

# Cloudamize License Agreement & Data Protection Policy

This License Agreement (the "Agreement") governs your access to and use of the Cloudamize Platform. By accepting this License Agreement or otherwise accessing and/or using the Cloudamize Platform, you agree to be bound by this Agreement on behalf of yourself and on behalf of your organization ("You", "Your"). This Agreement is effective between the You and Cloudamize Inc. or one of its affiliates ("Us", "We", "Our") as of the date of acceptance and/or use of the Cloudamize Platform.

## DEFINITIONS

1. "Cloudamize Platform" means the Cloudamize cloud technology platform, any and all of Our Intellectual Property or other materials related thereto, but specifically excluding: (a) the underlying physical infrastructure which the Cloudamize Platform accesses and relies upon, (b) the infrastructure made available by a third party cloud infrastructure provider, and (c) Your Data which utilizes or is available through the Cloudamize Platform.
2. "Integrated Offering" means the Cloudamize Platform, when combined, integrated, or otherwise used in conjunction with Your products, services or technology and distributed to a User.
3. "Intellectual Property" means any and all code, patents, rights to inventions, utility models, copyright, trademarks, database rights, moral rights, rights in Our Confidential Information (including know-how and trade secrets) and any other intellectual property rights in any part of the world.
4. "Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
5. "Order Form" means a document detailing the Cloudamize Platform license type, node quantity, license fees, support, and any other terms relating to Your rights and obligations in connection with the Cloudamize Platform. By entering into an Order Form, You agree to the terms of this Agreement.
6. "Partner and Reseller Licensees" means those licensees under this Agreement who have been granted either a Partner License or a Reseller License, as set out in an Order Form.
7. "User" means an end-user of the Cloudamize Platform or of an Integrated Offering.
8. "Your Data" means any and all data, materials, content or information entered into, transmitted through, or stored on the Cloudamize Platform by You or Your Users, or otherwise made available or accessible to Us by You or Your Users.

## LICENSE

1. Subject to Your payment of applicable license fees, We grant to You a worldwide, non-exclusive, non-transferable, non-sublicensable, license to access and use the Cloudamize Platform for your own internal business purposes (a "Direct License").

2. Where expressly specified in an Order Form and subject to Your payment of applicable license fees, We grant to You a worldwide, non-exclusive, non-transferable, non-sublicensable, license to:
  - i. incorporate the Cloudamize Platform into an Integrated Offering (a "Partner License");
  - ii. distribute access to the Cloudamize Platform or Integrated Offering (a "Reseller License");
3. Partner and Reseller Licensees shall also have the right to market the Cloudamize Platform and/or Integrated Offering to existing and potential customers.

## **OUR RESPONSIBILITIES**

1. Access. We will: (i) make the Cloudamize Platform available to You and Your Users pursuant to this Agreement and any applicable Order Forms; and (ii) for Partner and Reseller Licensees, offer appropriate promotional materials with respect to the Cloudamize Platform.
2. Support. We will provide Our standard level of support for the Cloudamize Platform to You at no additional charge, and/or upgraded support if purchased, pursuant to our Service Level Agreement, set out here: <https://support.cloudamize.com/hc/en-us/articles/115004436008-Support-Offerings-and-SLA>, as may be amended by Us from time to time, and as may be otherwise detailed in Your Order Form.
3. Your Data. We will maintain appropriate physical and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We will not use or disclose any of Your Data, other than as necessary in the provision of the Cloudamize Platform pursuant to this Agreement.
4. Personnel. We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

## **USE OF THE TECHNOLOGY**

1. Your Responsibilities. You will: (i) be responsible for Your or for Your Users' agreement to and compliance with this Agreement, and any applicable order forms or purchase orders between You and Your Users, (ii) be responsible for the accuracy, quality and legality of Your Data, (iii) use all reasonable efforts to prevent unauthorized access to or use of the Cloudamize Platform and notify Us as soon as possible of any such unauthorized access or use, (iv) use the Cloudamize Platform only in accordance with this Agreement, any Order Forms, and any other attachments or amendments thereto, and (v) comply with all applicable laws and regulations.
2. Usage Restrictions. You may not: (i) make the Cloudamize Platform available to anyone outside of the necessary personnel within Your company; (ii) sell, lease, license, sublicense, distribute or otherwise make the Cloudamize Platform available to any third parties, other than any license rights expressly granted in Your Order Form or this Agreement, or grant or attempt to grant any User or third party such rights; (iii) use the Cloudamize Platform 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 Platform to transmit any Malicious Code; (v) attempt to gain, or assist another party's attempt to gain, unauthorized access to the Cloudamize Platform; (vi) copy, modify, or create derivative works of the Cloudamize Platform or any of Our Intellectual Property, other than as expressly permitted under this Agreement or an Order Form, or (vii) build a competitive product to the Cloudamize Platform. Any violation of these restrictions shall be considered a material breach of this Agreement.

## **PARTNER AND RESELLER LICENSEE RESPONSIBILITIES (APPLICABLE TO PARTNER AND RESELLER LICENSEES)**

1. Promotion and Support. You agree to use reasonable commercial efforts to market and distribute the Cloudamize Platform or Integrated Offering.
2. Distribution. You will only distribute the Cloudamize Platform or Integrated Offering to Users who agree to be bound by terms and obligations no less restrictive than those contained in this Agreement.
3. Non-Solicitation. You will not during the Term of this Agreement and for one year thereafter, directly or indirectly, encourage or cause any of Our current customers to stop, alter or reduce such customer's use of the Cloudamize Platform, or any other product, service or technology supplied by Us.
4. Integrated Offering. If You are distributing any Integrated Offering, You will be solely responsible for providing the Integrated Offering, and shall be solely liable for any and all losses incurred by Us resulting from any User's use or misuse of the Integrated Offering. You also agree that any Integrated Offering will be consistent with the quality and any standards of the Cloudamize Platform, and that any Integrated Offering shall not damage or tarnish the goodwill, brand, or reputation of Cloudamize, its affiliates, and/or the Cloudamize Platform. You will provide any Integrated Offering in compliance with all applicable laws, rules, and regulations. You warrant that the Integrated Offering will not infringe the intellectual property or privacy rights of any third party.

## **DATA PROTECTION**

1. Both parties agree to comply with all applicable data protection laws, rules, and regulations.
2. If applicable, both parties agree that the Cloudamize Data Protection Agreement, available at [here](#), shall apply to the control, processing, and use of any of Your Data under this Agreement or any Order Form.

## **BILLING AND PAYMENT**

1. Fees. You will pay all fees and costs specified in an Order Form. You must notify Us of any disputed charges within ten (10) business days from the receipt of any invoice, otherwise You agree to the fees set forth in that invoice, and waive the right to dispute such fees. You will make payments using the method agreed to in the Order Form. If we have a separately negotiated Order Form or Statement of Work, the pricing in such Order

Form or Statement of Work will supersede the standard pricing available through this website.

2. Taxes and Withholding. You are solely responsible for any applicable VAT, sales, use or any other taxes payable under, or arising out of, or in connection with, this Agreement.
3. 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, within 30 days from the due date on such invoice, We have the right to suspend Your access to and use of the Cloudamize Platform. Once You have paid any outstanding amounts, We may reinstate any access, use, sale, or resale rights under this Agreement and Your Order Form.
4. Price Changes. Pricing for the Cloudamize Platform is subject to change upon 30 days' notice by Us. Any changes to Our prices shall not affect amounts already paid by You.

## **INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS**

1. Intellectual Property Rights. Except as explicitly set forth in this Agreement, the parties agree and acknowledge that neither party is granted any license, express or implied, to or under any intellectual property rights of the other party.
2. Feedback. You grant Us the worldwide, perpetual, and irrevocable royalty-free license to use any feedback provided by You or Your Users relating to the use or operation of the Cloudamize Platform.
3. Marketing Materials. Neither party shall modify any marketing, support, or technical materials provided by the other party. No right, title, or interest in any such materials shall transfer from one party to the other under this Agreement, other than any limited license to use the materials, as agreed by the parties.

## **TERM AND TERMINATION**

1. Term. This Agreement shall continue until terminated by either party (the "Term"). Unless otherwise specified in an Order Form, the maximum duration of any license hereunder shall be the earlier of 3 months from: (i) the Order Form effective date; and (ii) the date of first access to the Cloudamize Platform.
2. Surrender of Materials. Upon termination of this Agreement, either party may request the return or destruction of its proprietary or confidential 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.
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) by Us if You or any of Your

Users breaches any term or condition set forth in this Agreement, or if We reasonably believe that any such breach is threatened by You or Your Users.

4. Post-Termination Obligations. Any termination of this Agreement shall not relieve either party from any obligations hereunder due and owing prior to termination of this Agreement. Upon any termination of this Agreement: (i) You will cease using the Cloudamize Platform for internal business use; (ii) You will cease including the Cloudamize Platform in any Integrated Offering; (iii) all rights and licenses granted to You to distribute the Cloudamize Platform or Integrated Offering shall immediately terminate and be revoked; and (iv) each party will return or destroy the other parties' confidential information and, upon request, certify to the other party that it has done so.

## **CONFIDENTIALITY**

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 may be permitted so long as such contractor has a need to know and is required to maintain the confidentiality of such information as required by this Section 10.

## **LIMITED WARRANTIES, LIMITATION OF LIABILITY, AND DISCLAIMERS**

1. YOU UNDERSTAND AND AGREE THAT THE CLOUDAMIZE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". WE DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.
2. LIMITATION OF LIABILITY. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING 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. 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 BY YOU 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.

## INDEMNIFICATION

1. We will indemnify You against damages arising from a third party claim where there is a finding by a court of competent jurisdiction that the Your use of the Cloudamize Platform infringes the intellectual property rights of that third party; provided that You: (i) promptly notify Us in writing of any such suit; (ii) grants Us sole control of the proceedings (including without limitation the right to settle on Your behalf); and (iii) cooperate at all times with Us in connection with its defense at Our reasonable expense.
2. If We become aware of any infringement claim related to the Cloudamize Platform, We may, in Our sole discretion and at no cost to You: (x) modify the Cloudamize Platform so that they are no longer claimed to infringe, (y) obtain a license for You to use the Cloudamize Platform pursuant to this Agreement, or (z) terminate this Agreement and/or any affected Order Form on 30 days' written notice and provide a pro-rata refund to You for the affected Cloudamize Platform.
3. We will have no obligation to indemnify you if: (1) the claim against You arises from the use of our Cloudamize Platform in combination with any products, software, or technology provided by a third party; (2) if the claim against You arises out of any use of the Cloudamize Platform that violates this Agreement; or (3) if the claim against You arises out of any modification or alteration of the Cloudamize Platform performed by You or at Your direction.
4. Exclusive Remedy. This Section states Our sole liability and Your exclusive remedy for any type of claim described in this Section.

## MISCELLANEOUS

1. Compliance with Law. Both parties represent that they shall comply with all applicable laws, rules, and regulations.
2. Export Regulations. You acknowledge that the Cloudamize Platform are subject to controls under applicable export laws and agree that You will not and shall not permit any User to export or re-export the Cloudamize Platform in any form in violation of the export laws of any jurisdiction. You agree that unless prior authorization is obtained from the U.S. Department of Commerce, neither You nor Your affiliates shall export, re-export, or release, directly or indirectly, any technology, software, or software source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), received from Us, or export, re-export, or release, directly or indirectly, any direct product of such technology, software, or software source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the technology, software, software source code, or direct product is prohibited by EAR. You furnish the assurances provided herein to Us in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.
3. 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.

4. **Audit Rights.** You will keep accurate records in the normal course relating to this Agreement, including regarding amounts charged to Users. We may, no more than once per year of the Term, 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, You shall promptly pay to Us the appropriate fees to remedy such non-compliance, plus the reasonable cost of conducting the audit.
5. **Waiver.** The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term or condition of this Agreement.
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 We may freely assign the Agreement to an affiliate or successor by merger, reorganization, consolidation or sale of some or all of its assets, without the prior written consent of the other party.
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.
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.
9. **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.
10. **Survival.** All provisions that logically ought to survive termination of this agreement shall survive.