



Agreement Number(s) where required:
HP #:.....
Customer #:.....
Effective Date (if applicable):.....
Term Length (if applicable):.....

HP CUSTOMER TERMS – MANAGED SERVICE

These terms represent the agreement (“Agreement”) by and between HP Japan Inc., located at 2-2-1 Ojima, Koto-ku, Tokyo, 136-8711 Japan (“HP”) and by _____ (“Customer”) located at _____ that governs the purchase of services and products by Customer.

1. **Managed Services.** HP will provide the services as described in a Statement of Work (“SOW”) attached to this Agreement or incorporating it by reference. Each party will appoint a single point of contact as set forth in the SOW who will serve as their primary representative, have overall responsibility for managing performance, and meet with the other party’s representative to review progress. Change requests are governed by the change management procedures as set forth in the SOW.
2. **Orders.** This Agreement may also govern sale of related stand-alone products, support, and custom services, as described in an accepted order (“Order”) or additional supporting material. “Supporting Material” may include (as examples) additional statements of work, hardware or software specifications, data sheets, published warranties, and some Supporting Material may be available to Customer in hard copy or by accessing a designated HP website.
3. **Global Deployment.** These terms may be used by Customer either for a single SOW or as a framework for multiple SOWs. In addition, these terms may be used on a global basis by the parties’ “Affiliates”, meaning any entity controlled by, controlling, or under common control with a party. Affiliates participate under these terms by placing Orders which specify delivery in the same country as the HP Affiliate accepting the Order; agreeing to a SOW; or a Local Country Participation Agreement (“LCPA”). The Order, SOW or LCPA shall reference this Agreement and specify any additional terms to reflect local law or business practices. The LCPA may reference or be attached to an additional SOW.
4. **Prices and Taxes.** Prices are set forth in the SOW or Order. Prices are exclusive of taxes, duties, and fees (including installation, shipping, and handling) unless otherwise stated. If a withholding tax is required by law, please contact the HP order representative to discuss appropriate procedures.
5. **Invoices and Payment.** Customer agrees to pay all invoiced amounts within thirty (30) days of HP’s invoice date. HP may suspend or cancel performance of open Orders or services if Customer fails to make payments when due.
6. **Risk of Loss.** Risk of loss or damage for products, other than damage caused by HP, will pass to Customer or its designee upon delivery.
7. **Services Performance.** All services are performed using generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any such service concerns and HP will re-perform any service that fails to meet this standard.
8. **Eligibility.** HP’s service commitments do not cover claims resulting from:
 - improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material not performed or authorized by HP;
 - modifications or improper system maintenance or calibration not performed by HP or authorized by HP;
 - failure or functional limitations of any non-HP branded software or product impacting systems receiving HP support or service;
 - malware (e.g. virus, worm, etc.) not introduced by HP; or
 - abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HP’s control.
9. **Software Licence.** The following licence terms apply whether HP provides software to Customer as part of a managed service or as a separate software transaction.
 - a. **Grant.** HP grants Customer a non-exclusive, non-transferable licence to use one copy of the HP-branded version or release of the software in the Order or as part of a managed service for Customer’s internal purposes only. For non-HP branded software, the third party’s licence terms will govern its use.



- b. Term. The licence granted is perpetual, unless: (a) software provided as part of a managed service SOW, in which case it will expire according to the termination provisions in the SOW or (b) the Customer purchases a term licence, as stated in the Order. However, in any event HP may terminate the licence on written notice if Customer fails to comply with the terms of this Agreement.
 - c. Restrictions. Customer may make one copy of the software for archival purposes or when it is an essential step in authorized use, as long as Customer reproduces copyright notices on software and documentation. Customer may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of software.
- 10. Sales of Products and Services.** In addition to a managed service, Customer may purchase HP hardware and software products, accompanying support, and related professional services. If so, the following terms apply to such purchases:
- a. Title. Title for products sold will transfer to Customer upon the later of delivery or full payment.
 - b. Support Services. HP's support services will be described in the applicable Supporting Material, which will cover the description of HP's offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported.
 - c. Software Performance. HP warrants that its branded software products will conform materially to their specifications and be free of malware at the time of delivery. HP warranties for software products will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. HP does not warrant that the operation of software products will be uninterrupted or error-free or that software products will operate in hardware and software combinations other than as authorized by HP in Supporting Material.
 - d. Updates. Customer may order new software versions, releases or maintenance updates ("Updates"), if available, separately or through an HP software support agreement. Additional licences or fees may apply for these Updates or for the use of the software in an upgraded environment. Updates are subject to the licence terms in effect at the time that HP makes them available to Customer.
 - e. Product Performance. All HP-branded products are covered by HP's limited warranty statements provided with the products or otherwise made available in Supporting Material. Non-HP branded products and services receive warranty coverage as provided by the relevant third party supplier. When HP receives a valid warranty claim, HP will either repair the relevant defect or replace the product. If HP is unable to do either within a reasonable time, Customer will be entitled to a full refund upon the prompt return of the product to HP. HP will pay for shipment of repaired or replaced products to Customer and Customer will be responsible for return shipment of the product to HP.
 - f. Delivery. HP will use all commercially reasonable efforts to deliver products in a timely manner. HP may elect to deliver software and related product/license information by electronic transmission or via download.
 - g. US Federal Government Use. If software is licensed to Customer for use in the performance of a US Government prime contract or subcontract, Customer agrees that consistent with FAR 12.211 and 12.212, commercial computer software, documentation and technical data for commercial items are licensed under HP's standard commercial license.
 - h. Remedies. This Agreement states all remedies for warranty claims. To the extent permitted by law, HP disclaims all other warranties.
- 11. Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under this Agreement. Customer grants HP a non-exclusive, worldwide, royalty-free right and licence to any intellectual property that is necessary for HP and its designees to perform the ordered services. If deliverables are created by HP specifically for Customer and identified as such in Supporting Material, HP hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free licence to reproduce and use copies of the deliverables internally.
- 12. Intellectual Property Rights Infringement.** HP will defend and/or settle any claims against Customer that allege that an HP-branded product or service as supplied under this Agreement infringes the intellectual property rights of a third party. HP will rely on Customer's prompt notification of the claim and cooperation with HP's defence. HP may modify the product or service so as to be non-infringing and materially equivalent, or HP may procure a licence. If these options are not available, HP will refund to Customer the amount paid for the



affected product in the first year or the depreciated value thereafter or, for support services, the balance of any pre-paid amount or, for professional services, the amount paid. HP is not responsible for claims resulting from any unauthorized use of the products or services. This section shall also apply to deliverables identified as such in the relevant Supporting Material except that HP is not responsible for claims resulting from deliverables content or design provided by Customer.

- 13. Confidentiality.** Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees (including employees of Affiliates), agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information: i) that was known or becomes known to the receiving party without obligation of confidentiality; ii) that is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.
- 14. Personal Data.** Each party shall comply with their respective obligations under applicable data protection and privacy laws and regulations. To the extent that HP is processing any personal data to which it has access on behalf of Customer, HP's Customer Data Processing Addendum shall apply. HP's Customer Data Processing Addendum is available on www.hp.com/privacy or upon request.
- 15. Global Trade Compliance.** Products and services provided under these terms are for Customer's internal use and not for further commercialization. If Customer exports, imports or otherwise transfers products and/or deliverables provided under these terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. HP may suspend its performance under this Agreement to the extent required by laws applicable to either party.
- 16. Limitation of Liability.** HP's aggregate liability to Customer under this Agreement is limited to the greater of \$1,000,000 or the amount payable by Customer to HP under the relevant Order or SOW for the twelve (12) months preceding the breach. Neither Customer nor HP will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; wilful repudiation of the Agreement; nor any liability which may not be excluded or limited by applicable law.
- 17. Termination.** Either party may terminate this Agreement on written notice if the other fails to meet any material obligation and fails to remedy the breach within a reasonable period after being notified in writing of the details. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations. Any terms in the Agreement which by their nature extend beyond termination or expiration of the Agreement will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.
- 18. Dispute Resolution.** Any disputed matter under this Agreement will be referred to the parties' Project Managers, except for HP's right to terminate for Customer's failure to pay and except with respect to each party's right to pursue equitable remedies. If the Project Managers are unable to resolve the disputed matter within 2 weeks, the matter will be escalated to the parties' sponsoring executives. If these representatives fail to reach a mutual resolution within the following 2 weeks, or such other period as may be agreed to by the parties, the matter will be referred to the managers of such sponsoring executives. HP may suspend performance of services under this Agreement to the extent a disputed matter (including without limitation, a force majeure event or unfulfilled dependency) is not resolved within 60 days of the commencement of this dispute resolution process.
- 19. Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
- 20. Dependencies.** Customer will comply with the general obligations specified in this Agreement, together with any specific Customer obligations described in the relevant Statement of Work, in a timely manner. Customer acknowledges that HP's ability to deliver the 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.



21. General.

- a. Notices. All notices required under this Agreement will be in writing and sent to (i) the address of the local HP or Customer Project Manager, or such other address as the Project Manager may designate, with copy to HP, Global Legal Affairs, Attn: Country Counsel 2-2-1 Ojima, Koto-ku, Tokyo, 136-8711 Japan as applicable, and will be considered effective upon receipt.
- b. Authorization to Install Software. HP may be required to install copies of third party or HP-branded software in order to deliver services and Customer authorizes HP to accept license terms that accompany the software on Customer's behalf.
- c. Assignment. Neither party may assign this Agreement nor any SOW or Order in whole or part, without the prior written consent of the other.
- d. Hiring. Customer agrees not to solicit, offer to employ, or enter into consultant relationships with any HP employee involved in the performance of services under this Agreement for 1 year after the date he or she ceases to perform such services. However, Customer may hire any such employee who responds to a general hiring program conducted in the ordinary course of business, and not specifically directed to HP employees.
- e. Entire Agreement. This Agreement represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties.
- f. Independent Contractor. HP is an independent contractor in the performance of this Agreement and any SOW attached hereto and neither HP nor any HP personnel or Affiliates are employees or agents of Customer.
- g. Governing Law. The Agreement will be governed by the laws of the country of HP or the HP Affiliate accepting the Order or executing an LCPA or SOW, and the courts of that locale will have jurisdiction, however, HP or its Affiliate may, bring suit for payment in the country where the Customer Affiliate that placed the Order or executed an LCPA or SOW is located. Customer and HP agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Claims arising or raised in the United States will be governed by the laws of the state where Customer US Affiliate is headquartered, excluding rules as to choice and conflict of law.

Signed for **HP**

By : _____
Title : _____
Date : _____

Signed for **Customer**

By : _____
Title : _____
Date : _____