

# CLARITY TERMS FOR SERVICE PROVIDERS OF HPE AAS SOLUTIONS

1 February 2024

Version 1

These Terms document the requirements and responsibilities for the Customer to purchase 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 Direct to Resell Partner for use as a service provider.

**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.

**Direct to Resell Partner:** 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 reseller of the Services 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 Direct to Resell Partner and “Purchaser” shall be interpreted as 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 Service Providers of HPE aaS Solutions’.

**Transactional Document:** The applicable legal quote for the Services agreed between the Direct to Resell Partner and the Customer.

## 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 Customer’s purchase order(s) (excluding pre-printed terms) pertaining to the Services,

- c. Any Solution Materials agreed as applicable, and
- d. These Terms.

### **3. Pass Through Terms**

Direct to Resell Partner hereby passes through the following terms to the Customer to create a direct contractual relationship between HPE and the Customer: the HPE aaS Terms for Customers, and the applicable Solution Material including the Data Privacy and Security Agreement for the purchased Services. Customer acknowledges and agrees that HPE shall not be responsible 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 Customer:

- 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.

### **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. 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 Customer 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. Novation**

- a. Customer agrees in advance that Direct to Resell Partner may elect to novate the Agreement to HPE if:
  - i. Customer does not pay its due amounts for any reason, other than Direct to Resell Partner's uncured breach or Direct to Resell Partner's insolvency and
  - ii. Such Customer non-payment results in an outstanding amount equal to three monthly invoices.
- b. **Terms of Novation**
  - i. Customer will remain responsible for paying all amounts incurred prior to the date of novation to Direct to Resell Partner and will owe and pay all amounts incurred after the date of novation to HPE.

- ii. Once novated, the Agreement will be considered a direct agreement between HPE and the Customer.
- iii. The novation will only be for the Services covered under the impacted Agreement.
- iv. HPE will have the following specific right: “HPE may terminate the Agreement for non-payment 30 days after notification of the breach and failure to cure.”
- v. HPE will not be bound by any service level agreements or penalties that vary from those provided by HPE.
- vi. The HPE aaS Terms for Customers create an enforceable delivery obligation between HPE and the Customer.
- vii. As part of the novation, Customer agrees to be bound by HPE’s standard payment terms:  
**“Invoiced amounts are payable without offset within 30 days of the invoice date”.**
- viii. As part of the novation, 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.”**

## 8. General Terms

### a. General Terms of Purchase

- i. Direct to Resell Partner 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 Direct to Resell Partner to Customer upon delivery at ship-to address. If special shipping arrangements are agreed to and products are shipped via Customer’s carrier or designate, risk of loss or damage will pass to Customer on delivery to Customer’s carrier or designate.
- iii. Without prejudice to Direct to Resell Partner’s termination rights, Direct to Resell Partner may discontinue performance under the Agreement or any other agreement between Customer and Direct to Resell Partner if Customer fails to pay any sum when due to Direct to Resell Partner or if after seven (7) days written notice of performance failure, Customer 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. Customer acknowledges and agrees that it has been made aware of such warranty and any support terms prior to the Agreement being formed. Direct to Resell Partner 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, DIRECT TO RESELL PARTNER’S MAXIMUM LIABILITY UNDER THE AGREEMENT IS US\$1,000,000 PER INCIDENT. NOTWITHSTANDING THE FOREGOING, IN NO EVENT IS DIRECT TO RESELL PARTNER 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. **Entire Agreement**

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

d. **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.

e. **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.

f. **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.