

Rafay Systems, Inc.

Master Subscription Terms and Conditions

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THESE TERMS AND CONDITIONS. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO SUCH ENTITY.

Customer and Rafay Systems, Inc. (“Rafay”) hereby agree as follows:

1. **Scope.** These Terms and Conditions shall apply to Customer’s use of Rafay’s multi-cluster management & application operations platform, whether as part of Rafay’s managed Kubernetes clusters deployed globally or as deployed in a customer environment, or a combination of both (together with any related packaged professional services, premium support services, products and offline components, the “Services”) ordered by Customer under a free trial or ordering document (including any online order) specifying the Services to be provided hereunder (“Order”). These Terms and Conditions and all Orders (collectively referred to as this “Agreement”) represent the parties’ entire understanding regarding the Services and shall control over any different or additional terms of any purchase order or other non-Rafay ordering document, and no terms included in any such purchase order or other non-Rafay ordering document shall apply to the Services. In the event of a conflict between these Terms and

Conditions and an Order, the terms of the Order shall control. All capitalized terms not defined herein shall have the meanings attributed in the Order.

2. Free Trial. If Customer registers for a free trial, Rafay will make one or more Services available to Customer on a trial basis free of charge until the earlier of (a) the end of the free trial period for which you registered to use the applicable Services, or (b) the start date of any purchased subscriptions ordered for such Services. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY REPRESENTATIONS, WARRANTIES OR INDEMNITIES.

3. Right to Use the Services. During the Subscription Term set forth in an Order, Rafay grants to Customer a nontransferable, nonexclusive, worldwide right to permit those individuals authorized by Customer or on Customer's behalf, and who are Customer's employees, agents or contractors ("Users"), to access and use the Services subject to the terms of the Agreement. Each Order defines specific usage rights ("Usage Rights"), and Customer shall at all times ensure that its use does not exceed its Usage Rights.

4. Usage Restrictions and Representations.

4.1 Customer shall not, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any software, documentation or data related to or provided with the Services ("Software"); (ii) modify, translate, or create derivative works based on the Services or Software; or copy (except for archival purposes), rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or Software; (iii) use or access the Services to build or support, and/or assist a third party in building or supporting, products or services competitive to Rafay; or (iv) remove any proprietary notices or labels from the Services or Software. Customer shall use the Services and Software only for its own internal business operations, and not for the operation of a service bureau or timesharing service.

4.2 Customer shall not knowingly or willfully use the Services in any manner that could damage, disable, overburden, impair or otherwise interfere with Rafay's provision of the Services. Customer shall be responsible for maintaining the security of its equipment

and account access passwords. Customer represents and warrants that Customer will use the Services only in compliance applicable laws and regulations. Customer shall be liable for all acts and omissions of its Users.

4.3 Rafay may immediately suspend Customer's password, account, and access to the Services if (i) Customer fails to make payment due within ten business days after Rafay has provided Customer with notice of such failure; or (ii) Customer violates Section 3, 4, or 10 of these Terms and Conditions. Any suspension by Rafay of the Services under the preceding sentence shall not relieve Customer of its payment obligations under this Agreement.

5. Ownership.

5.1 Rafay owns or has rights to all intellectual property rights in and to the Services and Software (including all derivatives or improvements thereof). All suggestions, enhancements requests, feedback, recommendations or other input provided by Customer or any other party relating to the Services or Software shall be owned by Rafay, and Customer hereby makes all assignments necessary to accomplish the foregoing ownership. Any rights not expressly granted herein are reserved by Rafay.

5.2 Customer owns any data, information or material originated by Customer that Customer submits or provides in the course of using the Services ("Customer Data"). Rafay has no ownership rights in or to Customer Data. Customer shall be solely responsible for the accuracy, quality, content and legality of Customer Data, the means by which Customer Data is acquired and the transfer of Customer Data outside of the Rafay Services. Except to the extent Customer or any Users make any Customer Data accessible to other users or the public through the Services, Customer Data shall be deemed to be Customer Confidential Information pursuant to Section 10 below. Customer represents and warrants that it has all rights necessary to upload the Customer Data to the Services and to otherwise have such Customer Data used or shared, as applicable, by Rafay as part of the Services.

6. Billing and Payment.

6.1 Customer shall pay all fees set forth in an Order. All fees are non-cancelable and nonrefundable, except as expressly specified in Section 8.2. All fees are exclusive of taxes, levies, or duties imposed by taxing authorities, and Customer shall be

responsible for payment of all such taxes, levies, or duties (excluding taxes based on Rafay's income), even if such amounts are not listed on an Order. Customer shall pay all fees in U.S. Dollars or in such other currency as agreed to in writing by the parties.

6.2 All amounts invoiced hereunder are due and payable as specified in the Order. Unpaid invoices that are not the subject of a written good faith dispute are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all reasonable expenses of collection.

6.3 If at any time Rafay determines that Customer is exceeding the Usage Rights, Rafay shall notify Customer and Customer shall bring its usage within the limits of such Usage Rights. If Customer fails to do so within 30 days of receipt of Rafay's notice, Rafay reserves the right to charge and Customer agrees to pay Rafay's then-current usage fees for such overage.

7. Term and Termination.

7.1 The Agreement shall commence as of the date set forth in the first Order or the beginning of a free trial, if earlier, and, unless earlier terminated as set forth below, shall remain in effect through the end of the Subscription Term in any current Order (or the end of the free trial if no purchased subscription is ordered). If a subscription is purchased, the Subscription Term will automatically renew for additional successive periods of time equal to the length of the original Subscription Term, unless either party provides written notice of non-renewal at least sixty (60) days prior to the end of the then-current term. All sections of the Agreement which by their nature should survive termination will survive, including without limitation, accrued rights to payment, use restrictions and indemnity obligations, confidentiality obligations, warranty disclaimers, and limitations of liability.

7.2 In the event of a material breach by either party, the non-breaching party shall have the right to terminate the applicable Order for cause if such breach has not been cured within 30 days of written notice from the non-breaching party specifying the breach in detail. If Rafay terminates an Order for Customer's material breach, all fees set forth on such Order are immediately due and payable.

7.3 Upon any termination or expiration of an Order, Customer's right to access and use the Services covered by that Order shall terminate. Notwithstanding the foregoing, at Customer's request if received within 30 days of termination of the Order, Rafay will permit Customer to access the Services solely to the extent necessary for Customer to retrieve a file of Customer Data then in Rafay's possession. Customer acknowledges and agrees that Rafay has no obligation to retain Customer Data and that Rafay will have the right to irretrievably delete and destroy Customer Data after 30 days following the termination of the Agreement.

8. Representations, Disclaimer of Warranties, Indemnities.

8.1 Each party represents and warrants to the other party that it has the power and authority to enter into the Agreement. Rafay warrants to Customer that it will (a) perform the Services substantially in accordance with its documentation under normal use; and (b) provide the Services in a manner consistent with generally accepted industry standards. Customer must notify Rafay of any warranty deficiencies within 30 days from performance of the relevant Services in order to receive warranty remedies.

8.2 For breach of the express warranty set forth above, Customer's exclusive remedy shall be the re-performance of the deficient Services. If Rafay cannot re-perform such deficient Services as warranted, Customer shall be entitled to recover a pro-rata portion of the fees paid to Rafay for such deficient Services, and such refund shall be Rafay's entire liability.

8.3 The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, or because of other causes beyond Rafay's reasonable control, but Rafay shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled unavailability of the Services.

8.4 Rafay shall defend Customer against any third party claims, demands, suits, or proceedings ("Claims") made or brought against Customer alleging that the use of the Service as contemplated hereunder infringes the intellectual property rights of a third party and shall pay all costs and damages finally awarded against Customer by a court of competent jurisdiction as a result of such Claim; provided, that Customer (a) promptly gives written notice of the Claim to Rafay; (b) gives Rafay sole control of the defense and settlement of the Claim (provided that Rafay may not settle or defend any Claim

unless it unconditionally releases Customer of all liability); and (c) provides to Rafay, at Rafay's cost, all reasonable assistance. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Rafay, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Rafay, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, or (v) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Rafay to be infringing, Rafay may, at its option and expense (1) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (2) obtain for Customer a license to continue using the Service, or (3) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

8.5 Customer shall defend Rafay against any Claims made or brought against Rafay alleging that Customer Data, or Customer's use of the Services in violation of the Agreement, infringes the intellectual property rights of, or has otherwise harmed, a third party or violates any law or regulation and shall pay all costs and damages finally awarded against Rafay by a court of competent jurisdiction as a result of such Claim; provided, that Rafay (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases Rafay of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

8.6 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, RAFAY AND ITS THIRD PARTY PROVIDERS HEREBY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND QUALITY. RAFAY AND ITS THIRD PARTY PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE RELIABILITY, AVAILABILITY, TIMELINESS, SUITABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES OR THE RESULTS CUSTOMER MAY OBTAIN BY USING THE SERVICES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, RAFAY AND ITS THIRD PARTY PROVIDERS

DO NOT REPRESENT OR WARRANT THAT (A) THE OPERATION OR USE OF THE SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR-FREE; OR (B) THE QUALITY OF THE, SERVICES WILL MEET CUSTOMER'S REQUIREMENTS. CUSTOMER ACKNOWLEDGES THAT NEITHER RAFAY NOR ITS THIRD PARTY PROVIDERS CONTROLS THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. RAFAY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. WITHOUT LIMITING THE FOREGOING, RAFAY DOES NOT WARRANT OR GUARANTEE THAT ANY OR ALL SECURITY ATTACKS WILL BE DISCOVERED, REPORTED OR REMEDIED, OR THAT THERE WILL NOT BE ANY SECURITY BREACHES BY THIRD PARTIES. EXCEPT WHERE EXPRESSLY PROVIDED OTHERWISE BY RAFAY, THE SERVICES ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS.

9. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE, INACCURACY OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICE OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND IT'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID (OR, IN THE CASE OF CUSTOMER'S LIABILITY, PAID AND/OR PAYABLE) BY CUSTOMER IN THE PRECEDING 12 MONTHS.
10. Confidential Information. Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business (hereinafter referred to as "Confidential Information" of the Disclosing Party). The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information; and (ii) not to use (except as expressly permitted in Section 11 below) or divulge to any third person any such Confidential Information. The Disclosing Party agrees that the

foregoing shall not apply with respect to Confidential Information after five years following the termination of the Agreement or any Confidential Information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by its prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it by a third party; or (d) was independently developed without use of any Confidential Information of the Disclosing Party. If any Confidential Information is required by law to be disclosed, it may be disclosed to the extent of the requirement, provided that the Receiving Party provides the Disclosing Party with a reasonable opportunity to intervene in any relevant proceedings to protect its interests in the Confidential Information.

11. Statistical Information. Notwithstanding anything else in the Agreement or otherwise, Rafay may monitor Customer's use of the Services and use Customer Data in an aggregate and anonymous manner, compile statistical and performance information related to the provision and operation of the Services, and may make such information publicly available, provided that such information does not incorporate Customer Data and/or identify Customer's Confidential Information. Rafay retains all intellectual property rights in such information.
12. Notices. Rafay may give notice applicable to Rafay's general Services customer base by means of a general notice on the Services portal, and notices specific to Customer by electronic mail to Customer's e-mail address on record in Rafay's account information or by written communication sent by first class mail or pre-paid post to Customer's address on record in Rafay's account information. If Customer has a dispute with Rafay, wishes to provide a notice under the Agreement, or becomes subject to insolvency or other similar legal proceedings, Customer shall promptly send written notice to Rafay Systems, Inc. at 530 Lakeside Drive, Suite 210, Sunnyvale, CA 94085, USA, Attn: CEO.

13. General provisions.

13.1 Any action, Claim, or dispute related to the Agreement will be governed by California law, excluding its conflicts of law provisions, and controlling U.S. federal law. The Uniform Computer Information Transactions Act will not apply to the Agreement. The failure of either party to enforce any right or provision in the Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing.

13.2 The Agreement and all Order(s), represent the parties' entire understanding relating to the Services, and supersede any prior or contemporaneous, conflicting or additional communications. The exchange of a fully executed Order by fax or electronic signature shall be sufficient to bind the parties to the Terms and Conditions of the Agreement and such Order. The Agreement may be amended only by written agreement signed by the parties. If any provision of the Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

13.3 No joint venture, partnership, employment, or agency relationship exists between Rafay and Customer as a result of the Agreement or use of the Services. Neither party may assign the Agreement without the prior written approval of the other, such approval not to be unreasonably withheld or delayed, provided that such approval shall not be required in connection with a merger or acquisition of all or substantially all of the assets of the assigning company related to this Agreement. Any purported assignment in violation of this Section shall be void.