

**AWS BETA TEST PARTICIPATION AGREEMENT**  
(Cover Page)

This AWS Beta Test Participation Agreement (this "Agreement") is made and entered into by and between Amazon Web Services LLC, a Delaware limited liability company ("AWS"), and the "Company" specified on this Cover Page. This Agreement supplements the terms of the existing AWS Customer Agreement or AWS Enterprise Customer Agreement between the Parties and describes the additional terms and conditions under which Company may access and use certain features, technologies and services that are not yet generally commercially available (each, a "Beta Service"). AWS and Company are sometimes referred to collectively as the "Parties" and each individually as a "Party." Capitalized terms not defined in this Cover Page will have the meanings set forth in the Terms and Conditions attached to this Cover Page.

This Agreement consists of this Cover Page, the Terms and Conditions attached as Attachment A, the terms of the existing AWS Customer Agreement or AWS Enterprise Agreement between the Parties, and any additional terms and conditions that AWS may specify in connection with an individual Beta Service. In consideration of the mutual promises contained in this Agreement, AWS and Company agree to all terms of the Agreement effective as of the date the last Party signs this Agreement.

<b>AMAZON WEB SERVICES LLC</b> By: <u>[Signature]</u> Name: <u>Carla Stratford</u> Title: <u>Director, AWS Sales &amp; Bus. Dev.</u> Signature Date: <u>NOV 20 2012</u>  Address: 410 Terry Avenue North Seattle, WA 98109-5210 Attention: General Counsel	Company Name: <u>MadeiraCloud Limited</u> By: <u>D.R.K. O'Prey</u> Name: <u>Daniel O'Prey</u> Title: <u>CEO</u> Signature Date: <u>2012/11/17</u>  Address: Xueyuannanlu Road, Area 12, Building 54, Room 110 Haidian, Beijing, P.R. China Attention: <u>Daniel O'Prey</u>
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**ATTACHMENT A**  
**Terms and Conditions**

**1. Definitions**

**"Additional Feedback"** means all feedback, suggestions, and ideas that Company provides to AWS or its affiliates concerning improvements or enhancements to a Beta Service or any related Beta Materials.

**"Additional Policies"** means all policies and guidelines related to any Beta Service, Beta Materials or other web services offered by AWS or its affiliates and posted on <http://aws.amazon.com> or otherwise made available to Company, including privacy policies, terms of use, acceptable use policies, and any additional terms and conditions for a specific Beta Test.

**"AWS Confidential Information"** means all nonpublic information disclosed by AWS party, its affiliates, or the agents of any of the foregoing to Company, its affiliates, or the agents of any of the foregoing, 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. AWS Confidential Information includes, without limitation (a) nonpublic information relating to AWS' or its affiliates' technology, customers, business plans, promotional and marketing activities, finances and other business affairs, (b) third-party information that AWS or its affiliates is obligated to keep confidential, (c) Beta Materials, Test Observations, Additional Feedback, or any other information about or involving (including the existence of) any of the Beta Tests or Beta Services, and (d) the nature, content and existence of this Agreement and any discussions or negotiations between the Parties. AWS Confidential Information does not include any information that (i) is or becomes publicly available without breach of this Agreement, (ii) can be shown by documentation to have been known to the receiving party at the time of its receipt from the disclosing party, (iii) is received from a third party who did not acquire or disclose such information by a wrongful or tortious act, or (iv) can be shown by documentation to have been independently developed by the receiving party without reference to any AWS Confidential Information.

**"Beta Materials"** means any hardware, software, specifications or other technical documentation related to a specific Beta Service that may be provided to Company by AWS.

**"Beta Test"** means the testing and evaluation of a specific Beta Service by Company and certain other AWS customers or business partners.

**"Test Observations"** means all information relating to Company's use, testing or evaluation of a Beta Service or any related Beta Materials, including all observations or information regarding the performance, features and functionality of a Beta Service or any related Beta Materials.

**2. Participation in Beta Tests**

**2.1 Generally.** AWS grants Company a limited, nonexclusive, non-transferable, royalty-free, revocable license to do the following during the term of the applicable Beta Test: (a) access and use the Beta Service solely for internal evaluation purposes; and (b) install, copy, and use any related Beta Materials solely as necessary to access and use the Beta Service in the manner permitted by this Agreement. After the conclusion of a Beta Test, Company will not have any further right to use the applicable Beta Service, and if AWS releases a generally available version of the Beta Service, Company's use of the generally commercially available version will be subject to separate terms and conditions. However, AWS does not guarantee that any Beta Service will ever be made generally

commercially available, or that any generally commercially available version will contain the same or similar functionality as the version made available by AWS during the Beta Test.

**2.2 Restrictions and Limitations.** Company will not:

- (a) allow access to any Beta Service or Beta Materials by any third party other than Company's employees and contractors who (i) have a need to use or access the Beta Service or Beta Materials in connection with Company's internal evaluation activities and (ii) have executed written nondisclosure agreements obligating them to protect the confidentiality of the Beta Service and Beta Materials;
- (b) use any Beta Service or Beta Materials in violation of any Additional Policy;
- (c) violate any usage limits for a Beta Service that AWS may communicate to Company;
- (d) export or allow access to any Beta Service or Beta Materials in any manner contrary to the export regulations of the United States; or
- (e) otherwise access or use any Beta Service, or install, copy or use any Beta Materials, in any manner or for any purpose not expressly permitted by this Agreement.

AWS may lower or raise any usage limits for any Beta Service or Beta Materials at any time. If requested by AWS, Company will promptly increase or decrease its usage of the applicable Beta Service or Beta Materials to the levels that AWS may specify. AWS may also suspend Company's access to any Beta Service at any time and for any reason. Beta Services also may be unavailable or their performance may be negatively affected by scheduled maintenance. AWS will use reasonable efforts to notify Company in advance of scheduled maintenance, but AWS is unable to provide advance notice of unscheduled or emergency maintenance.

**2.3 Test Observations and Additional Feedback.** In consideration of the rights granted in this Agreement, Company will provide Test Observations, when and in the form reasonably requested by AWS. AWS will own and may use and evaluate all Test Observations for its own purposes. Company will not use any Test Observations except for its internal evaluation purposes. If Company elects to provide Additional Feedback to AWS or its affiliates, AWS will own the Additional Feedback, may use the Additional Feedback without accounting or compensation to Company, and Company will assist AWS and its affiliates as reasonably required to document, perfect, and maintain AWS's rights in the Additional Feedback.

**3. Term and Termination**

**3.1 Term.** The term of each individual Beta Test will be specified by AWS, but will automatically terminate upon the release of a generally commercially available version of the applicable Beta Service. The term of this Agreement will commence on the date the last Party signs the Cover Page and will continue until terminated pursuant to Section 3.2.

**3.2 Termination.** Either Party may terminate Company's participation in an individual Beta Test, or this Agreement entirely, at any time for any reason upon notice to the other Party. Upon termination of this Agreement: (a) all rights and licenses granted to Company in this Agreement will immediately terminate; (b) Company will immediately return or, if instructed by AWS, destroy all Beta Materials or any other confidential or proprietary information of AWS or its affiliates related to any Beta Service or



this Agreement; and (c) Sections 2.3 and 4 through 7 will survive.

#### 4. Confidentiality

**4.1 Use and Disclosure.** Company may not disclose any AWS Confidential Information during the term of this Agreement or at any time during the three (3) year period following the end of the Term. If the Parties have executed a separate non-disclosure agreement (the "NDA") and there is a conflict between the terms of the NDA and the terms of this Section 4.1, the terms of the NDA will control.

**4.2 Publicity.** Neither Party will issue any press release or public statement regarding this Agreement or any Beta Test, Beta Service or Beta Materials unless the other Party has approved in writing the time, form and content of the information to be disseminated to third parties or the public.

#### 5. Disclaimer of Warranties

THE BETA SERVICES AND BETA MATERIALS ARE NOT READY FOR GENERAL COMMERCIAL RELEASE AND MAY CONTAIN BUGS, ERRORS, DEFECTS OR HARMFUL COMPONENTS. ACCORDINGLY, AWS IS PROVIDING THE BETA SERVICES AND BETA MATERIALS TO COMPANY "AS IS." AWS MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO THE BETA SERVICES OR BETA MATERIALS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NOTWITHSTANDING ANY PUBLISHED MATERIALS THAT STATE OTHERWISE, AWS DOES NOT WARRANT THAT THE BETA SERVICES OR BETA MATERIALS WILL BE ERROR-FREE OR THAT THEY WILL MEET ANY SPECIFIED SERVICE LEVEL, OR WILL OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME.

#### 6. Limitation of Liability

NEITHER AWS NOR ANY OF ITS AFFILIATES OR LICENSORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE AGGREGATE LIABILITY OF AWS AND ITS AFFILIATES AND LICENSORS ARISING FROM OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNTS PAID (IF ANY) BY COMPANY TO AWS UNDER THIS AGREEMENT.

#### 7. Miscellaneous

**7.1 Intellectual Property Rights.** Except for those limited rights expressly granted in Section 2.1, AWS and its licensors retain all right, title and interest in and to the Beta Services and the Beta Materials, including all related intellectual property rights.

**7.2 Independent Contractors; Independent Development.** This Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind, or an obligation to form any such relationship or entity. Each Party will act as an independent contractor and not as an agent of the other Party for any purpose, and neither will have the authority to bind the other. Nothing in this Agreement will be construed as a representation or agreement that either Party or its affiliates will not develop or have developed products, technology, concepts, systems or techniques that are similar to or compete with the other Party's products, technology, concepts, systems or techniques.

**7.3 Assignment.** Company will not assign this Agreement, in whole or in part, whether by operation or law or otherwise, without AWS's prior written consent. Any attempt to assign this Agreement or any portion hereof in violation of this Section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of each Party's successors and assigns.

**7.4 Governing Law; Venue.** This Agreement is governed by the laws of the state of Washington, without reference to its choice of law rules. Both Parties irrevocably consent to exclusive jurisdiction and venue of the state and federal courts located in King County, Washington with respect to any dispute arising from this Agreement. However, AWS may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of AWS's or any third party's intellectual property or other proprietary rights. The Parties exclude application of the United Nations Convention for the International Sale of Goods.

**7.5 Severability.** If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

**7.6 No Waiver.** Any failure by either Party to enforce the other Party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement. Any waivers are effective only if recorded in a writing signed by the Party granting the waiver.

**7.7 Other Rights.** Each Party's obligations hereunder are in addition to, and not exclusive of, any and all of its other obligations and duties to the other Party, whether express, implied, in fact or in law. Because the Beta Services and Beta Materials involve features, technologies and services that are not yet generally commercially available, Company acknowledges that any violation of this Agreement could cause irreparable harm to AWS for which monetary damages may be difficult to ascertain or an inadequate remedy. Company therefore agrees that AWS will have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of this Agreement.

**7.8 Notices.** All notices, consents, approvals and other correspondence under this Agreement will be given in writing, will refer to this Agreement and will be personally delivered or sent by overnight courier or registered or certified mail (return receipt requested) to the address set forth below the Parties' signatures on the Cover Page to this Agreement. Either Party may from time to time change such address by giving the other Party notice of the change in accordance with this Section.

**7.9 Entire Agreement.** This Agreement, including the AWS Customer Agreement or AWS Enterprise Customer Agreement between the Parties, the NDA and the Additional Policies, constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes all prior oral or written communications and agreements between the Parties relating to the subject matter of this Agreement. If the terms in this Attachment are inconsistent with the terms contained in the AWS Customer Agreement or AWS Enterprise Customer Agreement between the Parties, the NDA or any Additional Policy, the terms contained in this Attachment will control. This Agreement may be amended or modified only with the mutual written consent of the Parties. This Agreement may be executed by facsimile and in counterpart copies.



