

# SERVICE TERMS AND CONDITIONS - CLOUDIMAGE

Latest Update: March 1st, 2017

## 1. Introduction

WELCOME! WE ARE VERY EXCITED YOU HAVE DECIDED TO USE OUR SERVICES. PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY CHECKING THE BOX "I AGREE" TO THESE TERMS AND CONDITIONS OR BY ACCESSING OR USING THE SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS AND ALL TERMS INCORPORATED BY REFERENCE. These Terms and Conditions ("Terms") between You and Scaleflex OOD ("Cloudimage", "we" or "us") govern Your ("Customer", "You") use and access to Cloudimage's cloud-based image transformation products and services (collectively "Services"); by using the Services, You accept these Terms in full. If You disagree with these Terms or any part of these Terms, You can freely decide not to use this website and/or the Services. You must be at least of legal adult age to use this website and the Services. By using this website and benefitting from the Services and by agreeing to these Terms You warrant and represent that You are at least of legal adult age in Your country.

## 2. Definitions

"*Caching*" means the process of keeping a copy of the Origin Image and/or any User Content for further Transformation

"*CDN*" means Content Delivery Network and refers to a supplier of Cloudimage

"*CDN Traffic*" means the monthly CDN traffic

"*Client Portal*" means Your administration portal

"*Discount*" means the discount provided in the article

"*Service Availability*" in the present Terms

"*Free Trial*" means the 30-day period You can enjoy the Services in a non-production environment for free

"*Origin Image*" means the image You want to transform with the Services prior to Transformation

"*Transformation*" means the image processing operation from Cloudimage, including but not limited to resizing, cropping, watermarking and quality alteration applied to the Origin Image

"*Transformed Image*" means the image after application of the Transformation supported by Cloudimage

"*Image Cache*" means a copy of the Origin Image as well as the Transformed Images temporarily stored on Cloudimage's servers

"*Resizing Server*" means a server maintained by Cloudimage responsible for the Caching and the Transformation

"*Party*" means Cloudimage or You

"*Plan*" means a paid Cloudimage subscription for production use of the Services, which contains a specified storage allocation for the Image Cache and CDN Traffic per month

"*Privacy Policy*" means the privacy policy referred to in the present Terms

"*Services*" means the services offered by Cloudimage to You under these Terms, including (1) the Transformation, (2) temporary Caching on the Resizing Servers, and (3) CDN Traffic

"*Storage*" means the total storage required for storing the Image Cache

"*Terms*" means the present service terms and conditions

"*Token*" means Your token associated to a Free Trial or Plan

"*User Content*" means the (image) material You provide to Cloudimage for Caching, applying Transformations and delivering over a CDN

"*Uptime*" means the percentage of time in a calendar month that Cloudimage's Services or Client Portal are available for access, as measured by Cloudimage.

“*URL Pattern*” means the URL used to call the Cloudimage Services including the Token, the Transformation parameters and the Origin Image URL

“*Visitor*” means the end user to whom Transformed Image(s) are delivered to.

### 3. Privacy

Your privacy matters to us. You can learn how we handle Your information when You use our Services by reading our Privacy Policy at <http://cloudimage.io/privacy> for a description of how we collect, protect, use and disclose Your information. We encourage You to give the Privacy Policy a careful look because, by using our Services, you agree a.o. that we can collect, use and transfer Your information, User Content, Origin Images and any other data and/or information You sent us, consistent with that Privacy Policy.

### 4. The Services

The Services are described as following image processing workflow:

- a) The download of an Origin Image from the Customer’s hosting infrastructure or the upload of an Origin Image to Cloudimage via API or web portal
- b) The temporary Caching of the Origin Image for up to 90 days on the dedicated Resizing Server
- c) The Transformation of the Origin Image based on the transformation parameters within the URL Pattern
- d) The delivery of the Transformed Image to the Visitor via CDN or the delivery of the Transformed Image to You directly

Cloudimage is not an image storage or hosting solution and does not guarantee the persistence of the Image Cache and/or any User Content and/or other data. You must connect Your own image storage or hosting solution to Cloudimage. We may clean the Image Cache on a regular basis. You are solely responsible for creating and keeping backup copies of the User Content and/or any data You provide, and make it available to Cloudimage for subsequent Caching and Transformation. Any information and/or User Content provided by You through the Services may contain links to third party websites that are not owned or controlled by us. We have no control over, and assume no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, we will not and cannot censor or edit the content of any third-party site. By using the Services, You expressly acknowledge and agree that we shall not be responsible for any damages, claims or other liability arising from or related to Your use of any third-party website, and/or for any loss, unintended change, corruption and/or damage to your information, data and/or Origin Image, and/or User Content.

### 5. Fees and Payments

After a 30-day Free Trial period, You can decide to further enjoy our Services in a production environment by subscribing to a paid Plan as listed on Cloudimage’s website at: <https://cloudimage.io/#pricing> We make payment as easy as possible for You. You may pay the subscription fees by using following methods of payment available: a) Credit Card b) Paypal c) Bank transfer to Cloudimage’s bank account as noted in the issued invoice Payments will include local taxes based on Your location and must be made in a timely manner in compliance with the following payment schedule: a) For monthly subscriptions: up to seven (7) calendar days after each new month’s beginning b) For quarterly or annual subscriptions: up to seven (7) calendar days after receipt of our invoice Upon failure to make any payment, and following a seven (7) days prior notice of due payments sent to You, Cloudimage may disable and/or terminate Your Plan. This right of suspension will not limit any other of our rights or remedies related to Customer’s failure to pay. You herewith agree to waive any and all rights and further agree to refrain from initiating any claims, actions or proceedings against Cloudimage, its affiliates parties, partners, its

officers, directors, employees, and agents in case of non-payment. From time to time, Cloudimage may change the Service fees and will post a notice on the website and per email to You 14 calendar days prior to such change.

## **6. Plan Overuse**

Cloudimage tracks Your storage and CDN Traffic consumption on a daily basis. If Your Storage or CDN traffic consumption exceeds 110% of Your subscribed Plan, You will be contacted by a Cloudimage representative per email sent to Your account's email address to agree on an upgrade to the next available standard Plan or a custom Plan. Failure to respond within seven (7) calendar days will result in a premium charge proportional to Your overuse at the next monthly billing period. If Your storage or CDN traffic consumption exceeds 200% of Your subscribed Plan, You will be automatically upgraded to the next available Plan and You agree to pay the then applicable Service fees.

## **7. License To Use The Services**

### ***7.1 Rights We Grant You:***

Unless otherwise stated, Cloudimage and/or its licensors own the intellectual property rights in the website and the Services. You or the respective right holder, holds any and all rights to the Origin Image and the User Content, and Cloudimage does not own any rights to the Origin Image, the User Content and the Transformed Image except for the rights to provide the Services to You as explicitly stated below. You are granted a personal, worldwide, non-sub-licensable, non-assignable, revocable, non-exclusive license to access and use the Services. Subject to the license below, all these intellectual property rights are reserved. This license is for the sole purpose of letting You use and enjoy the Services in a way that these Terms and our usage policies allow. Any software that we provide You may automatically download and install upgrades, updates or other new features. You may be able to configure new features from your Client Portal.. You may not copy, modify, distribute, sell or lease any part of our Services, nor may you reverse engineer or attempt to extract the source code of that software, unless applicable laws prohibit these restrictions or you have our written permission to do so.

### ***7.2 Rights You Grant Us***

Cloudimage's Services let You create, upload, post, send, receive and store content. When You do that, you retain whatever ownership rights in that content you had to begin with. But You grant us a license to use that content in order to provide the Services to You. How broad that license is, depends on which Services you use and the settings you have selected. For all Services, You grant us a worldwide, royalty-free, sub-licensable, and transferable license to host, store, use, display, reproduce, modify, adapt, edit, publish, and distribute the User Content, including but not limited to the Origin Image. This license is for the limited purpose of operating, developing, providing, promoting, and improving the Services and researching and developing new ones. In addition to the rights you grant us in connection with other Services, you also grant us a perpetual license to create derivative works from, promote, exhibit, broadcast, syndicate, publicly perform and publicly display content submitted to us in any form and in any and all media or distribution methods (now known or later developed). Although we are not required to do so, You hereby authorize us to access, review, screen and delete your User Content at any time and for any reason, including if we think your content violates these Terms. However, You alone remain responsible for the User Content you create, upload, post, send or store through the Services. You must not: a) republish material from this website (including republication on another website); b) sell, rent or sub-license material from the website; c) reproduce, duplicate, copy or otherwise

exploit material on this website for a commercial purpose; d) redistribute material from this website (except for content specifically and expressly made available for redistribution) e) use a token which was not assigned to You by Cloudimage; doing so may result in the suspension of Your account

## **8. Client Portal**

Access to Cloudimage's Client Portal is restricted and protected with an account You must create when signing up for the Services. You agree to: a) keep Your username and password confidential; b) provide accurate and complete information when creating an account; c) maintain and update Your account information; d) maintain the security of Your account by not sharing Your password with other, not explicitly designated persons; e) promptly notify Cloudimage in case of any potential or actual misuse, unauthorized use of Your account; You hereby give your express consent to Cloudimage to access the above details and data in order to provide and use the Services. Your use of the Services as permitted is solely for Your personal use, and You are not permitted to resell or charge others for use of or access to the Services, or in any other manner inconsistent with these Terms. Cloudimage reserves the right to restrict access to other areas of this website, or indeed this entire website, at Cloudimage's discretion. Cloudimage may disable Your user ID and password in Cloudimage's sole discretion without notice or explanation in case You: a) violated any applicable law, rule or regulation; b) breached these Terms; c) abused Your rights to use the Services; d) performed any act which is harmful or likely to be harmful to us or any third party; e) for any other reasons Cloudimage deems this reasonably necessary;

## **9. User Content And Acceptable Use**

### ***9.1 User content***

In these terms and conditions, "User Content" means (image) material that You submit to us for Caching, Transformation and CDN delivery. You retain all rights in images You upload to the Services and grant Cloudimage a non-exclusive, revocable license to store, reproduce, transform, modify and deliver the User Content, solely in the course of providing the Services. You must not submit any User Content to Cloudimage that is or has ever been the subject of any threatened or actual legal proceedings or other similar complaint. Cloudimage reserves the right to edit or remove any material submitted to this website, or stored on Cloudimage's servers, or hosted or published upon this website. Notwithstanding Cloudimage's rights under these Terms in relation to User Content, Cloudimage does not undertake to monitor the submission of such content to, or the publication of such content on this website.

### ***9.2 Acceptable Use***

You must not use the Services in any way that causes, or may cause, damage to us or to any third party or impairment of the availability or accessibility of the Services; or in any way that is unlawful, illegal, fraudulent, exploitive of children, invasive of privacy, false, misleading, deceptive, or harmful, or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity, or includes viruses, corrupted data, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware, or other harmful, disruptive, or destructive files. You shall be solely responsible for your own User Content and the consequences of posting them. Because Cloudimage is only acting as a repository of data, user submitted information does not necessarily represent the views or opinions

of Cloudimage, and Cloudimage makes no guarantees as to the validity, accuracy or legal status thereof. In connection with User Content and everything You send, You affirm, represent, and/or warrant that: (i) You own or have the necessary licenses, rights, consents, and permissions to use and authorize Cloudimage to use all patent, trademark, trade secret, copyright or other proprietary rights in and to any and all your User Content to enable the Transformation in the manner contemplated by the Services and these Terms; and (ii) You have the written consent, release, and/or permission of each and every identifiable individual person in the User Content to enable use of the User Content in the manner contemplated by the Services and these Terms. Cloudimage reserves the right to remove any information and User Content without prior notice. Cloudimage may also terminate a user's access to the Service, if they are determined to be a repeat infringer, or for any or no reason. Cloudimage may remove such information and data and/or User Content, and/or terminate Your access for uploading such User Content in violation of these Terms at any time, without prior notice and at its sole discretion.

#### **10. Compliance with third-party Data-center and Content Delivery Network's Acceptable Use Policies (AUPs)**

By accepting these Terms, You agree to comply with the AUPs of the Content Delivery Networks (CDN) used by Cloudimage:

- a) CDNetworks: [Terms of Use](#) and [AUP](#)
- b) Amazon Cloudfront: [AUP](#)
- c) OVH: [CDN Terms and Conditions](#) and [Hosting Terms and Conditions](#)

#### **11. No warranties**

This website and the Services are provided on an "as is" and "as available" basis without any representations or warranties, express or implied to the maximum extent allowed by law. Cloudimage makes no representations or warranties in relation to the Services or the information and materials provided on the website and through the Services. YOU AGREE THAT YOUR USE OF THE SERVICES SHALL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, CLOUDIMAGE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICES AND YOUR USE THEREOF. CLOUDIMAGE MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THIS SERVICES CONTENT AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICES, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SERVICES, (IV) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES THROUGH THE ACTIONS OF ANY THIRD PARTY, AND/OR (V) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE CLOUDIMAGE SERVICE. CLOUDIMAGE DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE CLOUDIMAGE SERVICES OR ANY HYPERLINKED WEBSITE OR FEATURED IN ANY USER STATUS SUBMISSION OR OTHER ADVERTISING, AND CLOUDIMAGE WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE

THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

## **12. Service Availability**

If the Uptime of the Services falls below 99.9% in a given calendar month, You will be eligible to an up-to 10% discount on the monthly fee associated to Your Plan (hereinafter the "Discount"). The Discount will not be awarded in the following circumstances: a) circumstances beyond Cloudimage's reasonable control, including but not limited to act or war, acts of God, earthquake, flood, embargo, riot, sabotage b) technical issue(s) outside of Cloudimage's control including network, DNS and connectivity problems c) downtime advised more than 72 hours in advance d) downtime resulting from individual periods of non-availability lasting less than three (3) minutes e) suspension of Your right to use the Services in accordance with these Terms If You believe that You are entitled to such Discount, You may submit a request for indemnification per email to hello@cloudimage.io within 10 days of becoming eligible to a Discount. You must include supporting documentation in Your request such as log files proving the non-availability of the service, and Cloudimage will, at its sole discretion but applying reasonable standards applicable within the industry, decide whether a Discount will be granted.

## **13. Term or Termination**

These Terms commence on the date You first accept it and continue until all subscriptions hereunder have expired or have been terminated. A Party may terminate these Terms (i) for cause upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, (iii) upon thirty (30) days written notice or (iv) otherwise as mentioned in the present Terms.

## **14. Limitations Of Liability**

IN NO EVENT WILL CLOUDIMAGE, AND/OR CLOUDIMAGE'S EMPLOYEES, DIRECTORS, SHAREHOLDERS, ADVISORS OR ANYONE ACTING ON CLOUDIMAGE'S BEHALF BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OR LIABILITIES WHATSOEVER ARISING FROM OR RELATING TO THE SERVICES, THE SERVICES CONTENT OR THESE TERMS, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY, EVEN IF CLOUDIMAGE HAS BEEN ADVISED ON THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF CLOUDIMAGE EXCEED THE GREATER OF EUR €100 OR THE AMOUNT YOU PAID CLOUDIMAGE IN THE PAST THREE (3) MONTHS FOR THE SERVICES. YOU SPECIFICALLY ACKNOWLEDGE THAT CLOUDIMAGE SHALL NOT BE LIABLE FOR (A) USER SUBMISSIONS OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU, AND/OR (B) FOR ANY DAMAGES WHATSOEVER RESULTING FROM ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF (USER) CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICES, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SERVERS, (IV) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES BY ANY

THIRD PARTY, (V) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE COMPANY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND/OR (VI) THE DISCLOSURE OF INFORMATION PURSUANT TO THESE TERMS OF SERVICE OR PRIVACY POLICY. THE ABOVE LIMITATIONS WILL NOT, HOWEVER, LIMIT YOUR PAYMENT OBLIGATIONS UNDER THESE TERMS OR EXCLUDE OR LIMIT THE LIABILITY OF A PARTY FOR ITS OWN ACTS OF FRAUD (INCLUDING FRAUDULENT MISREPRESENTATION) OR FOR DEATH OR PERSONAL INJURY CAUSED BY SUCH PARTY'S NEGLIGENCE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

### **15. Indemnity**

You agree to defend, indemnify and hold harmless Cloudimage and its affiliates, its officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Services; (ii) your violation of any term of these Terms; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that one of your User Content caused damage to a third party. This defense and indemnification obligation will survive these Terms and your use of the Services.

### **16. Exceptions**

Nothing in this website disclaimer will exclude or limit any warranty implied by law that it would be unlawful to exclude or limit; and nothing in this website disclaimer will exclude or limit Cloudimage's liability in respect of any: a) death or personal injury caused by Cloudimage's negligence; b) fraud or fraudulent misrepresentation on the part of Cloudimage, or c) matter which it would be illegal or unlawful for Cloudimage to exclude or limit, or to attempt or purport to exclude or limit, its liability.

### **17. Reasonableness**

By using this website, You agree that the exclusions and limitations of liability set out in this website disclaimer are reasonable. If You do not think they are reasonable, You must not use this website.

### **18. Variation**

Cloudimage may revise these Terms from time-to-time. Revised terms and conditions will apply to the use of this website and the Services from the date of the publication of the revised terms and conditions on this website. Please check this page regularly to ensure You are familiar with the current version.

### **19. Assignment**

Cloudimage may transfer, sub-contract or otherwise deal with Cloudimage's rights and/or obligations under these Terms without notifying You or obtaining Your consent. You may not transfer, sub-contract or otherwise deal with Your rights and/or obligations under these terms and conditions.

### **20. Severability**

If a provision of these Terms is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

## **21. Law and jurisdiction**

These Terms are subject to the law of France and any disputes relating to these Terms will be subject to the exclusive jurisdiction of the applicable courts of Sofia, Bulgaria.

## **22. Contact**

If You have any questions about these Terms or the use of the Services, please contact us per email [hello@cloudimage.io](mailto:hello@cloudimage.io).

## **23. Publicity**

You agree that Cloudimage may reference and use Your name, logos and trademarks in Cloudimage marketing and promotional materials, including, but not limited to the Cloudimage website, solely for purposes of identifying You as a customer of Cloudimage. Otherwise, neither party may use the trade names, trademarks, service marks, or logos of the other party without the express written consent of the other party.