Redgate Master SaaS Subscription Agreement

Unless expressly agreed otherwise in writing by the parties, any use of Our Services is subject to the terms of this Software as a Service Agreement ("**Agreement**"). Please read the full Agreement carefully.

You confirm that You accept and agree to be legally bound by all terms of this Agreement by using Our Services. If You do not accept these terms, do not use the Services. Where an individual uses the Services for: (a) business use, such individual represents that they have the authority to agree to the terms of this Agreement on behalf of their employer; or (b) personal use, such individual represents that they are at least 18 years of age, and that they have the right, power and authority to enter into this Agreement.

IMPORTANT NOTICES:

1 This Agreement and Your Redgate quote shall prevail over Your standard terms and conditions (if any) attached to, enclosed with, or referred to in, Your purchase order or order confirmation; and

2 If You have purchased any on-premise software or professional services from Us, such products or services will be governed by their respective terms and conditions.

TERMS AND CONDITIONS

1 SUBSCRIPTION

1.1 **Evaluation License**. You are entitled to a free trial of the Services for the purposes of deciding whether or not the applicable Services meet Your requirements ("**Evaluation Period**"). During each Evaluation Period the terms in Schedule 1 will apply.

1.2 **Subscription License**. In consideration of You paying Us the applicable Subscription Fee or Renewal Fee as appropriate, We grant You a non-exclusive, non-transferable right to access and use the Services during the Subscription Period, subject to the terms of this Agreement including any applicable Product Specific Terms and Documentation. Use of any Preview Services may be time limited and shall only be used for evaluation.

1.3 The rights under this Agreement are personal to You. You may not rent, lease, sub-license, sell, pledge, assign the benefit or delegate the burden of this Agreement or the Services to anyone, or hold this Agreement on trust for any other person. You shall ensure that Your employees and contractors comply with the terms of this Agreement and You agree to be responsible for the acts and omissions of Your employees and contractors with respect to the Services.

1.4 Except as stated in this Agreement, You have no right to use, copy, publish, display, distribute in whole or in part, modify or translate the Services or any part thereof. You may not attempt to access, or attempt to access the underlying source code, or decompile, reverse compile, disassemble, reverse engineer, or otherwise attempt to derive, reconstruct, or discover the source code, structure, algorithms, or underlying ideas of the Services either in whole or in part, except to the extent such restrictions are expressly permitted by intellectual property law.

1.5 Where You are providing database management services to Your customer(s) and using the Services in their owned and controlled environments, You shall ensure that You have permission to use the Services and that the Services are protected against any unauthorized use. Any access and use of the Services by Your customers shall be deemed a breach of this Agreement. You may share reports with Your customer(s) if such reports contain Your customer's data, which has been generated by the Services.

1.6 You shall not use the Services to develop or license any products or services that are substantially similar to or competitive with the Services.

1.7 You shall:

1.7.1 comply with all reasonable instructions from Us relating to the use of the Services;

1.7.2 give Us all necessary access to such information as may be required by Us, to the extent required to provide the Services, including to Your Customer Data, security access information and configuration services;

1.7.3 only use the Services on systems You are authorized to use;

1.7.4 comply with all applicable laws relating to Your use of the Services;

1.7.5 ensure that Your network and systems comply with the relevant specifications provided by Us from time to time; and

1.7.6 not use the Services to send or store Malicious Code.

1.8 **Third Party Files**. The Services may contain or be provided with Third Party Files, which are subject to their own separate license terms. We shall not be liable under this Agreement for Your access and use of such Third Party Files. Your use of any Third Party Files is subject to Your compliance with the applicable license terms.

1.9 You acknowledge that the Services may be provided using infrastructure belonging to third parties. We shall not be liable under this Agreement for Your access and use of such third party infrastructure. Your use of any third party infrastructure is subject to Your compliance with the applicable third party terms.

2 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

2.1 You acknowledge that: (a) the Services are licensed and not sold, and all Intellectual Property Rights in or relating to the Services are owned by or licensed to Us; (b) except as expressly granted under this Agreement, You have no rights in the Services; and (c) We shall have the right to use Your name and/or logo on customer lists on Our website and in other marketing material.

2.2 You hereby agree to refrain from any action which would diminish Our Intellectual Property Rights in or relating to the Services or which would call those rights into question.

2.3 You agree not to delete, remove or alter any trademarks, logos, copyright notices or similar proprietary notices or marks of Ours or Our licensors, including without limitation any electronic watermarks or other identifiers that may be incorporated in the Services or Documentation. All representations of Our name or logo must remain as originally distributed.

3 ACCESS TO SERVICES

3.1 **Your Environment**. You are responsible for any environment controlled, owned or leased by You or Your customer(s) (as applicable), including but not limited to any on-premise, cloud-based or software-as-a-service Servers ("**Your Environment**"). Where You connect Your Environment to the Services: (a) You hereby grant to Redgate the right to, and are expressly instructing Us to, integrate with Your Environment for the purpose of providing the Services; (b) You are solely responsible for selecting, implementing, activating, deactivating and configuring Your Environment with the Services; and (c). You hereby represent that Redgate's access and integration with Your Environment does not violate and is in compliance with any relevant terms and conditions, licenses and policies of Yours and Your third party licensors as applicable.

3.2 **Customer Data**. During Your use of the Services, We will collect Customer Data on Your behalf. You hereby agree: (a) that the Customer Data We collect on Your behalf is in compliance with the Acceptable Use provisions as set out in clause 3.5; and (b) to grant Redgate, its Affiliates (including their respective employees) and third party processors a worldwide, non-exclusive right to, and are expressly instructing Redgate, its Affiliates and third party processors to, process the Customer Data in order to provide and support Your use of the Services in accordance with Your instructions as contained within this Agreement and the Data Processing Addendum as set out on Our website: https://assets.red-gate.com/purchase/assets/redgate-data-processing-addendum.pdf. Further You agree that We shall be able to use the Customer Data to diagnose and reproduce issues, and to help Us further develop and improve the Services, including through aggregated or anonymised use where required by applicable law. Redgate shall maintain administrative, physical and technical safeguards intended to protect the security, privacy and integrity of the Customer Data as set out within the Data Processing Addendum. The parties agree to comply with the Data Processing Addendum which is incorporated into this Agreement, and all applicable data protection laws. You acknowledge that the Services are not designed to process Special Category Data. Further, You own and retain all rights, title, and interests in and to Your Customer Data including any Outputs. You hereby grant Redgate, its affiliates and third party processors, a limited, non-exclusive, worldwide, royalty-free license to access, use, host, store, copy, transmit, display, process and modify, and create derivative works of Customer Data solely as necessary to: (a) provide, maintain, improve, secure, and support the Services in accordance with this Agreement and the applicable Documentation; (b) prevent or address technical problems, security issues, and abuse; and (c) improve and develop the Services, provided that any use for improvement and development will be limited to what is necessary for that purpose and will be subject to the confidentiality, security, and data protection obligations in this Agreement and the applicable Data Processing Addendum. This license continues for the term of the Agreement (and, as applicable, for any additional period We are required to retain Your Customer Data under the Agreement or law) and terminates when Customer Data is deleted or returned in accordance with the Agreement.

3.3 **Outputs.** You own all Outputs to the extent they constitute Customer Data or are derived from Customer Data subject to Our Intellectual Property Rights. We may use, reproduce and deliver Outputs to You to provide, operate, support and secure the Services.

3.4 **Security.** You are responsible for properly configuring the Services in accordance with Our instructions, and securing access passwords, keys, tokens or other credentials used by You in connection with the Services. You agree to take all reasonable steps to prevent unauthorized access or use of the Services and to promptly notify Us by emailing security@red-gate.com, if the Services or Customer Data have been: (a) made available to an unauthorized third party; or (b) accessed by an unauthorized third party.

3.5 **Acceptable Use.** In accepting the terms of this Agreement, You allow Us to collect Customer Data on Your behalf and agree that such Customer Data is not unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; does not facilitate illegal activity, depict sexually explicit images, promote unlawful violence; is not discriminatory based on race, gender, color, religious belief, sexual orientation, disability or is otherwise illegal or causes damage or injury to any person or property.

3.5.1 We will hold a copy of the Customer Data on Your behalf for the provision of Your use of the Services.

3.5.2 We acknowledge that, where applicable, all rights, title and interest in and to the Customer Data belongs to You. You agree that You shall have sole responsibility for the legality, reliability, integrity and quality of the Customer Data.

3.5.3 You acknowledge that: (a) the Services may not be available to You all of the time; and (b) except to the extent Customer Data is Personally Identifiable Data, We shall not be responsible for any loss, or corruption of the Customer Data We hold.

3.5.4 You are responsible for maintaining and securing Your network connections and telecommunications links from Your systems to the Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet.

3.5.5 You shall not use the Services in any manner designed to adversely impact the operation of the Services. We reserve the right to cease/limit Your access to the Services, if We believe this may be the case.

3.5.6 Your use of the Services must remain within reasonable and proportionate limits considering typical usage for the number of licenses granted to You. You must not engage in any activity that creates excessive, abnormal, or disproportionate demand on the Services or Our third party infrastructure, or that materially degrades performance for other users. If We determine that Your usage is excessive, We may notify You and request that You modify Your use of the Services. If You do not take appropriate steps, or if Your usage poses an immediate risk to the Services, We may suspend or restrict Your access as reasonably necessary.

4 PAYMENT

4.1 Each Subscription Fee (together with any levies, duties and/or taxes imposed on You in Your jurisdiction (including, but not limited to, value added tax, sales tax, use tax and withholding tax)) shall be due on the applicable Subscription Start Date and paid by You on the payment due date on the Redgate invoice issued to You.

4.2 Any Fees (together with any levies, duties and/or taxes imposed on You in Your jurisdiction (including, but not limited to, value added tax, sales tax, use tax and withholding tax)) shall be paid by You on the payment due date on the Redgate invoice issued to You.

4.3 You may not deduct any amounts from any Fees.

4.4 We reserve the right to charge interest of 2% above the Bank of England base rate in force from time to time, on any late payments due under this Agreement until such amount is paid.

4.5 Where You have obtained the Services through a Channel Partner, the terms You have agreed with such Channel Partner solely in relation to payment and invoicing will apply instead of this clause 4, all other terms of this Agreement shall apply to You and will remain in full force and effect.

4.6 Where You have chosen to pay Us using Recurring Billing the additional terms set out in Schedule 2 shall apply.

5 CONFIDENTIALITY AND FEEDBACK

5.1 In connection with this Agreement, each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to clause 5.2, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, product information, software, pricing and other information of any kind whatsoever, developed or acquired by either party in connection with this Agreement, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential". Without limiting the foregoing: (a) all Customer Data (including all Personally Identifiable Data) is and will remain Your Confidential Information; and (b) the structure, organization, and source code of Our software, the Services, and any information related thereto in any Documentation are and will remain Our Confidential Information or Confidential Information of Our licensors. You agree not to provide or disclose any such proprietary confidential information of Ours (including relating to or derived from the Preview Services and/or the Services) to any third party.

5.2 Subject to clause 5.3, Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' non-compliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

5.3 Notwithstanding the provisions of clause 5.2 or any other provisions of this Agreement, none of the exclusions set forth in clause 5.2 apply to any Customer Data, whether provided by or on behalf of You to Us or the Services for processing or generated or derived from such processing and regardless of whether such Customer Data may be publicly available or otherwise qualify for exclusion under any of the other provisions of clause 5.2.

5.4 Each Receiving Party recognizes and agrees that the Confidential Information of the Disclosing Party is critical to the Disclosing Party's business and that neither Party would enter into this Agreement without assurance that such information and its value will be protected as provided in this clause 5 and elsewhere in this Agreement. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

5.4.1 not access or use, or permit the access or use of, Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement.

5.4.2 not use or permit the use of any of the Disclosing Party's Confidential Information, directly or indirectly, in any manner to the detriment of the Disclosing Party or to obtain any competitive advantage over the Disclosing Party.

5.4.3 except as may be permitted by and subject to its compliance with clause 5.5, not disclose or permit access to Confidential Information other than to its Representatives who: (a) need to know such Confidential Information for the purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (b) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this clause; and (c) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this clause.

5.4.4 safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its own sensitive information and in no event less than a reasonable degree of care.

5.4.5 ensure its Representatives comply with and shall be responsible and liable for any of its Representatives' noncompliance with the terms of this clause 5.

5.4.6 notify the Disclosing Party in writing promptly of any unauthorized disclosure or use of the Disclosing Party's Confidential Information and cooperate with the Disclosing Party to protect the confidentiality and ownership of all Intellectual Property Rights, privacy rights, and other rights therein.

5.5 If the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information, then, to the extent permitted by applicable law, the Receiving Party shall: (a)

promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy, or waive its rights under clause 5.4; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this clause, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment. No such compelled disclosure by the Receiving Party will otherwise affect the Receiving Party's obligations hereunder with respect to the Confidential Information so disclosed.

5.6 If You provide any ideas, suggestions or other input to Redgate relating to any Redgate products or the Services, including Preview Services ("**Feedback**"), Redgate may use such Feedback at its sole discretion including in the development and licensing of its products and services (as applicable), without any obligations or restrictions. You acknowledge and agree that any Intellectual Property Rights arising in the Feedback, or the related improvements will be owned exclusively by Us, and You hereby assign absolutely and with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to Us any such Intellectual Property Rights.

6 WARRANTY

6.1 Other than as provided in clause 12.10.2(i), We warrant to You that:

6.1.1 We own the Intellectual Property Rights in the Services and/or have the right to grant a license to You; and

6.1.2 in creating the Services, We have not knowingly infringed the intellectual property rights of third parties.

6.2 Other than as provided for in clauses 6.1 and 12.10.2(i), We do not offer any warranty related to the Services and/or the support provided, either express or implied, including but not limited to implied warranties of fitness for purpose or satisfactory quality, save for any non-excludable rights and remedies You may have under law. You acknowledge that the Services are of such complexity that inherent defects may exist, and therefore We cannot guarantee that the Services will be free from error or defect, nor that its operation will be uninterrupted or that We maintain Customer Data without loss. The Services have been developed as a standard software as a service product for use by a wide variety of users and so We are unable to warrant that they will meet any particular user needs. You shall take full responsibility for ensuring that the Services are suitable for Your intended purposes and, to facilitate investigation into such suitability, We offer a free Evaluation Period. Further, You acknowledge it is Your obligation to ensure that You have the appropriate IT infrastructure and authorization to run Services on an environment owned or controlled by You or Your customer(s) (as applicable).

6.3 Regardless of clause 6.1, any Preview Services are provided "AS IS", with no representation, guarantee or warranty of any kind as to their functionality, quality, performance, suitability or fitness for purpose. All other terms, conditions, representations and warranties expressed or implied whether by statute or otherwise are hereby expressly excluded, and the provisions of clauses 6.1, 7 and 11.2 shall not apply to the Preview Services. Redgate is under no obligation to release the Preview Services as part of the Services or any other products or services.

7 AVAILABILITY AND SUPPORT

7.1 **Availability**. We shall use commercially reasonable efforts, within Our control, to ensure uninterrupted access to Your use of the Services.

7.2 **Support**. In relation to and without prejudice to the generality of clause 6.2 above, We provide support to users of the Services via Our website, user forums, by email and by phone. The support is provided subject to the terms of this Agreement. You accept that, although We will use reasonable efforts to solve problems identified by You, the nature of services is such that no guarantee can be provided that any particular problem will be solved. You accept that, where a particular problem requires an update to the Services, the scheduling of any new releases and the functionality those releases contain shall be under Our sole control.

8 LIMITATION AND EXCLUSION OF LIABILITY

8.1 Nothing in this Agreement shall limit or exclude either party's liability for: (a) personal injury or death

resulting from negligence; (b) fraud; or (c) any other matter for which liability cannot be excluded by law.

8.2 Subject to clause 8.1 and other than as provided in clause 12.10.2(ii), neither party shall be liable to the other party for any indirect, special or consequential loss or damage whatsoever arising under or in relation to this Agreement (whether in contract, tort (including negligence), or otherwise). We shall not be liable to You for any of the following types of loss or damage arising under or in relation to this Agreement: (a) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue; or (b) any loss, or corruption, of software or data; or (c) any loss of use of hardware, software or data. Further, We shall not be liable or responsible to You for any compensation, reimbursement or damages arising due to Your inability to use the Services, including as a result of any suspension of this Agreement or Your access to the Services. In relation to the Preview Services, Our sole liability under this Agreement, subject to clause 8.1 shall be limited to ten pounds (GBP£10).

8.3 Subject to clauses 8.1 and 8.2, Our aggregate liability under and in connection with this Agreement howsoever caused shall be limited in all cases to the aggregate sum of the Subscription Fees or Renewal Fees (as applicable) paid in the 12 months prior to the event giving rise to the liability. Notwithstanding the foregoing, where liability relates to Our breach of Our obligations under the Data Processing Addendum, Our aggregate liability shall increase to two times (2x) the Subscription Fees or Renewal Fees (as applicable) paid in the 12 months prior to the event giving rise to the liability.

8.4 Except as expressly and specifically provided in this Agreement, You assume sole responsibility for results obtained from the use of the Services and the Documentation by You, and for conclusions drawn from such use. We shall not be liable for any damage caused by errors or omissions in any Customer Data, information, instructions or scripts provided to Us by You in connection with the Services, or any actions taken by Us at Your direction. **You acknowledge that Outputs generated may contain errors and should be reviewed by Your appropriate personnel before use or reliance.**

8.5 The provisions of this clause allocate risks under this Agreement between You and Us, and the Fees reflect this allocation of risks and these limitations of liability.

9 LICENSE TERM, SUSPENSION, TERMINATION AND RETIRED SERVICES

9.1 Your license to use the Services shall commence on the applicable Subscription Start Date and, unless terminated earlier in accordance with this clause 9, shall continue for the Initial Subscription Period. Thereafter, Your license shall be automatically renewed for either 12 months or 36 months (each a "**Renewal Period**"), unless either party notifies the other party of termination in writing, at least 30 days before the end of the Initial Subscription Period or any Renewal Period, in which case the license shall terminate upon the expiry of the applicable Initial Subscription Period or Renewal Period. If Your license is automatically renewed the term length for Your next renewal period for the Services shall be either: (a) 12 months, if Your Initial Subscription Period and/or Your last Renewal Period was less than a 36 month term; or (b) 36 months, if Your Initial Subscription Period and/or Your last Renewal Period was for a term of 36 months or more.

9.2 **Suspension**. We reserve the right to immediately suspend access to the Services where We reasonably consider it necessary to do so or to comply with applicable law. If such suspension occurs, We will notify You promptly and include any actions You are required to take for the reinstatement of the Services, if legally permitted.

9.3 We may terminate Your license and this Agreement immediately upon written notice to You if You fail to make payments for the Services when due and You do not make payment within 10 days of being notified in writing to do so.

9.4 We may terminate Your license and this Agreement if You: (a) breach any of the provisions of this Agreement other than payment, which are either not capable of being remedied or where they are capable of being remedied and You fail to remedy them within 30 days of being notified to do so; (b) cause Us or if it is reasonably foreseeable that You will cause Us to breach any applicable or pending laws or regulations; or (c) have taken or have taken against You (other than in relation to a solvent restructuring) any step or action which would result in You; (i) entering into bankruptcy, administration, provisional liquidation or any composition or arrangement with Your creditors; (ii) being wound up (whether voluntarily or by order of the court), (iii) being struck off the register of companies; (iv) having a receiver appointed to any of Your assets, or entering a procedure in any jurisdiction with similar effect to the provisions in this subclause (c).

9.5 Financial entities subject to DORA (Reg (EU) 2022/2554) shall be permitted to exercise their Article 28(7) rights.

9.6 When all of Your licenses to the Services have expired or been terminated then this Agreement shall

terminate in its entirety.

9.7 Upon termination or expiration of Your license: (a) You must cease use of the Services, and Your access to the Services shall be automatically disabled; (b) unless otherwise agreed between the parties in writing, where Your Customer Data has been collected to facilitate Your use of the Services, We shall destroy all Customer Data within 60 days after termination of this Agreement, unless We are required to keep or store such data by law. You acknowledge that You hold the primary source of the Customer Data and it is Your responsibility to extract the applicable reporting data including any Outputs that You wish to retain after termination of this Agreement from the Services.

9.8 Upon termination of this Agreement the provisions of clauses 1.6, 1.8, 1.9, 2, 4 (for any Fees that remain due and owing), 5, 6.2, 6.3, 8, 9, 11, 12.1 to 12.15 and 13 will remain in effect.

9.9 The termination of this Agreement howsoever arising shall not affect the rights, duties and liabilities of either party accrued prior to termination.

9.10 **Retired Services**. We reserve the right to retire any Services on written notice by Us at any time to come into effect at the end of Your then current Initial Subscription Period or Renewal Period (as the case may be). Upon receipt of such notice, You will no longer be entitled to renew Your licenses to such Services.

10 DATA COLLECTION AND PRIVACY

10.1 Information collected by Us will only be used for the purposes described in this Agreement. Please see Our Privacy Notice, for further information on how We collect and use data which can be viewed at: https://www.red-gate.com/privacy.

10.2 Nothing herein shall be construed as prohibiting Us from utilizing any Usage Data, which We may collect to optimize and improve the Services, or otherwise operate Our business. We will only share Your Usage Data with Our third party processors as required to operate Our business, Our third party processor list can be viewed at: https://www.red-gate.com/website/third-parties.

10.3 You hereby authorize Us to aggregate and collect, for Our own purposes and analysis, user information, usage stats and other relevant data about Your use of the Services as part of the Usage Data.

10.4 You acknowledge that: (a) to the extent Redgate processes Customer Data on Your behalf for the provision of the Preview Services and/or the Services, Redgate acts as processor and such processing is governed by the terms of the Data Processing Addendum; and (b) Redgate acts as the controller of the Usage Data collected in accordance with the Privacy Notice.

11 THIRD PARTY CLAIMS

11.1 You agree to indemnify Us from any loss or damage whether in contract, tort (including negligence), or otherwise: (a) if a third party claims that Your use of the Services causes Us any loss or damage, except in the circumstances in clause 11.2 below; and (b) against any third party claim to the extent related to or arising from Customer Data or Your breach or alleged breach of: (i) this Agreement; or (ii) any applicable law or regulation.

11.2 If any claim is brought against You alleging that Your use of the Services in accordance with this Agreement infringes the rights of any third party, You shall promptly notify Us and supply full details of the claim. The two of us shall consult together on an appropriate course of action and seek to minimize the effect of any claim on the respective businesses. We shall have the right, but not the obligation, to take control of all negotiations and litigation arising out of the claim. We will pay any damages and costs awarded against You in connection with any claim subject to the limitations of liability in clause 8. We shall have the right, at Our sole choice, to either: (a) use reasonable efforts to negotiate terms for continued use by You of the claimed infringing services; or (b) use reasonable efforts to modify the Services to make it non-infringing; or (c) terminate this Agreement with immediate effect and in such event, We shall refund to You a pro rata refund of the Fees paid to Us for the period from termination to expiration of the current Subscription Period.

12 GENERAL

12.1 **Governing law and settlement of disputes.** This Agreement (and any dispute or claim relating to it, or its formation, existence, construction, performance, validity or termination) will be governed by and construed in accordance with the laws of England. The courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Without

prejudice to any other rights or remedies that We may have, You acknowledge and agree that damages alone would not be an adequate remedy for any breach of clauses 1, 2, 5 and/or the Product Specific Terms by You. Accordingly, We shall be entitled to seek an injunction or other equitable relief for any threatened or actual breach of those clauses.

12.2 **Compliance with applicable law.** You agree that, notwithstanding clause 12.1 above, You may be subject to additional laws in other jurisdictions with respect to Your use of the Services in such jurisdictions. You agree to comply with the laws of any such jurisdiction including, without limitation, any applicable export laws or regulations.

12.3 **Severability.** If any provision or part of any provision in this Agreement is found to be illegal, invalid or unenforceable for any reason then the remaining provisions or part provisions remain unaffected and the parties shall meet promptly to discuss in good faith and agree an alternative provision or part provision that provides as closely as possible, the same commercial effect as the original.

12.4 **No waiver.** No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

12.5 **No third party rights.** We and You do not intend that any of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and all rights by virtue of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

12.6 **No Assignment.** You are not permitted to assign or transfer this Agreement or any rights granted to You to any third party without Our prior written consent. If We consent to the assignment, this Agreement will be binding on Your successors and assigns.

12.7 **Audit.** Where the business model and payment for any Services is dependent on Your level of use (e.g. number of people or servers), You agree that We shall be entitled to inspect Your records annually to ensure that You are in compliance with the terms of this Agreement and have not exceeded the use that You have paid for. Any audit may be conducted by Us or Our third party agents during normal business hours.

12.8 **Entire agreement.** This Agreement including its schedules which are incorporated herein and form part of the Agreement, together with Your Redgate quote and Data Processing Addendum, contains all the terms which the parties have agreed in relation to the subject matter of this Agreement and supersedes any prior oral agreements, representations or understandings between the parties in relation to such subject matter.

12.9 **Revisions to terms**. We reserve the right to revise the terms of this Agreement by updating this Agreement on Our website. You are advised to check the website periodically for notices concerning such revisions. If You do not agree with any such revision, You may terminate Your agreement within 10 days of the relevant revision without liability to Us. Your continued use of the Services shall be deemed to constitute acceptance of any revised terms. No revisions will apply retrospectively.

12.10 **Consumer regulations**.

12.10.1 This clause applies to Consumers only. You shall have the right to cancel this Agreement 14 days from the date You agree to be obliged to pay for the Services under this Agreement. Should You wish to cancel this Agreement under this clause 12.10, You must notify Us of Your decision to cancel by either: (a) returning a completed Model Cancellation Form (a copy of which is available here: https://www.red-gate.com/trust/cancellations) to Us; or (b) sending Us an email clearly confirming Your decision to: orders@red-gate.com. If You have any complaints about this Agreement, including complaints about the Services, please raise these with Redgate using the relevant contact details: https://www.red-gate.com/our-company/contact-us.

12.10.2 Australian consumer law

(i) Despite clause 6 Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, You are entitled; (i) to cancel Your service contract with Us; and (ii) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, You are entitled to have the failure rectified in a reasonable time. If this is not done You are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

(ii) Despite clause 8 and any other provision in this Agreement, if the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law in Schedule 2 of that Act) provides that there is a guarantee in relation to any good or service supplied by Us in connection with this Agreement, and Our liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 8.2, 8.3 and clause 3 of Schedule 1 and any other limitation of Our liability in this Agreement, do not apply to that liability and instead Our liability for such failure is limited to (at Our election): (a) in the case of a supply of goods, replacing the goods or of acquiring equivalent goods, or paying the cost of having the goods repaired; or (b) in the case of a supply of services, supplying the services again or paying the cost of having the services supplied again.

12.11 **Notices**. References to notices being "written" or "in writing" includes email. Any legal notices to Redgate must be emailed to: legal@red-gate.com.

12.12 **Updating Your information**. Where You have updated Your company details including but not limited to Your address, name or email domain, You are required to notify Us to ensure the parties can continue to meet their obligations under this Agreement, please email Us at: legal@red-gate.com.

12.13 **Channel Partners**. If You purchase the Services through a Redgate authorized Channel Partner, You acknowledge that: (i) We are independent from such Channel Partner; (ii) any such Channel Partner does not have authority to bind Redgate in any way, make modifications to this Agreement or make any warranties or representations on Our behalf; and (iii) We do not have any liability whatsoever for any acts or omissions of any such Channel Partner.

12.14 **Third Party AI**. We may use technologies provided by Third Party AI for providing certain features in Our Preview Services or Services. You acknowledge that: (i) We do not control or assume responsibility for the content, performance, availability or compliance of such Third Party AI; and (ii) Your use of such features is subject to the applicable terms of the relevant Third Party AI.

12.15 **Artificial Intelligence and Machine Learning.** We agree to not use Your Customer Data for training models other than for use by You. Any Outputs generated by the integrated AI (including via any Third Party AI) are provided "AS IS" and without any representation, guarantee or warranty of any kind. Redgate disclaims all liability for outcomes, decisions, actions or Outputs resulting from Your reliance on AI generated content. **You acknowledge that Outputs generated using AI may contain errors and should be reviewed by Your appropriate personnel before use or reliance.**

12.16 **Force Majeure**. Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs, failure of a utility service or transport or telecommunications network or any third party infrastructure required for the provision of the Services, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, pandemic, accident, fire, flood, or storm. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 2 months, the party not affected may terminate this Agreement by giving 30 days' written notice to the other party.

12.17 **Third Party Services**. Where You connect or configure the Preview Services and/or Services to interoperate with any third party product, service, platform, or environment ("**Third Party Services**"), You are solely responsible for ensuring that such connection and Your use of the Third Party Services complies with the applicable third party terms and conditions. Redgate does not control, endorse, or accept any responsibility or liability for: (a) the availability, functionality, security, or performance of any Third Party Services; (b) any act or omission of the relevant third party provider; or (c) any loss, damage, or liability arising from or in connection with Your connection to, or use of, any Third Party Services. Redgate's obligations under this Agreement do not extend to any Third Party Services, whether or not integrated by You or accessible through the Preview Services and/or Services.

13 DEFINITIONS

13.1 In this Agreement, capitalized terms shall have the meanings set out below or the relevant Schedule.

"**Channel Partner**" means any third party authorized by Us to sell licenses to the Services.

"**Confidential Information**" has the meaning set out in clause 5.1.

"**Customer Data**" means any data You provide or We collect on Your behalf to enable for the provision of the Services. For information on the type of data collected, please refer to the applicable Documentation for the Services.

"**Customer Portal**" means the customer portal We may make available to You to manage Your use of

the Services.

"**Data Processing Addendum**" means the data processing agreement as set out on Our website https://assets.red-gate.com/purchase/assets/redgate-data-processing-addendum.pdf;

"**Disclosing Party**" has the meaning set out in clause 5.1.

"**Documentation**" means the technical guides and documentation for the Services available on Our website https://documentation.red-gate.com/home.

"**Evaluation Period**" has the meaning as set out in clause 1.1.

"**Fees**" means the Subscription Fee and/or Renewal Fee and any other fees as set out on Your Redgate invoice.

"**Feedback**" has the meaning set out in clause 5.6.

"**Intellectual Property Rights**" means patents, registered designs, registered trade and service marks, registered copyright and modifications to and applications for any of the foregoing and the right to apply for protection for such registered rights anywhere in the world and inventions, discoveries, copyright, database right, unregistered trade or service marks, brand names or know-how and any similar or equivalent rights whether capable of registration or not arising, applied for or granted worldwide.

"**Initial Subscription Period**" means the initial period agreed with Us (as stated on Our invoice or on Your account page on Our Customer Portal), starting on the Subscription Start Date.

"**Malicious Code**" means any code, scripts, files, software or programs, which prevent, impair or otherwise adversely affect the operation of the Services, including but not limited to worms, trojan horses, viruses and timebombs.

"**Our**", "**Redgate**", "**Us**" and "**We**" means Red Gate Software Limited, a company registered in England with company number 3857576 and registered office at Cavendish House, Cambridge Business Park, Cambridge CB4 0XB, England.

"**Outputs**" means any and all works created by the Services, including but not limited to any integrated AI and/or Third Party AI.

"**Personally Identifiable Data**" means any information relating to an identified or identifiable natural living person.

"**Preview Services**" means any beta version of the Services and/or its features made available to You for evaluation prior to full release.

"**Privacy Notice**" means the document entitled Privacy Notice on Our website https://www.red-gate.com/trust/privacy-notice/.

"**Product Specific Terms**" means the terms applicable to a specific item of the Services as set out on Our website: https://www.red-gate.com/support/license/product-specific-terms/#saas-software;

"**Receiving Party**" has the meaning set out in clause 5.1.

"**Recurring Billing**" means where You have chosen and given Us authority to charge You and take payment for the Services on a recurring basis.

"**Renewal Fee**" means the fees payable by You under this Agreement to Us for the relevant Services during the Renewal Period (excluding VAT and all other relevant taxes, where applicable), as detailed by Us from time to time including through Our website or Our Customer Portal, as part of a written quotation or renewal.

"**Renewal Period**" has the same meaning set out in clause 9.1.

"**Representatives**" means, with respect to a party, that party's and its affiliates, employees, officers, directors, agents, independent contractors, service providers, and legal advisors.

"**Server**" means all or part of an operating system instance, or all or part of a virtual (or other emulated) operating system instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and instances of applications, if any, configured to run on the operating system. There are two types of Server, physical and virtual. A physical hardware system can have one physical Server and/or one or more virtual Servers.

"**Services**" means the software as a service product identified as available for licensing on a subscription basis as "Services" on Our website https://www.red-gate.com/support/license/software-editions/#saas-services, selected by You and licensed to You under this Agreement, but expressly excluding the Third Party Files.

"**Special Category Data**" shall have the same meaning as given under Article 9 of the UK GDPR.

"**Subscription Fee**" means the fee payable by You to Us for the relevant Services during the Initial

Subscription Period (excluding VAT and all other relevant taxes, where applicable), as detailed by Us from time to time including through Our website or Our Customer Portal, as part of a written quotation.

"**Subscription Period**" means the Initial Subscription Period together with any subsequent Renewal Periods.

"**Subscription Start Date**" means the earlier of: (a) the date of the invoice issued to You by Us under this Agreement; or (b) the date You pay the Subscription Fee.

"**Third Party AI**" means any artificial intelligence software, model, service, or functionality that is developed, owned, or operated by an entity other than Redgate, and which may be integrated with, accessed through, or used in conjunction with the Preview Services or Services. This includes, but is not limited to, generative AI models, machine learning algorithms, natural language processing tools, and other AI-based technologies provided by external vendors or platforms. Our current Third Party AI providers can be found on Our website: https://www.red-gate.com/trust/saas-subprocessors.

"**Third Party Files**" means the files identified in the installer, documentation, readmes or notice files for the applicable Services as third party files, including any open source software or third party plug-ins.

"**Third Party Services**" has the same meaning as set out in clause 10.16.

"**UK GDPR**" means Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended from time to time, including as amended by the Data Protection Act 2018.

"**Usage Data**" means the statistical usage data derived from the operation of the Services, including any activity data of Yours and Your employees and the performance results for the Services. This Usage Data shall exclude Your confidential information.

"**You**" and "**Your**", means either: (a) an individual, where such individual uses the Services for their own personal use (also referred to as a "**Consumer**"); or (b) an organization or legal entity whereby an employee or individual contractor of such organization or legal entity uses the Services on behalf of such organization or legal entity.

"**Your Environment**" has the meaning set out in clause 3.1.

Schedule 1

Evaluation Period

1 We grant You the right to use any Services for the applicable Evaluation Period. The length of the Evaluation Period is confirmed on the relevant product page for the applicable Services on Our website. The Evaluation Period may be extended by written agreement with Us.

2 To the extent permitted by law and subject to the other non-excludable rights and remedies You may have under law in relation to the relevant Services, during any Evaluation Period, You hereby agree that any Services are provided AS IS with no representation, guarantee or warranty of any kind as to its functionality, quality, performance, suitability or fitness for purpose. All other terms, conditions, representations and warranties expressed or implied whether by statute or otherwise are hereby expressly excluded.

3 Other than as provided in clause 12.10.2(ii) of this Agreement, We shall not be liable for any claim, damages or other liability arising from or in connection with Your use of any Services during an Evaluation Period.

4 For the avoidance of doubt, during any Evaluation Period: (a) clauses 6.1, 8.3 and 11.2 of this Agreement shall not apply; and (b) clause 11.1 shall apply except that the reference to clause 11.2 is deleted.

5 Before or upon expiry of any Evaluation Period:

(a) if, in Your sole opinion, the Services has met Your requirements, and You wish to continue to use the Services beyond the end of the Evaluation Period, You can decide whether to obtain the equivalent Subscription Fee version. The Evaluation Period shall automatically terminate when You place an order for the Services. Once the appropriate license has been obtained or You have placed Your order, this Agreement shall continue in force (except that this Schedule 1 shall no longer apply).

(b) if You decide that the Services does not meet Your requirements, or otherwise do not wish to enter into a paid up license, then You shall cease use of the Services received from Us or made in connection with this evaluation and all documentation relating thereto. Any rights of Yours to use the Services shall cease.

Schedule 2

Recurring Billing

This Schedule 2 is only applicable where You have chosen to pay for the Services using Recurring Billing.

1 Definitions

"**Billing Account**" means the account number associated with Your billing information and set out within Your Redgate quotes and invoices; and

"**Redgate ID**" means Your user account to Redgate's website (www.red-gate.com), which enables You to access the Customer Portal.

2 Order Placement and Acceptance

2.1 You can sign up for Recurring Billing with Us by:

2.1.1 online via Redgate's website (www.red-gate.com); or

2.1.2 using the payment link on Your Redgate quote or invoice.

2.2 All order details shall be written in English. You can modify Your order details before Redgate's acceptance of Your order by emailing Us at: orders@red-gate.com. English is the preferred language for all order related inquiries.

2.3 **Tax**. Where You are subject to indirect taxes including but not limited to VAT, sales tax, goods and services tax, You shall provide Us with Your valid tax number or if You are exempt from tax, You shall provide us with Your valid tax exemption certificate by emailing Us at: orders@red-gate.com.

2.4 You will be required to sign in to Redgate's website using Your Redgate ID or will be required to create a Redgate ID if You are a new customer.

2.5 If You are new to Recurring Billing, We will ask You to provide Us with Your payment information and authorization to charge You on a Recurring Billing basis. The authorization shall be used to pay Your first Recurring Billing order and any future orders that are applied to Your Billing Account. These payment details shall be used to collect payment either: (a) immediately for Your first Recurring Billing order; or (b) when due for payment as set out on Your Redgate invoice.

2.6 Once Your order is placed You shall receive an email confirming Your order has been placed to the "Bill to" email address on Your Redgate quote or invoice.

2.7 **Acceptance**. Where We have accepted Your order You shall receive an invoice from Us sent to the "Bill to" email address on Your Redgate invoice. You shall be able to access Your license to the Services during the Subscription Term as set out within Your Redgate invoice by logging into the Customer Portal.

3 Payment

3.1 **Payments by credit card**. Redgate accepts major debit and credit cards via Our third party payment gateway provider Stripe. Redgate is not responsible for any payment failure resulting from inaccurate card details provided by You when placing Your order, any restrictions applicable to Your card by Your bank, or payment gateway failure. When processing Your credit card transactions, these details are solely collected by Our third party payment gateway provider, Redgate does not record or access Your card details. Where Your card details have expired, Your new card details will automatically be updated by Stripe.

3.2 **Payments via third parties.** Redgate accepts payment via GooglePay and ApplePay. Your use of any third party payment is subject to Your compliance with the applicable terms of service.

3.3 **Payment by direct debit (UK and EU bank and building society holders only)**. You can set up direct debit Recurring Billing payments online (www.red-gate.com) when placing Your order with Us via Our payment gateway provider Stripe. A direct debit guarantee/mandate is offered by all banks and building societies that accept instructions to pay direct debits. Where there are changes to the amount, payment date or frequency of Your direct debit, We will notify You at least 10 business days in advance of Your designated account being debited. You can cancel Your direct debit at any time by contacting Your bank or building society and by emailing Us at: orders@red-gate.com.

4 Recurring Billing

4.1 Where an individual enters into Recurring Billing, they represent that they have full authority to do so and that they are over 18 years of age.

4.2 You agree that the payment method specified by You for Recurring Billing is and will continue to be linked to an account that You own or are otherwise legally authorized to use, and that You will maintain funds or credit limit in the account linked to Your chosen payment method, as applicable to pay using Recurring Billing.

4.3 **Renewals**. If Your subscription renews in accordance with clause 9.1 of the Agreement, You authorize Redgate to charge Your chosen payment method automatically at the payment due date and amount set out on Your Redgate invoice.

4.4 Where You wish to change the payment method associated with Recurring Billing or have closed Your bank account, please email us at: orders@red-gate.com.

4.5 Where You have signed up to pay Us through Recurring Billing Your payment for all subsequent orders associated with Your Billing Account shall be taken using Your selected payment method, unless You advise Us otherwise in writing by emailing Us at: orders@red-gate.com.

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