

READ THIS MASTER RESELLER PROGRAM AGREEMENT BEFORE REGISTERING AS A RESELLER. BY (A) CLICKING ON AN “ACCEPT” BUTTON, OR (B) EXECUTING AN ORDER THAT REFERENCES THIS MASTER RESELLER PROGRAM AGREEMENT, OR (C) OTHERWISE REGISTERING AS A RESELLER, YOU (“PARTNER”) AGREE TO THE TERMS OF THIS MASTER RESELLER PROGRAM AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND SUCH COMPANY OR OTHER LEGAL ENTITY TO THESE TERMS IN WHICH CASE THE TERMS “PARTNER” WILL REFER TO SUCH ENTITY. PARTNER FURTHER REPRESENTS THAT IT IS A SOPHISTICATED ENTITY THAT HAS READ AND UNDERSTANDS THIS MASTER RESELLER PROGRAM AGREEMENT AND HAS HAD SUFFICIENT OPPORTUNITY TO CONSULT WITH COUNSEL, PRIOR TO AGREEING TO THE TERMS HEREIN AND SUBMITTING ITS REGISTRATION. THE AGREEMENT IS EFFECTIVE AS OF THE DATE YOU ACCEPT THESE TERMS (“EFFECTIVE DATE”).

IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK ON AN “ACCEPT” BUTTON, OR OTHERWISE REGISTER AS A RESELLER;

MASTER RESELLER PROGRAM AGREEMENT

This Master Reseller Program Agreement (“**Master Agreement**”), made this ___ day of ___, ___ (“**Effective Date**”), by and between HCL Technologies Limited, a corporation incorporated under the laws of Republic of India having registered address at 806, Siddharth Complex 96, Nehru Place, Delhi – 110019 (“**Licensor**” or “HCL”) and [PARTNER], a corporation having an address at [ADDRESS] (“**Partner**”). The parties agree as follows:

1. SCOPE OF AGREEMENT

1.1. Exhibits and Schedules. This Master Agreement describes the terms under which Partner shall be entitled to participate in HCL’s Business Partner Program associated with the resale of HCL’s software Products (the “**Program**”). The Schedules attached to this Master Agreement describe details of the Program (the “**Schedules**”). The Schedules attached hereto and this Master Agreement constitutes the entire agreement between HCL and Partner (the “**Agreement**”). Schedules may be added or deleted from time to time by the agreement of the parties, but each party is only authorized to offer the Products, Support and Services to the extent permitted under this Master Agreement or one or more applicable Schedules that is executed and in force. The Schedules are incorporated by reference into this Master Agreement.

2. DEFINITIONS

2.1. “Affiliates” means an entity that controls, is controlled by or shares common control with HCL, Customer or Partner, as applicable, where such control arises from either (a) a direct or indirect ownership interest of more than 50% of the outstanding voting stock and/or equivalent interest, or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock, by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50% of the outstanding voting stock and/or equivalent interest.

2.2. “Confidential Information” means any non-public information about a party, including, without limitation, the terms of this Master Agreement, the party’s business, vendors, customers, potential customers, products, services, employees, finances, costs, expenses, financial or competitive condition, policies, and practices, computer software programs (including their respective design, architecture, modules, interfaces, databases and database structures, capabilities and functionality, source code and object code), research and development efforts, marketing and distribution efforts, and any other non-public information that does or may have economic value by reason of not being generally known, including information licensed or otherwise disclosed to a party in confidence by a third party and made available under this Master Agreement. “Confidential Information” does not include information that recipient can show through documentary evidence: (a) is or becomes publicly known through no fault of recipient; (b) is known by or in the possession of recipient prior to its receipt

from disclosing party; (c) is lawfully obtained from a third party who rightfully possesses the information (without any confidentiality or proprietary restriction); or (d) is independently developed by a receiving party without reliance on or reference to the Confidential Information of the disclosing party. HCL leads shall be considered the Confidential Information of HCL.

- 2.3. “Customer”** means a person or entity who acquires the Products from Partner for such person or entity’s internal business purpose.
- 2.4. “Derivative Work(s)”** means a work which is based upon, refers to or makes use of the Products or Documentation, in part or in whole, such as a revision, modification, translation, abridgement, condensation, expansion, or any other form in which the Products or Documentation may be recast, transformed, or adapted.
- 2.5. “Documentation”** means the applicable standard end user documentation for Products, which may be amended by HCL from time to time.
- 2.6. “End User Agreement”** means either (i) HCL’s then-current master license agreement for the Products, as provided or otherwise identified by HCL, pursuant to which HCL grants a Customer a license to use the Products; or (ii) a current, valid license agreement already in place for the Products with HCL or an original licensor (e.g., IBM) that is signed by or otherwise entered into by the Customer and approved by HCL.
- 2.7. “Intellectual Property Rights”** means any ideas, inventions, discoveries, processes, works of authorship, marks, names, know-how, and any and all rights in such materials on a worldwide basis, including any rights in patents, inventor’s certificates, utility models, copyrights, moral rights, trade secrets, mask works, and all related, similar, or other intellectual property rights recognized in any jurisdiction worldwide, including all applications and registrations with respect thereto.
- 2.8. “Marks”** mean the trademarks, domain names, logos, trade names, brands and service marks of HCL (or its Affiliates) as may be designated by HCL from time to time.
- 2.9. “Products”** means the object code version of HCL’s software as identified in a Schedule or Order.
- 2.10. “Services”** mean any consulting, installation, system administration, training, support or maintenance services provided by HCL or its Affiliates to Partner or one of its Customers relating to the Products.
- 2.11. “Support”** means technical assistance, updates, maintenance and support for the Products.

- 2.12. **“Taxes”** mean any federal, state, municipal or other governmental taxes, fees, tariffs or duties, including income, franchise, excise, sales, use, gross receipts, import, export, value added, goods and property or similar tax, now or hereafter imposed on or required to be collected in connection with sales of Products or Services, and which such person is obligated to collect or remit to any such taxing authority (but excluding taxes payable by such person on its own net income).
- 2.13. **“Territory”** means worldwide except for those countries considered embargoed, sanctioned, or terrorist countries under United States or applicable laws or regulations.
- 2.14. For the purpose of clarity, reference to “sales,” “selling” or “reselling” Products is sales of a license to use the software and does not entail transfer of title to the Products but only the right to use the Products pursuant to an authorized End User Agreement.

3. RESALE OF SOFTWARE

- 3.1. **Appointment of Reseller.** Subject to the terms and conditions set forth herein, HCL hereby appoints Partner as HCL’s independent, non-exclusive, authorized reseller of the Products, and Partner hereby accepts such appointment.
- 3.2. **Promotion and Resale.** Partner shall, at its own expense, use its commercially reasonable efforts, in its sole discretion, to market and promote the Products, and to offer to sell and sell licenses for the Products to potential Customers. For avoidance of doubt, the Products are licensed to Customers under the End User Agreement with HCL, not sold. Partner shall provide HCL with the names and addresses of Customers licensing the Products. In connection with sales of licenses for the Products as permitted hereunder, Partner shall arrange for Customers to be provided access to, and agree to be bound by, the End User Agreement in accordance with Section 4.7. Subject to Section 8.8 (Use of Purchase Orders), Partner will submit a purchase order or other document ordering Products or Services for each proposed deal under the Program (an “Order”) and pre-register deals as provided in the Schedules. HCL will notify Partner of acceptance or rejection of Orders within a reasonable time.
- 3.3. **Partner Cancellation.** In the event Partner cancels a previously accepted Order after shipment, the cancellation charges as mentioned in the Order shall apply.
- 3.4. **HCL Cancellation.** HCL reserves the right to cancel or delay shipment of any Orders placed by Partner and accepted by HCL, if Partner: (a) fails to make any payment as provided herein; (b) fails to meet the credit or financial requirements established by HCL; or (c) otherwise fails to comply with the terms and conditions of this Master Agreement.
- 3.5. **Prices.** HCL may provide Partner with discounts on Products based upon terms outlined in the Schedule(s). Partner shall pay HCL based upon the prices set forth in Orders. The licenses and/or services to be provided to each Customer, and the prices therefore, will be determined by Partner in its discretion.
- 3.6. **HCL Sales Support.** HCL shall, in its sole discretion, use commercially reasonable efforts to (a) provide sales and technical assistance as requested by Partner, including participating in conference calls and on-site presentation/Q&A support, to Partner’s sales team to support the qualification and education of prospective Partner’s Customers about the Products in pursuit of sales opportunities, and (b) provide Partner with sales, sales engineering and technical support documents, as requested by Partner, from time to time as reasonably necessary to assist Partner’s internal and external efforts. Partner shall use provided technical information solely to assist in the marketing and distribution of the Products.

- 3.7. **HCL Customer Support.** HCL shall provide Support for the Products only as set forth in a Schedule or an Order. Partner shall ensure any obligations of Support provided to Customer are substantially similar to those set forth in the Schedule or Order. Support is governed by HCL’s standard applicable Support terms and policies in effect and as modified from time to time by HCL. Upon written consent by HCL, Partner may provide support directly to Customer. Such Support will be in accordance with terms mutually agreed upon by HCL and Partner.
- 3.8. **Additional Services.** HCL may agree to provide training or other Services to Partner and Partner’s Customers for additional fees as outlined in a Schedule or an Order and subject to the terms specified therein.

4. LICENSES

- 4.1. **Intentionally left blank.**
- 4.2. **HCL License to Resell, Distribute, and Provide Access to Products.** Subject to clause 4.3 and the terms and conditions of this Master Agreement and Customer’s acceptance of the End User Agreement, HCL hereby grants to Partner a non-exclusive, non-transferable, personal license under HCL Intellectual Property Rights to (i) reproduce, perform, display, and distribute licenses for Products and associated Documentation to Customers solely within the Territory; or (ii) in the case of software-as-a-service Products (as identified in an Order) solely to provide access to the Products. In either instance, the licenses are granted solely in accordance with a valid Order and during the Order term therein.
- 4.3. **Restrictions on Use.** Partner agrees (i) not to create or attempt to create by reverse engineering, disassembly, decompilation or otherwise, the source code, internal structure, or organization of the Products, or any part thereof, or aid or permit others to do so, except and only to the extent expressly permitted by applicable law; (ii) not to copy or modify the Products or include any portion of the Products in any other software program; (iii) not to provide use of the Products in a computer service business, rental or commercial timesharing arrangement or otherwise lease, sublicense, or lend the Products unless licensed from HCL under a separate agreement; and (iv) not to separate the Products into component parts for distribution or transfer to a third party.
- 4.4. **Proprietary Notices.** Partner shall not remove any Products identification or notices of any proprietary or copyright restrictions from any Products or any support material. Partner must reproduce and include the copyright notice and any other notices that appear on the original copy of the Documentation on any permitted copies made by HCL on any media.
- 4.5. **Third Party Software.** Partner hereby acknowledges that the Program(s) may contain open source software and third party commercial software. In the event that open source software is included in the Program(s), Partner agrees that HCL and its Affiliates have not obtained or conveyed to Partner any intellectual property rights to use the applicable underlying open source software as such usage is governed by the underlying license.
- 4.6. **Compliance with Laws.** Partner shall be solely responsible for complying with the laws and regulations applicable to its business in performing its responsibilities hereunder, as well as those applicable to the distribution and sale of the Products by Partner, including, without limitation, tax, export and foreign exchange laws and the United States Foreign Corrupt Practices Act. Partner will bear all expenses and costs related to compliance with such laws and regulations.
- 4.7. **End User License.** Partner shall obtain from each Customer acceptance of an order for Products, Services and/or Support through Partner’s own ordering instrument. Such instrument

shall incorporate by reference the End User Agreement as the governing license terms.

- 4.8. **Compliance.** Partner shall provide information as reasonably requested by HCL to verify compliance by Partner with the terms of this Master Agreement

5. MARKETING MATTERS AND SALES REPORTS

- 5.1. **Press Releases.** Except as may be required by law, if either party desires to issue a press release or other public announcement concerning this Master Agreement or the relationship between the parties, the party shall obtain the other party's prior written approval of any such public announcement.
- 5.2. **Trade Practices.** Both parties will refrain from engaging in any illegal, unfair, or deceptive trade practices, unethical business practices whatsoever, or making any representations inconsistent with specifications provided in writing by the other party. Any costs of promotion and marketing shall be borne solely by the incurring party, and nothing in this Master Agreement shall be interpreted to require promotion of products or services through marketing media forms which either party normally charges a fee to provide.
- 5.3. **Advertising.** Any advertising or promotional material with respect to HCL, its Marks, and/or Products that Partner creates in connection with resale of the Products or activities under this Master Agreement shall be provided to HCL, in original form, for review and approval prior to distribution.

6. CONFIDENTIALITY AND NON-SOLICITATION

- 6.1. **Nondisclosure and Nonuse.** Each party receiving Confidential Information shall (a) disclose such Confidential Information to only those directors, officers, employees and agents of such party (i) whose duties justify their need to know such information and (ii) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information (in the case of recipients that are not employees, such parties shall have agreed in writing to protect Confidential Information on terms substantially similar to those contained in this Master Agreement); and (b) use such Confidential Information only for the purposes set forth in this Master Agreement. Each party receiving Confidential Information shall treat such information as strictly confidential and shall use the same care to prevent disclosure of such information as such party uses with respect to its own confidential and proprietary information, which shall not be less than a reasonable standard of care. Notwithstanding the foregoing, each party may disclose Confidential Information to the extent necessary pursuant to applicable federal, state, or local law, regulation, court order, or other legal process, provided the receiving party, to the extent reasonably possible, has given the disclosing party prior written notice of such required disclosure and an opportunity to contest such required disclosure at the disclosing party's expense.
- 6.2. **Notice.** The receiving party will notify the disclosing party immediately in the event the receiving party learns of any unauthorized possession, use, or knowledge of Confidential Information and will reasonably cooperate with the disclosing party, in any litigation against any third persons necessary to protect the disclosing party's rights with respect to the Confidential Information and materials.
- 6.3. **Non-Solicitation of Employees.** During the term of this Master Agreement and for one (1) year thereafter, neither party shall directly solicit for employment any employee of the other party unless otherwise agreed in writing by the parties or if the employee responds to a general solicitation, mass advertisement, or similar type of broad-based publicly disseminated solicitation not directed specifically toward one or more employees of the other party.
- 6.4. **Non-Solicitation of Customers.** During the term of this

Master Agreement, Partner shall not (by itself or through its distributors) sell, release, or otherwise disclose the identities of HCL's Customers or solicit directly or indirectly such Customers to purchase or license another vendor's software of a type or class similar to HCL's Products.

- 6.5. **Injunctive Relief.** In the event of any breach of the provisions of this Section, the breaching party agrees that the non-breaching party would suffer irreparable harm and shall therefore be entitled to obtain injunctive relief against the breaching party.

7. TERM; TERMINATION

- 7.1. **Term.** This Master Agreement between the parties shall commence as of the Effective Date and shall continue until terminated by either party as provided herein ("Term").
- 7.2. **Default.** Either party may, at its option, terminate this Master Agreement (including and any or all Schedules and Orders), in whole or in part, if a material default by the other party is not corrected within ten (10) days after receipt of a written notice of the default. It shall be a material default for Partner to fail to pay HCL any and all applicable fees. Either party may terminate this Master Agreement with immediate effect and without prior recourse to any judicial authority, by giving written notice to the other party in the event that such other party: (a) ceases to do business in the normal course for a continuous period of at least thirty (30) calendar days, (b) becomes or is declared insolvent or bankrupt, (c) is the subject of any proceeding related to its liquidation or insolvency (whether voluntarily or involuntarily) which is not dismissed within ninety (90) calendar days or (d) makes an assignment for the benefit of creditors.
- 7.3. **Mutual Termination.** Either party may terminate this Master Agreement at any time upon thirty (30) days prior written notice. A party may terminate this Master Agreement (and any Schedules and Orders), immediately by written notice, if the other party breaches Articles 4 or 6 of this Master Agreement. A party may terminate this Master Agreement immediately upon written notice to the other party if the other party assigns any of its rights and obligations hereunder without any prior written consent required under Section 11.4 of this Master Agreement.
- 7.4. **Effects of Termination.** Upon termination or expiration of this Master Agreement, Partner's participation in the Program shall terminate and Partner shall immediately (i) cease all use of Products and Documentation; (ii) discontinue any use of the Marks, name, logo, trademarks, service marks or slogans of HCL and the brand names of any Products; (iii) discontinue all representation or statements from which it might be inferred that any relationship exists between HCL and Partner; (iv) cease to promote, solicit orders for or procure orders for Products (but Partner will not act in any way to damage the reputation or goodwill of HCL or any Products); (v) return to HCL all items and materials using the Marks in its possession, as HCL may direct, at HCL's expense, and (vi) return all Products, Confidential Information, and related materials to HCL and (vii) clear any outstandings which were due and payable as on the effective date of termination. Notwithstanding the above, Partner's Customers may continue to use Products following termination or expiration of this Master Agreement pursuant to the applicable terms of their End User Agreement, provided Partner or such Customer pays all applicable fees to HCL pursuant to Article 8 and applicable Schedules and Orders.
- 7.5. **No Harm upon Termination.** Except as otherwise expressly provided herein, upon the expiration or termination of this Master Agreement, Partner shall not be entitled to, and each to the fullest extent permitted by law waives, any statutorily prescribed or other compensation, reimbursement, or damages for loss of goodwill, clientele, prospective profits, investments, or anticipated sales or commitments of any kind

associated with termination of the reseller/distributor arrangement herein. The parties acknowledge that this Section has been included as a material inducement for Partner and HCL to enter into this Master Agreement and that Partner and HCL would not have entered into this Master Agreement but for the limitations of liability set forth herein.

- 7.6. **Responsibilities Upon Termination.** Nothing in this Master Agreement will affect (i) the rights and liabilities of either party with respect to Products sold to Customers prior to termination; (ii) the rights and liabilities of either party under any separate agreement between the parties; (iii) any indebtedness then owing by either party to the other, or (iv) any liability for damages resulting from an actionable breach prior to termination.
- 7.7. **Survival of Terms.** The following terms shall survive any expiration or termination of this Master Agreement: Sections: 6, 7, 8, 9, 10, and 11. Notwithstanding any provision in this Master Agreement to the contrary, each party may continue to exercise the rights and licenses granted hereunder to the extent necessary to allow such party to fulfill its obligations under existing binding agreements to Customers that are effective at the time of termination, provided that Partner shall continue to pay HCL all applicable fees and Partner shall continue to comply with this Master Agreement.

8. FEES; PAYMENT

- 8.1. **Invoicing, Payment and Late Fees.** Partner will pay any and all fees as detailed in the Order. Except as provided therein, all amounts in the Order are in United States Dollars (USD). Payment is due in advance. Partner will pay HCL for the amounts due, owing, and duly invoiced under the Order within thirty (30) days of the date of invoice (irrespective of whether Partner has been paid by Customer or whether Customer is in an automatic renewal term). Partner shall make all payments pursuant to the Order through electronic transfer of funds to the designated bank accounts as nominated by HCL in writing. Overdue amounts payable under the Order will bear interest from the original due date at the rate of one percent (1%) per month or the maximum legal rate, whichever is less. Except as provided in this Master Agreement, all fees are non-refundable and non-cancelable.
- 8.2. **Billing and Collection.** Partner will be responsible for all billing and collections for Products sold pursuant to this Master Agreement.
- 8.3. **Expenses.** Except as otherwise specifically provided herein, each party shall be solely responsible for all expenses incurred by it in connection with its efforts under this Master Agreement, including but not limited to, salaries, office expenses, and traveling.
- 8.4. **Record Keeping.** Each party to this Master Agreement shall maintain complete and accurate accounting, business books and records regarding its activities under this Master Agreement in accordance with generally accepted accounting principles and such party's business practices. Subject to preceding sentence, each party shall retain such books and records for not less than two (2) years following creation.
- 8.5. **Audit.** For the sole purpose of ensuring compliance with this Master Agreement, HCL shall have the right, either directly or through an independent nationally recognized certified public accounting firm, to conduct a reasonable and necessary audit of portions of the books and records of Partner which are relevant to amounts payable to HCL pursuant to this Master Agreement and to verify compliance with the restrictions herein. Such audit shall be conducted after ten days prior written notice to Partner. Such audits shall not be made more frequently than once every twelve months and no audit right shall apply following termination of this Master Agreement unless Partner has paid HCL at any time in the 12 months preceding the date such audit is requested. HCL's costs in conducting an audit will be borne by HCL unless the audit discloses that Partner has underpaid accrued fees by five

percent (5%) or more, in which case the cost of such audit will be borne by Partner.

- 8.6. **Taxes.** All fees quoted are exclusive of taxes. Partner is responsible for payment of any sales, use, value added, GST, and any other similar taxes or governmental fees associated with the Order, except for taxes based on HCL's net income, gross revenue or employment obligations. If HCL is obligated by applicable law to collect and remit any taxes or fees, the appropriate tax or fee amount will be charged and set forth in the applicable invoice. Partner agrees to bear any withholding tax liability as may be required by law and would increase payment due under the Order by such an amount so that the net payment made to HCL after deduction of applicable withholding tax is the same, had there been no withholding tax applicable. Partner is solely responsible for timely and accurate payment of applicable taxes and fees, irrespective of what HCL's invoice may state.
- 8.7. **Orders by Affiliates.** Orders may be entered into under this Agreement by and between (a) HCL or an Affiliate of HCL; and (b) Partner or an Affiliate of Partner. With respect to an Order, the term HCL or Partner will be deemed to refer to the entities that execute such Order. Partner shall be responsible for its Affiliates' agreement and compliance with this Agreement (including Orders).
- 8.8. **Use of Purchase Orders.** Solely for administrative convenience of the parties in ordering hereunder, Partner may issue a purchase order in lieu of the Parties signing the HCL Order form (HCL Program License and Support Order Schedule) and such purchase order shall then be deemed an Order for ordering purposes. Such purchase order shall be subject to this Master Agreement, and any different terms in such purchase order (whether payment terms, taxes, warranty, scope of Support, limitation of liability, termination, or otherwise) will not apply as the purpose of the purchase order is solely for identifying pricing, product/service selected, Customer, and quantity for ordering hereunder. All references in this Master Agreement to differing or additional terms that may apply in an Order do not apply to purchase orders used as the Order. Subject to this paragraph, HCL (or its Affiliates) may accept the purchase order by processing it.
- ## 9. OWNERSHIP OF INTELLECTUAL PROPERTY
- 9.1. **Ownership of Intellectual Property.** Partner acknowledges and agrees that HCL, and its licensors, own and shall retain all right, title and interest in and to the Products and Documentation, as well as any other products or services manufactured and/or distributed or otherwise made available by HCL (including all copies and Derivative Works thereof, by whomever produced, if any), including any and all Intellectual Property Rights embodied therein.
- 9.2. **Trademarks and Logos.** The Marks are and will remain the exclusive property of HCL. Partner will not take any action that jeopardizes HCL's proprietary rights or acquire any rights in the Marks, nor use any of the Marks as part of its name or web domain name. Partner may only use the Marks in accordance with the applicable guidelines set forth herein and those provided by HCL from time to time, and subject to any consent required under Section 5.3. Partner agrees to promptly notify HCL of any unauthorized use of the Marks of which it has actual knowledge. Upon termination or expiration of this Master Agreement, any permission or right to use any of the Marks granted hereunder shall cease to exist, and Partner shall cease immediately any use of the Marks.
- 9.3. **Injunctive Relief.** In the event of any breach of the provisions of this Section, Partner agrees that HCL would suffer irreparable harm and shall therefore be entitled to obtain injunctive relief against Partner.

10. WARRANTY DISCLAIMERS/LIMITATION OF LIABILITY/INDEMNIFICATION

- 10.1. Warranties.** Each party represents and warrants that (a) the person who has signed this Master Agreement for the party is authorized to execute and deliver this Master Agreement on its behalf, and (b) the party possesses all rights necessary to grant the rights herein. THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND HCL HEREBY DISCLAIMS TO THE FULL EXTENT PERMITTED BY LAW ANY OTHER WARRANTIES, EXPRESS AOR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE; NOR ARE THERE ANY WARRANTIES CREATED BY A COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE. EXCEPT AS PROVIDED HEREIN, ANY SOFTWARE, EQUIPMENT, AND/OR SERVICE PROVIDED BY HCL IS "AS-IS" AND WITHOUT REPRESENTATION OR ANY WARRANTY OF ANY KIND.
- 10.2. Warranty Disclaimers.** Partner will not make any representations or create any warranties, express or implied, concerning HCL's Products, products or services, other than those stated in HCL's promotional materials or End User Agreement.
- 10.3. Limitation of Liability.** EXCEPT FOR CLAIMS ARISING UNDER SECTIONS 4, 6.1 OR 10.5, IN NO EVENT SHALL EITHER PARTY (AND ITS AFFILIATES) HAVE ANY RIGHT HEREUNDER AGAINST THE OTHER FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING ANY SUCH DAMAGES FOR LOST PROFITS. IN NO EVENT WILL THE TOTAL COLLECTIVE LIABILITY OF HCL (AND ITS AFFILIATES) UNDER THIS MASTER AGREEMENT EXCEED THE AGGREGATE FEES PAID BY PARTNER TO HCL, UNDER THE APPLICABLE ORDER, DURING THE PRECEDING TWELVE-MONTH PERIOD FOR THE AFFECTED PRODUCT OR SERVICE (LESS ANY DAMAGES HCL/HCL AFFILIATES HAVE PAID TO CUSTOMER/CUSTOMER AFFILIATES FOR THE SAME CLAIM).
- 10.4. Indemnification by HCL.** HCL shall at its option defend or settle any third party claim or action brought against Partner alleging that the software, documentation or services provided by HCL and used in accordance with this Master Agreement infringe upon, violate or misappropriate any patent, copyright, trademark, trade secret, or intellectual property right of any third party and shall pay amounts finally awarded by a court against the Partner or included in a settlement approved by HCL; provided that Partner provides HCL with (a) prompt written notice of such claim or action, (b) sole control and authority over the defense and settlement of such claim or action, (c) proper and full information, and (d) reasonable assistance to defend and/or settle any such claim or action. In the event that the Products, or a part thereof, is held, or in HCL's (as Indemnifying Party) sole opinion, may be held to constitute an infringement, HCL, at its option and expense, may either (x) modify the Product so it becomes non-infringing, (y) replace the Products with functionally equivalent non-infringing materials reasonably acceptable to Partner, or (z) if neither of such options is practical then terminate this Master Agreement with respect to such Products upon notice to Partner. Notwithstanding the foregoing, HCL will have no liability to the extent the alleged infringement arises from (i) the use of the Products in a manner not specified in relevant software documentation, (ii) use of other than a then current release of the Product, or (iii) combinations of the Product with third party programs, software, hardware, or firmware. THE FOREGOING STATES THE ENTIRE LIABILITY AND OBLIGATIONS OF HCL AND THE EXCLUSIVE REMEDY OF PARTNER,

WITH RESPECT TO ANY THIRD PARTY CLAIMS REGARDING ALLEGED OR ACTUAL INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY HCL.

- 10.5 Indemnification by Partner.** Partner shall defend or at its option settle any third party claim or action brought against HCL resulting from infringement of HCL's Intellectual Property Rights by Partner, including any misuse of HCL brands, and any warranty given or representation made by the Partner to a Customer or prospective Customer in breach of Section 10.2, and shall indemnify HCL for same.

11. MISCELLANEOUS

- 11.1. General.** If any provision or provisions of this Master Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. Faxed, photocopy, PDF or otherwise transmitted copies are considered documents equivalent to original documents, provided that the process for transmission accurately transmits the original document. This Master Agreement (including any Schedule attached hereto) may only be amended in a writing signed by both parties' authorized signatories. No provision in this Master Agreement is intended or shall create any rights with respect to the subject matter of this Master Agreement in any third party.
- 11.2. Alternate Dispute Resolution.** (i) The parties agree to cooperate in good faith in all actions relating to the Master Agreement, to communicate openly and honestly, and generally to attempt to avoid disputes in connection with the Master Agreement. If, nevertheless, a dispute should arise in connection with the Master Agreement, the parties agree to use their best efforts to resolve such dispute in a fair and equitable manner and without the need for expensive and time-consuming litigation. Except as otherwise set forth in this Master Agreement, in the event a dispute arises between the parties concerning this Master Agreement that cannot be resolved informally, it may be resolved in accordance with the alternate dispute resolution procedure set forth herein. If a dispute arises over the amount of funds that the Partner is to remit to HCL, Partner shall remit all funds that are not in dispute to HCL, hold the disputed funds in escrow, and the amount in dispute shall be resolved in accordance with this Section; (ii) the parties agree that the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which may be directly affected by such dispute; (iii) any and all disputes which cannot be resolved informally may be settled by final and binding arbitration in accordance with the Expedited Rules of the Commercial Arbitration Rules of the American Arbitration Association, except as otherwise expressly provided herein or agreed to in writing by the parties, or to the extent inconsistent with the requirements of California law. The arbitration shall take place in the Partner's city and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, in accordance with applicable laws set forth in Section 11.3 (Governing Law); (iv) Each party shall pay one-half of the reasonable fees and expenses of the neutral arbitrator. All other fees and expenses of each party, including without limitation, the fees and expenses of its counsel, witnesses, and others acting for it, and arbitrators not jointly appointed, shall be paid by the party incurring such costs; and (v) The arbitrator shall have no authority to add to, delete from, or otherwise modify any provision of this Master Agreement, or to issue an award having such effect.
- 11.3. Governing Law.** For purchases in the U.S., any claims arising under or relating to this Agreement will be governed by the internal substantive laws of the State of California or federal courts located in California, without reference to (i) any conflicts of law principle that would apply the substantive

- laws of another jurisdiction to the parties' rights or duties; (ii) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (iii) other international laws. For purchases in the U.S., each party (i) hereby irrevocably agrees to submit to the jurisdiction and venue in the courts of the State of California for all disputes and litigation arising under or relating to this Master Agreement and (ii) waives any right to a jury trial in any proceeding arising out of or related to this Master Agreement. For purchase outside the U.S., both parties agree to the application of the laws of the country in which Partner obtained the Program license to govern, interpret, and enforce all of Partner's and HCL's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Master Agreement, without reference to (i) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (ii) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (iii) other international laws. Furthermore, all rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Master Agreement, are subject to the jurisdiction of the courts of the country in which Partner obtained the Program license.
- 11.4. Assignment.** No right or obligation of a party under this Master Agreement may be assigned, delegated, or otherwise transferred, whether by agreement, operation of law or otherwise, without the express prior written consent of the other party, except that a party may assign, delegate, or transfer rights or obligations to its Affiliates. Any attempt to assign, delegate or otherwise transfer any of a party's rights or obligations hereunder, without such consent, shall be null and void. Subject to the preceding sentence, this Master Agreement shall bind each party and its permitted successors and assigns.
- 11.5. Notices.** Any communication permitted or required shall be (a) in writing, (b) delivered in person or by overnight courier, sent by facsimile, sent by certified or registered mail or private courier, postage prepaid, and addressed as above or to such other address as is given in accordance with this Section 11.5, and (c) effective upon receipt. The parties consent to the use of electronic means for communications as a signed writing.
- 11.6. Force Majeure.** Except with regard to payment obligations, neither party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control.
- 11.7. Export Control.** Partner shall not export or allow the export or re-export the Products, any components thereof or any Confidential Information of HCL without the express written consent of HCL and only in compliance with all export laws and regulations of the U.S. Department of Commerce and all other U.S. agencies and authorities, and, if applicable, relevant foreign laws and regulations.
- 11.8. Language.** English or local language shall be the language of the Master Agreement and all notices, communications, and other correspondence between HCL and Partner.
- 11.9. Relationship.** HCL and Partner are independent contracting parties. This Master Agreement shall not constitute the parties as principal and agent, partners, joint venturers, or employer and employee. The reference to Partner as a "partner" does not imply or shown an intention to create a joint venture or partnership between the parties and no such venture shall be deemed created by this Agreement.
- 11.10. Order of Precedence.** In the event of any inconsistencies between the terms of this Master Agreement and any referenced, attached, or preprinted terms and conditions on any invoice, purchase order or other transaction document, this Master Agreement shall take precedence and any supplemental, additional or conflicting terms in such documents shall have no effect and are hereby objected to and rejected. Notwithstanding the foregoing, the details of a specific deal expressly specified in an Order accepted by HCL shall control in the event of a conflict with the terms of this Master Agreement or any Schedule.
- 11.11. Government Use.** Partner will procure the Products for direct or indirect sales to the U.S. federal government solely from the distributor designated by HCL. HCL (and its Affiliates) shall have no liability in connection with such purchase/sales. Partner will not directly or indirectly provide any Products or Documentation to any other governmental or public entity without the prior written permission of HCL. HCL shall determine what constitutes a direct or indirect sale to the U.S. federal government, or local or international governmental or public entity. Partner represents that Products and Documentation delivered to an agency or instrumentality of the United States Government shall identify the Products and documentation as "commercial computer software" and "commercial computer software documentation" and, as specified in FAR 12.212 or DFARS 227.7202, and their successors, as applicable, shall restrict the Government's rights to use, reproduce or disclose such Products and accompanying Documentation in accordance with the terms of HCL's then-current standard End User Agreement.
- 11.12. Entire Agreement.** This Master Agreement and any applicable Exhibit(s)/Schedules, constitutes the entire, full, exclusive and complete Agreement between the parties concerning the subject matter hereof, and supersede all prior or contemporaneous communications, proposals, representations, agreements and warranties, whether oral or written, on this subject.
- 11.13. Waiver.** The waiver by either party of a breach or a default of any provision of this Master Agreement shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to exercise or avail itself of any right operate as a waiver of any future right by such party.

SCHEDULE 1

HCL Partner Engagement Program Criteria

HCL values the unique skills, expertise and reach that our partners offer to customers around the globe. By working together through HCL's Business Partner Engagement Program, we can better help customers unlock the value of our products and achieve their business objectives.

The following criteria is applicable to all HCL Partner Programs:

I. Program Requirements

- Standard business and credit checks are required to certify Partner's participation in program.
- Agreement to be a good steward of HCL and HCL products.
- Partners are required to pre-register all software deals with HCL in order to qualify for incentives.
- HCL's business partner resell program is strictly for the sale of HCL software. It is not inclusive or representative of any services. HCL has no involvement in any services agreement a Partner may enter into directly with customers.
- 30-day payment terms to HCL are required.

II. Support and Maintenance Renewals

- The partnership models described in Schedule 2 apply only to new licenses; HCL will work with Partners directly on resale of support and maintenance renewal opportunities.

III. Participating HCL Products

SCHEDULE 2

Partner Program Model

1. Partner Resell Program

Description: Approved Partners are able to resell the licenses of HCL software Products, identified in an Order, directly to end customers, expanding the potential reach of the software and providing an easy way for customers and Partners to do business.

Specifications:

- End customer transactions are done on partner's paper and subject to Customer's acceptance of an End User Agreement with HCL.
- Partner is required to inform HCL of end customer name and address.
- Partner must be certified by HCL on any product which they wish to resell.
 - Partners who can provide valid, current verification of IBM certification on the same product(s) can enroll directly to HCL's Partner Program
 - Partners not certified by IBM must complete HCL product certification (certification programs to be announced at a later date; not yet available)
 - Certification may be waived for some products or partners, at the discretion of HCL
 - HCL will provide Products support directly to the end customer.
- Software entitlements and support will be enabled for the end customer directly by HCL upon HCL's receipt of purchase order from Partner.
- Partners must pre-register deals and show added value to the customer through ongoing engagement in the deal cycle through to closure.

- Approved Partners with pre-registered deals may, in accordance with HCL's then current program requirements, receive a percent discount from HCL. HCL may change any such discount on 90 days notice.
- Partners are not allowed to sell to a distributor or secondary channel partner.