Payara Open Source Software Assurance Agreement

This Agreement is between Payara Services Limited (a company incorporated and registered in England and Wales with company number 09998946 whose registered office is at Malvern Hills Science Park, Geraldine Road, Malvern, Worcestershire, WR14 3SZ). ("Payara"), and the Customer as defined in the Enterprise Order.

1. The Customer has agreed to take a Payara Enterprise Agreement as specified in the Enterprise Order ("the Enterprise Agreement"), and Payara has further agreed to provide the Customer with certain assurances regarding its open source product offering as set out in this Assurance Agreement. This Assurance Agreement is separate from the Enterprise Agreement, but will terminate immediately if and when the Enterprise Agreement terminates for any reason.

2. This Assurance Agreement imports the definitions and interpretation set out in clause 1 of the Enterprise Agreement.

3. Subject to clauses 4, 5 and 6 below, the following shall apply:

    3.1.1. Payara shall indemnify and defend, at its expense, any losses, liabilities, damages or expenses (including reasonable legal fees) incurred in connection with any demands, claims, allegations, suits, actions or proceedings (each, a "Claim") made or brought against the Customer, its subsidiaries, parents, shareholders or affiliates under common control, and each of their respective directors, officers, employees and agents (the "Customer Indemnified Parties") by a third party to the extent such Claim alleges that the Software or Services infringe a valid patent or other Intellectual Property Right of an Unaffiliated Third Party enforceable in the United Kingdom or United States.

    3.1.2. The foregoing indemnification obligations of Payara are conditional upon the Customer (a) promptly giving written notice of the Claim to Payara (b) giving Payara sole control of the defence and settlement of the Claim (provided that Payara may not settle any Claim without the Customer's consent unless it unconditionally releases the Customer of all liability); (c) not being arrears of any payments due to Payara under the Enterprise

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Agreement and (d) providing to Payara all reasonable assistance requested by Payara, with out-of-pocket expenses for such assistance borne by Payara. In no event shall Payara be liable for any Claim not notified to it within 12 months after the claim arising.

3.1.3. Payara may, at its sole option and expense: (i) procure for the Customer the right to continue using the Software and Services ('Product') provided by Payara under the terms of this Assurance Agreement; (ii) replace or modify such Product to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate this Assurance Agreement and refund to the Customer a reasonably proportion of the sum paid for the Product under the Services Agreement. Payara will give the Customer as much notice as reasonably practicable prior to exercising its option to terminate under option (iii).

3.1.4. Excluded from Payara's indemnification obligations above are Claims arising out of the Customer's use of the Software or Services: (i) in combination with any product, software, service or device ("Unapproved Item") not furnished by Payara or previously approved in writing by Payara; or (ii) other than in accordance with the Services Agreement; or (iii) any item of open source code provided by a third party. For clarity, where a Claim arises under (i) above, this exclusion shall not apply where the Claim would remain valid if the Unapproved Item were to be substituted for an Approved Item. An Approved Item is one which the Customer has chosen not to use but which (1) has already been furnished to the Customer by Payara, or (2) which Payara has previously approved in writing, not having withdrawn such approval prior to the Customer's use of it.

4. The provisions of this Assurance Agreement set forth Payara's sole and exclusive obligations, and the Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third party intellectual property rights of any kind, and are in substitution for any remedies which the Customer may have under this Assurance Agreement, the Enterprise Agreement or otherwise, and whether in contract, tort or other theory of law.

5. Payara's aggregate total liability for any Claim or series of Claims and its costs and expenses of performing its indemnification obligations arising under this Assurance Agreement shall be equal to ten (10) times the total amount received by Payara under the Enterprise Agreement for the provision of Products and Services in the 12 months prior to the date of the latest Claim to arise.

6. Nothing in this Assurance Agreement is intended to limit or reduce Payara's liability for death or personal injury, or for fraud.

7. The Customer may terminate this Assurance Agreement at any time on notice to Payara. Such termination shall not, of itself, terminate the Enterprise Agreement.

8. Clauses 15, 16 and 17 of the Enterprise Agreement shall apply to this Assurance Agreement as if set out in it, with the cross-references amended accordingly.

9. Termination of this Assurance Agreement for any reason shall be without liability to either party, and, subject to clause 7 above, any claim that either party has against the other whether accrued or not arising out this Assurance Agreement shall extinguish.