

Contract Number: MHEC-12152020

**Amendment #1  
Between Hewlett Packard Enterprise Company  
And  
The Midwestern Higher Education Compact  
Contract Number: MHEC-12152020**

Whereas, this Amendment #1 (“Amendment”) to Master Price Agreement, Contract No. MHEC-12152020 (“Agreement”) is entered into by the Parties to amend and modify the Agreement by and between the Midwestern Higher Education Compact (“MHEC”) and Hewlett Packard Enterprise Company (“HPE” or “Contractor”), as follows:

Whereas, the parties entered into the Master Agreement dated December 15, 2020 (the “Agreement”) and the parties now desire to amend the terms of the Agreement.

Now, therefore:

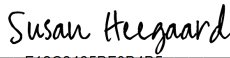
**Section 1. Contract Term.** Shall be deleted in its entirety and replaced with the following:

“1. **Contract Term.** This Agreement shall be effective on December 15, 2020 and shall remain in effect until January 31, 2028 (Term Ending Date) or unless otherwise terminated pursuant to the terms of the Agreement. Eligible Participants may procure products and services from Contractor under the terms of the MHEC Master Agreement at any time during the duration of the Agreement.”

Except as set forth above, the Agreement shall remain as stated. In the event of a conflict between the terms found elsewhere in the Agreement and this Amendment #1, this Amendment #1 shall control.

This Amendment #1 is hereby executed by the parties’ authorized representatives set forth below, and effective upon the later date of signatures hereto (“Effective Date”).

**Midwestern Higher Education Compact**


DocuSigned by:  
  
F12C8485BF0B4B5...  
Signature

Susan Heegaard  
Name

President  
Title

November 28, 2023 | 10:15 PM PST  
Date

**Hewlett Packard Enterprise**

DocuSigned by:  
  
C0DEFFD991C04FE...  
Signature

Mary Reuss  
Name

Contract Negotiator  
Title

November 28, 2023 | 1:31 PM PST  
Date

**Master Price Agreement**  
**Between Hewlett Packard Enterprise Company**  
**And**  
**The Midwestern Higher Education Compact**  
**Contract Number: MHEC-12152020**

This Master Price Agreement (“Agreement”) is entered by and between Midwestern Higher Education Compact, whose governing body is the Midwestern Higher Education Commission (“MHEC”) with offices at 105 Fifth Avenue South, Suite 450, Minneapolis, MN 55401 and Hewlett Packard Enterprise Company (“HPE” or “Contractor”) with corporate offices located at 6280 America Center Drive, San Jose, CA 95002. The term “Contractor” includes Contractor, its agents, and subcontractors. The term “Customer” includes all Eligible Participants.

**Whereas**, the Midwestern Higher Education Compact (Compact) is an interstate compact of twelve Midwestern states, such states being Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Member States); and MHEC, a nonprofit 501(c) (3), is a statutorily created governing body of the Compact established for the purposes, in part, of determining, negotiating and providing quality and affordable services for the Member States, the entities in those Member States, and the citizens residing in those Member States; and

**Whereas**, MHEC has established a technology initiative, the purpose of which is to determine, negotiate and make available quality and affordable technology products and services to the not-for-profit and public education related entities in the MHEC Member States; and

**Whereas**, MHEC has entered into separate agreements with the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE) respectively to allow entities in the NHEBE Member States, SREB Member States and the WICHE Member States access MHEC’s technology initiative contracts, including this Master Agreement; and

**Whereas**, NEBHE Member States refers to any state that is a member, or affiliate member NEBHE. Current NEBHE Member States are: Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont; and

**Whereas**, SREB Member States refers to any state that is a member or an affiliate member of SREB. Current SREB Member States are: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia; and

**Whereas**, WICHE Member States refers to any state that is a member or an affiliate member of SREB. Current WICHE Member States are: Alaska, Arizona, California, Colorado, Hawai'i, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and U.S. Pacific Territories and Freely Associated States; and

**Whereas**, it is acknowledged by the parties that MHEC is executing this Agreement to permit Eligible Participants to purchase products and services offered by HPE, at the pricing available under this Agreement. No representation is made that any quantities will be purchased or that any services will be utilized. The parties acknowledge that this Agreement is an award pursuant to HPE's response to: MHEC competitive solicitations ("Bids") for MHEC Virtualization & Data Center Modernization MHEC-RFP-03092020 dated March 9, 2020.

Therefore, this Agreement represents the terms and conditions that governs Customer Orders for purchase of products and services from Contractor as follows:

1. **Contract Term.** This Agreement shall be effective on December 15, 2020 and shall remain in effect until January 31, 2024 (Term Ending Date) or unless otherwise terminated pursuant to the terms of the Agreement. The Agreement may be mutually renewed for four (4) additional years, unless one party terminates in writing ninety (90) days prior to the Term Ending Date anniversary. Eligible Participants may procure products and services from Contractor under the terms of the MHEC Master Agreement at any time during the duration of the Agreement.

2. **Orders.** "Order" means the accepted order including any supporting material which the parties identify 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), published warranties and service level agreements, and may be available to Eligible Participant in hard copy or by accessing a designated HPE website.

3. **Scope and Order Placement.** These terms may be used by Eligible Participant either for a single Order or as a framework for multiple Orders. In addition, these terms may be used by an HPE "**Affiliate**", meaning any entity controlled by, controlling, or under common control by HPE subject to approval by the respective Eligible Participant. The parties can confirm their agreement to these terms by referencing Contract Number: MHEC-12152020 on Orders.

This Agreement allows for the purchase of Hardware, Software and Services for Eligible Participants. In addition to the applicable Hardware and Software products, any proposed solution may have Related Services as options including, but not limited to maintenance, technical support, consulting, and training necessary to allow the institution to fully utilize the purchased solution.

4. **Hardware.** "Hardware" refers to HPE's full line of hardware for a) networks and related equipment and components, b) wireless and related equipment and components, c) server and storage and related equipment and components made available for sale by HPE to Eligible Participants under this Agreement. HPE may incorporate changes to their hardware offering; however, any changes must be within the scope of the Virtualization and Data Center Modernization MHEC-RFP-03092020 award.

5. **Software.** "Software" refers to HPE's full line of software for a) networks and related equipment and components, b) wireless and related equipment and components, c) server and storage and related equipment and components made available for sale by HPE to Eligible Participants under this Agreement. HPE may incorporate changes to their software offering; however, any changes must be within the scope of the Virtualization and Data Center Modernization MHEC-RFP-03092020 award.

**6. Services.** “**Services**” refers to the Services offered by HPE under this Agreement for a) networks, b) wireless, and c) server and storage including but not limited to: pre-implementation design, installation/de-installation, migration, optimization, maintenance, technical support, training and IT as a Service (services accessible over the internet). HPE may incorporate changes to their service offering; however, any changes must be within the scope of the Virtualization and Data Center Modernization MHEC-RFP-03092020 award. These services are as follows:

- a. Support Services: Such as warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, and recycling/disposal. 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 Eligible Participant’s responsibilities, as well as the Eligible Participant’s systems supported. Exhibit B, Supplemental Data Sheet, includes general requirements and limitations that apply to HPE’s support offerings.
- b. Training and certification. “**Training**” refers to the training and certification courses led by HPE experts on a multitude of technology topics and platforms delivered through a variety of methods, including but not limited to: Virtual Instructor-Led Training (VILT)- Face-to-face online classes conducted in real time, HPE Digital Learner- Subscription-based online program for anytime, anywhere learning, HPE eLearning- Self-paced online training courses available for individual purchase, In-person or customized training taught at your choice of site (corporate office, local hotel).
- c. Professional Services: Such as assessments, disaster recovery planning and support, services desk/help desk, software and application development, and any other directly related technical support and/or IT related services required for the effective operation of the Hardware and Software offered or supplied.
- d. IT-as-a-Service: Refers to the delivery of a variety of hybrid services and applications accessible on demand over the internet including, but not limited to:
  1. Software-as-a-Service (SaaS): Refers to a software delivery method that provides access to software and its functions remotely as a web based service allowing users to connect to and use cloud-based apps over the Internet.
  2. Infrastructure-as-a-Service (IaaS): Refers to compute infrastructure owned by a service provider and offered to customers on demand. Customer is provided the capability to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications; and possibly limited control of select networking components. Resources may be single-tenant or multitenant, and are hosted by the service provider or on-premises in a customer’s data center.
  3. Platform as a service (PaaS): Refers to a type of cloud offering that delivers application infrastructure (middleware) capabilities as a service. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.

Services may require additional contract terms and conditions. Eligible Participants purchasing custom on-site Support, on-site Training, Professional Services, or IT-as-a-Service shall negotiate the terms and conditions of such purchase with Contractor in Supporting Material, including, as applicable, Service Level Agreements (SLA) or Statements of Work (SOW).

**7. Leasing and Financing:** Eligible Members may elect to finance purchases under a separate finance agreement. Hewlett-Packard Financial Services Company (“HPFS”) offers State and Local Government finance options, with the representative finance agreements. The parties recognize that finance agreements are separate and independent agreements between the Eligible Member and the finance entity, with the terms thereof constituting the entire agreement for financing. The following Master Lease Agreement templates are set forth in Exhibit E

- a. Master Lease Purchase Agreement
- b. Master Operating Lease Agreement

**8. Eligible Participants.** At a minimum the Contractor’s proposed solution shall be available for all public and private non-profit colleges, universities, community colleges, technical colleges and higher education agencies in the twelve (12) Midwestern state region of MHEC.

Solution offerings shall be also made available to any or all of the following public entities:

- K-12 schools and districts, including public libraries;
- cities, counties, and local subdivisions;
- state agencies; and

Participation under the terms and conditions of this Agreement is also available for “like” Eligible Participants within the following other education Compacts in the country; the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE); subject to each respective Compacts’ approval.

MHEC is not liable to Contractor, or its agents, for the failure of any Eligible Participant to make any payment or to otherwise fully perform pursuant to the terms and conditions of a Purchase Order and/or this Agreement. Eligible Participant shall not be liable for any other Eligible Participant that executes its own Order under this Agreement.

Notwithstanding MHEC’s role in entering into this Agreement and any additional efforts by MHEC, Eligible Participants acknowledges and agrees that:

- a. Eligible Participant is solely responsible for its own due diligence regarding the Agreement;
- b. MHEC is not responsible for, and makes no representation or warranty, regarding the appropriateness of the Agreement for the Eligible Participant specifically; MHEC has not made any legally bidding representations regarding Contractor and that MHEC does not guarantee or warrant the products or services of Contractor; and
- c. MHEC is not responsible for the actions or omissions of Contractor.

Issues of interpretation and eligibility for participation are solely within the authority of the procurement and statutory rules and regulations applicable to the Eligible Participant and MHEC. The Eligible Participant is responsible for assuring it has the authority to place Orders under this Agreement.

**9. Order of Precedence.** Where the terms and conditions of the Master Agreement are in conflict with an Eligible Participants state and/or institutional laws or regulations, the Eligible Participant and Contractor may enter into an addendum to amend the terms and conditions of the Master

Agreement to conform to the Eligible Participant's state and/or institutional laws and regulations. Similarly, the Eligible Participant participating in this contract and Contractor solution provider may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract. Any addendum or supplemental agreement is exclusively between the participating Eligible Participant and Contractor.

In the event of any conflict among these documents, the following order of precedence shall apply:

- a. Executed Addendum between Eligible Participant and Contractor
- b. The terms and conditions of this Agreement
- c. Exhibits to this Agreement
- d. The list of products and services contained in the Order

**10. Partner Utilization.** Eligible Participants have the option of utilizing HPE Authorized Resellers. The HPE Authorized Resellers participation will be in accordance with the terms and conditions set forth in this Agreement. Approved Resellers are shown on the Contractor's dedicated website at [www.hpe.com/buy/mhec2020](http://www.hpe.com/buy/mhec2020). HPE has two (2) distinct Reseller Fulfillment Programs (listed below) for processing Orders through HPE Authorized Resellers.

**a. Reseller Agent Program:**

Under the Reseller Agent Program the purchase order ("Order") is made out to Hewlett Packard Enterprise Company ("HPE"). HPE fulfills and ships the Order to the Eligible Participant and invoices the Eligible Participant directly. Reseller Agent provides pre- and post-sales support, including but limited to providing advice on specifications and quotes and assisting in the escalation of orders and returns. Reseller Agent's HPE Authorization or Locator ID Number must be listed on all quotes and related order activities for sales and tracking purposes. Orders must include the Contract Number MHEC-12152020. HPE Order information, including the HPE remittance address, is available in the Information Center located at the HPE website [www.hpe.com/buy/mhec2020](http://www.hpe.com/buy/mhec2020).

**b. Indirect Fulfillment Program:**

HPE may select an HPE authorized distributor, or reseller(s) to act as Indirect Fulfillment Resellers of HPE and assume HPE's duties in accordance with the terms and conditions of the Master Agreement.

1. HPE must identify any Indirect Fulfillment Resellers on the contract website: [www.hpe.com/buy/mhec2020](http://www.hpe.com/buy/mhec2020). Only those Indirect Fulfillment Resellers listed on the website are authorized to fulfill Orders on behalf of HPE.
2. At any time during the term of this Agreement should MHEC protest the inclusion of an HPE authorized Indirect Fulfillment Reseller pursuant to commercially justifiable cause, HPE may require that firm to undergo re-approval or terminate the Indirect Fulfillment Reseller(s) authorization to fulfill Orders under this Agreement.
3. The Order fulfillment responsibilities of Indirect Fulfillment Resellers authorized to process Orders under the terms and conditions of this Agreement, include providing quotations, accepting purchase orders, delivering products and services, and processing payments in the Fulfillment Agent's name.
4. HPE shall require Indirect Fulfillment Resellers to follow the terms and conditions of this Agreement.

**11. Supplemental Order Fulfillment.** Distribution and Installation Agreements. Eligible Participants may have their own order fulfillment/installation agreements with an HPE Authorized Partner. The terms and pricing of this Agreement are in effect and separate from any additional terms and conditions, fees or markups resulting from the Eligible Participant separate fulfillment/installation agreement (“Supplemental Agreement”) with that HPE Authorized Partner.

Any Supplemental Agreement developed as a result of this Agreement is exclusively between the Eligible Participant and the HPE Authorized Partner. HPE and MHEC, their agents, and employees shall not be made party to any claim for breach of such Supplemental Agreement.

**12. Purchase Order Arrangements.** Eligible Participant may place orders with Contractor through the customer-specific portal, or by letter or e-mail. Where appropriate, orders must specify a delivery date. If Eligible Participant extends the delivery date of an existing Order beyond ninety (90) days, then it will be considered a new order. Eligible Participant may cancel a hardware Order at no charge up to five (5) business days prior to the shipment date.

Contractor will maintain the on-line MHEC based web site at URL: [www.hpe.com/buy/mhec2020](http://www.hpe.com/buy/mhec2020). It will provide information on Virtualization & Datacenter Modernization and pricing for Eligible Participants to place Orders.

**13. Subcontractors.** Contractor shall have the right to use subcontractors to provide the services described in this Agreement. If Contractor elects to use subcontractors in the performance of custom professional services under this Agreement, Contractor will provide a list of such subcontractors in the associated Statement of Work (SOW). Notwithstanding the foregoing, the use of such subcontractors shall not release Contractor from performing its obligations under this Agreement.

Contractor shall be liable for any damage or loss resulting from personal injury or damage to tangible property arising from the acts or omissions of subcontractor while performing services pursuant to this Agreement.

Should Contractor elect to use subcontractor, MHEC encourages the consideration of minorities, women, and economic disadvantaged small businesses. Subcontractors that qualify as small/disadvantaged businesses may be required to provide all certifications and/or reports of such upon request by Eligible Participant.

**14. Prices and Taxes.** Prices will be as quoted in writing by Contractor or, in the absence of a written quote, as set out on the customer-specific portal. Prices are made available at least at the minimum discount off HPE published list price, with discounts listed in Exhibit A of this Agreement. Prices are exclusive of taxes, duties, and fees (including installation, shipping and handling) unless otherwise quoted. If a withholding tax is required by law, please contact the Contractor order representative to discuss appropriate procedures. Unless the Eligible Participant provides a proof of tax exemption, taxes will be additive to the contracted price. Upon prior approval by Eligible Participant, Contractor will charge separately for reasonable out-of-pocket expenses, such as travel expenses incurred in providing professional services.

**15. Invoices and Payment.** Eligible Participant agrees to pay all invoiced amounts within thirty (30) days of Contractor's invoice date. After the thirtieth (30th) day from the date of the invoice, unless otherwise mutually agreed to, interest shall be paid on the unpaid balance due to Contractor at the rate of one and one-half percent (1½%) per month or the maximum rate allowed by law, rule, regulation or court order. The Eligible Participant shall make a good faith effort to pay within thirty (30) days after the date of the invoice. Contractor may suspend

or cancel performance of open Orders or services due to a specific Eligible Participant if said Eligible Participant fails to make payments when due. Invoices will be directed to the bill-to location specified by the Eligible Participant. The Eligible Participant placing the Order with Contractor shall alone be liable or responsible for payment for products and/or services ordered and will be invoiced direct by the Contractor and Contractor shall seek payment solely from the purchasing Eligible Participant. Neither MHEC nor other Eligible Participants shall be liable for the indebtedness of any one Eligible Participant nor shall Contractor suspend or cancel performance of open Orders for Services due to MHEC or other Eligible Participants for the failure of any other Eligible Participant to make payments when due.

**16. Title.** Risk of loss or damage and title for hardware products will pass upon delivery to Eligible Participant or its designee. Where permitted by law, HPE retains a security interest in products sold until full payment is received. HPE warrants that Eligible Participants shall acquire good and clean title to HPE branded Hardware and Software supplied under this Agreement, free and clear of all liens and encumbrances. For any non-HPE branded Hardware and Software, HPE warrants that it has the right to provide such products to Eligible Participants.

**17. Delivery.** Contractor will use all commercially reasonable efforts to deliver products in a timely manner. Contractor may elect to deliver software and related product/license information by electronic transmission or via download. Contractor shall ship the Products F.O.B. destination. Standard ground freight will be used. Special or inside delivery may require additional charges. Title, Risk of loss or damage to the Products shall pass to Eligible Participant upon delivery to the "Ship To" location specified on Eligible Participant's Order. Contractor shall bear the risk of loss with respect to returns sent via Contractor specified carrier except for loss or damage directly attributable to the negligence of the Eligible Participant.

Orders for Eligible Participants located outside of the USA will be shipped by Contractor only to locations within the continental US, or Alaska or Hawaii, at which point the Eligible Participant must inspect and accept the product and title will pass to the Eligible Participant. All responsibility for then shipping the products outside the USA will be the Eligible Participant's; including but not limited to, insuring compliance with all federal, state, and local export regulations and laws. The Eligible Participant's responsibility in this type of situation includes all costs associated with shipping the products from that point forward inclusive of duties, tariffs, excise fees, shipping charges, or other fees. Contractor will not ship products which are intended for resale or final shipment to locations/countries which are under U.S. sanctions or trade embargos.

**18. Installation.** If Contractor is providing installation with the product purchase, Contractor's site guidelines (available upon request) will describe Eligible Participant requirements. Unless otherwise stated in the Statement of Work (SOW), Contractor will conduct the manufacturer's standard installation and test procedures to confirm completion.

When installation is required Contractor must provide the cost of installation as separate line item on their quotation. Installation includes, as applicable, all packing, freight, insurance, set-up, instruction, and operation manual charges. Equipment must be set in place in an area designated by Eligible Participant personnel. Upon request, Contractor will provide a Services quote with a Statement of Work (SOW) to remove any and all debris from the Eligible Participant's site. Upon installation, all operating instructions will be provided either physically or electronically to Eligible Participant's personnel identified on the purchase order.

**19. Support Services Eligibility.** HPE's service, support and warranty commitments do not cover claims resulting from:



- a. Improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
- b. Modifications or improper system maintenance or calibration not performed by HPE or authorized by HPE;
- c. Failure or functional limitations of any non-HPE software or product impacting systems receiving HPE support or service;
- d. Malware (e.g. virus, worm, etc.) not introduced by HPE; or
- e. 5. Abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HPE's control.

## **20. Acceptance.**

a. **Hardware:** Unless otherwise agreed upon by Eligible Participant and Contractor, within fifteen (15) days from the date of delivery, the Eligible Participant shall accept or reject the products for which installation by Contractor is not needed. Absent Eligible Participant notification to Contractor that the product does not meet manufacturer published specifications, product shall be deemed accepted on the 16th day. For products for which installation by Contractor is required, and unless otherwise agreed upon by Eligible Participant and Contractor, the procuring Eligible Participant shall accept or reject the products upon Contractor's completion of installation and verification tests, and issuance to Eligible Participant an installation verification certificate. Products shall be invoiced upon delivery or installation when Contractor is performing the installation.

b. **Services:** Unless otherwise agreed to by Eligible Participant and Contractor, Services are accepted upon performance. Services shall be invoiced upon completion unless otherwise specified on the Order.

c. **Software:** Except as may be provided in any warranty included in the Software, Software may not be returned by Eligible Participant following delivery and acceptance shall occur upon delivery.

**21. Dependencies.** HPE's ability to deliver services will depend on Eligible Participant's reasonable and timely cooperation and the accuracy and completeness of any information from Eligible Participant needed to deliver the services.

**22. Change Orders.** Eligible Participant and Contractor each agree to appoint a project representative to serve as the principal point of contact in managing the delivery of services and in dealing with issues that may arise. Requests to change the scope of services or deliverables will require a change order signed by both parties.

**23. Hardware 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 Eligible Participant 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.

**24. 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.

**25. Services Performance.** Services are performed using generally recognized commercial practices and standards. Eligible Participant agrees to provide prompt notice of any such service concerns and HPE will re-perform any service that fails to meet this standard.

**26. Services with Deliverables.** If Supporting Material for services define specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Eligible Participant notifies HPE of such a non-conformity during the period, HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Eligible Participant will return those deliverables to HPE.

**27. 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, Eligible Participant will be entitled to a full refund upon the prompt return of the product to HPE (if hardware) or upon written confirmation by Eligible Participant that the relevant software product has been destroyed or permanently disabled. HPE will pay for shipment of repaired or replaced products to Eligible Participant and Eligible Participant will be responsible for return shipment of the product to HPE.

**28. Remedies.** This Agreement states all remedies for warranty claims. To the extent permitted by law, HPE disclaims all other warranties.

**29. Non-HPE Branded Hardware, Software and Third-Party Services.** HPE does not warrant non-HPE branded Hardware, Software or third-party services. Any warranty provided on non-HPE branded Hardware, Software or third-party services is provided by the publisher, original manufacturer, or service provider and may vary from product to product or service to service. Such warranties shall be provided to the Eligible Participants with the non-HPE branded Hardware, Software or third-party services.

**30. License.** The terms applicable to any software are in its license agreement, included with the Software media packaging, or presented to Eligible Participants during the installation or use of the Software. For HPE branded Software, Eligible Participants use of such Software is subject to the HPE End User License Agreement – Enterprise Version (EULA) as set forth in Exhibit F, attached hereto. As between Eligible Participant and Contractor, this EULA shall be governed and construed in accordance with the laws of the state where the Eligible Participant resides. Venue for any claim, dispute or action concerning EULA shall be in the state where the Eligible Participant resides. If a separate license agreement exists between Eligible Participants and the manufacturer or the owner of the Software, that license agreement will control and will apply according to its terms and conditions.

**31. Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under this Agreement. Eligible Participant grants HPE a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary solely for the purpose of HPE and its designee's performance of obligations pursuant to the ordered

services. If deliverables are created by HPE specifically for Eligible Participant and identified as such in Supporting Material, HPE hereby grants Eligible Participant a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverables internally.

**32. Intellectual Property Rights Infringement.** HPE will defend and/or settle any claims against MHEC or Eligible Participant that allege that an HPE-branded product or service as supplied under this Agreement infringes the intellectual property rights of a third party. HPE will rely on MHEC or Eligible Participant's prompt notification of the claim and cooperation with our defense. HPE may modify the product or service so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to Eligible Participant the amount paid for the affected product in the first year or the depreciated value thereafter or, for support services, the balance of any pre-paid amount or, for professional services, the amount paid. HPE is not responsible for claims resulting from any unauthorized use of the products or services. This section shall also apply to deliverables identified as such in the relevant Support Material except that HPE is not responsible for claims resulting from deliverables content or design provided by Eligible Participant.

With respect to any claim that a non-HPE branded Hardware or Software or third party Service supplied under this agreement infringes the intellectual property rights of a third party, HPE agrees to pass through to the appropriate Eligible Participant any rights to indemnification protection for which HPE currently or subsequently has in place with the manufacturer, licensor, and publisher.

**33. License Grant.** HPE grants Eligible Participant 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. For non-HPE branded software, the third party's license terms will govern its use.

**34. Updates.** Eligible Participant 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 Eligible Participant.

**35. License Restrictions.** HPE may monitor use/license restrictions remotely and, if HPE makes a license management program available, Eligible Participant agrees to install and use it within a reasonable period of time. Eligible Participant 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. Eligible Participant may use this archival copy without paying an additional license only when the primary system is inoperable. Eligible Participant may not copy licensed software onto or otherwise use or make it available on any public external distributed network. Licenses that allow use over Eligible Participant's intranet require restricted access by authorized users only. Eligible Participant will also not modify, reverse engineer, disassemble decrypt, decompile or make derivative works of any software licensed to Eligible Participant under this Agreement unless permitted by statute, in which case Eligible Participant will provide HPE with reasonably detailed information about those activities.

**36. License Term and Termination.** Unless otherwise specified, any license granted is perpetual,

provided however that if Eligible Participant 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, Eligible Participant will either destroy all copies of the software or return them to HPE, except that Eligible Participant may retain one copy for archival purposes only. The acceptance and term of the License commences upon delivery, unless otherwise specified in the Statement of Work.

**37. License Transfer.** Eligible Participant 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, Eligible Participant's rights shall terminate and Eligible Participant shall transfer all copies of the software to the transferee. Transferee must agree in writing to be bound by the applicable software license terms. Eligible Participant may transfer firmware only upon transfer of associated hardware.

**38. License Compliance.** HPE may audit Eligible Participant 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 Eligible Participant will pay to HPE such underpayments. If underpayments discovered exceed ten (10) percent of the contract price, Eligible Participant will reimburse HPE for the auditor costs. HPE rights to audit under this section shall survive for two (2) years past the purchase of the perpetual license, or expiration of any maintenance period or the termination of the license whichever is greater.

**39. Confidentiality.** 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 three (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, court order or a governmental agency.

**40. 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 Eligible Participant in providing services. To the extent HPE has access to Eligible Participant PII stored on a system or device of Eligible Participant, such access will likely be incidental and Eligible Participant will remain the data controller of Eligible Participant PII at all times. Consistent with applicable law, HPE will use any PII to which it has access strictly for purposes of delivering the services ordered. Should the parties determine that HPE will have access to greater PII, the respective obligations of both parties shall be set forth in Supporting Materials.

**41. FERPA.** Contractor agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPPA), the Gramm-Leach Bliley Act (GLBA) and all other state and federal privacy laws to the extent applicable to any product or service provided to Eligible Organizations.

**42. Accessibility.** Contractor agrees to comply with all applicable requirements of the Rehabilitation Act of 1973, as amended, 29 USC 794, including Sections 504 and 508, which prohibits discrimination on the basis of disabilities, and with the Americans with Disabilities Act of

1990 ("ADA"), as amended, 42 USC 12101 et seq., which requires the provision of accessible facilities and services. Goods and services provided by provider shall be accessible to individuals with disabilities to the greatest extent practical, but in no event less than the standards set forth by the state in which the Eligible Participant resides and federal accessibility laws. For web-based environments, services and content must conform to the Web Content Accessibility Guidelines ("WCAG") 2.0 AA (available at <http://www.w3.org/WAI/intro/wcag.php>). Provide documentation that describes the level of compliance with Section 508 Standards and for web-based technology with Web Content Accessibility Guidelines ("WCAG") 2.0 AA.

**43. US Federal Government Use.** If software is licensed to Eligible Participant for use in the performance of a US Government prime contract or subcontract, Eligible Participant 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.

**44. Global Trade Compliance.** Products and services provided under these terms are for Eligible Participant's internal use and not for further commercialization. If Eligible Participant exports, imports or otherwise transfers products and/or deliverables provided under these terms, Eligible Participant 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 this Agreement to the extent required by laws applicable to either party.

**45. Data Ownership.** Eligible Participant's data shall remain the exclusive property of Eligible Participant and Eligible Participant shall retain all rights, including intellectual property rights in and to such data. Offeror will use Eligible Participant data only for the purpose of fulfilling its duties under the Master Agreement or an order under the Master Agreement, and for Eligible Participant's sole benefit, and will not share such data with or disclose it to any third party without the prior written consent of Eligible Participant or as otherwise required by law.

**46. Limitation of Liability.** Contractor's liability to Eligible Participant under this Agreement is limited to the greater of \$1,000,000 or the amount payable by Eligible Participant to Contractor for the relevant Order. Neither Eligible Participant nor Contractor will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. 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.

**47. Disputes.** If Eligible Participant is dissatisfied with any products or services purchased under these terms and disagrees with Contractor's proposed resolution, we both agree to promptly escalate the issue to a Vice President (or equivalent executive) in our respective organizations for an amicable resolution without prejudice to the right to later seek a legal remedy.

**48. 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.

**49. Termination.** Master Agreement may be canceled by either Contractor or MHEC at any time without cause during its term upon ninety (90) days written notice to the other party. The inability of the Contractor to provide sufficient products or services at the expected service level and/or to perform services on a timely basis may serve as grounds for and order or Master Agreement contract termination. MHEC shall provide Contractor with a reasonable time to cure. Poor performance as demonstrated by slow response time, failure to adhere to safety practices and regulations, failure to pursue the work with diligence, poor productivity, inefficient work, and

poor workmanship may, without limitation, constitute grounds for immediate termination of an order under the Master Agreement by Eligible Participant or of the Master Agreement by MHEC. Eligible Participant or MHEC shall provide Contractor with a reasonable time to cure. MHEC also reserves the right to request removal from participation in services associated with this Master Agreement any awarded Contractor's employee and/or subcontractor whose conduct is deemed unsatisfactory by MHEC. Termination of the Master Agreement shall in no way limit the parties' remedies at law and equity.

**50. Conflict of Interest.** Contractor warrants, to the best of its knowledge and belief, and except as otherwise disclosed, there are no facts or circumstances which could give rise to organizational conflicts of interest. Contractor agrees that if an organizational conflict of interest is discovered during the term of this Agreement, it will provide immediate and full disclosure to MHEC that shall include a description of the action the Contractor has taken or purposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, MHEC may, at its discretion, cancel this Agreement.

**51. Assignment.** Neither Party may, nor will it have the power to, assign or novate this Agreement without the consent of the other.

**52. Survival.** Certain paragraphs of this Agreement, including but not limited to Indemnification; and Limitation of Liability shall survive the expiration of this Master Agreement. Software licenses, warranty and service agreements, and non-disclosure agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**53. Communications.** Any communications, as it related to the business relationship and obligations of HPE and MHEC under this Agreement, will be directed as follows:

MHEC  
Mr. Nathan Jay Sorensen  
Director of Government Contracts  
Midwestern Higher Education Compact  
105 Fifth Avenue South, Suite 450  
Minneapolis, MN 55401  
Phone: 612/677-2767  
Email: [nathans@mhec.org](mailto:nathans@mhec.org)

HPE  
Ms. Stacey Pierce  
SLED, US Route to Market Manager  
Email: [Stacey.pierce@hpe.com](mailto:Stacey.pierce@hpe.com)  
Phone: 512/319-1012

Mail C/O:  
America's Contract Operations – SLED  
6280 America Center Drive  
San Jose, CA 95002

**54. Eligible Participant.** Notices shall be sent to Eligible Participant's business address. The term "business address" shall mean the "Bill to" address set forth in an invoice to Eligible Participant.

**55. Non-Appropriation.** This provision applies only to publicly funded Eligible Participants. The terms of this Agreement and any Order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any Order, Eligible Participant may terminate its obligations under this Agreement if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The Eligible Participant's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final and binding. An Eligible Participant shall provide sixty (60) days' notice, if possible, of its intent to terminate this contract for non-appropriation. The Eligible Participant shall send to Contractor a notice of its Governing

Body's decision not to appropriate funds. Such termination shall relieve the Eligible Participant, its officers and employees from any responsibility or liability for the payment of any future Orders. However, all outstanding invoices from Contractor will be paid by the Eligible Participant.

**56. Records.** Contractor shall retain and maintain all financial and accounting records and documents relating to this Agreement, and maintained in accordance with generally accepted accounting principles, for six (6) years after the Agreement is terminated, expires or in accordance with final payment by the Eligible Participant hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the Eligible Participant, including the procurement officer or designee, upon written request, at all reasonable times. In no event will HP be required to provide the Eligible Participant or its auditor with access to Contractor's internal cost and resource utilization data, or data related to employees or other customers of Contractor.

**57. Background Checks.** Contractor will perform background investigations within the scope of Contractor's current standard policies and practices, where legally acceptable and culturally permissible.

**58. Insurance.** Contractor will maintain the following insurance limits while performing any services under this Agreement: (a) Workers' Compensation Insurance for Contractor employees, including coverage required under the State's and Federal Laws; (b) Employer's Liability Insurance with limits of a minimum of: (i) \$1,000,000 for each accident for bodily injury by accident, (ii) \$1,000,000 for bodily injury by disease, and (iii) \$1,000,000 for each employee for bodily injury by disease; (c) General Liability Insurance with limits of: (i) \$1,000,000 per occurrence for bodily injury and property damage, and shall provide copies of certificates of insurance to Eligible Participants if requested. Eligible Participants may require additional coverage consistent with applicable law, regulation or policy. Contractor shall give MHEC and the procuring Eligible Participants a minimum of ten (10) days' notice prior to cancellation of policies. The Contractor shall require all subcontractors performing any work to maintain coverage as specified.

**59. Publicity.** Any MHEC and/or Eligible Participant specific Contractor generated announcements and publicity resulting from this Agreement must receive the prior approval of MHEC and/or Eligible Participant. Contractor will not make any representations of MHEC and/or Eligible Participant's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of MHEC and/or Eligible Participant.

**60. Oversight Committee.** An Oversight Committee comprised of representatives of Eligible Participants shall be appointed by MHEC to assist and support MHEC and HPE in developing and refining the implementation of this Agreement. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Participants in assuring quality and timely products and services, web presence; and to advise HPE on the effectiveness of its implementation progression. At the very least there will be an annual meeting between HPE and MHEC (and perhaps members of the Oversight Committee) to perform an Agreement health check; including items such as those above.

**61. Indemnification.** Contractor will indemnify, defend or settle and hold harmless MHEC and Eligible Participants, as well as the representatives, agents and employees of MHEC and Eligible Participants, from any and all third party claims or causes of action related to a claim

of personal bodily injury or damage to tangible property, including all attorneys' fees incurred by MHEC and/or Eligible Participants, arising from the willful misconduct or negligent performance of this Agreement by Contractor, Contractor's agents, employees, or subcontractors. MHEC and/or Eligible Participant shall give Contractor written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder, and, subject to any legally required approval, including approval of state's attorney general, or consistent with applicable law permits Contractor to control the defense of any such claim or action at Contractor's own expense. MHEC and/or Eligible Participants agree that Contractor may employ attorneys of its own choice to appear and defend the claim or action and that MHEC and/or Eligible Participants shall do nothing to compromise the defense of such claim or action or any settlement thereof and shall provide Contractor with all reasonable assistance that Contractor may require.

**62. Equal Opportunity Compliance.** Contractor agrees to abide by all applicable federal and state laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Contractor under this Agreement. If Contractor is found to be not in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**63. Compliance with Law.** Contractor shall comply with all applicable laws and governmental regulations, which by their terms, apply to Contractor's performance under an Order pursuant to this Agreement. Eligible Participant agrees to comply with all applicable laws and governmental regulations in connection with this Agreement. MHEC agrees to comply with all applicable laws and governmental regulations in connection with this Agreement.

**64. Administrative Fee and Reporting.** MHEC has incurred, and will continue to incur, costs and expenses in the development, implementation, administration and marketing of this program. The Contractor compile with Exhibit D reporting requirements and shall pay MHEC for total accumulative net sales, during the applicable quarterly Reporting Period, an administrative fee of 0.50% or 0.005. The Administrative Fee, payable to MHEC, shall only apply to Quotes and Orders that expressly state the Contract Number: MHEC-12152020.

**65. Governing Law.** As between MHEC and Contractor, this Agreement shall be governed and construed in accordance with the laws of the State of Minnesota; and venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the State of Minnesota.

As between Eligible Participant and Contractor, this Agreement shall be governed and construed in accordance with the laws of the Eligible Participant's State. Venue for any claim, dispute or action concerning an Order placed against this Agreement shall be in the Eligible Participant's State.

**66. Sovereign Immunity.** Notwithstanding anything to the contrary in the Agreement or Order under this Agreement, this Agreement shall not be construed to deprive an Eligible Participant of its applicable sovereign immunity; or of any applicable legal requirements or limitations afforded to the Eligible Participant by state law.



**67. General.** This Agreement and its Exhibits: A, B, C, D, E, and F, represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modification to the Agreement will be made only through a written amendment signed by both parties.

<Signature Page – Next Page>

Contract Number: MHEC-12152020

The parties confirm their agreement to these terms, effective as of the later date of signatures below:

**Hewlett Packard Enterprise Company**

By: Mary A. Reuss

Name: Mary A. Reuss

Title: Contract Negotiator

Date: December 1, 2020

**Midwestern Higher Education Compact**

By: Susan Heegaard

Name: Susan Heegaard

Title: President

Date: 12/14/20

### Exhibit A – Price Schedule

Please see the attached HPE Discount off of List Price Schedule.



HPE MHEC  
DataCenter Moderniz.

## Exhibit B – 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 HPE Software.

### 1. SERVICE ELIGIBILITY

- **Hardware Support-General Eligibility.** Hardware products must be in good operating condition, as reasonably determined by HPE, to be eligible for placement under support. You must also maintain eligible products at the latest HPE-specified configuration and revision levels.
- **Return to Support.** If you allow support to lapse, HPE may charge you additional fees to resume support or require you to perform certain hardware or software upgrades.
- **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 your 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 your systems or sites. You may only use the Proprietary Service Tools during the applicable Support coverage period and only as allowed by HPE and you may not sell, transfer, assign, pledge, or in any way encumber or convey the Proprietary Service Tools. Upon termination of Support, you will return the Proprietary Service Tools or allow HPE to remove these Proprietary Service Tools. You will also be required to:
  - Allows HPE to keep the Proprietary Service Tools resident on your systems or sites, and assist HPE in running them;
  - Install Proprietary Service Tools, including installation of any required updates and patches;
  - Use the electronic data transfer capability to inform HPE of events identified by the software;
  - If required, purchase HPE-specified remote connection hardware for systems with remote diagnosis service; and
  - Provide remote connectivity through an approved communications line.
  - You may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of the Proprietary Service Tools. If you have a mandatory right to do so under statute, you must inform HPE in writing prior to making such modifications.

### 2. SUPPORT LIMITATIONS

- **Local Availability of Support.** Some offerings, features, and coverage (and related products) may not be available in all countries or 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.
- **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 HPE branded software, and provided that HPE branded software is used with hardware or software included in HPE-specified configurations at the 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.

- **Relocation and impact on Support.** Relocation of any products under support is your 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.
- **Multi-vendor Support.** HPE provides support for certain non-HPE branded products. The relevant data sheet will specify availability and coverage levels and the support will be provided accordingly, whether or not the non-HPE branded products are under warranty. HPE may discontinue support of non-HPE branded products if the manufacturer or licensor ceases to provide support for them.
- **Modifications.** You 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

- **Site and Product Access.** You 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 determined necessary by HPE to service the products; and other access requirements described in the relevant data sheet. If you fail to provide such access, resulting in HPE's inability to provide support, HPE shall be entitled to charge you for the support call at HPE's published service rates. You are 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 will charge you for the extra work at HPE's published service rates.
- **Licenses and Updates.** You may purchase available product support for HPE branded products only if you can provide evidence that you have rightfully acquired an appropriate HPE license for the products, and you may not alter or modify the products unless authorized by HPE at any time. Your right to use firmware and software updates ("Updates") provided under HPE Support or warranty or if otherwise made available to you is co-extensive with your license to the underlying product. However in addition:
  - You may not use Updates to provide services to third parties
  - You may not make copies and distribute, resell or sublicense Updates to third parties
  - You may not copy Updates or make them available on a public or external distributed network. This means that you may not copy Updates for products that are not under support by HPE.
  - You may not allow access to Updates on an intranet unless it is restricted to authorized users.
  - You cannot make copies of and distribute Updates on devices that are not supported by HPE.
  - You may make only make one copy of the Updates for archival purposes or when it is an essential step in authorized use.

- You may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of the Updates. If you have a mandatory right to do so under statute, you must inform HPE in writing prior to making such modifications.
- HPE may terminate your license to use the Updates upon written notice if you fail to comply with these terms.
- If you authorize a third-party to act as your agent and download Updates on your behalf, using your entitlement, you are strictly and wholly liable for your agents' adherence to the terms of your contract with HPE, including these license terms. In addition, all parties must execute HPE's agency agreement to allow for such access by the third party.
- **Software Support Documentation and Right to Copy.** You may only copy documentation updates if you purchased the right to copy them for the associated products. Copies must include appropriate HPE trademark and copyright notices.
- **Loaner Units.** HPE maintains title and you 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.
- **Hardware Support: Compatible Cables and Connectors.** You 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.
- **Data Backup.** So that you can reconstruct your lost or altered files, data, or programs, you must maintain a separate backup system or procedure that is not dependent on the products under support.
- **Temporary Workarounds.** If requested by HPE, you will implement temporary procedures or workarounds provided by HPE while HPE works on a permanent solution.
- **Hazardous Environment.** You will notify HPE if you use products in an environment that poses a potential health or safety hazard to HPE employees or subcontractors. HPE may require you to maintain such products under HPE supervision and may postpone service until you remedy such hazards.
- **Authorized Representative.** You will have a representative present when HPE provides support at your site.
- **Product List.** You will create, maintain and update a list of all products under support including: the location of the products, serial numbers, the HPE-designated system identifiers, and coverage levels.
- **Solution Center Designated Callers.** You 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.
- **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 you 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, you may be required to replace that Designated Caller. All Designated Callers must have the proper

system identifier as provided to you when Support is initiated. Solution Centers may provide support in English or local languages, or both.

- **HIPAA Customers.** You represent that you are not a Covered Entity or Business Associate under the U.S. Health Insurance Portability and Accountability Act (HIPAA), and that you will not be creating, receiving, maintaining, or transmitting protected health information. If you determine that you are a Covered Entity or Business Associate, you agree to notify HPE and the parties agree to negotiate a mutually agreeable Business Associate Agreement.

#### 4. GENERAL PROVISIONS

- **Cancellation.** Unless otherwise agreed in writing, you may only cancel support orders or delete products from an existing support order upon sixty (60) days' written notice if you sell or discontinue use of the products under support, or upgrade to a newer HPE technology that is maintained under HPE support. HPE reserves the right to audit customer's installed base to verify compliance with this provision. 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 applicable, HPE will refund you a pro-rata amount for any unused prepaid support if canceled for the reasons as set forth above, subject to any other restrictions or early termination fees as may be set forth in writing
- **Pricing.** Except for prepaid support or if otherwise agreed in writing, HPE may change support prices upon sixty (60) days' written notice.
- **Additional Services.** Additional services performed by HPE at your request, and that are not included in your purchased support, will be chargeable at the applicable published service rates for the country where the service is performed.
- **Replacement Parts.** Parts provided under hardware 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 HPE, unless HPE agrees otherwise and you pay any applicable charges.
- **Media Sanitization.** You are responsible for properly sanitizing or removing data from products that may be replaced or returned to HPE as part of the repair process to ensure the safeguarding of your data. For more information on your responsibilities, go to [https://www.hpe.com/us/en/home.html?xdomain=hp\\_us\\_en\\_header\\_call-out](https://www.hpe.com/us/en/home.html?xdomain=hp_us_en_header_call-out).
- **Data Protection.** Unless otherwise agreed to between Eligible Participant and Contractor, to the extent HPE processes personal data on your behalf in the course of providing the services, the HPE Support Services – Data Privacy and Security Agreement found at [www.hpe.com/info/customer-privacy.html](http://www.hpe.com/info/customer-privacy.html) shall apply.
- **Audit.** HPE may audit your compliance with these terms. Upon reasonable notice, HPE may conduct an audit during normal business hours (with auditor's costs being at HPE's expense). If a software license audit reveals underpayments then you will pay to HPE such underpayments. If underpayments discovered exceed five percent of the contract price, you will reimburse HPE for the auditor costs.

### Exhibit C – HPE SLED Return Policy

Please see the attached HPE SLED Return Policy.



Returns Policy  
SLED\_v2 rel 04.2018.p



### Exhibit D – Administrative Fee and Reporting

**Administrative Fee:** MHEC has incurred, and will continue to incur, costs and expenses in the development, implementation, administration and marketing of this program. The Contractor shall pay MHEC for total accumulative net sales, during the applicable quarterly Reporting Period, an administrative fee of 0.50% or 0.005. The Administrative Fee, payable to MHEC, shall only apply to Quotes and Orders that expressly state the Contract Number: MHEC-12152020.

**Reporting:** Contract must submit business activity reports each quarter. The quarterly reports must include, at a minimum, the following information:

- Quarter number and year
- MHEC contract number
- Vendor name
- Name, phone number and email address of person who may be contacted for questions about the report
- Customer Name
- Customer Type (Higher Education, K-12, state agencies, cities, counties, local subdivisions)
- Address
- City
- State
- Zip Code
- Purchase Order Number
- Product Description
- Date Shipped or Delivered to End User
- Quantity
- List Price
- Sale Price
- Administration Fee
- % Discount
- \$ Savings
- Reseller (if applicable)

Quarterly Reports and Contract Administration Fees shall be submitted by end of the preceding month after the end of March, June, September, and December of each calendar year.

<b><u>Reports</u></b>	<b><u>Reporting Period</u></b>	<b><u>Report and Fee Due Date</u></b>
Calendar Quarter 1	(January 1 March 31)	Due April 30
Calendar Quarter 2	(April 1 to June 30)	Due July 31
Calendar Quarter 3	(July 1 to September 30)	Due October 31
Calendar Quarter 4	(October 1 to December 31)	Due January 31

## Exhibit E – Master Lease Agreement

Eligible Members may elect to finance purchases under a separate finance agreement. Hewlett-Packard Financial Services Company (“HPFS”) offers State and Local Government finance options, with the representative finance agreements. The parties recognize that finance agreements are separate and independent agreements between the Eligible Member and the finance entity, with the terms thereof constituting the entire agreement for financing.

### Master Lease Purchase Agreement



Master Lease  
Purchase Agreement.pdf

### Master Operating Lease Agreement



Master Operating  
Lease Agreement.pdf

**Exhibit F – HPE End User License Agreement (EULA)**

Please see attached HPE's End User License Agreement.



HPE EULA.pdf