



## HP TERMS AND CONDITIONS OF SALE AND SERVICE

Dear Participant:

Thank you for your interest to participate in HP Developer & Solution Partner Program.

Please consider the following.

REQUIREMENTS FOR PUERTO RICO INCLUDE:

\_Download the agreement: E121 and HP TERMS AND CONDITIONS OF SALE AND SERVICE versions for PUERTO RICO and print two copies.

-Please Sign the E121 and HP TERMS AND CONDITIONS OF SALE AND SERVICE documents in duplicate.

-Send via courier: Fedex, UPS, DHL, etc. those both hard copy documents and copy of company's documents as:

1. Copy of Passport or Identification Document of the Legal Representative of the company and of his authorized signature.
2. Certificate of Good Standing (If it applies)
3. Certificate of Incorporation (issued within last 3 months)
4. Tax Id number
5. Articles of Incorporation and Bylaws

HP PARTNER OPERATIONS CONTRACTS ADMINISTRATOR  
AT: CONTRACTS SUPPORT

Hewlett Packard Costa Rica  
Zona Franca Ultrapark  
800 metros noreste del  
Mall Real Cariari  
La Aurora Heredia  
Edificio 8A  
Costa Rica

-HP will review your application for eligibility.

-If approved HP will send you back one original signed copy of the contract with the HP DSPP Agreement Number.

-Your Business Representative will be sending you an electronic Welcome Letter, which will also include your HP DSPP Agreement Number.



## 1. HP DEVELOPER & SOLUTION PARTNER PROGRAM TERMS

This HP DEVELOPER & SOLUTION PARTNER PROGRAM TERMS Section and the HP TERMS AND CONDITIONS OF SALE AND SERVICE Section establish the entire agreement ("Agreement"). All capitalized terms not defined in this Section will have the meaning set forth in the TERMS AND CONDITIONS OF SALE AND SERVICE Section. In the event of conflict between this Section and the TERMS AND CONDITIONS OF SALE AND SERVICE Section, the terms of this Section prevail.

### A. RECITALS

1. Participant wishes to develop, convert, test, certify, demonstrate and deploy certain hardware/software products/services for use with HP Products as described in this Section.
2. HP wishes to assist Participant by providing access to the content and developer tools that HP may make available through its Developer & Solution Partner Program ("DSPP") and the associated web site, including discounts on the purchase of certain approved HP Products, in the minimum configuration necessary to develop, convert, test and demonstrate Participant's products/services and provide integration or consulting services for HP solutions or platforms in Puerto Rico (the "Territory").
3. HP wishes to make available to its customers and internal audiences information about products and services available for HP platforms. Participant wishes to provide information on its company/products/services and HP may, at its sole discretion, publish this information on HP websites and in other HP collateral and marketing materials.

### B. PRODUCT DEVELOPMENT

1. Participant agrees to devote commercially reasonable efforts to:
  - a. develop, convert, test, certify, demonstrate and deploy, within the Territory, certain Participant products/services for use with HP Products; or
  - b. provide integration or consulting services for HP solutions or platforms within the Territory. In the event Participant makes any new versions, releases, updates, upgrades or other enhancements to the certain products/services generally available during the term of this Agreement ("Enhancements"), Participant will simultaneously or within a reasonable period of time thereafter enable and make the Enhancements generally available for use with HP Products.
2. Participant agrees that it is solely responsible for all costs and expenses of developing the products/services and for all marketing of the products/services, except as otherwise agreed by HP in a separate, written agreement.

### C. HP PRODUCTS

1. Subject to the conditions of this Sub-Section, HP may, at its sole discretion, sell hardware and license software to Participant. Sales made by HP will be in accordance with one or more Product Exhibits and other eligible product lists and discount schedules available through the DSPP web site and pursuant to the HP TERMS AND CONDITIONS OF SALE AND SERVICE Section. Some optional DSPP benefits, such as HP value added services, may be subject to other terms, conditions and fees under separate agreements to be entered into with Participant at Participant's option.
2. Participant may not exceed the specified order limits in HP Products through DSPP during each calendar year that this Agreement is in effect. System configurations for HP Products and order limits are contained in the current HP DSPP details located at [www.hp.com/dspp](http://www.hp.com/dspp).
3. HP may offer used or remarketed HP Products updated to current technical specifications if allowed by local country regulations.
4. Participant agrees not to purchase HP Products under this Agreement for resale purposes.
5. Participant agrees to purchase a one-year support and maintenance agreement beginning on the date of delivery for certain HP Products that have less than a one-year warranty from HP.
6. The discounts HP grants to Participant under this Agreement are in lieu of any other discount. No dollar value for HP Products purchased under this Agreement will be credited to any other agreement with HP.

### D. PRICE

The purchase price of HP Products purchased under this Agreement will be based upon HP's then current local country list price less the applicable then current DSPP discount available at the DSPP web site at the time HP receives Participant's order.



[[ContractNumber]]

Participant agrees to pay the applicable charges associated with any HP Product purchased, licensed or otherwise received hereunder, or with any other fee-based DSPP benefit Participant may select. Amounts are due upon receipt of invoice and payable as specified in an invoice or transaction document.

#### E. REPRESENTATIONS AND TRADEMARKS

1. Participant may, where appropriate, acknowledge familiarity with HP hardware and HP Software. Participant will not make any claims about HP or HP Products, other than current information published by HP.
2. Participant is authorized, upon HP's execution of this Agreement, to display the HP trademark known as the HP Business Partner Insignia (the "Insignia"). Participant may display the insignia solely in connection with the fair and accurate marketing of Participant's products/services that have been developed, certified and deployed for use with HP Products in accordance with this Agreement. Participant will only use artwork supplied by HP for the Insignia, and will not modify this artwork in any manner. All materials that bear the Insignia must also bear Participant's corporate name and/or logo. The Insignia shall be physically separated from, and displayed in a size and location less prominent than Participant's own name or logo. Participant may only display the Insignia in good taste, in a manner that preserves its value as a trademark, and in accordance with all standards and guidelines provided by HP for its display. Participant will not display the Insignia in a way that may imply that the Participant is an agency or branch of HP. Upon HP's request, Participant will discontinue the use of the Insignia. All rights or purported rights in the Insignia acquired through Participant's use belong solely to HP and/or its affiliates. This Agreement does not authorize Participant to use any other HP trademarks. Participant will not incorporate the words "HP" or "COMPAQ" into its trade, business or domain names. All rights to use Insignia will cease upon termination of this Agreement.
3. HP may, but is not obligated to, permit Participant to directly upload fair and accurate information regarding Participant and Participant's authorized products/services/distributors/customers to a profile on a site operated or sponsored by the HP DSPP. HP may permit Participant to upload its company or product logo(s) to this site. Participant warrants that any trademarks or other materials it uploads to the DSPP site comply with this Agreement and do not infringe any third party rights. Participant acknowledges that HP may remove Participant's logo(s) and/or profile from its site with or without cause.

#### F. TERM AND TERMINATION

1. This Agreement will commence upon the effective date specified below and remain in effect for one (1) year thereafter unless terminated earlier under this Section F.1. Either party may terminate any Section or this entire Agreement without cause upon thirty (30) days written notice to the other party. Either party may terminate any Section or this entire Agreement for cause unless the other party cures the breach within fifteen (15) days of written notice of such breach.
2. In the event of termination by HP for cause, Participant agrees to pay to HP, at HP's discretion, the amounts by which HP discounted purchases of HP Products under this Agreement during the immediately preceding twelve (12) months.
3. Upon termination, or at any time upon notice of user dissatisfaction with Participant's products/services, HP may discontinue display of information describing Participant's products/services. Notice of user dissatisfaction shall be considered to be good cause for termination.
4. All rights and any license granted to Participant will cease upon termination of this Agreement.

#### G. CHANGES AND AMENDMENTS

1. From time to time, HP may add or delete HP Products from DSPP; change list prices or discounts; implement or change HP policies or programs; change or terminate DSPP; or otherwise amend this Agreement or its Sections at HP's discretion, after reasonable notice to Participant in writing or through the DSPP web site.

#### H. GENERAL

1. Participant and HP agree that no right, title or interest in each other's products is granted or may be implied from the Agreement except as expressly stated.
2. HP reserves the right to refuse to sell HP Products/services under this Agreement, if in HP's sole judgment the intended use of the equipment does not satisfy the conditions stated herein.
3. Participant and HP agree that each is an independent contractor and that no relationship of agency, partnership, joint venture, legal representative or other form of association with regard to HP or HP's Products is intended by or may be claimed by Participant in connection with this Agreement. This Agreement does not authorize either party to represent, act for, bind or commit the other.
4. Participant may not assign any rights or obligations hereunder without prior written consent from HP. HP may, however, assign any rights and obligations hereunder to another Hewlett-Packard entity at any time subject to written notice.
5. Participant agrees that HP has no obligation to keep confidential information provided by Participant that is not submitted pursuant to a separately executed confidential disclosure agreement. By entering into this Agreement, Participant hereby consents to HP's use of any information Participant may provide in connection with the DSPP Application or program in profiling Participant and its products/services/distributors/partners/customers, in furtherance of DSPP marketing Participant products/services availability on HP platforms, and for any other purpose permitted under this Agreement. Participant



[[ContractNumber]]

specifically agrees that HP may use any information provided by Participant to profile Participant and its products/services/distributors/partners/customers on a web site owned or otherwise sponsored by HP. HP also may use information on how to contact Participant's employees such as names, work phone numbers and work e-mail addresses in any country where any HP organization or Participant does business. Participant will maintain the accuracy of the information provided to HP as part of DSPP, as well as regularly update or supplement such information upon HP's reasonable request. To the extent Participant provides HP with any contact information collected by Participant or Participant's authorized third parties (including information collected from end users), Participant represents and warrants that such information is, where required by local law, covered by a notification filed with the applicable data protection authority and is processed in accordance with the provisions of all applicable data protection legislation. In the event Participant submits any information to HP about its customers, distributors or partners, Participant grants the rights and warrants to HP that it has such rights to sublicense the use of the Participant's tradename and trademark. Participant agrees to indemnify HP against any claims made against HP due to the use of such Participant's tradename or trademark previously authorized for use by Participant.

6. This Agreement will not obligate either party to use or market products developed by the other party, nor will it restrict either party in connection with offering or developing similar or competing products or entering into similar agreements with other parties.
7. Each party may communicate with the other by electronic means (for example, to provide written notice or consent to the other), and such communication is acceptable as a signed writing to the extent permissible under applicable law.
8. As part of this Agreement, Participant agrees to receive periodic information on products, programs, or other HP offerings.
9. Participant may not issue a press release relating to HP, HP Products, HP services, or this Agreement without HP's prior written consent. Participant will not make any claim or representation about HP or its products or services other than as currently published by HP.
10. Participant will comply with all applicable laws and regulations including export laws.
11. This Agreement will be construed in accordance with the laws of the State of California without regard to conflict of laws principles, if Participant is located in the United States.



[[ContractNumber]]

EFFECTIVE DATE [[ContStartDt]]

Sign Date: \_\_\_\_\_

AGREED TO: \_\_\_\_\_  
Participant: \_\_\_\_\_

AGREED TO: \_\_\_\_\_  
HP: Hewlett Packard Company

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Authorized Representative Signature

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Ciro Rodrigues  
Technology and Solutions Group Latin America  
Finance Director

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
11445 Compaq Center Dr W  
Houston, Texas  
US, 77070  
1 281 514 3933



## HP TERMS AND CONDITIONS OF SALE AND SERVICE

### A. HP BASE TERMS

#### 1. DEFINITIONS

- a. *Affiliate* of a party means an entity controlling, controlled by, or under common control with, that party.
- b. *Deliverable* means the tangible work product resulting from the performance of Services excluding Products and Custom Products.
- c. *Hardware* means computer and related devices and equipment, related documentation, accessories, parts, and upgrades.
- d. *HP Branded* means Products and Services bearing a trademark or service mark of Hewlett-Packard Company or any Hewlett-Packard Company Affiliate.
- e. *HP Business Partner* means select companies authorized by HP to promote, market, support, and deliver certain Products and Services.
- f. *Product* means Hardware and Software listed in HP's standard price list at the time of HP's acceptance of Customer order, and including products that are modified, altered, or customized to meet Customer requirements ("Custom Products").
- g. *Professional Service* means consulting, integration, or technical services performed by HP under a Statement of Work or other Transaction Document.
- h. *Service* means Support and Professional Services.
- i. *Software* means machine-readable instructions and data (and copies thereof), and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures.
- j. Software License Information ("SLI") is license information that is specific to a Software Product. SLI may be found in a file in the Software Product's directory or as information that accompanies the Software Product or in HP quotations. SLI is available upon request.
- k. *Specification* means technical information about Products published in HP Product manuals, user documentation, and technical data sheets in effect on the date HP delivers Products to Customer.
- l. *Statement of Work* means an executed document so titled, that describes the Services to be performed by HP under the Professional Services Terms or Support Terms sections.
- m. *Support* means Hardware maintenance and repair, Software maintenance, training, installation and configuration, and other standard support services provided by HP and includes "Custom Support" which is any agreed non-standard Support as described in a Statement of Work.
- n. *Transaction Document(s)* means an accepted Customer order (excluding pre-printed terms) and in relation to that order valid HP quotations, HP published technical data sheets or service descriptions, HP limited warranty statements delivered with or otherwise made available to Customer with Products, and mutually executed Statements of Work, all as provided by HP, or other mutually executed documents that reference this Agreement.
- o. *Version* means a release of Software that contains new features, enhancements, and/or maintenance updates, or for certain Software, a collection of revisions packaged into a single entity and, as such, made available by HP to its customers (also called a "Release").

#### 2. PARTICIPATION

- a. Global Agreement. Customer Affiliates may participate under this Agreement through the issuance of their order referencing this Agreement and its acceptance by an HP Affiliate in the same country. Upon HP's acceptance of such an order, the terms of this Agreement will apply between the HP Affiliate and the Customer Affiliate and references to "HP" and "Customer" shall mean HP Affiliate and Customer Affiliate respectively. The HP Affiliate may include in their acceptance transmittal supplemental country specific terms to reflect local law or business practice that will take precedence over any other inconsistent terms in this Agreement. All orders placed by Customer Affiliates must specify a "ship to" address or Service performance location within the country of the HP Affiliate where the order is accepted.
- b. Prior Authorization. Any sale or license of a Product or Service under this Agreement to a Customer Affiliate in countries where HP does not have an Affiliate is subject to HP's prior written authorization.
- c. Affiliate Liability. Each HP Affiliate will perform only in its designated jurisdiction and is solely responsible for claims arising out of its own performance.

#### 3. PRICES AND TAXES



- a. Prices. Product and Service prices are specified in the current local published HP price list at the time HP receives Customer's order, or in a valid Transaction Document. Prices are subject to change at any time prior to HP's acceptance of Customer's order, unless stated otherwise in a Transaction Document.
  - b. Price Validity. Unless prices are changed by HP in accordance with this Agreement, prices are valid while this Agreement is in effect for the period set forth in a Transaction Document. Product prices for an order remain valid for ninety (90) days from original order date unless otherwise quoted by HP.
  - c. Taxes. Prices are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on HP or on the Customer by any taxing authority (other than taxes imposed on HP's income) related to Customer's order, unless Customer has provided HP with an appropriate resale or exemption certificate for the delivery location. "Delivery location" means the location where HP transfers title or possession of Products to Customer or its designate or the location where Services are performed or, in the case of remote or intangible Services, where the Products being serviced are located.
  - d. Withholding Tax. If Customer is required by law to withhold and remit tax relating to Customer's order, Customer shall:
    1. be entitled to reduce the payment by the amount of such tax;
    2. withhold and remit such tax to the applicable tax jurisdiction;
    3. assist HP to obtain the benefit of any reduced withholding tax under applicable tax treaties; and
    4. furnish to HP a tax certificate or other acceptable evidence of payment of such tax as required by the relevant taxing authorities.
  - e. Financing. Third party financing transactions require advance notice to HP for appropriate tax treatment.
4. CUSTOMER ORDERS
- a. Orders. Orders must reference this Agreement and are subject to acceptance by HP. Orders must specify a "ship to" address and have a delivery date within ninety (90) days from the order date unless otherwise provided in a Transaction Document.
  - b. Cancellation. Customer may cancel an order for Products (but not Custom Products) at no charge up to five (5) business days prior to the scheduled shipment date.
  - c. Extended Delivery Dates. Changes to orders that extend delivery dates beyond ninety (90) days from the order date shall be considered new orders at the prices in effect when HP receives the changed order.
5. DELIVERY
- a. Delivery. HP will deliver Products by arranging shipping to the receiving area at the "ship to" address specified in Customer's order within the country in which HP accepted the order. HP may elect in its sole discretion to deliver Software, Deliverables, Specifications, or Product documentation by enabling electronic transmission to, or electronic access or download by Customer in the country where HP accepted the order.
  - b. Delivery Charges. Transportation and handling charges are payable by Customer and will be specified in an HP invoice unless otherwise specified in a Transaction Document. Special packing or shipping arrangements will be charged separately to Customer.
  - c. Delivery Requirements. If HP is unable to meet Customer's Product delivery requirements, Customer may cancel that order, and such cancellation is Customer's sole remedy.
6. PAYMENT
- a. Payment Terms. Customer agrees to pay, without offset, all invoiced amounts within thirty (30) days of HP's invoice date. HP may change credit or payment terms for unfulfilled orders if, in HP's reasonable opinion, Customer's financial condition, previous payment record, or relationship with HP merits such change.
  - b. Customer Default. HP may discontinue performance if Customer fails to pay any sum due, or if after ten (10) days written notice Customer has not cured any other failure to perform under this Agreement.
  - c. Security Interest. HP retains a security interest in Products until payment. Customer shall execute any paperwork required by HP to effectuate any such security interest.
7. WARRANTY PROVISIONS
- a. Warranty Statements. HP limited warranty statements for Hardware, Software, Support, and Professional Services, as applicable, are contained in their respective sections of this Agreement. The limited warranties in this Agreement are subject to the terms, limitations, and exclusions contained in the limited warranty statement provided for the Product in the country where that Product is located when the warranty claim is made. A different limited warranty statement may apply and be quoted if the Product is purchased as part of a system.
  - b. Transfer. Warranties are transferable to another party for the remainder of the warranty period subject to HP license transfer policies and any assignment restrictions.



- c. Delivery Date. Warranties begin on the date of delivery, or for Hardware on the date of installation if installed by HP. If Customer schedules or delays such installation by HP more than thirty (30) days after delivery, Customer's warranty period will begin on the 31st day after delivery.
- d. Exclusions. HP is not obligated to provide warranty services or Support for any claims resulting from:
  - 1. improper site preparation, or site or environmental conditions that do not conform to HP's site specifications;
  - 2. Customer's non-compliance with Specifications or Transaction Documents;
  - 3. improper or inadequate maintenance or calibration;
  - 4. Customer or third-party media, software, interfacing, supplies, or other products;
  - 5. modifications not performed or authorized by HP;
  - 6. virus, infection, worm or similar malicious code not introduced by HP; or
  - 7. abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HP's control.
- e. Non-HP Branded Products and Services. HP provides third-party products, software, and services that are not HP Branded "AS IS" without warranties of any kind, although the original manufacturers or third party suppliers of such products, software and services may provide their own warranties.
- f. Disclaimer. THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THIS AGREEMENT ARE EXCLUSIVE. NO OTHER WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY HP OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT ALLOWED BY LOCAL LAW HP DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

## 8. INTELLECTUAL PROPERTY INFRINGEMENT

- a. Third-Party Claims. HP will defend or settle any third party claims against Customer alleging that HP Branded Products or Support (excluding Custom Products and Custom Support) provided under this Agreement infringes intellectual property rights in the country where they were sold, if Customer:
  - 1. promptly notifies HP of the claim in writing;
  - 2. cooperates with HP in the defense of the claim; and
  - 3. grants HP sole control of the defense or settlement of the claim.

HP will pay infringement claim defense costs, HP-negotiated settlement amounts, and court-awarded damages.

- b. Remedies. If such a claim appears likely, then HP may modify the HP Branded Products or Support, procure any necessary license, or replace the affected item with one that is at least functionally equivalent. If HP determines that none of these alternatives is reasonably available, then HP will issue Customer a refund equal to:
  - 1. the purchase price paid for the affected item if within one year of delivery, or the Customer's net book value thereafter, or
  - 2. if the claim relates to infringing Support, the lesser of twelve (12) months charges for the claimed infringing Support or the amount paid by Customer for that Support.
- c. Exclusions. HP has no obligation for any claim of infringement arising from:
  - 1. HP's compliance with Customer or third party designs, specifications, instructions, or technical information;
  - 2. Modifications made by Customer or a third party;
  - 3. Customer's non-compliance with the Specifications or the Transaction Documents;
  - 4. Customer's use with products, software, or services that are not HP Branded; or
  - 5. Any open source or freeware software.
- d. Sole and Exclusive. This sub-section A.8 states HP's entire liability for claims of intellectual property infringement.

## 9. INTELLECTUAL PROPERTY RIGHTS

No rights in copyright, patents, trademarks, trade secrets, or other intellectual property are granted by either party to the other except as expressly provided under this Agreement. Customer will not register or use any mark or internet domain name that contains HP's trademarks (e.g., "HP", "hp", or "Hewlett-Packard").



#### 10. RESTRICTED USE

Products, Support, and Deliverables are not specifically designed, manufactured, or intended for use as parts, components, or assemblies for the planning, construction, maintenance, or direct operation of a nuclear facility. Customer is solely liable if Products, Support, or Deliverables purchased by Customer are used for these applications and will indemnify and hold HP harmless from all loss, damage, expense, or liability in connection with such use.

#### 11. LIMITATION OF LIABILITY AND REMEDIES

- a. Limitation of Liability. Except for the amounts in sub-section A.8 above and damages for bodily injury (including death) HP's total aggregate liability is limited to the amount paid by Customer for:
  1. the Product;
  2. Support during the period of a material breach up to a maximum of twelve (12) months; or
  3. the Professional Service;that in each case is the subject of the claim.
- b. Disclaimer. EXCEPT FOR CLAIMS BY A PARTY FOR INFRINGEMENT OF THEIR INTELLECTUAL PROPERTY RIGHTS AGAINST THE OTHER PARTY, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL COSTS OR DAMAGES OF ANY KIND OR FOR ANY DOWNTIME COSTS; LOST BUSINESS, REVENUES, OR PROFITS; FAILURE TO REALIZE EXPECTED SAVINGS; LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA; OR SOFTWARE RESTORATION WHETHER OR NOT THAT PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH COSTS, EXPENSES, OR DAMAGES.
- c. Legal Theory. TO THE EXTENT ALLOWED BY LOCAL LAW, THESE LIMITATIONS WILL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE.

#### 12. TERMINATION

- a. Termination for Convenience. Either party may terminate this Agreement for convenience upon thirty (30) days prior written notice to the other party, unless prohibited by the terms of a Transaction Document.
- b. Termination for Cause. Either party may terminate this Agreement on written notice if the other party fails to comply with this Agreement after it has been notified in writing of the nature of the failure and been provided with a reasonable time to cure the failure.
- c. Prior Orders. Except as otherwise provided in sub-section A.12.d below, the termination of this Agreement will not affect payments due or fulfillment and payment of orders accepted prior to termination.
- d. Bankruptcy. If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may terminate this Agreement without notice and may cancel any unfulfilled obligations.
- e. Survival. Any terms in this Agreement which by their nature extend beyond the termination or expiration of this Agreement will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns. Any termination under this sub-section A.12 will be without prejudice to the terminating party's legal rights and remedies, including injunction and other equitable remedies.

#### 13. HP BUSINESS PARTNERS

HP's obligations with respect to HP Branded Products or Services procured by Customer from authorized HP Business Partners are limited to the sub-sections A.7 Warranty Provisions, A.8 Intellectual Property Infringement, A.9 Intellectual Property Rights, A.10 Restricted Use, A.11 Limitation of Liability and Remedies; and clauses b, c, d, e, f, g, h, i, j, and k of sub-section A.14 General in these Base Terms and the Software License Terms section. HP is not responsible for the acts or omissions of HP Business Partners, for any obligations undertaken or representations that they may make, or for any other products or services that they supply to Customer.

#### 14. GENERAL

- a. Electronic Orders and EDI. Where facilitated under local law, the parties may do business electronically, including order placement and acceptance. Once accepted, such orders will create fully enforceable obligations subject to the terms of this Agreement. Such orders and acceptances will be deemed for all purposes to be an original signed writing. Customer and HP will adopt commercially reasonable security measures for password and access protection.
- b. Internal Use. Products and Services acquired by Customer under this Agreement are solely for Customer's own internal use and not for resale or sub-licensing.
- c. Force Majeure. Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control; however, this provision will not apply to Customer's payment obligations.



- d. Assignment. Customer may not assign, delegate or otherwise transfer all or any part of this Agreement without prior written consent from HP. Any such attempted assignment, delegation, or transfer will be null and void. Assignments of HP Software licenses are subject to compliance with HP's Software license transfer policies.
- e. Export and Import. Customer who exports, re-exports, imports, or otherwise transfers Products, technology, or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. HP may suspend performance under this Agreement: 1) if the Customer is in violation of any applicable laws or regulations, and 2) to the extent necessary to assure compliance under the U.S. or other applicable export or similar regulations.
- f. Governing Law. Disputes arising from this Agreement will be governed by the law of the jurisdiction of the principal place of business of the HP Affiliate accepting the order to which the dispute relates and the courts of that locale will have jurisdiction, except that HP may, at its option, bring suit for collection in the country where the Customer Affiliate that placed the order is located. Customer and HP agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Claims arising or raised in the United States will be governed by the laws of the State of California, excluding rules as to choice and conflict of law.
- g. Notices. All notices that are required under this Agreement will be in writing and will be considered effective upon receipt.
- h. Entire Agreement. This Agreement is the entire agreement between HP and Customer regarding Customer's purchase of Products and Services, and supersedes and replaces any previous communications, representations, or agreements, or Customer's additional or inconsistent terms, whether oral or written. In the event any provision of this Agreement is held invalid or unenforceable the remainder of the Agreement will remain enforceable and unaffected thereby.
- i. Waiver. Neither party's failure to exercise or delay in exercising any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.
- j. Order of Precedence. Unless otherwise agreed or provided herein, documents will apply in the following descending order of precedence:
  - 1. SLI;
  - 2. the sections of this Agreement;
  - 3. the Statement of Work (if applicable);
  - 4. all Transaction Documents.
- k. Independent Contractor. HP is an independent contractor in the performance of this Agreement and neither HP nor any HP personnel are employees or agents of Customer or HP Business Partners. Nothing in this Agreement will be construed as creating a joint venture, partnership or employment relationship between the parties, nor will either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.



## **B. HP HARDWARE TERMS**

### **1. RISK OF LOSS**

Risk of loss or damage, and title to Hardware, will pass to Customer and acceptance will occur upon delivery to the "ship to" address or, if special shipping arrangements are agreed to, upon delivery to Customer's carrier or designee.

### **2. INSTALLATION**

If HP provides installation services, Customer will make available facilities that meet HP published site guidelines that will be provided to Customer upon request. Upon delivery, Customer will place each item of Hardware in its designated location. Installation is billed at HP's published installation charges unless quoted as part of the Hardware purchase price. Installation by HP is complete when the Hardware passes HP's standard installation and test procedures.

### **3. TRADE-IN PROGRAMS**

Customer has the responsibility for risk of loss for trade-in Hardware until receipt by HP. Such items must be returned to HP as soon as reasonably practicable at Customer's expense free of all liens, claims, or encumbrances, or Customer will repay to HP the applicable trade-in credit.

### **4. HARDWARE LIMITED WARRANTY**

HP warrants HP Branded Hardware against defects in materials and workmanship under normal use during the warranty period and that it will materially conform to its Specifications for the time specified in the applicable Transaction Documents. HP Branded Hardware may contain used parts that are equivalent to new in performance and reliability and are warranted as new.

### **5. OPERATION**

HP does not warrant that the operation of Hardware will be uninterrupted or error free, or that Hardware will operate in Hardware and Software combinations other than as expressly required by HP in the Product Specifications or that Hardware will meet requirements specified by Customer. Customer may only use firmware embedded in the Hardware to enable the Hardware to function in accordance with its Specifications.

### **6. EXCLUSIVE REMEDIES**

Upon notice of a valid warranty claim during the warranty period and if provided reasonable access to the HP Branded Hardware, HP will, at its option, repair a defect in the HP Branded Hardware, or correct a material non-conformance to Specifications, or replace such Hardware with Hardware of equal or better functional performance. If HP is unable, within a reasonable time, to complete the repair or correction, or replace such HP Branded Hardware, Customer will be entitled to a refund of the purchase price paid upon prompt return of such Hardware to HP. Subject to the terms in Customer's specific Product warranty statement Customer will pay expenses for return of such Hardware to HP. HP will pay expenses for shipment of repaired or replacement Hardware to Customer. This sub-section states HP's entire liability for Hardware warranty claims.



## C. HP SOFTWARE LICENSE TERMS

### 1. LICENSE GRANT

HP grants Customer a non-exclusive, non-transferable license to "Use", in object code form, the Version or Release of the HP Branded Software delivered from an HP accepted order. For purposes of this Agreement, unless otherwise specified in the SLI, "Use" means to install, store, load, execute, and display one copy of the Software on one device at a time for Customer's internal business purposes. Customer's Use of such Software is subject to these license terms, the applicable Use restrictions and authorizations, and applicable licensed locations for the Software specified in SLI (the "Software License"). The usage terms specified in the SLI for HP Branded Software will not be materially more restrictive than the Use defined in this sub-section C1. For non-HP Branded Software, the third party supplier's license terms and use restrictions found in the SLI will solely govern its use.

### 2. OWNERSHIP

This Software License confers no title or ownership and is not a sale of any rights in the Software. Third-party suppliers are intended beneficiaries under this Agreement and independently may protect their rights in the Software in the event of any infringement. All rights not expressly granted to Customer are reserved solely to HP or its suppliers.

### 3. ACCEPTANCE

Customer accepts Software upon delivery.

### 4. UPGRADES

Software Versions or maintenance updates, if available, may be ordered separately or may be available through Software Support. HP reserves the right to require additional licenses and fees for Software Versions or separately purchased maintenance updates or for Use of the Software in conjunction with upgraded Hardware or Software. When Customer obtains a license for a new Software Version through Software Support or purchases an upgrade license to a new Version, Customer's Software License for the earlier Version shall terminate. Software Versions are subject to the license terms in effect on the date that HP delivers or makes the Version available to Customer.

### 5. LICENSE RESTRICTIONS

- a. Use Restrictions. Customer may not exceed the number of licenses, agents, tiers, nodes, seats, or other Use restrictions or authorizations agreed to and paid for by Customer. Some Software may require license keys or contain other technical protection measures. Customer acknowledges that HP may monitor Customer's compliance with Use restrictions and authorizations remotely, or otherwise. If HP makes a license management program available which records and reports license usage information, Customer agrees to appropriately install, configure and execute such license management program beginning no later than one hundred and eighty (180) days from the date it is made available to Customer and continuing for the period that the software is used.
- b. Copy and Adaptation. Unless otherwise permitted by HP, Customer may only make copies or adaptations of the Software for archival purposes or when copying or adaptation is an essential step in the authorized Use of the Software. If Customer makes a copy for backup purposes and installs such copy on a backup device, unless otherwise provided in the SLI, Customer may not operate such backup installation of the Software without paying an additional license fee, except in cases where the original device becomes inoperable. If a copy is activated on a backup device in response to failure of the original device, the Use on the backup device must be discontinued when the original or replacement device becomes operable. Customer may not copy the Software onto or otherwise Use or make it available on, to, or through any public or external distributed network. Licenses that allow Use over Customer's intranet require restricted access by authorized users only.
- c. Copyright Notice. Customer must reproduce all copyright notices that appear in or on the Software (including documentation) on all permitted copies or adaptations. Copies of documentation are limited to internal use.
- d. Designated System. Notwithstanding anything to the contrary herein, the Software License for certain Software, as identified in SLI, is non-transferable and for Use only on a computer system owned, controlled, or operated by or solely on behalf of Customer and may be further identified by HP by the combination of a unique number and a specific system type ("Designated System") and such license will terminate in the event of a change in either the system number or system type, an unauthorized relocation, or if the Designated System ceases to be within the possession or control of Customer.
- e. OS Software. Operating system Software may only be used when operating the associated Hardware in configurations as approved, sold, or subsequently upgraded by HP or an HP Business Partner.
- f. Changes. Customer will not modify, reverse engineer, disassemble, decrypt, decompile, or make derivative works of the Software. Where Customer has other rights mandated under statute, Customer will provide HP with reasonably detailed information regarding any intended modifications, reverse engineering, disassembly, decryption, or decompilation and the purposes therefore.
- g. Use for Service Provision. Extending the Use of Software to any person or entity other than Customer as a function of providing services, (i.e.; making the Software available through a commercial timesharing or service bureau) must be authorized in writing by HP prior to such use and may require additional licenses and fees.



- h. Consultant Use and Access. Subject to the terms and conditions of this Agreement, Customer may permit a consultant or subcontractor to Use Software at the licensed location for the sole purpose of providing services to Customer. Customer will be responsible and directly liable to HP for consultants' compliance with this Agreement.

#### 6. LICENSE TERM AND TERMINATION

Unless a different time period for the license is specified in the applicable SLI or quotation, the Software License granted Customer will be perpetual, provided however that HP may terminate the Software License upon notice for failure to comply with this Agreement. Immediately upon termination of the Software License or upon expiration of any individual limited term license, Customer will destroy the Software and all copies of the Software subject to the termination or expiration or return them to HP. Customer shall remove and destroy or return to HP any copies of the Software that are merged into adaptations, except for individual pieces of data in Customer's database. Customer may retain one copy of the Software subsequent to termination solely for archival purposes only. At HP's request, Customer will certify in writing to HP that Customer has complied with these requirements.

#### 7. LICENSE TRANSFER

Customer may not sublicense, assign, transfer, rent, or lease the Software or the Software License to any other party except as permitted in this section. Except as provided in sub-section C. 5. d above, HP Branded Software licenses are transferable subject to HP's prior written authorization and payment to HP of any applicable fees or compliance with applicable third party terms. Upon transfer of the Software License Customer's rights under the License will terminate and Customer will immediately deliver the Software and all copies to the transferee. The transferee must agree in writing to the terms of the Software License, and, upon such agreement, the transferee will be considered the "Customer" for purposes of the license terms. Customer may transfer firmware only upon transfer of the associated Hardware.

#### 8. U.S. FEDERAL GOVERNMENT USE

If the Software is licensed for use in the performance of a U.S. Government prime contract or subcontract, Customer agrees that, consistent with FAR 12.211 and 12.212, commercial computer Software, computer Software documentation and technical data for commercial items are licensed under HP's standard commercial license.

#### 9. COMPLIANCE

Customer agrees that HP may audit Customer's compliance with the Software License terms. Any such audit would be at HP's expense, require reasonable notice, and would be performed during normal business hours. If an audit reveals underpayments then Customer will immediately pay HP such underpayments together with the costs reasonably incurred by HP in connection with the audit and seeking compliance with this sub-section.

#### 10. WARRANTY

HP Branded Software will materially conform to its Specifications. If a warranty period is not specified for HP Branded Software, the warranty period will be ninety (90) days from the delivery date.

#### 11. VIRUS WARRANTY

HP warrants that any physical media containing HP Branded Software will be shipped free of viruses.

#### 12. WARRANTY LIMITATION

HP 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 expressly required by HP in the Product Specifications or that Software will meet requirements specified by Customer.

#### 13. EXCLUSIVE REMEDIES

If notified of a valid warranty claim during the warranty period, HP will, at its option, correct the warranty defect for HP Branded Software, or replace such Software. If HP is unable, within a reasonable time, to complete the correction, or replace such Software, Customer will be entitled to a refund of the purchase price paid upon prompt return of such Software to HP. Customer will pay expenses for return of such Software to HP. HP will pay expenses for shipment of repaired or replacement Software to Customer. This sub-section C.13 states HP's entire liability for warranty claims.

#### 14. IMPLIED LICENSE

There are no implied licenses.



## D. HP SUPPORT TERMS

### 1. SUPPORT SERVICES

- a. Description of Support. HP will deliver Support according to the description of the offering, eligibility requirements, service limitations, and Customer responsibilities described in the relevant Transaction Documents.
- b. Ordering Support. HP may offer Support:
  1. at the time of Product purchase, or prior to installation of Products for which Support is being purchased, for a fixed term (may be referred to as "HP Care Pack");
  2. after the time of Product purchase, for either a fixed term or an initial term that may be renewed (may be referred to as "HP Contractual Services");
  3. on a per-event basis; or
  4. at any time, when agreed non-standard Support has been offered by HP for the Customer according to a Statement of Work (also known as "Custom Support") or as otherwise offered by HP.
- c. Cancellation. Customer may cancel Support orders or delete Products from Support upon thirty (30) days written notice, unless otherwise stated in a Transaction Document. HP may discontinue Support for Products and specific Support services no longer included in HP's Support offering upon sixty (60) days written notice, unless otherwise agreed. If Customer cancels prepaid Support, HP will refund Customer a pro-rata amount for the unused prepaid Support, less any early termination fees or subject to any restrictions set forth in a Transaction Document.
- d. Return to Support. If Customer allows Support to lapse, HP may charge Customer additional fees to resume Support or require Customer to perform certain hardware or software upgrades. HP will review and assess whether such fees are required, and explain these to Customer at the time of the request to return to Support.
- e. Local Availability. Customer may order Support from HP's current Support offerings. Some offerings, features, and coverage (and related Products) may not be available in all countries or areas.
- f. Support Warranty. HP warrants that it will perform Support using generally recognized commercial practices and standards.
- g. Exclusive Remedies. HP will re-perform Support not performed in accordance with the warranty herein. This sub-section D.1.g states HP's entire liability for Support warranty claims.

### 2. PRICING, SERVICES, AVAILABILITY, AND INVOICING

- a. Pricing. Except for prepaid Support or as otherwise stated in a Transaction Document, HP may change Support prices upon sixty (60) days written notice.
- b. Additional Services. Additional services performed by HP at Customer's request that are not included in Customer's purchased Support will be chargeable at the applicable published service rates for the country where the service is performed. Such additional services include but are not limited to:
  1. Customer requests for Support after HP's local standard business hours (unless Customer has specifically purchased after-hours coverage for the requested Support);
  2. Customer requests for repair for damage or failure attributable to the causes specified in sub-section A.7.d of the HP Base Terms ("Warranty Exclusions"); and
  3. Customer requests for Support where Customer does not, in HP's reasonable determination, meet the applicable prerequisites and eligibility requirements for Support.
- c. Local Availability. Support outside of the applicable HP coverage areas may be subject to travel charges, longer response times, reduced restoration or repair commitments, and reduced coverage hours.
- d. Invoicing. Invoices for Support will be issued in advance of the Support period. HP Support invoices and related documentation will be produced in accordance with HP system standards. Additional levels of detail requested by Customer may be chargeable.

### 3. SITE AND PRODUCT ACCESS

Customer shall provide HP access to the Products covered under Support; adequate working space and facilities within a reasonable distance of the Products; access to and use of information, customer resources, and facilities as reasonably determined necessary by HP to service the Products; and other access requirements described in the relevant Transaction Document. If Customer fails to provide such access, resulting in HP's inability to provide Support, HP shall be entitled to charge Customer for the Support call at HP's published service rates. Customer is responsible for removing any Products ineligible for Support to allow HP to perform Support. If delivery of Support is made more difficult because of ineligible Products, HP will charge Customer for the extra work at HP's published service rates.



#### 4. STANDARD SUPPORT PRODUCT ELIGIBILITY

- a. Minimum Configuration for Support. Customer must purchase the same level of Support and for the same coverage period for: all Products within a minimum supportable system unit (i.e. all components within a server, storage, or network device) to allow for proper execution of standalone and operating system diagnostics for the configuration.
- b. Eligibility. For initial and on-going Support eligibility Customer must maintain all Products and associated hardware and software at the latest HP-specified configuration and revision levels and in HP's reasonable opinion, in good operating condition.
- c. Modifications. Customer will allow HP, at HP's request and at no additional charge, to modify Products to improve operation, supportability, and reliability, or to meet legal requirements.
- d. Loaner Units. HP maintains title and Customer shall have risk of loss or damage for loaner units if provided at HP's discretion as part of Support or warranty services and such units will be returned to HP without lien or encumbrance at the end of the loaner period.
- e. Relocation. Customer is responsible for moving Products. If Customer moves the Products to a new location, HP may charge additional Support fees and modify the response times, and Customer may be required to execute amended or new Transaction Documents. If Customer moves Products to another country, Support shall be subject to availability in the destination country. Reasonable advanced notice to HP may be required to begin Support for some Products after relocation.
- f. Maximum Use Limitations. Certain Products have a maximum usage limit, which is set forth in the manufacturer's operating manual or the technical data sheet. Customer must operate such Products within the maximum usage limit.
- g. Multi-Vendor Support. HP provides Support for certain non-HP Branded Products. The relevant Transaction Document will specify availability and coverage levels, and govern delivery of multi-vendor Support, whether or not the non-HP Branded Products are under warranty. HP may discontinue Support of non-HP Branded Products if the manufacturer or licensor ceases to provide support for such Products.

#### 5. PROPRIETARY SERVICE TOOLS

HP will require Customer's use of certain hardware and/or software system and network diagnostic and maintenance programs ("Proprietary Service Tools"), as well as certain diagnostic tools that may be included as part of the Customer's system, for delivery of Support under certain coverage levels. Proprietary Service Tools are and remain the sole and exclusive property of HP, are provided "as is," and include, but are not limited to: remote fault management software, network Support tools, Insight Manager, Instant Support, and Instant Support Enterprise Edition (known as "ISEE"). Proprietary Service Tools may reside on the Customer's systems or sites. Customer may only use the Proprietary Service Tools during the applicable Support coverage period and only as allowed by HP. Customer may not sell, transfer, assign, pledge, or in any way encumber or convey the Proprietary Service Tools. Upon termination of Support, Customer will return the Proprietary Service Tools or allow HP to remove these Proprietary Service Tools. Customer will also be required to:

- a. allow HP to keep the Proprietary Service Tools resident on Customer's systems or sites, and assist HP in running them;
- b. install Proprietary Service Tools, including installation of any required updates and patches;
- c. use the electronic data transfer capability to inform HP of events identified by the software;
- d. if required, purchase HP-specified remote connection hardware for systems with remote diagnosis service; and
- e. provide remote connectivity through an HP approved communications line.

#### 6. CUSTOMER RESPONSIBILITIES

- a. Data Backup. To reconstruct lost or altered Customer files, data, or programs, Customer must maintain a separate backup system or procedure that is not dependent on the Products under Support.
- b. Temporary Workarounds. Customer will implement temporary procedures or workarounds provided by HP while HP works on permanent solutions.
- c. Hazardous Environment. Customer will notify HP if Customer uses Products in an environment that poses a potential health or safety hazard to HP employees or subcontractors. HP may require Customer to maintain such Products under HP supervision and may postpone service until Customer remedies such hazards.
- d. Authorized Representative. Customer will have a representative present when HP provides Support at Customer's site.
- e. Product List. Customer will create and maintain a list of all Products under Support including: the location of the Products, serial numbers, the HP-designated system identifiers, and coverage levels. Customer shall keep the list updated during the applicable Support period.
- f. Documentation. If Customer purchases a Support offering that includes documentation updates, Customer may copy such updates only for systems under such coverage. Copies must include appropriate HP trademark and copyright notices.

#### 7. SUPPORTED SOFTWARE



Customer may purchase available Support for HP Branded Software only if Customer can provide evidence it has rightfully acquired an appropriate HP license for such Software. HP will be under no obligation to provide Support due to any alterations or modifications to the Software not authorized by HP or for Software for which Customer cannot provide a sufficient proof of a valid license. Unless otherwise agreed by HP, HP only provides Support for the current Version and the immediately preceding Version of HP Branded Software, and then only when HP Branded Software is used with Hardware or Software included in HP-specified configurations at the specified Version level.

#### 8. ACCESSORIES AND PARTS AND MISCELLANEOUS

- a. Compatible Cables and Connectors. Customer will connect Products covered under Support with cables or connectors (including fiber optics if applicable) that are compatible with the system, according to the manufacturer's operating manual.
- b. Support for Accessories. HP may provide Support for cables, connectors, interfaces, and other accessories if Customer purchases Support for such accessories at the same Hardware service level purchased for the Products with which they are used.
- c. Consumables. Support does not include the delivery, return, replacement, or installation of supplies or other consumable items (including, but not limited to, operating supplies, magnetic media, print heads, ribbons, toner, and batteries) unless otherwise stated in a Transaction Document.
- d. Replacement Parts. Parts provided under Support may be whole unit replacements or be new or functionally equivalent to new in performance and reliability and warranted as new. Replaced parts become the property of HP, unless HP agrees otherwise and Customer pays any applicable charges.
- e. Service Providers. HP reserves the right and Customer agrees to HP's use of HP-authorized service providers to assist in the provision of Support.

#### 9. ACCESS TO HP SOLUTION CENTER AND IT RESOURCE CENTER

- a. Designated Callers. Customer will identify a reasonable number of callers, as determined by HP and Customer ("Designated Callers"), who may access HP's customer Support call centers ("Solution Centers").
- b. Qualifications. Designated Callers must be generally knowledgeable and demonstrate technical aptitude in system administration, system management, and, if applicable, network administration and management and diagnostic testing. HP may review and discuss with Customer any Designated Caller's experience to determine initial eligibility. If issues arise during a call to the Solution Center that, in HP's reasonable opinion, may be a result of a Designated Caller's lack of general experience and training, the Customer may be required to replace that Designated Caller. All Designated Callers must have the proper system identifier as provided in the Transaction Documents or by HP when Support is initiated. HP Solution Centers may provide support in English or local language(s), or both.
- c. HP IT Resource Center. HP IT Resource Center is available via the worldwide web for certain types of Support. Customer may access specified areas of the HP IT Resource Center. File Transfer Protocol access is required for some electronic services. Customer employees who submit HP Solution Center service requests via the HP IT Resource Center must meet the qualifications set forth in sub-section D.9.b above.
- d. Telecommunication Charges. Customer will pay for all telecommunication charges associated with using HP IT Resource Center, installing and maintaining ISDN links and Internet connections (or HP-approved alternatives) to the HP Solution Center, or using the Proprietary Service Tools.