

**Web services Enterprise Agreement**

This web service Enterprise Agreement (this "**Agreement**") is made and entered into by and between XX , Inc., a YY corporation **referred to as seller** and the customer specified on this Cover Page ("**Customer**").

In consideration of the mutual promises contained In this Agreement, SELLER and Customer agree to all terms of the Agreement effective as of the date the last party signs this Agreement (the "**Effective Date**").

Defined terms used In this Agreement with initial letters capitalized have the meanings given in Section 13 below.

## 1. Use of the Service Offerings,

**1.1 Generally.** Customer may access and use the Service Offerings in accordance with this Agreement. Service Level Agreements apply to certain Services. Customer's use of the Service Offerings will comply with the terms of this Agreement.

**1.2 SELLER Account.** To access the Services, Customer must create one or more SELLER Enterprise Accounts. Unless explicitly permitted by the Service Terms, Customer will only create one SELLER Enterprise Account per email address. All SELLER Enterprise Accounts will be covered by this Agreement. For all SELLER Enterprise Accounts, this Agreement supersedes any acceptance of the SELLER Customer Agreement by Customer or any of its employees acting on behalf of Customer. If any of Customer's SELLER accounts do not meet the definition of an "SELLER Enterprise Account," those accounts will be governed by the SELLER Customer Agreement.

**1.3 Third-Party Content.** Third-Party Content may be used by Customer at Customer's election. Third-Party Content is governed by this Agreement unless accompanied by separate terms and conditions, which may include separate fees and charges.

**1.4 Customer Affiliates.** Any Customer Affiliate may use the Service Offerings under its own SELLER Enterprise Account(s) under the terms of this Agreement by executing an addendum to this Agreement with SELLER, as mutually agreed by SELLER and the Customer Affiliate.

## 2. Changes.

**2.1 To the Service Offerings.** SELLER may change or discontinue any of the Service Offerings, from time to time. For any SELLER Enterprise Accounts enrolled in SELLER Support at the Developer-level tier or above (or any successor service providing such communications alerts), SELLER will provide at least 12 months prior Notice to Customer if SELLER decides to discontinue a Service that it makes generally available to its customers and that Customer is using. SELLER will not be obligated to provide Notice under this Section 2.1 if the discontinuation is necessary to address an emergency or threat to the security or integrity of SELLER, respond to claims, litigation, or loss of license rights related to third-party intellectual property rights, or comply with the law or requests of a government entity.

**2.2 To the Service Level Agreements.** SELLER may change Service Level Agreements from time to time, but will provide 90 days' prior Notice to Customer before materially reducing the benefits offered to Customer under any Service Level Agreement(s) that are available as of the Effective Date.

## 3. Privacy and Security.

**3.1 SELLER Security.** SELLER will implement reasonable and appropriate measures for the SELLER Network (as determined by SELLER) designed to help Customer secure Customer Content against accidental or unlawful loss, access or disclosure (the "**Security Objectives**") in accordance with the SELLER Security Standards. SELLER may modify the SELLER Security Standards from time to time, but will continue to provide at least the same level of security as is described in the SELLER Security Standards on the Effective Date.

**3.2 Data Privacy.** Customer may specify the SELLER regions in which Customer Content will be stored. Customer consents to the storage of Customer Content in, and transfer of Customer Content into, the SELLER regions Customer selects. SELLER will not access or use Customer Content except as necessary to maintain or provide the Service Offerings, or as necessary to comply with the law or a binding order of a governmental body. SELLER will not (a) disclose Customer Content to any government or third party, or (b) subject to Section 3.3, move Customer Content from the SELLER regions selected by Customer; except in each case as necessary to comply with the law or a binding order of a governmental body (such as a subpoena or court order). Unless it would be in violation of a court order or other legal requirement, SELLER will give Customer reasonable Notice of any legal requirement or order referred to in this Section 3.2, to enable Customer to seek a protective order or other appropriate remedy. SELLER will only use Account Information in accordance with the Privacy Policy, and Customer consents to such usage. The Privacy Policy does not apply to Customer Content.

**3.3 Service Attributes.** To provide billing and administration services, SELLER may process Service Attributes in the SELLER region(s) where Customer uses the Service Offerings and the SELLER regions in the United States. To provide Customer with support services initiated by Customer and investigate fraud, abuse or violations of this Agreement, SELLER may process Service Attributes where SELLER maintains its support and investigation personnel.

**SELLER Information Security Program.** As of the Effective Date, SELLER is certified under ISO 27001. SELLER will maintain an information security program designed to provide at least the same level of protection as evidenced by its certification under ISO 27001 on the Effective Date.

**3.5 Audits of Technical and Organizational Measures.** Upon Customer's request, and provided that the parties have an applicable NDA in place, SELLER will provide to Customer a copy of its Service Organization Controls 1, Type 2 report or such alternative industry standard reports or certifications that are substantially equivalent as reasonably determined by SELLER. SELLER will provide this documentation no more than twice annually and this documentation will be treated as Confidential Information of SELLER under the NDA.

#### **4. Customer Responsibilities.**

**4.1 Customer Content.** Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Content. Customer agrees that Customer Content will not violate any of the Policies or any applicable law.

**4.2 Customer's Security and Redundancy.** Customers have a variety of options to choose from when configuring their accounts, and for all sensitive or otherwise valuable content SELLER recommends that Customer uses strong security and redundancy features, such as access controls, encryption, and backup. Customer is responsible for properly configuring and using the Service Offerings in a manner that provides security and redundancy of its SELLER Enterprise Accounts and Customer Content, such as, for example, using enhanced access controls to prevent unauthorized access to SELLER Enterprise Accounts and Customer Content, using encryption technology to prevent unauthorized access to Customer Content, and ensuring the appropriate level of backup to prevent loss of Customer Content.

**4.3 Log-In Credentials and Account Keys.** SELLER log-in credentials and private keys generated by the Services are for Customer's Internal use only and Customer may not sell, transfer or sublicense them to any other entity or person, except that Customer may disclose its private key to its agents and subcontractors (including any of its Affiliates who are acting as an agent or subcontractor of Customer) performing work on behalf of Customer. Except to the extent caused by SELLER's breach of this Agreement, as between the parties, Customer is responsible for all activities that occur under its SELLER Enterprise Accounts.

**4.4 End Users.** If Customer uses the Services to provide services to, or otherwise interact with, End Users, then Customer, and not SELLER, will have the relationships (e.g., via executed contracts between Customer and End Users or via online terms of service) with End Users. Therefore Customer, and not SELLER, is responsible for End Users' use of Customer Content and the Service Offerings. To the extent that Customer enables End Users to access the Services or Customer Content, Customer will ensure that all End Users comply with any applicable obligations of Customer under this Agreement and that any terms of any agreement with each End User are not inconsistent with this Agreement. SELLER does not provide any support or services to End Users unless SELLER has a separate agreement with Customer or an End User obligating SELLER to provide support or services to End Users. Customer is responsible for providing customer service (if any) to End Users.

#### **5. Fees and Payment.**

**5.1 Service Fees.** Unless otherwise stated on the SELLER Site, SELLER will invoice Customer at the end of each month for all applicable fees and charges accrued for use of the Service Offerings, as described on the SELLER Site, during the month. Customer will pay SELLER all invoiced amounts within 30 days of the date of the invoice (other than Disputed Amounts). For any Disputed Amounts, Customer will provide Notice to SELLER, including the basis for the dispute (including any supporting documentation), and the parties will meet within 30 days of the date of the Notice to resolve the dispute. If the parties fail to resolve the dispute within such 30 day period, SELLER may, at its option, limit (in full or in part) Customer's or any End User's right to access or use the Service Offerings until the dispute is resolved. All amounts payable by Customer under this Agreement will be paid to SELLER without setoff or counterclaim and without deduction or withholding, provided that Disputed Amounts will be handled as set forth above. Fees and charges for any new Service or new feature of a Service will be effective when SELLER posts updated fees and charges on the SELLER Site, unless expressly stated otherwise in a Notice. SELLER may increase or add new fees and charges for any existing Service by giving Customer at least 60 days' prior Notice. SELLER may charge Customer interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.

**5.2 Taxes.** Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement. All fees payable by Customer are exclusive of Indirect Taxes. SELLER may charge and Customer will pay applicable Indirect Taxes that SELLER is legally obligated or authorized to collect from Customer. Customer will provide such information to SELLER as reasonably required to determine whether SELLER is obligated to collect Indirect Taxes from Customer. SELLER will not collect, and Customer will not pay, any Indirect Tax for which Customer furnishes SELLER a properly completed exemption certificate or a direct payment permit certificate for which SELLER may claim an available exemption from such Indirect Tax. All payments made by Customer to SELLER under this Agreement will be made free and clear of any deduction or withholding, as may be required by law. If any such deduction or withholding (including but not limited to cross-border withholding taxes) is required on any payment, Customer will pay such additional amounts as are necessary so that the net amount received by SELLER is equal to the amount then due and payable under this Agreement. SELLER will provide Customer with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any withholding or deduction for taxes in respect of payments made under this Agreement.

**6. Temporary Limitation of Access and Use Rights.** SELLER may temporarily limit (in full or in part, as set forth in this Section 6) Customer's or any End User's right to access or use the Service Offerings upon Notice to Customer (which will be reasonable prior notice unless SELLER reasonably believes immediate limitation is necessary) if SELLER reasonably determines that Customer's or an End User's use of the Service Offerings poses a security risk or threat to the function of the Service Offerings, or poses a security or liability risk or threat to SELLER, its Affiliates or any third party. SELLER will only limit Customer's right to access or use the instances, data or portions of the Service Offerings that caused the security or liability risk or threat. SELLER will restore Customer's access and use rights promptly after Customer has resolved the issue giving rise to the limitation. Customer remains responsible for all fees and charges for the Service Offerings during the period of limitation.

**7. Term; Termination.**

**7.1 Term.** The term of this Agreement will commence on the Effective Date and will remain in effect until terminated pursuant to this Agreement. Any Notice of termination of this Agreement by either party to the other must include a Termination Date.

**7.2 Termination.**

**(a) Termination for Convenience.** Customer may terminate this Agreement for any reason by providing SELLER Notice. SELLER may terminate this Agreement for any reason by providing Customer at least two years' Notice.

**(b) Termination for Cause.**

**(i) By Either Party.** Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and the material breach remains uncured for a period of 30 days from receipt of Notice by the other party.

**(ii) By SELLER.** SELLER may terminate this Agreement for cause (a) upon 90 days' Notice to Customer if SELLER has the right to limit Customer's or any End User's right to access or use the Service Offerings under Section 6 and Customer has not cured the condition giving rise to that right to limit within such 90 day period, or (b) upon 30 days' Notice to Customer in order to comply with applicable law or requirements of governmental entities.

**7.3 Effect of Termination.**

**(a) Generally,** Upon the Termination Date:

**(i)** except as provided in Section 7.3(b), all of Customer's rights under this Agreement immediately terminate;

**(ii)** Customer remains responsible for all fees and charges Customer has incurred through the Termination Date;

**(iii)** Customer will immediately return or, if instructed by SELLER, destroy all SELLER Content in Customer's possession (except for SELLER Content that is publicly available on the SELLER Site); and

**(iv)** Sections 4, 5, 7.3, 8.1, 8.3, 8.4, 9, 10.3, 11, 12 and 13 will continue to apply in accordance with

**(b) Post-Termination Retrieval of Customer Content.** During the 90 days following the Termination Date, SELLER will not take action to remove any Customer Content as a result of the termination. In addition, during such period, SELLER will allow Customer to retrieve any remaining Customer Content from the Services, unless

(i) prohibited by law or the order of a governmental or regulatory body or it could subject SELLER or its Affiliates to liability, or (ii) Customer has not paid all amounts due under this Agreement, other than Disputed Amounts. For any use of the Services during such period, the terms of this Agreement will apply and Customer will pay the

applicable fees at the rates under Section 5. No later than the end of this 90 day period, Customer will close all SELLER Enterprise Accounts.

## **8, Proprietary Rights.**

**8.1 Customer Content.** As between Customer and SELLER, Customer (or Customer's licensors) own all right, title, and interest in and to Customer Content. Except as provided in this Agreement, SELLER obtains no rights under this Agreement from Customer (or Customer's licensors) to Customer Content.

**8.2 Service Offerings License.** SELLER or its licensors own all right, title, and interest in and to the Service Offerings, and all related technology and intellectual property rights. Subject to the terms of this Agreement, SELLER grants Customer a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following: (a) access and use the Services solely in accordance with this Agreement; and (b) copy and use the SELLER Content solely for Customer's permitted use of the Services. Except as provided in this Section 8.2, Customer obtains no rights under this Agreement from SELLER, its Affiliates, or their licensors to the Service Offerings, including without limitation any related intellectual property rights. Some SELLER Content may be provided to Customer under a separate license, such as the Apache License, Version 2.0, which will be identified to Customer in the notice file or on the download page, in which case that license will govern Customer's use of that SELLER Content.

**8.3 License Restrictions.** Neither Customer nor any End User may use the Service Offerings in any manner or for any purpose other than as expressly permitted by this Agreement. Neither Customer nor any End User may, or may attempt to (a) modify, alter, tamper with, repair, or otherwise create derivative works of any Content included in the Service Offerings (except to the extent Content Included in the Service Offerings Is provided to Customer under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Service Offerings or apply any other process or procedure to derive the source code of any software included in the Service Offerings, (c) access or use the Service Offerings in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Service Offerings. During and after the Term, Customer will not assert, nor will Customer authorize, assist, or encourage any third party to assert, any intellectual property infringement claim regarding any Service Offerings Customer has used. Customer may only use the SELLER Marks in accordance with the Trademark Use Guidelines. Customer will not misrepresent or embellish the relationship between SELLER and customer (Including by expressing or implying that SELLER supports, sponsors, endorses, or contributes to customer or Customer's business endeavors). Customer will not imply any relationship or affiliation between SELLER and Customer except as expressly permitted by this Agreement.

**8.4 Suggestions.** If Customer elects to provide any Suggestions to SELLER or its Affiliates, SELLER and its Affiliates will be entitled to use the Suggestions without restriction.

## **9. Third-Party Claims.**

**9.1 Policies and End User Disputes.** Customer will defend, indemnify and hold harmless SELLER, its Affiliates, and their respective employees, officers, directors, and representatives against any Losses arising from or related to any third-party claim that arises from a violation of the Policies by Customer or any End User, or that arises from any dispute between Customer and any End User.

### **9.2 Intellectual Property.**

(a) Subject to the limitations in this Section 9, SELLER will defend Customer and its employees, officers, and directors against any third-party claim alleging that the Services Infringe or misappropriate that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(b) Subject to the limitations in this Section 9, Customer will defend SELLER, its Affiliates, and their respective employees, officers, and directors against any third-party claim alleging that any Customer Content infringes or misappropriates that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(c) Neither party will have obligations or liability under this Section 9.2 arising from infringement by combinations of the Services or Customer Content, as applicable, with any other product, service, software, data, content, or method. In addition, SELLER will have no obligations or liability arising from Customer's or any End User's use of the Services after SELLER has notified Customer to discontinue such use. The remedies provided in this Section 9.2 are the sole and exclusive remedies for any third-party claims of infringement or misappropriation of intellectual property rights by the Services or by Customer Content.

(d) For any claim covered by Section 9.2(a), SELLER will, at its election, either: (i) procure the rights to use that portion of the Services alleged to be infringing; (ii) replace the alleged infringing portion of the Services with a non-infringing alternative; (iii) modify the alleged infringing portion of the Services to make it non-infringing; or (iv) terminate the allegedly infringing portion of the Services or this Agreement.

9.3 **Process.** The obligations under this Section 9 will apply only if the party seeking defense or indemnity: (a) gives the other party prompt written notice of the claim; (b) permits the other party to control the defense and settlement of the claim; and (c) reasonably cooperates with the other party (at the other party's expense) in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim that involves any commitment, other than the payment of money, without the written consent of the other party.

## 10. SELLER Warranties and Warranty Disclaimers.

**10.1 SELLER Warranties.** SELLER represents and warrants to Customer that the Services will perform substantially in accordance with the Documentation .

**10.2 Mutual Warranties.** Each party represents and warrants to the other that (a) it has full power and authority to enter into and perform this Agreement, (b) the execution and delivery of this Agreement has been duly authorized, (c) it will comply with all applicable seller, rules, regulations and ordinances in the performance of this Agreement (and, in the case of Customer, the use of the Service Offerings), and (d) its performance hereunder does not breach any other agreement to which it is bound.

10.3 **Warranty Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1 AND SECTION 10.2, AND EXCEPT TO THE EXTENT PROHIBITED BY LAW, SELLER, ITS AFFILIATES AND ITS LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE SERVICE OFFERINGS OR THE THIRD-PARTY CONTENT, AND DISCLAIM ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (A) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, (B) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (C) THAT THE SERVICE OFFERINGS OR THIRD-PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE, OR FREE OF HARMFUL COMPONENTS, AND (D) THAT ANY CONTENT, INCLUDING CUSTOMER CONTENT OR THIRD-PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

## 11, limitations of liability.

**11.1 Liability Disclaimers.** EXCEPT FOR PAYMENT OBLIGATIONS ARISING UNDER SECTION 9.1, NEITHER PARTY NOR ANY OF THEIR AFFILIATES OR LICENSORS WILL BE LIABLE TO THE OTHER PARTY UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR (A) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, (B) THE VALUE OF CUSTOMER CONTENT, (C) LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, OR GOODWILL, OR (D) UNAVAILABILITY OF THE SERVICE OFFERINGS (THIS DOES NOT LIMIT ANY SERVICE CREDITS THAT MAY BE AVAILABLE UNDER SERVICE LEVEL AGREEMENTS).

**11.2 Damages Cap.** EXCEPT FOR PAYMENT OBLIGATIONS ARISING UNDER SECTION 9, THE AGGREGATE LIABILITY UNDER THIS AGREEMENT OF EITHER PARTY AND ANY OF THEIR RESPECTIVE AFFILIATES OR LICENSORS WILL NOT EXCEED THE LESSER OF (A) THE AMOUNTS PAID BY CUSTOMER TO SELLER UNDER THIS AGREEMENT FOR THE

SERVICES THAT GAVE RISE TO THE LIABILITY DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE, OR (B) USO \$20,000,000; PROVIDED, HOWEVER THAT NOTHING IN THIS SECTION 11 WILL LIMIT CUSTOMER'S OBLIGATION TO PAY SELLER FOR CUSTOMER'S USE OF THE SERVICE OFFERINGS PURSUANT TO SECTION 5, OR ANY OTHER PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

## **12, Miscellaneous.**

**12.1 Assignment.** Neither party may assign or otherwise transfer this Agreement or any of its rights and obligations under this Agreement without the prior written approval of the other party; except that either party may assign or otherwise transfer this Agreement without the consent of the other party (a) in connection with a merger, acquisition or sale of all or substantially all of its assets, or (b) to any Affiliate or as part of a corporate reorganization. Effective upon such assignment or transfer, subject to the assignee/transferee's consent, the assignee/transferee is deemed substituted for the assignor/transferor as a party to this Agreement and the assignor/transferor is fully released from all of its obligations and duties to perform under this Agreement. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective permitted successors and assigns.

**12.2 Counterparts; Facsimile.** This Agreement may be executed by facsimile or by electronic signature in a format approved by SELLER, and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument.

**12.3 Entire Agreement.** This Agreement incorporates the Policies by reference and is the entire agreement between Customer and SELLER regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between Customer and SELLER, whether written or verbal, regarding the subject matter of this Agreement (including, as set forth in Section 1.2, any acceptance of the SELLER Customer Agreement by Customer or any of its employees acting on behalf of Customer). SELLER will not be bound by any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) including for example, any term, condition or other provision (a) submitted by Customer in any order, receipt, acceptance, confirmation, correspondence or other document, (b) related to any online registration, response to any Request for Bid, Request for Proposal, Request for Information, or other questionnaire, or (c) related to any invoicing process that Customer submits or requires SELLER to complete. If the terms of this document are inconsistent with the terms contained in any Policy, the terms contained in this document will control, except that the Service Terms will control over this document. No modification or amendment of any portion of this Agreement will be effective unless in writing and signed by the parties to this Agreement.

**12.4 Force Majeure.** Except for payment obligations, neither party will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond its reasonable control, including acts of God, labor disputes or other industrial disturbances, electrical or power outage, utilities or telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

**12.5 Governing Law; Venue.** The law of the State of Washington, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between the parties. Any dispute relating in any way to the Service Offerings or this Agreement will only be adjudicated in a state or federal court located in King County, Washington. Each party consents to exclusive jurisdiction and venue in these courts. Notwithstanding the foregoing, either party may seek injunctive relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of such party's, its Affiliates' or any third party's Intellectual property or other proprietary rights. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

**12.6 Trade Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a U.S. company, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. Customer is solely responsible for compliance with applicable laws related to the manner in which Customer chooses to use the Service Offerings, including (i) Customer's transfer and processing of Customer Content, (ii) the provision of

Customer Content to End Users, and (iii) specifying the SELLER region in which any of the foregoing occur. Customer represents that Customer and the entities that own or control Customer, and the financial institutions used to pay SELLER under this Agreement, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the U.S. Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list, and the U.S. Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.

**12.7 Independent Contractors; Non-Exclusive Rights.** SELLER and Customer are independent contractors, and this Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship. Neither party, or any of their respective Affiliates, is an agent of the other for any purpose or has the authority to bind the other.

**12.8 Language.** All communications and Notices made or given pursuant to this Agreement must be in the English language. If SELLER provides a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

**12.9 Nondisclosure; Publicity.** If the parties have an NDA, then the NDA is incorporated by reference into this Agreement, except that the security provisions in Section 3, not the NDA, apply to Customer Content. Except to the extent permitted by applicable law, neither party will issue any press release or make any other public communication with respect to this Agreement or Customer's use of the Service Offerings. SELLER and Customer agree that the contents of this Agreement are not publicly known and will not be disclosed by either party.

**12.10 Notice,**

(a) **General.** Except as otherwise set forth in Section 12.10(b), to give notice to a party under this Agreement, each party must contact the other party as follows: (i) by facsimile transmission; or (ii) by personal delivery, overnight courier or registered or certified mail. Notices must be sent to the fax number of the other party listed on the Cover Page to this Agreement or addressed to the address of the other party listed on the Cover Page to this Agreement, or such other fax number or address as a party may subsequently provide in writing to the other party. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided by registered or certified mail will be effective three business days after they are sent.

(b) **Electronic Notice.** SELLER may provide notice to Customer (i) under Sections 2.2 or 5.1 by (A) sending a message to the email address then associated with at least one of Customer's SELLER Enterprise Accounts, or (B) posting a notice on the SELLER Site, (ii) under Section 6 by sending a message to the email address then associated with Customer's applicable SELLER Enterprise Account, and (iii) under Section 2.1 by sending a message to the email address then associated with at least one of Customer's SELLER Enterprise Accounts (or such other email address as agreed upon by the parties) or via a support case. Any notices provided by posting on the SELLER Site will be effective upon posting and notices provided by email will be effective when SELLER sends the email.

**12.11 No Third-Party Beneficiaries.** Except as set forth in Section 9, this Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.

**12.12 No Waivers.** The failure by either party to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit such party's right to enforce such provision at a later time. All waivers by a party must be provided in a Notice to be effective.

**12.13 Severability.** If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to give effect to the intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

**13, Definitions.** Defined terms used in this Agreement with initial letters capitalized have the meanings given below:

"**Acceptable Use Policy**" means the policy located at <http://seller.com/aup> (and any successor or related locations designated by SELLER), as it may be updated by SELLER from time to time.

"**Account Information**" means information about customer that Customer provides to SELLER in the creation or administration of an SELLER Enterprise Account. For example, Account Information includes names, usernames, phone numbers, email addresses and billing information associated with an SELLER Enterprise Account.

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by or is under common control with that party.

"**API**" means an application program interface.

"**SELLER Content**" means Content that SELLER or any of its Affiliates makes available related to the Services or on the SELLER Site to allow access to and use of the Services, including APIs; WSDLs; sample code; software libraries; command line tools; proofs of concept, templates, and other related technology (including but not limited to any of the foregoing that are provided by any SELLER personnel). SELLER Content does not include the Services or Third-Party Content.

"**SELLER Customer Agreement**" means SELLER's standard user agreement located on the SELLER Site at <http://seller.ama.zon.com/agreement> (and any successor or related locations designated by SELLER), as



may be updated by SELLER from time to time.

"**SELLER Enterprise Account**" means an SELLER account opened by Customer using a Customer-issued email address (with an email domain name that is owned by Customer) that includes Customer's full legal name in the "Company Name" field associated with the SELLER account.

"**SELLER Marks**" means any trademarks, service marks, service or trade names, logos, and other designations of SELLER and its Affiliates that SELLER may make available to Customer in connection with this Agreement.

"**SELLER Network**" means SELLER's data center facilities, servers, networking equipment, storage media, and host software systems (e.g., virtual firewalls) that are within SELLER's control and are used to provide the Services.

"**SELLER Security Standards**" means the security standards attached to this Agreement as Attachment A.

"**SELLER Site**" means <http://seller.com> (and any successor or related locations designated by SELLER), as may be updated by SELLER from time to time.

"**Content**" means software (including machine images), data, text, audio, video, or images.

"**Customer Content**" means Content that Customer or any End User transfers to SELLER for processing, storage or hosting by the Services in connection with an SELLER Enterprise Account and any computational results that Customer or any End User derive from the foregoing through its use of the Services. For example, Customer Content includes Content that Customer or any End User stores in Simple Storage Service. Customer Content does not include Account Information.

"**Disputed Amounts**" means amounts disputed by customer in a Notice and in good faith as billing errors.

"**Documentation**" means the user guides and admin guides (in each case exclusive of content referenced via hyperlink) for the Services located at <http://seller.com/documentation> (and any successor or related locations designated by SELLER), as such user guides and admin guides may be updated by SELLER from time to time.

"**End User**" means any individual or entity that directly or indirectly through another user (a) accesses or uses customer Content, or (b) otherwise accesses or uses the Service Offerings under an SELLER Enterprise Account. The term "End User" does not include individuals or entities when they are accessing or using the Services or any Content under their own SELLER account, rather than under an SELLER Enterprise Account.

"**Indirect Taxes**" means applicable taxes and duties, including, without limitation, VAT, GST, excise taxes, sales and transactions taxes, and gross tax receipts.

"**Losses**" means any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees).

"**NOA**" means the Mutual Nondisclosure Agreement between Customer and .com, Inc., dated January 24, 2017.

"**Notice**" means any notice provided in accordance with Section 12.10.

"Policies" means the Acceptable Use Policy, Privacy Policy, and the Service Terms .

"Privacy Policy" means the privacy policy located at <http://aws.amazon.com/privacy> (and any successor or related locations designated by SELLER), as may be updated by SELLER from time to time.

"Service" means each of the services made available by SELLER or its Affiliates for which Customer registers via the SELLER Site (or by such other means made available by SELLER), including those web services described in the Service Terms. Services do not include Third-Party Content.

"Service Attributes" means Service usage data related to an SELLER Enterprise Account, such as resource Identifiers, metadata tags, security and access roles , rules, usage policies, permissions, usage statistics and analytics.

"Service Level Agreement" means all service level agreements that SELLER offers with respect to the Services and posted on the SELLER Site, as they may be updated by SELLER from time to time. The service level agreements that SELLER offers with respect to the Services are located at <http://seller.amazon.com/legal/service-level-agreements> (and any successor or related locations designated by SELLER), as may be updated by SELLER from time to time.

"Service Offerings" means the Services, the SELLER Content, the SELLER Marks, and any other product or service provided by SELLER under this Agreement . Service Offerings do not include Third-Party Content .

"Service Terms" means the rights and restrictions for particular Services located at <http://aws.amazon.com/service-terms> (and any successor or related locations designated by SELLER), as may be updated by SELLER from time to time.

"Suggestions" means all suggested improvements to the Service Offerings that Customer provides to AWS.

"Term" means the term of this Agreement described in Section 7.1.

"Termination Date" means the effective date of termination provided in accordance with Section 7, in a Notice from one party to the other.

"Third-Party Content" means Content of a third party made available on the SELLER Marketplace or on developer forums, sample code repositories, public data repositories, community-focused areas of the SELLER Site, or any other part of the SELLER Site that allows third parties to make available software, products, or data.

"Trademark Use Guidelines" means the guidelines and trademark license located at <http://seller.amazon.com/trademark-guidelines/> (and any successor or related locations designated by SELLER), as may be updated by SELLER from time to time.

Capitalized terms not otherwise defined in this document have the meanings assigned to them in the applicable SELLER Enterprise Agreement.

**1. Information Security Program.** SELLER will maintain an information security program (including the adoption and enforcement of internal policies and procedures) designed to (a) satisfy the Security Objectives, (b) identify reasonably foreseeable and internal risks to security and unauthorized access to the SELLER Network, and (c) minimize security risks, including through risk assessment and regular testing. SELLER will designate one or more employees to coordinate and be accountable for the information security program. The information security program will include the following measures:

**1.1 Network Security.** The SELLER Network will be electronically accessible to employees, contractors and any other person as necessary to provide the Services. SELLER will maintain access controls and policies to manage what access is allowed to the SELLER Network from each network connection and user, including the use of firewalls or functionally equivalent technology and authentication controls. SELLER will maintain corrective action and incident response plans to respond to potential security threats.

## **1.2 Physical Security**

**1.2.1 Physical Access Controls.** Physical components of the SELLER Network are housed in nondescript facilities (the "Facilities"). Physical barrier controls are used to prevent unauthorized entrance to the Facilities both at the perimeter and at building access points. Passage through the physical barriers at the Facilities requires either electronic access control validation (e.g., card access systems, etc.) or validation by human security personnel (e.g., contract or in-house security guard service, receptionist, etc.). Employees and certain contractors are assigned photo-ID badges that must be worn while the employees and contractors are at any of the Facilities. Visitors and any other contractors are required to sign-in with designated personnel, must show appropriate identification, are assigned a visitor ID badge that must be worn while the visitor or contractor is at any of the Facilities, and are continually escorted by authorized employees or contractors while visiting the Facilities.

**1.2.2 Limited Employee and Contractor Access.** SELLER provides access to the Facilities to those employees and contractors who have a legitimate business need for such access privileges. When an employee or contractor no longer has a business need for the access privileges assigned to him/her, the access privileges are promptly revoked, even if the employee or contractor continues to be an employee of SELLER or its affiliates.

**1.2.3 Physical Security Protections.** All access points (other than main entry doors) are maintained in a secured (locked) state. Access points to the Facilities are monitored by video surveillance cameras designed to record all individuals accessing the Facilities. SELLER also maintains electronic intrusion detection systems designed to detect unauthorized access to the Facilities, including monitoring points of vulnerability (e.g., primary entry doors, emergency egress doors, roof hatches, dock bay doors, etc.) with door contacts, glass breakage devices, interior motion-detection, or other devices designed to detect individuals attempting to gain access to the Facilities. All physical access to the Facilities by employees and contractors is logged and routinely audited.

**2. Continued Evaluation.** SELLER will conduct periodic reviews of the security of its SELLER Network and adequacy of its information security program as measured against industry security standards and its policies and procedures. SELLER will continually evaluate the security of its SELLER Network and associated Services to determine whether additional or different security measures are required to respond to new security risks or findings

generated by the periodic reviews.