

Data Communications Products and Services Contract Overview for Hewlett Packard Enterprise Company State of Idaho

Each Contractor will have contract specific overviews created. The information in this document is the generic information provided for all Contractors. Please see each PADD Contractor Info Sheet for information specific to each Contractor.

Mandatory Use Categories

The categories awarded to Hewlett Packard Enterprise Company include but not limited to the following:

- Unified Communications;
- Networking;
- Routers, Switches, Security, and Networking Storage;
- Wireless;

Review the Master Agreement, pages thirty-three (33) to forty-one (41) for detailed information on each category. For each category there are Value Added Services available for procurement at the time of product purchase or anytime afterwards. Review the Master Agreement, page forty-one (pg. 41) for further details on Value Added Services.

Pricing Discounts and Value-added Services

Review the Master Agreement, page forty-one (41) for pricing notes, discounts, and a list of the Value-Added Services.

Ordering

Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities’ rules, policies, and procedures regarding the ordering of Products and/or Services contemplated by this Master Agreement. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

All Orders pursuant to this Master Agreement, at a minimum, shall include:

- (1) The Services or supplies being delivered;
- (2) The place and requested time of delivery;
- (3) A billing address;
- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
- (6) A ceiling amount of the order for Services being ordered; and
- (7) The Master Agreement identifier.

All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

Shipping and Delivery

The prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.

All deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

Inspection and Acceptance

Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

Acceptance of Products occurs upon delivery, and applies to all Product(s) (hardware and software) purchased under this Master Agreement, including any additional, replacement or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Participating Entity.

All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

The warranty period shall begin upon Acceptance.

Payment

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

Prices are exclusive of taxes, duties, and fees, unless otherwise quoted. If a withholding tax is required by law, the tax will be added and identified on the applicable invoice.

Warranty

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used as described in Contractor's response to the solicitation, (c) the Product is suitable for any special purposes identified in the solicitation, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of material defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

Product performance. All HPE-branded hardware products are covered by HPE's limited warranty statements that are provided with the Products or otherwise made available. Hardware warranties begin on the date of delivery or if applicable, upon completion of HPE installation, or (where Customer delays HPE installation) at the latest 30 days from the date of delivery. Non-HPE branded products receive warranty coverage as provided by the relevant third-party supplier.

Software performance. HPE warrants that its branded software products will conform materially to their specifications and be free of malware at the time of delivery. HPE warranties for software product will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. HPE does not warrant that the operation of software products will be uninterrupted or error free or that software products will operate in hardware and software combinations other than as authorized by HPE in Supporting Material.

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

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

Product Warranty Claims. When Contractor receives a valid warranty claim for an HPE hardware or software product, HPE will either repair the relevant defect or replace the product. If HPE is unable to complete the repair or replace the product within a reasonable time, Customer will be entitled to a full refund upon the prompt return of the product to HPE (if hardware) or upon written confirmation by Customer that the relevant software product has been destroyed or permanently disabled. HPE will pay for shipment of repaired or replaced products to Customer and Customer will be responsible for return shipment of the product to HPE.

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

1. improper use, site preparation, or site or environmental conditions or other noncompliance with applicable Supporting Material;
2. Modifications or improper system maintenance or calibration not performed by HPE or authorized by HPE;
3. failure or functional limitations of any non-HPE software or product impacting systems receiving HPE support or service;
4. malware (e.g. virus, worm, etc.) not introduced by HPE; or
5. abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HPE's control.

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

Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product, except for any portion of the Product which is provided subject to a nonexclusive subscription license or is Embedded Software, free and clear of all liens, encumbrances, or other security interests. Subject to the foregoing exclusion, transfer of title

to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license to the Embedded Software shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee. Any Services or any portion of the Product which is provided subject to a nonexclusive subscription license provided under this Agreement shall not transfer to another entity.

License of Pre-Existing Intellectual Property

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce for Purchasing Entity's own use, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The license shall be subject to owner and 3rd party rights in the Pre-existing Intellectual Property.

No Guarantee of Service Volumes

The Contractor acknowledges and agrees that the Lead State and NASPO ValuePoint makes no representation, warranty or condition as to the nature, timing, quality, quantity or volume of business for the Services or any other products and services that the Contractor may realize from this Master Agreement, or the compensation that may be earned by the Contractor by offering the Services. The Contractor acknowledges and agrees that it has conducted its own due diligence prior to entering into this Master Agreement as to all the foregoing matters.

Subscription License

For that portion of the Product which is provided subject to a nonexclusive subscription license, Contractor shall grant to the Purchasing Entity such subscription license as agreed upon by the Contractor and Purchasing Entity as set forth in Attachment D.

Purchasing Entity Data

Purchasing Entity retains full right and title to Data provided by it and any Data derived therefrom, including metadata. Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. The obligation shall extend beyond the term of this Master Agreement in perpetuity. Contractor shall not use any information collected in connection with this Master Agreement, including Purchasing Entity Data, for any purpose other than fulfilling its obligations under this Master Agreement.

System Failure or Damage

In the event of system failure or damage caused by Contractor or its Services, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

Title to Product

If access to the Product requires an application program interface (API), Contractor shall convey to Purchasing Entity an irrevocable and perpetual license to use the API, unless otherwise subject to license restrictions and fees. No transfer of ownership of any intellectual property will occur under this Master Agreement. Purchasing Entity grants Contractor a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for Contractor and its designees to perform the ordered Services. If deliverables are created by Contractor specifically for Purchasing Entity and identified as such in Supporting Material, Contractor hereby grants Purchasing Entity a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverables internally.

Data Privacy

The Contractor must comply with all applicable laws related to data privacy and security, including IRS Pub 1075, as identified in the Order. Prior to entering into a SLA with a Purchasing Entity, the Contractor and Purchasing Entity must cooperate and hold a meeting to determine the Data Categorization to determine what data the Contractor will hold, store, or process and determine whether the security provided meets the Purchasing Entity's legal obligations. The Contractor must document the Data Categorization in the SLA or Statement of Work or Order. Contractor is not responsible for viruses or malware introduced by Purchasing Entity or an end user. Purchasing Entity may not use the Services in ways that would impose additional regulatory or other legal obligations on Contractor unless the parties have expressly agreed to do so in writing.

Transition Assistance

The Contractor shall reasonably cooperate with other parties in connection with all Services to be delivered under this Master Agreement, including without limitation any successor service provider to whom a Purchasing Entity's Data is transferred in connection with the termination or expiration of this Master Agreement. The Contractor shall assist a Purchasing Entity in exporting and extracting a Purchasing Entity's Data, in a format usable without the use of the Services and as agreed by a Purchasing Entity, at no additional cost to the Purchasing Entity. Any transition services requested by a Purchasing Entity involving additional knowledge transfer and support may be subject to a separate transition Statement of Work.

A Purchasing Entity and the Contractor shall, when reasonable, create a Transition Plan Document identifying the transition services to be provided and including a Statement of Work if applicable.

The Contractor must maintain the confidentiality and security of a Purchasing Entity's Data during the transition services and thereafter as required by the Purchasing Entity.

Performance and Payment Time Frames that Exceed Contract Duration

All maintenance or other agreements for services entered into during the duration of an SLA and whose performance and payment time frames extend beyond the duration of this Master Agreement shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No new leases, maintenance or other agreements for services may be executed after the Master Agreement has expired. For the purposes of this section, renewals of maintenance, subscriptions, and other service agreements, shall not be considered as "new."