

Participating Addendum Number 022-HPE
for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES
between
State of North Dakota
and
Hewlett Packard Enterprise

This Participating Addendum is entered into by State of North Dakota ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number 23008, executed by Contractor and the State of Minnesota for Computer Equipment, Peripherals & Related Services ("Master Agreement"):

Hewlett Packard Enterprise ("Contractor")
1701 East Mossy Oaks Road
Spring, TX 77389

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Jacklyn Smith
SLED Central, Contracts Program Manager
Jacklyn.smith@hpe.com
207-494-6436

Participating Entity's contact for this Participating Addendum is:

Abby Dschaak
Procurement Officer
600 East Boulevard Ave, Dept 012
Bismarck, ND 58505
aadschaak@nd.gov
701-328-4912

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein. This Participating Addendum will take precedence over the previous Participating Addendum if the previous Participating Addendum is still active at the time of the effective date. Should the term of the Master Agreement be extended, this Participating Addendum will automatically be extended as well.
- III. PARTICIPATION AND USAGE.** This Participating Addendum, established pursuant to N.D.C.C § 54-44.4-13, may be used by all state agencies, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C § 39-04.2, and the International Peace Garden. Participating Entity has sole authority to determine which additional entities authorized by state statute are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.
- IV. GOVERNING LAW.** This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.
- V. SCOPE.** Contractor is authorized to sell products/services in Category 3 Servers & Storage under this Participating Addendum. Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to the Contractor and Participating Entity and Purchasing Entities.

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- a. **Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
- b. **Equipment Leasing/Rental.** Equipment leasing and rental is not allowed under this Participating Addendum.
- c. **Equipment Trade-in, Takeback, and/or Recycling Program.** Trade-in, takeback and/or recycling of products by agencies covered by this Addendum are subject to approval of OMB State Surplus Property pursuant to N.D.C.C. § 54-44.4.6.
- d. **Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by the Participating Entity in writing to Contractor via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.

- VI. **ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.
- VII. **PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** Quarterly reports will be provided by Contractor to Participating Entity showing a summary of each sale to include Purchasing Entity, description and amount.
- VIII. **FEDERAL FUNDING REQUIREMENTS.** Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.
- IX. **ATTACHMENT A.** Attachment A includes Participating Entity modifications and additions to the Master Agreement terms and conditions.
- X. **OTHER ATTACHMENTS.**
 - a. The following attachments are subject to the Master Agreement and this Participating Addendum:
 - i. Attachment B: Portfolio Terms with Supplemental Data Sheet Terms for Support
 - ii. Attachment C: HPE EULA and Software Licensing Terms
 - b. The Master Agreement Exhibit E policies URL listed as: <https://www.hpe.com/us/en/about/end-user-agreement-terms.html>, customer terms for USA listed below do not apply to this Participating Addendum:
 - i. Portfolio Terms

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- ii. Professional Services Only Terms
- iii. Supplemental Data Sheet Terms for Support
- iv. Software as a Service Terms
- v. HPE Greenlake Terms

XI. NOTICE. Any notice required herein shall be sent to the following:

For Contractor:

Jacklyn Smith
SLED Central, Contracts Program Manager
Jacklyn.smith@hpe.com
207-494-6436

For Participating Entity:

Abby Dschaak
Procurement Officer
600 East Boulevard Ave, Dept 012
Bismarck, ND 58505
aadschaak@nd.gov
701-328-4912

XII. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. While Participating Entity will maintain the official record of this Participating Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

HEWLETT PACKARD ENTERPRISE:

Mary Reuss Digitally signed by Mary Reuss
Date: 2024.01.12 10:04:57
-06'00'

Signature

Mary Reuss

Printed Name

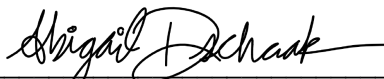
Contract Negotiator

Title

January 12, 2022

Date

PARTICIPATING ENTITY:



Signature

Abigail Dschaak

Printed Name

State Procurement Officer

Title

1-12-2024

Date

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**Attachment A – Participating Entity Modifications and Additions to
Master Agreement Terms and Conditions**

**I. INSPECTION AND ACCEPTANCE (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO
VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 19.D)**

The final two sentences of item 19.d, "Return of Products is subject to the Contractor's applicable return policy, which shall be made available to Purchasing Entity prior to placement of an order. Any restocking fee may not exceed 15% of the purchase price." are deleted and a new item 19.i is added to read as follows:

With the exception of products that do not meet the manufacturer's specifications, return of products is subject to the Contractor's applicable return policy, which shall be made available to Purchasing Entity prior to placement of an order. Any restocking fee may not exceed 15% of the purchase price.

**II. TERMINATION (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER
AGREEMENT TERMS AND CONDITIONS, ITEM #42)**

Termination for Lack of Funding or Authority

Participating Entity, by written notice to Contractor, may terminate the whole or any part of this Participating Addendum under any of the following conditions:

- a. If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for purchase of the services or goods in the indicated quantities or term.
- b. If federal or state laws or rules are modified or interpreted in a way that the services or goods are no longer allowable or appropriate for purchase under this Participating Addendum or are no longer eligible for the funding proposed for payments authorized by this Participating Addendum.
- c. If any license, permit, or certificate required by law or rule, or by the terms of this Participating Addendum, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Participating Addendum under this subsection is without prejudice to any obligations or liabilities of either Party already accrued prior to termination.

**III. DEFAULTS AND REMEDIES (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO
VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM #44.D)**

Delete the final sentence of item 44.d, "Contractor may discontinue performance under a Purchase Order if the Purchasing Entity fails, after thirty (30) days written notice to the Purchasing Entity, to cure a failure to perform under the applicable Participating Addendum."

IV. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Contractor agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

Contractor shall have and keep current all licenses and permits required by law during the Term of this Participating Addendum all licenses and permits required by law.

Contractor is prohibited from boycotting Israel for the duration of this Participating Addendum. (See N.D.C.C § 54-44.4-15.) Contractor represents that it does not and will not engage in a boycotting Israel during the term of this Participating Addendum. If Participating Entity receives evidence that Contractor boycotts Israel, Participating Entity shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if Contractor has fewer than ten full-time employees.

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Contractor's failure to comply with this section may be deemed a material breach by Contractor entitling Participating Entity to terminate in accordance with the Termination for Cause section of the Master Agreement, Exhibit A: NASPO ValuePoint Master Agreement Terms and Conditions, item 42.

V. INJUNCTIVE RELIEF (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 40)

Contractor shall immediately report to Participating Entity any and all unauthorized disclosures or uses of Participating Entity's confidential information or proprietary information of which Contractor or its staff is aware or has knowledge. Contractor acknowledges that any unauthorized publication or disclosure of Participating Entity's confidential information or proprietary information to others may cause immediate and irreparable harm to Participating Entity. If Contractor should publish or disclose such confidential information or proprietary information without authorization, Participating Entity shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. Contractor shall indemnify, defend, and hold harmless Participating Entity from all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys' fees) caused by or arising from Contractor's unauthorized use or disclosure of Participating Entity's confidential information or proprietary information. As a condition to these indemnity obligations, Participating Entity will provide Contractor with prompt notice of any claim of which Participating Entity is aware and for which indemnification shall be sought under this Participating Addendum and shall cooperate in all reasonable respects with Contractor in connection with any such claim.

VI. INDEMNIFICATION (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 34)

In addition to the indemnification obligations of the Master Contract, any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Contractor also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Participating Addendum.

VII. LIMITATION OF LIABILITY (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 35)

The following is inserted as the first sentence of Limitations of Liability section before subsections a, b, and c: "The terms of the NASPO ValuePoint Master Agreement govern to the extent allowed under applicable law."

VIII. INSURANCE (REPLACES MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 28.B.1)

Commercial general liability, including premises or operations, contractual liability per the terms and conditions of the policy, and products or completed operations coverages (if applicable), with liability limits of \$2,000,000 per occurrence.

IX. CONFIDENTIALITY (REPLACES MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 40A)

Contractor shall not use or disclose any information it receives from Participating Entity under this Participating Addendum that Participating Entity has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Participating Addendum or as authorized in advance by Participating Entity. Participating Entity shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that Participating Entity determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, [N.D.C.C. ch. 44-04](#). The duty of Participating Entity and Contractor to maintain confidentiality of information under this section continues beyond the Term of this Participating Addendum.

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X. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Participating Addendum, certain records may be open to the public upon request.

Public records may include: (a) records Participating Entity receives from Contractor under this Participating Addendum, (b) records obtained by either Party under this Participating Addendum, and (c) records generated by either Party under this Participating Addendum.

Contractor agrees to contact Participating Entity immediately upon receiving a request for information under the public records law and to comply with Participating Entity's instructions on how to respond to such request.

XI. SPOILIATION – NOTICE OF POTENTIAL CLAIMS

Contractor shall promptly notify Participating Entity of all potential claims that arise or result from this Participating Addendum. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Participating Entity the opportunity to review and inspect such evidence, including the scene of an accident.

XII. SEVERABILITY

If any term of this Participating Addendum is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Participating Addendum did not contain that term.

**XIII. APPLICABLE LAW AND VENUE (REPLACES MASTER AGREEMENT, EXHIBIT A: NASPO
VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 39)**

This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

XIV. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering this Participating Addendum, Participating Entity does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. Participating Entity does not waive any right to a jury trial.

XV. ATTORNEY FEES AND COSTS

In the event a lawsuit is instituted by Participating Entity to obtain performance under this Participating Addendum, and Participating Entity is the prevailing Party, Contractor shall, except when prohibited by [N.D.C.C. § 28-26-04](#), pay Participating Entity's reasonable attorney fees and costs in connection with the lawsuit.

XVI. STATE AUDIT

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of Contractor relevant to this Participating Addendum are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. Contractor shall maintain these records for at least three (3) years following completion of this Participating Addendum and be able to provide them upon reasonable notice. Participating Entity, State Auditor, or Auditor's designee shall provide reasonable notice to Contractor prior to conducting examination.



Hewlett Packard Enterprise

HPE CUSTOMER TERMS - PORTFOLIO

1. **Parties.** These terms represent the agreement ("**Agreement**") that governs the purchase of products and services from the Hewlett Packard Enterprise entity identified in the signature section below ("**HPE**") by the Customer entity identified below ("**Customer**").
2. **Orders.** "**Order**" means the accepted order including any supporting material which the parties identify as incorporated either by attachment or reference ("**Supporting Material**"). Supporting Material may include (as examples) product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements, and statements of work (SOWs), published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated HPE website.
3. **Scope and Order Placement.** These terms may be used by Customer either for a single Order or as a framework for multiple Orders. In addition, these terms may be used on a global basis by the parties' "**Affiliates**", meaning any entity controlled by, controlling, or under common control with a party. The parties can confirm their agreement to these terms either by signature where indicated at the end or by referencing these terms on Orders. Affiliates participate under these terms by placing orders which specify product or service delivery in the same country as the HPE Affiliate accepting the Order, referencing these terms, and specifying any additional terms or amendments to reflect local law or business practices.
4. **Order Arrangements.** Customer may place orders with HPE through our website, customer-specific portal, or by letter, fax or e-mail. Where appropriate, orders must specify a delivery date. If Customer extends the delivery date of an existing Order beyond ninety (90) days, then it will be considered a new order. Customer may cancel a hardware Order at no charge up to five (5) business days prior to shipment date.
5. ~~**Prices and Taxes.** Prices will be as quoted in writing by HPE or, in the absence of a written quote, as set out on our website, customer-specific portal, or HPE published list price at the time an order is submitted to HPE. Prices are exclusive of taxes, duties, and fees (including installation, shipping, and handling) unless otherwise quoted. If a withholding tax is required by law, please contact the HPE order representative to discuss appropriate procedures. HPE will charge separately for reasonable out-of-pocket expenses, such as travel expenses incurred in providing professional services.~~
6. **Invoices and Payment.** Customer agrees to pay all invoiced amounts within thirty (30) days of HPE's invoice date. HPE may suspend or cancel performance of open Orders or services if Customer fails to make payments when due.
7. **Title.** Risk of loss or damage and title for hardware products will pass upon delivery to Customer or its designee. Where permitted by law, HPE retains a security interest in products sold until full payment is received.
8. **Delivery.** HPE will use all commercially reasonable efforts to deliver products in a timely manner. HPE may elect to deliver software and related product/license information by electronic transmission or via download.



Hewlett Packard Enterprise

9. **Installation.** If HPE is providing installation with the product purchase, HPE's site guidelines (available upon request) will describe Customer requirements. HPE will conduct its standard installation and test procedures to confirm completion.
10. **Support Services.** HPE's support services will be described in the applicable Supporting Material, which will cover the description of HPE's offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported.
11. **Eligibility.** HPE's service, support and warranty commitments do not cover claims resulting from:
 1. improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
 2. Modifications or improper system maintenance or calibration not performed by HPE or authorized by HPE;
 3. failure or functional limitations of any non-HPE software or product impacting systems receiving HPE support or service;
 4. malware (e.g. virus, worm, etc.) not introduced by HPE; or
 5. abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HPE's control.
12. **Professional Services.** HPE will deliver any ordered IT consulting, training or other services as described in the applicable Supporting Material.
13. **Professional Services Acceptance.** The acceptance process (if any) will be described in the applicable Supporting Material, will apply only to the deliverables specified, and shall not apply to other products or services to be provided by HPE.
14. **Dependencies.** HPE's ability to deliver services will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services.
15. **Change Orders.** We each agree to appoint a project representative to serve as the principal point of contact in managing the delivery of services and in dealing with issues that may arise. Requests to change the scope of services or deliverables will require a change order signed by both parties.
16. **Product Performance.** All HPE-branded hardware products are covered by HPE's limited warranty statements that are provided with the products or otherwise made available. Hardware warranties begin on the date of delivery or if applicable, upon completion of HPE installation, or (where Customer delays HPE installation) at the latest 30 days from the date of delivery. Non-HPE branded products receive warranty coverage as provided by the relevant third party supplier.
17. **Software Performance.** HPE warrants that its branded software products will conform materially to their specifications and be free of malware at the time of delivery. HPE warranties for software products will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. HPE does not warrant that the operation of software products will be

uninterrupted or error-free or that software products will operate in hardware and software combinations other than as authorized by HPE in Supporting Material.

18. **Services Performance.** Services are performed using generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any such service concerns and HPE will re-perform any service that fails to meet this standard.
19. **Services with Deliverables.** If Supporting Material for services define specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HPE of such a non-conformity during the 30 day period, HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HPE.
20. **Product Warranty Claims.** When we receive a valid warranty claim for an HPE hardware or software product, HPE will either repair the relevant defect or replace the product. If HPE is unable to complete the repair or replace the product within a reasonable time, Customer will be entitled to a full refund upon the prompt return of the product to HPE (if hardware) or upon written confirmation by Customer that the relevant software product has been destroyed or permanently disabled. HPE will pay for shipment of repaired or replaced products to Customer and Customer will be responsible for return shipment of the product to HPE.
21. **Remedies.** This Agreement states all remedies for warranty claims. To the extent permitted by law, HPE disclaims all other warranties.
22. **Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under this Agreement. Customer grants HPE a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for HPE and its designees to perform the ordered services. If deliverables are created by HPE specifically for Customer and identified as such in Supporting Material, HPE hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverables internally.
23. **Intellectual Property Rights Infringement.** HPE will defend and/or settle any claims against Customer that allege that an HPE-branded product or service as supplied under this Agreement infringes the intellectual property rights of a third party. HPE will rely on Customer's prompt notification of the claim and cooperation with our defense. HPE may modify the product or service so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to Customer the amount paid for the affected product in the first year or the depreciated value thereafter or, for support services, the balance of any pre-paid amount or, for professional services, the amount paid. HPE is not responsible for claims resulting from any unauthorized use of the products or services. This section shall also apply to deliverables identified as such in the relevant Support Material except that HPE is not responsible for claims resulting from deliverables content or design provided by Customer.
24. **License Grant.** HPE grants Customer a non-exclusive license to use the version or release of the HPE-branded software listed in the Order. Permitted use is for internal purposes only (and not for further commercialization), and is subject to any specific software licensing information

that is in the software product or its Supporting Material. For non-HPE branded software, the third party's license terms will govern its use.

25. **Updates.** Customer may order new software versions, releases or maintenance updates ("Updates"), if available, separately or through an HPE software support agreement. Additional licenses or fees may apply for these Updates or for the use of the software in an upgraded environment. Updates are subject to the license terms in effect at the time that HPE makes them available to Customer.
26. **License Restrictions.** HPE may monitor use/license restrictions remotely and, if HPE makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may make a copy or adaptation of a licensed software product only for archival purposes or when it is an essential step in the authorized use of the software. Customer may use this archival copy without paying an additional license only when the primary system is inoperable. Customer may not copy licensed software onto or otherwise use or make it available on any public external distributed network. Licenses that allow use over Customer's intranet require restricted access by authorized users only. Customer will also not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of any software licensed to Customer under this Agreement unless permitted by statute, in which case Customer will provide HPE with reasonably detailed information about those activities.
27. **License Term and Termination.** Unless otherwise specified, any license granted is perpetual, provided however that if Customer fails to comply with the terms of this Agreement, HPE may terminate the license upon written notice. Immediately upon termination, or in the case of a limited-term license, upon expiration, Customer will either destroy all copies of the software or return them to HPE, except that Customer may retain one copy for archival purposes only.
28. **License Transfer.** Customer may not sublicense, assign, transfer, rent or lease the software or software license except as permitted by HPE. HPE-branded software licenses are generally transferable subject to HPE's prior written authorization and payment to HPE of any applicable fees. Upon such transfer, Customer's rights shall terminate and Customer shall transfer all copies of the software to the transferee. Transferee must agree in writing to be bound by the applicable software license terms. Customer may transfer firmware only upon transfer of associated hardware.
29. **License Compliance.** HPE may audit Customer compliance with the software license terms. Upon reasonable notice, HPE may conduct an audit during normal business hours (with the auditor's costs being at HPE's expense). If an audit reveals underpayments then Customer will pay to HPE such underpayments. If underpayments discovered exceed five (5) percent of the contract price, Customer will reimburse HPE for the auditor costs.
30. **Confidentiality.** Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3

years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.

31. **Personal Information.** Each party shall comply with their respective obligations under applicable data protection legislation. HPE does not intend to have access to personally identifiable information (“**PII**”) of Customer in providing services. To the extent HPE has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. HPE will use any PII to which it has access strictly for purposes of delivering the services ordered.
32. **US Federal Government Use.** If software is licensed to Customer for use in the performance of a US Government prime contract or subcontract, Customer agrees that consistent with FAR 12.211 and 12.212, commercial computer software, documentation and technical data for commercial items are licensed under HPE’s standard commercial license.
33. **Global Trade compliance.** Products and services provided under these terms are for Customer’s internal use and not for further commercialization. If Customer exports, imports or otherwise transfers products and/or deliverables provided under these terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. HPE may suspend its performance under this Agreement to the extent required by laws applicable to either party.
34. **Limitation of Liability.** HPE’s liability to Customer under this Agreement is limited to the greater of \$1,000,000 or the amount payable by Customer to HPE for the relevant Order. Neither Customer nor HPE will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. This provision does not limit either party’s liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; wilful repudiation of the Agreement; nor any liability which may not be excluded or limited by applicable law.
35. **Disputes.** If Customer is dissatisfied with any products or services purchased under these terms and disagrees with HPE’s proposed resolution, we both agree to promptly escalate the issue to a Vice President (or equivalent executive) in our respective organizations for an amicable resolution without prejudice to the right to later seek a legal remedy.
36. **Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
37. **Termination.** Either party may terminate this Agreement on written notice if the other fails to meet any material obligation and fails to remedy the breach within a reasonable period after being notified in writing of the details. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations. Any terms in the Agreement which by their nature extend beyond termination or expiration of the Agreement will remain in effect until fulfilled and will apply to both parties’ respective successors and permitted assigns.



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38. **General.** This Agreement represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties. The Agreement will be governed by the laws of the country of HPE or the HPE Affiliate accepting the Order and the courts of that locale will have jurisdiction, however, HPE or its Affiliate may, bring suit for payment in the country where the Customer Affiliate that placed the Order is located. Customer and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Claims arising or raised in the United States will be governed by the laws of the state of California, excluding rules as to choice and conflict of law.

SUPPLEMENTAL DATA SHEET

This Supplemental Data Sheet provides additional general requirements and limitations that apply to HPE's support offerings, which are set forth in detail in offering-specific datasheets with the exception of those support offerings delivered by HPE Software.

1. SERVICE ELIGIBILITY

- **Hardware Support-General Eligibility.** Hardware products must be in good operating condition, as reasonably determined by HPE, to be eligible for placement under support. You must also maintain eligible products at the latest HPE-specified configuration and revision levels.
- **Return to Support.** If you allow support to lapse, HPE may charge you additional fees to resume support or require you to perform certain hardware or software upgrades.
- **Use of Proprietary Service Tools.** HPE may require you to use certain hardware and/or software system and network diagnostic and maintenance programs ("Proprietary Service Tools"), as well as certain diagnostic tools that may be included as part of the your system. Proprietary Service Tools are and remain the sole and exclusive property of HPE, and are provided "as is." Proprietary Service Tools may reside on your systems or sites. You may only use the Proprietary Service Tools during the applicable Support coverage period and only as allowed by HPE and you may not sell, transfer, assign, pledge, or in any way encumber or convey the Proprietary Service Tools. Upon termination of Support, you will return the Proprietary Service Tools or allow HPE to remove these Proprietary Service Tools. You will also be required to:
 - Allows HPE to keep the Proprietary Service Tools resident on your systems or sites, and assist HPE in running them;
 - Install Proprietary Service Tools, including installation of any required updates and patches;
 - Use the electronic data transfer capability to inform HPE of events identified by the software;
 - If required, purchase HPE-specified remote connection hardware for systems with remote diagnosis service; and
 - Provide remote connectivity through an approved communications line.
 - You may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of the Proprietary Service Tools. If you have a mandatory right to do so under statute, you must inform HPE in writing prior to making such modifications.

2. SUPPORT LIMITATIONS

- **Local Availability of Support.** Some offerings, features, and coverage (and related products) may not be available in all countries or areas. In addition, delivery of support

outside of the applicable HPE coverage areas may be subject to travel charges, longer response times, reduced restoration or repair commitments, and reduced coverage hours.

- **Version Support.** Unless otherwise agreed by HPE in writing, and for those offerings not delivered by HPE Software, HPE only provides support for the current version and the immediately preceding version of HPE branded software, and provided that HPE branded software is used with hardware or software included in HPE-specified configurations at the specified version level. "Version" means a release of software that contains new features, enhancements, and/or maintenance updates, or for certain software, a collection of revisions packaged into a single entity and, as such, made available to our customers.
- **Relocation and impact on Support.** Relocation of any products under support is your responsibility and is subject to local availability and fee changes. Reasonable advance notice to HPE may be required to begin support after relocation. For products, any relocation is also subject to the license terms for such products.
- **Multi-vendor Support.** HPE provides support for certain non-HPE branded products. The relevant data sheet will specify availability and coverage levels and the support will be provided accordingly, whether or not the non-HPE branded products are under warranty. HPE may discontinue support of non-HPE branded products if the manufacturer or licensor ceases to provide support for them.
- **Modifications.** You will allow HPE, at HPE's request, and at no additional charge, to modify products to improve operation, supportability, and reliability, or to meet legal requirements.

3. CUSTOMER RESPONSIBILITIES

- **Site and Product Access.** You will provide HPE access to the products covered under support; and if applicable, adequate working space and facilities within a reasonable distance of the products; access to and use of information, customer resources, and facilities as reasonably determined necessary by HPE to service the products; and other access requirements described in the relevant data sheet. If you fail to provide such access, resulting in HPE's inability to provide support, HPE shall be entitled to charge you for the support call at HPE's published service rates. You are responsible for removing any products ineligible for support, as advised by HPE, to allow HPE to perform support. If delivery of support is made more difficult because of ineligible products, HPE will charge you for the extra work at HPE's published service rates.
- **Licenses and Updates.** You may purchase available product support for HPE branded products only if you can provide evidence that you have rightfully acquired an appropriate HPE license for the products, and you may not alter or modify the products unless authorized by HPE at any time. Your right to use firmware and software updates ("Updates") provided under HPE Support or warranty or if otherwise made available to you is co-extensive with your license to the underlying product. However in addition:
 - You may not use Updates to provide services to third parties
 - You may not make copies and distribute, resell or sublicense Updates to third parties
 - You may not copy Updates or make them available on a public or external distributed network. This means that you may not copy Updates for products that are not under support by HPE.
 - You may not allow access to Updates on an intranet unless it is restricted to authorized users.



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- You cannot make copies of and distribute Updates on devices that are not supported by HPE.
 - You may make only make one copy of the Updates for archival purposes or when it is an essential step in authorized use.
 - You may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of the Updates. If you have a mandatory right to do so under statute, you must inform HPE in writing prior to making such modifications.
 - HPE may terminate your license to use the Updates upon written notice if you fail to comply with these terms.
 - If you authorize a third-party to act as your agent and download Updates on your behalf, using your entitlement, you are strictly and wholly liable for your agents' adherence to the terms of your contract with HPE, including these license terms. In addition, all parties must execute HPE's agency agreement to allow for such access by the third party.
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- **Software Support Documentation and Right to Copy.** You may only copy documentation updates if you purchased the right to copy them for the associated products. Copies must include appropriate HPE trademark and copyright notices.
 - **Loaner Units.** HPE maintains title and you shall have risk of loss or damage for loaner units if provided at HPE's discretion as part of hardware support or warranty services and such units will be returned to HPE without lien or encumbrance at the end of the loaner period.
 - **Hardware Support: Compatible Cables and Connectors.** You will connect hardware products covered under support with cables and connectors (including fiber optics if applicable) that are compatible with the system, according to the manufacturer's operating manual.
 - **Data Backup.** So that you can reconstruct your lost or altered files, data, or programs, you must maintain a separate backup system or procedure that is not dependent on the products under support.
 - **Temporary Workarounds.** If requested by HPE, you will implement temporary procedures or workarounds provided by HPE while HPE works on a permanent solution.
 - **Hazardous Environment.** You will notify HPE if you use products in an environment that poses a potential health or safety hazard to HPE employees or subcontractors. HPE may require you to maintain such products under HPE supervision and may postpone service until you remedy such hazards.
 - **Authorized Representative.** You will have a representative present when HPE provides support at your site.
 - **Product List.** You will create, maintain and update a list of all products under support including: the location of the products, serial numbers, the HPE-designated system identifiers, and coverage levels.
 - **Solution Center Designated Callers.** You will identify a reasonable number of callers, as determined by HPE and Customer ("Designated Callers"), who may access HPE's customer Support call centers ("Solution Centers") or online help tools.
 - **Solution Center Caller Qualifications.** Designated Callers must be generally knowledgeable and demonstrate technical aptitude in system administration, system management, and, if applicable, network administration and management and diagnostic testing. HPE may review and discuss with you any Designated Caller's experience to determine initial eligibility. If issues arise during a call to the Solution Center that, in HPE's reasonable opinion, may be a result of a Designated Caller's lack of general experience and training, you may be required to replace that Designated Caller. All Designated

Callers must have the proper system identifier as provided to you when Support is initiated. Solution Centers may provide support in English or local languages, or both.

- **HIPAA Customers.** You represent that you are not a Covered Entity or Business Associate under the U.S. Health Insurance Portability and Accountability Act (HIPAA), and that you will not be creating, receiving, maintaining, or transmitting protected health information. If you determine that you are a Covered Entity or Business Associate, you agree to notify HPE and the parties agree to negotiate a mutually agreeable Business Associate Agreement.

4. GENERAL PROVISIONS

- **Cancellation.** You may cancel support orders or delete products from support upon thirty (30) days' written notice, unless otherwise agreed in writing. HPE may discontinue support for products and specific support services no longer included in HPE's support offering upon sixty (60) days' written notice, unless otherwise agreed in writing. If you cancel prepaid support, HPE will refund you a pro-rata amount for the unused prepaid support subject to any restrictions or early termination fees as may be set forth in writing.
- ~~**Pricing.** Except for prepaid support or if otherwise agreed in writing, HPE may change support prices upon sixty (60) days' written notice.~~
- **Additional Services.** Additional services performed by HPE at your request, and that are not included in your purchased support, will be chargeable at the applicable published service rates for the country where the service is performed.
- **Replacement Parts.** Parts provided under hardware support may be whole unit replacements, or be new or functionally equivalent to new in performance and reliability and warranted as new. Replaced parts become the property of HPE, unless HPE agrees otherwise and you pay any applicable charges.
- **Media Sanitization.** You are responsible for properly sanitizing or removing data from products that may be replaced or returned to HPE as part of the repair process to ensure the safeguarding of your data. For more information on your responsibilities, go to www.hpe.com/media/handling.
- **Data Protection.** To the extent HPE processes personal data on your behalf in the course of providing the services, the HPE Support Services – Data Privacy and Security Agreement found at www.hpe.com/us/en/legal/customer-privacy.html shall apply.
- **Audit.** HPE may audit your compliance with these terms. Upon reasonable notice, HPE may conduct an audit during normal business hours (with auditor's costs being at HPE's expense). If a software license audit reveals underpayments then you will pay to HPE such underpayments. If underpayments discovered exceed five percent of the contract price, you will reimburse HPE for the auditor costs.



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1. **Applicability.** This end user license agreement (the "Agreement") governs the use of accompanying software, unless it is subject to a separate agreement between you and Hewlett Packard Enterprise Company and its subsidiaries ("HPE"). By downloading, copying, or using the software you agree to this Agreement. HPE provides translations of this Agreement in certain languages other than English, which may be found at: <http://www.hpe.com/software/SW Licensing>.
2. **Terms.** This Agreement includes supporting material accompanying the software or referenced by HPE, which may be software license information, additional license authorizations, software specifications, published warranties, supplier terms, open source software licenses and similar content ("Supporting Material"). Additional license authorizations are at: <http://www.hpe.com/software/SW Licensing>.
3. **Authorization.** If you agree to this Agreement on behalf of another person or entity, you warrant you have authority to do so.
4. **Consumer Rights.** If you obtained software as a consumer, nothing in this Agreement affects your statutory rights.
5. **Electronic Delivery.** HPE may elect to deliver software and related software product or license information by electronic transmission or download.
6. **License Grant.** If you abide by this Agreement, HPE grants you a non-exclusive non-transferable license to use one copy of the version or release of the accompanying software for your internal purposes only, and is subject to any specific software licensing information that is in the software product or its Supporting Material.

Your use is subject to the following restrictions, unless specifically allowed in Supporting Material:

- You may not use software to provide services to third parties.
 - You may not make copies and distribute, resell or sublicense software to third parties.
 - You may not download and use patches, enhancements, bug fixes, or similar updates unless you have a license to the underlying software. However, such license doesn't automatically give you a right to receive such updates and HPE reserves the right to make such updates only available to customers with support contracts.
 - You may not copy software or make it available on a public or external distributed network.
 - You may not allow access on an intranet unless it is restricted to authorized users.
 - You may make one copy of the software for archival purposes or when it is an essential step in authorized use.
 - You may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of software. If you have a mandatory right to do so under statute, you must inform HPE in writing about such modifications.
7. **Remote Monitoring.** Some software may require keys or other technical protection measures and HPE may monitor your compliance with the Agreement, remotely or otherwise. If HPE makes a license management program for recording and reporting license usage information, you will use such program no later than 180 days from the date it's made available.
 8. **Ownership.** No transfer of ownership of any intellectual property will occur under this Agreement.
 9. **Copyright Notices.** You must reproduce copyright notices on software and documentation for authorized copies.
 10. **Operating Systems.** Operating system software may only be used on approved hardware and configurations.





11. 90-day Limited Warranty for HPE Software.

- HPE-branded software materially conforms to its specifications, if any, and is free of malware at the time of delivery; if you notify HPE within 90 days of delivery of non-conformance to this warranty, HPE will replace your copy. This Agreement states all remedies for warranty claims.
- HPE does not warrant that the operation of software will be uninterrupted or error free, or that software will operate in hardware and software combinations other than as authorized by HPE in Supporting Material. To the extent permitted by law, HPE disclaims all other warranties.

12. Intellectual Property Rights Infringement. HPE will defend and/or settle any claims against you that allege that HPE-branded software as supplied under this Agreement infringes the intellectual property rights of a third party. HPE will rely on your prompt notification of the claim and cooperation with our defense. HPE may modify the software so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to you the amount paid for the affected product in the first year or the depreciated value thereafter. HPE is not responsible for claims resulting from any unauthorized use of the software.

13. Limitation of Liability. HPE's liability to you under this Agreement is limited to the amount actually paid by you to HPE for the relevant software, except for amounts in Section 12 ("Intellectual Property Rights Infringement"). Neither you nor HPE will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; willful repudiation of the Agreement; or any liability that may not be excluded or limited by applicable law.

14. Termination. This Agreement is effective until terminated or in the case of a limited-term license, upon expiration; however, your rights under this Agreement terminate if you fail to comply with it. Immediately upon termination or expiration, you will destroy the software and documentation and any copies, or return them to HPE. You may keep one copy of software and documentation for archival purposes. We may ask you to certify in writing you have complied with this section. Warranty disclaimers, the limitation of liability, this section on termination, and Section 15 ("General") will survive termination.

15. General.

- a. Assignment. You may not assign this Agreement without prior written consent of HPE, payment of transfer fees and compliance with HPE's software license transfer policies. Authorized assignments will terminate your license to the software and you must deliver software and documentation and copies thereof to the assignee. The assignee will agree in writing to this Agreement. You may only transfer firmware if you transfer associated hardware.
- b. U.S. Government. If the software is licensed to you for use in the performance of a U.S. Government prime contract or subcontract, you agree that, consistent with FAR 12.211 and 12.212, commercial computer software, computer software documentation and technical data for commercial items are licensed under HPE's standard commercial license.
- c. Global Trade Compliance. You agree to comply with the trade-related laws and regulations of the U.S. and other national governments. If you export, import or otherwise transfer products provided under this Agreement, you will be responsible for obtaining any required export or import authorizations. You confirm that you are not located in a country that is subject to trade control sanctions (currently Cuba, Iran, N. Korea, N. Sudan, and Syria) and further agree that you will not retransfer the products to any such country. HPE may suspend its performance under this Agreement to the extent required by laws applicable to either party.
- d. Audit. HPE may audit you for compliance with the software license terms. Upon reasonable notice, HPE may conduct an audit during normal business hours (with the auditor's costs being at HPE's expense). If an audit reveals underpayments then you will pay to HPE such underpayments.





If underpayments discovered exceed five (5) percent, you will reimburse HPE for the auditor costs.

- e. Open Source Components. To the extent the Supporting Material includes open source licenses, such licenses shall control over this Agreement with respect to the particular open source component. To the extent Supporting Material includes the GNU General Public License or the GNU Lesser General Public License: (a) the software includes a copy of the source code; or (b) if you downloaded the software from a website, a copy of the source code is available on the same website; or (c) if you send HPE written notice, HPE will send you a copy of the source code for a reasonable fee.
 - f. Notices. Written notices under this Agreement may be provided to HPE via the method provided in the Supporting Material.
 - g. Governing Law. ~~This Agreement will be governed by the laws of the state of California, U.S.A., excluding rules as to choice and conflict of law. You and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.~~
 - h. Force Majeure. Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
 - i. Entire Agreement. ~~This Agreement represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist.~~ Modifications to the Agreement will be made only through a written amendment signed by both parties. If HPE doesn't exercise its rights under this Agreement, such delay is not a waiver of its rights.
16. **Australian Consumers.** If you acquired the software as a consumer within the meaning of the 'Australian Consumer Law' under the Australian *Competition and Consumer Act* 2010 (Cth) then despite any other provision of this Agreement, the terms at this URL apply: <http://www.hpe.com/software/SWLicensing>.
17. **Russian Consumers.** If you are based in the Russian Federation and the rights to use the software are provided to you under a separate license and/or sublicense agreement concluded between you and a duly authorized HPE partner, then this Agreement shall not be applicable.

