Docker Subscription Service Agreement

Last updated December 10, 2024

This Docker Subscription Service Agreement ("**Agreement**"), by and between the Customer identified on the applicable Order Form and Docker, Inc. ("**Docker**"), shall govern Customer's initial purchase on the Effective Date (set forth on Customer's initial Order Form) as well as any future purchases made by Customer which reference this Agreement. The parties hereby agree as follows:

1. Definitions. Capitalized terms shall have the meanings defined herein.

"Account Owner" means an individual named User of the Service who has been authorized by the Customer to manage the Subscription.

"Add-on Services" means those additional software or services that may be offered in the future as additional software or services at such prices as may be noted by Docker at that time.

"AI Features" shall mean features of the Service enabled by artificial intelligence that are designed to assist Users with analytics, automation, prediction, decision-making or other tasks.

"Customer" or "you" shall mean the entity you represent or, if that does not apply, to you individually.

"Customer Data" means all information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer in the course of using the Service. For avoidance of doubt, Customer Data does not include data and information related to Customer's use of the Service that is used by Docker in an aggregate and/or anonymized manner, including to compile statistical and performance information related to the Service, or any other information reflecting the access and use of the Service by or on behalf of Customer or its Users ("**Usage Data**").

"Data Processing Agreement" means Docker's data processing agreement available at https://www.docker.com/legal/data-processing-agreement.

"Docker Build Cloud" means the hosted cloud service of the Service for building container images.

"Docker Desktop" means the downloadable object-code of the desktop client software component of the Service.

"Docker Hub" means the hosted repository component of the Service for finding and sharing container images.

"Docker Scout" means an added component of the Service used for providing insights and suggestions on improving software supply chain including aspects of security and vulnerability scanning.

"Docker Product Suite" or "Service" means the development, non-production, generally available cloud subscription software products, and downloadable components thereof, ordered by Customer as set forth in an applicable Order Form, including Docker Desktop, Docker Hub, Docker Scout, Docker Build Cloud, Testcontainers Cloud, and any Add-on Services, as well as any updates thereto. Except for certain third-party software expressly set forth in an applicable Order Form, the definition of Docker Product Suite does not include Third-Party Products or content available in a registry or repository via the Service, which are instead subject to the corresponding third-party's license or terms.

"Documentation" means the Service documentation made available by Docker on the Docker website at https://docs.docker.com.

"Entitlements" means the User license quantities, usage minutes, image pull count and storage, and any additional product and usage limits thereto, or support features, included in the Subscription purchased by Customer.

"Evaluation Services" means software or services that are distributed or otherwise made available for Customer to try at its option, at no additional charge, and which are designated as beta, limited release, developer preview, non-production, proof of concept, evaluation, or that are similarly described in the corresponding Order Form, applicable Evaluation Services registration process or Documentation. The terms applicable to such Evaluation Services shall be set forth in an applicable Order Form or addendum to this Agreement.

"Fees" means the corresponding monetary amounts quoted for a non-free of charge Subscription or Entitlement.

"Government Entity" means (1) any federal, national, supranational, state, provincial, Commonwealth, local or foreign or similar government, governmental subdivision, regulatory or administrative body or other governmental or quasi-governmental agency, tribunal, commission, court, judicial or arbitral body or other entity with competent jurisdiction; (2) any entity directly or indirectly owned or controlled by the government or a government organization; (3) any entity created by law or decree; (4) any entity whose principal source of funds comes from the government; or (5) any department, agency, or instrumentality of a public international organization. It is within Docker's sole discretion to determine if an entity is considered a Government Entity under the terms of this definition.

"Marketplace" means a third-party online marketplace such as Amazon Web Services, or other authorized platforms (each, a "Marketplace") through which Customer completes a Service license purchase.

"On-Demand Usage" means usage in excess of the Entitlements' consumption limits included or additionally purchased.

"Open Source Software" means third-party software that is distributed or otherwise made available as "free software", "open source software" or under a similar licensing or distribution model.

"Order Form" means the digital or physical ordering document identifying the products and related Fees as applicable for Customer's purchases from Docker. Order Forms shall be deemed incorporated herein by reference.

"Pricing Page" means the Pricing and Subscriptions page which has a description of the Offering tier of the Service set forth at https://www.docker.com/pricing.

"Public Sector SSA" means the Public Sector Subscription Service Agreement applicable to U.S. Public Sector Customers, available at https://www.docker.com/static/Docker-Public-Sector-SSA.pdf

"Reseller" means a Docker authorized third-party reseller partner.

"Subscription" or **"Offering"** means the level of Entitlements you have ordered from the Service description offerings described on the Pricing Page or an applicable Order Form.

"Subscription Term" means the period of time set forth in the applicable Order Form during which Customer is authorized to use the Service.

"Testcontainers Cloud" means the hosted cloud service of the Docker Product Suite for provisioning disposable, on-demand virtual containers for software development and testing use cases.

"Third-Party Products" means optionable Web-based or downloadable software or services licensed by third-parties and that Docker may make available for Customer to use in conjunction with the Docker Product Suite. Except as otherwise specified in an Order Form, such Third-Party Products shall be subject to the corresponding third-party's license or terms, as applicable.

"User" means an individual authorized by Customer to log into or to otherwise use the Service for Customer's internal business purposes and in accordance with the terms of this Agreement and the applicable Order Form. For paid Offerings, Users may include employees, consultants, contractors, and agents of Customer or its affiliates subject at all times to the license restrictions of this Agreement.

"U.S. Public Sector Customer" means solely with regard to United States Customers, any Government Entity. The term also includes state, local, or public education entities created by the laws (including constitution or statute) of a U.S. state or commonwealth ("SLED").

2. License and Ownership.

2.1 Subject to the terms and conditions of the Agreement and the applicable Order Form, Docker hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable license during the applicable Subscription Term for Customer to permit its Users to: (i) download, install, run, and use Docker Desktop and (ii) access and use Docker Hub, and otherwise access and use the Service, in accordance with the applicable Documentation for Customer's internal business purposes. Customer understands and agrees that Users require a Docker Hub account in order to receive the corresponding access to the Service. Docker owns the Usage Data. Nothing herein will be construed as restricting or prohibiting Docker from utilizing the Usage Data in any way, including to optimize and improve the Docker Product Suite or related Docker services so long as the Usage Data remains aggregated and de-identified, or to enforce this Agreement.

2.2 Customer grants to Docker, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Customer Data, as reasonably necessary for Docker to provide the Service in accordance with this Agreement. Customer will: (a) be solely responsible for the nature, quality and accuracy of the Customer Data, (b) ensure that the Customer Data complies with the terms of this Agreement and all applicable laws, (c) promptly handle and resolve any notices and claims relating to the Customer Data, and (d) ensure that it has the rights to the Customer Data necessary to grant Docker the rights contemplated by this Agreement. Docker has no liability to Customer or any third party as a result of: (i) any unauthorized disclosure or access to an Administrator's or User's account or Customer Data as a result of an Administrator's or User's, misuse of the Service or loss or theft of any Administrator or User password or username, except to the extent resulting from Docker's gross negligence or willful misconduct, (ii) any deletion, destruction, damage or loss of Customer Data caused by, or at the direction of, Customer, or (iii) Customer's failure to maintain adequate security or virus controls in any devices used to access the Service.

2.3 The Service is made available for use or licensed, not sold. Customer acknowledges and agrees that this Agreement does not transfer to Customer any Docker or third-party intellectual property rights. Customer acknowledges and agrees that, as between Docker and Customer, Docker owns all right, title, and interest in and to the Service (including any improvements, modifications, and enhancements thereto), and Docker shall, notwithstanding any other term of this Agreement, remain the owner of the Service. All rights not expressly granted by Docker herein are reserved.

2.4 During the Subscription Term, Docker will provide support for the Service in accordance with the Service Level Agreement & Terms available at

https://www.docker.com/support/, as applicable to the products and support purchased via an Order Form.

2.5 Docker may offer certain product features, APIs, or other components of the Service ("Early Access Products") to you as part of an Early Access Program ("EAP"). Your use of Early Access Products is subject to any additional terms specified by Docker and is only permitted during the limited period we designate (or, if not designated, until terminated in accordance with this Agreement). Docker may modify or terminate your right to use Early Access Products at any time and for any reason in its sole discretion. You understand that Early Access Products are under active development, may be inoperable or incomplete, and are likely to contain more errors and bugs than the generally available features of the Service. Docker makes no representations as to the performance of such Early Access Products nor promises that any Early Access Products will ever be made generally available. All information regarding the features or performance of any Early Access Products is deemed Docker Confidential Information.

3. Subscription Term; Payment.

3.1 The length of the Subscription Term. The Subscription Term will automatically renew for additional 12-month periods unless a party provides at least 30 days' written notice prior to the end of the then-current term that such party does not wish to renew for the upcoming term. In the case of non-renewal by Customer, a notice as found at https://www.docker.com/static/Docker-Notice-of-Non-Renewal.pdf, must be signed and emailed to sales@docker.com no less than 30 days prior to the end of the Subscription Term. Upon renewal, Customer shall pay the subscription Fees set forth in the applicable renewal Order Form. All payment inquiries should be directed to receivables@docker.com.

3.2 For an Offering purchased or otherwise facilitated through our sales team, pricing and other relevant terms will be set forth in the applicable Order Form. Unless stated specifically otherwise on the Order Form, all payments to Docker including for invoiced On-Demand Usage, are due within 30 days of the invoice from Docker to you. Late payments will bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less). In addition to any of Docker's other rights or remedies, Docker reserves the right to disable or suspend Customer's and its User's access to the Service for any failure by Customer to pay due invoices in accordance herein. All payment inquiries should be directed to receivables@docker.com.

3.3 Customer may purchase additional Entitlements as made available by Docker.

3.4. For Customer's purchase of the Services is through a Marketplace or through a Reseller, Customer agrees to pay all fees according to the standard Docker price list found at each Marketplace or Reseller price, including all applicable charges specified for the Service (including any charges for use in excess of authorizations). The Docker price list is exclusive of any customs or other duty, tax, and similar levies imposed by

any authority. Customer understands it will pay the applicable Marketplace or Reseller in lieu of paying Docker directly. Customer's acceptance of the Marketplace or Reseller pricing and terms and conditions shall bind Customer to the obligations of this Agreement and any applicable Order Form. If Customer purchases through a Marketplace or Reseller, Customer will be responsible for full payment of the fees for the Subscription Term, regardless of usage, payment or billing terms between Customer and the Marketplace or Reseller.

3.5 Except as otherwise expressly set forth in this Agreement, all payments by Customer hereunder are non-refundable and shall be made free and clear of and without reduction for all applicable withholding, sales or use, goods and services, value- added, consumption or other similar fees or taxes imposed by any government (other than taxes on the net income of Docker), which shall be paid by Customer. Accordingly, if you are required to withhold any taxes on the amounts payable to Docker hereunder, you shall pay Docker such additional amounts as are necessary to ensure receipt by Docker of the full amount that Docker would have received but for the deduction on account of such withholding. You shall provide Docker with official receipts issued by the appropriate governmental agency, or such other evidence as is reasonably requested by Docker to establish that such taxes have been paid. Where applicable law requires you to self-assess or reverse-charge any taxes, you shall be responsible for complying with such law. In such a case, you undertake to provide Docker with your valid VAT registration number that is relevant to the Service provided under the terms of this Agreement. The amounts of any taxes required to be paid by Docker will be added to Docker's invoice, and you shall promptly remit such amounts to Docker, as the collection agent, upon invoice. Docker reserves the right to disable your access to the Service for any failure to pay or any late payment.

4. License Limitations; Use Restrictions.

4.1 General License Limitations.

(a) Customer's license to use the Service may subject to certain general restrictions and limitations depending on the Offering Customer has chosen, including but not limited to quantity of data stored, age of data stored, pull rate (defined as the number of requests per hour to download data from Docker Hub), the number of image autobuilds or the number of collaborators on an account, as set forth on the applicable Order Form or Documentation. Personal Offerings are limited to: (i) use by an individual developer for personal use to develop Open Source Software or free applications as further restricted under this SSA, and/or (ii) use by members of an educational organization enrolled in a classroom learning environment solely for academic or research in not for-profit projects, or contributions to Open Source Software. Docker reserves the right to determine whether any use under the Personal Offering is allowed.

(b) Customer agrees that it is responsible for Customer's and its Users' conduct while accessing or using the Service and for any consequences thereof. Customer agrees to use the Service only for purposes that are legal, proper and in accordance with this Agreement, the Order Form, and any applicable laws or regulations.

(c) Customer and its Users shall not, and shall not encourage any third party to: (i) modify, adapt, alter, translate, or create derivative works of the Service; (ii) reverse-engineer, decompile, disassemble, or attempt to derive the source code for the Service, in whole or in part, except to the extent that such activities are permitted under applicable law; (iii) distribute, license, sublicense, lease, rent, loan, or otherwise transfer the Service to any third party other than to Users; (iv) remove, alter, or obscure in any way the proprietary rights notices (including copyright, patent, and trademark notices and symbols) of Docker or its licensors or suppliers contained on or within any copies of the Service; (v) use the Service for the purpose of creating a product or service competitive with the Service; (vi) remove, minimize, block or modify any notices of Docker or its licensors or suppliers in the Service; or (vii) use the Service other than as described in the applicable Documentation or for any unlawful purpose. Customer acknowledges that while Customer is permitted to use Docker Desktop on a virtual machine, as of the Effective Date of this Agreement, such use is an unsupported configuration.

(d) The Service may include an image vulnerability scanning feature that will scan the images that Customer specifies, which may be based upon code Customer authored or code of others, and may generate vulnerability reports or other information for Customer. The data that supports this feature may be provided by a third party and Customer agrees and understands that any reports or other information that Customer receives from Docker (directly or indirectly) about possible vulnerabilities are not guaranteed to be comprehensive, and there can be no assurance that every fault or vulnerability is discovered in a particular image. Customer agrees that the Service should not be used as the basis to deploy systems that must be hardened or highly secure, or involve mission-critical business operations, the operation of nuclear facilities, aircraft navigation, important communication systems, medical devices, air traffic control devices, real time control systems or other situations in which an inaccuracy or error in a report or in the service could lead to death, personal injury, or physical property or environmental damage.

4.2 Specific License Limitations for Standalone use of Docker Desktop.

(a) The use of Docker Desktop without a paid Subscription, is further restricted (i) to your use for a non-commercial open source project and/or (ii) use in a commercial undertaking with fewer than 250 employees and less than US $10,000,000 (or equivalent local currency) in annual revenue. Government Entities shall not use Docker Desktop or access other Entitlements of the Service without purchasing a Subscription.

4.3 Use Restrictions. Customer and its Users may not and may not allow any third party to:

1. Send, upload, distribute, or disseminate or offer to do the same with respect to any defamatory, harassing, abusive, fraudulent, obscene or otherwise objectionable content;

2. Distribute malware, viruses, worms, defects, Trojan horses, corrupted files, hoaxes, or any other items of a destructive or deceptive nature;

3. Impersonate another person (via the use of an email address or otherwise) or otherwise misrepresent yourself or the source of any content;

4. Upload, post, transmit or otherwise make available through the Service any content that infringes any patent, trademark, copyright, trade secret or other proprietary right of any third party;

5. Upload, post, transmit or otherwise make available through images any Personally Identifiable Information (PII), trade secrets or sensitive or confidential information in violation of contractual, professional or other similar obligations. This includes tokens, keys and credentials;

6. Utilize secrets such as tokens, keys, credentials and other sensitive data in Docker command lines, other Docker coding tools, and builds launched to Docker Build Cloud;

7. Download any content posted by another user that you know, or reasonably should know, that cannot be legally distributed in such a manner;

8. Submit content that falsely expresses or implies that such content is sponsored or endorsed by Docker;

9. Interfere with other users' enjoyment of the Service;

10. Access the Service for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Services

or exploit the Service for any unauthorized commercial purpose, including without limitation mirroring or replicating content for a commercial service;

11. Modify, adapt, translate, or reverse engineer any portion of the Service, unless authorized by Docker;

12. Remove any copyright, trademark or other proprietary rights notices contained in or on the Service or any content posted thereon;

13. Reformat or frame any portion of the web pages that are part of the Service's administration display;

14. Use the Service in connection with illegal peer-to-peer file sharing;

15. Display any content on the Service that contains any hate related or violent content or contains any other material, products, or services that violate or encourage conduct that would violate applicable laws;

16. Use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the Service or the content posted thereon or to collect information about its users for any unauthorized purpose;

17. Create user accounts under fraudulent pretenses;

18. Use a service account or a Docker account created under a personal or other email domain not authorized by the Customer pursuant to this Agreement and an applicable Order Form;

19. Use of no-fee accounts to provide any services to your employer and/or any commercial entity or receive such services.

20. Use the Service, or any interfaces provided with the Service, to access any Docker product or service in a manner that violates this Agreement;

21. Mine cryptocurrency using computing resources of the Service or any other Docker computing resources; or load cryptocurrency mining code, scripts or malware into any Service or any other Docker computing resources;

22. Transfer excessive amounts of data while using the Service. If Docker determines that Customer's bandwidth usage is significantly higher compared to other users

of similar features, it may result in potential throttling or On-Demand Usage charges; or

23. Consume excessive amounts of public data storage when using the Service. Docker may suspend Customer's or a User's access to and/or account for the Service, or remove, disable, or delete any Customer Data if Docker reasonably believes there has been a violation of this Section 4.3. Docker agrees to provide Customer with reasonable notice of any such suspension disablement, or deletion before its implementation unless immediate suspension, disablement, or deletion is necessary to comply with legal process, regulation, order, or prevent imminent harm to the Service or any third party, in which case Docker will notify Customer to the extent possible and/or allowed by applicable law. If Docker suspends Customer's right to access or use any portion of the Service, Customer remains responsible for all fees incurred prior to the suspension and Customer will not be entitled to any credit or refund.

4.4 Usernames.
(a.) Docker reserves the right to reclaim usernames on behalf of businesses or individuals that hold legal claims or trademarks to those usernames. Users of business names and/or logos that may be considered misleading to others may be permanently suspended. Docker also reserves the right to reclaim usernames using Docker trademarks or usernames that violate our trademark guidelines, available at https://www.docker.com/legal/trademark-guidelines/, which are hereby incorporated into this Agreement by reference.
(b.)Customer and its Users shall not engage in username squatting. Users with an account that is inactive for more than 6 months may be terminated at Docker's discretion and without further notice. Docker takes into account several factors when determining what conduct is considered to be username squatting including, without limitation: (i) the number of accounts created; (ii) creating accounts for the purpose of preventing others from using those account names; and (iii) creating accounts for the purpose of selling those accounts. Customer and its Users shall not buy or sell usernames.

5. Customer Data.
Docker acknowledges that, as between Docker and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to Customer Data.

Customer hereby grants to Docker a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data solely as may be necessary for Docker to provide the Service including updates and upgrades thereto. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and completeness of all Customer Data. In the event Customer Data includes any personal information, Docker will process such information in accordance with its Data Processing Agreement. Docker may delete Customer's usage history and data files older than 12 months or within 90 days of the termination of this Agreement.

6. AI Features.

Customer's use of AI Features where available, will be solely at Customer's discretion. The Service may be used without enabling the AI Features except as otherwise specified in the Documentation. Docker will not use Customer's Data to train artificial intelligence models without the Customer's express consent at the Administrator-level of authority.

7. Open Source Software.

Any part of the Service that contains or utilizes Open Source Software is distributed and made available under the terms of the open source license agreements referenced in the applicable distribution or the applicable help, notices, about or source files or Documentation. Copyrights and other proprietary rights to the Open Source Software are held by the copyright holders identified in the applicable distribution or the applicable help, notices, about or source files or Documentation. The Service shall not include any code licensed under any "viral" or "copyleft" license.

8. Records and Audit.

Customer shall establish and maintain complete and accurate records related to Customer and its Users use of the Service, and any such other information as reasonably necessary for Docker to verify compliance with the terms of this Agreement and any applicable Order Form. Upon at least ten (10) days' prior notice to Customer, Docker or its representative may inspect such records to confirm Customer's compliance with the terms of this Agreement and any applicable Order Form. If Customer's records or Docker's Service records reveal that Customer or Customer's Users have exceeded their permitted use of the Service, Docker may invoice Customer for any past or ongoing underpaid amounts resulting from such excess use and Customer will promptly pay Docker such amounts upon receipt of invoice. This remedy is without prejudice to any other remedies available to Docker at law or equity or under this Agreement. To the extent Docker is obligated to do so, Docker may share audit results with certain of its third-party licensors or assign the audit rights specified herein to such licensors.

9. Term and Termination.

This Agreement commences on the Effective Date and will remain in effect until it is terminated in accordance with the terms herein. Either party may terminate this

Agreement and any Order Form if the other party materially breaches the terms and conditions of this Agreement and fails to cure such breach within 30 days of receiving written notice thereof. If there are no outstanding Order Forms, either party may terminate this Agreement upon at least 30 days' prior written notice to the other party. Upon the expiration or termination of this Agreement or an applicable Order Form, the license to the Service will automatically terminate and Customer will discontinue all use of the Service. Sections 4.4, 5, 8, 10, 11, 13, and 15 shall survive any termination or expiration of this Agreement or any Order Form.

10. Feedback.

Upon submitting any Customer or User suggestions, proposals, ideas, recommendations, bug reports, ideas, improvements or other feedback regarding Docker's products and services ("**Feedback**"), Customer grants to Docker a royalty-free, fully paid, sub-licensable, transferable, non-exclusive, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import, and otherwise exploit feedback (including by incorporation of such feedback into the Docker Desktop, Docker Hub, the Service, and any other Docker services) without restriction. Feedback expressly excludes any Customer Confidential Information and Customer Data.

11. Confidentiality.

11.1 Definition. "**Confidential Information**" means any information disclosed by one party ("**Discloser**") to the other ("**Recipient**"), directly or indirectly, in writing, orally or by inspection of tangible objects, which is designated as "Confidential," "Proprietary" or some similar designation, or learned by Recipient under circumstances in which such information would reasonably be understood to be confidential.

11.2 Exceptions. The confidentiality obligations in this Section 11 shall not apply with respect to any information which Recipient can demonstrate: (a) was in the public domain at the time it was disclosed to Recipient or has become in the public domain through no act or omission of Recipient; (b) was known to Recipient, without restriction, at the time of disclosure as shown by the files of Recipient in existence at the time of disclosure; (c) was disclosed by Recipient with the prior written approval of Discloser; (d) was independently developed by Recipient without any use of Discloser's Confidential Information; or (e) became known to Recipient, without restriction, from a source other than Discloser without breach of this Agreement by Recipient and otherwise not knowingly in violation of Discloser's rights.

11.3 Restrictions on Use and Disclosure. Recipient agrees not to use Discloser's Confidential Information or disclose, distribute, or disseminate Discloser's Confidential Information except in furtherance of the performance of its obligations or enforcement of its rights hereunder or as otherwise expressly agreed by Discloser in writing. Recipient agrees to restrict access to such Confidential Information to those employees, agents, contractors, or consultants of Recipient who need to know such Confidential

Information for performing as contemplated hereunder and are bound by confidentiality obligations no less protective than those contained in this Agreement. Recipient shall exercise the same degree of care to prevent unauthorized use or disclosure of Discloser's Confidential Information to others as it takes to preserve and safeguard its own information of like importance, but in no event less than reasonable care.

11.4 Compelled Disclosure. If Recipient is compelled by a court or other competent authority or applicable law to disclose Confidential Information of Discloser, it shall, to the extent permitted by applicable law, give Discloser prompt written notice and shall provide Discloser with reasonable cooperation at Discloser's expense so that Discloser may take steps to oppose such disclosure or obtain a protective order. Recipient shall not be in breach of its obligations in this Section 11 if it makes any legally compelled disclosure provided that Recipient meets the foregoing notice and cooperation requirements.

11.5 Injunctive Relief. Recipient acknowledges that breach of the confidentiality obligations may cause irreparable harm to Discloser, the extent of which may be difficult to ascertain. Accordingly, Recipient agrees that Discloser may be entitled to seek immediate injunctive relief in the event of breach of an obligation of confidentiality by Recipient, and that Discloser shall not be required to post a bond or show irreparable harm in order to obtain such injunctive relief.

11.6 Return of Confidential Information. As between the parties, Confidential Information shall remain the property of the Discloser. At any time, upon Discloser's reasonable request, Recipient shall promptly (and in any event within 30 days) return to Discloser or destroy, at the election of the Discloser, any Confidential Information of the Discloser in Recipient's possession. In addition, within 30 days after termination of this Agreement, Recipient shall (i) promptly return all tangible materials containing such Confidential Information to Discloser, (ii) remove all Confidential Information (and any copies thereof) from any computer systems of the Recipient and confirm in writing that all materials containing Confidential Information have been destroyed or returned to Discloser, as applicable, by Recipient. Recipient shall cause its affiliates, agents, contractors, and employees to comply with the foregoing.

12. Security

Docker will maintain reasonable administrative, physical, and technical security measures consistent with applicable law and current prevailing security practices and that are intended to protect against the loss, misuse, unauthorized access, alteration or disclosure of Customer's Data or the Service. Such additional measures will include compliance with the Security and Privacy Guidelines available at https://www.docker.com/trust/. Docker shall notify Customer of any confirmed security breach as soon as reasonably possible thereafter but in any event within seventy-two (72) hours of a breach involving Customer Data.

13. Warranty Disclaimer.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CUSTOMER UNDERSTANDS AND AGREES THAT USE OF THE SERVICE IS AT CUSTOMER'S SOLE RISK AND THAT THE SERVICE AND DOCUMENTATION IS PROVIDED "AS IS" AND "AS AVAILABLE." DOCKER, ITS SUBSIDIARIES, AND ITS AFFILIATES MAKE NO EXPRESS WARRANTIES AND DISCLAIM ALL IMPLIED WARRANTIES REGARDING THE SERVICE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, TOGETHER WITH ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE IN TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM DOCKER OR ELSEWHERE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DOCKER AND ITS SUBSIDIARIES AND AFFILIATES DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, OR (B) CUSTOMER'S USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL EXCLUDE OR LIMIT DOCKER'S WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THE SERVICE IS NOT DESIGNED, INTENDED OR WARRANTED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. DOCKER DOES NOT WARRANT ANY THIRD PARTY PRODUCTS OR SERVICES.

14. Indemnification.

14.1 By Docker. Subject to the limitation on liability set forth in Section 15, Docker shall defend at its own expense any legal action brought against you to the extent that it is based on a claim or allegation that the Service (excluding any Open Source Software) infringes a U.S. patent or copyright of a third party, and Docker will pay any costs and damages awarded against you in any such action, or agreed to under a settlement signed by Docker, that are attributable to any such claim but shall not be responsible for any compromise made or expense incurred without Docker's consent. Such defense and payments are subject to the conditions that you (a) give Docker prompt written notice of such claim, (b) tender to Docker sole control of the defense and settlement of the claim, and (c) reasonably cooperate with Docker when requested in connection with the defense and settlement of the claim. Docker will have no liability to so defend and pay for any infringement claim to the extent it (i) is based on modification of the Service other than by Docker, with or without authorization; (ii) results from your failure to use

an updated version of the Service; or (iii) is based on the combination or use of the Service with any software (including, without limitation, Open Source Software), program or device not provided by Docker if such infringement would not have arisen but for such use or combination; or (iv) results from use of the Service by you after the license was terminated.

14.2 Limitation on Infringement Claims. Docker will have no liability to Customer Indemnitees or any obligations under this Section 14 to the extent a claim arise out of: (a) the modification of any portion of the Service by any party other than Docker or its authorized representatives; (b) the combination, operation, or use of any Service with other product(s), data, third party software, or services where the Service would not by itself be infringing; (c) the continued use of the allegedly infringing Service after being notified of the infringement claim or after being provided a modified version of the Service by Docker to address any alleged infringement; or (d) the failure to use the Service in accordance with the applicable Documentation or outside the scope of the rights granted under this Agreement. Should the Service, or the operation thereof, become or in Docker's opinion be likely to become, the subject of such claim described in Section 14.1, Docker may, at its option and expense, (i) procure the right for Customer to continue using the Service, or (ii) replace or modify the Service so that it becomes non-infringing. If neither (i) or (ii) are reasonably practicable, Docker may terminate the applicable Order Form and refund to Customer any pre-paid, unused Fees paid by Customer corresponding to the unused period of the Subscription Term. **THIS SECTION 14 STATES DOCKER'S SOLE AND EXCLUSIVE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.**

14.3 By Customer. Customer shall defend and hold Docker and its affiliates, officers, directors, agents, and employees ("**Docker Indemnitees**") harmless against any third party claims and actions arising from (a) an allegation that Customer Data infringes the intellectual property rights of any third party, and (b) any use by Customer or its Users of the Service in violation of the license restrictions in Section 4.3 of this Agreement or violation of applicable laws, rules or regulations in connection with the Service, and shall indemnify the Docker Indemnitees against any damages, judgments, litigation costs including any reasonable attorneys' fees.

14.4 Procedure. The party seeking indemnification will notify the indemnifying party promptly of any claim or action covered by this Section 14. The parties agree to reasonably cooperate during such proceedings. The indemnifying party will have the right to defend any such claim and will have control over the litigation, negotiation, and settlement of any such claim, provided it will not make any settlement of a claim that results in any liability or imposes any obligation on the indemnified party without the

prior written consent of such party, which will not be unreasonably withheld. The indemnified party may, at its sole expense, participate in the defense of any claim.

15. Limitation of Liability.

15.1 Exclusion of Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT DOCKER, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL IN NO EVENT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, GOODWILL, LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, OR INTERRUPTION OF BUSINESS) ARISING FROM THIS AGREEMENT, WHETHER UNDER THEORY OF CONTRACT, TORT, INCLUDING NEGLIGENCE, OR OTHERWISE, EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

15.2 Liability Cap. THE TOTAL LIABILITY OF DOCKER ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE RELEVANT SERVICE UNDER THE APPLICABLE ORDER FORM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

16. Export Restrictions.

Customer understands that the Service is subject to United States export controls administered by the United States Department of Commerce and the United States Department of Treasury Office of Foreign Assets Control. Customer acknowledges and agrees that the Service may not be used, transferred or otherwise exported or re-exported to countries as to which the United States, maintains an embargo (collectively, "**Embargoed Countries**"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Entity List, Denied Persons List, or Unverified List, or the U.S. Department of State's Nonproliferation Sanctions list (collectively, "**Designated Nationals**"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Customer agrees to comply with all United States export laws and assumes sole responsibility for obtaining United States government export licenses to export or re-export as may be required. Customer will defend, indemnify, and hold Docker and its licensors harmless from and against any liabilities arising from Customer's or any of its officers, directors, employees, agents, or representatives violation of such laws or regulations.

17. U.S. Public Sector Users.

Any U.S. Public Sector Customers are subject to the Public Sector SSA.

18. Governing Law and Jurisdiction.

The Agreement and all of its Order Forms will be governed as follows:

For Docker Personal and any other no-fee Offering accounts:

Governing law:	Courts with exclusive jurisdiction:
The laws of the State of California and controlling United States federal law.	The state and federal courts located within the county of Santa Clara, California. Any dispute, controversy or claim arising under, out of or relating to this Agreement, will be finally determined by arbitration conducted by JAMS (or, if unavailable, then such other similar group that can provide former judges as arbiters) in accordance with the Rules of Arbitration of the International Chamber of Commerce applicable to commercial disputes by a single arbiter who is (a) fluent in written and spoken English, the language governing this Agreement, and (b) skilled and experienced with cloud or internet services. The place of such arbitration will be in Santa Clara County, California, U.S.A. The judgment of the arbitrator will be final, non-appealable (to the extent not inconsistent with applicable law) and binding upon the parties, and may be entered in any court of competent jurisdiction. The foregoing does not limit or restrict either party from seeking injunctive or other equitable relief from a court of competent jurisdiction.

For all Offering accounts subject to a fee the Agreement will be governed as follows based on the Customer's place of domicile:

Customer's domicile:	Governing law:	Courts with exclusive jurisdiction:

In the Americas, Asia Pacific, India, Israel and any other region other than as specified below.	The laws of the State of California and controlling United States federal law.	The state and federal courts located within the county of Santa Clara, California. Any dispute, controversy or claim arising under, out of or relating to this Agreement, will be finally determined by arbitration conducted by JAMS (or, if unavailable, then such other similar group that can provide former judges as arbiters) in accordance with the Rules of Arbitration of the International Chamber of Commerce applicable to commercial disputes by a single arbiter who is (a) fluent in written and spoken English, the language governing this Agreement, and (b) skilled and experienced with cloud or internet services. The place of such arbitration will be in Santa Clara County, California, U.S.A. The judgment of the arbitrator will be final, non-appealable (to the extent not inconsistent with applicable law) and binding upon the parties, and may be entered in any court of competent jurisdiction. The foregoing does not limit or restrict either party from seeking injunctive or other equitable relief from a court of competent jurisdiction.
In the European Union, the European Economic Area, Switzerland, Africa or the Middle East (other	The laws of the Netherlands.	The courts of Utrecht, albeit not until the parties have pursued the IT Mediation Regulations of the Stichting Geschillenoplossing Automatisering (SGOA) in The Hague. The parties agree to participate in the mediation in good faith, and to share its costs equally.

than Israel).		
In the United Kingdom.	The laws of England and Wales.	Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.

The parties agree that the Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods will not apply to this Agreement.

19. Miscellaneous.

19.1 Assignment. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld), provided that Docker may assign this Agreement, without Customer's consent, to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

19.2 Legal Notices. Any notices hereunder must be in writing. Docker may provide notice to Customer through Customer's signup email address, the address provided in the applicable Order Form, customer's account or in-product notifications. Customer agrees that any electronic communication will satisfy any applicable legal communication requirements, including that such communications be in writing. Any notice to Customer will be deemed given upon the first business day after Docker sends it. You will provide notice to us by mail to: Docker, Inc. **3790 El Camino Real Ste. 1052 Palo Alto, CA, 94306-3314**, Attn: Legal Department, with an email copy to Legal@docker.com.

19.3 Changes to the Terms. Docker may modify these terms from time to time, with notice to Customer in accordance with Section 19.2 (Legal Notices) or by posting the

modified terms on our website. Together with notice, we will specify the effective date of the modifications.

19.4 Contractual Relationship. The parties are independent contractors. This Agreement shall not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties.

19.5 Integration and Order of Precedence. This Agreement, including all Order Forms, constitutes the entire agreement between Customer and Docker concerning the subject matter of this Agreement and it supersedes all prior and simultaneous proposals, agreements, understandings, or other communications between the parties, oral or written, regarding such subject matter. The terms of an Order Form will prevail over the general terms herein only if such Order Form expressly references this Agreement, the intent to prevail over this Agreement, and is signed by authorized signatories of both Docker and Customer. Section headings are for convenience only and shall not affect interpretation of the relevant section. No provision of any purchase order or other form employed or provided by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will continue in full force and effect.

19.6 Force Majeure. Except for the inability to meet financial obligations, neither party will be liable for failures or delays in performance due to causes beyond its reasonable control, including, but not limited to, any act of God, fire, earthquake, flood, storm, natural disaster, computer-related attacks, hacking, internet service provider failures or delays, accident, pandemic, labor unrest, civil disobedience, act of terrorism or act of government (each a "Force Majeure Event"). The parties agree to use their best efforts to minimize the effects of such failures or delays. For the avoidance of doubt, Customer understands that the Service may not be provided in countries listed in the Office of Foreign Assets Control sanction list and Customer's access to the Service may be restricted in such countries. Such prohibitions shall not constitute a Force Majeure.

19.7 Non-waiver. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived.

19.8 Third-party Beneficiaries. Nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of this Agreement.