



SOFTWARE-AS-A-SERVICE TERMS

These Software-as-a-Service Terms (the "**SaaS Terms**") set forth the terms and conditions under which CloudShare Inc. ("**CloudShare**") grant to you (the "**Customer**") the right to use CloudShare's cloud-based products and services. By signing a subscription agreement (the "**Subscription Agreement**") and/or by using our products and services, you agree to be bound by The SaaS Terms, which are incorporated by reference into the Subscription Agreement.

1. THE SERVICE

- 1.1. Customer shall be granted access to CloudShare's website (the "**Service**") for non-production usage, including but not limited to, training, demonstration, or development of Customer's hosted software (the "**Permitted Purposes**").
- 1.2. The Service consists of CloudShare hosting on its website (the "**CloudShare Site**") Customer's software product(s) solely for the Permitted Purposes identified in the Subscription Agreement (the "**Hosted Software**").
Customer shall not resell the Service or use it for any purpose other than the Permitted Purposes listed in the Subscription Agreement. Customer is responsible for all content it or users to whom it has issued login credentials may upload, post, email, or otherwise transmit to the Service. The Customer controls the Hosted Software and is responsible for any liability arising from its use.
- 1.3. Customer may give its employees and third parties access to the Hosted Software for the Permitted Purposes listed in the Subscription Agreement using a CloudShare-provided tool to issue login credentials. Customer will be responsible for the use of the Hosted Software through a login credentials by any such entities, and shall immediately notify CloudShare if it believes that there has been unauthorized use of such user credentials.
- 1.4. Customer will ensure that its Hosted Software conforms to any specifications and configurations provided to Customer by CloudShare for the proper installation and functioning of the Hosted Software on the CloudShare Site. Customer will be responsible for uploading and installing the Hosted Software on the CloudShare Site, including any and all updates and upgrades to such Hosted Software, and for such purpose CloudShare may provide Customer with certain tools for use in installing and administering the Software. Such tools are licensed only for such purpose.
- 1.5. Use of Public Cloud: If the Subscription Agreement indicates that CloudShare is using a public Cloud provider and not its own equipment in a data center or Customer opts to have CloudShare enable the use of a public Cloud provider as shall be indicated in the Subscription Agreement, then:
 - 1.5.1. Customer will be responsible for complying with any user agreements of that Public Cloud provider.
 - 1.5.2. If the Subscription Agreement or Customer's enablement indicates that Customer will control the relationship with the Public Cloud provider, it is responsible for authorizing CloudShare's users and paying the Public Cloud provider's fees, and CloudShare will comply with any user agreements of that Public Cloud provider with respect to its provision of the Service.
 - 1.5.3. If the Subscription Agreement or Customer's enablement indicates that CloudShare will be responsible for acquiring the Public Cloud service, CloudShare will pass the Public Cloud provider's periodic fees to Customer without markup and Customer shall pay those fees to CloudShare.
 - 1.5.4. All of CloudShare's physical security obligations, backup and failover obligations, and infrastructure security testing obligations in the Security section of the Service Level, Support & Security Exhibit (found at <https://www.cloudshare.com/cloudshare-agreements>) will be performed by the Public Cloud



provider; where Customer controls the relationship with the Public Cloud provider, CloudShare is not responsible for the Public Cloud provider's failure to perform such obligations. While CloudShare expects the Public Cloud provider to maintain uptime consistent with CloudShare's obligations in the SLA, Support, and Security Exhibit, CloudShare is not responsible for a Public Cloud provider's failure to do so.

- 1.6. Any open source software used in connection with the Service or the Hosted Software, whether provided by Customer or CloudShare or a third party who has received user credentials through Customer, will be subject to all terms of the relevant open source license agreements or distribution models. Notwithstanding the foregoing, CloudShare does not and shall not use any open source software which uses a license that has the effect of making the Hosted Software open source.
- 1.7. CloudShare shall make commercially reasonable efforts to ensure that the CloudShare Site will be accessible and functional on a continuous basis, with the exception of scheduled maintenance periods in accordance with its Service Level terms that are updated from time to time and found in the SLA, Support & Security Exhibit at <https://www.cloudshare.com/cloudshare-agreements>. CloudShare's right to update the Service Level terms from time to time does not extend to increasing scheduled maintenance periods or decreasing the uptime commitment. Notwithstanding the foregoing, Customer acknowledges and agrees that the Service may be inaccessible or inoperable for various reasons, including without limitation due to equipment malfunctions, unscheduled maintenance or repairs, or causes that are beyond CloudShare's reasonable control, such as interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion, etc.

If the CloudShare Site becomes inaccessible or is not fully functional, other than due to scheduled maintenance, CloudShare shall have qualified personnel respond and endeavor to remedy such unavailability or failure of functionality as soon as reasonably possible.

- 1.8. **Service Availability Credits:** Service availability credits apply only to Customers whose software products are hosted on CloudShare's equipment; they are not available for Customers who are using a Public Cloud provider. Service availability will be calculated in accordance with the Service Level Terms. If during any calendar month, availability falls below 99.9% and Customer has made a timely claim in accordance with the Service Level Terms, CloudShare will provide Customer with a service credit in accordance with the applicable Service Credit % set forth below. The service credit shall be calculated against the Total fees paid by Customer for the Service. The "**Monthly Fee**" is determined by dividing the total fees for the Service by the number of months in the applicable Subscription Agreement, or any subsequent renewals and new service.

Actual Uptime Percentage:

≥ 98.5% but < 99.9%

≤ 98.4% but > 90.0%

< 90.0%

Service Credit %:

2% of Monthly Fees

10% of Monthly Fees

20% of Monthly Fees

CloudShare will credit an amount equal to the Service Credit % times the Monthly Fee to Customer within thirty (30) days of the month in which a claim is made. This credit is Customer's sole and exclusive financial remedy for failure to meet the uptime SLA; however, Customer retains the right to treat an outright failure to provide the Service as a breach and issue a cure notice for such breach.

- 1.9. In using the Service, Customer will adhere to all applicable laws regarding the transmission and distribution of information or material over the Internet and will otherwise adhere to generally accepted standards of Internet usage. Customer will reasonably limit the personally identifiable information processed by the Hosted Software, which will generally be limited to email addresses of credentialed users and their associated ISP information. Any data used for demonstration, training, development, or testing



shall be either anonymized or not associated with real persons. Unless otherwise stated in the Subscription Agreement, the maximum number of concurrent users shall be no greater than 150. Information about CloudShare's Data Processing can be found in its Data Processing Exhibit at <https://www.cloudshare.com/cloudshare-agreements>.

2. CONSIDERATION

- 2.1. In consideration for the Service Customer will pay CloudShare the fees indicated in the Subscription Agreement. Unless otherwise stated in the Subscription Agreement, the Service will be provided in the form of a 12-month subscription, based on a fixed number of hours per month, as specified in the Subscription Agreement (“**User-Hours**”). Unless otherwise stated in the Subscription Agreement, the Service is on a monthly use-or-lose basis, and any unused prepaid fees are not carried over to a subsequent month or a renewal period. Any multi-year discounts are not carried over to a subsequent or a renewal period. Unless the Subscription Agreement states different payment terms, payment is due upon receipt of invoice, which shall be sent via email on the date of the invoice.
- 2.2. Customer will be charged for any overuse of the Service in excess of the monthly hours (“**Overages**”) at the rates indicated in the Subscription Agreement.
- 2.3. If Customer incurs Overages, CloudShare will invoice Customer at the beginning of each month for the excess Services provided to Customer during the previous month. Payment will be due within net thirty (30) days from the date of invoice, which shall be sent via email on the date of the invoice.
- 2.4. All prices and fees indicated in the Subscription Agreement are net and exclusive of any taxes (including without limitation any Value Added Tax or other sales tax), customs, tariffs or other charges or fees, all of which will be added to such prices and fees and borne exclusively by Customer. However, CloudShare remains responsible for all taxes related to its income and assets.
- 2.5. All fees are stated in U.S. dollars and shall be paid in U.S. dollars by way of a bank transfer for the invoiced amount to the CloudShare bank account designated in such invoice.
- 2.6. At CloudShare's discretion, invoices that are overdue shall incur a late fee in the amount of one percent (1%) per month or any portion thereof. Late fees shall not apply to disputed invoices if the dispute is provided to CloudShare by the invoice due date and undisputed portions of the invoice are paid on time. Customer is responsible for collection fees and legal fees associated with collection of overdue invoices.
- 2.7. Licensing for all Microsoft software provided by CloudShare as part of its hosting environment is covered by SPLA or License Mobility Agreements and is included in the pricing set out in the Subscription Agreement.

3. TERM AND TERMINATION

- 3.1. These SaaS Terms apply for the duration of the Subscription Agreement. Any renewal will be subject to the then-current version of the CloudShare SaaS Terms.
- 3.2. Either Party may terminate the Subscription Agreement if the other Party breaches any material term or condition of the Subscription Agreement or the SaaS Terms, and such breach is not remedied within thirty (30) days after receiving written notice thereof.



- 3.3. Either Party shall have the right to immediately terminate the Subscription Agreement, upon written notice in the event the other Party files a petition in bankruptcy or is adjudicated as bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, discontinues its business or has a receiver appointed for its business.
- 3.4. For removal of doubt, termination for any reason under this Section 3 shall be without prejudice to Customer's obligation to pay CloudShare for any and all Services rendered prior to such termination. Pricing for the Service is based on a firm commitment for the entire term of the Subscription Agreement, with an expectation that the Service will not be rendered or costs incurred by CloudShare equally each month. Accordingly, in the event that the Subscription Agreement is terminated for any reason other than CloudShare's uncured material breach (Section 3.2), CloudShare's bankruptcy or insolvency (Section 3.3), or an extended Force Majeure impacting CloudShare's ability to deliver the Services (Section 11.6) Customer shall remain responsible for all subscription fees for the full term of the Subscription Agreement, but not for any unexecuted renewals. There is no termination for convenience for Subscription Agreements.
- 3.5. Upon any termination of the Subscription Agreement, Customer shall, as of the date of such termination, immediately cease accessing and otherwise utilizing the Service. Customer has access to its data within its Hosted Software at all times and must retrieve it prior to termination. Following termination, CloudShare shall delete the Hosted Software within thirty (30) days and any backup copies within six (6) months using its normal backup rotation protocol. CloudShare's obligations with regard to confidentiality and security for the Hosted Software shall continue until such time as it is securely deleted.
- 3.6. Following termination, the parties shall work in good faith to resolve any payment disputes within sixty (60) days including payment of any outstanding but unapplied credits due pursuant to Section 1.8.
- 3.7. The following sections shall survive termination of the Subscription Agreement and these Terms: 5, 8, 10, 11.

4. SUSPENSION

- 4.1. CloudShare, at its sole discretion, may suspend Customer's access to the Service in the event that: (i) Customer is more than thirty (30) days late in payment of undisputed portions of invoices; (ii) CloudShare has received a court order such as an injunction prohibiting it from performing the Service or any part thereof related to the Hosted Software; (iii) there has been a claim or threat of claim made against CloudShare that the Hosted Software infringes intellectual property rights and, after such claim or threat is presented to Customer, Customer has failed to provide the indemnification and defense required by Section 9; or (iv) Customer is using the Service for production use of the Hosted Software, whether for the benefit of Customer or a third party.
- 4.2. After the condition associated with the suspension has been cured, CloudShare shall resume providing the Service. Subscription periods are for calendar periods and any extension by CloudShare after suspension is at CloudShare's sole discretion.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. All materials, including but not limited to any computer software (in object code and source code form, but with the exception of Customer's Hosted Software), data or information employed by CloudShare pursuant to the Subscription Agreement and/or these SaaS Terms, and any know-how, methodologies, equipment, or processes used by CloudShare to provide the Service, including without limitation all



patent, copyright, trade secret and any other proprietary rights therein, are and shall remain the sole and exclusive property of CloudShare and, as applicable, its third-party licensors.

- 5.2. The Hosted Software is and shall remain the sole and exclusive property of Customer, and, as applicable, its third-party licensors. Customer hereby grants CloudShare a non-exclusive, worldwide, royalty-free license to install, store, host, display, and otherwise use the Hosted Software as necessary for performance of the Services.
- 5.3. Customer and its users may submit a notification pursuant to the Digital Millennium Copyright Act (DMCA) by providing CloudShare Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further details):
 - (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright's interest;
 - (b) a description of the copyrighted work that the user claim has been infringed, including the URL (i.e., web page address) of the location where the copyrighted work exists or a copy of the copyrighted work;
 - (c) identification of the URL or other specific location on CloudShare Site where the material that the user claim is infringing is located;
 - (d) user's address, telephone number, and email address;
 - (e) a statement by the user that user have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
 - (f) a statement by the user, made under penalty of perjury, that the above information in the notice is accurate and that the user is the copyright owner or authorized to act on the copyright owner's behalf.

It is possible to contact our Copyright Agent via email at privacy@cloudshare.com.

6. **TRADEMARKS AND PUBLICITY**

- 6.1. Use and display in conjunction with providing the Service. Customer hereby grants CloudShare a non-exclusive, worldwide, royalty-free license to use any name, logo, trade dress, trademark or service mark provided to CloudShare by Customer for the sole purpose of providing the Services to Customer. "CloudShare" and other CloudShare logos and product and service names are trademarks of CloudShare (the "**CloudShare Marks**"). Customer shall not display or use in any manner the CloudShare Marks without CloudShare's prior written permission.
- 6.2. Publicity. CloudShare may use Customer's name and logo in lists of customers which appear in sales presentations, marketing materials and on its website. Any other use of Customer's name and logo for publicity (such as, but not limited to press releases featuring Customer or white papers focused on Customer) shall require Customer's prior written consent. For the avoidance of doubt, this section does not prohibit CloudShare from referencing Customer's name verbally.

7. **WARRANTY**

- 7.1. Mutual Warranties. Each party warrants that it has the authority to enter into the Subscription Agreement and, in connection with its performance, shall comply with all laws applicable to it related to data privacy, international communications and the transmission of technical or personal data. Each party warrants that the intellectual property it is supplying in relation to the Subscription Agreement is, at the time of execution of the Subscription Agreement, not known to be infringing upon the intellectual property rights of third parties.
- 7.2. CloudShare's Warranty. CloudShare represents to Customer that the Service shall perform materially in accordance with the CloudShare Service Level section of the Service Level, Support & Security Exhibit at



<https://www.cloudshare.com/cloudshare-agreements>. For a breach of such warranty, Customer's exclusive remedy shall be as provided in the said Exhibit.

- 7.3. **WARRANTY DISCLAIMER.** EXCEPT FOR THE LIMITED WARRANTY UNDER THIS SECTION 7, CUSTOMER ACKNOWLEDGES THAT THE SERVICE IS BEING PROVIDED 'AS IS'. CLOUDSHARE EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (EVEN IF ON NOTICE OF SUCH PURPOSE), NON-INFRINGEMENT, SATISFACTORY QUALITY, THAT ANY DATA STORED WITH CLOUDSHARE WILL BE SECURE OR OTHERWISE NOT LOST OR DAMAGED, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

8. LIMITATIONS OF LIABILITY

- 8.1. CloudShare shall have no liability for any malfunctions, errors or non-performance of Customer's Hosted Software, and CloudShare shall have no obligation to monitor Customer's Hosted Software for accuracy, completeness or proper performance, all of which are the sole responsibility of Customer.
- 8.2. As part of the evaluation of Customer's Hosted Software, a potential purchaser may be permitted to upload to the CloudShare Site certain contents, for the purpose of evaluating the Hosted Software's performance with such contents. Customer acknowledges and agrees that CloudShare will have no liability for any such contents, including without limitation the use or inability to use such contents with the Hosted Software, the performance of the Hosted Software with such contents, or any loss or damage to such contents.
- 8.3. CloudShare strives to keep its CloudShare Site secure, but cannot guarantee that it will always be successful at doing so, given the nature of the Internet. Accordingly, CloudShare will have no liability to Customer for any unauthorized access, copying or use of the Customer's Hosted Software, or any resulting corruption, deletion, destruction or loss thereof.
- 8.4. CLOUDSHARE SHALL IN NO WAY BE LIABLE TO CUSTOMER, OR TO ANY POTENTIAL PURCHASER OR OTHER THIRD PARTY, FOR THE RESULTS OF THE USE AND EVALUATION OF THE HOSTED SOFTWARE, INCLUDING WITHOUT LIMITATION FOR ANY DECISION TO PURCHASE OR NOT PURCHASE CUSTOMER'S HOSTED SOFTWARE, OR FOR ANY SATISFACTION OR NON-SATISFACTION WITH ANY SUCH PURCHASE AND/OR THE USE OF ANY CUSTOMER PRODUCT.
- 8.5. EXCEPT AS LIMITED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, OR FOR ANY LOST PROFITS, LOSS OF USE, COST OF DATA RECONSTRUCTION, COST OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS OR SUBCONTRACTORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. CUSTOMER WILL NOT ASSERT THAT ITS PAYMENT OBLIGATIONS AS SET FORTH IN THE SUBSCRIPTION AGREEMENT ARE EXCLUDED AS LOST PROFITS.
- 8.6. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO (I) A PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 9, OR CUSTOMER'S PAYMENT OBLIGATIONS, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT



SHALL THE TOTAL AND AGGREGATE LIABILITY OF EITHER PARTY FOR ANY CLAIM UNDER ANY CAUSE OF ACTION IN CONNECTION WITH THIS SAAS TERMS AND THE SUBSCRIPTION AGREEMENT AND THE SERVICES TO BE PROVIDED HEREUNDER EXCEED THE FEES PAID OR PAYABLE TO CLOUDSHARE BY CUSTOMER UNDER THE SUBSCRIPTION AGREEMENT IN THE TWELVE MONTHS PRECEDING SUCH CLAIM, OR IN THE CASE OF A CLAIM ARISING DURING THE FIRST TWELVE MONTHS OF THE SUBSCRIPTION AGREEMENT, THE AMOUNT EQUAL TO THE FEES INDICATED IN THE SUBSCRIPTION AGREEMENT FOR THE FIRST TWELVE MONTHS OF THE SUBSCRIPTION AGREEMENT.

9. INDEMNIFICATION

- 9.1. Customer hereby agrees to indemnify and hold harmless CloudShare and its officers, directors, employees, affiliates and agents, from and against any and all losses, liabilities, damages, costs and expenses (including without limitation reasonable attorneys' fees, expert witness fees and court costs) incurred by CloudShare or its affiliates with respect to any claim, action, suit or proceeding brought by third parties arising out of or in connection with a claim that the Hosted Software, and/or the display, access to and/or use of the Hosted Software, infringe, misappropriate, or otherwise violate any intellectual property, proprietary, privacy or other right of any third party.

Customer's obligation will be reduced to the extent that any claim of infringement is based upon or arises out of (i) the use or combination of the Hosted Software with any software or hardware, products, data or other materials provided by CloudShare and where such claim would not have occurred absent such use or combination; (ii) the modification or alteration of the Hosted Software by CloudShare or a third party operating under its instructions; (iii) the use of the Hosted Software by CloudShare in a manner other than that allowed by the Subscription Agreement. The provisions of this Section 9 state the sole and exclusive obligations of Customer and its licensors and suppliers for any claim of intellectual property infringement arising out of or relating to the Hosted Software.

- 9.2. CloudShare hereby agrees to indemnify and hold harmless Customer and its officers, directors, employees, affiliates and agents, from and against any and all losses, liabilities, damages, costs and expenses (including without limitation reasonable attorneys' fees, expert witness fees and court costs) incurred by Customer or its affiliates with respect to any third party claim, action, suit or proceeding arising out of or in connection with a claim that the CloudShare Site or Service, and/or the display, access to and/or use of the CloudShare Site or Service, infringe, misappropriate, or otherwise violate any intellectual property of any third party.

CloudShare's obligation will be reduced to the extent any claim of infringement that is based upon or arises out of (i) the use or combination of the Service with any software or hardware, products, data or other materials not provided by CloudShare and where such claim would not have occurred absent such use or combination; (ii) the modification or alteration of the Service by anyone other than CloudShare; (iii) the use of the Service in excess of the rights granted in or in breach of the Subscription Agreement and these SaaS Terms. The provisions of this Section 9 state the sole and exclusive obligations of CloudShare and its licensors and suppliers for any claim of intellectual property infringement arising out of or relating to the Service.

- 9.3. If an infringement is alleged to be the result of the combination of the Hosted Software and the Service, each party shall be responsible for the part of the infringement attributable to their provided intellectual property.
- 9.4. The indemnified party shall promptly notify the indemnifying party of any such claim referred to in Section 9.1 and/or 9.2 above, as applicable, and shall permit indemnifying party to control the defense of



such claim, subject to allowing the indemnified party to participate in such defense at indemnified party's expense. Indemnified party shall not, except with the consent of indemnifying party, agree to the entry of any judgment or enter into any settlement which does not include a complete and unconditional release for indemnified party from all liability in respect to such claim, suit or proceeding.

10. **CONFIDENTIALITY:**

- 10.1. **"Confidential Information"** means (a) any software utilized by CloudShare in the provision of the Service and its respective source code; (b) the Hosted Software and data stored by it; and (c) each party's business or technical information, including but not limited to the documentation, training materials, any information relating to software plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how that is designated by the disclosing party as "confidential" or "proprietary" or the receiving party knows or should reasonably know is confidential or proprietary; and (d) the terms, conditions, and pricing of the Subscription Agreement (but not its existence or parties).
- 10.2. **Protection.** Each party agrees to protect the Confidential Information of the other party in the same manner that it protects its own Confidential Information of like kind, but in no event using less than a reasonable standard of care.
- 10.3. **Compelled Disclosure.** A disclosure by one party of Confidential Information of the other party to the extent required by applicable law, shall not be considered a breach of the Subscription Agreement, provided the party so compelled promptly provides the other party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.
- 10.4. **Special Protection for Hosted Software and Associated Data.** CloudShare shall use the security measures generally described in the Service Level Terms for the Hosted Software and associated data.
- 10.5. **Special Protection for Data Submitted to CloudShare via Website.** Registration data and certain other information is subject to CloudShare's Privacy Policy found at <https://www.cloudshare.com/privacy-policy>.
- 10.6. **Remedies.** If a party discloses or uses (or threatens to disclose or use) any Confidential Information of the other party in breach of confidentiality protections hereunder, the other party shall have the right, in addition to any other remedies available, to injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies are inadequate.
- 10.7. **Destruction of Confidential Information.** Excluding the Hosted Software and associated data, which are addressed in Section 3, following termination of the Subscription Agreement, the parties shall destroy or return each other's Confidential Information except where retention of it is required under generally accepted business practices, including but not limited to accounting practices and retaining materials related to a business engagement for the full statute of limitations period. Confidential Information shall be subject to the requirements of the Subscription Agreement until such time as it is returned or destroyed.
- 10.8. **Exclusions.** Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the other party; (ii) was known to a party prior to its disclosure by the other party without breach of any obligation owed to the other party; (iii) was independently developed by a party without breach of any obligation owed to the other party; or (iv)



is received from a third party without breach of any obligation owed to the other party. Customer Data shall not be subject to the exclusions set forth in this Section.

11. MISCELLANEOUS

- 11.1. The SaaS Terms shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to its conflict of law principles. The Parties agree that the United Nations Convention on the International Sales Goods shall not apply to the SaaS Terms. All actions, suits or proceedings under or related to the SaaS Terms shall be subject to the exclusive jurisdiction of the competent courts of California, to the exclusion of all other jurisdictions.
- 11.2. All notices permitted or required hereunder shall be in writing and shall be sent by facsimile, or personal delivery at the facsimile number, or property address identified in the Subscription Agreement, or other property address as either Party may specify. If no address is provided, notice may be sent to the registered agents for a Party. Any such notice will be deemed as being received on the date of confirmed transmission of facsimile or personal delivery unless given outside normal business hours in which case such notice shall be deemed as being given on the next business day.
- 11.3. The Subscription Agreement may not be assigned without the prior written consent of the other Party, except that CloudShare may assign the Subscription Agreement to any party which is controlled by or under the control of CloudShare, or in connection with a merger, acquisition, sale of all or substantially all of CloudShare assets or other such corporate reorganization.
- 11.4. The terms and provisions herein contained in the Subscription Agreement, these SaaS terms, and any documents referenced therein constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous communications, oral or written, between the Parties hereto.
- 11.5. If any provision of the SaaS Terms or the Subscription Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that the SaaS Terms or the Subscription Agreement shall otherwise remain in full force and effect and enforceable.
- 11.6. Neither Party shall be liable for any delay in performing its obligations (except for payment obligations) hereunder if such delay is caused by factors beyond its control, including without limitation acts of God, war, riot, fire, explosion, flood, earthquake or technical or technological failure beyond such Party's reasonable control ("**Force Majeure**"). Subject to the party so delaying promptly notifying the other Party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such Party's obligations shall be suspended during the period of Force Majeure and such Party shall be granted an extension of time for performance equal to the period of the delay. Either Party may, if such delay continues for more than sixty (60) days, terminate the Subscription Agreement by giving notice in writing to the other in which event neither Party shall be liable to the other by reason of such termination.
- 11.7. The Subscription Agreement may only be amended by a written document executed by both Parties.
- 11.8. The executable documents associated with the Subscription Agreement may be executed in counterparts and each taken together shall constitute one and the same document. Secure electronic signature may also be used.

