

Master Professional Services Agreement

This Agreement is by and between KERNSHELL TECHNOLOGIES PRIVATE LIMITED, with offices at F/303 Sahjanand Residency, Nr. Saurabh Society, Manav Mandir Char Rasta, Memnagar, Ahmedabad, Gujarat – 380052, INDIA (“Kernshell”) and the company or other legal entity accepting this Agreement or represented by the individual that accepts this Agreement (“Customer”). This agreement governs Customer’s purchase of Kernshell’s Professional Services associated with its proprietary Software and Services and is incorporated into the Master Subscription Agreement, Master Software License Agreement, or other written software license agreement executed by Kernshell and Customer as applicable (each, an “MSA”), between Kernshell and Customer by reference.

The Agreement was last updated on 02-April-2021 and is made effective between Customer and Kernshell as of the date Customer accepts the Agreement (“Effective Date”) by executing an Order Form, MSA or Work Order that references this Agreement. Kernshell may update this Agreement by posting an updated version at <https://www.kernshell.com/terms-and-conditions/> which will be effective as of the date of posting.

DEFINITIONS. In addition to any other terms defined in the MSA (as applicable), the following defined terms will have the following meanings:

“**Professional Services**” means software configuration, development, consulting, or other services performed by Kernshell as identified under a Work Order or Order Form, excluding Customer Support.

“**Work Order**” means the document(s) by which Customer orders the Professional Services, and which are agreed to by the parties in writing and incorporated herein by reference.

“**Work Product**” means any software, documentation or other materials developed and provided to Customer as part of the Professional Services.

1. SERVICES.

1.1. **Description of Professional Services.** Kernshell agrees to provide the Professional Services to Customer as defined in the Work Order or Order Form(s) executed by the parties from time to time. Kernshell has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Professional Services to be performed by Kernshell hereunder unless otherwise provided herein.

1.2. **Limitations of this Agreement.** This Agreement governs Professional Services only and does not grant Customer any rights to use or access the Software or Services, as applicable, which are set forth in the MSA. If Kernshell has commenced Professional Services at Customer’s request in connection with the matters described in any Order Form or proposal for Professional Services, or request for proposal, all provisions of the Agreement as originally proposed by Kernshell shall apply to such activities even if the Order Form has not been formally executed by both parties.

1.3. **Term.** Each Work Order or Order Form entered into shall remain in effect until the Professional Services described therein are completed.

1.4. **Cooperation.** Customer agrees to cooperate with Kernshell and provide Kernshell access to complete and accurate information and data from its officers, agents, and employees; office accommodations and facilities; equipment assistance; and suitably configured technology products in a timely fashion and as reasonably required by Kernshell to perform its duties hereunder. Customer agrees that such cooperation, performance of its responsibilities hereunder and provision of information, data,

accommodations and facilities, equipment assistance, and technology products are essential to Kernshell's ability to perform the Professional Services and that Kernshell shall be entitled to rely on Customer's decisions and approvals in connection with Kernshell's Professional Services. To the extent that the Professional Services require Kernshell to access or use any third party products provided by Customer, Customer warrants that it shall have all rights and licenses of third parties necessary or appropriate for Kernshell to access or use such third party products and agrees to produce evidence of such rights and licenses upon the reasonable request of Kernshell and to indemnify, defend and hold harmless Kernshell and its licensors from and against any claims, actions, demands, lawsuits, damages, liabilities, settlements, penalties, fines, costs and expenses (including reasonable attorneys' fees) to the extent arising from Kernshell's access to or use of such third party products.

- 1.5. **Changes.** If any relevant requirements, project plans, schedules, scopes, specifications, designs, software, hardware products, or related system environments or architecture that are either set forth in a Work Order or Order Form or otherwise necessary to perform the Professional Services are changed by Customer or any other person not authorized by Kernshell, Kernshell shall not be responsible for the change or the completion of Professional Services affected by the change unless Customer and Kernshell specifically consent to the change, scheduling, and additional charges, if any, in writing.
- 1.6. **Requests for acceptance.** Customer has five (5) business days to respond to request for acceptance. If Customer does not identify specific defects in an organized deficiency list within the foregoing time frame, the Work Product is deemed accepted.

2. FEES AND EXPENSES.

- 2.1. **Fees.** Customer shall pay to Kernshell fees for the Professional Services as specified in the applicable Work Order or Order Form in accordance with the terms specified therein. All Professional Services will be provided on a time and materials basis, unless otherwise stated, and any amounts stated as estimates shall be non-binding and shall not constitute either a "fixed fee" or "not-to-exceed" agreement, unless specifically stated to be such. For any Professional Services that Kernshell performs pursuant to the parties' informal agreement or understanding for which fees are not specified on the Order Form, such Professional Services shall be paid for at Kernshell's then-prevailing time and materials rates unless otherwise agreed by the parties in writing.
- 2.2. **Delays.** Any delays in performance of the Professional Services caused by Customer may result in additional charges for resource time.
- 2.3. **Expenses.** Unless otherwise specified in a Work Order or Order Form, Customer shall reimburse Kernshell for out-of-pocket expenses reasonably incurred in rendering the Professional Services, including reasonable travel and transportation expenses, lodging, and meals. In addition, Kernshell will invoice Customer for travel time associated with the Professional Services at a rate of \$110 per hour for the actual time traveled, not to exceed four (4) hours per resource, per session.

3. OWNERSHIP.

- 3.1. **Work Product.** Upon final payment, Customer shall have a perpetual, nontransferable, fully paid-up right and license for Customer's internal business purposes to use, copy, modify and prepare derivative works of the Work Product developed in the course of the Professional Services pursuant to this Agreement and the MSA, whether jointly or individually, subject to Customer's obligation to maintain the confidentiality of same for the benefit of Kernshell. Notwithstanding the foregoing,

where the Work Product consists of a modification, extension, configuration, enhancement, derivative, improvement, Modification, or modification of the Software, Services, or Documentation (each, a “Configuration”), Customer agrees that the software license and ownership provisions and all applicable restrictions contained in the MSA shall govern the use and ownership of such Configurations, and this Agreement does not grant license rights to such Configurations beyond those granted to Customer in the MSA with respect to the Services or Software as applicable. Such Configurations and all Work Product are and shall remain the property of Kernshell, and all intellectual property and other rights, title, and interest therein are hereby assigned to Kernshell, including all rights in copyrights, trade secrets, trademarks, patents, inventions, modifications, enhancements, derivative works, discoveries, processes, methods, designs and know-how, whether or not copyrightable or patentable, pertaining to such Configurations, Work Product and the Professional Services, whether conceived by Kernshell alone or in conjunction with others, all of which constitute Kernshell Confidential Information. Customer acknowledges that Kernshell is in the business of licensing and configuring its proprietary software products for a wide variety of customers and understands that Kernshell will continue these activities. Accordingly, nothing in this Agreement shall preclude or limit Kernshell from providing services or developing, licensing or configuring software or materials for itself or others, irrespective of the possible similarity of such software or materials to Work Product or Configurations developed during the course of the Agreement, nor using for itself or others any knowledge, skills, experience, ideas, concepts, know-how and techniques used or gained in the performance of Professional Services or the development of Work Product or Configurations hereunder or which may be embodied or reflected therein. Kernshell’s rights under this Section 3.1 shall be perpetual and irrevocable.

3.2. **Kernshell Products.** In the course of performance hereunder, Kernshell may use products or materials proprietary to it, including Kernshell software applications (“Kernshell Products”). Such Kernshell Products are Kernshell’s Confidential Information for purposes of the MSA. Customer shall have or obtain no rights in such Kernshell Products other than to use them as authorized by Kernshell from time to time solely for purposes of performing Customer responsibilities hereunder or as otherwise permitted in writing by Kernshell.

4. LIMITED WARRANTY.

4.1. **Warranty.** Kernshell warrants, for Customer’s benefit alone, for a period of 30 days from the performance of Professional Services, (A) that the Professional Services will be performed in a professional workmanlike manner consistent with industry standards; and (B) the Work Product(s) will substantially conform with the descriptions provided for in each Work Order or Order Form. For clarity, the warranty period for any Work Product resulting from the Professional Services will in no event exceed the termination date of the Professional Services. Kernshell does not warrant error-free or uninterrupted operation of any Professional Service or Work Product or that Kernshell will correct all non-conformities.

4.2. **Exclusive Remedy.** Kernshell’s entire liability and Customer’s sole and exclusive remedy for the breach of Kernshell’s warranty obligations in Section 4.1, shall be for Kernshell to use commercially reasonable efforts to reperform the affected Professional Services or, at Kernshell’s option, terminate the Work Order or Order Form and refund to Customer the fees paid for the portion of such Professional Services giving rise to the breach plus any prepaid fees for Services which shall not be provided as a result of termination.

- 4.3. **Notice.** Licensee shall notify Kernshell within the warranty period in writing of the alleged warranty breach and provide Kernshell with a precise description of the problem and all relevant information reasonably necessary for Kernshell in order to rectify such warranty breach.
- 4.4. **Exclusions.** The warranty described in this Section 4 shall not apply (A) if the applicable Work Product is not used in accordance with the applicable Documentation or (B) if the alleged warranty breach is caused by (i) a modification to the Work Product, (ii) Customer, or (iii) any third party software or technology product.
- 4.5. **Disclaimer.** OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 4.1 ABOVE, AND EXCLUDING ANY WARRANTIES EXPRESSLY SET FORTH IN ANY ADDITIONAL TERMS AND CONDITIONS AGREED TO BY THE PARTIES, NEITHER Kernshell NOR ITS LICENSORS, EMPLOYEES, AGENTS, DISTRIBUTORS, MARKETING PARTNERS, RESELLERS, PARENT, OR AFFILIATES OR SUBSIDIARIES MAKE ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS TO CUSTOMER, ANY OF ITS AFFILIATES, OR TO ANY OTHER PARTY WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, OR SERVICES, OR OTHERWISE REGARDING THE AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS EXPRESSLY EXCLUDED AND DISCLAIMED. Kernshell DOES NOT WARRANT THAT THE WORK PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE WORK PRODUCT IS WITHOUT DEFECT OR ERROR, OR THAT THE WORK PRODUCT WILL OPERATE WITH ANY HARDWARE OR SOFTWARE NOT SPECIFIED IN THE DOCUMENTATION.