



## Portainer Business Edition - End User License Agreement (Published on Portainer.io)

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### 1. INTRODUCTION

This End User License Agreement (the "Agreement") is entered into by and between Portainer., an Auckland, New Zealand company with its principal place of business at 1 Boundary Road, Hobsonville, Auckland 0618, New Zealand and the organization on whose behalf you are agreeing to this Agreement ("Company").

By downloading, installing and/or using the software, you expressly accept and agree to the terms of this agreement. If you are an individual agreeing to the terms of this agreement on behalf of an entity ("Company"), you represent that you have the legal authority to bind that entity.

By accepting this agreement, you represent that and warrant that any and all information you provide is true, accurate and complete.

This Agreement may be modified at any time for any reason. Amendments to this Agreement will be effective upon email notification, posting the changes online 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 of this Agreement. Your continued use of the software represents your acceptance and agreement to be bound by the most recent version of this Agreement.

### 2. DEFINITIONS

**"Affiliates"** means any entity that is controlled by, under the control of, or under common control with Company where "control" means ownership of, or the right to control, greater than 50% of the voting securities of such entity.

**"Commercial Use"** is the use of the licensed software for a Company's internal business purposes.

**"Container Runtime"** means software that executes and manages container images on a node.

**"Contractor"** means any third party employed by Company or a Company Affiliate to perform services for the benefit of Company.

**"Deliverable"** means developments, work product and deliverables resulting from any Services (as defined in Section 3(d)) performed by Portainer pursuant to this Agreement and the applicable Ordering Document.

**"Documentation"** means the user guide and technical specifications for the Products delivered by Portainer along with the Products as may be updated by Portainer from time to time.

**"Educational Use"** is the non-commercial use of the licensed software by members of an educational institution in a classroom learning environment for academic or research purposes.

**"Node"** A "node" can be described as a "server" (whether this is an actual physical server, a VM, a Raspberry Pi, your desktop or laptop, an industrial computer or an embedded compute device) that is capable of running containers (via Docker, Kubernetes or another orchestrator) which is either running the Portainer Server or is under the management of a Portainer Server installation. .

**"Non Profit or Charitable Organization Use"** is the non-commercial use of the licensed software by a legally registered not for profit or charitable institution.

**"Open Source Software"** means any third-party open source software or other similar community or free software of any type (including software code licensed under any version of the GNU GPL, Mozilla or Apache licenses).

**"Open Source Use"** is the non-commercial use of the licensed software to support an open source project or community.

**"Order Form"** means a document governing purchases of Product Subscriptions made by Company hereunder that is executed by an authorized representative of each Party.

**"Ordering Document"** means any and all Order Forms and/or Statements of Work, collectively and/or individually.



**"Personal Use"** is the non-commercial use of the licensed software by an individual for personal education or upskilling.

**"Product"** means Portainer's software application(s) identified in one or more Order Form(s) to which Company purchases a Subscription pursuant to the terms of this Agreement and an Ordering Document.

**"Product Maintenance"** means the support and maintenance services to be performed by Portainer as further set forth in this Agreement.

**"Statement of Work"** means a document governing the provision of Services by Portainer for the benefit of Company hereunder that is executed by an authorized representative of each Party.

**"Subscription"** means the right and license granted to Company by Portainer to use the Products in accordance with the terms of this Agreement during the specified term.

**"Subscription Term"** has the meaning set forth in Section 12(b) of this Agreement.

### 3. PRODUCTS

a. **Provision of Products; License.** Portainer shall make the Products available to Company pursuant to this Agreement and the relevant Order Forms during the applicable Subscription term. Each fully executed Order Form shall form a part of this Agreement and be subject to the terms and conditions set forth herein. All Products and Documentation shall be delivered by electronic means unless otherwise expressly stated in the applicable Order Form. Company agrees that Company's purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Portainer regarding future functionality or features.

b. **License; Node Subscriptions.** With regard to all Products to be installed at Company's facilities, Portainer grants to Company a non-transferable, non-assignable (except as otherwise stated in Section 14(g)), non-sublicensable, non-exclusive, limited license to use such Products for Company's internal business purposes only, subject to the terms of this Agreement and the applicable Order Form. Unless otherwise specified in the applicable Order Form, (i) Subscriptions are purchased on a base annual fee plus per-Node basis and may not be used with more than the licensed number of Nodes, (ii) Company must notify Portainer when actual node usage exceeds the quantity of purchased node licenses by 20% and pay for additional Node Subscriptions during the Subscription term at the same prices charged by Portainer for the Subscriptions purchased pursuant to an Order Form(s), prorated for the remainder of the Subscription term in effect at the time the additional Node Subscriptions are purchased, and (iii) the additional Node Subscriptions shall terminate on the same date as the pre-existing Subscriptions. Company will: (i) be responsible for compliance with this Agreement and use of the Products, and (ii) use the Products only in accordance with the Documentation.

c. **Restrictions.** Company shall not (i) permit any third party to access the Products and/or Deliverables except as permitted herein or in an Order Form, (ii) modify, translate, reverse engineer, decompile, disassemble, create derivative works of or copy the Products and/or Deliverables or otherwise seek to obtain or use the source code or non-public APIs of the Product, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Portainer), (iii) remove, alter or obscure any proprietary notices, labels or marks on any component or portion of the Products and/or Deliverables, (iv) market, sell, resell, rent, distribute or lease the Products and/or Deliverables, (v) use the Products and/or Deliverables for the benefit of any third party including use of the Products to operate as a service bureau, ASP, or hosting service, (vi) attempt to gain unauthorized access to the Products and/or Deliverables, or their related systems or networks, (vii) access the Products and/or Deliverables, or permit access to the Products and/or Deliverables, for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes, and/or (x) access the Products and/or Deliverables in order to (A) build a competitive product or service, or (B) copy any features, functions or graphics of, or data or information in, the Products and/or Deliverables.

d. **Services.** From time to time, Company may request that Portainer perform certain training and/or professional services that are related to the Products but beyond the scope of this Agreement (collectively, the "Services"). Upon Company's request, Portainer will prepare a Statement of Work that includes the terms and conditions relevant to the Services to be performed. Statements of Work will, to the extent applicable, contain: (i) a description of the Services to be performed; (ii) any applicable assumptions, milestones, Deliverables, and timelines for delivery; (iii) applicable fees and payment terms; and (iv) any other terms applicable to such Services. Each fully executed Statement of Work shall form a part of this Agreement and be subject to the terms and conditions set forth herein.

e. **Use by Affiliates and Contractors.** Subject to the terms and conditions of this Agreement, Company's Affiliates and Contractors may use the Products licensed to Company hereunder, provided that (a) such use is strictly limited to use for the benefit of Company; and (b) Company remains liable for the acts and omissions of, and responsible for compliance with the terms and conditions of this Agreement



by, each Affiliate and Contractor. Company agrees to provide a list of each Affiliate and Contractor that uses the Products for Company's benefit upon Portainer's written request.

4. **PRODUCT MAINTENANCE.** Portainer will provide Product Maintenance pursuant to the terms of the support policy set forth at <https://www.portainer.io/support-terms>

## 5. **FEES AND PAYMENT**

a. **Fees.** Company will pay all fees specified in all Ordering Documents, and shall reimburse Portainer, at Portainer's actual cost and without mark-up, for Portainer's reasonable travel expenses that are incurred as a result of Portainer's performance hereunder. Except as otherwise specified herein or in an Ordering Document, (i) fees are based on Product Subscriptions purchased and not actual usage, (ii) all fees are non-cancelable and non-refundable, and (iii) the number of Subscriptions purchased cannot be decreased during the relevant Subscription Term. Subscription fees are based on annual periods that begin on the Subscription start date and are renewed on each anniversary thereof. As between the Parties, Company shall bear all expenses incurred in performance of its obligations or exercise of its rights under this Agreement.

b. **Payment.** Portainer will submit an invoice for all Product Subscriptions and Services purchased by Company as set forth in one or more Ordering Document(s). Unless otherwise agreed in an Ordering Document, all Portainer invoices are payable no later than thirty (30) days from the date of the invoice. All fees payable under this Agreement shall be made without recoupment or set-off.

c. **Overdue Charges; Suspension of Service.** If any fees are not received from Company by the due date, then at Portainer's discretion, such charges may accrue interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. If any amount owing by Company pursuant to this Agreement is thirty (30) or more days overdue, Portainer may, without limiting Portainer's other rights and remedies, suspend Company's access to the Products and/or provision of the Services until such amounts are paid in full.

d. **Payment Disputes.** Portainer shall not exercise Portainer's rights under Section 5(c) to the extent that the applicable charges are under reasonable and good-faith dispute and Company is cooperating diligently to resolve the dispute.

e. **Taxes.** Unless otherwise stated, Portainer's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Except for taxes assessable against Portainer based on Portainer's income, Company is responsible for paying all Taxes associated with Company's purchases hereunder. If Portainer has the legal obligation to pay or collect Taxes for which Company is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Company in accordance with Section 5(b) above, unless Company provides Portainer with a valid tax exemption certificate authorized by the appropriate taxing authority.

f. **Audit.** Company agrees to maintain complete and accurate records in accordance with generally accepted accounting principles with respect to matters necessary to ensure Company's compliance with this Agreement. Portainer will have the right, at its own expense and upon reasonable prior notice, periodically to inspect and audit the records of Company with respect to matters covered by this Agreement. If such inspection and audit reveals that Company has underpaid Portainer with respect to any amounts due and payable during the period to which such inspection and audit relate, Company shall promptly pay such amounts as are necessary to rectify such underpayment, together with interest in accordance with Section 5(c). Such inspection and audit rights shall extend throughout the term of this Agreement and for a period of 3 years thereafter.

## 6. **PROPRIETARY RIGHTS**

a. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Portainer, for itself and on behalf of its licensors, reserves all rights in the Products and Deliverables that are not expressly granted to Company in this Agreement, and Company acknowledges and agrees that, except as otherwise expressly set forth in this Agreement, Portainer owns all rights, title and interest in and to the Products and Deliverables. All rights, title and interest in and to any and all improvements, modifications, derivative works and innovations of, to and/or involving the Products and Deliverables will be retained in full and owned by Portainer, even if such improvements, modifications, derivative works or innovations result from suggestions, enhancement requests, recommendations or other feedback provided to Portainer by or on behalf of Company. Company agrees not to challenge, directly or indirectly, the right, title, and interest of Portainer in and to the Products or Deliverables, and further agrees that it will not directly or indirectly, register, apply for registration, or attempt to acquire any legal protection for any of the Products and Deliverables.



b. **Open Source Software.** The Products may incorporate certain Open Source Software code. Ownership, use, warranty and modification rights with respect to any such designated code shall be as expressly set forth in the applicable license pursuant to which such Open Source Software code is governed and licensed to the public.

#### 7. **CUSTOMER REFERENCE COMMITMENT**

Customer agrees that Portainer may refer to Customer's name and trademarks in Portainer's marketing materials and website; however, Portainer will not use Customer's name or trademarks in any other publicity (e.g., press releases and customer references) without Customer's prior written consent.

#### 8. **CONFIDENTIALITY**

a. **Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each Party shall include the terms and conditions of this Agreement and all Ordering Documents, as well as business and marketing plans, research, development, services, customers, customer lists, designs, drawings, technology and technical information, products, product plans, software, developments, inventions, processes, formulas, finances, and business processes of such Party; and Portainer's Confidential Information shall include the Products, the Deliverables and the Documentation. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of or access to the Disclosing Party's Confidential Information.

b. **Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect its own confidential information of like kind (but in no event less than reasonable care) not to disclose any Confidential Information of the Disclosing Party or use it for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement, who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein, and for whom the Receiving Party remains fully liable.

c. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior written notice of such compelled disclosure (to the extent not legally prohibited) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

d. **Injunctive Relief.** Each Party acknowledges that the extent of damages in the event of any threatened or actual breach of this Section 8 would be difficult or impossible to ascertain and that there would be available no adequate remedy at law in the event of any such breach. Each Party therefore agrees that, in the event it breaches this Section 8, the other Party will be entitled to specific performance and injunctive or other equitable relief, in addition to any other relief to which it may be entitled at law or in equity. Any such relief shall be in addition to and not in lieu of any relief in the form of monetary damages.

#### 9. **WARRANTIES AND DISCLAIMERS**

a. **Portainer's Warranties.** Portainer warrants that: (i) all Services will be performed by Portainer in a professional and workmanlike manner; provided that, in the event of a breach of this warranty by Portainer, Company's exclusive remedy will be re-performance of the Services by Portainer; and (ii) the Products shall perform materially in accordance with the Documentation; provided that Portainer's sole liability and Company's sole and exclusive remedy for any breach of this warranty shall be, in Portainer's sole discretion and at no charge to Company, to use commercially reasonable efforts to provide Company with an error correction or work-around that corrects the reported non-conformity, or if Portainer determines such remedy to be impracticable, to terminate the Subscription Term and refund to Company a pro-rata portion of the Subscription fees paid by Company to Portainer for the applicable Products equal to the unused portion of the Subscription Term; provided further that the limited warranty set forth in this Section 9(a)(ii) will not apply: (A) unless Company makes a claim within thirty (30) days of the date on which the condition giving rise to the claim first appeared, (B) if the Product is used with hardware or software not specified in the Documentation, or (C) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services.

b. **Mutual Warranties.** Each Party represents and warrants that (i) it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder; (ii) its execution, delivery and performance of this Agreement will not conflict with or result in a breach or other violation of any agreement or other third party obligation by which it is bound; (iii) when executed and delivered,



this Agreement will constitute its legal, valid and binding obligation enforceable against it in accordance with its terms; and (iv) it will comply with all applicable laws in its performance of this Agreement.

**c. Disclaimers.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, PORTAINER MAKES NO, AND COMPANY HEREBY WAIVES AND DISCLAIMS ANY AND ALL, REPRESENTATIONS OR WARRANTIES REGARDING THIS AGREEMENT OR THE PRODUCTS, SERVICES AND DELIVERABLES CONTEMPLATED HEREBY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ERROR-FREE OR UNINTERRUPTED SERVICE, AS WELL AS ALL IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. FURTHERMORE, THE PRODUCTS, SERVICES AND DELIVERABLES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND PORTAINER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**10. INDEMNIFICATION.** Portainer shall defend Company against any claim, demand, suit, or proceeding ("**Claim**") made or brought against Company by a third party alleging that the use of the Products as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Company for any damages finally awarded against, and for reasonable attorney's fees incurred by, Company in connection with any such Claim; provided that Company (a) promptly gives Portainer written notice of the Claim; (b) gives Portainer sole control of the defense and settlement of the Claim; and (c) provides to Portainer all reasonable assistance, at Portainer's expense. Portainer shall have no liability under this Agreement with respect to any Claim based upon: (i) combination or use of the Products with equipment, products, systems, software, materials or processes not furnished by Portainer if, absent such combination, no infringement would exist; (ii) use of the Products in a manner inconsistent with the Documentation; (iii) use of the Products which use breaches this Agreement. If Company's use of a Product is, or in Portainer's opinion is likely to be, enjoined due to a Claim, then Portainer may: (A) procure for Company the right to continue using such Product per the terms of this Agreement; (B) replace or modify the applicable Product so that it is non-infringing and substantially equivalent in function to the enjoined Product; or (C) terminate Company's Subscription to access and use the Product and refund any unused, prepaid fees covering the remainder of the Subscription Term after the effective date of such termination. This Section 8 states Portainer's sole liability to Company, and Company's exclusive remedy against Portainer, for any type of Claim described in this Section.

**11. LIMITATION OF LIABILITY.** NEITHER PARTY WILL BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHER THEORY), TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFIT, BUSINESS OR DATA) ARISING OUT OF THIS AGREEMENT. EXCEPT FOR AMOUNTS TO BE PAID PURSUANT TO SECTION 9 OR DAMAGES ARISING FROM A BREACH OF SECTION 8, THE AGGREGATE LIABILITY OF PORTAINER ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL NOT EXCEED THE AGGREGATE AMOUNT PAID AND PAYABLE BY COMPANY TO PORTAINER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH A CLAIM ARISES.

**12. TERM AND TERMINATION**

**a. Term of Agreement.** This Agreement commences on the Effective Date and continues until all Ordering Documents have expired or have been terminated.

**b. Subscription Term.** Subscriptions purchased by Company commence on the start date specified in the applicable Order Form and continue for the Subscription term specified therein (the "Initial Term"). If the start date for a Subscription is not specified on the applicable Order Form, the start date for the Subscription shall be the date on which Portainer makes the Product available to Company. Except as otherwise specified in an Order Form or as terminated pursuant to this Agreement or the applicable Order Form, all Subscriptions shall automatically renew for additional periods equal to twelve (12) months for the same number of Nodes as of the end of the prior Subscription (each a "Renewal Term" and, together with the "Initial Term," hereinafter collectively referred to as the "Subscription Term"), unless either Party gives the other written notice of non-renewal at least 60 days prior to the end of the Subscription Term. The fees charged by Portainer to Company for any Renewal Term shall be Portainer's then-current fees for the Products licensed as part of the Subscription.

**c. Termination.** A Party may terminate this Agreement for cause: (i) upon 30 days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**d. Effect of Termination.** Termination of this Agreement shall not release the Parties from any liability that, at the time of termination, has already accrued or that thereafter may accrue with respect to any act or omission before termination, or from any obligation that is expressly stated in this Agreement to survive termination. Upon any termination of this Agreement, each Party shall (i) immediately discontinue all access to and use of the other Party's Confidential Information; (ii) delete the other Party's Confidential Information from its computer storage or any other media, including online and off-line libraries; (iii) return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in its possession; and (iv) promptly pay all amounts due and remaining



payable hereunder. Termination of this Agreement, regardless of cause or nature, shall be without prejudice to any other rights or remedies of the Parties and shall be without liability for any loss or damage occasioned thereby.

e. **Surviving Provisions.** Sections 5, 6, 8, 11, 12(d) and (e), 13, and 14(b), (d), (f), (h) and (i) shall survive any termination or expiration of this Agreement.

### **13. NOTICES, GOVERNING LAW AND JURISDICTION**

a. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; or (c) by certified or registered mail, return receipt requested, upon verification of receipt. Notices shall be sent to the addresses provided above, and any notices sent to Portainer shall be sent to the attention of the "Legal Department." Either Party may designate a different address by providing written notice to the other Party.

b. **Governing Law; Jurisdiction; Jury Trial.** The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the laws of New Zealand. The Parties expressly disclaim the applicability of, and waive any rights based upon, the Uniform Computer Information Transactions Act or the United Nations Convention on Contracts for the International Sale of Goods. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

### **14. GENERAL**

a. **Export Compliance.** Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions when providing and using the Products. Without limiting the foregoing, (i) each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Company shall not permit Users to access or use Products in violation of any U.S. export embargo, prohibition or restriction. Furthermore, Company will not, directly or indirectly, remove or export from the United States or allow the export or re-export of any part of the Product and/or Documentation: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority.

b. **Relationship of the Parties.** The Parties will perform hereunder as independent contractors. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent between the Parties.

c. **Government End Users.** The Products are commercial computer software. If the User or licensee of the Products is or becomes an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Products, or any related Documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Products were developed fully at private expense. All other use is prohibited.

d. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement, and the Parties acknowledge that this Agreement is intended solely for the benefit of the Parties, their successors and permitted assigns, and nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their permitted successors and assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

e. **Force Majeure.** Portainer shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of God, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond the reasonable control of Portainer (each a "Force Majeure Event"). Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

f. **Waiver and Cumulative Remedies; Severability.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.





**g. Assignment.** Neither Party will have the right to assign this Agreement without the written consent of the other Party; provided, however, that Portainer will have the right to assign this Agreement to an Affiliate of Portainer or pursuant to a merger, consolidation, reorganization or sale of all or substantially all of the assets of the business to which this Agreement relates. Any assignment in violation of the foregoing provision shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

**h. Headings; Contract Interpretation.** The captions to the Sections of this Agreement are not a part of this Agreement but are merely guides or labels to assist in locating and reading the Sections hereof. The terms "this Agreement," "herein," "hereof," "hereunder" and similar expressions refer to this Agreement and not to any particular section or other portion hereof. Except as expressly provided otherwise, references herein to "days" are to calendar days. Any use of the term "including" in this Agreement shall be construed as if followed by the phrase "without limitation."

**i. Entire Agreement; Counterparts.** This Agreement, including all exhibits and addenda hereto and all Ordering Documents, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by an authorized representative of each Party. Unless otherwise expressly agreed in an Ordering Document, if the terms of this Agreement conflict with the terms of any Ordering Document, the terms of this Agreement will prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Company's purchase order or other order documentation (excluding Ordering Documents) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one Agreement.