



- 2.2 The Supplier must: (a) follow all reasonable instructions of the Purchaser, and (b) promptly notify the Purchaser of any circumstances of which it becomes aware which are likely to impact its ability to perform its obligations under

## **5 Title and Risk of Loss**

- 5.1 Title to the Products (other than software) or part of the Products belongs to the Purchaser free of encumbrances and all other interests from the earlier of delivery or payment of the value (as reasonably determined by the Purchaser) of the Products or part of the Products.
- 5.2 The Supplier is solely liable for Loss or damage to the Products prior to delivery to the Delivery Address.

## **6 Inspection and Acceptance**

- 6.1 The Purchaser may inspect the Products and/or Services at any time and upon request, the Supplier must at its own cost facilitate inspection and give the Purchaser any access required for the purpose of conducting the inspection to the satisfaction of the Purchaser. Inspection does not relieve the Supplier of any of its obligations under the Contract.
- 6.2 The Purchaser is entitled at any time before or after delivery, and without prejudice to any other rights, to reject any of the Products and/or any Services which (in its reasonable discretion) do not fully comply with the Contract. The Purchaser is not liable to pay

- 7.2 The Supplier must deliver any Third Party Warranty to the Purchaser in a form acceptable to the Purchaser on or before the Delivery Date or Completion Date (as applicable).
- 7.3 All warranties referred to in the Contract will run to the Purchaser, its successors and assigns.
- 7.4 The requirements of this **clause 7** are in addition to any other warranties, rights, remedies or guarantees from the Supplier or third parties in respect of the Products and Services set out in the Purchase Order or implied or imposed by Local Law



deliver to the Purchaser a certificate signed by a duly authorised representative certifying compliance with the provisions of this **clause 12.6** no later than 10 Business Days after receiving a request from the Purchaser to do so.

- 12.7 The return, destruction or deletion of Confidential Information in accordance with **clause 12.6** does not release the Supplier from its obligations under the Contract.

## 13 Personal Information Protection

- 13.1 To the extent that Supplier has had or will have access to Personal Data of Purchaser and/or its customers, Supplier agrees to:
- a) comply with applicable Privacy Law in force from time to time in performing the Services;
  - b) process, use and maintain the Personal Data for Purchaser and/or its customers only in accordance with Purchaser's instructions and this Contract for the purposes of performing its responsibilities and obligations under this Contract, and make no other use of the Personal Data other than for the

applicable, in the event that the Services provided by Supplier involves a transfer of Purchaser's and/or its customer's Personal Data outside of the European Economic Area, transfer the Personal Data only if at least one of the following conditions are satisfied: (i) the Personal Data is transferred to a country which is recognised by the European Commission as providing an adequate level of protection in relation to the Personal Data that is transferred; or (ii) a processing agreement which incorporates the standard model contractual clauses for data transfers approved by the European Commission is executed between the applicable parties within 90 days following execution of this Contract;

- i) promptly notify Purchaser of (i) any failure to comply with Purchaser's instructions concerning the Personal Data, (ii) any suspected or actual breach of this Section, (iii) any disclosure, except as permitted hereunder, or request for disclosure of Personal Data to a third party and (iv) any inquiry from a third party concerning the Personal Data; and, (v) any change in Local Law that would render Supplier unable to comply with this Section;
- j) on termination of the Agreement, return or permanently delete all copies of such personal data to Purchaser, as directed by Purchaser, and certify compliance with this obligation in writing to Purchaser. Such certification of compliance to be signed by a signing officer of Supplier.

13.2 Breach of this **clause 13** shall be deemed a material breach of this Contract.

## 14 Termination

14.1 **Termination for convenience.** The Purchaser may also terminate or cancel a

Purchase Order for Products or Services at no charge at any time (a) prior to acceptance by Supplier of this Purchase Order; and (b) in the case of Products, after acceptance of this Purchase Order by Supplier up to five (5) business days prior to the scheduled Delivery Date; and (c) in the case of Services, on two

Any such termination shall be without liability by Supplier except for completed Products previously delivered, accepted and not yet paid for or for Services previously performed and accepted by Purchaser and not yet paid for.;

14.2 **Termination for cause.** Either party may terminate a Contract immediately by giving written notice to other party if: (a) the other party commits a breach of the Contract which is capable of remedy, and fails to remedy that





## 20 Notices

- 20.1 Any notice, approval or consent required to be given under this agreement must be in writing (in English) and must be delivered by hand, prepaid post, or electronic mail to the address of the party set out in the Purchase Order or an alternate address as may be advised by the other party from time to time.
- 20.2 Notice will be considered to have been received: (a) if sent by hand, when left at the address of the recipient; (b) if sent by prepaid post, 3 Business Days (if posted to an address in the same Country) or 10 Business Days (if posted from one Country to another) after the date of posting; or (c) if sent by electronic mail, on the day of transmission as evidenced by an electronic communication transmission record; but if a notice is served by hand, or is received by the recipient by electronic mail, on a day that is not a Business Day, or after 5:00 pm (recipient's local time) on a Business Day, the notice will be considered to have been received by the recipient at 9.00 am (recipient's local time) on the next Business Day.

## 21 General Provisions

- 21.1 **Assignment.** The Purchaser may assign or transfer its rights or obligations under the Contract without the prior written consent of the Supplier. The Supplier may not assign or transfer its rights or obligations under the Contract without the prior written consent of the Purchaser.
- 21.2 **Indirect Loss.** To the extent permitted by applicable Local Law, the Purchaser is not liable to Supplier or to any other party for: (a) any indirect, incidental, special, consequential, aggravated, or exemplary damages; (b) any lost sales, lost revenue, lost profits; or (c) any loss not arising naturally and not arising according to

the usual course of things, from the relevant breach or acts or omissions.

- 21.3 **Conflict of Interest.** The Purchaser undertakes and warrants that: (a) no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract; (b) during the course of the Contract, it will not engage in any activity likely to compromise its ability to perform its obligations under the Contract fairly and independently. The Supplier must immediately disclose to the Purchaser any activity which constitutes or may constitute a conflict of interest; and that its Personnel will not engage in any activity or obtain any interest likely to conflict with or restrict the Supplier in performing its obligations under the Contract fairly and independently. The Supplier must immediately disclose to the Purchaser any such activity or interest.
- 21.4 **Relationship.** Except as otherwise provided in the Contract, nothing in the Contract constitutes a joint venture, partnership or relationship of principal and agent or employer and employee, between the parties and the Contract is not to be construed as . Except as otherwise provided

Purchaser's right to later enforce or to exercise it.

- 21.7 **Entire Agreement.** The Contract represents the entire understanding of the parties and supersedes all prior agreements, arrangements, representations or understandings (if any) of the parties in respect of matters dealt with by the Contract.



passed for the winding up of the insolvent party.

**"Intellectual Property Rights"** means all rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

**"Local Law"** means the laws of state, territory or country (read in that order of precedence) of: (i) the Country; and (ii) the countries in which the Products and Services are supplied; **"Loss"** means all losses, liabilities, fines, penalties, damages, claims and interest, and all related costs and expenses (including any and all legal costs (on a full indemnity basis), and costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

**"Personal Data"** means all data, information or an opinion about an individual whose identity is apparent or reasonably ascertainable from that information or opinion.

**"Personnel"** means the employees, directors, contractors or agents of a party.

**"Privacy Law"** any law, regulation or other statutory instrument or proclamation in the Country, which relates to the privacy or confidentiality of Personal Data about individuals and with which the Purchaser and Supplier must comply;

**"Price"** is in United States Dollars (USD) unless a different currency is stated in the

Purchase Order, is the total value of the Purchase Order as set out in the Purchase Order and includes all applicable Taxes and freight charges set out in the Purchase Order.

**"Products"** means the Products described in the Purchase Order.

**"Purchase Order"** means the Purchase Order issued by Purchaser to Supplier for the supply of Products and/or Services and which references these Purchase Order Terms.

**"Purchaser"** means the entity issuing the Purchase Order. **"Services"** means the Services described in the Purchase Order and on any accompanying Statement of Work or other such similar document setting out the Services to be delivered. **"Specifications"** means the functional, non-functional and technical requirements for the applicable Products and/or Services as specified in the Purchase Order including but not limited to (a) the requirements agreed between the parties and set out in the Purchase Order; (b) the Purchaser's business or user requirements, including functional and non-functional (including performance) requirements, which are described from a business perspective and in a non-technical manner and communicated to Supplier; and (b) the functional and technical specifications set out or referred to in Supplier's or relevant

published technical and operating documentation.

**"Statement of Work"** and **"SOW"** means a document referencing these Purchase Order Terms or applicable Service Agreement and executed by the parties, containing the Specifications for the procurement of Services;

**"Supplier"** means the Supplier described in the Purchase Order and any accompanying Statement of Work.

#### **Supplier Portal**

published at <http://www.opentext.com/who-we-are/corporate/opentext-supplier-information>.

**Supply Agreement**

negotiated agreement executed by the parties (or their affiliates) which governs the supply of Products and/or Services as specified in the Purchase Order and identified by name and contract number (if applicable).

"**Taxes**" means the sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate Government Agency arising out of the supply of Products or

