

# Evaluation Terms of Use

Effective day: \_\_\_\_\_, 2017

## 1. Definitions.

“**Cloud Service**” means the hosted service offering as further described in the Documentation.

“**Documentation**” means the description of the Apigee Products licensed by Customer contained in the applicable specification sheet, available on Apigee’s website at <https://apigee.com/about/specification-sheets>.

“**Registration Form**” means an online form or other ordering document listing the Apigee Products for use hereunder.

“**Software**” means a machine executable copy of the object code of the software products provided by Apigee to Customer as further described in the Documentation.

“**Apigee Products**” means the Software or Cloud Services. Apigee Products may also include Pre-Released Products (as defined below) that are being provided to Customers for their feedback and testing.

“**Term**” means the evaluation term defined on each Registration Form, of if no such term is defined, thirty (30) days, commencing on the date of execution of this Agreement.

## 2. Evaluation License and Restrictions.

2.1 **License.** Subject to the terms and conditions of this Agreement, Apigee grants Customer a limited, nonexclusive, non-transferable license to use and evaluate the Apigee Products for its internal, non-production purposes for the Term. Customer acknowledges and agrees that the Apigee Products are provided hereunder for Customer’s internal evaluation purposes only and may not be used for any commercial purposes whatsoever.

2.2 **License Restrictions.** Customer is prohibited from (i) reverse engineering the Apigee Products; (ii) reselling, sublicensing, leasing, time-sharing or otherwise making the Apigee Products available to any third party; (iii) modifying, copying or creating derivative works based on the Apigee Products; (iv) using or accessing the Apigee Products for the purpose of building a competitive product; (v) using the Apigee Products, or permitting any of them to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication; attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Apigee Products or the data contained therein; and (vi) propagating any virus, worms, Trojan horses, or other programming routine intended to damage any system or data.

2.3 **Updates.** Apigee may, in its sole discretion, provide updates, modifications or bug fixes for the Apigee Products to Customer during the term of this Agreement. Any such updates, modifications, or bug fixes shall be deemed part of the Apigee Products and subject to the license and other terms and conditions hereunder.

2.4 **Pre-Release Products.** Any Apigee Product that is labeled as "Beta", "Preview", "Advanced", "Early-Adopter", "Pre-Release" or other similarly named designation, shall be provided solely to the Customer for the purpose of testing the Apigee Product in order to provide Feedback and to identify any potential defects or bugs ("Pre-Release Products"). The Customer acknowledges and agrees that any such Pre-Released Products is for testing purposes only and shall not be incorporated into any contract or other commitment between the parties and is not a commitment by Apigee to deliver any such Pre-Release Product and should not be relied upon in making purchasing decisions. The development, release, timing and pricing of any Pre-Release Products remains at the sole discretion of Apigee.

### 3 **Customer's Obligations.**

3.1 **Feedback.** Customer will provide Apigee with feedback relating to the Apigee Products performance and suggestions for changes, modifications, or improvements to the Apigee Products ("Feedback"). Apigee shall own all intellectual property rights in Feedback and Feedback will be deemed Apigee Confidential Information.

3.2 **Fees.** Customer shall pay the fees, if any, set forth on each Registration Form within thirty (30) days of Apigee's invoice date. Customer shall be responsible for all taxes owing in connection with the transactions contemplated herein, except for taxes on Apigee's net income.

4 **Ownership.** Customer acknowledges and agrees that Apigee owns all right, title and interest (including without limitation all patents, copyrights, trade secrets or other proprietary rights) in the Apigee Products, and any modifications, corrections or enhancements thereto, whether or not made by Apigee. Customer further acknowledges that the Apigee Products contains valuable trade secrets and confidential information of Apigee, including but not limited to the specifications, functionality and performance thereof, and shall take all reasonable precautions to prevent any disclosure of such information except as expressly permitted in this Agreement.

### 5 **Confidentiality.**

5.1 As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed 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, including the Apigee Products, documentation, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to Disclosing Party.

5.2 Receiving Party shall not disclose any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written consent. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.

5.3 If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

5.4 If Receiving Party discloses (or threatens to disclose) any Confidential Information of Disclosing Party in breach of confidentiality protections hereunder, Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies are inadequate.

5.5 Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information and, upon request of the Disclosing Party, return to the Disclosing Party or destroy (at the Disclosing Party's election) all materials containing such Confidential Information.

5.6 Notwithstanding the foregoing, Apigee may use, for its business purposes, data, text, and files that pass through and/or may be generated by the use of the Apigee Products in anonymized format.

6 **Indemnity.** Apigee will defend or settle any action brought against Customer to the extent that it is based upon a claim that the Apigee Products, as provided by Apigee to Customer under this Agreement and used within the scope of this Agreement, infringe any U.S. patent or any copyright or misappropriates any trade secret, and will

pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer or payable by Customer in settlement, provided that Customer: (i) promptly notify Apigee in writing of the claim; (ii) grant Apigee sole control of the defense and settlement of the claim; and (iii) provide Apigee, at Apigee's expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim. If Customer's use of the Apigee Products is, or in Apigee's opinion is likely to be, enjoined due to the type of claim specified above, Apigee may, at its sole option and expense, terminate Customer's right and Apigee's obligations hereunder with respect to such Apigee Products. Notwithstanding the terms of this Section 6, Apigee will have no liability for any infringement or misappropriation claim of any kind to the extent that it results from: (a) modifications to the Apigee Products made by a party other than Apigee, if a claim would not have occurred but for such modifications; (b) the combination, operation or use of the Apigee Products with equipment, devices, software or data not supplied or approved by Apigee, if a claim would not have occurred but for such combination, operation or use; (c) Customer's failure to use updated or modified Apigee Products provided by Apigee to avoid a claim; or (d) Customer's use of the Apigee Products other than in accordance with this Agreement and the Documentation. THE PROVISIONS OF THIS SECTION 6 SET FORTH APIGEE'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

## **7 Term and Termination.**

7.1 This Agreement shall commence on the Effective Date and terminate upon expiration of the Term of all Registration Forms, unless earlier terminated pursuant to this Section 7. Either party may terminate this Agreement thirty (30) days after written notice to the other party of such party's material breach of this Agreement, which breach is not cured within such thirty (30) day period.

7.2 Upon the effective date of termination of this Agreement or any Registration Form, Customer's license to use the Apigee Products defined in the applicable Registration Form will cease and Customer will delete and either destroy or return to Apigee all copies of the Software and any Documentation. The parties' rights and obligations with respect to, title and protection, confidentiality, warranty disclaimers, limitation of liability and governing law provisions of this Agreement shall survive termination of this Agreement.

7.3 If Customer elects to license the Apigee Products for production use, Customer acknowledges and agrees that such production licenses will be subject to Apigee's then current terms and conditions.

8 **No Warranty.** THE APIGEE PRODUCTS ARE PROVIDED "AS IS", AND APIGEE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, APIGEE DOES NOT WARRANT THAT THE APIGEE PRODUCTS WILL MEET CUSTOMER'S NEEDS, WILL FUNCTION PROPERLY, OR WILL BE ERROR-FREE.

9 **Limitation of Liability.**

9.1 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOSS OF PROFITS, DATA, OR SERVICE, OR ANY, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9.2 EACH PARTY'S TOTAL LIABILITY TO THE OTHER ARISING OUT OF OR UNDER THIS AGREEMENT OR FOR BREACH OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE GREATER OF (I) FEES PAID BY CUSTOMER UNDER THIS AGREEMENT; OR (II) TEN THOUSAND DOLLARS (\$10,000).

9.3 THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY SHALL NOT APPLY TO (I) CLAIMS FOR A BREACH OF SECTIONS 4 OR 5; or (II) CUSTOMER'S BREACH OF SECTION 2.

10 **Export Restrictions.** Customer agrees to comply fully with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the importation and use of the Apigee Products.

11 **U.S. Government Restricted Rights.** If Customer is a federal government entity, Apigee provides the Apigee Products, including related technology, for ultimate federal government end use solely in accordance with the following: Government technical data and Apigee Products rights related to the Apigee Products 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 greater rights are needed, a mutually acceptable written addendum specifically conveying such

rights must be included in this Agreement.

12 **Miscellaneous.** Notices shall be in writing, sent using a recognized private mail carrier or the United States Postal Service and effective on proof of delivery. Notices to Apigee shall be sent to Apigee Corporation, 10 S Almaden Blvd 16<sup>th</sup> Floor, CA 95113. Notices to Customer shall be sent to the address on file with Apigee. The parties are independent contractors, and nothing in this Agreement is intended to shall create any agency, partnership or joint venture relationship between them. This Agreement is governed and interpreted in accordance with the laws of the State of California without reference to conflicts of laws principles. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in Santa Clara, County, California, for resolution of any disputes arising out of this Agreement. Customer may not assign this Agreement, or any of its rights or obligations hereunder, by operation of law or otherwise, without Apigee 's prior written consent. Any purported assignment by Customer other than as provided in this Section 12 shall be null and void. Apigee may include the Customer's name in any of its marketing activities and/or customer lists. If any of the provisions of this Agreement are held to be invalid under any applicable statute or rule of law, they are, to that extent, deemed omitted. No failure by Apigee to enforce any of its rights under this Agreement will act as a waiver of such rights. This Agreement constitutes the entire agreement between Apigee and Customer with respect to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard thereto, and supersedes any and all other written or oral agreements existing between the parties hereto regarding the subject matter of this Agreement. This Agreement may not be modified without the prior written consent of both parties.

**AGREED:**

Prospective Customer Name: \_\_\_\_\_

Sign: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

