

# Hewlett Packard Enterprise Packaged Support Services

## Terms

### Australia

1. **Parties.** These terms represent the agreement (“**Agreement**”) that governs the delivery of packaged support services from Hewlett Packard Enterprise Company (“**HPE**”) to (a) an end-user customer who purchases these support services either directly from HPE or through an HPE authorized partner for their own internal use; or (b) an HPE partner authorized to obtain packaged support services for their end-user customers or for the partner’s own end-use (either, a “**Customer**”).
2. “**HPE Packaged support service(s)**” are those services which are:
  - Described in the data sheet and the supplemental data sheet (the “**Supporting Material**”), which set forth HPE’s offering, eligibility requirements, service limitations and customer responsibilities. Supporting Material can be found at HPE’s Support Services Central site and click here to access the supplemental data sheet terms for support.
  - For products purchased and services delivered in the Australia.
  - Either:
    - o purchased at time of sale of the supported product, or within 90 days of such purchase; or
    - o purchased at the end of the warranty or prior support coverage period (“**Post-Warranty and Renewal HPE Packaged support services,**” as more fully described below)
3. **Prices and Taxes.** Customer will prepay for HPE Packaged support services at the time of purchase. Customer will pay all applicable taxes. If purchasing directly from HPE, Customer agrees to pay all invoiced amounts within thirty (30) days of HPE’s invoice date; if not, the reseller payment terms apply.
4. **Cancellation.** Full refunds for prepaid services are available from the place of purchase only if Customer cancels within thirty (30) days of the start date of the Agreement, and provided no HPE Packaged support services have been provided by HPE at time of cancellation. If the Supporting Material has a different cancellation provision, the terms of this Section 4 shall take precedence. HPE may discontinue HPE Packaged support services no longer included in HPE’s support offering upon sixty (60) days’ written notice.
5. **Location.** Unless otherwise specified in a data sheet, HPE will not deliver HPE Packaged support services on products moved outside the Australia.
6. **Services Performance.** HPE Packaged support services are performed using generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any such service concerns and HPE will re-perform any service that fails to meet this standard. HPE is not liable for the performance or non-performance of third party vendors, their products, or their support services.
7. **Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under this Agreement. 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 services.
8. **Intellectual Property Rights Infringement.** HPE will defend and/or settle any claims against Customer that allege that an HPE-branded Packaged support service as supplied under this Agreement infringes the intellectual property rights of a third party. HPE will rely on Customer’s prompt notification of the claim and cooperation with our defense. HPE may modify the HPE Packaged support service so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, HPE will refund to Customer the balance of any pre-paid amount. HPE is not responsible for claims resulting from any unauthorized use of HPE Packaged support services.
9. **Confidentiality.** Customer is responsible for the security of its proprietary and confidential information. Information exchanged under this Agreement 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 this Agreement, 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.
10. **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. Customer is responsible for the security of its proprietary and confidential information, including PII.
11. **Limitation of Liability.** HPE’s liability to Customer under this Agreement is limited to the greater of \$300,000 or the amount payable by Customer for the relevant HPE Packaged support service. Neither Customer nor HPE will be liable for lost revenues or



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profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. HPE will not be liable for performance delays or for nonperformance due to causes beyond its reasonable control. This provision does not limit either party's

liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; willful repudiation of the Agreement; nor any liability which may not be excluded or limited by applicable law.

**12. Limitations of Service.** HPE Packaged support services do not cover any damage or failure caused by:

- failure or functional limitations of any non-HPE software or product impacting systems receiving HPE Packaged support service;
- improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
- modifications or improper system maintenance or calibration not performed by HPE or authorized by HPE;
- abuse, neglect, accident, fire or water damage, electrical disturbances, transportation by anyone other than HPE; or other causes beyond HPE's control; or
- malware (e.g. virus, worm, etc.) not introduced by HPE.

**13. Registration.** End-user customer or HPE authorized partner is responsible for registering the product to be supported within ten (10) days of purchase of the support service, using the registration instructions within each package, email, or as otherwise directed by HPE. In the event a covered product changes location or the support service is transferred with the sale of a used product, registration (or a proper adjustment to existing HPE registration) is to occur within ten days of purchase from previous owner. HPE IS NOT OBLIGATED TO PROVIDE HPE PACKAGED SUPPORT SERVICES IF CUSTOMER DOES NOT REGISTER PRODUCT AS STATED HEREIN.

**14. Assignment.** This Agreement may only be assigned in connection with sale of the covered product. End-user customer or HPE authorized partner as assignor must inform HPE when the covered product is sold. The assignment must be in writing, signed by the assignor and available for inspection by HPE. Assignment will not be valid if in breach of local or U.S. export regulations. Customer is responsible for any taxes or fees associated with any assignment of the Agreement. Notwithstanding the foregoing, HPE services may be delivered by an HPE authorized partner.

**15. Post Warranty or Renewal HPE Packaged Support Services.** Certain select products may be eligible for the purchase of a Post Warranty or Renewal HPE Packaged support service. Such services must be purchased and registered as follows: i) no earlier than 90 days prior to expiration of the original product warranty or previously purchased HPE Packaged support service and ii) no later than 30 days following expiration of the product warranty or previously purchased HPE Packaged support service (except for Renewal HPE Packaged support services purchased on HPE products that have a lifetime warranty in which case this 30 day requirement is not applicable). Only one Post Warranty or Renewal HPE Packaged support service can be purchased and registered on the same product at the same time.

**16. Term and Termination.**

- HPE Packaged support services sold during warranty. This Agreement begins on the start date of the hardware product warranty period and will terminate upon completion of the specified number of years of service purchased.
- Post Warranty or Renewal HPE Packaged support services. This Agreement begins upon the later of: i) expiration of the original product warranty, ii) expiration of previous support service coverage, or iii) the HPE Packaged support service purchase date, as applicable, and terminates upon completion of the specified number of years of service purchased.
- Standalone HPE Packaged support services for software. This Agreement begins on the purchase date of the Packaged support service and will terminate upon the earlier of: i) completion of the specified number of years of service purchased, or ii) if applicable, upon closure of the last covered incident.
- Termination. HPE may terminate these HPE Packaged support services at any time after the effective date of this Agreement if Customer fails to perform or observe any condition of this Agreement with HPE.

**17. Timeliness of Action.** In no event will any cause of action be brought against HPE more than one year after the cause of action has occurred.

**18. Governing Laws.** Any disputes arising in connection with this Agreement will be governed by the laws of the State of California. The courts of the State of California shall have jurisdiction.

**19. Entire Agreement.** This Agreement represents the entire understanding of the parties with respect to its subject matter and supersedes any previous communications or agreements that may exist. HPE's obligations are limited to this Agreement. However, for HPE authorized partners, the HPE Partner Agreement may have additional terms that apply between HPE and Partner. Customer's additional or different terms and conditions will not apply. Customer's acceptance of this Agreement is deemed to occur upon Customer's purchase of HPE Packaged support services. No change of any of the terms and conditions will be valid unless in writing signed by an authorized representative of each party.