

CLARITY TERMS FOR RESELLERS OF HPE AAS SOLUTIONS

1 February 2024

Version 1

These Terms document the requirements and responsibilities for the Reseller to purchase and resell the Services.

1. Definitions

Agreement: The entirety of terms stipulated in section 2 of these Terms in the order of precedence stipulated therein. Where this term, “Agreement”, is used in this document, this definition shall prevail against any other versions of the definition in other parts of the Agreement.

Customer: The entity buying the Services from the Reseller for their own internal end use.

Data Privacy and Security Agreement: The HPE data privacy and security terms applicable to the Services as referenced in the Solution Material and the HPE aaS Terms for Customers.

Distributor: Clarity Computer (Distribution) Limited trading as Westcoast Ireland (incorporated and registered in Ireland with company number 158550 and whose registered office is at 6th Floor, South Bank House, Barrow Street Dublin 4., Dublin, D04TR29), authorized by HPE to act as a distributor of the Services to the Reseller for reselling to the Customer.

HPE: The Hewlett Packard Enterprise entity delivering the Services.

HPE aaS Terms for Customers: The version of the terms prevailing at the date of the Transactional Document that govern HPE’s provision of the Services to the Customer, and which are posted here: <https://www.hpe.com/psnow/doc/a50009054enw>.

HPE aaS Commercial Terms: The version of the commercial terms prevailing at the date of the Transactional Document that are applicable to the sale and provision of the Services, which are posted here: <https://www.hpe.com/psnow/doc/a50009055enw>, and where “Seller” shall be interpreted as Distributor and “Purchaser” shall be interpreted as Reseller.

Reseller: The HPE-authorized solution provider purchasing the Services from the Distributor for resale to the Customer.

Services: The services, described in the Transactional Document, that HPE will perform for the Customer, including the provision of HPE intellectual property and Systems for Customer’s access, if applicable.

Solution Material (or Supporting Material): Specifications, service descriptions, data sheets, statements of work, software terms, software-as-a-service terms, additional license authorizations, solution specific terms, warranties, and any other documents (excluding marketing material) referenced in the Solution Material and/or Transactional Document.

System: The hardware and/or software (including firmware) accessed as part of the Services.

Terms: These ‘Clarity Terms for Resellers of HPE aaS Solutions’.

Transactional Document: The applicable legal quote for the Services agreed between the Distributor and the Reseller.

2. Order of Precedence

The transaction for the resale of the Services is subject to the following terms and conditions in descending order of precedence:

- a. The Transactional Document,

- b. The Reseller's purchase order(s) (excluding pre-printed terms) pertaining to the Services,
- c. Any Solution Materials agreed as applicable, and
- d. These Terms.

3. Obligation to Pass Through Terms to the Customer

Reseller shall pass through to the Customer the HPE aaS Terms for Customers, the applicable Solution Material including the Data Privacy and Security Agreement for the purchased Services. Reseller will not obligate HPE to provide any services that are not set forth in the applicable Solution Material or the HPE aaS Terms for Customers.

4. Purchase Terms

The following purchase terms apply to the Reseller:

- a. The payment models for the Services, including the pricing procedure, the default billing cycle and billing frequency, ordering, taxes, and payment terms, are detailed in the HPE aaS Commercial Terms.
- b. The applicable Solution Material or Transactional Document will reference the payment model for the Service.
- c. Prices will be described in the Solution Material or the Transactional Document.
- d. Reseller is not obligated to apply the same purchase terms when it sells to the Customer.

5. Termination Rights

Either party may terminate the Agreement:

- a. 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.
- b. If the other party is subject to an insolvency or bankruptcy event.
- c. If the Customer terminates because of HPE's uncured material breach.
- d. If the Customer or the Reseller terminate their own agreement for reasons other than HPE's uncured material breach.
- e. If HPE terminates because of the Customer's uncured material breach.
- f. If the Customer gives notice of non-renewal pursuant to section 4.6 of the HPE aaS Terms for Customers or terminates for convenience a Pay per use Agreement or an auto-renewed Subscription or Subscription with a Pay per use option, as defined in the HPE aaS Terms for Customers.

6. Effects of Termination

Unless otherwise described in the HPE aaS Commercial Terms, in the event of a termination of all or any portion of the Services before the expiration of a committed period for any reason other than HPE's uncured material breach or insolvency, the Reseller must pay early termination fees equal to the Subscription fee for the impacted Services times the remaining commitment period. For clarity, Services with no committed period or no committed period remaining will not have early termination fees. For Services with a ramp-up period, Services will be deemed to include all Systems installed, even if not activated.

7. Reseller Insolvency or Breach

Reseller agrees to include the following provision into its agreement with the Customer:

"In the event that this agreement is terminated by the Customer due to Reseller insolvency or bankruptcy or for Reseller's uncured breach, HPE and the distributor from whom Reseller purchased the Services for resale to Customer will work together with the Customer to assist in procuring a substantially similar replacement order ("Replacement Order") with HPE, the distributor, or another authorized reseller."

8. Customer Non-Payment

This section is only applicable to Services with a remaining committed period at the time of

termination and when early termination fees would be due upon termination.

HPE grants Reseller the right to novate its own agreement with the Customer to HPE if the conditions of section 8 herein are met. Upon such novation, and subject to (i) Reseller being current on all outstanding amounts under the Agreement, and (ii) Reseller agreeing to terminate its own agreement with the Customer without any early termination fees, Distributor and Reseller agree to terminate the Agreement without any early termination fees.

9. HPE Coverage for Customer Non-Payment

The following terms apply to the Reseller. This section is only applicable to Services with a remaining committed period at the time of termination and when early termination fees would be due upon termination.

a. Novation Rights

Reseller may elect to novate its own agreement with the Customer to HPE if:

- i. Customer does not pay its due amounts for any reason, other than Distributor's or Reseller's uncured breach of any of the agreements in the contract chain or Distributor's or Reseller's insolvency, and
- ii. Such Customer non-payment results in an outstanding amount equal to three monthly invoices.

b. Terms of Novation Rights

- i. HPE will assume all billing and payment risk from the date of novation.
- ii. Reseller will remain responsible for pursuing payment from the Customer for all amounts incurred prior to the novation.
- iii. Once novated, the agreement will be considered a direct agreement between HPE and the Customer and the Reseller will not receive any additional partner benefits associated with the novated agreement.
- iv. HPE will be entitled to lead the agreement with the Customer from the date of novation, including all future change orders and renewals.
- v. HPE will invoice the Reseller a pro-rated refund of any Reseller incentives that are directly tied to the transaction.

c. Preconditions for Novation and Termination Rights

The novation rights stated in this Section 9 will only apply subject to the following preconditions:

- i. HPE was able to perform, and Customer passed, the HPE credit check. If Reseller has moved forward with a transaction despite Customer failing the credit check, this entire Section 9 will not apply.
- ii. The Reseller used reasonable efforts to pursue payment from the Customer and has notified the Distributor and HPE of the issue so that Distributor and/or HPE, assist resolving the non-payment (which may include suspension of the Services if permissible and appropriate).
- iii. The decision to request a novation resides with the Reseller.
- iv. The novation will only be for the Services covered by the impacted Customer transaction.
- v. The novation must be in writing and legally enforceable and is only possible in countries where HPE has an operative subsidiary.
- vi. The terms of the Reseller's agreement with the Customer permit the novation to HPE, contain a termination for breach clause that would allow HPE to terminate the contract for non-payment 30 days after notification of the breach and failure to cure, and contain termination fees that are no less than the early termination fees that HPE agreed to with the Distributor. The terms of the Reseller's agreement with the Customer may not contain any service level agreements or penalties that vary from those provided by HPE.

- vii. The HPE aaS Terms for Customers were passed through to the Customer without modification to create an enforceable delivery obligation between HPE and the Customer.
- viii. Reseller must ensure that as part of the novation, the Customer agrees to be bound by HPE's standard payment terms:
"Invoiced amounts are payable without offset within 30 days of the invoice date".
- ix. Reseller must ensure that, as part of the novation, the Customer agrees to the following order of precedence:
"To the extent there is a conflict between the novated agreement and the HPE aaS Terms for Customers and HPE aaS Commercial Terms, the HPE aaS Terms for Customers and HPE aaS Commercial Terms will apply".

10. General Terms

a. General Terms of Purchase

- i. Distributor will, or (where HPE are shipping directly) will procure that HPE will, make commercially reasonable efforts to meet ship dates quoted or acknowledged.
- ii. Risk of loss or damage for any product will pass from Distributor to Reseller upon delivery at ship-to address. If special shipping arrangements are agreed to and products are shipped via Reseller's carrier or designate, risk of loss or damage will pass to Reseller on delivery to Reseller's carrier or designate.
- iii. Without prejudice to Distributor's termination rights, Distributor may discontinue performance under the Agreement or any other agreement between Reseller and Distributor if Reseller fails to pay any sum when due to Distributor or if after seven (7) days written notice of performance failure, Reseller does not correct such performance failure.
- iv. HPE's warranty and any support in respect of the Services is offered on a pass-through basis to the Customer and is set out under the HPE aaS Terms for Customers and the applicable Solution Material. Reseller is responsible for making the Customer aware of such warranty and any support terms prior to the Agreement being formed. Distributor offers no direct warranties whatsoever in respect of the Services and all terms whatsoever (whether expressed or implied and whether arising at common law or by statute) in respect of the Services (including, but not limited to, terms implied by section 39 of the Sale of Goods and Supply of Services Act 1980 (as amended)) are hereby excluded to the full extent permitted by law.

b. Limitation of Liability

EXCEPT FOR CLAIMS FOR DAMAGES FOR BODILY INJURY OR DEATH AND FOR ANY OTHER CLAIM WHICH CAN NOT BE EXCLUDED BY APPLICABLE LAW, DISTRIBUTOR'S MAXIMUM LIABILITY UNDER THE AGREEMENT IS US\$1,000,000 PER INCIDENT. NOTWITHSTANDING THE FOREGOING, IN NO EVENT IS DISTRIBUTOR LIABLE FOR ANY AND ALL DAMAGES FROM BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, OR LOSS OF USE OF ANY PROPERTY OR CAPITAL NOR FOR ANY (OTHER) SPECIAL, INDIRECT, INCIDENTAL, STATUTORY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

TO THE EXTENT ALLOWED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE.

c. Indemnification

Reseller is solely responsible for its acts, omissions, obligations, representations, or misrepresentations in providing its services to Customers. Reseller agrees to defend, indemnify and hold harmless against all claims, lawsuits, liabilities, losses, damages, costs and expenses (including reasonable attorney and expert witness fees), as a result of any

claims by Customers, arising out of or in connection with Reseller's acts, omissions, obligations, representations, or misrepresentations in connection with Reseller's provision of services or services offerings; or reselling of HPE products and support (including the Services) to Customers.

d. **Entire Agreement**

The Agreement is the entire agreement between the parties regarding its subject matter and supersedes all prior representations, discussions, negotiations, agreements, or Reseller's additional or inconsistent terms, whether written or oral. Additional or inconsistent terms on any purchase order or other document from Reseller will not apply to transactions.

e. **Force Majeure**

Neither party will be liable for performance delays or for non-performance due to causes beyond its reasonable control. However, this provision will not apply to any payment obligations.

f. **Governing Law**

The Agreement will be governed by Irish law. For any dispute between the parties relating to the formation, validity, breach or termination of the Agreement, the courts of Ireland shall have exclusive jurisdiction.

g. **Notices**

All notices must be in writing, and considered given as of twenty-four (24) hours after sending by electronic means, over night courier, hand delivery, or as of five (5) days of certified mailing. Delivery and receipt of notices are calculated based upon business days, excluding Saturday, Sunday, and public holidays.