

Customer Agreement

Last Updated: November 16, 2015

1. Use of the Services

1. **Generally.** You may access and use the Services in accordance with this Agreement. You will adhere to all laws, rules, and regulations applicable to your use of the Services, including the Acceptable Use Policy and any other policy governing your use of the Services as agreed between You and Us. You shall (i) be responsible for Your compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of Your Data and any software code You enter or use through the Service and of the means by which You acquired Your Data or software code, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the any applicable laws and government regulations.
2. **Restrictions.** You shall not (a) make the Services available to any third party other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (f) create derivative works based on the Services, (g) copy, frame or mirror any part or content of the Services (h) reverse engineer the Services, or (i) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the

- Services, or (j) attempt to gain unauthorized access to the Services or their related systems or networks.
3. **Third Party Content.** Third Party Content, such as software applications provided by third parties, may be made available directly to you by Us or by other companies or individuals under separate terms and conditions, including separate fees and charges. You acknowledge that We may allow providers of those Third-Party Applications to access Your Data as required for the interoperation of such Third-Party Applications with the Services. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers. Your use of any Third Party Content is at your sole risk.
 4. **Usage Limitations.** Services may be subject to limitations, such as, for example, the number of servers you may run, and the ability to send emails or install additional software on Your servers. In addition, You acknowledge and agree that We may monitor Your use of the Services and collect data regarding such use for, among other purposes, maintaining and improving the Service, assuring Your compliance with Our usage limitations and guidelines, and for ensuring that the Service is not being used for illegal purposes. To the extent that We discover or become aware that You are using the Services in contravention of this Agreement, or in any manner proscribed by applicable law, We reserve the right to deny You continued access to the Service and to terminate your account.
 5. **Services Use.** You may only use the Services to store, retrieve, query, serve, and execute Your Content that is owned, licensed or lawfully obtained by You.
 6. **Software Downloads.** In addition to our Services, we also provide Software for use with the Services, which we make available to you for use with Cloud Provider Accounts or with the

Services. Subject to your compliance with the terms and conditions of this Agreement, we grant you a non-exclusive and non-transferable license to download and Execute the executable form of the Software on a computer or Cloud Provider Account which you are authorized to access and use, solely for your operation and use. You may make copies of the Software for backup purposes, provided that you reproduce on it all copyright and other proprietary notices that are on the original copy of the Software. We reserve all rights in the Software not expressly granted to you in this Agreement or by the licenses of any open source software components included within the Software.

Except as expressly specified in this Agreement, you may not: (a) copy (except in the course of loading or installing) or modify the Software, including but not limited to adding new features or otherwise making adaptations that alter the functioning of the Software; or (b) transfer, sublicense, lease, lend, rent or otherwise distribute the Software to any third party. You acknowledge and agree that portions of the Software, including but not limited to the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of Bitnami and its licensors. Accordingly, you agree not to disassemble, decompile or reverse engineer the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition or by the licenses of any open source software components included within the Software. You may not download or use the Software or Services to build a competitive product or service to the Software or Services.

The Software is protected by United States copyright law and

international treaties. You will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices or markings appearing on the Software as delivered to you.

2. Changes

1. **To the Services.** We shall make the Services available to You pursuant to this Agreement. We may change, discontinue, or deprecate any or all of the Services or change or remove features or functionality of the Services. We will notify You of any material change to or discontinuation of the Services for which you are enrolled.
2. **Revisions to this Agreement.** You agree that we may modify this Agreement or any policy or other terms referenced in this Agreement (collectively, "Additional Policies") at any time by posting a revised version of the Agreement or such Additional Policy on Our Website accessible at: <https://bitnami.com>. By continuing to use or receive the Services after the effective date of any revisions to this Agreement or any Additional Policies, You agree to be bound by the revised Agreement or any revised Additional Policies. It is Your responsibility to check Our Website regularly for changes to this Agreement or the Additional Policies, as applicable. We last modified this Agreement on the date set forth at the top of this Agreement.

3. Security and Privacy

1. **Bitnami Security.** Without limiting Section 12 or your obligations under Section 4, we will implement reasonable and appropriate measures designed to help you secure Your Content against accidental or unlawful loss, access or disclosure.
2. **Privacy.** You consent to our collection, use and disclosure of information associated with the Services in accordance with our

[Privacy Policy.](#)

4. Your Responsibilities

1. **Your Content.** You are solely responsible for the development, content, operation, maintenance, and use of Your Content. For example, you are solely responsible for: (a) the technical operation of Your Content; (b) compliance of Your Content with this Agreement, the Acceptable Use Policy any other Policies and the law; (c) any claims relating to Your Content; and (d) properly handling and processing notices sent to you (or any of your affiliates) by any person claiming that Your Content violate such person's rights, including notices pursuant to the Digital Millennium Copyright Act. You are also responsible for maintaining licenses and adhering to the license terms for the software that You run on any BitNami Service.

2. **Acceptable Use Policy.**

Illegal or Harmful Content and Activities. You may not use, or instruct, encourage or enable others to use, the Services or the BitNami Site for any illegal, harmful or offensive use or to transmit, store, display, distribute or otherwise make available any content that is illegal, harmful or offensive. Prohibited activities and content include: any illegal activities, such as advertising or making available gambling sites or services or facilitating or disseminating child pornography; activities that may menace, harass or be harmful to others, including offering or disseminating fraudulent goods, services, schemes, or promotions or engaging in other deceptive practices; posting content that infringes or misappropriates the intellectual property or proprietary rights of others or that is false, defamatory, obscene, abusive, promotes bigotry, racism, hatred or harm, or is invasive of privacy, or otherwise objectionable,

including content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts; and posting content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms, time bombs, or cancelbots.

Security Violations. You may not use the Services to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (each, a "System"). Prohibited activities include: accessing or using any System without permission, including attempting to probe, scan, or test the vulnerability of a System or to breach any security or authentication measures used by a System, monitoring of data or traffic on a System without permission and forging TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route.

Network Abuse. You may not make network connections to any users, hosts, or networks unless you have permission to communicate with them. Prohibited activities include: monitoring or crawling of a System that impairs or disrupts the System being monitored or crawled; inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective; interfering with the proper functioning of any System, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques' operating network services like open proxies; and using manual or electronic means to avoid any use limitations placed on a System, such as access and storage restrictions.

Email Abuse. You will not distribute, publish, send, or facilitate

the sending of unsolicited mass e-mail or other messages, promotions, advertising, or solicitations (like "spam," "junk mail," or "chain letters"), including commercial advertising and informational announcements. You will not alter or obscure mail headers or assume a sender's identity without the sender's explicit permission. You will not collect replies to messages sent from another internet service provider if those messages violate this Policy or the acceptable use policy of that provider.

Reporting. We may report any activity that we suspect violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Our reporting may include disclosing appropriate customer information.

3. **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 Content, which may include the use of encryption technology to protect Your Content from unauthorized access and routine archiving Your Content. BitNami login credentials are for your internal use only and you may not sell, transfer or sublicense them to any other entity or person, except that you may disclose your private key to your agents and subcontractors performing work on your behalf.
4. **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 this Agreement, Your Content or use of the Services. You are responsible for End Users' use of Your Content and the Services. You will ensure that all End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement by an End User, you will

immediately terminate such End User's access to Your Content and the Services.

5. **Your Content.** You will provide information or other materials related to Your Content as reasonably requested by us to verify your compliance with the Agreement. We may monitor the external interfaces (e.g., ports) of Your Content to verify your compliance with the Agreement. You will not block or interfere with our monitoring, but you may use encryption technology or firewalls to help keep Your Content confidential. You will reasonably cooperate with us to identify the source of any problem with the Services that we reasonably believe may be attributable to Your Content or any end user materials that you control.
6. **Content Removal.** If we reasonably believe any of Your Content violates the law, infringes or misappropriates the rights of any third party or otherwise violates a material term of the Agreement ("Prohibited Content"), we will notify you of the Prohibited Content and may request that such content be removed from the Services or access to it be disabled. If you do not remove or deactivate access to the Prohibited Content within 2 business days of our notice, we may remove or deactivate access to the Prohibited Content or suspend the Services in accordance with the terms set forth in this Agreement. Notwithstanding the foregoing, we may remove or deactivate access to any Prohibited Content without prior notice in connection with illegal content, where the content may disrupt or threaten the Services, pursuant to the Digital Millennium Copyright Act or as required to comply with law or any judicial, regulatory or other governmental order or request. In the event that we remove content without prior notice, we will provide prompt notice to you unless prohibited by law.

5. Cloud Service Providers

1. **Cloud Provider Accounts.** Some of Our Services enable you to run and manage applications on third party cloud computing platforms provided by one or more Cloud Providers. Our Services are offered separate from, and irrespective of, the Cloud Provider(s) accounts which you establish ("Cloud Provider Accounts"). You are responsible for selecting and paying for any fees charged by Cloud Providers for Your Cloud Provider Accounts. The specific Services offered by Us pursuant to this Agreement are not offered unless and until You have established Your own Cloud Provider Account with one or more Cloud Providers.
2. **Terms of Use.** You agree to comply with any and all terms of use under which you are granted access to the services provided by Cloud Providers that you use in connection with Our Services. You represent and warrant that you have the right to use any of the Cloud Provider Accounts you use in connection with Our Service and that your use of Our Service in connection with the Cloud Provider Account is in compliance with the terms and conditions under which the Cloud Provider grants you the rights to use its service.

6. Fees and Payment

1. **Service Fees.** We calculate and bill fees and charges monthly. For some of our Services, we may bill you in advance. We may bill you more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. You will pay us the applicable fees and charges for use of the Services as described on the BitNami Site using one of the payment methods we support. All amounts payable under this Agreement

will be made without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new Service or new feature of a Service will be effective when we post updated fees and charges on the BitNami Site unless we expressly state otherwise in a notice. We may increase or add new fees and charges for any existing Services by giving you at least 30 days' advance notice. We may charge you interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.

2. **Credits.** If You downgrade Your plan mid-cycle, a credit for the difference between your actual usage and the amount you were charged in the last billing cycle will be applied to Your account. This credit will expire after one year.
3. **Overdue Charges.** If any payments for amounts due are not received from You by the due date (except charges then under reasonable and good faith dispute), then at Our discretion, (a) such amounts due may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals on payment terms shorter than those specified in Section 6.1.
4. **Charges 30 or More Days Overdue.** If any amounts due by You under this or any other agreement for Services is 30 or more days overdue (except charges then under reasonable and good faith dispute), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full.
5. **Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any

nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority.

6. **Special Pricing.** From time to time, we may offer free or discounted pricing covering certain usage of the Services ("Special Pricing"). We may discontinue or stop accepting new sign-ups for Special Pricing at any time. Standard charges will apply after a Special Pricing offer ends or if you exceed the limitations specified for the Special Pricing. You must comply with any additional terms, restrictions, or limitations for the Special Pricing offer as described in the offer terms or on the pricing page for the eligible Service(s). You may not access or use the Services in a way intended to avoid any additional terms, restrictions, or limitations (e.g., such as establishing multiple accounts in an attempt to claim additional Special Pricing benefits) and we may immediately terminate your account if you do so.

7. Temporary Suspension

1. **Generally.** We may suspend your or any End User's right to access or use any portion or all of the Services immediately upon notice to you if we determine: (a) your or an End User's use of or registration for the Services (i) poses a security risk to the Services or any third party, (ii) may adversely impact the Services or the systems or Content of any other BitNami customer, (iii) may subject us, our affiliates, or any third party to

liability, or (iv) may be fraudulent; (b) you are, or any End User is, in breach of this Agreement, including if you are delinquent on your payment obligations for more than 15 days; or (c) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

2. **Effect of Suspension.** If we suspend your right to access or use any portion or all of the Services: (a) you remain responsible for all fees and charges you have incurred through the date of suspension; (b) you remain responsible for any applicable fees and charges for any Services to which you continue to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension; and (c) we will not erase any of Your Content as a result of your suspension, except as specified elsewhere in this Agreement. Our right to suspend your or any End User's right to access or use the Services is in addition to our right to terminate this Agreement pursuant to Section 8.2.

8. Term; Termination

1. **Term.** The term of this Agreement will commence on the Effective Date and will remain in effect until terminated by you or us in accordance with Section 8.2.
2. **Termination.**
 1. (a) Termination for Convenience. You may terminate this Agreement for any reason by (i) providing us notice and (ii) closing your account for all Services for which we provide an account closing mechanism. We may terminate this Agreement for any reason by providing you 30 days advance notice.
 2. Termination for Cause. Either party may terminate this

Agreement for cause upon 30 days advance notice to the other party if there is any material default or breach of this Agreement by the other party, unless the defaulting party has cured the material default or breach within the 30 day notice period. We may also terminate this Agreement immediately upon notice to you (A) for cause, if any act or omission by you or any End User results in a suspension described in Section 7.1, (B) if our relationship with a third party partner who provides software or other technology we use to provide the Services expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, (C) if we believe providing the Services could create a substantial economic or technical burden or material security risk for us, (D) in order to comply with the law or requests of governmental entities, or (E) if we determine use of the Services by you or any End Users or our provision of any of the Services to you or any End Users has become impractical or unfeasible for any legal or regulatory reason.

3. **Effect of Termination.** Upon any termination of this Agreement:
- (i) all your rights under this Agreement immediately terminate;
 - (ii) you remain responsible for all fees and charges you have incurred through the date of termination, including fees and charges for in-process tasks completed after the date of termination;
 - (iii) you will immediately return or, if instructed by us, destroy all BitNami Content in your possession; and
 - (iv) all terms of this Agreement that contain continuing obligations shall survive its expiration or termination.

9. Confidentiality

1. **Definition of Confidential Information.** As used herein, "**Confidential Information.**" means all confidential information

disclosed by a party (" **Disclosing Party** ") to the other party (" **Receiving Party** "), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

2. **Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.
3. **Protection of Your Data.** We shall not (a) modify Your Data, (b)

disclose Your Data except as compelled by law in accordance with Section 9.4 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters.

4. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

10. **Proprietary Rights**

1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein. Some BitNami Content 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 this Agreement and any separate license, the separate license will prevail with respect to that BitNami Content.
2. **Your Content.** As between you and us, you or your licensors own all right, title, and interest in and to Your Content. Except as

provided in this Section 10, we obtain no rights under this Agreement from you or your licensors to Your Content, including any related intellectual property rights. You consent to our use of Your Content to provide the Services to you and any End Users. We may disclose Your Content to provide the Services to you or any End Users or to comply with any request of a governmental or regulatory body (including subpoenas or court orders).

3. **Your Submissions.** We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services any of Your Submissions, including those submitted by Users.
4. **Adequate Rights.** You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Content and Your Submissions; (b) you have all rights in Your Content and Your Submissions necessary to grant the rights contemplated by this Agreement; and (c) none of Your Content, Your Submissions or End Users' use of Your Content, Your Submissions or the Services will violate the Acceptable Use Policy.
5. **License Restrictions.** All licenses granted to you in this Agreement are conditional on your continued compliance this Agreement, and will immediately and automatically terminate if you do not comply with any term or condition of this Agreement. During and after the Term, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against us or any of our affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Services you have used.
6. **Federal Government End Use Provisions.** We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the

following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data - Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

11. Indemnification

1. **General.** You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of 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 any activities under your BitNami account and use by your employees and personnel); (b) breach of this Agreement or violation of applicable law by you or any End User; (c) Your Content or the combination of Your Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Your Content or by the use, development, design, production, advertising or marketing of Your Content; or (d) a dispute between you and any End User. If we or our affiliates are obligated to respond to a third party subpoena or other compulsory legal order or process described above, you will also

reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at our then-current hourly rates.

2. **Process.** We will promptly notify you of any claim subject to Section 11.1, but our failure to promptly notify you will only affect your obligations under Section 11.1 to the extent that our failure prejudices your ability to defend the claim. You may: (a) use counsel of your own choosing (subject to our written consent) to defend against any claim; and (b) settle the claim as you deem appropriate, provided that you obtain our prior written consent before entering into any settlement. We may also assume control of the defense and settlement of the claim at any time.

12. **Disclaimers**

THE SERVICES ARE PROVIDED "AS IS." WE AND OUR AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES OR THE THIRD PARTY CONTENT, INCLUDING ANY WARRANTY THAT THE SERVICES OR THIRD PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT OR THE THIRD PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

13. **Limitations of Liability**

1. **Limitations of Liability.** WE AND OUR AFFILIATES OR 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 AFFILIATES OR 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 THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICES, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SLAS, 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 THIS AGREEMENT 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 CONTENT OR OTHER DATA.
2. **Maximum Liability.** IN ANY CASE, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 6 MONTHS PRECEDING THE CLAIM.
3. **Survival of Limitations.** YOU AGREE THAT the LIMITATIONS OF

LIABILITY and the MAXIMUM AGGREGATE LIABILITY specified IN this Section 13 will survive ANY EXPRIATION OR TERMINATION OF THIS AGREEMENT and be enforceable and apply even if any REMAINING remedy OTHERWISE AVAILABLE is found to have failed of its essential purpose.

14. **Miscellaneous**

1. **General.** You are contracting with BitRock, Inc., a California corporation. All notices required or permitted under this Agreement which are to be delivered to Us should be addressed to the address indicated on Our website at the time of delivery of the notice. Our current address is:

BitRock, Inc.

900 Kearny Street 5th Floor

San Francisco, CA 94133

2. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and delivered via courier, expedited delivery service, postal mail or email. Notices will be deemed communicated upon receipt, provided that receipt of any such notice is verified through commercially reasonable means. Notices to You shall be addressed to the system administrator designated by You for Your relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by You. In addition to giving notice via the foregoing methods, both parties agree that either party may give notice to the other by operation of the Services or the applications offered by Us through the Services. As an example, if Our application provides a user with an opportunity to cancel or terminate their account through operation of a "cancellation" or "termination" button or similar feature or functionality within the application or

Service then clicking through such a button or similar feature or function shall constitute "notice" as that term is intended in this Agreement.

3. **Agreement to Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of California, USA, excluding conflict of laws provisions, excluding the 1980 United Nations Convention on Contracts for the International Sale of Goods, and excluding any potentially applicable provisions of the Uniform Computer Information Transactions Act, to the extent it is, or has been, adopted in a governing jurisdiction. Any disputes arising out of this Agreement shall be resolved in San Francisco County, California in accordance with the rules of the American Arbitration Association.
4. **Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

15. General Provisions

1. **Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.
2. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
3. **No Third-Party Beneficiaries.** There are no third-party

beneficiaries to this Agreement.

4. **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
5. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
6. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
7. **Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all registration data, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification,

amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto, the terms of such exhibit or addendum shall prevail.

Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

16. Definitions

- **"Acceptable Use Policy"** means the policy outlined in Section 4.2
- **"API"** means an application program interface.
- **"Bitnami Content"** means Content we or any of its affiliates make available in connection with the Services or on the Bitnami Site to allow access to and use of the Services, including Documentation; sample code; software libraries; command line tools; and other related technology. Bitnami Content does not include the Services.
- **"Bitnami Marks"** means any trademarks, service marks, service or trade names, logos, and other designations of Bitnami and its affiliates that we may make available to you in connection with this Agreement.
- **"Bitnami Site"** means <https://bitnami.com> and any successor or related site designated by us.
- **"Content"** means software (including machine images), data, text, audio, video, images or other content.
- **"Cloud Provider"** means a provider of cloud computing

services.

- **"Data"** means all electronic data or information submitted by You to the Services, including but not limited to any access keys required to access Cloud Provider services.
- **"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 <https://docs.bitnami.com>, 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 Content; or (b) otherwise accesses or uses the Services under Your 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 BitNami account, rather than Your account.
- **"Execute"** means to load, install, and run the Software in order to benefit from its functionality as designed by us.
- **"Policies"** means the Site Terms, all restrictions described in the BitNami Content and on the BitNami Site, and any other policy or terms referenced in or incorporated into this Agreement. Policies do not include whitepapers or other marketing materials referenced on the BitNami Site.
- **"Privacy Policy"** means the privacy policy currently referenced at <https://www.vmware.com/help/privacy.html>, as it may be updated by Us from time to time.
- **"Service"** means each of the web services made available by Us or our affiliates.
- **"Services"** means the Services (including associated APIs), the Bitnami Content, the Bitnami Marks, the Bitnami Site, and any other product or service provided by us under this Agreement. Services do not include Third Party Content.

- **"Site Terms"** means the terms of use located at <https://www.vmware.com/help/legal.html> as they may be updated by us from time to time.
- **"Software"** means the Bitnami Launchpads, installers, or virtual machine downloads, such as AMI (Amazon Cloud Templates), VHDs (Azure machine images), or other cloud images or virtual machine images, including cloud images that can be launched outside of the Services on Cloud Provider Accounts.
- **"Term"** means the term of this Agreement described in Section 8.1.
- **"Third Party Content"** means Content made available to you by any third party on the Bitnami Site or in conjunction with the Services.
- **"Your Content"** means Content you or any End User (a) run on the Services, (b) cause to interface with the Services, or (c) upload to the Services under your account or otherwise transfer, process, use or store in connection with your account.
- **"Your Submissions"** means Content that you post or otherwise submit to developer forums, public data repositories, or similar community-focused areas of the Bitnami Site or the Services or that you transmit to us via email, phone or other communications mechanisms.