



Contract Number

HP DEVELOPER & SOLUTION PARTNER PROGRAM TERMS

BETWEEN _____ hereinafter "HP"
AND _____ hereinafter "Participant"

This HP Developer & Solution Partner Program Terms section becomes part of the HP Single Order Terms and they establish the entire agreement ("Agreement"). All capitalized terms not defined in this section will have the meaning set forth in the HP Single Order Terms. In the event of conflict between this section and other section(s) of the HP Single Order Terms, the terms of this section prevail for the subject matter of this section.

1. RECITALS

- a. 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.
- b. 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 Asia Pacific Countries (the "Territory").
- c. 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.
- d. For the purposes of this agreement Asia Pacific Countries are defined as the following countries: Australia, China, Hong Kong, India, Indonesia, Korea, Malaysia, New Zealand, Philippines, Singapore, Taiwan, Thailand, and Pakistan

2. PRODUCT DEVELOPMENT

- a. Participant agrees to devote commercially reasonable efforts to:
 1. develop, convert, test, certify, demonstrate and deploy, within the Territory, certain Participant products/services for use with HP Products; or
 2. 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.
- b. 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.

3. HP PRODUCTS

- a. 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 Single Order Terms. 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.
- b. 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.
- c. HP may offer used or remarketed HP Products updated to current technical specifications if allowed by local country regulations.



- d. Participant agrees to use the HP Products primarily for the purposes stated in sub-section 2 hereof for at least the amount of time specified in the current HP DSPP web site. The amount of time specified may vary among the HP Products.
- e. Participant agrees not to purchase HP Products under this Agreement for resale purposes.
- f. 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.
- g. 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.

4. 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. 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.

5. REPRESENTATIONS AND TRADEMARKS

- a. 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.
- b. 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.
- c. 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.

6. TERM AND TERMINATION

- a. This Agreement will commence upon the effective date specified below and remain in effect for one (1) year thereafter unless terminated earlier under this sub-section 6 provided Participant is:
 - 1. meeting its obligations under this Agreement; and
 - 2. maintains the accuracy of its company, contact and product/service information, this Agreement will renew automatically for additional one (1) year periods.
- b. 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.
- c. 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.
- d. 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.
- e. All rights and any license granted to Participant will cease upon termination of this Agreement.



7. CHANGES AND AMENDMENTS

- a. 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.
- b. Except as provided in sub-section 7.a above, no amendment to this Agreement will be binding on either party unless made in writing and signed by authorized representatives of both parties.

8. GENERAL

- a. 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.
- b. 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.
- c. 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.
- d. 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.
- e. 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 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.
- f. During the term of this Agreement, Participant may receive or have access to information about HP Product plans and strategies, which HP reasonably considers to be confidential ("Confidential Information"). Before HP discloses such Confidential Information to Participant, the Confidential Information will be marked as confidential at the time of disclosure. Confidential Information may be used by Participant only with respect to the performance of its obligations under this Agreement, and only by those of its employees or subcontractors who have a need to know such information for purposes related to this Agreement and who have executed separate agreements containing substantially similar confidentiality provisions. Participant will protect the Confidential Information of HP by using the same degree of care (but not less than a reasonable degree of care) to prevent the unauthorized use, dissemination or publication of such Confidential Information, as Participant uses to protect its own confidential information of like nature. Participant's obligation with respect to Confidential Information under this sub-section 8.f will be for three (3) years after the date of disclosure. The obligations stated in this sub-section 8.f will not apply to any information which:
 - 1. was in the Participant's possession before receipt from HP;
 - 2. is or becomes a matter of public knowledge through no fault of Participant;
 - 3. is rightfully received by Participant from a third party without a duty of confidentiality;
 - 4. is disclosed by HP to a third party without a duty of confidentiality on the third party;
 - 5. is independently developed by Participant;
 - 6. is disclosed under operation of law; or
 - 7. is disclosed by the Participant with HP's prior written approval.



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- g. 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.
- h. 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.
- i. As part of this Agreement, Participant agrees to receive periodic information on products, programs, or other HP offerings.
- j. 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.
- k. Participant will comply with all applicable laws and regulations including export laws.
- l. Sub-section 8.f above will survive expiration or termination of this Agreement.
- m. This Agreement will be construed in accordance with the laws of the country and locality in which HP accepts the order. HP AGREEMENT NUMBER

EFFECTIVE DATE

Sign Date: _____

AGREED TO: Customer _____

AGREED TO: HP _____

Authorized Representative Signature

Authorized Representative Signature

Name: _____

Name: _____

Title: _____

Title: _____

Address: -----

Address: _____

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HP SINGLE ENGAGEMENT TERMS FOR PROFESSIONAL SERVICES

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 HP's performance of Professional Services that is specified in a Transaction Document to be provided to Customer, excluding Products, Custom Products and modifications, enhancements and derivative works thereto.
- c. *Hardware* means computer and related devices and equipment, related documentation, accessories, parts, and upgrades.
- d. *HP Branded* means Products and Professional Services bearing a trademark or service mark of Hewlett-Packard Company or any Hewlett-Packard Company Affiliate.
- e. *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").
- f. *Professional Services* means consulting, integration, or technical services performed by HP under a Statement of Work or other Transaction Document, excluding Hardware maintenance and repair, Software maintenance, training, or other standard support services provided by HP ("Support").
- g. *Software* means machine-readable instructions and data (and copies thereof) and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures.
- h. *Statement of Work* means an executed document so titled, that describes the Professional Services to be performed by HP. The parties may utilize a Statement of Work or other form of Transaction Document to describe the Professional Services.
- i. *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 these Terms.

2. PROFESSIONAL SERVICES

- a. Professional Services. HP will perform the Professional Services and provide Deliverables as described in the relevant Transaction Documents and these HP Single Engagement Terms for Professional Services ("Terms").
- b. Project Representatives. Each party will appoint an individual for each project who will serve as their primary representative ("Project Representative"). Each Project Representative will:
 1. have overall responsibility for managing and coordinating the performance of the party it represents in a prompt and professional manner; and
 2. meet with the other party's Project Representative at regular intervals to review progress and resolve any issues relating to the Professional Services.

The Customer's Project Representative will be available at all times when HP's personnel are at Customer's premises or will designate an alternate with the same level of authority and project knowledge in the event of unavailability. Either party may change its Project Representative at any time upon written notice.

- c. Changes. Requests by Customer and recommendations by HP for changes to the Professional Services or Deliverables are subject to the HP change management procedures set forth in the applicable Transaction Document, and shall become effective upon the execution date of such change order.
- d. Dependencies. Customer will comply with the general obligations specified in these Terms, together with any specific Customer obligations described in the relevant Transaction Document, in a timely manner. Customer acknowledges that HP's ability to deliver the Professional Services is dependent upon Customer's full and timely cooperation with HP, as well as the accuracy and completeness of any information and data Customer provides to HP. Customer acknowledges that HP bids and Customer has the right to acquire Professional Services and Products separately.
- e. Suspension of Professional Services. Except for failure to pay as set forth in section 4, HP may elect to suspend performance, if after ten (10) days written notice, Customer has not cured a failure to perform under these Terms.

3. PRICES, PAYMENT SCHEDULE, AND TAXES

- a. Prices. Prices shall be as specified in the current local published HP price list at the time HP receives Customer's order or valid

Transaction Document. Customer will be responsible for payment of reasonable out of pocket expenses incurred by HP in connection with the performance of Professional Services, including travel and travel-related expenses (such as lodging and meals), unless otherwise stated in the Transaction Document.

- b. Payment Schedule. Any applicable payment schedule will be set forth in the Transaction Document. Any Professional Services provided on a time and expense basis will be invoiced monthly, unless otherwise agreed in the Transaction Document.
- 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 Professional Services are performed. If Customer requests that specific HP personnel perform Professional Services outside the city, state, province, or country in which such personnel are based, Customer shall reimburse HP for increased taxes and related out of pocket costs incurred by HP and/or its personnel as a result of providing such Services.
- d. Withholding Tax. If Customer is required by law to withhold and remit tax relating to the Professional Services, 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.

4. PAYMENT

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. HP may discontinue performance if Customer fails to pay any sum when due.

5. ACCEPTANCE

Acceptance of Professional Services occurs upon HP's performance of the Professional Services. Acceptance of Deliverables occurs upon delivery, unless otherwise specified in the relevant Transaction Document. If a Deliverables acceptance procedure is set forth in the relevant Transaction Document, such procedure and associated remedies do not apply to Products or Custom Products, even if they can be used in connection with the Professional Services or Deliverables.

6. CUSTOMER ORDERS

Orders are subject to acceptance by HP. The associated delivery schedule for an order shall not exceed twelve (12) months, unless otherwise provided in a Transaction Document.

7. WARRANTY

- a. HP warrants that it will perform Professional Services using generally recognized commercial practices and standards. HP will re-perform any Professional Services not performed in accordance with the foregoing warranty provided that HP receives written notice from Customer within thirty (30) days after such Professional Services were performed. This will be Customer's sole and exclusive remedy for a breach of the foregoing warranty.
- b. HP warrants that the final Deliverable provided to Customer will substantially conform to the requirements set forth in the applicable Transaction Document for such Deliverable for a period of thirty (30) days following the date of acceptance. If Customer provides written notice to HP, within thirty (30) days after acceptance of the Deliverable, of any non-conformance with this warranty, HP will attempt to correct any non-conformance confirmed by HP within a reasonable time. Customer will provide HP with sufficient information to permit HP to confirm such non-conformance, and will provide assistance and cooperation as reasonably requested by HP to permit HP to attempt to correct such non-conformance. If HP is unable to comply with the foregoing obligations, HP will refund a reasonable portion of the price stated in the Transaction Document applicable to that Deliverable upon Customer's prompt return of the affected Deliverable to HP. This will be Customer's sole and exclusive remedy for a breach of the foregoing warranty. This Deliverables warranty and associated remedies do not apply to Products or Custom Products, even if they can be used in connection with the Professional Services or Deliverables.

HP will not be responsible for a breach of warranty that would not have occurred but for:

- 1. changes to a Deliverable that were implemented by Customer or a third party without HP's prior written authorization;
- 2. changes to software or hardware with which the Deliverable operates or interfaces, or on which the Deliverable or the Professional Services otherwise rely, made by Customer or a third party, including the vendors of such software or hardware without HP's prior written authorization;
- 3. errors or defects in software or hardware with which the Deliverable operates or interfaces, or on which the Deliverable or Professional Services otherwise rely (excluding HP Branded Hardware and Software provided in connection with the Deliverable);
or
- 4. improper use or operation of a Deliverable or any portion thereof.

- c. Non-HP Branded Products and Professional Services. HP provides third-party products, software, and Professional 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 Professional Services may provide their own warranties.
- d. Disclaimer. HP DOES NOT WARRANT THAT DELIVERABLES WILL BE ERROR FREE OR THAT THEY WILL BE COMPATIBLE WITH PRESENT OR FUTURE PRODUCTS OF HP OR OTHER VENDORS. THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THESE TERMS 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, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

8. INTELLECTUAL PROPERTY INFRINGEMENT

- a. Third-Party Claims. HP will defend or settle third party claims against Customer brought in the country where the Professional Services and Deliverables are provided under these Terms resulting from: (i) HP's infringement of any trade secrets, copyrights, trademarks, service marks, or trade names alleged to have occurred in relation to the Deliverables, or ii) HP's knowing infringement of the patent of a third party in connection with the performance of the Professional Services or the provision of the Deliverables, 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 and 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, HP may modify the infringing Professional Services or Deliverable, procure any necessary rights to use, or replace the affected Professional Services or Deliverable with one that is at least functionally equivalent. If HP determines that none of these alternatives is reasonably available, then HP will issue a refund to Customer for a pro-rata portion of the charges paid by Customer for the infringing Professional Services or Deliverable upon discontinuance of the Professional Services or return of the Deliverable to HP.
- c. Exclusions. HP has no obligation for any claim of infringement arising from:
 - 1. any third party materials;
 - 2. HP's compliance with or use of Customer's information, technology, designs, specifications or instructions, including those incorporated into any Transaction Document or Deliverable;
 - 3. modifications made by Customer or a third party;
 - 4. Customer's non-compliance with the Transaction Documents or the licensing or use restrictions set forth herein; or
 - 5. Customer's use of the Deliverables with non-HP Branded products or third party materials.
- d. Sole and Exclusive. This section 8 states HP's entire liability and Customer's sole and exclusive remedies for claims of intellectual property infringement.

9. INTELLECTUAL PROPERTY RIGHTS

- a. Intellectual Property Rights. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights ("IPR") existing prior to the effective date of the relevant Transaction Document shall belong to the party that owned such rights immediately prior to the effective date.
- b. License to HP. Customer grants HP a non-exclusive, worldwide, royalty-free right and license (or right to use or sublicense) to use, copy, make derivative works of, distribute, display, perform, and transmit Customer's and third parties' intellectual property rights to the extent necessary for HP to perform its obligations and exercise its rights under these Terms.
- c. Deliverables and License to Customer. HP will own all IPR in the Deliverables created hereunder. HP grants to Customer a worldwide, non-exclusive, fully paid, royalty-free license to use, execute, reproduce, display, and make copies of such Deliverables for its internal use. To the extent that the Deliverables include Software, Customer's license as set forth above is to the object code version of the Software. Notwithstanding the foregoing, any third party Software incorporated into any licensed Deliverable will be subject to the license terms applicable to such Software.

10. CONFIDENTIALITY

In connection with the Professional Services described in the Transaction Document, either party may receive or have access to technical information, information about product plans and strategies, promotions, customers and related technical, financial or business information which the disclosing party considers to be the confidential information of that party or its third party contractors or suppliers ("Confidential Information"). The following will apply to any such Confidential Information:

- a. Before any Confidential Information is disclosed, the parties will first agree to disclose and receive such information in confidence. If

then disclosed, the Confidential Information will be marked as confidential at the time of disclosure, or if disclosed orally but stated to be confidential, will be designated as confidential in a writing by the disclosing party summarizing the Confidential Information disclosed and sent to the receiving party within thirty (30) days after such oral disclosure.

- b. Confidential Information may be used by the receiving party only with respect to the performance of its obligations under these Terms and the relevant Transaction Document, and only by the employees of the receiving party and its employees, agents or contractors who have a need to know such information for purposes of this these Terms and the relevant Transaction Document. The receiving party will protect, and will ensure that its employees, agents and contractors will protect, the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the receiving party uses to protect its own confidential information of a like nature.
- c. The receiving party's confidentiality obligation will be for a period of three (3) years after the date of disclosure.
- d. The confidentiality obligations of the parties will not extend to information that:
 - 1. was in the receiving party's possession before receipt from the disclosing party;
 - 2. is or becomes publicly known without breach by the receiving party;
 - 3. is rightfully received by the receiving party from a third party without a duty of confidentiality;
 - 4. is independently developed or learned by the receiving party; or
 - 5. is disclosed by the receiving party with the disclosing party's prior written approval.

11. LIMITATION OF LIABILITY AND REMEDIES

- a. Limitation of Liability. Except for the amounts in section 8 above and damages for bodily injury (including death), HP's total aggregate liability is limited to the amount paid by Customer for the Professional Services or Deliverable under the Transaction Document that 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. For Professional Services performed on a time and expense basis, either party may terminate the relevant Transaction Document to which these Terms are attached for convenience upon thirty (30) days prior written notice to the other party, unless otherwise prohibited by these Terms or in the Transaction Document.
- b. Termination for Cause. Either party may terminate the relevant Transaction Document to which these Terms are attached on written notice for cause if the other party fails to comply with these Terms 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. 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 the relevant Transaction Document to which these Terms are attached without notice and may cancel any unfulfilled obligations.
- d. Effect of Termination. Upon termination of a Transaction Document, Customer will pay HP for all Professional Services performed and charges and expenses incurred by HP up to the date of termination, and Customer will receive all work in progress for which Customer has paid. Should the sum of such amounts be less than any advance payment received by HP, HP will refund the difference within thirty (30) days of such termination.
- e. Effect of Termination of Licenses. HP may terminate Customer's license in the Deliverables upon notice for failure to comply with these Terms. In the event of termination of Customer's license, Customer will immediately destroy or return to HP the affected Deliverables and all partial or complete copies thereof, or provide satisfactory evidence of their destruction to HP.
- f. Survival. Any provision in these Terms which by their nature extend beyond the termination or expiration will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns. Any termination under this section 12 will be without prejudice to the party's legal rights and remedies, including injunction and other equitable remedies.

13. HIRING OF EMPLOYEES

Customer agrees not to solicit, or make offers of employment to, or enter into consultant relationships with, any HP employee involved, directly or indirectly, in the performance of Professional Services hereunder for one (1) year after the date such employee ceases to perform Professional Services under these Terms. Customer shall not be prevented from hiring any such employee who responds to a general hiring program conducted in the ordinary course of business and not specifically directed to such HP employees.

14. GENERAL

- a. Restricted Use. Professional Services and Deliverables acquired by Customer under these Terms are solely for Customer's own internal use and are not for resale or distribution. 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 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.
- b. 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.
- c. Assignment. Customer may not assign, delegate or otherwise transfer all or any part of its rights or obligations under these Terms without prior written consent from HP. Any such attempted assignment, delegation, or transfer will be null and void.
- d. Export and Import. Customer who exports, re-exports, imports, or otherwise transfers Deliverables, 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 these Terms: 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.
- e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Philippines. Any action or suit that may arise under this Agreement shall be filed with the proper courts of Makati City to the exclusion of all other courts.
- f. Notices. All notices that are required under these Terms will be in writing and will be considered effective upon receipt.
- g. Entire Agreement. These Terms and the relevant Transaction Documents represent the entire agreement between HP and Customer regarding Customer's purchase of Professional 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 these Terms is held invalid or unenforceable the remainder of the Terms will remain enforceable and unaffected thereby.
- h. Waiver. Neither party's failure to exercise or delay in exercising any of its rights under these Terms will constitute or be deemed a waiver or forfeiture of those rights.
- i. Background Checks. HP conducts background checks in accordance with HP's policies and procedures.
- j. Order of Precedence. In the event of conflict, the order of precedence shall be as follows, except where the parties expressly state otherwise in the Transaction Document.
 1. these Terms,
 2. the Statement of Work (if applicable),
 3. all other Transaction Documents.
- k. Independent Contractor. HP is an independent contractor in the performance under these Terms and neither HP nor any HP personnel are employees or agents of Customer. Nothing in these Terms 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.
- l. Authorization to Install Software. During the provision of Professional Services, HP may be required to install copies of third-party or HP Branded Software and be required to accept license terms accompanying such software ("Shrink-Wrap Terms") on behalf of Customer. Shrink-Wrap Terms may be in electronic format, embedded in the software, or contained within the Software documentation. Customer hereby acknowledges that it is Customer's responsibility to review Shrink-Wrap Terms at the time of installation, and hereby authorizes HP to accept all Shrink-Wrap Terms on its behalf.
- m. Publicity. Neither party will publicize nor disclose to any third party without the consent of the other party either the price or these Terms or the fact of its existence and execution, except as may be necessary to comply with other obligations stated in these Terms. Notwithstanding the foregoing, HP may use Customer's name and identification of this engagement in connection with general lists of Customers and experience.
- n. Products and Support. These Terms for Professional Services do not contemplate the sale of Products or Support, which shall require the necessary terms and conditions for such purchase. In the event Customer wishes to purchase Products or Support, the terms governing such purchase will need to be established between the parties.
- o. Similar Services. Nothing in these Terms will prohibit HP from providing Professional Services similar to those provided hereunder to other customers.

- p. Electronic Orders and EDI. Where facilitated under local law, the parties may do business electronically, including order placement and acceptance. Once accepted, such orders create fully enforceable obligations subject to these Terms. Such orders and acceptance 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.