



HPE GREENLAKE FAST 2.0

Russ Fenton

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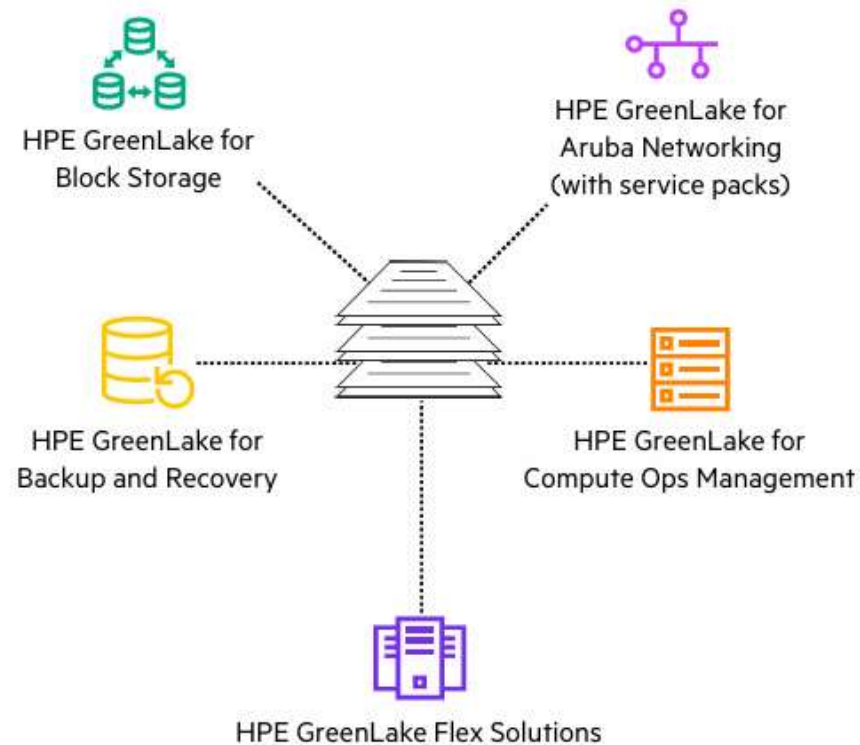
[IngramMicro.com](https://www.ingrammicro.com)

What is FAST 2.0?

- Framework for Agreement Simplification and Transformation (FAST)

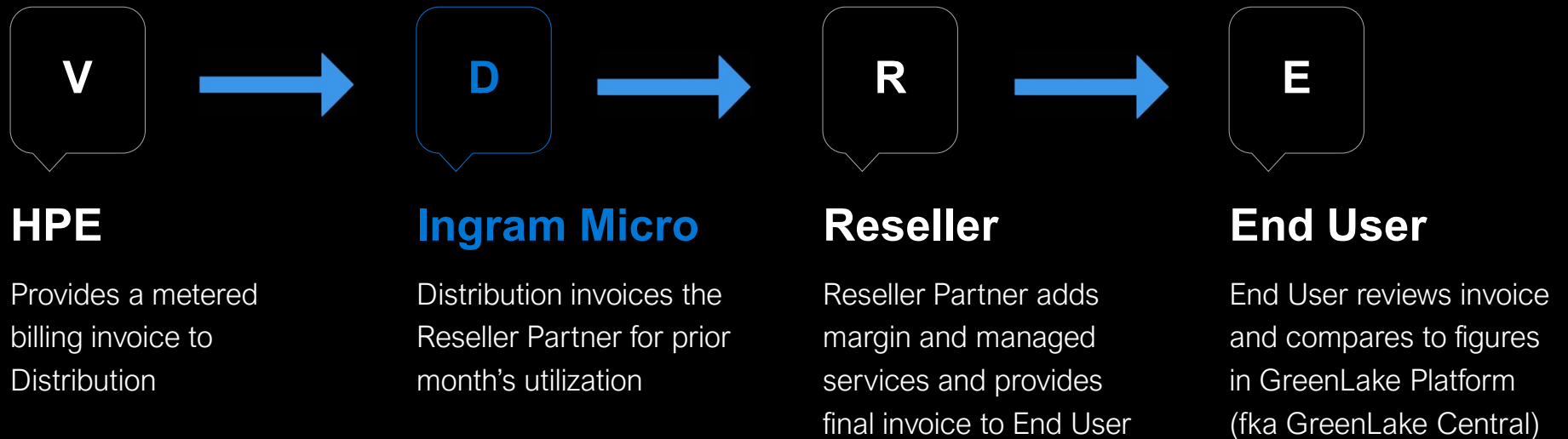
Benefits

- One set of global terms brings consistency and standardization
- One-time effort by partners (to read-through the terms and align to the new framework) saves time and resources on all future deals
- For HPE GreenLake Flex Solutions, the modular SOW has been reduced to ~15 pages (by “linking” to the terms and service descriptions)
- We are estimating a **30%-60%** reduction in contract size and **60%** in terms

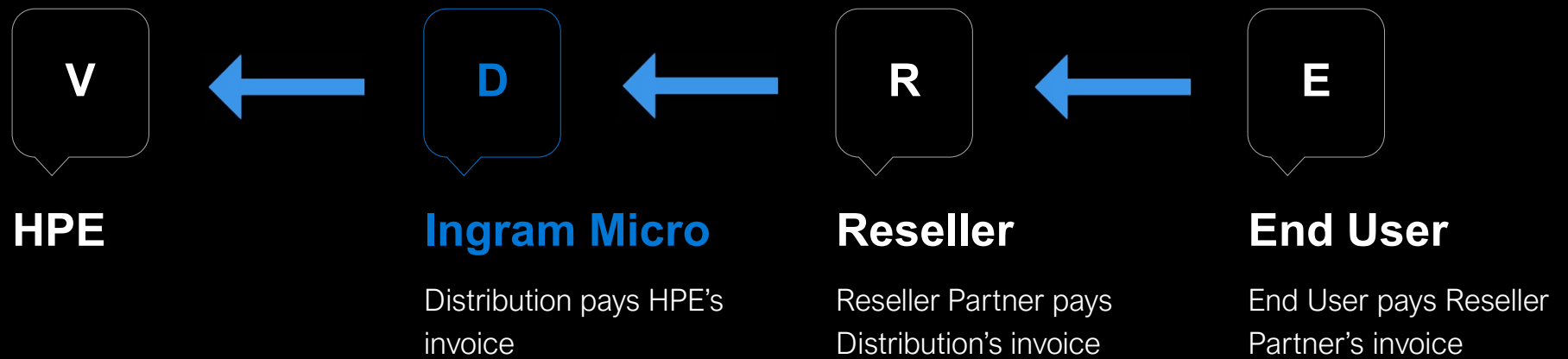



How does the invoice flow and who pays who?

Invoice Flow



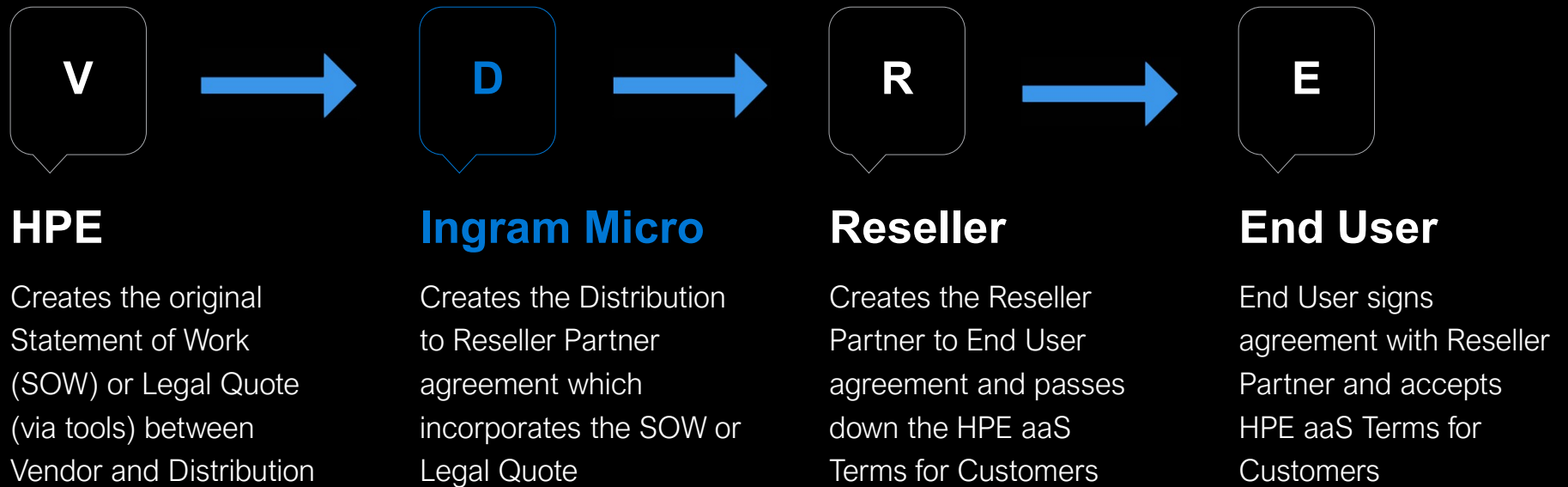
Payment Flow



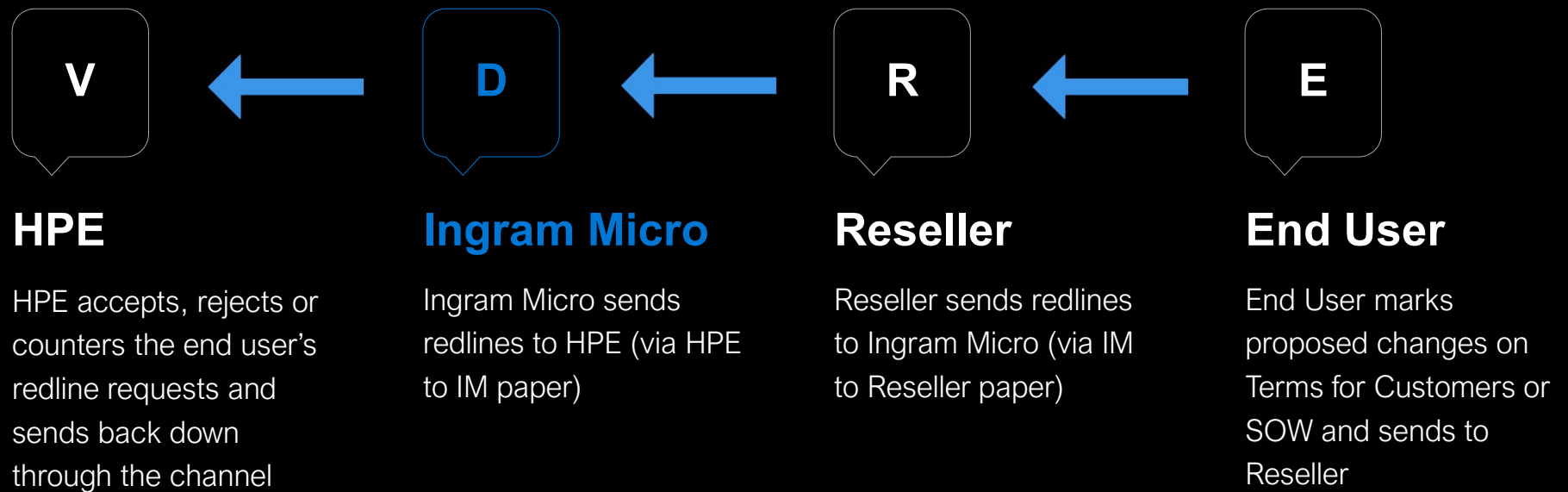


How is the agreement generated and how do redlines flow?

Agreement Flow



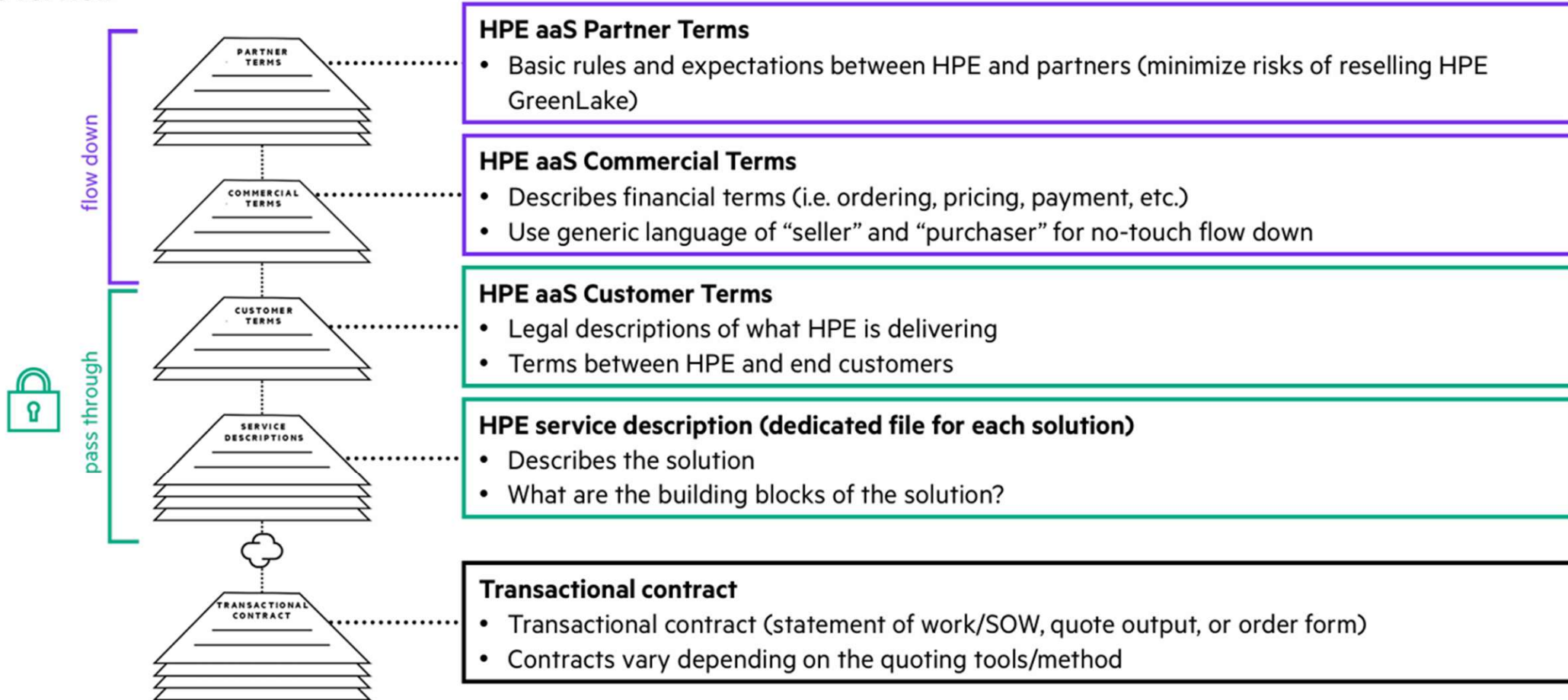
Redline Flow (only for Custom deals)

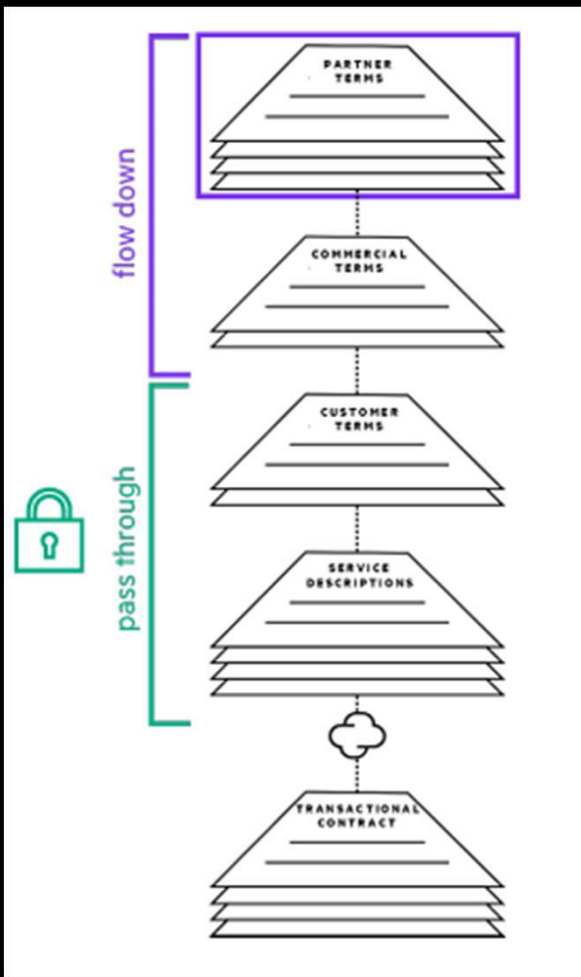




What are the various pieces of the FAST 2.0 Agreement?

Overview





HPE aaS Terms for Partners (Channel Only)

- Think of this as the “Program Guide”
- Applies to every HPE GreenLake channel transaction
- Governs the relationship between HPE and Distributor and Reseller Partners
- Not End User facing (Channel Only)
- **Contains Important Preconditions for Reseller’s Novation Rights (main form of deal protection)**

What is Novation?

Novation: replacing one or more of the original parties of a contract, thereby terminating the original parties' rights and obligations under the old contract

Requirements:

- 1) A valid, prior agreement, for which
- 2) All parties agree to substitute a new contract;
- 3) Discharge of the prior obligation; and,
- 4) A valid, new agreement

What is Novation in the context of FAST 2.0?

- Reseller owns the right to novate
- Reseller assigns their Customer contract to HPE and is relieved of any Early Termination Fees that would otherwise be due
- After novation, the agreement will be considered a direct agreement between HPE and the Customer
- HPE will assume all billing and payment risk from the date of novation
- Reseller still responsible for collecting from the Customer any past due amounts incurred prior to the novation
- Reseller will not receive any additional partner benefits (rebates, etc.) associated with the novated agreement
- HPE will “claw back” a pro-rated refund of any partner benefits (rebates, etc.) it paid upfront

When does Novation apply?

- Customer does not pay its due amounts for any reason, other than the uncured breach or insolvency of another party; and,
- Such Customer Non-Payment results in an outstanding amount equal to three monthly invoices
- The agreement contains a remaining committed period (reserved capacity or minimum amount due)



Preconditions for Novation (section 7.3)

- HPE performed a Credit Check and Customer passed;
- Reseller notified Distributor and Vendor of the Customer Non-Payment;
- Reseller used reasonable efforts to pursue payment from Customer;
- Novation must be in writing and legally enforceable;
- Reseller's agreement with Customer:
 - permits the novation to HPE
 - contains a termination for breach clause that would allow HPE to terminate the contract for non-payment 30 days after breach and failure to cure
 - contains termination fees that are no less than the Early Termination Fees
 - does not contain any service level agreements or penalties that vary from those provided by HPE
 - Customer agrees to be bound by HPE's standard payment terms (net 30), in case of novation
 - Customer agrees to put HPE aaS Terms for Customers at top of order of precedence, in case of novation

HPE Sample Terms – Reseller to Customer

- Voluntary Sample Terms
- Replace the HPE aaS Terms for Partners (Channel Only)
- Drafted by HPE

*Can be found in Contract Document Finder Tool

TERMS							
18	a50009054	HPE aaS Terms for Customers	All	v2	21	Translation	Country-specific terms for Slovakia added to section 5
19	a50009055	HPE aaS Commercial Terms	All		21	Translation	
20	a50009056	HPE aaS Terms for Partners	Channel only		21	Translation	
21	f2a50009054D2R	FAST 2.0 Sample Partner Terms - Distributor to Reseller	Channel only		21	Localization	
22	f2a50009054R2C	FAST 2.0 Sample Partner Terms - Reseller to Customer	Channel only		21	Localization	
23	a50009485	HPE Hybrid & Private Cloud Solution-Specific Commercial Terms	All	v2	13	Translation	Removed PCBE and Block
24	a50009412	HPE GreenLake Commercial Terms for select solutions	All	v2	21	Translation	Added terms for Block Storage and PCBE
25							

This template is prepared by Hewlett Packard Enterprise (HPE) for the purpose of enabling HPE Partners reselling HPE as-a-service solutions. This template is indicative, for guidance only. HPE Partners are free to use their own template(s) or deviate from this template as they see fit. This template does not constitute legal or tax advice; Partners must obtain their own legal or tax advice in relation to this template. Reliance on this template is at the Partner's own risk. This guidance does not amend any agreement between the Partner and HPE.

SAMPLE FLOW-DOWN CLAUSES FOR RESELLER TO CUSTOMER

Make sure to include the applicable HPE pass-through terms identified in the Distributor's transactional contract into your own transactional contract with the Customer.

Use the order of precedent language below in your transactional contract i.e., your Statement of Work, Order Form or Legal Quote.

If you will be taking Distributor's transactional contract as a basis for creating your own version, don't forget to implement the order of precedent set out below.

If your Distributor chooses not to rely on the HPE aaS Commercial Terms by way of reference but created their own commercial terms as part of their own flow-down terms, you will have to decide whether to leverage Distributor's commercial terms by way or reference if feasible or by creating your own Reseller flow-down terms base of the Distributor's document.

In the case set out in the previous paragraph you will have to insert the Distributor's or your own document's title and URL into sub-sections i and ii. below of the order of precedent clause.

1. Order of precedent

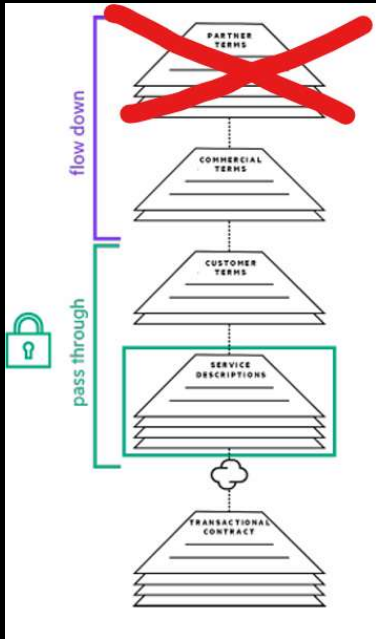
This transaction is subject to the following terms and conditions in descending order of precedent.

- a. This Statement of Work, Order Form or Legal Quotation
- b. With respect to commercial terms (e.g., any early termination fees) not captured in this Statement of Work, Order Form or Legal Quotation the
 - i. HPE Hybrid & Private Cloud Solution-Specific Commercial Terms posted here [\[URL\]](#) if a HPE Hybrid & Private Cloud solution is included and the
 - ii. HPE GreenLake Commercial Terms posted here [\[URL\]](#)
 are incorporated herein by way of reference.
- c. With respect to other terms and conditions not captured in this Statement of Work (e.g., limitation of liability of Reseller to Customer) the [\[RESELLER TERMS\]](#) posted here [\[URL\]](#) will govern.

The termination provisions set out below must be included in your Reseller flow-down terms linked in the order of precedent set out above.

HPE Sample Terms – Reseller to Customer

- Resellers Need to preserve Novation rights (meet all preconditions)
- Replace the HPE aaS Terms for Partners (Channel Only) with either HPE aaS Sample Terms or Reseller’s own custom language that preserves Novation rights



Replace Terms for Partners with

- HPE aaS Sample Terms or
- Reseller’s Custom Language (to preserve Novation rights)

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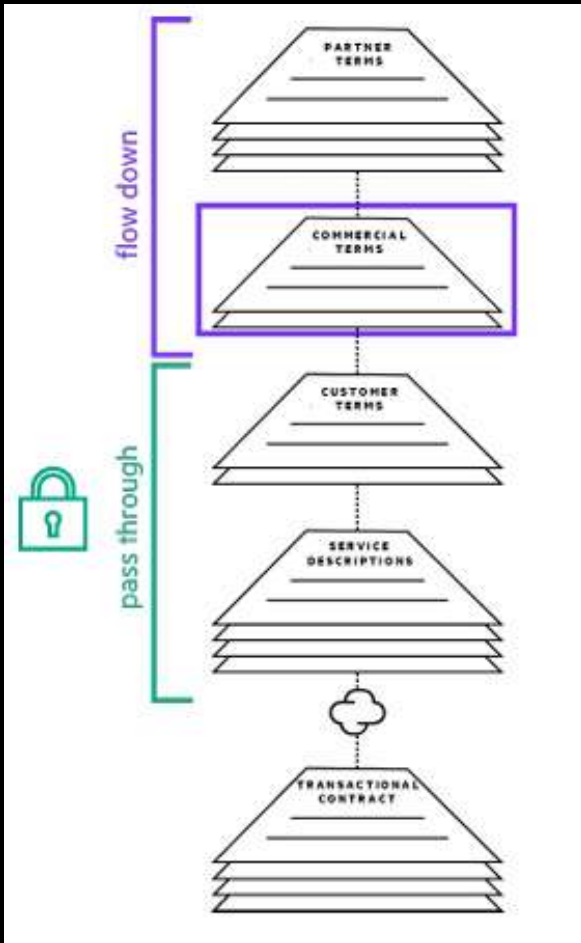
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1. Order of precedent

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- With respect to commercial terms (e.g., any early termination fees) not captured in this Statement of Work, Order Form or Legal Quotation the
 - HPE Hybrid & Private Cloud Solution-Specific Commercial Terms posted here [\[URL\]](#) if a HPE Hybrid & Private Cloud solution is included and the
 - HPE GreenLake Commercial Terms posted here [\[URL\]](#)
 are incorporated herein by way of reference.
- With respect to other terms and conditions not captured in this Statement of Work (e.g., limitation of liability of Reseller to Customer) the [\[RESELLER TERMS\]](#) posted here [\[URL\]](#) will govern.

The termination provisions set out below must be included in your Reseller flow-down terms linked in the order of precedent set out above.



HPE aaS Commercial Terms

- Describes financial terms (pricing, ordering, etc.)
- Uses generic “Seller” and “Purchaser” personas
- Applies to every Ingram Micro HPE GreenLake transaction

Hewlett Packard Enterprise

HPE aaS Commercial Terms

November 1, 2023
Version 1

1. Definitions

1.1 **Agreement:** The Agreement between the Seller and the Purchaser for the Service.
 1.2 **Billing Frequency:** The frequency by which the Service is billed. This can be on a recurring basis or Upfront.
 1.3 **Commitment:** The amount of Service committed by Customer. Commitment may be expressed in UOM or a spend amount.
 1.4 **Consumption:** The amount the Customer uses the Service based on one or multiple UOMs.
 1.5 **Customer:** The entity that contracted for the Services, either directly from HPE or indirectly through a Reseller.
 1.6 **Distributor:** The HPE-authorized distributor purchasing from HPE and selling to a Reseller.
 1.7 **HPE:** The contracting Hewlett Packard Enterprise group company.
 1.8 **Pay per use:** The payment model defined in section 5.1.
 1.9 **Purchaser:** The entity buying the Service.
 1.10 **Reseller:** The HPE-authorized solution provider reselling to the Customer.
 1.11 **Seller:** The entity selling the Service.
 1.12 **Service(s):** The services, detailed in the Agreement, that HPE will perform for the Customer, including the provision of HPE intellectual property and Systems for Customer's access, if applicable.
 1.13 **Solution Material:** Service descriptions, statements of work, additional license authorizations, and any other documents (excluding marketing material) referenced in the Solution Material and/or legal quote.
 1.14 **Subscription:** The payment model defined in section 5.2.
 1.15 **System:** The HPE-provided hardware and/or software (including firmware) accessed as part of the Services (excluding hardware where title has transferred).
 1.16 **Unit(s) of Measure (UOM(s)):** The billable unit of the Service defined in the Solution Material or legal quote.
 1.17 **Upfront:** The Service is billed in full for the entire Commitment term.

2. Reseller Transactions

2.1 If Customer purchases the Services directly from HPE these HPE as-a-service ("aaS") Commercial Terms attach to the HPE aaS Terms for Customers.
 2.2 If Customer purchases the Services from a Reseller, these HPE aaS Commercial Terms will apply between HPE and the Distributor or Direct to Resell Partner (i.e., a Reseller authorized to purchase directly from HPE and resell to the Customer).
 2.3 Distributor, direct to Resell Partner, and/or the Reseller may choose to rely on these HPE aaS Commercial Terms by incorporating them into their own agreements by way of reference. If Customer purchases from a Reseller, such Reseller will set the price and payment terms with Customer at their own discretion, and all relevant amounts owed for the Services are due to, and will be invoiced by, such Reseller for their own account and on their own behalf.
 2.4 The HPE aaS Terms for Customers and the Solution Materials create binding delivery obligations from HPE to Customer in addition to the respective delivery obligations between the Reseller and Customer and will become binding on HPE and Customer upon Reseller's acceptance of the Customer's order. When HPE performs the Services, the Reseller shall be discharged solely from its respective delivery obligations to the Customer, and vice versa. HPE will have no obligation for additional services sold by Reseller or other terms agreed by Customer with Reseller that deviate from the Agreement.

3. Ordering

3.1 Electronic transactions

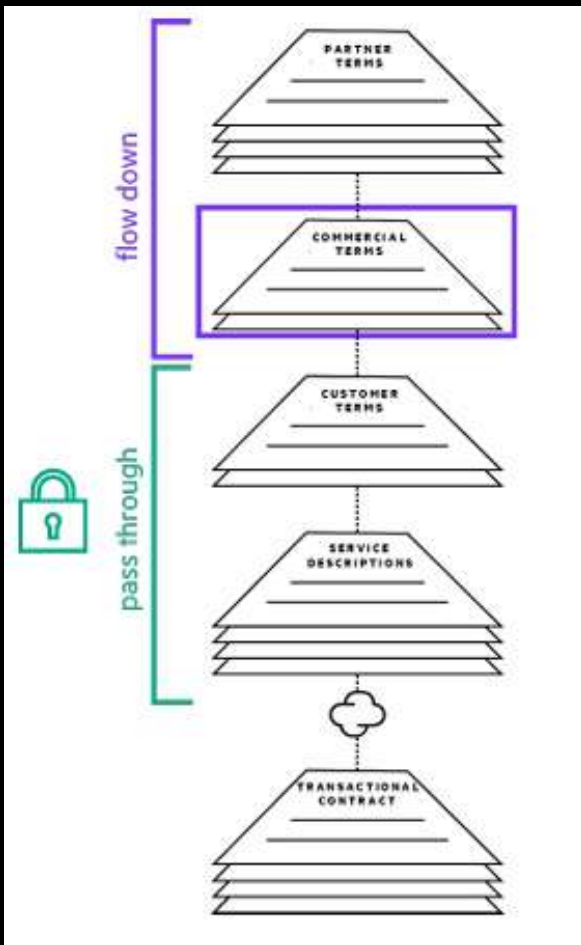
3.1.1 The parties may conduct business electronically. Electronic transactions include electronic consent to contracts, issuing legal quotes, placing or accepting orders through electronic means, exchanging and/or accepting Solution Materials electronically, and content posted on Seller websites and linked in other Agreement documents.

3.2 Ordering

3.2.1 Depending on the type of Services, the Purchaser orders Services from the Seller by issuing a purchase order referencing the legal quote, by clicking to place the order through a portal, or through such other means acceptable to Seller.

3.3 Purchase orders

3.3.1 If Purchaser does not issue purchase orders as a matter of business practice, Purchaser represents and warrants that its purchase of the Services authorizes HPE to begin to provide the Services. Purchaser will pay for the Services without the necessity of a purchase order and Purchaser will not contest payment for the provision of Services due to the fact that no purchase order was issued.



Sub-Commercial Terms

- Only some products require the extra terms
- Apply in addition to HPE aaS Commercial Terms

HPE Hybrid & Private Cloud Solution-Specific Commercial Terms

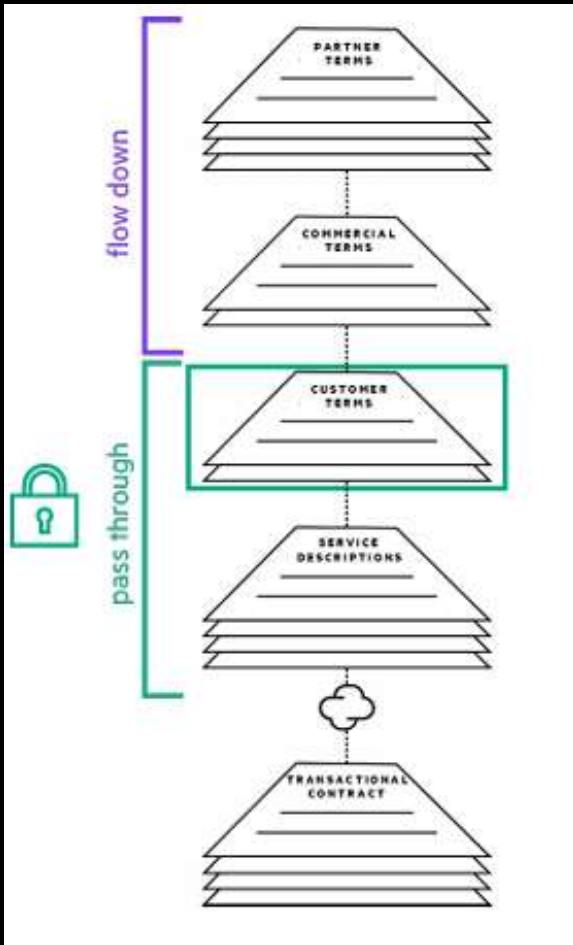
- In addition to HPE aaS Commercial Terms
- Only included for some solutions

HPE GreenLake Commercial Terms for Select Solutions

- In addition to HPE aaS Commercial Terms
- Only included for some solutions

*Commercial Terms can be found in the Contract Document Finder Tool

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18								
19	a50009054	HPE aaS Terms for Customers	All	v2	21	Translation	Country-specific terms for Slovakia added to section 5	■
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23	f2a50009054R2C	FAST 2.0 Sample Partner Terms - Reseller to Customer	Channel only		21	Localization		■
24	a50009485	HPE Hybrid & Private Cloud Solution-Specific Commercial Terms	All	v2	13	Translation	Removed PCBE and Block	■
25	a50009412	HPE GreenLake Commercial Terms for select solutions	All	v2	21	Translation	Added terms for Block Storage and PCBE	■



HPE aaS Terms for Customers

- Governs the relationship between HPE and the End User
- Replaces the HPE GreenLake Terms v3
- No longer contains financial terms for HPE Direct deals
- Must be passed down to the End User, unchanged

Hewlett Packard Enterprise

HPE aaS Terms for Customers

November 1, 2023
Version 1

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

1. Definitions

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

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

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

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

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

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

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

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

1.9. **Services:** The services, defined in the Agreement, that HPE will perform for the Customer, including the provision of HPE Intellectual Property and Systems for Customer's access, if applicable.

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

1.11. **System:** The hardware and/or software (including firmware) accessed as part of the Services.
Capitalized terms used but not defined in these HPE aaS Terms for Customers shall have the meaning given to them elsewhere in the Agreement.

2. Terms Applicable to All Services


2.1. Hardware and Software Systems

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

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

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

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



**Where can I find the current
versions of all these
documents?**

HPE GreenLake Contract Document Finder Tool

Updated 1/8/2024

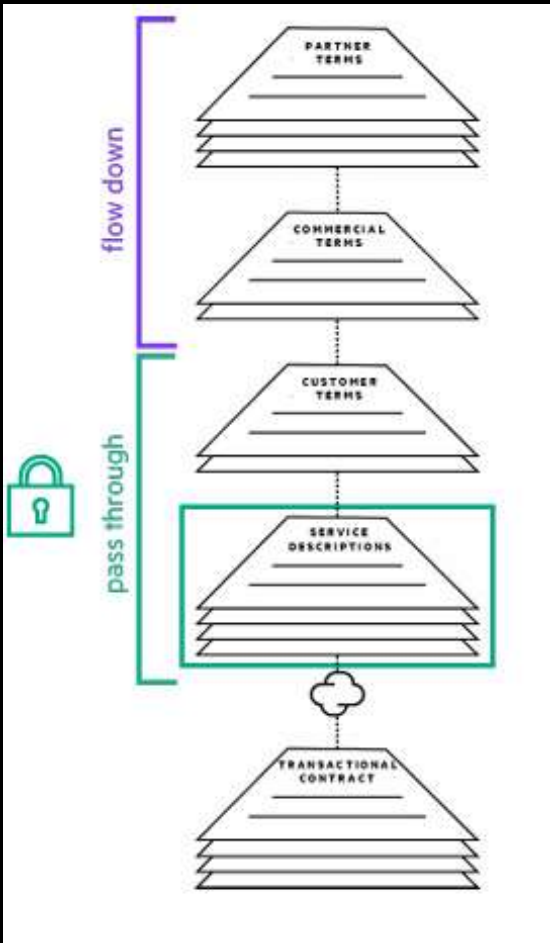
Doc ID#		GTM	Latest Version	Language Scope	Status	Updates	English - (Click on icon)
FAST 2.0 for HPE GreenLake							
SOW, ORDERS FORMS +							
FAST2SOW	HPE GreenLake Statement of Work	All	v4	22	Translation	Removed "This SOW" throughout the file for iCertis functionality added NonStop	■
FAST2COFNT	HPE GL Change Order Form (New Tech)	All	v1	22	Translation		■
FAST2COFG	HPE GL Change Order Form (Growth)	All	v1	22	Translation		■
TERMS							
a50009054	HPE aaS Terms for Customers	All	v2	21	Translation	Country-specific terms for Slovakia added to section 5	■
a50009055	HPE aaS Commercial Terms	All		21	Translation		■
a50009056	HPE aaS Terms for Partners	Channel only		21	Translation		■
f2a50009054D2R	FAST 2.0 Sample Partner Terms - Distributor to Reseller	Channel only		21	Localization		■
f2a50009054R2C	FAST 2.0 Sample Partner Terms - Reseller to Customer	Channel only		21	Localization		■
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a50009412	HPE GreenLake Commercial Terms for select solutions	All	v2	21	Translation	Added terms for Block Storage and PCBE	■
CORE SERVICE DESCRIPTIONS							
a50009576	HPE GREENLAKE FLEX SOLUTIONS	All		23	Translation		■
a50009620	HPE GREENLAKE FLEX SOLUTIONS Entry service experience	All		23	Translation		■
a50009622	HPE GREENLAKE FLEX SOLUTIONS Standard service experie	All		23	Translation		■
a50009619	HPE GREENLAKE FLEX SOLUTIONS Basic service experience	All		23	Translation		■
a50009621	HPE GREENLAKE FLEX SOLUTIONS Lite services experience	All		23	Translation		■
a50009512	HPE GREENLAKE FLEX SOLUTIONS Partner-led services expe	All		23	Translation		■
a50009486	HPE GreenLake for Private Cloud Enterprise	All		23	Translation		■

ADD-ON SERVICE DESCRIPTIONS

a50009577	HPE Managed Services for GreenLake Flex Solutions	All		23	Translation	
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SERVICE DESCRIPTIONS

a50009403	HPE GreenLake for Backup and Recovery	All		6	Translation	
a50009404	HPE GreenLake for Block Storage	All	v2	3	Translation	Updated for
a50009411	HPE GreenLake for Disaster Recovery	All		6	Translation	
a50009276	OpsRamp	All		6	Translation	
a50009418	HPE GreenLake for Private Cloud Business Edition	All	v2	2	Translation	Updated for
a50009502	HPE GreenLake for Private Cloud Business Edition software, attached to HPE Alletra dHCI	All		6	Translation	
a50009366	HPE GreenLake for Compute Ops Management	All		6	Translation	
a50009367	HPE GreenLake for Compute Ops Management – OneView Edi	All		6	Translation	
a50009423	HPE GreenLake for Microsoft Azure Stack HCI	All		6	Translation	
a50009513	HPE GreenLake Flex Solutions built for Virtual Desktop Infrastr	All		6	Translation	
a50009574	SaaS attached to HPE Alletra Storage	All		6	Translation	
a50009575	HPE GreenLake for Block Storage software, attached to HPE A	All		6	Translation	
a50009509	HPE GreenLake for Networking service packs	All		3	Translation	
a50009406	HPE GreenLake at CyrusOne	All		6	Translation	
a50009407	HPE GreenLake at Digital Realty Trust	All		6	Translation	
a50009408	HPE GreenLake at Equinix	All		6	Translation	
a50009420	HPE GreenLake for VMware Cloud Foundation	All		6	Translation	
a50009594	HPE Education Learning Credit	All		6	Translation	
a50009369	HPE GreenLake For Storage Fabric Management	All		6	Translation	
a50009624	Red Hat subscriptions in HPE GreenLake	All		6	Translation	
a50009422	HPE GreenLake Flex Solution built for Veeam	All		6	Translation	
a50009417	HPE GreenLake Flex Solutions built for Nutanix	All		6	Translation	

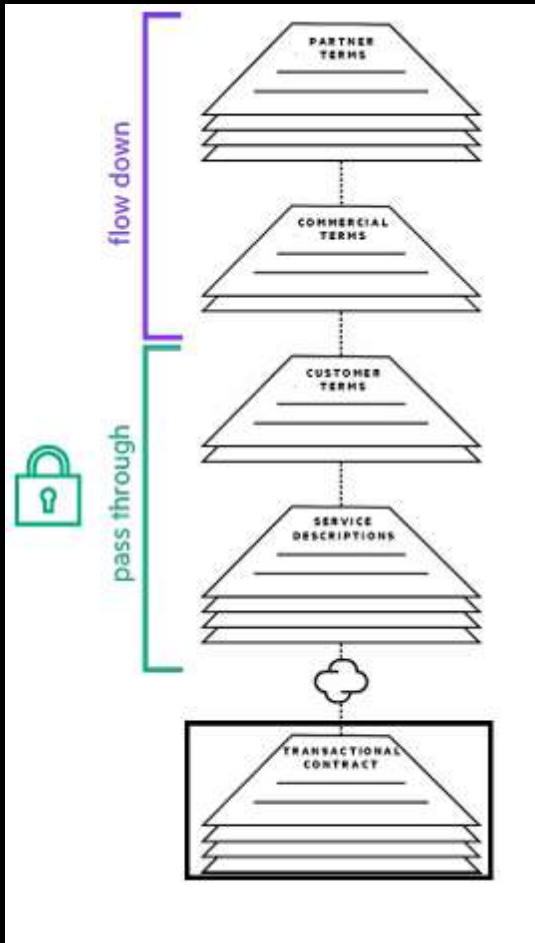


Service Descriptions

- The “What” not the “How” of what is being provided
- Outlines any offerings with SLA
- “Core” Service Descriptions for Flex Solutions
- Dedicated file to for each product specific Service being provided

* Service Descriptions can be found in Contract Document Finder tool

CORE SERVICE DESCRIPTIONS						
a50009576	HPE GREENLAKE FLEX SOLUTIONS	All	23	Translation		
a50009620	HPE GREENLAKE FLEX SOLUTIONS Entry service experience	All	23	Translation		
a50009622	HPE GREENLAKE FLEX SOLUTIONS Standard service experience	All	23	Translation		
a50009619	HPE GREENLAKE FLEX SOLUTIONS Basic service experience	All	23	Translation		
a50009621	HPE GREENLAKE FLEX SOLUTIONS Lite services experience	All	23	Translation		
a50009512	HPE GREENLAKE FLEX SOLUTIONS Partner-led services experience	All	23	Translation		
a50009466	HPE GreenLake for Private Cloud Enterprise	All	23	Translation		
ADD-ON SERVICE DESCRIPTIONS						
a50009577	HPE Managed Services for GreenLake Flex Solutions	All	23	Translation		
SERVICE DESCRIPTIONS						
a50009403	HPE GreenLake for Backup and Recovery	All	6	Translation		
a50009404	HPE GreenLake for Block Storage	All	v2 3	Translation	Updated for change to IQ	
a50009411	HPE GreenLake for Disaster Recovery	All	6	Translation		
a50009276	OpsRamp	All	6	Translation		
a50009418	HPE GreenLake for Private Cloud Business Edition	All	v2 2	Translation	Updated for change to IQ	
a50009502	HPE GreenLake for Private Cloud Business Edition software, attached to HPE Alletra dHCI	All	6	Translation		
a50009366	HPE GreenLake for Compute Ops Management	All	6	Translation		
a50009367	HPE GreenLake for Compute Ops Management – OneView Edition	All	6	Translation		
a50009423	HPE GreenLake for Microsoft Azure Stack HCI	All	6	Translation		
a50009513	HPE GreenLake Flex Solutions built for Virtual Desktop Infrastructure	All	6	Translation		
a50009574	SaaS attached to HPE Alletra Storage	All	6	Translation		
a50009575	HPE GreenLake for Block Storage software, attached to HPE Alletra	All	6	Translation		
a50009509	HPE GreenLake for Networking service packs	All	3	Translation		
a50009406	HPE GreenLake at CyrusOne	All	6	Translation		
a50009407	HPE GreenLake at Digital Realty Trust	All	6	Translation		
a50009408	HPE GreenLake at Equinix	All	6	Translation		
a50009420	HPE GreenLake for VMware Cloud Foundation	All	6	Translation		
a50009594	HPE Education Learning Credit	All	6	Translation		
a50009369	HPE GreenLake For Storage Fabric Management	All	6	Translation		
a50009624	Red Hat subscriptions in HPE GreenLake	All	6	Translation		
a50009422	HPE GreenLake Flex Solution built for Veeam	All	6	Translation		
a50009417	HPE GreenLake Flex Solutions built for Nutanix	All	6	Translation		



Transactional Agreement

- Solution and Quantities
- Unit of Measure, Term and Pricing
- Service and payment model selections



Flex Solutions (Custom)

HPE creates a Statement of Work (SOW), so Distribution will also provide a SOW to Reseller



Integrated Quoting 2.0

IQ 2.0 outputs a “legal quote”, so Distribution will also provide a “legal quote” to Reseller



*As-a-Service Quoter

ASQ outputs a “legal quote”, so Distribution will also provide a “legal quote” to Reseller

HPE GREENLAKE STATEMENT OF WORK

About this Statement of Work

Seller:

Ingram Micro Inc ("Tier One Partner")

Purchaser:

Resellers "R" Russ ("Tier Two Partner")

Customer receiving HPE services (if different from Purchaser)

End User, LLC

Prepared by Russell J. Fenton

Issue date: May 20, 2024

Unless signed by both parties, this SOW and the prices herein will expire 30 days from the date of issue.

This HPE GreenLake Statement of Work ("SOW") is governed by the following terms in descending order of precedence:

1. This SOW
2. Ingram Micro Sales Terms and Conditions
3. HPE aaS Commercial Terms <https://www.hpe.com/psnow/doc/a50009055ENW?ver=1>
4. HPE aaS Terms for Partners <https://psnow.ext.hpe.com/doc/a50009056ENW?ver=1>
5. HPE Partner Agreement

Tier Two Partner understands and agrees to provide to the Customer:

- the delivery-related information in section 5 (Service Details) of this SOW
- the applicable service descriptions identified in this SOW including any Data Privacy and Security Agreement applicable to the Service referenced in the service description.
- HPE aaS Terms for Customers <https://www.hpe.com/psnow/doc/a50009054ENW?ver=2>

Ingram Micro HPE GreenLake Order Form

This Ingram Micro HPE GreenLake Order Form ("Order Form") is made and entered into between Ingram Micro Inc. ("Ingram Micro" or "Tier One Partner") and [RESELLER LEGAL NAME] ("Reseller" or "Tier Two Partner") each (a "Party") or together ("Parties") and is effective as of [MM/DD/YYYY] (the "Effective Date").

1. This Order Form is governed by the following descending order of precedence:
 - a. The commercial terms set out in the HPE GreenLake Quote attached as Appendix 1;
 - b. The terms and conditions set out in Ingram Micro's Sales Terms and Conditions or other agreement between the Parties ("Sales Agreement");
 - c. HPE GreenLake Commercial Terms for select solutions
<https://www.hpe.com/psnow/doc/a50009412ENW>
 - d. HPE aaS Commercial Terms <https://www.hpe.com/psnow/doc/a50009055ENW>;
 - e. HPE aaS Terms for Partners <https://psnow.ext.hpe.com/doc/a50009056ENW>; and
 - f. The HPE Partner Agreement entered into between HPE and Reseller.
2. The HPE terms referenced and incorporated into this Order Form in Sections 1.c., 1.d. and 1.e. above shall mean those terms as published by HPE and in effect as of the Effective Date of this Order Form.
3. Tier Two Partner understands and agrees to provide the Customer:
 - a. The delivery-related information contained in Appendix 1
 - b. The service descriptions referenced in Appendix 1
 - c. HPE aaS Terms for Customers <https://www.hpe.com/psnow/doc/a50009054ENW>
4. Tier Two Partner hereby attests that to the best of its knowledge its agreement with its Customer complies with the preconditions for novation and termination rights listed in section 7.3 of the HPE aaS Terms for Partners, specifically sections 7.3.6, 7.3.7, 7.3.8 and 7.3.9.

Each Party represents that this Order Form is agreed and has been executed below by its duly authorized representative.

[RESELLER LEGAL NAME]
[Street Address]
[City, State ZIP Code]

Ingram Micro Inc.
3351 Michelson Drive, Suite 100
Irvine, CA 92612-0697

By: _____ By: _____
Printed Name: _____ Printed Name: _____
Title: _____ Title: _____
Date: _____ Date: _____

Ingram Micro HPE GreenLake Order Form

APPENDIX 1 Commercial Terms for GreenLake Order Form

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HPE GreenLake Order Form

This HPE GreenLake Order Form ("Order Form") is made and entered into between [RESELLER LEGAL NAME] ("Seller" or "Reseller") and [END USER LEGAL NAME] ("Purchaser" or "Customer") each (a "Party") or together ("Parties") and is effective as of [MM/DD/YYYY] (the "Effective Date").

1. This Order Form is governed by the following descending order of precedence:
 - a. The commercial terms set out in Appendix 1;
 - b. HPE GreenLake Commercial Terms for select solutions <https://www.hpe.com/psnow/doc/a50009412ENW>
 - c. HPE aaS Commercial Terms <https://www.hpe.com/psnow/doc/a50009055ENW>;
 - d. The Reseller Insolvency and Novation terms and conditions set out in Appendix 2
2. The HPE terms referenced and incorporated into this Order Form in Sections 1.b. and 1.c. above shall mean those terms as published by HPE and in effect as of the Effective Date of this Order Form.
3. Customer agrees it has been provided the following:
 - a. The delivery-related information contained in Appendix 1
 - b. The service descriptions referenced in Appendix 1
 - c. HPE aaS Terms for Customers <https://www.hpe.com/psnow/doc/a50009054ENW>

Each Party represents that this Order Form is agreed and has been executed below by its duly authorized representative.

[RESELLER LEGAL NAME]
[Street Address]
[City, State ZIP Code]

[END USER LEGAL NAME]
[Street Address]
[City, State ZIP Code]

By: _____ By: _____

Printed Name: _____ Printed Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

HPE GreenLake Order Form

APPENDIX 1

Commercial Terms for GreenLake Order Form

SAMPLE

HPE GreenLake Order Form

APPENDIX 2

Reseller Insolvency and Novation

HPE GreenLake Order Form


1. Reseller insolvency

In the event that Reseller suffers an insolvency or bankruptcy event or is terminated by the Customer for Reseller's uncured breach, HPE and the Distributor from whom Reseller purchased the HPE aaS Services for resale to Customer will work together with the Customer to assist in procuring a substantially similar replacement order ("Replacement Order") with HPE, Distributor, or another authorized Reseller.

2. Novation

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

Appendix 1 = IM to Reseller Quote


HPE CONFIDENTIAL | AUTHORIZED HPE PARTNER USE ONLY

HPE GreenLake Quote (Appendix 1)

Quote Number	NQXXXXXXXX-01	Quote Name	HP Storage - Greenlake
Quote Date	May 18, 2024	Country	US
Expires on	September 18, 2024	Currency	USD
Opportunity ID	OPE-XXXXXXXXXX		
Sales Contact	Resellers "R" Russ		
Sales Contact Phone			
Sales Contact Email	russ@resellersruss.com		
Seller		Purchaser	
Ingram Micro Inc ("Tier One Partner")		Resellers "R" Russ ("Tier Two Partner")	
Customer Receiving HPE services			
End User, LLC			
Addresses			
Tier One Partner address	Ingram Micro Inc 3351 MICHELSON DR STE 100 IRVINE, California, 92612-0697 US		
Ship to address	End User, LLC 1234 Main Street Cleveland, OH 44114 US Sally End User 555-987-6543 sally@enduserllc.com		

Tier Two Partner address

Resellers "R" Russ
666 Shark Street
Parsippany, NJ
US

SYSTEMS DETAILS

Ingram Micro pricing to Resellers "R" Russ

Configuration	Billing Tier	UOM	Requested Capacity	Reserved Capacity	Reserved Capacity %	Unit Price	Initial Reserved Monthly Price
End User LLC 2023 1019 Solution	DL380 Gen11 #2 (1024.0GB Memory) 3BA	Compute Unit	1,741.00	1,741.00	100	0.73	1,270.93
End User LLC 2023 1019 Solution	Alletra 5000 #2 A68	HPE GB	29,947.00	20,962.90	70	0.0751	1,574.31
Total							2,845.24

UoM = Unit of Measure

* Capacities will be rounded to two decimal places. For example, 10.001 up to and including 10.004 will be rounded down to 10.00, and 10.005 up to and including 10.009 will be rounded up to 10.01.

Subject to the pricing model and applicable minimums described previously, consumption-based charges will be calculated by multiplying the output of the metering tools by the applicable Unit Price. Prices are in local currency and exclusive of applicable taxes (such as, sales, value-added tax (VAT), goods and services tax (GST), stamp duty, or similar taxes or fees including stamp duty)

Included Services

HPE GreenLake Experience: Entry
<https://www.hpe.com/psnow/doc/a50009620ENW?ver=2>

Support Service: Tech Care Essential without DMR/CDMR
<https://www.hpe.com/psnow/doc/a00108652enw>

Additional Services

What Changed in FAST 2.0?

Changes in the HPE aaS Commercial Terms

Section 4.2 – “present and future” language removed from the tax section

4.2 Taxes

- 4.2.1 Prices are exclusive of applicable sales, use, consumption, service, VAT, GST, or similar taxes. Invoices will separately state charges, fees, and applicable taxes. Unless an appropriate exemption certificate was provided before the relevant Services are performed, all applicable taxes, charges, fees, and surcharges (however levied) must be paid or reimbursed by the Purchaser.
- 4.2.2 If the Purchaser is required to withhold any tax, the Purchaser will reduce payment by the amount of the tax and provide applicable tax documentation necessary to reclaim all withheld taxes. If the Purchaser has not provided the necessary documentation within the time prescribed by the taxing authority or the documentation is not acceptable to the taxing authority to reclaim the withheld taxes, the Purchaser will reimburse the withheld amount.

Section 4.5 – Defines Early Termination Fee – the FAST 1.0 calculation was reserved capacity x rate x months remaining in the term “x 1.1” (adding 10% to the ETF). This extra 10% has been removed.

4.5 Early Termination Fees

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 Purchaser 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.

Changes in the HPE aaS Terms for Partners

Section 2.3.1 – On deal sizes above \$5M Distributor is required to assist HPE in obtaining the necessary reseller partner information for HPE to identify and conduct a credit check on the reseller.

2.3 **Distributor's Responsibilities**

2.3.1 Distributor will assist HPE in obtaining the necessary Customer information so that HPE can identify and conduct a credit check on Customer. If HPE is not able to perform a satisfactory credit check on Customer or if Customer fails the credit check, HPE will notify the Distributor prior to entering into the Agreement, and the Distributor must authorize proceeding with the deal in writing. Distributor will inform the Reseller on the outcome of the credit check and will ensure that any authorization to proceed with the deal despite the Customer's failure to pass the credit check is, at least, communicated to the Reseller. **For transactions equal or greater than USD 5M (based on the value of the order placed to HPE, as determined by HPE), Distributor will assist HPE in obtaining the necessary Reseller information so that HPE can identify and conduct a credit check on Reseller.** If HPE is not able to perform a satisfactory credit check on Reseller or if Reseller fails the credit check, HPE will notify the Distributor prior to entering into the Agreement, and the Distributor must authorize proceeding with the deal in writing.

Changes in the HPE aaS Terms for Partners

Section 4.2 – Effects of Termination – Same as FAST 1.0, but HPE provided additional clarity around products/offerings without any reserved capacity or “commitment” (i.e., there is no ETF for Pay as you go models).

4.2 **Effects of termination**

Unless otherwise described in the HPE aaS Commercial Terms, in the event of a termination of all or any portion of the Services before the expiration of a committed period for any reason other than HPE’s uncured material breach or insolvency, the Tier One Partner must pay early termination fees equal to the Subscription fee for the impacted Services times the remaining Commitment period. For clarity, Services with no committed period or no committed period remaining will not have early termination fees. For Services with a ramp-up period, Services will be deemed to include all Systems installed, even if not activated.

Changes in the HPE aaS Terms for Partners

Section 5.1.1 – Rejected Replacement Orders (following Customer’s termination of Reseller for Insolvency/Bankruptcy/Uncured Material Breach) result in a reduction of distribution’s Early Termination Fee to the Fair Market Value of the gear.

5. Reseller Insolvency or Breach (Applicable to Distributors only)

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.

5.1.1 In the event that:

- a. Reseller suffers an insolvency or bankruptcy event or
- b. Customer terminates the agreement with Reseller for Reseller’s uncured breach

HPE and Distributor will work together with the Customer to assist in procuring a substantially similar replacement order with HPE, Distributor, or another authorized Reseller (“Replacement Order”).

If Customer enters into a Replacement Order with HPE, Distributor may terminate the impacted Agreement by written notice to HPE, in which case HPE will relieve Distributor of any early termination fee and any return fee set out in the Agreement.

If the Customer does not enter into a Replacement Order, HPE will recover any Systems from the Customer, as applicable, and Distributor may terminate the impacted Agreement. Once HPE recovers any Systems from the Customer, as applicable, Distributor will have no obligation to pay the return fee, where applicable. Additionally, HPE will reduce the early termination fee by an amount that will be based upon the fair market value of the

recovered Systems, as determined by HPE at the point of termination.

Changes in the HPE aaS Terms for Partners

Section 5.1.2 – On deals worth more than \$5M, a rejected replacement order will result in the reduction of distribution's Early Termination Fee to three times the monthly invoice amount (similar to the reseller's "novation" deal protection)

5.1.2 In the event that:

- a. Reseller suffers an insolvency or bankruptcy event and
- b. The transaction value (based on the value of the order placed to HPE, as determined by HPE) is of at least USD 5 million and
- c. HPE was able to perform, and Reseller passed, the HPE credit check. If the Distributor has moved forward with a transaction despite Reseller failing the credit check, this entire Section 5.1.2 will not apply and
- d. Customer refused to agree on placing a Replacement Order to HPE or to the Distributor or to another authorized Reseller in the event of Reseller's insolvency and
- e. HPE recovers the Systems from the Customer, as applicable,

the Distributor may terminate the impacted Agreement. Distributor will have no obligation to pay the return fee, where applicable, and will pay early termination fees equal to the price of three monthly invoices. HPE assumes no obligations or risks for the period before the termination effective date of the impacted Agreement.

Changes in the HPE aaS Terms for Customers

Country Specific Terms (US Only)

Section 3.10 – If a court deems the agreement to be a lease, then Customer grants HPE a PMSI and may file a Financing Statement

UNITED STATES

Insert the following as a new Section 3.10:

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

Changes in the HPE aaS Terms for Customers

Section 4.9 – Limitation of Liability was increased from \$500k to \$1M, but HPE rejected our recommendation that the Limitation of Liability be the greater of \$1M or 12 times the monthly invoice at the time of termination (so that the LOL could grow in conjunction with the deal size).

4.9 Limitation of liability

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

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

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

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



HPE

- HPE's uncured material breach
OR
- HPE's insolvency

No ETF/Return Fee

HPE liable per
T's & C's



Ingram Micro

- Ingram Micro's uncured material breach
OR
- Ingram Micro's insolvency

Termination by HPE

ETF/Return Fee



Reseller Partner

- Resellers Partner's uncured material breach
OR
- Reseller's insolvency

If End User accepts
Replacement
Order, then NO
ETF/Return Fee

No Replacement
Order = Reduced
ETF (FMV)

If Deal >\$5M, ETF =
3 monthly invoices



End User

End User does not pay an accumulation of 3 invoices for reasons not imputable to Reseller or Distributor

If End User agreed to novation, then NO ETF/Return Fee but no Partner incentives for novated portion

Otherwise

ETF/Return Fee