



SambaNova Cloud Terms of Service

Date of Last Revision: September 9, 2024

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT FOR AN ENTITY, SUCH AS THE COMPANY YOU WORK FOR, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO SIGN FOR AND BIND SUCH ENTITY TO THE TERMS OF THIS AGREEMENT.

This SambaNova Cloud – Terms of Service (this “Agreement”) is entered into by SambaNova Systems, Inc., a Delaware corporation, with offices at 2200 Geng Road, Suite 100, Palo Alto, CA 94303 (“SambaNova,” “us” or “we”), and the entity or person agreeing to these terms (“Customer” or “you”). This Agreement includes any Additional Documents, which are incorporated into and made part of this Agreement, and governs your access to and use of the Service. The “Effective Date” of this Agreement is the date on which you accept, by means of an electronic click-through agreement, an Order, or any other legally effective means, this Agreement (your “Acceptance”).

Unless you have an Order with us, we may modify this Agreement and/or any Additional Documents, or supplement this Agreement with Additional Documents, from time to time. Unless otherwise specified by us, such changes become effective for you upon your continued use of the Service following our written notification to you of such changes, and such changes shall apply to your use of the Service following such notification.

1. USE OF SERVICE

1.1. Service Provision and Access. We will make the Service available during the Term solely for use by Customer, including its authorized Users, in accordance with this Agreement and any Additional Documents. Any use of the Service by a User must be solely for the benefit of Customer or its User. Notwithstanding the foregoing, for the avoidance of doubt, any use of the Service by a User shall be attributed to Customer for all purposes of this Agreement, and Customer shall be responsible for the compliance with this Agreement by each User. You must implement and use reasonable and appropriate measures to help secure the Service by you and your Users. If you discover any vulnerabilities or breaches, you must promptly inform us and

provide us details of such.

1.2. Grant of License. Subject to and conditioned upon Customer's and its Users' strict compliance with all terms and conditions set forth in this Agreement and the Additional Documents, SambaNova hereby grants to Customer a non-exclusive, non-transferable, limited license during the Term to use the software embodied in the Service, and to sublicense such license to its authorized Users. This license grants Customer the right to access and use such software only in accordance with this Agreement and the Additional Documents.

1.3. Third-Party Materials. The Service may include software, content, data, or other materials that are owned by persons or entities other than SambaNova and that are provided to Customer on licensee terms that are in addition to and/or different from those contained in this Agreement ("Third-Party Licenses"). A list of all materials and licenses, if any, included in the Service and provided under Third-Party Licenses is available upon written request to SambaNova. Customer is bound by and shall comply with, and is responsible for ensuring that each User is bound by and complies with, all Third-Party Licenses. Any breach by Customer or any of its Users of any Third-Party License is also a breach of this Agreement.

1.4. Compliance with Applicable Laws; Personal Data. As a generally available cloud compute service, we will provide the Service in accordance with our obligations under laws applicable to our Service generally, and without regard to your specific and particular use of the Service. If you use the Service to process personal data, or any other specified types of data requiring compliance with any applicable laws or regulations, you represent to us that you have established and maintained any such compliance, and have provided all applicable privacy notices and obtained necessary consents to process such data using the Service, and that you are processing such data using the Service in accordance with all applicable law. You understand and agree that we are not responsible for establishing, providing, obtaining, or maintaining any such compliance, notices and/or consents, and that we may not have done so.

1.5. General Restrictions. Customer, including any User, will not (and will not permit any third party to): (a) copy, modify, or create a derivative work of the Service; (b) reverse engineer, disassemble or decompile any Service or otherwise seek to obtain the source code of any software included in the Service (except to the extent such restriction is prohibited by applicable law); (c) sell, resell, rent, sublicense, transfer or otherwise make available any Service to a third party (other than permitting a User to use the Service) or in a service bureau or outsourced offering; (d) remove or

obscure any proprietary or other notices contained in any Service; (e) use the Service in violation of any applicable law; or (f) access or use the Service for the purposes of designing or developing a competing product or service; or (g) without our prior written consent, publish or disclose information or results relating to capabilities, performance, performance comparisons or other “benchmarking” activities relating to the Service or our infrastructure.

2. CUSTOMER CONTENT

2.1. Customer Content. As between the parties, Customer or its licensors retain all right, title and interest in and to the Customer Content. You will ensure that Customer Content and its use in our Service do not violate any applicable law or breach any applicable contract or license. Subject to the terms of this Agreement, you hereby grant to SambaNova and its Affiliates a non-exclusive, worldwide, royalty-free right to access, store and/or process the Customer Content during the Term solely to the extent necessary to provide the Service to you or as may be required by law, and for no other purposes. You represent and warrant to us that you have all rights in Customer Content necessary to grant the rights contemplated herein.

2.2. Customer is responsible for any consents and notices required to permit Customer’s use and receipt of the Service and our accessing, storing and processing of any content or data provided by you under this Agreement.

3. USAGE & PRICING; FEES & PAYMENT; TAXES

3.1. Usage & Pricing. The allowances for and limits on your usage of, and if applicable, Fees for, the Service shall be as set forth in the Order, if applicable, or any other applicable Additional Documents.

3.2. Fees & Payment. All Fees and payment terms are as set forth in the Order, if applicable, or any other applicable Additional Documents. Except as expressly set forth in this Agreement or any Additional Documents, all Fees are non-refundable. Any purchase orders issued by you are for your internal purposes only, and SambaNova rejects any such purchase orders. Late payments may bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) from the payment due date until fully paid. Customer will be responsible for all reasonable expenses (including attorneys’ fees) incurred by us in collecting any delinquent amounts.

3.3. Taxes. Fees do not include Taxes. Customer is responsible for paying all Taxes associated with its purchases, and will pay SambaNova for the Service without any reduction for Taxes. If

SambaNova is obligated to pay or collect Taxes, the Taxes will be invoiced to Customer and Customer will pay such Taxes, unless Customer provides SambaNova with a timely and valid tax exemption certificate. If required under applicable law, Customer will provide SambaNova with applicable tax identification information to ensure its compliance with applicable laws and regulations.

4. TERM; TERMINATION

4.1 Term. If there is an Order, the “Term” of this Agreement begins on the Effective Date and ends on the last day of the duration specified in the Order, or as earlier terminated pursuant to Section 4.2. If there is no Order, the Term will begin on the Effective Date and remain in effect until terminated by either party upon written notice to the other party, which it may do for any or no reason.

4.2. Termination for Cause. If there is an Order, either party may terminate this Agreement if the other party (a) fails to cure any material breach of this Agreement (including a failure to pay Fees) within 30 days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors’ arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party and is not dismissed within 60 days. Any prepaid Fees for tokens, compute or other consumable units or metrics that are unused shall be refunded to you, and you will be relieved of any further minimum usage or Fee commitment by you following the termination date, on a prorated basis if this Agreement is terminated by you pursuant to this Section. Conversely, any such prepaid and unused tokens, compute, units or metrics shall be forfeited without refund, and any unmet minimum Fee commitment will become immediately due, if this Agreement is terminated by us pursuant to this Section.

4.3. Effect of Termination. Upon termination or expiration of this Agreement, (a) all rights and access to the Service shall cease and terminate, and (b) all Fees owed by you to SambaNova are immediately due.

4.4. Survival. The following Sections will survive any expiration or termination of this Agreement: 3 (Usage & Pricing; Fees & Payment; Taxes), 4 (Term & Termination), 5 (Intellectual Property), 6 (Confidential Information), 7.2 (Disclaimer), 9 (Indemnification), 10 (Limitation of Liability), 11 (General Terms), and 12 (Definitions).

5. INTELLECTUAL PROPERTY

5.1. SambaNova Technology. Except for the express limited rights set forth in this Agreement, no right, title or interest in any SambaNova intellectual property is granted to Customer, implied or otherwise. Customer acknowledges that the Service is offered as an online, hosted solution, and that Customer has no right to obtain a copy of the underlying computer code for any Service.

5.2. Service Usage Data. We may collect and use query logs, and any data (but not Customer Content) relating to the operation, support and/or use of the Service ("Service Usage Data") to provide administration Service, develop, improve, support, and operate our products and Service, or to investigate fraud, abuse or violations of this Agreement.

6. CONFIDENTIAL INFORMATION.

Each party (as "Receiving Party") will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the other party ("Disclosing Party") for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. If Receiving Party is required by law or court order to disclose Confidential Information, then Receiving Party shall, to the extent legally permitted, provide Disclosing Party with advance written notification and cooperate in any effort to obtain confidential treatment of the Confidential Information. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such violative disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to any other remedies available at law.

7. REPRESENTATIONS & WARRANTIES

7.1. Mutual Representations & Warranties. Each party represents and warrants that (a) it has validly entered into this Agreement and has the legal power to do so; and (b) it will comply with all laws and regulations applicable to its provision, receipt, or use of the Service, as applicable.

7.2 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SAMBANOVA

MAKES NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ERROR-FREE OR UNINTERRUPTED USE OF THE SERVICE.

8. MARKETING; FEEDBACK.

8.1. Marketing. Customer agrees that we may use Customer's name, logo and trademarks to identify Customer as a customer of ours for marketing or promotional purposes.

8.2. Feedback. Any feedback and suggestions made by Customer to SambaNova regarding the Service may be used by us without any restriction or obligation to you.

9. INDEMNIFICATION.

9.1. SambaNova Indemnification Obligations. We will defend Customer against any third party claim alleging that the Service, when used in accordance with this Agreement and the Additional Documents, infringes any intellectual property right of such third party, and will indemnify and hold harmless Customer from and against any damages and costs (including reasonable attorneys' fees) resulting from such claim, except where such claim, damages or costs are based upon, or result from, Customer Content or Customer specifications and requirements. If Customer's use of the Service results or may result in an infringement claim, we may either: (a) substitute similar products or services; (b) procure for Customer the right to continue using the Service; or if we believe that (a) and (b) are not commercially reasonable, (c) terminate this Agreement and refund to Customer any unused Fees that Customer has pre-paid for the Service. This Section states the Customer's sole and exclusive remedy under this Agreement for any third-party allegations of infringement of intellectual property rights.

9.2. Customer Indemnification Obligations. Customer will defend SambaNova against any third party claim arising from or relating to any Customer Content or Customer specifications and requirements used in connection with the Service and any breach by Customer of the terms of this Agreement, and will indemnify and hold harmless SambaNova from and against any damages and costs (including reasonable attorneys' fees) resulting from such claim.

9.3. Indemnification Procedures. In the event of a potential indemnity obligation under this Section 9, the indemnified party will: (a) promptly notify the indemnifying party in writing of the claim; (b) allow the indemnifying party the right to control the investigation, defense and settlement (if

applicable) of such claim at the indemnifying party's sole cost and expense; and (c) upon request of the indemnifying party, provide all necessary cooperation at the indemnifying party's expense. Any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent.

10. LIMITATION OF LIABILITY.

10.1 EXCEPT AS TO "EXCLUDED CLAIMS" (DEFINED IN SECTION 10.2), TO THE MAXIMUM EXTENT PERMITTED BY LAW: (A) NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY KIND, OR LOSS OF USE, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, COSTS OF DELAY, OR LOST PROFITS, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE; (B) EACH PARTY'S AND ITS AFFILIATES' TOTAL AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO SAMBANOVA DURING THE 12 MONTH PERIOD BEFORE THE EVENT GIVING RISE TO LIABILITY AND; (C) THIS SECTION 10 WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

10.2 EXCLUDED CLAIMS. NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS EITHER PARTY'S LIABILITY FOR FRAUD OR FRAUDULENT MISREPRESENTATION; BREACH OF ITS PAYMENT, CONFIDENTIALITY OR INDEMNIFICATION OBLIGATIONS HEREIN; INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; FAILURE TO RETURN, DAMAGE OR LOSS TO SAMBANOVA HARDWARE; OR MATTERS FOR WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW ("EXCLUDED CLAIMS").

11. GENERAL TERMS

11.1. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that either party may assign this Agreement in its entirety in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets or voting securities to such party's successor; and SambaNova may assign this Agreement in its entirety to any Affiliate. Each party shall promptly provide notice of any such

assignment. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section will be null and void.

11.2. Severability. If any provision of this Agreement is deemed to be unenforceable or invalid, the rest of the Agreement will remain in effect.

11.3. Governing Law; Jurisdiction and Venue. This Agreement will be governed by California law, without regard to conflicts of laws provisions thereof. The jurisdiction and venue for litigation related to the subject matter hereof will be the state and federal courts located in Santa Clara County, California and both parties hereby submit to the personal jurisdiction of such courts.

11.4. Notice. Any notice or communication required or permitted under this Agreement will be in writing to the applicable party at the last address provided to the other party in writing and will be deemed to have been received by the addressee: (a) if given by hand, immediately upon receipt; (b) if given by overnight courier service, the first business day following dispatch; (c) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail; or (d) if given by email, immediately upon receipt of the email by such recipient.

11.5. Amendments; Waivers; Order of Precedence. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by a duly authorized representative of each party to this Agreement, except as otherwise expressly set forth in this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative of the party providing the waiver. In the event of any conflict between this Agreement, any Order and any other Additional Document, such conflict shall be resolved in the following order of precedence: the Order (if applicable), any other Additional Document, and this Agreement.

11.6. Entire Agreement. This Agreement (including any Additional Documents) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

11.7. Third Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

11.8. Force Majeure. Neither party will be liable to the other for any delay or failure to perform any

obligation under this Agreement (except for a failure to pay Fees) if the delay or failure results from any cause beyond such party's reasonable control, including but not limited to acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, public health emergencies pandemics and epidemics), acts or orders of government, acts of terrorism, or war.

11.9. Independent Contractors. The parties to this Agreement are independent contractors. No agency, partnership, or joint venture is created between the parties under this Agreement.

11.10. Export Control. Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Customer will not (and will not permit any third parties to) access or use any Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to any Service any information that is controlled under the U.S. International Traffic in Arms Regulations.

12. DEFINITIONS.

Terms not otherwise defined in this Agreement shall have the following meanings:

"Additional Documents" means, if you have an Order with us, the Order and any appendices, supplements or other documentation included at the time of the Order, and if you do not have an Order with us, any other appendices, supplements or other documentation published or provided by us from time to time that relate to the Service, including without limitation, for accessing or using the Service (including usage allowances or limits), and Fees.

"Affiliate" means an entity that, directly or indirectly, owns or controls, is owned or is controlled by, or is under common ownership or control with a party.

"Confidential Information" shall mean all information that is identified as confidential at the time of disclosure or should be reasonably known to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure.

"Customer Content" means software, data, text, audio, video or images, or any artificial

intelligence or machine learning model or algorithm that you or any User transfers to us for processing, storage or hosting by the Service and any computational results that you or your Users derive from the foregoing through their use of the Service, including machine learning model weights and biases you transfer to us or derive via model training on the Service.

“Fees” means the fees payable by Customer, if any, for the applicable Service, as set forth in the applicable Additional Documents.

“Order” means, if applicable, the SambaNova ordering document executed by the parties for the Service, which references this Agreement and specifies the terms and conditions relating to the Service that are specific to you and/or your Users.

“Service” means the SambaNova Cloud platform-as-a-service offering provided by SambaNova.

“Taxes” means taxes, levies, duties or similar governmental assessments of any nature, including, for example, any sales, use, GST, value-added, withholding, or similar taxes, whether domestic or foreign, or assessed by any jurisdiction, but excluding any taxes based on net income, property, or employees of SambaNova.

“User” means the persons and/or entities designated and granted access to the Service by or on behalf of Customer.