

# HPE GreenLake terms

July 11, 2022

Version 3

## 1. Definitions

- **Agreement:** Collectively, these [HPE GreenLake Terms](#), [HPE GreenLake data sheet](#), any applicable [HPE service data sheets](#), the order form or SOW and any referenced documents.
- **Billing Tiers:** A particular System or component of a System with unit pricing.
- **Contract Change Management Process:** The process described in the account support plan (ASP) used to make modifications to the solution.
- **Customer:** The entity that will be receiving the Services.
- **Deliverable:** Tangible output of the Services specifically identified as such in the SOW or data sheet.
- **Delivered Capacity:** The delivered systems but not necessarily installed or activated but awaiting their installation during the ramp-up period.
- **GMS:** HPE GreenLake Management Services.
- **HPE:** The contracting Hewlett Packard Enterprise group company.
- **Items:** Services, hardware, software, technology, or data.
- **Requested Capacity:** Requested Capacity is the number of Units required over the term agreed to with the Customer. Requested Capacity may increase through the contract change management process documented in the Account Support Plan (ASP).
- **Reseller:** The authorized HPE reseller that is reselling to the Customer.
- **Reserved Capacity:** Reserved Capacity is the minimum number of Units that will be invoiced monthly.
- **Services:** The Services, detailed in the Agreement, that HPE will perform for the Customer.
- **SOW:** HPE GreenLake Services Statement of Work.
- **System, Systems:** The hardware and relevant software as provided by HPE as part of the Services.
- **Variable Capacity:** Variable Capacity is the delta between the Requested Capacity and Reserved Capacity. This capacity is billed when used.

All capitalized Terms that are used but not defined in these HPE GreenLake Terms shall have the meaning given to them elsewhere in the Agreement. This document includes country-specific provisions (section 9) and they shall precede their respective sections on this document.

## 2. Reseller transactions

Notwithstanding anything to the contrary herein, if Customer buys the Services through a Reseller (as opposed to directly from HPE), then all references and terms related to fees, payments, cancellation or termination rights, or similar financial terms (including, but not limited to, those set out in [section 7. Financial Terms](#)) shall not apply, and any financial terms shall instead be governed by Customer's agreement with the Reseller. In particular, in case of any purchase from a Reseller, such Reseller would set the payment terms with Customer in its own discretion, and all relevant amounts owed for the Services are due to, and will be invoiced by, such Reseller for that Reseller's own account and on such Reseller's own behalf. These HPE GreenLake Terms create binding delivery obligations from HPE to Customer in addition to the respective delivery obligations of the Reseller to Customer. When HPE performs the Services, the Reseller shall also be discharged from its respective obligations to the Customer. The foregoing applies accordingly to the relationship between Tier One Partner and the Reseller if a Tier One Partner is involved.

## 3. Services

### 3.1 Right to use the Systems

- Title to Systems remains with HPE or its affiliates.
- Any HPE software that is provided as part of the Systems is subject to the terms of the software license agreement and additional license authorizations, if applicable, available on [hpe.com/software/SWlicensing](https://hpe.com/software/SWlicensing).
- For non-HPE branded software, the third-party license terms will govern its use. Customer may be directed to the third party's URL to click and accept the third party's license terms and/or download the software for use under this Agreement. The respective license terms will be made available to Customer upon request. Any licenses granted will terminate upon termination or expiration of the Services.
- If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.
- If the service provider use is purchased—HPE grants the Customer a non-transferrable right to use the System for the applicable System Term, including the right to:
  - Use the Systems to provide Services to end users.
  - Provide Customer's end users with access to the Systems for their internal business purposes.
  - Note that not all third-party software is available for service provider use. Consult the third-party license terms for use rights.
- If the service provider use is not purchased—HPE grants the Customer a non-transferable right to internally use the Systems provided under these Services for the applicable System Term.

### 3.2 Services with Deliverables

- If the Services specifically include Deliverables, those Deliverables will conform materially to their written specifications for 30 days following delivery.
- If the Customer notifies HPE of 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 the Customer will return those Deliverables to HPE. The above states all remedies for warranty claims pertaining to Deliverables. To the extent permitted by law, HPE disclaims all other warranties.

### 3.3 Services with remote monitoring

- In addition to the metering tools, HPE will install certain hardware and software tools (HPE Tools) to deliver remote monitoring services. HPE Tools are owned by HPE and delivery of these Services is contingent upon installation of them for use by HPE. The Customer may not use, transfer, assign, pledge, or in any way encumber or convey the tools. HPE will remove the tools upon termination or expiration of the Services.
- Any remote monitoring services (or portions thereof) will be provided from locations determined by HPE, which may be outside the country where the Systems are located.
- Customer acknowledges that it is responsible (administratively and financially) for obtaining all required approvals, licenses, authorizations, consents, and permits for HPE to perform remote monitoring Services.
- HPE grants Customer a limited license to use HPE information technology service management (ITSM) integration tool during the term and solely for the purposes of HPE's provision of the Services set forth herein (only applies to HPE GMS).
- The Customer agrees that the information available in HPE ITSM integration tool is HPE Confidential Information (only applies to HPE GMS).

### 3.4 Services with training courses

- Any course materials provided or made available are the copyrighted works of HPE or the original content provider. They are provided only for sole use of the person attending the course and may not be reproduced, distributed, or modified without HPE's written consent.



## 4. General terms and conditions

### 4.1 Warranties

- HPE will provide Services using generally recognized commercial practices; however, the parties agree that Services may not be uninterrupted or error-free. Upon prompt notice, HPE will re-perform Services.
- HPE's service, support and warranty obligations do not apply for claims that are attributable to: a) improper usage, site preparation or site or environment conditions or other non-compliance with supporting materials, b) changes or inappropriate maintenance or calibration of systems that were not completed or authorized by HPE, c) malfunctions or functional limitations of third-party software or products that have an effect on systems, for which HPE provides support or service, d) malware (e.g., viruses, worms), not introduced by HPE, or e) negligence, accident, fire or water damage, electrical faults, transport, by the Customer or other reasons beyond the control of HPE.
- The Agreement states all remedies for warranty claims. To the fullest extent permitted by law, HPE disclaims all other warranties, conditions and terms implied by law.

### 4.2 Intellectual property

- No transfer of ownership of any intellectual property will occur under the Agreement.
- If or when necessary for HPE to provide the Services, the Customer grants to HPE a non-exclusive, royalty-free right and license to use, display, perform, and sublicense (solely to HPE's subcontractors) the Customer intellectual property rights and third-parties' intellectual property rights solely to provide the Services.
- If Deliverables are created by HPE specifically for the Customer and identified as such in the Agreement, HPE hereby grants Customer a worldwide, non-exclusive, fully paid, and royalty-free license to reproduce and use copies of the Deliverables internally.

### 4.3 Confidentiality

- Confidential Information means all material, non-public information disclosed or made available between the parties, if the circumstances of disclosure would reasonably indicate such treatment (including any of the information associated with the metering tools, metering or reporting of usage data, billing, or the process to collect amounts due under the Agreement).
- The parties will keep Confidential Information in confidence.
- The parties may use Confidential Information only to fulfill obligations or exercise rights under the Agreement, and may share it only with employees, agents, or contractors with a need to know such information.
- The parties will protect the Confidential Information using a reasonable degree of care for three years from the date of receipt.
- These obligations do not cover information that was known or becomes known to the receiving party without obligation of confidentiality, is independently developed by the receiving party, or is disclosed as required by law.

### 4.4 Personal data processing

- HPE does not require any access to personal data in the performance of the Services, except for the Customer's personnel's business contact information. HPE will utilize Customer's business contact information solely to the extent necessary for HPE to provide the Services and to identify complimentary Services to the Customer, either directly or indirectly. Customer is responsible at all times for processing, managing, and accessing their data. HPE does not monitor the data entered, stored, or processed by the Customer in Systems.
- If Customer inadvertently provides HPE with personal data (excluding Customer's personnel's business contact information), HPE will process such personal data solely by deleting such data from HPE's internal environment.
- Where legitimate business purposes require HPE to collect and process business contact information relating to contractors' (employees or other individuals representing the Customer, HPE, as a data controller, will process such personal data using appropriate technical and organizational measures and in compliance with its privacy statement ([hpe.com/us/en/legal/privacy.html](https://hpe.com/us/en/legal/privacy.html)) and applicable laws.
- Where HPE discloses personal data relating to its employees or other individuals representing HPE to Customer or where such persons provide their personal data directly to the Customer, Customer will process such personal data using appropriate technical and organizational measures in compliance with the Customer's privacy policies and applicable laws.
- If HPE processes personal data on Customer's behalf in the course of providing the Services, it will do so in accordance with the HPE Support and Professional Services—Data Privacy and Security Agreement ([hpe.com/info/Customer-privacy](https://hpe.com/info/Customer-privacy)).



## 4.5 Rights and remedies

### 4.5.1 HPE and third-party software terms

- During delivery of the Services, HPE may be required to install copies of third-party or HPE software and to accept on behalf of the Customer the license terms of such software, which may be in electronic format, embedded in the software, or contained within the software documentation, and can be made available upon request.
- Customer is responsible to review the license terms at the time of installation, and hereby authorizes HPE to accept such terms on its behalf.

### 4.5.2 Termination

- Subject to applicable Termination Fees, if any, either party may terminate the Agreement:
  - If the other party materially breaches its contractual obligations and fails to remedy the breach within 30 days of receiving written notice of the material breach, or
  - If the other party is subject to an insolvency or bankruptcy event or any analogous step is taken by or against a party.
- Subject to applicable Termination Fees, if any, Customer may terminate for convenience, upon 90 days' written notice.

### 4.5.3 Customer duty to defend

- Customer will defend or settle any third-party claims against HPE arising out of Customer's or its users', employees', contractors' (excluding HPE), or agents' improper use of the Systems, subject to HPE's prompt notification of the claim and cooperation with Customer's defense. The Customer will pay third-party claim defense costs, settlement amounts, and any court-awarded damages. This section states Customer's entire liability and HPE's sole and exclusive remedy for such third-party claims.

### 4.5.4 HPE duty to defend

- HPE will defend or settle any third-party claims against the Customer that allege an HPE-branded System or Service or Deliverables supplied under the Agreement infringes the intellectual property rights of a third party, subject to Customer's prompt notification of the claim and cooperation with HPE's defense.
- HPE may modify the Systems or Services or Deliverables to be non-infringing and materially equivalent, or HPE may procure a license. If these options are not available, HPE will refund the balance of any pre-paid and undelivered Services upon return of the impacted Systems and/or Deliverables.
- HPE is not responsible for claims resulting from any unauthorized use of the Systems or Services or Deliverables content or design provided by the Customer.
- HPE will pay third-party claim defense costs, settlement amounts, and any court-awarded damages.
- This section states HPE's entire liability and Customer's sole and exclusive remedy for such third-party claims.

### 4.5.5 Limitation of liability

- The aggregate liability of each party to the other for all claims under or relating to these Terms is limited to USD \$500,000.
- Neither the Customer nor HPE will be liable for lost revenues or profits, downtime costs, loss or damage to data, or indirect, special, or consequential costs or damages.
- This section does not limit either party's liability for:
  - Indemnification obligations or duties to defend
  - Early termination fees if applicable
  - Unauthorized use of intellectual property
  - Loss or damage to Systems
  - Death or bodily injury caused by negligence
  - Acts of fraud
  - Other liability which may not be excluded or limited by applicable law



#### 4.6 General provisions

- **Force majeure**

Neither party will be liable for delays or for non-performance due to causes beyond its reasonable control even if the party has been already in delay when the force majeure event occurred, except for payment obligations.

- **Entire Agreement**

The Agreement represents the parties' entire understanding with respect to its subject matter and supersedes any previous communications.

- **Amendment**

Any changes to the Agreement must be agreed upon in writing by both parties.

- **Assignment**

The Customer may not assign all or any part of the Agreement without HPE's prior written consent.

- **Governing law and jurisdiction**

The Agreement will be governed by the laws and courts of the country/jurisdiction of the HPE entity accepting the order; however, HPE may bring suit for payment in the country where the Customer is located. The Customer and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

- **Survival**

Any clause which by its nature should survive to give adequate effect to its terms (for example, but not limited to, confidentiality obligations, rights and remedies, Early Termination Fees, de-installation fees, and more) will survive the termination or expiration of the Agreement.

- **Enforceability**

If any term or provision of the Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Agreement will not be affected.

- **Compliance with laws**

Each party will comply with applicable laws, including the export, import and sanctions laws of the United States (US), European Union (EU) and other applicable jurisdictions. Customer warrants that no Customer locations or recipients of HPE items are subject to any embargoes (currently Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine), trade control sanctions, or blocking measure, and that Customer is not owned or controlled, directly or indirectly, by any person or entity subject to any such restrictions. Customer will be the importer of record for any hardware items for which import is required for delivery of any portion of the Services. HPE may suspend performance of relevant Services to the extent necessary to ensure compliance under US or other applicable laws.

## 5. Customer responsibilities

### 5.1 General

Customer warrants that it will not disclose or otherwise transfer to HPE or its employees any of Customer's items that are listed in an Export Control Classification Number (ECCN), other than "EAR99", under the US or EU export control regulations, or listed on the United States Munitions List in the US International Traffic in Arms Regulations, unless Customer provides HPE at least one (1) month's prior written notice of the need to disclose or transfer such items. Unless expressly agreed otherwise, Customer will obtain any export licenses required to disclose such items to HPE.

### 5.2 HPE GreenLake Management Services (if applicable)

- Provide on-site personnel as appropriate for operations management, tape mounts, off-site tape storage, any other required media handling, and other physical on-site activities.
- Maintain responsibility for procuring any consumable supplies (for example, CDs, DVDs tapes, and cleaning supplies).
- Inform HPE in advance of making any environmental changes that may impact the Services.
- Continue to maintain Customer's end-user service desk function.



**5.2.1 Service design, transition, and implementation**

- During the Service design, transition, and implementation activities, the Customer will provide HPE with:
  - IP addresses, LAN connections, and network topology required for remote monitoring and management
  - Necessary documentation regarding the Systems, operating procedures, instructions, and configuration information as identified during the project initiation
- For knowledge transfer, the Customer must provide authorized HPE representatives with access rights to all relevant systems and locations and make personnel with requisite knowledge and skills available to share knowledge and experience.

**5.2.2 Tools and connectivity**

Provide the necessary infrastructure for management stations based on HPE requirements for the monitoring agents

- (Depending on connectivity to be used) Provide a virtual machine to host remote device access (RDA) functionality; supported versions are Debian and CentOS
- OpenVMS (Only for VMS):
  - OpenVMS support requires the setup of an additional management tool (cockpit manager) at the Customer site. The minimum management tool for OpenVMS systems comprises one HPE Integrity rx2800 running OpenVMS with cockpit manager plus a Windows system for the connector software to connect cockpit manager to the IT Operation Center. Servers for cockpit manager and connector software must be provided by the Customer.
  - For multi-site clusters, the Customer must ensure the management systems are replicated across sites and failover for cockpit manager and connector must be configured in line with the Customer’s cluster failover settings.
- Provide security clearance and port opening as described here:

Activity	Description	Connectivity required
Monitor	One-way system information and alerts	SNMP, secure communication using port 443
Operate	Site-to-site VPN connection	SSH, IPSec, and HTTPS, to perform operate activities based on Standard operation procedure
Administrate	Different security integration available, to be decided during transition phase	Customer provides access to HPE employees on system level or just on demand, every activity from remote is reported and provide auditable records

- In addition, the Customer will ensure access only by authorized employees for the purposes of provision of HPE-GMS.

**5.2.3 Product support contracts**

- Customers must share all third-party support and license contract information, such as validation requirements and coverage, with HPE.
- Customer must take the steps necessary to ensure that HPE can submit service calls on the Customer’s behalf for the limited purpose of placing a support call with the vendor, and the Customer must provide HPE with the appropriate information required to place the call. If required by the vendor, the Customer will take any steps necessary to ensure that HPE can submit calls on the Customer’s behalf. If the Customer does not meet these requirements, HPE will not be able to submit calls to the vendor on the Customer’s behalf and assumes no responsibility for failure to do so. HPE’s obligations are limited to the placing of support calls only. The Customer remains responsible for the performance of their obligations under such agreements, including paying all applicable fees, such as those that may apply because of logging calls with the vendor.

**5.3 Facilities and infrastructure**

**5.3.1 Facilities**

Customer will provide facilities in a safe environment, one that does not pose a potential health or safety hazard to HPE employees or subcontractors, for the Systems and metering tools, such as:

- Floor space, electricity, cooling, physical security, uninterrupted power supply, network, and storage cabling
- Network for both LAN and WAN connectivity and bandwidth
- Operating environment for the metering tools
- HPE’s metering tools will reside on a virtual machine provided by Customer, which must meet the minimum specifications for running a current supported version of Microsoft Windows Server operating system.



### 5.3.2 Setup of third-party systems

The Customer is responsible for:

- Provisioning and connecting any required hardware, software, network, cables, and such (for example, storage area network, operating systems) not provided by HPE as part of the Systems
- Ensuring that such connected or attached devices and/or software are compliant and compatible with the Systems

### 5.3.3 Compliance with building and safety codes

The Customer is responsible for:

- Attaching wall and ceiling mounts to the building structure according to local building codes
- Ensuring that the facility, cable runs, and power outlets conform to all local fire and electrical codes
- Any other construction or safety measure required by current local legislation

## 5.4 Systems and data

### 5.4.1 Procuring required software

Unless included as part of the Systems, the Customer is responsible for purchasing and installing the OS, virtualization software, and related software licenses and support.

### 5.4.2 Enabling installation

The Customer acknowledges that they must take the necessary steps to enable installation (including metering tools) within 30 calendar days from receipt of the Systems.

### 5.4.3 Registering for product support

The Customer is responsible for registering to use HPE or a third-party vendor's electronic services to access knowledge databases and obtain product information. HPE will provide registration information to the Customer for HPE electronic services.

### 5.4.4 Managing the System after installation

Customer is responsible for the System management activities once the installation Services have been completed (only applies to Services with no HPE GMS).

### 5.4.5 Maintaining the System

Customer must maintain the Systems at the agreed configuration and revision levels.

### 5.4.6 Data backup

The Customer is responsible for data backup.

### 5.4.7 Using proprietary service tools

- HPE may require the Customer to use certain hardware, software, and/or network diagnostic, metering, and maintenance programs as well as certain diagnostic or monitoring tools such as, HPE InfoSight that may be included as part of the System (proprietary service tools). This includes tools such as HPE's metering script, support tools and technical support (STaTS), and HPE Support Center (HPE SC).
- The Customer will be required to assist to install proprietary service tools (including any required updates and patches) on the Customer's Systems and assist HPE in running them.
- Proprietary service tools are and remain the sole property of HPE. They are provided as is without any warranty. The Customer may only use the proprietary service tools during the System Term and only as allowed by HPE. The Customer may not use, sell, transfer, assign, pledge, or in any way encumber or convey the proprietary service tools. The Customer shall return the proprietary service tools or allow HPE to remove these tools upon termination or expiration of the Services.
- Data transmission and encryption—Customer will allow for network data communication to HPE to transmit data collected by the diagnostic and metering tools using encryption methods specified in the applicable data sheet.



#### 5.4.8 Allowing modifications by HPE

The Customer will allow HPE, at HPE's request and at no additional charge, to modify Systems to improve operation, supportability, and reliability or to meet legal requirements.

#### 5.4.9 Prohibited modifications by Customer

Customer will neither add to nor alter Systems nor make any alterations that may prevent or impair transmission and/or collection of usage data, nor manipulate or alter usage data in any manner.

#### 5.4.10 Media sanitization and data deletion

The Customer is responsible for the security of the Customer's proprietary and confidential information. The Customer is responsible for sanitizing, removing, or deleting all data or Customer-provided software from Systems or any parts of it that may be replaced or returned to HPE. The process described at [hpe.com/media/handling](https://hpe.com/media/handling) will apply.

#### 5.4.11 Temporary workarounds

Customer will implement temporary procedures or workarounds provided by HPE while HPE works on a permanent solution.

### 5.5 Access and communications

#### 5.5.1 Access to Systems

- The Customer will provide HPE unencumbered access to Systems and metering tools, either remotely or on-site, as required.
- Ensure devices at different locations in the Systems are interconnected with stable connectivity, good bandwidth and capable of being monitored from a centralized monitoring solution.

#### 5.5.2 HPE information requests

Unless otherwise agreed, the Customer will respond within two business days to HPE requests for Customer business and technical data, documentation, and other Services relevant information required by HPE for the provision of Services. This includes:

- Documentation and information needed for design, development, evaluation, installation, and testing
- Storage configuration information
- Network configuration information (including IP addresses, LAN and WAN connections and network topology, routing, VLANs, firewall settings, DNS, and DHCP)

### 5.6 Security and risk management

#### 5.6.1 Risk of loss

The risk of loss or damage to Systems will pass to the Customer upon delivery to Customer or its designee.

#### 5.6.2 Protection and insurance of HPE Systems

Customer will protect HPE's ownership interest in Systems and tools by:

- Affixing or allowing HPE to affix any marking supplied by HPE evidencing their ownership
- Using due care to maintain the Systems
- Not relocating the Systems or tools once installed unless agreed using the change management process
- Keeping Systems, tools in safe custody and control, as well as free from any liens or encumbrances from date of delivery to Customer until the Systems are returned, received, and the tools are removed
- Obtaining and maintaining liability insurance and replacement cost coverage insurance, as well as providing evidence of this insurance coverage upon HPE's request

#### 5.6.3 Security policy

Any HPE obligations regarding the Customer's security requirements must be agreed to in writing.





#### 5.6.4 Physical security

- The Customer will be responsible for providing physical security of the Systems and metering tools.
- The Customer will physically secure all rooms for servers, storage, network, and environmental facilities through electronic security systems.
- The Customer will be responsible for designating, managing, and distributing the authorization of user access.
- The Customer will log all permitted authorizations.
- The Customer will provide authorization to HPE employees to the extent necessary to perform the Services.
- Third-party personnel can enter secured rooms only if accompanied by authorized Customer employees.

#### 5.6.5 Logical security

- The Customer will be responsible for managing and controlling logical security of the Systems and metering tools.
- The Customer will allow logical access for HPE to the Systems, based on Customer's security rules.
- The Customer is responsible for ensuring that only Customer-approved data exists on the Systems.

#### 5.7 Other responsibilities

Further Customer responsibilities related to specific Services or software delivered under the Agreement may be specified in the relevant exhibits or linked data sheets.

## 6. Term

### 6.1 Agreement term

The Agreement begins upon acceptance of a Customer order and remains in force until the end of the last applicable System Term, including any applicable extension period.

### 6.2 System Term

- Each System Term will start on the earlier of:
  - The date that HPE notifies Customer in writing of the completion of HPE installation services of the System
  - The day on which the Customer can use the System
- And will continue for an initial period purchased ("System Term"). The System Term will automatically extend on a month-to-month basis unless either party gives at least 90 days prior notice whereby no extension will apply. In case the System includes components that cannot be extended monthly (for example, third-party software), the System Term will extend for the minimum period of time applicable to the components. During the extension period(s), each party can terminate the extended System Term to the end of the extension period by giving at least 30 days prior notice.
- After installation has been completed the System can be used by the Customer and the System Term starts regardless of whether integration and migration activities are still performed by HPE on behalf of the Customer.
- The System Term for each System shall be for the term set forth in System details. Add-on Systems, a hardware and/or software unit that can be added to increase its capabilities, and/or System components will be coterminous or non-coterminous with the original System as described in the change request. If not described, System components will be non-coterminous.

## 7. Financial terms

### 7.1 Pricing terms

#### 7.1.1 Pricing in case of metering issues

- If daily usage data cannot be collected by the metering scripts for more than two calendar days (including delays in implementing the metering script), HPE will send the Customer an email indicating that the daily usage data cannot be gathered. The Customer will immediately assist HPE in resolving the problem.
- If this issue continues for up to 30 days and
  - Usage data has already been collected, then HPE will use the usage data from the day immediately preceding the failure for that 30-day period.
  - No usage data has been collected, then HPE will use the mid-point between the installed capacity and the reserved capacity for that 30-day period.



- If the issue continues beyond 30 days, one of the following will apply until the daily usage data issue is resolved:
  - If the cause is attributable to the Customer, the billable amount will be equal to the installed capacity.
  - If the cause is attributable to HPE, the billable amount will be equal to the reserved capacity.
- If the cause is due to unidentified or unforeseeable external factors (in other words, neither HPE nor Customer has directly contributed to the failure through action or inaction), the billable amount will be equal to the mid-point between the installed capacity and the reserved capacity.

**7.1.2 Price adjustments**

- Prices are calculated upon the Customer’s estimated average growth per year through the System Term and for HPE GMS the management services pricing assumption.
- HPE and Customer will negotiate equitable changes to the prices and fees in good faith if:
  - Customer does not meet the annual growth rate assumption as stated in the Agreement
  - The values in the management services pricing assumption table, as stated in the Agreement, exceed 10% at any time during the term (only applies to HPE GMS)
  - A material adverse change in Customer’s financial or operating condition has occurred since the Agreement was signed
  - For Change Orders only, there is a material adverse change in market conditions (e.g., commodity pricing, supply chain restrictions, inflation, etc.)
- (Only applies if virtual machines included) Whenever the used capacity of virtual machines (VM) like VM 2.0 or containerized virtual machine model (CVMM) (but excluding Nutanix Systems) is below the reserved capacity for three consecutive months during the term, HPE will discuss with Customer and reserves the right to adjust the price and band for compute units (CU) to match the actual VM memory subscription ratio used by Customer using the following formula:
  - VM 2.0 price adjustment formula  
Adjusted price per CU = initial contractual price per CU x CU requested capacity / CU used capacity
  - CVMM price adjustment formula  
Adjusted price per containerized compute units (CCU) = initial contractual price per CCU x CCU requested capacity / CCU used capacity.

**7.2 Charges**

**7.2.1 Pricing**

**• Pricing mechanism**

- The basic pricing factor is used capacity, subject to the pricing model and minimum invoiceable amounts.
- Monthly price is calculated by
  - Multiplying the greater of used capacity or reserved capacity by the applicable price per unit for each System
  - Adding any applicable fixed monthly charges
  - Adding any applicable charges for optional Services

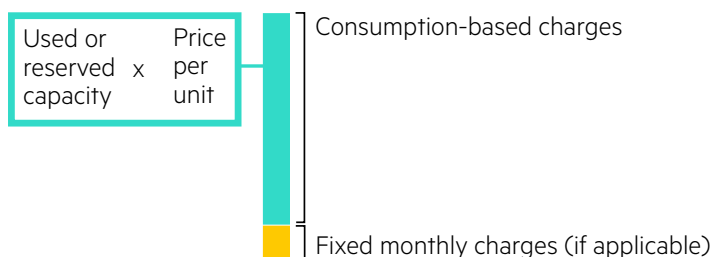


Figure 1. Pricing mechanism

**• Minimum invoiceable amounts**

- The minimum invoice will be the reserved capacity.
- If a variable capacity is included in the Agreement, then the Customer will be invoiced on the greater of reserved capacity or used capacity.
- If a variable capacity is not included in the Agreement, then reserved capacity will increase to the current installed capacity, which will be then invoiced monthly for the remaining System Term.



### 7.2.2 Invoicing

#### • Start of monthly invoicing

- Invoicing for the Services will begin upon the earlier of:
  - The first day after HPE notifies Customer in writing of the completion of HPE installation services of the System
  - The day on which Customer can use the System
- If installation services are delayed for a cause not attributable to HPE, on the 31st day from delivery of the System, HPE will start invoicing Customer a delay fee monthly in arrears. The delay fee is calculated as follows:
  - 1/30th of monthly reserved capacity of impacted billing Tiers charged daily as defined. Example: If reserved capacity is \$30,000/month then the delay fee would be \$1,000 a day. A 25-day delay would equal a fee of \$25,000.

#### • Invoice breakdown

- HPE will invoice Customer monthly in arrears, unless otherwise stated, for
  - The monthly price
  - Any applicable additional charges (such as, Early Termination Fees, return fee, and more)
  - Any applicable taxes (such as, sales, value-added tax [VAT], goods and services tax [GST] or similar taxes or fees including stamp duty)

#### • Taxes

- Prices are exclusive of applicable present or future sales, VAT, GST, or similar taxes. HPE's invoices will separately state charges and applicable taxes. Unless the Customer has provided HPE with an appropriate exemption certificate before the relevant Services are performed, the Customer will pay or reimburse HPE for all present or future taxes, fees, and surcharges applicable to the Services (however levied).
- If the Customer is required to withhold any tax related to the Services, the Customer will reduce payment to HPE by the amount of the tax and provide HPE with applicable tax documentation necessary for HPE to reclaim all withheld taxes. If the Customer has not provided the necessary documentation within the time prescribed by the taxing authority, the Customer will reimburse the withheld amount to HPE.
- Each party is solely responsible for all taxes and assessments upon its real and personal property and net income.

#### • Questions about invoices

- Customer will have three business days to contact HPE account support manager (ASM), HPE Customer success manager (CSM), or HPE service advisor following the monthly billing cycle with any questions or concerns regarding the invoice.

### 7.2.3 Payment

- Customer will pay invoiced amounts without offset within 30 days of the invoice date.
- Where the invoice value is disputed, then the Customer must pay the reserved capacity amount within 30 days of invoice date and state the reasons for withholding any amount that exceeds the reserved capacity. The parties will work in good faith to resolve the dispute promptly.
- HPE may suspend or cancel performance of Services if the Customer fails to make payments when due.

### 7.2.4 De-installation fees

- Customer must return the Systems to HPE within 30 days from expiration or termination date or HPE removing unused Systems, unless otherwise required by law and bear any related costs.
- If the parties agree that HPE will pick up the Systems, Customer is responsible for any reasonable mutually agreed fees associated with the de-installation, packing, and transportation to return Systems to HPE ("Return Fee").
- The parties will discuss and agree upon a termination assistance plan, as may be required. If Customer requires termination assistance services, HPE will provide them at HPE's then-current professional services time and materials rate.



### 7.2.5 Early Termination Fees

**• Termination for convenience, Customer breach, or insolvency**

– In the event of such termination of the Agreement or any System before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any.

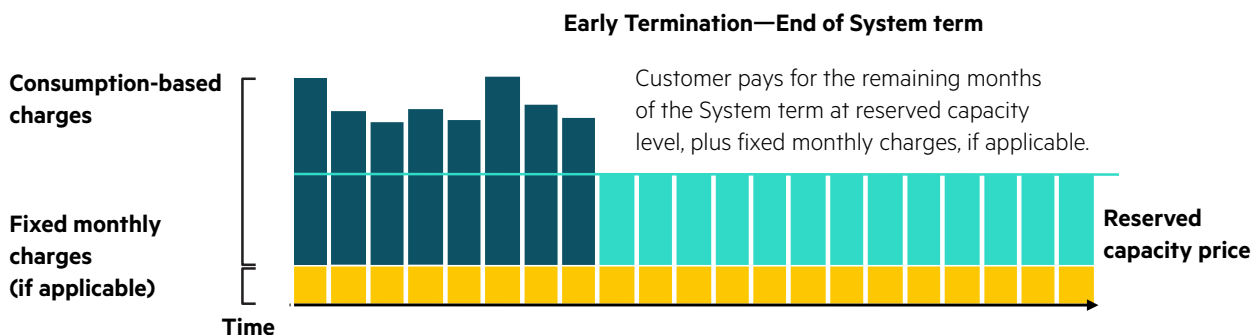


Figure 2. Early Termination Fee

– Customer will finally settle all liabilities arising out of any termination in accordance with this section upon payment in full of HPE’s final invoice, which will include:

- Early Termination Fees
- Any outstanding consumption-based charges
- Return Fee

**• Termination for HPE breach or insolvency**

– In the event of termination for cause resulting from an uncured HPE breach or HPE insolvency event, Customer will be relieved of the early termination fees and the return fee.

## 8. Limitations and assumptions

- Any Services not described in the Agreement are out of scope.
- HPE will provide the Services (or portions thereof) from any location determined by HPE. Any requests by the Customer to change the location will impact pricing and is subject to the contract change management process.
- The fees include the installation Services for the Systems. The fees do not include installations that may be required because of a Customer-initiated System relocation. Relocation Services may be purchased separately.
- Any of the information associated with the metering tools, the process to bill and collect amounts due hereunder, or metering or reporting of usage data will be deemed to be Confidential Information of Customer and HPE, and HPE may share such Confidential Information to third parties only to the extent necessary to perform the Services and/or to process the transaction.



- Customer acknowledges that HPE's ability to provide the Services under the Agreement is contingent upon the accuracy and completeness of information and data that Customer provides, as well as Customer's cooperation and timely performance of its obligations. If any such data or information is found to be inaccurate or incomplete, or Customer fails to perform its obligations, the parties will negotiate in good faith equitable changes to the impacted Agreement, which may include changes to the fees.
- All Deliverables are accepted upon delivery.
- Service-level objective (SLO) exclusions
 

The following are excluded from SLOs:

  - Delays in Customer approval process
  - Incidents due to Customer's applications, hardware, software, Services, or facilities
  - Management station downtime at the Customer site
  - Incidents due to the Customer WAN/LAN-related issues
  - Force Majeure at Customer or HPE site
  - Planned outages and scheduled maintenance
  - Factors outside HPE's reasonable control
  - Any act or omission on the part of Customer, its contractors or vendors, or any other entity over which Customer exercises control or has the right to exercise control, including Customer's failure to perform its obligations
  - Interruptions or incidents not reported by the Customer or where no ticket was opened
  - SLOs will be excluded during pre-handover phase or during any termination assistance Services
  - SLOs are excluded during the first 30 days from the effective date of the change order for any products added to the Systems under the contract change management process

## 9. Country-specific terms

### ARGENTINA

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 4.5.5 Limitation of Liability.** Replace first bullet with:

The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to 12 times the average monthly fees invoiced by HPE.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Argentina and the commercial ordinary courts of the city of Buenos Aires will have jurisdiction.

**Section 7.2 Payment.** Insert the following subsections as new bullets:

- Prices quoted in dollars shall be invoiced in the same currency. In the event that it was not possible to issue invoices in dollars due to any regulation from a relevant governmental authority or due to a technical or operative impossibility, the amounts owed in US dollars shall be invoiced in Argentine pesos at the HPE exchange rate published by Banco de la Nación Argentina on the closing of operations at the immediate prior day to invoice date.
- Notwithstanding section 765 of Civil and Commercial Code, Hewlett Packard Argentina SRL may accept as alternative payment method, the amount of pesos resulting from applying HPE exchange rate published by Banco de la Nación Argentina on the closing of operations at the immediate prior day to payment date. In case between the immediate prior day to invoice date and the date in which funds are credited in Hewlett Packard Argentina SRL's account there is any difference in the exchange rate, Hewlett Packard Argentina SRL may issue the relevant Debit or Credit Note.
- Payment will be made by bank transfer to the HPE's designated bank account. HPE shall not accept payments by check.



**Section 7.2.5 Early Termination Fees:** Replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered capacity and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term) x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any

## Australia

**AUSTRALIAN CONSUMER LAW (ACL)**

Australian Consumer Law (ACL): This clause applies if Customer is a consumer within the meaning of the ACL. Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

1. To cancel your service contract with us; and
2. To a refund for the unused portion, or to compensation for its reduced value
3. You are also entitled to be compensated for any other reasonably foreseeable loss or damage

If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

## Austria

**Section 4.1 Warranties.** Replace first bullet with:

HPE will provide Services using generally recognized commercial practices where there are defects with delivered items, which materially restrict their use for the purpose intended, the Customer is entitled to make a warranty claim. Initially, the Customer may only claim for subsequent performance within a reasonable period. Subsequent performance, according to the sole discretion of HPE, consists of either eliminating the defect or delivering a new item. The Customer's interests shall be reasonably taken into account when HPE exercises its right of choice. However, subsequent performance does not include the removal of the defective item or its reinstallation if HPE was not originally obliged to install it. If subsequent performance is impossible or has failed or if a reasonable grace period to be set by the Customer for subsequent performance has expired without success or is dispensable according to the statutory provisions, the Customer may terminate the Agreement in accordance with the termination clause. Compensation for damages or reimbursement of expenses is excluded from warranty claims, as long as nothing is stipulated to the contrary. However, in accordance with the statutory provisions HPE shall bear the expenses necessary for the purpose of testing and subsequent performance, in particular transport, travel, labor and material costs as well as any dismantling and installation costs, insofar as the expenses are not based on the fact that the products were subsequently brought to a location other than the place of delivery, unless the transfer corresponds to the intended use of the products. Any claim for defects shall lapse if any defect is based on the fact that the Customer or a third party has modified, improperly used or repaired products without the consent of HPE or products have not been installed, operated, and maintained in accordance with HPE guidelines. The Customer shall immediately notify HPE in writing of any defects. If the notice of defect was unjustified, HPE shall be entitled to demand reimbursement of the costs incurred by HPE as a result of the unjustified request to remedy the defect (in particular testing and transport costs), unless the Customer was not aware of the lack of defectiveness. A period of one year is applicable for warranty claims, beginning on the date of delivery or, if applicable, upon completion of the installation or (if the Customer delays installation by HPE), at the latest, 30 days after the date of delivery.



**Section 4.4 Personal data processing.** Replace entire section as follows:

The Customer is responsible at all times for processing their data. The Customer is responsible for managing their data and any access to their data. HPE does not monitor the data entered, stored, or processed by the Customer in Systems. The parties acknowledge that the Services to be provided in accordance with this Agreement are not intended to allow HPE to have direct access to the Customer's personal data. If this however occurs in the context of the particular order the following additional regulations apply ([hpe.com/psnow/doc/a50000759enw?from=app&section=search&isFutureVersion=true](https://hpe.com/psnow/doc/a50000759enw?from=app&section=search&isFutureVersion=true)).

In addition, HPE processes personal data for its own purposes automated and the contact data of the Customer contact person in accordance with the terms of the General Data Protection Regulation inside and outside of the Republic of Austria and the European Union.

Where HPE discloses personal data relating to its employees or other individuals representing HPE to Customer or where such persons provide their personal data directly to Customer, Customer will process such personal data using appropriate technical and organizational measures in compliance with Customer's privacy policies and applicable laws.

**Section 4.5.5 Limitation of Liability.** Replace first bullet with:

The aggregate liability of each party to the other for all claims under or relating to the Agreement is (i) in case of intent or blatant gross negligence without limitation and (ii) in case of simple gross negligence or slight negligence limited to 12 times the average monthly fees invoiced by HPE.

**Section 7.2.2 Taxes.** Replace first bullet with:

- Prices are exclusive of applicable present or future sales, VAT, GST, or similar taxes and other public charges/fees. Stamp duty (if applicable) will be borne by Customer. HPE's invoices will separately state charges and applicable taxes. Unless the Customer has provided HPE with an appropriate exemption certificate before the relevant Services are performed, the Customer will pay or reimburse HPE for all present or future taxes, fees, and surcharges applicable to the Services (however levied).

## Brazil

**Section 1 Definitions. Replace the following definitions:**

- **Services:** The Services, mainly composed by data processing and storage services, detailed in the Agreement, that HPE will perform for the Customer.
- **System, Systems:** The hardware and relevant software as provided by HPE as part of the Services necessary for the feasibility of data processing and storage services, subject of the Agreement. Title to Systems remains with HPE or its affiliates.

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 7.1.2 Price adjustments.** Insert the following subsection as a new item on the second bullet:

- The Client acknowledges that in the composition of the Agreement Price there are imported supplies, highly specialized labor workers and specific investments that may be affected by significant variations in macroeconomic indicators, including, without limitation, exchange rates, inflation, and availability of workers. Thus, in the event of such significant variations, HPE and the Customer agree to review the Price, seeking the economic and financial balance of the Agreement.

**Section 7.2.4 De-installation fees.** Insert the following subsection as a new item:

- Without derogation of these rights, the amounts in arrears will be monetarily adjusted by the variation of the IGPM-FGV rate, and interest of 1% per month and a fine of 2% will apply.



**Section 7.2.5—Early Termination Fees:** replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered capacity and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term) x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any.

## Canada

**Section 3.1 Rights to use the Systems.** Replace entire section as follows:

If a court deems this Agreement to be a lease intended for security or a lease that secures payment or performance of an obligation, then to secure Customer's obligations under this Agreement, Customer grants HPE (a) in each Province or Territory of Canada other than the Province of Quebec, a purchase money security interest in the System(s) and (b) in the Province of Quebec, a hypothec in the Systems (include the yellow highlighted text only if Systems will be in Quebec [otherwise, delete]) and hereby hypothecates the universality of the Systems for the amount set forth in Schedule A1 of Exhibit A, plus interest of said amount at the rate of 25% per annum, being understood that said rate is for the hypothec only and is not the rate applicable to the indebtedness due by Customer. Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein, excluding rules as to choice and conflict of law. Customer and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

**Section 4.6 General Provisions (Governing law and jurisdiction)** Insert the following subsection as new bullet:

- Customer hereby waives and excludes its rights regarding the provisions pertaining to contracts for services set forth in Article 2125 of the Civil Code of Quebec and acknowledges that this Agreement may only be terminated in the circumstances set forth by the provisions of the present Agreement.

**Section 4.6 General Provisions (Enforceability).** Replace this subsection with:

If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected. The parties confirm that it is their wish that this Agreement, as well as all other documents relating hereto, including all notices, have been and will be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette entente, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.

## Chile

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.





**Section 4.5.5 Limitation of Liability.** Replace first bullet with:

The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to 12 times the average monthly fees invoiced by HPE.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Chile and the commercial ordinary courts of the city of Santiago will have jurisdiction.

**Section 7.2 Payment.** Insert the following subsections as new bullets:

- Regarding Prices in USD, HPE may accept payments made by Client under this Proposal in Chilean Pesos, and HPE may issue the relevant invoices in the same local currency. In order to determine the amount to be paid in Chilean Pesos by Client, any owed amount in foreign currency shall be converted into Chilean Pesos according to the value of the observed dollar or its replacement, set by Banco Central de Chile for the day of issuance of the respective invoice, and / or UF (“Unidad de Fomento”—Unit of Account), to be paid in the equivalent in pesos, Chilean legal tender, according to the current value for the UF the day of payment.
- Payment will be made by bank transfer to the HPE’s designated bank account. HPE shall not accept payments by check.

**Section 7.2.5—Early Termination Fees:** Replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any

## Colombia

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer’s obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE’s ownership of these Systems.

**Section 4.5.5 Limitation of Liability.** Replace first bullet with:

The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to 12 times the average monthly fees invoiced by HPE.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Colombia and the commercial ordinary courts of the city of Bogotá will have jurisdiction.

**Section 7.2 Payment.** Insert the following subsections as new bullets:

- Customer agrees to pay all invoiced amounts in pesos colombianos resulting from applying “Tasa Representativa del Mercado” (TRM) of the invoice date.
- Payment will be made by bank transfer to the HPE’s designated bank account. HPE shall not accept payments by check.



**Section 7.2.5—Early Termination Fees:** Replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any

**France****Section 4.3 Confidentiality.** Replace fourth bullet with:

The parties will protect the Confidential Information with the same degree of care as it will protect its own Confidential Information.

**Section 4.4 Personal Data Processing.** Replace entire subsection with:

The Customer is responsible at all times for processing their data. The Customer is responsible for managing their data and any access to their data. HPE does not monitor the data entered, stored, or processed by the Customer in Systems. The parties acknowledge that the Services to be provided in accordance with this Agreement are not intended to allow HPE to have direct access to the Customer's personal data. If this however occurs in the context of the particular order the following additional regulations apply ([hpe.com/psnow/doc/a50000759enw?from=app&section=search&isFutureVersion=true](https://hpe.com/psnow/doc/a50000759enw?from=app&section=search&isFutureVersion=true)).

In addition, HPE processes personal data for its own purposes automated and the contact data of the Customer contact person in accordance with the terms of the General Data Protection Regulation inside and outside of the countries where the Services are provided and the European Union.

Where HPE discloses personal data relating to its employees or other individuals representing HPE to Customer or where such persons provide their personal data directly to Customer, Customer will process such personal data using appropriate technical and organizational measures in compliance with Customer's privacy policies and applicable laws.

**Section 4.5.2 Termination.** Replace entire subsection with:

Subject to applicable Termination Fees, if any, either party may terminate the Agreement:

If the other party materially breaches its contractual obligations and fails to remedy the breach within 30 days of receiving written notice of the material breach, or

Subject to applicable Termination Fees, if any, Customer may terminate for convenience, upon 90 days' written notice when authorized by applicable law.

**Section 4.5.3 Customer duty to defend.** Replace entire subsection with:

Customer will defend or settle any third-party claims against HPE arising out of Customer's or its users', employees', contractors' (excluding HPE), or agents' improper use of the Systems, subject to HPE's prompt notification of the claim and cooperation with Customer's defense. The Customer will pay third-party claim defense costs, settlement amounts, and any court-awarded damages. This section states Customer's entire liability and HPE's sole and exclusive remedy for such third-party claims.

**Section 7.2.3 Payment.** Replace fourth bullet with:

If any amount due to HPE remains unpaid after the date on which it is payable, HPE shall be entitled to charge i) interest on such sum from the due date until the actual date of payment of such a sum at a rate of three times the legal interest rate ("taux d'intérêt légal") in force at the time when the payment should have been made, and ii) an indemnity of 40 (forty) euros for credit collection fees. These interest and indemnities are due as of right ("de plein droit") the day after the payment date set out by the invoice, without any notice being necessary.



## Germany

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**3.2 Services with Deliverables.** Replace entire section as follows:

- If the Services specifically include Deliverables, those Deliverables will conform materially to their written specifications.

**Section 4.1 Warranties.** Replace entire section as follows:

- HPE will provide Services using generally recognized commercial practices. Where there are defects with delivered items, which materially restrict their use for the purpose intended, the Customer is entitled to make a warranty claim. Initially, the Customer may only claim for subsequent performance within a reasonable period. Subsequent performance, according to the sole discretion of HPE, consists of either eliminating the defect or delivering a new item. The Customer's interests shall be reasonably taken into account when HPE exercises its right of choice. However, subsequent performance does not include the removal of the defective item or its reinstallation if HPE was not originally obliged to install it. If subsequent performance is impossible or has failed or if a reasonable grace period to be set by the Customer for subsequent performance has expired without success or is dispensable according to the statutory provisions, the Customer may terminate the Agreement in accordance with the termination clause. Compensation for damages or reimbursement of expenses is excluded from warranty claims, as long as nothing is stipulated to the contrary. However, in accordance with the statutory provisions HPE shall bear the expenses necessary for the purpose of testing and subsequent performance, in particular transport, travel, labor and material costs as well as any dismantling and installation costs, insofar as the expenses are not based on the fact that the products were subsequently brought to a location other than the place of delivery, unless the transfer corresponds to the intended use of the products. Any claim for defects shall lapse if any defect is based on the fact that the Customer or a third party has modified, improperly used or repaired products without the consent of HPE or products have not been installed, operated, and maintained in accordance with HPE guidelines. The Customer shall immediately notify HPE in writing of any defects. If the notice of defect was unjustified, HPE shall be entitled to demand reimbursement of the costs incurred by HPE as a result of the unjustified request to remedy the defect (in particular testing and transport costs), unless the Customer was not aware of the lack of defectiveness. A period of one year is applicable for warranty claims, beginning on the date of delivery or, if applicable, upon completion of the installation or (if the Customer delays installation by HPE), at the latest, 30 days after the date of delivery.
- HPE's service, support and warranty obligations do not apply for claims that are attributable to: a) improper usage, site preparation or site or environment conditions or other non-compliance with supporting materials, b) changes or inappropriate maintenance or calibration of systems that were not completed or authorized by HPE, c) malfunctions or functional limitations of third-party software or products that have an effect on systems, for which HPE provides support or service, d) malware (e.g., viruses, worms), not introduced by HPE, or e) negligence, accident, fire or water damage, electrical faults, transport, by the Customer or other reasons beyond the control of HPE.

**Section 4.4 Personal data processing.** Replace entire section as follows:

The Customer is responsible at all times for processing their data. The Customer is responsible for managing their data and any access to their data. HPE does not monitor the data entered, stored, or processed by the Customer in Systems. The parties acknowledge that the Services to be provided in accordance with this Agreement are not intended to allow HPE to have direct access to the Customer's personal data. If this however occurs in the context of the particular order the following additional regulations apply ([hpe.com/psnow/doc/a50000759enw?from=app&section=search&isFutureVersion=true](https://hpe.com/psnow/doc/a50000759enw?from=app&section=search&isFutureVersion=true)).

- In addition, HPE processes personal data for its own purposes automated and the contact data of the Customer contact person in accordance with the terms of the General Data Protection Regulation inside and outside of the Federal Republic of Germany and the European Union.
- Where HPE discloses personal data relating to its employees or other individuals representing HPE to Customer or where such persons provide their personal data directly to Customer, Customer will process such personal data using appropriate technical and organizational measures in compliance with Customer's privacy policies and applicable laws.

**Section 4.5.2 Termination.** Add third bullet:

- The right to terminate the Agreement for cause (aus wichtigem Grund) according to statutory laws remains unaffected.

**Section 4.5.4 HPE duty to defend.** Delete last bullet.



**Section 7.2.2 Invoicing.** Replace 4th and 5th line/second major bullet as follows:

If installation services are delayed due to Customer's fault, on the 31st day from delivery of the System, HPE will start invoicing Tier One Partner a delay fee monthly in arrears. The delay fee shall be set off against any damages claims and shall be calculated as follows:

**Section 7.2.3 Payment.** Replace third bullet as follows:

- Where the good faith resolution does conclude within a period of two weeks of the dispute, HPE may suspend or cancel performance of Services.

## Hong kong

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

- This Agreement will be governed by the laws of Hong Kong and the courts of Hong Kong will have exclusive jurisdiction to settle any dispute arising out of this Agreement.

**Section 4.6 General Provisions (Compliance with laws).** Insert the following paragraph as a new bullet:

- Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Ordinance to enforce any term of this Agreement.

**Section 7.2.5—Early Termination Fees.** Replace the second bullet with:

- Termination for HPE breach or insolvency

In the event of termination for cause resulting from an uncured HPE material breach or HPE insolvency event, Customer will be relieved of the early termination fees and the return fee.

## Hungary

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 3.2 Services with Deliverables.** Replace second bullet with:

If the Customer notifies HPE of 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 the Customer will return those Deliverables to HPE. The above states all remedies for warranty ("jótállás" in Hungarian) claims pertaining to Deliverables. To the extent permitted by law, HPE disclaims all other warranties (both "jótállás" and "szavatosság" in Hungarian).

**Section 4.1 Warranties.** Replace fourth and fifth bullets with:

- If the non-compliance reported by the Customer is covered by the HPE Support Services included in the Services, the notification must be made in line with the applicable data sheet. If the non-compliance amounts to a material breach of these Terms, Customer may terminate this agreement with immediate effect in writing provided that HPE failed to remedy the breach within an adequate deadline of at least 30 days. HPE will proportionately refund the balance of any pre-paid and undelivered Services. The warranty set out in this clause is to be understood as "jótállás" under Hungarian law notwithstanding the limitations set out in the next paragraph of this clause.
- The above states all remedies for warranty claims. To the extent permitted by law, the HPE disclaims all other warranties (both "jótállás" and "szavatosság") in Hungarian.

**Section 7.2.5 Early Termination Fees (Termination for HPE breach or insolvency).** Replace entire subsection with:

- In the event of termination for cause resulting from an uncured material HPE breach or HPE insolvency event, Customer will be relieved of the early termination fees and the return fee.



## Indonesia

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 4.5.2 Termination.** Insert the following subsection as new bullet:

The parties expressly waive the application to the Agreement of Articles 1266 and 1267 of the Indonesian Civil Code but only to the extent of the requirement that a court order is required to terminate this Agreement.

**Section 4.5.5 Limitation of Liability.** Replace first bullet with:

The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to 12 times the average monthly fees invoiced by HPE.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Indonesia and the local Indonesian courts will have jurisdiction.

**Section 4.6 General Provisions (Language).** Insert the following subsection as new bullet:

- This Agreement has been executed in English and Indonesian language. Both versions are equally authentic. In the event there are differences in interpretation or construction between the English language and the Indonesian language version, the English language version shall prevail and the relevant text of the Indonesian version is deemed to be automatically amended (with effect from the date of the execution of this Agreement) to conform to the relevant text of the English version.

Each party (i) acknowledges that, with its agreement, this Agreement has been predominantly negotiated in the English language; (ii) represents that it has read and fully understands the contents and consequences of this Agreement; (iii) represents that it has made and entered into this Agreement freely and without duress, and (iv) represents that it has received independent legal advice with regard to this Agreement. The parties agree and undertake that they will not (and will not allow or assist any other party to) in any manner or forum, challenge the validity of, or raise or file any objection to, the transaction or this Agreement on the basis of any failure to comply with Indonesian Law No. 24 of 2009 regarding National Flag, Language, Coat of Arms and Anthem.

**Section 7.2.3 Payment.** Insert the following subsection as new bullet:

- Payments under this Agreement shall be made in local Indonesia currency.

## Italy

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 4.4 Personal Data Processing.** Replace the Privacy Policy link with: [hpe.com/it/it/legal/privacy.html](https://hpe.com/it/it/legal/privacy.html)

Insert the following paragraph as a new sixth bullet:

- Each party undertakes to comply with the obligations provided for by the applicable personal data protection regulations. If HPE (as "Data Processor" pursuant to Regulation (EU) 2016/679 of April 27, 2016, concerning the "Protection of individuals with regard to the processing of personal data, as well as the free circulation of such data", from now on "GDPR") carries out a processing of personal data on behalf of the Customer as data controller, the Parties, in compliance with art. 28 of the GDPR, they undertake to sign the "Contract relating to the processing of personal data". The Parties acknowledge that any damage occurring in the Data Privacy area will be subject to the limits indicated in Article Limitation of Liability.

**Section 5.1.1 HPE GreenLake Management Services (if applicable).** Insert the following paragraphs as new subsection bullets:

- To comply with and to commit its employees, agents, and delegates to comply with HPE Standards of Business Conduct. Customer also declares to have examined HPE Standard of Business Conduct. On this point, Customer declares to have examined the HPE Standards of Business Conduct which can be found at [hpe.com/it/231](https://hpe.com/it/231).



- To comply with and to commit its employees, agents, and delegates to comply with the rules of Legislative Decree 231/2001 and its changes and integrations. Customer also grants to refrain and to its employees, agents, or delegates to refrain from committing crimes provided by the aforementioned Legislative Decree 231/2001. On this point, Customer declares to have examined the HPE “Modello Organizzativo” which also could be find at [hpe.com/it/231](http://hpe.com/it/231).
- Customer undertakes to inform, by prompt written notice, HPE “Organismo di Vigilanza e Controllo” about any violation involving HPE (also in a prospective basis) and relevant to the crimes set forth in Legislative Decree 231/2001, and subsequent amendments and integrations, or violation involving HPE “Modello Organizzativo” or HPE Standards of Business Conduct, which Customer has learnt—directly or indirectly (also through its employees agents or delegates)—during the execution of this Agreement. In case of non-fulfillment and/or legal proceedings attributable to Customer and arising from or connected with these obligations, which will be considered as a serious breach of this Agreement, HPE reserves the right to terminate this Agreement, upon written notice, according to article 1456 of the Italian Civil Code, without prejudice to any further damages and “Health and Safety”.
- HPE agrees to comply with any legal requirements stated in the Legislative Decree 81/2008 concerning the adoption of health and safety measures in workplace. According to let. B), paragraph 1 of art. 26 of Legislative Decree 81/2008, Customer agrees to provide HPE with detailed information about the specific risks existing in the working environment where the activities are going to be carried out by HPE and about the prevention measures and the necessary danger warnings that Customer adopts relating to his activities. Customer and HPE agrees to cooperate in the implementation of prevention and protection measures against risks of accidents in workplace relating to the work activities stated in the contract; Customer must also coordinate these measures and inform HPE also in order to eliminate risks due to interference between the various contractors involved in the performance of the service. In order to achieve the purposes of the previous paragraph of this Article, Customer provides in process a “Documento Unico di Valutazione dei Rischi Interferenziali” (DUVRI) and sets out the measures adopted to eliminate or at least minimize the risk of interference. According to paragraph 5 of article 26 of Legislative Decree 81/2008 and unless otherwise stated, there are no fees concerning security.

## Japan

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer’s obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE’s ownership of these Systems.

**Section 6.2 System Term.** Replace the second paragraph of the first bullet with:

- The day on which the Customer can use the System

And will continue for an initial period defined in the SOW or in a corresponding change request (System Term). The System includes components that cannot be extended monthly (for example, third-party software), in which case the System Term will have to be extended for the minimum period of time applicable to the components.

## Korea

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer’s obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE’s ownership of these Systems.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Republic of Korea and the Seoul Central District Court will have exclusive jurisdiction for any actions arising under this Agreement.

**Section 7.2.5—Early Termination Fees:** Replace the second bullet with:

- Termination for HPE breach or insolvency
  - In the event of termination for cause resulting from an uncured HPE material breach or HPE insolvency event, Customer will be relieved of the early termination fees and the return/fee.



## Mexico

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Mexico and the commercial ordinary courts of Mexico City will have jurisdiction.

**Section 7.2.5—Early Termination Fees:** Replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term) x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any

## Peru

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 4.5.5 Limitation of Liability.** Replace first bullet with:

The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to 12 times the average monthly fees invoiced by HPE.

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Peru and the commercial ordinary courts of the city of Lima will have jurisdiction.

**Section 7.2 Payment.** Insert the following subsections as new bullets:

- HPE may suspend or cancel performance of open Orders or services if Customer fails to make payments when due and apply interests. The payment will be made exclusively in US Dollars, expressly renouncing the faculty established in Article 1237 of the Peruvian Civil Code. In the event that in the future any rule or legal provision that establishes that obligations agreed in foreign currency (US Dollars) cannot be paid in such currency, Customer may pay HPE in local currency, the amount in local currency that it was necessary for the HPE to acquire, at the highest exchange rate corresponding to each opportunity, the same amount in US Dollars, in accordance with the Applicable Laws.
- Payment will be made by bank transfer to the HPE's designated bank account. HPE shall not accept payments by check.

**Section 7.2.5—Early Termination Fees:** Replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows.



**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term) x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any

## Poland

**Section 4.1 Warranties.** Replace third bullet with:

- Subject to the provisions on this Agreement, the parties expressly exclude the warranty (rekojmia za wady) under Art. 556 and ff. of the Polish Civil Code.

**Section 6.2 System Term.** Replace the first paragraph of the first bullet with:

Each System Term will start on the earlier of:

- The date Customer has been notified by HPE in writing of the completion of the HPE installation services of the System at the Customer's designated site(s), or
- The 31st day from the delivery of the System to Customer

## Puerto Rico

**Section 4.6 General Provisions (Governing law and jurisdiction).** Replace the first sentence with:

This Agreement is governed by the laws of Puerto Rico and the commercial ordinary courts of the city of San Juan will have jurisdiction.

**Section 7.2.5—Early Termination Fees:** Replace the first bullet with:

- Termination for convenience, Customer breach, or insolvency
  - In the event of such termination of the Agreement or any System since the start of the Agreement term and before the expiration of the initial System Term, the Customer must pay HPE Early Termination Fees, calculated as follows:

**For ramp-up period:**

- For each impacted System during the ramp-up period: The delivered and/or installed capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For each impacted System after the ramp-up period: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term) x 1.1

**For non-ramp-up period:**

- For each impacted System: The reserved capacity at the time of the termination x applicable price per System per month x the number of months remaining in the affected System Term x 1.1
- For fixed monthly charges: The sum of any monthly fixed charges x the number of months remaining in the affected System Term
- For optional software or Services: Early Termination Fees, if any





## Slovakia

**Section 4.5.5 Limitation of Liability.** Replace first and second bullets with:

- The aggregate compensation of damage which either party will be required to compensate to the other for all claims under or relating to these Terms is limited to USD \$500,000.
- Neither the Customer nor HPE will be required to compensate the other party for lost revenues or profits, downtime costs, loss or damage to data, or indirect, special, or consequential costs or damages.

**Section 7.2.5 Early Termination Fees.** Replace the title of the first subsection with

- Termination for convenience by Customer, Customer breach, or insolvency

## Spain

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

- If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

**Section 7.2.2 Taxes.** Replace first bullet with:

- Prices are exclusive of applicable present or future sales, VAT, or similar taxes. HPE's invoices will separately state charges and applicable taxes. Unless the Customer has provided HPE with an appropriate exemption certificate before the relevant Services are performed, the Customer will pay or reimburse HPE for all present or future taxes, fees, and surcharges applicable to the Services (however levied).

## UK and Ireland

**Section 3.1 Rights to use the Systems.** The following subsection shall not apply:

- If a court deems the Agreement to be a lease intended for security, then to secure Customer's obligations under the Agreement, the Customer grants HPE a purchase money security interest in the Systems. The Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.


**Section 4.6 Compliance with laws (UK only).** Insert the following paragraph as a new subsection:

- Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall not have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

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