



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

1. **Scope and Parties.** These HPE Customer Terms for Software-as-a-Service (the “Agreement”) govern the purchase, access and use of software-as-a-service from the Hewlett Packard Enterprise entity receiving the Order (defined below) (“HPE”) by the Customer entity identified below (“Customer”). The terms of this Agreement become effective when HPE accepts Customer’s order, upon renewal of an order or upon Customer’s use of HPE SaaS (defined below) (“Effective Date”), and will remain in effect unless terminated pursuant to Section 19 (Termination).
2. **HPE Software-as-a-Service.** “HPE Software-as-a-Service” or “HPE SaaS” mean the HPE branded online software solutions that HPE makes available for Customer use through a network connection, each as described in the applicable supporting material and other exhibits or attachments that are each made a part of this Agreement (collectively, “Supporting Material”). The terms for use of each HPE SaaS is stated in the Supporting Material. Supporting Material may include service descriptions, data sheets, statements of work and their applicable exhibits, addenda, and attachments which may be available to Customer in hard copy or by accessing an HPE website. In the event of a conflict, Supporting Material takes precedence over this Agreement.
3. **Orders.** Customer may place orders for HPE SaaS through our website, customer-specific portal, or by letter, fax, or e-mail (each upon HPE’s acceptance, an “Order”). The term of each HPE SaaS subscription is stated in the applicable Order or Supporting Material and begins on the date that HPE SaaS is made available to Customer (“SaaS Order Term”).
4. **Access Rights.** During the applicable SaaS Order Term, Customer may access and use HPE SaaS in accordance with the applicable Supporting Material and this Agreement. Customer is responsible for complying with the terms of this Agreement and the Supporting Material. Customer is responsible for any and all use 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) except to the extent expressly permitted in Supporting Material, 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, 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, libellous 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; or (viii) reverse engineer HPE 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 HPE SaaS.
6. **Payment terms.**
  - a. **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.
  - b. **Invoices and Payment.** Customer agrees to pay all invoiced amounts within thirty (30) days of HPE’s invoice date.
7. **Customer-provided SaaS Data.** Customer is solely responsible for the data, text, audio, video, images, software, and other content input into an HPE system or environment (“Customer-provided SaaS Data”) during Customer’s access or use of HPE SaaS. 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. 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, or as otherwise required by law.

**8. Personal Data.**

- a. If, in the course of providing HPE SaaS, HPE agrees in writing to process Customer Personal Data, HPE shall process such data only as mutually agreed and in compliance with data protection legislation to which HPE is subject as a service provider and processor of Customer Personal Data.
- 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 HPE SaaS. The terms "controller", "processor", "process", "processed", "processing", and "personal data" used in this Agreement shall be as defined by EU Directive 95/46/EC, unless otherwise defined by applicable data protection legislation.

**9. Data Security.** HPE implements technical and organizational measures to protect Customer-provided SaaS Data. The Supporting Material for each HPE SaaS describes the measures implemented for such HPE SaaS.

**10. HPE SaaS Performance and Operations.** 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.

**11. HPE SaaS Operations.** So long as during the SaaS Order Term, HPE does not materially degrade the functionality, as described in Supporting Material of HPE SaaS, HPE reserves the right: (i) to modify the systems and environment used to provide HPE SaaS; and (ii) to make any changes to HPE 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 HPE SaaS' cost efficiency or performance. HPE may use global resources, such as HPE affiliates or third parties in worldwide locations to provide HPE SaaS and perform its obligations.

**12. License Grant to Software in connection with HPE SaaS.** To the extent that HPE provides software in connection with HPE SaaS, HPE grants Customer a non-exclusive and non-transferable license to use the version or release of the HPE-branded software listed in the Order or the applicable Supporting Material (the "Licensed Software") during the SaaS Order Term. Unless otherwise stated in writing, Customer may only use the Licensed Software for internal purposes and not for further commercialization. Customer may make a copy or adaptation of the Licensed Software only for archival purposes or when it is an essential step in the authorized use of the Licensed Software. Customer agrees that it will not modify, reverse engineer, disassemble, decrypt, decompile, or make derivative works of any Licensed Software unless permitted by statute, in which case Customer will provide HPE with reasonably detailed information about those activities. For non-HPE branded software, the third party's license terms will govern its use. HPE may monitor and audit Customer use of the Licensed Software and compliance with any associated license terms and, if HPE makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may not sublicense, assign, transfer, rent, or lease the Licensed Software except as permitted in writing by HPE.

**13. Warranty:** HPE WILL PERFORM HPE SAAS BY QUALIFIED PERSONNEL AND IN A WORKMANLIKE MANNER CONSISTENT WITH THE SUPPORTING MATERIAL. TO THE EXTENT PERMITTED BY LAW, HPE DISCLAIMS ALL OTHER WARRANTIES. HPE DOES NOT WARRANT THAT HPE SAAS WILL BE UNINTERRUPTED OR ERROR FREE. IF HPE PROVIDES CUSTOMER WITH A FREE-OF-CHARGE SAAS ORDER TERM, INCLUDING BUT NOT LIMITED TO HPE SAAS PROVIDED ON AN EVALUATION OR "FREEMIUM" BASIS, HPE SAAS IS PROVIDED "AS IS" AND TO THE EXTENT PERMITTED BY LAW, HPE DISCLAIMS ALL WARRANTIES AND LIABILITY.

**14. 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.

**15. 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 the balance of any pre-paid amount for the affected HPE SaaS. 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 Licensed Software 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.

- 16. **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 HPE SaaS 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. 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. If HPE provides customer with a free-of-charge SaaS Order Term, including but not limited to HPE SaaS provided on an evaluation or "freemium" basis, HPE SaaS is provided "as is" and to the extent permitted by law, HPE shall not be responsible for any loss or damage to Customer, its customers, or any third parties caused by HPE SaaS or the Licensed Software that HPE makes available for Customer.
- 17. **Suspension.** HPE may suspend Customer's access and use rights to HPE SaaS where Customer breaches Sections 4, 5, 6, 7, or 12 of this Agreement or Customer's use of HPE SaaS is in violation of law and Customer fails to remedy the breach within a reasonable period after being notified by HPE in writing of the details. The suspension shall become effective after lapse of the cure period. Customer remains responsible for applicable fees from the date of suspension and throughout the suspension period, including usage and data storage fees. Customer will not be entitled to service credits, if any, during any suspension period.
- 18. **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, if permitted by law, 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 17 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.
- 19. **Effect of Expiration or Termination.** Except for termination for cause in circumstances where HPE is at fault, 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:
  - a. HPE may disable all Customer access to the applicable HPE SaaS, and Customer shall promptly return to HPE (or at HPE's request destroy) any Licensed Software provided with HPE SaaS; and
  - b. HPE shall make available Customer-provided SaaS data in the format generally provided by HPE, subject to the terms of the applicable Supporting Material.
- 20. **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. The Agreement 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 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.

Signed for HPE by:

.....  
[Insert signature]

.....  
[Insert name and business title]

HPE Entity:.....

Date: .....  
HPE-CTSAAS02-00.4-EMEA-01Oct2016

Signed for Customer by:

.....  
[Insert signature]

.....  
[Insert name and business title]

Customer Entity:.....

Date: .....

