

Enterprise Support Plus Services

Terms and Conditions

1. Services Terms:

1.1 At HCL's sole discretion, HCL has the option to assign HCL's employees, independent contractors or agents acting for and on behalf of HCL ("HCL Personnel") to perform the Services.

1.2 HCL will not be restricted in its ability to re-assign HCL Personnel who have provided Services hereunder to similar engagements for other customers. Nothing in this Agreement shall preclude or limit HCL from providing services similar to the Services and/or developing software or materials for itself or other customers, irrespective of the possible similarity thereof to materials which might be delivered to Customer, including without limitation, work product similar to Work Product, screen formats, structure, sequence and organization.

1.3 The Customer shall pay Fees for the Services rendered and expenses (where applicable) as defined in the payment schedule within 30 days of invoice date. All Fees are exclusive of taxes. Customer shall pay applicable sales tax, import and custom duties and any other applicable taxes in addition to the Fees. In the event the Customer is required to withhold taxes, Customer agrees to furnish to HCL all required receipts and documentation substantiating such payment. Any invoice which is unpaid by Customer when due shall be subject to an interest charge equal to the lower of 1.5% per month or the highest applicable interest allowed by law

2. Confidential Information:

2.1 For purposes of this Section 2, the "Disclosing Party" is the Party which discloses Confidential Information and the "Receiving Party" is the Party that receives the Confidential Information. "Confidential Information" means any information, maintained in confidence by a Party, and which is marked as such or information, written or oral that by its nature would be to a reasonable person under the circumstances understood to be confidential or proprietary information of a Party. The Licensed Program, HCL Intellectual Property, documentation, product development and marketing plans, business methods, non-public financial and personnel data are Confidential Information of HCL. The following are not considered Confidential Information: (i) information which the Receiving Party is authorized in writing by the Disclosing Party to use without restriction; (ii) information rightfully in the Receiving Party's possession or known to it without the duty of confidentiality prior to receipt of such information from the Disclosing Party; (iii) information which is rightfully disclosed to the Receiving Party by a third party, having proper possession of such information, without the duty of confidentiality; (iv) information which properly enters the public domain; or (v) information which is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.

2.2 The Receiving Party shall use the Disclosing Party's Confidential Information only for the purposes for performing its obligations under this Agreement, and shall require its employees, agents, contractors, legal and financial advisors, to keep Confidential Information confidential, sharing it on a "need-to-know" basis only. The Receiving Party may disclose Confidential Information in connection with a judicial or administrative proceeding to the extent such disclosure is required under law or a court order, provided that the Disclosing Party shall be given prompt written notice of such proceeding and an opportunity to oppose such a disclosure.

2.3 In addition to any other remedies, the Disclosing Party is entitled to seek equitable relief.

2.4 For Confidential Information pertaining to the Licensed Program and HCL Intellectual Property, the obligations set forth in this Section 2 continue for an indefinite duration. For all other Confidential Information, confidentiality obligations will continue for five (5) years from the date of initial disclosure.

3. Warranties, Intellectual Property Rights & Limitation of Liability:

3.1 HCL shall use reasonable efforts to perform the Services in a professional and workmanlike manner in accordance with this Agreement.

HCL DOES NOT REPRESENT OR WARRANT THAT ALL ERRORS WILL BE CORRECTED OR THAT THE WORK PRODUCT OR SERVICES WILL RUN ERROR FREE OR UNINTERRUPTED. EXCEPT AS EXPRESSLY SET FORTH ABOVE, TO THE EXTENT PERMITTED BY LAW, NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY OR SATISFACTORY QUALITY, OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY HCL AND HCL MAKES NO WARRANTIES HEREUNDER WITH RESPECT TO ANY HARDWARE, EQUIPMENT OR THIRD PARTY SOFTWARE WHICH HCL MAY SUPPLY.

3.2 HCL is excused from and shall not be liable for failure to perform the Services, where such failure is due to the acts, omissions (including failure to provide timely, complete and accurate information), negligence, breach of this Agreement by the Customer or willful misconduct of the Customer or its employees, agents or subcontractors. Any HCL deadline that is affected by any Customer default shall be automatically extended by an amount of time equal to the length of such failure plus an additional period of time, if reasonably necessary, to compensate for such default.

3.3 As between Customer and HCL, HCL retains all rights, title and interest, including all intellectual property rights in the Work Product, and Customer has no rights to such Work Product other than the license rights granted under this Section 3.3. HCL retains all rights, title and interest, including all intellectual property rights in any tools and/or documentation used in connection with the Work Product, and all software, code, ideas, concepts, know-how, methods and techniques developed or conceived by HCL prior to or during performance of the Services, as well as modifications and derivative works of the Work Product ("HCL Intellectual Property"). All rights not specifically granted hereunder are expressly reserved by HCL. Customer shall promptly take all steps reasonably necessary, including execution of necessary documentation, to give effect to the foregoing obligation. Upon final payment for the Services and subject to the terms of this Agreement, HCL grants to Customer a non-exclusive, non-transferable licence to use the Work Product, without the right to sublicense, solely in connection with the Licensed Program for its internal business purposes only. For purposes of this Agreement, the term "Work Product" means all items produced for Customer's use in connection with the Services under this Agreement including code, documentation, materials, and other information created or provided by HCL.

3.4 Nothing in this Section 3.3 or in this Agreement shall give either Party rights to any pre-existing intellectual property rights of the other Party unless this is expressly provided for in this Agreement or is separately agreed in writing subject to appropriate terms and conditions.

3.5 (A) HCL agrees to indemnify Customer or, at its option, settle any third party claims that Customer's use of the Work Product alone (and not in combination with any other product or program) infringes a U.S. registered patent or any copyright in a country where Customer is authorized to use such Work Product (in accordance with the license terms specified for the Licensed Program). HCL may, at its option and at its own cost, procure for Customer the right to continue to use the Work Product, repair, modify or replace the Work Product so that it is no longer infringing, or terminate the Agreement or applicable part thereof and provide a refund of the Fees paid for the infringing Work Product, less a reasonable allowance for usage. The above indemnity is contingent upon (i) Customer providing prompt notice to HCL of any such claim and reasonable assistance in the defence thereof, (ii) HCL's sole right to control the defence or settlement of any such claim, provided that the settlement does not require a payment and admission of liability on the part of Customer, and (iii) that Customer shall not take any actions or omit to take actions that hinder the defence or settlement process as reasonably directed by HCL. HCL shall have no liability under this Section 3.5 if: (i) the allegation of infringement is a result of a modification of the Work Product not performed or approved by HCL, (ii) the Work Product is not used in accordance with applicable documentation, (iii) the alleged infringement is a result of use of the Work Product with any non-HCL supplied third party product, or (iv) Work Product was produced at the direction of Customer. THIS SECTION 3.5 (A) STATES THE ENTIRE LIABILITY AND OBLIGATIONS OF HCL, AND IS THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

(B) Customer shall indemnify HCL against any claim that any data, materials, items or information supplied to HCL hereunder infringes any U.S. registered patent or any copyright, trademark or trade secret, provided that: (i) Customer is provided prompt notice of any such claim, (ii) Customer is provided the sole authority to defend or settle such claim (and further provided that HCL is not obligated to admit liability or expend funds in connection with any such defence or settlement); and (iii) HCL may participate in any such settlement discussions or litigation to the extent that either may impact HCL's ongoing business practices.

3.6 (A) NEITHER PARTY SHALL BE LIABLE UNDER THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL LOSS, ANY LOSS OF PROFITS OR OTHER ECONOMIC OR FINANCIAL LOSS, LOSS OF USE, LOSS OF BUSINESS OR LOSS OF OR CORRUPTION OF DATA WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

(B) Except for death or personal injury caused by the negligence or wilful default of HCL, HCL's aggregate, cumulative and collective liability arising out of or in connection with this Agreement (whether in contract, tort, negligence, under an indemnity or by statute or otherwise) will, to the extent permissible by law, be limited to the total Fees paid by the Customer under this Agreement for the specific Services that caused the damage or gave rise to the cause of action.

(C) HCL's liability for damage to tangible personal or real property due to the negligence of HCL shall be limited in aggregate to the sum of US\$100,000 per event or series of related events, except where such limitation is prohibited by applicable law.

4. Termination:

4.1 Either Party can terminate this Agreement without prejudice to its other rights and remedies in the event that the other Party is in material breach of any of its obligations under the Agreement and (if the breach is capable of remedy) fails to remedy the breach within 30 days of receipt of notice requiring such breach to be cured.

4.2 If Customer becomes insolvent or if bankruptcy or receivership proceedings are initiated by or against Customer, to the extent permitted by applicable law, HCL shall have the right to withhold its own performance hereunder and/or to terminate this Agreement immediately and, in addition to all other rights of HCL, upon termination of this Agreement for any reason, all Fees and other amounts due to HCL under the Agreement will immediately become due and payable to HCL.

5. General Terms:

5.1 Each Party agrees to comply with applicable export control laws. With respect to any products, technology, technical data or software provided by Customer to HCL that are subject to U.S. Export and foreign trade control laws (e.g., the U.S. Commerce department's export administration regulations and regulations of the U.S. Treasury department's office of foreign assets control), Customer shall notify HCL and HCL shall, with the cooperation and assistance of Customer, comply with such applicable export control laws.

5.2 The Customer may not assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of HCL. HCL may assign all or any of its rights or obligations under this Agreement to any third party provided that the obligations of HCL under this Agreement continue to be carried out either by HCL or such third party. HCL has the right to assign any accounts receivables to a third party without obtaining prior permission from Customer.

5.3 If circumstances beyond the reasonable control of the Parties temporarily make it impossible for either or both of them to perform their obligations under this Agreement, then the obligations of the Parties will be temporarily suspended to such an extent as is reasonable in the circumstances.

5.4 Upon expiration or termination of the Agreement, the rights and obligations of the parties which by their context, intent and meaning would reasonably be expected to survive the termination or expiry of the Agreement or any part thereof will so survive.

5.5 If a dispute arises under this Agreement which the Parties are unable to resolve within a reasonable time, HCL may (i) suspend the Services pending resolution of the issues, or (ii) terminate this Agreement if the dispute is not resolved within thirty (30) days. In the event of such termination, all amounts due for Services rendered by HCL up to the date of termination will immediately become due and payable to HCL.

5.6 This Agreement represents the entire agreement between HCL and Customer with respect to the Services, and all other agreements, proposals, purchase orders, representations and other understandings concerning this Agreement, whether oral or written between the Parties are superseded in their entirety by this Agreement. No alteration or modification of this Agreement will be valid unless made in writing and signed by duly authorized representatives of the Parties. This Agreement, together with Exhibit A represents the entire agreement with respect to the Services. In the event of conflict, Exhibit A shall prevail over this terms on the first page of this Agreement.

5.7 During the term of this Agreement and for six (6) months thereafter (the "Effective Period"), each Party agrees not to hire, or engage as an independent contractor, or directly or indirectly solicit, induct, hire or employ any employee or contractor of the other, or a former employee or contractor, who has performed Services at the Customer's site ("Project Employee"), except that either Party may hire employees or contractors of the other Party or an affiliate of the other Party who apply, unsolicited, in response to a general advertising or other general recruitment campaign or with the consent of the other Party. If during the Effective Period, a Party hires or engages a Project Employee in violation of this provision, then the hiring Party agrees to pay to the other Party an amount equal to thirty percent (30%) of the applicable annual base salary of such Project Employee, exclusive of any bonus or other benefits, which amount the Parties agree is a fair and reasonable estimate of the damages and shall constitute the entire remedy and liability of either Party pursuant to this Section 5.7.

5.8 Customer represents that (i) it is duly authorized to provide personal data to HCL and it does so lawfully in compliance with relevant laws and regulations, (ii) HCL and any entity within the HCL group of companies (each a "HCL Entity") or its subcontractors can process such data, and (iii) HCL may disclose such data to any HCL entity and its subcontractors for this purpose and may transfer such data to countries outside of the country of origin. Each Party shall comply with relevant data protection/privacy legislation applicable to such Party's business.