HP SOFTWARE LICENSE TERMS

HEWLETT PACKARD COMPANY LICENSE AGREEMENT

IMPORTANT: READ CAREFULLY BEFORE USING THIS PRODUCT. USE OF THE SOFTWARE IS SUBJECT TO THE HEWLETT-PACKARD COMPANY ("HP") SOFTWARE LICENSE TERMS SET FORTH BELOW. USE OF THE SOFTWARE INDICATES CUSTOMER'S ACCEPTANCE OF THESE LICENSE TERMS. IF CUSTOMER DOES NOT ACCEPT THESE LICENSE TERMS, CUSTOMER MUST NOT INSTALL THE SOFTWARE.

SOFTWARE PROGRAM: HP StorageWorks Performance Advisor XP

PRODUCT VERSION: 2.0

PART NUMBER: B9369-96064

QUANTITY of DEVICES: 1 XP Disk Array

DEFINITIONS

- "Software" means one or more programs capable of operating on a controller, processor or other hardware Product ("Device") and related documentation. Software is either a separate Product, included with another Product ("Bundled Software"), or fixed in a Device and not removable in normal operation ("Firmware").
- "Use" means storing, loading, installing, executing, or displaying Software on a Device.
- "Products" means Software and documentation that are determined by HP to be available from HP upon receipt of Customer's order.
- "Software License" means the Software license grant and general license terms set forth herein. Each Software License has a corresponding License Fee.
- "License Fee" means the fee or fees designated by HP for Use of Software. Different License Fees may apply to particular Software if more than one Software License is available for that Software.
- "Delivery" means standard HP shipping to and arrival at the receiving area at the Ship To address specified in Customer's order.

LICENSE GRANT

- 1 In return for the License Fee, HP grants Customer a non-exclusive license to Use the object code version of the Software on the quantity of devices specified above at any one time and in conformance with:
 - a. The terms set forth herein; and
 - b. Use restrictions and authorizations for the Software specified by HP in its quotation, invoice or terms that accompany the Software; and
 - c. HP third-party suppliers' terms that accompany the Software.

In the event of a conflict, the third-party suppliers' terms that accompany the Software will take precedence over the Use restrictions and authorizations specified by HP and the terms set forth herein ONLY IN CONNECTION WITH THE CORRESPONDING THIRD PARTY SOFTWARE (SUCH CONFLICTING THIRD PARTY TERMS, IF ANY, SHALL NOT EXPAND HP'S DUTIES OR POTENTIAL LIABILITY UNDER THIS AGREEMENT); and the Use restrictions and authorizations specified by HP will take precedence over the terms set forth herein.

- **2** Unless otherwise specified, in return for the applicable License Fee, HP grants Customer a license to Use one copy of the Software on one Device at any one time.
- **3** Unless otherwise specified, all Software Licenses will be perpetual unless terminated or transferred in accordance with the terms of this agreement.
- 4 If Customer is an HP authorized reseller, Customer may sublicense the Software to an end-user for its Use or (if applicable) sublicense the Software to an HP authorized reseller for subsequent distribution to an end-user for its Use. These sublicenses must incorporate the terms of this Software License in a written sublicense agreement, which will be made available by HP upon request. If Customer is not an HP authorized reseller, Customer may not sublicense the Software unless otherwise agreed to by HP in writing.

Pursuant to HP's licenses with these third-parties, HP has included the following relevant license notices.

JClass Chart is copyrighted by Quest Software, Inc.

Copyright © 1985 - 2003

Solid Information Technology, Inc.

Copyright © 1993-2004

JAVATM2 Runtime Environment Version 1.4.2 is copyrighted by Sun Copyright © 2000-2003 Sun. All Rights Reserved.

3magic Coffee Table is copyrighted by 3Magic Copyright © 2000-2003 3magic. All Rights Reserved.

Apache

Apache Software License, Version 1.1

Copyright © 2000. The Apache Software Foundation. All rights reserved.

Tomcat

Copyright © 2000. The Apache Software Foundation. All rights reserved.

5 THE SOFTWARE PROVIDED HEREIN, IS PROVIDED BY HP AND BY THIRD PARTIES, INCLUDING THE OPEN SOURCE COMMUNITY ("ANCILLARY SOFTWARE"). USE OF THE HP SOFTWARE, THE ANCILLARY SOFTWARE, ACCOMPANYING PRINTED MATERIALS, AND THE "ONLINE" OR ELECTRONIC DOCUMENTATION (COLLECTIVELY, THE "PRODUCT") IS CONDITIONED UPON AND LIMITED BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING THE "AS IS WARRANTY STATEMENT" AND THE TERMS AND CONDITIONS OF THE ANCILLARY SOFTWARE LICENSE AGREEMENTS ("ANCILLARY SOFTWARE LICENSES"). USE OF ANCILLARY SOFTWARE SHALL BE GOVERNED BY THE ANCILLARY SOFTWARE LICENSE, EXCEPT THAT THE DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITIES PROVISIONS CONTAINED IN THE "AS-IS WARRANTY STATEMENT" OF THIS AGREEMENT SHALL ALSO APPLY TO SUCH ANCILLARY SOFTWARE. HP HAS IDENTIFIED ANCILLARY SOFTWARE BY EITHER NOTING THE ANCILLARY SOFTWARE PROVIDER'S OWNERSHIP WITHIN EACH ANCILLARY SOFTWARE PROGRAM FILE AND/OR BY PROVIDING INFORMATION IN THE "ANCILLARY.TXT" FILE. THE ANCILLARY SOFTWARE LICENSES ARE ALSO SET FORTH IN THE "ANCILLARY.TXT" FILE. BY ACCEPTING THE TERMS AND CONDITIONS OF THIS AGREEMENT, LICENSEE IS ALSO ACCEPTING THE TERMS AND CONDITIONS OF EACH ANCILLARY SOFTWARE LICENSE IN THE ANCILLARY.TXT FILE.

IF AND ONLY IF THE PRODUCT INCLUDES SOFTWARE LICENSED UNDER THE GNU GENERAL PUBLIC LICENSE ("GPL SOFTWARE"), LICENSEE MAY OBTAIN A COMPLETE MACHINE-READABLE COPY OF THE GPL SOFTWARE SOURCE CODE ("GPL SOURCE CODE") BY DOWNLOAD FROM A SITE SPECIFIED IN THE FOLLOWING HP WEBSITE: WWW.HP.COM. UPON LICENSEE'S WRITTEN REQUEST, HP WILL PROVIDE, FOR A FEE COVERING THE COST OF DISTRIBUTION, A COMPLETE MACHINE-READABLE COPY OF THE GPL SOURCE CODE, BY MAIL, TO LICENSEE. INFORMATION ABOUT HOW TO MAKE A WRITTEN REQUEST FOR GPL SOURCE CODE MAY BE FOUND AT THE FOLLOWING WEBSITE: WWW.HP.COM.

GENERAL LICENSE TERMS

COPYRIGHT: SOFTWARE is owned and copyrighted by HP or by third-party suppliers. Customer's Software License confers no title or ownership and is not a sale of any rights in the Software. Third-party suppliers may protect their rights in the Software in the event of any infringement.

RESTRICTIONS: Customer may not rent, lease, or otherwise transfer the Software except as expressly authorized in these terms. Customer may not make the Software available over the Internet or any other publicly accessible network or technology. Customer may not remove any copyright, trademark, or other proprietary notices from the Software or the media. Any and all copyrights must be reproduced.

COPYING: Customer may not copy the Software except as expressly provided for herein. Customer may copy the Software into the local memory or storage device of the specified quantity of computers. Customer may not copy the Software onto a network server or onto a company or personal intranet. Customer may make archival or back-up copies of the Software. Customer may permanently transfer its rights to use the Software, the Software itself including any updates to the specified version of the Software, and the accompanying documentation including your hard copy License Agreement, provided you retain no copies of the Software, updates, documentation, or License Agreement, and the recipient agrees to the License Terms.

TRANSFERABILITY: Customer's Software License is transferable subject to HP's prior written authorization and payment to HP of any applicable fee(s). Upon transfer of the Software License, Customer will immediately deliver all copies of the Software to the transferee. Customer may transfer Firmware only upon transfer of the associated Device. The transferee must agree in writing to the terms of Customer's Software License terms will be binding on involuntary transferees, notice of which is hereby given. Customer's Software License will automatically terminate upon transfer.

TERMINATION: HP may terminate Customer's or any transferee or sublicensee's Software License upon notice for failure to comply with any applicable Software License terms. Immediately upon termination, the Software and all copies of the Software will be destroyed or returned to HP. Copies of the Software that are merged into adaptations, except for individual pieces of data in Customer's or transferee's or sublicensee's database, will be removed and destroyed or returned to HP. With HP's written consent, one copy of the Software may be retained subsequent to termination for archival purposes.

UPGRADES: Updates, upgrades or other enhancements are available under HP Support agreements. HP reserves the right to require additional licenses and fees for Use of the Software on upgraded Devices.

MODIFICATION/DECOMPILING: Customer will not modify, disassemble, reverse engineer, decompile or create derivative works of the Software without HP's prior written consent. Where Customer has other rights under statute, Customer will provide HP with reasonably detailed information regarding any intended

disassembly or decompilation. Customer will not decrypt the Software unless necessary for legitimate use of the Software.

LIMITATION OF LIABILITY

Attention Notice

EXCEPT TO THE EXTENT PROHIBITED BY LOCAL LAW, IN NO EVENT WILL HP OR ITS SUBSIDIARIES, AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUPPLIERS BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER DAMAGES (INCLUDING LOST PROFIT, LOST DATA, OR DOWNTIME COSTS), ARISING OUT OF THE USE, INABILITY TO USE, OR THE RESULTS OF USE OF THE SOFTWARE, WHETHER BASED IN WARRANTY, CONTRACT, TORT OR OTHER LEGAL THEORY, AND WHETHER OR NOT HP WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE SOFTWARE IS NOT SPECIFICALLY DESIGNED, MANUFACTURED OR INTENDED FOR USE IN THE PLANNING, CONSTRUCTION, MAINTENANCE, OR DIRECT OPERATION OF A NUCLEAR FACILITY, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS. CUSTOMER IS SOLELY LIABLE IF THE SOFTWARE IS USED FOR THESE APPLICATIONS. CUSTOMER WILL INDEMNIFY AND HOLD HP HARMLESS FROM ALL LOSS, DAMAGE, EXPENSE OR LIABILITY IN CONNECTION WITH SUCH USE. In any case, HP's entire liability under any provision of this Software License and Express Limited Warranty shall be limited to the greater of the amount actually paid by Customer for the Software or U.S. \$ 5.00. Customer's use of the Software is entirely at Customer's own risk. Should the Software prove defective, Customer assumes the entire cost of all service, repair or correction. Some jurisdictions do not allow the exclusion or limitation of liability for incidental or consequential damages, so the above limitation may not apply to Customer to the extent prohibited by such local laws.

WARRANTY: HP warrants only that the Software media will be free of physical defects for a period of ninety (90) days from delivery.

EXCLUSIVE REMEDY: The entire liability of HP and its suppliers and Customer's exclusive remedy for Software that does not conform to this Limited Warranty shall be the repair or replacement of the defective media. This warranty and remedy are subject to Customer's return of the defective media during the warranty period to HP in the country in which Customer obtained the Software.

Attention Notice

<u>DISCLAIMER</u>: TO THE EXTENT ALLOWED BY LOCAL LAW, THIS SOFTWARE IS PROVIDED TO CUSTOMER "AS IS" WITHOUT WARRANTIES OR CONDITIONS OF ANY

KIND, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED. HP SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, TITLE, ACCURACY OF INFORMATIONAL CONTENT, AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE IS ASSUMED BY CUSTOMER. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY HP OR HP'S AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR AMEND THIS "AS IS" WARRANTY. Some jurisdictions do not allow exclusions of implied warranties or conditions, so the above exclusion may not apply to Customers to the extent prohibited by such local laws. Customer may have other rights that vary from country to country, state to state, or province to province.

NOTE: EXCEPT TO THE EXTENT ALLOWED BY LOCAL LAW, THESE WARRANTY TERMS DO NOT EXCLUDE, RESTRICT OR MODIFY, AND ARE IN ADDITION TO, THE MANDATORY STATUTORY RIGHTS APPLICABLE TO THE LICENSE OF THE SOFTWARE TO CUSTOMER; PROVIDED, HOWEVER, THAT THE CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS SPECIFICALLY DISCLAIMED AND SHALL NOT GOVERN OR APPLY TO THE SOFTWARE PROVIDED IN CONNECTION WITH THIS WARRANTY STATEMENT.

GOVERNMENT: If the Software is licensed for use in the performance of a U.S. government prime contract or subcontract, Customer agrees that, consistent with FAR 12.211 and 12.212, commercial computer software, computer software documentation and technical data for commercial items are licensed under vendor's standard commercial license.

GENERAL TERMS

ASSIGNABILITY: Customer may not assign any rights or obligations hereunder without prior written consent from HP.

EXPORT: Customer who exports, re-exports or imports HP licensed Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. HP may suspend performance if Customer is in violation of any applicable laws or regulations.

SEVERABILITY: 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.

INTEGRATION/PRECEDENCE: These HP Software License Terms 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. These HP

Software License Terms may not be changed except by an amendment signed by an authorized representative of each party.

GOVERNING LAW. The validity of any of the terms of this license agreement, as well as the rights, duties and obligations of the parties under this license agreement, will be governed by the laws of the State of California, USA, without reference to any conflict of laws or choice of law principles in the State of California that might result in the application of the law of another jurisdiction.

March 2005

© 2005 Hewlett-Packard Development Company, L.P