

HPE GreenLake Pass-Through Terms

Thank you for purchasing the GreenLake Services (“Services”) from an authorized HPE reseller (“Reseller”).

These terms and conditions (“Terms”), as may be supplemented by solution-specific pass through terms (e.g. EULA) as well as any HPE branded datasheets or sections thereof referenced and incorporated in your purchasing documents with the Reseller reflect the delivery obligations of Hewlett Packard Enterprise (“HPE”) to you (“Customer”).

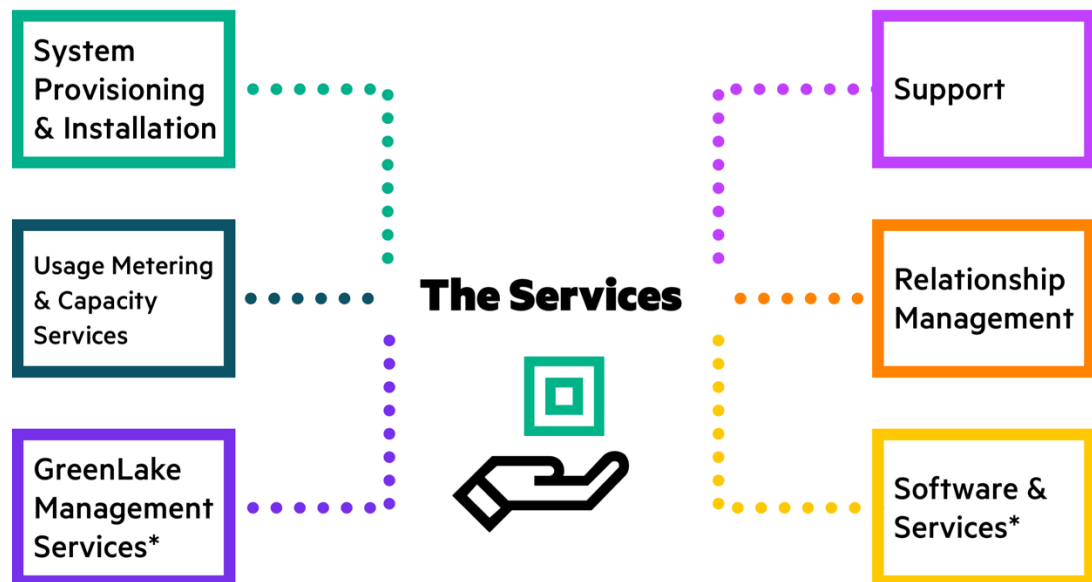
HPE is not responsible for any obligations undertaken by the Reseller or representations that they may make, or for any other services that they supply to Customer.

1. HPE Services

1.1 Overview

HPE GreenLake is a consumption-based solution that includes the following Services:

- a. System Provisioning and Installation,
- b. Relationship Management,
- c. Usage Metering,
- d. Capacity Management,
- e. Support,



(*) Included only if selected by the Customer

1.2 System Provisioning and Installation

1.2.1 General

“System” is defined as the services, hardware, and software acquired from the Reseller and will be delivered to and installed at the locations agreed upon with the Reseller.

HPE will deliver and install System at the locations agreed upon with the Reseller, according to HPE standard installation services which Reseller will communicate to Customer.

System is considered delivered upon Customer's or its designee's receipt of goods at the locations agreed upon with the Reseller.

1.2.2 Right to Use the Systems

HPE grants to Customer a non-transferable right to internally use the Systems provided under these Services for the applicable System Term.

Systems are owned or licensed by HPE or its affiliate.

All software provided as part of the System will be subject to the terms of the software license accompanying it.

The right to use the Systems will end upon the earlier of

- a. termination or expiration of these Terms, or
- b. the end of the applicable System Term.

If a court deems these Terms to be a lease intended for security, then to secure Customer's obligations under these Terms, Customer grants HPE a purchase money security interest in the System(s). Customer authorizes HPE to file a financing statement to give public notice of HPE's ownership of these Systems.

1.3 Relationship Management

1.3.1 Assigned Account Team

Upon completion of the System installation, HPE will commence the Services with an Assigned Account Team (“AAT”) who is either remote or on-site at HPE's discretion. The AAT will:

- oversee implementation of System,
 - review monthly usage, make recommendations, and provide advice,
 - assist Customer maintaining the System, and
 - be responsible for the change management process.
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1.3.2 Assigned Support Management

The AAT includes an Account Support Manager (“ASM”) who will:

- be the single point of contact to oversee the delivery of the Services,
 - work with Customer to develop and maintain an Account Support Plan (“ASP”), and
 - conduct support planning and review sessions according to the frequency listed in the ASP.
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1.3.3 Account Support Plan

The ASM develops an ASP in conjunction with Customer's IT staff and documents the combination of reactive and proactive support, device lists, geographic coverage, and any other support aspects provided by HPE.

The ASP also details roles, responsibilities, contact information, change management and escalation procedures, and will be formally confirmed with Customer during the service startup.

1.3.4 More Details

More details about the role and responsibilities of AAT and ASM are identified in the Datacenter Care datasheet (within Table 6, Core Features) in the Order Form.

1.4 Usage Metering

1.4.1 Metering Tools

HPE will provide metering tools to measure Systems' usage and the data will be provided to the Reseller for the monthly billing of the Systems.

HPE's metering tools only collect the data needed to determine usage for example, server or virtual machine on/off, physical core utilization percent, or written GB.

Subject to automated housekeeping routines, unencrypted files remain on Customer's metering server where Customer can check raw data collected at any time.

HPE's metering tools will reside on a virtual machine provided by Customer and in its own datacenter, which must meet the minimum specifications for running the current version of Microsoft Windows operating system.

All metering happens inside Customer's datacenter firewall, and an encrypted communication (email or API) with usage data is sent daily to HPE.

Metering of the Systems will begin on the date of completion of HPE's installation of the metering tools.

HPE will be responsible for ongoing administration, upgrades, and maintenance of the metering tools. This will include identification and installation of metering tool patches.

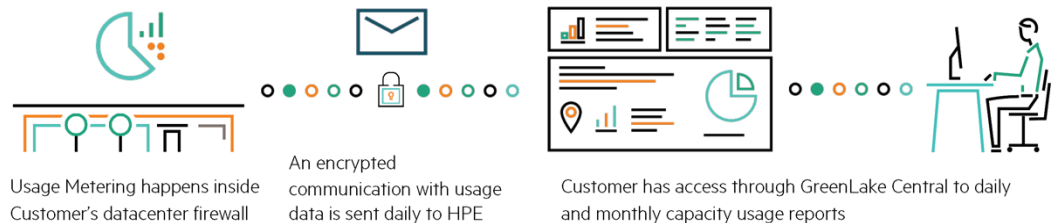
1.4.2 GreenLake Central

HPE will provide online access to the GreenLake Central using HPE-provided authorized user credentials. Customer will have access to daily and monthly capacity usage reports and can run standard and customer generated ad-hoc reporting.

Customer and HPE will mutually agree on the list of Customer employees who will have access to the usage data.

Customer's per Unit metered usage is sent daily to GreenLake Central and usage is summarized monthly.

HPE only uses the metering data for capacity planning meetings and for invoicing activities.



1.5 Capacity Management

Customer's usage will be measured by the defined Systems unit of measure ("Unit"). As usage increases, the parties agree to review future capacity requirements.

1.6 Support

HPE will maintain the System during System Term with reactive and proactive support, in accordance with the service levels and practices which Reseller will communicate to Customer.

1.7 Other Services

Additional Services provided by HPE, if any, will be documented and communicated to Customer by the Reseller.

1.7.2 Services with Deliverables

If Services define specific deliverables as communicated to Customer by the Reseller, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery.

If Customer notifies HPE of such 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 Customer will return those deliverables to HPE.

Any deliverables acceptance process for specific deliverables will be documented and communicated to Customer by the Reseller, and will not apply to any other products or services to be provided by HPE.

1.7.3 Services with Remote Monitoring

HPE will notify Customer of any change in location, if applicable, during the term of the SOW.

In addition to the metering tools, HPE will install certain hardware and software tools to deliver remote monitoring services. Such tools are owned by HPE and delivery of these services is contingent upon installation of them for use by HPE. Customer may not use, transfer, assign, pledge, or in any way encumber or convey the tools. HPE will remove the tools upon termination or expiration of the SOW.

Any remote monitoring services (or portions thereof) will be provided from locations determined by HPE which may be outside the country of purchase. Customer acknowledges that it is responsible (administratively and financially) for obtaining all required approvals, licenses, authorizations, consents and permits for HPE to perform remote monitoring services.

1.7.4 Services with Training Courses

Any course materials provided or made available are the copyrighted works of HPE or the original content provider, are provided only for sole use of the person attending the course, and may not be reproduced, distributed or modified without the HPE's written consent.

Customer acknowledges and agrees that temporary interruptions of online training services may occur from time to time. HPE will exercise reasonable care to prevent or minimize such interruptions.

HPE will not be liable to Customer for any failure or delay in receiving or transmitting data, or for any loss of or corruption to any data arising out of or in connection with delivering or conducting online training services.

2. Customer Responsibilities

2.1 Facilities and Infrastructure

2.1.1 Facilities

Customer will provide datacenter facilities for the Systems and metering tools, such as:

floor space, electricity, cooling, physical security, uninterrupted power supply (UPS), network and storage cabling, network for both LAN and WAN connectivity and bandwidth, and operating environment for the metering tools.

2.1.2 **Setup of non-HPE Systems**

Customer is responsible for:

setting up and connecting to the Systems any required hardware, software, network, cables, etc. (for example, Storage Area Network (SAN), network cabling, host servers, and operating systems), not provided by HPE under this agreement, and ensuring that such connected or attached devices and/or software are compliant and compatible with the HPE-provided Systems.

2.1.3 **Compliance with Building & Safety Codes**

Customer is responsible for:

attaching wall and ceiling mounts to the building structure according to local building codes;
Ensuring that the facility, cable runs, and power outlets conform to all local fire and electrical codes.

2.1.4 **Hazardous Environment**

Customer will notify HPE if Customer uses Systems in an environment that poses a potential health or safety hazard to HPE employees or subcontractors. HPE may require Customer to maintain such Systems under HPE supervision and may postpone Services until any hazards are remedied.

2.2 **Systems and Data**

2.2.1 **Procuring Required Software**

Unless included as part of the Systems, Customer is responsible for purchasing the operating system (OS), virtualization software, and related software support licenses from HPE or third-party software providers.

2.2.2 **Enabling Installation**

Customer acknowledges that it must take the necessary steps to enable HPE installation (including metering tools) within 30 calendar days from receipt of the Systems.

2.2.3 **Registering for Product Support**

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

2.2.4 **Managing the System After Installation**

Customer is responsible for System management activities once the installation services have been completed, except for those services defined in the GreenLake Management Services exhibit, if such services are included as part of this agreement

2.2.5 **Maintaining the System**

Customer must maintain the Systems at the agreed configuration and revision levels

2.2.6 **Data Backup**

Customer is responsible for data backup.

2.2.7 **Enabling Usage Data Transmission to HPE**

Customer will allow for network data communication to HPE of the data collected by the diagnostic tools and metering tools. This transmission will be via:

SMTP: 7-zip encrypted file attachments of usage data. Customer must notify HPE if a change is made to the email relay, network, or proxy to eliminate any interruption of usage data collection.

or

API: an encrypted API connection will be made to transfer usage data.

2.2.8 **Usage Data Encryption**

Customer will ensure that usage data required by HPE to perform the Services and transferred between Customer's locations, facilities, rooms, equipment, etc. is encrypted.

2.2.9 **Metering Tools**

Customer may not use, sell, transfer, assign, pledge, or in any way encumber or convey the Metering Tools, nor may Customer modify, adapt, copy, disassemble, or decompile them.

2.2.10 **Using Proprietary Service Tools**

HPE may require Customer to use certain hardware, software, and/or network diagnostic and maintenance programs ("Proprietary Service Tools"), as well as certain diagnostic tools that may be included as part of the System. This includes, tools such as HPE's metering script, STaTS (Service Tools & Technical Support), and HPE Support Center (HPESC).

Customer will also be required to

allow HPE to keep the Proprietary Service Tools resident on Customer Systems or Sites and assist HPE in running them,

install Proprietary Service Tools (including installation of any required updates and patches),

use an electronic data transfer capability to inform HPE of events identified by the Proprietary Service Tools,

if required, purchase HPE-specified remote connection hardware for Systems with remote diagnosis service,

provide remote connectivity through an approved communications line, and

return the Proprietary Service Tools or allow HPE to remove these Proprietary Service Tools upon termination of Services.

Proprietary Service Tools are and remain the sole property of HPE. They are provided "as is" without any warranty. Customer may only use the Proprietary Service Tools during the System Term and only as allowed by HPE. Customer may not sell, transfer, assign, pledge, or in any way encumber or convey the Proprietary Service Tools.

2.2.11 **Allowing Modifications by HPE**

Customer will allow HPE, at HPE's request and at no additional charge, to modify Systems to improve operation, supportability, and reliability or to meet legal requirements.

2.2.12 **Prohibited Modifications by Customer**

Customer will not add to or alter Systems, metering tools, or network environment.

Customer cannot make any alterations that may prevent or impair transmission and/or collection of usage data. Customer will not manipulate or alter usage data in any manner.

2.2.13 **Media Sanitization and Data Deletion**

Customer is responsible for the security of the Customer's proprietary and confidential information. The Customer is responsible for properly sanitizing, removing, or deleting all data or Customer-provided software from Systems or parts thereof that may be replaced or returned to HPE. For more information on Customer responsibilities (including those outlined in the HPE Media Sanitization Policy and Media Handling Policy, go to <https://www.hpe.com/media/handling>).

2.2.14 **Temporary Workarounds**

Customer will implement temporary procedures or workarounds provided by HPE while HPE works on a permanent solution.

2.2.15 **De-installation Responsibilities**

Upon System Term's expiration or termination, Customer will assist the Reseller in returning the Systems to HPE.

Customer is responsible for removal or deletion of all data or Customer-provided software on Systems.

2.3 **Access and Communications**

2.3.1 **Access to Systems and Sites**

Customer will provide HPE access to Systems and metering tools, both remote and onsite.

Customer is responsible for removing any products ineligible for Services, as advised by HPE, to allow HPE to perform Services. If delivery of Services is made more difficult because of ineligible products, HPE will charge Customer for the extra work at HPE's published service rates.

2.3.2 **HPE information Requests**

Unless otherwise agreed, Customer will respond within two business days to HPE requests for Customer business and technical data, documentation, and other Services relevant information. This includes

- documentation and information needed for design, development, evaluation, installation, and testing,
- storage configuration information, and
- network configuration information (including IP addresses, LAN and WAN connections and network topology, routing, VLANs, firewall settings, DNS, and DHCP).

2.4 **Management and Personnel**

2.4.1 **Assigning Contact Persons**

Before the start of the Services, Customer will assign contacts for the duration of the delivery of the Services. At least one person will have signature authority, and at least one person will have the authority to assign and direct the activities of Customer resources. This person will be authorized to approve changes to this agreement. As needed, Customer will provide updates to authorized contacts to the ASM.

Customer is responsible for maintaining the contact detail within the remote support solution that HPE will use in responding to a System failure.

2.4.2 **Assigning Technical Resources**

Customer will assign technical resource(s) (for example, for server, network, and storage) who will provide assistance in a timely manner to help build, integrate, and test the Systems.

During startup phase, Customer will assign, in a timely manner, a knowledgeable resource to assist with the development of the ASP.

2.4.3 **Designated Callers**

Customer will identify a reasonable number of personnel, as determined by HPE and Customer ("Designated Callers"), who may access HPE's customer solution center ("Solution Centers") or online help tools. All Designated Callers must have the proper System identifier as provided when these Services are initiated.

Designated Callers must be generally knowledgeable and demonstrate technical aptitude in System administration, System management, and (if applicable) network administration and management and diagnostic testing. HPE may review and discuss with Customer any Designated Caller's experience to determine initial eligibility. Solution Centers may provide support in English, local languages, or both.

If issues arise during a call to the Solution Center that, in HPE's reasonable opinion, may be a result of a Designated Caller's lack of general experience and training, Customer may be required to replace that Designated Caller.

2.4.4 **Authorized Representative**

Customer will have a representative present when HPE provides support at its Site.

2.4.5 **Attending Review Meetings**

Customer and HPE will attend scheduled review meetings or phone conference calls.

2.4.6 **Communication Plan for Critical Problems**

Customer will establish an internal communication plan for critical problems.

2.5 **Security and Risk Management**

2.5.1 **Loss Risk**

Risk of loss or damage to the Systems will pass to Customer upon delivery to Customer or its designee.

2.5.2 **Protection and Insurance of HPE Systems**

Customer will protect HPE's ownership interest in Systems and tools by

- affixing or allowing HPE to affix any marking supplied by HPE evidencing HPE's ownership,
- using due care to maintain the Systems,
- not relocating any Systems or tools once installed without obtaining HPE's consent through the contract change management process,
- not making any modifications to the Systems or tools,
- keeping the Systems and tools in safe custody and control and free from any liens or encumbrances from date of delivery to Customer Site(s) until the Systems are returned and received and the tools are removed, and
- obtain and maintaining liability insurance and replacement cost coverage insurance naming HPE, its successors, assigns, and Affiliates as loss payees, or additional insureds, and providing evidence of this insurance coverage upon HPE's request.

2.5.3 **Communicating Security Rules**

Customer will make its security rules and restrictions available to HPE prior to the execution of this SOW, with sufficient time to review and understand any HPE requirements associated with such rules. Any HPE obligations regarding Customer's security requirements must be agreed and specifically detailed in this SOW.

2.5.4 Physical Security

Customer will be responsible for providing physical security of the Systems and metering tools.

Customer will physically secure all rooms for servers, storage, network, and environmental facilities via electronic security systems.

Customer will be responsible for managing and distributing the authorizations.

Customer will provide HPE a list of authorized users.

Customer will ensure that only authorized persons can enter secured rooms. Authorizations may differ by room.

Customer will log all permitted authorizations.

Customer will provide authorization to HPE employees as agreed between Customer and HPE.

Third-party personnel can enter secured rooms only if accompanied by authorized Customer employees.

2.5.5 Logical Security

Customer will be responsible for managing and controlling logical security of the Systems and metering tools.

Customer will allow logical access for HPE to the Systems, based on Customer's security rules.

Customer is responsible for ensuring that only Customer approved data exists on the Systems.

2.6 Other Responsibilities

Further Customer responsibilities related to specific Services or software delivered under this agreement may be specified in the *HPE GreenLake Additional Pass-Through Terms* or in other terms provided by the Reseller.

3. General Terms

3.1 Term

These Terms will be valid until the end of the last System Term for all of the Systems provided under these Terms, including applicable extension period.

System Term will commence upon the earlier of

System installation, or
31 days after delivery of Systems

Until otherwise mutually agreed by the parties, each System Term will automatically extend on a month-to-month basis, unless the System includes components not able to be extended monthly (e.g. third party software), in which case the System Term will extend for the minimum period of time applicable to the components.

3.2 Warranties

HPE will provide Services using generally recognized commercial practices. Upon prompt notice, HPE will re-perform Services that fail to meet this standard.

These Terms states all remedies for warranty claims. To the extent permitted by law, HPE disclaims all other warranties.

3.3 Intellectual Property

No transfer of ownership of any intellectual property will occur under these Terms.

Customer grants to HPE a non-exclusive, royalty-free right and license to use, display, perform, and sublicense (solely to HPE's subcontractors) Customer intellectual property rights and third parties' intellectual property rights as provided by Customer to the extent necessary for HPE to provide the Services.

If deliverables are created by HPE specifically for Customer and identified as such in this SOW, HPE hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverables internally.

3.4 Confidentiality

"Confidential Information" means all material, non-public information disclosed or made available between the parties, if the circumstances of disclosure would reasonably indicate such confidences (including any of the information associated with the metering tools, metering or reporting of usage data, billing, or the process to collect amounts due hereunder).

The parties will keep the Confidential Information in confidence.

The parties may use Confidential Information only to fulfill obligations or exercising rights under these Terms, and may share it only with employees, agents, or contractors with a need to know such information.

The parties will protect Confidential Information using a reasonable degree of care for three years from the date of receipt.

These obligations do not cover information that

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.

3.5 Personal Data Processing

HPE does not require any access to personal data in the performance of the Services, except for Customer's business contact information. 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 Customer, either directly or indirectly. In the event of any inadvertent access to any other personal data, HPE will not use or modify the personal data in any manner, except that HPE may remove personal data that inadvertently resides on HPE systems within HPE's control.

Where legitimate business purposes require HPE to collect and process business contact information relating to Customer's employees or other individuals representing Customer, HPE, as a data controller, will process such personal data using appropriate technical and organizational measures and in compliance with its Privacy Statement (www.hpe.com/us/en/legal/privacy.html) and applicable laws.

Where HPE discloses personal data relating to its employees or other individuals representing HPE to Customer or where such persons provide their personal data directly to Customer, Customer will process such personal data using appropriate technical and organizational measures in compliance with Customer's privacy policies and applicable laws.

If HPE processes personal data on Customer's behalf in the course of providing the Services, it will do so in accordance with the *HPE Support and Professional Services – Data Privacy and Security Agreement* (www.hpe.com/info/customer-privacy).

3.6 Rights and Remedies

3.6.1 HPE and Third-party Software Terms

During delivery of Services, HPE may be required to install copies of third-party or HPE software and to accept on behalf of the Customer the license terms of such software (“Shrink-Wrap Terms”), which may in electronic format, embedded in the software, or contained within the software documentation.

3.6.2 **Customer Duty to Defend**

Customer will defend or settle any third-party claims against HPE arising out of Customer’s or its users, employees, contractors, or agents improper use of the Systems, but only if HPE

promptly notifies Customer in writing of the claim,
cooperates with Customer in such defense and settlement, and
grants Customer sole authority to control the defense and related settlement.

Customer will pay third-party claim defense costs, settlement amounts, and any court-awarded damages.

This Section states Customer’s entire liability and HPE’s sole and exclusive remedy for such third-party claims.

3.6.3 **HPE Duty to Defend**

HPE will defend and/or settle any claims against Customer that allege that an HPE-branded product or Service supplied under these Terms infringes the intellectual property rights of a third party. HPE will rely on Customer’s prompt notification of the claim and cooperation with HPE’s defense.

HPE may modify the product or Service so as to be non-infringing and materially equivalent, or HPE may procure a license. If these options are not available, HPE will refund the balance of any pre-paid and undelivered Services upon return of the impacted product.

HPE is not responsible for claims resulting from any unauthorized use of the products or Services.

3.6.4 **Limitation of Liability**

The aggregate liability of each party to the other for all claims under or relating to these Terms is limited to USD \$500,000.

Neither Customer nor HPE will be liable for lost revenues or profits, downtime costs, loss or damage to data, or indirect, special, or consequential costs or damages.

This Section does not limit either party’s liability for

indemnification obligations,
Early Termination Fees,
unauthorized use of intellectual property,
loss or damage to Systems,
death or bodily injury,
acts of fraud, or
any other liability which may not be excluded or limited by applicable law.

3.7 **General Provisions**

3.7.1 **Force Majeure**

Neither party will be liable for delays or for non-performance due to causes beyond its reasonable control, except for payment obligations.

3.7.2 **Entire Agreement**

These Terms represents the parties’ entire understanding with respect to its subject matter and supersedes any previous communications.

3.7.3 **Amendment**

Any changes to these Terms must be made in a writing signed by both parties.

3.7.4 **Assignment**

Customer may not assign all or any part of these Terms without HPE's prior written consent.

3.7.5 **Governing Law**

These Terms will be governed by the laws of the country of the HPE entity delivering the Services. Customer and HPE agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

3.7.6 **Survival**

Any clause which by its nature should survive to give adequate effect to its terms (for example, but not limited to, confidentiality obligations, rights and remedies, liability etc.) will survive the termination or expiration of the Terms.

3.7.7 **Enforceability**

If any term or provision of these Terms is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Terms will not be affected.

3.7.8 **Compliance with Laws**

Each party will comply with applicable laws.

Customer bears sole responsibility for all use of the Systems and Services.