

HPE Customer Terms — Software as a Service in Cloud Service Provider Marketplace

- 1. Scope and Parties.** These HPE Customer Terms for Software-as-a-Service (the **Agreement**) govern the use of HPE SaaS (defined below) from Hewlett Packard Enterprise by the customer (**Customer**). The terms of this Agreement become effective upon Customer's use of HPE SaaS (**Effective Date**) and will remain in effect unless terminated as provided herein.
- 2. HPE Software-as-a-Service. HPE Software-as-a-Service or HPE SaaS** means the HPE branded online software solutions that HPE makes available for Customer use through a cloud service provider portal or platform (Marketplace), as described in the applicable HPE supporting material, exhibits, or attachments that are each made a part of this Agreement (collectively, "**Supporting Material**"). Supporting Material is available to Customer from HPE through a link on the Marketplace. In the event of a conflict, this Agreement takes precedence over Supporting Material.
- 3. Access Rights.** Customer may access HPE SaaS through the Marketplace in accordance with the cloud service provider terms and conditions. Customer is solely responsible for complying with all cloud service provider terms and conditions for access including any applicable charges and terms of use for any software, content, service, or website it loads, creates, or accesses when using HPE SaaS.
- 4. Use Rights.** HPE grants Customer access to use the HPE SaaS described in the applicable Supporting Material subject to the terms of this Agreement and the applicable Supporting Material. HPE may monitor and audit Customer use of HPE SaaS and compliance with any associated license terms. Customer is responsible for any and all uses of HPE SaaS through Customer's credentials or any account that Customer may establish. Customer agrees to maintain the confidentiality of Customer's account, credentials, and any passwords necessary to use HPE SaaS. Should Customer believe that there has been unauthorized use of Customer's account, credentials, or passwords, Customer must immediately notify HPE.
- 5. Usage Limitations.** HPE SaaS may be used only for Customer's internal business purposes and not for commercialization. Customer will not: (i) exceed any usage limitations identified in the Supporting Material; (ii) sell, resell, license, sublicense, lease, rent, or distribute HPE SaaS or include HPE SaaS as a service or outsourcing offering, or make any portion of HPE SaaS available for the benefit of any third party; (iii) copy or reproduce any portion or as a whole, feature, function, or user interface of HPE SaaS; (iv) interfere with or disrupt the integrity or performance of HPE SaaS; (v) use HPE SaaS to submit, send, or store Customer-provided SaaS data that is obscene, threatening, libelous, or otherwise unlawful or tortuous material, violates any third party's privacy rights, or infringes upon or misappropriates intellectual property rights; (vi) use HPE SaaS to disrupt or cause harm to a third party's system or environment; (vii) access HPE SaaS to build a competitive product or service; (viii) reverse engineer or make derivative works of HPE SaaS; or (ix) sublicense, assign, transfer, rent, or lease HPE SaaS.
- 6. Customer-provided SaaS Data.** Customer is solely responsible for the data, text, audio, video, images, software, and other content input into a system, software, or environment during Customer's access or use of HPE SaaS (**Customer-provided SaaS Data**). As between HPE and Customer, Customer is and will remain the sole and exclusive owner of all rights, titles, and interests in and to all Customer-provided SaaS Data. Customer hereby provides to HPE all necessary rights to Customer-provided SaaS Data to enable HPE to provide HPE SaaS. HPE will use Customer-provided SaaS Data only as necessary to provide HPE SaaS, technical support for HPE SaaS, or as otherwise required by law.
- 7. Personal Information.** Personally identifiable information may only be used for the purpose of fulfilling obligations or exercising rights under the Agreement. Such information may be shared with employees, affiliates, agents, or contractors with a need to know such information to support that purpose. The parties will use a reasonable degree of care to prevent unauthorized use or disclosure. Where legitimate business purposes require HPE to collect and process personally identifiable business contact information relating to Customer's employees or other individuals representing Customer, HPE, as a data controller, will process such personally identifiable information i) using appropriate technical and organizational measures, and ii) in compliance with its [privacy statement](#) and applicable laws. Where HPE agrees to process personally identifiable information on behalf of Customer, HPE, as a data processor, will process such data only as permitted under the Agreement, including Supporting Materials, and in compliance with applicable laws (Solution-based Data Privacy and Security Agreements [DPSAs] and sub-processor information is available [here](#)). In the event international data transfers trigger the requirements for a data transfer mechanism, HPE will use its Binding Corporate Rules for Processors ([BCR-P](#)) or utilize the data transfer mechanism described in the applicable Supporting Materials.
- 8. HPE SaaS Performance and Operations.** So long as HPE does not materially degrade the functionality, as described in Supporting Material, of HPE SaaS, HPE reserves the right to make any changes to HPE SaaS that it deems necessary or useful. HPE's ability to deliver HPE SaaS will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver HPE SaaS.

9. **Warranty:** HPE WILL PROVIDE HPE SAAS USING GENERALLY RECOGNIZED COMMERCIAL PRACTICES. CUSTOMER'S SOLE REMEDY WILL BE TO TERMINATE THIS AGREEMENT. TO THE EXTENT PERMITTED BY LAW, HPE DISCLAIMS ALL OTHER WARRANTIES. HPE DOES NOT WARRANT THAT HPE SAAS WILL BE UNINTERRUPTED OR ERROR-FREE.
10. **Intellectual property rights.** No transfer of ownership of any intellectual property will occur under this Agreement. Customer grants HPE a non-exclusive, worldwide, royalty-free right and license to any intellectual property, including Customer-provided SaaS Data, that is necessary for HPE and its designees to perform HPE SaaS.
11. **Intellectual Property Rights Infringement.** HPE will defend and/or settle any claims against Customer that allege that an HPE-branded product or service as supplied under this Agreement infringes the intellectual property rights of a third party. HPE will rely on Customer's prompt notification of the claim and cooperation with our defense. HPE may modify the product or service so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to Customer the balance of any prepaid amount for the affected HPE SaaS. HPE is not responsible for claims resulting from Customer-provided SaaS Data or from any unauthorized use of HPE SaaS. This section shall also apply to HPE SaaS identified as such in the relevant Supporting Material except that HPE is not responsible for claims resulting from Customer-provided SaaS Data, customized configurations or designs (i) performed or provided by Customer or (ii) performed at Customer's direction. Customer will defend or indemnify HPE from and against third-party claims arising from Customer-provided SaaS Data or customized configuration, or designs (i) performed or provided by Customer or (ii) performed at Customer's direction.
12. **Limitation of liability.** HPE's liability to Customer under this Agreement is limited to the amount paid by Customer for the relevant usage of HPE SaaS that is the subject of the claim for the twelve-month period of SaaS usage immediately preceding the act or omission giving rise to the claim. This limit applies collectively to HPE, its employees, subsidiaries, contractors, and suppliers. Neither Customer nor HPE will be liable for lost revenues or profits, downtime costs, or indirect, special, or consequential costs or damages. This provision does not limit either party's liability for unauthorized use of intellectual property, death or bodily injury caused by their negligence, acts of fraud, nor any liability which may not be excluded or limited by applicable law. Neither party will be liable for performance delays or for non-performance due to causes beyond its reasonable control, except for payment obligations.
13. **Suspension.** HPE may suspend Customer's access and use rights to HPE SaaS if Customer breaches this Agreement or where Customer's use of HPE SaaS is in violation of law.
14. **Termination.** Either party may terminate this Agreement on written notice if the other fails to meet any material obligation and fails to remedy the breach within a reasonable period after being notified in writing of the details. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership, or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations. HPE may terminate this Agreement where Customer's access and use rights are suspended pursuant to [Section 13](#) or to comply with applicable laws or regulations. Any terms in the Agreement which by their nature extend beyond termination or expiration of the Agreement will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.
15. **Effect of Termination.** Upon termination of use of HPE SaaS, except as otherwise provided in the Supporting Material, HPE may disable all Customer access to HPE SaaS.
16. **General.** This Agreement represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to this Agreement will be made only through a written amendment signed by both parties. Unless otherwise required by applicable law, the Agreement will be governed by the laws of the state of California, excluding rules as to choice and conflicts of law, and the courts of California will have jurisdiction. Customer and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

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