



ENTERPRISE SUBSCRIPTION TERMS OF SERVICE

Effective July 15, 2021

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 or an Order Form (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.

1.2. "Agreement" means the Enterprise Subscription Agreement, which consists of: (a) these Terms of Service; (b) each mutually-executed Order Form; (c) the **Information Security Addendum**; and (d) the Service-specific **Supplemental Terms**, if any, that are applicable to Services purchased by Customer. To the extent that Customer processes Personal Data, then in addition to the foregoing, the **Cloudflare Customer DPA** is incorporated by reference into the Enterprise Subscription Agreement.

1.3. "Authorized Users" means Customer's and its Affiliates' employees, agents, directors, subcontractors, or other representatives who are authorized to access and use Services and administer Customer's and/or its Affiliates' use of such Services.

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

1.5. **"Cloudflare Technology"** means the Service, the Documentation, and any of Cloudflare's proprietary technology, including, without limitation, any software, processes, scripts, algorithms, user interfaces, know-how, technologies, designs, and/or other tangible or intangible technical material or information that Cloudflare makes available to Customer 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 Customer or uploaded by Customer 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 by Customer.

1.9. **"Customer Data"** means collectively, Customer Account Information, Customer Content and Customer Logs.

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

1.11. **"Customer Logs"** means any logs of End Users' and Authorized Users' interactions with Customer's Internet Properties and the Service that are made available to Customer via the Service dashboard or other online interface during the Term by Cloudflare.

1.12. **"Customer Support and Service Level Agreement" or "SLA"** means Cloudflare's standard customer support terms and service

level agreement, as set forth at

https://www.cloudflare.com/enterprise_support_sla/. Unless otherwise specified in the Order Form, the “Standard Plan” set out in the SLA applies.

1.13. “Data Processing Addendum” or DPA means Cloudflare’s data processing addendum, as set forth at

https://www.cloudflare.com/cloudflare_customer_DPAv3.pdf.

1.14. “Documentation” means all printed and online user manuals and other technical materials relating to the Services made available to Customer by Cloudflare, as may be updated from time to time.

1.15. “Effective Date” means the date upon which both Parties have executed the initial Order Form between the Parties.

1.16. “End User” means a third-party visitor to Customer’s Internet Properties and/or user of any of Customer’s services delivered thereon.

1.17. “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).

1.18. “Information Security Addendum” means the administrative, technical and physical safeguards Cloudflare takes to protect Confidential Information, as set forth at

<https://www.cloudflare.com/security-exhibit/>.

1.19. “Initial Term” means the initial term for the Customer’s use of any Service as specified in the initial Order Form, beginning on the Service Date.

1.20. "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.

1.21. "Internet Properties" means a website, including any subdomain thereof, network, or any Internet connected application.

1.22. "Laws" means any domestic, foreign, local, state, national and supranational laws, including without limitation EU and UK Data Protection Laws, regulations and treaties applicable to the respective Party.

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

1.24. "Network Data" means all models, observations, reports, analyses, statistics, databases and other information created, compiled, analyzed, generated or derived by Cloudflare from server, network or traffic data generated by Cloudflare in the course of providing the Service.

1.25. "Order Form" means Cloudflare's generated order form(s) and/or insertion orders for Services under the Agreement.

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

1.27. "Personal Data" means all data defined as 'personal data' under EU and UK Data Protection Laws and all data defined as 'personal information' under the CCPA.

1.28. "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.

1.29. “Service(s)” 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.

1.30. “Service Date” means the service date specified in the Order Form on which Cloudflare will make the Services set out in the relevant Order Form available to Customer.

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

1.32. “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.

1.33. “Terms of Service” means these Cloudflare Enterprise Subscription Terms.

1.34. “Threat Data” has the meaning assigned to it in **Section 6.2**.

2. Access, Use, and Restrictions

2.1. **Access and Use Rights.** Subject to Customer’s compliance with the terms and conditions of the Agreement (including, without limitation, all payment obligations), Cloudflare hereby grants Customer and its Authorized Users a right to access and use the Services listed in the Order Form(s) and any related Cloudflare Technology to the extent necessary to access and use such Services during the Term solely for Customer’s internal business purposes, and solely in accordance with the Documentation and the Agreement, and any other restrictions or obligations mutually agreed upon in writing by the Parties. Customer’s Affiliates, if any, included in an Order Form may access and use the Services subject to the same terms and conditions as Customer, provided that Customer will remain liable for payment of all Fees (as defined in **Section 3.1**) and its indemnification obligations under **Section 10 (Indemnification)**. Customer will cause such Affiliates to comply with the Agreement as if they were Customer and any reference to

“Customer” will be read to include such Affiliates. Any breach of the Agreement by an Affiliate of Customer or their respective Authorized Users, or other representatives will be deemed a breach by Customer of the Agreement and Customer will be liable for such breach as if itself had breached the Agreement.

2.2. Proprietary Rights. As between Customer, 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 Customer hereunder, Cloudflare reserves all rights, title and interest in and to the Cloudflare Technology. Customer hereby grants, and, if applicable, will cause all Affiliates to grant, Cloudflare a non-exclusive, royalty-free, worldwide, transferable, irrevocable, sublicensable, perpetual, license to use or incorporate into the Cloudflare Technology any Customer Feedback. All Customer Feedback is provided by Customer on an “AS IS” basis without warranty or indemnity of any kind. Cloudflare®, 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 Customer without Cloudflare’s prior written consent. Customer 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 and Acceptable Use. Customer **must** 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 Customer; (c) reverse-engineer the Service; (d) interfere with, or create an undue burden on the Service or Cloudflare’s network in a manner that poses or has the potential to pose significant harm to Cloudflare’s other customers or internal systems; (e) send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights, through the Service; (f) use the Service in violation of any Laws; (g) send or store Malicious Code in connection with the Service (h) probe, scan or test any vulnerability of the Services, including, without limitation, performing penetration, stress or load testing, including by introducing software or automated agents or scripts, other than

those expressly permitted by the Documentation or as explicitly set forth in the Order Form, without prior written consent from Cloudflare; (i) perform or publish any performance or benchmark tests or analyses relating to the Service, other than solely for Customer's internal use; or (j) cover or obscure any page or part of the Service via HTML/CSS, scripting, or any other means.

Notwithstanding anything to the contrary in the Agreement, Cloudflare may temporarily suspend or restrict the Services upon notice if Customer breaches (d) or (g) above and fails to cure such breach within a reasonable period of receiving notice from Cloudflare thereof.

2.4. Usernames and Passwords. Customer is responsible for maintaining the confidentiality of all Authorized Users' usernames and passwords created by or assigned to Customer's account ("**Credentials**") and is solely responsible for all activities that occur under such Credentials. Cloudflare reserves the right to terminate any Credentials that Cloudflare reasonably determines may have been used by an unauthorized third party, and will provide immediate notice of such termination to Customer and promptly replace such Credentials upon request. Credentials may not be shared or used by more than one individual Authorized User, but may be reassigned to a new Authorized User. Upon termination or expiration of the Agreement, all Credentials will be deactivated.

2.5. Third-Party Products and Services. Customer may access or use, at Customer's sole discretion, certain third-party products and services that interoperate with the Services including, but not limited to: third-party apps found on the Cloudflare Apps store located at www.cloudflare.com/apps/, third-party service integrations made available through the Cloudflare Service dashboard or APIs, and third-party products or services that Customer authorizes to access Customer's Cloudflare account using OAuth or other Credentials (collectively, "**Third-Party Products**"). Each Third-Party Product is governed by the terms of service, end user license agreement, privacy policies, and/or any other applicable terms and policies of the third party provider. Customer's access or use of Third-Party Products is solely between Customer and the applicable Third-Party Products provider. Cloudflare does not make any representations, warranties, or guarantees regarding the Third-Party Products or the providers thereof, including, but not limited to, the Third-Party Products' continued availability, security, and integrity. Third-Party Products are made available by Cloudflare

on an "AS IS" and "AS AVAILABLE" basis, and Cloudflare may cease providing them in the Cloudflare Apps Store at any time without entitling Customer to any refund, credit, or other compensation. Unless otherwise specified in writing by Cloudflare, Cloudflare will not be directly or indirectly responsible or liable in any manner, for any harms, damages, loss, lost profits, special or consequential damages, or claims, arising out of or in connection with the installation of, use of, or reliance on the performance of any of the Third-Party Products.

2.6. Beta Services. Cloudflare may make 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 testing 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 SLA will not apply to the Beta Services unless specified otherwise in the applicable Order Form. Cloudflare may discontinue, suspend, or remove Beta Services (including any Customer Data stored as part of the Beta Services) or Customer's access thereto at any time in Cloudflare's sole discretion and has no obligation to make them generally available. Customer understands that any information regarding Beta Services is Cloudflare's Confidential Information, and agrees not to disclose such information unless a Beta Service becomes generally available, except as required by law, and to only use such information in connection with Customer's use of the Beta Services. 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.

2.7. Purchase Through Reseller. If Customer purchases access to Services from an authorized Cloudflare reseller or partner ("**Reseller**"), and notwithstanding anything set forth otherwise in these Terms of Service: (a) in addition to Customer's compliance with the Agreement, Customer's right to access and use such Services is subject to the terms and conditions of Customer's written agreement with the Reseller (the "**Reseller Agreement**"),

including Customer's obligation to timely pay Fees to the Reseller; (b) Customer will execute all Order Forms directly with the Reseller and not Cloudflare; and (c) the terms and conditions of **Section 3** (Fees and Payment) are not applicable between Cloudflare and Customer and instead will be set forth in the Reseller Agreement. Any refund, payments and service credits which Cloudflare may or must provide to Customer in accordance with the terms of the Agreement, including, without limitation, the SLA, will be provided by Cloudflare to Reseller and Customer acknowledges that it must seek such refunds, payments and credits from Reseller only. Furthermore, Customer's right to terminate or cancel its subscription to any Service is solely as set forth in the Reseller Agreement. In the event that the Reseller ceases at any time to be an authorized Reseller, including for a failure to pay for any Services, Customer's continued use of Services may be conditioned upon Customer executing a written agreement for such Services directly with Cloudflare, and paying the outstanding Fees, if any, that Reseller did not remit to Cloudflare on Customer's behalf. Resellers are not authorized to modify the Agreement or make any promises or commitments on Cloudflare's behalf, and Cloudflare is not bound by any obligations to Customer other than as set forth in the Agreement. Cloudflare may temporarily suspend or terminate delivery of Services to Customer upon notice upon the written direction of Reseller.

3. Fees and Payment

3.1. Fees. Customer will pay the amounts set forth in all Order Form(s) (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. If the Parties are unable to resolve the Fee Dispute within sixty (60) days of Customer's receipt of the disputed invoice, then the Parties will be 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. Payment Terms. Unless otherwise specified in an Order Form, Cloudflare will invoice Customer annually in advance for the

Services on the Service Date as set forth in the respective Order Form(s). Each invoice will be due and payable upon receipt by Customer. If Customer has not paid the invoice amount within thirty (30) days of receipt, Cloudflare will be entitled to (a) withhold performance and discontinue Customer's access to the Service until all undisputed amounts due are paid in full; and (b) turn Customer over for collection to a third-party agency, if Customer fails to pay all undisputed amounts due within thirty (30) days after Cloudflare notifies Customer of non-payment of undisputed amounts. In the event Customer acquires or is acquired by another existing Cloudflare customer ("**Customer Acquirer**") during the Term, the respective Agreements and Fees applicable to Customer and Customer Acquirer will remain unchanged and unaffected unless and until otherwise agreed to by all affected parties.

3.3. 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 national jurisdiction (whether domestic or foreign) (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 under the Agreement, the appropriate amount will 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

During the Term, Cloudflare will provide any Services and technical support for such Services in accordance with the SLA. If Cloudflare fails to meet the service levels set forth in the SLA (each such failure, a "**Service Level Failure**"), then as Customer's sole and exclusive remedy for any Service Level Failure, Cloudflare will provide, at Customer's written request, Service Credits in accordance with the SLA. Unless otherwise explicitly agreed to in writing, any Service that Cloudflare makes available to Customer free of charge or on a trial basis, including, without limitation, any Beta Services, will not be subject to any service levels or performance guarantees set forth in the SLA.

5. Customer Obligations and Data Responsibility

5.1. General Customer Obligations. Customer will: (a) be responsible for configuring the encryption for all Customer Data (excluding Customer Account Information) that it transmits through the Service; (b) take commercially reasonable efforts to prevent unauthorized access to, or use of, the Service; (c) notify Cloudflare promptly in writing of any unauthorized access or use of the Service or Credentials; and (d) be solely responsible for Customer-devised or Customer-implemented rules (and associated misconfigurations and outages) and actions taken by Customer that might result in denial of service, availability issues, or performance degradation.

5.2. Customer Data Responsibility. Except for Customer Account Information, Customer is solely responsible for keeping and maintaining its own copies of Customer Data. Cloudflare is not obligated to Customer to maintain any copies thereof, and may delete Customer Data at any time after seventy-two (72) hours from the time such Customer Data is captured by Cloudflare, except for any Customer Account Information included therein that is reasonably required for the operation of the Services during the Term. EXCEPT WITH RESPECT TO CLOUDFLARE'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 12.7, UNDER NO CIRCUMSTANCE WILL CLOUDFLARE BE LIABLE FOR ANY LOSS OR DELETION OF CUSTOMER DATA.

6. Use of Customer Data, Threat Data, and Network Data by Cloudflare

6.1. The ordinary operation of the Services requires Customer Data to pass through Cloudflare's network. 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, except for a worldwide, non-exclusive, limited right of use (including to store, copy, transmit and display) solely as permitted under the Agreement and as required to provide the Services, revocable in accordance with the terms of the Agreement. To the extent that Cloudflare processes Customer Data on behalf of

Customer that includes Personal Data, Cloudflare will handle such Personal Data in compliance with the DPA.

6.2. Cloudflare retains all right, title, and interest in the Network Data, and shall have the right to use Network Data for purposes of providing, maintaining, developing, and improving its Services. Cloudflare may monitor and inspect the traffic on the Cloudflare network, including any related logs, as necessary to perform the Services and to derive and compile Threat Data. “**Threat Data**” means information relating to the nature, behavior, source, frequency, and other characteristics of the traffic on Cloudflare's network required to help Cloudflare identify, analyze, mitigate, prevent, and block malicious activities on Cloudflare's network. Cloudflare is permitted to use, distribute and make derivative works of the Threat Data to improve, update, maintain and develop the Services and to retain such Threat Data according to its retention policies. Cloudflare will not share or disclose Threat Data to third-parties in a way that identifies Customer, any End Customer, or Authorized User, except, as required to perform the Services or as otherwise permitted by Customer in writing. To the extent the Threat Data includes any Personal Data, Cloudflare will handle such Personal Data in compliance with applicable data protection laws. Cloudflare may use and retain Customer Account Information for business purposes related to the Agreement and to the extent necessary to meet Cloudflare's legal compliance obligations (including, for audit and anti-fraud purposes).

7. Warranties and Disclaimers

7.1. Mutual Warranties. Each Party warrants that it has the authority to enter into the Agreement and, in connection with its performance of the Agreement and/or its use of the Services, will comply with all Laws including, but not limited to, Laws related to data privacy, international communications and the transmission of 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 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. Service Level Failures do not constitute a breach of this Limited Warranty and are exclusively addressed by the SLA. 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 Initial Term and each Renewal Term: (a) the functionality of the Service will not be materially degraded; and (b) to the best of its knowledge, the Service does not contain, and Cloudflare will not knowingly introduce, any Malicious Code. Cloudflare may sunset, retire or replace any Service or feature thereof if applicable to all customers of the affected Service and provided the functionality of the Service will not be materially degraded. Cloudflare warrants that it has implemented and will maintain administrative, physical and technical safeguards designed 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, if applicable. Cloudflare warrants that it complies with and will maintain compliance with the security standards set out in the Information Security Addendum.

7.4. Customer Warranties. Customer represents and warrants/ that to the best of Customer's knowledge, the information Customer provides to Cloudflare regarding its and its Affiliates' 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 Data does not contain, and Customer will not knowingly introduce, any Malicious Code into the Cloudflare network.

7.5. Disclaimer. EXCEPT FOR THE WARRANTIES SET FORTH IN THE AGREEMENT, 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, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, OR INABILITY TO USE THE SERVICE (IN WHOLE OR IN PART). CLOUDFLARE CANNOT AND DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

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, 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, 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 formal proceeding.

10. Indemnification

10.1. By Cloudflare. Cloudflare will defend, indemnify and hold harmless Customer and its 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 Services infringes any United States Intellectual Property Right. If any portion of a Service that Customer subscribes to 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) Customer's use of the Service in a manner not permitted by the terms and conditions of the Agreement or the Documentation; (b) Customer Data or Customer's Internet Properties (including without limitation any activities or aspects thereof or commerce conducted thereon); (c) a Customer'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 notice will not release the indemnifying Party from its indemnity obligations except to the extent the indemnifying Party is materially prejudiced thereby; (b) the indemnifying Party will have sole control of the defense or settlement of any claim or suit; (c) the indemnified Party will cooperate with 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 the then-current Renewal Term, the

Agreement will automatically renew for successive Renewal Terms thereafter. The mutual execution of any Order Form pursuant to the Agreement will act to extend the then-current Agreement Term to end concurrently with the term of such Order Form. Customer acknowledges and agrees that if an Affiliate of Customer executes an Order Form pursuant to the Agreement (each, an “**Affiliate Order**”), such Affiliate Order will extend the then-current Term of the Agreement with respect to such Affiliate, as well as Customer. Termination of any Affiliate Order will not terminate the Agreement, as the Agreement may be terminated at the request of Customer only 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 cannot be cured, or, if curable, such breach remains uncured one (1) month after receipt of notice from the non-breaching Party specifying such breach in reasonable detail; (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; or (c) the other Party becomes generally unable or fails to pay its debts as they come due.

11.3. Effect of Termination. Upon expiration or termination of the Agreement: (a) Customer’s right to use and access the Service under these Terms of Service will be terminated subject to **Section 11.4**; (b) all Credentials associated with the Customer’s Authorized Users will be deactivated or downgraded to Cloudflare’s free plan; (c) Customer 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 upon request of the other Party promptly return or destroy all Confidential Information of the other Party to the extent such return or destruction is reasonably feasible. **Sections 1 (Definitions), 2.2 (Proprietary Rights), 3 (Fees and Payments)** (with respect to payment obligations incurred during the Term), **8 (Limitation of Liability), 10 (Indemnification), 11.3 (Effect of Termination),** and **12 (General)** of these Terms of Service will survive any such expiration or termination of the Agreement.

11.4. Access to Logs On Termination. For up to seventy-two (72) hours following expiration or termination of Customer's access to the Service, Cloudflare will use reasonable efforts to continue to make available to Customer the Customer Logs. Other than as set forth in this **Section 11.4**, upon termination of the Agreement, Customer's right to access or receive 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 will comply with all Laws. Customer agrees that it is responsible for determining whether use of the Service will satisfy Customer's individual compliance obligations. Customer will 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, the United Kingdom, or other applicable government authority. Customer will 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. Customer further acknowledges that performance of the Agreement may be subject to U.S. and non-U.S. anti-corruption and anti-bribery laws, rules, and regulations. Customer therefore covenants that it will make no payments, including charitable donations, of money or anything of value, nor will such be offered, promised or paid, directly or indirectly, to any person or entity (a) to improperly influence the acts of such person or entity, (b) to induce such person or entity to use its influence

with a government to obtain or retain business, or (c) to gain an improper advantage in connection with any business venture or contract in which Cloudflare is a participant.

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.

12.5. Remedies. The Parties acknowledge that any actual or threatened breach of **Sections 2 (License Grant and Restrictions)** or **12.7 (Confidential Information)** may constitute immediate, irreparable harm to the non-breaching Party, for which monetary damages may be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is 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. In addition, the terms and conditions of the Agreement, non-public information regarding the Service (including, without limitation, the Documentation, all underlying software, user interfaces, screenshots, information about the Cloudflare network, information concerning the performance, capacity, or design of the Service or any source code), and any Customer Feedback, is Confidential Information of Cloudflare. Confidential Information will remain the sole property of the Disclosing Party. Except for the specific rights granted by the Agreement, including as necessary to provide the Services, 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 or as necessary to provide the Services in accordance with or as otherwise permitted by the Agreement). The foregoing obligations will not restrict a Party from disclosing Confidential Information of the other Party pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, that the Party required to make such disclosure provides reasonable notice to the other Party to enable them to contest such

order or requirement, unless such Party is prevented from doing so by force of law. The restrictions set forth in this **Section 12.7** will not apply to the identities 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 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 valid, or for any reason is not capable of delivering any notice required by the Agreement, Customer acknowledges and agrees that Cloudflare's dispatch of an e-mail to such address will nonetheless constitute effective notice. Any notice provided to Cloudflare pursuant to the Agreement should be sent to the Cloudflare contact listed in the Order Form, with a copy to 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 and agreements, between the Parties with respect to such subject matter, including any applicable non-disclosure agreements. 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 electronically and 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 and the Terms of Service, the Order Form will control, but only to the extent there is a conflict. Unless agreed to in writing by Cloudflare, the terms of any pre-printed purchase orders or general terms and conditions that Customer submits to Cloudflare that contains terms that are different from, in conflict with, or in addition to, the terms of the Agreement are hereby rejected by Cloudflare, and will be void and of no effect.

END OF TERMS

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

Sales

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