

Hitachi Data Systems Certified Professional Program Rules & Agreement

BY SCROLLING TO THE BOTTOM OF THIS AGREEMENT AND CLICKING THE “ACCEPT” BUTTON BELOW, YOU ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT, INCLUDING ANY PROGRAM REQUIREMENTS POSTED ON THE PROGRAM WEB SITE, WHICH ARE INCORPORATED INTO AND FORM PART OF THIS AGREEMENT. YOU ALSO REPRESENT THAT YOU HAVE READ AND UNDERSTAND ALL OF THE PROVISIONS OF THIS AGREEMENT. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, YOU WILL NOT BE PERMITTED TO PARTICIPATE IN THE HITACHI DATA SYSTEMS CERTIFIED PROFESSIONAL PROGRAM AND WILL NOT BE PERMITTED TO TAKE THE CERTIFICATION EXAM.

Hitachi Data Systems Certified Professional Program Agreement

1. DEFINITIONS

In this Agreement the following terms will have the meanings set forth below:

1.1 “Certified” means an individual who has successfully met the Certification Requirements and has received written confirmation of such from the Hitachi Data Systems Program Office. “Certification” has the same meaning.

1.2 “Certification Requirements” means any one of those sets of requirements established by Hitachi Data Systems that an individual must meet to become Certified and must continue to meet to maintain Certified for the associated Track. The Certification Requirements are set out on the Program Website.

1.3 “Designation” means any one of the titles established by Hitachi Data Systems which you may become authorized to use after becoming Certified by Hitachi Data Systems for the Track associated with that title. Designations currently include Hitachi Data Systems Certified Professional, Hitachi Data Systems Implementer, Hitachi Data Systems Integration Professional, Hitachi Data Systems Architect, and Hitachi Data Systems Storage Manager.

1.4 “Logo shall mean any one of the Program logos established by Hitachi Data Systems which you may become authorized to use by becoming Hitachi Data Systems Certified for the Track associated with the Logo.

1.5 “Program” means the Hitachi Data Systems Certified Professional Program.

1.6 “Program Website” means the website located at http://www.hds.com/products_services/education/certifications.html. The Program Website provides additional tools and information about the Program, including the Certification Requirements for each Track, as well as any other Program and operational requirements.

1.7 “Track” means any one of the then current tracks established by Hitachi Data Systems under the Program in relation to which an individual may become Certified. Tracks currently include Foundations, Implementer, Architect and Storage Manager.

2. CERTIFICATION

2.1 Certification. Each Track has an associated set of Certification Requirements. Current Certification Requirements for the Tracks are available at the Program Website. To become Certified you must meet the requirements of the Program, including the Certification Requirements for the relevant Track. You are allowed to become Certified for more than one Track.

2.2 Maintaining Certification. To maintain Certification for a Track, you must maintain compliance with your obligations under this Agreement and with the current Certification Requirements for that Track, as may be specified or modified by Hitachi Data Systems from time to time. You agree to meet the Certification Requirements and other Program requirements, as updated from time to time, as a condition of obtaining and maintaining your Certification.

2.3 Certification Revocation. Hitachi Data Systems may, at its sole discretion revoke any and all Certifications, and permanently ban you from earning future Certifications, under any of the following circumstances: (a) if you fail to maintain compliance with the Certification Requirements, as well as any other Program requirements; (b) you breach the terms and conditions of this Agreement; or (c) Hitachi Data Systems determines, in its sole discretion, that you have taken any action that compromises the integrity and confidentiality of a certification exam or the Program.

3. RIGHT TO USE LOGO AND DESIGNATION

3.1 License. Subject to your compliance with the terms and conditions of this Agreement, upon your successful completion of the Certification Requirements for a Track, Hitachi Data Systems grants you a non-exclusive, non-transferable, non-assignable, royalty-free license to use the Logo and Designation associated with the Track for which you are Certified solely in connection with publicizing that you have met and continue to meet all Certification Requirements for that Track only as long as you maintain Certified status in relation to the relevant Track(s).

3.2 Limitations on Use. You agree not to use the Designation or Logo in a manner that (a) damages or infringes Hitachi Data Systems' rights in the Designation or Logo, (b) reflects negatively on Hitachi Data Systems or otherwise injures Hitachi Data Systems' reputation, (c) misrepresents your relationship with Hitachi Data Systems or gives the impression that Hitachi Data Systems endorses or recommends your business or services, or (d) gives the impression that the Designation or Logo applies to your employer or to any other individual other than yourself.

3.3 Compliance with Guidelines. You agree that you shall use only Hitachi Data Systems-supplied Logo artwork and that your reproduction and use of the Designation and Logo shall be in strict compliance with the Usage Guidelines which shall be made available to you upon your Certification. Upon request, you agree to promptly provide Hitachi Data Systems with representative examples of your materials using the Designation or Logo.

3.4 Reservation of Rights. You acknowledge the value of the goodwill associated with the Designation and Logo and acknowledge that such goodwill exclusively inures to the benefit of and belongs to Hitachi Data Systems. Hitachi Data Systems retains all rights not expressly conveyed to you by this Agreement, and shall have the right to grant licenses to others to use the Designation and Logo.

3.5 Protection of Mark. If necessary to aid Hitachi Data Systems in the protection of Hitachi Data Systems' rights in or to a Designation or Logo, you agree to provide reasonable cooperation and assistance to Hitachi Data Systems.

3.6 No Challenge of Rights. You agree not to challenge, interfere with, or bring any kind of action or legal or administrative proceeding in relation to the rights and title of Hitachi Data Systems in or to any Designation or Logo.

3.7 No Unauthorized Use, Registration. You agree not to use any Designation or Logo except as specifically authorized under this Agreement, not to file any application to register, in any class and in any country, any trademark or service mark for any Designation or Logo or any other mark confusingly similar to any Designation or Logo. You agree to immediately cease all use of all Logos and Designations upon the termination of this Agreement.

4. CONFIDENTIALITY AND OWNERSHIP

4.1 Hitachi Data Systems Confidential Information. You understand, acknowledge and agree that the certification exams and all information provided to you or obtained by you related to the certification exams, including, but not limited to, the specific questions and the content, structure,

and organization of the exams, shall be deemed to be the confidential information of Hitachi Data Systems ("Confidential Information").

4.2 Your Confidentiality Obligations. You agree that you will, both during and after the term of this Agreement, (a) hold all Confidential Information in confidence and take all reasonable measures to protect the Confidential Information, (b) make no use of the Confidential Information except as expressly allowed under this Agreement, and (c) not disclose, reproduce, disseminate or transmit in any way any portion of the Confidential Information to any third party in any form, including without limitation, written, electronic or verbal.

4.3 Intellectual Property Ownership. Hitachi Data Systems retains all rights, title and interest in and to all Program and related information, content, data, exams, materials, and all copyrights, patent rights, trademark rights and other proprietary rights therein. All rights not expressly granted by Hitachi Data Systems to you are expressly reserved to Hitachi Data Systems.

5. CERTIFICATION INFORMATION

5.1 Third Parties. Hitachi Data Systems is entitled, but is not obligated, to make information concerning your Certification status available to third parties in writing or electronically. Hitachi Data Systems has certain partner programs that require employment of a minimum number of Hitachi Data Systems Certified employees. For this reason, the revocation of any Certification may result in loss of partner benefits to such employers. You agree that if Hitachi Data Systems revokes your Certification pursuant to Section 2.3, Hitachi Data Systems shall have the right to notify your employer and respond to any inquiry by your employer about changes in your Certification status. You have the responsibility for ensuring that your information is accurate and that Hitachi Data Systems is kept aware of your current relevant information. Hitachi Data Systems shall have no liability for providing incorrect information to third parties in response to a proper request to verify your Certification status.

5.2 Information Processing. You agree and consent that Hitachi Data Systems and the Program contractors and testing vendors may process and exchange your information in connection with the operation of the Program.

6. BUSINESS CONDUCT

You agree that all business you conduct and all services you provide in your capacity as a participant in the Program, or in connection with the promotion or selling of which you use or display a Designation or Logo, shall be performed in a manner that (a) does not reflect negatively on Hitachi Data Systems or in any way harm Hitachi Data Systems' reputation, (b) avoids unethical, illegal, misleading or deceptive practices, (c) does not make or appear to make any warranties, representations or guarantees on behalf of Hitachi Data Systems or related to Hitachi Data Systems products or services, (d) complies with all applicable governmental laws and regulations and (e) protects Hitachi Data Systems' confidential information, copyrights and other intellectual property rights.

7. TERM AND TERMINATION.

7.1 Term. The term of this Agreement shall commence upon the date of you accept this Agreement and will continue until terminated in accordance with this Section 7.

7.2 Termination by Either Party. Either party, with or without cause, may terminate this Agreement upon thirty (30) days written notice of termination to the other party.

7.3 Termination by Hitachi Data Systems. Hitachi Data Systems, in its sole discretion and without prejudice to any rights Hitachi Data Systems may have under this Agreement of in law, equity or otherwise, may terminate this Agreement at any time upon the occurrence of any one of the following events: (a) you fail to comply with the requirements established by Hitachi Data

Systems for maintaining your Certification for at least one Track, (b) you misrepresent your Certification status, (c) you use a Logo or Designation in a manner that Hitachi Data Systems believes could injure Hitachi Data Systems' reputation or rights in the Logo or Designation, (d) you misappropriate or disclose without authorization any Hitachi Data Systems trade secret or confidential information including, without limitation, any Confidential Information as identified in 4.1 above or (e) you fail to comply with any of the material terms of this Agreement.

7.4 Effect of Termination. Upon termination of this Agreement, the license and all rights granted hereunder shall terminate completely. You shall immediately discontinue all use of Designations and Logos. Except as specifically provided herein, you shall have no further rights or obligations under this Agreement after termination.

7.5 Survival. Rights and obligations under Sections 3.4, 3.5, 3.6, 3.7, 4, 5, 7.3, 8, 9, 10 and 11 of this Agreement shall survive termination of this Agreement.

8. LIMITATION OF LIABILITY

IN NO EVENT SHALL Hitachi Data Systems BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS PROFITS) ARISING FROM THIS AGREEMENT OR IN ANY WAY RELATED TO YOUR CERTIFICATION, YOUR FAILURE TO ACHIEVE OR MAINTAIN CERTIFICATION, YOUR USE OR INABILITY TO USE THE DESIGNATIONS OR LOGOS, OR THE TERMINATION OF YOUR CERTIFICATION, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF Hitachi Data Systems HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. INDEMNIFICATION.

You agree to indemnify and hold Hitachi Data Systems harmless against any loss, liability, damage, cost or expense (including attorneys' fees) arising out of any claims or suits, whatever their nature and however arising, which may be brought or made against Hitachi Data Systems arising out of or in any manner connected with: (i) any breach by you of this Agreement including, but not limited to, your use of the Designations and Logos in any way that is inconsistent with this Agreement; (ii) any claim alleging that your services were promoted, sold or performed in a deceptive, incomplete, illegal, negligent, improper or unauthorized manner, (iii) Hitachi Data Systems termination of this Agreement pursuant to the terms of this Agreement or (iv) your use or misuse of the intellectual property or confidential information of Hitachi Data Systems or any third party.

10. CHANGES TO PROGRAM

10.1 Right to Change. Hitachi Data Systems reserves the right to terminate the Program or to make changes to the Program at any time. Such changes may include, but are not limited: (a) changes to the number, scope, organization, objectives and content of the exams, (b) additions, deletions or other modifications to the Certification Requirements, (c) addition of new Tracks, Designations and Logos, and (d) deletion, modification or replacement of any Track, Designation or Logo.

10.2 Notice of Changes. Hitachi Data Systems will post a notice of any Program changes on the Program Website. If Hitachi Data Systems records indicate that you are certified for a Track and any change to the Program affects the Certification Requirements for that Track, Hitachi Data Systems intends, but is not obligated, to send an email notification to you at the email address on file with the Program Office, however it is your responsibility to monitor the posted Program information and Certification Requirements for any changes potentially affecting your Certification status.

10.3 Effect of Changes. If Hitachi Data Systems changes the requirements for maintaining certification for a Track for which you are Certified, you must comply with the changed

requirements within six (6) months from the effective date of such requirements change. If you have not fully complied with the new or modified requirements within the six-month period, your Certification for that Track shall terminate and you shall cease all use of the Designation or Logo associated with that Track.

11. OTHER PROVISIONS

11.1 No Joint Venture or Partnership. This Agreement shall not create a joint venture, partnership, principal-agent, employer-employee, or similar relationship between the parties. You agree that you will not represent yourself as an agent, employee, consultant, contractor or legal representative of Hitachi Data Systems or any subsidiary thereof based upon this Agreement.

11.2 No Warranties by You. This Agreement does not give you any right or authority to make any representation, warranty, or promise on behalf of Hitachi Data Systems or Hitachi Data Systems' products or services.

11.3 Injunction. You recognize and acknowledge that a material breach by you of any of your covenants, agreements or undertakings hereunder will cause Hitachi Data Systems irreparable damage, which cannot be readily remedied in monetary damages in an action at law. Therefore, in addition to its rights and remedies otherwise available at law, upon an adequate showing of material breach, and without further proof of irreparable harm other than this acknowledgment, Hitachi Data Systems shall be entitled to immediate equitable relief, including, but not limited to, both interim and permanent injunctions, to stop such damage.

11.4 Governing Law and Jurisdiction. This Agreement shall be governed and construed and enforced in all respects in accordance with the substantive and procedural laws of the state of California and the venue for any litigation will be the appropriate courts in Santa Clara County, California. Both you and Hitachi Data Systems submit to the exclusive jurisdiction and venue of such courts, and specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods.

11.5 Waiver and Severability. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. In the event any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, then the other provisions of this Agreement shall continue in full force and effect.

11.6 No Assignment. This Agreement may not be assigned by you in whole or in part. Any attempted assignment shall be null and void.

11.7 Notices. All notices required by this Agreement to be sent to Hitachi Data Systems must be addressed to Hitachi Data Systems Certified Professional Program at 750 Central Expressway, Santa Clara, California. All notices to be mailed to you will be directed to the most recent email address for you in the Program Office files. It is your responsibility to ensure that the Program Office has your current email and postal address.

11.8 Entire Agreement. This Agreement constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.