U.S. PUBLIC SECTOR ADDENDUM
TO
DOCKER SUBSCRIPTION SERVICE AGREEMENT
Last updated March 28, 2023

This U.S. Public Sector Addendum (the "Addendum") is incorporated into and forms part of the Docker, Inc. Subscription Service Agreement, which is generally available at https://docs.docker.com (or other such titled written or electronic agreement addressing the same subject matter) between Docker and Customer ("Agreement") and which governs the provision and use of Docker products or services. Capitalized terms used but not otherwise defined in this Addendum shall have the meanings given to them in the Agreement.

This Addendum applies to United States government customers, including entities of the United States Federal Government ("Federal"), as well as state, local, or public education entities created by the Laws (including constitution or statute) of the applicable state ("SLED"). Docker acknowledges that statutes and regulations governing Federal and SLED 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 Addendum are required by applicable Law, Docker and Customer agree that the following provisions take precedence over any conflicting terms in the Agreement:

1. <u>Business Purpose/Grant of License</u>. Docker acknowledges that references to "business purpose" in the Agreement includes government purposes authorized by applicable Laws. Use of the Docker Platform for private, personal, or non-governmental purposes shall result in the waiver of this Addendum and the terms and conditions of the Agreement shall apply without modification.

2. <u>Public Disclosure Laws</u>. Notwithstanding any confidentiality obligations in the Agreement, Docker acknowledges that Customer may be compelled to disclose certain categories of information meeting defined as Confidential Information (as defined by Docker's Subscription Service Agreement) 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, related Order Forms, statements of work, 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.

3. <u>Fees and Taxes</u>. Docker understands that Customer may be subject to applicable Laws governing payment, including availability of funds, timing of payments, late payment interest penalties, and taxes.

4. <u>Indemnification</u>.

    (a) <u>No Customer Indemnification Obligation</u>. To the extent applicable Law prohibits Customer from indemnifying Docker, any terms or conditions in the Agreement requiring Customer to indemnify Docker shall be deemed void and not binding against Customer.

    (b) <u>Take Down Requirement</u>. 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 breach of the Agreement, the Documentation, or applicable Order Form, 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.

    (c) <u>Government Control of Defense</u>. Any provision of the Agreement 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 (for a SLED

Customer) has the sole right to represent the respective Federal or SLED entity, as applicable, in litigation and other formal proceedings.

5. Controlling Law, Venue, Disputes, and Attorneys' Fees. Notwithstanding anything in the Agreement to the contrary:

   (a) Federal. As it relates to Federal entities, the Agreement and any disputes arising out of or related thereto shall be governed by U.S. Federal Law. Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal Law is hereby deleted and superseded by the forum or venue required by applicable Law. If Docker believes a Federal Customer is in breach of the Agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Law while continuing performance as set forth in Federal Acquisition Regulation 52.233–1 (Disputes) (or other applicable Disputes provision incorporated into the Agreement).

   (b) SLED. As it relates to SLED entities, 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.

   (c) Attorneys' Fees. Any language requiring Customer to pay Docker's attorneys' fees is hereby deleted.

6. Intellectual Property. 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 FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFARS 252.227-7015 (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 any resulting agreement. This provision applies in lieu of and supersedes any Federal Acquisition Regulation, Defense Federal Acquisition Regulation Supplement, or other clause or provision pertaining to Customer's rights in technical data, computer software, and computer software documentation.