

DEPARTMENT OF INFORMATION RESOURCES
APPENDIX E TO DIR CONTRACT NUMBER: DIR-TSO-3359
Customer Terms for Hewlett Packard Software-As-A-Service
and NonStop Products and Services

These Customer terms for Hewlett Packard Enterprise Company (“HPE”) Software-as-a-Service and NonStop Products and Services (“**Agreement**”) are Appendix E to the State of Texas Department of Information Resources (“**DIR**”) Contract No. DIR-TSO-3359 and applies to any Customer’s purchases of Software-as-a-Service and/or NonStop Products and Services from HPE. In the event of a conflict in terms between this Agreement and DIR Contract No. DIR-TSO-3359, the terms of DIR Contract No. DIR-TSO-3359 shall take precedence.

A. SOFTWARE-AS-A-SERVICE

1. **Definitions.** The capitalized terms and all terms and conditions of this Agreement shall be governed by DIR Contract No. DIR-TSO-3359. The following definitions shall apply for purposes of SaaS:
 - a) “**HP Software**” means the Hewlett Packard Software Products accessed by Customer using SaaS as identified in the Service Data Sheet and/or Statement of Work (“**SOW**”) (either or both “**Supporting Material**”).
 - b) “**Order**” means the accepted order including any Supporting Material, which the parties identify as incorporated either by attachment or reference.
 - c) “**Software-as-a-Service**” or “**SaaS**” means Customer’s access to the Hewlett Packard Software, Support, and related Services HPE provides to Customer, as described in the Supporting Material, and other exhibits or attachments that are made a part of this Agreement.
2. **Overview.** SaaS may be used only for Customer’s internal business purposes and not for commercialization. The SaaS term is in the relevant Supporting Material or HPE quotation (the “**SaaS Term**”). If Customer has perpetual or term licenses for the Hewlett Packard Software then such licenses shall be used for SaaS. For perpetual licenses Customer may have access to a physical copy of the Hewlett Packard Software during and after the SaaS Term. Any Software that Customer receives in order to access SaaS will be licensed under the terms of Customer’s existing software license agreement at the time of receipt; if at receipt Customer has no existing Software license agreement then the end user license accompanying the Software will apply to the Software.
3. **Dependencies.** HPE’s ability to deliver SaaS will depend on Customer’s reasonable and timely cooperation and on the accuracy and completeness of any information from Customer that is required to deliver SaaS (“**Customer Materials**”). Any third-party materials that Customer provides to HPE must be set forth in an SOW and Customer will obtain any consents required from third parties for HPE to use, display, or modify Customer Materials (collectively, the “**Required Consents**”) during the SaaS Term to the extent necessary for HPE to provide SaaS.
4. **Invoices and Payment.** Customer agrees to pay all invoiced amounts in accordance with Section 8.K. of DIR Contract No. DIR-TSO-3359. HPE may suspend or cancel performance of open Orders or Services if Customer fails to make undisputed payments when due.
5. **SaaS Performance.** HPE warrants that its’ SaaS is consistent with currently accepted industry standards and practices for services of a similar nature. To the extent allowed by local law, HPE disclaims all implied warranties or conditions including any implied warranties of merchantability,

fitness for a particular purpose, title, and non-infringement. HPE does not warrant that the Services will be uninterrupted or error free.

6. **Security; Customer is Data Controller.** Customer shall remain the data controller of its personally identifiable information (“PII”) at all times. As the data controller, Customer shall evaluate the sufficiency of the security provided by HPE as a part of SaaS.
7. **Required Consents; Customer Obligation.** Customer shall promptly notify HPE in writing of any third party claims against HPE relating to (i) Customer’s failure to obtain and maintain the Required Consents, or (ii) HPE’s use of Customer Materials.
8. **Limitation of Liability.** Limitation of Liability shall be handled in accordance with Section 10.K. of Appendix A to DIR Contract No. DIR-TSO-3359.
9. **Termination and Effect of Termination.** Appendix A, Section 11.B. (Termination) to DIR Contract No. DIR-TSO-3359 shall apply to this Agreement.
10. **Rescheduling.** Customer has the one-time right to reschedule the Order start date without charge (for a date that is no more than three (3) months after the originally scheduled start date) upon no less than three (3) business days’ written notice prior to the date that delivery is scheduled to begin except as it may be in accordance with Section 11.C. Force Majeure of Appendix A to DIR Contract No. DIR-TSO-3359.

11. General.

- a) Order of Precedence. In the event of a conflict in terms, Section 1.C. Order of Precedence in DIR Contract No. DIR-TSO-3359 shall govern. This Agreement includes as if fully incorporated herein a Service Data Sheet, and if applicable, a Statement of Work.
- b) Compliance with Laws. Each party agrees to be responsible for complying with all laws and regulations applicable to the respective party. This Agreement shall be interpreted in accordance with the laws of Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.
- c) Non-Solicitation. Customer agrees not to solicit, or make offers of employment to, or enter into consultant relationships with, any HPE employee involved, directly or indirectly, in the performance of SaaS for one (1) year after the date such employee ceases to perform SaaS or related Services hereunder. However, Customer may hire any HPE employee who responds to a general hiring program conducted in the ordinary course of business and not specifically directed to such HPE employee.
- d) Disputes. Disputes shall be handled in accordance with Section 11.A. of Appendix A to DIR Contract No. DIR-TSO-3359.
- e) Force Majeure. Force Majeure shall be handled in accordance with Section 11.C. of Appendix A to DIR Contract No. DIR-TSO-3359.

B. NONSTOP PRODUCTS AND SUPPORT SERVICES

1. Definitions. Unless otherwise specifically defined in these terms, the capitalized terms and all terms and conditions of this Agreement shall be governed by DIR Contract No. DIR-TSO-3359. The following definitions shall apply for purposes of NonStop:

- a) “**Designated System**” means an HPE NonStop System owned, controlled, or operated by or solely on behalf of Customer and identified by HPE by the combination of a unique number and specific system type.
- b) “**Existing Term**” for NonStop Software under a term license means any available term elected by Customer for (i) the first item of NonStop Software licensed to a Designated System on a term basis, or (ii) any renewal term thereafter. DIR Contract No. DIR-TSO-3359 is for an initial term through July 3, 2016 and two (2) one-year renewal options which may be exercised by Vendor’s issuance of thirty (30) days advanced written notice and Customer’s concurrence prior to the then-effective expiration date (each a “Renewal Term”).
- c) “**NonStop Product**” means NonStop Hardware, NonStop Software and associated documentation, parts, and upgrades.
- d) “**NonStop Software**” means all Software provided by HPE for Use on a Designated System. NonStop Software includes user documentation and related materials, but excludes documentation made publicly accessible by Hewlett Packard and Software provided by HPE with an electronic or other license form.
- e) “**System**” means a collection of NonStop Hardware and NonStop Software that is designed to operate as a functional unit.

2. NonStop Software Licensing Plans and Charges

- a) Subject to Customer’s payment of the applicable license fee(s), HPE will grant the available license for each item of NonStop Software specified on an Order.
 - i. Paid-Up License. HPE grants Customer a perpetual license to use the applicable NonStop Software on a Designated System. A “**One-Time License Charge**” or “**OLC**” will be invoiced upon shipment in accordance with Appendix C, Pricing Index of DIR Contract No. DIR-TSO-3359.
 - ii. Term License. HPE grants Customer a license to use the applicable NonStop Software on a Designated System for the term specified on the Order (the “**Term**”). A “**Term License Charge**” or “**TLC**” will be invoiced upon shipment. Upon expiration of the Term, the license will renew on a monthly basis subject to payment by Customer of the applicable Monthly License Charge unless Customer otherwise advises HPE.

The initial Term will begin the first day of the second month following the shipment date of applicable NonStop Software. NonStop Software added to a Designated System on a term basis during an Existing Term will be coterminous with the expiration date of the Existing Term and the corresponding TLC will be pro-rated for the remainder of the Existing Term.
 - iii. Monthly License. HPE grants Customer a license to use the applicable NonStop Software on a Designated System. A “**Monthly License Charge**” or “**MLC**” will be invoiced upon

shipment of NonStop Software and monthly in advance thereafter in accordance with Appendix C, Pricing Index of DIR Contract No. DIR-TSO-3359.

b) Additional License Terms and Restrictions:

- i. Notwithstanding any contrary term in the Agreement, NonStop Software licenses are for use only on the Designated System and are non-transferable. Any NonStop Software license will terminate (i) in the event of a change in either the System number or System type, or (ii) if the Designated System ceases to be within the possession or control of Customer.
- ii. Certain NonStop Software is available under a “user-based” license that restricts use to a specified maximum number of concurrent end-user devices on the Designated System. A user-based license will be subject to an OLC, TLC or an MLC, as applicable, in accordance with the terms of Section 2.a), above. Customer may not increase the number of users unless Customer submits a request for additional users and HPE receives payment for the additional users in accordance with Appendix C, Pricing Index of DIR Contract No. DIR-TSO-3359.
- iii. NonStop Software available under a “per CPU” or “per processor” license must be licensed on each processor in the Designated System.
- iv. Customer may not use NonStop Products for purposes of supplying or offering NonStop Product Support or maintenance to any third party.

3. Warranty

Notwithstanding any terms to the contrary in DIR Contract No. DIR-TSO-3359 or this Section B.3., NonStop Products purchased from HPE will receive the warranty described in the HP Global Limited Warranty Statement for NonStop Products (“**Warranty Statement**”) posted at http://h20565.www2.hp.com/hpsc/doc/public/display?sp4ts.oid=5316423&docId=emr_na-c04796361&docLocale=en_US on the date of the Order. Customer should print a copy for its records. Customer’s use of any NonStop Product constitutes acceptance of Hewlett Packard’s warranty terms. HP may not alter Warranty terms in any way that diminishes the protection or coverage afforded as of the commencement date of DIR Contract No. DIR-TSO-3359 nor shall any terms at any time provide lesser coverage to Customer than to other customers of HPE.

4. NonStop Support Requirements.

All current NonStop Software on a System must be covered under the same HP Support offering and coverage level.

During any period of on-going Support requested by Customer, in addition to the responsibilities stated in the Agreement, Customer will:

- a) Provide peripheral cabling including fiber optics;
- b) Promptly install each fix, patch, or workaround provided by HPE to correct a NonStop Software problem; and
- c) Provide direct, dedicated System access as approved by HPE enabling HPE to perform diagnostic tests.

5. Support Charges

- a) Except as set forth in Section 5.b) below, all Support charges will begin on the date that any applicable warranty period expires or on the coverage date specified in Supporting Material (“**Support Effective Date**”).
- b) Unless specifically excluded in writing by Customer, any NonStop Product added to a System for which HPE is providing Support will automatically be covered under the applicable Support agreement then in effect for the remainder of its term. The Support charges for such additional NonStop Product will begin on the date any applicable warranty period expires or on the earlier of (i) the date of installation, or (ii) thirty (30) days from the date of delivery if no warranty applies.

6. SUPPORT LIMITATIONS

In addition to limitations stated in the Agreement, HPE's Support obligations hereunder will not apply if NonStop Product Support is required due to software and/or application code that has been compiled using anything other than an HP NonStop compiler.

7. TERM, TERMINATION AND CANCELLATION

- a) The license for any item of NonStop Software granted by HPE will be effective from the date such NonStop Software is delivered to Customer and, unless sooner terminated, will terminate in the event the Designated System for such item of NonStop Software ceases to be within the possession and control of Customer or until Customer fails to or ceases to pay applicable License Fees in accordance with Section 8.K. Payments, of Appendix A to DIR Contract No. DIR-TSO-3359. Customer may terminate the license for any item of NonStop Software, together with the obligation to pay further applicable license charges, effective no less than thirty (30) days after the last day of the month in which the notice of termination is received by HPE. In the event of a termination of any license for which a fee or charge has been paid, there will be no refund or credit to Customer.
- b) Support will continue for a minimum of twelve (12) months from the Support Effective Date (the “**Minimum Term**”), and will continue thereafter throughout the minimum term, unless terminated in accordance with Appendix A, Section 11.B. (Termination) to DIR Contract No. DIR-TSO-3359. DIR Contract No. DIR-TSO-3359 is for an initial term through July 3, 2016 and two (2) one-year renewal options which may be exercised by Vendor’s issuance of thirty (30) days advanced written notice and Customer's concurrence prior to the then-effective expiration date (each a “Renewal Term”).

8. MISCELLANEOUS

- a) Customer agrees that NonStop Software: 1) is considered by HP to be a trade secret; 2) is furnished to Customer in confidence; and 3) contains information that HP asserts to be proprietary and confidential information and, therefore, such NonStop Software is subject to the Confidentiality provisions of DIR Contract No. DIR-TSO-3359. If Customer is confronted with legal action to disclose confidential information, Customer will promptly notify HP and reasonably assist HP in obtaining a protective order.

Customer’s duty in relation to Nonstop Software and confidentiality survives termination of the Agreement.

- b) Customer Orders will be binding only with respect to (i) NonStop Products and/or Support ordered and the elected license plan; (ii) prices and/or fees related to section 8.b)(i) in accordance with Appendix C, Pricing Index of DIR Contract No. DIR-TSO-3359; and (iii) specified “ship to” and “bill to” addresses. Other terms and preprinted terms on or attached to any Order shall be void and have no effect.

END OF APPENDIX E