



# Reseller Agreement

Agreement Number:

These terms and conditions are an agreement (the “Agreement”) between Cloudability Inc. (“Cloudability”, “Us”, “We”, “Our”) and you (“Reseller”, “You”, “Your”, “Yourself”) that contains the terms and conditions that govern Your participation in Our Reseller program (the “Program”). The Agreement takes effect on the date of last signature as contained in the signature blocks below (the “Effective Date”).

## 1. Appointment

For the duration of this Agreement, Cloudability hereby appoints Reseller as a non-exclusive reseller with the right to re-sell Cloudability services (“Cloudability Services”) to certain prospective and current customers of Cloudability in the manner described in this Agreement, and Reseller hereby accepts such appointment. Reseller may not otherwise sell or re-sell Cloudability Services.

## 2. Program

- 2.1. **Permission to Contact.** You agree to allow Us to use Your professional contact information so that We may periodically contact You about the Program or related events, training opportunities, or other information We determine relevant to Your participation in the Program.
- 2.2. **Certifications.** We require Reseller personnel to obtain and maintain certain Cloudability sales and technical training in accordance with certification programs We may from time to time implement. Reseller agrees that it will bear the costs and expenses (including any fees charged by Us) of obtaining and maintaining any such certifications.

## 3. Promotion and Marketing

- 3.1. **Use of Your Logo and Trademarks.** You agree that We may display Your company name, website, and logo or trademarks (“Marks”) on Our website in connection with the marketing and promotion of the Program. Additionally, you may choose to provide Us with images, text, PDFs, presentations or other materials (“Materials”) for Our use in promoting You.
- 3.2. **Ownership of Marks and Materials.** You will at all times retain title and ownership over Your Marks and Materials, however You agree to grant Us and Our affiliates a non-exclusive, worldwide, royalty-free license to use Your Marks and Materials in connection with the marketing, advertising, and promotion of the Cloudability Services and Program.
- 3.3. **Promoting Your Participation in the Program.** You may not issue any press release or other public statement with respect to Your participation in the Program without Our prior written consent.
- 3.4. **Reseller Program Logo Usage.** We may make available to You a graphic image (a “Reseller Program Logo”) that signifies Your participation in that Program. We grant to You a limited, revocable, non-exclusive, non-sub-licensable, non-transferable, worldwide,

royalty-free license to use and display the latest version of the Reseller Program Logo for the sole purpose of performing Your obligations under this Agreement.

- 3.5. **Feedback.** You may voluntarily provide feedback, comments and suggestions regarding improvements to the Program or Cloudability Services (“Feedback”). Cloudability will be free to use, disclose, reproduce, license or otherwise distribute and exploit such Feedback as it sees fit, on a royalty-free irrevocable basis, entirely without obligation or restriction of any kind.

#### **4. Program Content and Proprietary Rights**

- 4.1. **Content.** Cloudability may provide, text, images, videos, websites, applications, and other content (the “Program Content”) to You when participating in the Program. We grant You a limited, revocable, non-exclusive, non-sub-licensable, non-transferable, worldwide, royalty-free license to use the Program Content for the sole purpose of performing Your obligations under this Agreement.
- 4.2. **Restrictions of Content Use.** You agree to only use the Program Content in ways expressly permitted under this Agreement. You may not: (i) reproduce, sell, sub-license, or distribute, or disclose any non-public Program Content to any third party, (ii) modify, alter or create derivative works of any Program Content, (iii) remove any attribution from any Program Content, (iv) use Program Content in any way that is unlawful or violates and rights of a third party, and (v) enter any non-public Program Content into any public website, forum, or social network.
- 4.3. **Proprietary Rights and Trademarks.** Cloudability owns all worldwide right, title and interest in and to the Program Content and Cloudability Services, including the underlying software platform (“Cloudability IP”) including all worldwide intellectual property rights therein. This Agreement does not convey any proprietary interest in or to any Cloudability IP or rights of entitlement to the use thereof except as expressly set forth herein. The Cloudability Services are protected by copyright, trademark, and other laws of the United States and foreign countries. You may not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Cloudability Services.

#### **5. Quotations, Fees and Payment**

- 5.1. **Quotations, Usage Limits and Fees.** Reseller shall solicit a quotation from Cloudability for Cloudability Services (“Cloudability Quotation”), at a price that represents the then-current list price for the Cloudability Services, less the discount set forth in Exhibit A, or such other amount Cloudability may otherwise extend in writing to Reseller (“Fees”). Subscriptions to the Cloudability Services include a limit to the aggregate amount the End User has elected to be monitored by the Cloudability Services, and are based on gross charges from cloud providers (“Monitored Costs”). Fees include a flat, base subscription fee for use of the Cloudability Services up to a specific amount of annual Monitored Costs (“Plan Limit”), and billed and payable annually in advance of the subscription term. Fees also include a charge for additional usage above and beyond the Plan Limit that are calculated as a percentage of the total Monitored Costs, and billed and payable each month as they occur. Reseller has the discretion to determine the prices that it charges to its customers; provided, however, that Reseller may not publically list its pricing for the Cloudability Services, including posting such pricing on Reseller’s website. Reseller will provide its customer with a quotation for the Cloudability Services based on the Cloudability Quotation at a price determined by Reseller (“Reseller Quotation”). Once

Reseller has accepted Cloudability's Quotation, the end user customer identified in the Cloudability Quotation shall be deemed a Cloudability end user ("End User").

- 5.2. **Plan Limit Upgrades.** You may instruct Us to increase the Plan Limit for End Users by executing a replacement Cloudability Quotation, which will outline any resulting changes in pricing, fees and subscription term. Changes to the subscription term and Plan Limit will become effective during the next billing period following Your execution of the Cloudability Quotation.
- 5.3. **Payments.** Cloudability will invoice Reseller for the Fees following Reseller's acceptance of the Cloudability Quotation. All payment obligations are non-cancelable and all amounts paid are nonrefundable. Payment terms are net thirty (30) days from the date the invoice is presented to You, without offsets or deductions of any kind and payment is due in U.S. Dollars unless quoted otherwise. Late payments will bear interest at 1.5% per month or the maximum rate permitted by law, whichever is less calculated from the date such amount was due until the date that payment is received by Cloudability.
- 5.4. **Taxes.** Cloudability's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and You are responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on Cloudability's income. You are responsible for paying all taxes associated with Your purchase of any Services. If Cloudability has the legal obligation to pay or collect taxes for which You are responsible, the appropriate amount shall be invoiced to and paid by You unless You provide Cloudability with a valid tax exemption certificate authorized by the appropriate taxing authority.
- 5.5. **Billing Disputes.** If You believe Your invoice is incorrect, You must contact Cloudability in writing within thirty (30) days of the date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.
- 5.6. **Functionality.** Reseller agrees that its purchases are not contingent on the delivery of any future release of new features, functionality, nor are Your purchases dependent on any oral, written or public comments made by Cloudability regarding such features, functionality or services.

## 6. Terms and Conditions

All use of the Cloudability Services by End Users shall be governed by either (i) the terms and conditions located at [https://app.cloudability.com/terms\\_and\\_conditions](https://app.cloudability.com/terms_and_conditions), or (ii) a separate negotiated agreement between Cloudability and the End User for use of Cloudability Services (in either case, the "End User Agreement"). You may not purport to impose any other terms pertaining to the End User's use of the Cloudability Services. Reseller agrees to include the following in Reseller Quotations: "Use of Cloudability Services shall be governed by Cloudability's Master Service Agreement located at [https://app.cloudability.com/terms\\_and\\_conditions](https://app.cloudability.com/terms_and_conditions)". You agree to immediately notify Us of any known or suspected breach of the End User Agreement or other unauthorized use of the Cloudability Services, and to assist Us in the enforcement of the End User Agreement.

## 7. Representations and Warranties

- 7.1. **Representations.** Each party to this Agreement represents and warrants to the other party that: (i) such party has the full corporate right, power and authority to enter into this Agreement and to perform that acts required of it hereunder; and (ii) the execution of this Agreement by such party, and the performance by such party of its obligations and

duties hereunder, do not and will not violate any agreement to which such party is a party or by which such party is otherwise bound.

7.2. **Warranties.** The Cloudability Services are provided “AS IS” and on an “AS AVAILABLE” basis. We do not warrant that the Cloudability Services will be provided without interruption or be completely error free.

7.3. **Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, CLOUDABILITY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

## 8. Confidentiality

8.1. **Definition of Confidential Information.** Each party understands that it will have access to or be directly or indirectly exposed to certain non-public information relating to the disclosing party’s business that is marked as “confidential” at the time of disclosure or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure in connection with the use and/or performance of the Services (“Confidential Information”). Confidential Information does not include any information that the receiving party can show: (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the disclosing party, (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the disclosing party.

8.2. **Protection of Confidential Information.** The receiving party agrees: (i) to use reasonable measures and reasonable efforts to provide protection for each other’s Confidential Information, including measures at least as strict as those each party uses to protect its own Confidential Information, and (ii) not to use (except as expressly permitted herein) or disclose to any third person any such Confidential Information.

8.3. **Compelled Disclosure.** Notwithstanding any other provision, the receiving party may disclose Confidential Information it receives if compelled to do so by law, regulatory requirement or legal process. Unless prohibited by law or legal process, the receiving party will use its commercially reasonable efforts to give the disclosing party prior notice of the request for such disclosure and a reasonable period of time to respond to such request.

## 9. Indemnification

9.1. **Indemnification by Us.** We will defend any action brought by End Users or other third parties against You based on claims, losses, demands, causes of action and judgments (including attorneys’ fees and court costs) (collectively “Claim(s)”) that (a) the Cloudability Services, in the form delivered by Us, infringes or misappropriates any copyright, trademark, moral right or trade secret, (b) the Cloudability Service, in the form delivered by Us, causes a physical injury to any End User, or (c) that We have breached a warranty to the End User. We will pay any settlement or final award against Reseller based on such Claims unless it is found that the infringement or injury arises from Reseller’s marketing and sales activities or any breach of this Agreement by Reseller. In such a case, Reseller shall pay any settlement or final award against it and shall reimburse

Us for all defense expenses. This section states Your sole and exclusive remedy, and Our sole and exclusive liability, for any intellectual property infringement.

**9.2. Indemnification by You.** You will defend any action brought by End Users or other third parties based upon Claims arising from (a) Reseller's sales and marketing activities, (b) any unauthorized promises (including any representations or warranties) regarding the Cloudability Services, or (c) Your breach of this Agreement. You will pay any settlement or final award against Us based on the Claims, and will hold Us harmless against all related damages, losses, fines, penalties, fees, costs, and expenses (including reasonable attorney fees).

**9.3. Procedure.** The indemnification and duties to defend described in this section are subject to the indemnified party: (i) promptly providing the indemnifying party with written notice of any claim, (ii) giving the indemnifying party sole control over the defense and settlement of the claim (provided that any settlement fully releases the indemnified party from all liability), and (iii) providing the indemnifying party with all reasonably necessary assistance to prepare and execute a defense, at its expense.

## 10. Limitation of Liability

EXCEPT FOR ANY INDEMNITY OBLIGATIONS OR BREACH OF CONFIDENTIALITY OBLIGATIONS ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, LIQUIDATED OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, REVENUE OR BUSINESS, ARISING IN WHOLE OR IN PART FROM YOUR ACCESS TO OR USE OF THE SERVICES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR BREACH OF CONFIDENTIALITY AND INDEMNITY OBLIGATIONS ABOVE, EACH PARTY'S LIABILITY FOR ANY CAUSE WHATEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE SUM OF ALL PAYMENTS YOU HAVE MADE TO CLOUDABILITY IN THE LAST TWELVE (12) MONTHS OR ONE HUNDRED DOLLARS (\$100.00), WHICHEVER IS GREATER.

## 11. Compliance

**11.1. Compliance with Laws.** You agree not to engage in any deceptive, misleading, illegal, or unethical practices that may be detrimental to Cloudability or its products and services, and agree to comply with all applicable federal, state and local laws and regulations while operating under this Agreement. You further agree to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

**11.2. Anti-Bribery Compliance.** You agree that You will not pay, offer, or promise to pay (or authorize a payment, offer or promise to pay) money or anything of value, directly or indirectly, to government officials (including, without limitation, officials or employees of government-owned commercial enterprises or international organizations), party officials, or candidates for government or party office, to influence any act or decision by those persons that would constitute a violation of law or duty in order to obtain, retain, or direct business (i.e., to induce the payee to improperly influence any government act or to secure an improper advantage). Without limiting the foregoing, You agree that it will not make or offer to make, directly or indirectly, any payment or gift to such persons

when such payment or gift would constitute a bribe, kickback, or other illegal payment under U.S. or applicable foreign laws. Reseller understands that sale of Cloudability Services are subject to the United States Foreign Corrupt Practices Act ("FCPA"), as well as any other applicable anti-corruption laws which may have effect. You understand that We are committed to complying with the FCPA and all applicable anti-corruption laws, and You declare Your commitment to and compliance with those laws as well. Reseller will cooperate with Us to provide such information and further declarations as may be requested from time to time in connection with those laws. You will hold harmless, defend, and indemnify Us from and against any damages or liabilities, including governmental fines, related to Your failure (or the failure of anyone acting for or at the direction of You) to comply with the anti-corruption laws of any country.

## **12. Audit**

We or Our designee may, at any time during the term of this Agreement and with seven (7) days prior written notice, request and gain access to Your premises (subject to Your security procedures) for the limited purpose of conducting an audit to determine and verify that You are in compliance with this Agreement. You shall promptly grant such access and cooperate in the audit. The audit shall be restricted in scope, manner and duration to that reasonably necessary to achieve its purpose and not disrupt Your operations. You shall be liable for promptly remedying any underpayments of Fees revealed during the audit. Should the underpayment exceed five percent (5%), You will reimburse Us for the costs and expenses of the audit.

## **13. Term and Termination**

**13.1.Term.** The term of this Agreement will commence on the Effective Date and remain in effect until terminated by either party as outlined in this Agreement. Either party may terminate this Agreement for any or no reason by providing the other party with thirty (30) days written notice.

**13.2.Effect of Termination.** If this Agreement is terminated for any reason: (i) all licenses granted to You by Us will terminate, (ii) You agree to immediately cease use of any Reseller Program Logos or any Program Content and, (iii) cease to identify Yourself as a participant in any Program or refer to Yourself as a "Reseller" of Cloudability.

## **14. General**

**14.1.Jurisdiction.** This Agreement, and Your relationship with Us, shall be governed by the laws of the State of Oregon without regard to its conflict or choice of law provisions. Any dispute with Cloudability, or its officers, directors, employees, agents or affiliates, arising under or in relation to this Agreement shall be resolved exclusively through the state and federal courts within the county of Multnomah County, Oregon.

**14.2.Entire Agreement.** This Agreement constitutes the complete and exclusive understanding and agreement between Us regarding its subject matter and supersedes all prior or contemporaneous Agreements or understandings, written or oral, relating to its subject matter.

**14.3.Assignment.** You may not assign this Agreement, in whole or in part, without Our prior written consent, except in connection with a merger, acquisition, or sale of all or substantially all of Your assets, provided that You provide Us with prior notice.

**14.4.Relationship of the Parties.** Nothing in this Agreement is intended imply or create a partnership, association, joint venture, employee-employer, or franchiser-franchisee relationship. Notwithstanding any other provision of this Agreement, the parties do not intend this Agreement to give You any authority to bind Us to any type of business transaction. You are not an agent of Cloudability. Other than as may be authorized in writing by Us, You will not use any Cloudability IP, and will not represent itself as Our agent (or any analogous relationship). The parties are independent contractors of one another. You shall not without Our prior written consent make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of the Cloudability Services that are inconsistent with those contained in the applicable documentation, or otherwise incur any liability on Our behalf. You will direct all Customer requests for support on Cloudability Services to Us.

**14.5.Severability.** If any portion of this Agreement is found to be void or unenforceable, the remaining provisions will remain in full force and effect.

**14.6.Order of Precedence.** To the extent that conflicts occur between terms contained in this Agreement and those defined in a Cloudability Quotation, the order of precedence shall be: Cloudability Quotation, then this Agreement.

**14.7.Notices.** Notice shall be deemed made upon: a) personal delivery, b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested) or by certified or registered mail, return receipt requested, postage prepaid, or c) the first business day after sending by email. All notices should be addressed to:

Cloudability Inc.  
Attn: Legal Department  
334 NW 11<sup>th</sup> Avenue  
Portland, OR 97209

In witness whereof, the authorized representatives of the parties have executed this Agreement as of the date set forth below.

**CLOUDABILITY INC.**

**RESELLER**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date





## EXHIBIT A

### Reseller Discount Schedule

	Discount
Cloudability Services	%