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**ROBIN SYSTEMS, INC.**  
**Master Services Agreement**

This Master Services Agreement (this “Agreement”) is entered into as of the \_\_\_\_\_, 2022 (the “Effective Date”), as defined below, by and between ROBIN SYSTEMS, INC., a Delaware corporation (“Robin”) and \_\_\_\_\_ a \_\_\_\_\_, with its principal offices located at \_\_\_\_\_ (“Customer”).

**RECITALS**

A. Robin is a developer of virtualization technologies deployed via software products which enable converged infrastructure and clustering and caching across a variety of storage systems and components. Robin offers these products, among other places, through the Google Marketplace under a separate marketplace agreement.

B. Customer has purchased the right to a license to certain products through the Google Marketplace and now desires to redeem this license to use the software and related intellectual property under the terms and conditions set forth below.

**AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Definitions**

(a) “Confidential Information” means data and information of a proprietary or confidential nature disclosed by one party to the other under or relating to this Agreement, including, but not limited to, trade secrets, computer programs, product plans, business strategies, proprietary tools, methodologies, software, and the serial numbers that accompany the Robin Product(s). Confidential Information shall not include (or shall cease to include) data or information that (i) is or becomes generally known to the public on or after the Effective Date, other than as a result of any act or omission of the receiving party; (ii) was rightfully known to the receiving party prior to its receipt from the disclosing party; (iii) is rightfully furnished to the receiving party by a third party without restriction as to use or disclosure; (iv) is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information; or (v) is disclosed with the prior written consent of the disclosing party. Data and information shall be considered to be Confidential Information if (i) designated as such by the disclosing party orally, in writing, or in any other form before the disclosure, or (ii) due to its character or nature, a reasonable person in a like position and under like circumstances as the parties would treat it as secret and confidential.

(b) “Doc Set(s)” means the set(s) of technical documentation which Robin generally makes available, including printed updates, “Read Me” files and release notes available on-line.

(c) “License Term” shall mean the term of the license granted hereunder as set forth on the applicable Order Form. Upon the expiration of the License Term, all of Customer’s rights to use or access the Robin Product(s) shall cease.

(d) “Maximum Cores” means, for the Robin Product(s), the total number of cores for which license fees have been paid as set forth in the Order Form. License fees based on Cores must be paid for each Core where Robin Product(s) are installed. The Maximum Cores for the Robin Product(s) may be increased as set forth in Section 4.

(e) “Order Form” means one or more ordering documents that contain business terms related to Customer’s subscription to use the Robin Products executed by Customer and Google through the Google Marketplace and referencing this Agreement.

(e) “Product Updates” means new versions, updates, bug fixes and enhancements of the Robin Products licensed hereunder and the applicable Order Form that Robin makes available for download, in its sole discretion, from its website during the License Term.

(f) “Robin Product(s)” means the version of Robin software product(s) listed in the applicable Order Form delivered to Customer under this Agreement, consisting of both software and the applicable end user documentation, with the software portion of such product(s) in executable code only. The Robin Product(s) includes any Product Updates provided to Customer under this Agreement.

## 2. RESERVED

## 3. License

(a) License Grant. Subject to the terms and conditions of this Agreement, Robin grants Customer a limited, non-exclusive, non-transferable (except as set forth in Section 17(a)), non-sublicensable (except as set forth in Section 17(a)) right, during the License Term, solely for the internal business purposes of Customer, to:

- (i) reproduce and install the Robin Products on no more than the Maximum Cores;
- (ii) reproduce copies of the Robin Products for backup purposes; and
- (iii) reproduce a reasonable number of copies of Doc Sets for internal use and training, provided all such copies contain the same proprietary notices which appear on the original material provided by Robin.

(b) Limitations. Use of the Robin Products is permitted only by employees and contractors working for the benefit of Customer that are authorized by Customer to use the Robin Products (“Users”). Customer will only use the Robin Products in compliance with the use restrictions specified in the Order Form, including, without limitation, the number of Maximum Cores. Customer may permit its Affiliates’ employees and contractors to serve as Users, provided Customer remains responsible for compliance by such individuals with all of the terms and conditions of this Agreement, and any use of the Robin Products by such individuals shall be for the sole benefit of Customer. An “Affiliate” means any entity under the control of Customer where “control” means ownership of or the right to control greater than 50% of the voting securities of such entity. Customer represents and warrants that it: (i) has the authority to negotiate this Agreement on behalf of each of its Affiliates which will utilize the Robin Products hereunder, and to bind such Affiliates to terms and conditions of this Agreement, and (ii) will be responsible for any breach of the terms and conditions of this Agreement by such Affiliates.

(c) License Restrictions. Except as expressly set forth in this Agreement, Customer shall not (and shall not permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying structure, ideas, or algorithms of the Robin Products (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Robin Products; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Robin Products; (iv) use the Robin Products for the benefit of an unauthorized third party; (v) remove or otherwise alter any proprietary notices or labels from the Robin Products or any portion thereof; (vi) use the Robin Products to build an application or product that is competitive with any Robin product; (vii) interfere with the proper working of the Robin Products; or (viii) bypass any measures Robin may use to prevent or restrict access to the Robin Products (or other accounts, computer systems or networks connected to Robin). Customer is responsible for all of Customer's activity in connection with the Robin Products, including but not limited to handling Customer's data used with the Robin Products.

## 4. RESERVED

## 5. RESERVED

## 6. Responsibilities of Customer

(a) Unauthorized Use or Disclosure. Customer acknowledges that any unauthorized use or disclosure of the Robin Products may cause irreparable damage to Robin. If an unauthorized use or disclosure occurs, Customer will promptly notify Robin and take, at Customer's expense, all steps which are necessary to recover the Robin Products and to prevent its subsequent unauthorized use or dissemination, including availing itself of actions for seizure and injunctive relief. If Customer fails to take these steps in a timely and adequate manner, Robin may take them in its own or Customer's name and at Customer's expense.

(b) Customer Responsibilities. Customer (i) shall use the Robin Products in compliance with all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Robin Products (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws), and (ii) shall not use the Robin Products in a manner that violates any third party intellectual property, contractual or other proprietary rights.

## 7. Ownership.

(a) Ownership of the Robin Products. All rights, title and interest in and to the Robin Products (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the Robin Products provided or developed by Robin) and anything developed or delivered by or on behalf of Robin under this Agreement are owned exclusively by Robin or its licensors. All software which is distributed or otherwise provided to Customer hereunder is licensed and not sold. No rights or licenses are granted except as expressly and unambiguously set forth in this Agreement.

(b) Feedback. Customer may from time to time provide suggestions, comments, information or other feedback with respect to the Robin Products ("Feedback"). For the avoidance of doubt, Feedback will only refer to suggestions, comments or other feedback provided to Robin regarding the Robin Products and will not include information regarding Customer products or services. Robin may want to incorporate this Feedback into its Robin Products and this clause provides Robin with the necessary license to do so. Customer hereby grant to us and our assigns a royalty-free, worldwide, perpetual, irrevocable, fully transferable and sublicensable right and license to use, disclose, reproduce, modify, create derivative works from, distribute, display and otherwise distribute and exploit any Feedback as we see fit, entirely without obligation or restriction of any kind, except that Robin will not identify Customer as the provider of such Feedback.

## 8. Term and Termination

(a) Term. Unless terminated earlier as set forth in this Agreement, the term of this Agreement shall begin on the Effective Date and shall continue until the expiration of all Order Forms. The term of each Order Form shall continue for the initial term specified on the Order Form (the "Initial Term"), and following the Initial Term, shall automatically renew (including all terms and pricing) for additional successive periods of one year each (each, a "Renewal Term") unless either party notifies the other party of such party's intention not to renew no later than thirty (30) days prior to the expiration of the Initial Term or then-current Renewal Term, as applicable.

(b) Termination. Either Robin or the Customer may terminate this Agreement at any time upon thirty (30) days prior written notice if the other party is in material breach of any provision of this Agreement, if such breach is not cured within such thirty (30) day period.

(c) Effect of Termination/Expiration. Upon termination of this Agreement (i) the licenses granted hereunder to Customer shall immediately terminate; (ii) Customer must stop using the Robin Product(s) (and erase and destroy all such copies created in accordance with this Agreement); and (iii) Customer shall immediately remit to Robin any and all fees that have accrued but remain unpaid as of the termination date. Upon termination of the Agreement by Customer for Robin's breach pursuant to Section 8(b), Robin shall refund to Customer the prepaid and unused Fees paid hereunder, on a pro-rated basis.

(d) Survival. Section 8, “*Limited Warranty*”, Section 9, “*Indemnity*”, Section 10, “*Limitation of Liability*”, Section 11, “*US Government Use*”, Section 12, “*Export*”, Section 13, “*Nondisclosure*”, Section 16, “*Notices*”, and Section 17, “*General*” shall survive any termination and expiration of this Agreement.

## 9. Limited Warranty

(a) Limited Warranty. Robin warrants to Customer that: (i) it shall perform all services in accordance with industry standards; (ii), upon the initial delivery of the Robin Product(s) to Customer and for thirty (30) days after the effective date of the applicable Order Form, the Robin Products (in its unmodified form as provided by Robin) shall operate in substantial conformance with the Doc Sets (“*Limited Warranty*”). **Robin does not warrant that the use of the Robin Product(s) will be uninterrupted or error free or that all errors or failures will be corrected.** The Limited Warranty does not apply if failure of the Robin Products has resulted from accident, abuse, misapplication or any problem or error in the operating system software with which the Robin Products operate.

(b) Exclusive Remedy. Robin's sole obligation and Customer's sole and exclusive remedy under any express or implied warranties hereunder (except for Section 8(c)) shall be for Robin, to use commercially reasonable efforts to make modifications and error corrections to bring the Robin Products into conformity with Robin's warranty set forth above.

(c) Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL IMPLIED AND STATUTORY WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED AND DISCLAIMED.

**10. Indemnity.** Robin agrees to defend Customer against, at its own expense, any claim, suit or action brought against the Customer to the extent it is based upon a third party claim that the Robin Product(s) used by Customer in a manner as authorized hereunder infringes any United States patent, copyright or trade secret subject to the following limitations and pay any settlements with respect to the foregoing indemnification obligations that Robin agrees to in a writing signed by Robin's authorized officer or final judgments awarded to the third party claimant by a court of competent jurisdiction.. The foregoing indemnification obligations are conditioned on Customer giving Robin (i) prompt written notice of any action, (ii) sole control over the defense or settlement and (iii) reasonable assistance with regard to the defense or settlement at Robin's expense. Robin shall have no liability under the foregoing indemnity for any claim of infringement to the extent it would have been avoided but for (i) any modification to the Robin Product(s) made by any person or entity other than Robin or its authorized agents, or (ii) the combination, operation or use of the Robin Product(s) with other products or technology not specified by the applicable Doc Set(s) where the Robin Product(s) would not alone be infringing; or (iii) any claim that the Robin Product(s) infringe any patent, copyright or trade secret in which Customer or any affiliate of Customer has an interest or licenses.

Should the Robin Product(s) become, or in Robin's reasonable opinion be likely to become, the subject of any infringement claim or suit, Robin shall, at its sole option, (i) procure for Customer the right to continue using the Robin Product(s) as authorized hereunder, or (ii) modify the Robin Product(s) such that it no longer infringes the proprietary rights of any third party, while maintaining substantially the same functionality of the Robin Product(s). If neither (i) or (ii) are commercially practicable, Robin may terminate this Agreement upon written notice in which case Customer must cease from further using the Robin Product(s) and return all copies of Robin Product(s) to Robin, upon which Robin shall refund to Customer all prepaid and unused Fees paid hereunder to Robin, on a pro-rated basis.

NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY IN THIS AGREEMENT, THIS SECTION 10 STATES ROBIN'S ENTIRE RESPONSIBILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS UNDER THIS AGREEMENT.

**11. Limitation of Liability.** IN NO EVENT SHALL ROBIN BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT

LIMITATION, LOST OR CORRUPTED DATA, LOST PROFITS OR SAVINGS, LOSS OF BUSINESS OR OTHER ECONOMIC LOSS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE RELATIONSHIP OF THE PARTIES, WHETHER OR NOT ROBIN HAS BEEN ADVISED OR KNEW OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION OR THEORY ASSERTED. ROBIN'S MAXIMUM LIABILITY TO THE CUSTOMER ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT THE CUSTOMER PAID ROBIN FOR THE LICENSE AND MAINTENANCE PROVIDED HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO A CLAIM HEREUNDER. CUSTOMER EXPRESSLY AGREES TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION, AND ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THESE LIMITATIONS, THE FEES CHARGED FOR THE LICENSE WOULD BE HIGHER.

**12. US Government Use.** The Robin Product(s) may only be transferred to the U.S. Government with the prior written consent of an officer of Robin and solely with "Restricted Rights", as that term is defined in the Department of Defense ("DOD") Supplement to the Federal Acquisition Regulations ("DFARS") in paragraph 252.227-7202.32 (c)(1) if to the DOD, or, if the Robin Product(s) is supplied to any unit or agency of the US Government other than DOD, the Government's rights in Robin Product(s) shall be no greater than those set forth in FAR 52.227-19(c)(1) or (c)(2), Commercial Computer software - Restricted Rights; or FAR 52.227-14, Rights in General Data Alternative III, as applicable. Contractor: ROBIN SYSTEMS, INC., 830 Hillview Court, Suite 280, Milpitas, California 95035-4564.

**13. Export.** Both parties shall comply with all applicable laws including but not limited to the export control laws of the United States. Customer shall not export or re-export the Robin Products without the appropriate U.S. and foreign government licenses, and Customer shall defend, indemnify and hold Robin and its suppliers harmless from any claims arising out of Customer's violation of such export control laws. By accepting this Agreement, Customer confirms that Customer is not a resident or citizen of any country currently embargoed by the U.S.A. list of embargoed countries is available at the official web site of the Office of Foreign Assets Control of the U.S. Department of the Treasury at: <http://www.treas.gov/ofac/>.

**14. Nondisclosure.** Each party agrees (i) to hold the other party's Confidential Information in strict confidence; (ii) not to disclose Confidential Information to any third parties, except for employees and independent contractors who have a "need to know" and who have signed agreements containing disclosure and use restrictions no less stringent than those set forth herein; and (iii) not to use any Confidential Information for any purpose except as required to perform under this Agreement. This provision shall not prohibit either party from disclosing information to the extent reasonably required by law; provided that the party required to disclose such information shall provide prior notice to the disclosing party of such required disclosure and the opportunity to obtain an appropriate protective or other court order.

**15. Back-Up.** During the License Term, Customer will regularly back-up its computer system(s) on a separate media. Customer acknowledges that any failure to do so may significantly decrease its ability to mitigate any harm or damage arising from any problem or error in the Robin Products or the provision of services under this Agreement.

**16. Audit.** Customer agrees to maintain accurate records of the use of the Robin Products, including but not limited to the number of Cores, quantity of storage, and at Robin's request Customer shall certify the foregoing in writing. Upon reasonable notice and during regular business hours, Robin shall have the right to audit the use of the Robin Products by Customer (and its affiliates and subsidiaries, if applicable) to verify compliance with this Agreement. If an audit reveals any use of the Robin Products that is out of compliance with this Agreement, Customer must promptly correct such error. If the audit reveals unlicensed use of the Robin Products, then Customer shall, within fifteen (15) days, pay to Robin the then-current license for all such unlicensed Cores. If such unlicensed use is greater than 5% more than the Robin Product(s) licensed, Customer agrees to reimburse Robin for its costs and expenses incurred in audit.

**17. Notices.** All legal notices and other communications required or permitted under this Agreement shall be in writing and delivered in person, by United States certified mail, return-receipt requested, by facsimile with

confirmation sheet, or by overnight express mail to the parties at their addresses set forth below or to such other address as either party may so designate in writing at least ten (10) days prior to such notice or communication.

**If to Robin:**

ROBIN SYSTEMS, INC.  
2001 Gateway Place, Suite 340  
San Jose, CA 95110  
Attn: Legal

**If to Customer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**18. General.**

(a) Assignments and Binding Effect. Either party may not sell, transfer, or assign this Agreement without the prior written consent of the other party, except in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of such party's assets. Any act in derogation of the foregoing shall be null and void, and the Customer will remain obligated under this Agreement. This Agreement shall benefit and be binding upon the parties to this Agreement and their respective permitted successors and assigns.

(b) No Implied Waiver. The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.

(c) Use of Trademarks. Robin may, in its advertising, sales literature and other promotional materials, use the trademarks of Customer, subject to compliance with any reasonable guidelines as Customer may adopt from time to time. Upon the termination of this Agreement such right shall cease, and Robin shall destroy all advertising, sales literature and other promotional materials containing trademarks of Customer. Robin hereby acknowledges that Customer is the sole and exclusive holder of all right, title, and interest in and to the trademarks of Customer and Robin does not have and will not acquire any interest in or to the trademarks of Customer as a result of this Agreement or otherwise.

(d) Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.

(e) Governing Law. This Agreement and any disputes arising out of, or related to, this Agreement, its termination or the relationship of the parties will be governed by and construed in accordance with the laws of the State of California, excluding (i) its conflict of laws principles, (ii) the United Nations Convention on Contracts for the International Sale of Goods and (iii) Uniform Computer Information Transactions Act.

(f) Dispute Resolution. Prior to commencing any litigation, the parties agree to seek an amicable settlement of any disputes or claims, provided that either party may commence litigation at any time to avoid prejudice to any rights in equity or law.

(g) Entirety. This Agreement, Order Forms and all Exhibits attached hereto represent and constitute the complete agreement and understanding of the parties with respect to the subject matter herein, and supersedes any other agreement or understanding, written or oral, including any shrink-wrap, click wrap license agreement or purchase order terms, if any, with respect to such subject matter. To the extent of any conflict or inconsistency between the provisions in this Agreement and any other documents or pages referenced in this Agreement, the following order of precedence will apply: (1) the terms of any Order Form (if any), (2) this Agreement and (3) except as expressly stated herein, any other documents or pages referenced in this Agreement.

(h) Modifications. This Agreement may be modified only through a written instrument signed by both parties and may be executed in two or more counterparts, each of which shall be deemed an original and one and the same Agreement.

(i) Counterparts. The parties hereto agree that facsimile signatures on a copy of this Agreement shall be effective and enforceable as if they were original signatures.

(j) Headings. The headings appearing in this Agreement are inserted for convenience only and shall not be used to define, limit or enlarge the scope of this Agreement or any of the obligations herein.

(k) Attorneys' Fees. In any action brought to enforce or interpret this Agreement by a party hereto, the prevailing party in such action shall be entitled to the award of its reasonable attorneys' fees and costs, in addition to such other relief as may be awarded.

IN WITNESS WHEREOF, the parties to this Agreement acknowledge they have read this Agreement and understand and agree to be bound by its terms and conditions and hereby execute it through their duly authorized representatives.

**CUSTOMER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ROBIN SYSTEMS, INC.**

By: \_\_\_\_\_

Name: Anirban (Oni) Chakravartti

Title: SVP, Global Sales\_\_\_\_\_

Date: \_\_\_\_\_