

Agreement Number: _____
Customer: _____
Effective Date: _____
Term (if applicable): _____

HP CUSTOMER TERMS – PORTFOLIO

1. **Parties.** These terms represent the agreement (**Agreement**) governing the purchase of products and services from HP New Zealand (**HP**) by the Customer entity (**Customer**) as each are identified in the execution section.
2. **Orders.** **Order** means the accepted order together with any supporting material which the parties identify as incorporated either by attachment or reference, including product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements, and statements of work (SOWs), published warranties and service level agreements (**Supporting Material**). Supporting Material is available to Customer either in hard copy or by accessing a designated HP website.
3. **Scope and order placement.** This Agreement starts on the Effective Date and continues for the Term unless terminated earlier. If no Term is specified, the Agreement continues until terminated in accordance with its terms. It may be used by Customer either for a single Order or as a framework for multiple Orders and may also be used on a global basis by the parties' affiliates, meaning any entity controlled by, controlling, or under common control with either party (**Affiliates**). The parties can confirm their agreement to these terms either by signing below or by referencing this Agreement on Orders. Affiliates participate under these terms by placing orders which specify product or service delivery in the same country as the HP Affiliate accepting the Order, referencing this Agreement, and specifying any additional terms or amendments to reflect local law or business practices.
4. **Order arrangements.** Customer may place orders with HP through our website, customer-specific portal, or by letter, fax or e-mail. Where appropriate, orders must specify a delivery date. If Customer extends the delivery date of an existing Order beyond ninety (90) days, then it will be considered a new order. Customer may cancel a hardware Order at no charge up to five (5) business days prior to the shipment date.
5. **Prices and taxes.** Prices are as quoted in writing by HP or, in the absence of a written quote, as set out on our website, customer-specific portal, or HP's published list price at the time an order is submitted to HP. Prices are exclusive of taxes (including goods and services tax), duties, and fees (including installation, shipping, and handling) unless otherwise quoted. If a withholding tax is required by law, please contact the HP order representative to discuss appropriate procedures. HP will charge separately for reasonable out-of-pocket expenses, such as travel expenses incurred in providing professional services (if any).
6. **Invoices and payment.** Customer must 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 does not pay amounts owed on or before the due date.
7. **Title.** Risk of loss or damage and title for hardware products passes upon delivery to Customer or its designee. To the extent permitted by law, HP retains a security interest in products sold until full payment is received.
8. **Delivery.** HP will use all commercially reasonable efforts to deliver products in a timely manner. HP may deliver software and related product/licence information by electronic transmission or via download.
9. **Installation.** If HP is providing installation services with the product purchase, HP's site guidelines (available upon request) will describe Customer requirements. HP will conduct its standard installation and test procedures to confirm completion.
10. **Support services.** If Customer has purchased HP support services as specified in an Order, those services will be delivered as described in the applicable Supporting Material, including a description of HP's offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported.
11. **Eligibility.** HP's service, support and warranty commitments do not cover claims resulting from the following and HP may charge separately for services relating to such claims at the applicable published service rates:

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- (a) improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
- (b) modifications or improper system maintenance or calibration not performed or authorised by HP;
- (c) failure or functional limitations of any non-HP software or product impacting systems receiving HP support or service;
- (d) malware (e.g. virus, worm etc.) not introduced by HP;
- (e) abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HP's control;
- (f) use of HP-branded hardware and software in combination with non-HP branded products except where authorised or recommended by HP in Supporting Material.

12. **Professional services.** If Customer has purchased HP professional services (including IT consulting and training) as specified in an Order, those services will be delivered as described in the applicable Supporting Material and the following provisions apply:

- (a) Acceptance. The acceptance process (if any) will be described in the applicable Supporting Material, will apply only to the deliverables specified, and will not apply to other products or services to be provided by HP;
- (b) Dependencies. HP's ability to deliver services will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services; and
- (c) Change Orders. HP and Customer must each appoint a project representative to serve as the principal point of contact in managing the delivery of services and in dealing with issues that may arise. Requests to change the scope of services or deliverables will require a change order signed by both parties.

13. **Services performance.** HP must perform services using generally recognized commercial practices and standards. HP will re-perform any service that fails to meet this requirement where so notified by Customer.

14. **Services with deliverables.** If Supporting Material for services defines specific deliverables, HP warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HP of a non-conformity during the 30 day period, HP will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HP.

15. **Product performance.**

- (a) HP-branded hardware. HP-branded hardware is covered by HP's applicable limited warranty statements provided or made available by HP.
- (b) HP-branded software. HP warrants that HP-branded software will conform materially to its specifications for the period stated in section 15(d) and be free of malware at the time of delivery. HP does not warrant that software operation will be uninterrupted or error-free or that software will operate in any particular hardware and software combinations.
- (c) Non-HP branded products. Non-HP branded products (whether hardware or software) receive warranty coverage as provided by the relevant third party supplier.

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- (d) **Warranty periods.** The warranties under sections 15(a) to 15(c) begin on the date of delivery by HP or if applicable, upon completion of HP installation, or (where Customer delays HP installation) at the latest 30 days from the date of delivery. They continue, in the case of HP-branded hardware, for the period stated in HP's standard warranty for the product and in the case of HP-branded software, 90 calendar days (unless otherwise specified in Supporting Material).
16. **Product warranty claims.** When we receive a valid warranty claim for an HP-branded hardware or software product, HP will either repair the defect or replace the product. If HP is unable to complete the repair or replace the product within a reasonable time, Customer may request a full refund upon prompt return of the product to HP (if hardware) or upon written confirmation by Customer that the software product has been destroyed or permanently disabled. HP will pay for shipment of repaired or replaced products to Customer and Customer must return the product to HP.
17. **Exclusion of warranty.** To the full extent permitted by law, HP excludes all representations, warranties, terms and conditions, whether express or implied (and including those implied by statute, custom, law or otherwise), except as expressly set out in this Agreement, including implied warranties of merchantability, fitness for a particular purpose, title and non-infringement.
18. **Intellectual property rights.** No transfer of ownership of any intellectual property occurs 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 ordered services. If deliverables are created by HP specifically for Customer and identified as such in Supporting Material, HP grants Customer a worldwide, non-exclusive, fully paid, royalty-free licence to reproduce and use copies of the deliverables internally.
19. **Intellectual property rights infringement.** HP will defend and/or settle any claims against Customer alleging that an HP-branded product or service supplied under this Agreement infringes the intellectual property rights of a third party, provided Customer promptly notifies HP of the claim and cooperates with our defence. HP may modify the product or service so as to be non-infringing and materially equivalent, or we may procure a licence. If these options are unavailable, HP will refund to Customer the amount paid for the affected product in the first year or the depreciated value after or, for support services, the balance of any pre-paid amount or, for professional services, the amount paid. HP is not liable for claims caused or contributed to by:
- (a) unauthorised use of products, services or deliverables supplied by HP;
 - (b) HP's compliance with designs, specifications, instructions or technical information supplied by or on behalf of Customer;
 - (c) changes to products, services or deliverables made by or on behalf of Customer;
 - (d) Customer's non-compliance with the specifications or any other product specific terms or requirements in documentation provided by HP; or
 - (e) use of products, services or deliverables supplied by HP with products, software or services that are not HP-branded.

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20. **Customer licence.** HP grants Customer a non-exclusive licence to use the version or release of the HP-branded software listed in the Order. Permitted use is for internal purposes only (and not for further commercialisation), and is subject to any specific software licensing information that is in the software product or its Supporting Material. For non-HP branded software, the third party's licence terms will govern its use.
21. **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.
22. **Licence restrictions.** HP may monitor use/licence restrictions remotely and, if HP makes a licence management program available, Customer agrees to install and use it within a reasonable period of time. Customer may make a copy or adaptation of a licenced software product only for archival purposes or when it is an essential step in the authorised use of the software. Customer may use this archival copy without paying an additional licence only when the primary system is inoperable. Customer may not copy licenced software onto or otherwise use or make it available on any public external distributed network. Licences that allow use over Customer's intranet require restricted access by authorised users only. Customer will also not modify, reverse engineer, disassemble decrypt, decompile or make derivative works of any software licenced to Customer under this Agreement unless permitted by statute, in which case Customer will provide HP with reasonably detailed information about those activities.
23. **Licence term and termination.** Unless otherwise specified, any licence granted is perpetual, except HP may terminate the licence on written notice if Customer breaches this Agreement. Immediately upon termination, or in the case of a limited-term licence, upon expiration, Customer will either destroy all copies of the software or return them to HP. Customer may retain one copy for archival purposes only.
24. **Licence transfer.** Customer may not sub-licence, assign, transfer, rent or lease the software or software licence except as permitted by HP. HP-branded software licences are generally transferable subject to HP's prior written authorisation and payment to HP of any applicable fees. Upon such transfer, Customer's rights terminate and Customer must transfer all copies of the software to the transferee. Transferee must agree in writing to be bound by the applicable software licence terms. Customer may transfer firmware only upon transfer of associated hardware.
25. **Licence compliance.** HP may audit Customer compliance with the software licence terms. HP may conduct an audit during normal business hours on reasonable notice (with the auditor's costs being at HP's expense). If an audit reveals underpayments then Customer must pay to HP such underpayments. If underpayments discovered exceed five (5) per cent of the contract price, Customer must reimburse HP for the auditor costs.
26. **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, 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 unauthorised 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 that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.
27. **Personal Information.** Each party must comply with their respective obligations under applicable privacy and data protection legislation. HP does not intend to have access to personally identifiable information (**PII**) of Customer in providing services. If HP has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer retains full responsibility for Customer PII at all times. HP will use PII to which it has access strictly for purposes of delivering ordered services.
28. **Compliance.** Customer must comply with all laws, regulations and legal requirements applicable to the exercise of Customer's rights, and performance of Customer's obligations, under this Agreement. Products,

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services and deliverables provided under this Agreement are for Customer's internal use and not for further commercialisation. If Customer exports, imports or otherwise transfers products and/or deliverables provided under this Agreement, Customer must comply with applicable laws and regulations and for obtaining any required export or import authorisations. HP may suspend its performance under this Agreement if required by laws applicable to either party.

29. Limitations and exclusions of liability.

- (a) **Limitation.** HP's cumulative liability to Customer for all claims made by Customer under or in connection with this Agreement whether arising under contract (including under any indemnity), negligence or any other tort, under statute or otherwise at all will not exceed in aggregate the greater of \$1m or the total fees paid or payable to HP for the relevant Order in respect of which the claim arose.
- (b) **Exclusion.** Neither party will be liable to other party in respect of any loss of profits, business, custom, revenue, anticipated savings, goodwill, data or contracts or any type of special, indirect, economic, punitive or consequential loss (including loss or damage suffered as a result of any claims brought by a third party) even if such loss was reasonably foreseeable or the party had been advised of the possibility of the other party incurring the same.
- (c) **Application.** The limitations and exclusions under sections 29(a) and (b) apply to the full extent permitted by law. Nothing in this Agreement operates to exclude or limit liability: for death or personal injury caused by negligence; for fraud; in the case of HP, liability under section 19; for loss of or damage to tangible property caused by a party's breach of contract or negligence; for breaches of confidentiality under section 26; or for wilful misconduct (being a wilfully wrong act or omission which was known to be wrong and yet was intentionally persisted in with the intention of harming a person's safety or tangible property (excluding negligence or mistake)).
- (d) **Savings.** HP will be not in breach of any of its obligations, or be liable under an indemnity, under this Agreement to the extent that the HP act or omission which would constitute such a breach, or give rise to liability under an indemnity, is caused by an act or omission by or on behalf of Customer.
- (e) **Consumer Guarantees Act 1993.** The exclusions and limitations of warranties, liability and remedies in this Agreement apply except to the extent prohibited by the Consumer Guarantees Act 1993 in situations where that Act can apply and its provisions have not been excluded or modified as permitted by that Act. Where any supply of products or services is for business purposes, Customer agrees that the Consumer Guarantees Act 1993 does not apply and that given the nature and value of the transaction, this is fair and reasonable.

30. Disputes. If Customer is dissatisfied with any products or services purchased under these terms and disagrees with HP's proposed resolution, we both agree to promptly escalate the issue to a Vice President (or equivalent executive) in our respective organizations for an amicable resolution without prejudice to the right to later seek a legal remedy.

31. 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.

32. Termination. Either party may terminate this Agreement (and all unfulfilled obligations) on written notice if the other:

- (a) commits a material breach of this Agreement and fails to remedy the breach within a reasonable period after being notified in writing of the details; or
- (b) becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment.

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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. Expiry or termination of this Agreement does not affect accrued rights and remedies.

33. **General.** 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 may be made only by written amendment signed by both parties. Customer must not assign, novate or transfer any or all of its rights or obligations under this Agreement without HP's prior written consent (not to be unreasonably withheld or delayed). Sections 1 to 34 take precedence over the Supporting Material.
34. **Law and jurisdiction.** This Agreement is governed by the laws of New Zealand and the courts of New Zealand have exclusive jurisdiction, except HP may commence proceedings to recover amounts due and payable in any country where the Customer Affiliate that placed the Order is located or in any country in case of urgent relief. The United Nations Convention on Contracts for the International Sale of Goods does not apply.