

HPL Storage Systems Program Software License Agreement, dated _____¹

This Agreement is by and between the Hewlett-Packard Company, having an address at 1501 Page Mill Road, Palo Alto, CA (“HP”) and the person or entity (“Participant”) identified below, and is effective from the date above, once both parties have executed this Agreement.

I. INTRODUCTION

This agreement (“Agreement”) relates to each software package identified in an attached Appendix A, each component of such a software package, and any related materials (including any manuals or other technical literature which HP in its discretion decides to provide with the software), all of which shall hereafter be referred to as the Licensed Materials.

HP represents that its research labs (“HP Labs”) is engaged in research into storage system design and configuration, and has as a result of such research developed the Licensed Materials. HP further represents that the Licensed Materials are based upon and contain information, techniques, algorithms and unique computer code that HP has developed at significant cost. HP considers the Licensed Materials as embodying valuable HP trade secrets. HP intends to disclose and provide Licensed Materials only on a confidential basis with the understanding that Participant will protect and maintain the confidentiality of the Licensed Materials.

HP desires to provide Participant with a copy of the Licensed Materials free of monetary charge, but under certain terms and conditions which Participant must strictly adhere to. These terms are designed to provide Participant with some limited use rights and limited publication rights for “academic research,” while keeping the Licensed Materials from being used by parties not approved by HP (or from being used in commerce by any party other than HP) and preserving HP’s discretion to commercialize its Licensed Materials.

In part because HP is not charging money for the license hereunder, HP shall not be liable for any reason whatsoever and is not providing any warranties, maintenance or support of the Licensed Materials; use of the Licensed Materials is at Participant’s sole risk.

In part because Participant is not charging money for the Derivative Works, Participant shall not be liable for any reason whatsoever for HP’s use of them; Participant is not providing any warranties, maintenance or support of the Derivative Works; and use of the Derivative Works is at HP’s sole risk.

These terms are further discussed below.

II. LICENSE GRANT

The term “Participant” may refer to a specific individual, a specific company or university, or a specific subdivision only of a company or university, as indicated by the signature and related blocks at end of this Agreement.

Participant may on a non-exclusive basis reproduce and use the Licensed Materials for academic purposes while maintaining them as Confidential Information (defined in a section below). Except as expressly set forth in this section, Participant shall not provide the Licensed Materials to any third parties. The term

¹ Insert the date on which this agreement becomes valid. The date becomes part of the name for the purposes of identifying the agreement. The date is **REQUIRED**.

“academic purposes” (Academic Purposes) shall be construed to permit internal use and reproduction of the Licensed Materials and to permit publication of the results of the same generally to members of the academic community. The term Academic Purposes shall not be construed to permit use of the Licensed Materials to provide services to third parties, whether or not fee-based, nor shall it be construed so as to permit disclosure of HP’s Confidential Information.

If Participant is a multiple-person entity (e.g., a university or a company or a part thereof), then Participant shall take appropriate measures to ensure that access to Licensed Materials is restricted to those employees, students and faculty associated with that entity, who have been advised of the confidential nature of the Licensed Materials, and who are obligated to abide by the confidentiality, license scope and the other terms of this Agreement. Please note that the term Participant refers to exactly that entity (e.g., that department or subdivision) named at the end of this Agreement, and does not include any parent, subsidiary, university at-large, etc.

The license granted herein is made under HP’s copyrights solely for Academic Purposes, and no other license is granted hereby; in no event shall the license hereunder be construed to permit use or incorporation of the Licensed Materials into any commercial product or service. No patent, copyright or other license is granted hereby, and HP reserves all title in and to the Licensed Materials.

III. CONFIDENTIAL INFORMATION

“Confidential Information” shall include the Licensed Materials provided to Participant by HP, as well as information provided to Participant by HP in the course of this Agreement that is marked Confidential, or described to Participant as confidential at the time of its provision to Participant and identified as Confidential in writing no later than thirty (30) days after such provision.

Participant shall use reasonable measures to preserve the secrecy of HP’s Confidential Information, in no event less than those measures which Participant uses to protect its own information of a like nature. Participant’s obligations shall continue for at least seven years after the later of both parties’ execution of this Agreement and both parties’ execution of the appropriate sheet of Appendix A. Participant’s obligations shall be excused to the extent that any specific Confidential Information (a) becomes public through no misappropriation or breach of confidentiality obligation to HP, (b) is received from a third party entitled to disclose such information where the third party has not breached a confidentiality obligation or committed a misappropriation with respect to such information, (c) is independently invented by persons not having any direct or indirect access to Confidential Information, (d) can be demonstrated to have been in its possession prior to receipt under this agreement without confidentiality restrictions, or (e) is disclosed to a third party with the written approval of HP. Participant may disclose specific Confidential Information to the extent required by governmental decree or order of a court of competent jurisdiction without breaching this Agreement, provided that Participant shall use reasonable measures (1) to obtain a protective order prohibiting public disclosure of such Confidential Information or discloses such Confidential Information only under seal (unless these are expressly forbidden by participant’s legal status as a State agency), (2) promptly informs HP of any such proceedings, and (3) (unless expressly forbidden by participant’s legal status as a State agency) permits HP’s involvement in any such proceedings.

Participant shall be entitled to publish information as delineated in the “Publication” section, below, without violating the terms of these Confidential Information restrictions.

IV. LICENSE BACK FOR DERIVATIVE WORKS OR IMPROVEMENTS; OTHER INTELLECTUAL PROPERTY ISSUES

As a condition of the license provided under this Agreement, Participant agrees that HP is hereby licensed to any “derivative works” (as that term is conventionally used and understood in connection with the

copyright laws) of the Licensed Materials. HP's license shall be worldwide, fully paid-up, non-exclusive, perpetual and royalty-free, and shall include rights to copy, make, modify, adapt, translate, use, sell, distribute and have-made such derivative works under Participant's applicable copyrights, patents and other forms of intellectual property. Participant must deliver any such derivative works and future revisions to them in source code format to the HP Project Sponsor identified below no later than three months after first successful compilation. Notwithstanding this last provision, if there are multiple updates of the same derivative work, all having substantially the same purpose and functionality, Participant shall be obligated only to provide the most up-to-date version at the end of that three-month period.

Derivative works of the Licensed Materials shall be governed by the terms of this Agreement as though they were Licensed Materials, e.g., Participant may not share its derivative works with third parties who are not employees, students or faculty who comply with the provisions above.

Participant shall not remove any copyright or other proprietary notice placed in the Licensed Materials by HP, and shall cause the same to be reproduced in each derivative work of the Licensed Materials.

Participant shall not knowingly incorporate any of HP's Confidential Information into any patent application. If Participant does incorporate any HP Confidential Information into any patent application then, in addition to any remedies available to HP for improper disclosure of Confidential Information, HP shall receive a free, fully paid-up, non-exclusive, worldwide, royalty-free and perpetual license under any resultant patent, utility model, inventor's certificate or similar issuing intellectual property right, including rights to make, use, sell and have-made any product or method whatsoever. Participant agrees that HP shall also receive similar license rights under any patent application filed by Participant claiming improvements to the Licensed Materials.

V. PUBLICATION

Participant may publish for Academic Purposes the results of any software execution of the Licensed Materials, provided that Participant may not publish Licensed Materials themselves. As part of each such publication, Participant shall include an acknowledgement of the use of the applicable HP software or other Licensed Materials.

Participant may also include in such publication a brief summary of how the applicable Licensed Materials operate. The brief summary must "brief," that is, detailing the operation of Licensed Materials may not be a primary purpose of the publication and the summary must be limited to no more than a few brief paragraphs. The brief summary must be used only to explain how data or results discussed in the publication were achieved, and it must not include any fragmented portion of, or specific algorithm or code employed by, the Licensed Materials. Participant shall not describe the License Materials in any way except as authorized by this paragraph, or as expressly authorized in advance, in writing, by HP's Project Sponsor on a case-by-case basis. The provisions governing the permitted brief summary may be made more (but not less) restrictive by specific terms in the attached Appendix A.

Participant also agrees that within thirty days of the time it (a) submits for external publication any article based on to the Licensed Materials or their use, or (b) internally publishes any such article, Participant shall also share such article with HP, addressed to the HP Sponsor identified below. "Internal publication" as used in this paragraph refers to cases where Participant is a specific subdivision or department of a company or university, and formally shares information within that company or university in a manner that is not accessible to the general public or others outside the company or university. If such internal publication provided to HP includes information which is confidential to Participant and the information is clearly and distinctively marked as such by an identifying label (e.g., "Confidential to [Participant]"), then HP shall be obligated to protect such information as Participant's confidential information. HP's obligations shall be the same as those specified in the Confidential Information section, above, and subject

to the same exclusions, except that the period of confidentiality for such Participant confidential information shall be two years from the date of provision to HP.

VI. NO WARRANTY, SUPPORT OR MAINTENANCE

The parties agree that HP, in setting its price (of no monetary payment) for the license hereunder, provides no warranties, implied or express, under this Agreement or the Licensed Materials. In particular, HP specifically and expressly disclaims any warranty of merchantability, any warranty of fitness for a particular purpose, any date calculation warranty, and any warranty that the Licensed Materials are free from intellectual property claims of others.

The Licensed Materials are experimental in nature and HP shall be under no obligation to maintain or support them, or to answer questions relating to the Licensed Materials. Use of the Licensed Materials is at Participant's sole risk.

With respect to derivative works provided back to HP pursuant to the terms above, the parties agree that as Participant is providing such works for free, Participant provides no warranties, implied or express, under this Agreement or otherwise with derivative works. In particular, Participant specifically and expressly disclaims any warranty of merchantability, any warranty of fitness for a particular purpose, any date calculation warranty, and any warranty that such Derivative Works are free from intellectual property claims of others.

Derivative works are experimental in nature and Participant shall be under no obligation to maintain or support them, or to answer questions relating to such derivative works. Use of the derivative works is at HP's sole risk.

VII. LIMITATION ON LIABILITY

The parties agree that HP, in setting its price (of no monetary payment) for the license hereunder, assumes no liability for damages for any reason whatsoever, based on any legal theory whatsoever, relating to the Licensed Materials or this Agreement. By entering into this Agreement and receiving the Licensed Materials, Participant waives any claim, assertion or right to monetary damages against HP which relates to this Agreement or any activities performed under this Agreement. HP shall in no event be liable for any damages relating to the Licensed Materials, this Agreement, or activities performed under this Agreement, even if advised of the possibility of the foregoing.

With respect to derivative works provided back to HP pursuant to the terms above, the parties agree that as Participant is providing such works for free, Participant assumes no liability for damages suffered by HP based on HP's use of such derivative works, based on any reason or legal theory whatsoever.

Further, in no event shall either party be liable for indirect, special, punitive, incidental or consequential damage, even if advised of the possibility of the foregoing.

VIII. TERMINATION

HP may by written notice terminate the license hereunder at will. In the event that HP terminates this Agreement without cause, Participant shall use reasonable efforts to return all copies of the Licensed Materials or destroy all copies of the Licensed Materials within six (6) months of such notice. In the event that HP terminates for cause as recited in the notice of termination, Participant shall immediately cease using the Licensed Materials and shall certify the immediate return or destruction of all copies of the Licensed Materials which are in Participant's possession.

Termination by HP will only affect the rights of Participant, its students, employees and faculty, with respect to the Licensed Materials. Termination by HP will not affect or impact any of the other terms of this Agreement, which shall continue in full force and effect.

IX. MISCELLANEOUS TERMS

Participant may not assign, transfer, encumber or delegate this Agreement, the license hereunder or the Licensed Materials for any reason whatsoever; because of the confidential and proprietary nature of the Licensed Materials, the license given hereunder to Participant shall be considered personal in nature, and any assignment, transfer, encumbrance or delegation of the License Materials or this Agreement for any reason whatsoever, whether by law or otherwise, shall be considered to work irreparable harm upon HP. If Participant is a subdivision or department of a company or university, this non-assignment provision shall prevent the transfer or assumption of this Agreement or any liabilities or obligations thereof by the company or university. HP is not receiving monetary consideration for the Licensed Materials, this non-assignment provision shall be considered material inducement for HP to enter this Agreement, and HP represents that it would not have entered into this Agreement absent this clause.

HP's Project Sponsor is identified as follows:

John Wilkes
Hewlett-Packard Company
Mail Stop 1U-13
1501 Page Mill Road
Palo Alto, CA 94304

The headings used in this Agreement are for reference only, and should not be construed to impose any limitations.

This Agreement shall be governed by the laws of Delaware.

Under no circumstances shall this Agreement or the Licensed Materials be regarded as the subject of binding arbitration. Even if an arbitration clause from another agreement potentially governs subject matter hereunder, the parties hereby agree this Agreement integrates their understanding of no binding arbitration for any matter or dispute which is in any way related to this Agreement or the Licensed Materials. Except as otherwise provided by this Agreement, the parties reserve all legal remedies whatsoever, including by way of example, the right to proceed in a court of law before a judge.

This Agreement does not create any agency or partnership relationship.

This Agreement integrates the parties' entire understanding relating to the Licensed Materials, Derivative Works, and any Confidential Information, publications, or intellectual property that result from or are directly associated with their exchange under this Agreement, and may not be contradicted by any prior or contemporaneous oral or written agreement. This Agreement may be amended only by a written amendment, executed by both parties, which is explicitly captioned as an amendment to this Agreement.

HP will make the Licensed Materials available to university research groups under terms and conditions similar to those in this Agreement for the purpose of verifying research results that Participant obtains through its use of, or that it derives from, Licensed Materials (including Participant derivative works).

IT IS SO AGREED.

“PARTICIPANT”

“HP”

Participant name:² _____
Participant address: _____

Hewlett-Packard Company
1501 Page Mill Road
Palo Alto, CA 94304

Authorized signature: _____³

_____⁴

Printed name: _____

John Wilkes, Laboratory Scientist

Date:⁵ _____

² Please enter the name of the individual, or the specific unit of the university or company that will be receiving and using the information, for example, “Storage Systems Program, Department of Electrical Engineering, Greenwich State University.”

³ For Participant, Authorized Signature is that of somebody capable of legally binding Participant to this Agreement. In many universities, this involves the Dean’s office or its equivalent.

⁴ For HP, Authorized Signature is that of an HP functional manager or equivalent.

⁵ The date that the party signed the agreement.