# TD SYNNEX

# TD SYNNEX HPE GreenLake aaS Partner Terms

## June 2024

## Version 3

These TD SYNNEX HPE Greenlake aaS Partner Terms ("**Terms**") for HPE as-a-service ("**aaS**") document the requirements and responsibilities for Reseller's and MSPs to purchase and/or resell HPE's on-premises and/or cloud based as-a-service offerings ("**HPE aaS Solutions")** through TD SYNNEX. These Terms are applicable in addition to and incorporated into TD SYNNEX T&C's. By placing an order to purchase HPE aaS Solutions through TD SYNNEX, Reseller or MSP acknowledges that it has been provided with access and opportunity to save documents referenced or linked herein and that it irrevocably accepts the terms and conditions stipulated therein and in these Terms.

TD SYNNEX reserves the right to make changes to these Terms. TD SYNNEX may terminate these Terms at any time effective 30 days after notice.

## 1. Definitions

1.1 **Agreement:** Collectively, to the extent applicable, the following make up the entire agreement of Reseller with TD SYNNEX (in ascending order of precedence): (i) the TD SYNNEX T&C's (ii) these Terms, (iii) any Solution Materials agreed as applicable, (iv) the Partners order(s) (excluding pre-printed terms), TD SYNNEX – HPE Greenlake Integrated Quoting Order Form or TD SYNNEX HPE GreenLake Quotation. Where this term, "Agreement," is used in this document, this definition shall prevail against any other versions of the definition in other parts of the Agreement.

1.2 **Customer:** The entity that contracted for the Services through the Reseller or in the case of an MSP, the entity that contracted with TD SYNNEX directly.

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

1.4 **Direct to Resell Partner**: Where TD SYNNEX is authorized to sell direct to an MSP, then TD SYNNEX will act as a Direct to Resell Partner, while the MSP will be the Customer for the purposes of these Terms.

1.5 **HPE:** The Hewlett Packard Enterprise group company providing the Services through TD SYNNEX.

1.6 **HPE aaS Commercial Terms:** the commercial terms applicable to the sale and purchase of Services as detailed in Section 9.

1.7 **HPE aaS Terms for Customers:** The terms that govern HPE's provision of the Services to the Customer as detailed in Section 9.

1.8 **Insolvency or Bankruptcy Event:** A party (a) taking any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; (b)  suspending, or threatening to suspend, or ceasing or threatening to cease to carry on all or a substantial part of its business; or (c)   a Customer's financial position

deteriorates to such an extent that in TD SYNNEX's reasonable opinion its capability to adequately fulfil its obligations under the Agreenent has been placed in jeopardy;

1.9 **MSP**: HPE authorised managed service provider.

1.10 **Reseller:** The HPE-authorized solution provider purchasing from TD SYNNEX and reselling to the Customer.

1.11 **Service(s):** The services that HPE will perform for the Customer, including the provision of HPE intellectual property and Systems for Customer's access, if applicable.

1.12 **Solution Material (or Supporting Material):** Specifications, service descriptions, data sheets, statements of work, software terms, software-as-a-service terms, additional license authorizations, solution specific terms, warranties, and any other documents (excluding marketing material) referenced in the Solution Material and/or TD SYNNEX – HPE Greenlake Integrated Quoting Order Form or TD SYNNEX HPE Greenlake Quotation.

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

1.14 **TD SYNNEX:** the TD SYNNEX entity to which Reseller submits its order for provision of the Services.

1.15 **TD SYNNEX T&C's:** the TD SYNNEX Harmonized Terms & Conditions of Sale available at the following URL: https://eu.tdsynnex.com/terms-conditions, as supplemented and/or amended by the Country-Specific Terms, available at https://eu.tdsynnex.com/country-specific-terms-of-sale, (both also available upon written request), unless the parties have agreed on different terms and conditions in writing, in which case, the written and executed agreement shall constitute the "Ts & Cs of Sale" for this Agreement.

All capitalized terms that are used but not defined in these Terms shall have the meaning given to them elsewhere in the Agreement.

## 2. Structure Overview and Responsibilities

2.1 **Authorization to Resell**

Under these Terms, Reseller is authorized to purchase HPE aaS Solutions from TD SYNNEX and resell them to Customers. In the event that TD SYNNEX is authorised by HPE to sell direct to an MSP, then the MSP will be considered the 'Customer' for the purposes of these Terms.

Each HPE aaS Solution sold under these Terms must have a Customer identified, unless specifically authorized by TD SYNNEX.

Reseller acknowledges and agrees that HPE entity, TD SYNNEX entity, Reseller entity, MSP entity and Customer entity shall be located in the same country.

The Reseller acknowledges and agrees that the hardware will be installed in the country where the TD SYNNEX selling entity is located.

2.2 **Reseller's Responsibilities.** Reseller (which shall include for the purposes of this clause, TD SYNNEX acting as a Direct to Resell Partner for the purposes of selling directly to an MSP) will comply with the following responsibilities.

2.2.1 Reseller is responsible for entering into its own agreements for the sale of HPE aaS Solutions to its Customers.

2.2.2 **Reseller is responsible for passing through to Customer each of the terms and conditions listed in the table at Section 9 and the applicable Solution Material, including the Data Privacy and Security Agreement, for the purchased Services**.

Reseller will not obligate HPE or TD SYNNEX to provide any services that are not set forth in the HPE aaS Terms for Customers and the Solution Material.

2.2.3   Reseller sets the price and the payment terms with the Customer in its sole discretion.

2.2.4   Reseller acts for its own account when collecting payments from Customer.

2.2.5   Customer will not have any payment obligation to HPE or to TD SYNNEX when the Customer purchases from Reseller except in the case where the Customer is an MSP and TD SYNNEX is acting as a Direct to Resell Partner.

2.2.6   Reseller's payment obligations to TD SYNNEX are independent from the Customer's payment obligations to Reseller and their performance by the Customer.

2.2.7   Non-fulfilment of Reseller's obligation to pay its debts when due is a material breach of the TD SYNNEX T&C's. TD SYNNEX may inform the Customer that Reseller is not paying amounts due under its own agreement with TD SYNNEX.

2.2.8   Reseller will assist TD SYNNEX and HPE in obtaining the necessary Customer information so that HPE can identify and conduct a credit check on Customer. If HPE are not able to perform a satisfactory credit check on Customer or if Customer fails the credit check, TD SYNNEX will notify Reseller prior to entering into the Agreement. If TD SYNNEX and Reseller each wish to proceed with the transaction despite the Customer's credit failure, they must indicate their willingness to do so in writing signed by authorized persons for each of the Parties.

2.2.9   When requested by HPE, Reseller or MSP will provide information to TD SYNNEX, and hereby authorizes TD SYNNEX to share such information with HPE, in order to allow TD SYNNEX and HPE to perform credit checks on Reseller or MSP. If TD SYNNEX or HPE are not able to perform a satisfactory credit check on Reseller or MSP, or if Reseller or MSP fails the credit check, TD SYNNEX will notify Reseller or MSP prior to entering into the Agreement. The transaction will not proceed unless TD SYNNEX and Reseller or MSP each indicate their willingness to proceed in a writing signed by authorized persons for each of the Parties.

2.3   **HPE Responsibilities**

2.3.1   HPE will deliver the Services to Customer as described in these Terms, TD SYNNEX – HPE Greenlake Integrated Quoting Order Form or TD SYNNEX HPE Greenlake Quotation (if applicable), the HPE aaS Terms for Customers and the applicable Solution Material.

2.3.2   HPE will have no obligation to deliver any services not included in the applicable Solution Material or any additional services sold by the Reseller or to comply with any other terms agreed between TD SYNNEX and the Reseller or the MSP, and/or the Reseller and Customer.

2.4   **Parallel obligations of the parties**

2.4.1   Reseller will inform the Customer that the HPE aaS Terms for Customers and applicable Solution Material, including the Data Privacy and Security Agreement create binding delivery obligations from HPE to Customer in addition to the respective obligations of the Reseller to Customer. When HPE performs the Services, the Reseller shall also be discharged from its respective obligations to the Customer, and vice versa. The foregoing applies accordingly to the relationship between TD SYNNEX and Reseller.

2.4.2   The HPE aaS Terms for Customers and the applicable Solution Material create binding delivery obligations from HPE to Customer in addition to the respective obligations of

TD SYNNEX to Reseller. When HPE performs the Services to Customer, TD SYNNEX shall also be discharged from its respective obligations to Reseller.

2.4.3 In relation to an MSP, the HPE aaS Terms for Customers and applicable Solution Material, including the Data Privacy and Security Agreement create binding delivery obligations from HPE to the MSP in addition to the respective obligations of TD SYNNEX to MSP. When HPE performs the Services, TD SYNNEX shall also be discharged from its respective obligations to the MSP, and vice versa.

2.5 **Pass Through Terms to an MSP**: the terms and conditions listed in the table at Section 9 and the applicable Solution Material, including the Data Privacy and Security Agreement, for the purchased Services shall apply to the MSP. HPE nor TD SYNNEX are obligated to provide any services that are not set forth in the HPE aaS Terms for Customers and the Solution Material.

2.6 Reseller acknowledges that its compliance with these Terms are of the essence, in particular section 2.2 (Reseller's Responsibilities), section 2.4 (Parallel Obligations of the Parties) and/or section 5 (Reseller Insolvency) of these Terms. Reseller agrees that it shall defend, indemnify and hold harmless TD SYNNEX from and against any and all claims, costs, charges, penalties, demands, losses, obligations, liabilities, damages and expenses (including reasonable attorneys' fees) suffered directly or indirectly by TD SYNNEX resulting from and against any third-party claim, including any HPE's claim, arising out of, or in connection with (i) any negligent or willful breach of any covenant, representation or warranty made by the Reseller in these Terms, or (ii) any failure by the Reseller to perform or fulfil any of its obligations, covenants or agreements set forth in these Terms. In particular, and without prejudice to any other available rights or remedies TD SYNNEX may have under contract, law or otherwise, the Reseller agrees to reimburse, upon notice, TD SYNNEX of any and all sums TD SYNNEX may have to pay to HPE in the event of failure of the Reseller to comply with section 2.2 (Reseller's Responsibilities), section 2.4 (Parallel Obligations of the Parties) and/or section 5 (Reseller Insolvency) of these Terms.

## 3. Purchase Terms

3.1 The payment models for the Services, including the pricing procedure, the default billing cycle and billing frequency, ordering, taxes, and payment terms, are detailed in the HPE aaS Commercial Terms.

3.2 The applicable Solution Material or TD SYNNEX – HPE Greenlake Integrated Quoting Order Form or TD SYNNEX HPE Greenlake Quotation will reference the payment model for the Service.

3.3 Prices will be described in the Solution Material or TD SYNNEX – HPE Greenlake Integrated Quoting Order Form or TD SYNNEX HPE Greenlake Quotation.

3.4 Reseller is not obligated to apply the same purchase terms when it sells to the Customer.

## 4. Termination

4.1 **Termination rights.** Either party may terminate the Agreement:

4.1.1 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.

4.1.2 If the other party is subject to an Insolvency or Bankruptcy Event.

4.1.3    If the Customer terminates because of HPE's uncured material breach.

4.1.4    If the Customer or the Reseller terminate their own agreement for reasons other than HPE's uncured material breach.

4.1.5    If HPE terminates because of the Customer's uncured material breach.

4.1.6    If the Customer gives notice of non-renewal pursuant to section 4.6 of the HPE aaS Terms for Customers or terminates for convenience a Pay per use Agreement or an auto-renewed Subscription or Subscription with a Pay per use option, as defined in the HPE aaS Terms for Customers.

4.1.7    If TD SYNNEX is no longer authorized to distribute HPE aaS Solutions.

4.2    **Effects of termination.** In the event of a termination of all or any portion of the Services before the expiration of a Commitment period for any reason other than HPE's uncured material breach or insolvency, including the exercise of any termination for convenience right within a Commitment period, the Reseller or MSP must pay early termination fees equal to the Subscription fee for the impacted Services times the remaining Commitment period.  For Services with a ramp-up period, Services will be deemed to include all Systems installed, even if not activated.

5.    **Reseller Insolvency.**

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

*"In the event that Reseller suffers an Insolvency or Bankruptcy Event or is terminated by the Customer for Reseller's uncured breach, HPE and TD SYNNEX will work together with the Customer to assist in procuring a substantially similar replacement order ("Replacement Order") with HPE, TD SYNNEX, or another authorized Reseller."*

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

6    **Reserved.**

7    **Coverage for Non-payment.**

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

7.2    **Novation rights.** Reseller (including the Direct to Resell Partner) may elect to novate its own agreement with the Customer to HPE if:

7.2.1    Customer does not pay its due amounts for any reason, other than TD SYNNEX's or Reseller's (including the Direct to Resell Partner) uncured breach of any of the agreements in the contract chain or TD SYNNEX's or Reseller's (including the Direct to Resell Partner) insolvency and

7.2.2    Such Customer non-payment results in an outstanding amount equal to three monthly invoices.

7.3    **Terms of Novation Rights – (Applicable to the Reseller only)**

7.3.1    HPE will assume all billing and payment risk from the date of novation.

7.3.2    Reseller will remain responsible for pursuing payment from the Customer for all amounts incurred prior to the novation.

7.3.3     Once novated, the agreement will be considered a direct agreement between HPE and the Customer and Reseller will not receive any additional partner benefits associated with the novated agreement.

7.3.4     HPE will be entitled to lead the agreement with Customer from the date of novation, including all future change orders and renewals.

7.3.5     HPE will invoice Reseller a pro-rated refund of any Reseller incentives that are directly tied to the transaction.

**7.4**     **Preconditions for Novation and Termination Rights. (Applicable to the Reseller only).** The novation rights stated in this Section 7 will only apply subject to the following preconditions:

7.4.1     HPE was able to perform, and Customer passed, the HPE credit check. If Reseller has moved forward with a transaction despite Customer failing the credit check, this entire Section 7 will not apply.

7.4.2     The Reseller used reasonable efforts to pursue payment from the Customer and has notified TD SYNNEX and HPE of the issue so that TD SYNNEX and/or HPE can assist resolving the non-payment (which may include suspension of the Services if permissible and appropriate).

7.4.3     The decision to request a novation resides with Reseller.

7.4.4     The novation will only be for the Services covered by the impacted Customer transaction.

7.4.5     The novation must be as legally required under certain jurisdiction, in writing and legally enforceable and is only possible in countries where HPE has an operative subsidiary.

7.4.6     The terms of Reseller's agreement with the Customer permit the novation to HPE, contain a termination for breach clause that would allow HPE to terminate the contract for non-payment 30 days after notification of the breach and failure to cure, and contain termination fees that are no less than the early termination fees that HPE agreed to with TD SYNNEX. The terms of Reseller's agreement with the Customer may not contain any service level agreements or penalties that vary from those provided by HPE.

7.4.7     The HPE aaS Terms for Customers were passed through to the Customer without modification to create an enforceable delivery obligation between HPE and the Customer.

7.4.8     Reseller must ensure that as part of the novation, the Customer agrees to be bound by HPE's standard payment terms, as follows:

"**Invoiced amounts are payable without offset within 30 days of the invoice date**".

7.4.9     Reseller must ensure that, as part of the novation, the Customer agrees to the following order of precedence:

**"To the extent there is a conflict between the novated agreement and the HPE aaS Terms for Customers and HPE aaS Commercial Terms, the HPE aaS Terms for Customers and HPE aaS Commercial Terms will apply."**

**Where TD SYNNEX is the Direct to Reseller Partner and the Customer is an MSP, the following terms apply to the MSP only:**

a.     TD SYNNEX may at any time assign, novate, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement. The Customer shall not assign, novate, transfer, mortgage, charge, subcontract,

delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of TD SYNNEX.

b. In the event that TD SYNNEX suffers an Insolvency or Bankruptcy Event or is terminated by the Customer for TD SYNNEX's uncured breach, HPE will work together with the Customer to assist in procuring a substantially similar replacement order ("**Replacement Order**") with HPE or another authorized Reseller.

c. In the event of a novation of the Agreement to HPE, the following terms shall apply:

   i. Customer will remain responsible for paying all amounts incurred prior to the novation to TD SYNNEX and will owe and pay any amounts incurred after novation to HPE.

   ii. Once novated, the Agreement will be considered a direct Agreement between HPE and the Customer.

   iii. The novation will only be for HPE aaS Solutions and will not apply to any TD SYYNEX or third-party services.

   iv. Novation can only be between legal entities registered and operating in the same country, novation is not possible in a country where Hewlett Packard Enterprise Company does not have an operating sales and delivery subsidiary.

   v. With the effect of novation HPE will have the following right under the novated Agreement: HPE may terminate the Agreement for non-payment 30 days after notification of the breach and failure to cure.

   vi. HPE will not be bound by any service level agreements or penalties that vary from those provided by HPE.

   vii. The HPE aaS Terms for Customers create an enforceable delivery obligation between HPE and the Customer.

   viii. Customer agrees to be bound by HPE's standard payment terms: *"Invoiced amounts are payable without offset within 30 days of the invoice date".*

   ix. Customer agrees to the following order of precedence: "*To the extent there is a conflict between the novated Agreement and the HPE aaS Terms for Customers, HPE aaS Commercial Terms and HPE Hybrid & Private Cloud Commercial Terms or the HPE GreenLake Commercial Terms for select solutions, the HPE-branded terms will prevail."*

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

## 8   General Provisions.

Unless otherwise described in the Solution Material or legal quote, the following general provisions will apply:

### 8.2   The HPE GreenLake edge-to-cloud platform

8.2.1   Reseller will be granted access to usage reports via the HPE GreenLake edge-to-cloud platform where the Service is metered.

8.2.2   Reseller may only use the metering data for the purposes of the Agreement and its agreement for the resale of the Service.

**8.3 Limitations and Assumptions.** Any information associated with metering tools, the process to bill and collect amounts due under the Agreement, or metering or reporting of usage data, if applicable, will be deemed confidential information of HPE.

9 **Table of documents referenced in these Terms:**

| Document name | URL |
|---|---|
| HPE aaS Terms for Customers | HPE aaS Terms for Customer |
| HPE aaS Commercial Terms | HPE aaS Commercial Terms |
| HPE's service-specific Data Privacy and Security Agreements | Data Privacy Terms and Sub-processor Transparency \| HPE |
| HPE Hybrid & Private Cloud Solution-Specific Commercial Terms | HPE Hybrid & Private Cloud Solution-Specific Commercial Terms |
| HPE GreenLake Commercial Terms for select solutions | HPE GreenLake Commercial Terms for select solutions |
| HPE Greenlake Datasheets | HP Log on selector (hpe.com) |