



HPE CUSTOMER PASS THROUGH TERMS

HPE's obligations with respect to products or services supplied by HPE and procured by an end-user customer (hereinafter "Customer") from authorized HPE Business Partners are limited to the terms and conditions in these HPE CUSTOMER PASS THROUGH TERMS ("Terms") and the specific Supporting Material included with the HPE supplied products and services. HPE is not responsible for the acts or omissions of HPE Business Partners, for any obligations undertaken by them or representations that they may make, or for any other products or services that they supply to Customer.

- 1. Orders.** "Order" means the accepted order issued by Customer under the GSA Schedule Contract, including any HPE-branded supporting material which is identified as incorporated either by attachment or reference ("**Supporting Material**"). Supporting Material may include (as examples) product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements and statements of work (SOWs), HPE Care Pack Support Service Agreement, published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated HPE website, provided that in the event of inconsistency between the terms of any Supporting Material and the terms of the GSA Schedule Contract (including HPE's GSA Addendum), the latter shall control to the extent of the inconsistency.
- 2. Title.** When HPE delivers to Customer directly, risk of loss or damage and title for hardware products will pass upon delivery to Customer or its designee. Where permitted by law, HPE retains a security interest in products sold until full payment is received.
- 3. Installation.** If HPE is providing installation with the product purchase, HPE's site guidelines (available upon request) will describe Customer requirements. HPE will conduct its standard installation and test procedures to confirm completion.
- 4. 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.
- 5. Software-as-a-Service.** HPE's online software-as-a-service solution that HPE provides to Customer, including support, and related professional services will be described in the Supporting Material ("**SaaS**"). The SaaS term is specified in the Supporting Material or HPE quotation (the "**SaaS Term**"). If Customer previously purchased a perpetual license to the on-premise version of the HPE branded software product ("**HPE Software**"), the price of SaaS shall reflect such purchase and such pre-existing license shall be deemed to be used in relation to SaaS. During the SaaS Term, Customer may not use such HPE Software installed on Customer infrastructure except in connection with receipt of SaaS.
- 6. SaaS 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.
- 7. Professional Services.** - Reserved
- 8. Professional Services Acceptance-** Reserved.
- 9. 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



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5. abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HPE's control.
10. **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.
11. **Change Orders.** Reserved
12. **Product Performance.** All HPE-branded hardware products are covered by HPE's limited warranty statements that are provided with the products or otherwise made available. Hardware warranties begin on the date of delivery or if applicable, upon completion of HPE installation, or (where Customer delays HPE installation) at the latest 30 days from the date of delivery. Non-HPE branded products receive warranty coverage as provided by the relevant third party supplier.
13. **Software Performance.** HPE warrants that its 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 software products will operate in hardware and software combinations other than as authorized by HPE in Supporting Material.
14. **Services Performance.** Services are performed using generally recognized commercial practices and standards.
15. **SaaS Performance.** SaaS is provided consistent with generally recognized practices and standards for software-as-a-service. HPE does not warrant that SaaS will be uninterrupted or error free.
16. **Services with Deliverables.** If Supporting Material for services defines specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HPE of such non-conformity during the 30 day period, HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HPE.
17. **SaaS Performance.** SaaS is provided consistent with generally recognized practices and standards for software-as-a-service. HPE does not warrant that SaaS will be uninterrupted or error free.
18. **Services with Deliverables.** If Supporting Material for services defines specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HPE of such non-conformity during the 30 day period, HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HPE.
19. **Product Warranty Claims.** When we receive a valid warranty claim for an HPE hardware or software product, HPE will either repair the relevant defect or replace the product. If HPE is unable to complete the repair or replace the product within a reasonable time, Customer will be entitled to a full refund upon the prompt return of the product to HPE (if hardware) or upon written confirmation by Customer that the relevant software product has been destroyed or permanently disabled. HPE will pay for shipment of repaired or replaced products to Customer and Customer will be responsible for return shipment of the product to HPE.
20. **Remedies.** This Agreement states all remedies for warranty claims. To the extent permitted by law, HPE disclaims all other warranties.
21. **Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under these Terms. 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 support services. If deliverables are created by HPE specifically for Customer and identified as such in Supporting Material, HPE hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverable internally.
22. **Intellectual Property Rights Infringement.** For Federal government customers, the Government will control litigation or settlement of any patent infringement claims arising out of the performance of this contract and brought against the government notwithstanding anything to the contrary in a "Patent Indemnity" provision of this contract or other related



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transaction document. HPE reserves the right to intervene in the proceedings at its own expense through counsel of its choice.

23. **License Grant.** HPE grants Customer a non-exclusive license to use the version or release of the HPE-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.
24. **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.
25. **License Restrictions.** 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 these Terms unless permitted by statute, in which case Customer will provide HPE with reasonably detailed information about those activities.
26. **License Term and Termination.** Unless otherwise specified, any license granted is perpetual 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.
27. **License Transfer.** Customer may not sublicense, assign, transfer, rent or lease the software or software license except as permitted by HPE. HPE-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. Customer may transfer firmware only upon transfer of associated hardware.
28. **License Compliance.** HPE may audit Customer compliance with the software license terms. 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 pay to HPE such underpayments. If underpayments discovered exceed five (5) percent of the contract price, Customer will reimburse HPE for the auditor costs.
29. **Confidentiality.** Information exchanged under these Terms 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 these Terms, 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.
30. **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. **For SaaS purposes, Customer** acknowledges that HPE may route, process or store, and could access business contact information and the data that Customer enters into HPE's SaaS infrastructure, from countries other than the country from which Customer entered such data.



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- 31. **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.

- 32. **Global Trade Compliance.** Products and services provided under these Terms are for Customer's internal use and not for further commercialization. If Customer exports, imports or otherwise transfers products and/or deliverables provided under these Terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. HPE may suspend its performance under these Terms to the extent required by laws applicable to either party.

- 33. **Limitation of Liability.** Reserved

- 34. **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.

- 35. **General.** These Terms represent our entire understanding with respect to its subject matter and supersede any previous communication or agreements that may exist. Modifications to these Terms will be made only through a written amendment signed by HPE and Customer.

Aruba Networks, Inc. End-User Software License Agreement (“Agreement”)

IMPORTANT

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS BEFORE INSTALLATION OR USE OF ANY SOFTWARE PROGRAMS FROM ARUBA NETWORKS, INC. AND ITS AFFILIATES OR AIRWAVE WIRELESS (COLLECTIVELY, “ARUBA”). INSTALLATION OR USE OF SUCH SOFTWARE PROGRAMS SHALL BE DEEMED TO CONFIRM YOUR ACCEPTANCE OF THESE TERMS. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS. YOUR RIGHTS UNDER THIS AGREEMENT BEGIN WHEN YOU RECEIVE YOUR LICENSE KEY FROM ARUBA, AND NOT ON THE DATE THAT YOU INSTALL THE SOFTWARE. IT IS UP TO YOU TO INSTALL THE SOFTWARE PROMPTLY UPON RECEIPT OF A LICENSE KEY FROM ARUBA. **IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST PROMPTLY RETURN ALL SUCH SOFTWARE AND HARDWARE PRODUCTS TO ARUBA (OR IF YOU PURCHASED SUCH PRODUCTS FROM A RESELLER, THE RESELLER FROM WHICH YOU PURCHASED SUCH PRODUCTS) AND ANY FEES YOU HAVE PAID FOR SUCH PRODUCTS WILL BE REFUNDED.**

1. LICENSE

Subject to your full compliance with all the terms and restrictions set forth in this agreement (“Agreement”), Aruba grants you a non-exclusive, non-transferable (except as expressly permitted below), non-sublicensable license to use the Aruba software programs (“Programs”). Any third party software programs obtained through the use of the Programs are exclusively subject to the terms and conditions accompanying those third party programs (“Third Party Programs”).

The Programs may use certificates, provisioning profiles, keys, and other such authorization and management controls that you provide as part of your use of the Programs (“Controls”). Aruba disclaims any responsibility whatsoever for your usage of such Controls as part of the Program(s) and you agree not to hold Aruba responsible for such usage of such Controls.

2. PROPRIETARY RIGHTS

Aruba and its suppliers shall at all times retain title, all ownership rights, and all intellectual property rights in and to the Programs, including any and all rights to error corrections, enhancements, new releases, and other work product that may be created in connection with technical support services that Aruba provides (collectively, “Support Enhancements”). Support Enhancements will be considered Programs for purposes of this Agreement, subject to all of the rights, obligations and restrictions set forth herein. The Programs in source code form remain a confidential trade secret of Aruba and/or its suppliers. The Programs are protected by the copyright and other intellectual property laws of the United States and international treaties. You acknowledge that, in the course of using the Programs, you may obtain or learn information relating to the Programs, which may include, without limitation, information relating to the performance, reliability or stability of the Programs, operation of the Programs, know-how, techniques, processes, ideas, algorithms, and software design and architecture (“Proprietary Information”). As between the parties, such Proprietary Information shall belong solely to Aruba. During and after the term of this Agreement, you shall hold in confidence and protect, and shall not use

(except as expressly authorized by this Agreement) or disclose, Proprietary Information to any third party.

3. RESTRICTIONS ON USE AND TRANSFER

A. Programs from Aruba may be used solely for the internal use and operation of an Aruba network by you or your organization. All Programs may only be run directly on Aruba's hardware products or an Aruba-provided virtual machine, except that Programs specifically designed by Aruba to operate on third party hardware platforms may be run on such third party hardware platforms. All Programs may be copied solely for installation and back-up purposes in support of your licensed use. You may not modify the Programs in any manner without the prior written approval of Aruba. You may not perform interoperability testing on the Programs without the prior written approval of Aruba. You may physically transfer the base operating system Programs and this Agreement to another party only if (i) all related hardware products are transferred along with the Programs, (ii) the other party accepts the terms and restrictions of this Agreement, (iii) all copies of Programs and related documentation that are not transferred to the other party are destroyed or returned to Aruba, and (iv) you comply with all applicable laws including any import/export control regulations. Separately licensed Programs which have been loaded onto the hardware to add features or enable functions may not be transferred.

B. You shall not (and you shall not permit others to), directly or indirectly, modify, translate, decompile, disassemble, or reverse engineer the Programs (except to the extent applicable laws specifically prohibit such restriction) or any copy, in whole or in part, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Programs; copy (except for the purposes set forth above), rent, lease, distribute, or otherwise transfer rights to the Programs; or remove any proprietary notices or labels on the Programs.

C. You shall not disclose any Proprietary Information, including any information relating to the performance or operation of the Programs (including any benchmarking or other testing results) to any third party without the express prior written consent of Aruba. You may not engage a third party to perform security testing on the Programs unless that third party enters into a written non-disclosure agreement directly with Aruba.

D. You understand and agree that some of the Programs are designed to automatically communicate certain network parameters and other information about the Programs and their performance back to Aruba. Aruba uses this information (a) to monitor the performance of the Programs; (b) to alert You in the event that upgrades or updates are available; and (c) as necessary to comply with Aruba's legal obligations and to protect Aruba's legal rights. Aruba will not use any information gathered in this manner for any other purpose.

4. LIMITED WARRANTY AND DISCLAIMER

Aruba warrants to you (and only you) that any media on which the Programs are recorded will be free from defects in materials and workmanship under normal use for a period of

ninety (90) days from the date the Programs are delivered to you. If a defect in any such media should occur during this 90-day period, the media may be returned to Aruba (or if you received such Programs from a reseller, to such reseller) and Aruba or the reseller, as applicable, will replace the media without charge to you. Aruba shall have no responsibility to replace media if the failure of media results from accident, abuse or misuse of the media.

ALL THIRD PARTY PROGRAMS ARE PROVIDED AS-IS AND ARUBA EXPLICITLY DISCLAIMS ANY RESPONSIBILITY WHATSOEVER FOR THE PERFORMANCE OR NON-PERFORMANCE OF SUCH THIRD PARTY PROGRAMS.

ARUBA AND ITS SUPPLIERS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PROGRAMS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAMS WILL BE UNINTERRUPTED OR ERROR-FREE.

EXCEPT FOR THE EXPRESS WARRANTY ABOVE, THE PROGRAMS ARE PROVIDED TO YOU WITH NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

5. LIMITATION OF LIABILITY

YOUR EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF ARUBA AND ITS SUPPLIERS RELATED TO THE PROGRAMS SHALL BE EXPRESSLY LIMITED TO REPLACEMENT OF MEDIA AS PROVIDED ABOVE. IN NO EVENT WILL ARUBA OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE PROGRAMS BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST DATA, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. TERM

This Agreement is effective until terminated, and shall automatically apply to any future upgrades or updates to any Programs or any additional features of any Programs, except as otherwise specified by Aruba. You may terminate this Agreement at any time by destroying all copies of the Programs and related documentation. This Agreement will terminate automatically, with respect to any Program or feature of any Program, at the end of the applicable term of any limited-term license purchased by you, or if you fail to comply with any term or condition of this Agreement, including any failure to pay any associated license and related fees due by you in full and any attempt to transfer a copy of the Programs to another party except as provided in this Agreement. You agree that upon such termination, you will destroy all copies of the Programs and related documentation.

7. U.S. GOVERNMENT RESTRICTED RIGHTS

If you are acquiring the Programs on behalf of the U.S. Government, the following provisions apply: (i) if the Programs are supplied to the

Department of Defense or any related agency of service, the Programs are subject to “restricted rights” as that term is defined in Defense Federal Acquisition Regulations (“DFAR”) in Section 252.227-7013(c)(1); and (ii) if the Programs are supplied to any other unit or agency of the United States Government, the Programs are considered “restricted computer software” and the Government's rights in the Programs are set forth in the Federal Acquisition Regulations (“FAR”) in Section 52.227-19(c)(2). Use, duplication or disclosure by the Government is subject to the restrictions set forth in such sections. You represent that you are not acquiring the Programs on behalf of a government other than the U.S. Government.

8. GENERAL

You acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and restrictions. You further agree that this license is the complete and exclusive statement of your agreement with Aruba and supersedes any proposal or prior agreement, oral or written, and any other communications relating to the subject matter of this license. This Agreement may only be modified in writing. Any waivers and amendments of this Agreement or any of its terms shall be effective only if made by non-preprinted agreements clearly understood by both parties to be an amendment or waiver. This Agreement shall be governed by and construed under the laws of the state of California, USA as if made and entered into in that state by two residents thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods.

If you are located in the People's Republic of China, all disputes arising from or relating to the subject matter of this Agreement must be resolved in Hong Kong by the Hong Kong International Arbitration Centre pursuant to its rules of arbitration then in effect, and the arbitration shall be conducted in English. If you are located outside of the People's Republic of China, all disputes arising from or relating to the subject matter of this Agreement shall be resolved by and you hereby consent to binding arbitration conducted in the English language in San Francisco, California, USA pursuant to California law and the rules of the Judicial Arbitration and Mediation Service (JAMS.) Judgment upon any award so rendered may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right at any time to seek injunctive or other forms of equitable relief from any court of competent jurisdiction. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

