

# **TERMS FOR HPE GREENLAKE.**

## **ARP NEDERLAND B.V.**

24<sup>th</sup> of January, version 3.0

## Introduction.

HPE Greenlake is a service provided by:

Hewlett-Packard Nederland B.V. (**'HPE'**), Stroombaan 16, 1181 VX Amstelveen, Nederland, to its HPE Greenlake Partners (HPE-authorized distributors and HPE-authorized resellers).

As a HPE-authorized reseller, ARP Nederland B.V. (**'ARP'**), Withuisveld 30, 6226 NV Maastricht, is permitted to purchase HPE GreenLake Services from HPE-authorized distributors and resell the services to its customers.

The following terms apply to customers of ARP regarding the delivery of HPE Greenlake.

All that is understood to be HPE Greenlake is mentioned in the HPE aaS Terms for Customer, the HPE aaS Commercial Terms, the HPE Greenlake data sheets, any applicable HPE service data sheets, the order form or HPE Greenlake Statement of Work and any of its referenced documents, to which the latest version of those terms apply.

**Learn more at:** [www.hpe.com/GreenLake](https://www.hpe.com/GreenLake)

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## 1. Scope of services.

- 1.1 HPE Greenlake is designed to provide ease of startup, flexible pricing models, scalability, and flexible usage for eligible infrastructure (compute, storage, networking, etc.), software, and HPE GreenLake Management Services.
- 1.2 The service is designed for customers looking for a pay-per-use model (subject to minimums).
- 1.3 ARP has the following responsibilities to their customers, when it comes to HPE Greenlake.
  - Work with its customers to understand their environment and HPE Greenlake needs and provide requirements to HPE;
  - Provide its customers with Solution pricing and invoicing (includes HPE Greenlake);
  - Provide its customers Sales engagement (initial and ongoing/change order);
  - Own customer relationship through delivery of the HPE Greenlake Management services and
  - Deliver its customers Capacity management by access to usage reports and communication.
- 1.4 ARP offers HPE Greenlake exclusively to customers who are entrepreneurs, a legal entity under public law or a special fund under public law. ARP will not accept any orders from consumers / natural persons (i.e. any natural person who is acting for purposes which are outside his trade, business, or profession).

## 2. Definitions.

- 2.1 All capitalized terms are defined in the applicable documents, in particular the HPE aaS Terms for Customer and all documents referenced therein.

## 3. Applicable documents.

- 3.1 Part of these terms and conditions are the following documents.
- 3.2 In the event of contradictions between the provisions of the individual contractual documents, the following order of precedence shall apply:
  - HPE GreenLake Statement of Work (SoW) agreed between customer and ARP;
  - Customer terms and conditions for delivery of HPE Greenlake by ARP Nederland B.V. (this document) and
  - The annexes to these terms and conditions:
    - HPE aaS Terms for Customer ([Annex 1](#)) or as stated in the Statement of Work;
    - HPE aaS Commercial Terms ([Annex 2](#)) or as stated in the Statement of Work;
    - HPE Licence Agreement / End User License Agreement and Software Licencing Terms ([Annex 3](#)) or as stated in the Statement of Work;
    - HPE Data Sheets ([Annex 4](#)) or as stated in the Statement of Work;
    - HPE Privacy Statement ([Annex 5](#)) or the HPE Data Privacy and Security Agreement Schedule or as stated in the Statement of Work.
- 3.3 The documents and terms and conditions mentioned above apply exclusively.
- 3.4 Any general business and purchasing terms and conditions the customer may have that differ, oppose or supplement these terms and conditions will only be integrated into the Contract if and insofar as ARP expressly consents to their applicability.
- 3.5 This requirement for consent applies in all cases, even if, for example, ARP begins providing services without expressing any reservations after having been informed of the customer's general business and purchasing terms and conditions.
- 3.6 Individual agreements (including collateral agreements, amendments and supplements) concluded in specific cases between ARP and its customer will prevail over these terms and conditions in all cases. A written contract or

written confirmation from ARP is required to make the contents of any such agreement binding.

- 3.7 Statutory provisions apply even without any clarification insofar as they are not lawfully modified or expressly excluded in these terms and conditions.

#### 4. Conclusion of the Contract.

- 4.1 Unless otherwise stipulated in the Statement of Work, signing the Statement of Work constitutes acceptance by the customer and a valid, binding order.
- 4.2 The Customer is required to carefully verify the accuracy and adequacy of ARP's offers. This applies in particular to offers containing specific assumptions ARP has used in calculations and service descriptions, and which are designated as such in the Statement of Work. The customer must inform ARP of any inaccurate assumptions so that ARP can revise the offer.
- 4.3 The HPE aaS Terms for Customer ([Annex 1](#)) establish delivery obligations between HPE and the customer additional to those between ARP and the customer. In the event HPE provisions the services, ARP is released from its obligations towards the customer and vice versa.
- 4.4 The HPE aaS Terms for Customer do not establish an obligation for the customer to pay HPE.

#### 5. Changes to the documents.

- 5.1 ARP remains authorised to change the contractual documents in the event of changing market conditions, amendments made by the manufacturer, developments and/or other circumstances insofar as the change does not alter any scope of performance essential for maintaining the quid pro quo between ARP and its customer, and insofar as the change is deemed reasonable for the customer.
- 5.2 ARP must inform the customer immediately of any such changes. If the customer does not object to the changes by sending written notification to ARP within 30 days of receiving notice, these changes will be considered accepted, and the modified document versions will apply thenceforth.

- 5.3 When informing the customer of the changes, ARP will explicitly draw the customer's attention to the consequence of failing to submit a written objection.

#### 6. Delivery of HPE Greenlake.

- 6.1 Delivery of the HPE Greenlake devices and services are only within The Netherlands.
- 6.2 ARP will inform the customer if it cannot deliver the HPE devices and services to the location.
- 6.3 Deliveries outside The Netherlands are only possible upon special request. Upon request, the customer will provide ARP with all the necessary documentation e.g. customs papers. Additional costs for shipping, customs duties, taxes, etc., which exceed those standard for delivery within The Netherlands, are invoiced separately.
- 6.4 The customer shall be responsible for the accidental destruction, loss, write-off, rendering unusable, damage and premature decline in value from the moment of risk transfer unless these can be traced back to ARP.
- These circumstances do not free the customer from its payment obligations.
- 6.5 Upon receipt of the HPE devices, the customer must immediately check the external condition, report any damage to the carrier and inform ARP in writing.

#### 7. Ownership, usage of service and change of location.

- 7.1 The customer does not take ownership of the hardware components. The HPE devices provided to the customer by ARP remain the property of HPE.
- 7.2 The customer shall allow ARP and HPE access to inspect the devices at any time during its business hours.
- 7.3 The parties agree that any connection of the HPE equipment made available to an immovable or movable property only takes place for a temporary

purpose, with the intention of re-establishing the separation upon termination of the user agreement.

- 7.4 If the customer rents business premises, the landlord of these premises must be informed immediately of the third-party ownership of the HPE devices. At ARP's request, the landlord – at its own expense – shall also provide written confirmation of this.
- 7.5 The HPE devices and other services are for the sole use of the customer. The customer is not entitled to sell, rent or use the devices in any other manner that limits ARP's rights.
- 7.6 The customer must protect the HPE devices from being accessed by third parties and indemnify them against third-party rights and is to inform ARP immediately in writing of any imminent or effectuated enforcement measures related to the HPE devices or the property where they are located and provide all necessary documents and information. The customer bears any resulting intervention costs.
- 7.7 The customer may only use the HPE devices within its own business environments. A permanent change in the hardware components' location is only possible after written confirmation of ARP.
- 7.8 The customer shall bear the risk and costs of the change of location.
- 7.9 The customer shall treat the HPE devices with care and use them in accordance with HPE aaS Terms for Customer.
- 7.10 Changes and add-ons to HPE devices which significantly change or impair their functionality and value require the prior written consent of ARP. The customer may not impair or endanger the ownership of the HPE devices, in particular not make them an essential part of another object.
- 7.11 The HPE devices are to be used for standard commercial purposes in accordance with the HPE aaS Terms for Customer. They are not to be used in critical security systems, nuclear power plants, military installations, in medical devices with life-sustaining functions or in the manufacture of weapons. No liability is accepted for use in these areas.

## 8. System / Contract term.

- 8.1 The minimum system / contract term is three years.
- 8.2 Each system term begins on whichever of the following days is earlier:
  - The date on which ARP informs the Customer in writing about the completion of HPE installation services for the system.
  - The day on which the Customer can use the system.

This period corresponds with the usage period agreed for the systems.

Once the initial period has expired, it automatically extends by one month at a time unless one of the Parties terminates the Contract with at least 90 days' notice to the end of the initial usage period.

If the system includes components that cannot be extended monthly (e.g. third-party software), the system term extends for the minimum period applicable for the components.

After the initial period, each Party can terminate the Contract with at least 30 days' notice to the end of the extension period.

- 8.3 After installation, the Customer can use the system and the system term begins regardless of HPEs need to carry out integration and migration activities on behalf of the Customer.
- 8.4 Each system's usage period is defined in the system details. Add-on systems and/or system components are either coterminous (with the same duration) or non-coterminous (with different durations) with the original system as described in the change request.

## 9. Services for Measuring Consumption and Capacity.

### Metering tools:

- 9.1 HPE/ARP will make metering tools available in order to measure the system's use for monthly invoicing purposes.

- 9.2 The HPE metering tools collect data required to determine usage (e.g. switching the server on/off, virtual machine storage capacity, physical core load as a percentage or as written GB).
- 9.3 HPE or its accredited partner install the metering tools on virtual machines made available by the Customer in its own data centre. The data centre must meet the minimum requirements for running the latest Microsoft Windows OS version.
- 9.4 Measuring begins on the day HPE completes the installation of the measurement tools.

### Measuring capacities used:

- 9.5 HPE measures system usage using the system units defined below in order to calculate monthly use.

### Virtual machines: (e.g. HPE Synergy, HPE ProLiant or general servers)

- 9.6 Virtual machine use is calculated in 'compute units'. A compute unit is considered 'used capacity' if the metering tools record that it is allocated once or more per day. 'Daily used capacity' is the total number of compute units allocated in a day.

### Physical servers, blade servers and other physical computing devices

- 9.7 Physical computing devices usage is measured in 'powered-on units'. A server is considered 'used capacity' if the metering tools record that an individual physical server device is powered on once or more per day. 'Daily used capacity' is the total number of physical devices allocated in a day.

### Raw capacity – Amount of data written including RAID or erasure coding overheads.

- 9.8 Applicable to:
  - HPE XP- disk arrays – UoM = Written Raw GB

- HPE 3PAR Storage Arrays – UoM = Written Raw GiB (HPE 3PAR is being phased out please consider positioning HPE Primera or HPE Nimble Storage as per Storage BU guidelines.)
- HPE Primera Storage Arrays – UoM = Written Raw GiB (Legacy metering—this is not the preferred option—Storage Option B: HPE Primera Usable GiB) HPE Primera usable GiB)
- Storage device usage is measured in either gigabytes (GB) or gibibytes (GiB) of storage written to a raw level (including RAID or erasure coding overheads).
- Storage is considered used capacity when data is sent from a server and written to the disk drives in the array as recorded by the metering tools. Data is collected daily and 'used capacity' is the average storage space in use over the month.

### Usable capacity – Amount of data written excluding RAID or erasure coding overheads.

- 9.9 Applicable to:
  - HPE Primera Storage Arrays – UoM = HPE Primera Usable GiB (Preferred HPE Primera option)
  - HPE Nimble Storage Arrays – UoM = Written Usable GiB
  - HPE StoreOnce – UoM = Written Usable GB
  - VSA (Virtual Storage Appliance) – UoM = Written Usable GB
  - HPE Alletra MP – UoM = Written Usable GiB
  - Storage device usage is measured in either gigabytes (GB) or gibibytes (GiB) of storage written to a usable capacity level (i.e. excluding RAID or erasure coding overheads).
  - Storage is considered used capacity when data is sent from a server and written to the disk drives in the array as recorded by the metering tools. Data is collected daily and 'used capacity' is the average storage space in use over the month.

### Allocated Capacity – Capacity provisioned to the host from the array.

- 9.10 Applicable to:

- MSA Storage Arrays – UoM = Allocated GB
- HPE Synergy Storage Modules—UoM = Allocated GB
- Storage device usage is measured in gigabytes (GB) of storage capacity provisioned to the host system.
- Storage is considered used capacity if it is allocated to a server as determined from the data collected by the metering tools. Data is collected daily and 'used capacity' is the average storage space in use over the month.
- For MSA storage arrays only. If the customer elects to use thick volumes the reported capacity will be 100% of the allocated capacity. If the Customer elects to use thin volumes, the capacity will reflect the thin volume capacity taken up by its data. (See the MSA QuickSpecs for more information on thin provisioning).

### Physical cores.

- 9.11 Physical cores usage is measured as a percentage of utilisation. A physical core is considered 'used capacity' if its daily average utilisation is greater than 3% as recorded by the metering tools 'Daily used capacity' is the total number of physical cores with usage greater than 3% in a day.
- 9.12 Unless otherwise specified, 'used capacity' is the monthly average of applicable 'daily used capacity' rounded to the nearest whole number (for example, 10.01 up to and including 10.49 will be rounded down to 10, and 10.50 up to and including 10.99 will be rounded up to 11).
- 9.13 For software products provided by HPE that are directly licensed for specific hardware devices or other variable/quantifiable conditions, HPE will update HPE GreenLake Central monthly with the number of HPE licences used (for example, licence per CPU). The same rounding up factor described above will also be applied to the number of licences used.
- 9.14 For software products provided by HPE that are licensed at an environment wide level (for example, not dependent on the amount of hardware

deployed or other variable/quantifiable conditions), the fee is fixed per month irrespective of usage.

## 10. Termination.

### Storage system.

- 10.1 Either party may terminate a SoW or order form:
- 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.
  - If the other party is subject to an insolvency or bankruptcy event.

Once the initial period has expired, it automatically extends by one month at a time unless one of the Parties terminates the Contract with at least 90 days' notice to the end of the initial usage period. If the system includes components that cannot be extended monthly (e.g. third-party software), the system term extends for the minimum period applicable for the components. After the initial period, each Party can terminate the Contract with at least 30 days' notice to the end of the extension period.

## 11. Impact of termination.

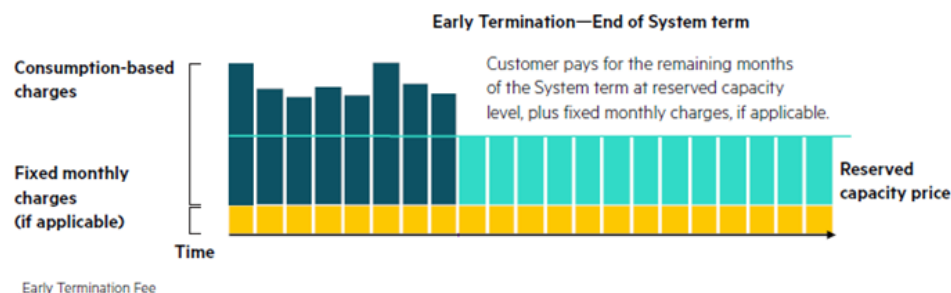
### Termination fees.

- 11.1 In the event of termination of a SoW, order form or any system before the expiration of the system term, ARP will invoice termination fees as calculated below:
- For each affected 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 affected 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

- c. For each affected system if no ramp-up period: (the reserved capacity at the time of the termination x applicable price per system and month x the number of months remaining in the affected system term) x 1.1
- d. For fixed monthly charges: The total of any monthly fixed charges set forth in the SoW or order form x the number of months remaining in the affected system term.
- e. For optional software or services: Termination fees as defined in the relevant annexes.



11.2 The Customer will settle all liabilities arising out of any termination in accordance with this section by paying in full ARP's final invoice, which will include:

- a. Termination fees;
- b. Any outstanding consumption-based charges and
- c. Return fees.

### Termination due to breach or insolvency.

11.3 In the event of extraordinary termination due to an uncured ARP breach or insolvency event, the customer is relieved from paying termination and return fees.

11.4 If due cause exists, either contracting party may terminate the Contract without observing the notice period; this must be done within a reasonable period of time after such due cause becomes known. A Compelling Reason exists if the terminating Party, taking into account all the circumstances of the individual case as well as the interests of both contractual parties, cannot reasonably be expected to continue with the Contract due to certain facts ("Compelling Reason"). Where breach of contractual obligations is the grounds for Compelling Reason, termination is only permitted if no remedy is provided by a specified deadline or if a warning issued is not heeded, unless such a deadline is not deemed necessary. A Compelling Reason for ARP to terminate the Contract exists in particular when:

- a. The customer is in default with the payment of at least two (2) monthly invoices;
- b. Insolvency proceedings are opened against the customer's assets or if the opening of insolvency proceedings is rejected due to a lack of assets;
- c. The customer liquidates or sells its business or moves its headquarters abroad;
- d. The customer is in serious breach of its obligations despite a warning (e.g. due to sub-leasing).

11.5 In the case of extraordinary termination, ARP shall be compensated so that it is in the same position it would have been in had the Contract not been terminated. This shall be without prejudice to any additional claim for overdue payments.

## 12. Contract novation.

12.1 ARP can choose to novate the Contract with the customer, including all rights and obligations, to HPE in the event that:

- a. The customer does not pay the amounts due for any reason with the exception of ARP's uncured breach or insolvency and
- b. Such non-payment by the customer results in an outstanding amount equal to three monthly invoices.

The customer at all times agrees to this transfer.

- 12.2 As part of the novation, the customer agrees to be bound by HPE's standard payment terms:
- The customer will pay invoiced amounts without offset or withholding within 30 days of the invoice date. HPE may suspend or cancel the provision of services if the Customer fails to make payments when due. Fees exclude and the Customer will pay or reimburse all present or future, taxes, fees, and surcharges upon or arising from the provision of services (however levied) unless the Customer has provided HPE with an appropriate exemption certificate before the relevant services are performed. Each party is solely responsible for all taxes and assessments upon its own real estate, personal property and net income. If the customer is required to withhold any tax related to the services, it 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 documentation has not been provided within the time prescribed by the tax authority, the Customer will reimburse the withheld amounts to HPE.
- 12.3 The customer agrees that, to the extent of a conflict between the novated agreement and the HPE aaS Terms for Customer, the HPE aaS Terms for Customer will apply.
- 12.4 HPE is entitled to terminate the Contract for non-payment 30 days after notification of the breach and failure to cure. In this case, the provisions on termination (section 10 and 11 of these terms and conditions) shall apply accordingly between HPE and the Customer.

## 13>Returns.

- 13.1 Unless otherwise required by law, the customer must return the systems to HPE within 30 days of the expiration/termination date or HPE removing unused systems and bear all related costs.
- 13.2 If the Parties agree that HPE/ARP will pick up the systems, the customer is responsible for any reasonable, mutually agreed fees associated with the deinstallation, packing, and transportation to return Systems to HPE/ARP ("Return Fee").
- 13.3 The Parties will discuss and agree upon a termination assistance plan. If the customer requires termination assistance services, the HPE/ARP will provide them at HPE's applicable rates for Professional Services.
- 13.4 When returned, hardware components must be complete, i.e. with all accessories supplied upon conclusion of the Contract, and in a condition that is also in accordance with the Contract. This contractually agreed condition requires that the hardware components be fully functional and exhibit no wear and tear beyond what is generally expected from normal usage.
- 13.5 Before returning the components, the customer is obliged to delete all software and data it has installed and remove any passwords. This does not apply to hardware components on which no Customer data are located or on which it is not possible to install software (e.g. access points). If possible, the hardware should be reset to factory settings.
- 13.6 If the customer does not return the hardware components in full and on time, the customer must pay the monthly fee indicated in the individual Contract for each full or partial month past the return deadline until they have been returned.

## 14.Insurance, security and risk management.

### Risk of loss.

- 14.1 The risk of loss of or damage to systems is transferred to the customer or its representative upon delivery.

## Protection and insurance of HPE Systems.

- 14.2 The Customer protects HPE's systems and tools by:
- Affixing labels provided by ARP that identify HPE's ownership, or authorising HPE to do so
  - Maintaining the systems with due care
  - Not relocating the systems or tools once they have been installed unless agreed within the framework of a change management process.
  - Ensuring the systems and metering tools are secure and free from liens and impediments from the day of deployment to the Customer's location(s) until the systems are returned and the tools removed.
  - Taking out indemnity insurance and other insurance to cover the replacement value. Evidence of cover must be given to ARP or HPE upon request.

## Communication of security rules.

- ARP's obligations vis-à-vis the Customers security requirements must be agreed in writing.

## Physical security.

- The Customer is responsible for the physical security of the systems and metering tools.
- The Customer physically protects all rooms for servers, data storage devices, network and environment components using electronic security systems.
- The Customer is responsible for allocating and managing authorisations.
- The Customer logs all assigned authorisations.
- The Customer provides ARP's employees with the authorisations needed to provision the services.
- Third-party employees may only enter secured rooms when accompanied by an authorised Customer employee.

## Logical security.

- The Customer is responsible for managing and controlling logical security of the systems and metering tools.
- The Customer grants HPE/ARP logical access to the systems on the basis of the Customer's applicable security rules.
- The Customer must ensure that only Customer-approved data are on the systems.

## Other responsibilities

The Customer's additional responsibilities related to specific services or software deployed within the framework of the agreement can be found in the respective annexes and linked data sheets.

## 15. Customer's obligation to cooperate.

- 15.1 The customer's responsibilities are laid out in the Statement of Work (SoW), section 5 of the HPEaaS Terms for Customer ([Annex 1](#)) and the respective data sheets ([Annex 4](#)).
- 15.2 To enable the proper delivery of services by HPE, the customer assumes sole responsibility for meeting all technical and organisational prerequisites. The customer will provide ARP with all documentation and information required for service delivery in good time.
- 15.3 HPE must have access to all operational facilities and technical infrastructure impacted by or required for service delivery.
- 15.4 The customer is responsible for taking all necessary precautions to protect its IT infrastructure (security, backups, etc.) unless ARP is contractually obliged in an individual Contract to do so. The customer must particularly ensure that data is backed up in good time before ARP begins work on a system.
- 15.5 The customer may, when using items provided by HPE for temporary use, such as hardware, software and storage, only store or otherwise process content the use of which use does not violate Dutch or any applicable foreign law. In particular, it cannot be subject to prosecution

- or fine, and it cannot violate data-protection legislation nor the property rights of third parties (e.g. copyrights, patents, trademarks or the right to bear a name).
- 15.6 The customer is obliged to carry out regular and proper data backups. This does not apply to hardware components which by the very nature cannot be backed up (e.g. access points).
- 15.7 If cooperation obligations or provision requirements are not met in accordance with the Contract, ARP is exempt, in whole or in part, from its corresponding performance obligation insofar as ARP relies on these cooperation obligations and provision requirements. ARP is not responsible for service issues resulting from the Customer's failure to meet cooperation obligations or provision requirements in accordance with the Contract.
- 15.8 ARP may invoice the customer separately for any additional costs resulting from the customer's failure to meet cooperation obligations or provision requirements in accordance with the Contract. ARP's right to further claims remains unaffected.

## 16. Pricing and Invoicing.

### Prices.

- 16.1 Pricing and fees are determined based on the provisions of the Statement of Work (SoW).
- 16.2 The provisions of HPE aaS Commercial Terms ([Annex 2](#)) apply to the relationship between ARP and the customer. This also covers pricing in case of metering issues, the pricing mechanism, price adjustments, invoicing and taxes.

### Invoicing.

- 16.3 Invoicing for the services will begin upon the earlier of:
- The first day after HPE notifies the customer in writing of the completion of HPE installation services for the system.
  - The day on which the customer can use the system.

- 16.4 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 the 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,-.
- 16.5 Unless otherwise stated, ARP will invoice the Customer monthly in arrears 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] or similar taxes or fees.

### Payment.

- 16.6 The customer has 10 business days following the monthly billing cycle to contact ARP with any questions or concerns regarding the invoice payment.
- 16.7 The customer will pay invoiced amounts without offset or withholding within 30 days of the invoice date.
- 16.8 Where the invoice value is disputed, the customer must pay the reserved capacity amount within 30 days of the invoice date and state the reasons for withholding. The Parties will work in good faith to resolve the dispute promptly.

### Credit checks.

- 16.9 The customer will assist ARP in obtaining the necessary Customer information so that HPE can conduct a credit check on the Customer.
- 16.10 If ARP provides services for which it is entitled to demand separate remuneration, these services are to be remunerated separately

according to the price list applicable at the time the services were commissioned, unless the Parties have agreed otherwise.

- 16.11 The customer consents to receiving electronic invoices, which ARP may issue through an authorised representative. Unless agreed otherwise, invoices will be sent to the default address, fax number or e-mail address indicated by the Customer.
- 16.12 If ARP becomes aware of circumstances which could considerably reduce the creditworthiness of the customer and which jeopardise the customer's payment of outstanding receivables, ARP is entitled to wait until advance payment or security has been made to carry out the outstanding deliveries or provide outstanding services due under the corresponding contractual relationship.

## 17. Warranty.

The following warranty provisions apply to material and legal defects.

- 17.1 ARP is liable for the customer's warranty claims in accordance with legal provisions unless otherwise stipulated in these terms and conditions.
- 17.2 In order to quickly remedy defects, the customer is entitled to assert its warranty rights against HPE, in particular those in the HPE aaS Terms for Customer ([Annex 1](#)). In this event, ARP will provide the Customer reasonable support. While these rights are being exercised, the statute of limitations for the Customer's corresponding warranty claim against the HPE is suspended.
- 17.3 Moreover, the Customer must notify ARP immediately of any defects to the products and services, providing all information known to the Customer for the purpose of identifying the defect. The Customer must take reasonable measures to facilitate the identification of the defect and its causes.
- 17.4 An immediate reduction of the current remuneration for the services is only permitted insofar as the claim for reduction is undisputed or has been established with legal effect. The Customer reserves the right to reclaim any overpayments under the principles of unjust enrichment.

## 18. Usage rights.

- 18.1 The granting of usage rights for the products and services is made directly by HPE in accordance with the provisions of the HPE aaS Terms for Customer ([Annex 1](#)) and the Software Licensing Terms ([Annex 3](#)).

## 19. Liability.

- 19.1 With respect to the claim's basis and extent, ARP is liable in accordance with statutory regulations (a) in the event of intent or gross negligence by ARP, (b) for damages falling in the context of a guarantee issued by ARP or (c) where there is injury to life and limb or harm to health.
- 19.2 In all other cases, ARP is only liable in the event of a breach of a material contractual obligation (i.e. an obligation the fulfilment of which enables the proper performance of the Contract and the observance of which the contractual party regularly relies on and may legitimately rely on) and only for the typical damage that could be foreseen when the Contract was concluded.
- 19.3 The Contractual Parties assume the typical, foreseeable damages expected upon conclusion of the Contract to not exceed €500.000,- for individual cases. Statutory liability limitations remain unaffected.
- 19.4 In the event of data loss through ordinary negligence, ARP is liable only for the costs that would be incurred to recover data that was properly and regularly backed up by the Customer. This does not apply if data backup is one of the services ARP is required to provide.
- 19.5 No further liability is assumed. Liability—regardless of the legal basis—is excluded for indirect damage, consequential damage caused by a defect, or lost profit.
- 19.6 ARP's strict liability for any defects that were already present upon conclusion of the Contract is excluded insofar as the defect is not related to a feature guaranteed by ARP.

- 19.7 The liability exclusions and limitations above also apply to the personal liability of employees, staff members, personnel, representatives and vicarious agents.
- 19.8 The Customer's entitlement to damages or compensation for futile expenses expires after one (1) year. This does not apply to entitlements arising from injury to life, limb or health, entitlements or entitlements arising from the violation of a quality guarantee. Furthermore, it does not apply to entitlements based on an intentional or grossly negligent breach of obligations by ARP or any legal representative or agent of ARP.
- 19.9 Paid Service Level Credits will be counted towards the Customer's damages.

## 20. Force Majeure.

- 20.1 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. This does not apply to payment obligations.

## 21. Confidentiality.

- 21.1 Each contractual party undertakes to treat confidentially, for an unlimited amount of time, all information or items which are disclosed or made known by the other Party during the initiation or performance of the Contract, and which are considered business or trade secrets within the meaning of Dutch law or designated as confidential (Confidential Information), and to use Confidential Information solely for the purpose of performing the Contract. The Contracting Parties must protect Confidential Information in such a way as to prevent any access by unauthorised third parties. Any further confidentiality obligations arising from separate confidentiality agreements concluded between the Parties remain unaffected.

- 21.2 This confidentiality obligation does not apply if it can be proven that the information:
- Was already known to the recipient prior to disclosure,
  - Was already public knowledge at the time of disclosure,
  - Became public knowledge after disclosure through no fault of the recipient,
  - Was lawfully made available to the recipient by a third party, without any restriction as to confidentiality or use, after the initial disclosure,
  - Has been independently acquired by the recipient prior to its disclosure,
  - Must be disclosed by the recipient pursuant to statutory regulations, a court order or an official order by a governmental authority; in this case, the contractual party required to disclose information must inform the other contractual party immediately of the disclosure to the extent possible and permissible.
- 21.3 Third parties within the meaning of this agreement are not the companies affiliated with the Parties within the meaning of Dutch law.

However, in order to disclose information to an affiliated company, the contractual party must, in advance, obligate its affiliated company to maintain confidentiality.

## 22. Data Protection.

- 22.1 To comply with the provisions of data protection law, the Parties are each responsible for their respective areas. The Customer is responsible for managing their data and any access to it. The Parties acknowledge that it is not intended to allow ARP direct access to the Customer's personal data.
- 22.2 If ARP processes personal data in the course of providing the services, it will inform the Customer of the fact in good time so that measures required under the EU GDPR, such as a Commissioned Data Processing Agreement, can be put in place.



- 22.3 As it cannot be excluded that services are delivered by HPE directly to the Customer within the meaning of commissioned data processing in accordance with Art. 28 GDPR, it should be noted that the Customer is responsible for ensuring any necessary contract is concluded.
- 22.4 HPE's Privacy Policy (HPE Data Privacy and Security Agreement Schedule – [Annex 5](#)) governs the protection and security of personal data by HPE in relation to services rendered on behalf of the Customer and forms a part of the agreement between HPE and the Customer.

### 23. Assignment, set-off, rights to retention.

- 23.1 The Parties are only authorised to assign claims from the Contract with the written consent of the other Party.
- 23.2 The Customer may set off only those receivables that are undisputed or have been established with legal effect.
- 23.3 Rights of retention may only be exercised by the Customer in the case of undisputed or legally established receivables arising from the same legal relationship.

### 24. Assignability.

- 24.1 ARP shall be entitled to assign the receivables against the Customer for the purpose of refinancing.
- 24.2 ARP shall be entitled to forward all documents to a financing party for the purpose of refinancing.

### 25. Identification and obligation to provide information.

- 25.1 The Customer must immediately notify ARP of any change of its registered office and of any changes to the administrative or operational headquarters.

- 25.2 The Customer is obliged to provide ARP with the information required to establish identity pursuant to Dutch law and to submit the documents required to verify identity and to permit copies to be made and archived.
- 25.3 The Customer is required to provide ARP with all requested information regarding the Customer's legal and economic situation at any time. The Customer must also provide all documents necessary to meet the requirements of the banking supervisory authority.
- 25.4 During the period of use, the Customer shall regularly submit to ARP its own audited annual financial statements, along with the notes and management report, as well as the consolidated financial statements and the corresponding annual and/or audit reports for each. Should it not be possible to present these documents within six months of the end of the financial year, the Customer shall initially submit the documents in draft form. These documents are to be e-mailed to ARP.
- 25.5 The Customer is to be informed immediately in writing should there be any changes on the part of ARP.

### 26. Final provisions.

- 26.1 Amendments and supplements to these terms and conditions or to any contracts concluded under these terms and conditions must be agreed upon in writing by the authorized signatories of both parties to be considered valid. This also applies to any amendments and supplements to this clause regarding this written form requirement. Submission of the corresponding declarations by telecommunication, in particular by email, is sufficient for these purposes. Any notices or other declarations relating to this Contract and producing a legal effect (e.g. the setting of deadlines, terminations) must be submitted in writing (e.g. by letter, email or fax). Statutory form requirements, as well as further evidence, in particular if the legitimation of the Party submitting the declaration is in doubt, remain unaffected.
- 26.2 The law of The Netherlands shall apply to the exclusion of the UN Convention on the International Sale of Goods. The exclusive court of

- jurisdiction for all disputes arising from or in connection with the Contract is the location of ARP's registered office.
- 26.3 Each Party must bear its own respective costs incurred in connection with the conclusion and performance of the contract, unless agreed otherwise.
- 26.4 If any provision of these terms and conditions or the Contract concluded under these terms and Conditions is or becomes fully or partially invalid, or if any subsequently adopted provision is or becomes fully or partially invalid, or if any omission is found in the Contract or any supplements thereto, the validity of the remaining provisions remains unaffected. To replace any invalid provision or fill an omission, a valid, practicable provision must be agreed that most closely resembles the legal and business intentions the Parties had or would have had (based on the purpose of the Contract and any subsequent supplements) if they had considered this point at the time they entered into the Contract. If the invalidity of a provision is the result of a specific measure of performance or time (notice period or deadline) set out therein, the new provision must set out the legally permitted measure closest to the original measure.
- 26.5 Only the Dutch version of these terms and conditions is legally authoritative for the interpretation of the provisions herein, prevailing over any translations.
- 26.6 The Customer may not assign all or any part of the Agreement without HPE's / ARP's prior written consent.



## ✓ Annexes.

The following annexes have been agreed:

- **Annex 1: HPE aaS Terms for Customer**

**Available at:**

<https://www.hpe.com/psnow/doc/a50009054enw?section=Document%20Type>

- **Annex 2: HPE aaS Terms for Customer**

**Available at:** <https://www.hpe.com/psnow/doc/a50009055ENW?ver=1>

- **Annex 3: HPE EULA AND SOFTWARE LICENSING TERMS**

**Available at:** <https://www.hpe.com/us/en/software/licensing.html>

- **Annex 4: Data Sheets**

**Available at:** <https://www.hpe.com/psnow/document-types?doctype=data%20sheet&cc=us&lc=en&f=1&s=1&t=greenlake&jumpid=in-greenlake-ds-psnow>

<https://www.hpe.com/docs/gl-datasheets>

- **Annex 5: HPE Privacy Statement**

**Available at:** <https://www.hpe.com/us/en/legal/privacy.html>  
[www.hpe.com/docs/hpe-dpsa](https://www.hpe.com/docs/hpe-dpsa)

## ✓ Version history.

- Version 1.0, 1<sup>st</sup> of June 2024, first version of these terms and conditions.
  - Based on the HPE Greenlake terms, version 3.0 of July 11<sup>th</sup> 2022 and the documents referenced to therein.

- Version 2.0, 29<sup>th</sup> August 2024, second version of these terms and conditions.
  - The HPE Greenlake Terms of the 11<sup>th</sup> of July 11 2022 have expired on the 1<sup>st</sup> of July 2024. This change has therefore been implemented in this document. For a complete overview of the applicable conditions, see the Statement of Work and the appendices referred to therein.
- Version 3.0, 24<sup>th</sup> of January, 2025, third version of these terms and conditions.
  - The hyperlinks listed under the 'Annexes' have been updated and in the Dutch version of these terms, some terms have been translated from English to Dutch for readability purposes.

### **Our contact information.**

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