



Docker Certification Program Agreement

Last updated: August 16, 2017

This Docker Certification Program Agreement (this “Agreement”) contains the terms and conditions that govern your participation in the Docker Certification Program (as defined below) and is an agreement between Docker, Inc. (“Docker,” “we,” “us,” or “our”) and you (“you”). This Agreement takes effect when you click the acceptance button or check box presented with these terms (the “Effective Date”). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor, you are not subject to any agreements prohibiting your participation, etc.). Please see Section 10 for definitions of certain capitalized terms used in this Agreement.

1. Participation in the Docker Certification Program.

1.1 Generally.

To obtain a Docker Certification and participate in the Program, you must (a) take the applicable Certification Exam(s) and receive a passing score, (b) comply with all additional requirements associated with such Docker Certification as may be specified on the Docker Certification Site, and (c) adhere to all laws, rules, and regulations applicable to the Program, including this Agreement and all Policies (as defined in Section 10) (all of the foregoing collectively, the “Certification Requirements”). All exam fees paid in connection with the Program are in U.S. dollars. You are responsible for any exchange rate fluctuations.

1.2 Use of Name and Logo.

Subject to the terms of this Agreement and your completion of and continued compliance with the applicable Certification Requirements, we grant you the limited right to use the name of the specific Docker Certification that you have received and any Docker Mark associated with such Docker Certification for so long as such Docker Certification is valid or until revoked or terminated as set forth in this Agreement. You may only use the Docker Marks only in accordance with the Docker Trademark Guidelines. We may revoke your license (if any) to use any Docker Mark associated with the Docker Certification at any time by giving you written notice.

1.3 Your Responsibilities.

At all times when you are holding yourself out as the recipient of a Docker Certification, or at any time that you are providing services that relate to Docker or any Products, you will: (a) conduct your activities in a professional and competent manner; (b) comply with all applicable laws, regulations and orders of any governmental or regulatory authority; (c) promote Docker and the Products in a manner that maintains the good name and reputation of both Docker and the Products; (d) not make any representations, warranties, or guarantees to third parties with respect to Docker or the specifications, features, or capabilities of any of the Products; (e) not misrepresent or embellish your relationship with Docker; and (f) not engage in any illegal, false or deceptive acts or practices.

1.4 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 you are exclusive of applicable taxes and duties, including, without limitation, VAT, excise taxes, sales and transaction taxes, and gross receipts taxes (“Indirect Taxes”). You will provide such information to Docker as reasonably required to determine whether Docker is obligated to collect Indirect Taxes from you. Docker will not collect, and you will not pay, any such tax or duty for which you furnish Docker a properly completed exemption certificate or a direct payment permit certificate or for which Docker may claim an available exemption from tax. All payments made by you to Docker 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, you will pay such additional amounts as are necessary so that the net amount received by Docker is equal to the amount then due and payable under this Agreement. Docker will provide you with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any withholding or deduction for taxes in respect of payments made under this Agreement.

2. Testing.

2.1 Procedures.

You will comply with all rules and regulations applicable to the administration of the Certification Exam as set forth by Docker or by a Certification Exam Provider. You will not engage in any misconduct in connection with the Certification Exam, including without limitation: (a) receiving or providing unauthorized assistance, or submitting work that is not your own; (b) possession or use of unauthorized materials during any Certification Exam; (c) falsifying your identity or identification documents, or misusing any testing identification number, username, or other credentials that have been provided to you; (d) failing to adhere to any testing policy, procedure, or directions; (e) disclosing or disseminating the content of any Certification Exam; (f) use of any Docker Marks in a manner not authorized by this Agreement and the Docker Trademark Guidelines; or (g) any other actions that we believe are inconsistent with the principles of the Program.

2.2 Confidentiality.

You agree that all Testing Materials are Docker Confidential Information. You may not use, disclose, reproduce, copy, transmit, distribute, or make derivative works of any Certification Exam, Testing Materials or other Docker Confidential Information, or any part thereof in whole or in part, in any form or by any means.

2.3 Retakes.

If you do not pass a Certification Exam, you may retake such Certification Exam only in accordance with the retake policy as described on the Docker Certification Site.

2.4 Noncompliance.

You agree that if for any reason we believe that you have violated the terms of this Agreement, including without limitation this Section 2, we may in our sole discretion (and without the refund of any testing fees) cancel the results of any Certification Exam, revoke any Docker Certification, terminate your rights under this Agreement and/or otherwise prohibit you from participating in the Program.

3. Privacy.

If you choose to participate in the Program, your participation and any dispute over privacy is subject to the Docker Privacy Policy, the current version of which is available at <https://www.docker.com/docker-privacy-policy>. We may e-mail periodic reminders of our privacy

notices and conditions, but you should check our website frequently to see recent changes. Unless stated otherwise, the Privacy Policy applies to all information that we have about you and your account. You agree that we may share your information with our third-party contractors in connection with the administration of Certification Exams. We may also verify the status of your Docker Certification(s) to any third parties who inquire about such status.

4. Term and Termination.

4.1 Term.

The term of this Agreement will begin on the Effective Date, and will continue until terminated by either party, or until all Docker Certifications you hold are no longer valid. Each Docker Certification is valid for a period of 2 years following the date on which you successfully pass the applicable Certification Exam.

4.2 Termination.

(a) Termination for Convenience. You may terminate this Agreement for any reason by providing us notice. We may terminate this Agreement for any reason by providing you 30 days advance notice.

(b) Termination for Cause. We may terminate this Agreement at any time if you breach this Agreement or if you fail to meet any Certification Requirements.

4.3. Effect of Termination.

Upon any termination of this Agreement, all your rights under this Agreement immediately terminate, all Docker Certifications you hold will immediately become invalid, you will immediately cease to hold yourself out as holding any Docker Certification, and you will immediately cease all use of the Docker Marks. Sections 2.2, 3, 4.3, 5, 6, 7, 9, and 10 will continue to apply in accordance with their terms.

5. Indemnification.

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 participation in the Program; (b) your use of any Docker Mark in a manner not authorized by or consistent with this Agreement; (c) any representations, warranties, or guarantees you make to third parties with respect to Docker or the specifications, features, or capabilities of any of the Products; (d) any misrepresentation or embellishment by you of your relationship with Docker; (e) your breach of this Agreement or violation of applicable law; or (f) a dispute between you and any third party. We may assume control of the defense and settlement of the claim at any time.

6. Disclaimers.

THE PROGRAM, INCLUDING BUT NOT LIMITED TO THE TESTING MATERIALS, IS PROVIDED "AS IS." WE AND OUR AFFILIATES, LICENSORS AND CERTIFICATION EXAM PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE PROGRAM, TESTING MATERIALS OR THIS AGREEMENT. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATES, LICENSORS AND CERTIFICATION EXAM PROVIDERS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A

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

7. Limitations of Liability.

WE AND OUR AFFILIATES, LICENSORS AND CERTIFICATION EXAM PROVIDERS WILL NOT BE LIABLE TO YOU FOR ANY:

- (A) DIRECT DAMAGES;
- (B) LOSS OF PROFITS;
- (C) LOSS OF BUSINESS;
- (D) LOSS OF ANTICIPATED SAVINGS;
- (E) DEPLETION OF GOODWILL AND SIMILAR LOSSES;
- (F) INVESTMENTS, EXPENDITURES OR COMMITMENTS RELATED TO THE PROGRAM; OR
- (G) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PURE ECONOMIC LOSS, COSTS, DAMAGES, EXPENSES OR EXEMPLARY DAMAGES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES, LICENSORS OR CERTIFICATION EXAM PROVIDERS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (I) YOUR FAILURE TO ACHIEVE DOCKER CERTIFICATION OR OTHER INABILITY TO PARTICIPATE IN THE PROGRAM, INCLUDING AS A RESULT OF ANY (X) TERMINATION OR SUSPENSION OF THIS AGREEMENT, OR (Y) OUR DISCONTINUATION OF ANY DOCKER CERTIFICATION, CERTIFICATION EXAM, OR ALL OF THE PROGRAM; OR (II) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE PROGRAM.

8. Modifications.

We may from time to time change this Agreement or any Policies, or change or discontinue any Docker Certification, the Program as a whole, or any aspect of it, including without limitation changing Certification Requirements, changing training or testing materials, changing passing score requirements, or changing or discontinuing Program benefits. We will notify you of changes by posting them on the Docker Certification Site or by otherwise notifying you in accordance with Section 9.4. You are responsible for checking the Docker Certification Site regularly for changes. Changes will be effective as of the date such changes are posted or, if we notify you by email, as stated in the email message. By continuing to participate in the Program, you agree to comply with the most current version of this Agreement, the Policies and all additional requirements specified on the Docker Certification Site. The current Certification Requirements for each Docker Certification and the current version of this Agreement may be found on the Docker Certification Site. It is your responsibility to check the Docker Certification Site regularly for modifications to the Program or this Agreement. We last modified this Agreement on the date listed at the beginning of this Agreement.

9. Miscellaneous.

9.1 Publicity.

You will not misrepresent or embellish the relationship between us and you (including by expressing or implying that we support, sponsor, endorse, or contribute to you or your business endeavors), or express or imply any relationship or affiliation between us and you or any other person or entity except as expressly permitted by this Agreement.

9.2 Independent Contractors; Non-Exclusive Rights.

We and you are independent contractors, and neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve 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.

9.3 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.

9.4 Notice.

(a) To You. We may provide any notice to you under this Agreement by: (i) posting a notice on the Docker Certification Site; or (ii) sending a message to the email address we have on file for you. Notices we provide by posting on the Docker Certification Site will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.

(b) To Us. To give us notice under this Agreement, you must contact Docker as follows: (i) email to: certification@docker.com; or (ii) by personal delivery, overnight courier or registered or certified mail to Docker, Inc., 144 Townsend Street, San Francisco, CA 94107. We may update the email address or address for notices to us by posting a notice on the Docker Certification Site. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.

(c) Language. All communications and notices to be made or given pursuant to this Agreement must be in the English language.

9.5 Assignment.

You will not assign this Agreement, or delegate or sublicense any of your rights under this Agreement, without our prior written consent. Any assignment or transfer in violation of this Section 9.5 will be void. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

9.6 No Waivers.

The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by us must be in writing to be effective.

9.7 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.

9.8 Governing Law; Venue.

The laws of the State of California, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between you and us. Any dispute relating in any way to the Program or this Agreement where a party seeks aggregate relief of \$7,500 or more will be adjudicated in any state or federal court in the County of San Francisco, California. You consent to exclusive jurisdiction and venue in those courts. We may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of our, our affiliates, or any third party's intellectual property or other proprietary rights. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

9.9 Trade Compliance.

You represent and warrant that you and your financial institution(s), or any party that owns or controls you or your financial institution, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority.

9.10 Entire Agreement; English Language.

This Agreement includes the Policies and is the entire agreement between you and us regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of this Agreement. We will not be bound by, and we specifically object 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 you 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. If we provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

10. Definitions.

"Docker Certification" means a specific certification designation that you may receive from us indicating you have received a passing score on a Certification Exam with respect to certain Docker products or services and met other Certification Requirements as may be specified by us.

"Docker Certification Program" or "Program" means the program pursuant to which we make available certain Docker Certifications.

"Docker Certification Site" means <https://success.docker.com/certification> and any successor or related site designated by Docker.

“Docker Confidential Information” means all nonpublic information disclosed by us, our affiliates, business partners, Certification Exam Providers, or our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Docker Confidential Information includes: (a) all nonpublic information relating to the Program or the Certification Exams; (b) all Testing Materials; and (c) third-party information that we are obligated to keep confidential.

“Docker Marks” means any trademarks, service marks, service or trade names, logos, and other designations of Docker and its affiliates that we may make available to you in connection with this Agreement or the Program.

“Certification Exam” means the exam that you must pass to receive a particular Docker Certification.

“Certification Exam Provider” means any third party authorized by Docker to administer Certification Exams.

“Policies” means all policies and restrictions associated with the Program described on the Docker Certification 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 Docker Certification Site.

“Privacy Policy” means the privacy policy currently referenced at <https://www.docker.com/docker-privacy-policy> as it may be updated by Docker from time to time, and as may be made available on any successor or related site designated by Docker.

“Products” means each of our products and/or services made available by us or our affiliates, on a commercial or non-commercial basis, which is the subject of this Agreement, the Docker Certification, or the Certification Exam .

“Testing Materials” means the Certification Exam and any other materials that are provided to you in connection with a Certification Exam (which may include instructions, study materials, exam questions, or other content).

“Trademark Use Guidelines” means the guidelines and license located at <https://www.docker.com/trademark-guidelines> as they may be updated by Docker from time to time, and as may be made available on any successor or related site designated by Docker.