



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). ***If Customer is a consumer within the meaning of the Australian Consumer Law under the Australian Competition and Consumer Act 2010 (Cth), refer to section 21.***
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 unauthorised 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 commercialisation. 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 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. HPE may suspend or cancel performance of open Orders or services if Customer fails to make payments when due.

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 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 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 Information.** Each party must comply with their respective obligations under applicable privacy and data protection legislation. If, in the course of providing HPE SaaS, HPE agrees in writing to process personally identifiable information (PII), HPE shall process such data only as permitted under this Agreement and in compliance with with privacy and data protection legislation to which HPE is subject as a service provider.
9. **Data Security.** HPE implements technical and organisational 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: (i) HPE may modify the systems and environment used to provide HPE SaaS; and (ii) HPE reserves the right 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 commercialisation. Customer may make a copy or adaptation of the Licensed Software only for archival purposes or when it is an essential step in the authorised 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 unauthorised 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, customised 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 customised 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: unauthorised use of intellectual property, death or bodily injury caused by their negligence, acts of fraud, HPE's breach of a consumer guarantee under the ACL (subject to section 21(b)), 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 Licensed Software that makes available for Customer.
17. **Suspension.** HPE may suspend Customer's access and use rights to HPE SaaS where Customer fails to make payments when due, Customer breaches Sections 4, 5, 6, 7, or 12 of this Agreement or Customer's use of HPE SaaS is in violation of law. Customer remains responsible for applicable fees through date of suspension including usage and data storage fees, Customer will not be entitled to service credits 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 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, 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 may make available certain 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 New South Wales, Australia and the courts of that state 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.
21. **Australian Consumer Law (ACL).**
 - (a) Subject to section 21(b), if Customer is a consumer within the meaning the ACL:
 - (i) HPE's products and services are supplied with consumer guarantees that cannot be excluded under the ACL. Customer has a right to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. Customer has a right to have the products repaired or replaced if they are not of acceptable quality and the failure is not a major failure;
 - (ii) nothing in this Agreement excludes or limits any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by the ACL (including any consumer guarantee) which cannot be lawfully excluded or limited;

- (iii) Customer's express warranties under this Agreement are in addition to Customer's rights and remedies under the ACL. Customer's consumer guarantee rights under the ACL prevail to the extent that they are inconsistent with any limitations contained in the express warranty;
- (iv) if HPE products are provided by Customer to HPE for repair, they may be repaired using refurbished parts or may be replaced by refurbished products of the same type rather than being repaired. Customer data stored on products may be lost during repair;
- (v) the express warranty period for HPE's products, software and services is set out in the Supporting Material; and
- (vi) if Customer wishes to receive support or claim a remedy under a warranty under this Agreement or the ACL, Customer should contact HPE:

Hewlett-Packard Australia Pty Ltd
 410 Concord Road
 Rhodes NSW 2138
 Telephone number for Australian calls: 13 11 47
 Telephone number for international calls: +61 2 8031 8316
 or visit www.hpe.com.au and select the "Customer Service" option for the most current list of phone support numbers.

(b) If Customer is a consumer within the meaning of the ACL and is purchasing goods or services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then despite any other provision of this Agreement, HPE limits its liability for failure to comply with a consumer guarantee as follows:

- (i) provision of services: to any one or more of the following: re-supply of the services or payment of the costs of having the services re-supplied;
- (ii) provision of products: to any one or more of the following: replacement of the products or the supply of equivalent products; repair of the goods; payment of the costs of replacing the goods or of acquiring equivalent goods; or payment of the costs of having the products repaired; and

otherwise, to the maximum extent permitted by law.

Signed for HPE by:

.....
 [Insert signature]

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

HPE Entity: Hewlett-Packard Australia Pty Ltd

Date:

Signed for Customer by:

.....
 [Insert signature]

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

Customer Entity:.....

Date: