

ENTERPRISE SUBSCRIPTION TERMS OF SERVICE

1. DEFINITIONS. Capitalized terms shall 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 “Agreement” means the Enterprise Subscription Agreement, which is comprised of: (a) these Terms of Service; (b) each mutually-executed Order Form and/or Insertion Order; and (c) any other document that is expressly incorporated by reference.

1.2 “Authorized Users” means Customer’s employees who are authorized to administer Customer’s use of the Service, as listed in the Order Form, or as may be added or changed from time-to-time at Customer’s request.

1.3 “Cloudflare” means Cloudflare, Inc.

1.4 “Cloudflare Technology” means the Service, the Documentation, and any of Cloudflare’s proprietary technology, including, without limitation, any software, hardware, products, processes, 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.

1.5 “Customer Content” means any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects originating or transmitted from any website owned or operated by Customer and routed to, passed through and/or cached on or within, Cloudflare’s network or otherwise transmitted or routed using the Service.

1.6 “Customer Data” means collectively, Customer Log Files and Customer-specific Aggregations.

1.7 “Customer Log Files” means the raw logs of interactions that Cloudflare processes on behalf of Customer during the course of providing the Service. By way of illustration, Customer Log Files may include items such as: hostname; client IP; timestamp; HTTP request-line; HTTP status code; content-length; referrer; user agent; and Cloudflare request ID.

1.8 “Customer-specific Aggregations” means aggregated information derived from the Customer Log Files (including, without limitation, usage analytics, bandwidth consumption, availability performance, customer-specific IP-trust scores, rules, and settings) which Cloudflare uses to provide the Service.

1.9 “Documentation” means all then-current user manuals and other technical materials relating to the Service that are generally made available to Cloudflare’s customers.

1.10 “Effective Date” means the effective date of the Agreement. The Effective Date is specified in the Order Form, and is generally the date on which the last Party signs the Order Form.

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

1.12 “Insertion Order” means the Cloudflare document that Customer uses to order additional products, features, or services during the Term, once signed by both Customer and Cloudflare.

1.13 “Insertion Order Term” means the term specified in an applicable Insertion Order, for additional products, features, or services purchased by Customer.

1.14 “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.

1.15 “Operational Metrics” means: (a) all traffic data, cryptographically-hashed samples of Customer Log Files, clickstream information, logged snippets of transmitted Customer Content, IP-trust scores, and other server activity data collected by Cloudflare in the course of performing the Service; and (b) all analytical products derived therefrom. Operational Metrics are not Customer-identifiable.

1.16 “Order Form” means the Cloudflare document that Customer uses to order the Service, once signed by both Customer and Cloudflare.

1.17 “Party” or “Parties” means Cloudflare and/or Customer, as applicable.

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

1.19 “Service” means Cloudflare’s global service to improve website performance, security, and availability, with such features and specifications as may be further described in the Documentation and the Order Form.

1.20 “Service Data” means, collectively, Customer Data and Operational Metrics.

1.21 “Service Date” means the date on which the Service shall first be activated for Customer, and from which date Customer shall be invoiced. The Service Date is specified in the Order Form.

1.22 “Service Level Agreement” means Cloudflare’s current standard service level agreement, which can be viewed at www.Cloudflare.com/_xsla.

1.23 “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.

1.24 “Terms of Service” means these Enterprise Subscription Terms of Service.

2. LICENSE GRANT AND RESTRICTIONS

2.1 License Grant. Subject to Customer’s compliance with the terms and conditions of the Agreement (including, without limitation, all payment obligations), Cloudflare hereby grants to Customer a non-exclusive, non-transferable, and non-sublicensable license, to use and access the Service for its own internal purposes during the Term, solely in accordance with the Documentation and any other restrictions or obligations mutually agreed upon by the Parties. During the Term, the features and specifications of the Service purchased by Customer shall not be materially degraded by Cloudflare. Except as expressly set forth in the Agreement, no express or implied license or right of any kind is granted to Customer regarding the Cloudflare Technology or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the Cloudflare Technology. All rights not expressly granted to Customer herein are reserved to Cloudflare.

2.2 Customer Content; Acceptable Use of the Service. As between Customer and Cloudflare, Customer is and shall be solely responsible for, the Customer Content (including, without limitation, creating, renewing, updating, deleting, editing, and controlling all aspects of the Customer Content). Customer agrees to adhere to generally accepted industry best practices for encrypting both Customer Content and the content of its customers. Customer agrees to comply at all times with all applicable laws and regulations with respect to its use

of the Service. Without limiting the foregoing, Customer agrees not to use the Service in connection with any: (a) infringement or misappropriation of any Intellectual Property Rights; (b) defamation, libel, slander, obscenity, or violation of the rights of privacy or publicity of any person or entity; or (c) other offensive, harassing, or illegal conduct.

2.3 Limitations. Customer agrees that it may not: (a) permit any person to access and/or use the Service other than the Authorized Users; (b) rent, lease, loan, export or sell access to the Service to any third party; (c) interfere with, disrupt, alter, translate, or modify the Service or any part thereof, or create an undue burden on the Service or the networks or services connected to the Service; (d) reverse-engineer or access the Service in order to: (i) build a competitive product or service; (ii) build a product using similar ideas, features, functions or graphics to the Service; or (iii) copy any ideas, features, functions or graphics of the Service; (e) without Cloudflare's express written permission, introduce software or automated agents or scripts into the Service so as to produce multiple accounts, generate automated searches, requests or queries, or to strip or mine data from the Service; (f) perform or publish any performance or benchmark tests or analyses relating to the Service or the use thereof, other than solely for Customer's internal use; or (g) cover or obscure any page or part of the Service via HTML/CSS, scripting, or any other means.

2.4 Usernames and Passwords. At Customer's request, Cloudflare will provide each Authorized User a unique username and password to enable such Authorized User to access the Service pursuant to the Agreement. Cloudflare reserves the right to change or update these usernames and passwords in Cloudflare's sole discretion from time to time, and shall inform Customer of such changes or updates as soon as is practicable. Each Authorized User's username and password may only be used to access the Service during one (1) concurrent login session. Customer acknowledges and agrees that: (a) only Authorized Users are entitled to access the Service with their assigned usernames and passwords provided by Cloudflare; (b) it will provide to Cloudflare any information and other assistance as necessary to enable Cloudflare to establish usernames for all Authorized Users, and will verify all Authorized User requests for account passwords; (c) it will ensure that each username and password issued to an Authorized User will be used only by that Authorized User; (d) it is responsible for maintaining the confidentiality of all Authorized Users' usernames and passwords, and is solely responsible for all activities that occur under such usernames and passwords; and (e) it will notify Cloudflare promptly of any actual or suspected unauthorized use of any Authorized User's account, username, or password, or any other breach or suspected breach of the Agreement. Cloudflare reserves the right to terminate any Authorized User's username or password that Cloudflare reasonably determines may have been used by an unauthorized third party, and shall provide immediate notice of such to Customer. Usernames and passwords cannot be shared or used by more than one individual Authorized User, but may be reassigned from time to time 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. For Customer's own security, Cloudflare strongly encourages Customer to enable two-factor authentication in conjunction with all usernames and passwords.

2.5 Ownership and Feedback. The Cloudflare Technology is the exclusive property of Cloudflare or its suppliers. Customer hereby assigns in whole to Cloudflare, without the need for remuneration, any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer related to the Cloudflare Technology (collectively, "**Feedback**"). Cloudflare recognizes that Feedback is provided "AS IS" and shall be used solely at its discretion.

3. TRADEMARKS USAGE RESTRICTIONS

All indicia, trademarks, service marks, trade names, logos, symbols, business names and/or brand names and associated goodwill (collectively "**Marks**") appearing on, or incorporated into, the Customer Content are and shall remain, as between Cloudflare and Customer, the exclusive property of Customer or its suppliers (except to the extent that such Marks are Cloudflare Marks). All Marks appearing on or incorporated in the Cloudflare Technology are and shall remain, as between Cloudflare and Customer, the exclusive property of Cloudflare or its suppliers (except to the extent that such Marks are Customer Marks). Other than as provided in the Agreement, neither Party grants any rights in or to its Marks to the other Party, and neither Party may remove, destroy or alter

the other Party's Marks used in connection with the Service. Each Party agrees that it shall not challenge, or assist others to challenge, the rights of the other Party (or its suppliers or licensors) in such Party's Marks, the registration of such Marks, or attempt to register any Marks confusingly similar to such Marks. Other than as set forth in the Agreement, all use by a Party of the other Party's Marks shall require the other Party's prior written approval and shall be subject to the other Party's logo and trademark usage guidelines.

4. FEES AND PAYMENT

4.1 Fees. In consideration of Cloudflare's provision of the Service, during the Term, Customer shall pay the monthly fees set forth in the Order Form, and the Additional Monthly Fees set forth in any Insertion Order, if applicable (collectively, the "**Monthly Fees**"). The Monthly Fees shall be payable from the Service Date. All payment obligations are non-cancellable, and other than as provided in the Agreement, all amounts paid are non-refundable. Cloudflare reserves the right to modify the Monthly Fees in its reasonable discretion at any time after one (1) year from the Effective Date, upon at least two (2) months prior notice to Customer.

5. SUPPORT, DATA, AND OPERATIONAL METRICS

5.1 Support. During the Term, Cloudflare shall provide technical support for the Service in accordance with Cloudflare's then-current standard support terms, a current version of which can be viewed at www.Cloudflare.com/__xcusp.

5.2 Customer Responsibilities. Customer shall be solely responsible for supporting and maintaining the availability of its website(s), the connectivity of its website(s) to the Internet, and all Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for Customer to operate and maintain its website(s) to meet Customer's business requirements and to utilize the Service.

5.3 Customer Data Responsibility. Cloudflare shall make Customer Data available to Customer in a timely way, but is not obligated to back-up any such data that may be stored on the Service. Customer acknowledges that Cloudflare is not required to retain Customer Log Files, and may delete such files at any time after seventy-two (72) hours. As such, Customer agrees that it is responsible for keeping and maintaining its own copy of all Customer Log Files, once delivered to Customer. Cloudflare highly recommends that Customer create back-up copies of any Customer Data, at Customer's sole expense. **UNDER NO CIRCUMSTANCE SHALL CLOUDFLARE BE LIABLE FOR ANY LOSS OF CUSTOMER DATA.**

5.4 Access to Customer Log Files On Termination. In the event that Customer's access to the Service is terminated (other than by reason of Customer's breach), at Customer's request, Cloudflare will use reasonable efforts to make available to Customer the Customer Log Files not already delivered to Customer. In the event of a breach of the Agreement by Customer, including, without limitation, Customer's non-payment, Cloudflare reserves the right to immediately withhold, remove and/or discard Customer Log Files. Other than as set forth in this **Section 5.4**, upon termination of the Agreement, Customer's right to access or receive Customer Log Files stored by Cloudflare shall immediately cease.

5.5 Use of Service Data by Cloudflare.

(a) Customer agrees and acknowledges that in the ordinary operation of the Service, the Service collects and transmits Service Data from Customer's network environment and/or the Internet to Cloudflare's servers and that Cloudflare uses such Service Data for all reasonable and necessary purposes required to provide the Service. Customer agrees and acknowledges that Cloudflare acts as its limited agent pursuant to the terms and conditions of the Agreement, for the purpose of providing Internet data and optimization services. Customer acknowledges its responsibility to ensure that its use of the Service is permitted under the laws of its jurisdiction and agrees to indemnify and hold Cloudflare harmless if its use of the Service is in violation of local law. Customer also grants to Cloudflare the perpetual, irrevocable right to use, reproduce, modify, and otherwise exploit the Operational Metrics, both during and after the Term, for the purpose of

improving and enhancing the Service, monitoring the performance of the Service, and performing internal research and development for the provisioning of Cloudflare products and services. This grant is essential to the provision of the Service. Cloudflare may retain Customer-specific Aggregations solely for internal research and development, audit, and anti-fraud purposes.

(b) Cloudflare shall not assign, transfer, sell, license, sublicense, or grant any rights to Customer Data to any other person or entity without Customer's explicit written permission. Cloudflare acknowledges that the Customer Data constitutes proprietary information and/or trade secrets of Customer or its suppliers and that the Customer Data is or may be protected by U.S. copyright, trade secret and similar laws and certain international treaty provisions. The Agreement does not transfer or convey to Cloudflare or any third party any right, title or interest in or 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 with the Customer. However, the foregoing restrictions shall not prevent Cloudflare from disclosing Customer Data pursuant to an order or requirement of a court, administrative agency, or other governmental body; *provided*, that Cloudflare provides reasonable notice to the Customer of such, to enable it to contest such order or requirement, unless such Cloudflare is prevented from doing so by force of law.

(c) Customer agrees and acknowledges that Customer may install or utilize certain third party apps ("**Apps**") with the Service. These 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. Cloudflare does not endorse and is not responsible or liable, directly or indirectly, for the services or features provided by any Apps that Customer may choose to install, or for any damage or loss alleged or caused in connection with the use of, or reliance upon, any Apps.

(d) Customer may install or utilize certain additional Cloudflare features or services including, but not limited to, Cloudflare's Railgun™, Keyless SSL™, or domain name registration services. In the event that Customer installs or utilizes such additional features or services, Customer agrees and acknowledges that it may be required to accept the licenses or agreements associated with such features or services, and to install additional software modules to utilize such features or services.

(e) In providing the Service, Cloudflare may update Customer's website(s) for Customer's benefit, based on Customer's settings, in order to, among other things:

- Intercept requests determined to be threats, and present them with a challenge page,
- Add cookies to Customer's domain to track visitors, such as those who have successfully passed the CAPTCHA on a challenge page,
- Add scripts to Customer's website(s) to, for example, improve page load performance, add services, enable Apps, or perform additional performance tracking,
- Add or remove response headers, based on edge-side code,
- Detect email addresses, and replace them with a script in order to keep them from being harvested, and/or
- Make other changes to increase the performance or security of Customer's website(s).

Cloudflare will inform Customer if any of the foregoing features would modify Customer's content and if applicable, provide Customer with a mechanism to disable such feature.

5.6 Service Levels. The Service shall be provisioned in accordance with the Service Level Agreement, which sets forth Customer's exclusive remedies for any service level commitment claims.

6. WARRANTIES AND DISCLAIMERS

6.1 Limited Warranty. During the Term, Cloudflare warrants solely to Customer that the Service will materially conform to Cloudflare's then-current 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 Monthly 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.

6.2 Additional Warranties and Acknowledgements. Cloudflare warrants solely to Customer that Cloudflare maintains robust security practices to guard against the introduction of viruses, Trojan horses, disabling code, malware or similar hostile items into the Cloudflare Technology or Service Data. Cloudflare acknowledges that it is compliant with Payment Card Industry Data Security Standard (PCI DSS) and is a PCI DSS Level 1 certified organization. As such Cloudflare is therefore responsible for the security cardholder data that it transmits on behalf of its customers while that data is within Cloudflare's network. Cloudflare does not store cardholder data transmitted through its network at any point. Customer represents and warrants that the information it provides to Cloudflare regarding its network usage (including but not limited to bandwidth usage, number of domains, geographic location of users, and SSL requirements) in order to obtain a price quote which forms the basis of the Agreement, is truthful, accurate, and complete, to the best of its knowledge.

6.3 Disclaimer. THE WARRANTIES SET FORTH IN THE AGREEMENT ARE THE ONLY WARRANTIES MADE BY CLOUDFLARE. SUBJECT TO THE FOREGOING WARRANTIES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, 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, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, OR INABILITY TO USE THE SERVICE (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY CLOUDFLARE. CLOUDFLARE CANNOT AND DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICE SHALL BE UNINTERRUPTED OR ERROR-FREE.

6.4 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.

7. LIMITATION OF LIABILITY

7.1 Types of Damages. TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL 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.

7.2 Amount of Damages. THE MAXIMUM LIABILITY OF CLOUDFLARE ARISING OUT OF OR IN ANY WAY CONNECTED TO THE AGREEMENT SHALL BE LIMITED TO AND SHALL NOT

EXCEED IN THE AGGREGATE, THE MONTHLY 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. IN NO EVENT SHALL CLOUDFLARE'S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THE AGREEMENT.

7.3 Basis of the Bargain. The Parties agree that the limitations of liability set forth in this **Section 7** shall survive and continue in full force and effect, despite any failure of consideration or of an exclusive remedy. The Parties acknowledge that the prices were set, and that the Agreement was entered into, in reliance upon these limitations of liability, and that all such limitations form an essential basis of the bargain between the Parties.

8. INFORMAL DISPUTE RESOLUTION

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

9. INDEMNIFICATION

9.1 By Cloudflare. Cloudflare will defend or settle, at Cloudflare's option and expense, any third party claim brought against Customer, its affiliates, licensors, suppliers, officers, directors, employees and agents to the extent that such claim is based on an allegation that Customer's use of the Service misappropriates any trade secret recognized under the Uniform Trade Secrets Act or infringes any other United States Intellectual Property Right, and Cloudflare will pay all damages and costs (including reasonable legal fees) finally awarded by a court of final appeal attributable to such a claim. 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 refund any Monthly 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 shall have no obligation under this **Section 9** 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.**

9.2 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 breach of the Agreement; (b) Customer's use of the Service; (c) Customer Content or Customer's website(s) (including without limitation any activities or aspects thereof or commerce conducted thereon); (d) Customer's non-compliance with local law; or (e) Customer's failure to pay any taxes, levies, or duties imposed by taxing authorities as required in **Section** Error! Reference source not found. (**Payment Terms**).

9.3 Procedure. The indemnifying Party's obligations as set forth above are expressly conditioned upon each of the following: (a) the indemnified Party shall promptly notify the indemnifying Party in writing of any threatened or actual claim or suit; *provided*, that failure to provide such prompt notice shall not release the indemnifying Party from its indemnity obligations except to the extent the indemnifying Party is materially

prejudiced thereby; (b) the indemnifying Party shall have sole control of the defense or settlement of any claim or suit; (c) the indemnified Party shall 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.

10. TERM AND TERMINATION

10.1 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 shall automatically renew for successive Renewal Terms thereafter. If a Party provides timely notice of its intent not to renew the Agreement, the Agreement shall expire at the end of the then-current Term. The mutual execution of any Insertion Order pursuant to the Agreement shall act to extend the then-current Term to end concurrently with the Insertion Order Term specified in such Insertion Order.

10.2 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.

10.3 Suspension by Cloudflare. Notwithstanding **Section 10.2 (Termination)**, Cloudflare may temporarily suspend the provision of the Service to Customer in exigent circumstances in order to maintain the integrity of the Cloudflare Technology and the Cloudflare network until a threat to such integrity has been resolved; *provided*, that Cloudflare shall work to resolve such threat as quickly as possible.

10.4 Effect of Termination. Upon expiration or termination of the Agreement: (a) Customer's right to use and access the Service shall be terminated (except to the limited extent set forth in **Section 5.4 (Access to Service Upon Termination)**); (b) all usernames and passwords associated with Customer's Authorized Users shall be deactivated; (c) Customer shall immediately discontinue use of the Service; (d) Customer shall immediately pay all outstanding Monthly 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 Confidential Information of such Party. **Sections 1 (Definitions), 2.5 (Ownership), 4 (Fees and Payments)** (with respect to payment obligations incurred during the Term), **5.4 (Access to Customer Log Files on Termination), 5.5 (Use of Service Data by Cloudflare), 7 (Limitation of Liability), 10.4 (Effect of Termination), and 11 (General)** of these Terms of Service will survive any such expiration or termination of the Agreement.

11. GENERAL

11.1 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 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.

11.2 Export. Customer agrees not to export, re-export, or transfer, directly or indirectly, any technical data acquired from Cloudflare, or any products utilizing such data, in violation of United States export laws or regulations.

11.3 Local Laws. Cloudflare and its suppliers make no representation that the Service is appropriate or available for use in locations other than the United States. Customer is solely responsible for compliance with

all laws applicable to its purchase and use of the Service, including without limitation, the export and import regulations of other countries.

11.4 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 7 (Limitation of Liability)** will remain in effect notwithstanding the unenforceability of any provision in **Section 6 (Warranties and Disclaimers)**.

11.5 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.

11.6 Remedies. The Parties acknowledge that any actual or threatened breach of **Sections 2 (License Grant and Restrictions)** or **11.8 (Confidential Information)** will 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.

11.7 No Assignment. Customer shall 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 assign the Agreement in its entirety, upon written notice to the other Party but 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 shall be binding upon the Parties and their respective successors and permitted assigns.

11.8 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 Feedback, is the Confidential Information of Cloudflare. Confidential Information shall remain the sole property of the Disclosing Party. Except for the specific rights granted by the Agreement, the Receiving Party shall not use any Confidential Information of the Disclosing Party for its own account. The Receiving Party shall 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 shall 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 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 11.8** shall 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.

11.9 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.

11.10 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.

11.11 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.

11.12 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. 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 shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. Unless agreed to in writing by Cloudflare, the terms of any document 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 shall be void and of no effect.

END OF TERMS