Cloudamize Software License Agreement

This Cloudamize Software License Agreement (the "Agreement") governs access to and use of the Cloudamize Software and any accompanying offerings. By accepting this Agreement or otherwise accessing and/or using the Cloudamize Software, you, on behalf of its organization and all Authorized Users, (collectively the "Licensee") agrees to be bound by this Agreement. This Agreement is effective between Licensee and Cloudamize, Inc. and its Affiliates ("Cloudamize") as of the date of acceptance or use by Licensee of the Cloudamize Software.

1. DEFINITIONS
    1.1. "Affiliate" means with respect to either party, an entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Party, where "control" means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise, and/or (ii) ownership of at least fifty percent (50%) of the voting stock, shares or interests of any such entity.
    1.2. "Authorized User" means any Licensee employees, consultants, contractors or agents authorized by Licensee's administrator to access and use the Cloudamize Software on behalf of Licensee for its business purposes, in each case subject to such person's agreement to be bound by the terms of this Agreement and any Order Form.
    1.3. "Cloudamize Software" means the Cloudamize cloud technology platform, any and all of Cloudamize's Intellectual Property or other materials related thereto, but specifically excluding: (a) the underlying physical infrastructure which the Cloudamize Software accesses and relies upon, (b) the infrastructure made available by a third-party cloud infrastructure provider, and (c) Partner or Customer Data which utilizes or is available through the Cloudamize Software.

1.4. "Cloud Infrastructure Services" means one or more public or private cloud computing services for the provision of compute capacity, data storage, data transmission, network and related infrastructure services.

1.5. "Confidential Information" means proprietary and third-party information that is marked as confidential or, from its nature, content or the circumstances in which it is disclosed, might reasonably be considered to be confidential. It does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient or that was lawfully given to the recipient by a third-party.

1.6. "CSP" means a third party cloud service provider.

1.7. "Intellectual Property" means any and all code, patents, rights to inventions, utility models, copyrights, trademarks, database rights, moral rights, rights in either Party's Confidential Information (including know-how and trade secrets) and any other intellectual property rights in any part of the world.

1.8. "Licensee Data" means any and all data, materials, content or information entered into, transmitted through, or stored on the Cloudamize Software by Licensee, or otherwise made available or accessible to Cloudamize by Licensee.

1.9. "Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

1.10. "Order Form" means a document detailing the permissible access to the Cloudamize Software, specifically the quantity, term, license fees, start and/or end date, End User name, and any other terms relating to Licensee's rights and obligations in connection with the Cloudamize Software, and may include a purchase order, invoice, or other ordering document between Licensee and a CSP if Licensee's use or access to the Cloudamize Software is funded by a CSP.

1.11. "Party" or "Parties" means either a single party, or both parties to this Agreement.

Cloudamize™

1.12. "Services" means the Cloudamize Software combined with any Professional Services (as defined below), if applicable.

2. LICENSE

2.1. License Grant. Subject to the terms of this Agreement, any Order Forms and payment of all applicable license fees, Cloudamize grants Licensee a revocable, worldwide, non-exclusive, non-sublicensable, non-transferable license to access and use the Cloudamize Software as detailed at https://www.cloudreach.com/en/legal/cloudreach-service-definitio ns-and-specification s/ for Licensee's business purposes for the Order Form Term (defined below).

2.2. Reservation of Rights. Except as expressly granted in this Agreement, there are no other licenses granted to Licensee, express, implied. All rights not granted in this Agreement are reserved by Cloudamize.

2.3. Open Source Software. Cloudamize may distribute certain Open Source Software with the Cloudamize Software. Any Open Source Software distributed as part of the Cloudamize Software shall be "as is." Licensee shall have only such rights and/or licenses, if any, to use the Open Source Software as are set forth in the license applicable to such Open Source Software.

2.4. CSP Funded License. For clarification, all terms in this Agreement other than the "Billing and Payment" Section, shall apply to Licensee's use of the Cloudamize Software whether purchased directly by Licensee, or by a CSP.

3. CLOUDAMIZE RESPONSIBILITIES

3.1. Access. Cloudamize will make the Cloudamize Software available to Licensee and any AUthorized Users pursuant to this Agreement and any applicable Order Forms.

3.2. Support. Cloudamize will provide support pursuant to the applicable product specifications available at https://www.cloudreach.com/en/legal/cloudreach-service-definitio ns-and-specification s/.

3.3. Licensee Data. Cloudamize will maintain appropriate physical and technical safeguards for protection of the security, confidentiality and integrity of Licensee Data. Cloudamize will not use or disclose

any of Licensee Data, other than as necessary in the provision of the Cloudamize Software pursuant to this Agreement.

3.4. Personnel. Cloudamize will be responsible for the performance of its personnel (including Cloudamize employees and contractors) and their compliance with Cloudamize's obligations under this Agreement.

3.5. Modification of the Cloudamize Software. Cloudamize reserves the right to modify the Cloudamize Software on 90 days' notice, provided that: (i) Cloudamize shall not modify the Cloudamize Software for any active Order Forms; and (ii) if such modifications materially impact Licensee's use of the Cloudamize Software pursuant to this Agreement, Licensee may terminate this Agreement immediately upon written notice to Cloudamize.

3.6. Professional Services. If purchased or otherwise ordered by Licensee, Cloudamize may provide certain professional services enabled by the Cloudamize Software (the "Professional Services"), and such Professional Services will be provided pursuant to the details (including fees, service period, scope, and deliverables) set forth on an applicable Order Form. If applicable, with respect to the Professional Services:

3.6.1. Licensee will provide all necessary access and cooperation to enable Cloudamize to perform its obligations under an Order Form. Cloudamize shall have no liability for any failure to deliver any Professional Services resulting in whole or in part from a lack of such access or cooperation, or any incorrect assumption or a dependency outside of Cloudamize's control.

3.6.2. Cloudamize warrants that at the time of performance all Services will be performed in a good and workmanlike manner and in accordance with generally accepted industry standards. EXCEPT FOR THE FOREGOING, CLOUDAMIZE MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, AND CLOUDAMIZE SPECIFICALLY DISCLAIMS ALL OTHER SUCH WARRANTIES, INCLUDING THE WARRANTIES OF

MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE OR USE.

4.   USE OF THE TECHNOLOGY; LICENSEE RESPONSIBILITIES

   4.1.   Licensee Responsibilities. Licensee will: (i) be responsible for identifying and authenticating all Authorized Users, for approving access by such Authorized Users to the Cloudamize Software, for controlling against unauthorized access by Authorized Users; (ii) be responsible for all Authorized Users' agreement to and compliance with this Agreement, and any applicable Order Forms; (iii) be responsible for the accuracy, quality and legality of Licensee Data; (iv) use all reasonable efforts to prevent unauthorized access to or use of the Cloudamize Software and notify Cloudamize as soon as possible of any such unauthorized access or use; (v) use the Cloudamize Software only in accordance with this Agreement and any Order Forms; (vi) select and be solely responsible for ensuring compliance with any terms and conditions governing Licensee's use of or access to any Cloud Infrastructure Services; and (vii) comply with all applicable laws and regulations.

   4.2.   Licensee Infrastructure. Licensee shall retain sole responsibility for its information technology infrastructure, including, computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Licensee or through third-party providers, as well as the security and use of access credentials, and all access to and use of the Cloudamize Software.

   4.3.   Usage Restrictions. Licensee may not: (i) make the Cloudamize Software available to anyone outside of the Authorized Users; (ii) sell, resell, lease, license, sublicense, distribute or otherwise make the Cloudamize Software available to any third-parties, other than any license rights expressly granted in this Agreement and any Order Form, or grant or attempt to grant any third-party such rights; (iii) use the Cloudamize Software to upload, transmit, store, or share any information or materials that infringes the intellectual property or privacy rights of a third-party, or information or material that is unlawful; (iv) use the Cloudamize

Software to transmit any Malicious Code; (v) attempt to gain, or assist another party's attempt to gain, unauthorized access to the Cloudamize Software; or (vi) disassemble, decompile, reverse engineer, copy, modify, or create derivative works from the Cloudamize Software, unless expressly permitted in an Order Form. Any violation of these restrictions shall be considered a material breach of this Agreement.

4.4. Patches and Updates. Cloudamize may update or provide patches or updates to the Cloudamize Software at any time. As a result, Cloudamize may require Licensee to accept such patches or updates to the Cloudamize Software and Licensee agrees that the version of each Cloudamize Software to which it is granted a license shall be the version of each Cloudamize Software which is then generally made available by Cloudamize. Licensee may need to update third-party software or other technology from time to time in order to be compatible with the Cloudamize Software.

5. TERM AND TERMINATION

5.1. Term. This Agreement shall continue until terminated by either party (the "Term").

5.2. Cloudamize Software Access Term. Licensee's access to the Cloudamize Software shall begin on the date specified in the applicable Order Form and continue for the term set forth in that Order Form (the "Order Form Term").

5.3. Termination. This Agreement may be terminated: (i) by either Party for any reason on 30 days' written notice to the other Party; (ii) immediately by mutual agreement of the parties; or (iii) on notice of one Party, if the other Party is in material breach of this Agreement, provided that following such notice of a material breach, the breaching Party shall have 14 days from receipt of the notice to cure such breach; (iv) immediately in the event that either Party commences a liquidation or dissolution or becomes the subject of a bankruptcy or insolvency proceeding, by the Party not commencing the liquidation, dissolution or bankruptcy/insolvency proceeding; or (v) immediately by Cloudamize if Licensee or any Authorized Users breach any term or condition set forth in this Agreement.

5.4. Active Order Forms at Termination. If there are any Order Forms still in effect at the termination of this Agreement, the Parties agree to fulfill their respective obligations under such Order Form until the applicable Order Form Term has expired, as if this Agreement were still in effect.

5.5. Surrender of Materials. Notwithstanding anything to the contrary herein, the parties may keep copies of any materials, data, or other information beyond the Term of this Agreement only as necessary to comply with applicable legal or regulatory requirements.

6. BILLING AND PAYMENT

6.1. Fees. Licensee will pay all fees and costs specified in an Order Form. Licensee must notify Cloudamize of any disputed charges within 10 business days from the receipt of an invoice, otherwise Licensee waives the right to dispute such fees. Unless otherwise specified on an Order Form, Licensee will pay for access to the Cloudamize Software annually, in advance, with the first invoice to be issued on the effective date of an Order Form. If no effective date is defined, Cloudamize shall provision access and invoice upon execution of an Order Form.

6.2. Invoice Due Date. Licensee will pay all invoices according to the term defined on the individual Order Form.

6.3. Taxes and Withholding. Licensee is solely responsible for any applicable VAT, sales, use or any other taxes payable under, or arising out of, or in connection with this Agreement.

6.4. Unpaid Amounts. Unpaid amounts will be subject to a monthly late fee of 1.5% of the outstanding balance, or the maximum legally allowable interest rate, whichever is lower. If an invoice is not paid in full, or disputed pursuant to the method set forth above, Cloudamize may suspend Licensee's access to and use of the Cloudamize Software.

6.5. True Up. Cloudamize reserves the right to charge Licensee for use of the Cloudamize Software in excess of the license(s) purchased in any Order Form. Cloudamize may exercise this right at the end of any Order Form Term (as defined below).

7. INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS

7.1. Intellectual Property Rights. Except as explicitly set forth in this Agreement or an Order Form, Licensee shall have no right, title, or interest in the Cloudamize Software or Intellectual Property contained therein. Licensee shall retain all rights in Licensee Data. Cloudamize shall have a license to use Licensee Data only as required to provide the Services. Except with Cloudamize's prior written consent, Licensee shall not: (a) distribute modified Cloudamize Software; (b) remove any copyright, proprietary notice, or license information from any Cloudamize Software or documentation; or (c) use the Cloudamize Software in any manner or for any purpose not specifically permitted by this Agreement. Cloudamize owns and retains all right, title, and interest in the Cloudamize Software and all Intellectual Property rights inherent therein, including, without limitation, all changes incorporated into the Cloudamize Software by Cloudamize, even if originally requested or suggested by Licensee and/or any Authorized User. Any unauthorized use of the Cloudamize Software will constitute a material breach of this Agreement.

7.2. Feedback. Licensee grants Cloudamize the worldwide, perpetual, irrevocable, and royalty-free license to use any feedback provided by Licensee relating to the use or operation of the Cloudamize Software.

7.3. Aggregated Anonymous Statistics. Notwithstanding anything else in this Agreement, Cloudamize may monitor Licensee's use of the Cloudamize Software and use data and information related to such use, Cloudamize Software, and other information in an aggregated and anonymized manner (which shall include the removal of identifying information such as phone number, Authorized User names and specific Licensee information) including to compile statistical and performance information related to the operation of Cloudamize Software, and to improve features and functions in these ("Aggregated Anonymous Statistics"). As between Cloudamize and Licensee, all right, title and interest in the Aggregated Anonymous Statistics and all Intellectual Property Rights therein, belong to and are retained solely by Cloudamize. Licensee acknowledges that Cloudamize

will be compiling Aggregated Anonymous Statistics based on Cloudamize Software and information input by Licensee and Authorized Users into the Cloudamize Software, and Customer agrees that Cloudamize may (a) make such Aggregated Anonymous Statistics publicly available, and (b) use such information to the extent and in any manner permitted by applicable law or regulation and for purposes of data gathering, analysis, service enhancement and marketing, provided that such data and information does not identify Licensee, an Authorized User, or Licensee's Confidential Information.

7.4. CSP Data Access. Notwithstanding anything to the contrary in this Agreement and subject always to the confidentiality obligations set forth below, if Licensee's purchase or use of the Cloudamize Software is funded by or through a CSP, that CSP will have a right to access and make use of Licensee Data for its business purposes. Cloudamize will not be responsible for such CSP's compliance with applicable data protection laws, rules, and regulations; any liability stemming from the CSP's use of or access to Licensee Data will be governed by Licensee's direct agreement with such CSP.

8. DATA PROTECTION

8.1. Data Protection Laws. Both parties agree to comply with all applicable data protection laws, rules, and regulations.

8.2. Data Protection. The parties agree to the terms of the Data Processing Agreement set out [here](#).

9. CONFIDENTIALITY

9.1. To the extent that Confidential Information of either Party and its affiliates is disclosed and/or received by the other Party or its affiliates, each Party agrees not to use the other Party's Confidential Information except in the performance of or as authorized by this Agreement, and not to disclose, sell, license, distribute or otherwise make available such information to third-parties. Use by third-party contractors or CSPs may be permitted so long as such third-party is required to maintain the confidentiality of such information as required by this Section.

10. INDEMNIFICATION

10.1.   Cloudamize Indemnification. Cloudamize will indemnify Licensee against damages arising from a third-party claim where there is a finding by a court of competent jurisdiction that Licensee's use of the Services infringes the Intellectual Property rights of that third-party.

10.2.   If Cloudamize becomes aware of any infringement claim related to the Services, Cloudamize may, in its sole discretion and at no cost to Licensee: (i) modify the Services so that its is no longer claimed to infringe; (ii) obtain a license for Licensee to use the Services pursuant to this Agreement; or (iii) terminate this Agreement and/or any affected Order Form on 30 days' written notice to Licensee and provide a pro-rata refund for the affected period.

10.3.   Cloudamize will have no obligation to indemnify Licensee if: (i) the claim against Licensee arises from the use of the Services in combination with any products, software, or technology provided by a third-party; (ii) if the claim against Licensee arises out of any use of the Services that violates this Agreement; or (iii) if the claim against Licensee arises out of any modification or alteration of the Services performed by Licensee or at Licensee's direction.

10.4.   Licensee Indemnification. Licensee will indemnify Cloudamize against damages arising from a third-party claim against Cloudamize: (i) that any Licensee Data or other information, design, specification, instruction, software, service, data, hardware, or material furnished by Licensee or an Authorized User infringes a third-party's intellectual property rights, and (ii) for any breach of applicable law by Licensee.

10.5.   Indemnification Process. Any claim for indemnification pursuant to this Agreement shall be conditioned on the indemnified Party: (i) promptly notifying the indemnifying Party in writing of any such suit; (ii) granting the indemnifying Party sole control of the proceedings (including without limitation the right to settle on the indemnified Party's behalf); and (iii) cooperating at all times with the indemnifying Party in connection with its defense at the indemnifying Party's reasonable expense.

11.   LIMITED WARRANTIES, LIMITATION OF LIABILITY, AND DISCLAIMERS

11.1. LIMITED WARRANTIES. LICENSEE UNDERSTANDS AND AGREES THAT THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE". CLOUDAMIZE DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE ORNON-INFRINGEMENT OR THAT THE SERVICES WILL PERFORM ERROR-FREE OR UNINTERRUPTED.

11.2. NO WARRANTY FOR CLOUD INFRASTRUCTURE SERVICE. THE CLOUD INFRASTRUCTURE SERVICE IS NOT PROVIDED OR CONTROLLED BY CLOUDAMIZE AND IS NOT PART OF THE SERVICES OR ANY CLOUDAMIZE PRODUCT. CLOUDAMIZE IS NOT RESPONSIBLE FOR THE CLOUD INFRASTRUCTURE SERVICE IN ANY WAY.

11.3. LIMITATION OF LIABILITY. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING ANY COST OF COVER, LOST PROFITS, LOST GOODWILL, LOST USE OR PERFORMANCE OF ANY PRODUCTS, SERVICES, OR OTHER PROPERTY, LOSS OR IMPAIRMENT OF DATA OR SOFTWARE, OR OTHERWISE EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLOUDAMIZE WILL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. IN ANY CASE, EXCEPT FOR DAMAGES THAT ARE REQUIRED BY LAW TO BE PAID AND CANNOT BE LIMITED BY CONTRACT, THE PARTIES AGREE THAT ALL DAMAGES ARE EXCLUDED EXCEPT FOR THE DIRECT DAMAGES AND THAT EACH PARTY'S MAXIMUM CUMULATIVE LIABILITY OR OTHER FINANCIAL CLAIM (OTHER THAN PAYMENTS AS THEY BECOME DUE) WHETHER IN CONTRACT, TORT, FOR INDEMNIFICATION OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID OR PAYABLE BY LICENSEE (OR, IF APPLICABLE, PAYABLE OR FUNDED BY A CSP) UNDER THE RELEVANT ORDER FORM DURING THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, UP TO A MAXIMUM OF $1,000,000.

12. MISCELLANEOUS

12.1.   Compliance with Law. Both Parties represent that they shall comply with all applicable laws, rules, and regulations governing the performance of a Party's obligations under this Agreement.

12.2.   Force Majeure. Neither Party shall be liable for delays and/or defaults in its performance under this Agreement due to causes beyond its reasonable control, including, but without limiting the generality of the foregoing: acts of god, fire or explosion, flood, telecommunication system failure, war, acts of or acts terrorism, or any other cause beyond a Party's reasonable control.

12.3.   Cloudamize Marketing Rights. Cloudamize may only use Licensee's name, trademarks or service marks, and reference to this Agreement in promotional and marketing materials, public announcements or required disclosures: (i) on Licensee's written consent and (ii) subject to any branding or other guidelines provided by Licensee from time to time.

12.4.   Audit Rights. Licensee will keep accurate records in the normal course relating to this Agreement. Cloudamize may, no more than once per year of the Term and on reasonable notice to Licensee, request access to copies of any such records. In the event such audit discloses non-compliance with the Agreement, without limiting any other remedy hereunder, Licensee shall promptly pay to Cloudamize the appropriate fees to remedy such non-compliance, plus the reasonable cost of conducting the audit.

12.5.   Waiver. The failure of either Party to enforce any of the terms or conditions of this Agreement shall not constitute a waiver of any term or condition of this Agreement.

12.6.   Assignment. Neither Party may assign or transfer any right, obligation or duty, in whole or in part, or any other interest hereunder without the written consent of the other Party, except that Cloudamize may freely assign to an affiliate or successor by merger, reorganization, consolidation or sale of some or all of its assets, without Licensee's prior written consent.

12.7.   Severability. Should any part, term or provision of this Agreement or any Order Form be declared invalid, void or unenforceable, then such provision shall be construed, as nearly as possible, to

reflect the intentions of the Parties with all terms and provisions remaining in full force and effect.

12.8.   Applicable Law. This Agreement shall be governed by the laws of the State of New York without regard to its choice of law provisions.

12.9.   Relationship of the Parties. The Parties to this Agreement are independent contractors and nothing in this Agreement will be deemed or construed as creating a joint venture, partnership, agency relationship, franchise, or business opportunity between Licensee and Cloudamize. Neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party.

12.10.   Entire Agreement. The Agreement and any Order Form, as amended from time to time, constitutes the entire agreement between the Parties with regard to the subject matter herein. In the event of a conflict between this Agreement and an Order Form, the terms of this Agreement shall prevail.

12.11.   Survival. All provisions that logically ought to survive termination of this agreement shall survive.