



## **APIFYCLOUD TERMS OF SERVICES**

This ApifyCloud Service Agreement and the documents referenced herein (the “Agreement”) contain terms and conditions that govern your access to and use of the ApifyCloud Service.

The Agreement is entered into by the parties to the Services Order and will allow you or the entity that you represent (“You,” “Your” or “Customer”) to order ApifyCloud Services from us.

The Agreement consists of this cover page, the Terms and Conditions, any applicable Schedules, Services Orders and SOWs executed during the Term of this Agreement:

This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter hereof, superseding all prior or contemporaneous agreements, representations, promises and understandings, whether written, electronic, oral or otherwise.

Except as expressly provided herein, each party acknowledges and agrees that by executing the terms and conditions specified in this Agreement, (i) it is not relying upon any other statements, representations, warranties, promises, assurances, or the like, (ii) no remedies are or will be available to a party with respect to the foregoing, and (iii) such remedies are unconditionally and irrevocably waived; provided, the foregoing shall not apply to any acts of fraud by a party.

This Agreement takes effect when both parties have executed the Services Order (the “Effective Date”). You represent to Us that You are lawfully able to enter into contracts that bind the entity You represent and that You have legal authority to do so.

## **TERMS AND CONDITIONS**

### **SECTION ONE – SERVICES/DEFINITIONS**

1.1 This Agreement contains general terms applicable to any Services that You purchase or license from Us. All Services will be identified in an Services Order or SOW and specific terms and conditions will apply.

1.2 In addition to the terms defined elsewhere in the Agreement, some defined terms that You should be familiar with are:

**Affiliate:** A business entity that: (a) Controls the party; (b) is Controlled by the party; or (c) is under common Control with the party, but only during the time that such Control exists. For the purposes of this definition, “Control(led)” is the ability to determine the management policies of an entity through ownership of a majority of shares or by control of the board of management.



**ApifyCloud Services:** Our cloud communications service as made available to You using equipment, facilities and software owned or operated by or for Us as further described in the ApifyCloud Schedule and the applicable Services Order.

**Customer Data:** Your proprietary information and information about your customers (including Personal Data) submitted through the Cloud Services by You or Your Users. Customer Data does not include Service Improvements as defined in Section 9.4 (Service Improvements).

**Deliverables:** means the configurations and modifications to the ApifyCloud Services provided by Us to You pursuant to a Statement of Work.

**Documentation** means the end user manual(s) and other materials typically provided by Us for use with the ApifyCloud Services.

**Equipment:** Third party products provided on a pass-through basis without warranty from ApifyCloud.

**Exclusions:** the following conditions, which are deemed excluded from, and that terminate, Our warranty, defense or indemnity obligation: (i) use of Materials in combination with any non-ApifyCloud equipment, software, services, processes, data or materials; (ii) Your non-compliance with this Agreement or Documentation; (iii) use of Materials after receipt of notice from Us to discontinue such use, including Your failure to use modifications provided by Us; (iv) the development or use of any alteration, derivation, modification or customization of the Materials; (v) Our compliance with Your requests or instructions or the use of any materials or data provided by You; (vi) Your business method(s) or process(es); or (vii) Your content or Customer Data.

**Force Majeure:** Delays or failures on performance resulting from acts beyond the control of a party. Such acts include acts of God, provider blockades, denial of service attacks, strikes, lockouts, riots, acts of war, terrorism, epidemics, Laws effective after the Effective Date, fire, communication line failures, power failures, earthquakes or other disasters natural or man-made.

**Feedback:** any suggestions, enhancement requests, recommendations, report, feedback, proposals, anonymized statistical data or other information concerning the Services. Notwithstanding anything to contrary herein contained, in no event shall Feedback be deemed Customer Intellectual Property unless such Feedback existed on or before the Effective Date.

**Malicious Code:** Viruses, worms, time bombs, corrupted files, Trojan horses and other harmful or malicious code, files, scripts, agents, programs, or any other similar code that may interrupt, limit, damage the operation of ApifyCloud' or another's computer or property.



Personal Data: any information relating to Your customers that is protected by applicable privacy law.

Professional Services: the consulting and implementation services provided by Us relating to the ApifyCloud Services and documented in a statement of work (“Statement of Work” or “SOW”) or Services Order.

Related Parties: A party’s past, present and future officers, directors, employees, and other personnel, agents, insurers, reinsurers, servants, attorneys, parent company, subsidiaries and affiliates.

Services: the ApifyCloud Services, Professional Services and Support.

Services Order: the document used to place orders for ApifyCloud Services.

Support the support and maintenance for the ApifyCloud Services as described in the attached ApifyCloud Schedule.

## **SECTION TWO – SCOPE OF USE**

2.1 Proprietary Rights. All trademarks, service marks, patents, copyrights, trade secrets and other intellectual property rights in any and all Services hardware, Documentation, Deliverables and any other materials, products or services provided to You or used in providing Services to You (collectively, “Materials”) are and shall remain the exclusive property of ApifyCloud or its business partners, licensors or suppliers, as applicable, whether or not specifically recognized or perfected under applicable local law. ApifyCloud and its business partners, licensors and suppliers reserve all rights not expressly granted in the Agreement and own all rights in all derivative works of the Materials and any copy, translation, modification, adaptation or derivation (including any improvement or development) of the Materials.

2.2 Use of Materials and Services. You will not, and will not permit or authorize any third party to: (a) sell, rent, lease, sublicense or otherwise make the Materials available to any third party except as expressly authorized by this Agreement; (b) modify or create any derivative works, functionally equivalent works, or translations of the Materials; (c) copy any feature, design or graphic in, or disassemble, reverse engineer or decompile the Materials or remove or modify any proprietary markings or restrictive legends placed on any Materials; (d) access or use the Materials to compete with Us or to assist anyone else to compete with Us; (e) remove or modify any proprietary markings or restrictive legends placed on any Materials; (f) take any action that jeopardizes Our rights or the rights of Our business partners, licensors or suppliers in any Materials; (g) violate any law, regulation, mandate or court order; (h) use the Materials in a manner that is defamatory, harassing, infringing or otherwise causes damage or injury to any person or property; (i) transmit viruses or other deleterious code; or (k) damage, disable, overburden or impair the Materials or any other



party's use of the Materials. You are responsible for the use of the Materials by your Affiliates.

2.3 Similar Materials and Services. Subject to the confidentiality provisions of this Agreement, nothing in this Agreement precludes or limits Us in any way from providing materials or services that are similar to materials or services provided or contemplated in this Agreement or developing deliverables or other materials or services that are similar to or compete with any materials or services developed as a result of this Agreement, regardless of their similarity to any Materials, including Deliverables. We are free to use any concepts, processes, techniques, improvements or other know-how developed by Us in the course of performance of this Agreement (even if similar to materials, products and services provided hereunder) free from any use restriction or payment obligation. For the avoidance of doubt, but subject to this Agreement, including this Section 2.3, We do not claim any rights to Your Confidential Information.

2.4 ApifyCloud Services License. We grant You and Your Affiliates a non-exclusive, non-transferable, worldwide right to authorize individuals solely within Your and Your Affiliates' organization to access the ApifyCloud Services during the term of an Services Order but only for Your own internal business purposes and subject to the terms and conditions of this Agreement, the applicable ApifyCloud Schedule, the Documentation and the terms associated with the specific Services Order.

2.5 Deliverables License. You are granted a license to use Deliverables solely in connection with, and under the same provisions as, Your use of the Services.

2.6 To the extent not already owned by ApifyCloud and subject in each case to Section 10.1 (Marketing) to the extent Customer is identified by name or logo, Customer, on behalf of itself and its Related Parties, hereby grants ApifyCloud a perpetual, exclusive, royalty-free, worldwide license to use or disclose (or choose not to use or disclose), and create derivative works of Feedback for any purpose, in any way, in any media worldwide.

### **SECTION THREE – CONFIDENTIALITY**

3.1 For purposes of this Agreement, the party disclosing Confidential Information is referred to as the "Discloser" and the party receiving Confidential Information is referred to as the "Recipient." "Confidential Information" means proprietary information of Discloser, or third party proprietary information disclosed to Discloser, that is provided to Recipient. Recipient's obligations to protect Discloser's Confidential Information does not apply to information that: (i) is or becomes, through no act or omission of Recipient, publicly available; (ii) known by Recipient at the time of receipt, as shown by Recipient's contemporaneous written records; (iii) is subsequently and rightfully provided to Recipient by a third party, without restriction on disclosure; or (iv) is independently developed by Recipient without use of or access to Discloser's Confidential Information. Our Confidential Information includes the Materials and technical information relating to the Materials.

3.2 Recipient will safeguard the confidentiality of Discloser's Confidential Information, including at a minimum, the precautions taken by Recipient to protect its own Confidential Information but in any event no less than reasonable precautions. Recipient will: (a) not disclose or use Discloser's Confidential Information for any purpose other than as contemplated by, and consistent with, the terms of this Agreement, (b) limit access to Discloser's Confidential Information only to its employees and agents who have a need to know such information and who are bound by written confidentiality obligations at least as protective as the requirements of this Agreement, and (c) not sell, transfer, disclose or otherwise make available Discloser's Confidential Information to any third party without the other party's prior written consent. If Recipient is required to disclose Discloser's Confidential Information under the terms of a subpoena, court order, governmental rule or regulation or other judicial requirement, unless legally prohibited from doing so, Recipient will promptly notify Discloser of the existence, terms and circumstances surrounding such a request or requirement so that Discloser may seek an appropriate protective order. If Discloser seeks a protective order, Recipient will reasonably cooperate in such effort at Discloser's expense. Subject to Recipient's compliance with the foregoing notice and cooperation obligations, Recipient will be allowed to make the required disclosure.

3.3 The Recipient will return any tangible materials containing Confidential Information, and any copies or reproductions thereof, to the Discloser within thirty (30) days after the Discloser's written request. Recipient agrees to undertake whatever action is reasonably necessary to remedy any breach of Recipient's confidentiality obligations or any other unauthorized disclosure or use of the Confidential Information by Recipient, its employees, its agents, or contractors. The Recipient acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that the Discloser Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction without the necessity of posting any bond.

#### **SECTION FOUR – PAYMENT, TAXES AND RECORDS**

4.1 ApifyCloud Services. You will pay all fees and charges for the ApifyCloud Services pursuant to the attached ApifyCloud Schedule and Services Order. Upon execution by both parties, each Services Order shall be a non-cancelable, non-refundable order by Customer. Subject to Section 4.3 (Fee Disputes), We reserve the right to suspend the ApifyCloud Services, or any portion thereof, or reject the transmission of any information through the ApifyCloud Service based upon (i) reasonable belief that the use of the ApifyCloud Services is in violation of applicable Laws, (ii) Your failure to pay amounts when due, or (iii) an imminent compromise to the security or integrity of the network. As practicable depending on the circumstances, we will provide notice of the suspension and keep You reasonably informed of ApifyCloud' efforts to restore the ApifyCloud Services. You acknowledge and agree that fees quoted in a Services Order are contingent upon the agreed upon length of



the entire Term. These fees are not subject to early termination or cancellation and this obligation may not be waived.

4.2 Timing, Payment Disputes and Taxes. All invoices for Services are due and payable within thirty (30) days of receipt unless otherwise set forth in the Services Order or Statement of Work. Unless otherwise agreed, You shall pay all amounts due hereunder via Automated Clearinghouse (ACH), wire, or using our E-bill portal, if applicable. We shall provide invoices electronically via email to a provided email address. If an invoicing portal is used, it shall be provided at the time the order is placed with Us. Subject to Section

4.3 (Fee Disputes), all past due payments will bear interest at the rate of 1.5% or such lower rate as is required by law. You will pay any late payment charge upon remitting the principal amount to Us and will pay all collection costs incurred by Us. Except as otherwise specified in the Services Order, the fees do not include any taxes. You are responsible for paying all taxes, levies, including any universal service fees, duties, or similar items, including any value-added, sales, use or withholding taxes other than taxes on Our net income (collectively "Taxes") associated with the Services Order and reimbursing Us for any Taxes with respect to the amounts due under any Services Order. If You are required to withhold Taxes from amounts payable to Us, You will timely remit it to the appropriate governmental authority in accordance with applicable laws And you will promptly furnish Us with the official receipt of payment of such Taxes to the appropriate taxing authority. You will not rely on Us to determine taxability and You are ultimately responsible for assessing and paying any applicable Taxes. If You provide us with an incorrect ship-to address or, where applicable, You do not provide Us with a valid tax exemption certificate prior to placing an Order, We will not provide you with a credit for such Taxes and You will be responsible for getting a refund from the applicable tax authority. 4.3 Fee Disputes. If You in good faith dispute the amount of any invoice, You will timely pay the undisputed amount and will notify Us in writing of the disputed amount no later than the date payment would otherwise be due, providing the reasons for the dispute. The parties will attempt in good faith to resolve the dispute within thirty (30) days after Our receipt of Your notice of dispute (the "Resolution Period"), during which time withholding of the disputed amount will not be considered a material breach of this Agreement, no interest will accrue for late payment of the disputed amount. Upon resolution of the dispute, You will pay the resolved amount promptly but in any case within ten (10) days of mutual written agreement resolving the dispute. If the dispute is not resolved within the thirty-day (30) Resolution Period, then each party will be entitled to pursue all available remedies.

## **SECTION FIVE – PROFESSIONAL SERVICES**

5.1 Professional Services. If applicable, we will provide the Professional Services identified in a Services Order or SOW executed by the parties.



## **SECTION SIX – WARRANTIES**

6.1 Cloud Services Warranty. Beginning on the date that the term of the initial Services Order for the ApifyCloud Services commences, We warrant to You that the ApifyCloud Services will materially conform to the then current description of the ApifyCloud Services in the Documentation. If You become aware of any material inconsistencies, You must notify Us in writing. Your sole and exclusive remedy for breach of this warranty shall be for Us to correct errors.

6.2 Professional Services and Support Warranty. We warrant that the Professional Services and Support will be performed in a professional and workmanlike manner and in accordance with applicable requirements of this Agreement and any applicable SOW or Services Order. Your sole and exclusive remedy for breach of this warranty shall be for Us to re-perform non-conforming services.

## **SECTION EIGHT – TERM AND TERMINATION**

8.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue during the term of all outstanding Services Orders and SOWs issued under this Agreement (the “Term”). Each Services Order shall indicate its term.

8.2 Termination for Cause. Either party may terminate the Agreement upon notice and thirty (30) days opportunity to cure (if susceptible to cure) if the other party breaches a material term of the Agreement, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy under the law of the United States (or any similar laws of any state or country) or appoints a receiver, or acquiesces in the appointment of a receiver or trustee, or liquidator. Failure to pay and violation of proprietary rights obligations are material breaches. If, during the cure period referenced in this Section 8.1, We document an effort to promptly cure the breach, then, notwithstanding anything to the contrary, You will not terminate the Agreement while such good faith efforts are continuing. Our efforts to cure the breach may not exceed 120 days from Your notice.

8.3 Effect of Termination. Immediately upon termination, the licenses granted hereunder and rights to use shall terminate, and You must stop using the Materials. Within five (5) days after termination you will (a) return the Materials and all copies in your possession or (b) destroy the Materials and all copies and confirm in writing that they have been destroyed. You will have access to retrieve Your Customer Data up to the date of termination at no additional charge. If You require additional time to retrieve Your Customer Data beyond the date of termination, You may request, and We will grant, a thirty (30) day extension to the Term of the Agreement; provided such request is made on or prior to the termination date. During the extended period, You will be charged for Your usage in accordance with the monthly term structure described in Section 5.2.1 (Monthly Term) of the ApifyCloud Cloud Schedule



attached hereto. The ApifyCloud Services will be terminated at the end of the extension period, unless You request additional extension period(s) prior to the effective termination date.

8.4 Survival of Terms. All terms of this Agreement which, by their nature, are intended to survive termination of this Agreement will survive termination, including all payment obligations, use restrictions, confidentiality obligations, ownership terms, indemnification obligations, disclaimers, Exclusions and limitations of liability.

## **SECTION NINE – CUSTOMER DATA**

9.1 Ownership of Customer Data. As between ApifyCloud and You, You retain ownership of and all intellectual property rights in Customer Data and grant Us a non-exclusive, non-sublicenseable (except to parties working on Our behalf), non-transferable, royalty-free license to access, process, store, transmit, and otherwise make use of the Customer Data as necessary to provide the Services and to otherwise fulfill Our obligations under the Agreement.

9.2 Transfers of Data. You agree that the Customer Data may be transferred or stored outside the country where You and Your customers are located in order to carry out the Services and Our other obligations under the Agreement. You represent and warrant that You have obtained all consents necessary for Us to collect, access, process, store, transmit, and otherwise use Customer Data in accordance with the Agreement. You shall comply with all requirements of integrity, quality, legality and all other similar aspects in respect of Customer Data. We may, but are not obligated to, review or monitor any Customer Data. We expressly disclaim any duty to review or determine the legality, accuracy or completeness of Customer Data.

9.3 Privacy. We have developed and will maintain a privacy program designed to respect and protect Customer Data under our control. We will not rent or sell any Customer Data.

9.4 Service Improvements. We may aggregate data and information related to the performance, operation and use of the ApifyCloud Services to create statistical analyses, to perform benchmarking, to perform research and development and to perform other similar activities (“Service Improvements”). We will not incorporate Customer Data in Service Improvements in a form that could identify You or Your customers and we will use industry standard techniques to anonymize Customer Data prior to performing Service Improvements. We retain all intellectual property rights in Service Improvements and may make them publicly available.



## DEFINITIONS

1. “Initial Subscription Term” means the Subscription Term in specified in Customer’s initial Service Order submitted on after execution of this Agreement.
2. “ApifyCloud Website” means the website used to access the ApifyCloud Services and any successor or related site designated by us.
3. “Subscription Term” means the term of the ApifyCloud Services you selected, as set forth in the Services Order.

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Andres Molina  
**ApifyCloud LLC**  
**CEO**

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**Customer**  
**Authorized Signature**

Date: