

NEC Software License Agreement

NEC Storage HYDRAsTOR Virtual Appliance(Base 1TB)

The customer ("Customer") and NEC Corporation ("NEC") hereby agree as follows with respect to the Licensed Software defined in Section 1 hereunder.

1. Definition

- i. "NEC Storage HYDRAsTOR series" shall mean the appliance product of NEC where the Licensed Software is preinstalled.
- ii. "HYDRAsTOR device" shall mean a hardware portion of "NEC Storage HYDRAsTOR series", which is managed and controlled by Licensed Software.
- iii. "Licensed Software" shall mean;
 - (1) the preinstalled software portion of NEC Storage HYDRAsTOR series in object code form and the software either in object code form or source code form running on platforms other than HYDRAsTOR device and accompanying documents, in the case the Customer purchased the NEC Storage HYDRAsTOR series or
 - (2) the software included in the Licensed Software of NEC named as NEC Storage HYDRAsTOR Virtual Appliance, and accompanying documents, in the case the Customer purchased the NEC Storage HYDRAsTOR Virtual Appliance.
- iv. "HYDRAsTOR software" shall mean a portion of the Licensed Software excluding JRE software. The Customer may obtain the details of the software within the HYDRAsTOR software by contacting NEC's E-mail address "hydrastor-window@hyg.jp.nec.com".
- v. "JRE software" shall mean the software and accompanying documents that is a portion of Licensed Software and listed in table 1 "The list of JRE software" attached hereto.
- vi. The Licensed Software may contain the third party software subject to such third party's license terms ("Third Party Licensed Software") and the software subject to an open source software license terms ("OSS License Software"). The use by the Customer of the Third Party Licensed Software and OSS License Software shall be subject to such third party's license terms and open source software license terms, respectively, which shall prevail over the terms and conditions of this Agreement. The Customer may obtain the details of the software within the Third Party Licensed Software and the OSS License Software and applicable license terms and conditions by contacting NEC's E-mail address "hydrastor-window@hyg.jp.nec.com".
- vii. "VM" shall mean a virtual hardware system made by certain virtualization technology on which the Licensed Software may operate without any modification thereto.
- viii. "Node" shall mean;
 - (1) a device consisting HYDRAsTOR device, in the case the Customer purchased the NEC Storage HYDRAsTOR series or
 - (2) an instance of the VM, in the case the Customer purchased the NEC Storage HYDRAsTOR Virtual Appliance.

2. License Conditions

- i. To the HYDRAsTOR software, the terms and conditions in Sections 3 to 10 herein shall apply.
- ii. To the JRE software, the terms and conditions of Sections 3 to 10 and "Additional conditions for JRE" set forth in Exhibit 1 shall apply.
- iii. To Licensed Software, the terms and conditions of applicable to such OSS Licensed Software and the terms and conditions in Sections 8 to 10 herein shall apply. The terms and conditions of typical OSS Licensed Software are set forth in Exhibit 2 to 16.
- iv. Regarding Sections 2.2 and 2.3, if there is any conflict between the terms and conditions of the body of this Agreement, and those of respective Exhibits and of applicable OSS licenses, the latter shall prevail.
- v. This Agreement shall also apply to the Licensed Software for additional Nodes to HYDRAsTOR device and the updated versions of the Licensed Software, furnished by NEC to the Customer after Customer's initial receipt of the Licensed Software unless different terms and conditions shall apply to the Licensed Software so furnished.

3. License

- i. NEC grants the Customer a personal, non-transferable and non-exclusive license to install the Licensed Software;
 - (1) on Nodes consisting the HYDRAsTOR device on which the Licensed Software has been preinstalled by NEC, in the case the Customer purchased the NEC Storage HYDRAsTOR series or
 - (2) on a single Node, in the case the Customer purchased the NEC Storage HYDRAsTOR Virtual Appliance.
- ii. In the case NEC provides the Customer a copy of the Licensed Software. The Customer may use it only for the backup purpose.
- iii. The Customer may use the Licensed Software only for the purpose of the Customer's internal business. Except as otherwise permitted by NEC in writing, the Customer may not (1) rent or lease the Licensed Software or (2) use the Licensed Software in or for a service under which the Customer offer any use of the Licensed Software by third party(ies), such as hosting service and time-sharing service.

4. Copying

- i. The Customer may make one (1) copy of the Licensed Software solely for the backup purpose.
- ii. The Customer shall reproduce the copyright notices or other proprietary notices on each copy of the Licensed Software the Customer made pursuant to Section 4.1 above.
- iii. The Customer shall not execute more than one instance of the VM with the same license key for the NEC Storage HYDRAsTOR Virtual Appliance.

5. Transfer, etc.

- i. Without the prior written consent of NEC, the Customer shall assign, transfer, or otherwise make available the Licensed Software to any third party.
- ii. The Customer shall not export or transfer, directly or indirectly, the Licensed Software to any country other than the country where the Customer acquires the Licensed Software without prior written consent of NEC and further without the appropriate consent, if required, of the government of such country or any other country having jurisdiction.

6. Decompiling, etc.

- i. The Customer shall not alter, reverse engineer, decompile, or disassemble the Licensed Software.
- ii. The Customer shall not remove or change the copyright notices or other notices placed in and on the Licensed Software.
- iii. The Customer shall not conduct performance comparison or benchmarking activities with respect to the Licensed Software, and shall not disclose the result thereof without prior written approval of NEC.

7. Intellectual Property Right

- i. No provision in this Agreement shall be construed to assign and/or transfer any intellectual property right in and/or to the Licensed Software to the Customer.

8. No Warranty, etc.

- i. NEC WILL NOT PROVIDE ANY WARRANTY IN RELATION TO THE LICENSED SOFTWARE, INCLUDING MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE AND NON-INFRINGEMENT OF ANY THIRD PARTY'S RIGHT.
- ii. In the event that the Customer finds a material defect in the media containing the Licensed Software, which prevents the Licensed Software from operating properly, NEC, if it agrees that NEC is responsible for such defect, will replace the defective media at no charge provided that such media in question is returned to NEC within thirty (30) days of your receipt, with receipt specifying the date of Customer's receipt (or a copy thereof). This Section 8.2 provides NEC's sole warranty and the Customer's exclusive remedy hereunder.
- iii. IN ANY CASE, NEC SHALL NOT BE LIABLE IN ANY WAY WITH RESPECT TO CUSTOMER'S LOST PROFIT, DAMAGES ARISING FROM SPECIAL CIRCUMSTANCES (INCLUDING CASES WHERE NEC PREDICTED, OR COULD HAVE PREDICTED, SUCH DAMAGES), AND DAMAGES BASED ON CLAIMS MADE BY THIRD PARTIES AGAINST THE CUSTOMER SUCH AS COMPENSATION FOR DAMAGES AND THE LIKE. NEC'S ENTIRE LIABILITY FOR ANY REASONS WHATSOEVER SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY THE CUSTOMER FOR THE PRODUCT THAT CAUSED THE LIABILITY OF NEC WHETHER BASED ON BREACH OF CONTRACT, TORT, OR OTHERWISE.

9. Termination

- i. NEC may terminate the license granted to the Customer hereunder at any time if the Customer fails to comply with any terms and conditions of this Agreement. Upon termination of the license, the Customer shall destroy the Licensed Software and any copies of the Licensed Software, and further certify in writing to such effect within two (2) weeks from the termination date.
- ii. he Customer may terminate the license granted hereunder by giving NEC a written notice. Upon termination of the license, the Customer shall destroy the Licensed Software and any copies of the Licensed Software in advance, and attach a written certificate to this effect to such written notice.

10. Others

- i. Except as expressly provided for herein, NEC does not grant any rights to the Customer.
- ii. If Licensed Software is licensed to U.S. Government, then the following shall apply. The Government Rights in Technical Data and Computer Software clauses defined in Federal Acquisition Regulations 252.227-7013 or their successor; The applicable Restricted Rights Regulations for Department of Defense Government agencies; or Language that is equivalent to the Restricted Rights Regulations in the case of non-Department of Defense Government agencies.
- iii. This Agreement shall be governed by the laws of Japan. The Tokyo District Court in Japan shall have exclusive jurisdiction over all disputes relating to this Agreement as court of first instance.

Table 1 The list of JRE software

Package Name
jre

Exhibit 1 Additional conditions for JRE

To JRE, in addition to the terms of the main body of this Agreement, the following conditions shall apply.

(1) Additional conditions for JRE

1. Java Technology Restrictions. Customer shall not create, modify, change the behavior of classes, interfaces, or subpackages that are in any way identified as "Java", "Javax", "Sun" or similar convention as specified by Oracle America Inc. ("Oracle") in any naming convention designation.
2. Trademarks and Logos. Customer shall acknowledge that Oracle owns the Java trademark and all Java-related trademarks, logos and icons including the Coffee Cup and Duke ("Java Marks") and agree to: (a) comply with the Java Trademark Guidelines at <http://www.oracle.com/us/legal/third-party-trademarks/index.html>; (b) not do anything harmful to or inconsistent with Oracle's rights in the Java Marks; and (c) assist Oracle in protecting those rights, including assigning to Oracle any rights acquired by the Customer in any Java Mark.
3. Source Code. JRE may contain source code that, unless expressly licensed for other purposes, is provided solely for reference purposes pursuant to the terms of this agreement.
4. Third Party Code. Additional copyright notices and license terms applicable to portions of JRE are set forth in the "THIRDPARTYLICENSEREADME.txt" file included in the delivered package with this software license agreement.
5. Commercial Features. The use of the Commercial Features for any commercial or production purpose requires a separate license from Oracle. "Commercial Features" means those features identified in Table 1-1 (Commercial Features In Java SE Product Editions) of the program documentation accessible at <http://www.oracle.com/technetwork/indexes/documentation/index.html>.

(2) The contents of the THIRDPARTYLICENSEREADME.txt referred in Section 4 of (1)

Exhibit 2 to 16

Refer to "HS_THIRDPARTYLICENSE.TXT" included in the delivered package with this software license agreement.