

This Application Developer and API License Agreement (the “**Agreement**”), effective as of the date of acceptance of this Agreement (the “**Effective Date**”), is by and between Joyent, Inc. (“**Joyent**”) and you, or the individual, company or other entity that you represent (“**Licensee**”). If you are entering into this Agreement on behalf of a company or other entity, you represent and warrant that you have authority to bind such company or other entity to this Agreement.

By building applications that interact with Joyent Cloud Portal (the “**Joyent Cloud Portal**”) Licensee unconditionally consents and agrees to be bound by and a party to this Agreement.

1. Purpose.

- a. **Use of Licensed Materials.** This Agreement governs the use by Licensee of the following, all of which collectively are the “**Licensed Materials**”: (a) the application programming interface (“**API**”) of Joyent Cloud Portal and any accompanying or related documentation, source code, executable applications and other materials (collectively, the “**Joyent Cloud Portal API**”), including, but not limited to, as made available through Joyent’s code repository (the “**Developer Website**”), as modified from time to time.
- b. **Use of Joyent Marks.** This Agreement also governs the use by Licensee, and restrictions on such use, of Joyent’s name, trademarks, service marks, logos and other branding made available for use in connection with the Licensed Materials (the “**Joyent Marks**”).

2. License. Subject to the terms and conditions of this Agreement, including the restrictions set forth in Section 3, Joyent grants to Licensee a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to: (a) use and make calls to the Joyent Cloud Portal API to develop, implement and distribute software applications, services or products (the “**Licensee Applications**”) that interact with the Joyent Cloud Portal; (b) use and display the Joyent Marks only to identify that the Licensed Materials originate from the Joyent Cloud Portal. Licensed Applications do not include those applications that use or access the Joyent API or the Joyent Cloud Portal in order to monitor the availability, performance, or functionality of any of the Joyent API or the Joyent Cloud Portal, for any other benchmarking or for other competitive purposes.

3. Restrictions. The licenses granted in Section 2 are explicitly conditioned on Licensee’s adherence to the following restrictions.

- a. **Compliance with this Agreement, Policies and Guidelines.** Licensee must comply with the restrictions set forth in this Agreement, the Joyent Terms of Service, the Joyent Privacy Policy, the Joyent Trademark Guidelines and the Joyent Content Policy in all uses of the Licensed Materials. If Joyent believes, in its sole discretion, that Licensee has violated or attempted to violate any term, condition or the spirit of this Agreement, Licensee’s license to and ability to use and access the Licensed Materials may be temporarily or permanently revoked, with or without notice to Licensee.
- b. **Obtaining and Maintaining an API Key.** In order to use the Joyent Cloud Portal, Licensee must obtain project repository access (an “**Developer Access**”) via registration on the Developer Website <https://github.com/joyent/piranha>. Licensee shall not share his or her repository access keys, shall keep such repository access keys secure and shall use it as Licensee’s sole means of accessing the Joyent repository.
- c. **User Login Approval.** Licensed users will receive access to the Joyent Cloud Portal code repository after receiving acceptance of the Joyent Cloud Portal developer agreement.
- d. **No Substantial Replication.** Licensee shall not substantially replicate products or services offered by Joyent, but is explicitly permitted to create specialized versions or extensions of such products or services. For example, Licensee is not permitted to fully replicate the Joyent Cloud Portal, but may create specialized views of features developed through the Joyent Cloud Portal API. In addition, Licensee shall not use the Licensed Materials or other information collected from users of Licensed Applications to create or
- e. maintain a separate cloud platform or service.
- f. **No Compromising Joyent Security.** Licensee is not permitted to use the Licensed Materials in any manner that does or could potentially undermine the security of the Joyent Cloud Portal or the Licensed Materials. Licensee shall not, and shall not attempt to, interfere with, modify or disable any features, functionality or security controls of the Joyent Cloud Portal or the Joyent Cloud Portal API, defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the Licensed Materials, or reverse engineer, decompile, disassemble or derive source code, underlying ideas, algorithms, structure or organizational form from the Joyent Cloud Portal or the Joyent Cloud Portal API. In addition, the Licensee is not permitted to use the Licensed Material to direct provisioning event or transactions to other infrastructure services aside from their own.
- g. **Reporting Security Flaws and Unauthorized Access.** Licensee shall immediately report to Joyent any

security flaws Licensee discovers in any of the Joyent Cloud Portal or the Licensed Materials. Joyent reserves the right, in its sole discretion, to determine what constitutes a security flaw. Licensee shall further immediately report any actual or suspected unauthorized access to the Joyent Cloud Portal API using Licensee's API credentials. Failure to report such flaws or unauthorized accesses, particularly prior to public disclosure, shall be considered a material breach of this Agreement.

h. **No Circumvention or Reverse Engineering; Maintenance of Proprietary Notices.** Licensee shall not, and shall not attempt to: (i) interfere with, modify or disable any features or functionality of the Joyent Cloud Portal Services or Joyent Cloud Portal API, including, without limitation, any mechanisms used to restrict or control the Joyent Cloud Portal or Joyent Cloud Portal API, such as anti-circumvention measures; (ii) translate, reverse engineer, decompile, disassemble or derive source code, underlying ideas, algorithms, structure or organizational form from the Joyent Cloud Portal or the Licensed Materials; (iii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the Joyent Services or the Licensed Materials; or (iv) remove or modify any proprietary notices, attribution or marks from or delivered as part of the Joyent Cloud Portal or the Licensed Materials.

i. **Indicating Use of the Joyent Services and the Joyent API.** In a prominent location in all Licensed Applications, Licensee should, to the extent reasonable based on the nature of the Licensed Application, indicate that such Licensed Applications have been created using the Joyent Cloud Portal and/or the Joyent Cloud Portal API, and shall comply with the Joyent Trademark Guidelines in doing so.

j. **Use of Joyent Marks.** Licensee may not, under any circumstances: (i) include in or use the Joyent Marks, or any marks that are confusingly similar to or derivative of the Joyent Marks (including without limitation, "Joyful", "SmarterOS", "NodeRock.js" and "JOY") ("**Confusing Marks**"), as part of Licensee's trade name (registered or otherwise), logos or other identifiers of Licensee; (ii) include in or use the Joyent Marks or any Confusing Marks as part of any names, domain names logos or other identifiers of Licensee Applications; or (iii) use the Joyent Marks or Confusing Marks in a manner that creates or may create a sense of endorsement, sponsorship or association with Joyent, unless expressly permitted by Joyent, in writing, to do so. All use of the Joyent Marks, and any goodwill arising out of such use, shall inure to the benefit of Joyent. Licensee may freely state and disclose that Licensee is using the Joyent Services or the Joyent API, as long as Licensee adheres to all restrictions on the use of the Joyent Marks stated in this Agreement, including those stated in the Joyent Trademark Guidelines.

k. **No Misleading Users.** Licensee may not, under any circumstances, whether within a Licensed Application or in materials discussing or concerning a Licensed Application, mislead, confuse or cause misapprehension or confusion among users as to the features, functionality, origin, capabilities or other aspects of said Licensed Application, Joyent, the Joyent Services or the Joyent API. You should not advertise or otherwise discuss your application in a way that confuses or misleads users about the application or about Joyent.

l. **Monitoring.** Joyent reserves the right to monitor Licensee's use of the Licensed Materials for any reason or no reason, including to ensure Licensee's compliance with the terms and conditions of this Agreement.

4. **Modifications.** Licensee acknowledges and agrees that Joyent may modify (including but not limited to updating) this Agreement, the Joyent Cloud Portal, the Joyent Cloud Portal API and Joyent Content Policy from time to time (a "**Modification**"). Except for modifications of the Joyent Services, Licensee will be notified a Modification through notifications or posts on the Developer Website or through a form of direct communication from Joyent to Licensee, including but not limited to e-mail or notifications through the Joyent Cloud Portal. Licensee further acknowledges and agrees that the Joyent Cloud Portal and the Licensed Materials may be modified at any time and without any notice to Licensee. Licensee shall, within thirty (30) days from the date of first notice of any Modification(s) (or such shorter period of time specified in the notice of the Modification(s)) comply with such modification(s) by implementing and using the most current version of the Joyent Cloud Portal API and making any changes to Licensee Applications that may be required as a result of such Modification(s). Licensee acknowledges that a Modification may have an adverse effect on Licensee Applications, including but not limited to changing the manner in which Licensee Applications communicate with Joyent Cloud Portal. Licensee acknowledges that its sole recourse for such adverse effects is to terminate this Agreement pursuant to Section 10, and that Licensee's continued access to or use of the Joyent Cloud Portal or any Licensed Materials following such thirty (30) day period shall constitute binding acceptance of the Modification(s) at issue. Joyent will attempt, but is not obligated, to provide thirty (30) days notice of any Modification that is not backwards compatible or that Joyent reasonably believes will remove or materially alter significant functionality of the Joyent Cloud Portal API.

5. Ownership.

a. **Joyent.** Licensee acknowledges and agrees that Joyent and its licensors, particularly its users, retain all worldwide right, title and interest in and to the Licensed Materials, including all worldwide intellectual property rights therein. Licensee also acknowledges and agrees that, as between Licensee and Joyent, Joyent owns all right, title and interest in and to the Joyent Cloud Portal, the Joyent Cloud Portal API, the Joyent Marks, and any derivative works or enhancements thereof, including but not limited to all worldwide intellectual property rights therein.

Licensee agrees not to act in any manner inconsistent with such ownership. Any of Joyent's rights not expressly granted under this Agreement are withheld. Licensee agrees that it will not challenge Joyent's ownership of the Joyent Marks, challenge the validity of the licenses granted under this Agreement, or otherwise copy or exploit the Joyent Marks during or after the termination of this Agreement, except as expressly authorized under this Agreement. If Licensee acquires any rights in the Joyent Marks or any confusingly similar marks, by operation of law or otherwise, Licensee will, at no expense to Joyent, immediately effectuate an assignment of such rights to Joyent.

b. **Licensee.** As between Licensee and Joyent, Licensee retains all worldwide right, title and interest in and to the Licensee Applications, excluding the Joyent Cloud Portal, Joyent Cloud Portal API, the Licensed Materials, the Joyent Marks, and any derivative works or enhancements thereof, including but not limited to all intellectual property rights therein.

6. **Licensee's Feedback and/or Contribution.** Licensee may provide Joyent with feedback or comments related to the Licensed Material and/or Licensee's experience with and use thereof ("**Feedback**"). Licensor owns or has sufficient rights to contribute the software source code and other related intellectual property under the terms of this agreement to Joyent for use within Joyent's software development projects ("**Projects**"). Licensee agrees that Joyent and its designees and assigns shall be free to copy, modify, create derivative works of, publicly display, disclose, distribute, license, sublicense, incorporate and otherwise use Feedback, including all derivative works thereto, for any and all purposes, commercial or otherwise, with no obligation of any kind to Licensee. From time to time, Licensee may submit a contribution to Joyent. A "**Contribution**" shall mean any original work of authorship, including any modifications or additions to an existing work that is submitted by Licensee to Joyent for inclusion in, or documentation of, any of the products or services owned or managed by Joyent including to the Joyent Cloud Portal or Joyent Cloud Portal API (the "**Work**"). For the purposes of this definition, "submitted" means any form of electronic, verbal, or written communication sent to Joyent or its representatives, including but not limited to communication on electronic mailing lists, source code control systems, and issue tracking systems that are managed by, or on behalf of, Joyent for the purpose of discussing and improving the Work, but excluding communication that is conspicuously marked or otherwise designated in writing by Licensee as "Not a Contribution."

7. **Licensee's Grant-backs to Joyent.** Subject to the terms and conditions of this Agreement, Licensee hereby grants to Joyent:

- a) **Grant of Copyright License.** Licensee hereby grants to Joyent and to recipients of software distributed or offered by Joyent a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable copyright license to reproduce, prepare derivative works of, publicly display, publicly perform, sublicense, and distribute Licensee's Contributions and such derivative works; and,
- b) **Grant of Patent License.** Licensee hereby grants to Joyent and to recipients of software and services distributed or offered by Joyent a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable (except as stated in this section) patent license to make, have made, use, offer to sell, sell, import, and otherwise transfer the Work, where such license applies only to those patent claims licensable by Licensee that are necessarily infringed by Licensee's Contribution(s) alone or by combination of Licensee's Contribution(s) with the Work to which such Contribution(s) was submitted. If any entity institutes patent litigation against Licensee or any other entity (including a cross-claim or counterclaim in a lawsuit) alleging that Licensee's Contribution, or the Work to which you have contributed, constitutes direct or contributory patent infringement, then any patent licenses granted to that entity under this Agreement for that Contribution or Work shall terminate as of the date such litigation is filed.

6. **Support.** This Agreement does not entitle Licensee to any support for the Licensed Materials, unless Licensee makes separate arrangements with Joyent for such support. Any such support provided by Joyent shall be subject to the terms of this Agreement as modified by a separate support agreement. Licensee is solely responsible for providing all support and technical assistance to end users of the Licensee Applications. Licensee acknowledges and agrees that Joyent has no obligation to provide support or technical assistance directly to Licensee's end users and Licensee shall not represent to any of its end users that Joyent is available to provide such support.

7. **Confidentiality.** Licensee may from time to time, gain access to proprietary information, technical data, trade secrets or know-how, including, but not limited to, source code, research, product plans, products, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information that is either marked as "confidential" or disclosed in such a manner that it would be apparent it should be treated confidentially ("**Confidential Information**"). Licensee may use Confidential Information only to the extent necessary to exercise its rights under this Agreement. Licensee may not disclose Confidential Information to a third party without the prior express consent of Joyent, provided in writing or by email. Licensee agrees that it will protect

Confidential Information from unauthorized use, access, or disclosure in the same manner that Licensee would use to protect its own confidential and proprietary information of a similar nature and in any event with no less than a reasonable degree of care.

8. Term and Termination; Survival. This Agreement shall commence on the Effective Date and will remain in effect until terminated pursuant to this Section. Either party may terminate this Agreement at any time, for any reason, or for no reason including, but not limited to, if Licensee violates any provision of this Agreement. Any termination of this Agreement shall also terminate the licenses granted hereunder. Upon termination of this Agreement for any reason, Licensee shall cease using, and either return to Joyent, or destroy and remove from all computers, hard drives, networks, and other storage media, all copies of the Licensed Materials and any Confidential Information in Licensee's possession, and shall certify to Joyent that such actions have occurred. Sections 2-5, 7, 9 and 10-13 shall survive termination of this Agreement.

9. Representations and Warranties of Licensee. Licensee represents and warrants that: (i) Licensee has the necessary power and authority to enter into this Agreement, is legally entitled to grant the license in Section 5 and that the performance of its obligations will not constitute a breach or otherwise violate any other Agreement or the rights of any third party arising therefrom; (ii) Licensee shall maintain, throughout the Term, all required rights and licenses related to the Licensee Applications and Licensee Applications shall not infringe or otherwise violate any third party rights, including but not limited to third party intellectual property rights; and (iii) Licensee's uses of Licensee's Contributions do and shall comply with all applicable foreign, federal, state and local laws, rules and regulations. Licensee represents that each of Licensee's Contributions is Licensee's original creation. Licensee represents that its Contribution submissions include complete details of any third-party license or other restriction (including, but not limited to, related patents and trademarks) which are associated with any part of the Contributions.

10. Indemnification by Licensee. Licensee will indemnify and hold Joyent, its subsidiaries, affiliates, officers, employees and agents harmless from any and all claims, damages, losses, liabilities, actions, judgments, costs and expenses brought by a third party arising out of or in connection with: (i) any act or omission by Licensee in connection with Licensee's use of the Joyent Cloud Portal or the Licensed Materials; (ii) Licensee's use of the Joyent Cloud Portal or the Licensed Materials other than as expressly allowed by this Agreement; (iii) Licensee's breach of this Agreement, including but not limited to Licensee's representations and warranties herein; or (iv) any Licensed Application.

11. Disclaimer. The Joyent Cloud Portal and the Licensed Materials are provided "as is" without warranty of any kind. Joyent disclaims all warranties, whether express, implied or statutory, regarding the licensed materials and the Joyent services, including without limitation any and all implied warranties of merchantability, accuracy, results of use, reliability, fitness for a particular purpose, title, interference with quiet enjoyment, non-infringement of third-party rights and any warranties or conditions arising out of course of dealing or usage of trade. Further, Joyent disclaims any warranty that Licensee's use of the Joyent Cloud Portal or the Licensed Materials will meet any or all of Licensee's requirements or that such use will be uninterrupted, error-free, virus-free or secure. Some states do not allow the exclusion or limitation of implied warranties, so the above limitations and exclusions may not apply to you. These two items are especially important. Please make sure you understand them.

12. Limitation of Liability. In no event shall Joyent be liable to Licensee for any special, incidental, indirect, direct, exemplary, punitive, compensatory or consequential damages (including loss of use, data, business or profits) arising out of or in connection with this Agreement, whether such liability arises from any claim based upon contract, warranty, tort (including negligence), strict liability or otherwise, and whether or not Joyent has been advised of the possibility of such loss or damage. Any claim arising out of or relating to this Agreement must be brought within one (1) year. In any case, Joyent's aggregate liability under this Agreement will not exceed fifty U.S. dollars (US\$50.00). The foregoing limitations will survive and apply even if any limited remedy specified in this agreement is found to have failed of its essential purpose. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations and exclusions may not apply to you.

13. Miscellaneous. This Agreement, the Joyent Trademark Guidelines, the Joyent Content Policy, the Joyent Terms of Service and the Joyent Privacy Policy together constitute the entire agreement among the parties with respect to the subject matter of this Agreement and supersede and merge all prior proposals, understandings and contemporaneous communications, whether oral, written or electronic. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Any modification of or changes to this Agreement must be in a writing duly authorized by an authorized representative of Joyent or pursuant to Section 4

(Modifications). Licensee may not assign any of the rights or obligations granted under this Agreement, voluntarily or by operation of law (including without limitation in connection with a merger, acquisition, or sale of assets) except with the express written consent of Joyent, and any attempted assignment in violation of this paragraph is void. Joyent may assign, transfer or delegate any of its rights and obligations hereunder without notice or consent. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. This Agreement shall be governed by and construed in accordance with the laws of the State of California, including its conflicts of law rules, and the United States of America. Licensee agrees that any dispute arising from or relating to the subject matter of this Agreement shall be governed by the exclusive jurisdiction and venue of the state and federal courts of San Francisco County, California. The section and paragraph headings in this Agreement, along with all provided annotations, are for convenience only and shall not affect the interpretation of this Agreement. The failure of Joyent to enforce any part of this Agreement shall not constitute a waiver of its right to later enforce that or any other part of this Agreement. Waiver of compliance in any particular instance does not mean that Joyent will waive compliance in the future. In order for any waiver of any covenant or right under this Agreement to be binding, such waiver must be memorialized in a writing duly authorized by Joyent. Unless otherwise specified, all notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. All notices to Joyent shall be sent to legal@Joyent.com. All notices to Licensee shall be sent to the location specified in Licensee's Joyent API access registration information.

IN WITNESS WHEREOF, the parties hereto have executed this Beta Test Agreement as of the date first above written.

ACCEPTED BY: JOYENT, INC.	ACCEPTED BY:
_____	_____
Authorized Signature	Company Name
_____	_____
Printed Name of Signatory and Title	Authorized Signature
_____	_____
Date	Printed Name of Signatory and Title
_____	_____
	Date

	Address Line 1

	Address Line 2

	Jurisdiction of Incorporation, if applicable

	Email:

	Phone:
