



Hewlett Packard Enterprise

HEWLETT PACKARD ENTERPRISE DISTRIBUTION LED SERVICE PROVIDER AGREEMENT

1. **Parties.** These Terms, together with any Addenda to these Terms as provided to you directly or posted on the HPE Partner Portal, constitute the Hewlett Packard Enterprise Distribution Led Service Provider Agreement (the “**Agreement**”) between Hewlett Packard Enterprise (“**HPE**”) and you as a Distribution Led Service Provider (“**Service Provider**”) (individually referred to herein as a “Party” and, collectively, as the “Parties”). This Agreement applies to your purchases from HPE authorized distributors of HPE Products and Support as a Service Provider.
2. **Definitions.** When used in this Agreement, the following terms will have the meanings specified below.
 - a. **Addendum** or **Addenda** means document(s) attached to, or incorporated by reference into the Agreement and made available in the OPM or posted on the HPE Partner Portal, at any time during its duration that set(s) forth additional descriptions and requirements of particular partner relationships, HP partner program offerings and Product offerings. Addenda include, but are not limited to, the Hewlett Packard Enterprise End-User Special Negotiated Discount Agent Distributor Program Terms, Hewlett Packard Enterprise Partner Code of Conduct, Hewlett Packard Enterprise Partner End-User Special Negotiated Discount Program Terms and the Hewlett Packard Enterprise Partner Product Promotion And Channel Partner Discount Terms.
 - b. **End User** means the end consumer of the Services as built and delivered by the Service Provider, and excludes employees, contractors and Related Entities of Service Provider.
 - c. **Hewlett Packard Enterprise** or **HPE** means Hewlett Packard Enterprise B.V., Amstelveen, Meyrin Branch, 150 Route du Nant d’Avril, (1st Floor), 1217 Meyrin / Geneva, Switzerland.
 - d. **HPE Partner Portal** means the HPE website located on the HPE domain, which contains relevant program information, documents and terms.
 - e. **Products** means HPE hardware, software, documentation, accessories, supplies, parts and upgrades that HPE makes available for you to purchase or license through HPE authorized distributors, with the exception of certain HPE products for which HPE has designated that additional or different programs, authorizations, and agreements are required for use in delivering Services, including, but not limited to, HPE products from *HPE Software* and *HPE Security* business units or organizations and HPE’s successors (“**Excepted Products**”). All references in this Agreement to Products shall exclude Excepted Products.
 - f. **Product Licensing Terms** means the various terms and conditions related to licensing models for Products made available by HPE to Service Provider on the HPE Partner Portal, and as may be subject to change by HPE.
 - g. **Related Entities** means any entity controlled by, controlling, or under common control with a Party to this Agreement.
 - h. **Services** means services provided by a Service Provider in the regular course of its business using Products and Support for managing or augmenting the information technology functions of other companies for a fee, such as, but not limited to, outsourcing, hosting, Infrastructure-as-a-Service (“**IaaS**”), Platform-as-a-Service (“**PaaS**”), Software-as-a-Service (“**SaaS**”), remote network management, security monitoring, log management, patch management, remote data back-up, and application services such as load testing, quality testing, regression testing, or performance testing.
 - i. **Support** means support services for Products as purchased by Service Provider.



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3. RESTRICTIONS

- a. Service Provider will not resell Products within two (2) years from the date that Service Provider purchased the Products except upon HPE approval (“Restricted Period”). Upon HPE approval or after 2 years from the date that Service Provider purchased the Products, Service Provider will only sell such Products as “used” or “refurbished”. NOTWITHSTANDING ANY WARRANTY STATEMENTS TO THE CONTRARY, PRODUCTS SOLD AS USED OR REFURBISHED ARE PROVIDED ‘AS IS’ WITHOUT WARRANTY OF ANY KIND, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE.
- b. Service Providers also participating in HPE Partner Ready Programs retain all rights for actions taken under those agreements. This Agreement has no impact on existing Partner Ready agreements.
- c. Service Provider will not receive commissions from HPE for any purchases or sales of Services.

4. BASE WARRANTY

- a. Warranty Statements. HPE limited warranty statements for Products apply. 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 may be quoted if the Product is purchased as part of a system.
- b. 90 Day Limited Warranty for HPE Software. HPE-branded software is free of malware at the time of delivery. If Service Provider notifies HPE within 90 days of delivery of non-conformance to this warranty, HPE will replace Service Provider’s copy. This Agreement states all remedies for warranty claims. HPE 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 authorized by HPE. To the extent permitted by law, HPE disclaims all other warranties.
- c. Transfer. Warranties are transferable to another party for the remainder of the warranty period subject to HPE license transfer policies and any assignment restrictions.
- d. Delivery Date. Warranties begin on the date of delivery, or on the date of installation if installed by HPE. If Service Provider schedules or delays such installation by HPE more than thirty (30) days after delivery, Service Provider warranty period will begin on the 31st day after delivery.
- e. Exclusions. HPE 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 HPE’s site specifications;
 2. Service Providers non-compliance with specifications or transaction documents;
 3. improper or inadequate maintenance or calibration;
 4. Service Provider or third-party’s media, software, interfacing, supplies, or other products;
 5. modifications not performed or authorized by HPE;
 6. virus, infection, worm or similar malicious code not introduced by HPE;
 7. abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances, transportation by Service Provider, or other causes beyond HPE’s control, or
 8. any other unauthorized use of the Products, including any claims made by End Users.



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- f. Non-HPE Branded Products and Services. HPE provides third-party products, software, and services that are not HPE 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.
- g. Disclaimer. TO THE EXTENT ALLOWED BY THE LAW APPLICABLE TO THE AGREEMENT, THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THIS AGREEMENT ARE EXCLUSIVE. NO OTHER WARRANTY, GUARANTEE OR CONDITION, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY HPE OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE AND HPE DISCLAIMS ALL IMPLIED WARRANTIES, GUARANTEES AND CONDITIONS INCLUDING ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

5. ADDITIONAL REQUIREMENTS AND AUTHORIZATIONS

- a. Service Provider may authorize End Users to access the Products solely for the purpose of receiving the Services.
- b. Orders for Products must be sent to a local HPE authorized distributor in the country where the Products' base component (e.g. the management server(s) for Products that are priced on a managed server basis) will be physically installed and managed for providing Services, as opposed to where non-base licensing components like software agents, users, or clients will be physically installed. If Service Provider does not have a local procurement capability for ordering a license in the country where the base Products will be installed, HPE may, in its sole discretion, approve a request from Service Provider for placement of the order in another country.
- c. HPE authorizes Service Provider to purchase Products from distribution for delivery of Services to third-party End Users pursuant to a services contract between Service Provider and such End Users.
- d. Service Provider may not use any HPE trademarks, service marks, branding, logos, or other insignia without the express written permission from HPE.
- e. Service Provider must reproduce copyright notices on software and documentation for any authorized copies.

6. OTHER HPE AND SERVICE PROVIDER OBLIGATIONS.

- a. No Endorsement and Non-exclusivity. HPE does not endorse, approve, recommend, warrant, or guarantee Services, and Service Provider shall not make any representations or other statements to its End Users or other third parties to the contrary. This is a non-exclusive relationship. HPE is free to enter into the same or similar relationships with third parties and to market, promote, license, and sell products and services utilizing Products that might compete with the Services.
- b. Service Provider Indemnity. Service Provider is solely responsible for the delivery and results of the Services it provides to its End Users. Service Provider agrees to (i) defend HPE against all claims and lawsuits in any form brought by Service Provider's End Users or any other third party against HPE arising out of Service Provider's unauthorized use of the Products or breach of its own contractual obligations to its End User with respect to the delivery of the Services, (ii) pay actual and direct liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) incurred by HPE with respect to same, and (iii) include a provision in its contract with End Users stating that End User will not bring any claims against HPE arising out of the Services. The limitation of liability in the Agreement shall not apply to Service Provider's obligations and liability under the foregoing provisions.
- c. Intellectual Property Rights Infringement. HPE will defend and/or settle any claims against Service Provider that allege that HPE-branded Products as licensed under this Agreement infringes the intellectual property rights of a third party. HPE will rely on Service Provider's prompt notification of the claim and cooperation with HPE's defense. HPE may modify the Products so as to be non-infringing and materially equivalent, or HPE may procure a license. If these options are not available, HPE will



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refund the amount paid for the affected Product in the first year or the depreciated value thereafter. HPE is not responsible for claims resulting from any unauthorized use of the Products.

- d. Limitation of Liability. HPE's maximum liability under this Agreement is US\$1,000,000 per incident, except for amounts in section "Intellectual property rights infringement." Neither Service Provider nor HPE 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 the Party's negligence; acts of fraud; willful repudiation of the Agreement; or any liability that may not be excluded or limited by applicable law.
- e. Anti-Corruption Laws. The Parties agree that they are familiar with the provisions of the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and other analogous anti-corruption legislation in other jurisdictions where the Parties do business or which otherwise apply to the Parties (together "Anti-Corruption Laws"), and that they shall not in connection with the transactions contemplated by this Agreement make any payment or transfer anything of value, offer, promise or give a financial or other advantage or request, agree to receive or accept a financial or other advantage either directly or indirectly: to any government official or employee (including employees of a government corporation or public international organization) or to any political party or candidate for public office or to any other person or entity with an intent to obtain or retain business or otherwise gain an improper business advantage. The Parties further agree that they will not take any action which would cause either Party to be in violation of the Anti-Corruption Laws. In case of breach of the above, the non-breaching Party may suspend or terminate the Agreement at any time without notice or indemnity. The breaching Party agrees to indemnify the non-breaching Party for any losses, damages, fines, penalties whatsoever which the non-breaching Party may suffer or incur arising out of or incidental to any such violation.
- f. Publicity. Neither Party shall issue any press release concerning this Agreement without the prior written consent of the other Party as to form, content, and timing of the press release.
- g. Confidentiality. Service Provider agrees that all reporting and financial information related to this Agreement that is not generally available is considered confidential information of HPE. Service Provider shall use such information only to the extent necessary for the performance of this Agreement and in accordance with the terms of this Agreement.
- h. Personal Information. The Parties shall comply with their respective obligations under applicable data protection legislation in jurisdictions where the Parties or their Related Entities do business or which otherwise apply to the Parties. HPE does not intend to have access to personally identifiable information ("PII") of Service Provider or its customers.
- i. Global Trade Compliance. Service Provider agrees to comply with the trade-related laws and regulations of the U.S. and other national governments. If Service Provider exports, imports or otherwise transfer's products provided under this Agreement, Service Provider will be responsible for obtaining any required export or import authorizations. Service Provider confirms that Service Provider is not located in a country that is subject to trade control sanctions (currently Cuba, Iran, N. Korea, N. Sudan, and Syria) and further agrees that Service Provider will not retransfer the Products to any such country. HPE may suspend its performance under this Agreement to the extent required by laws applicable to either Party.
- j. Governing Law. Disputes arising in connection with this Agreement will be governed by the laws of the country and the locality of the HPE Affiliate for which we accept your order and the courts of that country will have exclusive jurisdiction, except that we may, at our option bring suit for collection in the country where you are located. Service Provider and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

7. AUDIT

- a. HPE may audit Service Provider's compliance with the terms of this Agreement, including its use of the



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Products to provide Services. Upon reasonable notice, HPE may conduct an audit during normal business hours (with the auditor's costs being at HPE's expense).

- b. Service Provider will keep records of the Product names, model numbers, serial numbers, and the location where the Products are installed, in addition to all relevant records relating to End Users to whom Service Provider has delivered Services in connection with this Agreement. On first demand from HPE, Service Provider shall immediately provide to HPE by any appropriate documentation necessary, proof that Service Provider did not transfer title to the HPE products or the license or other right to use software.
- c. Upon HPE's reasonable request, Service Provider will provide HPE a report listing the foregoing information and any other information regarding Products purchased under this Agreement for the period requested and the Services Service Provider has provided to End Users. HPE's right to audit Service Providers records pertaining to Service Providers' purchases made under this Agreement and HPE's right to verify Service Providers' compliance with this Agreement will include the period beginning four (4) years prior to the audit date.

8. TERM AND TERMINATION

- a. Term of Agreement. This Agreement is effective on the date indicated in the approval notification we issue to you. This Agreement will remain in effect until terminated.
- b. Termination for Convenience. Either Party may terminate this Agreement for convenience upon thirty (30) days prior written notice to the other Party, or any longer written notice provided by HPE, which is considered given upon receipt of notice.
- c. Termination for Cause. Either Party may terminate this Agreement on written notice if the other fails to meet any material obligation and, to the extent capable of remediation, 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 with immediate effect.
- d. Effect of Termination. The termination of this Agreement will not affect payments due or fulfillment and payment of orders accepted and purchase commitments made prior to termination. 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.

9. GENERAL

- a. Entire Agreement. This Agreement represents the Parties' entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist.
- b. Assignment. Service Provider may not assign or transfer this Agreement without prior written consent of HPE.
- c. Changes and Amendments. Any amendment that HPE issues to this Agreement will automatically become a part of this Agreement on the effective date specified in an amendment notice provided to Partner. If Partner does not agree with the amendment, Partner must give HPE written notice of Partner's objection within fifteen (15) days of receipt of the notice. If Partner objects and the parties cannot reach agreement on the amendment within thirty (30) days after HPE's receipt of Partner's objection, then either party may terminate this Agreement under the terms of section 8, Terms and Termination.



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END-USER SPECIAL NEGOTIATED DISCOUNT AGENT DISTRIBUTOR PROGRAM TERMS

These End-User Special Negotiated Discount Agent Distributor Program (“Program”) Terms define the terms and conditions (“Terms”) under which you may appoint one or more Hewlett Packard Enterprise (“HPE”) authorized Distributors to submit requests for End-User Special Negotiated Discounts on your behalf. To qualify for this Program, you must have a valid Agreement. In the event of any conflict between these Terms and the Agreement, these Terms will govern any subject matter of this Program. Capitalized terms not otherwise defined in these Terms are defined in the Agreement.

Unless requested to accept these Terms online or otherwise, you acknowledge and agree that your participation in the Program constitutes acceptance of these Terms. Participation in the Program is subject to the following Terms:

Section 1 – Authorization

By participating in this Program you are authorizing the HPE authorized Distributors to submit requests for End-User Special Negotiated Discounts on your behalf.

Section 2 -- Your Responsibilities

You understand and acknowledge that you will be directly liable and responsible for all obligations and duties set forth in the Hewlett Packard Enterprise End-User Special Negotiated Discount Program Terms which can be found on the HPE Partner Ready Portal, in connection with any End-User Special Negotiated Discounts requested on your behalf by the Agent Distributor. You must check the HPE Partner Ready Portal to ensure you are complying with the latest version of the Hewlett Packard Enterprise Partner End-User Special Negotiated Discount Program Terms.

You understand that the provision of inaccurate or false information on your behalf may render the application invalid and constitute a breach of your obligations under the Hewlett Packard Enterprise End-User Special Negotiated Discount Program Terms which, in addition to other remedies, could result in your disqualification from future participation in Hewlett Packard Enterprise Partner End-User Special Negotiated Discount Program and in your obligation to repay misused End-User Special Negotiated Discounts.

You understand that (just as if you had submitted the End-User Special Negotiated Discount request yourself) HPE may contact the End-User directly to validate specific details about any deal opportunity and, if applicable, that you will be required to mark the quote “Won” should you be selected by the End-User for the deal opportunity.

You understand that you have obligations to provide HPE with information and documentation to validate your compliance with the Hewlett Packard Enterprise Partner End-User Special Negotiated Discount Program Terms.

At our request you must provide us with a single point of contact with regard to the Program. The single point of contact will be copied on delegated pricing requests and will be required to report any fraudulent submittals to HPE.



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Section 3 -- Term and Termination

Your appointment of the Agent Distributor under these Terms will become effective immediately upon submission by the Agent Distributor of a first request for End-User Special Negotiated Discounts on your behalf, and remains in place until expiration or termination of your Agreement, or your participation in the Hewlett Packard Enterprise Partner End-User Special Negotiated Discount Program Terms, or your written request to the HPE Partner support team via the “contact HP” link in the HPE Partner Portal to revoke such appointment. Either Party may terminate this Program without cause upon thirty (30) days written notice.