



**HPE CUSTOMER TERMS - SOFTWARE-AS-A-SERVICE**

1. **Scope and Parties.** These terms and the applicable Order (collectively, the “**Agreement**”) govern the purchase of SaaS from the Hewlett Packard Enterprise entity receiving the Order (“**HPE**”) by the Customer entity identified below (“**Customer**”).
2. **Definitions.**
  - a. “**SaaS Order**” or “**Order**” means the accepted order for a SaaS including any supporting material which the parties identify as incorporated either by attachment or reference (“**Supporting Material**”). Supporting Material may include (as examples) standard or negotiated service descriptions or data sheets and their supplements and may be available to Customer in hard copy or by accessing a designated HPE website.
  - b. “**SaaS**” means the online solutions that HPE provides, as described in the Order, including the Supporting Material and other exhibits or attachments that are made an integral part of this Agreement. It also includes documents and other content, devices, hardware and software and other materials to the extent provided by HPE in connection with SaaS (“**HPE SaaS Materials**”).
3. **Access Rights.** During the applicable SaaS Order Term, HPE provides Customer with non-exclusive and non-transferable access and the right to use SaaS in accordance with this Agreement.
4. **Scope and Order Placement.** The term of each SaaS Order is stated therein (“**SaaS Order Term**”). These terms may be used by Customer either for a single Order or as a framework for multiple Orders. Customer may place orders with HPE through our website, customer-specific portal, or by letter, fax or e-mail. The term of this Agreement begins on the Effective Date and will remain in effect unless terminated pursuant to Section 17 (Termination).
5. **Prices and Taxes.** Prices will be as quoted in writing by HPE or, in the absence of a written quote, as set out on our website, customer-specific portal, or HPE published list price at the time an order is submitted to HPE. Prices are exclusive of taxes, duties, and fees unless otherwise quoted. If a withholding tax is required by law, please contact the HPE order representative to discuss appropriate procedures.
6. **Invoices and Payment.** Customer agrees to pay all invoiced amounts within forty-five (45) days of HPE’s invoice date. HPE may suspend or cancel performance of open Orders if Customer fails to make payments when due.**SaaS Data.** The applicable Supporting Material may describe the data and content that is collected or otherwise received from Customer by or through the access or use of SaaS (“**Customer-provided SaaS Data**”) and may describe additional categories of data generated by Customer’s access or use of SaaS. Customer has sole responsibility for the accuracy, quality, and legality of any Customer-provided SaaS Data, including the means by which it was obtained by Customer. As between HPE and Customer, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer-provided SaaS Data. HPE will use Customer-provided SaaS Data only as necessary to provide SaaS (including preventative and reactive technical support), or as permitted by Customer, or as otherwise required by law.
8. **SaaS Performance.** HPE’s ability to deliver SaaS will depend on Customer’s reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services. HPE will perform SaaS by qualified personnel and in a professional manner consistent with the Supporting Material. To the extent permitted by law, HPE disclaims all other warranties. HPE does not warrant that SaaS will be uninterrupted or error free. If HPE provides Customer with a free-of-charge SaaS during a specific Order Term, including but not limited to SaaS provided on an evaluation or “freemium” basis, SaaS is provided “AS IS” and to the extent permitted by law, HPE disclaims all warranties and liability.



# Hewlett Packard Enterprise

HPE Agreement Number(s) where required: .....  
 HPE entity: .....  
 Customer: .....  
 Effective Date (if applicable): .....  
 Term Length (if applicable): .....

- 9. **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 the ordered services.
- 10. **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 may procure a license. If these options are not available, HPE will refund to Customer the balance of any pre-paid amount for SaaS or support services. Should the SaaS Order include Software products, the refund will equal the amount paid for the affected product in the first year or the depreciated value thereafter or for professional services, the amount paid. HPE is not responsible for claims resulting from Customer-provided SaaS Data or from any unauthorized use of the products or services. This section shall also apply to deliverables identified as such in the relevant Supporting Material except that HPE is not responsible for claims resulting from deliverables content or design provided by Customer.
- 11. **SaaS Usage Limitations.** SaaS may be used only for Customer’s internal business purposes and not for commercialization. SaaS Customers will not: (i) exceed any usage limitations identified in the Supporting Material; (ii) except to the extent expressly permitted in Supporting Material, sell, resell, license, sublicense, lease, rent or distribute SaaS or include SaaS as a service bureau or outsourcing offering, or make any portion of SaaS available for the benefit of any third party; (iii) copy or reproduce any portion, feature, function, or user interface of SaaS; (iv) interfere with or disrupt the integrity or performance of the SaaS; (v) use SaaS to submit, send or store Customer-provided SaaS Data that is infringing, obscene, threatening, libellous or otherwise unlawful or tortuous material or material in violation of any third party’s privacy rights; (vi) access SaaS to build a competitive product or service, or (vii) reverse engineer SaaS. Customer is responsible for complying with all terms of use for any software, content, service or website it loads, creates or accesses when using SaaS.
- 12. **Confidentiality.** Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential Information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential Information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.
- 13. **Personal Data.**
  - a. If, in the course of providing SaaS, HPE processes Customer Personal Data, HPE shall process such data only as permitted under this Agreement and in compliance with data protection legislation to which it is subject as a service provider and processor of Customer Personal Data. **Exhibit 2 “Data Protection Regulations”** shall apply.
  - b. **“Customer Personal Data”** means personal data of which Customer or its affiliates is the controller and which HPE processes in the course of providing SaaS. The terms **“controller”**, **“data subject”**, **“processor”**, **“process”**, **“processed”**, **“processing”**, and **“personal data”** used in this Addendum shall be as defined by EU Directive 95/46/EC, unless otherwise defined by applicable data protection legislation.
- 14. **SaaS Operations.** So long as during the SaaS Order Term, HPE does not degrade the functionality of SaaS as described in Supporting Material: (i) HPE retains sole control over the operation, provision, maintenance and management, and



performance of SaaS, including the selection, deployment, modification and replacement of the HPE Software and/or HPE SaaS Materials , and maintenance, upgrades, corrections or repairs; and (ii) HPE reserves the right to make any changes to SaaS that it deems necessary or useful to maintain or enhance the quality or delivery of HPE’s services to its customers, the competitive strength of or market for HPE’s services, or SaaS’ cost efficiency or performance. HPE may use global resources, such as HPE Affiliates or third parties in worldwide locations to provide SaaS and perform its obligations.

- 15. **Limitation of Liability.** HPE’s liability to Customer under this Agreement is limited to the greater of \$1,000,000 or the amount payable by Customer to HPE for the relevant Order that is the subject of the claim for the twelve (12) month period immediately preceding the act or omission giving rise to the claim. 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; willful misconduct; 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.
- 16. **Disputes.** If Customer is dissatisfied with SaaS and disagrees with HPE’s proposed resolution, HPE and Customer both agree to promptly escalate the issue to a Vice President (or equivalent executive) in the respective organization for an amicable resolution without prejudice to the right to later seek a legal remedy.
- 17. **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. Any terms in this 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.
- 18. **Effect of Expiration or Termination.** Except for Customer’s termination for cause, the termination of this Agreement shall not entitle Customer to any refund, and payment obligations are non-cancelable. Upon expiration or termination of a SaaS Order Term, except as otherwise provided in the Supporting Material:
  - 1. HPE may disable all Customer access to SaaS, and Customer shall promptly return to HPE (or at HPE’s request destroy) any HPE SaaS Materials;
  - 2. At the end of the SaaS Order Term, HPE may make available certain data in the format generally provided by HPE, subject to offering-specific requirements;
  - 3. With respect to Customer Confidential Information that is not requested by Customer to be returned, HPE may retain such information, in its then-current state and solely to the extent and for so long as required by HPE’s corporate policies and applicable law until deleted in its ordinary course, provided it remains subject to all confidentiality and other applicable requirements of the Agreement.
- 19. **General.** This Addendum represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Addendum will be made only through a written amendment signed by both parties. The Addendum will be governed by the laws of the country of HPE or the HPE Affiliate accepting the Order and the courts of that locale will have exclusive jurisdiction; however, HPE or its Affiliate may bring suit for payment in the country where the Customer Affiliate that placed the Order is located. Customer and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Claims arising or raised in the United States will be governed by the laws of the state of California, excluding rules as to choice and conflicts of law.



# Hewlett Packard Enterprise

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The parties confirm their agreement to these terms either by referencing them in the relevant Order or by executing below:

**Signed for HPE:** .....  
 [Insert signature]

**By:** .....  
 [Insert name]

**Title:** .....  
 [Insert signatory's business title]

**HPE Entity:** .....

**Date:** .....  
 [Insert date]

**Signed for Customer:** .....  
 [Insert signature]

**By:** .....  
 [Insert name]

**Title:** .....  
 [Insert signatory's business title]

**Customer Entity:** .....

**Date:** .....  
 [Insert date]

**EXHIBIT 1 – SOFTWARE LICENSE / SUPPORT / PROFESSIONAL SERVICES REGULATIONS**

**1. Software Product Licenses, Support, and/or Professional Services.** To the extent that Customer's Order for HPE SaaS includes Customer's purchase of software product licenses, software product support, and/or professional services, this Exhibit applies and supplements the terms applicable between HPE and Customer for SaaS. In the event of a conflict between this Exhibit and the Agreement, the terms and conditions of this Exhibit will govern for purpose of Customer's Order for software product licenses, software product support, and/or professional services.



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 Customer: .....  
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2. **Definitions.** Capitalized terms used but not defined in this Exhibit are as defined in the Agreement. “Supporting Material” may additionally include (as examples) software product lists and software specifications, support data sheets, published warranties etc.
3. **Order Arrangements; Delivery.** Where appropriate, Orders must specify a delivery date. If Customer extends the delivery date of an existing Order beyond ninety (90) days, then it will be considered a new order. HPE will use all commercially reasonable efforts to deliver software products in a timely manner. HPE may elect to deliver software and related software product/license information by electronic transmission or download.
4. **Support Services; Professional Services; Services Performance.** HPE’s support services will be described in the applicable Supporting Material, which will cover the description of HPE’s offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported. HPE will deliver any ordered professional services as described in the applicable Supporting Material. If deliverables are created by HPE specifically for Customer and identified as such in Supporting Material, HPE hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverables internally. HPE will charge separately for reasonable out-of-pocket expenses, such as travel expenses incurred in providing professional services. The acceptance process for professional services will apply only to deliverables specified in professional services Supporting Material, and shall not apply to other products or services to be provided by HPE. Services are performed using generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any such service concerns and HPE will re-perform any service that fails to meet this standard. If Supporting Material for professional services defines specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HPE of such a non-conformity during the 30 day period, HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HPE.
5. **Software Performance.** HPE warrants that its branded software products will conform materially to their specifications and be free of malware at the time of delivery. HPE warranties for software products will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. HPE does not warrant that the operation of software products will be uninterrupted or error-free or that software products will operate in hardware and software combinations other than as authorized by HPE in Supporting Material.
6. **Product Warranty Claims; Remedies.** When we receive a valid warranty claim for an HPE software product, HPE will either repair the relevant defect or replace the software product. If HPE is unable to complete the repair or replace the software product within a reasonable time, Customer will be entitled to a full refund upon the prompt written confirmation by Customer that the relevant software product has been destroyed or permanently disabled. HPE will pay for shipment of repaired or replaced software products to Customer. This Exhibit states all remedies for warranty claims. To the extent permitted by law, HPE disclaims all other warranties.
7. **Eligibility.** HPE’s service, support and warranty commitments do not cover claims resulting from: (1) improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material; (2) modifications or improper system maintenance or calibration not performed by HPE or authorized by HPE; (3) failure or functional limitations of any non-HPE software or product impacting systems receiving HPE support or service; (4) malware (e.g. virus, worm, etc.) not introduced by HPE; or (5) abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HPE’s control.
8. **License Grant.** HPE grants Customer a non-exclusive license to use the version or release of the HPE-branded software license listed in the Order. Permitted use is for internal purposes only (and not for further commercialization), and is subject to any specific software licensing information that is in the software product or its Supporting Material. For non-HPE branded software, the third party’s license terms will govern its use.
9. **Updates.** Customer may order new software versions, releases or maintenance updates (“Updates”), if available,



separately or through an HPE software support agreement. Additional licenses or fees may apply for these Updates or for the use of the software in an upgraded environment. Updates are subject to the license terms in effect at the time that HPE makes them available to Customer.

- 10. License Restrictions.** HPE may monitor use/license restrictions remotely and, if HPE makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may make a copy or adaptation of a licensed software product only for archival purposes or when it is an essential step in the authorized use of the software. Customer may use this archival copy without paying an additional license only when the primary system is inoperable. Customer may not copy licensed software onto or otherwise use or make it available on any public external distributed network. Licenses that allow use over Customer’s intranet require restricted access by authorized users only. Customer will also not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of any software licensed to Customer under this Agreement unless permitted by statute, in which case Customer will provide HPE with reasonably detailed information about those activities.
- 11. License Term and Termination.** Unless otherwise specified, any license granted is perpetual, provided however that if Customer fails to comply with the terms of this Agreement, HPE may terminate the license upon written notice. Immediately upon termination, or in the case of a limited-term license, upon expiration, Customer will either destroy all copies of the software or return them to HPE, except that Customer may retain one copy for archival purposes only.
- 12. License Transfer.** Customer may not sublicense, assign, transfer, rent or lease the software or software license except as permitted by HPE. HPE-branded software licenses are generally transferable subject to HPE’s prior written authorization and payment to HPE of any applicable fees. Upon such transfer, Customer’s rights shall terminate and Customer shall transfer all copies of the software to the transferee. Transferee must agree in writing to be bound by the applicable software license terms. Customer may transfer firmware only upon transfer of associated hardware.
- 13. License Compliance.** HPE may audit Customer compliance with the software license terms. Upon reasonable notice, HPE may conduct an audit during normal business hours (with the auditor’s costs being at HPE’s expense). If an audit reveals underpayments then Customer will pay to HPE such underpayments. If underpayments discovered exceed five (5) percent of the contract price, Customer will reimburse HPE for the auditor costs.
- 14. US Federal Government Use.** If software is licensed to Customer for use in the performance of a US Government prime contract or subcontract, Customer agrees that consistent with FAR 12.211 and 12.212, commercial computer software, documentation and technical data for commercial items are licensed under HPE’s standard commercial license.
- 15. Global Trade Compliance.** If Customer exports, imports or otherwise transfers software product and/or deliverables provided under this Exhibit, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. HPE may suspend its performance under this Exhibit to the extent required by laws applicable to either party.

**EXHIBIT 2- DATA PROTECTION REGULATIONS**

- 1. Customer hereby appoints HPE as a processor of Customer Personal Data. Customer and HPE shall comply with all data protection laws to which they are subject, as a controller and processor respectively, and which are applicable to their information security, privacy and data protection obligations in connection with Customer Personal Data.
- 2. HPE shall only process Customer Personal Data as required to provide SaaS and in accordance with the Customer’s written instructions (which may be specific instructions or instructions of a general nature as set out in this Agreement)



or as otherwise notified by the Customer to HPE under this Agreement) and to the extent that such instructions are not compatible with HPE’s obligations under this Agreement they shall be implemented as agreed by the parties.

3. HPE has implemented technical and organisational measures to protect Customer Personal Data during the performance of SaaS against accidental, unauthorised or unlawful processing, destruction, loss, damage or disclosure, details of which are provided at the hp.com website or can otherwise be provided on Customer’s request as HPE’s **Security Description (SaaS or Software Support)**. These include:
  - a. Physical access controls
  - b. Access Controls
  - c. Access Limitation Controls
  - d. Input Controls
  - e. Job Controls
  - f. Availability Controls
  - g. Data Separation
4. HPE will ensure that all employees involved in the processing of Customer Personal Data are authorized personnel with a need to access the data, are bound by appropriate confidentiality obligations and have undergone appropriate training in the protection of personal data.
5. Where the Supporting Material identifies categories of Customer Personal Data or other Customer-provided data that are to be returned to Customer upon termination, HPE will supply such data to Customer in the agreed format and will delete from HPE’s own systems any remaining copies of such Customer Personal Data or other data, unless legislation applicable to it prevents it from doing so.
6. HPE will within five (5) business days of receipt, refer to Customer any queries from data subjects in connection with Customer Personal Data, for Customer to deal with.
7. HPE will on written request of Customer promptly amend or delete any Customer Personal Data to the extent that Customer is not able to amend or delete the data itself.
8. Customer Personal Data will be transferred to HPE’s parent company, Hewlett Packard Enterprise Company in the United States of America, and onward to other affiliate and third party subcontractors located outside the EEA and Switzerland who support SaaS, a list of which is available upon request.
9. If and to the extent HPE is acting as a data processor or sub-processor with respect to Customer Personal Data pertaining to residents of the European Economic Area or Switzerland ("EEA+ Data Subjects"), the EU Standard Contractual Clauses (Processors) (short: "Model Contract") shall apply and supersede any conflicting terms of this Exhibit to the extent EEA+ Data Subjects are concerned. Between HPE and the Customer, this Exhibit shall prevail in case of any conflicts or inconsistencies with the Model Contract. Any losses suffered by data exporter or data importer (both as defined in the Model Contract) shall be treated as if they had been suffered by Customer or HPE respectively and shall in all cases be recovered by Customer or HPE subject to any limits on that party’s liability contained in this Agreement in section "limitation of liability". Nothing in that section "limitation of liability " shall limit the liability of either party in relation to a claim by a data subject under a Model Contract.
10. When HPE obtains formal approval for binding corporate rules for processors (BCR-P), the parties may agree to rely on the BCR-P for transfers of Customer Personal Data. The relevant information and additional contract terms will be provided to Customer on request.
11. HPE will ensure that any affiliate or third party subcontractor involved in processing Customer Personal Data enters into a written agreement with HPE (which may be an inter-company agreement in the case of affiliates), which includes obligations substantially similar to those contained in this Addendum and appropriate to the nature of the processing involved.