

**Appendix E to DIR Contract Number DIR-TSO-2733 ("DIR CONTRACT")**

**AWS Customer Agreement**

**Amazon Web Services, Inc.  
Texas Department of Information Resources**

**(Cover Page)**

This AWS Enterprise Customer Agreement (this "**Agreement**") is made and entered into by and between Amazon Web Services, Inc., a Delaware corporation ("**AWS**") and the customer specified on this Cover Page ("**Customer**"). The Agreement is entered pursuant to, and subject to, DIR Contract Number DIR-TSO-2733 ("DIR Contract").

This Agreement consists of this Cover Page and the Terms and Conditions attached as Attachment A. In consideration of the mutual promises contained in this Agreement, AWS and Customer agree to all terms of the Agreement effective as of the date the last party signs this Agreement (the "**Effective Date**").

<b>AMAZON WEB SERVICES, INC.</b> By: _____ Name: _____ Title: _____ Signature Date: _____  <b>Address:</b>  <b>410 Terry Avenue North Seattle, WA 98109-5210 Attention: General Counsel Fax: 206-266-7010</b>	<b>Customer Name: [ _____ ]</b> By: _____ Name: _____ Title: _____ Signature Date: _____  <b>Address:</b> _____ _____ <b>Attention:</b> _____ <b>Fax:</b> _____
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## ATTACHMENT A: Terms and Conditions

### 1. Use of the Service Offerings

**1.1 Generally.** Customer may access and use the Service Offerings in accordance with this Agreement. Service Level Agreements may apply to certain Service Offerings. Customer will adhere to all laws, rules, and regulations applicable to Customer's use of the Service Offerings, including the Service Terms, the Acceptable Use Policy and the other Policies as defined in Section 13. While Customer is accessing the Service Offerings under the Texas Department of Information Resources Cooperative Contracts Program (the "DIR Program"), Customer will only access or use Service Offerings that are included in the DIR Program ("Program Services").

**1.2 AWS Account.** To access the Services, Customer must create one or more accounts, each associated with a valid e-mail address. Unless explicitly permitted by the Service Terms, Customer will only create one account per email address. Customer will identify to AWS all accounts to be covered by this Agreement. Customer is responsible for all activities that occur under its accounts (including the use of Services that are not Program Services), regardless of whether the activities are undertaken by Customer, its employees or a third party (including contractors or agents) and, except to the extent caused by AWS's breach of this Agreement, AWS and its Affiliates are not responsible for unauthorized access to Customer's accounts. Customer may terminate any of its accounts and this Agreement at any time in accordance with Section 7. For clarification and as described in Section 12.12, this Agreement supersedes any acceptance by Customer or any of its employees (on behalf of Customer) of the AWS Customer Agreement in connection with all accounts identified by Customer to AWS as accounts to be covered by this Agreement as described in this Section 1.2. To the extent that an account is not identified as an account to be covered by this Agreement, that account will be governed by the AWS Customer Agreement.

**1.3 Support.** If Customer would like support for the Services other than the support AWS generally provides to other users of the Services without charge, Customer may enroll for customer support in accordance with the terms of the AWS Support Guidelines.

**1.4 Third Party Content.** Third Party Content may be made available directly to Customer through the AWS Site or in connection with the Services. This content may be governed by separate terms and conditions, including separate fees and charges. Because AWS may not have tested or screened the Third Party Content, Customer's use of such content is at Customer's sole risk.

**1.5 Customer Affiliates.** Any Customer Affiliate may use the Service Offerings under the terms of this Agreement by executing an addendum to this Agreement with AWS, as mutually agreed by AWS and the Customer Affiliate.

### 2. Changes

**2.1 To the Service Offerings.** AWS may change or discontinue any of the Service Offerings (including the Service Offerings as a whole) or change or remove features or functionality of the Service Offerings from time to time. AWS will provide at least 6 months prior notice to any Customer AWS accounts (identified by Customer to AWS as described in Section 1.2) enrolled in AWS Support at the Developer-level tier or above (or any successor service providing such communications alerts) if AWS knowingly discontinues a Service or functionality of a Service that it makes generally available to its customers, except that AWS may not provide such notice if necessary to (a) address an emergency or threat to the security or integrity of AWS, (b) respond to claims, litigation, or loss of license rights related to third party intellectual property rights, or (c) comply with the law or requests of a government entity.

**2.2 To the Service Level Agreements.** AWS may change, discontinue, or add Service Level Agreements from time to time, but will provide 60 days advance notice to Customer before materially reducing the benefits offered to Customer under the Service Level Agreements.

### 3. Security and Data Privacy

**3.1 AWS Security.** Without limiting Section 10.3 or Customer's obligations under Section 4.2, AWS will implement reasonable and appropriate measures for the AWS Network (as determined by AWS) designed to help Customer secure Customer Content against accidental or unlawful loss, access or disclosure.

**3.2 Data Privacy.** AWS participates in the safe harbor programs described in the Privacy Policy. Customer may specify the AWS regions in which Customer Content will be stored and accessible by End Users. AWS will not move Customer Content from the selected AWS regions without notifying Customer, unless required to comply with the law or requests of a governmental or regulatory body (including subpoenas or court orders). Customer consents to AWS's collection, use and disclosure of information associated with the Service Offerings in accordance with the Privacy Policy, and to the processing of Customer Content in, and transfer of Customer Content into, the AWS regions Customer selects.

**3.3 Disclosure of Customer Content.** Without modifying or expanding AWS's obligations under Section 3.1, AWS will not use or disclose Customer Content, except as necessary to provide the Service Offerings to Customer and any End Users in accordance with the Documentation or to comply with the law or requests of a governmental or regulatory body (including subpoenas or court orders). AWS will give Customer reasonable notice of a request of a governmental or regulatory body to allow Customer to seek a protective order or other appropriate remedy (except to the extent AWS's compliance with the foregoing would cause it to violate a court order or other legal requirement).

#### **4. Customer Responsibilities**

**4.1 Customer Content.** Customer will ensure that none of Customer Content, Customer Submissions or End Users' use of Customer Content, Customer Submissions or the Service Offerings will violate the Acceptable Use Policy, the other Policies or applicable law. Further, Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Content and Customer Submissions. For example, Customer is solely responsible for:

- (a) the technical operation of Customer Content, including ensuring that calls Customer makes to any Service are compatible with then-current APIs for that Service;
- (b) any claims relating to Customer Content or Customer Submissions; and
- (c) properly handling and processing notices that are sent to Customer (or any Customer Affiliate) by any person claiming that Customer Content or Customer Submissions violate such person's rights,

including notices pursuant to the Digital Millennium Copyright Act.

**4.2 Other Security and Backup.** Customer is responsible for properly configuring and using the Service Offerings and taking steps to maintain appropriate security, protection, and backup of Customer Content, which may include use of encryption technology to protect Customer Content from unauthorized access and routine archiving of Customer Content. AWS log-in credentials and private keys generated by the Services are for Customer's internal use only and Customer may not sell, transfer or sublicense them to any other entity or person, except that Customer may disclose its private key to its agents and subcontractors performing work on behalf of Customer.

**4.3 End User Violations.** Customer is responsible for End Users' use of Customer Content and the Service Offerings. Customer will ensure that all End Users comply with Customer's obligations under this Agreement and that the terms of its agreement with each End User are consistent with this Agreement. If Customer becomes aware of any violation of its obligations under this Agreement by an End User, Customer will immediately terminate such End User's access to Customer Content and the Service Offerings.

**4.4 End User Support.** Customer is responsible for providing customer service (if any) to End Users. AWS does not provide any support or services to End Users unless AWS has a separate agreement with Customer or an End User obligating AWS to provide support or services.

#### **5. Fees and Payment**

**5.1 Service Fees.** Unless otherwise stated on the AWS Site, AWS will invoice Customer at the end of each month for all applicable fees and charges accrued for use of the Service Offerings, as described on the AWS Site, during the month. Customer will pay AWS all amounts due under an invoice (other than amounts disputed by Customer in good faith as ("Disputed Amounts")) in accordance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251. For any Disputed Amounts, Customer will provide the basis for the dispute (including any supporting documentation) and the parties will meet within 30 days to resolve the dispute. If the parties fail to resolve the dispute within such 30 day period, AWS may, at its option, either (a) suspend Customer's or any End User's right to access or use any portion of

or all of the Service Offerings immediately upon notice to Customer or (b) terminate this Agreement immediately upon notice to Customer. Fees and charges for any new Service or new feature of a Service will be effective when AWS posts updated fees and charges on the AWS Site, unless expressly stated otherwise in a notice. AWS may increase or add new fees and charges for any existing Service by giving Customer at least 60 days' advance notice. AWS may charge Customer interest in accordance with the Texas Prompt Payment Act.

**5.2 Taxes.** Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement. All fees payable by Customer are exclusive of applicable taxes and duties, including, without limitation, VAT, GST, excise taxes, sales and transactions taxes, and gross tax receipts ("Indirect Taxes"). AWS may charge and Customer will pay applicable Indirect Taxes that AWS is legally obligated or allowed to collect from Customer. Customer will provide such information to AWS as reasonably required to determine whether AWS is obligated to collect Indirect Taxes from Customer. AWS will not collect, and Customer will not pay, any Indirect Tax for which Customer furnishes AWS a properly completed exemption certificate or a direct payment permit certificate for which AWS may claim an available exemption from such Indirect Tax. All payments made by Customer to AWS under this Agreement will be made free and clear of any withholding or deduction for taxes. If any such taxes (for example, international withholding taxes) are required to be withheld on any payment, Customer will pay such additional amounts as are necessary so that the net amount received by AWS is equal to the amount then due and payable under this Agreement. To claim a tax exemption, Customer is required to enroll in the Amazon Tax Exemption Program. This can currently be done by uploading the tax exemptions document(s) to the Customer's AWS account. Specific program instructions are currently located at [http://www.amazon.com/gp/help/customer/display.html/ref=hp\\_left\\_sib?ie=UTF8&nodeId=201133370](http://www.amazon.com/gp/help/customer/display.html/ref=hp_left_sib?ie=UTF8&nodeId=201133370).

## **6. Temporary Suspension**

**6.1 Generally.** AWS may suspend Customer's or any End User's right to access or use any portion of or all of the Service Offerings immediately upon notice to Customer if AWS determines:

(a) Customer's or an End User's use of the Service Offerings (i) poses a security risk to the Service Offerings or any third party, (ii) may adversely impact AWS's systems, the Service Offerings or the systems or Content of any other AWS customer, or (iii) may subject AWS, its Affiliates or any third party to liability;

(b) Customer or any End User is in breach of this Agreement, including if Customer is delinquent on its payment obligations relating to undisputed payment amounts for more than 30 days;

(c) Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Customer's assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

**6.2 Effect of Suspension.** If AWS suspends Customer's right to access or use any portion of the Service Offerings:

(a) Customer remains responsible for all fees and charges Customer has incurred through the date of suspension;

(b) Customer remains responsible for any applicable fees and charges for any Service Offerings to which Customer continues 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;

(c) Customer will not be entitled to any service credits under the Service Level Agreements for any suspended service for the period of suspension; and

(d) AWS will not erase any Customer Content as a result of the suspension, except as specified elsewhere in this Agreement.

AWS's right to suspend Customer's or any End User's right to access or use the Service Offerings is in addition to AWS's right to terminate this Agreement pursuant to Section 7.2.

## **7. Term; Termination**

**7.1 Term.** The term of this Agreement will commence on the Effective Date and will remain in

effect until terminated by Customer or AWS in accordance with this Agreement.

## 7.2 Termination.

(a) **Termination for Convenience.** Termination for Convenience is in accordance with Section 9B3 Appendix A, DIR Contract Number DIR Contract Number DIR-TSO-2733.

### (b) Termination for Cause

(i) **By AWS.** AWS may also terminate this Agreement upon 30 days advance notice to Customer: (A) for cause, if there is an act or omission by Customer or any End User that AWS has the right to suspend for under Section 6.1, or (B) in order to comply with applicable law or requests of governmental entities.

Additional Termination for Cause language in contained in Section 9B4 of Appendix A of DIR Contract Number DIR-TSO-2733.

## 7.3 Effect of Termination.

(a) **Generally.** Upon any termination of this Agreement:

(i) subject to subparagraph (iv) below, all of Customer's rights under this Agreement immediately terminate

(ii) Customer remains responsible for all fees and charges Customer has incurred through the date of termination, including fees and charges for in-process tasks completed after the date of termination;

(iii) Subject to its legal obligations for records retention, Customer will immediately return or, if instructed by AWS, destroy all AWS Content in Customer's possession; and

(iv) Sections 4.1, 5, 7.3, 8.1, 8.2, 8.5, 8.6, 9, 10.3, 11, 12 and 13 will continue to apply in accordance with their terms.

(b) **Post-Termination Assistance.** During the 30 days following termination:

(i) AWS will not erase any Customer Content as a result of the termination;

(ii) For any use of the Services after the termination date, the terms of this Agreement will apply during any applicable post-termination assistance period; and

(iii) Customer may retrieve Customer Content from the Services.

Any additional post-termination assistance from AWS is subject to mutual agreement of the parties. Customer will pay for any post-termination use of the Services, including applicable data storage fees. AWS will not be obligated to provide the post-termination assistance described in this Section where: (A) it is prohibited by law or the order of a governmental or regulatory body; (B) it may subject AWS to liability, or (C) Customer has not paid all amounts due under this Agreement, other than amounts disputed by Customer in good faith as evidenced by written documentation.

## 8. Proprietary Rights

**8.1 Customer Content.** As between Customer and AWS, Customer or Customer's licensors own all right, title, and interest in and to Customer Content. Except as provided in this Agreement, AWS obtains no rights under this Agreement from Customer or Customer's licensors to Customer Content.

**8.2 Customer Submissions.** Customer Submissions will be governed by the terms of the Apache License, Version 2.0, unless Customer specifies one of the other licenses supported by AWS at the time of submission. The Apache License, Version 2.0, is an open source software license that allows the user of the software the freedom to use the software for any purpose subject to the terms of the license (e.g., to distribute it, to modify it, and to distribute modified versions of the software). Customer Submissions are optional and Customers are not required to make Customer Submissions to use the Services.

**8.3 Reference to Customer.** Upon consent from Customer's account owner (which may be via email), AWS may use Customer's trade names, trademarks, service marks, logos, domain names and other distinctive brand features in presentations, marketing materials, and website listings (including links to Customer's website) for the purpose of advertising or publicizing Customer's use of the Service and Customer Submissions.

**8.4 Service Offerings License.** As between Customer and AWS, AWS, its Affiliates or its licensors own all right, title, and interest in and to the Service Offerings. Subject to the terms of this Agreement, AWS grants Customer a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following during the Term: (a) access

and use the Services solely in accordance with this Agreement; and (b) copy and use the AWS Content solely in connection with Customer's permitted use of the Services. Except as provided in this Section 8.4, Customer obtains no rights under this Agreement from AWS or its licensors to the Service Offerings, including any related intellectual property rights. Some AWS Content may be provided to Customer under a separate license, such as the Apache License, Version 2.0, in which case that license will govern Customer's use of that AWS Content.

**8.5 License Restrictions.** Neither Customer nor any End User may use the Service Offerings in any manner or for any purpose other than as expressly permitted by this Agreement. Neither Customer nor any End User may, or may attempt to, (a) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Service Offerings (except to the extent software included in the Service Offerings are provided to Customer under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Service Offerings or apply any other process or procedure to derive the source code of any software included in the Service Offerings, (c) access or use the Service Offerings in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Service Offerings. During and after the Term, Customer will not assert, nor will Customer authorize, assist, or encourage any third party to assert, against AWS or any of its Affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Service Offerings Customer has used. Customer may only use the AWS Marks in accordance with the Trademark Use Guidelines. Customer will not misrepresent or embellish the relationship between AWS and Customer (including by expressing or implying that AWS supports, sponsors, endorses, or contributes to Customer or Customer's business endeavors). Customer will not imply any relationship or affiliation between AWS and Customer except as expressly permitted by this Agreement.

**8.6 Suggestions.** If Customer elects to provide any Suggestions to AWS or its Affiliates, AWS and its Affiliates will be entitled to use the Suggestions without restriction. Customer hereby irrevocably assigns to AWS all right, title, and interest in and to the Suggestions. This does not relieve AWS of any

obligation concerning confidentiality of Customer Content as provided under Section 3.

## **9. Customer Representations and Warranties.**

### **9.1 Customer Representations and Warranties.**

Customer represents and warrants that (i) Customer and any End Users' use of the Service Offerings (including any activities under a Customer Account and use by Customer's employees and personnel), Customer Content and Customer Submissions will not violate this Agreement or applicable law; (ii) Customer Content or Customer Submissions, the combination of Customer Content or Customer Submissions with other applications, content or processes, or the use, development, design, production, advertising or marketing of Customer Content or Customer Submissions, do not and will not infringe or misappropriate any third-party rights; and (iii) and Customer's use of the Service Offerings will not cause harm to any End Users. Nothing in this Appendix E Service Agreement is meant to confer rights to third parties outside of the DIR Contract DIR-TSO-2733.

**9.2 Process.** Subject to the discretion and agreement of the Office of the Attorney General, AWS may participate or observe in litigation or settlement negotiations concerning this Contract in matters related to AWS's interests.

## **10. Representations, Warranties, Disclaimers**

**10.1 AWS Warranties.** AWS will promptly notify Customer of any claim subject to Section 9.1, but AWS's failure to promptly notify Customer will only affect Customer's obligations under Section 9.1 to the extent that AWS's failure prejudices Customer's ability to defend the claim. Subject to Section 11, AWS represents and warrants to Customer that the Services will perform materially in accordance with the Documentation.

**10.2 Mutual Warranties.** Subject to Section 11, each party represents and warrants to the other that it will comply with all applicable laws, rules, regulations and ordinances in the performance of this Agreement.

### **10.3 Disclaimers.**

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1 (AWS WARRANTIES), THE SERVICE OFFERINGS ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1 (AWS WARRANTIES), AWS, ITS AFFILIATES AND ITS LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND,

WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS OR THE THIRD PARTY CONTENT, INCLUDING ANY WARRANTY THAT THE SERVICE OFFERINGS OR THIRD PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE, OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING CUSTOMER CONTENT OR THIRD PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, AWS, ITS AFFILIATES AND ITS LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

## **11. Limitations of Liability.**

**11.1 Disclaimer.** IF ANY PARTY DEFAULTS IN ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND SUBJECT TO THE LIABILITY CAP IN SECTION 8.K OF APPENDIX A OF THE DIR CONTRACT, AS MODIFIED BY THE PARTIES, THE NON BREACHING PARTY WILL BE ENTITLED TO RECOVER FROM THE BREACHING PARTY ONLY THE ACTUAL AND DIRECT DAMAGES THAT THE NON BREACHING PARTY MAY INCUR ON ACCOUNT OF SUCH BREACH. NEITHER PARTY NOR ANY OF ITS RESPECTIVE AFFILIATES OR LICENSORS WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING DAMAGES ASSOCIATED WITH: LOSS OF PROFITS OR GOOD WILL; UNAVAILABILITY OR NONPERFORMANCE OF ANY OR ALL OF THE SERVICES; INVESTMENTS, EXPENDITURES OR COMMITMENTS RELATED TO USE OR ACCESS TO THE SERVICE OFFERINGS; COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; UNAUTHORIZED ACCESS TO, COMPROMISE, ALTERATION OR LOSS OF CUSTOMER CONTENT; OR COST OF REPLACEMENT OR RESTORATION OF ANY LOST OR ALTERED CUSTOMER CONTENT.

**11.2 DAMAGES CAP.** NEITHER PARTY'S NOR ANY OF ITS RESPECTIVE AFFILIATES OR LICENSORS AGGREGATE LIABILITY WILL EXCEED THE AMOUNTS IDENTIFIED IN SECTION 8.K OF APPENDIX A OF THE DIR CONTRACT.

## **12. Miscellaneous**

**12.1 Nondisclosure; Publicity.** Subject to their legal obligations under the Texas Public Information Act, Texas Government Code Chapter 552, the parties will observe the confidentiality provisions of this agreement when issuing press releases or other public announcements. If Customer receives a request under the Texas Public Information Act for the disclosure of Covered Information, Customer will provide Amazon with prior notice and a reasonable opportunity to prevent disclosure of Covered Information.

**12.2 Force Majeure.** Force Majeure shall be in accordance with Section 9C of Appendix A, DIR Contract Number DIR-TSO-2733.

**12.3 Independent Contractors; Non-Exclusive Rights.** AWS and Customer are independent contractors, neither party, or any of their respective Affiliates, is an agent of the other for any purpose or has the authority to bind the other. Each party reserves the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other party and (b) to assist third party developers or systems integrators who may offer products or services which compete with the other party's products or services.

**12.4 No Third Party Beneficiaries.** This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

**12.5 U.S. Government Rights.** If Customer is using the Service Offerings on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer will immediately discontinue Customer's use of the Service Offerings. The terms "commercial item" and "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

**12.6 Import and Export Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of

Foreign Assets Control. For clarity, Customer is solely responsible for compliance related to the manner in which Customer chooses to use the Service Offerings, including Customer's transfer and processing of Customer Content, the provision of Customer Content to End Users, and the AWS region in which any of the foregoing occur.

#### **12.7 Notice.**

**(a) General.** Except as otherwise set forth in Section 12.7(b), to give notice to a party under this Agreement, each party must contact the other party as follows: (i) by facsimile transmission; or (ii) by personal delivery, overnight courier or registered or certified mail. Notices must be sent to the fax number of the other party listed on the Cover Page to this Agreement or addressed to the address of the other party listed on the Cover Page to this Agreement, or such other fax number or address as a party may subsequently designate in a notice to the other party. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective upon delivery. Notices provided by registered or certified mail will be effective three business days after they are sent.

**(b) Electronic Notice.** AWS may provide notice to Customer: (i) under Sections 2.2 or 5.1 by (A) sending a message to the email address then associated with Customer's account, or (B) posting a notice on the AWS Site, (ii) under Section 6.1 by sending a message to the email address then associated with Customer's account, and (iii) under Section 2.1 by sending a message to the email address then associated with Customer's account (or such other email address as agreed upon by the parties) or via a support case. Notices provided by posting on the AWS Site will be effective upon posting and notices provided by email will be effective when AWS sends the email. For the notices in this contract that are deemed to be posted on the AWS site, AWS will review and notify DIR and Customers monthly via email (with delivery receipt confirmation) of any changes to the notices.

**(c) Language.** All communications and notices to be made or given pursuant to this Agreement must be in the English language. If AWS provides a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

**12.8 Assignment.** Assignment shall be in accordance with Section 3D of Appendix A, DIR Contract Number DIR-TSO-2733.

**12.9 No Waivers.** The failure by either party to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit such party's right to enforce such provision at a later time. All waivers by a party must be in writing and sent in accordance with Section 12.7 to be effective.

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

**12.11 International Goods.** The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

**12.12 Entire Agreement; Policies.** This Agreement includes the Policies, the following DIR Program documents as executed by AWS: *Contract for Products and Related Services* and the *Standard Terms and Conditions for products and Related Services Contracts* and is the entire agreement between Customer and AWS regarding the subject matter of this Agreement. DIR Contract Number DIR-TSO-2733 and this Agreement supersede all prior or contemporaneous representations, understandings, agreements, or communications between Customer and AWS, whether written or verbal, regarding the subject matter of this Agreement, including any acceptance by Customer or any of its employees (on behalf of Customer) of the AWS Customer Agreement in connection with accounts identified by Customer to AWS as accounts to be covered by this Agreement as described in Section 1.2. Notwithstanding any other agreement between Customer and AWS, the security and data privacy provisions in Section 3 of this Agreement contain AWS's and its Affiliates' entire obligation regarding the security, privacy and confidentiality of Customer Content. AWS will not be bound by, and specifically objects to, any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by Customer in

any order, receipt, acceptance, confirmation, correspondence or other document. If the terms of this document are inconsistent with the terms contained in any Policy, the terms contained in this document will control, except that the Service Terms will control over this document. No modification or amendment of any portion of this Agreement will be effective unless in writing and signed by the parties to this Agreement.

**12.13 Counterparts; Facsimile.** This Agreement may be executed by facsimile and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument.

**13. Definitions.** Defined terms used in this Agreement with initial letters capitalized have the meanings given below:

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

**“Affiliate”** means any entity that directly or indirectly controls, is controlled by or is under common control with that party.

**“API”** means an application program interface.

**“AWS Content”** means Content AWS or any of its Affiliates makes available in connection with the Services or on the AWS Site to allow access to and use of the Services, including WSDLs; Documentation; sample code; software libraries; command line tools; and other related technology. AWS Content does not include the Services or Third Party Content.

**“AWS Customer Agreement”** means AWS’s standard user agreement posted on the AWS Site at <http://aws.amazon.com/agreement>.

**“AWS Marks”** means any trademarks, service marks, service or trade names, logos, and other designations of AWS and its Affiliates that AWS may make available to Customer in connection with this Agreement.

**“AWS Network”** means AWS’s data center facilities, servers, networking equipment, and host software systems (e.g., virtual firewalls) that are within AWS’s control and are used to provide the Services.

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

**“AWS Support Guidelines”** means the guidelines currently available at

<http://aws.amazon.com/premiumsupport/guidelines>, as they may be updated by AWS from time to time.

**“Customer Content”** means Content that Customer or any End User (a) runs on the Services, (b) causes to interface with the Services, or (c) uploads to the Services under Customer’s account or otherwise transfers, processes, uses or stores in connection with Customer’s account.

**“Customer Submissions”** means Content that Customer posts or otherwise submits to developer forums, sample code repositories, public data repositories, or similar community-focused areas of the AWS Site or the Services.

**“Content”** means software (including machine images), data, text, audio, video, images or other content.

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

**“End User”** means any individual or entity that directly or indirectly through another user: (a) accesses or uses Customer Content; or (b) otherwise accesses or uses the Service Offerings under a Customer 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 account, rather than a Customer account.

**“Losses”** means any claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys’ fees).

**“Policies”** means the Acceptable Use Policy, the Terms of Use, the Service Terms, the Trademark Use Guidelines, all restrictions described in the AWS Content and on the AWS Site, and any other policy or terms referenced in or incorporated into this Agreement, but does not include whitepapers or other marketing materials referenced on the AWS Site.

**“Privacy Policy”** means the privacy policy currently referenced at <http://aws.amazon.com/privacy>, as it may be updated by AWS from time to time.

**“Service”** means each of the web services made available by AWS or its Affiliates for which Customer

registers via the AWS Site, including those web services described in the Service Terms.

**“Service Level Agreement”** means all service level agreements that AWS offers with respect to the Services and post on the AWS Site, as they may be updated by AWS from time to time. The service level agreements that AWS currently offers with respect to the Services are located at <http://aws.amazon.com/ec2-sla/>, <http://aws.amazon.com/s3-sla/>, <http://aws.amazon.com/cloudfront/sla/>, <http://aws.amazon.com/route53/sla/>.

**“Service Offerings”** means the Services (including associated APIs), the AWS Content, the AWS Marks, the AWS Site, and any other product or service provided by AWS under this Agreement. Service Offerings do not include Third Party Content.

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

**“Suggestions”** means all suggested improvements to the Service Offerings that Customer provides to AWS.

**“Term”** means the term of this Agreement described in Section 7.1.

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

**“Third Party Content”** means Content of a third party made available to Customer in conjunction with the Services or by any third party on the AWS Site.

**“Trademark Use Guidelines”** means the guidelines and trademark license located at <http://aws.amazon.com/trademark-guidelines/>, as they may be updated by AWS from time to time.