



Software Licence Agreement

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 Customer specified in the Order Form, including all employees or other individuals using the Software, (collectively **Customer, 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 customers and does not apply for visitors of the site or users of the Portainer Open Source Community Edition software.

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, 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

1.1 In this Agreement, unless the context otherwise requires:

Agreement means this Software Licence Agreement, including the Order Form, Specific Terms and the Support Terms and Conditions;

Business Day means a day (other than a Saturday or a Sunday) on which registered banks are open for business in Auckland, New Zealand;

Commencement Date means the date from which your licence to use the Software commences, which:

- (a) in relation to the Free Nodes, is the date you submit the Order Form for the Free Nodes or otherwise the date loaded by us in the Licence Key; or
- (b) in relation to the Paid Nodes, is the date set out in the Order Form or otherwise loaded 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;

Environment means any of the following environments on which the Software is installed:

- (a) Docker Standalone;
- (b) Docker Swarm; or
- (c) Kubernetes;

Free Nodes means the first five Nodes that we license to you and which are provided to you free of charge;

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 Fees means the licence fees specified in the Order Form for the Paid Nodes;

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;
- (b) the Permitted Number of Nodes the Software may be used on; and
- (c) the Licence Term;

Licence Term means the term of your licence to use the Software commencing on the Commencement Date and ending, in relation to:

- (a) the Free Nodes, on termination of this Agreement in accordance with its terms;
- (b) the Paid Nodes, on the earlier of termination of this Agreement in accordance with its terms or the licence period specified to you on the invoice we send to you for the Paid Nodes;

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 quote for the Software, or a form on our website which you complete;

Paid Nodes means the number of nodes in addition to the Free Nodes, which are subject to the payment of a Licence Fee as set out in an Order Form;

Permitted Number of Nodes means the number of Free Nodes and Paid 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;

Support Services means the support services described in the Support Terms and Conditions; and

Support Terms and Conditions means the Support Terms and Conditions located at www.portainer.io/support-terms

1.2 In this Agreement, unless the context otherwise requires:

- (a) all amounts specified are in United States dollars (unless a different currency is specified in the Order Form) and exclude all taxes;
- (b) 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;
- (c) 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**

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 or such other location that we specify;
- (b) install and use the Software on any Environment operated by you provided that, subject to clause 2.4, 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 may, for no more than 24 hours in any 3 month period during the term of this Agreement, install and use the Software on 20% more Permitted Number of Nodes (**Additional Nodes**) without incurring additional Licence Fees (**Permitted Bursting**). If you exceed Permitted Bursting (whether by duration and/or installing and using the Software on more than the Additional Nodes), we may charge, and you will pay, additional Licence Fees for the use of the Software on Additional Nodes.

2.5 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.

2.6 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. **Support**

- 3.1 We will provide the Support Services to you in accordance with the Support Terms and Conditions and this Agreement.
- 3.2 You will not use any Software identified as an update or upgrade unless you are properly licensed to use Software which we have identified as being eligible for such update or upgrade as applicable (collectively **Updates**). If you install any Updates you will:
 - (a) ensure that your installation of such Updates continues to meet the Requirements and Pre-requisites; and
 - (b) carry out your own thorough evaluation and testing of the Updates to ensure that the Software and Updates operate correctly in your IT environment before placing the Software and Updates in a production environment.

We will not be liable for a breach of clause 5.1(a) or a failure to provide Support Services arising out of, of in connection with, a breach by you of this clause.

4. **Licence Fees and Payment**

- 4.1 You will pay the Licence Fees for the Paid Nodes and any other agreed charges under this Agreement plus taxes (if any) to us in accordance with the payment terms set out in the Order Form. No licence fees are payable for the Free Nodes however we reserve the right to introduce licence fees for Free Nodes in the future by giving written notice to you in accordance with clause 4.3.
- 4.2 If you default in any payment of the Licence Fees, we may (without prejudice to our other rights):

- (a) charge interest on the unpaid amount from the due date until the date of actual payment at 2% per annum over the base overdraft facility rate charged by our bankers from time to time;
 - (b) withhold the provision of any of the Support Services until all amounts you owe to us under this Agreement have been paid in full; and/or
 - (c) deactivate the functionality of the Software by invalidating the Licence Keys until all amounts you owe to us under this Agreement have been paid in full.
- 4.3 We may increase any, or introduce new, Licence Fees (including for Free Nodes) by giving you at least 30 days' prior written notice. If you do not wish to pay the increased or new Licence Fees you may terminate this Agreement by giving notice to us at least five days prior to the effective date of the increase or introduction.
- 4.4 You are responsible for payment of all duties or taxes.
- 4.5 If you are required by law to deduct or withhold taxes or charges from the amounts due to us under this Agreement, you will ensure that the amount due to us is increased so that the payment actually made to us equals the amount due to us as if no such taxes or charges had been imposed.

5. **Warranties and Liability**

- 5.1 We warrant that:
- (a) subject to clauses 5.2 and 5.3, the Software will operate, function and perform substantially in accordance with the Documentation, provided that you comply with your obligations under clause 2.3;
 - (b) to the best of our knowledge and belief, the Software does not infringe the copyright of any third party;
 - (c) the Support Services will be of a professional quality conforming to generally accepted industry standards.
- 5.2 We do not warrant that the Software will meet your requirements or that operation of the Software will be uninterrupted or error free.
- 5.3 If you notify us in writing of any defect or fault in the Software, the consequence of which it fails to conform with the warranty in clause 5.1(a), we will, at our option, and as your sole remedy against us, do any of the following:
- (a) repair the Software;
 - (b) replace the Software; or
 - (c) terminate this Agreement immediately by notice in writing to you and refund any of the Licence Fees paid by you as at the date of termination (less a reasonable sum in respect of your use of the Software to the date of termination),
- provided you provide all the information that may be necessary to assist us in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable us to re-create the defect or fault.
- 5.4 You will indemnify us against all costs, losses, damages and expenses incurred by us arising out of or in connection with any claim by a third party against us relating to your use of the Software.
- 5.5 Except as expressly set out in this Agreement, to the maximum extent permitted by law, all representations, conditions or warranties (whether express or implied, statutory or otherwise, and including warranties of merchantability and fitness for a particular purpose) in respect of the Software and the Support Services are expressly excluded.

- 5.6 We will not be liable whether in contract, tort (including negligence) or otherwise for:
- (a) indirect or consequential loss arising out of, or in connection with, this Agreement; and
 - (b) loss of revenue, loss or profit, data loss or corruption, penalties, fines, implementation delays, arising out of, or in connection with, this Agreement.
- 5.7 Our liability to you for any loss or damage arising out of or in connection with this Agreement will not exceed in aggregate, the total Licence Fees you have paid us under this Agreement in the six months prior to the time the liability arises.
- 5.8 We will not be in default by reason of any failure to perform our obligations under this Agreement caused by any act or any event beyond our control, but will use our reasonable endeavours to resume our obligations under this Agreement as soon as possible.

6. **Intellectual Property Rights**

- 6.1 Subject to clause 6.2, 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 the Support Services (**Created Materials**). 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.
- 6.2 You acknowledge and agree that the Software may include open source software that has been contributed by third parties and all Intellectual Property Rights in that software remains with those third parties.
- 6.3 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.

7. **Confidentiality**

- 7.1 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.
- 7.2 Clause 7.1 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.

8. Termination

- 8.1 This Agreement commences on the Commencement Date and continues for the Licence Term. For Paid Nodes, we will contact you at least 30 days before the end of the Licence Term requesting your permission to renew. If you tell us you do not wish to renew or you do not confirm that you wish to pay for another Licence Term, then this Agreement will terminate at the end of the Licence Term (in respect of the Paid Nodes) and the Software will notify you that the Licence Key is no longer valid and you will be unable to login to, and use, the Software.
- 8.2 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.
- 8.3 On termination of this Agreement:
 - (a) you will remain liable for any Licence Fees or other charges payable to us, which become due for payment before, on or after termination;
 - (b) you will immediately cease to use the Software and Documentation and uninstall the Software;
 - (c) each party will return all of the other party's Confidential Information in its possession or control, or destroy all such Confidential Information.
- 8.4 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.

9. Disputes

- 9.1 If a dispute arises out of or relates to this Agreement (the **Dispute**), a party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause, except where the party seeks urgent interlocutory relief.
- 9.2 A party claiming the Dispute has arisen must give written notice to the other party specifying the nature of the Dispute.
- 9.3 On receipt of that notice, the parties will use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation or other informal means.
- 9.4 If the Dispute is not resolved within 15 Business Days of the notice being given pursuant to clause 9.2 (or within such further period agreed in writing by the parties), either party may, by giving written notice to the other party, require the Dispute to be determined by the arbitration of a single arbitrator except in the case of urgent interlocutory relief. The arbitrator will be appointed by the parties or, failing agreement within 5 Business Days of the notice requiring arbitration, by the President of the New Zealand Law Society on application of either party. The arbitration will be conducted as soon as possible and in accordance with the provisions of the Arbitration Act 1996. The arbitrator's decision will be binding on the parties.

10. General

10.1 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 Customer, 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.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 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, 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. If you do not agree to any amendment to this Agreement you may terminate this Agreement by giving notice to us within 30 days after the effective date of the amendment. Otherwise, subject to clause 4.3, no alteration of the terms of this Agreement will be binding unless it is in writing and executed by both parties.

10.7 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.

10.8 You will not assign this Agreement or any of your rights or obligations under this Agreement without our prior written consent.

- 10.9 If any provision in this Agreement is invalid or unenforceable, the remaining provisions will continue in full force and effect.
- 10.10 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.