

## OPENLOGIC COMPUTER ENGINE IMAGE AGREEMENT

This OpenLogic Computer Engine Image Agreement (this “**Agreement**”) contains the terms and conditions that govern your access to, and use of, the open source software made available by OpenLogic, Inc., a Perforce company, on the marketplace of a cloud platform provider (each a “**Cloud Platform Marketplace**”) as a Computer Engine Image (the “**CEI**”), as well as the terms and conditions of any support services that you purchase for the CEI, and is a legal agreement between OpenLogic, Inc. (“**OpenLogic**,” “**we**,” “**us**,” or “**our**”) and you or the entity you represent (“**you**”). The Agreement takes effect when you click an “I Accept” button or check box presented with these terms or, if earlier, when you download or use any of the CEI (the “**Effective Date**”). If you are entering into the Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

### 1. CEI

The CEI is provided “as-is” with no warranty from OpenLogic. You acknowledge that OpenLogic is under no obligation to provide support for any portion of the CEI for which you have not purchased support services.

### 2. Support Services

OpenLogic will provide support services as provided in the Agreement (the “**Support Services**”) for the specific CEI for the period for which you have purchased such Support Services. Support Services consists of assistance with problem resolution, defects, and "how to" questions as well as advice and recommendations on installation and configuration. Support Services for the CEI will cover only the cloud platform (“**Cloud Platform**”) instances on which the CEI is deployed through the Cloud Platform. Support Services will not cover support of the Cloud Platform infrastructure or support for the CEI running on other infrastructure.

OpenLogic will provide Support Services eight (8) hours per day between 9:00 AM and 5:00 PM Eastern Time, five (5) days per week with a four (4) hour response time.

Support Services incidents can be submitted via email to [image-support@openlogic.com](mailto:image-support@openlogic.com). Each single unique defect or question about a Purchased Stack will be counted as an incident. Unless otherwise indicated at the time of purchase, you may submit an unlimited number of Support Services incidents. Details about the Support Services process, response times, types of issues, and severity of issues can be found here: <http://www.openlogic.com/>. OpenLogic reserves the right to change the Support Services terms from time to time. Any changes made to the Support Services during a calendar month will be applicable beginning on the first day of the next calendar month.

### 3. Limitations on Support

OpenLogic will have no obligation to provide Support Services or may cease providing the Support Services in the case of, or with respect to, any incident that is in whole or in part due to, caused by, or resulting from any of the following: (i) a breach by you of the Agreement; (ii) the operational characteristics of the Cloud Platform -provided

instances or infrastructure; (iii) any third party products, software, hardware, equipment, content, data or information, and any modifications, improvements, updates, new versions, or new releases thereto or thereof, not provided by OpenLogic; (iv) any CEI other than the most current release thereof made available by OpenLogic through the Cloud Platform Marketplace; (v) use of any CEI after OpenLogic has notified you to cease use thereof under the Agreement; or (vii) your negligence, abuse, misapplication, or misuse of the CEI or the Support Services. OpenLogic will have no liability for any changes required by your hardware or software configuration that may be necessary to use any CEI Stack due to a workaround, error correction, or maintenance release.

## **5. Ownership and License**

**5.1. Your Technology.** Any information, data, content, software, methodologies, methods, techniques, concepts, systems, procedures, know-how, or inventions ("**Technology**") of yours that were acquired, developed or created by, or licensed to you prior to the Effective Date or independent from the Agreement ("**Your Technology**"), and all intellectual property rights therein and relating thereto throughout the world, including, without limitation, all copyrights, trademarks, service marks, trade secrets, patents, moral rights, contract rights and any and all other legal rights protecting intangible proprietary information (collectively, "**IPR**"), are and will remain your exclusive property. During the term of the Agreement, you may choose to provide OpenLogic with access to Your Technology to facilitate OpenLogic in providing the Support Services, in which case you grant to OpenLogic all rights and licenses in and to Your Technology as may be necessary for OpenLogic to complete its obligations under the Agreement. It should be noted that OpenLogic does not have access to Your Technology deployed on the Cloud Platform unless you choose to give OpenLogic access as part of providing the Support Services.

**5.2. CEI License.** The CEI is comprised of open source software, which are subject to the terms of the open source software license(s) accompanying, or otherwise applicable to, that open source software. Nothing in the Agreement limits your rights under or grants rights to you that supersede the terms of any applicable open source software license. All deliverables hereunder are derivative works, modifications, patches, or scripts of, or directly relating to, the CEI, and OpenLogic will license such deliverable under the same open source software license as the CEI to which it relates. To the extent the terms of the licenses applicable to the CEI require OpenLogic to make an offer to provide source code for the CEI, and OpenLogic has not already made such source code available to you, such offer is hereby made. Any request to fulfill such offer should be directed only to: [legal@perforce.com](mailto:legal@perforce.com)

**5.3. Open Source Acknowledgement.** You acknowledge that your own distribution or deployment of instances containing or linking to the CEI, or any other open source software, may trigger open source license conditions and you are responsible for complying with them.

**5.4 Open Source Community.** In the process of providing the Support Services,

OpenLogic occasionally finds bugs and errors in open source software as well as issues in how certain open source packages work together. OpenLogic will use commercially reasonable efforts to work with open source communities to resolve bugs or defects and contribute those changes back for incorporation in future releases. Due to the nature of open source development, OpenLogic cannot guarantee that the open source communities will accept bug fixes.

**5.5. OpenLogic Technology.** All technology or other idea, conception, invention, reduction to practice, discovery or development provided or made by or on behalf of OpenLogic, and any modification, enhancement, improvement, or derivative work thereto or thereof (collectively, "**OpenLogic Technology**"), and all IPR therein and thereto, are and will remain the exclusive property of OpenLogic.

## **6. Warranties.**

**6.1. General.** Each party represents and warrants to the other party that the performance of such party's obligations hereunder does not and will not violate any law, rule, or regulation applicable to such party.

**6.2. OpenLogic.** OpenLogic will perform all Support Services as stated under the Agreement. If OpenLogic fails to comply with the previous sentence, OpenLogic will, at its sole discretion and as your sole remedy and OpenLogic's sole obligation for any such failure: (a) re-perform the Support Services in a manner that resolves the alleged failure; or (b) refund any fees paid by you attributable to the Support Services that are the subject of the failure.

## **7. Disclaimer**

THE WARRANTIES SET FORTH IN SECTION 6 ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE BY OPENLOGIC UNDER THE AGREEMENT AND OPENLOGIC SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH REGARD TO THE SUPPORT SERVICES, DELIVERABLES AND ANY OTHER SUBJECT MATTER OF THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY OR MERCHANTABILITY.

## **8. Limitation of Liability**

OPENLOGIC WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE), INCLUDING, BY WAY OF EXAMPLE, LOST REVENUE, LOST PROFITS, BUSINESS INTERRUPTION, AND INJURY TO REPUTATION, EVEN IF OPENLOGIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF OPENLOGIC RELATING TO THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE TOTAL FEES PAID BY YOU FOR SUPPORT SERVICES PROVIDED BY

OPENLOGIC DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT(S) GIVING RISE TO SUCH LIABILITY.

## **9. Confidential Information.**

**9.1. Confidential Information.** For purposes of the Agreement, "**Confidential Information**" means any data or information regarding the business, finances, services or technology of either party provided to or otherwise obtained by the other party, including, without limitation, technical, marketing, financial, pricing, employee, and planning information, and any other data or information received or otherwise obtained under the Agreement that a reasonable person should have known, under the circumstances, was confidential or proprietary.

**9.2. Protection.** Each party (the "**Receiving Party**") may from time to time receive or otherwise obtain Confidential Information from the other party (the "**Disclosing Party**"). The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by the Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of the Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information in the same manner as the Receiving Party protects its own confidential information of a similar nature and with no less than reasonable care.

**9.3. Exceptions.** The Receiving Party's obligations with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already lawfully known to the Receiving Party as of the Effective Date; (b) is disclosed to the Receiving Party after the Effective Date by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party becomes, generally available to the public; or (d) is independently developed by the Receiving Party without access to, use of, or reference to, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) necessary for the Receiving Party to enforce its rights under the Agreement in connection with a legal proceeding; or (ii) required by law or by the order of a court of similar judicial, regulatory or administrative body, provided that the Receiving Party notifies the Disclosing Party in advance of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

## **10. General**

**10.1. Export.** You will comply with all applicable export and import laws and regulations in your use of the CEI. You represent that you are not barred from receiving services under U.S. laws or other applicable jurisdiction, including without limitations, the Denied Persons List and the Entity List, and other lists issued by the

U.S. Department of Commerce, Bureau of Industry and Security. You represent that you are not located in, under the control of, or a national or resident of any country to which the United States has embargoed goods.

**10.2. Assignment.** The Agreement, or any of your rights and obligations under the Agreement, cannot be assigned or otherwise transferred in whole or in part, and any such attempted assignment or transfer by you in violation of the foregoing will be null and void.

**10.3. Choice of Law.** The Agreement will be governed by the laws of the State of Minnesota in the United States of America, without regard to conflicts of law principles. The federal and state courts located in Hennepin County, Minnesota (and any other courts having jurisdiction over matters arising in Hennepin County, Minnesota) will have exclusive jurisdiction over any disputes arising under the Agreement and the parties hereby irrevocably consent to the personal jurisdiction of such courts. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to the Agreement.

**10.4. Relationship of parties.** The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between you and OpenLogic. There are no third-party beneficiaries to the Agreement.

**10.5. Waiver.** All waivers under the Agreement must be in writing. Any waiver or failure to enforce any provision of the Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**10.6. Survival.** Sections 5 (Ownership; License), 7 (Disclaimer), 8 (Limitation of Liability), 9 (Confidential Information), and 10 (General) will survive termination or expiration of the Agreement.

**10.7. Severability.** If any provision of the Agreement is held to be unenforceable, that provision will be modified so as to be enforceable, or if such modification is not possible, that provision will be removed and the remaining provisions will remain in full force.

*--Last updated 27 August 2020--*