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5. **Electronic Delivery.** HPE may elect to deliver software and related software product or license information by electronic transmission or download.
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Your use is subject to the following restrictions, unless specifically allowed in Supporting Material:

- You may not use software to provide services to third parties.
  - You may not make copies and distribute, resell or sublicense software to third parties.
  - You may not download and use patches, enhancements, bug fixes, or similar updates unless you have a license to the underlying software. However, such license doesn't automatically give you a right to receive such updates and HPE reserves the right to make such updates only available to customers with support contracts.
  - You may not copy software or make it available on a public or external distributed network.
  - You may not allow access on an intranet unless it is restricted to authorized users.
  - You may make one copy of the software for archival purposes or when it is an essential step in authorized use.
  - You may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of software. If you have a mandatory right to do so under statute, you must inform HPE in writing about such modifications.
7. **Remote Monitoring.** Some software may require keys or other technical protection measures and HPE may monitor your compliance with the Agreement, remotely or otherwise. If HPE makes a license management program for recording and reporting license usage information, you will use such program no later than 180 days from the date it's made available.
  8. **Ownership.** No transfer of ownership of any intellectual property will occur under this Agreement.
  9. **Copyright Notices.** You must reproduce copyright notices on software and documentation for authorized copies.



10. **Operating Systems.** Operating system software may only be used on approved hardware and configurations.
11. **90-day Limited Warranty for HPE Software.**
  - HPE-branded software materially conforms to its specifications, if any, and is free of malware at the time of delivery; if you notify HPE within 90 days of delivery of non-conformance to this warranty, HPE will replace your copy. This Agreement states all remedies for warranty claims.
  - HPE does not warrant that the operation of software will be uninterrupted or error free, or that software will operate in hardware and software combinations other than as authorized by HPE in Supporting Material.
  - HPE's Warranty terms shall apply to the extent they do not conflict with FAR 52.212-4(o)
12. **Intellectual Property Rights Infringement.** HPE will have the right to intervene to defend and/or settle any claims against you that allege that HPE-branded software as supplied under this Agreement infringes the intellectual property rights of a third party. HPE will rely on your prompt notification of the claim and cooperation with our defense. HPE may modify the software so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to you the amount paid for the affected product in the first year or the depreciated value thereafter. HPE is not responsible for claims resulting from any unauthorized use of the software. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.
13. **Limitation of Liability.** HPE's liability to you under this Agreement is determined in accordance with FAR 52.212-4 This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; willful repudiation of the Agreement; or any liability that may not be excluded or limited by Federal law.
14. **Termination.** This Agreement is effective until terminated or in the case of a limited-term license, upon expiration; however, your rights under this Agreement terminate if you fail to comply with it. Immediately upon termination or expiration, you will destroy the software and documentation and any copies, or return them to HPE. You may keep one copy of software and documentation for archival purposes. We may ask you to certify in writing you have complied with this section. Warranty disclaimers, the limitation of liability, this section on termination, and Section 15 ("General") will survive termination.
15. **General.**
  - a. **Assignment.** Assignments are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change of Name Agreements. Authorized assignments will terminate your license to the software and you must deliver software and documentation and copies thereof to the assignee. The assignee will agree in writing to this Agreement. You may only transfer firmware if you transfer associated hardware.
  - b. **U.S. Government.** If the software is licensed to you for use in the performance of a U.S. Government prime contract or subcontract, you agree that, consistent with FAR 12.211 and 12.212, commercial computer software, computer software documentation and technical data for commercial items are licensed under HPE's standard commercial license. All U.S. Government end users acquire the software with only those rights set forth herein. Any provisions that are inconsistent with Federal Procurement Regulations are not enforceable against the United States Government.



- c. Global Trade Compliance. You agree to comply with the trade-related laws and regulations of the U.S. and other national governments. If you export, import or otherwise transfer products provided under this Agreement, you will be responsible for obtaining any required export or import authorizations. You confirm that you are not located in a country that is subject to trade control sanctions (currently Cuba, Iran, N. Korea, N. Sudan, and Syria) and further agree that you will not retransfer the products to any such country. HPE may suspend its performance under this Agreement to the extent required by laws applicable to either party.
- d. Audit. HPE may audit you for compliance with the software license terms. Upon reasonable notice, subject to Government security requirements, HPE may conduct an audit during normal business hours (with the auditor's costs being at HPE's expense).

Discrepancies found in an audit may result in a charge by HPE to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order. This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at FAR 52,233-1; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

- e. Open Source Components. To the extent the Supporting Material includes open source licenses, such licenses shall be provided to the ordering agency upon request and shall control over this Agreement with respect to the particular open source component. To the extent Supporting Material includes the GNU General Public License or the GNU Lesser General Public License: (a) the software includes a copy of the source code; or (b) if you downloaded the software from a website, a copy of the source code is available on the samewebsite; or (c) if you send HPE written notice, HPE will send you a copy of the source code for a reasonable fee.
- f. Notices. Written notices under this Agreement may be provided to HPE via the method provided in the Supporting Material.
- g. Governing Law. All contract disputes arising out of or relating to this Agreement shall be governed by and construed in accordance with the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transaction contemplated hereby shall be instituted in the court or board of jurisdiction under the CDA. If the matter is tortious in nature, the action shall be brought under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b).
- h. This Agreement will be governed by Federal law.
- i. Force Majeure. Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control in accordance with FAR 52.212-4(f), except for payment obligations.
- j. Entire Agreement. This Agreement, along with any government purchase order or contract, represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties. If HPE doesn't exercise its rights under this Agreement, such delay is not a waiver of its rights.

## 16. Reserved