

TEXAS DEPARTMENT OF INFORMATION RESOURCES
APPENDIX D TO DIR CONTRACT NO. DIR-TSO-2538
Customer Agreement for HP Software Licensing and Software and Hardware Support

This Customer Agreement for Hewlett-Packard Company (“**HP**”) Software Licensing and Software and Hardware Support (“**Agreement**”) is an Appendix to the State of Texas Department of Information Resources (“**DIR**”) Contract DIR-TSO-2538 (“**CONTRACT**”) and applies to any Customer’s purchases of Software Product licenses and/or Support Services from HP.

1. **Definitions.** Unless otherwise specifically defined herein, the capitalized terms and all terms and conditions of this Agreement shall be governed by DIR Contract No. DIR-TSO-2538.
2. **Scope and Order Placement.** These terms may be used by Customer, as defined in Appendix A, Section 3.A. of DIR Contract No. DIR-TSO-2538, either for a single Order or as a framework for multiple Orders. The Customer shall annotate DIR Contract No. DIR-TSO-2538 on all Orders placed with HP or HP Order Fulfillers.
3. **Order Arrangements.** Customer may place orders with HP through our website, customer-specific portal, or by letter, fax or e-mail. Customer shall annotate DIR Contract No. DIR-TSO-2538 when placing an Order. Where appropriate, orders must specify a delivery date for Software Product licenses and Support Services. If Customer extends the delivery date of an existing Order beyond ninety (90) days, then it will be considered a new Order.
4. **Prices and Taxes.** All pricing shall be in accordance with Appendix C, Pricing Index of DIR Contract No. DIR-TSO-2538. Prices will be as quoted in writing by HP or, in the absence of a written quote, as set out on HP’s DIR website. If prices quoted or listed on HP’s website are different than the prices in Appendix C Pricing Index of DIR Contract No. DIR-TSO-2538, the Appendix C Pricing shall govern. Quotes provided by HP are exclusive of taxes, duties, and fees (including installation,) unless otherwise quoted. If a withholding tax is required by law, please contact the HP order representative to discuss appropriate procedures. In accordance with Appendix A, Section 8.G. of DIR Contract No. DIR-TSO-2538, charges for Services will not include travel expenses but may include charges for reasonable and pre-approved out-of-pocket expenses.
5. **Invoices and Payment.** Customer agrees to pay all invoiced amounts in accordance with Section 8.K. of Appendix A of DIR Contract No. DIR-TSO-2538. HP may suspend or cancel performance of open Orders or Services if Customer fails to make payments when due.
6. **Products.** Section 14, Additional Terms of DIR Contract No. DIR-TSO-2538 shall apply.
7. **Software.**
 - a) **License Grant.** HP grants Customer a non-exclusive license to use the version or release of the HP-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-HP Branded Software, the third party’s license terms will govern its use.
 - b) **Updates.** Customer may order new Software versions, releases or maintenance updates (“**Updates**”), if available, separately or through an HP 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 HP makes them available to Customer.

- c) License Restrictions. In accordance with Customer Security requirements, which Customer will provide to HP upon request, HP may monitor use/license restrictions remotely and, if HP 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 HP with reasonably detailed information about those activities.
- d) 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, HP 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 HP, except that Customer may retain one copy for archival purposes only.
- e) License Transfer. Customer may not sublicense, assign, transfer, rent or lease the Software or Software license except as permitted by HP. HP-Branded Software licenses are generally transferable subject to HP's prior written authorization and payment to HP 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 and DIR Contract No. DIR-TSO-2538. Transferee must be an eligible Customer as defined in Section 3.A of Appendix A of DIR Contract No. DIR-TSO-2538. Customer may transfer firmware only upon transfer of associated Hardware.
- f) License Compliance. HP may audit Customer compliance with the Software license terms. Upon reasonable notice, HP may conduct an audit during normal business hours (with the auditor's costs being at HP's expense). If an audit reveals underpayments then Customer will pay to HP such underpayments.
- g) Software Performance. HP warrants that its Branded Software Products will conform materially to their specifications and be free of malware at the time of delivery. HP warranties for Software Products will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. HP 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 HP in Supporting Material.
- h) 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 HP's standard commercial license.

EXHIBIT A – SUPPLEMENTAL DATA SHEET

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

1. SERVICE ELIGIBILITY

- a) Hardware Support-General Eligibility. Hardware Products must be in good operating condition, as reasonably determined by HP, to be eligible for placement under Support. You (“**you**” or “**your**”) must also maintain eligible Products at the latest HP-specified configuration and revision levels.
- b) Return to Support. If you allow Support to lapse, HP may charge you additional fees to resume Support or require you to perform certain Hardware or Software upgrades.
- c) Use of Proprietary Service Tools. HP 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 HP, 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 HP 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 HP to remove these Proprietary Service Tools. You will also be required to:
 - (i) Allow HP to keep the Proprietary Service Tools resident on your systems or sites, and assist HP in running them;
 - (ii) Install Proprietary Service Tools, including installation of any required updates and patches;
 - (iii) Use the electronic data transfer capability to inform HP of events identified by the Software;
 - (iv) If required, purchase HP-specified remote connection Hardware for systems with remote diagnosis service; and
 - (v) Provide remote connectivity through an approved communications line in accordance with Customer Security requirements, which Customer will provide to HP upon request.

2. SUPPORT LIMITATIONS

- a) 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 HP coverage areas may be subject to travel charges, longer response times, reduced restoration or repair commitments, and reduced coverage hours. All additional charges must be pre-approved by the Customer.
- b) Version Support. Unless otherwise agreed by HP in writing, and for those offerings not delivered by HP Software, HP only provides Support for the current version and the immediately preceding version of HP Branded Software, and provided that HP Branded Software is used with Hardware or Software included in HP-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.

- c) 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 HP may be required to begin Support after relocation. For Products, any relocation is also subject to the license terms for such Products.
- d) Multi-vendor Support. HP provides Support for certain non-HP Branded Products. The relevant data sheet will specify availability and coverage levels and the Support will be provided accordingly, whether or not the non-HP Branded Products are under warranty. HP may discontinue Support of non-HP Branded Products if the manufacturer or licensor ceases to provide Support for them.
- e) Modifications. You will allow HP, at HP's request, and at no additional charge, to modify Products to improve operation, supportability, and reliability, or to meet legal requirements.

3. CUSTOMER RESPONSIBILITIES

- a) Site and Product Access. You will provide HP 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 HP to service the Products and other access requirements described in the relevant data sheet. If you fail to provide such access, resulting in HP's inability to provide Support, HP shall be entitled to charge you for the Support in accordance with Appendix C, Pricing Index of DIR Contract No. DIR-SDD-2538. You are responsible for removing any Products ineligible for Support, as advised by HP, to allow HP to perform Support. If delivery of Support is made more difficult because of ineligible Products, HP will charge you for the extra work in accordance with Appendix C, Pricing Index of DIR Contract No. DIR-SDD-2538.
- b) Licenses. You may purchase available Product Support for HP Branded Products only if you can provide evidence that you have rightfully acquired an appropriate HP license for the Products, and you may not alter or modify the Products unless authorized by HP at any time.
- c) 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 HP trademark and copyright notices.
- d) Loaner Units. HP maintains title and you shall have risk of loss or damage for loaner units if provided at HP's discretion as part of Hardware Support or warranty Services and such units will be returned to HP without lien or encumbrance at the end of the loaner period.
- e) 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.
- f) Data Backup. To 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.
- g) Temporary Workarounds. You will implement temporary procedures or workarounds provided by HP while HP works on a permanent solution.
- h) Hazardous Environment. You will notify HP if you use Products in an environment that poses a potential health or safety hazard to HP employees or subcontractors. HP may require you to maintain such Products under HP supervision and may postpone service until you remedy such hazards.
- i) Authorized Representative. You will have a representative present when HP provides Support at your site.

- j) Product List. You will create, maintain and update a list of all Products under Support including: the location of the Products, serial numbers, the HP-designated system identifiers, and coverage levels.
- k) Solution Center Designated Callers. You will identify a reasonable number of callers, as determined by HP and Customer (“**Designated Callers**”), who may access HP’s customer Support call centers (“**Solution Centers**”) or online help tools.
- l) 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. HP 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 HP’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.

4. GENERAL PROVISIONS

- a) Cancellation. You may cancel Support orders or delete Products from Support upon thirty (30) days written notice, unless otherwise agreed in writing. HP may discontinue Support for Products and specific Support Services no longer included in HP’s Support offering upon sixty (60) days written notice, unless otherwise agreed in writing. If you cancel prepaid Support, HP 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.
- b) Pricing. All pricing shall be in accordance with Appendix C Pricing Index, of DIR Contract No. DIR-TSO-2538.
- c) Additional Services. Additional Services performed by HP at your request, and that are not included in your purchased Support, will be in accordance with Pricing Index, Appendix C of DIR Contract No. DIR-TSO-2538.
- d) 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 HP unless otherwise defined in a Customer purchased extended warranty, unless HP agrees otherwise and you pay any applicable charges, the prices for which HP will quote upon request.

END OF APPENDIX D