist Purchaser, at

Seller’s cost, in conducting this additional testing of the Products. If Seller is unable to correct the noted non-conformities within the specified time period, Purchaser may: (i) immediately terminate all or part of the PO, and receive a refund of all monies paid to date thereunder; (ii) by written notice, extend the Acceptance Period or permit additional iterations of review of corrected Products; or (iii) accept the non-conforming Products with an appropriate pro-rata reduction in price or fees. Notwithstanding the foregoing, any election by Purchaser of one of the foregoing remedies will not affect Purchaser’s right to terminate all or part of the PO, or to seek a refund of all monies paid to date thereunder.

#### **C. WARRANTIES- GENERALLY**

The following warranties are applicable to Products and Services procured under this PO and are in addition to other warranties set forth in this PO that are generally applicable to the relationship between Seller and Purchaser.

##### **1. Documentation.**

Seller represents and warrants that: (i) it has provided to Purchaser as of the Delivery Date all Documentation for the Products, and that it will provide to Purchaser updated versions of all such Documentation when such versions become commercially available, for so long as Purchaser is receiving Maintenance Services; and (ii) all Documentation is detailed, complete and accurately describes the functional, operational and performance capabilities of the Products.

**2. Performance.** Seller represents and warrants that the Products will perform in accordance with the Documentation and any performance standards set forth elsewhere in this PO for a period of twelve (12) months from Purchaser’s acceptance of the Products, and during any time period for which Purchaser procures Maintenance Services for the Products, or such other time period set forth in this PO (“**Warranty Period**”).

**3. Ownership and Right to License.** Seller represents and warrants that (i) it owns or has the right to license all right, title and interest in and to the Products for the purposes set forth herein and; (ii) the Products are free and clear of all liens and encumbrances, including but not limited to, any security interest perfecting the interests of Seller or any third party.

##### **4. Remedies.**

In the event that the Products do not comply with the warranties set forth in this PO, Seller will, at its sole cost and expense, and in the following order of priority: (i) promptly correct any such non-conformity (“**Repair**”); or (ii) replace the Products without charge to Purchaser with Products containing the same functionality in all material respects and conforming to all applicable warranties (“**Replace**”). If Seller is unable to Repair or Replace the Products within ten (10) business days of receipt of notice from Purchaser (unless another time period is agreed by the Parties), or Seller otherwise becoming aware of such non-compliance, then Purchaser will have the option to (x) immediately terminate all or part of the applicable PO and any interdependent POs, and receive a refund of all monies paid to date thereunder; (y) by written notice, extend the time period to permit Seller to Repair or Replace; or (z) accept the non-conforming Products with an appropriate pro-rata reduction in price or fees. Notwithstanding the foregoing, any election by Purchaser of one of the foregoing remedies will not affect Purchaser’s right to terminate all or part of the applicable PO or interdependent POs, or to seek a refund of all monies paid to date thereunder.

#### **D. TRAINING.**

Seller will provide a reasonable amount of training in the use, operation, function, features and maintenance of the Products on-site at location(s) identified by Purchaser without any additional charge to Purchaser. Any training provided by Seller will include written training materials. In addition, Purchaser will have the right to record training provided by Seller and to use such recordings for Business Operations. Purchaser may, at no additional cost and expense, use Purchaser personnel who have been trained by Seller to train other Purchaser personnel on the use of the Products.

# Purchase Order Terms

## E. MAINTENANCE SERVICES

### 1. Term.

Seller will provide Maintenance Services at no charge during any Warranty Period (“**Initial Maintenance Services Term**”). After the Initial Maintenance Services Term, Seller will offer Maintenance Services to Purchaser in one (1) year terms, unless otherwise specified in this PO (each, a “**Renewal Maintenance Services Term**”). Seller will make available Maintenance Services for each version of the Products Used by an Authorized User for five (5) years after acceptance of the version of the Products (“**Minimum Period**”) and from year to year thereafter for as long as Seller furnishes Maintenance Services to users of products substantially similar to the Products. If Purchaser has elected to receive Maintenance Services, Seller will give written notice to Purchaser of Purchaser’s option to renew such Maintenance Services at least sixty (60) days and no more than ninety (90) days prior to expiration of the Initial Maintenance Services Term or current Renewal Maintenance Services Term and such notice may be in the form of an invoice for Maintenance Services for the next Renewal Maintenance Services Term. Purchaser’s written notice of its intent to renew or its payment of the next term’s fees will constitute renewal. Notwithstanding the foregoing, payment by Purchaser for any such Renewal Maintenance Services Term shall not be due until the first day of such term. If Purchaser purchases additional Products already subject to Maintenance Services pursuant to an existing PO, the initial Maintenance Services fee for the first Renewal Maintenance Services Term for the newly-acquired Products will be prorated so that the start date for the second Renewal Maintenance Services Term for the newly-acquired Products is coterminous with the start date for the Renewal Maintenance Services Term for the existing Products, so that all fees for Maintenance Services are due and payable on the same date.

### 2. Effect of Termination of Maintenance Services.

Termination of Maintenance Services under this PO will not constitute termination of the licenses for the Products. Within sixty (60) days after the effective date of any termination of Maintenance Services, Seller will refund the pro rata portion of the Maintenance Services fees corresponding to the period of time remaining in the Renewal Maintenance Services Term at the time of termination.

### 3. Reinstatement.

In the event that Purchaser desires to reinstate Maintenance Services after a period in which Purchaser allowed such Maintenance Services to lapse, Purchaser may reinstate Maintenance Services under the terms and conditions of this **Section 15.E (MAINTENANCE SERVICES)**, provided Purchaser pays Seller a mutually agreed upon fee for the Maintenance Services for the Renewal Maintenance Services Term which amount will not exceed the then current Maintenance Services fee for the Products. In no event will Purchaser be required to pay any penalty or additional fees to reinstate Maintenance Services.

### 4. Maintenance Services Requirements.

Unless set forth to the contrary in an Exhibit, the Maintenance Services provided by Seller will consist of:

- a. Preventive Maintenance
- b. Remedial Maintenance
- c. Unlimited toll free telephone consultation, available twenty-four (24) hours per day, seven (7) days per week (including holidays), regarding the installation, Use and trouble-shooting of the Products and, if such telephone consultation cannot satisfactorily resolve all installation, Use and troubleshooting issues, then on-site consultation at Purchaser’s location(s) without additional cost to Purchaser. Service calls to Seller may be made by an unlimited number of Purchaser contacts. Seller will provide Purchaser’s contact with a unique ticket number for each service call.
- d. Logging every service call received from Purchaser, along with the corresponding solution and correction time.
- e. Notification to Purchaser of the existence of coding errors, bugs and other problems in the Products promptly after the same first become known

to and verified by Seller.

f. Delivery to Purchaser of any and all Corrections and Updates at no additional cost to Purchaser and as soon as they first become available for distribution. In any event, Purchaser may elect to accept or reject any Correction or decline to install any Update. Seller will provide Maintenance Services for (a) each Update for at least forty-eight (48) months after acceptance of such Update by Purchaser; and (b) at least the four (4) immediately prior major Updates (i.e., new major version releases) provided to Purchaser.

g. Invitations for Authorized Users to attend and participate in, at no additional cost to Purchaser: (a) all user conferences and trade shows relating to any Products that are the subject of Maintenance Services; and (b) any meetings of any user group(s) that determines or influences Seller’s priorities for development of future Updates. Responding within (i) thirty (30) minutes to Purchaser’s initial request for assistance with a Class 1 Error or Class 2 Error; or (ii) within one (1) hour after the start of the next business day for Class 3 Errors. Seller’s response will include assigning fully-qualified technicians to work with Purchaser to diagnose and correct or create a workaround for the Error and notifying the Purchaser contact making the initial request for assistance of Seller’s efforts, plans for resolution of the Error, and estimated time required to resolve the Error.

h. Correcting or creating a workaround for Errors as follows:

(i) **Class 1 Errors.** For Class 1 Errors, Seller will provide a Correction or workaround, reasonable in Purchaser’s judgment (each, a “**Fix**”), within four (4) hours after Purchaser first reports the Error. Seller will assign fully-qualified technicians to work with Purchaser without interruption (i.e., twenty-four (24) hours per day, subject to applicable labor law restrictions, if any) until Seller provides a Fix. If no Fix is provided within four (4) hours after Purchaser first reports the Error, Seller will, at Purchaser’s option, immediately send at least one fully-qualified technician to Purchaser’s site until Seller provides a Fix. If Seller has not provided a Fix within eight

(8) hours after Purchaser first reports the Error, Purchaser will receive a credit equal to one (1) week’s worth of Maintenance Services for each additional hour Seller requires to remedy the Error. In addition to the foregoing, in the event that Seller does not provide a Fix within four (4) days, Purchaser may terminate all or part of this PO, and receive a refund of all monies paid to date under this PO. If Seller first provides a workaround, Seller will provide a Correction within ten (10) days after Purchaser first reports the Error.

(ii) **Class 2 Errors.** For Class 2 Errors, Seller will provide a Fix by the opening of the second business day after Purchaser first reports the Error. If any Class 2 Error has not been corrected by the opening of the second business day after Purchaser first reports the Error, Seller will, at Purchaser’s option, immediately send at least one fully-qualified technician to Purchaser’s site during Purchaser’s regular business hours until Seller provides a Fix. If Seller has not provided a Fix within three (3) business days after Purchaser first reports the Error, Purchaser will receive a credit equal to one (1) week’s worth of Maintenance Services for each additional business-day that Seller requires to remedy the Error. In addition to the foregoing, in the event that Seller does not provide a Fix within ten (10) business days, Purchaser may terminate all or part of this PO, and receive a refund of all monies paid to date under this PO. If Seller first provides a workaround, Seller will provide a Correction within thirty (30) days after Purchaser first reports the Error.

(iii) **Class 3 Errors.** For Class 3 Errors, Seller will provide a Correction no later than the next Update, unless Seller has scheduled release of such Update less than thirty (30) days after Purchaser first reports the Error in which case Seller will provide a Correction in the following Update.

(iv) **Termination.** Termination by Purchaser pursuant to the foregoing **Sections 15.C.4.x. through z.** inclusive will not require the cure period otherwise set forth in **Section 13 (TERM AND TERMINATION)** of this PO.



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### 16. Hardware Purchases

The following terms and conditions in this **Section 16 (Hardware Purchases)**

apply if Hardware is being purchased under this PO:

#### A. **INSTALLATION.**

On or before the execution of this PO, but in no event less than thirty (30) days before the Scheduled Installation Date (absent agreement of the Parties to the contrary), Seller will provide Purchaser with any written site specifications it requires of Purchaser in order to prepare the Installation Location. At its expense, Purchaser will prepare the Installation Location for the Hardware in accordance with any such specifications. Upon request, Seller, at its expense, will inspect the prepared Installation Location and provide Purchaser with a written inspection report, indicating any deficiencies that could affect the operation of the Hardware, including specific recommendations for resolving these deficiencies. Seller's inspection will be conducted sufficiently in advance of the Scheduled Installation Date to provide Purchaser with adequate time to remedy any deficiencies identified by Seller. Purchaser, at its expense, will correct any deficiencies identified by Seller and Seller, at its expense, will conduct a follow-up inspection. Upon Seller's reasonable determination that Purchaser's preparation is satisfactory, Seller will notify Purchaser in writing that the Installation Location has been prepared in accordance with the requirements. Seller will bear the expense of any modifications that Purchaser must make to the Installation Location due to Seller's provision of incomplete or erroneous Installation Location preparation specifications. At no additional charge, at Purchaser's election, Seller will (i) unpack the Hardware at the Installation Location; (ii) dispose of all packaging materials; (iii) install and configure the Hardware; and (iv) start-up and test the Hardware to ensure that it complies with the Documentation and the performance standards set forth in an Exhibit. Notwithstanding the foregoing, any installation and configuration Services that have an associated cost will be addressed under an Exhibit

#### B. **LICENSE AND IP RIGHTS**

1. Seller, pursuant to all of its Intellectual Property Rights in the Products, hereby grants to the Authorized Users, a worldwide, non-exclusive, irrevocable, perpetual, fully-paid-up license to (i) use the Documentation and any software-code included with the Hardware; and (ii) copy, distribute and create derivative works from the Documentation as required for the Authorized Users to use the Hardware, for the Business Operations ("**Hardware License**"). If the Hardware is sold or transferred to a third party, the Hardware License will be transferred to such third party with the Hardware. Notwithstanding the foregoing, Purchaser will, as it deems necessary, procure any operating system or other software application licensed by Seller separate from the Hardware pursuant to a separate PO or from another supplier pursuant to a separate agreement.

#### 2. **Ownership.**

Except for the licenses granted herein, Purchaser agrees that Seller will own all right, title and interest in and to the Hardware. Seller agrees that Purchaser will own all right, title and interest in and to any derivative works of the Hardware that Purchaser creates, as well as all data input and output arising out of the Use of the Hardware, and, as between Seller and Purchaser, to any computer programs developed by or for Purchaser that may be employed by Authorized Users to interface with the Products. The Parties agree that in the event that the Software licensed under this PO is modified by Seller, the ownership of the resulting Deliverables will be determined in accordance with **Section 5 (Intellectual Property Rights)** of this PO.

#### 3. **Software and Maintenance from Third-Parties.**

Seller and Purchaser agree that any Hardware or Maintenance Services procured through a third-party provider, regardless of channel or method, will be subject to terms and conditions that are the same or better than those set forth in this PO. To ensure such terms and conditions are applicable, at Purchaser's option, Seller will require such third party provider to (1) reference this PO in any

documents between Purchaser and such third party provider that apply to the procurement of Products or Maintenance Services; or (2) use an agreement with terms and conditions that are the same or better than those set forth in this PO. If Purchaser purchases Maintenance Services through a third-party provider in which Seller is the primary or ultimate provider of such Maintenance Services, then such Maintenance Services will be governed by this PO and be performed in accordance with the terms of this PO.

C. **HARDWARE WARRANTIES.** The following warranties are applicable to Hardware procured under this PO and are in addition to other warranties set forth in this PO that are generally applicable to the relationship between Seller and Purchaser.

#### 1. **Hazardous Materials.**

Seller represents and warrants: (i) that Seller Personnel providing the Hardware and Maintenance Services to Purchaser understand the nature of the hazards associated with the Hazardous Materials, including handling, transportation, and use of such Hazardous Materials; (ii) prior to causing Hazardous Materials to be present at the premises of an Authorized User, Seller will obtain Purchaser's written approval from its environmental/health/safety organization or committee; and (iii) that Seller will provide in a timely manner to Purchaser safety data sheets and any other documentation reasonably necessary to enable Purchaser to comply with all applicable international, federal, state/provincial and local laws (and all corresponding regulations/directives) relating to the Hazardous Materials.

#### D. **DISCONTINUED HARDWARE.**

If Seller discontinues manufacturing any Hardware, Seller will provide Purchaser with no less than ninety (90) days' prior written notice thereof ("**Notice Period**"). Seller agrees: (i) that Purchaser will have the right to place an unlimited amount of orders for the Hardware scheduled to be discontinued during the Notice Period; and (ii) Seller will fully cooperate and negotiate in good faith with Purchaser to execute additional purchase orders prior to the expiration of the Notice Period.

#### E. **LEMON HARDWARE.**

In the event that Seller is required to make more than three (3) Remedial Maintenance calls during the twelve (12) month period following initial acceptance of the Hardware, Purchaser may, at its option, exercise any of the rights and remedies set forth in **Section 15.C.4 (Remedies)** without regard to the order of priority in that section.

#### G. **HARDWARE MAINTENANCE SERVICES.**

#### 1. **Preventive Maintenance.**

Seller will perform Preventive Maintenance to ensure the Hardware operates in accordance with the Documentation. The frequency and scheduling of Preventive Maintenance will be as set forth in the Exhibit, provided that, in all cases, Seller will perform Preventive Maintenance in a manner that does not unreasonably interfere with Purchaser's activities and during hours acceptable to Purchaser. Seller may, with the prior written consent of Purchaser, perform Preventive Maintenance at the same time as Remedial Maintenance.

#### 2. **Remedial Maintenance.**

a. **Unusable Hardware.** If resolution of any Class 1 or Class 2 Error requires that the Hardware be removed from Purchaser's site or that the Hardware be rendered unusable for more than twenty-four (24) hours, upon Purchaser's request Seller will provide, for the period that the Hardware is unavailable, substitute identical Hardware (in construction and configuration), unless Purchaser has agreed to accept Hardware with different but equivalent functionality in its place.

#### 3. **Availability Guarantee.**

Seller warrants that the Hardware will be operable and available for use by Purchaser as specified in the Documentation. If Hardware is not available for use or does not function in compliance with the Documentation, the

## Purchase Order Terms

Parties agree that from the time that Purchaser first reports to Seller that such Hardware is non-compliant through the time that Seller demonstrates that such Hardware has been restored to operation and is available for use will be defined as the "Outage." The Outage may be the basis for credits payable by Seller to Purchaser, as set forth in the applicable PO. The Parties agree that any such credits are liquidated damages for the unavailability of the Hardware, and not a penalty on Seller.

### 4. Parts.

**a. Replacement.** Seller will maintain an inventory of replacement parts in types and amounts required to perform the Maintenance Services. All replacement parts will be identical to the parts in the then-current Hardware (in construction and configuration), unless Purchaser has agreed to accept Hardware with different but equivalent functionality in its place. Unless set forth to the contrary in this PO, all replacement parts will be new. If the applicable PO provides that Purchaser must pay a separate, additional charge for replacement parts, Purchaser may obtain such parts from Sellers other than Seller, provided that those parts conform to the Documentation and performance standards for the Hardware. If a part provided or installed by Seller malfunctions within one hundred twenty (120) days after installation, and if Seller is providing Maintenance Services to Purchaser on a time-and-materials or other non-fixed-fee basis, there will be no charge for the Maintenance Services required as a result of the part's malfunction, and Purchaser will receive a credit in such amount, if Purchaser has already paid for such Services.

**b. Removed Parts.** With the exception of drives, storage, or other data-bearing media (which will always be retained by Purchaser), the Parties agree that replaced parts will, upon removal, become the property of Seller, who will be responsible for their proper disposal or recycling. In the event that Purchaser allows Seller to store replacement parts on Purchaser's premises, Seller acknowledges and agrees that (i) any storage space is provided "AS IS" and that Purchaser assumes no risk of loss, responsibility or liability whatsoever with respect to any such replacement parts; and (ii) any replacement parts stored on Purchaser's premises will be used by Seller only in connection with the performance of the Maintenance Services for Purchaser.

### 5. Procedure for Remedial Maintenance.

Seller Personnel servicing or removing drives, storage, or other data-bearing media will only conduct such Services in the presence of Purchaser security, and will at all times follow the dual custody requirements as dictated by Purchaser security. Seller Personnel will notify the primary Purchaser contact in this PO, and coordinate with Purchaser security prior to commencing any such Services.

### 17. Licensing of Software

The following terms and conditions in this **Section 17 (Licensing of Software)** apply if Software is being licensed under this PO:

#### A. LICENSE

##### 1. License Grant.

Seller hereby grants to Purchaser a world-wide, non-exclusive, irrevocable, perpetual license for Authorized Users to Use the Licensed Products. The foregoing Use license specifically includes the right for Purchaser to:

- a. make a reasonable number of copies of the Licensed Products to support Non-Production Environments at no additional cost;
- b. move Licensed Products between Production Environments and Non- Production Environments, provided that Purchaser will not Use, in the aggregate, more than the total number of Licensed Products licensed under this PO, if a limit on number of Licensed Products is specified in an Exhibit, in either Production Environments or Non-Production Environments. In addition, Purchaser agrees to identify to Seller the locations of the Production Environments or Non-Production Environments

where it may be using the Licensed Products;

c. host or otherwise make the Licensed Products available for Use by Authorized Users via a computer network, intranet or Internet, even if such Authorized User is not located at an authorized site set forth in the applicable PO, provided that such Authorized User is providing services for Authorized Users and is engaged in Business Operations at or through such authorized site;

d. migrate from one Platform to a different Platform for no additional fee, provided that Purchaser first notifies Seller of such change and that such new Platform is supported by Seller at such time. In such event Purchaser may run simultaneously on both Platforms until the Software runs Error free for a period of six (6) consecutive months or such other reasonable period upon written notice to Seller by Purchaser to validate the appropriate operation of the Software;

e. implement multiple Platform instances, including operating systems or hardware configurations, whether in Production Environments or Non- Production Environments, and move Licensed Products among Platform instances, in the course of exercising the rights granted in this **Section 17.A (License Grant)**;

f. transfer the Licensed Products to other Authorized Users, hardware, or locations that comply with the terms and conditions of this PO, without any requirement of any relocation, transfer, or assignment fee or any prior notice to or consent of Seller.

g. If there are any other restrictions or limitations on the foregoing license with respect to a Licensed Product, the Parties agree such restrictions or limitations will be expressly set forth in an Exhibit. In the event that the license granted for Licensed Products is restricted or limited by equipment parameters, Purchaser is entitled to transition the Software from one piece or set of equipment to an equivalent piece or set of equipment, or to dynamically allocate the computing power of the Software over one or more pieces of equipment, including via virtual Use, without breach of the license or the need of Purchaser to procure additional licenses.

#### 2. Excess Quantity.

If, in the course of exercising the rights granted in **Section 17.A (License Grant)**, Purchaser's Use constitutes an Excess Quantity of the Licensed Products, then, as Seller's sole and exclusive remedy, Purchaser will, in its sole discretion, either: (1) reduce the Excess Quantity to the aggregate licensed capacity as set forth in the applicable Schedule(s) or as otherwise authorized by Seller; or (2) purchase licenses for the Excess Quantity, and, if elected by Purchaser, Maintenance Services. Any additional fees assessed under this section will be at the pricing set forth in the applicable PO.

#### B. DELIVERY

Seller will deliver the Licensed Products at its risk and expense. Seller will only deliver the Licensed Products by electronic transmission or by load and leave (where no tangible storage media is physically transferred to Purchaser) on the date set forth in the applicable PO. For the avoidance of doubt, Corrections and Updates Seller provides to Purchaser, and any modifications to the Software pursuant to the Professional Services Attachment shall also be delivered by electronic transmission or load and leave. The initial delivery date of the Licensed Products will be set forth in this PO.

**C. SOFTWARE WARRANTIES.** The following warranties are applicable to Software procured under this PO and are in addition to other warranties set forth in this PO that are generally applicable to the relationship between Seller and Purchaser.

##### 1. Interface.

Seller acknowledges that Purchaser is working with a number of third parties in developing, maintaining and supporting Purchaser's various systems and that Purchaser's Use of the Software may involve the development or use of one or more APIs between such third party systems

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and the Software. Seller represents and warrants that it (i) will communicate to Purchaser the industry-standard APIs that Seller is evaluating or implementing; (ii) will fully cooperate with Purchaser and third parties to identify industry-standard APIs and use commercially reasonable efforts to develop its APIs using as many industry-standard protocols as possible; and (iii) will fully cooperate with Purchaser and third parties to develop, maintain and support such APIs.

### 2. Open Architecture Environment.

Seller represents and warrants to Purchaser that the Software is designed and will continue to be designed to operate in an Open Architecture Environment and, as such, all external Seller interface specifications will be published and generally available. For purposes of the foregoing, an "Open Architecture Environment" is an architecture that adheres to a publicly known set of interface specifications so that any applications that have been implemented to those interface specifications will be able to interoperate with any other third party applications that adhere to the same interface specifications.

### 3. Compatibility.

Seller represents and warrants that (i) the Software is compatible with, and capable of efficiently and properly operating in conjunction with, the systems, machines, operating systems or other hardware or software described in the Documentation or as recommended or authorized by Seller, and will use commercially reasonable efforts to ensure the Software remains compatible with subsequent releases and updates to such systems, machines, operating systems or other hardware or software; and (ii) all Corrections and Updates will be compatible with and capable of efficiently and properly operating in conjunction with any previous version or release of the Software.

### 4. Data Integrity.

Seller represents and warrants that all data types, structures, formats and content will be converted completely and accurately such that Purchaser will be able to reconcile the original data with the converted data without any loss to or deviation from the original data.

## D. SOFTWARE MAINTENANCE SERVICES

1. **End of Service Date.** Seller will notify Purchaser, in writing, when Seller becomes aware that Software has an End of Service Date, but in no event less than twelve (12) months prior to an End of Service Date. After the End of Service Date, Purchaser may choose to (i) upgrade to a supported version or release of the Licensed Products at no additional charge; (ii) purchase extended Maintenance Services or support as Professional Services for mutually agreed upon fees; or (iii) continue to Use the Licensed Products without Maintenance Services.

2. **Bundling and Unbundling.** During the Initial Maintenance Services Term or any Renewal Maintenance Services Term, Seller agrees that the Maintenance Services will not be altered by Seller's renaming, repackaging, bundling or unbundling of the underlying Software. Should any portion of the Software later be made available only within a bundled package offered by Seller (the "Package") which includes functionalities that were not licensed by Purchaser, then: (a) Purchaser will automatically be granted a license to the Package or, if practical, to that portion of the Package having the functionalities of the Software previously licensed by Purchaser hereunder; and (b) Maintenance Services fees charged to Purchaser for the Package will reflect only those fees attributable to the functionalities of the Software previously licensed by Purchaser. However, should Purchaser elect to Use the additional functionalities of the Package in Production Environments, then Purchaser will pay Seller a mutually agreed upon additional license fee, such additional license fee not to exceed the difference between the then current list price for the Package and the then current list price of the Software.

### 18. Professional Services

The following terms and conditions in this **Section 18 (Professional Services)** apply if Professional Services are being purchased under this PO:

## A. SERVICE LEVEL AGREEMENTS

This PO, including any attached Exhibit, will include service level agreements with respect to the Professional Services, including without limitation, quality, timeliness, or accuracy of the Professional Services, or related reporting obligations ("**SLAs**"). If either Party becomes aware of any non-conformance of the Professional Services or any Deliverables with respect to the SLAs, Seller, at its own cost and expense, will promptly correct the noted non-conformities, or re-perform the Professional Services, in accordance with the applicable SLAs.

If this PO or an Exhibit specifies that liquidated damages may be awarded for Seller's failure to meet any SLAs, the Parties agree that these liquidated damages will not be construed as a penalty, and are a reasonable estimate of the damages to be suffered for any stated failure of performance. Or, if this PO does not specify liquidated damages for Seller's failure to meet the SLAs, then Purchaser may demand a refund of all amounts paid by Purchaser with respect to the non-conforming Professional Services or Deliverables.

## B. PROCUREMENT PURSUANT TO PURCHASE ORDERS

A PO Form or an Exhibit will describe the Professional Services to be performed, the compensation, and any other details related to such engagement.

## C. USE OF SPECIFIC SELLER PERSONNEL

If Purchaser requests that a specific individual or entity perform Professional Services for Purchaser as Seller Personnel, Purchaser will advise Seller in writing of the name of such individual or entity proposed to be assigned to Purchaser prior to the issuance of this PO. Seller will use commercially reasonable efforts to accommodate any such request.

## 19. Marketing Services

The following terms and conditions in this **Section 19 (Marketing Services)** apply if Marketing Services are being purchased under this PO:

## A. LICENSES.

### 1. Mark(s).

Purchaser hereby grants to Seller a limited, worldwide, royalty-free, non-exclusive right and license to use the Mark(s) solely for the exclusive purpose(s) outlined in this PO ("**Grant**"). The Grant and any and all rights granted hereunder are personal in nature to Seller and Seller may not assign, transfer or sublicense these rights. Seller agrees that nothing herein shall give to it any right, title or interest in the Mark(s) except in accordance with the terms of this PO. The Mark(s) are the sole property of Purchaser and any and all uses by Seller thereof shall inure to the benefit, and be on behalf, of Purchaser and its successors and assigns. All rights not specifically granted or licensed to Seller are reserved to Purchaser.

2. **Termination of Mark Grant.** The Grant shall terminate: (i) when this PO terminates; or (ii) at Purchaser's discretion, upon reasonable notice to Seller. When the Grant terminates, Seller agrees to immediately comply with any instructions provided by Purchaser with respect to any work in process.

3. **No Contest.** Seller shall not assert any claim adverse to Purchaser's right, title or interest in or to any of the Marks or to any distinctive features used in connection therewith, and Seller shall not use any of the Marks in any way that could prejudice Purchaser's rights therein. Seller shall not sublicense or authorize any third party to use any of the Marks without Purchaser's prior express written consent.

4. **Use of Marks.** Seller will at all times strictly observe and comply with all specified requirements of Purchaser and applicable law with reference to the proper use of the Marks. Seller shall maintain continuity respecting the appearance, design and usage of the Marks in accordance with the standards and procedures established by Purchaser, including, but not limited to, use of the federal trademark notice of registration (®) or other appropriate notice as specified by Purchaser in connection with Seller's use of the Marks. Seller agrees that it will not use any Mark(s) except the

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camera-ready or downloadable Mark(s) provided to Seller by Purchaser and use the Mark(s) only in such form, style and color, and in such logotype format, as specified in Purchaser's established graphics standards and usage guidelines or as may be otherwise specified from time to time by Purchaser. Seller must submit to Purchaser samples of all materials that incorporate or use the Marks prior to distribution or display with the public for Purchaser's review and approval. Purchaser may, in its sole discretion, decline any proposed use of any Marks, or withdraw any previously approved use, effective upon written notice to Seller, and Seller shall comply with Purchaser's instructions provided in such notice. Seller will not alter, change, modify the resolution or otherwise modify any Mark in any manner, or use it in combination with any other words or symbols, without Purchaser's prior written approval of the proposed variation. In no event shall Seller use or display any mark confusingly similar to the Marks.

**5. Quality Control.** Seller recognizes that, as a result of many years of advertising, investment and dependable service to the consuming public, the Marks have acquired a high degree of fame and favorable recognition with the purchasing public in connection with the products and services offered by Purchaser and its Affiliates. Seller shall maintain the highest standards respecting the nature and quality of goods and services offered in connection with the Marks in accordance with such quality control standards and procedures reasonably established from time to time by Purchaser. Seller agrees to use reasonable best efforts to preserve the high standards and goodwill of the Marks so as to preserve and enhance the goodwill of the Marks and the high and favorable recognition with the purchasing public. Seller agrees that all products and/or services offered in connection with the Marks shall be of a nature and quality commensurate with the nature and quality of Seller's corresponding products and/or services as of the issuance of this PO. Purchaser may monitor products and/or services offered in connection with the Marks.

In the event Purchaser, in its sole discretion, determines that Seller has failed to meet the quality control standards and procedures established by Purchaser, then Purchaser shall furnish Seller written notice specifying in reasonable detail the respects in which Seller has failed to meet such standards. Seller shall, upon receipt of such notification from Purchaser, immediately (i) commence, and thereafter diligently pursue, curing any default with respect to the quality control standards and procedures and shall achieve the cure as soon as commercially practicable, and (ii) cease using Marks in connection with the products and/or services as to which the failure of standards and procedures has occurred and shall not resume such use of the Marks until it has received authorization, in writing, from Purchaser to resume such activity.

**6. Protection/Enforcement.** Except as set forth herein, Purchaser shall have the sole and exclusive right to enforce its trademark and/or service mark rights against any third parties in relation to or in connection with the Marks. Purchaser shall have the sole right to control any trademark and/or service mark enforcement actions. Seller agrees to execute any and all agreements and documents Purchaser deems reasonably necessary for it to evidence ownership of and to obtain and maintain protection for the Marks. In the event Seller becomes aware of a third party's use of the Marks in connection with investment and/or financial services, in the United States, which use was not taking place prior to the issuance of this PO, Seller shall notify Purchaser of such use.

**7. Brand Standards.** Seller will complete all necessary Purchaser brand training on an annual basis during the term of this PO. Seller will comply with all brand guidelines and standards communicated by a Purchaser to Seller. If Seller has any concerns regarding the brand guidelines or standards in light of the Seller obligations set forth in this PO, Seller will immediately notify the Purchaser contact in the applicable PO and work with Purchaser to ensure a prompt resolution of any such concerns.

**8. Photography.** If Seller creates Products or Deliverables using photographic images, Seller will use Purchaser proprietary photography maintained in Purchaser's image library or stock photography provided by

stock houses with whom Purchaser has negotiated rates, unless otherwise approved by Purchaser. Purchaser will assist Seller in obtaining access and/or copies of such photographic images.

**9. License to Seller Technology.** If in the course of receiving the Products or Services (or corresponding Deliverable), Purchaser must access the technology of Seller (e.g., web-based reporting), then Seller (pursuant to all of its Intellectual Property Rights) grants to Purchaser the limited right and license, for the fees set forth in the applicable PO, to use such technology as required to receive the Products, Services and/or corresponding Deliverable for Purchaser's own business operations and activities (including with its service providers), including the use of any Seller-provided software that may be required to access the Seller's technology.

### **B. Customer Preferences**

1. If Services to be performed involve any Seller contact with Purchaser's or its Affiliates customers or consumers, Seller warrants and agrees that any oral or written requests or direction it receives from customers or prospective customers of Purchaser or its Affiliates to not: (a) receive marketing material by mail, (b) receive phone calls, (c) receive emails, (d) receive contest solicitations, or (e) receive interactive ads, Seller will communicate such requests to the applicable Purchaser contact in the applicable SOW no later than two (2) business days after receipt of any such request.

### **C. Data Handling Procedures.**

1. In the event it is necessary for Seller to receive or have access to Customer/Consumer Information in order to perform Services, Seller shall comply with any information security requirements communicated to Seller by Purchaser from time to time, including without limitation any encryption obligations.

### **20. Recruiting Services.**

1. In the event the Parties desire Seller to provide recruiting Services to Purchaser, the Parties hereby acknowledge that the term "Master Agreement" as used in this PO may mean an online click agreement as agreed to for each engagement of recruiting Services provided by Seller to Purchaser if agreed by the Parties.