Hewlett Packard Enterprise

HPE CUSTOMER TERMS - SUPPORT

1. **Parties.** These terms represent the agreement ("**Agreement**") that governs the purchase of support 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 materials which the parties identify as incorporated either by attachment or reference ("**Supporting Material**"). Supporting Material may include (as examples) support 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 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 a purchase order or letter. Where appropriate, orders must specify a service delivery date. If Customer extends the service delivery date of an existing Order beyond ninety (90) days, then it will be considered a new order.

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.

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. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **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.

16. **Global Trade compliance.** Services provided under these terms are for Customer's internal use and not for further commercialization. HPE may suspend its performance under this Agreement to the extent required by laws applicable to either party.

17. **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.

18. **Disputes.** If Customer is dissatisfied with any 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.

19. **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.

20. **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.

21. **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

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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.
  - 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.

- **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.

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- **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.