

# HP Network Automation

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for the JAVA SE RUNTIME ENVIRONMENT (JRE) VERSION 6

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(2) TSI may assume and retain sole control of the investigation, the defense or the settlement of any third party infringement claim made against Licensee or TSI with respect to the Software Program, including the employment of counsel or accountants, at its cost and expense. Licensee shall have the right to employ counsel separate from counsel employed by TSI in any such action and to participate therein, but the fees and expenses of such counsel employed by Licensee shall be at Licensee expense. TSI shall have the right to determine and adopt (or, in the case of a proposal by Licensee, to approve) a settlement of such matter in its reasonable discretion. TSI shall not be liable for any settlement of any claim effected without its prior written consent, which shall not be unreasonably withheld. Whether or not TSI chooses to so investigate or defend such claim, Licensee shall cooperate with TSI in the defense thereof and shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested by TSI in connection therewith.

(3) If such a claim arises, or in either party's judgment is likely to arise, Licensee agrees to allow TSI, at TSI's option, to either (i) procure the right to permit the continued exercise of the rights and licenses in the Software Program granted under this Agreement; (ii) replace or modify the Software Program so it be-comes non-infringing, while affording equivalent performance; or (iii) terminate the license for the infringing Software Program and upon return thereof by Licensee, refund the unearned portion of any license fees paid by Licensee for the remainder of the current term hereof.

(4) TSI shall have no indemnity obligation for claims of infringement resulting from any combination, operation or use of the Software Program, or any components thereof, with any software programs or data not supplied by TSI if such infringement would have been avoided by use of the Software Program alone. Licensee acknowledges and agrees that these four items are the exclusive

remedy of Licensee for damages for breach of warranty or representations contained in this Section 7.

## Section 8 - Termination

Should either party commit a material breach of its obligations hereunder, the other party may, at its option, terminate this Agreement by written notice to the party in default. Such notice shall identify and describe the default upon which termination is based. The defaulting party shall have thirty (30) days from the effective delivery of the notice to cure such default, which, if effected, shall prevent termination by virtue of such default. Should an insolvency proceeding be filed by or against either party, the other party may terminate this Agreement forthwith by giving a written notice to the first party. Upon termination of this Agreement, Licensee will either return to TSI or destroy all copies of the Software Program and documentation then in Licensee's possession. Licenses to the Software Program granted in the normal course of business by Licensee to its customers shall survive termination of this Agreement. Licensee shall, within thirty (30) days after the date of such termination, furnish TSI with a certificate of compliance in accordance with this Section. The parties agree that TSI shall have the right to enforce the obligations arising under this Section and to enjoin or compel Licensee through injunctive relief. Licensee may retain a commercially reasonable number of copies of the Software Program and documentation solely for the purpose of supporting Licensee customers who purchased a Product prior to the termination of this Agreement.

## Section 9 - Export Controls

Licensee shall comply with, and ensure that Licensee sublicensees and resellers comply with, all applicable laws, regulations, rulings and executive orders of Japan or any other relevant jurisdiction relating to the export and re-export of the Software Program or any products containing the Software Program. Licensee shall not directly or indirectly export or re-export any Software Program or any Products containing the Software Program unless Licensee have obtained a license to do so if such a license is required. Licensee further agree that Licensee take appropriate measure to ensure that the Software Program or any Products containing the Software Program will not be exported or re-exported in violation of any applicable laws or regulations of any relevant jurisdiction.

## Section 10 - Entire Agreement

This Agreement, including any attachments, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, both oral and written, representations, statements, negotiations and undertakings, with respect to the subject matter hereof, which such agreements, representations, statements, negotiations and undertakings are merged herein. No amendment or modification of this Agreement or any

provision or attachment of this Agreement shall be effective unless it is in writing and signed by both parties.

### Section 11 - Governing Law

The validity, construction and performance of this Agreement shall be governed by the substantive laws of Japan (excluding conflicts of law principles). Licensee and TSI agree that any dispute arising out of this Agreement shall be subject to the exclusive jurisdiction of the Tokyo District Court of Japan. If any legal action is undertaken to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which that party may be entitled.

You agree that the United Nations Convention on Contracts for the International Sales of Goods will not apply to this Agreement.

### Section 12 - Assignment and Benefit

Without the consent of the other party in writing, neither party may assign this Agreement; provided, however, TSI or Licensee may assign this Agreement to a wholly-owned subsidiary of the respective corporation or a corporation in which the shareholders of the respective corporation own a majority interest of the voting control provided that the assigning party remains obligated hereunder; further provided, however, TSI or Licensee may assign this Agreement to another corporation which acquires or has acquired substantially all of the stock or assets of the assignor. If Licensee assigns this Agreement to an assignee as permitted in this Section, the assignee's license to use the Software Program is limited to use in Products which were offered by Licensee to Licensee customers or potential customers and the assignee is prohibited from use of the Software Program in other products or parts of products developed, sold or distributed by the assignee.

This Agreement shall be binding upon and shall inure to the benefit of Licensee and TSI and each party's successors, subject to the other provisions of this Section.

### Section 13 - 3rd Party Components

(1) The Software Program includes software and documentation components developed in part by Silver Egg Technology, Inc. ("SET") prior to 2001 and released under the following license.

Copyright (c) 2001 Silver Egg Technology

Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sub-license, and/or sell copies of the Software, and to permit persons to whom the

Software is furnished to do so, subject to the following conditions:

The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.

THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.

#### Section 14 - Confidentiality

Confidential Information means all technical, business, financial and other information that is disclosed by either party to the other, whether orally or in writing, and all the terms and conditions of this Agreement, and all non-publicly available information.

"Confidential Information" will not include any information (a) that is publicly available through no breach of this Agreement by either party, (b) that is independently developed or was previously known by either party, or (c) that is rightfully acquired by either party from a third party not under an obligation of confidentiality.

Except as expressly permitted by this Agreement, both parties shall not, nor shall they permit their respective employees, agents, attorneys or independent contractors to, disclose, use, copy, distribute, sell, license, publish, reproduce or otherwise make available Confidential Information of the other party. Each party will (a) secure and protect the other party's Confidential Information by using the same or greater level of care that it uses to protect its own confidential and proprietary information of like kind, but in no event less than a reasonable degree of care, and (b) advise each of their respective employees, agents, attorneys and independent contractors who have access to such Confidential Information of the terms of this paragraph. Notwithstanding the foregoing, either party may disclose the other party's Confidential Information to the extent required by applicable law or regulation, or by order of a court or other governmental entity, in which case such party shall so notify the other party as soon as practicable.

The confidentiality obligation hereunder shall survive termination or expiration of this Agreement.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

LICENSEE TSI

\_\_\_\_\_ By: \_\_\_\_\_

Department name Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

Licensee's Authorized Signature

\_\_\_\_\_

Typed or Printed Name

\_\_\_\_\_

Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

Street Address

\_\_\_\_\_

City or Town

\_\_\_\_\_

State or Province

\_\_\_\_\_

Zip Code

\_\_\_\_\_

Country

\_\_\_\_\_

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EXHIBIT 1

Licensed Software:

Java Service Wrapper version \_\_\_\_, \_\_\_\_\_ Edition \_\_ Bit

Licensed Operating System and Hardware Platform:

All platforms

Licensed Software Commercial Restrictions:

None

Licensed Software Use:

Bundle Development / Deployment.

Licensed Software Use Location:

Bundle Development/Deployment Worldwide

Authorized Number of Users:

Unlimited

FEES:

(Licensed Software)

\$\_\_\_\_\_

(TSIMS fees, if applicable)

Included in the License Fee for Year 1

(Services)

None

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## EXHIBIT 2

### End User License Terms / Copyright Notice

All End User Licenses shall include provisions that:

- (1) the End User is granted only a personal, nontransferable, and nonexclusive right to use the software only for personal use of the End User;
- (2) Licensee and/or its licensors retain all of their intellectual property rights in the software, and no title to such intellectual property is transferred to the End User;
- (3) the End User agrees not to reverse assemble, decompile, or otherwise attempt to derive source code from the TSI software;
- (4) Licensee's licensors shall not be liable to the End User for any indirect, consequential, incidental or special damages arising out of the use or license of the software, regardless of the theory of liability (including negligence and strict liability); and
- (5) Licensee and/or its licensors will have the right to terminate the license at any time in the event the End Users misuses the software; and

A section concerning 3rd party components shall be provided, in all End User licenses, which contains at least the following:

The Software Program includes software and documentation components developed in part by Silver Egg Technology, Inc. ("SET") prior to 2001 and released under the following license.

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The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.