

Cloudamize Distribution Partner Agreement

This Distribution Partner Agreement (the “Agreement”) is between Cloudamize, Inc. (an Atos business) and its Affiliates (“Cloudamize”) and {Insert} and its Affiliates (“Distributor”) (each a “Party” together the “Parties”). This Agreement governs Distributor’s access to and distribution/resale of the Cloudamize Software (as defined below). This Agreement is effective between Distributor and Cloudamize as of the date of the second signature below.

1. DEFINITIONS

- 1.1. “Affiliate” means with respect to either party, an entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Party, where “control” means: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise, and/or (ii) ownership of at least fifty percent (50%) of the voting stock, shares or interests of any such entity.
- 1.2. “Cloudamize Marks” means any service marks, trademarks, trade names, and logos owned by Cloudamize.
- 1.3. “Cloudamize Software” means the Cloudamize cloud technology platform, any and all Cloudamize Intellectual Property or other materials related thereto, but specifically excluding: (a) the underlying physical infrastructure which the Cloudamize Software accesses and relies upon, (b) the infrastructure made available by a third party cloud infrastructure provider, and (c) Customer Data which utilizes or is available through the Cloudamize Software.
- 1.4. “Confidential Information” includes proprietary and third-party information that is marked as confidential or, from its nature, content or the circumstances in which it is disclosed, might reasonably be considered to be confidential. It does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient or that was lawfully given to the recipient by a third-party.
- 1.5. “Customer Data” means any and all data, materials, content or information entered into, transmitted through, processed, or stored on the Cloudamize Software by a Distributor Customer or End User.
- 1.6. “End User” means the ultimate user of the Cloudamize Software who purchases or otherwise obtains access to the Cloudamize Software through Distributor or a Distributor Customer.
- 1.7. “Intellectual Property” means any and all code, patents, rights to inventions, utility models, copyrights, trademarks, database rights, moral rights, rights in either Party’s Confidential Information (including know-how and trade

- secrets) and any other intellectual property rights in any part of the world.
- 1.8. “Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
 - 1.9. “Marketing Materials” means any promotional, advertising, instructional, or marketing materials relating to the Cloudamize Software, made available by Cloudamize to Distributor.
 - 1.10. “Prospective Customer” means a contact of Distributor who is a potential purchaser of the Cloudamize Software through Distributor.
 - 1.11. “Distributor Customer” means a customer of Distributor who purchases access to the Cloudamize Software through Distributor.
 - 1.12. “Distributor Products” means the products, services, or technology made available by Distributor to its Distributor Customers and End Users.

2. LICENSE

- 2.1. Cloudamize grants to Distributor with respect to the Cloudamize Software:
 - 2.1.1. A limited, non-exclusive, non-sublicensable, and non-transferable license during the Term to resell the Cloudamize Software on an “as-is” basis to Distributor Customers for use by such Distributor Customers and their End Users;
 - 2.1.2. The right to use, copy, and distribute the Marketing Materials to advertise, promote, and otherwise market the Cloudamize Software to Prospective Customers; and
 - 2.1.3. Use the Cloudamize Marks in any Marketing Materials and in accordance with any brand or marketing instructions, specifications, or guidance from Cloudamize solely to promote the Cloudamize Software pursuant to this Agreement, provided that no right, title, or interest in the Cloudamize Marks shall vest in Distributor.

3. CLOUDAMIZE RESPONSIBILITIES

- 3.1. Support. Cloudamize will provide support to Distributor Customers, and Distributor may offer such support as part of its offering of the Cloudamize Software, pursuant to the Support & Enablement specifications detailed at <https://www.cloudreach.com/en/legal/cloudreach-service-definitions-and-specifications//>.
- 3.2. Customer Data. Cloudamize will maintain appropriate physical and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Cloudamize will not use or disclose any Customer Data, other than as necessary in the provision of the Cloudamize Software pursuant to this Agreement.
- 3.3. Personnel. Cloudamize will be responsible for the performance of its personnel (including employees and contractors) and their compliance with Cloudamize’s obligations under this Agreement, except as otherwise specified herein.
- 3.4. Modification of the Cloudamize Software. Cloudamize reserves the right to modify the Cloudamize Software on 90 days’ notice to Distributor, provided

that: (i) Cloudamize shall not modify the Cloudamize Software for any active agreements, and (ii) if such modifications materially disadvantage Distributor's resale of the Cloudamize Software pursuant to this Agreement, Distributor may terminate this Agreement immediately upon written notice to Cloudamize.

4. DISTRIBUTOR OBLIGATIONS

- 4.1. Promotion. Distributor agrees to use reasonable commercial efforts to market and distribute the Cloudamize Software for resale.
- 4.2. Distributor Responsibilities. Distributor will: (i) use all reasonable efforts to prevent unauthorized access to or use of the Cloudamize Software and notify Cloudamize as soon as possible if Distributor becomes aware of any such unauthorized access or use, (ii) comply with all applicable laws and regulations in reselling the Cloudamize Software, and (iii) be responsible for Distributor's use or sale of the Cloudamize Software and any agreements between Distributor and Distributor Customers.
- 4.3. Access Restrictions. Distributor may not: (i) attempt to gain or assist another party's attempt to gain unauthorized access to the Cloudamize Software, (ii) copy, modify, or create derivative works of the Cloudamize Software or any Cloudamize Intellectual Property, or (iii) develop, produce, market, distribute, license, sell or otherwise make available any products or services that are competitive to the Cloudamize Software. Any violation of these restrictions shall be considered a material breach of this Agreement.
- 4.4. Non-Solicitation. Distributor will not during the Term of this Agreement and for one year thereafter, directly or indirectly, encourage or cause any current Cloudamize customers to stop, alter or reduce such customer's use of the Cloudamize Software, or any other product, service or technology supplied by Cloudamize.
- 4.5. Distributor Customer Agreements. Distributor shall enter into direct contracts and purchasing documents with its Distributor Customers. Distributor will ensure that all Distributor Customers and their End Users are aware of and accept the terms and conditions contained in the Cloudamize Software Subscription Agreement available at <https://www.cloudamize.com/license-agreement>, or another link as provided by Cloudamize from time to time, and promptly report to Cloudamize any actual or suspected non-compliance with the Cloudamize Software Subscription Agreement. Any terms and conditions between Distributor and Distributor Customer that are less favorable to Cloudamize than those contained in the Cloudamize Software Subscription Agreement are at Distributor's sole risk and liability.

5. BILLING AND PAYMENT

- 5.1. **Effective Date.** The effective date of this agreement shall be the date of the last signature below (the "Agreement Effective Date").

- 5.2. **Invoice Trigger.** Cloudamize shall invoice Partner for 100% of the Total Cost on the Agreement Effective Date.
- 5.3. **Commitment Burndown.** The consumption/burndown of the Distributor's annual commitment shall be executed via the Distributor successfully closing a deal with the end-customer to leverage Cloudamize.
- 5.4. **Fees.** Distributor will pay all fees and costs specified in this agreement. Distributor must notify Cloudamize of any disputed charges within ten (10) business days from the receipt of any invoice, otherwise Distributor agrees to the fees set forth in that invoice, and waives the right to dispute such fees.
- 5.5. **Invoice Due Date.** Distributor will pay all invoices within thirty (30) days of the invoice date.
- 5.6. **Taxes and Withholding.** Distributor is solely responsible for any applicable VAT, sales, use or any other taxes payable under, or arising out of, or in connection with this Agreement.
- 5.7. **Unpaid Amounts.** Unpaid amounts will be subject to a monthly late fee of 1.5% of the outstanding balance, or the maximum legally allowable interest rate, whichever is lower. If an invoice is not paid in full, or not disputed pursuant to the method set forth above, Cloudamize may suspend access to the Cloudamize Software under this Agreement and any unpaid agreements hereunder.
- 5.8. **Price Changes.** Cloudamize reserves the right to change the prices or fees set forth in this Agreement, annually during the Term on January 1, provided that: (i) the fees will not increase by more than 25% from one year to the next, (ii) the prices or fees for Distributor shall not increase within the first 11 months of the Term, and (iii) any change to the Cloudamize prices or fees shall not affect amounts already paid by Distributor.

6. DEAL REGISTRATION & CLOSURE

- 6.1. **Deal Registration Method.** The Distributor is responsible for registering the deal by notifying sales@cloudamize.com. The notification must include the end-customer name and any other relevant information.
- 6.2. **Deal Registration Validity Period.** Upon registration of the deal with Cloudamize, the deal will stay exclusively with the Distributor for a period of 30 days from the date of first registration. At that point, Cloudamize reserves the right to terminate the registration if there's no indication from the Distributor that they plan to move forward.
- 6.3. **Deal Closure.** Upon successful closure of a deal with the end-customer, a representative from the Distributor shall notify Cloudamize by sending Cloudamize an email to sales@cloudamize.com with the end-customer Company name, the license type selected, total committed cost, and at least 1 point of contact's email address from the end-customer. Upon receiving said notification from a Distributor, Cloudamize will close the deal, allocate the associated value to the Distributor's Annual Commitment Burndown, and provision the end-customer account within the Cloudamize platform. At this point, the commitment is finalized and considered non-refundable.

7. DISTRIBUTION CUSTOMERS

- 7.1. **Non-Competition.** Distributor may not resell the Cloudamize Software to any current or prospective Cloudamize customers. If Distributor attempts to register a deal to Cloudamize for resale to such customer, Cloudamize may, in its sole discretion, refuse to finalize the registration of said deal on notice to Distributor within 10 business days of the receipt of the registration request.

8. INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS

- 8.1. **Intellectual Property Rights.** Except as explicitly set forth in this Agreement, the parties agree and acknowledge that neither party is granted any license, express or implied, to or under any intellectual property rights of the other party.
- 8.2. **Feedback.** Distributor grants Cloudreach the worldwide, perpetual, irrevocable royalty-free license to use any feedback provided by Distributor, Distributor Customers, or End Users relating to the use or operation of the Cloudamize Software.
- 8.3. **Marketing Materials.** Cloudamize may make available, upon request from Distributor, any marketing, support, or technical materials for the Cloudamize Software. Cloudamize shall retain ownership of all of the Marketing Materials, and no right, title or interest in the Marketing Materials shall transfer to Distributor, other than the limited license to use the Marketing Materials as set forth in this Agreement.
- 8.4. **Cloudamize Marketing Rights.** Cloudamize may use Distributor's name, trademarks or service marks, and reference to this Agreement in promotional and marketing materials, public announcements or required disclosures, subject to any branding or other guidelines provided by Distributor from time to time, on written consent from Distributor.

9. TERM AND TERMINATION

- 9.1. **Term.** Distributor's or Distributor Customer's, as applicable, access to the Cloudamize Software shall begin on the "**Effective Date**" (See section 5) of this agreement and last for 12 months.
- 9.2. **Termination.** This Agreement may be terminated: (i) by either Party for any reason on thirty (30) days' written notice to the other Party, (ii) immediately on mutual agreement of the Parties, or (iii) on notice of one Party, if the other Party is in material breach of this Agreement, provided that following such notice of a material breach, the breaching Party shall have fifteen (15) business days from receipt of the notice to cure such breach, (iv) immediately in the event that either Party commences a liquidation or dissolution or becomes the subject of a bankruptcy or insolvency proceeding, by the Party not commencing the liquidation, dissolution or bankruptcy/insolvency proceeding, or (v) by Cloudamize if Distributor breaches any term or condition set forth in this Agreement, or if Cloudamize reasonably believes that any such breach is threatened.

- 9.3. **Breach of Cloudamize Software License Agreement.** If Cloudamize learns that a Distributor Customer has breached the Cloudamize Software License Agreement, Cloudamize may, at its discretion, suspend or terminate access to such Distributor Customer and shall have no obligation to refund any payments, or any other liability to Distributor or Distributor Customer with respect to such suspension or termination.
- 9.4. **Post-Termination Obligations.** Any termination of this Agreement shall not relieve either Party from any obligations hereunder due and owing prior to termination of this Agreement. Upon termination of this Agreement: (i) Distributor shall not enter into any new sales of the Integrated Offering, and (ii) each Party will return or destroy the other Party's materials, data, or Confidential Information and, upon request, certify to the other Party that it has done so. Any outstanding payment obligations of Distributor shall survive the termination of this Agreement.
- 9.5. **Surrender of Materials.** Notwithstanding anything to the contrary herein, the Parties may keep copies of any materials, data, or other information beyond the Term of this Agreement only as necessary to comply with applicable legal or regulatory requirements.

10. DATA PROTECTION

- 10.1. Both parties agree to comply with all applicable data protection laws, rules, and regulations.
- 10.2. If applicable, both parties agree that the [Data Processing agreement as outlined on the Cloudamize website](#), shall apply to the control, processing, and use of any of Customer Data under this Agreement.

11. CONFIDENTIALITY

- 11.1. **Use of Confidential Information.** To the extent that Confidential Information of either party and its affiliates is disclosed and/or received by the other Party or its affiliates, each Party agrees not to use the other Party's Confidential Information except in the performance of, or as authorized by this Agreement, and not to disclose, sell, license, distribute or otherwise make available such information to third parties. Use by third party contractors may be permitted so long as such contractor has a need to know and is required to maintain the confidentiality of such information as required by this Section 10.

12. LIMITED WARRANTIES, LIMITATION OF LIABILITY, AND DISCLAIMERS

- 12.1. **NO WARRANTIES.** Distributor UNDERSTANDS AND AGREES THAT THE CLOUDAMIZE SOFTWARE IS PROVIDED "AS IS" AND "AS AVAILABLE". CLOUDAMIZE DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

- 12.2. **LIMITATION OF LIABILITY.** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING THE COST OF COVER, LOST PROFITS, LOST GOODWILL, LOST USE OR PERFORMANCE OF ANY PRODUCTS, SERVICES, OR OTHER PROPERTY, LOSS OR IMPAIRMENT OF DATA OR SOFTWARE, OR OTHERWISE EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, EXCEPT FOR DAMAGES THAT ARE REQUIRED BY LAW TO BE PAID AND CANNOT BE LIMITED BY CONTRACT, THE PARTIES AGREE THAT ALL DAMAGES ARE EXCLUDED EXCEPT FOR THE DIRECT DAMAGES AND THAT EACH PARTY'S MAXIMUM CUMULATIVE LIABILITY OR OTHER FINANCIAL CLAIM (OTHER THAN PAYMENTS AS THEY BECOME DUE) WHETHER IN CONTRACT, TORT, FOR INDEMNIFICATION OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY DISTRIBUTOR UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, UP TO A MAXIMUM OF \$1,000,000.

13. INDEMNIFICATION

- 13.1. **Indemnification by Cloudamize.** Cloudamize will indemnify Distributor against damages arising from a third party claim where there is a finding by a court of competent jurisdiction that Distributor's license under this Agreement of the Cloudamize Software infringes the intellectual property rights of that third party; provided that Distributor: (i) promptly notifies Cloudamize in writing of any such suit, (ii) grants Cloudamize sole control of the proceedings (including without limitation the right to settle on Distributor's behalf), and (iii) cooperates at all times with Cloudamize in connection with its defense at Cloudamize's reasonable expense.
- 13.2. **Infringement Indemnification.** If Cloudamize becomes aware of any infringement claim related to the Cloudamize Software, Cloudamize may, in its sole discretion and at no cost to Distributor: (i) modify the Cloudamize Software so that it is no longer claimed to infringe, (ii) obtain a license for Distributor to resell the Cloudamize Software pursuant to this Agreement, or (iii) terminate this Agreement on thirty (30) days' written notice and provide a pro-rata refund to Distributor for the affected Cloudamize Software.
- 13.3. **Indemnification Process.** Cloudamize will have no obligation to indemnify Distributor if: (i) the claim against Distributor arises from the use of the Cloudamize Software in combination with any unapproved products, software, or technology provided by a third party, (ii) if the claim against Distributor arises out of any use of the Cloudamize Software that violates this Agreement, or (iii) if the claim against Distributor arises out of any modification or alteration of the Cloudamize Software performed by Distributor or Distributor Customer, or at Distributor's or Distributor Customer's direction.
- 13.4. **Exclusive Remedy.** This Section states Cloudamize's sole liability and Distributor's exclusive remedy for any type of claim described in this Section.

14. MISCELLANEOUS

- 14.1. **Compliance with Laws.** Both parties represent that they shall comply with all applicable laws, rules, and regulations.
- 14.2. **Export Regulations.** Distributor acknowledges that the Cloudamize Software is subject to controls under applicable export laws and agree that Distributor will not and shall not permit any Distributor Customer or End User to export or re-export the Cloudamize Software in any form in violation of the export laws of any jurisdiction.
- 14.3. **Force Majeure.** Neither Party shall be liable for delays and/or defaults in its performance under this Agreement due to causes beyond its reasonable control, including, but without limiting the generality of the foregoing: acts of God, fire or explosion, flood, telecommunication system failure, war, acts of or acts terrorism, pandemic, epidemic, other disaster(s) or any other cause beyond a Party's reasonable control.
- 14.4. **Audit Rights.** Distributor will keep accurate records in the normal course relating to this Agreement, including regarding amounts charged to Distributor Customers. Cloudamize may, no more than once per year of the Term, request access to copies of any such records. In the event such audit discloses non-compliance with the Agreement, without limiting any other remedy hereunder, Distributor shall promptly pay Cloudamize the appropriate fees to remedy such non-compliance, plus the reasonable cost of conducting the audit.
- 14.5. **Waiver.** The failure of either Party to enforce any of the terms or conditions of this Agreement shall not constitute a waiver of any term or condition of this Agreement.
- 14.6. **Assignment.** Neither Party may assign or transfer any right, obligation or duty, in whole or in part, or any other interest hereunder without the written consent of the other Party, except that Cloudamize may freely assign to an affiliate or successor by merger, reorganization, consolidation or sale of some or all of its assets, without the prior written consent of Distributor.
- 14.7. **Severability.** Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, then such provision shall be construed, as nearly as possible, to reflect the intentions of the Parties with all terms and provisions remaining in full force and effect.
- 14.8. **Waiver of Jury Trial.** Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any Action arising out of or relating to this Agreement, including any exhibits, schedules, attachments and appendices attached to this Agreement, or the transactions contemplated hereby. Each Party certifies and acknowledges that (a) no Representative of the other Party has represented, expressly or otherwise, that the other Party would not seek to enforce the foregoing waiver in the event of an Action, (b) it has considered the implications of this waiver, (c) it makes this waiver voluntarily, and (d) it

has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 13.8.

14.9. **Dispute Resolution.** In the event of dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof (each, a "**Dispute**"), the Party seeking to settle the Dispute shall deliver Notice (each, a "**Dispute Notice**") of the dispute to the other Party as follows:

14.9.1. The Distributor shall send the Dispute Notice to the General Counsel of Cloudamize (or to another Person of equivalent or superior position designated by Cloudamize in a Notice to Distributor).

14.9.2. Cloudamize shall send the Dispute Notice to the CEO of Distributor (or to another Person of equivalent or superior position designated by Distributor in a Notice to Cloudamize). If the Parties are unable to resolve any Dispute within 30 Business Days after delivery of the applicable Dispute Notice, either Party may file suit in a court of competent jurisdiction in accordance with the provisions of this Agreement.

14.10. **Applicable Law.** This Agreement shall be governed by the laws of the State of New York without regard to its choice of law provisions.

14.11. **Relationship of the Parties.** The Parties to this Agreement are independent contractors and nothing in this Agreement will be deemed or construed as creating a joint venture, partnership, agency relationship, franchise, or business opportunity between Cloudamize and Distributor. Neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party.

14.12. **Entire Agreement.** The Agreement, as amended from time to time, constitutes the entire agreement between the Parties with regard to the subject matter herein. In the event of a conflict between this Agreement, the terms of this Agreement shall prevail.

14.13. **Survival.** All provisions that logically ought to survive termination of this agreement shall survive.

15. ANNUAL COMMITMENT

15.1. **Cost.** The Distributor has selected the [] Tier for their annual commitment, which at the time of signing this agreement has a [] cost associated with it.

15.2. **Commitment Benefits.** The Distributor benefits associated with Tier at the time of signature include;

15.2.1. {Insert}

Signed and accepted by the parties:

{Insert} ("Distributor")	Cloudamize, Inc. (an Atos business)
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Signature:

Signature:

Name:

Name:

Title:

Title:

Date:

Date: