



# ENTERPRISE SUBSCRIPTION TERMS OF SERVICE

Effective November 11, 2020

## 1. Definitions

Capitalized terms will have the meanings set forth in this Section 1, or in the section where first used in these Terms of Service, the Order Form, or an Insertion Order (if applicable).

**1.1. "Affiliate"** means any person, corporation, or other entity which controls, is controlled by, or is under common control with a Party to the Agreement as of the Effective Date. A corporation or other entity will be regarded as in "control" of another corporation or entity if it owns or directly or indirectly controls more than fifty percent (50%) of the voting stock or other ownership interest of the other corporation or entity, or if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation or other entity. With respect to Customer, "Affiliate" refers only to those Affiliates listed in the Order Form.

**1.2. "Agreement"** means the Enterprise Subscription Agreement, which is comprised of: (a) these Terms of Service; (b) Cloudflare's Privacy Policy located at <https://www.cloudflare.com/privacypolicy/>; (c) each mutually-executed Order Form and/or Insertion Order; and (d) any Service-specific Supplemental Terms that incorporate these Terms of Service by reference. To the extent that Customer processes personal data governed by EU and UK Data Protection Laws, then in addition to the foregoing, the Data Processing Addendum is incorporated by reference into the Enterprise Subscription Agreement.

**1.3. "Authorized Users"** means the Customer Parties' employees, agents or subcontractors who are authorized to administer the Customer Parties' use of the Service.

**1.4. "Cloudflare"** means Cloudflare, Inc.



material or information that Cloudflare makes available to the Customer Parties during the course of providing the Service, together with all updates thereto and all Intellectual Property Rights therein.

1.6. **"Customer"** means the Customer set forth in the Order Form.

1.7. **"Customer Account Information"** means the information Customer provides upon subscribing to the Service, audit logs, and Customer account settings.

1.8. **"Customer Content"** means any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects originating or transmitted from or processed by any Internet Properties owned, controlled or operated by a Customer Party or uploaded by a Customer Party through the Service, and routed to, passed through, processed and/or cached on or within, Cloudflare's network or otherwise transmitted or routed using the Service.

1.9. **"Customer Data"** means collectively, Customer Account Information, End User Log Files, and Customer-specific Aggregations.

1.10. **"Customer Feedback"** means suggestions, enhancement requests, recommendations or other feedback provided by the Customer Parties or their Authorized Users relating to the operation or functionality of the Service.

1.11. **"Customer Parties"** means the Customer and its Affiliates, if any, listed in the Order Form. A **"Customer Party"** may refer to either Customer or an Affiliate individually, as applicable.

1.12. **"Customer-specific Aggregations"** means customer-specific aggregated information derived from the End User Log Files (including, without limitation, usage analytics, bandwidth consumption, availability performance, rules, and settings) which Cloudflare uses to provide the Service.

1.13. **"Customer Support Terms"** means Cloudflare's standard customer support terms, available at [www.cloudflare.com/\\_\\_xcusp](http://www.cloudflare.com/__xcusp).

1.14. **"Data Processing Addendum"** means Cloudflare's data processing addendum, available at Cloudflare Customer DPA.

1.15. **"Documentation"** means all printed and online user manuals and other technical materials relating to the Services made available to the Customer Parties' by Cloudflare, as may be updated from time to time.



1.18. **"End User Log Files"** means the raw logs of End User interactions with the Customer Parties' Internet Properties that Cloudflare processes on behalf of Customer Parties during the course of providing the Service.

1.19. **"EU and UK Data Protection Laws"** means all laws and regulations of the European Union, the European Economic Area, their member states, Switzerland, and the United Kingdom, applicable to the processing of Personal Data including (where applicable), the Swiss Federal Act on Data Protection, the UK Data Protection Act and the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data).

1.20. **"Initial Term"** means the initial term for the Customer Parties' use of the Service as specified in the Order Form, beginning on the Service Date.

1.21. **"Insertion Order"** means a mutually executed, Cloudflare order form that Customer uses to order additional products, features, or Services during the Term.

1.22. **"Insertion Order Term"** means the term during which the Customer Parties are permitted to use of the additional products, features, or Services specified in the Insertion Order, beginning on the applicable Service Date.

1.23. **"Intellectual Property Rights"** means any and all now known or hereafter existing worldwide: (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing.

1.24. **"Internet Properties"** means a website or any internet connected application, including any subdomain thereof.

1.25. **"Laws"** means any local, state, national and/or foreign law, treaties, and/or regulations applicable to the respective Party.

1.26. **"Malicious Code"** means viruses, worms, time bombs, Trojan horses, and other malicious code, files, scripts, software agents and programs.



1.29. **"Party"** or **"Parties"** means Cloudflare and/or Customer, as applicable.

1.30. **"Renewal Term"** means each recurring twelve (12) month period following expiration of the Initial Term, unless a different time period is specified in the Order Form.

1.31. **"Service"** means Cloudflare's cloud-based solutions for increasing the performance, security, and availability of Internet Properties, along with any software made available by Cloudflare in connection with such services, including software development kits and application programming interfaces.

1.32. **"Service Data"** means, collectively, Customer Data and Operational Metrics.

1.33. **"Service Date"** means the service date specified in the Order Form or Insertion Order, as applicable, on which Cloudflare will make the Service available to Customer.

1.34. **"Service Level Agreement"** means Cloudflare's standard service level agreement, available at [www.cloudflare.com/\\_\\_xsla](http://www.cloudflare.com/__xsla).

1.35. **"Supplemental Terms"** means additional terms of use pertaining to certain individual Cloudflare Services as set forth at <https://www.cloudflare.com/supplemental-terms/>.

1.36. **"Term"** means the period of time from the Effective Date, including the Initial Term and all Renewal Terms, until the expiration or termination of the Agreement.

1.37. **"Terms of Service"** means these Enterprise Subscription Terms of Service.

## 2. License Grant and Restrictions

**2.1. License Grant.** Subject to the Customer Parties' compliance with the terms and conditions of the Agreement (including, without limitation, all payment obligations), Cloudflare will make the Service available for use and access by the Customer Parties and their Authorized Users during the Term solely for the Customer Parties' internal business purposes, and solely in accordance with the Documentation, and any other restrictions or obligations mutually agreed upon in writing by the Parties.

**2.2. Proprietary Rights.** As between the Customer Parties, Cloudflare, and Cloudflare's licensors, Cloudflare and/or its licensors own all right, title and interest to the Cloudflare Technology. Except for the limited rights expressly granted to the Customer Parties hereunder, Cloudflare reserves all



the Customer Parties shall not be liable for any trademark, service mark, or other intellectual property rights in the Cloudflare Marks, and any other product and service names and logos used or displayed in or on the Services are registered or unregistered trademarks of Cloudflare (collectively, "**Cloudflare Marks**"), and may not be used by the Customer Parties without Cloudflare's prior written consent. The Customer Parties must not attempt, now or in the future, to claim any rights in the Cloudflare Marks or use the Cloudflare Marks to disparage or misrepresent Cloudflare, or the Services.

**2.3. Restrictions.** Customer agrees that it may **not**: (a) modify, copy, or create derivative works based on, the Service or Documentation; (b) license, sublicense (except to Affiliates and Authorized Users), sell, resell, rent, lease, transfer, assign, distribute, or otherwise make the Service available to any third parties for use on any Internet Properties that are not owned and operated by the Customer Parties; (c) interfere with, or create an undue burden on the Service or Cloudflare's network; (d) reverse-engineer the Service; (e) send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights; (f) introduce software or automated agents or scripts, other than those expressly permitted by the Documentation or as explicitly set forth in the Order Form or an Insertion Order made pursuant to the Agreement; (g) perform or publish any performance or benchmark tests or analyses relating to the Service, other than solely for Customer's internal use; or (h) cover or obscure any page or part of the Service via HTML/CSS, scripting, or any other means.

**2.4. Usernames and Passwords.** Cloudflare will provide each Authorized User with a unique username and password ("**Credentials**") to access the Service. Customer is responsible for maintaining the confidentiality of all Authorized Users' Credentials. Cloudflare reserves the right to terminate any Authorized User's Credentials that Cloudflare reasonably determines may have been used by an unauthorized third party, and will provide immediate notice of such termination to Customer. Credentials cannot be shared or used by more than one individual Authorized User, but may be reassigned to a new Authorized User replacing a former Authorized User who has terminated employment (or otherwise changed job function) and who no longer uses the Service.

**2.5. Third-Party Apps License.** Customer may install or utilize certain third-party apps ("**Third-Party Apps**") with the Service that are made available through the Cloudflare Apps store located at [www.cloudflare.com/apps/](http://www.cloudflare.com/apps/). These Third-Party Apps are provided to Customer "AS IS" and are governed by their own terms of service and privacy policies as set forth by the third parties that provide them. By choosing to install or utilize Third-Party Apps Customer grants Cloudflare permission to interoperate with the Third-Party Apps as directed by Customer or Third-Party Apps. Unless otherwise specified in writing by Cloudflare, Cloudflare does not endorse and is



**2.6. Beta Services.** Cloudflare may make early stage or non-production Services ("**Beta Services**") available to Customer upon Customer's request. All Beta Services will be clearly designated as Beta Services in any Order Form or the Service's dashboard. Beta Services are intended for evaluation purposes only, and may be accessed by Customer at Customer's sole discretion. Cloudflare may, but is not obligated to, provide support for the Beta Services or correct any bugs, defects, or errors in the Beta Services. Regardless of whether Cloudflare provides technical support for the Beta Services, the Service Level Agreement shall not apply to the Beta Services unless specified otherwise in the applicable Order Form. Cloudflare may discontinue Beta Services at any time in Cloudflare's sole discretion and has no obligation to make them generally available. Notwithstanding Section 10.1, Cloudflare will have no liability for any harm or damage arising out of or in connection with any Beta Services, including any obligation or liability with respect to Customer Data. Any configurations or customer Data entered into Beta Services, and any customizations made to Beta Services by or for Customer, may be permanently lost.

### 3. Fees and Payment

**3.1. Fees.** During the Term, Customer will pay the fees set forth in the Order Form, along with any additional fees set forth in any active Insertion Order(s), if applicable (collectively, the "**Fees**"). All undisputed Fees will be payable from the Service Date. In the event that Customer disputes all or some of the invoiced Fees ("**Fee Dispute**"), Customer will provide a written notice to Cloudflare that reasonably describes the nature of the Fee Dispute within thirty (30) days of receiving the applicable invoice. The Parties will use good faith efforts to resolve the Fee Dispute, however if the Parties are unable to resolve the Fee Dispute within sixty (60) days of Customer's receipt of the disputed invoice, the Parties are free to exercise any legal or contractual remedies available to them. Except as explicitly set forth **Sections 7.2(b)** and **10.1(d)** all Fees are non-cancellable and non-refundable.

**3.2. Price Modification.** Cloudflare reserves the right to modify the Fees in its reasonable discretion, at any time after the Initial Term, upon at least two (2) months prior notice to Customer, provided that any such modification will not take effect until the start of the Renewal Term immediately following the Term in which Cloudflare provided Customer with notice of the modification. Notwithstanding **Section 11.1**, if Cloudflare announces a price modification two (2) months or less before the start of a Renewal Term, Customer may provide Cloudflare with a notice of non-renewal at any time prior to the start of such Renewal Term if Customer does not agree to the price modification.



Cloudflare will be entitled to maintain performance and discontinue customer's access to the Service until all amounts due are paid in full and turn Customer over for collection to a third-party agency, if after notifying Customer of non-payment, Customer fails to pay all amounts due within thirty (30) days' of receiving such notice. In the event Customer acquires or is acquired by another existing Cloudflare customer ("**Customer Acquirer**") during the Term, the Fees applicable to Customer and the Customer Acquirer will remain unchanged for the remainder of each of their Initial Terms or then-current Renewal Terms respectively.

**3.4. Taxes.** The Fees do not include, and may not be reduced to account for, any taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes assessable by any local, state, provincial or foreign jurisdiction (collectively "Taxes"). Customer is responsible for paying all Taxes imposed on the Services provided under the Agreement. If Cloudflare is found to have a legal obligation to pay or collect Taxes for which Customer is responsible for under the Agreement, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Cloudflare with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 4. Support Obligations

**4.1. Service Updates.** During the Term, Cloudflare will provide technical support for the Service in accordance with Cloudflare's Customer Support Terms. Cloudflare may make minor updates to Customer's Internet Properties from time to time, based on Customer's Service settings in order to increase the Internet Properties' performance or security. Cloudflare will inform Customer of any such update, and whenever possible, provide Customer with a mechanism to disable such update.

**4.2. Service Levels.** The Service will be provisioned in accordance with the Service Level Agreement. If Cloudflare fails to meet the service levels set forth in the Service Level Agreement (each such failure, a "**Service Failure**"), then as Customer's sole and exclusive remedy for any such Service Failure, Cloudflare will provide, at Customer's written request, Service Credits in accordance with the Service Level Agreement.

## 5. Customer Obligations, Acceptable Use and Data Responsibility

**5.1. Customer Obligations.** Customer will: (a) have sole responsibility for the accuracy, quality, and legality of all Customer Content; (b) encrypt all Customer Content transmitted to the Service using generally accepted industry best practices for encryption; (c) take commercially reasonable efforts



store infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights through the Service; (iii) send or store Malicious Code in connection with the Service. Customer is solely responsible for its Affiliates and Authorized Users' compliance with the Agreement and any breach by Customer's Affiliate or an Authorized User will be deemed to be a breach by Customer.

**5.3. Customer Data Responsibility.** Customer is solely responsible for keeping and maintaining its own copies of Customer Data, including End User Log Files. Cloudflare is not required to retain End User Log Files, and may delete such files at any time after seventy-two (72) hours from the time such End User Log Files are captured by Cloudflare. EXCEPT WITH RESPECT TO CLOUDFLARE'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 12.7, UNDER NO CIRCUMSTANCE SHALL CLOUDFLARE BE LIABLE FOR ANY LOSS OF CUSTOMER DATA.

## 6. Use of Service Data by Cloudflare

**6.1.** Customer agrees and acknowledges that in the ordinary operation of the Service, the Service collects and transmits Customer Data. Customer grants to Cloudflare a limited right to use, reproduce, modify, and otherwise exploit the Customer Data during the Term in connection with providing the Service, including troubleshooting and performance enhancement. Customer acknowledges and agrees that Cloudflare may retain portions of the Customer-specific Aggregations solely for internal research and development, audit and anti-fraud purposes.

**6.2.** The Agreement does not transfer or convey to Cloudflare or any third party any right, title or interest in and to the Customer Data, or any associated Intellectual Property Rights, but only a limited right of use revocable in accordance with the terms of the Agreement, unless otherwise agreed to by Customer. Subject to **Section 12.7**, Cloudflare may not assign, transfer, sell, license, sublicense, or grant any rights to Customer Data to any other person or entity without Customer's written consent.

**6.3.** Cloudflare will own all right, title or interest in and to the Operational Metrics, and any Intellectual Property Rights therein. Cloudflare grants to Customer a limited right to use, reproduce, modify, and otherwise exploit the Operational Metrics in connection with Customer's use of the Service, to the extent such Operational Metrics are generally made available through the Service's dashboard or other online interface during the Term.

## 7. Warranties and Disclaimers



technical or personal data.

**7.2. Limited Warranty.** Cloudflare warrants to Customer that the Service will materially conform to the Documentation under normal use and circumstances. If Customer notifies Cloudflare of a breach of the foregoing warranty, Cloudflare will, at its option, either: (a) correct the nonconformity in the Service; or (b) issue Customer a credit or refund of a portion of the Fees paid by Customer for the nonconforming Service that fairly reflects (at Cloudflare's reasonable determination) the diminished value of the nonconforming Service. The foregoing constitutes Customer's sole and exclusive remedy for any breach of this limited warranty.

**7.3. Additional Cloudflare Warranties.** Cloudflare warrants that during the Term: (i) the functionality of the Service will not be materially degraded; and (ii) to the best of its knowledge, the Service does not contain, and Cloudflare will not knowingly introduce, any Malicious Code. Notwithstanding the foregoing, Cloudflare shall not be prohibited from sun-setting, retiring or replacing any Service or feature thereof upon providing prior written notice to Customer. Cloudflare warrants that it has implemented and will maintain administrative, physical and technical safeguards to protect Customer Data that are no less rigorous than accepted industry standard practices, and will ensure that all such safeguards comply with applicable data protection and privacy laws, including the General Data Protection Regulation 2016/679, as well as the terms and conditions of the Data Processing Addendum. Cloudflare warrants that it is compliant and will maintain compliance with the Payment Card Industry Data Security Standard (PCI DSS) and is and will remain a PCI DSS Level 1 certified organization.

**7.4. Customer Warranties.** Customer represents and warrants that the information Customer provides to Cloudflare regarding the Customer Parties' network usage (including but not limited to bandwidth usage, number of domains, geographic location of users, and SSL requirements) in order to obtain any price quote which forms the basis of the Agreement, is truthful, accurate, and complete, to the best of its knowledge. Customer represents and warrants that the Customer Content does not contain, and Customer will not knowingly introduce, any Malicious Code into the Cloudflare network.

**7.5. Disclaimer.** THE WARRANTIES SET FORTH IN THE AGREEMENT ARE THE ONLY WARRANTIES MADE BY CLOUDFLARE. TO THE MAXIMUM EXTENT PERMITTED BY LAWS, THE SERVICE IS PROVIDED "AS IS," AND CLOUDFLARE MAKES NO (AND HEREBY DISCLAIMS ALL) WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, PAST OR PRESENT, OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE,



THE SERVICE WILL BE AVAILABLE 24/7 AND OPERATE WITHOUT INTERRUPTIONS.

**7.6. Internet Delays.** THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. CLOUDFLARE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

## 8. Limitation of Liability

**8.1. Types of Damages.** TO THE EXTENT LEGALLY PERMITTED UNDER LAW, IN NO EVENT WILL CLOUDFLARE OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, COMPENSATORY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, USE, GOODWILL, PERSONAL OR PROPERTY DAMAGE, OR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES) RESULTING FROM OR IN CONNECTION WITH THE AGREEMENT OR CUSTOMER'S USE, OR INABILITY TO USE THE SERVICE OR OTHER PRODUCTS OR SERVICES HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF CLOUDFLARE HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.

**8.2. Amount of Damages.** EXCEPT WITH RESPECT TO CLOUDFLARE'S INDEMNIFICATION OBLIGATION SET FORTH IN SECTION 10, THE MAXIMUM LIABILITY OF CLOUDFLARE ARISING OUT OF OR IN ANY WAY CONNECTED TO THE AGREEMENT WILL BE LIMITED TO AND WILL NOT EXCEED IN THE AGGREGATE, THE FEES PAID BY CUSTOMER TO CLOUDFLARE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST CLAIM TO ARISE UNDER THE AGREEMENT. THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THE AGREEMENT WILL NOT INCREASE CLOUDFLARE'S LIABILITY. EXCEPT WHERE PROHIBITED BY LAW, NO CLAIM REGARDLESS OF FORM, WHICH IN ANY WAY ARISES OUT OF THE AGREEMENT MAY BE MADE, NOR ACTION BASED UPON SUCH CLAIM BE BROUGHT BY CUSTOMER, MORE THAN ONE (1) YEAR AFTER THE TERMINATION OR EXPIRATION OF THE AGREEMENT. IN NO EVENT WILL CLOUDFLARE'S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THE AGREEMENT.

## 9. Informal Dispute Resolution

In the case of any disputes under the Agreement, the Parties will first attempt in good faith to resolve their dispute informally, or by means of commercial mediation, without the necessity of a



**10.1. By Cloudflare.** Cloudflare will defend, indemnify and hold harmless the Customer Parties and their licensors, suppliers, officers, directors, employees and agents from and against any and all damage, cost, liability and expenses (including court costs and reasonable attorneys' fees) incurred as a result of claims of third parties arising from or that are based upon an allegation that Customer's use of the Service infringes any United States Intellectual Property Right. If any portion of the Service becomes, or in Cloudflare's opinion is likely to become, the subject of a claim of infringement, Cloudflare may, at Cloudflare's option: (a) procure for Customer the right to continue using the Service; (b) replace the Service with non-infringing services which do not materially impair the functionality of the Service for Customer; (c) modify the Service so that it becomes non-infringing; or (d) terminate the Service and provide a pro rata refund any Fees already paid by Customer to Cloudflare to cover the remainder of the Term, and upon such termination, Customer will immediately cease all use of the Service. Notwithstanding the foregoing, Cloudflare will have no obligation under this **Section 10.1** or otherwise with respect to any infringement claim based upon: (w) any use of the Service not in accordance with the Agreement or the Documentation; (x) Cloudflare's conformance to Customer's unique specifications performed at Customer's request; (y) any use of the Service in combination with third party products, equipment, software or content not supplied by Cloudflare; or (z) any modification of the Service by any person other than Cloudflare or its authorized agents. THIS SUBSECTION SETS FORTH CLOUDFLARE'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

**10.2. By Customer.** Customer will defend, indemnify and hold harmless Cloudflare and its Affiliates, licensors, suppliers, officers, directors, employees and agents from and against any and all damage, cost, liability and expenses (including court costs and reasonable attorneys' fees) incurred as a result of claims of third parties arising from or that are based upon: (a) a Customer Party's use of the Service in a manner not permitted by the terms and conditions of the Agreement or the Documentation; (b) Customer Content or a Customer Party's Internet Properties (including without limitation any activities or aspects thereof or commerce conducted thereon); (c) a Customer Party's non-compliance with Law; or (d) Customer's failure to pay any Taxes imposed by taxing authorities as required in **Section 3.4 (Payment Terms)**.

**10.3. Procedure.** The indemnifying Party's obligations as set forth above are expressly conditioned upon each of the following: (a) the indemnified Party will promptly notify the indemnifying Party in writing of any threatened or actual claim or suit; provided, that failure to provide such prompt



that the indemnifying Party (at the indemnifying Party's expense), to facilitate the settlement or defense of any claim or suit; and (d) the indemnifying Party will not settle any claim or suit in a manner which results in an admission of liability by the indemnified Party, without the indemnified Party's prior written consent.

## 11. Term and Termination

**11.1. Term.** The Agreement will enter into effect on the Effective Date and continue until the expiration of the Initial Term specified in the Order Form. Unless a Party provides written notice of its intent not to renew the Agreement at least two (2) months prior to the expiration of the Initial Term or then-current Renewal Term, the Agreement will automatically renew for successive Renewal Terms thereafter. The mutual execution of any Insertion Order pursuant to the Agreement will act to extend the then-current Agreement Term to end concurrently with the Insertion Order Term. Customer acknowledges and agrees that if an Affiliate of Customer executes an Insertion Order pursuant to the Agreement (each, an "**Affiliate Insertion Order**"), such Affiliate Insertion Order will extend the then-current Term of the Agreement with respect to such Affiliate, as well as Customer. Termination of any Affiliate Insertion Order will not terminate the Agreement, as the Agreement may only be terminated at the request of Customer pursuant to this **Section 11.1 and Section 11.2**.

**11.2. Termination.** Either Party may at any time terminate the Agreement, upon written notice to the other Party, if: (a) the other Party has materially breached any provision of the Agreement, and such breach remains uncured one (1) month after receipt of notice from the non-breaching Party specifying such breach in reasonable detail; or (b) the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Notwithstanding the foregoing, Cloudflare may temporarily suspend or terminate delivery of the Service to Customer upon notice, if Customer breaches **Section 2.3(c)** above and fails to cure such breach within 24 hours of receiving such notice or such other timeframe as Cloudflare may reasonably request.

**11.3. Effect of Termination.** Upon expiration or termination of the Agreement: (a) the Customer Parties' right to use and access the Service will be terminated subject to **Section 11.4**; (b) all Credentials associated with the Customer Parties' Authorized Users will be deactivated; (c) all Customer Parties will immediately discontinue use of the Service; (d) Customer will immediately pay all outstanding Fees due to Cloudflare through the date of termination or expiration; and (e) each Party will promptly return to the other Party (or, if the other Party requests it, destroy) all



Service will survive any such expiration or termination of the Agreement.

**11.4. Access to End User Log Files On Termination.** Upon termination of the Service, Cloudflare will use reasonable efforts to make available to Customer the End User Log Files not already delivered to Customer for up to seventy-two (72) hours following termination. Other than as set forth in this **Section 11.4**, upon termination of the Agreement, Customer's right to access or receive End User Log Data via the Service will immediately cease.

## 12. General

**12.1. Governing Law and Venue.** The Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of California, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Customer hereby expressly consents to the exclusive, personal jurisdiction of, and venue in, the state and federal courts of San Francisco, California. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement.

**12.2. Compliance with Laws.** Customer shall not use the Service for any reason if Customer or any party that owns or controls Customer, are subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority. Customer shall not use the Service to export or re-export any information or technology to any country, individual, or entity to which such export or re-export is restricted or prohibited.

**12.3. Severability.** If any provision of the Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of the Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Without limiting the generality of the foregoing, Customer agrees that **Section 8 (Limitation of Liability)** will remain in effect notwithstanding the unenforceability of any provision in **Section 7 (Warranties and Disclaimers)**.

**12.4. Waiver.** Any waiver or failure by a Party to enforce any provision of the Agreement on one occasion will not be deemed a waiver of that or any other provision on that occasion, nor any other occasion.



remedy, and that injunctive relief is an appropriate remedy for such breach. In any legal action brought to enforce the Agreement, the prevailing Party will be entitled to receive its attorneys' fees, court costs, and other collection expenses from the non-prevailing Party, in addition to any other relief the prevailing Party may receive.

**12.6. No Assignment.** Customer will not assign, subcontract, delegate, or otherwise transfer the Agreement or its rights and obligations herein, in whole or in part, by operation of law or otherwise, without obtaining the prior written consent of Cloudflare, which consent may be withheld at Cloudflare's sole discretion, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void, ab initio. Notwithstanding the foregoing, however, either Party may upon written notice to the other Party, assign the Agreement in its entirety without the requirement to obtain consent, in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets of that Party. The Agreement will be binding upon the Parties and their respective successors and permitted assigns.

**12.7. Confidential Information.** For the purposes of the Agreement, "**Confidential Information**" means any information disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") which: (a) if disclosed in writing or electronically, is labeled as proprietary or confidential at the time of disclosure; (b) if disclosed orally, is identified as proprietary or confidential at the time of such disclosure, and is then summarized in a writing provided to the Receiving Party within one (1) month of the date of such disclosure; or (c) by its nature is confidential and would be judged so under a reasonable standard, or is disclosed or provided under circumstances reasonably indicating it is confidential or proprietary. The terms and conditions of the Agreement, non-public information regarding the Service (including, without limitation, any source code), and any Customer Feedback, is the Confidential Information of Cloudflare. Confidential Information will remain the sole property of the Disclosing Party. Except for the specific rights granted by the Agreement, the Receiving Party will not use any Confidential Information of the Disclosing Party for its own account. The Receiving Party will use the same standards to protect the Confidential Information of the Disclosing Party as it affords its own such information, but in no event less than the highest commercially reasonable degree of care. The Receiving Party will not disclose any Confidential Information of the Disclosing Party to any third party without the express written consent of the Disclosing Party (except solely for Receiving Party's internal business needs, to employees or consultants who have a need to know such information and who are bound by a written agreement or professional obligation to restrict the disclosure and use of such Confidential Information in a manner consistent with the Agreement). The foregoing obligations will not restrict a Party from disclosing Confidential Information of the other Party pursuant to the order or



or law. The restrictions set forth in this SECTION 12.7 will not apply to the disclosure of the Parties, or to any Confidential Information that: (i) was or becomes available to the public other than by a breach of the Agreement by the Receiving Party; (ii) was rightfully received by Receiving Party without confidential or proprietary restriction from a third party who has a right to disclose it; (iii) was independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information; (iv) was known to the Receiving Party at the time of disclosure, without confidential or proprietary restriction; (v) was produced in compliance with applicable law or a court order; provided, that the Disclosing Party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production; or (vi) was approved by the Disclosing Party for disclosure without restriction in a written document which is signed by a duly authorized representative of the Disclosing Party.

**12.8. Force Majeure.** Any delay in the performance of any duties or obligations of a Party (except the payment of money owed) will not be considered a breach of the Agreement if such delay is caused by events beyond the reasonable control of that Party (including, for example, labor disputes, shortages of materials, fire, earthquake, flood, or other acts of God (each, a "**Force Majeure Event**"); *provided*, that the delayed Party uses reasonable efforts, under the circumstances, to notify the other Party of the existence of the Force Majeure Event and works to resume performance as soon as possible.

**12.9. Independent Contractors.** The relationship of the Parties is that of independent contractors, neither Party is an agent or partner of the other. Neither Party will have, and will not represent to any third party that it has, any authority to act on behalf of or bind the other Party.

**12.10. Publicity.** Subject to Customer's trademark usage guidelines, Customer grants Cloudflare a non-exclusive, worldwide, royalty free right to include the Customer's name and logo in any customer listing appearing on or in any Cloudflare websites, brochures, fliers, presentations, annual reports and any other marketing materials. Customer may terminate the foregoing license at any time following the termination of the Agreement, by providing Cloudflare thirty (30) days' written notice, upon which Cloudflare will promptly remove Customer's name and logo from its website and cease from creating any new marketing material containing the same. Notwithstanding the foregoing, Cloudflare's right to continue to use any pre-printed marketing materials produced prior to such termination will continue until the supply of such materials is exhausted.

**12.11. Notices.** Customer is responsible for updating its information with Cloudflare, including providing Cloudflare with an up-to-date e-mail address for the provision of notices under the Agreement. In the event that the latest e-mail address provided to Cloudflare by Customer is not



Agreement should be sent to the Cloudflare contact noted in the Order Form, with a copy to [legal@cloudflare.com](mailto:legal@cloudflare.com).

**12.12. Commercial Communications.** Customer agrees that Cloudflare may send email communications to Customers' employee representatives in order to convey information about Cloudflare products and services, including promotional information about new or updated Cloudflare products and services, and Cloudflare events. Customer's employee representatives may opt-out of such communications on an individual basis by managing their communication preferences.

**12.13. Government Restrictions.** If Customer is an agency, department or entity of the United States Government ("**Government**"), Customer understands and agrees, that (a) Customer's rights to use, reproduce, release, modify or disclose the Cloudflare Technology, or any part thereof, is restricted in accordance with Federal Acquisition Regulation ("**FAR**") 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement ("**DFARS**") 227.7202 for military agencies, (b) the Cloudflare Technology consists of "commercial computer software" and "commercial computer software documentation," respectively, as defined in FAR Section 12.212 and DFARS Section 227.7202, or their successor provisions, as applicable and (c) use of the Cloudflare Technology by any Government agency, department or other agency of the Government is further restricted as set forth in the Agreement.

**12.14. Amendment.** Cloudflare may amend the Agreement at any time, provided that it gives notice to Customer not less than ten (10) days prior to the effective date of any such amendment. Customer's continued use of the Service after the effective date of the amendment may be relied upon by Cloudflare as Customer's consent to the amendment. Each amendment will supersede any previous versions of the Agreement and will govern any Services rendered to Customer by Cloudflare on or after the effective date of the amendment.

**12.15. Entire Agreement.** The Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the Parties with respect to such subject matter. Except as permitted by **Section 12.14**, no modification of, amendment to, or waiver of any rights under the Agreement will be effective unless in writing and signed by an authorized signatory of each of Customer and Cloudflare. The Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same agreement. In the event of a conflict between any Order Form or Insertion Order and the Agreement, the Order Form or Insertion Order will control, but only to the extent there is a conflict. Unless agreed to in writing by



no effect.

## END OF TERMS

### Have Questions?

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If you have questions about these terms or anything else about Cloudflare, please don't hesitate to contact us:

+1 (650) 319-8930

#### Cloudflare, Inc.

101 Townsend St,  
San Francisco, CA 94107  
USA

Attention: Data Protection Officer  
privacyquestions@cloudflare.com

Sales



Contact Sales:

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Getting Started



Community



Developers



Support



Company



