

Cloudsine Pte Ltd

Terms and Conditions for WebOrion® Partner Program (Authorised Sub-Resellers)

(Note: WebOrion is an innovative creation of Cloudsine Pte Ltd, with HQ in Singapore)

1. Definitions.

“Cloudsine Confidential Information” means all non-public information that is either designated as proprietary and/or confidential, or by the nature of the circumstances surrounding disclosure, should reasonably be understood to be confidential, including without limitation all pricing information related to the products and any Product testing competitive benchmarking or information related thereto.

“Documentation” means user manuals for the Products provided by Cloudsine with respect to the use and maintenance of the Products.

“End User” means an entity that purchases a Product or Service from Reseller for its own use and not for redistribution or resale.

“Product(s)” means the WebOrion suite of products, and any newer versions thereof that the parties may agree from time to time.

“Software” means the software of Cloudsine and its licensors incorporated in the Products in object code format, delivered by an authorized reseller to the Reseller under one or more separate agreement(s) entered into between the authorized reseller and the Reseller. The term “Software” shall also include any updates, upgrades, bug-fixes or new versions of the Software. All Software is licensed and not sold, notwithstanding any reference herein to the contrary.

“Territory” means the countries authorized by Cloudsine from time to time.

2. Resale of Products in the Territory.

(a) Reseller Agreement. The parties agree that, subject to the terms and conditions of this Agreement, Reseller is authorized to sell Products to End Users in the Territory. Reseller agrees not to sell any Product except strictly in accordance with the terms and conditions of this Agreement.

(b) Restrictions. Reseller shall sell the Products solely to End Users in the Territory subject to Cloudsine’s then current standard terms and conditions, which may be included with the Products as a “click-through” or “shrink-wrap” agreement. Reseller shall not grant to End Users any rights to the Products and Software that are contrary to the terms and conditions of this Agreement. Reseller shall promptly report to Cloudsine any use of the Products or Software by any End User or third party that is contrary to the terms and conditions of this Agreement of which it becomes aware. Reseller is an independent contractor and is not the legal representative or agent of Cloudsine for any purpose and shall have no right or authority (except as expressly provided in this Agreement) to incur, assume or create in writing or otherwise, any warranty on behalf of Cloudsine or its affiliates in relation to the Products or bind Cloudsine or its affiliates in any way whatsoever. For the avoidance of doubt, Reseller may provide warranties in relation to the Products on its own behalf. Nothing in this Agreement shall constitute a partnership or joint venture or establish a relationship of principal and agent or any other relationship of a similar nature between the parties.

(c) Competing Products. Reseller agrees that it will notify Cloudsine if it intends to resell, distribute or represent any products or accessories in the Territory which are similar to or have substantially the same use or purpose as the Products during the subsistence of this Agreement.

3. Proprietary Rights.

(a) Ownership. Title to and ownership of the Software and any improved, updated, modified or additional parts thereof, and all intellectual property rights in the Products, shall at all times remain the property of Cloudsine or Cloudsine's licensors. Cloudsine reserves all rights not expressly granted herein.

(b) Restrictions. Reseller shall not, and shall not permit any third party (including but not limited to End Users) to, in any form or manner, copy, distribute, reproduce, incorporate, use or allow access to the Products or Software, or modify, prepare derivative works of, decompile, reverse engineer, disassemble or otherwise attempt to derive source code or object code from the Products or Software, except as explicitly permitted under this Agreement or otherwise agreed in writing or to the extent such a restriction is expressly limited or prohibited by applicable law. Reseller shall not market, sell, license or distribute the Software on a stand-alone basis or otherwise separate the Software from the Products.

(c) Use of Trade Names. Reseller may use the product names of Cloudsine and WebOrion® and its licensors in Reseller's advertising and promotional media solely for the purpose of marketing the Products, provided (i) that Reseller conspicuously indicates in all such media that such names are trademarks of Cloudsine and WebOrion® and its licensors and (ii) that Reseller submits all such media to Cloudsine for prior approval. Upon termination of this Agreement for any reason, Reseller will immediately cease all use of such product names. Reseller agrees it will not challenge any intellectual property rights claimed by Cloudsine or its licensors in their respective trademarks.

(d) Feedback. Reseller shall provide prompt written notice to Cloudsine of any comments or complaints about the Products that are made by End Users, and of any problems with the Products or their use of which Reseller becomes aware. Any information provided by Reseller to Cloudsine in connection with the foregoing shall be the property of Cloudsine, and shall be Cloudsine's Confidential Information (as defined below).

(e) Use of Reseller's Marks by Cloudsine. The Reseller hereby grants to Cloudsine a non-exclusive, royalty free, worldwide license to use, publish and reproduce the trade name(s), trade mark(s), slogan(s) and/or logo(s) of the Reseller in Cloudsine's advertising, promotional literature and/or websites in the context of and in connection with the relationship between the Reseller and Cloudsine as described under the terms of this Agreement

4. Limitation of Liability. IN NO EVENT SHALL CLOUDSINE OR ITS SUPPLIERS OR LICENSORS BE LIABLE TO THE RESELLER FOR ANY DAMAGES, COSTS OR LOSSES WHATSOEVER, INCLUDING FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE). CLOUDSINE'S AND ITS SUPPLIERS' AGGREGATE TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID BY RESELLER FOR SUCH PRODUCTS. THE LIMITATIONS SET FORTH IN THIS CLAUSE 4 SHALL APPLY EVEN IF CLOUDSINE OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

TO THE FULLEST EXTENT PERMISSIBLE BY LAW, CLOUDSINE DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF FITNESS FOR PURPOSE OR MERCHANTABILITY, WITH RESPECT TO THE PRODUCTS OR THAT THE PRODUCTS ARE FREE FROM INFRINGEMENT OF ANY PATENT OR ANY OTHER RIGHTS OF ANY THIRD PARTIES. THE PRODUCTS ARE OFFERED "AS IS".

5. Compliance with all Applicable Laws; Export Control; Government Restricted Rights. Reseller represents and warrants that it shall comply with all laws and regulations applicable to Reseller with respect to the sale, purchase and use of the Products. Reseller further acknowledges and agrees that the products purchased, and software licensed, under this Agreement may be subject to restrictions and controls imposed by applicable laws and regulations, governmental, administrative and/or regulatory authorities. Reseller shall not export or re-export any Products purchased, or Software licensed, under this Agreement into any country in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

6. Confidentiality. Reseller acknowledges that, in connection with this Agreement and/or the Products or Software, Reseller may receive Cloudsine Confidential Information. Reseller agrees that it shall hold in confidence and not use (except in the performance hereof) or disclose to any third party any Cloudsine Confidential Information without Cloudsine's prior written consent. Nothing contained in this Agreement shall be construed as granting or conferring rights by license or otherwise in any Cloudsine Confidential Information. This Clause shall survive any termination of this Agreement. Reseller agrees that monetary damages for breach of confidentiality under this Clause may not be adequate and that Cloudsine shall be further entitled to injunctive relief. The foregoing confidentiality provisions shall not apply where Reseller can demonstrate that the information: (a) was previously known to Reseller at the time of disclosure, free of any obligation to keep it confidential; (b) became publicly known through no wrongful act of the Reseller; or (c) was rightfully received by Reseller from a third party who was not bound under any confidentiality provisions. Reseller may also make disclosures to the extent required by law or court order, provided that Reseller provides Cloudsine with prompt notice of such requirement and uses reasonable efforts to limit such disclosure, including co-operating with Cloudsine in applying for a restrictive order. The confidentiality obligations set forth in this Agreement shall be binding for five (5) years from the date of disclosure of Confidential Information.

7. Term and Termination.

(a) Term. This Agreement is effective on the Effective Date, shall remain in effect for **twelve (12) months** and renews automatically thereafter for successive twelve (12) month terms, unless terminated earlier in accordance with this Clause 7.

(b) Termination for Convenience. Cloudsine may terminate this Agreement without cause by providing at least thirty (30) days prior written notice to Reseller.

(c) Termination for Cause. If either party breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party shall have the right to terminate this Agreement at any time. Either party may terminate this Agreement, effective immediately upon written notice, if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors that is not dismissed within sixty (60) days.

(d) Effect of Termination. If this Agreement is terminated, then all of Reseller's rights and licenses with respect to the Products and Software shall terminate, provided that each license granted to an End User with respect to the Software in accordance with this Agreement shall survive in accordance with its terms, subject to termination for default in accordance with its terms. Neither party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other (or for any compensation to the other) arising from or incident to any

termination of this Agreement by such party which complies with the terms of the Agreement, whether or not such party is aware of any such damage, loss or expenses; provided that termination shall not relieve either party of any obligations incurred prior to the date of termination.

8. Assignment. Neither party may assign or transfer this Agreement or any rights or obligations under this Agreement, whether voluntary or by operation of law, without the prior written consent of the other party; provided, however, that either party may assign or transfer this Agreement to any successor by way of merger, acquisition or sale of all or substantially all of the assets relating to this Agreement. Any assignment or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties' respective successors and permitted assigns.

9. Rights of Third Parties. A person or entity who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any term of this Agreement.

10. Dispute Resolution and Governing Law and Dispute Resolution. This Agreement is governed by the laws of Singapore. Any dispute between the parties arising out of or in connection with this Agreement or in the performance thereof shall in the first instance be referred to the authorized representatives of the parties for resolution. If such efforts fail, then the dispute shall be referred to binding arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Center in force at such time, which rules shall be deemed to be incorporated by reference into this Agreement. The Tribunal shall consist of one (1) arbitrator chosen by the Singapore International Arbitration Center under its rules if the parties cannot otherwise agree upon an arbitrator.