

The Linux Foundation
Master Training and Certification Agreement

Last updated: March 23, 2020

This agreement (the “Agreement”), by and between The Linux Foundation (“Provider”) and the client identified in a Purchase Form referencing this Agreement (“Client” and, together with Provider, the “Parties”), is dated as of the effective date of the first Purchase Form (“Effective Date”). Client desires to purchase from Provider one or more training courses or certification exams for Client’s employees or contractors from time to time. The Parties desire to set forth the terms and conditions that shall apply to the purchase and delivery of such training courses and certification exams. Accordingly, the Parties agree as follows:

1. The Agreement.

1.1. Structure. The Agreement consists of (A) this Master Training and Certification Agreement (the “MTCA”); and (B) one or more Training and Certification Purchase Forms that are entered into from time to time hereunder (each, a “Purchase Form”). A Purchase Form shall be in the form established by Provider via its online order platform from time to time. If you have executed a separate Master Training and Certification Agreement with Provider, then that separate agreement shall apply rather than the terms herein.

1.2. Purpose. The Parties intend that from time to time during the Term of this Agreement, Client shall purchase from Provider one or more of the following offered by Provider: (a) training courses consisting of previously-created material delivered remotely over the internet (“eLearning Courses”); (b) instructor-led training courses delivered remotely over the internet (“Virtual Courses”); (c) instructor-led training courses delivered in person, on-site at a facility agreed upon by Client and Provider (“Onsite Courses”); and (d) certification exams conducted over the internet (“Certification Exams”). As used herein, “Training Courses” refers to eLearning Courses, Virtual Courses and Onsite Courses, and “Engagement” refers to Training Courses and Certification Exams. This MTCA sets forth the legal terms that shall govern all Engagements. Each Purchase Form shall specify the business terms (including Engagement dates and locations, fees, and requirements) that apply to one or more Engagements.

1.3. Order of Precedence. In the event of a conflict between the provisions of the documents comprising this Agreement, the order of precedence shall be the MTCA, then the Purchase Forms. A provision of a Purchase Form shall not take precedence over a conflicting provision in the MTCA unless it both (a) specifically references the conflicting provision in the MTCA, including the applicable section number; and (b) explicitly states that it is intended to apply notwithstanding that conflicting provision in the MTCA.

2. Term and Termination.

2.1. Term. This Agreement shall commence as of the Effective Date and shall continue until terminated as set forth in this Section 2. Each Purchase Form shall commence on the date set forth therein and shall continue until the Parties’ obligations set forth therein are fulfilled, except as otherwise set forth in this Section 2. If a Purchase Form indicates that it automatically renews, then at the end of each then-current term it will renew and continue for a subsequent renewal term as indicated therein, unless either Party provides written notice of non-renewal at least 30 days prior to the end of the then-current term.

2.2. Termination for Convenience. Either Party may terminate the Agreement upon 30 days’ written notice to the other Party. Termination pursuant to this Section 2.2 shall not affect either Party’s obligations with regards to Purchase Forms entered into prior to the

effective date of such termination, and the Agreement shall continue to apply to all Engagements and all obligations of each Party under such Purchase Forms until completed.

2.3. Termination of Purchase Form for Cause. Either Party may terminate a Purchase Form if the other Party materially breaches its obligations under that Purchase Form and fails to cure such breach within 30 days following written notice thereof. Termination pursuant to this Section 2.3 shall not affect either Party’s obligations with regards to other Purchase Forms or to the Agreement overall.

2.4. Termination of Agreement for Cause. Either Party may terminate the Agreement (including all Purchase Forms hereunder) if the other Party materially breaches the MTCA and fails to cure such breach within 30 days following written notice thereof.

2.5. Suspension during Period of Breach. During any period when Client is in breach of this Agreement and has not yet cured such breach, Provider may in its discretion suspend access to and provision of the Training Courses and Certification Exams to Provider and its Authorized Participants, and withhold any other benefits corresponding to the Engagements, until the breach is cured. Any such suspension shall not affect Client’s obligation to pay the Engagement Fees or other obligations set forth in the Agreement. Upon Client’s cure of all such breaches, Provider will use reasonable efforts to restore access to and provision of the affected Training Courses and Certification Exams, but Provider shall not be required to do so to the extent Provider determines it is impracticable (such as resulting delays and scheduling difficulties for the applicable Engagements).

2.6. Survival. Sections 1, 2.6, 3.1, and 4-9 of the MTCA shall survive termination of this Agreement for any reason. For the avoidance of doubt, Client’s obligations to pay Engagement Fees shall survive expiration of any Purchase Form, and shall survive termination of any Purchase Form or of this Agreement by Provider pursuant to Sections 2.3 or 2.4.

3. Engagements.

3.1. Fees. For each Engagement set forth in a Purchase Form, Client shall pay to Provider the fees set forth on the Purchase Form (each, an “Engagement Fee”).

3.2. Provision of Engagements. In exchange for the payment of the Engagement Fees, and subject to the terms of the Agreement, Client shall receive the corresponding Engagements set forth in the applicable Purchase Form. The Purchase Form shall set forth details such as the number of Authorized Participant seats and the number or choice of Training Course(s) and Certification Exam(s) that are provided thereunder.

3.3. Authorized Participants. As used herein, “Authorized Participant” means an individual who both, at the time of taking any

Training Course or Certification Exam, (a) is employed, or engaged as a contractor, by Client and (b) maintains a valid email address under the Client's corporate domain names that are specified in the corresponding Purchase Form. Provider shall not permit any individual who is not an Authorized Participant to access the Training Courses or Certification Exams or their related Materials, as defined below. As part of the registration for Training Courses and Certification Exams, Authorized Participants may be required to (a) use Provider's online registration system for signing up, using the coupon codes provided or otherwise, and to create a Linux Foundation ID (LFID); and (b) accept Provider's privacy policy and terms and conditions for the applicable Training Course or Certification Exam. Client shall be responsible for the acts and omissions of its Authorized Participants with regards to their conduct in the Engagements, and their use of the provided content of any Training Courses and Certification Exams, including any such written, printed, electronic, audio, or video content (collectively, "Materials").

3.4. Engagement Types. The following terms apply to any Engagements purchased by Participant hereunder, subject to Client's compliance with this Agreement, and during the term and subject to the other quantities and limitations specified in the applicable Participation Form:

3.4(a). eLearning Courses. Provider authorizes Client to provide the eLearning Courses and Materials to Authorized Participants remotely over the internet. The specific details of the eLearning Course Engagement, including the manner in which Provider's and/or Client's respective learning management systems may be used, will be specified in the applicable Purchase Form. Client is responsible for ensuring that Authorized Participants have all necessary equipment and network access to participate in the eLearning Course.

3.4(b). Virtual Courses. An employee or contractor of Provider will provide the Virtual Course classes and Materials to Client's Authorized Participants remotely over the internet, with timing as set forth in the Participation Form. Client is responsible for ensuring that Authorized Participants have all necessary equipment and network access to participate in the Virtual Course.

3.4(c). Onsite Courses. An employee or contractor of Provider will provide the Onsite Course classes and Materials to Client's Authorized Participants at a facility agreed upon by Client and Provider, with location and timing as set forth in the Participation Form. Client will supply the facility and the equipment set forth at <https://training.linuxfoundation.org/about/policies/on-site-training-facility-requirements/> or as may be otherwise indicated by Provider from time to time. If Provider agrees to provide hardware, Client will be liable for any loss or destruction of this equipment and hardware used in connection with the Onsite Course or otherwise.

3.4(d). Certification Exams. Provider will make available to Client coupon codes for use by Authorized Participants that desire to register for a Certification Exam. Coupon codes are subject to any limitations on use (including time limitations) specified in the applicable Participation Form. Client acknowledges and agrees that, as part of the registration for any Certification Exam, the Authorized Participants may be required to accept Provider's terms and conditions for the applicable Certification Exam.

3.5. Client Responsibilities. Without limitation of Client's other responsibilities set forth herein, Client shall be solely responsible for (a) assessing each Authorized Participant's suitability for any Training Course or Certification Exam; (b) ensuring enrollment of its Authorized

Participants in the appropriate Training Courses or Certification Exams; and (c) its Authorized Participants' participation in any Training Course or Certification Exam. Client will not solicit any instructor of a Virtual Course or an Onsite Course for further services for any purpose (including training) other than through Provider, except for routine courtesy and follow-up questions, until the earlier of (i) twelve months after delivery of the applicable Training Course, and (ii) when the instructor ceases to be an employee or contractor of Provider.

4. **Payments.**

4.1. Invoices. Provider or its designee will submit an invoice to Client. Unless otherwise directed by Client, all PO(s), invoices and payments will be issued through the designated invoice and payment system of Client, which Provider will use reasonable efforts to use; provided, that Provider shall not be required to accept any requirements not specified in this Agreement in connection with such system, and Provider may require the use of an alternative invoice and payment process in its discretion.

4.2. Method of Payment. Client may make payment by wire transfer, check, or credit card, or by any alternative method that is approved by Provider. If Client makes payment by credit card, then Provider may charge an additional processing fee.

4.3. Taxes. The Provider operates as a tax-exempt organization in the United States. Client shall be responsible for the payment of all taxes applicable to the Engagement Fees, irrespective of the jurisdiction where such taxes may be levied, excluding only taxes on Provider's net income.

4.4. Payment Due Date. Except where otherwise specified in a Purchase Form, Client shall pay all invoiced Engagement Fees within 30 days following receipt of the invoice. If Client does not pay the Engagement Fees prior to the applicable due dates, Provider may suspend the corresponding Engagement benefits as set forth in Section 2.5 above.

5. **Confidentiality.**

5.1. Confidential Information. As used herein, "Confidential Information" shall include Client's business, financial, and strategic information, which is maintained by the discloser as confidential, and is inadvertently disclosed by Client's Authorized Participants to the instructor during a Virtual Course or an Onsite Course, and which is either (i) identified in writing at the time of disclosure as confidential by an appropriate legend or marking, or (ii) identified orally at the time of disclosure as confidential and then subsequently identified by written notice as confidential within 15 days following such disclosure. Notwithstanding anything to the contrary in this Agreement, "Confidential Information" shall not include anything relating to or pertaining to any contribution (current or future) to any open source or open standards project.

5.2. Obligations. For two years following the applicable Virtual Course or Onsite Course, Provider shall not disclose the Confidential Information of Client to a third party, nor use it for any purpose other than the exercise of its rights and performance of its obligations hereunder.

5.3. Directions to Authorized Participants. The provisions of section 5.2 are subject to Client, prior to each Virtual Course and Onsite Course, instructing its Authorized Participants that they should not disclose any Confidential Information to the instructor.

5.4. Additional Restrictions. Additionally, neither Party may disclose the specific dollar amounts paid by Client to Provider without the specific written authorization from the other Party. The preceding sentence shall not prevent disclosure of such amounts to the Party's directors, advisors and other representatives, or disclosure as necessary to perform the Party's obligations hereunder or as may be required by law.

6. Intellectual Property.

The Materials are protected by copyright and other intellectual property rights. The training materials are provided for individual use by Authorized Participants in the form in which they are provided. Except as otherwise indicated in the Materials themselves, they may not be copied, modified, distributed to anyone other than Authorized Participants or used to provide training to others without the prior written consent of Provider. Open source code incorporated in the Materials may have other copyright holders and is used pursuant to the applicable open source license. Client will inform all Authorized Participants that the Materials incorporate proprietary materials and Client will not remove any proprietary markings on any of the Materials. Any feedback Client or its Authorized Participants might provide to Provider with respect to any Materials will become, as between Client and Provider, the property of Provider, and Client hereby assigns any rights Client might have in any such feedback to Provider.

7. Disclaimer.

PROVIDER MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE ENGAGEMENTS, THE MATERIALS OR THIS AGREEMENT, EITHER TO CLIENT, TO THE AUTHORIZED PARTICIPANTS OR TO ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROVIDER DOES NOT WARRANT THAT THE MATERIALS OR ENGAGEMENTS WILL BE FREE FROM BUGS, DEFECTS, DATA LOSS OR ERRORS, OR WILL BE ACCESSIBLE WITHOUT INTERRUPTION.

8. Limitation of Liability.

NEITHER PARTY SHALL BE LIABLE FOR (1) ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR (2) ANY DAMAGES IN AN AMOUNT EXCEEDING THE ENGAGEMENT FEE FOR THE SPECIFIC ENGAGEMENT TO WHICH THE LIABILITY RELATES, IN EACH CASE WHERE ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE SUBJECT MATTER HEREOF. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF PROVIDER TO CLIENT AND ALL OTHER PARTIES AFFILIATED WITH CLIENT RELATING TO OR ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE EXPENSE OF ANY INDEMNIFICATION OR SIMILAR OBLIGATION, SHALL NOT EXCEED THE AMOUNT INSURED AND ACTUALLY PAID OUT UNDER THE GENERAL COMMERCIAL INSURANCE POLICY OF PROVIDER. THE FOREGOING LIMITATIONS OF LIABILITY ARE AN ESSENTIAL BASIS OF THE DECISION OF PROVIDER TO OFFER THE ENGAGEMENTS, AND SHALL APPLY REGARDLESS OF THE LEGAL THEORY UPON WHICH DAMAGES MAY BE CLAIMED, REGARDLESS OF WHETHER A PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER THE

FOREGOING LIMITATIONS OF LIABILITY CAUSE ANY REMEDY TO FAIL IN ITS ESSENTIAL PURPOSE.

9. Miscellaneous.

9.1. Entire Agreement; Modifications. Each Party acknowledges that they have read this Agreement, understand it and that it is the complete and exclusive statement of their agreement which supersedes any prior agreement, oral or written, between the Parties regarding the Engagements. No modification of this Agreement shall be enforceable against either Party unless in writing signed by such Party.

9.2. Counterparts. This Agreement may be executed in one or more counterparts and may be signed physically or electronically, including via exchange of signed PDF documents. Each counterpart shall be an original, but all such counterparts shall constitute a single instrument.

9.3. Relationship of the Parties. For all purposes of this Agreement, each Party shall be and act as an independent contractor and not as a partner, joint venturer, representative or agent of the other. Neither Party has any authority to act on behalf of or to enter into any contract, incur any liability or make any representation or warranty on behalf of the other Party.

9.4. Governing Law and Jurisdiction. This Agreement shall be governed exclusively by the laws of the State of California, without reference to its principles of conflicts of law, the 1980 United Nations Conventions on Contracts for the International Sale of Goods, or other international laws. The Parties consent to the personal and exclusive jurisdiction of the federal and state courts of California.

9.5. Notices. Any notice under this Agreement shall be given in writing delivered (a) if to Client, to the mailing address or email address set forth in any Purchase Form hereunder; or (b) if to Provider, to The Linux Foundation, 1 Letterman Drive, Building D, Suite D4700, San Francisco, CA 94129, training@linuxfoundation.org. Any such notice shall be deemed to have been delivered and given either (i) on the delivery date if sent by email or if delivered personally to the Party to whom it is directed; (ii) one business day after deposit with a commercial overnight carrier, with written verification of receipt, or (iii) three business days after being mailed by certified mail, postage prepaid, return receipt requested.

9.6. Force Majeure. Either Party will be excused for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, fire, flood, embargo, disaster, pandemic or similar global, national or regional spread of disease, riot, sabotage, failure of the Internet, labor shortage or dispute, or governmental act, provided that the affected Party gives the other Party prompt notice of such cause to the extent practicable.

9.7. Waiver. A Party's failure or delay in exercising its rights under the Agreement shall not operate as a waiver of those rights or constitute a waiver of any prior, concurrent, or subsequent breach.

9.8. Severability. If any provision of the Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of the Agreement shall nevertheless remain in full force and effect.