HPE aaS Terms for Customers

June 01, 2026

Version 5

These HPE as-a-service (“aaS”) Terms govern HPE’s provision of on-premises and/or cloud based as-a-service offerings to the Customer (either directly or indirectly), as further detailed herein.

1. Definitions

1.1. **Affiliate**: Any entity controlling, controlled by, or under common control with a party.

1.2. **Agreement**: Collectively, to the extent applicable, the following make up the entire agreement (in ascending order of precedence): these HPE aaS Terms, the HPE aaS Commercial Terms (when purchasing from HPE), Solution Material, the Customer order(s) (as accepted by HPE, excluding pre-printed terms), legal quote(s), and Data Privacy and Security Agreement(s).

1.3. **Confidential Information**: Any non-public information disclosed or made available between the parties (whether written or orally), that is either clearly indicated as confidential at the time of disclosure or which by its nature should reasonably be treated as secret or confidential. In addition, any information associated with the metering tools, the process to bill and collect amounts due, or metering or reporting of usage data will be deemed to be Confidential Information of HPE. Metering or reporting of usage data can be shared by HPE with Resellers and HPE-authorized distributors if the Customer purchased the Service from a Reseller.

1.4. **Customer**: The entity that contracted for the Services, directly through HPE or indirectly through a Reseller.

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

1.6. **Deliverable**: Tangible output of the Services (including in electronic form) specifically identified as a “Deliverable” in the Solution Material.

1.7. **HPE**: The contracting Hewlett Packard Enterprise group company.

1.8. **Reseller**: The HPE-authorized solution provider reselling to the Customer.

1.9. **Services**: The services, detailed in the Agreement, that HPE will perform for the Customer, including the provision of HPE intellectual property and Systems for Customer’s access, if applicable.

1.10. **Solution Material**: Service descriptions, statements of work, additional license authorizations, and any other documents (excluding marketing material) referenced in the Solution Material and/or legal quote.

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

Capitalized terms used but not defined in these HPE aaS Terms shall have the meaning given to them elsewhere in the Agreement.

2. Terms Applicable to All Services

2.1. Hardware and Software Systems

2.1.1. HPE or its Affiliates will remain the owner or licensee of all Systems, unless the Solution Material or order specifically identifies that title to hardware Systems or licenses to software Systems transfers to Customer upon the start of the Services. HPE grants Customer a right to use the Systems, subject to any restrictions or limitations in the applicable Solution Material.

2.1.2. Where HPE specifically transfers title to hardware Systems or licenses software Systems to Customer in the Solution Material and/or legal quote, such transfer or software licensing shall occur at the start of the Services and be subject to the following terms, notwithstanding any conflicting provisions in the Agreement: (i) the hardware is subject to the HPE Customer Terms – Portfolio (hpe.com/us/en/about/end-user-agreement-terms.html), (ii) the HPE-branded software is subject to the HPE EULA and Software Licensing Terms and additional license authorizations, if applicable, available on hpe.com/software/SWLicensing or accepted by or on behalf of the Customer as part of the installation of the software, and (iii) the non-HPE branded software is subject to the applicable third-party license terms. Customer may be directed to the third party's URL to 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. If during delivery of the Services, HPE is required to install copies of HPE branded or third-party software on behalf of Customer, Customer authorizes HPE to accept the license terms on the Customer's behalf when part of the installation and/or configuration process. Any licenses granted will automatically terminate upon termination or expiration of the Services unless otherwise stated in the applicable HPE or third-party license terms.

2.1.3. Customer may not transfer, assign, pledge, or in any way encumber or convey any Systems that HPE or its Affiliates retains title to or remains the licensee for. Customer will return any such Systems in Customer's possession upon termination or expiration of the Services.

2.1.4. Certain Services are contingent on the installation of Systems and/or specific configurations, and Customer's failure to permit such installation or modification outside of specified configurations may impact the availability of certain aspects or the entirety of the Services.

2.2. Use of the Services

HPE grants the Customer a non-transferable right to internally use the Services for the benefit of Customer and Customer's end-users during the term of the Services. In addition, if service provider use is purchased, HPE also grants the Customer a non-transferrable right during the term of the Services to (i) use the Services to provide Customer solutions to Customer's end users, and (ii) permit Customer's end users to internally use the Services portion of the Customer solutions; subject to Customer remaining responsible for any such use. Not all third-party software is available for service provider use. Customer shall consult the third-party license terms for use rights.

2.3. Customer Rights and Responsibilities

2.3.1 Customer is responsible for maintaining Customer's credentials and will be responsible for any activity using Customer's credentials or workspace. Should Customer believe that there has been unauthorized use of Customer's credentials or workspace, Customer must immediately notify HPE and the third-party software vendor, if applicable.

2.3.2 Customer warrants that it will not disclose or otherwise transfer, or provide access to HPE or its employees anything that is listed with 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. Unless expressly agreed otherwise, Customer will obtain any export licenses required to disclose such items to HPE.

2.3.3 Customer will assist HPE in resolving any metering or remote monitoring issues to the extent caused by the environment under Customer's control.

2.3.4 Customer will provide a safe environment on Customer's premises when HPE or HPE Systems are on site that does not pose a potential health or safety hazard to HPE employees, subcontractors, Systems, and/or other HPE assets.

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

2.3.6 Unless otherwise agreed, the Customer will respond within 5 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. 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, then HPE will be relieved of its obligations until Customer has corrected or completed Customer's obligations.

2.3.7 HPE may suspend performance of Services if the Customer fails to make payments when due.

2.3.8 Customer will not (i) subject to the Deliverables and/or service provider use grant (if applicable), copy or reproduce any portion, feature, function, or user interface of the Services, (ii) interfere with or disrupt the integrity or performance of the Services; (iii) use the Services to submit, send, or store data that is obscene, threatening, libelous or otherwise unlawful or tortuous, violates any third party's privacy or human rights, or infringes upon or misappropriates intellectual property rights; (iv) use Services to disrupt or cause harm to a third party's system or environment; (v) access Services to build a competitive product or service; or (vi) reverse engineer the Services. Customer is responsible for complying with all terms of use for any software, content, service, or website it loads, creates, or accesses when using the Services.

2.3.9 Upon completion of a pilot, proof of concept, trial, or demo, Customer must convert to a paid contract covering the Services or immediately stop using the Services.

2.4. HPE Rights and Responsibilities

2.4.1 If necessary for supportability, and reliability of the Services or to meet legal requirements, HPE may, at no additional charge, modify, replace, or use alternative Systems to provide the Services, provided the alternative Systems meet the requirements agreed upon and the Services are of equal or better quality. In the event of Service interruption, HPE may implement temporary procedures or workarounds while HPE works on a permanent solution.

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

2.4.2 Services (or portions thereof) will be provided from locations determined by HPE, which may be outside the country where the Services are purchased. Any requests by the Customer to change the location may impact pricing and is subject to the contract change management process.

2.4.3 HPE may use Affiliates, agents, and/or subcontractors to perform all or a portion of the Services; however, HPE will remain responsible for the provision of the Services as if such Services were performed directly by HPE. HPE will ensure such third parties comply with terms that are no less protective of Customer than the terms contained herein.

3. Additional Terms for Systems Under Customer's Control

To the extent HPE provides HPE owned or licensed Systems (including through HPE Affiliates) that are or will be installed in a Customer-controlled environment (directly or indirectly), the following additional terms shall apply:

3.4 Customer will neither add to nor alter Systems without HPE's written approval. Customer is responsible for connecting the Systems to any other hardware, software, or services not provided or managed by HPE as part of the Services and is responsible for ensuring that such connected or attached devices and/or software are compliant and compatible with the Systems.

3.5 Customer is responsible for any installation delays not caused by HPE.

3.6 Unless included in the Services, Customer is responsible for the System management activities upon completion of installation.

3.7 Customer will provide HPE escorted and unencumbered access to Systems, either remotely or on-site, as required.

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

3.9 Customer will not relocate any Systems once installed unless agreed in writing by the parties. Customer is responsible for any costs arising out of Customer-initiated System relocation and may require recertification services.

3.10 Customer will be responsible for managing and controlling physical, administrative, and logical security of the Systems while under Customer's control.

3.11 Add-on Systems, Systems added to increase capabilities, and/or System components will be non-coterminous with the original System unless specifically agreed otherwise.

3.12 The parties may discuss and agree upon a termination assistance plan.

4. Terms and Conditions

4.4 Warranties

4.4.1 HPE will provide Services using generally recognized commercial practices in accordance with the Solution Materials. If the Services do not meet this standard, HPE will re-perform and/or remediate the Services after receiving prompt notice.

4.4.2 If the Services specifically include Deliverables, those Deliverables are accepted once provided to Customer, and HPE warrants that the Deliverables will conform materially to their written specifications for 30 days thereafter. 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.

4.4.3 HPE's Services and warranty obligations do not apply for claims: a) for Systems in a Customer-controlled environment, due to Customer's improper site preparation, deployment, or site or environment conditions, accident, fire or water damage, electrical faults, or transport, b) due to Customer's improper usage, negligence, non-compliance with Solution Material, modifications, or inappropriate maintenance or calibration, c) due to third-party software or product malfunctions or functional limitations, or d) due to malware (not introduced by HPE).

4.4.4 This section states all remedies for warranty claims. To the fullest extent permitted by law, HPE disclaims all other warranties, conditions, and terms implied by law.

4.4.5 Notwithstanding any other provision in the Agreement, if HPE provides Customer with Services for free or as part of a pilot, proof of concept, trial, or demo, such Services are provided "as is" and to the extent permitted by law, HPE disclaims all warranties and liability.

4.5 Intellectual property

4.5.1 No transfer of ownership of any intellectual property will occur under the Agreement.

4.5.2 If or when necessary for HPE to provide the Services, the Customer grants to HPE (and its subcontractors) a limited, non-exclusive, royalty-free right and license to use the Customer intellectual property rights and the Customer's rights in third-parties' intellectual property rights during the Services term solely to provide the Services.

4.5.3 If Deliverables are provided, HPE hereby grants Customer a worldwide, non-exclusive, fully paid, and royalty-free right to reproduce and use copies of the Deliverables internally.

4.5.4 If education services are provided, 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.

4.6 Confidentiality

4.6.1 The parties may use Confidential Information only to fulfill obligations or exercise rights under the Agreement and may share it only with their (and their Affiliates') employees, agents, or contractors with a need to know such information and who are subject to substantially similar terms.

4.6.2 The parties will protect the Confidential Information using a reasonable degree of care for at least three years from the date of receipt but in any event as long as the Confidential Information is protected by applicable law.

4.6.3 The obligations in this Section 4.3 do not cover information that is or becomes publicly known without fault of the receiving party, 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.

4.7 Personal Data

4.7.1 HPE collects and processes business contact information relating to Customer's employees or other individuals representing the Customer as a data controller and 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), the HPE GreenLake edge-to-cloud platform SaaS Data Privacy and Security Agreement (hpe.com/info/Customer-privacy), and applicable laws.
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.

4.7.2 Where HPE discloses business contact information of its employees or other individuals representing HPE to Customer or where such persons provide their personal data directly to Customer, or where Customer receives such data from a third party such as a partner or supplier of HPE, Customer will process such personal data as data controller, using appropriate technical and organizational measures in compliance with the Customer's privacy policies and applicable laws.

4.7.3 If HPE processes personal data (other than business contact information) in the performance of the Services, the Solution Material will reference the Data Privacy and Security Agreement applicable to those Services.

4.7.4 HPE will utilize technical and organizational measures to protect HPE-controlled Systems. Customer will be responsible for utilizing technical and organizational measures to protect Customer-controlled Systems.

4.8 Other Data

4.8.1 HPE collects telemetry data as part of the Services and uses that telemetry data (i) in order to provide the Services, and (ii) in de-identified form, to improve the features and functionality of HPE's offerings and to develop and provide new solutions.

4.8.2 To the extent Customer places data onto Systems, such data is owned by Customer. HPE will not access or use such data, except to the extent necessary to perform the Services and comply with applicable law. Customer is responsible at all times for controlling, managing, granting access to, and deleting their data from Systems. Unless specifically stated otherwise in the Solution Material, HPE does not monitor such data and Customer is responsible for its backup.

4.9 Services Term

Customer will be authorized to use the Services (including Systems) for the period of time contracted. Unless either party gives at least 90 days prior notice of non-renewal, the authorization to use the Services (including Systems) will automatically be extended for the minimum extension period (and may be extended multiple times until notice of non-renewal takes effect). The minimum extension period is monthly, unless a Service includes Systems that cannot be extended monthly (for example, third-party software), in which case the minimum extension period will be the minimum period of time applicable to the Systems.

4.10 Termination

4.10.1 Either party may terminate all or a portion of 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 voluntary or involuntary insolvency or reorganization proceedings by or against the other party are instituted under applicable law, provided that such termination is permitted by applicable laws.

4.10.2 In addition, Customer may terminate all or a portion of the Agreement for convenience upon 90 days' written notice, unless otherwise stated in the applicable Solution Material.

4.10.3 Upon the effective date of any termination or expiration, Customer will immediately cease using all Systems and HPE intellectual property, remove or destroy all Customer data from Systems whose title did not transfer, return all HPE material, including Systems whose title did not transfer, and pay any applicable early termination fees.

4.11 HPE Indemnification

4.11.1 HPE will defend or settle any third-party claims against the Customer that allege an HPE-branded System, Service, or Deliverable 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.

4.11.2 HPE will indemnify Customer for such claims by paying third-party claim defense costs, settlement amounts, and any court-awarded damages.

4.11.3 HPE is not responsible for claims resulting from any improper use of the Systems, Services, or Deliverables or content/design provided by the Customer.

4.11.4 HPE may modify the Systems, Services, or Deliverables to be non-infringing and materially equivalent, or HPE may procure the rights necessary for Customer's continued use of the Systems, Services, or Deliverables. 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.

4.11.5 This section states HPE's entire liability and Customer's sole and exclusive remedy for such third-party claims.

4.12 Limitation of liability

4.12.1 The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to USD $1,000,000.

4.12.2 Neither the Customer nor HPE will be liable for lost revenues, goodwill, or profits, downtime costs, diminished business value, anticipated savings, business interruption, loss or damage to data, or incidental, exemplary, punitive, indirect, special, or consequential costs or damages.

4.12.3 This section does not limit either party's liability for:

- Indemnification obligations
- Amounts due under the Agreement
- Unauthorized use of intellectual property
- Loss or damage to Systems under Customer's control
- Death or bodily injury
- Acts of fraud
- Other liability which may not be excluded or limited by applicable law.

4.13 General provisions

4.13.1 **Affiliates**: These terms may be used by Affiliates by referencing these terms in a legal quote and a corresponding order (or other means to show mutual agreement) and including any additional terms or amendments to reflect local law or business practices.

4.13.2 **Amendment:** Any changes to the Agreement must be agreed upon in writing by both parties.

4.13.3 **Assignment:** The Customer may not assign all or any part of the Agreement without HPE's prior written consent which cannot be unreasonably withheld or delayed.

4.13.4 **Compliance with Laws:** Each party will comply with applicable laws. HPE and Customer will comply with their respective responsibilities as exporters and importers under laws and regulations applicable to the export, import, or other transfer of the hardware, software, Services and technology provided by HPE under this Agreement, including the export, import, and sanctions laws of the United States and other applicable jurisdictions. If Customer exports, imports, or otherwise transfers products, technology and/or Deliverables provided under this Agreement, Customer will be responsible for complying with these and any other applicable export, import, and sanctions laws and regulations and for obtaining any required authorizations. Customer acknowledges that HPE cannot provide, directly or indirectly, any software, Services, or technology to: (i) embargoed or sanctioned countries or territories (currently Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, Ukraine Luhansk People's Republic (LNR), and the Ukraine Donetsk People's Republic (DNR)) or to nationals and parties from those countries; or (ii) any parties subject to trade control sanctions or blocking measures, including those designated on any of the lists of denied or restricted parties included in the United States Departments of State, Commerce, and Treasury Consolidated Screening List (available at trade.gov/consolidated-screening-list) or the European Union (EU) (available at data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en). Customer warrants that no Customer locations or recipients of HPE software, Services, and technology are subject to any such restrictions. HPE may suspend or terminate performance of obligations under this Agreement, without penalty, if: (1) Customer violates any applicable export, import, or sanctions law or regulation; (2) to the extent necessary to assure the Parties' compliance under U.S. or other applicable export, import, or sanctions laws or regulations; and (3) to the extent necessary to comply with applicable laws. Customer warrants that it will notify HPE if it becomes the subject or target of any restrictions listed above.

4.13.5 **Electronic Transactions**: The parties may agree to do business electronically. Electronic transactions include electronic consent to contracts, placing or accepting orders through electronic means, exchanging and accepting Solution Materials electronically, and content posted on HPE websites and linked in other Agreement documents.

4.13.6 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.

4.13.7 Entire Agreement: The Agreement represents the parties' entire understanding with respect to its subject matter and supersedes any previous communications and custom. Any Services not described in the Agreement are out of scope. The applicability of any industry standard and/or Customer's general terms and conditions or any similar terms not referenced in this Agreement are hereby expressly excluded.

4.13.8 Force Majeure: To the extent a force majeure event prevents a party from performing an obligation under this Agreement, the impacted party's performance obligation will be suspended until the conclusion of the force majeure event.

4.13.9 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.

4.13.10 Survival: Any clause which by its nature should survive to give adequate effect to its terms will survive the termination or expiration of the Agreement.

4.13.11 Term: The Agreement begins upon acceptance of a Customer order and remains in force for the Services term, including any applicable extension period. If multiple Services are contracted for under this Agreement, then the Agreement will remain in force until the end of all Services terms.

4.13.12 Acceptance: By ordering Services that are subject to these HPE aaS Terms, Customer acknowledges it was provided with access and opportunity to save the documents referenced or linked herein, and Customer irrevocably accepts the terms and conditions stipulated therein.

5. Country-Specific Terms

The following country-specific provisions shall apply only when the country's law is applicable per Section 4.10.9 and shall take precedence over the respective sections in the HPE aaS Terms.

AUSTRALIA

Insert the following as a new Section 4.1.6:

4.1.6 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:

– To cancel your service contract with us; and

– To a refund for the unused portion, or to compensation for its reduced value; and

– 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.

Insert the following as a new Section 4.1.7:

4.1.7 Customer acknowledges and agrees that:

i. The HPE-provided Systems are ultimately owned by HP Financial Services (Australia) Pty Ltd (HPEFS);

ii. This order may give rise to a security interest and a purchase money security interest (as defined under the Personal Property Securities Act 2009 ("PPSA") in the HPE-provided Systems (including any attachments, accessories, replacements, additional systems and proceeds) and HPE or HPEFS may register a security interest in the HPE-provided Systems by filing a financing statement pursuant to the PPSA;

iii. It will take such actions and provide such information as HPE requires to enable HPEFS to perfect and preserve its interest under this order as a first priority security interest and to maintain continuous perfection of such priority. Customer shall act immediately when requested by HPE and at its own cost;

iv. To the extent permitted by law, Customer hereby waives its rights relating to receipt of verification statements, statements of account, notice of proposals to retain collateral, and notices of the removal of an accession, any remedies against HPE or HPEFS under the PPSA, and any time period that must otherwise lapse under the PPSA before any right, power or remedy of a secured party may be exercised. Customer further agrees that section 96 of the PPSA will not apply to this order and is expressly contracted out of by Customer and HPE;

v. Following a material breach of the order, HPE or HPEFS may also be entitled to exercise rights to recover the HPE-provided Systems; and

Insert the following as a new Section 4.1.8

4.1.8 Customer represents that the HPE-provided Systems:

i. are not being acquired or used primarily for personal, domestic or household purposes,

ii. will not form part of its inventory; and

iii. the information provided in this order is accurate and it will not change its name, organizational identifier number or entity type without first notifying HPE in writing at least 5 days prior to any changes occurring.

Insert the following as a new Section 4.1.9

4.1.9 Customer confirms that:

i. the HPE-supplied Systems, IT infrastructure and/or Services are not being used to process “business critical data”, nor do they constitute “critical infrastructure assets” for the purposes of and as defined by the Security of Critical Infrastructure Act 2018 (Cth); and

ii. if such use is later intended, the Customer must formally provide HPE with 30 days’ written notice to facilitate HPE's legislative compliance, which compliance may include additional scope and fees to be documented in a change request (including in transactions via Resellers).

AUSTRIA

Replace Section 4.9.1 in its entirety with:

4.9.1 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 USD $1,000,000.

BELGIUM

Replace Section 4.10.8 in its entirety with:

4.10.8 **Force Majeure**: To the extent a force majeure event prevents a party from performing an obligation under this Agreement, the impacted party’s performance obligation will be suspended until the conclusion of the force majeure event. The impossibility to perform an obligation must be judged reasonably meaning that the performance is reasonably impossible. In no event can the party that is prevented from performing the obligation be held responsible and liable for the consequences of a force majeure event.

BRAZIL

Replace Section 1.9 in its entirety with:

1.9 **Services**: The consumption-based data processing and storage services as well as all the other services, detailed in the Agreement, that HPE will perform for the Customer, including Customer’s access to HPE intellectual property and Systems, if applicable.

Insert the following as a new Section 3.10:

3.10 Systems will be provided by HPE to the Customer, at the Customer's location, as a loan free of charge (Commodatum), and the Customer will be entitled to use the Systems, in accordance with the Agreement, for internal business purposes, provided that the Customer complies with the conditions of the Agreement. Customer acknowledges that the Systems are owned or licensed by HPE or its Affiliates.

3.10.1. In view of the provisions of item 4.1. above, Customer agrees to protect Systems by: i) posting or allowing HPE to post any markings evidencing HPE ownership, ii) using due care to maintain the Systems/Equipment; iii) not making any modifications to the Systems, iv) keeping the

Systems/Equipment in Customer's safe custody and control until such Systems are returned to and received by HPE. Customer will promptly notify HPE of, assuming all risks and paying for any damages caused to HPE Systems.

3.10.2. Customer will promptly notify HPE and assume the risk of any loss or damage not caused by HPE to the Systems and Measurement Tools (including repair and replacement costs) during the term of the Agreement.

Insert the following as a new Section 4.10.13:

4.10.13. Excessive overburden. The Customer acknowledges that the prices agreed include imported components, highly specialized labor and specific investments that may be affected by significant variations in macroeconomic indicators, including, without limitation, exchange rate, inflation and availability of labor. In case of such significant variations, parties mutually agree to review the Agreement prices, seeking the economic and financial balance of the Agreement.

CANADA

Insert the following as a new Section 4.7.4:

4.7.4 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 the Agreement may only be terminated in the circumstances set forth by the provisions of the Agreement.

Replace Section 4.10.6 in its entirety with:

4.10.6 **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. These HPE aaS Terms are available in French on our website. The Customer confirms that they have been presented a French version of these HPE aaS Terms first that it is their wish that the Agreement, as well as all other documents relating thereto, including notices, have been and will be drawn up in English language only. Le client confirme avoir été présenté une version française de ces Conditions HPE aaS et confirme sa volonté que cette entente, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise seulement.

Replace Section 4.10.9 in its entirety with:

4.10.9 **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. Claims arising or raised in Canada will be governed by the laws of Ontario and the laws of Canada applicable therein, excluding rules as to choice and conflict of law. The Customer and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

CHINA (MAINLAND)

Insert the following as a new Section 2.4.5:

2.4.5 HPE reserves the authority to exclude from its offerings any items related to public cloud services (such as colocation service or other public cloud services requiring local operating licenses) in response to legislative constraints in China. HPE may engage in discussions with the customer regarding the procurement of such services from duly licensed vendors, in order to safeguard the overall integrity of the products or services provided to customers.

Section 4.4.5 Personal data. Insert the following section:

HPE will transfer Customer's business contact information overseas in order to perform the Agreement and entrust third parties to process such information. Customer acknowledges that it has obtained consent from its employees or other individuals representing the Customer for such cross-border transfer and such info processing conducted by third parties.

CZECHIA

Replace Section 4.9.1 in its entirety with:

4.9.1 The aggregate compensation of damage of each party to the other for all claims under or relating to the Agreement is limited to USD $1,000,000.

Replace Section 4.9.2 in its entirety with:

4.9.2 Neither the Customer nor HPE will be required to compensate for lost revenues, goodwill, or profits, downtime costs, diminished business value, anticipated savings, business interruption, loss or damage to data, or incidental, exemplary, punitive, indirect, special, or consequential costs or damages.

FRANCE

Replace Section 4.9.3 in its entirety with:

4.9.3 This section does not limit either party's liability for:

– Amounts due under the Agreement

– Unauthorized use of intellectual property

– Loss or damage to Systems under Customer's control

– Death or bodily injury

– Acts of fraud

– Other liability which may not be excluded or limited by applicable law.

GERMANY

Replace Section 2.1.2 in its entirety with:

2.1.2 Where HPE specifically transfers title to hardware Systems or licenses software Systems to Customer in the Solution Material and/or legal quote, such transfer or software licensing shall be subject to the following terms, notwithstanding any conflicting provisions in the Agreement: (i) the hardware is subject to the HPE Customer Terms – Portfolio (hpe.com/us/en/about/end-user-agreement-terms.html), (ii) the HPE-branded software is subject to the HPE EULA and Software Licensing Terms and additional license authorizations, if applicable, available on hpe.com/software/SWLicensing or accepted by or on behalf of the Customer as part of the installation of the software, and (iii) the non-HPE branded software is subject to the applicable third-party license terms. Customer may be directed to the third party's URL to 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. If during delivery of the Services, HPE is required to install copies of HPE branded or third-party software on behalf of Customer, Customer authorizes HPE to accept the license terms on the Customer's behalf when part of the installation and/or configuration process. The license terms may be in electronic format, embedded in the software, or contained within the software documentation, and can be made available upon request to Customer. Customer is responsible to review the license terms at the time of installation, and hereby authorizes HPE to accept such terms on its behalf. Any licenses granted will automatically terminate upon termination or expiration of the Services unless otherwise stated in the applicable HPE or third-party license terms.

Replace Section 4.1.1 in its entirety with:

4.1.1 HPE will provide the Services using generally recognized commercial practices Where there are defects with Deliverables, 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.

Replace Section 4.1.2 in its entirety with:

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

Delete Section 4.1.4 in its entirety.

Replace Section 4.4.1 in its entirety with:

4.4.1 HPE collects and processes business contact information relating to Customer's employees or other individuals representing the Customer and 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), the HPE GreenLake edge-to-cloud platform SaaS Data Privacy and Security Agreement (hpe.com/info/Customer-privacy), and applicable laws. HPE qualifies as data controller for such data and 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.

Replace Section 4.4.3 in its entirety with:

4.4.3 The Customer is responsible at all times for his own processing of Customer data, including for managing Customer data and any access to it through the Services. HPE does not monitor the Customer 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, however, HPE is supposed to access Customer data in the context of a particular order, the following additional regulations apply https://www.hpe.com/psnow/doc/a50000759enw.

Delete Section 4.8.5 in its entirety.

HONG KONG

Insert the following as a new Section 4.10.13:

4.10.13 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) Ordinance (cap. 623) to enforce any term of this Agreement.

HUNGARY

Replace Section 4.10.5 in its entirety with:

4.10.5 The parties may agree to do business electronically. Electronic transactions include electronic consent to contracts, placing or accepting orders through electronic means, exchanging and accepting Solution Materials electronically, and content posted on HPE websites and linked in other Agreement documents. Parties hereby exclude the applicability of sections 6:82-6:84 of Act V of 2013 of the Hungary Civil Code.

INDIA

Replace Section 4.10.9 in its entirety with:

4.10.9 **Governing Law and Jurisdiction**: The Agreement will be governed by the laws of India and the courts of Bangalore, Karnataka shall have appropriate jurisdiction for any disputes that arise from this Agreement. The Customer and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

INDONESIA

Insert the following as a new Section 4.7.4:

4.7.4 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.

Replace Section 4.10.9 in its entirety with:

4.10.9 **Governing Law and Jurisdiction**: The Agreement will be governed by the laws of the Republic of Indonesia and Indonesian courts will have jurisdiction. The Customer and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

Insert the following as a new Section 4.7.4:

4.10.13 This Agreement has been executed in English and Indonesian language, in which should there be any misinterpretation between the two, the English version shall prevail. Datasheets and/or Supporting

Material may be executed in English language and should it be requested in accordance to the prevailing regulations, within 30 (thirty) days after such request the Parties will sign a Bahasa Indonesia version of the document, in which should there be any misinterpretation, the English version shall prevail. The cost for such translation shall be borne equally by the Parties. The Parties hereby disclaim any benefit from, or any right to cancel or declare this Agreement and the relevant Datasheets, Supporting Material(s) null and void pursuant to Law No. 24 of 2009 on the National Flag, Language, Emblem and Anthem.

ISRAEL

Insert the following as a new Section 2.4.5:

2.4.5 Without derogating from the above mentioned in section 2.1.3 and from HPE's full title and ownership over the Systems and tools, and for cautionary purposes only, HPE will have the right to register a pledge Systems and tools in its favour. The Customer warrants that it will provide HPE, promptly at HPE's request, in the form and substance satisfactory to HPE:

- an executed copy of the Pledge Agreement (as defined below) in Hebrew (including an original Registration Form (as defined below), all duly signed by the Customer and ready for filing with the applicable registrars for perfection of the pledge pursuant to the Pledge Agreement.
- "Pledge Agreement" means Fixed Charge Debenture Agreement, between Costumer and HPE in a form acceptable to HPE, according to which Customer pledges to HPE the Products; and all the forms and documents required to create and register the Pledge Agreement and the pledge in all relevant registrars (including "Form 10" or "Form 1", as applicable).

In addition to the representations and warranties contained herein, Costumer hereby further represents and warrants that:

- It shall fulfil all necessary actions in order to make the pledge legally enforceable and valid; and
- It shall create no encumbrance over the Products which are pledged to HPE in accordance with the Pledge Agreement.

For the avoidance of doubt, the pledge created in favour of HPE under the Pledge Agreement is made for cautionary purposes and shall not be construed as attesting to the Parties' intention that ownership and/or title to any products shall, at any time, be transferred to the Customer. It is clarified that ownership and title to the product shall vest at all times exclusively and solely with HPE.

ITALY

Replace Section 4.10.9 in its entirety with:

4.10.9 This Agreement will be governed by the laws of Italy. The Court of Milan will have jurisdiction for any actions arising under this Agreement, 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.

Insert the following as a new Section 4.10.13:

4.10.13 Compliance with Law 231/2001: Customer declares to have reviewed and undertakes to comply with HPE Organizational Model pursuant to Law 231/2001 (the "HPE 231 Model"), which is available at hpe.com/it/it/privacy/modello231.html. Customer shall promptly report to HPE any breach or suspected breach of the HPE 231 Model which Customer may become aware of (also through its employees, agents or collaborators) in connection with the performance of this Agreement.

KAZAKHSTAN

Replace Section 2.1.1 in its entirety with:

2.1.1 Unless HPE specifically transfers title to hardware Systems or licenses software Systems to Customer, HPE or its Affiliates will remain the owner or licensee of all Systems. HPE grants Customer a right to use the Systems, subject to any restrictions or limitations in the applicable Solution Material.

Delete Section 2.1.2 in its entirety.

Replace Section 2.1.3 in its entirety with:

2.1.3 If the Services specifically include Deliverables, those Deliverables are accepted once provided to Customer, and HPE warrants that the Deliverables will conform materially to their written specifications for 30 days thereafter. by signing Act of acceptance of Deliverables (Annex 1). Customer will sign Act of acceptance of Deliverables and return it to HPE in 15 days. If Customer has any claims, Customer has 15 days to deliver to HPE written motivated objections of signing the Act of acceptance of Deliverables. In this case HPE shall eliminate any incompliance with recognized commercial practices specified in

motivated objections within a reasonable period of time. If no motivated objections are submitted by the Customer within 15 days upon delivery of Act of acceptance of Deliverables to Customer, the Deliverables shall be considered by the Parties as duly rendered to the Customer, in agreed period of time and accepted by the Customer for payment without any exclusions. 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.

Replace Section 4.1.5 in its entirety with:

4.1.5 Notwithstanding any other provision in the Agreement, if HPE provides Customer with Services for purpose of marketing and promotion, or as part of a pilot, proof of concept, trial, or demo, such Services are provided “as is” and to the extent permitted by law, HPE disclaims all warranties and liability.

Replace Section 4.9.1 in its entirety with:

4.9.1 The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to direct damages and to USD $1,000,000.

Replace Section 4.9.2 in its entirety with:

4.9.2 Parties are liable only for direct damages. Neither the Customer nor HPE will be liable for any indirect damages, including but not limited to: lost revenues, goodwill, or profits, downtime costs, diminished business value, anticipated savings, business interruption, loss or damage to data, or incidental, exemplary, punitive, indirect, special, or consequential costs or damages.

Replace Section 4.9.3 in its entirety with:

4.9.3 This section does not limit either party’s liability for:

- Indemnification obligations
- Amounts due under the Agreement
- Unauthorized use of intellectual property
- Loss or damage to Systems under Customer’s control
- Death or bodily injury
- Acts of fraud.

Replace Section 4.9.1 in its entirety with:

4.10.5 **Electronic Transactions**: The parties may agree to do business electronically. Electronic transactions include electronic consent by usage of authorized electronic signature to contracts, placing or accepting by usage of authorized electronic signature orders, exchanging and accepting by usage of authorized electronic signature Solution Materials.

Insert the following as a new Section 4.10.13:

4.10.13 **Language**: The Agreement is signed in English and Russian language. In case of conflict Russian language prevails.

Insert the following as a new to the end of the HPE aaS Terms:

List of Annexes:

Annex 1: [Act of acceptance of Deliverables]

Annex 2: Solution Material, the Customer order(s) (excluding pre-printed terms), legal quote(s), and Data Privacy and Security Agreement(s).

Signatures, address, bank details of Parties:

[___]

Name, position, date of signature: [__]

[___]

Name, position, date of signature: [__]

NEW ZEALAND

Insert the following as a new Section 4.10.13:

10.13 The exclusions and limitations of warranties, liability and remedies in this contract apply except to the extent prohibited by the New Zealand Consumer Guarantees Act 1993 (CGA) in situations where the CGA can apply and its provisions have not been excluded or modified as permitted by the CGA. Pursuant to the above, the parties expressly acknowledge that the provision of HPE Services in New Zealand are for business purposes and the CGA will not apply to this contract and that given the nature and value of the transaction, this is fair and reasonable.

Insert the following as a new Section 4.10.14:

4.10.14 Customer acknowledges and agrees that:

vi. The HPE-provided Systems are ultimately owned by HP Financial Services (New Zealand) (HPEFS);

vii. This order may give rise to a security interest and a purchase money security interest (as defined under the Personal Property Securities Act 1999 (“PPSA") in the HPE-provided Systems (including any attachments, accessories, replacements, additional systems and proceeds) and HPE or HPEFS may register a security interest in the HPE-provided Systems by filing a financing statement pursuant to the PPSA;

viii. It will take such actions and provide such information as HPE requires to enable HPEFS to perfect and preserve its interest under this order as a first priority security interest and to maintain continuous perfection of such priority. Customer shall act immediately when requested by HPE and at its own cost;

ix. To the extent permitted by law, Customer hereby waives its rights relating to receipt of verification statements, statements of account, notice of proposals to retain collateral, and notices of the removal of an accession, and any time period that must otherwise lapse under the PPSA before any right, power or remedy of a secured party may be exercised. Customer further agrees that sections 116, 120(2), 125 and 129 of the PPSA do not apply to this order; and

x. Following a material breach of the order, or if at any time HPE or HPEFS believes the HPE-provided Systems is “at risk” (as construed in accordance with section 109(2) of the PPSA) HPE or HPEFS may also be entitled to exercise rights to recover the HPE-provided Systems.; and

Insert the following as a new Section 4.10.15:

4.10.15 Customer represents that the HPE-provided Systems:

i. are not being acquired or used primarily for personal, domestic or household purposes,

ii. will not form part of its inventory; and

iii. its information provided in this order is accurate and it will not change its name, organizational identifier number or entity type without first notifying HPE in writing at least 5 days prior to any changes occurring.

Insert the following as a new Section 4.10.16:

4.10.16 The provisions of Sections 4.10.14 and 4.10.15 are also intended for the benefit of and are intended to be enforceable by, HPEFS in accordance with the New Zealand Contracts (Privity) Act 1982).

POLAND

Insert the following as a new Section 4.10.16:

4.1.6 Polish statutory warranty (“rękojmia” indicated in the article 566 of Polish Civil Code) is excluded.

Replace Section 4.2.3 in its entirety with:

4.2.3 If Deliverables are provided by HPE, HPE hereby grants Customer a perpetual worldwide, non-exclusive, fully paid, and royalty-free right for the following uses:

- entering into computer memory;
- making a backup;
- recording and multiplication in whole or in part using any technique;
- copying and using copies of the Deliverables for internal use;

without the right to sublicense.

Replace Section 4.7.1 in its entirety with:

4.7.1 Subject to applicable Early Termination Fees, either party may terminate all or a portion of the Agreement:

- Effective immediately, 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
- With immediate effect, if voluntary or involuntary insolvency, loss of financial liquidity or any analogous step or reorganization proceedings by or against the other party are instituted under applicable law, provided that such termination is permitted by applicable laws.
- With immediate effect, in the event of a merger, capital amalgamation of the party with a sanctioned entity (state or corporate) or acquisition of the site by a sanctioned entity (state or corporate).

For the avoidance of doubt, insolvency is understood as a loss of financial liquidity, which is the ability to fulfill current obligations.

Replace Section 4.7.2 in its entirety with:

4.7.2 Subject to applicable Early Termination Fees, HPE may terminate the Agreement upon 90 days' written notice if the Systems are used contrary to their intended use (Section 3.3.1, Section 4., Section 5.6).

Replace Section 4.9.1 in its entirety with:

4.9.1 The aggregate liability of each party to the other for all claims under or relating to the Agreement is limited to USD $100,000.

Replace Section 4.9.3 in its entirety with:

4.9.3 This section does not limit either party’s liability for other liability which may not be excluded or limited by applicable law.

Prices are exclusive of applicable sales, use, consumption, service, VAT or similar taxes. Invoices will separately state charges, fees, and applicable taxes. Unless an appropriate exemption certificate was provided before the relevant Services are performed, all applicable taxes, charges, fees, and surcharges (however levied) must be paid or reimbursed by the Customer.

SINGAPORE

Insert the following as a new Section 4.10.13:

4.10.13 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 2001 to enforce any term of this Agreement.

SLOVAKIA

Replace the title of heading 4.9. “Limitation of Liability” with “Limitation of compensation of damage.”

Replace Section 4.9.1 in its entirety with:

4.9.1 The aggregate compensation of damage of each party to the other for all claims under or relating to the Agreement is limited to USD $1,000,000.

Replace Section 4.9.2 in its entirety with:

4.9.2 Neither the Customer nor HPE will be required to compensate for lost revenues, goodwill, or profits, downtime costs, diminished business value, anticipated savings, business interruption, loss or damage to data, or incidental, exemplary, punitive, indirect, special, or consequential costs or damages.

TURKEY

Replace Section 4.2.2 in its entirety with:

4.2.2 If or when necessary for HPE to provide the Services, the Customer grants and/or shall grant to HPE (and its subcontractors) a non-exclusive, royalty-free right and license to use the Customer intellectual property rights (the right of adaptation, the right of reproduction, the right of distribution, the right of representation, the right of communication; and the right to use the authority to disclose the work to the public, the right to use the authority to designate the name, the right to use the authority to prohibit modifications, the right to use the authority to access the original work [all rights herein are referred to as

"IP Rights" hereinafter]) and the Customer's rights in third-parties' IP Rights, limited to the Services term, solely to provide the Services.

End-User Statement

– Customer acknowledges that it intends to procure or use Hewlett Packard Enterprise (HPE) hardware, software, and/or technology ("products") that use cryptographic techniques that are classified under the EU's Dual-Use Control Regulation (EC) No 2021/821 as 5A002 or 5D002 and are subject to export license requirements.

– In compliance with EU export regulations, Customer certifies that all the products and services Customer plan to purchase/use from Hewlett Packard Enterprise

  • will only be used for the HPE solution for Customer as identified in this Agreement

  • will only be used in: Turkey (country of destination) or

  • will not otherwise be re-exported out of: Turkey (country of destination);

  • will not be directly or indirectly imported and exported to or from Russia and Belarus. Customer acknowledges this based on the US export regulations administered by BIS and OFAC as well as EU Notice to economic operators, importers and exporters under 2022/C 145 I/01, in view of Russian war of aggression against Ukraine.

  • will not have a military end-use as defined in Article 4 sub 1 of EU Regulation 2021/821;

  • will not be used for purposes of disruption, interception or monitoring of telecommunication networks or Internet Protocol network communications that could assist in or enable human rights abuses, or systems, equipment and components to perform 'cryptanalytic functions' in order to defeat, weaken or bypass "information security";

  • will not be used in any nuclear explosive activity or any unsafeguarded nuclear fuel-cycle activity; will not be used in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons, nor will they be resold if we know or suspect that they are intended or likely to be used for such a purpose; and

  • will not be re-exported or otherwise re-sold or transferred to a destination subject to a UN, EU or OSCE embargo where that act would be in breach of the terms of that embargo.

UNITED KINGDOM

Insert the following as a new Section 4.10.13:

4.10.13 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.

UNITED STATES

Insert the following as a new Section 3.10:

3.10 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.

Insert the following as a new Section 3.11:

3.11 **Care, custody, control of systems**

Customer will have care, custody, and control over the System or Systems and will exercise its duty to care for the Systems, without regard to whether the Systems are located at Customer's site or at a third-party site. Customer has exclusive right to use of the Systems except as necessary for HPE to fulfill obligations under the Agreement. This Section takes precedence over any inconsistent terms of the Agreement.

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