

## CLOUDMARK SOFTWARE EVALUATION LICENSE AND SERVICE AGREEMENT

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4. **CONFIDENTIALITY** TC . Any information (in any form, whether in tangible or intangible) relating to the Cloudmark Technology, including but not limited to performance results, all information and documents disclosed or produced by Cloudmark in the course of this Agreement, and all information which a person reasonably knowledgeable in the field of messaging security would recognize as confidential at the time of disclosure, shall be deemed the "Confidential Information" of Cloudmark. You agree to protect Cloudmark's Confidential Information in the same manner as You protect Your own confidential information of substantially similar proprietary value, but in no case less than with reasonable care. You will not divulge, transfer, sell, license, lease, or otherwise disclose or release any Confidential Information to third parties, with the exception of (i) Your employees or subcontractors who require access to such information for purposes of carrying out the evaluation of the Cloudmark Technology and Your obligations hereunder and (ii) persons who are employed as auditors by a public accounting firm or by a federal or state agency. You will use reasonable efforts to advise any person obtaining Confidential Information that such information is proprietary and obtain a written agreement obligating such person to maintain the confidentiality of any Confidential Information. You may disclose Confidential Information if so required by law (including an order of a competent court or subpoena); provided that You give Cloudmark adequate notice of such court order or subpoena in order to afford Cloudmark the opportunity to limit the scope of such order or subpoena. You shall not have any obligation under this Section for information which You can substantiate with documentary evidence has is or was (i) developed by You independently and without the benefit of information disclosed hereunder by Cloudmark; (ii) lawfully obtained by You from a third party without restriction and without breach of this Agreement; (iii) publicly available without breach of this

Agreement; or (iv) known to You prior to its receipt from Cloudmark.

**5. TERM AND TERMINATION** TC . The “Term” of this Agreement is thirty (30) days. Cloudmark may suspend performance and/or terminate this Agreement if (a) You materially breach any material provision of this Agreement and fail to cure that breach within five (5) days after receiving written notice of the breach; or (b) You become insolvent or make any assignment for the benefit of creditors or similar transfer evidencing insolvency, or suffer or permit the commencement of any form of insolvency or receivership proceeding, or have any petition under bankruptcy law filed against You, or have a trustee or receiver appointed for Your business or assets. Upon the termination of this Agreement for any reason (i) the License shall terminate, and (ii) You shall return to the Cloudmark , or destroy and certify the destruction of, all Confidential Information (including all copies of the Software and related documentation). *After the expiration or termination of this Agreement, Your continued use of the Cloudmark Technology will require purchasing a license from Cloudmark or one of its authorized resellers or distributors.* In the event of any termination or expiration of this Agreement for any reason, Sections 1, 2.2, .and Sections 3 through 7 shall survive termination. Neither party shall be liable to the other party for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.

**6. CHOICE OF LAW, ARBITRATION, EXPORT REGULATIONS AND U.S. GOVERNMENT USE.** This Agreement shall be governed by the laws of the State of California, USA, excluding conflict of laws provisions and excluding the provision of the 1980 United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act ("UCITA"). Any dispute arising out of or in connection with any provision of this Agreement shall be finally settled by arbitration held in Santa Clara County, California, in accordance with the rules of the American Arbitration Association. The arbitrator may grant injunctions or other equitable relief. The arbitrator's decision shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. The non-prevailing party will pay the costs of arbitration and the prevailing party's reasonable counsel fees and expenses. You agree that it would be impossible or inadequate to measure Cloudmark's damages from Your breach of Sections 2 or 4. Accordingly, if there is a breach or threatened breach of Sections 2 or 4, Cloudmark may, in addition to any other right or remedy, obtain an injunction restraining such breach or threatened breach and specific performance of such provision from any court of competent jurisdiction, without delivery of a bond or other security. You agree and acknowledge that the Cloudmark Technology is subject to U.S. export control law, and that You will comply with all applicable laws and regulations in Your use of the Cloudmark Technology under this Agreement, including without limitation all export laws and regulations of the U.S. Department of Commerce and all other U.S. agencies and authorities, including the Export Administration Regulations promulgated by the Bureau of Industry and Security (as codified in 15 C.F.R. Parts §§ 730-774). Without limiting the foregoing, You expressly agree not to export or re-export the Software in violation of such laws or regulations, or without all required licenses and authorizations. The Software is a “commercial item” as that term is defined at 48 C.F.R. § 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. § 12.212. Consistent with 48 C.F.R.

§ 12.212 and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, Cloudmark provides the Software to U.S. Government end users only pursuant to the terms and conditions herein.

**7. MISCELLANEOUS.** You represent and warrant that You have full power to enter into and perform this Agreement. You may not assign Your rights or delegate Your obligations under this Agreement without Cloudmark's prior written consent. This Agreement is not intended to benefit, nor shall it be deemed to give rise to, any rights in any third party. The parties are independent contractors. Neither party shall be liable hereunder by reason of any force majeure event. Each party shall be responsible for compliance with all applicable laws, rules and regulations, if any, related to the performance of its obligations under this Agreement. TC The failure of either party to require performance by the other party of any provision shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. TC If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect. TC . This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. Any amendments to this Agreement must be in writing and executed by an officer of the parties.