



Docker Public Sector Subscription Service Agreement

Last updated December 12, 2023

This Public Sector Subscription Service Agreement (“Agreement”), by and between the Public Sector Customer identified on the applicable Public Sector Contract (“Customer”) and Docker, Inc. (“Docker”) (collectively, the “Parties”), shall govern Customer’s initial purchase on the Effective Date (set forth in the Public Sector Contract) as well as any future purchases made by Customer which reference this Agreement.

This Agreement applies to all Public Sector Customers as defined herein. Docker acknowledges that statutes and regulations governing Public Sector Customers may sometimes require that certain terms in commercial supplier agreements be limited and may be ineffective and inoperative. Therefore, to the extent the deviations set forth in this Agreement are not otherwise prohibited by law, Docker and Customer agree that the following provisions take precedence over any conflicting terms in the Public Sector Contract.

This Agreement includes the following terms and conditions, the Service Level Agreement & Terms and any other terms, conditions, or addendum referenced herein, and all of which are expressly incorporated into this Agreement. References to the “Agreement” in any other terms or addendum are, unless expressly stated otherwise, references to this Agreement. References to the agreement between Docker and Customer generally are referred to as the “Public Sector Contract.”

Pursuant to the Public Sector Contract from which Customer has purchased from Docker certain products or services described herein, the Parties hereby agree as follows:

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

“**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.

“**Business Purpose**” includes government purposes authorized by applicable laws.

“**Customer**” or “**you**” shall mean the Public Sector Customer identified in the applicable Public Sector Contract.

“**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 Docker Platform. For avoidance of doubt, Customer Data does not include data and information related to Customer’s use of the Docker Platform that is used by Docker in an aggregate and/or anonymized manner, including to compile statistical and performance information related to the Docker Platform, or any other information reflecting the access and use of the Docker Platform 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 Docker Cloud Service provided pursuant to the Cloud Service Addendum to this Agreement.

“Docker Desktop” means the downloadable object-code of the desktop client software component of the Docker Platform.

“Docker Hub” means the hosted repository component of the Docker Platform for finding and sharing container images.

“Docker Scout” means an added component of the Docker Platform used for providing insights and suggestions on improvising software supply chain including aspects of security and vulnerability scanning.

“Docker Platform” or “Service” means the Docker subscription service software, and components thereof, ordered by Customer as set forth in an applicable Public Sector Contract, including Docker Desktop, Docker Hub, Docker Scout, Docker Build Cloud, and any Add-on Services, as well as any updates thereto. Except for certain third-party software expressly set forth in the applicable Public Sector Contract, the Docker Platform does not include Third-Party Products or content available in a registry or repository via the Docker Platform, which are instead subject to the corresponding third-party’s license or terms.

“Documentation” means the Docker Platform documentation made available by Docker on the Docker website at <https://docs.docker.com>.

“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 Public Sector Contract, applicable Evaluation Services registration process of Documentation. The terms applicable to such Evaluation Services shall be set forth in the applicable Public Sector Contract or addendum to this Agreement.

“Offering” means the level of service, components and features chosen from the Service description offerings described on the Pricing Page (Personal, Pro, Team, and Business).

“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.

“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 Contract” means the ordering document identifying the products and related fees and executed by Public Sector Customer and Docker, or Public Sector Customer and



Reseller and any ensuing Reseller Order, for Customer's purchases of Docker products and/or services.

"Public Sector Customer" means any United States (1) 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. The term also includes state, local, or public education entities created by the laws (including constitution or statute) of a state ("SLED"). It is within Docker's sole discretion to determine if an entity is considered a Public Sector Customer under the terms of this definition.

"Reseller" means an authorized reseller of Docker's products and services.

"Reseller Order" means the ordering document provided by Reseller to Docker in support of a Public Sector Contract.

"Subscription Term" means the period of time set forth in the applicable Public Sector Contract during which Customer is authorized to use the Docker Platform.

"Third-Party Products" means optional 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 Platform. Except as otherwise specified in the Public Sector Contract, such Third-Party Products shall be subject to the corresponding third-party's license or terms, as applicable.

"User" means any individual authorized by Customer to log into or to otherwise use the Docker Platform for Customer's internal business purposes and in accordance with the terms of this Agreement and the applicable Public Sector Contract. Users may include but are not limited to employees, consultants, contractors, and agents of Customer or its affiliates.

2. License, Ownership, and Support.

2.1 Subject to the terms and conditions of the Agreement and the applicable Public Sector Contract, 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 Docker Platform, in accordance with the applicable Documentation for Customer's internal business purposes. 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 Platform or related Docker services so long as the Usage Data remains aggregated and de-identified, or to enforce this Agreement. To the extent the license is acquired by a Federal contractor or Reseller on behalf of

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a Public Sector Customer, and the agreement with Docker requires transfer of the license from the Federal contractor or Reseller to the Public Sector Customer at the conclusion of the Federal contractor's prime contract, such transfer will be permissible in accordance with the terms negotiated between Docker and the Federal contractor or Reseller (but in no event shall be less restrictive than the terms included herein, including in connection with the payment of renewal fees).

2.2 The Docker Platform 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 Docker Platform (including any improvements, modifications, and enhancements thereto), and Docker shall, notwithstanding any other term of this Agreement, remain the owner of the Docker Platform. All rights not expressly granted by Docker herein are reserved.

2.3 During the Subscription Term, Docker will provide support for the Docker Platform in accordance with the Service level Agreement & Terms, available at <https://www.docker.com/support/>, as applicable to the products and support purchased via the Public Sector Contract.

2.4 The technical data and software rights related to the Docker Platform include only those rights customarily provided to the public as defined in the Agreement. The Docker Platform is provided in accordance with Federal Acquisition Regulation ("FAR") 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, Defense Federal Acquisition Regulation Supplement ("DFARS") 225.227-7015 (Technical Data – Commercial Items) and DFARS 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). Use, duplication, or disclosure by the United States Government is subject to the restrictions set forth in this Agreement and, where applicable, Docker's end-user license agreement(s) furnished with the Docker Platform. Customer may not agree to grant any rights in Docker's technical data inconsistent with this paragraph or the Agreement. If Customer needs rights not granted under these terms, it must negotiate with Docker to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in the Public Sector Contract. This provision applies in lieu of and supersedes any FAR, DFARS, or other clause or provision pertaining to Customer's rights in technical data, computer software, and computer software documentation.

3. Subscription Term, Payment.

3.1 The length of the Subscription Term. The Subscription Term will begin on the Term start date and continue through the Term end date as indicated in the Public Sector Contract.

3.2 Pricing and other relevant terms will be set forth in the applicable Public Sector Contract. All payments to Docker are due within 30 days of the invoice from Docker. Unless otherwise stated in the Public Sector Contract (or prohibited by law or regulation), 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 Docker Public Sector Subscription Service Agreement - last updated December 12, 2023



Customer's and its User's access to the Docker Platform for any failure by Customer to pay due invoices in accordance herein. All payment inquiries should be directed to receivables@docker.com.

3.3 Except as otherwise expressly set forth in this Agreement, including the Public Sector Contract, 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. If Docker has the legal obligation to pay or collect taxes for which Customer is responsible, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Docker with a valid tax exemption certificate authorized by the appropriate taxing authority.

4. License Limitations; Use Restrictions.

4.1 General License Limitations.

(a) Customer's license to use the Docker Platform may be 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 in the applicable Public Sector Contractor Documentation.

(b) Customer agrees that it is responsible for Customer's and its User's conduct while accessing or using the Docker Platform and for any consequences thereof. Customer agrees to use the Docker Platform only for purposes that are legal, proper and in accordance with this Agreement, the Public Sector Contract, and any applicable laws or regulations. 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 Docker Platform; (ii) reverse-engineer, decompile, disassemble, or attempt to derive the source code for the Docker Platform, 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 Docker Platform 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 Docker Platform; (v) use the Docker Platform for the purpose of creating a product or service competitive with the Docker Platform; (vi) remove, minimize, block or modify any notices of Docker or its licensors or suppliers in the Docker Platform; or (vii) use the Docker Platform 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. As such, Docker's support obligations and commitments do not apply to Customer's use of Docker Desktop on virtual machines and, instead, Docker will use commercially reasonable efforts to resolve issues raised by Customer regarding use of Docker Desktop on a virtual machine.



(c) The Docker Platform may include an image vulnerability scanning feature that will scan the images that Customer specifies, which may be based upon 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 Docker Platform 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 – Docker Desktop.

(a) The Docker Desktop component of the Service at the level of the Personal Offering (as described on the Pricing Page) is further restricted to: (i) your “Personal Use,” (ii) your “Educational Use,” (iii) your use for a non-commercial open source project, and (iv) your use in a “Small Business Environment.”

(b) For purposes of this Section 4.2: (i) “Personal Use” is the use by an individual developer for personal use to develop free or paid applications, (ii) “Educational Use” is the use by members of an educational organization in a classroom learning environment for academic or research purposes or contribution to an open source project, and (iii) a “Small Business Environment” is a commercial undertaking with fewer than 250 employees and less than U.S. \$10,000,000 (or equivalent local currency) in annual revenue; and (iv) with the exception of Educational Use, Public Sector Customers are prohibited from using the Docker Desktop component of the Service at the level of the Personal Offering.

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

- (a) Send, upload, distribute, or disseminate or offer to do the same with respect to any defamatory, harassing, abusive, fraudulent, obscene or otherwise objectionable content;
- (b) Distribute viruses, worms, defects, Trojan horses, corrupted files, hoaxes, or any other items of a destructive or deceptive nature;
- (c) Impersonate another person (via the use of an email address or otherwise) or otherwise misrepresent yourself or the source of any content;
- (d) 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;



- (e) 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;
- (f) Download any content posted by another user that you know, or reasonably should know, that cannot be legally distributed in such a manner;
- (g) Submit content that falsely expresses or implies that such content is sponsored or endorsed by Docker;
- (h) Interfere with other users’ enjoyment of the Service;
- (i) Exploit the Service for any unauthorized commercial purpose, including without limitation mirroring or replicating content for a commercial service;
- (j) Modify, adapt, translate, or reverse engineer any portion of the Service, unless authorized by Docker;
- (k) Remove any copyright, trademark or other proprietary rights notices contained in or on the Docker Platform or any content posted thereon;
- (l) Reformat or frame any portion of the web pages that are part of the Docker Platform’s administration display;
- (m) Use the Docker Platform in connection with illegal peer-to-peer file sharing;
- (n) Display any content on the Docker Platform 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;
- (o) Use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the Docker Platform or the content posted thereon or to collect information about its users for any unauthorized purpose;
- (p) Create user accounts under fraudulent pretenses; or
- (q) Use the Docker Platform or any interfaces provided with the Docker Platform, to access any Docker product or service in a manner that violates this Agreement.

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 six (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 Docker Platform 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.

6. Open Source Software.

Any part of the Docker Platform 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 Docker Platform shall not include any code licensed under any "viral" or "copyleft" license.

7. Records and Audits.

Customer shall establish and maintain complete and accurate records related to Customer and its Users use of the Docker Platform, and any such other information as reasonably necessary for Docker to verify compliance with the terms of this Agreement and the applicable Public Sector Contract. 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 the applicable Public Sector Contract. If Customer's records or Docker's Docker Platform records reveal that Customer or Customer's Users have exceeded their permitted use of the Docker Platform, 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.

8. Term and Termination.

(a) This Agreement commences on the Effective Date and will remain in effect until the expiration date indicated in the Public Sector Contract (the “**Term**”).

(b) Upon termination of the Public Sector Contract, or any applicable ordering document, such as a purchase order, or expiration of the Subscription Term as defined herein, the license to the Docker Platform will automatically terminate and customer will discontinue all use of the Docker Platform.

(c) Sections 4.3 (Use Restrictions), 5 (Customer Data), 7 (Records and Audits), 9 (Feedback), 11 (Confidentiality), 13 (Warranty Disclaimer), and 15 (Limitation of Liability), together with any other terms required for their enforcement, shall survive any termination or expiration of this Agreement, the Public Sector Contract, or any applicable ordering document.

9. 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 Docker Platform, and any other Docker services) without restriction. Feedback excludes any Customer Confidential Information and Customer Data.

10. U.S. Government Rights.

The Docker Platform and any other software covered under this Agreement are “commercial products” and/or “commercial services” as those terms are defined at FAR 2.101; consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in FAR 12.212. U.S. Government end users acquire the Docker Platform and any other software and Documentation covered under this Agreement with: (a) if acquired on behalf of any Executive Agency other than the Department of Defense, only those rights in technical data and software customarily provided to the public as defined in this Agreement, pursuant to FAR 12.211 and FAR 12.212; or (b) if acquired on behalf of the Department of Defense, only those rights in technical data and software customarily provided in this Agreement pursuant to DFARS 227.7202-3. Any other Federal agencies, including Legislative or Judiciary, shall obtain only those rights in technical data and software customarily provided to the public as set forth in this Agreement. Any State or SLED customers shall obtain only those rights in technical data and software customarily provided to the public as set forth in this Agreement.



If any Public Sector Customer has a need for rights not otherwise conveyed under this Section 10, the Customer must negotiate with Docker to determine acceptable terms for transferring any such rights through a mutually acceptable written addendum to this Agreement.

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 10 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.

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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 thirty (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.

11.7 Public Disclosure Laws. Notwithstanding any confidentiality obligations in the Agreement, Docker acknowledges that Customer may be compelled to disclose certain categories of information defined as Confidential Information, pursuant to applicable freedom of information and public disclosure laws (including, but not limited to, the Federal Freedom of Information Act and state equivalents). Docker acknowledges that such Confidential Information, including the terms and conditions of the Agreement, the Public Sector Contract, and related ordering documents, statements of work, or other attachments, or pricing information, may be disclosed to third parties upon request to the extent compelled by such laws; provided that, prior to any such disclosure, Customer provides prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Docker's cost, if Docker wishes to contest the disclosure.

12. Security.

Docker will maintain reasonable administrative, physical, and technical security measures consistent with applicable law, current prevailing security practices, and the Public Sector Contract, and that are intended to protect against the loss, misuse, unauthorized access, alteration or disclosure of Customer's Data or the Docker Platform. Such additional measures will include compliance with the Security and Privacy Guidelines available at <https://www.docker.com/legal/security-and-privacy-guidelines>. Unless otherwise stated in the Public Sector Contract, 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, INCLUDING THE PUBLIC SECTOR CONTRACT AND ANY ORDERING DOCUMENTS OR STATEMENTS OF WORK RELATING THERETO, CUSTOMER UNDERSTANDS AND AGREES THAT USE OF THE DOCKER PLATFORM IS AT CUSTOMER'S SOLE RISK AND THAT THE DOCKER PLATFORM 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 DOCKER PLATFORM, 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 DOCKER PLATFORM WILL MEET CUSTOMER'S REQUIREMENTS, OR (B) CUSTOMER'S USE OF THE DOCKER PLATFORM 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 DOCKER PLATFORM 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 SYSTEM, 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. In accordance with FAR 52.212-4(h), and subject to the limitation on liability set forth in Section 14.2, Docker shall defend, and hold Customer and its officers, directors, agents, and employees (collectively, "**Customer Indemnitees**") harmless from and against any third party claims or actions alleging that Customer Indemnitee's use of the Docker Platform infringes the intellectual property rights of a third party, and Docker will indemnify Customer Indemnitees against any costs and damages actually awarded against Customer Indemnitees in connection therewith, including reasonable attorneys' fees. Such indemnification is subject to the conditions that Customer: (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; (iii) is based on the combination or use of the Service with an 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 arises out of: (a) the modification of any portion of the Docker Platform by any party other than Docker or its authorized representatives; (b) the combination, operation, or use of any Docker Platform with



other product(s), data, third party software, or services where the Docker Platform would not by itself be infringing; (c) the continued use of the allegedly infringing Docker Platform after being notified of the infringement claim or after being provided a modified version of the Docker Platform by Docker to address any alleged infringement; or (d) the failure to use the Docker Platform in accordance with the applicable Documentation or outside the scope of the rights granted under this Agreement. Should the Docker Platform, 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 Docker Platform, or (ii) replace or modify the Docker Platform so that it becomes non-infringing. If neither (i) or (ii) are reasonably practicable, Docker may terminate the Public Sector Agreement 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 No Public Sector Customer Indemnification Obligation. To the extent applicable law prohibits Customer from indemnifying Docker, any terms or conditions in this Agreement requiring Customer to indemnify Docker shall be deemed void and not binding against Customer.

14.4 Public Sector Customer Warranty. Customer warrants that Customer Data and any modifications made to Docker's Platform on behalf of Customer does not infringe on any intellectual property rights, or violate any third-party privacy rights.

14.5 Take Down Requirement. In the event of any claims brought against Docker alleging that Customer Data infringes or misappropriates a third party's intellectual property rights or violates applicable laws, or arising out of Customer's use of the Docker Platform in beach of the Agreement, the Documentation, or applicable ordering document, Docker may require, by written notice to Customer, that Customer delete from the Docker Platform any Customer Data, or cease use of the applicable Docker Platform, that is the subject of any claims. Promptly after receiving any such notice, Customer will delete such Customer Data, or cease such applicable use of the Docker Platform, and certify such deletion or cessation to Docker in writing. Docker shall be authorized to provide a copy of such certification to the applicable claimant.

14.6 Government Control of Defense. Any provision of this Agreement or the Public Sector Contract requiring Docker to defend or indemnify Customer is hereby amended, to the extent required by applicable laws, to provide that the U.S. Department of Justice (for a Federal Customer) or applicable State Attorney General's Office, has the sole right to represent the respective Public Sector Customer, as applicable, in litigation and other formal proceedings.

14.7 Procedure. Docker's indemnification under [Section 14.1](#) is subject to Customer's prompt notification of any claim or action covered by this [Section 14](#). Customer agrees to reasonably cooperate during such proceedings. Docker has 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 Customer without the prior written consent, which will not be unreasonably withheld. The Customer 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 understand that the Docker Platform is subject to the United States export controls administered by the U.S. Department of Commerce and the U.S. Department of Treasury, Office of Foreign Assets Control. Customer acknowledges and agrees that the Docker Platform 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 Docker Platform, 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. General Provisions.



17.1 Governing Law and Jurisdiction. This Agreement will be governed by the following laws, as applicable:

(a) *Federal.* As relates to Federal Public Sector Customers, the Agreement and any disputes arising out of or related thereto shall be governed by U.S. Federal law, specifically 41 U.S.C. Chapter 71, Contract Disputes. If Docker believes the Federal Public Sector Customer is in breach of this Agreement, Docker shall pursue its rights under the Contract Disputes Act or other applicable law, including the applicable Disputes provision incorporated into the Public Sector Contract.

(b) *State.* As relates to State Public Sector Customers, the Agreement and any disputes arising out of or related thereto shall be governed by the laws of the state pursuant to which Customer is created. With respect to all disputes arising out of or related to the Agreement, the Parties consent to exclusive jurisdiction and venue in the state and federal courts located in such state. The Parties shall handle any disputes regarding performance of the Public Sector Contract in accordance with the Disputes provision incorporated into the Public Sector Contract.

(c) *SLED.* As relates to SLED Public Sector Customers, the Agreement and any disputes arising out of or related thereto shall be governed by the laws of the state pursuant to which Customer is created, or else the state in which Customer's primary headquarters or main office is geographically located. With respect to all disputes arising out of or related to the Agreement, the Parties consent to exclusive jurisdiction and venue in the state and federal courts located in such state. The Parties shall handle and disputes regarding performance of the Public Sector Contract in accordance with the Disputes provision incorporated into the Public Sector Contract.

17.2 Assignment. Neither Party may assign or otherwise transfer 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. Any attempted or purported Assignment in violation of this Section will be considered null and void. Subject to the foregoing, the terms of this Agreement bind and inure to the benefit of the Parties, their respective successors, and permitted assigns.

17.3 Legal Notices. Any notices hereunder must be in writing and sent to the addresses set forth in the preamble of this Agreement or as otherwise listed in the Public Sector Contract or applicable ordering document, with a copy for Docker to the attention of Legal@docker.com. 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.

17.4 Changes. Docker may modify these terms from time to time, with notice to Customer, in accordance with Section 17.3 (Legal Notices).



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

17.6 Integration and Order of Precedence. This Agreement, including the Public Sector Contract, any ordering documentation, statement of work, or any other attachments or addendums thereto, constitutes the entire agreement between Customer and Docker concerning the subject matter of this Agreement and its supersedes all prior and simultaneous proposals, agreements, understandings, or other communications between the Parties, oral or written, regarding such subject matter. The terms of the Public Sector Contract will prevail over the general terms herein only if such Public Sector Contract expressly references this Agreement, the intent to prevail over this Agreement, and is signed by authorized signatories of both Docker and Customer. 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.

17.7 Headings. Section headings are for convenience only and shall not affect interpretation of the relevant section.

17.8 Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will continue in full force and effect.

17.9 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 Docker Platform may not be provided in countries listed in the Office of Foreign Assets Control sanction list and Customer’s access to the Docker Platform may be restricted in such countries. Such prohibitions shall not constitute a Force Majeure.

17.10 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.

17.11 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.

Cloud Service Addendum

This Cloud Service Addendum (“CSA”) supplements and is incorporated into the Docker Subscription Service Agreement (“Agreement”) by and between Docker and Customer and is applicable solely to Customer’s use of the Docker Cloud Service. Defined terms used but not defined in this CSA shall have the same meaning set forth in the Agreement.

Docker Public Sector Subscription Service Agreement - last updated December 12, 2023



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

“Cloud Service” means the development, non-production, generally available software-as-a-service Docker Build Cloud Service, as set forth in the applicable Order Form.

“Administrator” or “Organization Owner” means an individual named User of the Docker Platform who has been designated by the Customer to have access to the Cloud Service with the authority to administer the Cloud Services.

“Build Minutes” means the number of minutes of access to the Cloud Service purchased by the Customer and/or included under the corresponding Service offering.

1. Access to the Cloud Service. Docker shall provide access and make the Cloud Service available to Customer for the duration of the Build Minutes specified in the corresponding Order Form. Customer understands and agrees that a Docker Hub account is required in order to receive the corresponding access to the Cloud Service.

2. Customer Data. 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 Cloud Services 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 Cloud 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 Cloud Services. Docker may delete Customer’s usage history and data files older than 12 months or within 90 days of the termination of this Agreement.

3. Usage Tracking and Reporting. Customer may track their Build Minutes usage through its Docker account. Build Minutes are credited on a per-month basis and unused Build Minutes do not roll-over from one month to the next.

4. Purchase of Additional Minutes. If Customer exhausts their allotment of Build Minutes, Customer may purchase additional Build Minutes on a self-serve basis, as made available at Docker’s website.