



## End User Licence Agreement – 5 Nodes Free Program

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Please read this Agreement carefully before downloading, installing and/or using the Software as it creates a legally binding contract between Portainer.io Limited (**Portainer, we, us or our**) and the Company specified in the Order Form, including all employees or other individuals using the Software, (collectively **Company, you or your**).

By downloading, installing and/or using the Software, you agree to follow and be bound by this Agreement.

Please note that this Agreement is solely for Portainer Business 5 node free users and does not apply for visitors of the site, users of the Portainer Open Source Community Edition software, or Portainer Business Edition Customers.

If you do not agree to the terms of this Agreement, please do not download, install and/or use the Software.

By accepting this Agreement you represent and warrant that any and all information you provide us is true, accurate and complete. The provision of false or fraudulent information is strictly prohibited.

This Agreement may be varied by us at any time. Unless otherwise stated, amendments to this Agreement will be effective upon us notifying you of the changes by email, by posting the changes at [www.portainer.io](http://www.portainer.io), or as a notification through the Software. You must ensure that you have read, understood and agree to the terms in this Agreement. You agree that your continued use of the Software represents your agreement to be bound by the most recent version of this Agreement.

### 1. Interpretation

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#### 1.1 In this Agreement, unless the context otherwise requires:

**Agreement** means this End User Licence Agreement, including the Order Form and Specific Terms;

**Commencement Date** means the date from which your licence to use the Software commences, which is the date you submit the Order Form for the Free Nodes or otherwise the date loaded by us in the Licence Key;

**Confidential Information** means any information, verbal or written, including documents, plans, software, market research data, product literature, trade secrets, processes, technical information, know-how, documentation, intellectual property and any financial and commercial information relating to the business of either party or any of either party's related or associated companies;

**Documentation** means all manuals, user guides and other information relating to the installation, configuration and use of the Software, accessible at [docs.portainer.io](http://docs.portainer.io);

**Environment** means any environment in which the Software is installed;

**Free Nodes** means the five Nodes that we license to you upon receipt of the online order form, and licensed under the specific license issued in response to that order.

**Intellectual Property Rights** means any patent, trade mark, service mark, copyright, moral rights, right in a design, know-how, confidential information and all or any other intellectual or industrial property rights, whether or not registered;

**Licence Key** means the licence activation key that we generate and provide to you which identifies:

- (a) the type of Software licence that is provided to you (5 Nodes Free);
- (b) the Permitted Number of Nodes the Software may be used on (5); and
- (c) the Licence Term;

**Licence Term** means the term of your licence to use the Software commencing on the Commencement Date and ending on termination of this Agreement in accordance with its terms;

**Licensing Technology** has the meaning set out in clause 2.2(a);

**Node** has, in respect of the relevant Environment, the meaning set out in the Documentation;

**Order Form** means any order or sign-up form for the provision of Software licences including a document containing our offer for the Software, or a form on our website which you complete;

**Permitted Number of Nodes** means the number of Free Nodes that the Software may be installed on;

**Requirements and Pre-requisites** means the requirements and pre-requisites for the installation and use of the Software, as set out in the Documentation and/or otherwise specified by us in writing;

**Software** means the object code version of the software listed in the Order Form, for the relevant Environment comprising:

- (a) Portainer Agent;
- (b) Portainer Server; and
- (c) all modifications, updates, upgrades and new versions of the software listed in paragraphs (a) and (b) above that we provide to you;

**Specific Terms** means any specific terms that also apply to your use of the Software, as may be set out in the Order Form;

1.2 In this Agreement, unless the context otherwise requires:

- (a) clause and other headings are for ease of reference only and will not be deemed to form any part of the context or to affect the interpretation of this Agreement;
- (b) words denoting the singular include the plural and vice versa, words denoting persons include natural persons, firms, companies and corporations and vice versa.

## 2. **Licence**

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2.1 We grant you a non-exclusive, non-transferable licence commencing on the Commencement Date and for the term of this Agreement to:

- (a) download the Software from [www.portainer.io](http://www.portainer.io) or such other location that we specify;
- (b) install and use the Software on any Environment operated by you provided that you do not install and use the Software on more than the Permitted Number of Nodes; and
- (c) use the Documentation,

for your internal business purposes, in accordance with all relevant laws, and on the terms of this Agreement.

2.2 You acknowledge and agree that:

- (a) the Software includes product activation, licensing servers, and other technology designed to manage licensing, and prevent unauthorised use and copying, of the Software (**Licensing Technology**);

- (b) the Licensing Technology may cause the Software or your devices to automatically connect to our licensing servers over the internet to ensure that the Software is being used in accordance with this Agreement and/or that the Licence Keys are valid;
- (c) if the Software is used in an air gapped environment, you must, if we ask you to, at least once per year (or any other period we specify) allow the Software or your devices to connect to the Licensing Technology to ensure that the Software is being used in accordance with this Agreement and/or that the Licence Keys are valid. Failure to allow the Software or your devices to connect to the Licensing technology may result in the Licence Keys becoming invalid or expiring and the Software ceasing to operate;
- (d) the Licensing Technology may prevent uses of the Software that are not permitted, including those that are in breach of this Agreement, by invalidating or expiring the Licence Keys so the Software will cease to operate;
- (e) you consent to the transmission of Software, device and/or user information to us and to the use of Licence Keys;
- (f) you will not utilise any software, equipment, or other means to circumvent or remove any form of copy and licence management protection that we use to monitor Software use, or use the Software together with any code, licence key, or activation code obtained from any source other than us; and
- (g) we will not be liable to you for any failure of the Software to operate as a result of any Licence Keys that have become invalid or expired in accordance with this clause.

2.3 You will:

- (a) provide all facilities required to use the Software, including computer hardware, communications software and data connections;
- (b) be responsible for your own business continuity, disaster recovery, security and authentication processes and procedures relating to the Software;
- (c) install and use the Software in accordance with the Requirements and Pre-requisites.

2.4 You will not:

- (a) cause or permit the reproduction, reverse engineering, disassembly or decompilation of the Software; and
- (b) except as expressly permitted under this Agreement, make the Software available to a third party for any purpose.

2.5 Without limiting clause 2.2, at our request, you will allow our representative to access your premises, IT systems/network/environment, and/or records, to verify your compliance with this Agreement.

### 3. **Warranties and Liability**

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- 3.1 No Warranty. The Software is licensed hereunder on an "AS IS" basis. To the maximum extent permitted by applicable law, Portainer disclaims all warranties, express or implied, with respect to such Software, including but not limited to, implied warranties of merchantability and fitness for a particular purpose or use.
- 3.2 Disclaimer of Liability. PORTAINER SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER WITH RESPECT TO THE USE OR OPERATION OF THE SOFTWARE, WHETHER DIRECT, SPECIAL, CONSEQUENTIAL, COLLATERAL, OR INCIDENTAL, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF PROFITS, LOSS OF USE OR INTERRUPTION OF BUSINESS. PORTAINER'S TOTAL LIABILITY FOR DIRECT DAMAGES HEREUNDER SHALL NOT EXCEED ONE U.S. DOLLAR (\$1.00). COMPANY MAY HAVE OTHER RIGHTS THAT VARY BY JURISDICTION.

#### 4. Intellectual Property Rights

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- 4.1 Subject to clause 4.2, you acknowledge that we own all rights, title and interest (including all Intellectual Property Rights) in:
- (a) the Software, Documentation and the Licensing Technology; and
  - (b) anything created by us in the course of providing any Support Services (**Created Materials**) if applicable. We grant you during the term of this Agreement a non-exclusive, non-transferable, royalty free right to use the Created Materials in conjunction with the Software.
- 4.2 You acknowledge and agree that the Software may include open source software. "**Open Source Software**" means various software components, including open source software and patches to open source software that may be provided to Company in connection with the provision of the Software. The Open Source Software is licensed to Company under its own applicable license terms and conditions, which can be found in the appropriate dependencies.xls file from the documentation. You acknowledge that all Intellectual Property Rights in that software remains with those third parties.
- 4.3 You may contact us for comments, suggestions and other feedback regarding the Software, including but not limited to usability, missing features, functional errors, and bug reports (**Feedback**). You agree that any Feedback provided to us may be used by us for any purpose without compensation of any kind to you, and we will be the sole owner of any and all software, documentation, improvements or other items developed by us that may relate to such Feedback.

#### 5. Confidentiality

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- 5.1 Each party will:
- (a) keep the other party's Confidential Information strictly confidential;
  - (b) procure that its respective directors, officers and employees abide by these obligations of confidence; and
  - (c) not disclose in any form, the whole or any part of the other party's Confidential Information to any other person, except as may be strictly necessary for the performance of its obligations under this Agreement.
- 5.2 Clause 5.1 will not apply to information which:
- (a) is or becomes part of the public domain through no fault on the part of the recipient;
  - (b) was in the recipient's lawful possession prior to disclosure and had not been obtained by the recipient from the disclosing party;
  - (c) is lawfully disclosed to the recipient by a third party without restriction on disclosure;
  - (d) is independently developed by the recipient without reference to the disclosing party's Confidential Information; or
  - (e) is required to be disclosed by a court of competent jurisdiction or any competent judicial, governmental or regulatory body or the rules of any applicable stock exchange provided that prompt written notice of this requirement is given to the other party and such disclosure will be only to the minimum extent required.
- 5.3 You agree that Portainer may refer to Company's name and trademarks in Portainer's marketing materials and website; however, Portainer will not use Company's name or trademarks in any other publicity (e.g., press releases and customer references) without Company's prior written consent.

## 6. Termination

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- 6.1 This Agreement commences on the Commencement Date and continues for the Licence Term.
- 6.2 Portainer may terminate this agreement by 30 days' notice in writing to company at its sole discretion
- 6.3 Either party may terminate this Agreement immediately by notice in writing to the other party if the other party:
- (a) breaches any of its obligations under this Agreement and (if the breach is capable of remedy) fails to remedy the breach within 30 days after receiving notice specifying the breach and requiring it to be remedied; or
  - (b) becomes bankrupt or goes or is put into liquidation or has a receiver or statutory manager appointed in respect of its assets or any of them or becomes insolvent, ceases to carry on its business or makes any composition or arrangement with its creditors.
- 6.4 On termination of this Agreement:
- (a) you will immediately cease to use the Software and Documentation and uninstall the Software;
  - (b) each party will return all of the other party's Confidential Information in its possession or control, or destroy all such Confidential Information.
- 6.5 Termination of this Agreement will not affect the accrued rights or liabilities of either party, nor will it affect any provision which is expressly or by implication intended to come into force or continue in force on or after termination.

## 7. General

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- 7.1 Any notice to be given in terms of this Agreement must be sent by email to the following address (as may be updated by either party in writing from time to time):
- (a) If to Portainer info@portainer.io
  - (b) If to Company, the email address specified in the Order Form or which we have in our records.
- Any communication by email will be deemed to be received when transmitted to the correct email address of the recipient.
- 7.2 You will comply with all applicable laws and regulations that apply to the Software, including all United States export and import laws and regulations. You will not download or otherwise export or re-export the Software or any underlying information or technology except in full compliance with such laws. You acknowledge that the Software and/or underlying information or technology may not be downloaded, accessed or otherwise exported or re-exported:
- (a) into any US embargoed countries;
  - (b) to anyone on the US Treasury Department's list of Specially Designated Nationals List or the US Commerce Department's Denied Parties List or Entity List. By using the Software, you represent and warrant that you are not located in any such country or on any such list.
- 7.3 You will not use the Software:
- (a) for any purposes prohibited by law, including, without limitation, the development, design, manufacture, or production of nuclear, missile, or chemical or biological weapons;
  - (b) in any on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of aircraft navigation or communication systems, air traffic control, direct lift support machines, or nuclear facilities, in which the failure of the Software could lead to death, personal injury, or severe physical or environmental damage (**High Risk Activities**). We specifically disclaims any express or implied warranties for High Risk Activities.

- 7.4 No waiver of any breach of this Agreement will be deemed to be a waiver of any other or any subsequent breach. The failure of any party to enforce any provision of this Agreement at any time will not be interpreted as a waiver of the provision.
- 7.5 This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior oral and written understanding, arrangements or agreements between them relating to the subject matter of this Agreement.
- 7.6 This Agreement may be amended by us at any time. Unless otherwise stated, amendments to this Agreement will be effective upon us notifying you of the changes by email, by posting the changes at [www.portainer.io](http://www.portainer.io), or as a notification through the Software. You must ensure that you have read, understood, and agree to the terms in this Agreement. You agree that your continued use of the Software represents your agreement to be bound by the most recent version of this Agreement.
- 7.7 Each party agrees to execute and deliver any documents and to do all things as may reasonably be required by the other party to obtain the full benefit of this Agreement according to its true intent, including executing any documents.
- 7.8 You will not assign this Agreement or any of your rights or obligations under this Agreement without our prior written consent.
- 7.9 If any provision in this Agreement is invalid or unenforceable, the remaining provisions will continue in full force and effect.
- 7.10 This Agreement will be governed by and construed in accordance with the laws of New Zealand and, for any urgent interlocutory relief only, the parties submit to the non-exclusive jurisdiction of the New Zealand courts.