

**TEXAS DEPARTMENT OF INFORMATION RESOURCES
APPENDIX D TO DIR CONTRACT NUMBER DIR-TSO-4160
SOFTWARE LICENSING AND SOFTWARE AND HARDWARE SUPPORT AGREEMENT**

This) Software Licensing and Software and Hardware Support Agreement (“**Agreement**”) is Appendix D to the State of Texas Department of Information Resources (“**DIR**”) Contract Number DIR-TSO-4160 (“**CONTRACT**”) and applies to any Customer’s purchases of Software Product licenses and/or Support Services from Hewlett Packard Enterprise Company (HPE).

1. **Definitions.** Unless otherwise specifically defined herein, the capitalized terms and all terms and conditions of this Agreement shall be governed by DIR Contract Number DIR-TSO-4160.
2. **Scope and Order Placement.** These terms may be used by Customer either for a single Order or as a framework for multiple Orders. The Customer shall annotate DIR Contract Number DIR-TSO-4160 on all Orders placed with HPE or HPE Resellers/Order Fulfillers.
3. **Order Arrangements.** Customer may place orders with HPE through HPE’s website <http://www.hpe.com/buy/texasdir> customer-specific portal, or with HPE authorized Resellers/Order Fulfillers, or by letter, fax or e-mail. Customer shall annotate DIR Contract Number DIR-TSO-4160 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 Number DIR-TSO-4160. Prices will be as quoted in writing by HPE or, in the absence of a written quote, as set out in Appendix C Pricing Index of DIR Contract Number DIR-TSO-4160. If prices quoted or listed on HPE’s website are different than the prices in Appendix C Pricing Index of DIR Contract Number DIR-TSO-4160, the Appendix C Pricing Index pricing shall govern. Quotes provided by HPE are exclusive of taxes, duties, and fees (including installation,) unless otherwise quoted. If a withholding tax is required by law, please contact the HPE order representative to discuss appropriate procedures. In accordance with Appendix A, Section 8.F. of DIR Contract Number DIR-TSO-4160, charges for Services will not include travel expenses but may include charges for reasonable and written pre-approved out-of-pocket expenses.
5. **Invoices and Payment.** Customer agrees to pay or dispute all invoiced amounts in accordance with Section 8.I. of Appendix A of DIR Contract Number DIR-TSO-4160. HPE may suspend or cancel performance of open Orders or Services if Customer fails to make payments or dispute when due.
6. **Products and Support.** Section 14, Additional Terms of Appendix A, Standard Terms and Conditions of DIR Contract Number DIR-TSO-4160 shall apply.
7. **Software.**
 - a) **License Grant.** HPE grants Customer a non-exclusive license to use the version or release of the Hewlett Packard Enterprise Manufacturer 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 Hewlett Packard Enterprise Manufacturer Branded Software, the third party’s license terms will govern its use.

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- b) 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.
- c) License Restrictions. In accordance with Customer Security requirements, which Customer will provide to HPE upon request, 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.
- 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, 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.
- e) License Transfer. Customer may not sublicense, assign, transfer, rent or lease the Software or Software license except as permitted by HPE. Hewlett Packard Enterprise Manufacturer 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 and DIR Contract Number DIR-TSO-4160. Transferee must be an eligible Customer as defined in Section 3.A of Appendix A of DIR Contract Number DIR-TSO-4160. Customer may transfer firmware only upon transfer of associated Hardware.
- f) License Compliance. HPE may audit Customer compliance with the Software license terms limited to the prior period not to exceed one (1) year or 365 calendar days. 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 dispute or pay to HPE such underpayments.
- g) Software Performance. HPE warrants that its Manufacturer 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

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Software Products will operate in Hardware and Software combinations other than as authorized by HPE in Supporting Material.

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.

End of Appendix D

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EXHIBIT A – 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 Hewlett Packard Enterprise Software.

1. SERVICE ELIGIBILITY

- a) Hardware Support-General Eligibility. Hardware Products must be in good operating condition, as reasonably determined by HPE, to be eligible for placement under Support. Customer must also maintain eligible Products at the latest HPE-specified configuration and revision levels.
- b) Return to Support. If Customer allows Support to lapse, HPE may charge Customer additional fees in accordance with Appendix C Pricing Index to DIR Contract Number DIR-TSO-4160 to resume Support or require you to perform certain Hardware or Software upgrades.
- c) 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 Customers’ 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 Customer systems or sites. Customer may only use the Proprietary Service Tools during the applicable Support coverage period and only as allowed by HPE and Customer may not sell, transfer, assign, pledge, or in any way encumber or convey the Proprietary Service Tools. Upon termination of Support, Customer will return the Proprietary Service Tools or allow HPE to remove these Proprietary Service Tools. Customer may also be required to:
 - (i) Allow HPE to keep the Proprietary Service Tools resident on Customer systems or sites, and assist HPE 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 HPE of events identified by the Software;
 - (iv) If required, purchase Hewlett Packard Enterprise-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 HPE upon request.

2. SUPPORT LIMITATIONS

- a) Local Availability of Support. Some offerings, features, and coverage (and related Products) may not be available in all 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. All additional charges must be pre-approved in writing by the Customer.
- b) 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 Hewlett Packard Enterprise Manufacturer Branded Software, and provided that Hewlett Packard Enterprise Manufacturer Branded Software is used with Hardware or Software included in Hewlett Packard Enterprise-specified configurations at the

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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 Customer 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.
- d) Multi-vendor Support. HPE may provide Support for certain non-Hewlett Packard Enterprise Manufacturer Branded Products only if these products are provided by HPE or otherwise directly and essentially related to a project or procurement for Customer under the terms of DIR Contract Number DIR-TSO-4160. The relevant data sheet will specify availability and coverage levels and the Support will be provided accordingly, whether or not the non-Hewlett Packard Enterprise Manufacturer Branded Products are under warranty. HPE may discontinue Support of non-Hewlett Packard Enterprise Manufacturer Branded Products if the manufacturer or licensor ceases to provide Support for them.
- e) Modifications. Customer 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

- a) Site and Product Access. Customer 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 necessary to service the Products and other access requirements described in the relevant data sheet. If Customer fails to provide such access, resulting in HPE's inability to provide Support, HPE shall be entitled to charge Customer for the Support in accordance with Appendix C, Pricing Index of DIR Contract Number DIR-TSO-4160. Customer is 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 may charge Customer for the extra work in accordance with Appendix C, Pricing Index of DIR Contract Number DIR-TSO-4160 upon written Customer approval.
- b) Licenses. Customer may purchase available Product Support for Hewlett Packard Enterprise Manufacturer Branded Products only if Customer can provide evidence that they have rightfully acquired an appropriate Hewlett Packard Enterprise license for the Products, and Customer may not alter or modify the Products unless authorized by HPE at any time.
- c) Software Support Documentation and Right to Copy. Customer may only copy documentation updates if Customer purchased the right to copy them for the associated Products. Copies must include appropriate Hewlett Packard Enterprise trademark and copyright notices.
- d) Loaner Units. HPE maintains title and Customer 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.
- e) Hardware Support. Compatible Cables and Connectors. Customer 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.

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- f) Data Backup. To reconstruct Customer lost or altered files, data, or programs, during installation, Customer must establish and maintain a separate backup system or procedure that is not dependent on the Products under Support.
- g) Temporary Workarounds. Customer will implement temporary procedures or workarounds provided by HPE while HPE works on a permanent solution.
- h) Hazardous Environment. Customer will notify HPE if Customer uses Products in an environment that poses a potential health or safety hazard to HPE employees or subcontractors. HPE may postpone service until Customer remedies such hazards.
- i) Authorized Representative. Customer will have a representative present when HPE provides Support at their site.
- j) Product List. Customer will create, maintain and update a list of all Products under Support including: the location of the Products, serial numbers, the Hewlett Packard Enterprise-designated system identifiers, and coverage levels.
- k) Solution Center Designated Callers. Customer 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.
- 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. HPE may review and discuss with Customer 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, Customer may be required to replace that Designated Caller. All Designated Callers must have the proper system identifier as provided to Customer when Support is initiated. Solution Centers must provide Support in English.

4. GENERAL PROVISIONS

- a) Cancellation. Customer 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 Customer cancels prepaid Support, HPE will refund Customer 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 Number DIR-TSO-4160.
- c) Additional Services. Additional Services performed by HPE at Customer request, and that are not included in your purchased Support, will be in accordance with Appendix C Pricing Index of DIR Contract Number DIR-TSO-4160. If the Additional Services are not listed in detail in Appendix C Pricing Index of DIR Contract Number DIR-TSO-4160, they may not be provided to an Order placed under DIR Contract Number DIR-TSO-4160.

Replacement Parts. Parts provided under an HPE Hardware Support Agreement may be whole unit replacements, or be new or functionally equivalent to new in performance and reliability and warranted as new. Replaced parts or replaced units become the property of HPE when the Customer has the HPE

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hardware under a current HPE Support Agreement and HPE provides the replaced parts or units at no additional cost to the Customer, unless the parties mutually agree otherwise.

End of Exhibit A to Appendix D