PORTAINER BUSINESS – 5 NODES FREE
LICENCE AND SUPPORT AGREEMENT

1   APPLICATION OF AGREEMENT

1.1   This Agreement applies to your use of the Software (as that term is defined below). By downloading, installing and/or using the Software:

a   you agree to this Agreement; and

b   where you download, install and/or use the Software on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to this Agreement on that person's behalf and that, by agreeing to this Agreement on that person's behalf, that person is bound by this Agreement.

1.2   If you do not agree to this Agreement, you are not authorised to access and use the Software, and you must not download, install and/or use the Software.

2   INTERPRETATION

In this Agreement:

Agreement means this agreement titled *Portainer Business Licence and Support Agreement*.

Approved Purpose means your internal business purposes.

Documentation means the user and technical documentation designed to enable you to properly use and operate the Software (if any), and includes any update of the documentation.

Endpoint means a processing environment, comprising a single machine (or virtual machine) or a cluster of machines (or virtual machines). An endpoint and a *Node* are equivalent for the purposes of this agreement

including and similar words do not imply any limit.

An *Instance* means a Portainer "server" deployment.

Intellectual Property Rights includes copyright, and all rights existing anywhere in the world conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. *Intellectual Property* has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

Node means a processing environment, comprising a single machine (or virtual machine) or a cluster of machines (or virtual machines). A Node and an *endpoint* are equivalent for the purposes of this agreement

A *party* includes that party's permitted assigns.

A *person* includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity.

Personnel includes officers, employees, contractors and agents, but a reference to your personnel does not include Portainer.io.

Portainer.io means Portainer.io Limited, a New Zealand company, company number 6091769.

Software means the software supplied to you by Portainer.io, including any update, revision or new version.

Start Date means the date that you first download, install and/or use the Software.

Support Services means the support services described on the Website at [*insert URL*] or otherwise agreed in writing.

You or *your* means you, or if clause 1.1b applies, both you and the other person on whose behalf you are acting.

Website means https://www.portainer.io/.

Words in the singular include the plural and vice versa.

A reference to a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

3 LICENCE

3.1 Portainer.io grants to you, and you accept, a non-exclusive and non-transferable licence for the duration of this Agreement to use the Software solely for the Approved Purpose and on the terms and conditions of this Agreement.

3.2 You must:

a use the Software and the Documentation for lawful purposes only and must not translate, decompile, reverse-engineer, resell, modify, vary, sub-license or otherwise deal in the Software or the Documentation except:

i as expressly provided for in this Agreement; or

ii to the extent expressly permitted by any applicable law or treaty where that law or treaty cannot be excluded, restricted or modified by this Agreement;

b   maintain all proprietary notices on the Software and the Documentation;

c   not transfer, assign or otherwise deal with or grant a security interest in the Software, the Documentation or your rights under this Agreement; and

d   not challenge Portainer.io's ownership, or the validity, of the Software, the Documentation or any other item or material created or developed by or on behalf of Portainer.io under or in connection with this Agreement (including the Intellectual Property Rights in those items).

4   SUPPORT SERVICES

Portainer.io will provide you with the Support Services in accordance with the Schedule, provided you have:

a   correctly completed the required signup process for the product;

b   maintained a proper operating environment for the use of the Software in accordance with any guidance from Portainer.io, including in the Documentation; and

c   complied with this Agreement and the Documentation.

5   INTELLECTUAL PROPERTY

5.1   Some of the Software consists of contributions that have been made to the Portainer open source project by third parties. Those contributions remain the property of the current owner.

5.2   Subject to clause 5.1, from the date of creation or development, Portainer.io owns all Intellectual Property Rights in:

a   the Software and the Documentation; and

b   any other item or material created, developed or provided by or on behalf of Portainer.io under or in connection with this Agreement.

5.3   If you provide Portainer.io with ideas, comments or suggestions relating to the Software or the Documentation (together **feedback**):

a   all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material enhancements, modifications or derivative works), are owned solely by Portainer.io; and

b   Portainer.io may use or disclose any feedback for any purpose.

6   WARRANTIES

6.1   Portainer.io warrants that:

a   to the best of its knowledge, your use of the Software in accordance with this Agreement will not infringe the Intellectual Property Rights of any other person; and

b   the Software will materially perform in conformity with the Documentation, although you acknowledge that the Software is of a technical nature and may not be error-free or bug-free.

6.2   Subject to clause 6.3, if the Software does not meet the warranty in clause 6.1b, Portainer.io will, at its option and cost, remedy, repair, enhance or replace the Software so that the Software meets and satisfies that warranty. Portainer.io's obligations under this clause will be your sole remedy against Portainer.io for a breach of warranty under clause 6.1b.

6.3   Portainer.io is not obliged to remedy, repair, enhance or replace the Software under clause 6.2 to the extent that the defect arises from or in connection with:

a   improper installation of the Software;

b   any release, error connection or modification of the Software not made by Portainer.io, unless it is pre-approved in writing by Portainer.io;

c   your use of the open source version of the Software;

d   the Software running on any platform that is not supported by Portainer.io; or

e   a breach of this Agreement by you, including use of the Software by you or your personnel in a manner or for a purpose not reasonably contemplated by this Agreement or not authorised in writing by Portainer.io.

6.4   TO THE MAXIMUM EXTENT PERMITTED BY LAW:

a   PORTAINER.IO'S WARRANTIES ARE LIMITED TO THOSE SET OUT IN THIS AGREEMENT AND ALL OTHER CONDITIONS, GUARANTEES OR WARRANTIES WHETHER EXPRESSED OR IMPLIED BY STATUTE OR OTHERWISE (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE) ARE EXPRESSLY EXCLUDED; AND

b   PORTAINER.IO MAKES NO REPRESENTATION CONCERNING THE QUALITY OF THE SOFTWARE OR THE SUPPORT SERVICES, AND DOES NOT PROMISE THAT THE SOFTWARE WILL BE ERROR-FREE, BUG-FREE, OR WILL OPERATE WITHOUT INTERRUPTION.

6.5   THE SOFTWARE IS NOT DESIGNED, INTENDED OR WARRANTED FOR USE IN (AND MUST NOT BE USED IN) HAZARDOUS ENVIRONMENTS AND/OR REQUIRING FAIL-SALE CONTROLS, INCLUDING OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPON SYSTEMS, IN WHICH THE FAILURE THEREOF COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

6.6 You agree and represent that you are acquiring the Software and the Support Services, and agreeing to this Agreement, for the purposes of trade. The parties agree that:

a to the maximum extent permissible by law, no consumer protection laws apply to the supply of the Software or the Support Services, or this Agreement; and

b it is fair and reasonable that the parties are bound by this clause 6.6.

7 LIABILITY

7.1 THE MAXIMUM AGGREGATE LIABILITY OF PORTAINER.IO UNDER OR IN CONNECTION WITH THIS AGREEMENT OR RELATING TO THE SOFTWARE OR THE SUPPORT SERVICES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, MUST NOT IN ANY ANNUAL SUBSCRIPTION PERIOD EXCEED THE FEES PAID BY YOU UNDER THIS AGREEMENT IN RELATION TO THAT SUBSCRIPTION PERIOD.

7.2 WITHOUT LIMITING CLAUSE 7.1, PORTAINER.IO IS NOT LIABLE TO YOU UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ANY:

a LOSS OF PROFIT, REVENUE, SAVINGS, BUSINESS, DATA AND/OR GOODWILL; OR

b CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGE OR LOSS OF ANY KIND,

EVEN IF PORTAINER.IO HAS BEEN ADVISED OF, KNOWS OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

7.3 Clauses 7.1 and 7.2 do not apply to limit Portainer.io's liability under or in connection with this Agreement for:

a personal injury or death; or

b fraud or wilful misconduct.

7.4 Clause 7.2 does not apply to limit your liability:

a under or in connection with this Agreement for:

i breach of clause 3; or

ii those matters stated in clause 7.3.

7.5 Neither party will be responsible, liable, or held to be in breach of this Agreement for any failure to perform its obligations under this Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under this Agreement, or by the negligence or misconduct of the other party or its personnel.

7.6 Each party must take reasonable steps to mitigate any loss or damage, cost, or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with this Agreement.

8 TERM AND TERMINATION

8.1 Unless terminated under this clause 8, this Agreement starts on the Start Date and continues for an initial term of 12 months at which point it will be renewed in accordance with renewal procedures in force at the time.

8.2 Termination of this Agreement does not affect either party's rights and obligations accrued before that termination.

8.3 No compensation is payable by Portainer.io to you as a result of termination of this Agreement for whatever reason.

8.4 Clauses which, by their nature, are intended to survive termination of this Agreement, including clauses 5, 7, 8.3 and 8.4, continue in force.

9 GENERAL

9.1 Neither party is liable to the other for any failure to perform its obligations under this Agreement to the extent caused by events beyond the parties' reasonable control.

9.2 You must comply with all applicable export control laws and not export or re-export the Software other than in compliance with those laws. You are responsible for obtaining any required licences to export, re-export or import the Software and Documentation.

9.3 You warrant that you are not, and the Software will not, directly or indirectly, be sold or re-exported to, or incorporated into products for the benefit of, a person or entity named on any United States denied or restricted party list or any other applicable government denied or restricted party list. Such lists include the Entity List at Part 744 of the Export Administration Regulations and the U.S. Office of Foreign Assets Control Specially Designated National list.

9.4 You warrant that, except as authorised under applicable laws and regulations, the Software will not be used, sold, re-exported or incorporated into products used directly or indirectly in the design, development, production, stockpiling, or use of chemical or biological weapons, nuclear programs, missiles, and maritime nuclear propulsion projects or for use by military, police or intelligence entities, for any space applications, or for use in foreign vessels or aircraft.

9.5 The United Nations Convention on Contracts for the International Sale of Goods 1980 does not apply to this Agreement.

9.6 For Portainer.io to waive a right under this Agreement, the waiver must be in writing.

9.7 If any part or provision of this Agreement is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be

treated for all purposes as severed from this Agreement. The remainder of this Agreement will be binding on you.

9.8   Any variation to this Agreement must be in writing and signed by both parties.

9.9   This Agreement sets out everything agreed by the parties relating to the Software and the Support Services and supersedes and cancels anything discussed, exchanged or agreed prior. The parties have not relied on any representation, warranty or agreement relating to the Software and the Support Services that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect.

9.10   You may not assign, novate, subcontract or transfer any right or obligation under this Agreement without Portainer.io's prior written approval. You remain liable for your obligations under this Agreement despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.

SCHEDULE

Support Services – PB 5 Nodes Free

The Schedule sets out the terms on which Portainer.io will provide Support Services to you for the duration of this Agreement.

1   For as long as you agree to these terms, and subject to the conditions in sections 4 and 5 of the Schedule, Portainer.io will perform the Support Services. No Support Services will be provided for the Software if you cease to be compliant with the license terms. For clarity, this specifically includes all financial and communications obligations as specified in the agreement.

2   The Support Services include, where applicable:
    a)   support for your environment, for up to 5 nodes; and;
    b)   unlimited tickets for Incidents.

3   Portainer.io will provide you with:
    a)   all Revisions of the Software; and
    b)   all new Versions of the Software at the same time as the new Version is generally released.

4   If a new Version is not installed or installation is delayed by you by more than a year from release, Portainer.io may, at its discretion:
    a)   elect not to provide the Support Services; or
    b)   require an amount to be paid by you for the provision of the Support Services.

5   As a condition to Portainer.io's support and/or maintenance obligations under this Agreement, you must:
    a)   first use reasonable efforts to resolve the issue by referring to the Documentation; and
    b)   contact Portainer.io via one of the following methods, for which details are outlined in our introduction and welcome emails:

            i. Portainer Support Page/Portal
            ii. Email to businesssupport@portainer.io

    c)   assist Portainer.io in identifying and correcting Errors;
    d)   execute reasonable diagnostic routines in accordance with instructions provided by Portainer.io (and inform Portainer.io of the results of such tests); and
    e)   ensure that its designated support coordinators are sufficiently qualified and familiar with the Software so as to provide Portainer.io with reasonable assistance in diagnosing and addressing Errors.

6   Support Services will only be rendered via agreed communications platforms as laid out in 5b of this schedule. Portainer.io will not utilise VPN or other remote access and networking applications unless agreed in writing on a case by case basis.

7   The below table describes the SLA response times that you can expect to receive on any incident logged via the Support Page/Portal or email to businesssupport@portainer.io:

    a)   SLA Priorities

            i.   Best efforts – all Support for Portainer Business 5 Nodes for Free is provided on a 'best-efforts' basis

    b)   Any incident logged by any communication platform other than the Support Page/Portal or via email to businesssupport@portainer.io should not expect the same response times

8   Portainer.io will use reasonable efforts to provide a resolution to errors and incidents, and provide a maintenance release of the Software if applicable. Resolution can include one or more of the following actions:

    a)   Software configuration change

    b)   Bug fix in a newer revision (of the same code branch)

    c)   Permanent workaround

    d)   Temporary workaround

    e)   Action plan to deliver a fix or suitable workaround (e.g. Upgrade to an already fixed version)

9   Nothing in this Agreement requires Portainer.io to provide Support Services where the support is required as a result of a circumstance described in clause 6.3a to 6.3e.

10   Should you request Portainer.io to provide services that are otherwise beyond the scope of this Agreement (including, for example, providing assistance or other services in connection with a non-conformity that does not constitute an Error), you will pay for any such services that Portainer.io agrees to perform on a time-and-materials basis at Portainer.io's then-current rates.

11   In this Schedule:

    a)   **Error** means a reproducible failure of the Software to substantially comply with its Documentation, if any.

    b)   **Incident** means a single question posed by you in respect to any failure or suspected failure of the Software to substantially comply with its Documentation.

    c)   **Revision** means a modification to a Version that is generally released, in the nature of an improvement made to the Software to correct program faults or other defects or to effect minor enhancements to the functionality of the Software.

    d)   **Version** means an addition of the Software that is generally released which introduces material and new functionality to a previous Version of the Software and which goes beyond the scope of a Revision and includes all Documentation associated with such Version (if any).

e) **Response** means a Portainer representative (i.e. not automated) has provided a reply to a request submitted via the Portainer Support Page/Portal or via email to businesssupport@portainer.io.