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# HPE Education Services

## Kenya

### Terms and Conditions

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These terms and conditions govern the purchase of education services from Hewlett Packard Enterprise Company (“HPE”).

#### 1. Definitions

- a. “HPE” shall mean, Hewlett Packard East Africa Ltd, Capitol Hill Square, 3rd floor, Chyulu Road, Upperhill, Nairobi, Kenya.
- b. “HPE Education Services” means training, courses, services and Course Materials delivered by HPE. Courses may be in various formats including, but not limited to, classroom scheduled seats (such as scheduled instructor led training at an HPE facility and remotely assisted instructional learning); onsite dedicated training at HPE, Customer or neutral site; lecture only training; online lecture only training; web based self-paced training, and subscription based training.
- c. “HPE Data Sheet” means an HPE standard specification document describing the details and features of the HPE Education Services offering to be provided.
- d. “Statement of Work” or “SOW” means a document signed by HPE and Customer that describes the specific HPE Education Services to be provided by HPE. SOWs are generally applicable to dedicated training specific to Customer’s requirements.
- e. “T&C’s” means this document entitled “HPE Education Services Terms and Conditions”.
- f. “Course Materials” means courses, documentation (for example, questionnaires and process guidelines), educational materials (for example, student workbooks, instructor guides, and computer based training), and other written information (in any form including electronic) and any other materials.
- g. “Customer” means either (i) end-user HPE customer who purchases the HPE Education Services described in these T&C from HPE or from an authorized HPE reseller, wholesaler, or distributor, or (ii) an HPE authorized reseller, wholesaler, or distributor who purchases HPE Education Services in order to provide such HPE Education Services to its customer.

#### 2. HPE Education Services

- a. HPE will provide the HPE Education Services described in the applicable HPE Data Sheet and/or Statement of Work in accordance with these T&Cs. In addition to these terms, the following terms located here apply to the purchase of HPE Training Credits.

- b. Subscription based HPE Education Services are for licensed (individually named) users only and are non-transferable. Upon receipt of an acceptable order for subscription based courses, HPE will make the training materials available until the end of the subscription term. Based on your subscription purchase, you may be required to register for courses within your subscription.

### **3. Orders and Acceptance**

- a. For open enrollment classes HPE will provide Customer with a reservation notice as soon as possible after receipt of Customer order and will provide Customer a confirmation notice after receipt of a valid method of payment or signed SOW, if applicable.
- b. The parties hereby agree that they may do business electronically, including contract formation, order placement and acceptance. Any orders placed by Customer and accepted by HPE on any HPE.com website or HPE/Customer extranet site will create fully enforceable obligations that will be subject to the T&Cs. Such orders and acceptances will be deemed for all purposes to be: 1) business records originated and maintained in documentary form; 2) a "writing" or "in writing"; 3) "signed"; and 4) an "original" when printed from electronic files or records established and maintained in the normal course of business. The parties further agree not to contest the validity or enforceability of such transactions under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the parties to be bound thereby and will be admissible if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceeding to the same extent and under the same conditions as other business records originated and maintained in documentary form.
- c. Acceptance of HPE Education Services will occur upon HPE's performance of such services.

### **4. Warranty**

- a. HPE warrants that all HPE Education Services will be provided in accordance with generally recognized commercial practices and standards.
- b. HPE makes no other warranty or representation as to the suitability or quality of the HPE Education Services. HPE expressly disclaims all liability for anything done or omitted in reliance upon the HPE Education Services or Training Materials. Customer shall have sole responsibility for fulfilling any requirements or accomplishing any objectives for which Customer purchased any HPE Education Services.

*The warranty contained in this section 4 is in lieu of and HPE expressly disclaims, and Customer hereby expressly waives, all other express warranties or conditions, and all other warranties, conditions, and obligations implied in law, including Warranties of merchantability and fitness for a particular purpose.*

### **5. Cancellation**

- a. Cancellation by HPE
  - i. Unless otherwise specified or agreed in writing by HPE, all courses shall commence on the date specified by HPE in the order confirmation or SOW. HPE reserves the right to change on up to 10 HPE business days prior to the class

start date. You will be notified at that time of such change or cancellation.

Please keep this in mind when making non-changeable flight arrangements.

- ii. HPE will use reasonable efforts to give notice of any cancellation of any course. If the course cannot be rescheduled, Customer may be entitled to a refund of any fee paid in respect of the cancelled services but shall not otherwise be entitled to any compensation, costs, losses or damages arising from such cancellation.
- iii. HPE business days are Monday through Friday, excluding local HPE holidays.

**b. Cancellation by Customers**

- i. For public / open enrollment classes, including HPE My Virtual Lab, student cancellation or reschedule requests received by HPE fewer than 10 HPE business days prior to the class start date will be subject to the full course fee. Example: if your class begins on Monday you must cancel by the Monday two weeks previous.
- ii. For private / dedicated classes, event cancellation requests received fewer than 10 HPE business days prior to the class start date will be subject to the full course fee.
- iii. Cancellations or refunds do not apply to any eLearning / WBT classes or subscription services that include eLearning / WBT classes.
- iv. HPE business days are Monday through Friday, excluding local HPE holidays.

**6. Payments**

- a. HPE reserves the right to change course prices at any time. In the event of such change, confirmed registrations will be honored at the original price. Registrations confirmed by a purchase order within 30 days of a price increase will also be honored at the original price.
- b. Prices do not include sales, use, service, value added or like taxes or customs duties. Such taxes and duties, when applicable, will be added to HPE's invoices. Further, if class deliveries are requested outside of the original invoicing country, it may be necessary for HPE to issue an invoice from the delivery country location.  
Withholding Tax: If Customer is required by law to withhold and remit tax relating to Customer's order, Customer shall:
  - 1. be entitled to reduce the payment by the amount of such tax;
  - 2. withhold and remit such tax to the applicable tax jurisdiction;
  - 3. assist HPE to obtain the benefit of any reduced withholding tax under applicable tax treaties; and
  - 4. furnish to HPE a tax certificate or other acceptable evidence of payment of such tax as required by the relevant taxing authorities.
- c. All payments will be made in advance unless otherwise stated in the order confirmation or SOW. In such case, the payments will be made within 45 calendar days of the date of invoice. These credit terms are subject to HPE credit approval. HPE may change credit terms upon reasonable notice at any time when, in HPE's opinion, Customer's financial condition, previous payment record, or the nature of Customer's relationship with HPE so warrants.
- d. When Customer has otherwise purchased a volume discounted education package, Customer may utilize such package for fulfillment of payment obligations for orders issued hereunder; provided, however sufficient credits must exist to pay in full for all HPE Education Services that will be delivered pursuant to the order. If additional

credits are needed, Customer may purchase such credits from HPE or an authorized HPE reseller prior to the commencement of the HPE Education Services or provide another valid method of payment for the difference. If Customer provides such other method of payment the volume discount will not apply.

## **7. Intellectual Property**

- a. All Course Materials provided for use throughout the course, including those available through a subscription are the copyrighted works of HPE or the original content provider. Unless otherwise set forth in the SOW, the Course Materials are provided for the sole use of the person attending classes and may not be used by any other person and may not be reproduced, distributed or modified without the written permission of HPE.
- b. HPE will defend or settle any claim against Customer regarding the HPE Education Services, to the effect that HPE knowingly infringed a patent, utility model, industrial design, copyright, trade secret, mask work or trademark in the country where such HPE Education Services are delivered; provided however that Customer promptly notifies HPE in writing of the claim, and Customer cooperates with HPE in, and grants HPE sole control of, the defense or settlement.

## **8. Remedies and Liabilities**

- a. HPE' s total aggregate liability to Customer for any reason and upon all claims and causes of action hereunder will be limited to the amount of fees paid by Customer for the HPE Education Services giving rise to the claim or cause of action. This limitation applies to all causes of action or claims including without limitation breach of contract, breach of warranty, negligence, strict liability or other torts. In no event will HPE be liable for any consequential, special, indirect, incidental or punitive damages, including without limitation loss of data, loss of profits or loss of savings or revenue, even if it has been advised of the possibility of such damages.
- b. In no event will any cause of action be brought against HPE more than one year after the cause of action has accrued.
- c. THE REMEDIES IN THESE T&Cs ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.
- d. The parties understand and agree that, to the extent permitted by applicable law, the foregoing exclusions and limitations of liability represent the parties' agreement as to allocation of risk between them in connection with their respective obligations hereunder. The fees payable to HPE reflect, and are set in reliance upon, this allocation of risk and the exclusions and limitations of liability set forth in these terms and conditions.

## **9. General**

- a. Customer acknowledges and agrees that temporary interruptions of online training services may occur from time to time. HPE shall exercise reasonable care to prevent or minimize such interruptions.
- b. HPE shall not be liable to Customer for any failure or delay in receiving or transmitting data, or for any loss of or corruption to any data arising out of or in connection with delivering or conducting online training services.

- c. HPE may refuse any individual admission, to a course, that it considers to be a safety or security risk to other course participants or the premises where the course is being held. Additionally, HPE may request any person in breach of its course regulations to leave the HPE premises or other premises where the course is held. Fees paid for course participant not admitted due to these circumstances will be forfeited and Customer will not be entitled to a refund for any portion thereof.
- d. HPE will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.
- e. Except with respect to HPE's rights regarding the use of subcontractors, neither party may assign any rights or obligations hereunder without prior written consent of the other party. HPE may, however, assign any rights and obligations hereunder to an affiliated entity at any time subject to written notice. These terms and conditions will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- f. Customer who exports, re-exports or imports data purchased hereunder, assumes responsibility for complying with applicable laws and regulations, and for obtaining required export and import authorizations. HPE may suspend performance if Customer is in violation of applicable export laws.
- g. Disputes arising in connection with these T&Cs will be governed by the laws of the country and locality in which HPE accepts the order.
- h. If any term or provision herein is determined to be illegal or unenforceable, the validity or enforceability of the remainder of the terms or provisions herein will remain in full force and effect.
- i. Customer will comply with the general obligations specified by these Terms and Conditions together with any specific Customer obligations described in the Statement of Work, in a timely manner. Customer acknowledges that HPE's ability to deliver the HPE Education Services is dependent upon Customer's full and timely cooperation with HPE, as well as the accuracy and completeness of any information and data Customer provides to HPE.
- j. Neither party's failure to exercise any of its rights under these T&Cs will constitute or be deemed a waiver or forfeiture of those rights.
- k. These T&Cs and, any applicable HPE order confirmation, SOW and/or HPE Data Sheet, constitute the entire agreement between HPE and Customer and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply. Customer's purchase will constitute Customer's acceptance of these T&Cs which T&Cs may not be changed except by an amendment signed by an authorized representative of each party.
- l. In the event any HPE Confidential Information (which will be identified as such by HPE prior to disclosure) is included in any Customer course, then Customer will be obliged to keep such information strictly confidential and not to disclose it to any third party whomsoever.
- m. These T&C are written in the English language and even if translated to any other language (as may be required by Customer, local courts or local law) these T&C written in English shall take precedence and always prevail. Both parties acknowledge that they fully master the English language and fully understand the content of the T&C.

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