



Contract Number

**23-501**

SAP Number

## Arrowhead Regional Medical Center

Department Contract Representative	William L. Gilbert
Telephone Number	(909) 580-6150
Contractor	Milestone Computer Technology, Inc.
Contractor Representative	Andy Johnson
Telephone Number	(602) 457-6777
Contract Term	June 13, 2023 through June 12, 2028
Original Contract Amount	\$6,007,345.77
Amendment Amount	
Total Contract Amount	\$6,007,345.77
Cost Center	8480

### IT IS HEREBY AGREED AS FOLLOWS:

**WHEREAS**, County conducted a competitive process to find a vendor to provide the Products and/or the Services that are the subject of this Contract, and

**WHEREAS**, County desires that such Products and/or Services be provided by Contractor and Contractor agrees to provide these Products and/or perform these Services as set forth below;

**NOW, THEREFORE**, the County and Contractor mutually agree to the following terms and conditions:

This Contract consists of these General Terms and the documents that are referenced and hereby incorporated as though fully set forth herein by a checked box below, and attachment hereto:

- ☒ Attachment A – HARDWARE PURCHASE TERMS
- ☐ Attachment B – SOFTWARE LICENSE
- ☐ Attachment C – SOFTWARE SUPPORT AND MAINTENANCE TERMS
- ☐ Attachment D – CLOUD SERVICES TERMS
- ☒ Attachment E – BUSINESS ASSOCIATE AGREEMENT
  - ☐ Attachment E-1 – Business Associate Addendum for Cloud Services

In the event of any inconsistency between this Contract and any forms, attachments, statements of works, or specifications which may be incorporated into this Contract, the following order of precedence shall apply: (i) this Contract; (ii) Attachments to this Contract, as indicated above; and (iii) price lists, SOWs, SLAs and other documents attached hereto or incorporated herein.

## **A. DEFINITIONS**

Unless elsewhere defined in this Contract, the following capitalized terms shall have the meaning ascribed herein:

- A.1** "Affiliates": collectively, municipalities, school districts, and other tax districts within County
- A.2** "County": San Bernardino County
- A.3** "Contractor": the individual or entity identified as providing the Products and/or Services
- A.4** "DRM": County's Department of Risk Management
- A.5** "Effective Date": the date of execution of the Contract
- A.6** "EFT": Electronic funds transfer.
- A.7** "P.O.": a purchase order specifying the types and quantity of Products, Services or Software ordered, the method of delivery, the delivery date required and the location to which Products or Software are to be shipped or the Services are to be provided.
- A.8** "Products": goods in the technology and consumer electronics category
- A.9** "Services": professional consulting, which may include implementation, design, customization, maintenance, help desk or other services necessary or desired by County as specified in an SOW.
- A.10** "Software": computer programs, procedures, rules, routines, or subroutines and any associated documentation pertaining to the operation of a computer system, including software designed to fill specific needs of a user; software that controls the execution of programs, and software that provides services such as resource allocation, scheduling, input/output control, and data management; application-independent software that supports the running of application software; software designed to facilitate the operation and maintenance of a computer system and its associated programs; and computer programs or routines designed to perform some general support function required by other application software, by the operating system, or by the system users, such as formatting electronic media, making copies of files, or deleting files.
- A.11** "SOW": a statement of work or work order that identifies Services provided by Contractor, including a detailed task list or specifications, the estimated period of performance, the fixed price or hourly rate to be charged for the Services, together with any milestones, acceptance criteria and other information regarding the scope of work, as mutually agreed by the Parties.

## **B. GENERAL CONTRACT REQUIREMENTS**

### **B.1 Recitals**

The recitals set forth above are true and correct and incorporated herein by this reference.

### **B.2 Contract Amendments**

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

### **B.3 Contract Assignability**

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

### **B.4 Reserved**

### **B.5 Attorney's Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

#### **B.6 Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contractor personnel to any County facility.

#### **B.7 Change of Address**

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

#### **B.8 Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

#### **B.9 Compliance with County Policy**

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate. County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

#### **B.10 Confidentiality**

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. Contractor shall execute and comply with the attached Business Associate Agreement (Attachment E). Contractor further agrees to comply with the requirements of other federal and state law that applies to the information collected and maintained by Contractor for Services performed pursuant to Contract.

#### **B.11 Primary Point of Contact**

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

#### **B.12 County Internship Initiative**

Contractor agrees to be contacted by the County to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by Contractor's business. Contractor is encouraged, and agrees to make good faith efforts, to utilize the County's program to aid the **County's Vision for a skilled workforce and jobs that create countywide prosperity**, and its **goal to Create, Maintain and Grow Jobs and Economic Value in the County**. The County's objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and trained workforce. When participating in the County's internship initiative, the Contractor remains an independent contractor and shall not be construed as agents, officers, or employees of the County. More

information about the County's GenerationGo! Career Pathways Program can be located at <http://wp.sbcounty.gov/workforce/career-pathways/>.

**B.13 County Representative**

The Hospital Director or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

**B.14 Damage to County Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence. If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

**B.15 Debarment and Suspension**

Contractor certifies that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

**B.16 Drug and Alcohol Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

**B.16.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

**B.16.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.

**B.16.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County. The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

**B.17 Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**B.18 Employment Discrimination**

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**B.19 Environmental Requirements**

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable. To assist the county in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

**B.20 Improper Influence**

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

**B.21 Improper Consideration**

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract. The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded. Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

**B.22 Informal Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**B.23 Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**B.24 Licenses, Permits and/or Certifications**

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

**B.25 Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

**B.26 Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

**B.27 Nondisclosure**

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**B.28 Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

**B.29 Ownership of Documents**

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

**B.30 Participation Clause**

The County desires that Municipalities, School Districts, and other Tax Districts requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of this contract with such governmental bodies as though they have been expressly identified in this contract, with the provisions that:

**B.30.1** Such governmental body does not have and will not have in force any other contract for like purchases.

**B.30.2** Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Contractor. The County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.

**B.31 Air, Water Pollution Control, Safety and Health**

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

**B.32 Records**

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract. All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

**B.33 Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

**B.34 Release of Information**

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

**B.35 Representation of the County**

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

**B.36 Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**B.37 Subcontracting**

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section E. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel. For any subcontractor, Contractor shall:

**B.37.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

**B.37.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.

**B.37.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. General Contract Requirements and Section E. Insurance and Indemnification.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

**B.38 Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

**B.39 Termination for Convenience**

The County reserves the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**B.40 Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**B.41 Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.



**B.42 Conflict of Interest**

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

**B.43 Former County Administrative Officials**

Contractor agrees to provide, or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

**B.44 Disclosure of Criminal and Civil Procedures**

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination. Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail. In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail. For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

**B.45 Copyright**

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

**B.46 Artwork, Proofs and Negatives**

All artwork, proofs, and/or negatives in either print or digital format for anything produced under the terms of this Contract are the property of the County. These items must be returned to the County within ten (10) days, upon



written notification to the Contractor. In the event of a failure to return the documents, the County is entitled to pursue any available legal remedies. In addition, the Contractor will be barred from all future solicitations, for a period of at least six (6) months.

**B.47 Iran Contracting Act**

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable. Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

**B.48 Reserved**

**B.49 Reserved**

**B.50 California Consumer Privacy Act**

To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing Services pursuant to this Contract, Contractor must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code §§1798.100, et seq.). For purposes of this provision, "business," "consumer," and "personal information" shall have the same meanings as set forth at Civil Code section 1798.140. Contractor must contact the County immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the County, including but not limited to, providing a list of disclosures or deleting personal information. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the County any notice provided by a consumer to Contractor pursuant to Civil Code section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Contract. Contractor must immediately notify the County if it receives a notice of violation from the California Attorney General pursuant to Civil Code section 1798.155(b).

**B. 51 Executive Order N-6-22 Russia Sanctions**

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. Contractor shall be provided advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the County.

**C. TERM OF CONTRACT**

This Contract is effective as of June 13, 2023 and expires June 12, 2028 but may be terminated earlier in accordance with provisions of this Contract.

**D. FISCAL PROVISIONS**

- D.1** The maximum amount of payment under this Contract shall not exceed \$6,007,345.77, and shall be subject to availability of other funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.
- D.2** Invoice shall be issued with a net sixty (60) day payment term with corresponding Purchase Order number stated on the invoice.
- D.3** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and

accurately complete forms provided by County required to process EFT payments.

- D.4** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- D.5** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- D.6** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- D.7** Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

## **E. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

### **E.1 Indemnification**

Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Contractor promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Contractor of its obligations only if and to the extent that such delay or failure materially prejudices Consultant's ability to defend such lawsuit or claim. County will give Contractor sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Contractor may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the goods or services that are the subject of the claim. In the event that Contractor fails to or elects not to defend County against any claim for which County is entitled to indemnity by Contractor, then Contractor shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Contractor. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Contractor's account at any time; and County, at its sole discretion, may settle the claim or suit.

If, in Contractor's opinion, any goods or services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Contractor may, at its option: (i) procure for County the right to continue using the goods or receiving the services; (ii) replace or modify the goods or services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Contractor, County shall cease use of the goods or services upon written notice from Contractor, and Contractor shall provide County with a pro-rata refund of the unearned fees paid by County to Contractor for such goods or services.

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

**E.2 Additional Insured**

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

**E.3 Waiver of Subrogation Rights**

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

**E.4 Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

**E.5 Severability of Interests**

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

**E.6 Proof of Coverage**

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

**E.7 Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

**E.8 Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

**E.9 Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

**E.10 Insurance Review**

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the County to monitor or enforce

compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

#### **E.11 Types and Limits**

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

**E.11.1 Workers' Compensation/Employer's Liability** – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract. If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management. With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

**E.11.2 Commercial/General Liability Insurance** – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

**E.11.3 Automobile Liability Insurance** – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**E.11.4 Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

**E.11.5 Umbrella Liability Insurance** – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**E.11.6 Professional Liability** – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

#### **F. RIGHT TO MONITOR AND AUDIT**

- F.1** The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.
- F.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

#### **G. CORRECTION OF PERFORMANCE DEFICIENCIES**

- G.1** Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- G.2** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- G.2.1** Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
- G.2.2** Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
- G.2.3** Withhold funds pending duration of the breach; and/or
- G.2.4** Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
- G.2.5** Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

#### **H. NOTICES**

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

San Bernardino County  
Arrowhead Regional Medical Center  
400 N Pepper Street  
Colton, CA 92324

Milestone Computer Technology, Inc.  
314 Wilcox St  
Castle Rock, CO 80104

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

#### **I. ENTIRE AGREEMENT**

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

#### **J. ELECTRONIC SIGNATURES**

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign

and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

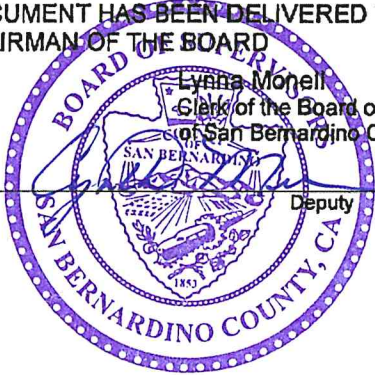
SAN BERNARDINO COUNTY

► Dawn Rowe  
Dawn Rowe, Chair, Board of Supervisors

Dated: JUN 13 2023

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By Lynna Monell  
Lynna Monell  
Clerk of the Board of Supervisors  
of San Bernardino County  
Deputy



MILESTONE COMPUTER TECHNOLOGY, INC.

(Print or type name of corporation, company, contractor, etc.)

By ► [Signature]  
(Authorized signature - sign in blue ink)

Name ANDY JOHNSON  
(Print or type name of person signing contract)

Title DIRECTOR  
(Print or Type)

Dated: MAY 10, 2023

Address 34 WILCOX ST.  
CASTLE ROCK, CO 80644

FOR COUNTY USE ONLY

Approved as to Legal Form

► Bonnie Uphold  
Bonnie Uphold, Supervising Deputy County Counsel

Date 6-1-2023

Reviewed for Contract Compliance

► \_\_\_\_\_  
Date \_\_\_\_\_

Reviewed/Approved by Department

► [Signature]  
William L. Gilbert, Director

Date 6/4/23





Contract Number

SAP Number

**ATTACHMENT A**  
**HARDWARE PURCHASE TERMS**

These Hardware Purchase Terms are attached to, form a part of, and supplement the General Terms.

**A. DEFINITIONS**

Capitalized terms used herein have the same meaning as ascribed in the General Terms. In addition, the following capitalized terms shall have the meaning ascribed herein:

- A.1** "Counterfeit Items": include, but are not limited to, raw materials, parts, components or assemblies that are or contain an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified material, part, component or assembly from the OEM, or the authorized OEM reseller or distributor. Unlawful or unauthorized substitution includes used material represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. If the item is an electronic part, the term also includes unlawful or unauthorized embedded software or firmware.
- A.2** "Documentation": users' guides, manuals and other printed materials necessary or useful to County for its use and maintenance of the Software or customarily provided with the Software. Manuals and other printed materials customized for County hereunder constitute Work Product if such materials are required by the Statement of Work.
- A.3** "OEM": an original equipment manufacturer.
- A.4** "Vendor": Contractor, as defined in the General Terms, and the individual or entity that is the direct seller of the Product to the County on behalf of Contractor.

**B. PRICE**

Prices for Products purchased hereunder shall be as specified in Exhibit A-1, Price List.

**C. DOCUMENTATION**

Vendor agrees to provide Documentation and updated versions thereof to County at no charge for each Product purchased. Vendor agrees that County may reproduce a reasonable number of copies of Documentation for its own use in maintaining the Products, provided that County includes Vendor's or manufacturer's copyright notice on any such reproduced Documentation. If County requests that Vendor provide additional copies of Documentation, Vendor agrees to charge no greater prices than Vendor charges to its other customers for similar additional copies of Documentation.

**D. ORDERS, DELIVERY, AND INSPECTION**

**D.1 Orders**

County may elect to purchase Products under this Contract by issuing a P.O. If Vendor is unable to fulfill a P.O., in whole or in part, due to insufficient inventory, Vendor will notify County in writing within twenty-four (24) hours of P.O. receipt, and County may, at its sole discretion, cancel or modify the P.O. Unless Vendor gives County written notice, a P.O. is deemed accepted within two (2) business days of Vendor's receipt or upon shipment, whichever occurs first. County may, in its sole discretion, cancel, reschedule, or change the location of delivery on any P.O. without incurring any additional charges by providing written notice to Vendor at any time prior to shipment.

**D.2 Shipping Terms**

Unless otherwise stated in the P.O., all shipments are Free on Board destination with Vendor bearing all costs for freight, insurance, duties, taxes and other shipping expenses to the destination specified in the P.O. and shall bear all risk of loss until County receives the Product at the specified destination. Vendor

shall ship orders according to County's requested shipment dates or, if no shipment date is specified, within two (2) business days of receipt of County's P.O.

#### **D.3 Delivery**

**Time is of the essence with respect to the delivery of Products.** Vendor shall immediately notify County in writing of any anticipated delay in meeting the delivery schedule, stating the reasons for the delay. Products shipped after their scheduled shipment date will be shipped by Vendor on an expedited overnight basis with the surcharge for such expedited overnight delivery being at Vendor's sole expense. No shipment will be deemed complete until all Products specified on the P.O. have been delivered. In case of default by Vendor, County may procure the Product from other sources and may deduct from unpaid balances due to Vendor. The prices paid by County for such alternate product shall be considered the prevailing market prices paid at the time such purchase is made.

#### **D.4 Order Inspection**

County will notify Vendor in writing, which may be via electronic mail, of any shipment not conforming to the P.O., including delivery of the wrong product, overages, shortages or shipping damage within five (5) business days of delivery. Vendor will correct any identified nonconformities within five (5) business days of County's notice. The foregoing procedure may be repeated until County accepts the Product or cancels the order. If County determines, after a minimum of 3 evaluation cycles as provided herein, that the Product fails to meet the P.O., County may cancel the order without incurring any further liability hereunder and procure the Products elsewhere.

#### **D.5 Right of Rejection**

Receipt of an order does not constitute acceptance of all Product in that order. County shall have the right to inspect or test and reject any order, or any part thereof within thirty (30) calendar days after delivery. The quantities specified in this Contract or any P.O. are the only quantities required. If the Vendor delivers in excess of the quantities ordered, County shall not be required to make any payment for the excess Products, and may return them to Vendor at Vendor's expense or exercise any other rights available to County at law or in equity.

### **E. PRODUCT WARRANTIES**

Vendor warrants that Products delivered under this Contract are new, only contain materials obtained directly from an OEM or a source having the express written authority of the OEM, including an authorized aftermarket manufacturer, and do not contain Counterfeit Items; substantially comply with the specifications and perform as described in the associated Documentation under normal use; are identical in all respects to samples provided as part of the bid process, if any; do not infringe or misappropriate any third party's patent, copyright, trademark, trade secret, or any other intellectual property right; and conform to all domestic legal requirements and shall not be in violation or cause County to be in violation of any applicable law, rule or regulation (including without limitation, export, environmental and hazardous substance laws, regulations, rules and directives). Vendor shall meet proper labeling requirements for Products, including without limitation, Consumer Product Safety Improvement Act, Federal Communications Commission, California Electronic Waste Recycling Act, California Restrictions on the use of Certain Hazardous Substances in Electronic Devices, and Proposition 65 certifications and warnings.

### **F. DISCLAIMER OF WARRANTIES**

**THE FOREGOING EXPRESS WRITTEN WARRANTIES BETWEEN THE PARTIES ARE EXCLUSIVE AND ARE IN LIEU OF ANY OTHER WARRANTIES OR REMEDIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO THE EXTENT THAT IT IS ILLEGAL OR UNENFORCEABLE UNDER APPLICABLE LAW.**

### **G. INDEMNIFICATION**

These indemnification obligations and responsibilities are in addition to the General Indemnification of General Terms Section E.1.

#### **G.1 Obligations**

Vendor shall defend, indemnify and hold harmless County, its officers, employees, agents and volunteers from and against all third party claims, costs (including, without limitation, attorneys' fees), and losses for

infringement of any United States patent, copyright, trademark or trade secret ("Intellectual Property Rights") by any Product.

#### **G.2 Defense and Settlement**

County will give Vendor sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Vendor may not settle the claim or suit absent the written consent of County unless such settlement: (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the Products that are the subject of the claim. In the event that Vendor fails to or elects not to defend County against any claim for which County is entitled to indemnity by Vendor, then Vendor shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Vendor. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Vendor's account at any time; and County, at its sole discretion, may settle the claim or suit. County may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability): (a) when substantial principles of government or public law are involved; (b) when litigation might create precedent affecting future County operations or liability; or (c) when involvement of County is otherwise mandated by law.

#### **G.3 Non-Infringing Alternatives**

If, in Vendor's opinion, any Products become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Vendor may, at its option: (i) procure for County the right to continue using the Products; (ii) replace or modify the Products to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is, in the reasonable judgment of Vendor, County shall cease use of the Products upon written notice from Vendor, and Vendor shall provide County with a pro-rata refund price paid by County to Vendor in connection with any such Products calculated over a 3-year baseline depreciation.

#### **G.4 Notice of Claim**

If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Vendor promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Vendor of its obligations only if and to the extent such delay or failure materially prejudices Vendor's ability to defend such lawsuit or claim.

[END OF HARDWARE PURCHASE TERMS]

**EXHIBIT A-1  
PRICE LIST**

<b>Item/Quantity</b>	<b>Unit Cost</b>	<b>Tax Amount</b>	<b>Discount</b>	<b>Total Amount</b>
Synergy Compute (incl Critical Care 6HRCTR)	\$1,269,172.80	\$65,774.63	*51%	\$1,334,947.43
Alletra Storage	\$3,189,170.88	\$242,211.29	*59%	\$3,431,382.17
StoreOnce	\$783,820.80	\$54,021.90	*67%	\$837,842.70
Fibre Channel Switching	\$113,626.80	\$4,230.93	*29%	\$117,857.73
Racks	\$33,339.60	\$851.52		\$34,191.12
EDU MGRT Services	\$251,124.62	\$0		\$251,124.62
<b>TOTALS:</b>	<b>\$5,640,255.50</b>	<b>\$367,090.27</b>		<b>\$6,007,345.77</b>
<b>*NOTE: Discount percentage off HPE MSRP LIST price</b>				
<b>Available payment options include monthly, quarterly, annually, or up-front.</b>				

## Bill of Material (BOM)

### Synergy Compute EDU MGRT

Quantity	Product#	Product Description
1	P06011-B21	HPE Synergy 12000 Configure-to-order Frame with 10x Fans
1	P06011-B21 ABA	HPE Synergy 12000 Frame
12	P22139-B21	HPE Synergy 480 Gen10 Plus Base Chassis Configure-to-order Compute Module
12	P22139-B21 OD1	Factory Integrated
24	P36927-B21	Intel Xeon-Gold 6330 2.0GHz 28-core 205W Processor for HPE
24	P36927-B21 OD1	Factory Integrated
288	P06033-B21	HPE 32GB (1x32GB) Dual Rank x4 DDR4-3200 CAS-22-22-22 Registered Smart Memory Kit
288	P06033-B21 OD1	Factory Integrated
12	P36675-B21	HPE Synergy 480 Gen10 Plus 2SFF Standard Drive Cage Kit
12	P36675-B21 OD1	Factory Integrated
24	P18422-B21	HPE 480GB SATA 6G Read Intensive SFF SC Multi Vendor SSD
24	P18422-B21 OD1	Factory Integrated
12	P02381-B21	HPE Smart Storage Hybrid Capacitor with 260mm Cable Kit
12	P02381-B21 OD1	Factory Integrated
12	804424-B21	HPE Smart Array P204i-c SR Gen10 (4 Internal Lanes/1GB Cache) 12G SAS Modular Controller
12	804424-B21 OD1	Factory Integrated
12	P02054-B21	HPE Synergy 6820C 25/50Gb Converged Network Adapter
12	P02054-B21 OD1	Factory Integrated
12	P13771-B21	HPE Trusted Platform Module 2.0 Gen10 Plus Black Rivets Kit
12	P13771-B21 OD1	Factory Integrated
12	P37274-B21	HPE Synergy 480 Gen10 Plus CPU Front Heat Sink Kit
12	P37274-B21 OD1	Factory Integrated
12	P37275-B21	HPE Synergy 480 Gen10 Plus CPU Rear Heat Sink Kit
12	P37275-B21 OD1	Factory Integrated
1	867793-B21	HPE Synergy 50Gb Interconnect Link Module
1	867793-B21 OD1	Factory Integrated
1	867796-B21	HPE Virtual Connect SE 100Gb F32 Module for Synergy
1	867796-B21 OD1	Factory Integrated
2	841716-B21	HPE 40Gb QSFP+ Bidirectional Transceiver
2	841716-B21 OD1	Factory Integrated
2	882251-B21	HPE Synergy 100GbE/4x25GbE/4x32GbFC QSFP28 Transceiver
2	882251-B21 OD1	Factory Integrated
1	R3P67A	HPE Synergy 32Gb Fibre Channel Upgrade FIO LTU
2	876852-B21	HPE Synergy 4-port Frame Link Module
2	876852-B21 OD1	Factory Integrated
1	455883-B21	HPE BladeSystem c-Class 10Gb SFP+ SR Transceiver
1	455883-B21 OD1	Factory Integrated
1	P27750-B21	HPE 6x 3000W Titanium Hot Plug FIO Power Supply Kit
1	804938-B21	HPE Synergy Frame Rack Rail Kit
1	804938-B21 OD1	Factory Integrated
1	804943-B21	HPE Synergy Frame 4x Lift Handles
1	804943-B21 OD1	Factory Integrated
1	859493-B21	Synergy Multi Frame Master1 FIO
1	872957-B21	HPE Synergy Composer2 Management Appliance
1	872957-B21 OD1	Factory Integrated
1	P06011-B21	HPE Synergy 12000 Configure-to-order Frame with 10x Fans
1	P06011-B21 ABA	HPE Synergy 12000 Frame

## Bill of Material (BOM)

### Synergy Compute EDU MGRT (cont.)

Quantity	Product #	Product Description
12	P22139-B21	HPE Synergy 480 Gen10 Plus Base Chassis Configure-to-order Compute Module
12	P22139-B21 0D1	Factory Integrated
24	P36927-B21	Intel Xeon-Gold 6330 2.0GHz 28-core 205W Processor for HPE
24	P36927-B21 0D1	Factory Integrated
288	P06033-B21	HPE 32GB (1x32GB) Dual Rank x4 DDR4-3200 CAS-22-22-22 Registered Smart Memory Kit
288	P06033-B21 0D1	Factory Integrated
12	P36675-B21	HPE Synergy 480 Gen10 Plus 2SFF Standard Drive Cage Kit
12	P36675-B21 0D1	Factory Integrated
24	P18422-B21	HPE 480GB SATA 6G Read Intensive SFF SC Multi Vendor SSD
24	P18422-B21 0D1	Factory Integrated
12	P02381-B21	HPE Smart Storage Hybrid Capacitor with 260mm Cable Kit
12	P02381-B21 0D1	Factory Integrated
12	804424-B21	HPE Smart Array P204i-c SR Gen10 (4 Internal Lanes/1GB Cache) 12G SAS Modular Controller
12	804424-B21 0D1	Factory Integrated
12	P02054-B21	HPE Synergy 6820C 25/50Gb Converged Network Adapter
12	P02054-B21 0D1	Factory Integrated
12	P13771-B21	HPE Trusted Platform Module 2.0 Gen10 Plus Black Rivets Kit
12	P13771-B21 0D1	Factory Integrated
12	P37274-B21	HPE Synergy 480 Gen10 Plus CPU Front Heat Sink Kit
12	P37274-B21 0D1	Factory Integrated
12	P37275-B21	HPE Synergy 480 Gen10 Plus CPU Rear Heat Sink Kit
12	P37275-B21 0D1	Factory Integrated
1	867793-B21	HPE Synergy 50Gb Interconnect Link Module
1	867793-B21 0D1	Factory Integrated
1	867796-B21	HPE Virtual Connect SE 100Gb F32 Module for Synergy
1	867796-B21 0D1	Factory Integrated
2	841716-B21	HPE 40Gb QSFP+ Bidirectional Transceiver
2	841716-B21 0D1	Factory Integrated
2	882251-B21	HPE Synergy 100GbE/4x25GbE/4x32GbFC QSFP28 Transceiver
2	882251-B21 0D1	Factory Integrated
1	R3P67A	HPE Synergy 32Gb Fibre Channel Upgrade FIO LTU
2	876852-B21	HPE Synergy 4-port Frame Link Module
2	876852-B21 0D1	Factory Integrated
1	455883-B21	HPE BladeSystem c-Class 10Gb SFP+ SR Transceiver
1	455883-B21 0D1	Factory Integrated
1	P27750-B21	HPE 6x 3000W Titanium Hot Plug FIO Power Supply Kit
1	804938-B21	HPE Synergy Frame Rack Rail Kit
1	804938-B21 0D1	Factory Integrated
1	859494-B22	Synergy Multi Frame Master2 FIO
1	872957-B21	HPE Synergy Composer2 Management Appliance
1	872957-B21 0D1	Factory Integrated
48	BD514AAE	VMware vSphere Enterprise Plus 1 Processor 5yr E-LTU
1	H1SR4AS	HPE Service Credit
1	H1SR4AS	HPE Service Credit
2	H0JD4A5	HPE 5Y Service Credits 10 Per Yr SVC
2	H0JD4A5 WFK	HPE 5Y Service Credits Qty 50 SVC

## Bill of Material (BOM)

### Synergy Compute EDU MGRT (cont.)

Quantity	Product #	Product Description
4	876689-B21	HPE Synergy 300Gb Interconnect Link 3m Active Optical Cable
2	845406-B21	HPE 100Gb QSFP28 to QSFP28 3m Direct Attach Copper Cable
1	HU4D5A5	HPE 5Y Complete Care Addon Essential Service
48	HU4D5A5 R5M	HPE VMw vSphere EntPlus 1P 5yr SW Supp
2	HU4D5A5 WJN	HPE Synergy 1200 Frame Supp
2	HU4D5A5 Z1Q	HPE Synergy Composer2 Support
2	HU4D5A5 Z1R	HPE Synergy VC SE 100Gb F32 Module Supp
2	HU4D5A5 Z1S	HPE Synergy 50Gb IC Link Module Support
24	HU4D5A5 ZVS	HPE SY480 Gen10 Plus Support
4	K2Q47A	HPE Multi Fiber Push On to 4 x Lucent Connector 15m Cable
4	QK735A	HPE Premier Flex LC/LC Multi-mode OM4 2 Fiber 15m Cable
2	487655-B21	HPE BladeSystem c-Class 10GbE SFP+ to SFP+ 3m Direct Attach Copper Cable
1	HA124A1	HPE Technical Installation Startup SVC
1	HA124A1 5ZQ	HPE Synergy Additional Frame Startup SVC
1	HA124A1 5ZM	HPE Synergy First Frame Startup SVC
1	HU7D2A1	HPE Synergy Ecosystem Health Review SVC
1	HG7A4AS	HPE CC Environment Wide Entitlement SVC
1	HU3V3A5	HPE 5Y Complete Care Starter Pack basic SVC
1	HU3V3A5 Y2Y	HPE 5Y CC Starter Pack Basic SVC
1	H1SR4AS	HPE Service Credit
1	HU0R5A5	HPE 5Y Service Credits 10 Per Yr SVC
10	HU0R5A5 Y39	HPE 5Y Service Credits Qty 50 SVC
1	U5466S	HPE Care Pack
20	U5466S 4BA	HPE Credits for Total Education SVC
1	HR2L8A1	HPE Data Migration 50 Server Base SVC
1	HR2M0A1	HPE Data Migration 250 Server Base SVC
1	HR2L9A1	HPE Data Migration 100 Server Base SVC



## Bill of Material (BOM)

### Alletra Storage

Quantity	Product #	Product Description
1	R0N93A	HPE Alletra 9000 4-way NVMe Storage Base
1	581817-B21	HPE Configurator Defined Build Instruction Option
2	R0N99A	HPE Alletra 9060 2-node Controller
2	R0N99A 0D1	Factory Integrated
32	R0Q10B	HPE Alletra 9000 15.36TB NVMe SFF FIPS Encrypted SSD
32	R0Q10B 0D1	Factory Integrated
16	Q2P62A	HPE 32Gb SFP28 Short Wave 1-pack Pull Tab Optical Transceiver
16	Q2P62A 0D1	Factory Integrated
4	R3B28A	HPE Alletra 9000 16/32Gb 4-port Fibre Channel Host Bus Adapter
4	R3B28A 0D1	Factory Integrated
4	R4W00A	HPE 1700W Power Supply Battery Kit
4	R4W00A 0D1	Factory Integrated
2	R3B13A	HPE Alletra 2240 2U SFF Drive Enclosure
32	R0Q10B	HPE Alletra 9000 15.36TB NVMe SFF FIPS Encrypted SSD
32	R0Q10B 0D1	Factory Integrated
4	R3B52A	HPE 100Gb QSFP28 to QSFP28 1m Direct Attach Copper Cable
4	R3B52A 0D1	Factory Integrated
4	R3B79A	HPE 1700W Power Supply Kit
4	R3B79A 0D1	Factory Integrated
1	R7N52AAE	HPE Alletra Software and Support SaaS
4443	R7N52AAE CTH	5-year Subscription
16	QK734A	HPE Premier Flex LC/LC Multi-mode OM4 2 Fiber 5m Cable
1	HA124A1	HPE Technical Installation Startup SVC
1	HA124A1 5SY	HPE Strge Systm Startup 4Wy Base Fld SVC
2	HA124A1 5Q3	HPE Strge System Startup Drv Enc Fld SVC
1	HA124A1 5R5	HPE Storage System Startup Base SW SVC
3	HF383A1	HPE Training Credits for Storage SVC
64	H0JD6A1	HPE Storage SSD Extended Replacement SVC
1	HU4D3A5	HPE 5Y Complete Care Addon Critical with Defective Media Retention Services
1	HU4D3A5 Z15	HPE Data Encryption LTU Supp
1	HU4D3A5 ZU5	HPE Alletra 9000 4-way NVMe Base Supp
2	HU4D3A5 ZU7	HPE Alletra 9060 2N Controller Supp
4	HU4D3A5 ZU8	HPE Alletra 9000 16/32Gb 4p FC HBA Supp
4	HU4D3A5 ZU9	HPE Alletra 9000 1700W PS Batt Kit Supp
64	HU4D3A5 ZUD	HPE Alletra 9000 15.36TB NVMe SSD Supp
2	HU4D3A5 ZVF	HPE Alletra 2240 2U SFF Drv Encl Support
4	HU4D3A5 ZVG	HPE 1700W PS Kit Support
1	R1P29AAE	HPE Data Encryption E-LTU

## Bill of Material (BOM)

### StoreOnce

Quantity	Product #	Product Description
1	R6U04A	HPE StoreOnce 5660 Base System
2	BB990A	HPE StoreOnce Gen4 32Gb Fibre Channel Network Card
2	BB990A 0D1	Factory Integrated
2	R7M24A	HPE StoreOnce Gen4 Plus 10/25Gb 2-port SFP Adapter
2	R7M24A 0D1	Factory Integrated
2	BB983A	HPE StoreOnce Gen4 10/25Gb SFP Network Card LTU
2	BB983A 0D1	Factory Integrated
2	BB991A	HPE StoreOnce Gen4 32Gb Fibre Channel Network Card LTU
2	BB991A 0D1	Factory Integrated
8	R7M60A	HPE StoreOnce 5260/5660 192TB Upgrade LTU
8	R7M60A 0D1	Factory Integrated
8	R7M23A	HPE StoreOnce 5260/5660 192TB Upgrade Kit
8	R7M23A 0D1	Factory Integrated
1	BB994AAE	HPE StoreOnce Encryption E-LTU
1	HU4D3A5	HPE 5Y Complete Care Addon Critical with Defective Media Retention Services
8	HU4D3A5 YJ9	HPE StoreOnce 52/5660 192TB Upg Kit Supp
1	HU4D3A5 YHP	HPE StoreOnce 5660 Base System Supp
1	HA124A1	HPE Technical Installation Startup SVC
1	HA124A1 5T7	HPE StoreOnce Sing N Catalys Startup SVC
1	HA124A1 5WQ	HPE StoreOnce 52/5650 Stup SVC
2	HF383A1	HPE Training Credits for Storage SVC

### Fibre Channel Switching

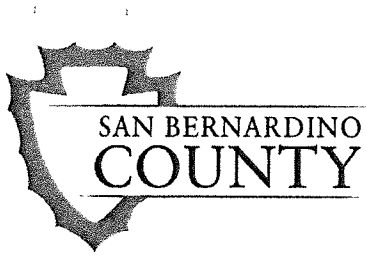
Quantity	Product #	Product Description
2	R6B05A	HPE SN6700B 64Gb 56/24 24-port 32Gb Short Wave SFP28 Integrated Fibre Channel Switch
2	Q9Y41AAE	HPE Network Orchestrator E-LTU
24	QK734A	HPE Premier Flex LC/LC Multi-mode OM4 2 Fiber 5m Cable
1	HA113A1	HPE Installation SVC
2	HA113A1 5GA	HPE LowEnd SAN/Edge Switch/HAFM Inst SVC
1	HU4D2A5	HPE 5Y Complete Care Addon Critical Service
2	HU4D2A5 ZGT	HPE Network Orchstrtor SW-6 Support
2	HU4D2A5 Z78	HPE SN6700B 64Gb 56/24 Swch Support
1	HA124A1	HPE Technical Installation Startup SVC
1	HA124A1 5VZ	HPE SAN Level 1 Tier 1 Startup SVC

## Bill of Material (BOM)

### Racks

Quantity	Product #	Product Description
2	P9K10A	HPE 42U 600mmx1200mm G2 Kitted Advanced Shock Rack with Side Panels and Baying
8	P9R53A	HPE G2 Metered 4.9kVA/L6-30P 24A/208V Outlets (32) C13 (6) C19/Vertical NA/JP PDU
2	BW932A	HPE 600mm Rack Stabilizer Kit
2	120672-B21	HPE Rack Ballast Kit
2	HA113A1	HPE Installation SVC
2	HA113A1 5BW	HPE ProLiant Add On Options Install SVC
1	HA113A1	HPE Installation SVC
2	HA113A1 5BY	HPE Rack and Rack Options Install SVC





**Contract Number**

---

**SAP Number**

---

**ATTACHMENT B**  
**SOFTWARE LICENSE**

**RESERVED**

**EXHIBIT B-1**  
**SOFTWARE QUANTITIES AND PRICES**

**RESERVED**

**EXHIBIT B-2**  
**END USER LICENSE AGREEMENT**

**RESERVED**



**EXHIBIT B-3**  
**STATEMENT OF WORK**

**RESERVED**



**Contract Number**

---

**SAP Number**

---

**ATTACHMENT C**  
**SOFTWARE SUPPORT AND MAINTENANCE TERMS**  
**RESERVED**

**EXHIBIT C-1**  
**SERVICE LEVEL AGREEMENT**  
**RESERVED**



**Contract Number**

---

**SAP Number**

---

**ATTACHMENT D**  
**CLOUD SERVICES TERMS**

**RESERVED**

**EXHIBIT D-1**  
**SERVICE LEVEL AGREEMENT**

**RESERVED**

**ATTACHMENT E**  
**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between the San Bernardino County Arrowhead Regional Medical Center (hereinafter Covered Entity) and Milestone Computer Technology, Inc. (hereinafter Business Associate). This Agreement is effective as of the effective date of the Contract.

**RECITALS**

**WHEREAS**, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

**WHEREAS**, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

**WHEREAS**, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

**WHEREAS**, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

**NOW THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

**I. Definitions**

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

- a. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.
- b. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103.
- c. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.
- d. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
- e. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
- f. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
- g. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including,

but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.

- h. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
- i. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
- j. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

## **II. Obligations and Activities of BA**

### **a. Permitted Uses and Disclosures**

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

### **b. Prohibited Uses and Disclosures**

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

### **c. Appropriate Safeguards**

- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.
- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and



disclosure of the CE's PHI.

Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

d. Subcontractors

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

e. Reporting of Improper Access, Use or Disclosure or Breach

Every suspected and actual Breach shall be reported immediately, but no later than one (1) business day upon discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to include but not limited to:
  1. Date the Breach or suspected Breach occurred;
  2. Date the Breach or suspected Breach was discovered;
  3. Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;
  4. Number of potentially affected Individual(s) with contact information; and
  5. Description of how the Breach or suspected Breach allegedly occurred.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
  1. The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
  2. The unauthorized person who had access to the PHI;
  3. Whether the PHI was actually acquired or viewed; and
  4. The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
  1. If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
  2. If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.
- iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.

f. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill

its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.

g. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

h. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

i. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

j. Termination

CE may immediately terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.

k. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

l. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

m. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

n. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to

invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services.

o. Direct Liability

BA may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

p. Indemnification

BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

q. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

r. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

s. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

### III. **Obligations of CE**

a. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:

- i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.

- ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
- iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

#### **IV. General Provisions**

a. Remedies

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

b. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

c. Regulatory References

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

d. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

e. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

f. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

g. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA shall comply with the more restrictive requirements.

h. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this Agreement.

**ATTACHMENT F**



# HPE Greenlake Statement of Work

**SOW Order Form #: ARMC-GL-SOW-041123**

*Pricing valid through June 30, 2023*

**CUSTOMER:** San Bernardino County on behalf of Arrowhead Regional Medical Center ("Customer")

**SOLUTION/SCOPE:** This HPE GreenLake solution provides Customer with HPE Synergy, StoreOnce, Alletra, FC switching and full Install/Startup Services at 100% commit. The added resources including the Greenlake Analytics portal and increased Support resources are a value add to Customer.

Except as agreed to herein, all purchases of products and/or services under this Agreement shall be made pursuant to the County Contract No. 23-XX ("Purchase Contract").

HPE Services will begin after execution of the Contract, and, if required by Customer, the receipt of a valid, acceptable purchase order.

Any amendment, exhibit, addendum, Statement of Work, or attachment, executed in writing between the parties, to the Ts & Cs or this Agreement, (COLLECTIVELY "Attachments") will be deemed to form a part of this Agreement.

Milestone is required by HPE to include a copy of the [HPE GreenLake Pass-Through Terms](#) (link provided) in its agreement with Customer and that the provision of these Services by HPE will be in accordance with such terms and this Order Form.

This Order Form incorporates exhibits and appendices mentioned herein. All datasheets listed, or specific sections of datasheets referenced, in this Order Form are incorporated by reference.

## 1. ORDER INFORMATION

**Purchase orders must reference the following information in order to be valid:**

- **SOW Order Form#:** ARMC-GL-SOW-042623
- **Contract:** County Contract No. 23-XX

- **Purchase Order #**
- **Purchase Order (Fiscal Year Encumbrance)**
- **Customer has the option to monthly, annually or up-front payments as follows (incl CA Sales Tax):**
  - Monthly: \$100,122.43
  - Annual: \$1,201,469.15
  - Up-Front: \$6,007,345.77

### **1.1 Updated purchase orders**

If funds are spread over multiple fiscal years and funds in the current purchase order are insufficient to cover usage for the next 3 months, Purchaser will promptly provide Seller with an updated or new purchase order with sufficient funds to cover estimated usage during the next year.

### **1.2 Remittance Address**

Milestone Computer Technology  
 314 Wilcox St  
 Castle Rock, CO 80104  
 Attn: Kristen Espino

### **1.3 Customer Addresses**

**Delivery Address:**

Arrowhead Regional Medical Center  
 400 N. Pepper Ave  
 Colton, CA 92324  
 Attn: Adam McCartney 909-580-2606  
[taylor@armc.sbcounty.gov](mailto:taylor@armc.sbcounty.gov)

**Customer Invoice Address:**

Arrowhead Regional Medical Center  
 400 N. Pepper Ave  
 Colton, CA 92324  
 Attn: Adam McCartney 909-580-2606

## **2. SYSTEMS DETAILS**

<b>Solution/Datasheet</b>	<b>Experience Level</b>	<b>Included Optional Features</b>
<u>HPE GreenLake Data Sheet</u>	HPE GreenLake Standard	

HPE Installation Services Data Sheets

HPE Integration and Performance Services

HPE Installation and Startup Services for HPE Synergy

HPE Synergy Ecosystem Health Review

HPE Tech Care Data Sheet

HPE Tech Care Essential

Defective Media Retention (DMR)

HPE Complete Care Data Sheet

HPE Complete Care Standard

HPE Advisory and Professional Services

HPE Storage Data Migration Service

#### 2.1.1 Delivery details

<b>Delivery address</b>	400 N. Pepper Ave. Colton, CA 92324
<b>Customer contact name</b>	Adam McCartney
<b>Customer contact phone</b>	(909) 580-2606
<b>Customer contact email</b>	McCartneyA@armc.sbcounty.gov
<b>Estimated service delivery start date</b>	60 business days after signature and valid purchase order
<b>Term for each System deployed under this SOW</b>	As provided in Contract

#### 2.1.2 Technical configuration/Bill of Materials (BOM)

DC Refresh deployed at Arrowhead Regional Medical Center. **See Attachment A for full Bill of Materials**

#### 2.1.3 Systems capacity

Billing Tier (DC Refresh)	UoM	Requested capacity	Reserved* capacity	Variable* capacity	Installed capacity
Racks	Fixed	2	100% and 2 Racks	0%	2 Racks
Synergy	Node	24	100% and 24 Nodes	0%	24 Nodes
Switches	Switch	2	100% and 2 Switches	0%	2 Switches
Alletra Storage	GB	669,600	100% and 669,600 GB	0%	669,600 GB
StoreOnce	GB	1,152,000	100 % and 1,152,000 GB	0%	1,152,000 GB

### 3. PRICING

Prices are in United States Dollars and exclusive of applicable taxes (such as, sales, value-added tax (VAT), goods and services tax (GST), stamp duty, or similar taxes or fees including stamp duty).

<b>Billing Tier (DC Refresh)</b>	<b>Annual Cost</b>
Racks	\$6,667.92
Synergy	\$253,834.56
Switches	\$22,725.36
Alletra Storage	\$637,834.18
StoreOnce	\$156,764.16
Data Migration	\$50,224.92
	\$1,128,051.10

#### **3.1.1 Delay fee**

As indicated in the HPE GreenLake terms, the delay fee amount is \$2,685.43 per day.

## **4. OTHER CONTRACT TERMS**

### **4.1 End of Term**

At the end of the term, Customer will take ownership of any equipment delivered by HPE under the contract with no additional fees, with notice 90 days prior to the end of Term.

### **4.2 Configuration Review Meeting**

Milestone will meet with Customer for a final configuration review which will include, but not limited to, finalize power and data cables (types/quantity), datacenter specifics (location/access/loading dock/elevator/etc.,) to help ensure overall quality and success of the project. We would also step through the configuration to ensure any discrepancies are talked through.

### **4.3 HPE Support Variances**

Milestone will provide Critical Care with 6HR Call To Repair (CTR)



# HPE GreenLake terms

July 11, 2022

Version 3

## 1. Definitions

- **Agreement:** Collectively, these [HPE GreenLake Terms](#), [HPE GreenLake data sheet](#), any applicable [HPE service data sheets](#), the order form or SOW and any referenced documents.
- **Billing Tiers:** A particular System or component of a System with unit pricing.
- **Contract Change Management Process:** The process described in the account support plan (ASP) used to make modifications to the solution.
- **Customer:** The entity that will be receiving the Services.
- **Deliverable:** Tangible output of the Services specifically identified as such in the SOW or data sheet.
- **Delivered Capacity:** The delivered systems but not necessarily installed or activated but awaiting their installation during the ramp-up period.
- **GMS:** HPE GreenLake Management Services.
- **HPE:** The contracting Hewlett Packard Enterprise group company.
- **Items:** Services, hardware, software, technology, or data.
- **Requested Capacity:** Requested Capacity is the number of Units required over the term agreed to with the Customer. Requested Capacity may increase through the contract change management process documented in the Account Support Plan (ASP).
- **Reseller:** The authorized HPE reseller that is reselling to the Customer.
- **Reserved Capacity:** Reserved Capacity is the minimum number of Units that will be invoiced monthly.
- **Services:** The Services, detailed in the Agreement, that HPE will perform for the Customer.
- **SOW:** HPE GreenLake Services Statement of Work.
- **System, Systems:** The hardware and relevant software as provided by HPE as part of the Services.
- **Variable Capacity:** Variable Capacity is the delta between the Requested Capacity and Reserved Capacity. This capacity is billed when used.

All capitalized Terms that are used but not defined in these HPE GreenLake Terms shall have the meaning given to them elsewhere in the Agreement. This document includes country-specific provisions (section 9) and they shall precede their respective sections on this document.

## 2. Reseller transactions

Notwithstanding anything to the contrary herein, if Customer buys the Services through a Reseller (as opposed to directly from HPE), then all references and terms related to fees, payments, cancellation or termination rights, or similar financial terms (including, but not limited to, those set out in [section 7, Financial Terms](#)) shall not apply, and any financial terms shall instead be governed by Customer's agreement with the Reseller. In particular, in case of any purchase from a Reseller, such Reseller would set the payment terms with Customer in its own discretion, and all relevant amounts owed for the Services are due to, and will be invoiced by, such Reseller for that Reseller's own account and on such Reseller's own behalf. These HPE GreenLake Terms create binding delivery obligations from HPE to Customer in addition to the respective delivery obligations of the Reseller to Customer. When HPE performs the Services, the Reseller shall also be discharged from its respective obligations to the Customer. The foregoing applies accordingly to the relationship between Tier One Partner and the Reseller if a Tier One Partner is involved.

### 3. Services

#### 3.1 Right to use the Systems

- Title to Systems remains with HPE or its affiliates.
- Any HPE software that is provided as part of the Systems is subject to the terms of the software license agreement and additional license authorizations, if applicable, available on [hpe.com/software/SW Licensing](http://hpe.com/software/SW Licensing).
- For non-HPE branded software, the third-party license terms will govern its use. Customer may be directed to the third party's URL to click and accept the third party's license terms and/or download the software for use under this Agreement. The respective license terms will be made available to Customer upon request. Any licenses granted will terminate upon termination or expiration of the Services.
- If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.
- If the service provider use is purchased—HPE grants the Customer a non-transferrable right to use the System for the applicable System Term, including the right to:
  - Use the Systems to provide Services to end users.
  - Provide Customer's end users with access to the Systems for their internal business purposes.
  - Note that not all third-party software is available for service provider use. Consult the third-party license terms for use rights.
- If the service provider use is not purchased—HPE grants the Customer a non-transferable right to internally use the Systems provided under these Services for the applicable System Term.

#### 3.2 Services with Deliverables

- If the Services specifically include Deliverables, those Deliverables will conform materially to their written specifications for 30 days following delivery.
- If the Customer notifies HPE of a 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 the Customer will return those Deliverables to HPE. The above states all remedies for warranty claims pertaining to Deliverables. To the extent permitted by law, HPE disclaims all other warranties.

#### 3.3 Services with remote monitoring

- In addition to the metering tools, HPE will install certain hardware and software tools (HPE Tools) to deliver remote monitoring services. HPE Tools are owned by HPE and delivery of these Services is contingent upon installation of them for use by HPE. The Customer may not use, transfer, assign, pledge, or in any way encumber or convey the tools. HPE will remove the tools upon termination or expiration of the Services.
- Any remote monitoring services (or portions thereof) will be provided from locations determined by HPE, which may be outside the country where the Systems are located.
- Customer acknowledges that it is responsible (administratively and financially) for obtaining all required approvals, licenses, authorizations, consents, and permits for HPE to perform remote monitoring Services.
- HPE grants Customer a limited license to use HPE information technology service management (ITSM) integration tool during the term and solely for the purposes of HPE's provision of the Services set forth herein (only applies to HPE GMS).
- The Customer agrees that the information available in HPE ITSM integration tool is HPE Confidential Information (only applies to HPE GMS).

#### 3.4 Services with training courses

- Any course materials provided or made available are the copyrighted works of HPE or the original content provider. They are provided only for sole use of the person attending the course and may not be reproduced, distributed, or modified without HPE's written consent.



## 4. General terms and conditions

### 4.1 Warranties

- HPE will provide Services using generally recognized commercial practices; however, the parties agree that Services may not be uninterrupted or error-free. Upon prompt notice, HPE will re-perform Services.
- HPE's service, support and warranty obligations do not apply for claims that are attributable to: a) improper usage, site preparation or site or environment conditions or other non-compliance with supporting materials, b) changes or inappropriate maintenance or calibration of systems that were not completed or authorized by HPE, c) malfunctions or functional limitations of third-party software or products that have an effect on systems, for which HPE provides support or service, d) malware (e.g., viruses, worms), not introduced by HPE, or e) negligence, accident, fire or water damage, electrical faults, transport, by the Customer or other reasons beyond the control of HPE.
- The Agreement states all remedies for warranty claims. To the fullest extent permitted by law, HPE disclaims all other warranties, conditions and terms implied by law.

### 4.2 Intellectual property

- No transfer of ownership of any intellectual property will occur under the Agreement.
- If or when necessary for HPE to provide the Services, the Customer grants to HPE a non-exclusive, royalty-free right and license to use, display, perform, and sublicense (solely to HPE's subcontractors) the Customer intellectual property rights and third-parties' intellectual property rights solely to provide the Services.
- If Deliverables are created by HPE specifically for the Customer and identified as such in the Agreement, HPE hereby grants Customer a worldwide, non-exclusive, fully paid, and royalty-free license to reproduce and use copies of the Deliverables internally.

### 4.3 Confidentiality

- Confidential Information means all material, non-public information disclosed or made available between the parties, if the circumstances of disclosure would reasonably indicate such treatment (including any of the information associated with the metering tools, metering or reporting of usage data, billing, or the process to collect amounts due under the Agreement).
- The parties will keep Confidential Information in confidence.
- The parties may use Confidential Information only to fulfill obligations or exercise rights under the Agreement, and may share it only with employees, agents, or contractors with a need to know such information.
- The parties will protect the Confidential Information using a reasonable degree of care for three years from the date of receipt.
- These obligations do not cover information that was known or becomes known to the receiving party without obligation of confidentiality, is independently developed by the receiving party, or is disclosed as required by law.

### 4.4 Personal data processing

- HPE does not require any access to personal data in the performance of the Services, except for the Customer's personnel's business contact information. HPE will utilize Customer's business contact information solely to the extent necessary for HPE to provide the Services and to identify complimentary Services to the Customer, either directly or indirectly. Customer is responsible at all times for processing, managing, and accessing their data. HPE does not monitor the data entered, stored, or processed by the Customer in Systems.
- If Customer inadvertently provides HPE with personal data (excluding Customer's personnel's business contact information), HPE will process such personal data solely by deleting such data from HPE's internal environment.
- Where legitimate business purposes require HPE to collect and process business contact information relating to contractors' (employees or other individuals representing the Customer, HPE, as a data controller, will process such personal data using appropriate technical and organizational measures and in compliance with its privacy statement ([hpe.com/us/en/legal/privacy.html](https://hpe.com/us/en/legal/privacy.html)) and applicable laws.
- Where HPE discloses personal data relating to its employees or other individuals representing HPE to Customer or where such persons provide their personal data directly to the Customer, Customer will process such personal data using appropriate technical and organizational measures in compliance with the Customer's privacy policies and applicable laws.
- If HPE processes personal data on Customer's behalf in the course of providing the Services, it will do so in accordance with the HPE Support and Professional Services—Data Privacy and Security Agreement ([hpe.com/info/Customer-privacy](https://hpe.com/info/Customer-privacy)).



#### 4.5 Rights and remedies

##### 4.5.1 HPE and third-party software terms

- During delivery of the Services, HPE may be required to install copies of third-party or HPE software and to accept on behalf of the Customer the license terms of such software, which may be in electronic format, embedded in the software, or contained within the software documentation, and can be made available upon request.
- Customer is responsible to review the license terms at the time of installation, and hereby authorizes HPE to accept such terms on its behalf.

##### 4.5.2 Termination

- Subject to applicable Termination Fees, if any, either party may terminate the Agreement:
  - If the other party materially breaches its contractual obligations and fails to remedy the breach within 30 days of receiving written notice of the material breach, or
  - If the other party is subject to an insolvency or bankruptcy event or any analogous step is taken by or against a party.
- Subject to applicable Termination Fees, if any, Customer may terminate for convenience, upon 90 days' written notice.

##### 4.5.3 Customer duty to defend

- Customer will defend or settle any third-party claims against HPE arising out of Customer's or its users', employees', contractors' (excluding HPE), or agents' improper use of the Systems, subject to HPE's prompt notification of the claim and cooperation with Customer's defense. The Customer will pay third-party claim defense costs, settlement amounts, and any court-awarded damages. This section states Customer's entire liability and HPE's sole and exclusive remedy for such third-party claims.

##### 4.5.4 HPE duty to defend

- HPE will defend or settle any third-party claims against the Customer that allege an HPE-branded System or Service or Deliverables supplied under the Agreement infringes the intellectual property rights of a third party, subject to Customer's prompt notification of the claim and cooperation with HPE's defense.
- HPE may modify the Systems or Services or Deliverables to be non-infringing and materially equivalent, or HPE may procure a license. If these options are not available, HPE will refund the balance of any pre-paid and undelivered Services upon return of the impacted Systems and/or Deliverables.
- HPE is not responsible for claims resulting from any unauthorized use of the Systems or Services or Deliverables content or design provided by the Customer.
- HPE will pay third-party claim defense costs, settlement amounts, and any court-awarded damages.
- This section states HPE's entire liability and Customer's sole and exclusive remedy for such third-party claims.

##### 4.5.5 Limitation of liability

- The aggregate liability of each party to the other for all claims under or relating to these Terms is limited to USD \$500,000.
- Neither the Customer nor HPE will be liable for lost revenues or profits, downtime costs, loss or damage to data, or indirect, special, or consequential costs or damages.
- This section does not limit either party's liability for:
  - Indemnification obligations or duties to defend
  - Early termination fees if applicable
  - Unauthorized use of intellectual property
  - Loss or damage to Systems
  - Death or bodily injury caused by negligence
  - Acts of fraud
  - Other liability which may not be excluded or limited by applicable law



#### 4.6 General provisions

- **Force majeure**

Neither party will be liable for delays or for non-performance due to causes beyond its reasonable control even if the party has been already in delay when the force majeure event occurred, except for payment obligations.

- **Entire Agreement**

The Agreement represents the parties' entire understanding with respect to its subject matter and supersedes any previous communications.

- **Amendment**

Any changes to the Agreement must be agreed upon in writing by both parties.

- **Assignment**

The Customer may not assign all or any part of the Agreement without HPE's prior written consent.

- **Governing law and jurisdiction**

The Agreement will be governed by the laws and courts of the country/jurisdiction of the HPE entity accepting the order; however, HPE may bring suit for payment in the country where the Customer is located. The Customer and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

- **Survival**

Any clause which by its nature should survive to give adequate effect to its terms (for example, but not limited to, confidentiality obligations, rights and remedies, Early Termination Fees, de-installation fees, and more) will survive the termination or expiration of the Agreement.

- **Enforceability**

If any term or provision of the Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Agreement will not be affected.

- **Compliance with laws**

Each party will comply with applicable laws, including the export, import and sanctions laws of the United States (US), European Union (EU) and other applicable jurisdictions. Customer warrants that no Customer locations or recipients of HPE items are subject to any embargoes (currently Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine), trade control sanctions, or blocking measure, and that Customer is not owned or controlled, directly or indirectly, by any person or entity subject to any such restrictions. Customer will be the importer of record for any hardware items for which import is required for delivery of any portion of the Services. HPE may suspend performance of relevant Services to the extent necessary to ensure compliance under US or other applicable laws.

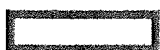
## 5. Customer responsibilities

### 5.1 General

Customer warrants that it will not disclose or otherwise transfer to HPE or its employees any of Customer's items that are listed in an Export Control Classification Number (ECCN), other than "EAR99", under the US or EU export control regulations, or listed on the United States Munitions List in the US International Traffic in Arms Regulations, unless Customer provides HPE at least one (1) month's prior written notice of the need to disclose or transfer such items. Unless expressly agreed otherwise, Customer will obtain any export licenses required to disclose such items to HPE.

### 5.2 HPE GreenLake Management Services (if applicable)

- Provide on-site personnel as appropriate for operations management, tape mounts, off-site tape storage, any other required media handling, and other physical on-site activities.
- Maintain responsibility for procuring any consumable supplies (for example, CDs, DVDs tapes, and cleaning supplies).
- Inform HPE in advance of making any environmental changes that may impact the Services.
- Continue to maintain Customer's end-user service desk function.



### 5.2.1 Service design, transition, and implementation

- During the Service design, transition, and implementation activities, the Customer will provide HPE with:
  - IP addresses, LAN connections, and network topology required for remote monitoring and management
  - Necessary documentation regarding the Systems, operating procedures, instructions, and configuration information as identified during the project initiation
- For knowledge transfer, the Customer must provide authorized HPE representatives with access rights to all relevant systems and locations and make personnel with requisite knowledge and skills available to share knowledge and experience.

### 5.2.2 Tools and connectivity

Provide the necessary infrastructure for management stations based on HPE requirements for the monitoring agents

- (Depending on connectivity to be used) Provide a virtual machine to host remote device access (RDA) functionality; supported versions are Debian and CentOS
- OpenVMS (Only for VMS):
  - OpenVMS support requires the setup of an additional management tool (cockpit manager) at the Customer site. The minimum management tool for OpenVMS systems comprises one HPE Integrity rx2800 running OpenVMS with cockpit manager plus a Windows system for the connector software to connect cockpit manager to the IT Operation Center. Servers for cockpit manager and connector software must be provided by the Customer.
  - For multi-site clusters, the Customer must ensure the management systems are replicated across sites and failover for cockpit manager and connector must be configured in line with the Customer's cluster failover settings.
- Provide security clearance and port opening as described here:

Activity	Description	Connectivity required
Monitor	One-way system information and alerts	SNMP, secure communication using port 443
Operate	Site-to-site VPN connection	SSH, IPSec, and HTTPS, to perform operate activities based on Standard operation procedure
Administrate	Different security integration available, to be decided during transition phase	Customer provides access to HPE employees on system level or just on demand, every activity from remote is reported and provide auditable records

- In addition, the Customer will ensure access only by authorized employees for the purposes of provision of HPE-GMS.

### 5.2.3 Product support contracts

- Customers must share all third-party support and license contract information, such as validation requirements and coverage, with HPE.
- Customer must take the steps necessary to ensure that HPE can submit service calls on the Customer's behalf for the limited purpose of placing a support call with the vendor, and the Customer must provide HPE with the appropriate information required to place the call. If required by the vendor, the Customer will take any steps necessary to ensure that HPE can submit calls on the Customer's behalf. If the Customer does not meet these requirements, HPE will not be able to submit calls to the vendor on the Customer's behalf and assumes no responsibility for failure to do so. HPE's obligations are limited to the placing of support calls only. The Customer remains responsible for the performance of their obligations under such agreements, including paying all applicable fees, such as those that may apply because of logging calls with the vendor.

## 5.3 Facilities and infrastructure

### 5.3.1 Facilities

Customer will provide facilities in a safe environment, one that does not pose a potential health or safety hazard to HPE employees or subcontractors, for the Systems and metering tools, such as:

- Floor space, electricity, cooling, physical security, uninterrupted power supply, network, and storage cabling
- Network for both LAN and WAN connectivity and bandwidth
- Operating environment for the metering tools
- HPE's metering tools will reside on a virtual machine provided by Customer, which must meet the minimum specifications for running a current supported version of Microsoft Windows Server operating system.



### 5.3.2 Setup of third-party systems

The Customer is responsible for:

- Provisioning and connecting any required hardware, software, network, cables, and such (for example, storage area network, operating systems) not provided by HPE as part of the Systems
- Ensuring that such connected or attached devices and/or software are compliant and compatible with the Systems

### 5.3.3 Compliance with building and safety codes

The Customer is responsible for:

- Attaching wall and ceiling mounts to the building structure according to local building codes
- Ensuring that the facility, cable runs, and power outlets conform to all local fire and electrical codes
- Any other construction or safety measure required by current local legislation

## 5.4 Systems and data

### 5.4.1 Procuring required software

Unless included as part of the Systems, the Customer is responsible for purchasing and installing the OS, virtualization software, and related software licenses and support.

### 5.4.2 Enabling installation

The Customer acknowledges that they must take the necessary steps to enable installation (including metering tools) within 30 calendar days from receipt of the Systems.

### 5.4.3 Registering for product support

The Customer is responsible for registering to use HPE or a third-party vendor's electronic services to access knowledge databases and obtain product information. HPE will provide registration information to the Customer for HPE electronic services.

### 5.4.4 Managing the System after installation

Customer is responsible for the System management activities once the installation Services have been completed (only applies to Services with no HPE GMS).

### 5.4.5 Maintaining the System

Customer must maintain the Systems at the agreed configuration and revision levels.

### 5.4.6 Data backup

The Customer is responsible for data backup.

### 5.4.7 Using proprietary service tools

- HPE may require the Customer to use certain hardware, software, and/or network diagnostic, metering, and maintenance programs as well as certain diagnostic or monitoring tools such as, HPE InfoSight that may be included as part of the System (proprietary service tools). This includes tools such as HPE's metering script, support tools and technical support (STaTS), and HPE Support Center (HPE SC).
- The Customer will be required to assist to install proprietary service tools (including any required updates and patches) on the Customer's Systems and assist HPE in running them.
- Proprietary service tools are and remain the sole property of HPE. They are provided as is without any warranty. The Customer may only use the proprietary service tools during the System Term and only as allowed by HPE. The Customer may not use, sell, transfer, assign, pledge, or in any way encumber or convey the proprietary service tools. The Customer shall return the proprietary service tools or allow HPE to remove these tools upon termination or expiration of the Services.
- Data transmission and encryption—Customer will allow for network data communication to HPE to transmit data collected by the diagnostic and metering tools using encryption methods specified in the applicable data sheet.



**5.4.8 Allowing modifications by HPE**

The Customer will allow HPE, at HPE's request and at no additional charge, to modify Systems to improve operation, supportability, and reliability or to meet legal requirements.

**5.4.9 Prohibited modifications by Customer**

Customer will neither add to nor alter Systems nor make any alterations that may prevent or impair transmission and/or collection of usage data, nor manipulate or alter usage data in any manner.

**5.4.10 Media sanitization and data deletion**

The Customer is responsible for the security of the Customer's proprietary and confidential information. The Customer is responsible for sanitizing, removing, or deleting all data or Customer-provided software from Systems or any parts of it that may be replaced or returned to HPE. The process described at [hpe.com/media/handling](http://hpe.com/media/handling) will apply.

**5.4.11 Temporary workarounds**

Customer will implement temporary procedures or workarounds provided by HPE while HPE works on a permanent solution.

**5.5 Access and communications****5.5.1 Access to Systems**

- The Customer will provide HPE unencumbered access to Systems and metering tools, either remotely or on-site, as required.
- Ensure devices at different locations in the Systems are interconnected with stable connectivity, good bandwidth and capable of being monitored from a centralized monitoring solution.

**5.5.2 HPE information requests**

Unless otherwise agreed, the Customer will respond within two business days to HPE requests for Customer business and technical data, documentation, and other Services relevant information required by HPE for the provision of Services. This includes:

- Documentation and information needed for design, development, evaluation, installation, and testing
- Storage configuration information
- Network configuration information (including IP addresses, LAN and WAN connections and network topology, routing, VLANs, firewall settings, DNS, and DHCP)

**5.6 Security and risk management****5.6.1 Risk of loss**

The risk of loss or damage to Systems will pass to the Customer upon delivery to Customer or its designee.

**5.6.2 Protection and insurance of HPE Systems**

Customer will protect HPE's ownership interest in Systems and tools by:

- Affixing or allowing HPE to affix any marking supplied by HPE evidencing their ownership
- Using due care to maintain the Systems
- Not relocating the Systems or tools once installed unless agreed using the change management process
- Keeping Systems, tools in safe custody and control, as well as free from any liens or encumbrances from date of delivery to Customer until the Systems are returned, received, and the tools are removed
- Obtaining and maintaining liability insurance and replacement cost coverage insurance, as well as providing evidence of this insurance coverage upon HPE's request

**5.6.3 Security policy**

Any HPE obligations regarding the Customer's security requirements must be agreed to in writing.





#### 5.6.4 Physical security

- The Customer will be responsible for providing physical security of the Systems and metering tools.
- The Customer will physically secure all rooms for servers, storage, network, and environmental facilities through electronic security systems.
- The Customer will be responsible for designating, managing, and distributing the authorization of user access.
- The Customer will log all permitted authorizations.
- The Customer will provide authorization to HPE employees to the extent necessary to perform the Services.
- Third-party personnel can enter secured rooms only if accompanied by authorized Customer employees.

#### 5.6.5 Logical security

- The Customer will be responsible for managing and controlling logical security of the Systems and metering tools.
- The Customer will allow logical access for HPE to the Systems, based on Customer's security rules.
- The Customer is responsible for ensuring that only Customer-approved data exists on the Systems.

#### 5.7 Other responsibilities

Further Customer responsibilities related to specific Services or software delivered under the Agreement may be specified in the relevant exhibits or linked data sheets

### 6. Term

#### 6.1 Agreement term

The Agreement begins upon acceptance of a Customer order and remains in force until the end of the last applicable System Term, including any applicable extension period.

#### 6.2 System Term

- Each System Term will start on the earlier of:
  - The date that HPE notifies Customer in writing of the completion of HPE installation services of the System
  - The day on which the Customer can use the System
- And will continue for an initial period purchased ("System Term"). The System Term will automatically extend on a month-to-month basis unless either party gives at least 90 days prior notice whereby no extension will apply. In case the System includes components that cannot be extended monthly (for example, third-party software), the System Term will extend for the minimum period of time applicable to the components. During the extension period(s), each party can terminate the extended System Term to the end of the extension period by giving at least 30 days prior notice.
- After installation has been completed the System can be used by the Customer and the System Term starts regardless of whether integration and migration activities are still performed by HPE on behalf of the Customer.
- The System Term for each System shall be for the term set forth in System details. Add-on Systems, a hardware and/or software unit that can be added to increase its capabilities, and/or System components will be coterminous or non-coterminous with the original System as described in the change request. If not described, System components will be non-coterminous.

### 7. Financial terms

#### 7.1 Pricing terms

##### 7.1.1 Pricing in case of metering issues

- If daily usage data cannot be collected by the metering scripts for more than two calendar days (including delays in implementing the metering script), HPE will send the Customer an email indicating that the daily usage data cannot be gathered. The Customer will immediately assist HPE in resolving the problem.
- If this issue continues for up to 30 days and
  - Usage data has already been collected, then HPE will use the usage data from the day immediately preceding the failure for that 30-day period.
  - No usage data has been collected, then HPE will use the mid-point between the installed capacity and the reserved capacity for that 30-day period.



- If the issue continues beyond 30 days, one of the following will apply until the daily usage data issue is resolved:
  - If the cause is attributable to the Customer, the billable amount will be equal to the installed capacity.
  - If the cause is attributable to HPE, the billable amount will be equal to the reserved capacity.
- If the cause is due to unidentified or unforeseeable external factors (in other words, neither HPE nor Customer has directly contributed to the failure through action or inaction), the billable amount will be equal to the mid-point between the installed capacity and the reserved capacity

### 7.1.2 Price adjustments

- Prices are calculated upon the Customer's estimated average growth per year through the System Term and for HPE GMS the management services pricing assumption.
- HPE and Customer will negotiate equitable changes to the prices and fees in good faith if:
  - Customer does not meet the annual growth rate assumption as stated in the Agreement
  - The values in the management services pricing assumption table, as stated in the Agreement, exceed 10% at any time during the term (only applies to HPE GMS)
  - A material adverse change in Customer's financial or operating condition has occurred since the Agreement was signed
  - For Change Orders only, there is a material adverse change in market conditions (e.g., commodity pricing, supply chain restrictions, inflation, etc.)
- (Only applies if virtual machines included) Whenever the used capacity of virtual machines (VM) like VM 2.0 or containerized virtual machine model (CVMM) (but excluding Nutanix Systems) is below the reserved capacity for three consecutive months during the term, HPE will discuss with Customer and reserves the right to adjust the price and band for compute units (CU) to match the actual VM memory subscription ratio used by Customer using the following formula:
  - VM 2.0 price adjustment formula  
Adjusted price per CU = initial contractual price per CU x CU requested capacity / CU used capacity
  - CVMM price adjustment formula  
Adjusted price per containerized compute units (CCU) = initial contractual price per CCU x CCU requested capacity / CCU used capacity.

## 7.2 Charges

### 7.2.1 Pricing

#### • Pricing mechanism

- The basic pricing factor is used capacity, subject to the pricing model and minimum invoiceable amounts.
- Monthly price is calculated by
  - Multiplying the greater of used capacity or reserved capacity by the applicable price per unit for each System
  - Adding any applicable fixed monthly charges
  - Adding any applicable charges for optional Services

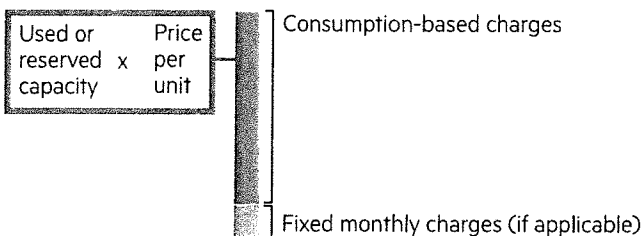


Figure 1. Pricing mechanism

#### • Minimum invoiceable amounts

- The minimum invoice will be the reserved capacity.
- If a variable capacity is included in the Agreement, then the Customer will be invoiced on the greater of reserved capacity or used capacity.
- If a variable capacity is not included in the Agreement, then reserved capacity will increase to the current installed capacity, which will be then invoiced monthly for the remaining System Term.



### 7.2.2 Invoicing

#### • Start of monthly invoicing

– Invoicing for the Services will begin upon the earlier of:

- The first day after HPE notifies Customer in writing of the completion of HPE installation services of the System
- The day on which Customer can use the System

– If installation services are delayed for a cause not attributable to HPE, on the 31st day from delivery of the System, HPE will start invoicing Customer a delay fee monthly in arrears. The delay fee is calculated as follows:

- 1/30th of monthly reserved capacity of impacted billing Tiers charged daily as defined. Example: If reserved capacity is \$30,000/month then the delay fee would be \$1,000 a day. A 25-day delay would equal a fee of \$25,000.

#### • Invoice breakdown

– HPE will invoice Customer monthly in arrears, unless otherwise stated, for

- The monthly price
- Any applicable additional charges (such as, Early Termination Fees, return fee, and more)
- Any applicable taxes (such as, sales, value-added tax [VAT], goods and services tax [GST] or similar taxes or fees including stamp duty)

#### • Taxes

– Prices are exclusive of applicable present or future sales, VAT, GST, or similar taxes. HPE's invoices will separately state charges and applicable taxes. Unless the Customer has provided HPE with an appropriate exemption certificate before the relevant Services are performed, the Customer will pay or reimburse HPE for all present or future taxes, fees, and surcharges applicable to the Services (however levied).

– If the Customer is required to withhold any tax related to the Services, the Customer will reduce payment to HPE by the amount of the tax and provide HPE with applicable tax documentation necessary for HPE to reclaim all withheld taxes. If the Customer has not provided the necessary documentation within the time prescribed by the taxing authority, the Customer will reimburse the withheld amount to HPE.

– Each party is solely responsible for all taxes and assessments upon its real and personal property and net income.

#### • Questions about invoices

– Customer will have three business days to contact HPE account support manager (ASM), HPE Customer success manager (CSM), or HPE service advisor following the monthly billing cycle with any questions or concerns regarding the invoice.

### 7.2.3 Payment

- Customer will pay invoiced amounts without offset within 30 days of the invoice date.
- Where the invoice value is disputed, then the Customer must pay the reserved capacity amount within 30 days of invoice date and state the reasons for withholding any amount that exceeds the reserved capacity. The parties will work in good faith to resolve the dispute promptly.
- HPE may suspend or cancel performance of Services if the Customer fails to make payments when due.

### 7.2.4 De-installation fees

- Customer must return the Systems to HPE within 30 days from expiration or termination date or HPE removing unused Systems, unless otherwise required by law and bear any related costs.
- If the parties agree that HPE will pick up the Systems, Customer is responsible for any reasonable mutually agreed fees associated with the de-installation, packing, and transportation to return Systems to HPE ("Return Fee").
- The parties will discuss and agree upon a termination assistance plan, as may be required. If Customer requires termination assistance services, HPE will provide them at HPE's then-current professional services time and materials rate.



### 7.2.5 Early Termination Fees

#### • Termination for convenience, Customer breach, or insolvency

– In the event of such termination of the Agreement or any System before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

##### For ramp-up period:

- For each impacted System during the ramp-up period: The installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1

##### For non-ramp-up period:

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any.

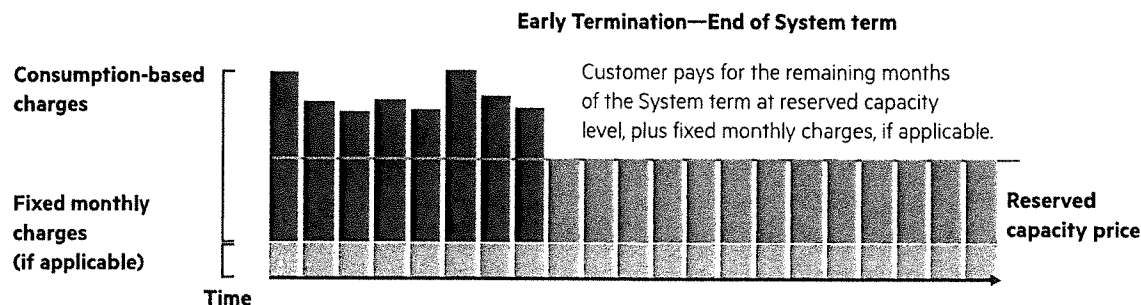


Figure 2. Early Termination Fee

– Customer will finally settle all liabilities arising out of any termination in accordance with this section upon payment in full of HPE's final invoice, which will include:

- Early Termination Fees
- Any outstanding consumption-based charges
- Return Fee

#### • Termination for HPE breach or insolvency

– In the event of termination for cause resulting from an uncured HPE breach or HPE insolvency event, Customer will be relieved of the early termination fees and the return fee.

## 8. Limitations and assumptions

- Any Services not described in the Agreement are out of scope.
- HPE will provide the Services (or portions thereof) from any location determined by HPE. Any requests by the Customer to change the location will impact pricing and is subject to the contract change management process.
- The fees include the installation Services for the Systems. The fees do not include installations that may be required because of a Customer-initiated System relocation. Relocation Services may be purchased separately.
- Any of the information associated with the metering tools, the process to bill and collect amounts due hereunder, or metering or reporting of usage data will be deemed to be Confidential Information of Customer and HPE, and HPE may share such Confidential Information to third parties only to the extent necessary to perform the Services and/or to process the transaction.



- Customer acknowledges that HPE's ability to provide the Services under the Agreement is contingent upon the accuracy and completeness of information and data that Customer provides, as well as Customer's cooperation and timely performance of its obligations. If any such data or information is found to be inaccurate or incomplete, or Customer fails to perform its obligations, the parties will negotiate in good faith equitable changes to the impacted Agreement, which may include changes to the fees.
- All Deliverables are accepted upon delivery.
- Service-level objective (SLO) exclusions  
The following are excluded from SLOs:
  - Delays in Customer approval process
  - Incidents due to Customer's applications, hardware, software, Services, or facilities
  - Management station downtime at the Customer site
  - Incidents due to the Customer WAN/LAN-related issues
  - Force Majeure at Customer or HPE site
  - Planned outages and scheduled maintenance
  - Factors outside HPE's reasonable control
  - Any act or omission on the part of Customer, its contractors or vendors, or any other entity over which Customer exercises control or has the right to exercise control, including Customer's failure to perform its obligations
  - Interruptions or incidents not reported by the Customer or where no ticket was opened
  - SLOs will be excluded during pre-handover phase or during any termination assistance Services
  - SLOs are excluded during the first 30 days from the effective date of the change order for any products added to the Systems under the contract change management process

## 9. Country-specific terms

### ARGENTINA

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 4.5.5 Limitation of Liability.** Replace first bullet with:

The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to 12 times the average monthly fees invoiced by HPE.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Argentina and the commercial ordinary courts of the city of Buenos Aires will have jurisdiction.

**Section 7.2 Payment.** Insert the following subsections as new bullets:

- Prices quoted in dollars shall be invoiced in the same currency. In the event that it was not possible to issue invoices in dollars due to any regulation from a relevant governmental authority or due to a technical or operative impossibility, the amounts owed in US dollars shall be invoiced in Argentine pesos at the HPE exchange rate published by Banco de la Nación Argentina on the closing of operations at the immediate prior day to invoice date.
- Notwithstanding section 765 of Civil and Commercial Code, Hewlett Packard Argentina SRL may accept as alternative payment method, the amount of pesos resulting from applying HPE exchange rate published by Banco de la Nación Argentina on the closing of operations at the immediate prior day to payment date. In case between the immediate prior day to invoice date and the date in which funds are credited in Hewlett Packard Argentina SRL's account there is any difference in the exchange rate, Hewlett Packard Argentina SRL may issue the relevant Debit or Credit Note.
- Payment will be made by bank transfer to the HPE's designated bank account. HPE shall not accept payments by check.



**Section 7.2.5 Early Termination Fees:** Replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered capacity and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term) x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any

**Australia****AUSTRALIAN CONSUMER LAW (ACL)**

Australian Consumer Law (ACL): This clause applies if Customer is a consumer within the meaning of the ACL. Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

1. To cancel your service contract with us; and
2. To a refund for the unused portion, or to compensation for its reduced value
3. You are also entitled to be compensated for any other reasonably foreseeable loss or damage

If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

**Austria****Section 4.1 Warranties.** Replace first bullet with:

HPE will provide Services using generally recognized commercial practices where there are defects with delivered items, which materially restrict their use for the purpose intended, the Customer is entitled to make a warranty claim. Initially, the Customer may only claim for subsequent performance within a reasonable period. Subsequent performance, according to the sole discretion of HPE, consists of either eliminating the defect or delivering a new item. The Customer's interests shall be reasonably taken into account when HPE exercises its right of choice. However, subsequent performance does not include the removal of the defective item or its reinstallation if HPE was not originally obliged to install it. If subsequent performance is impossible or has failed or if a reasonable grace period to be set by the Customer for subsequent performance has expired without success or is dispensable according to the statutory provisions, the Customer may terminate the Agreement in accordance with the termination clause. Compensation for damages or reimbursement of expenses is excluded from warranty claims, as long as nothing is stipulated to the contrary. However, in accordance with the statutory provisions HPE shall bear the expenses necessary for the purpose of testing and subsequent performance, in particular transport, travel, labor and material costs as well as any dismantling and installation costs, insofar as the expenses are not based on the fact that the products were subsequently brought to a location other than the place of delivery, unless the transfer corresponds to the intended use of the products. Any claim for defects shall lapse if any defect is based on the fact that the Customer or a third party has modified, improperly used or repaired products without the consent of HPE or products have not been installed, operated, and maintained in accordance with HPE guidelines. The Customer shall immediately notify HPE in writing of any defects. If the notice of defect was unjustified, HPE shall be entitled to demand reimbursement of the costs incurred by HPE as a result of the unjustified request to remedy the defect (in particular testing and transport costs), unless the Customer was not aware of the lack of defectiveness. A period of one year is applicable for warranty claims, beginning on the date of delivery or, if applicable, upon completion of the installation or (if the Customer delays installation by HPE), at the latest, 30 days after the date of delivery.





**Section 4.4 Personal data processing.** Replace entire section as follows:

The Customer is responsible at all times for processing their data. The Customer is responsible for managing their data and any access to their data. HPE does not monitor the data entered, stored, or processed by the Customer in Systems. The parties acknowledge that the Services to be provided in accordance with this Agreement are not intended to allow HPE to have direct access to the Customer's personal data. If this however occurs in the context of the particular order the following additional regulations apply ([hpe.com/psnow/doc/a50000759enw?from=app&section=search&isFutureVersion=true](https://hpe.com/psnow/doc/a50000759enw?from=app&section=search&isFutureVersion=true)).

In addition, HPE processes personal data for its own purposes automated and the contact data of the Customer contact person in accordance with the terms of the General Data Protection Regulation inside and outside of the Republic of Austria and the European Union.

Where HPE discloses personal data relating to its employees or other individuals representing HPE to Customer or where such persons provide their personal data directly to Customer, Customer will process such personal data using appropriate technical and organizational measures in compliance with Customer's privacy policies and applicable laws.

**Section 4.5.5 Limitation of Liability.** Replace first bullet with:

The aggregate liability of each party to the other for all claims under or relating to the Agreement is (i) in case of intent or blatant gross negligence without limitation and (ii) in case of simple gross negligence or slight negligence limited to 12 times the average monthly fees invoiced by HPE.

**Section 7.2.2 Taxes.** Replace first bullet with:

- Prices are exclusive of applicable present or future sales, VAT, GST, or similar taxes and other public charges/fees. Stamp duty (if applicable) will be borne by Customer. HPE's invoices will separately state charges and applicable taxes. Unless the Customer has provided HPE with an appropriate exemption certificate before the relevant Services are performed, the Customer will pay or reimburse HPE for all present or future taxes, fees, and surcharges applicable to the Services (however levied).

**Brazil****Section 1 Definitions.** Replace the following definitions:

- **Services:** The Services, mainly composed by data processing and storage services, detailed in the Agreement, that HPE will perform for the Customer.
- **System, Systems:** The hardware and relevant software as provided by HPE as part of the Services necessary for the feasibility of data processing and storage services, subject of the Agreement. Title to Systems remains with HPE or its affiliates.

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 7.1.2 Price adjustments.** Insert the following subsection as a new item on the second bullet:

- The Client acknowledges that in the composition of the Agreement Price there are imported supplies, highly specialized labor workers and specific investments that may be affected by significant variations in macroeconomic indicators, including, without limitation, exchange rates, inflation, and availability of workers. Thus, in the event of such significant variations, HPE and the Customer agree to review the Price, seeking the economic and financial balance of the Agreement.

**Section 7.2.4 De-installation fees.** Insert the following subsection as a new item:

- Without derogation of these rights, the amounts in arrears will be monetarily adjusted by the variation of the IGPM-FGV rate, and interest of 1% per month and a fine of 2% will apply.



**Section 7.2.5—Early Termination Fees:** replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered capacity and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term) x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any.

**Canada****Section 3.1 Rights to use the Systems.** Replace entire section as follows:

If a court deems this Agreement to be a lease intended for security or a lease that secures payment or performance of an obligation, then to secure Customer's obligations under this Agreement, Customer grants HPE (a) in each Province or Territory of Canada other than the Province of Quebec, a purchase money security interest in the System(s) and (b) in the Province of Quebec, a hypothec in the Systems (include the yellow highlighted text only if Systems will be in Quebec [otherwise, delete]) and hereby hypothecates the universality of the Systems for the amount set forth in Schedule A1 of Exhibit A, plus interest of said amount at the rate of 25% per annum, being understood that said rate is for the hypothec only and is not the rate applicable to the indebtedness due by Customer. Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein, excluding rules as to choice and conflict of law. Customer and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

**Section 4.6 General Provisions (Governing law and jurisdiction)** Insert the following subsection as new bullet:

- Customer hereby waives and excludes its rights regarding the provisions pertaining to contracts for services set forth in Article 2125 of the Civil Code of Quebec and acknowledges that this Agreement may only be terminated in the circumstances set forth by the provisions of the present Agreement.

**Section 4.6 General Provisions (Enforceability).** Replace this subsection with:

If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected. The parties confirm that it is their wish that this Agreement, as well as all other documents relating hereto, including all notices, have been and will be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette entente, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.

**Chile****Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.





**Section 4.5.5 Limitation of Liability.** Replace first bullet with:

The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to 12 times the average monthly fees invoiced by HPE.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Chile and the commercial ordinary courts of the city of Santiago will have jurisdiction.

**Section 7.2 Payment.** Insert the following subsections as new bullets:

- Regarding Prices in USD, HPE may accept payments made by Client under this Proposal in Chilean Pesos, and HPE may issue the relevant invoices in the same local currency. In order to determine the amount to be paid in Chilean Pesos by Client, any owed amount in foreign currency shall be converted into Chilean Pesos according to the value of the observed dollar or its replacement, set by Banco Central de Chile for the day of issuance of the respective invoice, and / or UF ("Unidad de Fomento"—Unit of Account), to be paid in the equivalent in pesos, Chilean legal tender, according to the current value for the UF the day of payment.
- Payment will be made by bank transfer to the HPE's designated bank account. HPE shall not accept payments by check.

**Section 7.2.5—Early Termination Fees:** Replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any

## Colombia

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 4.5.5 Limitation of Liability.** Replace first bullet with:

The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to 12 times the average monthly fees invoiced by HPE.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Colombia and the commercial ordinary courts of the city of Bogotá will have jurisdiction.

**Section 7.2 Payment.** Insert the following subsections as new bullets:

- Customer agrees to pay all invoiced amounts in pesos colombianos resulting from applying "Tasa Representativa del Mercado" (TRM) of the invoice date.
- Payment will be made by bank transfer to the HPE's designated bank account. HPE shall not accept payments by check.



**Section 7.2.5—Early Termination Fees:** Replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any

**France****Section 4.3 Confidentiality.** Replace fourth bullet with:

The parties will protect the Confidential Information with the same degree of care as it will protect its own Confidential Information.

**Section 4.4 Personal Data Processing.** Replace entire subsection with:

The Customer is responsible at all times for processing their data. The Customer is responsible for managing their data and any access to their data. HPE does not monitor the data entered, stored, or processed by the Customer in Systems. The parties acknowledge that the Services to be provided in accordance with this Agreement are not intended to allow HPE to have direct access to the Customer's personal data. If this however occurs in the context of the particular order the following additional regulations apply ([hpe.com/psnow/doc/a50000759enw?from=app&section=search&isFutureVersion=true](https://hpe.com/psnow/doc/a50000759enw?from=app&section=search&isFutureVersion=true)).

In addition, HPE processes personal data for its own purposes automated and the contact data of the Customer contact person in accordance with the terms of the General Data Protection Regulation inside and outside of the countries where the Services are provided and the European Union.

Where HPE discloses personal data relating to its employees or other individuals representing HPE to Customer or where such persons provide their personal data directly to Customer, Customer will process such personal data using appropriate technical and organizational measures in compliance with Customer's privacy policies and applicable laws.

**Section 4.5.2 Termination.** Replace entire subsection with:

Subject to applicable Termination Fees, if any, either party may terminate the Agreement:

If the other party materially breaches its contractual obligations and fails to remedy the breach within 30 days of receiving written notice of the material breach, or

Subject to applicable Termination Fees, if any, Customer may terminate for convenience, upon 90 days' written notice when authorized by applicable law.

**Section 4.5.3 Customer duty to defend.** Replace entire subsection with:

Customer will defend or settle any third-party claims against HPE arising out of Customer's or its users', employees', contractors' (excluding HPE), or agents' improper use of the Systems, subject to HPE's prompt notification of the claim and cooperation with Customer's defense. The Customer will pay third-party claim defense costs, settlement amounts, and any court-awarded damages. This section states Customer's entire liability and HPE's sole and exclusive remedy for such third-party claims.

**Section 7.2.3 Payment.** Replace fourth bullet with:

If any amount due to HPE remains unpaid after the date on which it is payable, HPE shall be entitled to charge i) interest on such sum from the due date until the actual date of payment of such a sum at a rate of three times the legal interest rate ("taux d'intérêt légal") in force at the time when the payment should have been made, and ii) an indemnity of 40 (forty) euros for credit collection fees. These interest and indemnities are due as of right ("de plein droit") the day after the payment date set out by the invoice, without any notice being necessary.



## Germany

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**3.2 Services with Deliverables.** Replace entire section as follows:

- If the Services specifically include Deliverables, those Deliverables will conform materially to their written specifications.

**Section 4.1 Warranties.** Replace entire section as follows:

- HPE will provide Services using generally recognized commercial practices. Where there are defects with delivered items, which materially restrict their use for the purpose intended, the Customer is entitled to make a warranty claim. Initially, the Customer may only claim for subsequent performance within a reasonable period. Subsequent performance, according to the sole discretion of HPE, consists of either eliminating the defect or delivering a new item. The Customer's interests shall be reasonably taken into account when HPE exercises its right of choice. However, subsequent performance does not include the removal of the defective item or its reinstallation if HPE was not originally obliged to install it. If subsequent performance is impossible or has failed or if a reasonable grace period to be set by the Customer for subsequent performance has expired without success or is dispensable according to the statutory provisions, the Customer may terminate the Agreement in accordance with the termination clause. Compensation for damages or reimbursement of expenses is excluded from warranty claims, as long as nothing is stipulated to the contrary. However, in accordance with the statutory provisions HPE shall bear the expenses necessary for the purpose of testing and subsequent performance, in particular transport, travel, labor and material costs as well as any dismantling and installation costs, insofar as the expenses are not based on the fact that the products were subsequently brought to a location other than the place of delivery, unless the transfer corresponds to the intended use of the products. Any claim for defects shall lapse if any defect is based on the fact that the Customer or a third party has modified, improperly used or repaired products without the consent of HPE or products have not been installed, operated, and maintained in accordance with HPE guidelines. The Customer shall immediately notify HPE in writing of any defects. If the notice of defect was unjustified, HPE shall be entitled to demand reimbursement of the costs incurred by HPE as a result of the unjustified request to remedy the defect (in particular testing and transport costs), unless the Customer was not aware of the lack of defectiveness. A period of one year is applicable for warranty claims, beginning on the date of delivery or, if applicable, upon completion of the installation or (if the Customer delays installation by HPE), at the latest, 30 days after the date of delivery.
- HPE's service, support and warranty obligations do not apply for claims that are attributable to: a) improper usage, site preparation or site or environment conditions or other non-compliance with supporting materials, b) changes or inappropriate maintenance or calibration of systems that were not completed or authorized by HPE, c) malfunctions or functional limitations of third-party software or products that have an effect on systems, for which HPE provides support or service, d) malware (e.g., viruses, worms), not introduced by HPE, or e) negligence, accident, fire or water damage, electrical faults, transport, by the Customer or other reasons beyond the control of HPE.

**Section 4.4 Personal data processing.** Replace entire section as follows:

The Customer is responsible at all times for processing their data. The Customer is responsible for managing their data and any access to their data. HPE does not monitor the data entered, stored, or processed by the Customer in Systems. The parties acknowledge that the Services to be provided in accordance with this Agreement are not intended to allow HPE to have direct access to the Customer's personal data. If this however occurs in the context of the particular order the following additional regulations apply ([hpe.com/psnow/doc/a50000759enw?from=app&section=search&isFutureVersion=true](https://hpe.com/psnow/doc/a50000759enw?from=app&section=search&isFutureVersion=true)).

- In addition, HPE processes personal data for its own purposes automated and the contact data of the Customer contact person in accordance with the terms of the General Data Protection Regulation inside and outside of the Federal Republic of Germany and the European Union.
- Where HPE discloses personal data relating to its employees or other individuals representing HPE to Customer or where such persons provide their personal data directly to Customer, Customer will process such personal data using appropriate technical and organizational measures in compliance with Customer's privacy policies and applicable laws.

**Section 4.5.2 Termination.** Add third bullet:

- The right to terminate the Agreement for cause (aus wichtigem Grund) according to statutory laws remains unaffected.

**Section 4.5.4 HPE duty to defend.** Delete last bullet.



**Section 7.2.2 Invoicing.** Replace 4th and 5th line/second major bullet as follows:

If installation services are delayed due to Customer's fault, on the 31st day from delivery of the System, HPE will start invoicing Tier One Partner a delay fee monthly in arrears. The delay fee shall be set off against any damages claims and shall be calculated as follows:

**Section 7.2.3 Payment.** Replace third bullet as follows:

- Where the good faith resolution does conclude within a period of two weeks of the dispute, HPE may suspend or cancel performance of Services.

## Hong kong

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

- This Agreement will be governed by the laws of Hong Kong and the courts of Hong Kong will have exclusive jurisdiction to settle any dispute arising out of this Agreement.

**Section 4.6 General Provisions (Compliance with laws).** Insert the following paragraph as a new bullet:

- Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Ordinance to enforce any term of this Agreement.

**Section 7.2.5—Early Termination Fees.** Replace the second bullet with:

- Termination for HPE breach or insolvency

In the event of termination for cause resulting from an uncured HPE material breach or HPE insolvency event, Customer will be relieved of the early termination fees and the return fee.

## Hungary

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 3.2 Services with Deliverables.** Replace second bullet with:

If the Customer notifies HPE of a 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 the Customer will return those Deliverables to HPE. The above states all remedies for warranty ("jótállás" in Hungarian) claims pertaining to Deliverables. To the extent permitted by law, HPE disclaims all other warranties (both "jótállás" and "szavatosság" in Hungarian).

**Section 4.1 Warranties.** Replace fourth and fifth bullets with:

- If the non-compliance reported by the Customer is covered by the HPE Support Services included in the Services, the notification must be made in line with the applicable data sheet. If the non-compliance amounts to a material breach of these Terms, Customer may terminate this agreement with immediate effect in writing provided that HPE failed to remedy the breach within an adequate deadline of at least 30 days. HPE will proportionately refund the balance of any pre-paid and undelivered Services. The warranty set out in this clause is to be understood as "jótállás" under Hungarian law notwithstanding the limitations set out in the next paragraph of this clause.
- The above states all remedies for warranty claims. To the extent permitted by law, the HPE disclaims all other warranties (both "jótállás" and "szavatosság") in Hungarian.

**Section 7.2.5 Early Termination Fees (Termination for HPE breach or insolvency).** Replace entire subsection with:

- In the event of termination for cause resulting from an uncured material HPE breach or HPE insolvency event, Customer will be relieved of the early termination fees and the return fee.



## Indonesia

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 4.5.2 Termination.** Insert the following subsection as new bullet:

The parties expressly waive the application to the Agreement of Articles 1266 and 1267 of the Indonesian Civil Code but only to the extent of the requirement that a court order is required to terminate this Agreement.

**Section 4.5.5 Limitation of Liability.** Replace first bullet with:

The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to 12 times the average monthly fees invoiced by HPE.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Indonesia and the local Indonesian courts will have jurisdiction.

**Section 4.6 General Provisions (Language).** Insert the following subsection as new bullet:

- This Agreement has been executed in English and Indonesian language. Both versions are equally authentic. In the event there are differences in interpretation or construction between the English language and the Indonesian language version, the English language version shall prevail and the relevant text of the Indonesian version is deemed to be automatically amended (with effect from the date of the execution of this Agreement) to conform to the relevant text of the English version.

Each party (i) acknowledges that, with its agreement, this Agreement has been predominantly negotiated in the English language; (ii) represents that it has read and fully understands the contents and consequences of this Agreement; (iii) represents that it has made and entered into this Agreement freely and without duress, and (iv) represents that it has received independent legal advice with regard to this Agreement. The parties agree and undertake that they will not (and will not allow or assist any other party to) in any manner or forum, challenge the validity of, or raise or file any objection to, the transaction or this Agreement on the basis of any failure to comply with Indonesian Law No. 24 of 2009 regarding National Flag, Language, Coat of Arms and Anthem.

**Section 7.2.3 Payment.** Insert the following subsection as new bullet:

- Payments under this Agreement shall be made in local Indonesia currency.

## Italy

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

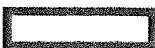
**Section 4.4 Personal Data Processing.** Replace the Privacy Policy link with: ([hpe.com/it/it/legal/privacy.html](https://hpe.com/it/it/legal/privacy.html))

Insert the following paragraph as a new sixth bullet:

- Each party undertakes to comply with the obligations provided for by the applicable personal data protection regulations. If HPE (as "Data Processor" pursuant to Regulation (EU) 2016/679 of April 27, 2016, concerning the "Protection of individuals with regard to the processing of personal data, as well as the free circulation of such data", from now on "GDPR") carries out a processing of personal data on behalf of the Customer as data controller, the Parties, in compliance with art. 28 of the GDPR, they undertake to sign the "Contract relating to the processing of personal data". The Parties acknowledge that any damage occurring in the Data Privacy area will be subject to the limits indicated in Article Limitation of Liability.

**Section 5.1.1 HPE GreenLake Management Services (if applicable).** Insert the following paragraphs as new subsection bullets:

- To comply with and to commit its employees, agents, and delegates to comply with HPE Standards of Business Conduct. Customer also declares to have examined HPE Standard of Business Conduct. On this point, Customer declares to have examined the HPE Standards of Business Conduct which can be find at [hpe.com/it/231](https://hpe.com/it/231).



- To comply with and to commit its employees, agents, and delegates to comply with the rules of Legislative Decree 231/2001 and its changes and integrations. Customer also grants to refrain and to its employees, agents, or delegates to refrain from committing crimes provided by the aforementioned Legislative Decree 231/2001. On this point, Customer declares to have examined the HPE "Modello Organizzativo" which also could be find at [hpe.com/it/231](http://hpe.com/it/231).
- Customer undertakes to inform, by prompt written notice, HPE "Organismo di Vigilanza e Controllo" about any violation involving HPE (also in a prospective basis) and relevant to the crimes set forth in Legislative Decree 231/2001, and subsequent amendments and integrations, or violation involving HPE "Modello Organizzativo" or HPE Standards of Business Conduct, which Customer has learnt—directly or indirectly (also through its employees agents or delegates)—during the execution of this Agreement. In case of non-fulfillment and/or legal proceedings attributable to Customer and arising from or connected with these obligations, which will be considered as a serious breach of this Agreement, HPE reserves the right to terminate this Agreement, upon written notice, according to article 1456 of the Italian Civil Code, without prejudice to any further damages and "Health and Safety".
- HPE agrees to comply with any legal requirements stated in the Legislative Decree 81/2008 concerning the adoption of health and safety measures in workplace. According to let. B), paragraph 1 of art. 26 of Legislative Decree 81/2008, Customer agrees to provide HPE with detailed information about the specific risks existing in the working environment where the activities are going to be carried out by HPE and about the prevention measures and the necessary danger warnings that Customer adopts relating to his activities. Customer and HPE agrees to cooperate in the implementation of prevention and protection measures against risks of accidents in workplace relating to the work activities stated in the contract; Customer must also coordinate these measures and inform HPE also in order to eliminate risks due to interference between the various contractors involved in the performance of the service. In order to achieve the purposes of the previous paragraph of this Article, Customer provides in process a "Documento Unico di Valutazione dei Rischi Interferenziali" (DUVRI) and sets out the measures adopted to eliminate or at least minimize the risk of interference. According to paragraph 5 of article 26 of Legislative Decree 81/2008 and unless otherwise stated, there are no fees concerning security.

## Japan

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 6.2 System Term.** Replace the second paragraph of the first bullet with:

- The day on which the Customer can use the System

And will continue for an initial period defined in the SOW or in a corresponding change request (System Term). The System includes components that cannot be extended monthly (for example, third-party software), in which case the System Term will have to be extended for the minimum period of time applicable to the components.

## Korea

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Republic of Korea and the Seoul Central District Court will have exclusive jurisdiction for any actions arising under this Agreement.

**Section 7.2.5—Early Termination Fees:** Replace the second bullet with:

- Termination for HPE breach or insolvency

– In the event of termination for cause resulting from an uncured HPE material breach or HPE insolvency event, Customer will be relieved of the early termination fees and the return/fee.



## Mexico

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Mexico and the commercial ordinary courts of Mexico City will have jurisdiction.

**Section 7.2.5—Early Termination Fees:** Replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term) x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any

## Peru

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 4.5.5 Limitation of Liability.** Replace first bullet with:

The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to 12 times the average monthly fees invoiced by HPE.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Peru and the commercial ordinary courts of the city of Lima will have jurisdiction.

**Section 7.2 Payment.** Insert the following subsections as new bullets:

- HPE may suspend or cancel performance of open Orders or services if Customer fails to make payments when due and apply interests. The payment will be made exclusively in US Dollars, expressly renouncing the faculty established in Article 1237 of the Peruvian Civil Code. In the event that in the future any rule or legal provision that establishes that obligations agreed in foreign currency (US Dollars) cannot be paid in such currency, Customer may pay HPE in local currency, the amount in local currency that it was necessary for the HPE to acquire, at the highest exchange rate corresponding to each opportunity, the same amount in US Dollars, in accordance with the Applicable Laws.
- Payment will be made by bank transfer to the HPE's designated bank account. HPE shall not accept payments by check.

**Section 7.2.5—Early Termination Fees:** Replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows.



**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term) x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any

**Poland****Section 4.1 Warranties.** Replace third bullet with:

- Subject to the provisions on this Agreement, the parties expressly exclude the warranty (rekojmia za wady) under Art. 556 and ff. of the Polish Civil Code.

**Section 6.2 System Term.** Replace the first paragraph of the first bullet with:

Each System Term will start on the earlier of:

- The date Customer has been notified by HPE in writing of the completion of the HPE installation services of the System at the Customer's designated site(s), or
- The 31st day from the delivery of the System to Customer

**Puerto Rico****Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Puerto Rico and the commercial ordinary courts of the city of San Juan will have jurisdiction.

**Section 7.2.5—Early Termination Fees:** Replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term) x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any





## Slovakia

**Section 4.5.5 Limitation of Liability.** Replace first and second bullets with:

- The aggregate compensation of damage which either party will be required to compensate to the other for all claims under or relating to these Terms is limited to USD \$500,000.
- Neither the Customer nor HPE will be required to compensate the other party for lost revenues or profits, downtime costs, loss or damage to data, or indirect, special, or consequential costs or damages.

**Section 7.2.5 Early Termination Fees.** Replace the title of the first subsection with

- Termination for convenience by Customer, Customer breach, or insolvency

## Spain

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

- If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 7.2.2 Taxes.** Replace first bullet with:

- Prices are exclusive of applicable present or future sales, VAT, or similar taxes. HPE's invoices will separately state charges and applicable taxes. Unless the Customer has provided HPE with an appropriate exemption certificate before the relevant Services are performed, the Customer will pay or reimburse HPE for all present or future taxes, fees, and surcharges applicable to the Services (however levied).

## UK and Ireland

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

- If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 4.6 Compliance with laws (UK only).** Insert the following paragraph as a new subsection:

- Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall not have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

Explore **HPE GreenLake**

**Learn more at**  
[hpe.com/greenlake](https://hpe.com/greenlake)

**Make the right purchase decision.**  
Contact our presales specialists.



**Get updates**

  
**Hewlett Packard  
Enterprise**

© Copyright 2022 Hewlett Packard Enterprise Development LP. The information contained herein is subject to change without notice. The only warranties for Hewlett Packard Enterprise products and services are set forth in the express warranty statements accompanying such products and services. Nothing herein should be construed as constituting an additional warranty. Hewlett Packard Enterprise shall not be liable for technical or editorial errors or omissions contained herein.

This data sheet is governed by the Hewlett Packard Enterprise current standard sales terms, which include the supplemental data sheet, or, if applicable, the Customer's purchase agreement with Hewlett Packard Enterprise.

Microsoft, Windows, and Windows Server are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries. All third-party marks are property of their respective owners.

a50005247ENW, V3