

## AWS Reseller Customer License Terms

**Last Updated:** September 6, 2016

These AWS Reseller Customer License Terms (these “**License Terms**”) govern your access to and use of the Services (as defined below) provided to you by an authorized AWS Channel Reseller (“**Reseller**”). These License Terms take effect when accepted by you or the entity you represent (“**you**”) in connection with an agreement between you and Reseller and establish a binding legal agreement between you and Amazon Web Services, Inc. (“**AWS**”). In these License Terms, “**we**”, “**us**”, or “**our**” means AWS and any of its affiliates. Please see Section 9 for definitions of certain capitalized terms used in these License Terms.

### **1. Use of the Services.**

**1.1 Generally.** You may access and use the Services in accordance with these License Terms and your agreement between you and Reseller. AWS Service Level Agreements do not apply to your use of the Services. You will adhere to all laws, rules, and regulations applicable to your use of the Services, including the Service Terms, the Acceptable Use Policy and the other Policies as defined in Section 9.

**1.2 Account Keys.** Reseller may provide you with account keys which will allow you to access the Services via one or more accounts. You are responsible for all activities that occur under these accounts, regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents) and we are not responsible for unauthorized access to these accounts.

**1.3 Third Party Materials.** Third Party Materials, such as software applications provided by third parties, may be made available directly to you by other companies or individuals under separate terms and conditions, including separate fees and charges. Because we may not have tested or screened the Third Party Content, your use of any Third Party Content is at your sole risk.

### **2. Your Responsibilities.**

**2.1 Your Materials.** You are solely responsible for the development, content, operation, maintenance, and use of Your Materials. For example, you are solely responsible for:

- (a) the technical operation of Your Materials, including ensuring that calls you make to any Service are compatible with then-current APIs for that Service;
- (b) compliance of Your Materials with the Acceptable Use Policy, the other Policies, and the law;
- (c) any claims relating to Your Materials; and
- (d) properly handling and processing notices sent to you (or any of your affiliates) by any person claiming that Your Materials violate such person’s rights, including notices pursuant to the Digital Millennium Copyright Act.

**2.2 Other Security and Backup.** You are responsible for properly configuring and using the Services and taking your own steps to maintain appropriate security, protection and backup of Your Materials, which may include the use of encryption technology to protect Your Materials from unauthorized access and routinely archiving Your Materials.

**2.3 End User Violations.** You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to these License Terms, Your Materials or use of the Services. You are responsible for End Users’ use of Your Materials and the Services. You will ensure that all End Users comply with your obligations under these License Terms and that the terms of your agreement with each End User are consistent with these License Terms. If you become aware of any violation of your obligations under these License Terms by an End User, you will immediately terminate such End User’s access to Your Materials and the Services.

**3. Suspension.** We may suspend your or any End User’s right to access or use any portion of the Services immediately if we determine:

- (a) you are, or any End User is, in breach of these License Terms; or

(b) your or an End User's use of the Services (i) poses a security risk to the Services or any other third party, (ii) may adversely impact the Services or the systems or Materials of any other AWS customer, (iii) may subject us or any third party to liability, or (iv) may be fraudulent.

#### **4. Proprietary Rights.**

**4.1 Adequate Rights.** You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Materials; and (b) none of Your Materials or End Users' use of Your Materials or the Services will violate the Acceptable Use Policy.

**4.2 Service License.** As between you and us, we or our licensors own and reserve all right, title, and interest in and to the Services. You are licensed to use the Services solely as a sublicensee of Reseller in accordance with these License Terms and the agreement between you and Reseller. Except as provided in this Section 4.2, you obtain no rights under these License Terms from us or our licensors to the Services, including any related intellectual property rights. Some AWS Materials may be provided to you under a separate license, such as the Apache Software License or other open source license. In the event of a conflict between these License Terms and any separate license, the separate license will prevail with respect to those AWS Materials.

**4.3 License Restrictions.** Neither you nor any End User may use the Services in any manner or for any purpose other than as expressly permitted by these License Terms and the agreement between you and Reseller. Neither you nor any End User may, or may attempt to, (a) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Services (except to the extent software included in the Services is provided to you under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Services or apply any other process or procedure to derive the source code of any software included in the Services, (c) access or use the Services in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Services. All licenses granted to you in these License Terms are conditional on your continued compliance with these License Terms, and will immediately and automatically terminate if you do not comply with any term or condition of these License Terms. You will not assert, nor will you authorize, assist, or encourage any third party to assert, against us or any of our customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Services you have used.

**4.4 Suggestions.** If you provide any Suggestions to us, we will own all right, title, and interest in and to the Suggestions, even if you have designated the Suggestions as confidential. We will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to us all right, title, and interest in and to the Suggestions and agree to provide us any assistance we may require to document, perfect, and maintain our rights in the Suggestions.

**5. Indemnification.** To the maximum extent permitted by applicable law, you will defend, indemnify, and hold harmless us, our licensors, and each of our or their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning: (a) your or any End Users' use of the Services (including use by your employees and personnel); (b) breach of these License Terms or violation of applicable law by you or any End User; (c) Your Materials or the combination of Your Materials with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Your Materials or by the use, development, design, production, advertising or marketing of Your Materials; or (d) a dispute between you and Reseller or you and any End User.

**6. Disclaimers.** THE SERVICES ARE PROVIDED "AS IS." WE AND OUR LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES OR THE THIRD PARTY MATERIALS, INCLUDING ANY WARRANTY THAT THE SERVICES OR THIRD PARTY MATERIALS WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY MATERIALS, INCLUDING YOUR MATERIALS OR THE THIRD PARTY MATERIALS, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A

PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

**7. Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE AND OUR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF YOUR USE OF OR ACCESS TO THE SERVICES, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICES, OR, (III) ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THESE LICENSE TERMS OR YOUR USE OF OR ACCESS TO THE SERVICES; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR MATERIALS OR OTHER DATA.

## **8. Miscellaneous.**

**8.1 Modifications to these License Terms.** We may modify these License Terms (including any Policies) at any time by posting a revised version on the AWS Site. The modified terms will become effective upon posting. By continuing to use the Services after the effective date of any modification to these License Terms, you agree to be bound by the modified terms. It is your responsibility to check the AWS Site regularly for modifications to these License Terms. We last modified these License Terms on the date listed at the top of these License Terms.

**8.2 U.S. Government Rights.** The Services are provided to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data” with the same rights and restrictions generally applicable to the Services. If you are using the Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Services. The terms “commercial item” “commercial computer software,” “commercial computer software documentation,” and “technical data” are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

**8.3 Import and Export Compliance.** In connection with these License Terms, you will comply with all applicable import, re-import, export, and re-export control laws and regulations.

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

**8.5 Governing Law.** The laws of the State of Washington, without reference to conflict of law rules, govern these License Terms and any dispute of any sort that might arise between you and us. Notwithstanding the foregoing, if your registered address is in the EEA, the laws of the Grand Duchy of Luxembourg, without reference to conflict of law rules, govern these License Terms and any dispute of any sort that might arise between you and us. The United Nations Convention for the International Sale of Goods does not apply to these License Terms.

**8.6 Disputes.** Any dispute or claim relating in any way to your use of the Services, or to any products or services sold or distributed by AWS will be resolved by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to these License Terms. **There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of these License Terms as a court would.** To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent Corporation Service Company, 300 Deschutes Way SW, Suite 304,

Tumwater, WA 98501. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, which are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. Payment of filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees for claims totaling less than USD\$10,000 unless the arbitrator determines the claims are frivolous. We will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or at a mutually agreed location. **We and you agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action.** If for any reason a claim proceeds in court rather than in arbitration **we and you waive any right to a jury trial.** Subject to Section 4.3, we and you both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights. Notwithstanding the foregoing, if your registered address is in the EEA, (a) the laws of the Grand Duchy of Luxembourg apply to these License Terms, (b) the arbitration will be conducted by the International Court of Arbitration of the International Chamber of Commerce under its rules which are available at <http://www.iccwbo.org/> by one arbitrator appointed in accordance with the respective rules, and (c) payment of filing, administration and arbitrator fees will be governed by the ICC International Court of Arbitration's rules.

**8.7 Entire Agreement; English Language.** These License Terms include the Policies and are the entire agreement between you and us regarding the subject matter of these License Terms. These License Terms supersede all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of these License Terms. If the terms of these License Terms are inconsistent with the terms contained in your agreement with Reseller, the terms contained in these License Terms will control. If we provide a translation of the English language version of these License Terms, the English language version of these License Terms will control if there is any conflict.

**8.8 Survival.** The following provisions will survive any termination of your use of the Services: Sections 2.1, 4, 5, 6, 7, 8, and 9.

## 9. Definitions.

**"Acceptable Use Policy"** means the policy currently available at <http://aws.amazon.com/aup>, as it may be updated by us from time to time.

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

**"AWS Materials"** means Materials we make available in connection with the Services or on the AWS Site to allow access to and use of the Services, including WSDLs; Documentation; sample code; software libraries; command line tools; and other related technology. AWS Materials do not include the Services.

**"AWS Service Level Agreement"** means all service level agreements that we offer with respect to the Services and post on the AWS Site, as they may be updated by us from time to time.

**"AWS Site"** means <http://aws.amazon.com> and any successor or related site designated by us.

**"Documentation"** means the developer guides, getting started guides, user guides, quick reference guides, and other technical and operations manuals and specifications for the Services located at <http://aws.amazon.com/documentation>, as such documentation may be updated by us from time to time.

**"End User"** means any individual or entity that directly or indirectly through another user: (a) accesses or uses Your Materials; or (b) otherwise accesses or uses the Services through you.

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

**"Policies"** means the Acceptable Use Policy, the Site Terms, the Service Terms, all restrictions described in the AWS Materials and on the AWS Site, and any other policy or terms referenced in or incorporated into these License Terms. Policies do not include whitepapers or other marketing materials referenced on the AWS Site.

**"Service"** means each of the web services made available by us via the Reseller, including those web services described in the Service Terms.

**“Service Terms”** means the rights and restrictions for particular Services located at <http://aws.amazon.com/serviceterms>, as they may be updated by us from time to time.

**“Site Terms”** means the terms of use located at <http://aws.amazon.com/terms/>, as they may be updated by us from time to time.

**“Suggestions”** means all suggested improvements to the Services, the AWS Site or AWS Materials that you provide to us.

**“Third Party Materials”** means Materials made available to you by any third party on the AWS Site or in conjunction with the Services.

**“Your Materials”** means Materials you or any End User transfer to us for processing, storage or hosting by the Services in connection with your use of the Services and any computational results that you or any End User derive from the foregoing through your use of the Services.