

## **Payara Development End-User Licence Agreement (EULA)**

This Development End-User Licence Agreement ("**Licence**") is a legal agreement between you (the "**Customer**" or "**you**") and Payara Services Limited of Malvern Hills Science Park, Geraldine Road, Malvern, Worcestershire, WR14 3SZ ("**Payara**", "**us**" or "**we**").

This EULA applies to the Software in object code provided to you for the purposes of a Payara Enterprise Evaluation ("**Software**").

We license use of the Software to you on the basis of this Licence, the Payara Development EULA. We do not sell the Software to you. We or our licensors remain the owners of the Software at all times.

### **IT IS HEREBY AGREED**

#### **1. GRANT AND SCOPE OF LICENCE, MINOR CHANGES, UPDATES**

- 1.1 In consideration of you agreeing to abide by the terms of this Licence, Payara hereby grants to you a non-exclusive, non-transferable licence to use the Software for development purposes only on the terms of this Licence.
- 1.2 This Licence permits you to do the following ("Permitted Uses"):
  - 1.2.1 install and use the Software, in object code form only, for development purposes only; and
  - 1.2.2 (provided you comply with the provisions in clause 2) make a reasonable number of copies of the Software for back-up purposes.
- 1.3 In this Licence, development purposes shall mean use of the Software for evaluation and development purposes in a private, single user, development environment. For the avoidance of doubt, this Licence grants no right or licence to use the Software for production purposes or in any private multi-user, live, public, pre-production or production environment.
- 1.4 We may update or require you to update the Software from time to time in which case this Licence applies to the Software as updated.

#### **2. Restrictions**

- 2.1 Except as expressly set out in this Licence (and in particular as set out in clause 3) or as otherwise permitted by law, you undertake:
  - 2.1.1 not to copy the Software, except where such copying is incidental to normal use of the Software under Permitted Uses;
  - 2.1.2 to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;

- 2.1.3 not to use or attempt to use the Software other than for Permitted Uses;
- 2.1.4 not to delete or obfuscate our copyright notice on all entire and partial copies of the Software in any form; and
- 2.1.5 not to provide, distribute, or otherwise make available, the Software in any form, in whole or in part to any third party (including to any affiliate company of the Customer) without prior written consent from us.

### **3. Intellectual property rights**

- 3.1 You acknowledge that all intellectual property rights in the Software throughout the world belong to us or our licensors, that rights in the Software are licensed (not sold) to you, and that you have no intellectual property rights in, or to, the Software other than the right to use the Software in accordance with the terms of this Licence.
- 3.2 Certain components of the Software are made available under open source licences in source code form. You can find out more about the components and the applicable licences [here](#). Nothing in this Licence is intended to derogate from the rights granted in respect of those components under the applicable licences.
- 3.3 The rights granted by an applicable open source licence- (including but not limited to any version of the Common Distribution and Development License (CDDL)) in the source code of any component referred to in clause 3.2 above do **not** apply to the object code form of the Software licensed to you under this Licence.

### **4. Disclaimers and Limitations on Liability**

- 4.1 This Software is provided on an "as is" basis, and without warranty of any kind whether express or implied. Your use of the Software is at your sole risk. We do not warrant under this Licence that:
  - 4.1.1 the Software will meet your specific requirements;
  - 4.1.2 the Software is fully compatible with any particular platform;
  - 4.1.3 your use of the Software will be uninterrupted, error free, timely or secure;
  - 4.1.4 the results that may be obtained from the use of the Software will be accurate or reliable;
  - 4.1.5 the quality of any products, services, information, or other material purchased or obtained by you through the Software will meet your expectations; or
  - 4.1.6 defects in the Software will be corrected.
- 4.2 Payara and its affiliates shall not be liable for any indirect, special, incidental, consequential, or exemplary damages or for damages for loss of

profits, goodwill, use, data or other intangible losses (whether in each case direct or indirect, and even where Payara has been advised of the possibility of such damages) related to the Software or this Licence including, for example:

- 4.2.1 the use or the inability to use the Software;
  - 4.2.2 the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received through the Software;
  - 4.2.3 unauthorised access to or alteration of your transmissions or data;
  - 4.2.4 statements or conduct of any third-party on the Software; or
  - 4.2.5 any other matter relating to the Software.
- 4.3 Payara reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Software (or any part thereof) with or without notice. Payara shall not be liable to you or to any third-party for any modification, price change, suspension or discontinuance of the Software.

## **5. Termination**

- 5.1 We may terminate this Licence immediately by written notice to you if you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so. This Licence will automatically terminate if you use the Software for any purpose other than development purposes.
- 5.2 Upon termination for any reason:
- 5.2.1 all rights granted to you under this Licence shall cease;
  - 5.2.2 you must cease all activities authorised by this Licence; and
  - 5.2.3 unless you have procured an alternative and separate licence or right to use the Software, you must immediately delete or remove the Software from all computer equipment in your possession and immediately destroy or return to us (at our option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.
- 5.3 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 5.4 The rights to terminate this Agreement given by this clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

## **6. Other important terms**

- 6.1 We may transfer our rights and obligations under these terms to another organisation. You may only transfer your rights or your obligations under this Licence to another person if we agree in writing.
- 6.2 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 6.3 Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 6.4 The failure or delay of Payara to exercise or enforce any right or provision of this Licence shall not constitute a waiver of such right or provision.
- 6.5 These terms are governed by English law and you can only bring legal proceedings in respect of the Software in the courts of England and Wales.