

Grafana Labs Master Services Agreement

[Legal and Security](#) › Master Services Agreement

PLEASE READ CAREFULLY: THE INDIVIDUAL ACCEPTING THIS MASTER SERVICES AGREEMENT (“MASTER SERVICES AGREEMENT”) ON BEHALF OF AN END USER CUSTOMER (“CUSTOMER”), REPRESENTS AND WARRANTS THAT THEY HAVE FULL AUTHORITY TO BIND CUSTOMER TO THIS MASTER SERVICES AGREEMENT. UNLESS CUSTOMER HAS ANOTHER VALID AGREEMENT FOR THE PURCHASE AND USE OF GRAFANA PRODUCT(S) AND PROFESSIONAL SERVICES, THIS MASTER SERVICES AGREEMENT GOVERNS, WHICH INCLUDES TERMS REGARDING LICENSE AND USAGE, DATA PRIVACY OBLIGATIONS, DISCLAIMERS AND LIMITATIONS OF LIABILITY, AND GRAFANA LABS’ RIGHT TO SUSPEND AND/OR TERMINATE THE AGREEMENT AND CUSTOMER’S ACCESS OR USE OF THE GRAFANA PRODUCT(S) AND PROFESSIONAL SERVICES (INCLUDING WORK PRODUCT, IF ANY) FOR NON-PAYMENT. BY ACCEPTING THIS MASTER SERVICES AGREEMENT (EITHER BY CLICKING, CHECKING A BOX OR ENTERING INTO A SERVICE ORDER) CUSTOMER ACCEPTS THIS MASTER SERVICES AGREEMENT, WHICH WILL BE DEEMED A BINDING CONTRACT BETWEEN CUSTOMER AND RAINBOW, INC. DBA GRAFANA LABS (“GRAFANA LABS”). IF CUSTOMER DOES NOT AGREE TO OR CANNOT COMPLY WITH ALL THE TERMS AND CONDITIONS OF THIS MASTER SERVICES AGREEMENT OR IF THE INDIVIDUAL ACCEPTING THIS MASTER SERVICES AGREEMENT DOES NOT HAVE AUTHORITY TO BIND CUSTOMER, THEN DO NOT ACCEPT AND CUSTOMER WILL NOT BE AUTHORIZED TO ACCESS OR USE THE GRAFANA PRODUCT(S) OR PROFESSIONAL SERVICES (INCLUDING WORK PRODUCT, IF ANY). THIS MASTER SERVICES AGREEMENT IS BINDING AS OF THE EARLIEST OF: (I) THE DATE THAT CUSTOMER ACCEPTS THIS MASTER SERVICES AGREEMENT, (II) THE DATE SET FORTH ON AN ORDER FORM(S) OR (II) THE DATE ON WHICH CUSTOMER DOWNLOADS, INSTALLS, ACTIVATES, ACCESSES, OR USES THE GRAFANA PRODUCT(S) OR PROFESSIONAL SERVICES (INCLUDING WORK PRODUCT, IF ANY).

1. DEFINITIONS. Capitalized terms in the Agreement have the meaning set forth in Exhibit A attached hereto and incorporated herein, or elsewhere in the Agreement.

2. GENERAL LICENSE TERMS

2.1 License Grant. Subject to Customer’s compliance with the terms and conditions of this Agreement, Grafana Labs grants to Customer and its Affiliates a worldwide, royalty-free, non-

exclusive, non-sublicensable, non-transferable (except to a successor-in-interest as permitted hereunder), revocable (except as otherwise permitted herein) license to access and use, as applicable, the Grafana Product(s) during the Subscription Term and in the quantities specified on the Order Form(s) solely for Customer's own internal business purposes. Customer may use the Documentation in connection with the license granted under this Section 2.1. Grafana Labs will deliver to Customer the Grafana Product(s) after the execution of an applicable Order Form(s). Grafana Labs will provide the Professional Services, if any, specified in one or more Order Form(s).

2.2 License Restrictions. Customer must not: (i) sublicense, sell, resell, transfer or assign (except to a successor-in-interest as permitted hereunder), distribute or otherwise commercially exploit or make available to any third-party the Grafana Product(s); (ii) modify, copy (other than a reasonable number for Customer's operation of the Grafana Product(s)), or make derivative works of or compilations based upon the Grafana Product(s); (iii) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code of the Grafana Product(s); (iv) use or access the Grafana Product(s) for the purposes of building a competitive product or service, or copying its features, functions, or user interface; or (v) resell any marketing, training or other materials such as slides, advice, guidance, or frameworks provided by Grafana Labs.

2.3 Configuration. Customer is responsible for proper installation and configuration of the Grafana Product(s) in accordance with the Documentation and securing access passwords, keys, tokens or other credentials used by Customer in connection with the Software (collectively, "Customer Credentials"). Customer is responsible for all activities conducted under its User logins. Customer authorizes Grafana Labs and its service providers the right to collect and process Customer Data and Personal Data to provide Customer with the Grafana Product(s) and Professional Services, if any. Customer agrees to use reasonable efforts to prevent unauthorized access or use of the Grafana Product(s) and to promptly notify Grafana Labs if Customer believes (a) any Customer Credentials have been lost, stolen or made available to an unauthorized third party or (b) an unauthorized third party has accessed the Grafana Product(s) or Customer Data.

3. AFFILIATE ORDERS. Each of Customer's Affiliates may enter into one or more Order Form(s) with Grafana Labs, subject to the provisions of this Section 3. Each Order Form(s) creates a separate contract between the individual Affiliate and Grafana Labs, is governed by the terms and conditions of this Master Services Agreement, and such Affiliate will be deemed the "Customer" thereunder. Each Affiliate will pay for all Fees pursuant to an Order Form(s) entered into by that Affiliate. Customer will remain fully liable for the acts and omissions of such Affiliates, and its and their employees, agents and contractors.

4. PROTECTION OF CUSTOMER DATA AND PERSONAL DATA. Grafana Labs will maintain reasonable and appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data and Personal Data, including, but not limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data and Personal Data. Grafana Labs' current data security policy is available at

<http://www.grafana.com/legal>, and hereby incorporated by reference into this Master Services Agreement.

5. OWNERSHIP.

Grafana Labs (and its licensors, where applicable) owns all right, title and interest (including all related Intellectual Property Rights) in and to the Grafana Product(s), Grafana Labs Technology, Work Product (which is specific to the Grafana Product(s) and not provided on a “work made for hire basis”), and any other Intellectual Property Rights owned by Grafana Labs. Grafana Labs hereby grants to Customer a worldwide, royalty-free, non-exclusive, time-limited, non-sublicensable, non-transferable (except to a successor in interest as permitted hereunder), revocable (except as otherwise permitted herein) license use the Work Product during the Subscription Term specified on the Order Form(s) in connection with the Grafana Product(s), solely for Customer’s own internal business purposes. There are no implied rights and all rights not expressly granted herein are reserved. No license, right, or interest in any Grafana Labs trademark, copyright, patent, trade name or service mark is granted hereunder. If a Customer or an Affiliate provides Grafana Labs with any Feedback, Grafana Labs will own all right, title and interest in and to such Feedback, and Grafana Labs will have the right to use such Feedback without restriction. Customer or its licensors (a) own all rights in and to all Customer Data. Customer has sole responsibility for ensuring the accuracy, quality, integrity, legality, security, reliability, appropriateness, and Intellectual Property Rights to use all Customer Data.

6. PAYMENT

6.1 Fees. Customer will pay all fees, and other charges, as specified on the Order Form(s) (“Fees”). The Fees are exclusive of all direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessment of any nature, including value-added, sales, use or withholding taxes (“Taxes”). Customer is solely responsible for payment of all Taxes related to this Agreement. Grafana Labs may be required to collect and remit Taxes from Customer, unless Customer provides Grafana Labs with a valid tax exemption certificate. Neither party shall be responsible for any Taxes levied against the other party’s net income.

6.2 Payment. Unless otherwise agreed between Customer and Reseller, all Fees under an Order Form(s) are due and payable within thirty (30) days of Customer’s receipt of invoice. All Fees are non-cancelable and non-refundable. Customer is responsible for paying for the Grafana Product(s) and Professional Services that Customer orders for the entire Subscription Term whether or not actually used. Fees are stated in United States Dollars, and must be paid in United States Dollars.

6.3 Non-Payment. Delinquent invoices (accounts in arrears) are subject to a service fee of one and one-half percent (1.5%) per month, or the maximum penalty permitted by law (whichever is less), on any outstanding balance, plus all expenses of collection; *provided, however*, that this

interest may not be applied until any amount due hereunder remains unpaid ten (10) days after a written notice is provided to Customer regarding such overdue amount, at which point interest shall apply from the date the written notice has been mailed. In addition to any other rights Grafana Labs may have, Grafana Labs reserves the right to suspend its performance under the Agreement and Customer's license to the Grafana Product(s) if: (a) any amount due hereunder remains unpaid ten (10) days after a written notice is provided to Customer regarding such overdue amount, (b) Customer breaches Section 2.2 (License Restrictions), or (c) if purchasing direct from Grafana Labs and required by Customer, Customer fails to issue a purchase order within a reasonable period of time (not to exceed thirty (30) days) after agreeing to an order hereunder (including, by way of executing an Order Form(s)).

6.4 Excess Usage. Customer will maintain accurate records of its use of the Grafana Product(s) sufficient to show compliance with the terms of this Agreement. On reasonable notice, Grafana Labs may audit Customer's use of the Grafana Product(s) to confirm Customer's compliance with the terms of this Agreement, provided such audit does not unreasonably interfere with Customer's business activities. Customer will reasonably cooperate with Grafana Labs and/or any third party auditor, and will, without prejudice to other rights of Grafana Labs, address any non-compliance identified by the audit within thirty (30) days after such audit, such as by purchasing sufficient licenses to cover any usage of the Grafana Product(s) beyond that specified on the applicable Order Form(s) ("Excess Usage") without benefit of any otherwise applicable discount and subject to license fees reflecting the duration of such Excess Usage. Customer will promptly reimburse Grafana Labs for all reasonable costs of the audit if the audit reveals either unpaid, Excess Usage of more than five (5%) percent, or that Customer has materially failed to maintain accurate records of use of the Grafana Product(s). Grafana Labs may also, at any time on request, require Customer to furnish Grafana Labs with a self-attestation accompanied by a usage report generated from Customer's systems or such other documentation necessary to verify that Customer's use of the Grafana Product(s) has not exceeded the quantities specified on the applicable Order Form(s).

WARRANTIES; DISCLAIMERS.

7.1. Each party warrants that: (a) it has the requisite corporate power and authority to enter into this Agreement and each Order Form(s); and (b) it will comply with all applicable laws in its performance hereunder.

7.2 Grafana Labs warrants that the Grafana Product(s) will substantially conform in all material respects with the applicable Documentation.

7.3 Grafana Labs offers SLA(s) for some of the Grafana Product(s), which are available at <https://grafana.com/legal/> and hereby incorporated by reference into this Agreement, as applicable.

7.4 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THE GRAFANA PRODUCT(S), GRAFANA LABS TECHNOLOGY, AND PROFESSIONAL

SERVICES ARE PROVIDED ON AN “AS IS” BASIS; AND GRAFANA LABS AND ITS LICENSORS DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY WARRANTIES OF REGULATORY COMPLIANCE, PERFORMANCE, ACCURACY, RELIABILITY, NON-INFRINGEMENT, OR THAT THE USE OF THE GRAFANA PRODUCT(S), GRAFANA LABS TECHNOLOGY, OR WORK PRODUCT WILL BE SECURE, TIMELY, UNINTERRUPTED, ERROR- OR DEFECT-FREE, OR THAT ERRORS OR DEFECTS WILL BE CORRECTED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8. TERM & TERMINATION

8.1 Term of Agreement. The term of this Master Services Agreement commences on the Effective Date and continues until the earlier of: (i) ninety (90) days after all Order Form(s) have expired or been terminated, or (ii) either party terminates this Master Services Agreement pursuant to the terms hereof.

8.2 Subscription Term. The subscription term of the applicable Grafana Product(s) and Professional Services, as applicable, will be specified on each Order Form(s) (“**Subscription Term**”).

8.3. No Order Form(s) in Effect. Either party may terminate this Agreement immediately by written notice if no Order Form(s) is in effect. In addition, Grafana Labs may also terminate a free or trial account at any time in its sole discretion.

8.4 Termination for Breach. Either party may terminate this Master Services Agreement, any Order Form(s), or any other document specifically incorporated herein by reference: (i) immediately upon written notice if the other party commits a non-remediable material breach of this Agreement; or (ii) if the other party fails to cure any remediable material breach of this Agreement within thirty (30) days of being notified in writing of such breach, unless such breach is for non-payment and then within five (5) days of such notice.

8.5 Effect of Termination. Termination or expiration of an Order Form(s) shall not constitute termination of this Master Services Agreement or any other active Order Form(s), however, in the event that this Master Services Agreement is terminated, any active Order Form(s) shall also terminate. On termination of this Master Services Agreement, all licenses to the Grafana Product(s) shall automatically terminate, and all Professional Services will cease, with immediate effect. On termination of an Order Form(s) all licenses to the Grafana Product(s) and all Professional Services under such Order Form(s) shall terminate with immediate effect.

8.6. Survival. In the event of the termination or expiration of this Agreement, the provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement shall survive, including but not limited to Sections 2.2-2.3 (License Restrictions; Configuration); 5 (“Ownership”); 6 (“Payment”); 7.4 (Warranty Disclaimer); 9 (“Indemnification” for the period of the applicable statute of limitations); 10 (“Confidentiality”);

11 (“Limitation of Liability”); 12 (“Publicity; Non-Solicitation”); 13 (“General”); and any accrued rights to payment shall remain in effect beyond such termination or expiration until fulfilled.

9. INDEMNIFICATION

9.1 Grafana Labs. Subject to Section 9.3 below, Grafana Labs will defend Customer against any third-party claim, demand, suit, or proceeding filed against Customer in the United States alleging that the Grafana Product(s), as sold and delivered to Customer pursuant to this Agreement (the “**Indemnified Products**”), directly infringe the intellectual property rights of such third party (“**Claim Against Customer**”), and will indemnify and hold harmless the Customer from and against any damages, costs, and expenses (including reasonable attorneys’ fees) finally awarded by a court of law in respect of such Claim Against Customer, or for amounts paid by Customer under a signed settlement of such Claim Against Customer. Notwithstanding the foregoing, Grafana Labs shall have no obligation under this Section 9.1 for any Claim Against Customer arising out of or related to: (i) modifications made to the Indemnified Products by anyone other than Grafana Labs; or (ii) the combination, operation or use by Customer or anyone acting on Customer’s behalf, of the Indemnified Products in connection with a third-party product or service (the combination of which causes the infringement); (iii) use or exploitation of the Indemnified Products other than as set forth in this Agreement or applicable Documentation; or (iv) failure to implement any update, modification, or replacement to the Indemnified Products as provided by Grafana Labs.

9.2 Customer. Subject to Section 9.3 below, Customer will defend Grafana Labs against any third-party claim, demand, suit, or proceeding alleging that Customer Data, or Grafana Labs’ use thereof in accordance with this Agreement, infringes, violates, or misappropriates Intellectual Property Rights (“**Claim Against GL**”), and will indemnify and hold harmless Grafana Labs from and against any damages, costs, and expenses (including reasonable attorneys’ fees) finally awarded by a court of law in respect of such Claim Against GL, or for amounts paid by Customer under a signed settlement of such Claim Against GL.

9.3 Process. Each indemnifying party’s obligations under Section 9.1 or Section 9.2, respectively, are conditioned upon the following: (i) the indemnified party first provides written notice of the Claim Against Customer or Claim Against GL, as applicable, to the indemnifying party within thirty (30) days after becoming aware of or reasonably should have been aware of the Claim Against Customer or Claim Against GL, as applicable, provided, however, the failure to provide such notice will only relieve the indemnifying party of its obligations under this Section 9 to the extent the indemnified party is prejudiced thereby; (ii) the indemnified party must tender sole and exclusive control of the Claim Against Customer or Claim Against GL, as applicable, to the indemnifying party, (iii) the indemnified party must provide reasonable assistance, cooperation, and required information with respect to the defense and/or settlement of the Claim Against Customer or Claim Against GL, as applicable. The indemnified party may participate in the Claim Against Customer or Claim Against GL, as applicable, at its sole cost and expense, except that the indemnifying party will retain sole control of the defense and/or

settlement. The indemnifying party shall not agree to any settlement of the Claim Against Customer or Claim Against GL, as applicable, that includes an injunction against the indemnified party, or admission of liability of the indemnified party without the indemnified party's prior written consent, which consent shall not be unreasonably withheld.

9.4. Exclusive Remedy. This Section 9 (Indemnification) is the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third-party claim described herein.

10. CONFIDENTIALITY

The parties agree that (i) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (ii) each will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (iii) the Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation (or otherwise bound) to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both parties agree that obligations of confidentiality will survive expiration or termination of this Agreement. Notwithstanding the foregoing, if any court or other governmental entity with competent jurisdiction requires the Receiving Party to disclose any of the Disclosing Party's Confidential Information, the Receiving Party may comply with its legal obligations after, to the extent permitted by law, giving the Disclosing Party prompt, reasonably detailed written notice regarding such required disclosure (including a copy of the relevant order or other legal process) to allow the Disclosing Party to seek a protective order or other appropriate remedy. The Receiving Party will disclose only such information as it reasonably deems is legally required and will cooperate reasonably with the Disclosing Party to obtain confidential treatment for any of the Disclosing Party's Confidential Information that is so disclosed. Similarly, the Receiving Party may disclose the Disclosing Party's Confidential Information on a "need-to-know" basis to its legal counsel, accountants, banks and other financing sources, consultants, and advisors under commercially reasonable confidentiality agreements. Upon the earlier of (i) the Disclosing Party's request, or (ii) the termination or expiration of this Agreement, the Receiving Party will return all copies of the Disclosing Party's Confidential Information, or destroy all copies of such Confidential Information in its possession; provided, however, the Receiving Party may retain a copy of any Confidential Information disclosed to it solely for archival purposes, provided that such copy is retained in secure storage and held in confidence for so long as such Confidential Information remains in the possession of the Receiving Party.

11. LIMITATION OF LIABILITY

11.1. EXCEPT FOR (i) THE PARTIES' OBLIGATIONS UNDER SECTION 9 OF THIS MASTER SERVICES AGREEMENT (INDEMNIFICATION), (ii) DAMAGES RESULTING

FROM EITHER PARTY'S GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT, (iii) EITHER PARTY'S MATERIAL BREACH OF SECTION 10 OF THIS MASTER SERVICES AGREEMENT (CONFIDENTIALITY), (iv) CUSTOMER'S BREACH OF SECTION 2 OF THIS MASTER SERVICES AGREEMENT (GENERAL LICENSE TERMS), OR (v) CUSTOMER'S PAYMENT OBLIGATIONS, EACH PARTY'S TOTAL, AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL FEES ACTUALLY PAID BY CUSTOMER TO GRAFANA LABS IN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

11.2 EXCEPT FOR (i) DAMAGES RESULTING FROM EITHER PARTY'S MATERIAL BREACH OF SECTION 10 OF THIS MASTER SERVICES AGREEMENT (CONFIDENTIALITY), OR (ii) CUSTOMER'S BREACH OF SECTION 2 OF THIS MASTER SERVICES AGREEMENT (GENERAL LICENSE TERMS), IN NO EVENT WILL EITHER PARTY OR THEIR RESPECTIVE OWNERS, EMPLOYEES, AGENTS, AFFILIATES, REPRESENTATIVES OR LICENSORS BE LIABLE UNDER THE AGREEMENT FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THE AGREEMENT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR OTHER COMMERCIAL DAMAGES OR LOSSES.

11.3. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF THE NATURE OF THE CLAIM AND ITS LIABILITIES, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES. BOTH PARTIES SPECIFICALLY ACKNOWLEDGE AND AGREE THAT THESE LIMITATIONS OF LIABILITY ARE REFLECTED IN THE PRICING.

12. PUBLICITY; NON-SOLICITATION

12.1 Publicity. Neither party shall, except as otherwise required by applicable laws, issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or otherwise use the other party's marks or logos without the prior written consent of the other party; *provided, however*, that Grafana Labs may include Customer's name and logo in its list of customers, its public website, and other promotional material.

12.2 Non-Solicitation. Customer agrees not to solicit any personnel of Grafana Labs involved with the delivery of Grafana Product(s) in connection with any Order Form(s) during the term of and for twelve (12) months after termination or expiration of such Order Form(s); provided that Customer may hire an individual employed by Grafana Labs who, without other solicitation, responds to advertisements or solicitations aimed at the general public, if permitted by applicable law.

13. GENERAL

13.1 U.S. Government Customers. This Section 13.1 shall only apply if Customer is a federal government entity. The Grafana Product(s) are provided to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data”, and are subject to this Master Services Agreement, with the same rights and restrictions generally applicable to the Grafana Product(s). If Customer or any User is using Grafana Product(s) on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, Customer and such Users must immediately discontinue use of the Grafana Product(s). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in this Agreement. The terms listed above are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

13.2 Governing Law; Venue. This Agreement is governed by the laws of the State of New York, without regard to conflicts of laws. The parties hereby irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts located in the County of New York, New York, for resolution of any disputes arising out of this Agreement. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.

13.3 Force Majeure. Neither party shall be liable for any delay or failure in performance of any part of this Agreement (except payment) to the extent that such delay is caused by a Force Majeure Event. If any such Force Majeure Event occurs, the party delayed or unable to perform (“**Delayed party**”), upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis during the continuance of such Condition (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis during the same period); provided, however, that the party so affected shall use its best reasonable efforts to avoid or remove such Condition, and both Parties shall proceed immediately with the performance of their obligations under this Agreement whenever such causes are removed or cease.

13.4 Independent Parties; No Third Party Beneficiaries. The Parties expressly understand and agree that their relationship is that of independent contractors. Nothing in this Agreement shall constitute one party as an employee, agent, joint venture partner or servant of another. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

13.5 Severability. If any provision of this Agreement is held invalid or unenforceable for any reason, then such provision shall be fully severable and will not affect the validity of the remaining provisions of the Agreement.

13.6 No Waiver. The failure of either party to enforce any right or provision in the Agreement will not constitute a waiver of such right or provision, unless acknowledged and agreed in writing by the party against whom the waiver is asserted.

13.7 Assignment. This Agreement is assignable by either party only with the other party's prior written consent, which will not be unreasonably withheld, conditioned or delayed; *provided, however,* either party may, upon written notice and without the prior approval of the other party, (a) assign this Agreement to an Affiliate as long as the Affiliate has sufficient assets to satisfy its obligations under this Agreement and the scope of Grafana Product(s) is not affected; or (b) assign this Agreement pursuant to a merger, consolidation, reorganization, change of control, or a sale of all or substantially all of such party's assets or stock.

13.8 Notices. All notices shall be in writing to each party's address on the signature page of this Master Services Agreement (or as updated by a party in writing to the other), and effective on receipt.

13.9 Entire Agreement; Integration. This Agreement constitutes the entire agreement of the parties and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter hereof. Notwithstanding any language to the contrary in this Agreement, any Customer (or Reseller) purchase order shall be deemed a convenient payment device only and no terms or conditions in any such purchase order shall be incorporated into this Agreement, which are void and of no effect.

13.10 Counterparts; Headings. This Agreement may be executed in counterparts. Section headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

13.11 Changes to this Agreement. No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties.

13.12 Remedies; Injunctive Relief. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. Either party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property, confidentiality, or proprietary rights under this agreement, as such a breach may cause the non-breaching party irreparable damage with no adequate remedy at law.

13.13 Open Source Components. Notwithstanding the license grant in Section 2.1, Customer acknowledges that certain components of the Grafana Product(s) ("Open Source Components") may be provided by third parties under open source software licenses, which means any software licenses approved as open source licenses by the Open Source Initiative or any substantially similar licenses. Customer acknowledges receipt of license notices for the Open Source Components for the initial delivery of the Product. To the extent required by the licenses covering third party Open Source Components, the terms of such licenses will apply to such Open Source Components in lieu of the terms of this Agreement. To the extent the terms of the licenses applicable to third party Open Source Components prohibit any of the restrictions in

Section 2.2 of this Master Services Agreement with respect to such Open Source Component, such restrictions will not apply to such Open Source Component. To the extent the terms of the licenses applicable to third party Open Source Components require Grafana Labs to make an offer to provide source code or related information in connection with the Open Source Components, such offer is hereby made. Grafana Labs may make certain components of the Grafana Product(s) separately generally available under open source or other royalty-free licenses. This Agreement will not vitiate the rights granted to Customer under such licenses. However, violation by Customer of such licenses will be deemed a breach of this Agreement.

13.14 Consumption-Based Products Terms [as applicable]. If an Order Form(s) includes Consumption-Based Products, pricing for consumption thereof will be determined by the applicable Consumption-Based Products Rate Table set forth in the applicable Order Form(s). Without limiting anything in this Agreement, for purposes of clarity, fees paid for Consumption-Based Products (whether prepaid and corresponding to unused consumption, or otherwise) expire at the end of the then-current Subscription Term, and are non-assignable, non-transferable, non-sublicensable, and not eligible for carry-over to subsequent Subscription Terms. Fees for the Consumption-Based Products will first be charged against any prepaid amounts, monthly in arrears, until exhausted. Fees for further consumption will be charged monthly in arrears, and Customer agrees to pay such amounts in accordance with Section 6 of this Master Services Agreement. Grafana Labs may change the pricing in the applicable Consumption-Based Products Rate Table at any time, in its sole discretion.

13.15 Changes to this Agreement. Grafana Labs may modify this Agreement at any time by posting a revised version at www.grafana.com which modifications will become effective as of the first day of the calendar month following the month in which they were first posted; provided, however, that if an Order Form(s) specifies a fixed term of twelve (12) months or longer, the modifications will instead be effective immediately upon the start of the next Subscription Term. In either case, if Customer objects to the updated Agreement, as its sole and exclusive remedy, Customer may choose not to renew, including canceling any terms set to auto-renew. For the avoidance of doubt, any Order Form(s) is subject to the version of the Agreement in effect at the time the Order Form(s) the Order Form(s) is signed by both Customer and Grafana Labs.

EXHIBIT A

DEFINITIONS

1. **“Affiliate”** means an entity that controls, is controlled by, or under common control with Customer or Grafana Labs, as applicable. **“Control”** means, possession of, directly or indirectly, the power to direct management through the ownership of fifty percent (50%) or more of its voting or equity securities, or by contract, voting trust or otherwise.

2. **“Agreement”** means this Master Services Agreement, collectively with: (a) all Order Form(s) agreed to by the parties in writing; and (b) any other materials or attachments specifically incorporated by reference herein, is referred to herein as the **“Agreement.”**

3. **“Customer Data”** means: any data, information, materials or multimedia content relating to Customer, Affiliates, or a User that is processed by the Grafana Product(s) that is not Personal Data.

4. **“Confidential Information”** means information and tangible materials disclosed by one party (the **“Disclosing Party”**) to the other party (the **“Receiving Party”**) under the Agreement that are or should be reasonably understood to be confidential or proprietary to the Disclosing Party based on the nature of the information and the circumstances of disclosure, including without limitation the terms of this Agreement (including pricing and other terms reflected in an ordering document or Order Form(s)), technical processes or formulas, sales, software, cost and other unpublished financial information, product and business plans, and projections. “Confidential Information” will not, however, include information or materials the Receiving Party can prove through verifiable, objective evidence:

(a) became part of the public domain without breach of the Agreement;

(b) was known to the Receiving Party prior to its receipt from the Disclosing Party without restriction on disclosure;

(c) was rightfully received from a third-party that lawfully and rightfully possesses such information without restriction on disclosure; or

(d) was developed independently by or for the Receiving Party without use of or reference to any Confidential Information of the Disclosing Party.

5. “Documentation” means Grafana Labs’ standard user manuals, specifications, and technical documentation, or other documentation provided by Grafana Labs in connection with Customer’s access and/or use of the Grafana Product(s).

6. “Feedback” means bug reports, suggestions, or other feedback relating to the Software or Grafana Labs Technology.

7. “Force Majeure Event” means reason of acts of God, wars, revolution, civil commotion, acts of public enemy, embargo, acts of government in its sovereign capacity, pandemic, or any other circumstances beyond the reasonable control and not involving any fault or negligence of the delayed party.

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17. “Order Form(s)” means an ordering document for Grafana Product(s) and/or Professional Services between Grafana Labs and Customer (or Reseller) that contains at least the following information: product name, license quantity, price, term, and billing contact.

18. “Software” means any Grafana Labs proprietary binary software and other binary software programs branded by Grafana Labs, its Affiliates and/or third parties, licensed hereunder.

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