

Master Services Terms and Conditions

Puppet, Inc.

1. **SCOPE.** This Master Services Terms and Conditions document states the terms and conditions (“Terms”) under which Puppet delivers consulting, implementation, training, or other professional services (collectively “Services”), and provides related tangible or intangible items (“Deliverables”), to the Customer, including any Customer “Affiliate,” meaning an entity that owns or controls, is owned or controlled by, or is under common control or ownership with Customer) pursuant to one or more electronic or written orders or statements of work signed by the parties or otherwise accepted by Puppet (each, an “SOW”). “Services” and “Deliverables,” however, do not include any software that Puppet licenses under separate agreement and the support and maintenance services related to such software (for example, Puppet Open Source and Puppet Enterprise; such software collectively referred to as “Products”). These Terms prevail over any conflict or inconsistency with any part of an SOW or purchase order (unless expressly stated otherwise in the SOW, which must be signed by Puppet). Any additional provisions that Customer may add to a purchase order or similar ordering document are hereby rejected. Customer accepts these Terms by using the Services.
2. **SERVICES.**
 - 2.1 **Description.** Puppet will provide to Customer the Services and Deliverables in accordance with any specifications or requirements set forth in the SOW (“Specifications”). If Puppet employees or subcontractors (“Personnel”) are working on Customer’s premises, (a) Customer will provide a safe and secure working environment, and (b) Puppet will instruct the Personnel to comply with all of Customer’s reasonable workplace safety and security standards and policies of which Customer notifies Puppet in writing. The parties may change Services or Deliverables only pursuant to a written change order accepted by both parties.
 - 2.2 **Delivery.** Unless otherwise stated in the SOW, all Services and Deliverables are deemed accepted upon delivery.
 - 2.3 **Facilities.** Unless otherwise stated in the SOW, all work will be performed at Puppet’s facility.
 - 2.4 **Personnel.** Puppet will ensure that all Services are performed by competent personnel. Puppet may provide a replacement in the event that the originally assigned personnel becomes unavailable for any period of time. Puppet may engage with subcontractors to perform the Services (and will identify any such subcontractors upon request), and agrees to remain responsible for the subcontractor’s performance of the Services.
 - 2.5 **Rescheduling or Cancellation.** All dates for Services that are confirmed by Puppet are firm unless cancelled or rescheduled under this section. Customer may reschedule or cancel Services by written notice to Puppet, subject to Customer’s payment of the applicable Change Fee, determined as follows: (a) if Puppet receives the notice at least fifteen (15) days prior to the start of the Services, there is no Change Fee; or (b) if Puppet receives the notice inside of fifteen (15) days, the Change Fee is as follows: the sum of (i) any travel change fees or other costs that are not refundable to Puppet plus (ii) if a fixed price SOW, twenty-five percent (25%) (for a rescheduling) or fifty percent (50%) (for a cancellation) of the total fixed price, or if a time and materials SOW, the product of either \$500 (for a rescheduling) or \$1000 (for a cancellation) per consultant assigned to the SOW times the lesser of ten (10) days or the estimated number of days assigned by Puppet to the SOW (calculated as 8 hours per day per consultant). For any rescheduling, the new date must be within twenty (20) business days of the original date, or Puppet may deem the Services to be cancelled and treat the new date as a new SOW, subject to the then-current schedule.
 - 2.6 **Background Checks.** Puppet will perform a criminal background check on all Personnel assigned to work on Customer’s premises, and will not assign any Personnel to perform Services on Customer’s premises if such Personnel has not satisfactorily passed the background check.
 - 2.7 **Assistance.** Customer acknowledges that the timely and successful performance of Services and delivery of the Deliverables requires Customer’s good faith cooperation. Therefore, Customer will (a) timely provide all information that Puppet reasonably requests, (b) provide access to Customer personnel, working space, facilities and records that Puppet reasonably requests, and (c) otherwise timely perform its obligations as necessary to meet the schedule in any SOW. Customer’s failure to comply with these provisions will excuse Puppet from any resulting delay in the Services.
3. **OWNERSHIP OF DELIVERABLES; LICENSES.**
 - 3.1 **Ownership.** Unless otherwise expressly set forth in an SOW, Puppet shall retain all right, title and interest in and to all Deliverables.
 - 3.2 **Deliverables License.** Subject to the provisions of these Terms, including payment, Puppet hereby grants to Customer a license to use and reproduce the Deliverables in connection with the Puppet Products to which they pertain (the “Deliverables License”), for as long as Customer maintains in good standing its license to such Products. Any software that is provided as part of a Deliverable is not considered part of a Product unless specifically agreed by Puppet in the SOW.
 - 3.3 **Customer Materials License.** Should Customer provide Puppet with materials that are subject to Customer’s intellectual property rights (“Customer Materials”), for the duration of the applicable SOW, Customer hereby grants to Puppet a license to use, modify and reproduce the Customer Materials as necessary to perform the Services.
 - 3.4 **Reservation of Rights.** Each party reserves all other right, title and interest in the Deliverables or Customer Materials, as applicable.

4. FEES AND PAYMENT; EXPENSES.

- 4.1 Fees. Customer agrees to pay Puppet the fees for all Services and Deliverables that are stated in an SOW, in accordance with the payment schedule stated in the SOW.
- 4.2 Travel and Expenses. Unless otherwise stated in an SOW, Customer will reimburse Puppet for its reasonable travel expenses that are incurred in accordance with the Puppet Travel Policy.
- 4.3 Payment Terms. Payment of all amounts is due within thirty (30) days of invoice date (unless the SOW specifies otherwise). Customer will pay in currently available funds payable at either the address set forth on the invoice or such other address as Puppet may specify in writing. All amounts payable shall be in the currency of the United States and specifically exclude (and Customer is responsible for) any and all applicable sales, use and other taxes, (other than taxes based on Puppet's income). Overdue amounts are subject to a late payment charge of the lower of (a) one and one-half percent (1.5%) per month and (b) the highest interest rate permitted by applicable law.

5. REPRESENTATIONS AND WARRANTIES.

- 5.1 General. With respect to each SOW, each party represents and warrants that (a) it has the full power and authority to enter into the SOW and to carry out its obligations under these Terms, and (b) it has complied, and will in the future comply, with all applicable laws in connection with the execution, delivery and performance of the SOW.
- 5.2 Performance. Puppet represents and warrants that the Services will be provided in a professional, competent and timely manner, and that any Deliverables, in the form provided by Puppet, will substantially conform to their applicable Specifications. Customer must notify Puppet of any claim that a Service or Deliverable breaches this warranty within thirty (30) days of performance or delivery. Customer's sole remedy, and Puppet's sole liability, for a breach of this warranty is the re-performance of the non-complying Services or the re-delivery of the non-complying Deliverables, in each case at no additional charge.
- 5.3 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5, PUPPET MAKES NO OTHER WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SERVICES AND THE DELIVERABLES, AND DISCLAIMS THE WARRANTIES (WHETHER EXPRESS, IMPLIED OR STATUTORY) OF FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, ACCURACY, NON-INFRINGEMENT, TITLE, MERCHANTABILITY AND THOSE THAT MAY ARISE FROM ANY COURSE OF DEALING OR PERFORMANCE.

6. DURATION.

- 6.1 Duration. These Terms apply for the duration of the SOW. Either party may terminate an SOW if the other party materially breaches these Terms and does not cure the breach within thirty (30) calendar days after receiving written Notice from the non-breaching party. In addition, Puppet may suspend any Services if Customer fails to pay undisputed fees when due by giving Customer five (5) days written notice of the overdue amounts. Customer must use any Professional Services during any time period specified in the SOW or purchase order (or if not specified, within twelve (12) months of the effective date of such SOW or purchase order), or such unused Professional Services will be forfeited and Customer will not be entitled to any refund.
- 6.2 Termination. Upon the termination of any SOW under these Terms, and without prejudice to any other rights or remedies which a party may have, (a) Puppet's obligations to perform the Services and provide Deliverables under the terminated SOW immediately end, (b) within thirty (30) days Customer shall pay to Puppet the full amount of any outstanding fees due and travel expenses incurred for Services performed and Deliverables provided, and (c) each party will within ten (10) days destroy all Confidential Information of such other party within its possession (including deleting it from any computer systems). Provided that Customer has paid in full for the applicable Deliverables, the Deliverables License continues past termination for as long as the Product license to which it pertains. Additionally, the terms of Sections 3, 5.3, 6.2, 7, 8, 10, 11 and 13 shall survive termination for any reason.

7. CONFIDENTIALITY. "Confidential Information" means, with respect to a party, including its Affiliates (the "Disclosing Party"), information that pertains to such party's (or its Affiliates') business, including technical, marketing, financial, employee, planning, product roadmaps, performance results, pricing, prototype products and services, inventions, trade secrets, and other confidential or proprietary information. Confidential Information will be designated and/or marked as proprietary and/or confidential when disclosed, but any information that the party receiving such information (the "Receiving Party") knew or should have known, under the circumstances, was considered confidential or proprietary by the Disclosing Party will be considered Confidential Information of the Disclosing Party even if not designated or marked as such. The Receiving Party shall preserve the confidentiality of the Disclosing Party's Confidential Information and treat such Confidential Information in the same manner that the Receiving Party treats its own Confidential Information, but in any event with at least a reasonable standard of care. The Receiving Party will use the Confidential Information of the Disclosing Party only to exercise its rights and perform its obligations under this Agreement. Confidential Information of the Disclosing Party will be disclosed only to those employees and contractors of the Receiving Party with a need to know such information and who are under a written agreement of non-disclosure and non-use which is no less protective of the Disclosing Party than the terms of this Section 7. The Receiving Party shall not be liable to the Disclosing Party for the release of the Disclosing Party's Confidential Information if such information (a) was known to the Receiving Party on or before the Effective Date without restriction as to use or disclosure, (b) was publicly disclosed without restriction on or before the Effective Date through no fault of the Receiving Party, (c) was independently

Puppet, Inc.

developed by the Receiving Party without use of the Confidential Information of the Disclosing Party, or (d) was disclosed to the Receiving Party more than three (3) years ago. The Receiving Party will not be deemed to have breached this Section 7 if it discloses the Disclosing Party's Confidential Information pursuant to any legal proceeding or as otherwise required by law, subject to the Receiving Party giving all reasonable prior Notice to the Disclosing Party to allow it to seek protective or other court orders to prevent or limit such legally required disclosure, and provided that the Receiving Party uses best efforts to make such disclosure under conditions of confidentiality and otherwise continues to treat such Confidential Information in accordance with this Section 7.

8. INDEMNIFICATION.

8.1 Obligation. Subject to the conditions and exceptions listed below, Puppet will defend Customer and Customer's shareholders, directors, and employees (the "Defendants") against a third party's claim that (a) while performing the Services the negligent or willful acts or omissions of Puppet caused death, personal injury or property damage, or (b) Customer's use of the Deliverables (in the form delivered to Customer and as authorized in this Agreement) infringes or misappropriates the third party's copyright or United States trade secret rights (in each case, a "Claim"); and will further indemnify the Defendants against any damages, fees (including reasonable attorney fees), costs and expenses which are included in a final award, judgment or settlement of a Claim.

8.2 Conditions. Puppet's obligations in Section 8.1 are conditioned on (a) Customer giving Notice to Puppet immediately upon receiving a Claim and providing Puppet with a written copy of the Claim, (b) Customer cooperating with Puppet in the defense or settlement of the Claim, and (c) Customer providing Puppet with all necessary authority for Puppet to defend or settle the claim. Customer may participate in the defense or settlement of the Claim at its own expense. Following Notice of a Claim, or if in its discretion Puppet determines that a Claim is likely, Puppet may, at its sole option, procure for Customer the right to continue to use the Deliverable as furnished, or replace or modify the Deliverable to make it non-infringing, or terminate this Agreement and refund to Customer any amounts that Customer pre-paid for the Deliverable.

8.3 Exceptions. Puppet has no obligation under Section 8.1(a) to the extent that the Claim was the fault of the Defendants, or under Section 8.1(b) with respect to any Claim based upon or otherwise relating to (a) any use of the Deliverable that is not authorized by this Agreement, (b) the combination of the Deliverable with other products, services, equipment, software, or data not supplied by Puppet, (c) any modification of the Deliverable by any person other than Puppet or its authorized agents, (d) any third party software that Puppet included in the Deliverable, (e) any part of a Deliverable that was required by Customer in the SOW (such that there was no non-infringing way to meet the requirement), or (f) continued use of the Deliverable by Customer after Puppet has provided a non-infringing version.

8.4 THIS SECTION REPRESENTS PUPPET'S ENTIRE LIABILITY TO CUSTOMER FOR INDEMNITY OF THIRD PARTY CLAIMS.

9. INSURANCE. Puppet, at its own expense, will maintain for the term of this Agreement appropriate and customary types and amounts of insurance, including Workmen's Compensation at the maximum statutory limit as required for all its employees, liability for bodily injury, and property damage coverage. Upon request, Puppet will provide Customer with necessary documentation, including certificates of insurance, evidencing the required coverage.

10. LIMITATION OF LIABILITY. EXCEPT AS STATED BELOW, EACH PARTY'S LIABILITY TO THE OTHER UNDER THIS AGREEMENT IS LIMITED AS FOLLOWS: (A) NEITHER SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS, LOST DATA OR LOST SAVINGS); AND (B) NEITHER SHALL BE LIABLE TO THE OTHER FOR ANY AMOUNTS IN EXCESS OF THE GREATER OF FIVE HUNDRED DOLLARS (\$500) OR THE AMOUNTS PAID BY CUSTOMER TO PUPPET IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY. THE LIMIT STATED IN (B) WILL NOT APPLY TO ANY UNPAID FEES OR EXPENSES OWED BY CUSTOMER TO PUPPET, AND NEITHER LIMIT APPLIES TO ANY LIABILITY THAT ARISES FROM ANY AMOUNTS TO BE PAID BY PUPPET UNDER SECTION 8.1(A), ANY VIOLATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR BREACHES OF SECTION 7 (CONFIDENTIALITY). THESE LIMITS APPLY REGARDLESS OF THE FORM OF CLAIM (CONTRACT, TORT OR OTHERWISE) AND EVEN IF THIS SECTION IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY. IN SUCH EVENT, LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

11. NON-SOLICITATION. Neither party shall directly or knowingly solicit for employment or employ any employee of the other party who performed Services during the term of the applicable SOW and for a period of one (1) year thereafter. This provision shall not, however, restrict general advertisements of employment or the rights of any employee of one party, on that employee's own initiative or in response to general advertisements, to seek employment from the other party and under such circumstances, for the other party to hire such employee.

12. ASSIGNMENT. Neither party may assign or otherwise transfer an SOW or any of its rights thereunder, nor delegate any of its obligations thereunder, to any third party without the prior written consent of the other party; provided, however, either party may assign any SOW and all of such party's rights and obligations under such SOW to any Affiliate or to any third party which

Master Services Terms and Conditions

Puppet, Inc.

succeeds by operation of law or purchases or otherwise acquires all or substantially all of the assets of such party (whether by way of merger, consolidation, sale of assets, or other corporate reorganization or combination) and assumes such party's obligations hereunder. Any attempted or purported assignment, transfer or delegation without any required consent having first been obtained shall be null and void and a material breach of this Agreement. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

13. GENERAL.

- 13.1 Relationship. The parties acknowledge and agree that the relationship between Puppet and Customer is that of independent contractors and nothing in these Terms or related to the Services performed in connection with any SOW shall be construed to create a partnership, joint venture, agency or employer-employee relationship between Customer and Puppet or any of Puppet's Personnel. Puppet's Personnel shall not be deemed employees or agents of Customer, and Puppet has and hereby retains the right to exercise full control of and supervision over the performance, employment, direction, compensation and discharge of any and all of its Personnel. Puppet shall be responsible for all employment withholding or other tax liability of any kind or nature arising in respect of its Personnel. Puppet abides by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a).
- 13.2 Force Majeure. Each party's failure to perform its obligations under an SOW, except any obligation to pay money, shall be excused to the extent and for the period such performance is prevented by any act or condition beyond the reasonable control of such party, such as any of the following: fire, flood, earthquake, acts of God, explosion, casualty of war, labor dispute, inability to obtain delivery of parts, failure of supplies of electrical power, violence, and any governmental law, order, regulation or ordinance. In such case, the party so affected shall give written Notice to the other party, and shall resume performance promptly after the foregoing condition has abated.
- 13.3 Severability; Waiver. If any part of these Terms is held to be unenforceable, in whole or in part, such holding shall not affect the validity of the other parts of these Terms. The waiver of a breach of any provision of these terms shall not operate or be interpreted as a waiver of any other or subsequent breach.
- 13.4 Notices. All notices that are denoted as "Notice" under these Terms shall be in writing and shall be delivered in person, by fax, overnight courier service or mailed by first class, registered or certified mail, postage prepaid, to the registered agent of the party. Such Notice shall be deemed to have been given effective two (2) days after the date sent. All other notices may be sent via electronic mail as well.
- 13.5 Governing Law; Disputes. The laws of the United States and the State of Oregon govern this Agreement. The parties agree to the exclusive venue and jurisdiction of the state or federal courts located in Multnomah County, Oregon, for any and all disputes, claims and controversies arising from or relating to this Agreement, and each party hereby irrevocably waives any objection to such exclusive jurisdiction. Notwithstanding anything in this Agreement to the contrary, Puppet may seek injunctive or other equitable relief in any court of competent jurisdiction to protect any actual or threatened misappropriation or infringement of its intellectual property rights or those of its licensors, and Customer hereby submits to the exclusive jurisdiction of such courts and waives any objection on the basis of improper venue, inconvenience of the forum or any other grounds. Customer agrees that any breach of the license restrictions or other infringement or misappropriation of the intellectual property rights of Puppet or its licensors will result in immediate and irreparable damage for which there is no adequate remedy at law.