



Contract Number

22-228

SAP Number

N/A

## Assessor-Recorder-County Clerk

<b>Department Contract Representative</b>	Tim Gaeta, Departmental Information Systems Administrator
<b>Telephone Number</b>	(909) 382-3240
<b>Contractor</b>	Docker, Inc.
<b>Contractor Representative</b>	N/A
<b>Telephone Number</b>	N/A
<b>Contract Term</b>	3/29/22 through 3/28/27
<b>Original Contract Amount</b>	N/A
<b>Amendment Amount</b>	N/A
<b>Total Contract Amount</b>	N/A
<b>Cost Center</b>	3119992756

**Briefly describe the general nature of the contract:** *The Docker, Inc. Terms of Service Agreement provides general terms and conditions for use of Docker, Inc. content and services.*

*This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.*

### FOR COUNTY USE ONLY

Approved as to Legal Form

► Kaleigh Ragon  
Kaleigh Ragon, Research Attorney for  
Stephanie Gutierrez, Deputy County Counsel

Date 03/09/2022

Reviewed for Contract Compliance

► \_\_\_\_\_

Date \_\_\_\_\_

Reviewed/Approved by Department

► Bob Dutton  
Bob Dutton, Assessor-Recorder-County Clerk

Date 3/16/22

# Docker Terms of Service

Effective as of: December 14, 2020

## 1. Your Agreement with Docker

**1.1** This website and all other related websites on which a link to these Terms of Service (the “**Terms**”) is displayed, and the Docker content and Docker services available on or through any of the foregoing (collectively, our “**Service**”) are provided to you by Docker, Inc., located at 3790 El Camino Real #1052, Palo Alto, CA 94306 USA (“**Docker**”). These Terms govern all access and use of the Service unless your access and use of Docker software is being made available to you under separate license terms.

**1.2** All use of the Service is subject to acceptance of these Terms. By accessing or using the Service, or any content or services provided on the Service, you are agreeing to these Terms. If you are entering into these Terms on behalf of an entity, such as your employer or the company you work for, you represent that you have the legal authority to bind, and do hereby bind, that entity to these Terms. You may not use the Service if you are a person barred from using the Service under the laws of the United States or other countries, including the country in which you are resident or from which you use the Service, or international laws or treaties. You may not use the Service if you are or represent an entity that is listed on any U.S. Government Denied Party/Person List. You affirm that you are over the age of 13, as the Service is not intended for children under 13. IF YOU ARE 13 OR OLDER BUT UNDER THE AGE OF 18, OR THE LEGAL AGE OF MAJORITY WHERE YOU RESIDE IF THAT JURISDICTION HAS AN OLDER AGE OF MAJORITY, THEN YOU AGREE TO REVIEW THE TERMS WITH YOUR PARENT OR GUARDIAN TO MAKE SURE THAT BOTH YOU AND YOUR PARENT OR GUARDIAN UNDERSTAND AND AGREE TO THESE TERMS. YOU AGREE TO HAVE YOUR PARENT OR GUARDIAN REVIEW AND ACCEPT THESE TERMS ON YOUR BEHALF. IF YOU ARE A PARENT OR GUARDIAN AGREEING TO THE TERMS FOR THE BENEFIT OF A CHILD OVER 13, THEN YOU AGREE TO AND ACCEPT FULL RESPONSIBILITY FOR THAT CHILD'S USE OF THE SERVICE, INCLUDING ALL FINANCIAL CHARGES AND LEGAL LIABILITY THAT HE OR SHE MAY INCUR.

**1.3** You agree that your use of the Service is not contingent on the delivery of any future functionality or features or dependent on any oral or written public comments made by Docker or any third party regarding future functionality or features.

## 2. Your Account and Use of the Service

**2.1** You must provide accurate and complete registration information any time you register to use the Service. You are responsible for the security of your passwords and for any use of your account. If you become aware of any unauthorized use of your password or of your account, you agree to notify Docker immediately via our [company contact form](#). You can also reset your password by logging into your account for the Service.

**2.2** Your use of the Service must comply with all applicable laws, regulations and ordinances, including any laws regarding the export of data or software.

**2.3** You agree not to (a) access (or attempt to access) the administrative interface of the Service by any means other than through the interface that is provided by Docker in connection with the Service, unless you have been specifically allowed to do so in a separate agreement with Docker, or (b) engage in any activity that interferes with or disrupts the Service (or the servers and networks which are connected to the Service).

**2.4** You may not access or use the Service for the purpose of bringing an intellectual property infringement claim against Docker or for the purpose of creating a product or service competitive with the Service.

**2.5** Your account may have: limitations placed on it that are determined by the type and category of account you have chosen as set forth at <https://www.docker.com/pricing>. These limitations include but are 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 an account on Docker Hub), number of image auto builds (<https://docs.docker.com/docker-hub/builds/>) and number of collaborators as more fully described at <https://docs.docker.com/docker-hub/repos/>. If your actions or other use of the Service exceed the permissions associated with your chosen level of service, Docker reserves the right to enforce, in its sole discretion, the limitations associated with your chosen service level, including deletion of data which exceeds those limitations. Repeated violations of these limitations may lead to termination of your account.

**2.6 Image Vulnerability Scanning.** The Service may include an image vulnerability scanning feature that will scan the images that you specify, which may be based upon code you authored, or code of others, and may generate vulnerability reports or information. This feature may be provided by a third party and you understand that any reports or other information that you receive 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. You agree 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.

### 3. Privacy and Restrictions on Use

**3.1** Docker's [Privacy Policy](#) describes Docker's collection, use, storage and disclosure of your personal information, including collection by any third party software utilized by Docker, and is hereby incorporated by this reference into these Terms. You agree to the use of your data in accordance with Docker's Privacy Policy.

**3.2** You agree that you will protect the privacy and legal rights of the end users of your repositories or other content stored or managed via the Service. You must provide legally adequate privacy notice and protection for such end users.

**3.3** You agree that you are responsible for your own conduct while accessing or using the Service and for any consequences thereof. You agree to use the Service only for purposes that are legal, proper and in accordance with these Terms and any applicable laws or regulations. By way of example, and not as a limitation, you 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 unlawful, 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 party, unless you are the owner of such rights or have the permission of the owner to post such content;
- e. Download any content posted by another user that you know, or reasonably should know, that cannot be legally distributed in such manner;
- f. Submit content that falsely expresses or implies that such content is sponsored or endorsed by Docker;
- g. Use the Service to violate the legal rights (such as rights of privacy and publicity) of others;
- h. Promote or encourage illegal activity;
- i. Interfere with other users' enjoyment of the Service;

- j. Exploit the Service for any unauthorized commercial purpose;
- k. Modify, adapt, translate, or reverse engineer any portion of the Service;
- l. Remove any copyright, trademark or other proprietary rights notices contained in or on the Service or any content posted thereon;
- m. Reformat or frame any portion of the web pages that are part of the Service's administration display;
- n. Use the Service in connection with illegal peer-to-peer file sharing;
- o. 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 any criminal laws, any other applicable laws, or any third party rights;
- p. 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;
- q. Create user accounts by automated means or under false or fraudulent pretenses; or
- r. Use the Service, or any interfaces provided with the Service, to access any Docker product or service in a manner that violates the Terms or other terms and conditions for use of such Docker product or service.

## 4. Usernames

**4.1** We reserve the right to reclaim usernames and organization names on behalf of businesses or individuals that hold legal claim or trademark to those usernames. Accounts using business names and/or logos that may be considered misleading to others may be permanently suspended. We also reserve the right to reclaim usernames and organization names using Docker trademarks or usernames and organization names that violate the [Docker Trademark Guidelines](#) which are hereby incorporated into these Terms by reference.

**4.2** You agree that Docker, in its sole discretion and subject to your opt-out rights as described below, may use your trade names, trademarks, service marks, logos, domain names and other distinctive brand features in presentations, marketing materials, customer lists, financial reports and Web site listings (including links to your website) for the purpose of advertising or publicizing your use of the Service. You may opt out of granting Docker the foregoing license, or require that you and Docker execute a separate license agreement therefor, by providing written notice to Docker within five (5) calendar days of the date you enter into these Terms.

**4.3 Username Squatting.** You may not and may not allow any third party to engage in username squatting. Accounts that are inactive for more than six months or that do not have any repositories associated with the account may be terminated at our discretion and without further notice. We take into account several factors when determining what conduct is considered to be username squatting including, without limitation:

- a. The number of accounts created
- b. Creating accounts for the purpose of preventing others from using those account names
- c. Creating accounts for the purpose of selling those accounts

**4.4 Selling Usernames.** You may not and may not allow any third party to buy or sell usernames and organization names.

## 5. Fees

**5.1** Subject to the Terms, the Service is provided to you without charge up to certain limits. Usage over this limit may require you to purchase additional resources or services. Pricing is set forth at <https://www.docker.com/pricing>.

**5.2** For all purchased resources and services, including with limitation any purchased Applications (as defined in Section 9), Docker will charge your credit card at the interval indicated at <https://www.docker.com/pricing>. Docker may change its fees and payment policies by notifying you at least fifteen (15) days before the beginning of the billing cycle in which such change will take effect. Late payments will bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less). All fees are non-refundable (except as expressly set forth in Section 11.3) and exclusive of applicable taxes. You are responsible for paying all taxes and government charges, and all reasonable expenses and attorneys fees Docker incurs collecting late amounts. You acknowledge and agree that any credit card and related billing and payment information that you provide to Docker may be shared by Docker with companies who work on Docker's behalf, such as payment processors and/or credit agencies, solely for the purposes of checking credit, effecting payment to Docker and servicing your account. Docker may also provide information in response to valid legal process, such as subpoenas, search warrants and court orders, or to establish or exercise its legal rights or defend against legal claims. Docker shall not be liable for any use or disclosure of such information by such third parties. Docker reserves the right to disable your access to the Service for any late payments. Any outstanding balance becomes immediately due and payable upon termination of the Terms for any reason.

## 6. User Content

**6.1** The Service allows you and other users to submit, post, transmit, and share content with other users, which may include, without limitation, data files, text, articles, documents, computer software or code, music, images, audiovisual works, informational materials and any user comments submitted by you and other users on or through the Service (collectively, **"User Content"**). For the avoidance of doubt, User Content shall not include Third Party Content (as defined in Section 9). You retain all your ownership rights in your User Content. Docker simply displays or makes the User Content available to users of the Service and does not otherwise control the content thereof. Docker does not guarantee any accuracy or confidentiality with respect to any information contained in any User Content, and strongly recommends that you think carefully about what you transmit, submit or post to or through the Service. You understand that all information contained in User Content is the sole responsibility of the person from whom such User Content originated. This means that you, and not Docker, are entirely responsible for all User Content that you upload, post, transmit, or otherwise make available through the Service, as well as for any actions taken by Docker or other users as a result of such User Content.

**6.2** Docker intends to, but does not guarantee that it will, display or make any User Content available on or through the Service, and Docker reserves the right to refuse to allow any User Content on the Service, or to edit or remove any User Content at any time with or without prior notice, if Docker reasonably believes that you or your User Content are in violation of these Terms or otherwise disrupt or threaten the operation of the Service. Without limiting the generality of the preceding sentence, Docker complies with the Digital Millennium Copyright Act, and will remove User Content from the Service upon receipt of a compliant takedown notice (see Section 16 below). You agree to immediately take down any User Content that violates the Terms, including pursuant to a take-down request from Docker. In the event that you elect not to comply with a request from Docker to take down certain User Content, Docker reserves the right to directly take down such User Content, or to suspend or terminate your use of the Service.

**6.3** By uploading or submitting your User Content through the Service, you hereby grant Docker and its affiliates and partners (collectively, the "Docker Licensees") a worldwide, non-exclusive, fully paid-up, royalty-free license to reproduce (including by making mechanical reproductions), reformat, distribute, publicly display, and publicly perform your User Content in connection with providing you and other users with the services, features and functionalities available on or through the Service; provided, that for any User Content that is subject to an open source license, Docker's rights shall be limited to the rights granted under the applicable open source license.

**6.4** The Service allows you to specify or upload the terms under which other users of the Service will be licensed to use your User Content. If you do not specify or upload such license terms with respect to any User Content, you hereby grant to any other users of the Service, a non-exclusive license to

access, download, use, modify or otherwise exploit such part of your User Content for any personal or business purposes.

**6.5** You are solely responsible for your own User Content and the consequences of posting or publishing them. In connection with User Content, you affirm, represent, and warrant that: (i) you either own your User Content or have the necessary licenses, rights, consents, and permissions to grant the rights and licenses granted in these Terms, and (ii) the Docker Licensee's exercise of the license rights set forth in this Section 6, does not and will not require obtaining a license from or paying any fees and/or royalties by Docker to any third party for the exercise of any rights granted in these Terms. However, the foregoing shall not be deemed a warranty by you of non-infringement of any third party patent rights.

**6.6** You understand that Docker may inspect your User Content, including but not limited to scanning for vulnerabilities, at any time to check for potential security vulnerabilities and other issues. Docker may request that you immediately remedy any issue it discovers in your User Content and retains the right to remove any User Content at any time without notice for any valid business or technical reasons, such as if security vulnerabilities are identified in such User Content.

**6.7** You understand that User Content made available on or through the Service comes from a variety of sources and that Docker does not endorse and is not responsible for the accuracy, usefulness, or intellectual property rights of or relating to such User Content. You understand that Docker cannot, and does not, review all User Content and does not endorse any User Content. You further understand and acknowledge that you may be exposed to User Content that is inaccurate, misleading, infringing, or otherwise objectionable. You agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Docker with respect thereto. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

**6.8** You agree that Docker has no responsibility or liability for the deletion or failure to store any User Content and other communications maintained on or transmitted through use of the Service. You further acknowledge that you are solely responsible for securing and backing up any User Content or other communication you upload or transmit to or through the Service.

## **7. Proprietary Rights**

You acknowledge and agree that Docker (or Docker's licensors) own all legal right, title and interest in and to the Service. The visual interfaces, graphics, design, systems, methods, information, computer



code, software, services, “look and feel”, organization, compilation of the content, code, data, images, and all other elements of the Service (collectively, the “**Docker Materials**”) are protected by United States copyright, trade dress, patent, and trademark laws, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. Except for any User Content owned and/or posted by you or other users, all Docker Materials are the copyrighted property of Docker or its licensors. Furthermore, all trademarks, service marks, and trade names contained in the Docker Materials are proprietary to Docker or its licensors. Except as expressly set forth herein, your use of the Service does not grant to you ownership of or any other rights with respect to any content, code, data, user comments or other materials that you may access on or through the Service. Docker reserves all rights to the Docker Materials not expressly granted in the Terms.

## 8. Feedback

You may choose to or Docker may invite you to submit comments, bug reports, ideas or other feedback about the Service, including without limitation about how to improve the Service or any other Docker products (“**Feedback**”). By submitting any Feedback, you agree that Docker is free to use such Feedback at its discretion and without any additional compensation to you, and/or to disclose such Feedback to third parties on a non-confidential basis or otherwise. You hereby grant Docker a perpetual, irrevocable, nonexclusive license under all rights necessary to incorporate and use your Feedback for any purpose.

## 9. Third-Party Store

**9.1** Docker may make available to you additional content, applications and services that are offered by third parties (“**Third Party Content**”). You acknowledge that your use of Third Party Content may be subject to additional fees. You further acknowledge that your use of any Third Party Content may be subject to a separate agreement between you and the provider of the Third Party Content (“**the Third Party Content Provider**”), and that Docker shall not be a party to such separate agreement between you and the Third Party Content Provider. The Third Party Content Provider, and not Docker, is solely responsible for the applicable Third Party Content, and any claims that you or any other party may have relating to that Third Party Content or its use. Docker does not endorse and is not responsible for the accuracy, functionality, usefulness, or intellectual property rights of or relating to such Third Party Content. You acknowledge and agree that, notwithstanding the foregoing, Docker and its affiliates are third party beneficiaries of the agreement between you and the Third Party Content Provider and that Docker will have the right (and will be deemed to have accepted the right) to enforce such agreement against you as a third party beneficiary thereof.

**9.2** By subscribing to or purchasing any Third Party Content, you grant Docker permission to share your User Content, and user information with the Third Party Content Provider as necessary for you to be provided the Third Party Content.

## 10. Recommendations

Docker may, and you grant Docker permission to, make recommendations via the Service or email for products or services that in Docker's opinion may be of interest to you based on your User Content, and/or use of the Service.

## 11. Modification and Termination

**11.1** Docker is constantly innovating in order to provide the best possible experience for its users. You acknowledge and agree that the form and nature of the Service may change from time to time without prior notice to you and that Docker may add new features and remove features or otherwise change any part of the Service at any time without notice.

**11.2** You may terminate these Terms at any time by canceling your account on the Service and discontinuing your use of the Service. You will not receive any refunds if you cancel your account or otherwise terminate these Terms.

**11.3** You agree that Docker, in its sole discretion and for any or no reason, may terminate these Terms and your account for the Service. You agree that any termination of your access to the Service may be without prior notice, and you agree that Docker will not be liable to you or any third party for such termination. If Docker terminates these Terms or your access or use of the Service due to your breach of these Terms or any suspected fraudulent, abusive, or illegal activity, then termination of these Terms shall be in addition to any other remedies Docker may have at law or in equity. Notwithstanding anything to the contrary herein, in the event of any termination by Docker other than due to your breach of these Terms, Docker will reimburse to you any fees you have prepaid for resources and services purchased hereunder, prorated to the date of such termination.

**11.4** Upon any termination or expiration of these Terms, whether by you or Docker, ANY INFORMATION (INCLUDING USER CONTENT) THAT YOU HAVE POSTED OR SUBMITTED ON OR THROUGH THE SERVICE OR THAT WHICH IS RELATED TO YOUR ACCOUNT MAY NO LONGER BE ACCESSED BY YOU and Docker will have no obligation to maintain any such information in its databases or to forward any such information to you or any third party. You are solely responsible for retrieving your User Content from the Service prior to termination of your account for any reason, provided that if we terminate your account, we will provide you a reasonable opportunity to retrieve your User Content.

**11.5** Upon any termination of these Terms or your account, Sections 5, 6, 7, 8, 11.4, 11.5, 12, 13, 14, 15, 19 and 20 shall survive.

## **12. EXCLUSION OF WARRANTIES**

**12.1** NOTHING IN THESE TERMS SHALL EXCLUDE OR LIMIT DOCKER'S WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW.

**12.2** YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK AND THAT THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, DOCKER, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS MAKE NO EXPRESS WARRANTIES AND DISCLAIM ALL IMPLIED WARRANTIES REGARDING THE SERVICE, USER CONTENT OR ANY THIRD PARTY CONTENT OR EXTERNAL SITES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT CORRECTNESS, ACCURACY AND RELIABILITY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DOCKER, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT: (A) YOUR USE OF THE SERVICE WILL MEET YOUR REQUIREMENTS, (B) YOUR USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, (C) USAGE DATA PROVIDED THROUGH THE SERVICE WILL BE ACCURATE OR (D) THE SERVICE OR ANY CONTENT, SERVICES, OR FEATURES MADE AVAILABLE ON OR THROUGH THE SERVICE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

## **13. LIMITATION OF LIABILITY**

**13.1** SUBJECT TO SECTION 12 ABOVE, YOU UNDERSTAND AND AGREE THAT DOCKER, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS, EVEN IF DOCKER OR A DOCKER AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**13.2** SUBJECT TO SECTION 12 ABOVE, YOU AGREE THAT THE AGGREGATE LIABILITY OF DOCKER, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY

PORTION OF THE SERVICE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO US\$100.

**13.3** YOU ACKNOWLEDGE AND AGREE THAT DOCKER HAS MADE AVAILABLE THE SERVICE AND ENTERED INTO THESE TERMS IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND DOCKER, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND DOCKER. DOCKER WOULD NOT BE ABLE TO PROVIDE THE SERVICE TO YOU WITHOUT THESE LIMITATIONS.

## 14. Indemnification

You agree to hold harmless and indemnify Docker and its subsidiaries, affiliates, officers, agents, employees, advertisers, licensors, suppliers or partners from and against any third party claim arising from or in any way related to (a) your breach of the Terms, (b) your violation of applicable laws, rules or regulations in connection with the Service, or (c) your User Content, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. In such case, Docker will provide you with written notice of such claim, suit or action; will provide you the opportunity to control the defense and/or settlement of such claim, suit or action; and will provide you reasonable assistance in such defense or settlement, upon reasonable request.

## 15. User Disagreements

You alone are responsible for your involvement and interactions with other users of the Service. Docker reserves the right, but has no obligation, to monitor disagreements between you and other users. If you have a dispute with any other users of the Service, you irrevocably and forever release Docker (and Docker's affiliates, officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

## 16. Copyright Policy

**16.1** Docker has established the following process to respond to notices of alleged infringement that comply with the United States' Digital Millennium Copyright Act ("**DMCA notices**").

**16.2** If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Service, please notify Docker's copyright agent, as set forth in the Digital Millennium Copyright Act of 1998 (DMCA). For your complaint to be valid under the DMCA, you must provide the following information in writing:

- a. An electronic or physical signature of a person authorized to act on behalf of the copyright owner;
- b. Identification of the copyrighted work that you claim is being infringed;
- c. Identification of the material that is claimed to be infringing and where it is located on the Service;
- d. Information reasonably sufficient to permit Docker to contact you, such as your address, telephone number, and e-mail address;
- e. A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law; and
- f. A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

Docker's Designated Copyright Agent to receive notifications of claimed infringement can be reached as follows:

Attention: Copyright Agent  
Docker, Inc.  
3790 El Camino Real #1052  
Palo Alto CA 94306

Email: [dmca@docker.com](mailto:dmca@docker.com)

For clarity, only DMCA notices should go to the Docker Designated Copyright Agent. Any other feedback, comments, requests for technical support or other communications should be directed to Docker through [support@docker.com](mailto:support@docker.com).

## 17. External Sites

**17.1** The Service may include hyperlinks to other web sites or resources (collectively, "**External Sites**") solely as a convenience to its users. Docker has no control over any External Sites which are provided by companies or persons other than Docker.

**17.2** You acknowledge and agree that Docker is not responsible for the availability of any External Sites, and does not endorse any advertising, products or other materials on or available from the External Sites.

**17.3** You acknowledge and agree that Docker is not liable for any loss or damage which may be incurred as a result of the availability of the External Sites, or as a result of any reliance placed by you on the completeness, accuracy or existence of any advertising, products or other materials on, or available from, the External Sites.

## 18. Changes to the Terms

Docker may make changes to the Terms from time to time. When such changes are made, Docker will make the updated Terms available on or through the Service. Please check these Terms periodically for changes. Unless otherwise agreed to between you and Docker in writing, your continued use of the Service after such changes have been published on or through the Service shall constitute your binding acceptance of such changes. Unless otherwise agreed to between you and Docker in writing, in the event that such changes materially alter your rights or obligations hereunder such amended Terms will automatically be effective upon the earlier of (i) your continued use of the Service with actual knowledge of such modifications, or (ii) 30 days from the date such modified Terms are made available on or through the Service. Notwithstanding the foregoing, the resolution of any dispute that arises between you and Docker will be governed by the Terms in effect at the time such dispute arose.

## 19. Dispute Resolution and Arbitration

**19.1** Generally. In the interest of resolving disputes between you and Docker in the most expedient and cost effective manner, you and Docker agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Our agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. **YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND DOCKER ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.**

**19.2** Exceptions. Despite the provisions of Section 19.1, we both agree that nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either of us to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or

local agency if that action is available; (c) seek injunctive relief in a court of law; or (d) to file suit in a court of law to address an intellectual property infringement claim.

**19.3 Arbitrator.** Any arbitration between you and Docker will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "**AAA Rules**") of the American Arbitration Association ("**AAA**"), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Docker.

**19.4 Notice; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail or Federal Express (signature required), or if we do not have a physical address on file for you, by electronic mail ("**Notice**"). Docker's address for Notice is: Docker, Inc., 3790 El Camino Real #1052, Palo Alto, CA 94306. The Notice must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("**Demand**"). We agree to use good faith efforts to resolve the claim directly, but if we do not reach an agreement to do so within 30 days after the Notice is received, you or Docker may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Docker must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If our dispute is finally resolved through arbitration in your favor, Docker will pay you the highest of the following: (i) the amount awarded by the arbitrator, if any; (ii) the last written settlement amount offered by Docker in settlement of the dispute prior to the arbitrator's award; or (iii) \$1,000.

**19.5 Fees.** If you commence arbitration in accordance with these Terms, Docker will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in Santa Clara County, California USA but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Docker for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

**19.6 No Class Actions.** YOU AND DOCKER AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Docker agree otherwise, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding.

**19.7 Modifications.** If Docker makes any future change to this arbitration provision (other than a change to Docker's address for Notice), you may reject the change by sending us written notice within 30 days of the change to Docker's address for Notice, in which case your account with Docker will be immediately terminated and this arbitration provision, as in effect immediately prior to the amendments you reject will survive.

**19.8 Enforceability.** If Section 19.6 is found to be unenforceable or if the entirety of this Section 19 is found to be unenforceable, then the entirety of this Section 19 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 20.7 will govern any action arising out of or related to these Terms.

## 20. General Legal Terms

**20.1** The Terms constitute the whole legal agreement between you and Docker and govern your use of the Service (but excluding any services which Docker may provide to you under a separate written agreement) and completely replace any prior agreements between you and Docker in relation to the Service.

**20.2** There are no third party beneficiaries to these Terms. The parties are independent contractors, and nothing in these Terms creates an agency, partnership or joint venture.

**20.3** If Docker provides you with a translation of the English language version of these Terms, the English language version of these Terms will control if there is any conflict.

**20.4** You agree that Docker may provide you with notices, including those regarding changes to the Terms, by email, regular mail, or postings on the Service. By providing Docker your email address, you consent to our using the email address to send you any notices required by law in lieu of communication by postal mail. You may provide us with legal notices at our postal address set forth above or via email to [support@docker.com](mailto:support@docker.com).

**20.5** You agree that if Docker does not exercise or enforce any legal right or remedy which is contained in the Terms (or which Docker has the benefit of under any applicable law), this will not be deemed a waiver of any such rights or remedies, and that those rights or remedies will still be available to Docker.



**20.6** Docker shall not be liable for failing or delaying performance of its obligations resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances.

**20.7** The Terms, and your relationship with Docker under the Terms, shall be governed by the laws of the State of California without regard to its conflict of laws provisions. You and Docker agree to submit to the exclusive jurisdiction of the courts located within the county of Santa Clara, California USA to resolve any legal matter arising from the Terms.

**20.8** You understand that the Service is subject to United States export controls administered by the U.S. Department of Commerce and the United States Department of Treasury Office of Foreign Assets Control. You acknowledge and agrees that the Service and any User Content or Third Party Content accessed by you shall 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, including without limitation by uploading or accessing any User Content or Third Party Content, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S. export laws and assume sole responsibility for obtaining United States government export licenses to export or re-export as may be required. You will defend, indemnify, and hold harmless Docker and its suppliers and licensors from and against any violation of such laws or regulations by you or any of your agents, officers, directors or employees.

**20.9** Neither party may assign any of its rights or obligations under these Terms, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Docker may assign the entirety of its rights and obligations under these Terms, without your consent, to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any assignment attempted to be made in violation of these Terms will be void.