

## AUTHORIZED RESELLER CONTRACT FOR AWS MARKETPLACE

### 1. Scope.

**1.1 Purpose.** This Authorized Reseller Contract for AWS Marketplace (the “**Reseller Contract**”) sets forth the terms and conditions pursuant to which a seller in AWS Marketplace (“**Seller**”) may designate a third-party reseller (“**Authorized Reseller**”) to resell content and related services to AWS Marketplace customers (“**Subscribers**”). Unless defined elsewhere in this Reseller Contract, terms in initial capital letters have the meanings set forth in Section 10. Authorized Reseller and Seller may be referred to collectively as the “**Parties**” or individually as a “**Party**”.

**1.2 Licensed Material.** This Reseller Contract is applicable only to Paid Listings that Seller offers in AWS Marketplace, which may include any form of deployment (e.g., Amazon Machine Image, Software-as-a-Service, Container) supported by AWS Marketplace functionality.

**1.3 Agreement.** The rights and obligations of each Party with respect to the resale of Licensed Material in AWS Marketplace will be subject to and governed by this Reseller Contract, the terms and conditions of the NDA (if any), and any amendments to any of the foregoing as may be agreed upon by the Parties, which together constitute the agreement between Authorized Reseller and Seller (the “**Agreement**”). Any terms or conditions in any order forms, quote, program or other business forms used by Authorized Reseller and Seller to administer this Agreement that are in addition to or different from the terms and conditions of this Agreement will have no force or effect, unless formalized in a writing that expressly states that such additional terms are intended to modify this Agreement and signed by both Parties.

**1.4 Nonexclusive Relationship.** This Agreement is nonexclusive. Seller reserves the right to, and to authorize others to market, offer, sell, license, and distribute the Licensed Materials and Services via the AWS Marketplace or elsewhere. Authorized Reseller shall not appoint or engage any third party to act on Authorized Reseller’s behalf as its agent, representative, or distributor to either purchase or sell Seller’s Licensed Material under the terms of this Agreement. Authorized Reseller reserves the right to market, offer, sell, license and distribute, products and services of third parties via the AWS Marketplace or elsewhere, including products similar to or competitive with the Licensed Material and/or Services.

**1.5 Limitation.** This Agreement does not govern, modify or affect, in any way, any separate agreement or other terms and conditions that apply between Seller and Authorized Reseller with respect to any sales channel other than AWS Marketplace or Authorized Reseller’s participation in any Seller resales program generally.

### 2. Resale of Licensed Material; Subscriptions.

**2.1 Authorized Reseller Appointment.** Seller hereby designates and appoints Authorized Reseller as an independent, non-exclusive reseller and distributor of Licensed Materials and any applicable Services to Subscribers in the AWS Marketplace during the term hereof in accordance with this Agreement. Seller authorizes Authorized Reseller to sell or sell licenses to and distribute the Licensed Materials on a Subscription basis in AWS Marketplace. Seller will sell the Subscriptions to Authorized Reseller for resale to Subscribers on the terms set forth herein.

**2.2 License.** Seller hereby grants to Authorized Reseller a nonexclusive, nontransferable (except in connection with an assignment permitted under Section 9.2), license to market, sell or sell licenses to and distribute Licensed Materials and any applicable Services to Subscribers in accordance with the terms and conditions of this Agreement.

**2.3 Marketing; Use of Seller Marks.** Seller hereby grants to Authorized Reseller a nonexclusive, nontransferable (except in connection with an assignment permitted under Section 9.2), royalty-free license to use the trademarks adopted and used by Seller for the Licensed Material (“**Seller Marks**”) in connection with its marketing and sale or sale of licenses to the Licensed Materials. Authorized Reseller will use the Seller Marks in

accordance with any trademark usage guidelines provided by Seller, as they may be updated from time to time upon reasonable advance notice. Upon request by Seller, Authorized Reseller will submit to Seller representative samples of marketing materials displaying the Seller Marks that it intends to use. If requested by Seller, Authorized Reseller will implement changes to such marketing materials, provided such changes are commercially reasonable. Authorized Reseller shall clearly indicate that it is an Authorized Reseller of the Licensed Materials so as to avoid confusion with the Seller Marks. All goodwill and any other rights, titles and interest arising from use of the Seller Marks by Authorized Reseller will inure to the benefit of Seller.

**2.4 Restrictions.** Except as may be separately agreed in writing by the Parties, Authorized Reseller may not: (a) access or use any Licensed Materials or Subscription as an end user; (b) sublicense, or otherwise authorize or grant to any third party, any of the rights granted to Authorized Reseller under this Section 2; (c) sell, sell licenses to or distribute any Licensed Materials via any sales channel other than AWS Marketplace; or (d) rename or rebrand the Licensed Materials. Authorized Reseller will not knowingly sell or sell licenses to Licensed Materials to any Subscriber that intends to use the Licensed Material or its functionality as a service bureau, time sharing or other outsourcing arrangement for the benefit of others unless separately agreed in writing by the Parties. Authorized Reseller will not knowingly sell or sell licenses to the Licensed Materials to any Subscriber that is a national, state, or local government entity or agency without Seller's prior express written consent. All rights not expressly granted herein are reserved to Seller.

**2.5 Pass-through Terms for Subscribers.** Unless otherwise agreed upon by Seller and Authorized Reseller in writing, Authorized Reseller will offer and provide the Licensed Materials to Subscribers under the same terms and conditions as described in the corresponding Paid Listing, if any. The terms and conditions that govern Subscriber's use of the Licensed Materials in accordance with the foregoing are referred to herein as the "**Pass-through Terms**". Authorized Reseller will not enter into any separate agreement with a Subscriber that will invalidate, add to, supersede, merge, modify, or otherwise limit or contradict the terms and conditions of the Pass-through Terms.

**2.6 Restriction on Pass-Through Warranties.** Unless otherwise expressly agreed to by Seller in writing (a) Authorized Reseller will not make any claims, statements, guarantees, conditions, representations, warranties or covenants regarding the specifications, features, capabilities, performance or other aspects of the Licensed Materials and/or Services that are in addition to, or otherwise inconsistent with, the Pass-through Terms, marketing materials, documentation and other literature published or approved by Seller concerning the Licensed Materials and/or Services ("**Seller Approved Materials**"); (b) Authorized Reseller will not make any claims, statements, guarantees, conditions, representations or warranties to any Subscribers on behalf of Seller with respect to any Licensed Materials and/or Services or represent to any third party that Authorized Reseller is an agent of Seller. To the extent that Authorized Reseller is permitted to make under subsection (a) above, or otherwise makes, any statement about the Licensed Materials and/or Services other than set forth in the Seller Approved Materials, Authorized Reseller will not make any deceptive or misleading statements about the Licensed Material and/or Services Authorized Reseller shall ensure that no technical support or other services provided by Authorized Reseller will invalidate or otherwise contradict any of the representations and warranties made by Seller in the Pass-through Terms.

**2.7 Resale Program Policies and Procedures; Lead Registration.** Except as otherwise expressly agreed to by the Parties in writing, to the extent applicable to Authorized Reseller's resale of Licensed Material under the Agreement and made available to Authorized Reseller, Authorized Reseller will comply with Seller's reasonable policies and procedures applicable to Authorized Reseller's designated level of participation in Seller's resale program, including if applicable registration requirements for potential Resale Offers.

**2.8 Pricing for Subscribers.** Authorized Reseller will have all discretion to set the price of the Resale Offer.

**2.9 Fulfillment; Support Services.** For each Resale Transaction made in accordance with this Agreement, Seller will maintain the availability of the Licensed Materials in AWS Marketplace as necessary to enable fulfillment of the Subscription. Seller will provide any Services directly to Subscribers and, as between

Seller and Authorized Reseller, will be solely responsible for the performance of the Services.

**2.10 Subscriber Information.** Any Subscriber information shared by and between Authorized Reseller and Seller may be used for the purposes of enabling fulfillment of the Subscription and providing access to and use of the Licensed Materials and/or Services to the Subscriber. Authorized Reseller and Seller will obtain any necessary consents, authorization, or other rights or permissions for access, use or disclosure of Subscriber information for other purposes. Authorized Reseller and Seller will each comply with their respective privacy policies and all applicable privacy and data protection laws and regulations.

### **3. Proprietary Rights.**

**3.1 Licensed Materials.** Subject to the licenses granted herein, Seller will retain all right, title and interest it may have in and to the Licensed Materials, the Services, and Seller Marks, including all Proprietary Rights therein. Nothing in this Agreement will be construed or interpreted as granting to Authorized Reseller any rights of ownership or any other proprietary rights in or to the Licensed Material, the Services, and Seller Marks. Authorized Reseller agrees that it will not adopt, use or register as a trademark, service mark, trade name, business name, corporate name or domain name or any part thereof, any word or symbol or combination thereof that is confusingly similar to any Seller Mark, including but not limited to adopting the look and feel of the Seller's website.

**3.2 Feedback.** If Authorized Reseller provides Seller with any suggestions, ideas, enhancement requests, recommendations or feedback regarding the Licensed Materials ("**Feedback**"), Seller may use and incorporate Feedback into Seller's products and services without restriction. Authorized Reseller will not have any obligation to provide Feedback, and all Feedback is provided "as is" and without warranty of any kind.

### **4. Warranties.**

**4.1 Seller Warranties.** Seller represents and warrants to Authorized Reseller that: (a) Seller is the owner of, or has sufficient rights in and to, the Licensed Materials to grant Authorized Reseller the rights granted in this Reseller Contract; and (b) the Licensed Materials, and Authorized Reseller's resale of the Licensed Materials as permitted pursuant to this Reseller Contract, will not infringe, misappropriate or violate the Proprietary Rights of any third party. In the event that Seller breaches its representations and warranties in this Section 4.1, Authorized Reseller's sole remedy for such breach shall be as set forth in Section 7.1.

**4.2 Compliance with Laws.** Each Party represents and warrants that it will comply with all applicable international, national, state and local laws, ordinances, rules, regulations and orders, as amended from time to time ("**Laws**") applicable to such Party in its performance under this Agreement, including applicable privacy and data protection laws and regulations.

**4.3 Power and Authority.** Each Party represents and warrants that: (a) it has full power and authority to enter in and perform this Agreement and that the execution and delivery of this Agreement has been duly authorized; and (b) this Agreement and such Party's performance hereunder will not breach any other agreement to which the Party is a party or is bound or violate any obligation owed by such Party to any third party.

**4.4 Disclaimer.** EXCEPT FOR THE WARRANTIES SPECIFIED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY MAKES ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT, REGARDING THE LICENSED MATERIALS, AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. NEITHER PARTY INTENDS FOR THIS CLAUSE TO DISCLAIM OR EXCLUDE ANY STATUTORY GUARANTEES OR IMPLIED WARRANTIES, REPRESENTATIONS OR CONDITIONS THAT ARE NOT PERMITTED BY LAW TO BE DISCLAIMED OR

EXCLUDED.

## 5. Confidentiality.

**5.1 Confidential Information.** “**Confidential Information**” means any nonpublic information directly or indirectly disclosed by either Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) or accessible to the Receiving Party pursuant to this Agreement that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential, including without limitation technical data, trade secrets, know-how, research, inventions, processes, designs, drawings, strategic roadmaps, product plans, product designs and architecture, security information, marketing plans, pricing and cost information, marketing and promotional activities, business plans, customer and supplier information, employee and Subscriber information, business and marketing plans, and business processes, and other technical, financial or business information, and any third party information that the Disclosing Party is required to maintain as confidential. Confidential Information will not, however, include any information which: (a) was publicly known or made generally available to the public prior to the time of disclosure; (b) becomes publicly known or made generally available after disclosure through no fault of the Receiving Party; (c) is in the possession of the Receiving Party, without restriction as to use or disclosure, at the time of disclosure by the Disclosing Party; (d) was lawfully received, without restriction as to use or disclosure, from a third party (who does not have an obligation of confidentiality or restriction on use itself); or (e) is developed by the Receiving Party independently from this Agreement and without use of or reference to the Disclosing Party’s Confidential Information. Except for rights expressly granted in this Agreement, each Party reserves all rights in and to its Confidential Information. The Parties agree that the Licensed Materials are Confidential Information of Seller.

**5.2 Obligations.** The Parties will maintain as confidential and will avoid disclosure and unauthorized use of Confidential Information of the other Party using reasonable precautions. Each Party will protect such Confidential Information with the same degree of care that a prudent person would exercise to protect its own confidential information of a like nature, and to prevent the unauthorized, negligent, or inadvertent use, disclosure, or publication thereof or access thereto. Each Party will restrict Confidential Information to individuals who need to know such Confidential Information and who are bound to confidentiality obligations at least as protective as the restrictions described in this Section 5. Except as necessary for the exercise of a Party’s rights under this Agreement, performance of a Party’s obligations under this Agreement or as otherwise permitted under this Agreement, neither Party will use Confidential Information of the other Party for any purpose. Each Party will promptly notify the other Party if it becomes aware of any unauthorized use or disclosure of the other Party’s Confidential Information, and reasonably cooperate with the other Party in attempts to limit disclosure.

**5.3 Compelled Disclosure.** If and to the extent required by law, including regulatory requirements, discovery request, subpoena, court order or governmental action, the Receiving Party may disclose or produce Confidential Information but will give reasonable prior notice (and where prior notice is not permitted by applicable Law, notice will be given as soon as the Receiving Party is legally permitted) to the Disclosing Party to permit the Disclosing Party to intervene and to request protective orders or confidential treatment therefor or other appropriate remedy regarding such disclosure. Disclosure of any Confidential Information pursuant to any legal requirement will not be deemed to render it non-confidential, and the Receiving Party’s obligations with respect to Confidential Information of the Disclosing Party will not be changed or lessened by virtue of any such disclosure.

**5.4 NDA.** Seller and Authorized Reseller may agree that a separate nondisclosure agreement between Seller and Authorized Reseller (or the respective Affiliate of Seller and Authorized Reseller) (“**NDA**”) will apply to the resale of Licensed Materials, in which case the terms and conditions thereof are incorporated herein by reference and will apply instead of subsections 5.1 through 5.3 of this Section 5.

## 6. Limitations of Liability.

**6.1 Disclaimer; General Cap.** SUBJECT TO SECTION 6.2, IN NO EVENT WILL (a) EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES ARISING OUT OF OR IN CONNECTION WITH THIS

AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES, AND (b) EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL THEORY, EXCEED THE FEES AND OTHER AMOUNTS PAID AND REQUIRED TO BE PAID BY AUTHORIZED RESELLER FOR THE SUBSCRIPTIONS IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE DAMAGES OR LOSSES.

**6.2 Exception for Certain Indemnification Obligations.** THE EXCLUSIONS OF AND LIMITATIONS ON LIABILITY SET FORTH IN SECTION 6.1 WILL NOT APPLY TO (A) ANY COSTS OF DEFENSE AND ANY AMOUNTS AWARDED AGAINST THE INDEMNIFIED PARTY BY A COURT OF COMPETENT JURISDICTION OR AGREED UPON PURSUANT TO SETTLEMENT AGREEMENT THAT ARE SUBJECT TO THE INDEMNIFYING PARTY'S INDEMNIFICATION AND DEFENSE OBLIGATIONS UNDER THIS AGREEMENT. THE EXCLUSIONS OF AND LIMITATIONS OF LIABILITY SET FORTH IN SECTION 6.1 WILL NOT APPLY TO ANY DAMAGES ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT OR (B) ANY OTHER LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAWS.

## **7. Indemnification.**

**7.1 Seller Indemnity.** Seller will, at its expense, defend Authorized Reseller and its Affiliates and their respective officers, directors, employees, agents and representatives (collectively "**Authorized Reseller Indemnified Parties**") from and against any and all claims, actions, proceedings and suits ("**Claims**") brought by a third party, to the extent arising out of or alleging: (a) any infringement, misappropriation or violation of any Proprietary Rights by the Licensed Materials, Services, Subscriptions or their resale as permitted under this Agreement; or (b) any failure by Seller to fulfill its obligations to any Subscriber pursuant to the terms of this Agreement. Seller will pay all amounts finally awarded against any Authorized Reseller Indemnified Party by a court of competent jurisdiction or agreed upon in settlement as permitted herein to the extent arising out of any such Claim. This Section 7.1 comprises Authorized Reseller's sole and exclusive right and remedy, and Seller's entire obligation and liability, with respect to any breach by Seller of any of its representations and warranties under this Agreement.

**7.2 Authorized Reseller Indemnity.** Authorized Reseller will, at its expense, defend Seller and its Affiliates and their respective officers, directors, employees, agents and representatives (collectively "**Seller Indemnified Parties**") from and against any and all Claims brought by a third party to the extent arising out of or alleging of any breach of Section 2 by the Authorized Reseller, including without limitation any failure by Authorized Reseller to make the Resale Offer subject to the Pass-through Terms, or any modification by Authorized Reseller of the Pass-through Terms without Seller's written consent. Authorized Reseller will pay all amounts finally awarded against any Seller Indemnified Party by a court of competent jurisdiction or agreed upon in settlement as permitted herein to the extent arising out of any such Claim. This Section 7.2 comprises Seller's sole and exclusive right and remedy, and Authorized Reseller's entire obligation and liability, with respect to any breach by Authorized Reseller of Section 2 of this Agreement.

**7.3 Process.** The Party(ies) seeking indemnification pursuant to this Section 7 (each, an "**Indemnified Party**") and collectively, the "**Indemnified Parties**") will give the other Party (the "**Indemnifying Party**") prompt notice of each Claim for which it seeks indemnification, provided that failure or delay in providing such notice will not release the Indemnifying Party from any obligations hereunder except to the extent that the Indemnifying Party is prejudiced by such failure. The Indemnified Parties will give the Indemnifying Party their reasonable cooperation in the defense of each Claim for which indemnity is sought, at the Indemnifying Party's expense. The Indemnifying Party will keep the Indemnified Parties informed of the status of each Claim. An Indemnified Party may participate in the defense at its own expense. The Indemnifying Party will control the defense or settlement of the Claim, provided that, without the Indemnified Parties' prior written consent, the Indemnifying Party: (a) will not enter into any settlement that: (i) includes any admission of guilt or wrongdoing by any Indemnified Party; (ii) imposes any financial obligations on any Indemnified Party that Indemnifying Party is not obligated to pay under this Section 7; (iii) imposes any non-monetary obligations on any Indemnified Party in contradiction to the terms and conditions

of this Agreement; and (iv) does not include a full and unconditional release of any Indemnified Parties; and (b) will not consent to the entry of judgment, except for a dismissal with prejudice of any Claim settled as permitted herein. The Indemnifying Party will ensure that any settlement into which it enters for any Claim is made confidential, except where not permitted by applicable Law.

**7.4 Not Limiting.** The foregoing indemnities will not be limited in any manner whatsoever by any required or other insurance coverage maintained by a Party.

## **8. Term and Termination.**

**8.1 Term.** This Agreement will continue in full force and effect until terminated by either Party as provided by this Agreement.

**8.2 Termination for Convenience.** Either Party may terminate this Agreement without cause at any time upon 30 days' notice to the other Party.

**8.3 Termination for Cause.** Either Party may terminate this Agreement if the other Party materially breaches this Agreement and does not cure the breach within 15 days following its receipt of written notice of the breach from the non-breaching Party. Notwithstanding the foregoing, either Party may terminate this Agreement if the other Party is (i) in breach of its confidentiality obligations hereunder, (ii) infringes upon or otherwise violates any of the other Party's Proprietary Rights, or (iii) misuses any of the other Party's trademarks in violation of the terms of this Agreement, and, if curable, does not cure such breach within 3 days following its receipt of written notice of the breach from the non-breaching Party.

**8.4 Effect of Termination.** Upon termination or expiration of this Agreement, all rights granted to Authorized Reseller will terminate, and Authorized Reseller will stop marketing, selling and, except as necessary for Authorized Reseller to enable Seller's fulfillment of purchased Subscriptions purchased prior to termination, distributing the Licensed Materials and all use of Seller Marks. Authorized Reseller and Seller will each discontinue representing that Authorized Reseller is a reseller of the Licensed Materials. Seller and Authorized Reseller will promptly notify AWS in accordance with AWS Marketplace requirements of any termination or modification of Authorized Reseller's resale rights. Authorized Reseller will promptly return to Seller all copies of Confidential Information of Seller in its possession, custody or control. Termination of this Agreement will not affect Subscribers rights to access and use the Licensed Materials pursuant to purchased Subscriptions in accordance with the applicable terms thereof. Seller will continue to enable the fulfillment the Subscriptions and provide the Services directly to Subscribers until completion of all Subscriptions purchased during the term of this Agreement are terminated in accordance with their terms.

**8.4.1** Sections 3 (Proprietary Rights), 5 (Confidentiality), 6 (Limitations of Liability), 7 (Indemnification), 8.4 (Effect of Termination), 9 (General) and 10 (Definitions), together with all other provisions of this Agreement that may reasonably be interpreted or construed as surviving expiration or termination, will survive the expiration or termination of this Agreement for any reason; but the nonuse and nondisclosure obligations of Section 5 will expire five years following the expiration or termination of this Agreement, except with respect to, and for as long as, any Confidential Information constitutes a trade secret.

**8.4.2** Neither Party will be liable to the other Party for any compensation or termination fees or for any damages, loss or expenses of any kind suffered or incurred by the other Party (including prospective profits or recovery of investments or expenses) arising from or incidental to any termination or expiration of this Agreement in accordance with its terms.

## **9. General.**

**9.1 Applicable Law.** This Agreement will be governed and interpreted under the Governing Laws, excluding its principles of conflict of laws. The Parties agree that the exclusive forum for any action or proceeding will be in the Governing Courts, and the Parties consent to the exclusive jurisdiction of the state and federal courts

located in the Governing Courts. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**9.2 Assignment.** Neither Party may assign or transfer this Agreement or any rights or delegate any duties herein, in whole or in part, without the prior written consent of the other Party, which will not be reasonably withheld, delayed or conditioned. Notwithstanding the foregoing, and without gaining the other Party's written consent, either Party may assign this Agreement, in its entirety, and delegate its obligations to its Affiliates or to any entity acquiring all or substantially all of the assets of the assigning Party's business that is the subject matter of this Agreement, whether by sale of assets, sale of stock, merger or otherwise. Any attempted assignment, transfer or delegation in contravention of this Section will be null and void. This Agreement will inure to the benefit of the Parties hereto and their permitted successors and assigns.

**9.3 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and there are no other representations, understandings or agreements between the Parties relating to the subject matter hereof. This Agreement is solely between Authorized Reseller and Seller. Neither Amazon Web Services, Inc. nor any of its Affiliates are a party to this Agreement and none of them will have any liability or obligations hereunder. The terms and conditions of this Agreement will not be changed, amended, modified or waived unless such change, amendment, modification or waiver is conspicuously identified as such, and is in writing and signed by authorized representatives of the Parties. NEITHER PARTY WILL BE BOUND BY, AND EACH SPECIFICALLY OBJECTS TO, ANY PROVISION THAT IS DIFFERENT FROM OR IN ADDITION TO THIS AGREEMENT (WHETHER PROFFERED ORALLY OR IN ANY QUOTATION, PURCHASE ORDER, INVOICE, SHIPPING DOCUMENT, ONLINE TERMS AND CONDITIONS, ACCEPTANCE, CONFIRMATION, CORRESPONDENCE, OR OTHERWISE), UNLESS SUCH PROVISION IS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY BOTH PARTIES THAT EXPRESSLY STATES THAT IT IS INTENDED TO MODIFY THE CONFLICTING TERMS.

**9.4 Electronic Signature; Counterparts.** This Agreement may be signed by manual or electronic signatures and in counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

**9.5 Export Laws.** Each Party will comply with all applicable customs and export control laws and regulations of the United States and/or such other country, in the case of Authorized Reseller, where Authorized Reseller sells the Licensed Materials, Services or Subscriptions, and in the case of Seller, where Seller provides the Licensed Materials, Services or Subscriptions. Each Party certifies that it and its Personnel are not on any of the relevant U.S. Government Lists of prohibited persons, including but not limited to the Treasury Department's List of Specially Designated Nationals and the Commerce Department's list of Denied Persons, or applicable similar list under such other country. Neither Party will export, re-export, ship, or otherwise transfer the Licensed Material to any country subject to an embargo or other sanction by the United States.

**9.6 Force Majeure.** Neither Party will be liable hereunder for any failure or delay in the performance of its obligations in whole or in part, on account of riots, fire, flood, earthquake, explosion, epidemics, pandemics, war, strike or labor disputes (not involving the Party claiming force majeure), embargo, civil or military authority, act of God, governmental action or other causes beyond its reasonable control and without the fault or negligence of such Party or its Personnel and such failure or delay could not have been prevented or circumvented by the non-performing Party through the use of alternate sourcing, workaround plans or other reasonable precautions (a "**Force Majeure Event**"). If a Force Majeure Event continues for more than 30 days, the other party may terminate this Agreement upon notice.

**9.7 Headings.** The headings throughout this Agreement are for reference purposes only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**9.8 Injunctive Relief.** The Parties agree that a violation of Section 2.1 ("Authorized Reseller Appointment"), Section 2.2 ("License"), Section 3 ("Proprietary Rights"), or Section 5 ("Confidentiality") of this

Agreement may cause irreparable harm to the non-breaching Party and that a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, the non-breaching Party will be entitled to seek temporary, preliminary and permanent injunctive relief or other equitable remedies in the event of any threatened or actual violation of any or all of the provisions hereof, without the requirement of posting a bond or proving actual damages.

**9.9 No Third-Party Beneficiaries.** Except as specified in Section 7 with respect to Authorized Reseller Indemnified Parties and Seller Indemnified Parties, nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations or liabilities whatsoever.

**9.10 Notices.** To be effective, notice under this Agreement must be given in writing. Each Party consents to receiving electronic communications and notifications from the other Party in connection with this Agreement. Each Party agrees that it may receive notices from the other Party regarding this Agreement: (a) by email to the email address designated by such Party as a notice address for the Reseller Contract; (b) by personal delivery; (c) by registered or certified mail, return receipt requested; or (d) by nationally recognized courier service. Notice will be deemed given upon written verification of receipt.

**9.11 Nonwaiver.** Any failure or delay by either Party to exercise or partially exercise any right, power or privilege under this Agreement will not be deemed a waiver of any such right, power or privilege under this Agreement. No waiver by either Party of a breach of any term, provision or condition of this Agreement by the other Party will constitute a waiver of any succeeding breach of the same or any other provision hereof. No such waiver will be valid unless executed in writing by the Party making the waiver.

**9.12 Publicity.** Neither Party will issue any publicity materials or press releases that refer to the other Party or its Affiliates, or use any trade name, trademark, service mark or logo of the other Party or its Affiliates in any advertising, promotions or otherwise, without the other Party's prior written consent. Notwithstanding the foregoing, either Party may identify the other Party as a seller or authorized reseller, as applicable, of Licensed Materials in such Party's marketing materials and, subject to Section 2, Authorized Reseller may identify the Licensed Materials that it is authorized to resell in its marketing materials.

**9.13 Relationship of Parties.** The relationship of the Parties will be that of independent contractors, and nothing contained in this Agreement will create or imply an agency relationship between Authorized Reseller and Seller, nor will this Agreement be deemed to constitute a joint venture or partnership or the relationship of employer and employee or otherwise create a fiduciary relationship between Authorized Reseller and Seller. Each Party assumes sole and full responsibility for its acts and the acts of its Personnel. Neither Party will have the authority to make commitments or enter into contracts on behalf of, bind, or otherwise oblige the other Party.

**9.14 Severability.** If any term or condition of this Agreement is to any extent held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby, and each term and condition will be valid and enforceable to the fullest extent permitted by law.

**9.15 Subcontracting.** Authorized Reseller will not use Subcontractors in its performance under this Agreement without Seller's prior written consent, which will not be unreasonably withheld. The performance of any act or omission under this Agreement by a Subcontractor for, by or through Authorized Reseller will be deemed the act or omission of Authorized Reseller. The performance of any act or omission under this Agreement by a Subcontractor for, by or through Seller will be deemed the act or omission of Seller. Upon request by a Party, the other Party will identify to the requesting Party any of its Subcontractors performing under this Agreement and such other information reasonably requested by such requesting Party about such subcontracting.

## **10. Definitions.**

**10.1 "Affiliate"** means, with respect to a Party, any entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.

**10.2** “**AWS**” means collectively, Amazon Web Services, Inc. and any of its affiliates that operate AWS Marketplace.

**10.3** “**AWS Marketplace**” means the marketplace operated by AWS located at <https://aws.amazon.com/marketplace/> as it may be updated from time to time. For the sake of clarity, “AWS Marketplace” also includes AWS Data Exchange.

**10.4** “**Governing Courts**” means the state and federal courts located in New York County, New York.

**10.5** “**Governing Law**” means the laws of the State of New York.

**10.6** “**Licensed Materials**” means any content that Seller promotes, licenses, sells or grants access to Subscribers through a Paid Listing.

**10.7** “**Paid Listing**” means a listing or offer in AWS Marketplace where AWS processes the payment of fees or other charges paid by Subscribers in connection with use of the Licensed Material, including offers made pursuant to an AWS Marketplace Reseller Authorization Form, AWS Marketplace Custom Resale Transaction Request Form or similar documentation.

**10.8** “**Personnel**” means a Party or its Affiliate’s directors, officers, employees, non-employee workers, agents, auditors, consultants, contractors, subcontractors and any other person performing services on behalf of such Party (but excludes the other Party and any of the foregoing of the other Party).

**10.9** “**Proprietary Rights**” means all intellectual property and proprietary rights throughout the world, whether now known or hereinafter discovered or invented, including, without limitation, all: (a) patents and patent applications, patent rights, rights of priority, and design rights; (b) rights associated with works of authorship, including but not limited to copyrights and mask work rights; (c) trade secrets; (d) trademarks (including service mark rights) and trade dress rights; (e) rights in data and databases; (f) analogous rights throughout the world; (g) all other intellectual and industrial property rights of every kind and nature which may exist anywhere in the world, whether registered or unregistered and (f) any and all applications and registrations, renewals, extensions, provisionals, continuations, continuations-in-part, divisions, reissues or reexaminations of any of the foregoing.

**10.10** “**Resale Offer**” means an offer by Authorized Reseller created by Authorized Reseller in AWS Marketplace to license, access and/or use Licensed Material and/or sell Services to Subscribers.

**10.11** “**Resale Transaction**” means the resale of a license to, access to, and/or use of Licensed Materials and/or Services to a Subscriber pursuant to a Resale Offer.

**10.12** “**Services**” means the services and tasks that Seller promotes, licenses, sells or grants access to Subscribers through a Paid Listing.

**10.13** “**Subcontractor**” means any third party subcontractor or other third party to whom Authorized Reseller or Seller delegates any of its duties and obligations under this Agreement.

**10.14** “**Subscription**” means a subscription to Licensed Material and/or Services ordered by a Subscriber pursuant to a Resale Offer from Authorized Reseller, regardless of the form of deployment in AWS Marketplace.