



## APPENDIX H

### CUSTOMER AGREEMENT FOR VENDOR SOFTWARE

This Customer Agreement for Software (“Software Agreement”) is offered as an Appendix and under the State of Texas Department of Information Resources (DIR) Contract DIR-SDD-223 and DIR-SDD-223 OOS (“CONTRACT”) the customer named below (“Customer”) and applies to Customer’s purchases of Software licenses and Support from HP.

This Agreement consists of the following:

1. this CONTRACT;
2. one or more of the sections listed below that correspond to Customer’s purchases:
  - a. HP Software License Terms
  - b. HP Support Terms; and
3. related Transaction Documents.



## A. HP BASE TERMS

### 1. DEFINITIONS

- a. *Affiliate* of a party means an entity controlling, controlled by, or under common control with, that party.
- b. *Deliverable* means the tangible work product resulting from the performance of Support excluding Products and Custom Products.
- c. *Hardware* means computer and related devices and equipment, related documentation, accessories, parts, and upgrades.
- d. *HP Branded* means Products and Supports bearing a trademark or service mark of Hewlett-Packard Company or any Hewlett-Packard Company Affiliate, and embedded HP selected third party Software that is not offered under a third party license agreement.
- e. *HP Business Partner* means select companies authorized by HP to promote, market, support, and deliver certain Products and Support.
- f. *Product* means Hardware and Software listed in HP's standard price list at the time of HP's acceptance of Customer order, and including products that are modified, altered, or customized to meet Customer requirements "Custom Products".
- g. *Software* means machine-readable instructions and data (and copies thereof) including middleware and firmware and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures.
- h. *Specification* means technical information about Products published in HP Product manuals, user documentation, and technical data sheets in effect on the date HP delivers Products to Customer.
- i. *Statement of Work* means an executed document so titled, that describes the Custom Support to be performed by HP under the Support Terms section.
- j. *Support* means Hardware maintenance and repair, Software maintenance, training, installation and configuration, and other standard support services provided by HP and includes "Custom Support" which is any agreed non-standard Support as described in a Statement of Work.
- k. *Transaction Document(s)* means an accepted Customer order (excluding pre-printed terms) and in relation to that order valid HP quotations, license terms delivered or otherwise made available to Customer with Software, HP published technical data sheets or service descriptions, HP limited warranty statements delivered with or otherwise made available to Customer with Products, and mutually executed Statement of Work, all as provided by HP, or other mutually executed documents that reference this Agreement.
- l. *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 by HP to its customers (also called a "Release").

2. Reserved

3. Reserved



#### 4. CUSTOMER ORDERS

- a. Orders. Orders must reference the Contract Number and are subject to acceptance by HP. Orders must specify a “ship to” address and have a delivery date within ninety (90) days from the order date.
- b. Extended Delivery Dates. Changes to orders that extend delivery dates beyond ninety (90) days from the order date shall be considered new orders at the prices in effect when HP receives the changed order.

#### 5. DELIVERY

- a. Delivery. HP will deliver Products by arranging shipping to the receiving area at the “ship to” address specified in Customer's order. HP may, with prior written Customer approval, deliver Software, Deliverables, Specifications, or Product documentation by enabling electronic transmission to, or electronic access or download by Customer.
- b. Delivery Requirements. If HP is unable to meet Customer's Product delivery requirements, Customer may cancel that order, and such cancellation is Customer's sole remedy.

#### 6. Security Interest.

For Customers outside of Texas, HP retains a security interest in Products until payment. If requested by HP, Customer agrees to reasonably assist HP to properly document such security interest.

#### 7. WARRANTY PROVISIONS

- a. Warranty Statements. HP limited warranty statements for Software and Support are contained in their respective sections of this Appendix F, Software License Agreement, or within the Contract. The limited warranties as collectively stated within the Contract and this Agreement are subject to the terms, limitations, and exclusions contained in the limited warranty statement provided for the Product in the country where that Product is located when the warranty claim is made. A different limited warranty statement may apply and be quoted if the Product is purchased as part of a system.
- b. Transfer. Warranties are transferable to another party for the remainder of the warranty period subject to HP license transfer policies and any assignment restrictions.
- c. Delivery Date. Warranties begin on the date of delivery, or on the date of installation if installed by HP. If Customer schedules or delays such installation by HP more than thirty (30) calendar days after delivery, Customer's warranty period will begin on the 31st calendar day after delivery.
- d. Exclusions. HP is not obligated to provide warranty services or Support for any claims resulting from:
  1. improper site preparation, or site or environmental conditions that do not conform to HP's site specifications;
  2. Customer's non-compliance with Specifications or Transaction Documents;
  3. improper or inadequate maintenance or calibration;
  4. Customer or third-party media, software, interfacing, supplies, or other products;
  5. modifications not performed or authorized by HP;



6. virus, infection, worm or similar malicious code not introduced by HP; or
7. abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HP's control.

f. Disclaimer. THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THIS SOFTWARE AGREEMENT ARE EXCLUSIVE. NO OTHER WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY HP DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

8. Reserved.

#### 9. INTELLECTUAL PROPERTY RIGHTS

No rights in copyright, patents, trademarks, trade secrets, or other intellectual property are granted by either party to the other except as expressly provided under the Contract. Customer will not register or use any mark or internet domain name that contains HP's trademarks (e.g., "HP", "hp", or "Hewlett-Packard").

#### 10. RESTRICTED USE

Products, Support, and Deliverables are not specifically designed, manufactured, or intended for use as parts, components, or assemblies for the planning, construction, maintenance, or direct operation of a nuclear facility. Customer is solely liable if Products, Support, or Deliverables purchased by Customer are used for these applications and will indemnify and hold HP harmless from all loss, damage, expense, or liability in connection with such use.

11. Reserved.

12. Reserved.

13. Reserved.

#### 14. GENERAL

a. Electronic Orders and EDI. Where facilitated under local law, the parties may do business electronically, including order placement and acceptance. Once accepted, such orders will create fully enforceable obligations subject to the terms of the Contract. Such orders and acceptances will be deemed for all purposes to be an original signed writing. Customer and HP will adopt commercially reasonable security measures for password and access protection if necessary to facilitate business.

b. Internal Use. Products and Support acquired by Customer under the Contract are solely for Customer's own internal use and not for resale or sub-licensing.

c. Reserved.

d. Assignment. Assignments of HP Software licenses are subject to compliance with HP's Software license transfer policies.

e. Export and Import. Customer who exports, re-exports, or imports Products, technology, or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. HP may suspend performance if Customer is in



violation of any applicable laws or regulations.

## B. HP SOFTWARE LICENSE TERMS

### 1. LICENSE GRANT

HP grants Customer a non-exclusive, non-transferable license to “Use”, in object code form, the Version or Release of the HP Branded Software delivered from an HP accepted order. For purposes of this Agreement, unless otherwise specified in the Transaction Documents, “Use” means to install, store, load, execute, and display one copy of the Software on one device at a time for Customer’s internal business purposes. Customer’s Use of such Software is subject to these license terms and the Use restrictions and authorizations for the Software specified by HP in Transaction Documents that accompany or are otherwise made available to Customer with the Software (the “Software License”). In the event of any conflict among such terms, the order of precedence will be the accompanying Transaction Documents, if any, then the terms of this section.

### 2. THIRD-PARTY SOFTWARE

For non-HP Branded Software, the third party supplier’s license terms and use restrictions found in the Transaction Documents that may accompany that Software will solely govern its Use.

### 3. OWNERSHIP

This Software License confers no title or ownership and is not a sale of any rights in the Software. Third-party suppliers are intended beneficiaries under this Agreement and independently may protect their rights in the Software in the event of any infringement. All rights not expressly granted to Customer are reserved solely to HP or its suppliers.

### 4. ACCEPTANCE

Customer accepts Software upon delivery.

### 5. UPGRADES

Software Versions or maintenance updates, if available, may be ordered separately or may be available through Software Support. HP reserves the right to require additional licenses and fees for Software Versions or separately purchased maintenance updates or for Use of the Software in conjunction with upgraded Hardware or Software. When Customer obtains a license for a new Software Version, Customer’s Software License for the earlier Version shall terminate. Software Versions are subject to the license terms in effect on the date that HP delivers or makes the Version available to Customer.

### 6. LICENSE RESTRICTIONS

- a. Use Restrictions. Customer may not exceed the number of licenses, agents, tiers, nodes, seats, or other Use restrictions or authorizations agreed to and paid for by Customer. Some Software may require license keys or contain other technical protection measures. Customer acknowledges that HP may monitor Customer’s compliance with Use restrictions and authorizations remotely, or otherwise. If HP makes a license management program available which records and reports license usage information, Customer agrees to appropriately install, configure and execute such license management program beginning no later than one hundred and eighty (180) calendar days from the date it is made available to Customer and continuing for the period that the software is used.



- b. Copy and Adaptation. Unless otherwise permitted by HP, Customer may only make copies or adaptations of the Software for archival purposes or when copying or adaptation is an essential step in the authorized Use of the Software. If Customer makes a copy for backup purposes and installs such copy on a backup device, unless otherwise provided in the Transaction Documents, Customer may not operate such backup installation of the Software without paying an additional license fee, except in cases where the original device becomes inoperable. If a copy is activated on a backup device in response to failure of the original device, the Use on the backup device must be discontinued when the original or replacement device becomes operable. Customer may not copy the Software onto or otherwise Use or make it available on, to, or through any public or external distributed network. Licenses that allow Use over Customer's intranet require restricted access by authorized users only.
- c. Copyright Notice. Customer must reproduce all copyright notices that appear in or on the Software (including documentation) on all permitted copies or adaptations. Copies of documentation are limited to internal use.
- d. Designated System. Notwithstanding anything to the contrary herein, the Software License for certain Software, as identified in Transaction Documents, is non-transferable and for use only on a computer system owned, controlled, or operated by or solely on behalf of Customer and may be further identified by HP by the combination of a unique number and a specific system type ("Designated System") and such license will terminate in the event of a change in either the system number or system type, an unauthorized relocation, or if the Designated System ceases to be within the possession or control of Customer.
- e. OS Software. Operating system Software may only be used when operating the associated Hardware in configurations as approved, sold, or subsequently upgraded by HP or an HP Business Partner.
- f. Changes. Customer will not modify, reverse engineer, disassemble, decrypt, decompile, or make derivative works of the Software. Where Customer has other rights mandated under statute, Customer will provide HP with reasonably detailed information regarding any intended modifications, reverse engineering, disassembly, decryption, or decompilation and the purposes therefore.
- g. Use for Service Provision. Extending the Use of Software to any person or entity other than Customer as a function of providing services, (i.e.; making the Software available through a commercial timesharing or service bureau) must be authorized in writing by HP prior to such use and may require additional licenses and fees.

## 7. LICENSE TERM AND TERMINATION

Unless otherwise specified in a Transaction Document, the Software License granted Customer will be perpetual, provided however that HP may terminate the Software License upon notice for failure to comply with this Agreement. Immediately upon termination of the Software License or upon expiration of any individual limited term license, Customer will destroy the Software and all copies of the Software subject to the termination or expiration or return them to HP. Customer shall remove and destroy or return to HP any copies of the Software that are merged into adaptations, except for individual pieces of data in Customer's database. Customer may retain one copy of the Software subsequent to termination solely for archival purposes only. At HP's request, Customer will certify in writing to HP that Customer has complied with these requirements.

## 8. LICENSE TRANSFER



Customer may not sublicense, assign, transfer, rent, or lease the Software or the Software License to any other party except as permitted in this section. Except as provided in sub-section B.6.d above, HP Branded Software licenses are transferable subject to HP's prior written authorization and payment to HP of any applicable fees or compliance with applicable third party terms. Upon transfer of the Software License, Customer's rights under the License will terminate and Customer will immediately deliver the Software and all copies to the transferee. The transferee must agree in writing to the terms of the Software License, and, upon such agreement, the transferee will be considered the "Customer" for purposes of the license terms. Customer may transfer firmware only upon transfer of the associated Hardware.

9. Reserved.

#### 10. COMPLIANCE

Customer agrees that HP may audit Customer's compliance with the Software License terms. Any such audit would be at HP's expense, require reasonable written notice, and would be performed during normal business hours. If an audit reveals underpayments then Customer will immediately pay HP such underpayments together with the costs reasonably incurred by HP in connection with the audit and seeking compliance with this sub-section.

#### 11. WARRANTY

HP Branded Software will materially conform to its Specifications. If a warranty period is not specified for HP Branded Software, the warranty period will be ninety (90) calendar days from the delivery date.

#### 12. VIRUS WARRANTY

HP warrants that any physical media containing HP Branded Software will be shipped free of viruses.

#### 13. WARRANTY LIMITATION

HP 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 expressly required by HP in the Product Specifications or that Software will meet requirements specified by Customer.

#### 14. EXCLUSIVE REMEDIES

If notified of a valid warranty claim during the warranty period, HP will, at its option, correct the warranty defect for HP Branded Software, or replace such Software. If HP is unable, within a reasonable time, to complete the correction, or replace such Software, Customer will be entitled to a full refund of the purchase price paid. HP will pay expenses for return of such Software to HP. HP will pay expenses for shipment of repaired or replacement Software to Customer. This sub-section B.14 states HP's entire liability for warranty claims.

#### 15. IMPLIED LICENSE

There are no implied licenses.

#### 16. FREWARE AND OPEN SOURCE

Notwithstanding other statements in this Agreement, Software licensed without fee or charge also referred to as Freeware and/or Open Source is provided "AS IS" without any warranties or indemnities of any kind. Software provided under any open source licensing model is governed solely by such open source licensing terms which will prevail over this Agreement.



## C. HP SUPPORT TERMS

### 1. SUPPORT SERVICES

- a. Description of Support. HP will deliver Support according to the description of the offering, eligibility requirements, service limitations, and Customer responsibilities described in the relevant Transaction Documents.
- b. Ordering Support. Customer may order Support:
  1. at the time of Product purchase, or prior to installation of Products for which Support is being purchased, for a fixed term (may be referred to as “HP Care Pack”);
  2. after the time of Product purchase, for either a fixed term or an initial term that may be renewed (may be referred to as “HP Contractual Services”);
  3. on a per-event basis; or
  4. at any time, when agreed non-standard Support has been offered by HP for the Customer according to a Statement of Work (also known as “Custom Support”) or as otherwise offered by HP.
- c. Cancellation. Customer may cancel Support orders or delete Products from Support upon thirty (30) days written notice, unless otherwise stated in a Transaction Document. 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. If Customer cancels prepaid Support, HP will refund Customer a pro-rata amount for the unused prepaid Support.
- d. Return to Support. If Customer allows Support to lapse, HP may charge Customer additional fees to resume Support or require Customer to perform certain hardware or software upgrades. HP will review and assess whether such fees are required, and explain these to Customer at the time of the request to return to Support.
- e. Local Availability. Customer may order Support from HP's current Support offerings, as stated within Appendix C, Pricing and Product Index. Some offerings, features, and coverage (and related Products) may not be available in all countries or areas.
- f. Support Warranty. HP warrants that it will perform Support using generally recognized commercial practices and standards.
- g. Exclusive Remedies. HP will re-perform Support not performed in accordance with the warranty herein. This sub-section C.1.g states HP's entire liability for Support warranty claims.

### 2. PRICING, SERVICE, AVAILABILITY, AND INVOICING

- a. Additional Service. Additional service performed by HP at Customer's request that are not included in Customer's purchased service will be chargeable at the applicable published service rates for the country where the service is performed. Such additional services include but are not limited to:
  1. Customer requests for Support after HP's local standard business hours (unless Customer has specifically purchased after-hours coverage for the requested Support);
  2. Customer requests for repair for damage or failure attributable to the causes specified in sub-section A.7.d of the HP Base Terms (“Warranty Exclusions”); and



3. Customer requests for Support where Customer does not, in HP's reasonable determination, meet the applicable prerequisites and eligibility requirements for Support.

- b. Local Availability. 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 travel related expenses shall comply with Section 4.G, Travel Expense Reimbursement, of the Contract.
- c. Invoicing. Invoices for Support will be issued in advance of the Support period. HP Support invoices and related documentation will be produced in accordance with HP system standards.

### 3. SITE AND PRODUCT ACCESS

Customer shall provide HP access to the Products covered under Support; 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 Transaction Document. If Customer fails to provide such access, resulting in HP's inability to provide Support, HP shall be entitled to charge Customer for the Support call at HP's published service rates. Customer is responsible for removing any Products ineligible for Support to allow HP to perform Support. If delivery of Support is made more difficult because of ineligible Products, HP will charge Customer for the extra work at HP's published service rates. HP shall use its commercially reasonable best efforts in complying with Appendix A, Sections H and I, as they relate to this Section of the Agreement.

### 4. STANDARD SUPPORT PRODUCT ELIGIBILITY

- a. Minimum Configuration for Support. Customer must purchase the same level of Support and for the same coverage period for: all Products within a minimum supportable system unit (i.e. all components within a server, storage, or network device) to allow for proper execution of standalone and operating system diagnostics for the configuration.
- b. Eligibility. For initial and on-going Support eligibility Customer must maintain all Products and associated hardware and software at the latest HP-specified configuration and revision levels and in HP's reasonable opinion, in good operating condition.
- c. Modifications. Customer will allow HP, at HP's request and at no additional charge to the Customer, to modify Products to improve operation, supportability, and reliability, or to meet legal requirements.
- d. Reserved.
- e. Relocation. Customer is responsible for moving Products. If Customer moves the Products to a new location, HP may charge additional Support fees and modify the response times, and Customer may be required to execute amended or new Transaction Documents. Reasonable advanced notice to HP may be required to begin Support for some Products after relocation.
- f. Maximum Use Limitations. Certain Products have a maximum usage limit, which is set forth in the manufacturer's operating manual or the technical data sheet. Customer must operate such Products within the maximum usage limit.



## 5. PROPRIETARY SUPPORT TOOLS

HP will require Customer's use of certain system and network diagnostic and maintenance programs ("Proprietary Service Tools") for delivery of Support under certain coverage levels. Proprietary Service Tools are and remain the sole and exclusive property of HP, are provided "as is," and include, but are not limited to: remote fault management software, network Support tools, Insight Manager, Instant Support, and Instant Support Enterprise Edition (known as "ISEE"). Proprietary Service Tools may reside on the Customer's systems or sites. Customer may only use the Proprietary Service Tools during the applicable Support coverage period and only as allowed by HP. 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 HP to remove these Proprietary Service Tools. Customer will also be required to:

- a. allow HP to keep the Proprietary Service Tools resident on Customer's systems or sites, and assist HP in running them;
- b. install Proprietary Service Tools, including installation of any required updates and patches;
- c. use the electronic data transfer capability to inform HP of events identified by the software;
- d. if required, purchase HP-specified remote connection hardware for systems with remote diagnosis service; and
- e. provide remote connectivity through an HP approved communications line.

## 6. CUSTOMER RESPONSIBILITIES

- a. Data Backup. To reconstruct lost or altered Customer files, data, or programs, Customer must maintain a separate backup system or procedure that is not dependent on the Products under Support.
- b. Temporary Workarounds. Customer will implement temporary procedures or workarounds provided by HP while HP works on permanent solutions.
- c. Hazardous Environment. Customer will notify HP if Customer uses Products in an environment that poses a potential health or safety hazard to HP employees or subcontractors. HP may require Customer to maintain such Products under HP supervision and may postpone service until Customer remedies such hazards.
- d. Authorized Representative. Customer will have a representative present when HP provides Support at Customer's site.
- e. Product List. Customer will create and maintain a list of all Products under Support including: the location of the Products, serial numbers, the HP-designated system identifiers, and coverage levels. Customer shall keep the list updated during the applicable Support period.
- f. Documentation. If Customer purchases a Support offering that includes documentation updates, Customer may copy such updates only for systems under such coverage. Copies must include appropriate HP Trademark and copyright notices.

## 7. SUPPORTED SOFTWARE

Customer may purchase available Support for HP Branded Software only if Customer can provide evidence it has rightfully acquired an appropriate HP license for such Software. HP will be under no obligation to provide Support due to any alterations or modifications to the Software not authorized by



HP or for Software for which Customer cannot provide a sufficient proof of a valid license. Unless otherwise agreed by HP, HP only provides Support for the current Version and the immediately preceding Version of HP Branded Software, and then only when HP Branded Software is used with Hardware or Software included in HP-specified configurations at the specified Version level.

#### 8. ACCESSORIES AND PARTS AND MISCELLANEOUS

- a. Compatible Cables and Connectors. Customer will connect Products covered under Support with cables or connectors (including fiber optics if applicable) that are compatible with the system, according to the manufacturer's operating manual.
- b. Reserved.
- c. Consumables. Support does not include the delivery, return, replacement, or installation of supplies or other consumable items (including, but not limited to, operating supplies, magnetic media, print heads, ribbons, toner, and batteries) unless otherwise stated in a Transaction Document.
- d. Replacement Parts. Parts provided under 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 HP agrees otherwise and Customer pays any applicable charges.
- e. Service Providers. HP reserves the right and Customer agrees to HP's use of HP-authorized service providers to assist in the provision of Support.

#### 9. ACCESS TO HP SOLUTION CENTER AND IT RESOURCE CENTER

- a. Designated Callers. Customer 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").
- b. 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. All Designated Callers must have the proper system identifier as provided in the Transaction Documents or by HP when Support is initiated. HP Solution Centers may provide support in English or local language(s), or both.
- c. HP IT Resource Center. HP IT Resource Center is available via the worldwide web for certain types of Support. Customer may access specified areas of the HP IT Resource Center. File Transfer Protocol access is required for some electronic services. Customer employees who submit HP Solution Center service requests via the HP IT Resource Center must meet the qualifications set forth in sub-section C.9.b above.
- d. Telecommunication Charges. Customer will pay for all telecommunication charges associated with using HP IT Resource Center, installing and maintaining ISDN links and Internet connections (or HP-approved alternatives) to the HP Solution Center, or using the Proprietary Service Tools.