

**SERVICES AGREEMENT**

This Services Agreement ("**General Terms**") is between Customer and the Pelion legal entity set forth in the Order Form ("**Pelion**") and takes effect as of the date Customer signs an Order Form ("**Effective Date**"). In the event of a conflict, inconsistency or difference between documents that make up this Agreement, the documents will control in the following order: the Order Form, and these General Terms.

Pelion may modify or update these General Terms and will notify Customer by posting a revised version of the General Terms on the Pelion website, and/or by providing by other reasonable means. If Customer does not agree to the updated terms then (a) the General Terms originally accepted by Customer will continue to apply to Services Customer has purchased as of the date of the update for the remainder of the then-current Services Term, and (b) the updated or modified terms will apply to any new purchases or renewals of Services made after the publication date of the updated terms.

<b>1. Definitions</b>
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- 1.1 "**Affiliate**" means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where "**control**" is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
- 1.2 "**Agreement**" means the terms of (a) if applicable, all Order Forms and Statements of Works executed by Pelion and Customer, and (b) the General Terms.
- 1.3 "**Confidential Information**" means: (i) the Pelion Deliverables, and derivatives thereof and any trade secrets relating to the Pelion Deliverables; (ii) any information designated in writing by either party, by appropriate legend, as confidential; (iii) any information which if first disclosed orally, is identified as confidential at the time of disclosure and is thereafter reduced to writing for confirmation and sent to the other party within thirty (30) days after its oral disclosure and designated, by appropriate legend, as confidential; and (iv) any information that is disclosed where the totality of the circumstances of such disclosure would compel a reasonable person to conclude that the disclosure was made with the intention that the information would be treated as confidential.
- 1.4 "**Customer**" means the person or entity which is identified in the Order Form or Statement of Work and is a party to this Agreement.
- 1.5 "**Customer Materials**" means any data, information, software or other materials Customer provides to Pelion under this Agreement.
- 1.6 "**Feedback**" means all suggestions, comments, feedback, ideas, or know-how (whether in oral or written form) relating to the Services, Pelion Deliverables and associated Pelion technology (if any).
- 1.7 "**Fees**" means the fees payable by Customer to Pelion for the Services, as set out in the applicable Order Form.
- 1.8 "**Intellectual Property**" means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software and semiconductor topographies, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.9 "**Order Form**" means an order form executed by both parties setting out: (a) Service(s) to be provided; (b) Services Term; (c) Fees; and (d) any other terms for using the Service that the parties have agreed upon.

- 1.10 **"Pelion Deliverables"** means any deliverables or other materials delivered to Customer under this Agreement.
- 1.11 **"Services"** means the services to be performed by Pelion as set out in a Order Form.
- 1.12 **"Services Term"** means the period during which Pelion will perform the Services as identified in the Order Form of Statement of Work.
- 1.13 **"Statement of Work"** means a detailed plan, agreed in accordance with Clause 2.2 and attached to an Order Form describing the Services to be provided by Pelion, the timetable for their performance and any other related matters.
- 1.14 **"Subsidiary"** means any company the majority of whose voting shares is now or hereafter owned or controlled, directly or indirectly, by a party hereto. A company shall be a Subsidiary only for the period during which such control exists.
- 1.15 **"Supplier"** means a third party that provides services to Pelion in order for Pelion to offer Services to its customers.

<b>2. Services</b>
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**Order process**

- 2.1 The Agreement applies to the provision of Services purchased by Customer. Customer may order Services by either or both:
- (i) signing a Order Form with Pelion; or
  - (ii) contacting Pelion requesting a detailed Statement of Work in accordance with Clause 2.2.

**Statements of Work**

- 2.2 Each Statement of Work shall be agreed in the following manner:
- (i) Customer shall ask Pelion to provide certain services by providing Pelion with as much information as Pelion reasonably requests in order to prepare a draft Statement of Work;
  - (ii) Following receipt of the information requested from Customer, Pelion shall, as soon as reasonably practicable either:
    - (a) inform Customer that it declines to provide the requested services; or
    - (b) provide Customer with a draft Statement of Work.

- 2.3 If Pelion provides the Customer with a draft Statement of Work pursuant to Clause 2.2 (ii) (b), Pelion and Customer shall discuss and agree such Statement of Work and, when agreed by both parties, such Statement of Work shall be attached to a Order Form, which shall be signed by the parties.

- 2.4 Once a Statement of Work has been agreed and signed in accordance with Clause 2.3, no amendment shall be made to it except in accordance with the change control provisions set out in the Statement of Work or Clause 10.6 (Variation).

**Provision of Services**

- 2.5 Subject to payment of the Fees, Pelion will use reasonable endeavours to provide Services to Customer as set out in the Order Form (including the Statement of Work (as applicable)), during the Services Term.
- 2.6 Pelion shall use reasonable endeavours to meet any performance dates specified in a Order Form but any such dates shall be estimates only and time for performance by Pelion shall not be of the essence of this Agreement.

**Feedback**

- 2.7 Customer may be asked to provide Feedback but has no obligation to do so. If Customer chooses to do so, Customer hereby grants to Pelion and its Affiliates, under all of Customer's and its Affiliates' (as applicable) Intellectual Property, a perpetual, worldwide, non-exclusive, irrevocable, royalty free, fully paid up licence to use the Feedback for any purpose, including incorporating the Feedback into, or using the Feedback to develop and improve the Services or any Pelion technology associated with the Services.

**Reservation of Rights**

- 2.8 Except as expressly licensed, Customer acquires no right, title or interest in any Pelion Deliverables, Pelion technology or any Intellectual Property therein. No Intellectual Property rights will transfer under this Agreement from Pelion to Customer.

**Licence to Pelion Deliverables**

- 2.9 Unless otherwise specified in an Order Form, Pelion hereby grants Customer a non-exclusive, worldwide, non-transferable, royalty-free licence to use and copy the Pelion Deliverables for the sole purpose of enjoying the benefit of the Services for the duration of the applicable Services Term.

**3. Customer Obligations**

**Customer Materials**

- 3.1 If Customer provides Customer Materials in connection with Pelion providing the Services, Customer agrees that, subject to Clause 4 (Confidentiality), Pelion, its Subsidiaries, and Suppliers may use Customer Materials to provide the Services to Customer. Customer agrees that Pelion's use of the Customer Materials does not require any additional consents or licences, will be in compliance with applicable laws, and will not violate any intellectual property, privacy or other right of any third party. As between Pelion and Customer, Customer retains all other rights in and to Customer Materials.
- 3.2 Customer shall:
- (i) provide Pelion with all necessary accurate information, support and co-operation that may be reasonably required to enable Pelion to perform the Services;
  - (ii) provide for Pelion, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to Customer's premises, office, data and other facilities as reasonably required by Pelion including any such access as is specified in an Order Form or Statement of Work; and
  - (iii) comply with any additional responsibilities of the Customer (including providing any Customer Materials) as set out in an Order Form.
- 3.3 If Pelion's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, Pelion shall be allowed an extension of time to perform its obligations equal to the delay caused by Customer.

**4. Confidentiality**

**Restricted Disclosure**

- 4.1 Except as expressly provided under this Agreement, each party shall maintain in confidence the Confidential Information disclosed by the other party and apply security measures no less stringent than the measures that such party applies to its own like information, but not less than a reasonable degree of care, to prevent unauthorised disclosure and use of the Confidential Information. The period of confidentiality shall be indefinite with respect to each party's Confidential Information.

**Permitted Disclosures**

- 4.2 Either party may disclose Confidential Information received from the other party in the following circumstances:
- (i) disclosure to third parties to the extent that the Confidential Information is required to be disclosed pursuant to a court order or as otherwise required by law, provided that the party required to make the disclosure promptly notifies the other party upon learning of such requirement and has given the other party a reasonable opportunity to contest or limit the scope of such required disclosure (including but not limited to making an application for a protective order);
  - (ii) disclosure to nominated third parties under written authority from the original discloser of the Confidential Information;
  - (iii) disclosure to the receiving party's legal counsel, accountants or professional advisors to the extent necessary for them to advise upon the interpretation or enforcement of this Agreement, provided that such counsel, accountants or professional advisors are bound by confidentiality obligations at least as protective as those contained in this Agreement; and

- (iv) disclosure to the receiving party's officers, employees, Subsidiaries, agents or contractors, or Affiliates of Pelion, on a need-to-know basis to further the purpose of this Agreement, provided that such officers, employees, Subsidiaries, agents or contractors, or Affiliates of Pelion, are subject to the same terms and conditions of confidentiality as are set out in this Agreement.

#### **Excepted Information**

- 4.3 The provisions of this Clause 4 shall not apply to information which:
- (i) is known to and has been reduced to tangible form by the receiving party prior to its receipt, provided that such information is not already subject to any obligations of confidentiality; or
  - (ii) is in the public domain at the time of receipt or later becomes part of the public domain without breach of the confidentiality obligations in this Agreement; or
  - (iii) is received from a third party without any breach of any obligation of confidentiality in respect of such information provided that such information is not subject to any continuing obligations of confidentiality; or
  - (iv) is independently developed without use of or reference to the other party's Confidential Information.
- 4.4 Feedback shall not be treated as confidential information by Pelion and Pelion shall be free to use, copy, disclose or otherwise distribute any Feedback to any third party or pursuant to any of the licences granted in Clause 2.8 without obligation or restriction of any kind.

### **5. Fees, Payment and Taxes**

#### **Fees and Payment**

- 5.1 Customer shall pay all Fees due to Pelion under the terms of the Order Form on or before the thirtieth (30<sup>th</sup>) day after Pelion has sent Customer an invoice ("**Due Date**"). Pelion shall send any invoice for payment to the address set out in the Order Form, unless otherwise provided in writing to Pelion, and Customer shall provide Pelion with at least ten (10) working days' notice of any change to such address. All fees are non-refundable and non-transferable.
- 5.2 If any invoice is not paid by the Due Date (defined in Clause 5.1), then (without prejudice to Pelion's other rights and remedies), in addition to the invoice amount, Pelion reserves the right to charge interest on such sum on a day to day basis from the Due Date to the date of payment at the rate of, the lesser of one percent (1%) per month and the maximum amount permitted by law.

#### **Taxes**

- 5.3 All sums stated under this Agreement do not include taxes. All applicable taxes shall be payable by Customer in accordance with relevant legislation in force at the relevant tax point, including value added taxes, sales and use taxes or other similar taxes. Customer shall pay all amounts due under a Order Form in full without any deduction or withholding. Without limiting the foregoing, in the event that payment of any sums due to Pelion under a Order Form become subject to any deduction or withholding in respect of or on account of tax, Customer shall pay to Pelion such additional sum as may be required in order that the net amount actually received and retained by Pelion under a Order Form (after such deduction or withholding has been made) shall be equal to the full amount that would have been received and retained by Pelion had no such deduction or withholding been required to be made.

### **6. Warranties and Exclusion of Warranty**

- 6.1 Pelion warrants that the Services will be performed in a professional and workmanlike manner by qualified personnel.
- 6.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED IN CLAUSE 6.1, THE SERVICES, PELION DELIVERABLES AND PELION CONFIDENTIAL INFORMATION ARE PROVIDED AS IS, AND PELION MAKES NO WARRANTIES EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF

MERCHANTABILITY, SATISFACTORY QUALITY, NON INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE UNDER THIS AGREEMENT.

**7. Limitation of Liability**

- 7.1 SUBJECT TO CLAUSE 7.3, NEITHER PARTY SHALL BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT WHETHER IN TORT, CONTRACT, STATUTE, MISREPRESENTATION, RESTITUTION OR OTHERWISE FOR ANY LOSS OF PROFIT, BUSINESS, REVENUE, ANTICIPATED SAVINGS, GOODWILL, LOSS OR CORRUPTION OF DATA OR INFORMATION, OR PURE ECONOMIC LOSS, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES EVEN IF PELION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 7.2 SUBJECT TO CLAUSES 7.1 AND 7.3, PELION'S AGGREGATE LIABILITY WITH RESPECT TO ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN TORT, CONTRACT, STATUTE, MISREPRESENTATION, RESTITUTION OR OTHERWISE, SHALL NOT EXCEED THE TOTAL FEES PAID TO PELION WITH RESPECT TO THE PARTICULAR SERVICE GIVING RISE TO LIABILITY UNDER THE APPLICABLE ORDER FORM OR STATEMENT OF WORK DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST RELEVANT CLAIM.
- 7.3 NOTHING IN THIS AGREEMENT SHALL OPERATE TO EXCLUDE LIABILITY FOR: (i) DEATH OR PERSONAL INJURY RESULTING FROM EITHER PARTY'S NEGLIGENCE; OR (ii) FRAUD OR FRAUDULENT MISREPRESENTATION.
- 7.4 The provisions of this Clause 7 allocate the risks under this Agreement between Pelion and Customer and Pelion's pricing reflects this allocation of risk and the limitation of liability specified herein.

**8. Term and Termination****Agreement Term**

- 8.1 This Agreement shall continue in force until terminated in accordance with Clause 8.3 below.

**Services Term**

- 8.2 Unless otherwise agreed in writing, the Services shall continue for the duration of the Services Term unless terminated earlier in accordance with Clause 8.3 below.
- 8.3 Without prejudice to any other right or remedy which may be available to either party, either party shall be entitled summarily to terminate this Agreement (in whole or with respect to any individual Order Form or Statement of Work) by giving written notice to the other party if:
- (i) the other party has committed a material breach of any of its obligations hereunder which is not capable of remedy; or
  - (ii) the other party has committed a material breach of any of its obligations hereunder which is capable of remedy but which has not been remedied within a period of forty-five (45) days following receipt of written notice to do so; or
  - (iii) any circumstances arise which would entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order; or
  - (iv) the other party makes any voluntary arrangement with its creditors for the general settlement of its debts or becomes subject to an administration order; or
  - (v) the other party has an order made against it, or passes a resolution, for its winding-up (except for the purposes of amalgamation or reconstruction) or has a receiver or similar officer appointed over all or substantially all of its property or assets.

**9. Effect of Expiry and Termination**

- 9.1 The termination of an individual Order Form will not terminate or suspend any other Order Form or Statement of Work. If the Agreement is terminated in whole, all outstanding Order Forms and Statements of Work will terminate.
- 9.2 Upon termination or expiry of the Agreement, or termination or expiry of any Order Forms:
- (i) Subject to Clause 9.2, all Customer's rights immediately terminate;
  - (ii) Customer remains responsible for all Fees Customer has incurred up to the date of termination or expiry, and any outstanding Fees (including any cancellation Fees specified in the relevant Order Form), whether or not such Fees have become due at the date of termination or expiry;
  - (iii) Customer will immediately return or, if instructed by Pelion, destroy all Pelion Confidential Information or Pelion equipment in Customer's possession;
  - (iv) Pelion shall return any of the Customer Materials not used up in the provision of the Services; and
  - (v) Any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 9.2 The provisions of Clauses 1 (Definitions), 2.7 (Feedback), 4 (Confidentiality), 5 (Fees), 7 (Limitation of Liability), 8 (Term and Termination), 9 (Effect of Expiry/Termination) and 10 (General) shall survive termination or expiry of this Agreement.

<b>10. General</b>
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**Notices**

- 10.1 All notices which are required to be given hereunder shall be in writing (which may include electronic mail) and shall be sent to the corporate office of the recipient or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 10.1. Any such notice may be delivered personally, by commercial overnight courier or facsimile transmission which shall be followed by a hard copy and shall be deemed to have been served if by hand when delivered, if by commercial overnight courier 48 hours after deposit with such courier and if by facsimile transmission when dispatched.

**Assignment**

- 10.2 Neither party may assign or transfer any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, either party may assign the Agreement in its entirety, without the other party's consent (a) to its Affiliate or (b) in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets; provided, however, that the assigning party must notify the other party as soon as reasonably possible after the completion of any such change in control. Within 30 days of such notice, the non-assigning party shall have the ability to terminate the Agreement by providing written notice with immediate effect should that non-assigning party determine that the change in control was to: (i) a direct competitor or (ii) an Affiliate of a direct competitor of the non-assigning party. This Agreement shall be binding upon, and inure to the benefit of, the parties and their permitted successors or assigns.

**Independent Parties**

- 10.4 Pelion and Customer are independent parties. Neither company nor their employees, consultants, contractors or agents are agents, employees or joint venturers of the other party, nor do they have the authority to bind the other party by contract or otherwise to any obligation. Neither party will represent to the contrary, either expressly, implicitly, by appearance or otherwise.

**Waiver**

- 10.5 Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of the right to enforce, in the future, that or any other provision of this Agreement.

**Variation**

10.6 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorized representatives).

**Force Majeure**

10.7 Neither party shall be liable for any failure or delay in its performance under this Agreement due to causes, including, but not limited to, acts of God, acts of civil or military authority, fires, epidemics, floods, earthquakes, riots, wars, sabotage, third party industrial disputes and government actions, which are beyond its reasonable control; provided that the delayed party: (i) gives the other party written notice of such cause promptly, and in any event within fourteen (14) days of discovery thereof; and (ii) uses its reasonable efforts to correct such failure or delay in its performance. The delayed party's time for performance or cure under this Clause 10.7 shall be extended for a period equal to the duration of the cause.

**Entire Agreement**

10.8 This Agreement, including any appendices, schedules or supplements, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding the subject matter. No amendment to or modification of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties. Nothing contained in any purchase order shall modify or add any terms and conditions to this Agreement.

**Severance**

10.9 The provisions contained in each clause and sub-clause of this Agreement shall be enforceable independently of each of the others and if a provision of this Agreement is, or becomes, illegal, invalid or deemed unenforceable by any court or administrative body of competent jurisdiction it shall not affect the legality, validity or enforceability of any other provisions of this Agreement. If any of these provisions is so held to be illegal, invalid or unenforceable but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it legal, valid or enforceable.

**Export Laws**

10.10 The material provided by either party under this Agreement is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. The parties agree to comply fully with all export laws and regulations of the United States and other countries ("**Export Laws**") to assure that neither the material provided by either party, nor any direct products thereof are: **(i)** exported, directly or indirectly, in violation of Export Laws, either to any countries that are subject to U.S export restrictions or to any end user who has been prohibited from participating in the U.S. export transactions by any federal agency of the U.S. government; or **(ii)** intended to be used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation.

**Governing Law**

10.11 The validity, construction and performance of this Agreement shall be governed by the laws of England and Wales. The Contracts (Rights of Third Parties) Act 1999 and any legislation amending or replacing that Act shall not apply in relation to this Agreement or any agreement, arrangement, understanding, liability or obligation arising under or in connection with this Agreement and nothing in this Agreement shall confer on any third party the right to enforce any provision of this Agreement.

10.12 Notwithstanding Clause 10.11, if Customer's address is in the U.S., the validity, construction and performance of the Agreement shall be governed by the laws of the State of California excluding its conflict of laws principles.