



Hosting Services Terms and Conditions

1. Definitions

Unless expressly stated otherwise the following definitions shall apply to the terms used in this Agreement:

"Application Form" means the form, email or other correspondence completed by the customer at time of request to purchase of services and submitted to Cloud Heroes. This form may have been completed in either an on-line electronic format or on paper.

"Confidential Information" means all information passing from one party to the other party relating to the business of the disclosing party, including but not limited to trade secrets, drawings, know-how, techniques, source and object code, business and marketing plans and projections, arrangements and agreements with third parties, customer information and customer information proprietary to customers, formulae, suppliers, concepts not reduced to material form, designs, plans and models but excludes information:

- (a) which is in or becomes part of the public domain other than through breach of this Agreement;
- (b) which the receiving party can prove by contemporaneous written documentation was already known to it at the time of disclosure by the disclosing party or its representatives; or
- (c) which the receiving party acquires from a third party entitled to disclose it;

"Customer Content" means all the materials placed on the Servers;

"Commencement Date" is the date at which Cloud Heroes commences to first provide hosting services for the Customer.

"Computer Virus" means any programmes or data incorporated into software or data that disrupts the proper operation of a computer hardware system or the associated software;

"Downtime" means any period during which the hosting service is unavailable due to failure of Cloud Heroes' systems or loss of all Internet connectivity to the Servers.

"Hosting Services" means those services provided to the Customer as described in the Application Form.

"Intellectual Property" means all intellectual property rights relating to or owned by either Party to this Agreement anywhere in the world (including present and future intellectual property rights) including without limitation Confidential Information, business names, domain names, copyright, database rights, patents, trade or service marks, designs, software, software programmes and source code and all variations, modifications or enhancements to each of them together with any application or right to apply for registration of those rights;



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"Materials" means all materials owned by a party used in the provision of Hosting Services, including software programmes and source code;

"Monthly Billing Date" is the date of the month of the Commencement Date.

"Acceptable Use Policy" means the policy setting out the terms and conditions on which the Customer agrees to utilise Cloud Heroes' network, systems, products and services as specified in Appendix A;

"Personnel" means any employees, agents or contractors of either Party;

"Servers" means Cloud Heroes' computer server equipment.

"Service Fee" means the fee specified on the Application Form to be paid by the Customer for the performance by Cloud Heroes of its obligations under this Agreement;

"Term" shall mean the period between the Commencement Date and the end date of this Agreement as specified in Clause 7 of this Agreement;

"Web Site" means the Customer's web site or sites, email, applications and/or any other system or service as hosted on Cloud Heroes' Servers.

2. Interpretation

2.1 In this Agreement, unless the context otherwise requires:

- (a) a reference to any document is a reference to that document as varied, novated or replaced from time to time;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes all other genders;
- (d) a reference to a person or entity includes a natural person, a partnership, a corporation, trust, association, an unincorporated body, authority or other entity; and
- (e) a reference to a person includes that person's legal personal representative, successors and permitted assigns;

2.2 Headings have been inserted for convenience only and shall not affect the interpretation of this Agreement.



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3. Provision of Hosting Services

Cloud Heroes will provide Hosting Services to the Customer on the terms and conditions of this Agreement and as set out in the Application Form.

4. Availability

- 4.1 The Customer acknowledges that Cloud Heroes' systems, servers and equipment may from time to time be inoperative or only partly operational as a consequence of mechanical breakdown, maintenance, hardware or software upgrades, telecommunication connectivity problems or other causes.
- 4.2 Cloud Heroes agrees to rectify faults or problems and to restore the system to full operational capacity as soon as reasonably practicable.
- 4.3 Notwithstanding the terms of Clauses 4.1 and 4.2, Cloud Heroes agree to comply with the provisions of the Service Level Agreement in Appendix B in relation to any Downtime during the Term.

5. Limitation of Liability

- 5.1 Cloud Heroes gives no condition, warranty or undertaking and makes no representation to the Customer about the suitability of, or fitness of Hosting Services for the Customer's purposes other than those conditions, warranties, undertakings or representations expressly set out in this Agreement.
- 5.2 With the exception of any rights which the Customer may have under applicable law, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from these Terms to the fullest extent permitted by law.
- 5.3 Subject to sub-clause 5.2:
 - (a) **Cloud Heroes' total liability** in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Agreement **shall be limited to the total value of Hosting Services paid to Cloud Heroes by the Customer equal to one month's charge** in terms of this Agreement; and



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- (b) Cloud Heroes shall not be liable to the Customer or any third party for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever or howsoever caused which arise out of or in connection with the Agreement, or for loss of profit, loss of business, loss of data, depletion of goodwill or loss occurring in the normal course of business or otherwise.

6. Customer Content

- 6.1** Cloud Heroes will not be responsible for the accuracy and functionality of the Customer Content.
- 6.2** If Cloud Heroes reasonably forms the view that the Customer Content of Customer Content may be in breach of its Acceptable Use Policy (AUP, see Appendix A), Cloud Heroes may remove that Customer Content from its servers and shall within twenty four (24) hours thereafter notify the Customer of its removal. In addition, the Customer shall fully and effectively indemnify Cloud Heroes in respect of all losses of whatsoever nature incurred by Cloud Heroes as a result of the breach of AUP.
- 6.3** Cloud Heroes will have no liability for any loss or damage to any data stored on Servers or back-up facilities. It is the customer's sole responsibility to ensure that they make provision for the back-up of their data. Cloud Heroes may provide such a service to the customer, any such service to be agreed in writing and detailed within the schedule of services.
- 6.4** The Customer will maintain adequate insurance cover in respect of any loss or damage to data stored on Servers or back-up facilities.
- 6.5** In the event that either party terminates the agreement for any reason, the customer will be provided access to their data in order to ensure that they can retrieve it from the Cloud Heroes servers. Such access will be granted free of charge for up to three (3) working days after the end of the contract period. Should the customer require assistance from Cloud Heroes to retrieve their data, either in terms of resource and/or materials, Cloud Heroes reserve the right to make a charge for such service(s). Access to the data following three (3) working days after the end of the agreement cannot be guaranteed and a charge will be made if such access is required.

7. Term

This Agreement will commence on the Commencement Date and will subsist for **an initial period as agreed between Cloud Heroes and the Customer** (the Initial Period); the Initial Period will not be less than one month unless earlier terminated in accordance with its terms. Following the Initial Period, this agreement shall automatically continue in force for **recurring periods as agreed**



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between Cloud Heroes and the Customer, such periods will be a minimum of one month unless terminated in accordance with its terms or by either party on giving the other 30 days written notice prior to the **Monthly Billing Date**. In all cases, a **Period** will commence on the first day of a calendar month. Any termination notice will start from the 1st day of the next **Period** (calendar month).

8. Charges and Payment

- 8.1 The Customer will pay Cloud Heroes the Service Fees specified in the order form together with any VAT and other applicable taxes at the then prevailing rate ("**Service Fees**").
- 8.2 The Customer will pay the Service Fees by Direct Debit which will be collected within ten (10) days of the Cloud Heroes' invoice.
- 8.3 Any Additional Fees and out of pocket expenses and charges will be agreed on in writing in advance between the parties and invoiced separately. The Customer shall reimburse Cloud Heroes for any such Additional Fees and out of pocket expenses reasonably incurred by Cloud Heroes.
- 8.4 If the Customer is in arrears in any payment due to Cloud Heroes under this Agreement, the Customer will pay, in addition to the arrears, interest at the rate of four percent (4%) per annum above the base rate for the time being of Lloyds Bank plc on all arrears calculated on a daily basis from the date the default occurs until payment is made in full as well before as after judgement.
- 8.5 Without limiting any other right or remedy available to Cloud Heroes, Cloud Heroes may on giving seven (7) days' notice, and without having to account for or to repay any money previously paid to it pursuant to the terms of this Agreement, refuse to commence, complete or deliver any work or otherwise comply with the provisions of this Agreement on Cloud Heroes' part to be observed or performed in the event the Customer:
 - (a) fails to pay any sums due to Cloud Heroes under this Agreement; or
 - (b) otherwise defaults in the due observance and performance of this Agreement.

9. Ownership & Software Licensing

- 9.1 The Parties acknowledge that this Agreement does not have the effect of transferring the ownership of any Intellectual Property.
- 9.2 Any Intellectual Property owned by either party and required for the performance by the other party of its obligations under this Agreement shall be licensed to that other party on a non-exclusive, royalty-free basis for the sole purpose of fulfilling that party's obligations under this Agreement and for the period during which the use of that Intellectual Property by that party pursuant to this Agreement is required.



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- 9.3** Where the Customer places or installs their own Material on Cloud Heroes' Servers, the Customer is responsible for ensuring that they have secured all necessary licences required for the performance by Cloud Heroes of its obligations under this Agreement and for the period during which the use of those rights by Cloud Heroes pursuant to this Agreement is required.
- 9.4** Where Cloud Heroes provides the Customer with the use of Microsoft software, Appendix C "Terms and Conditions Regarding Use of Microsoft Software" forms part of this agreement.

10. Domain Name Registration

If Cloud Heroes is requested to register domain names on behalf of the Customer at no time do Cloud Heroes represent that any particular domain name is available for registration. The registration and use of domains names is subject to the terms and conditions of the relevant naming authority – details can be obtained via the Cloud Heroes website. If payments are not received in respect of domain name registrations Cloud Heroes may cancel or retain them under the allowable terms of the registering authority. The Customer is responsible for ensuring they have rights to use domain names that are registered through Cloud Heroes and the Customer hereby indemnifies Cloud Heroes for any loss of whatsoever nature incurred by Cloud Heroes in that regard. In the event of a dispute between the Customer and third parties in respect of the rights to domain names, Cloud Heroes retains the right to suspend or cancel disputed domain names in accordance with the terms of the registering authority.

11. Acceptable Use Policy

- 11.1** The Customer acknowledges that it will comply with the Acceptable Use Policy as published in Appendix A to this document.
- 11.2** The Acceptable Use Policy is a standard policy for the conduct of Cloud Heroes' business and is necessary for the orderly and efficient provision of its hosting services to customers.
- 11.3** In the event of the Customer breaching the Acceptable Use Policy, Cloud Heroes retains the right to suspend or terminate the provision of Hosting Services and shall within twenty four (24) hours thereafter notify the Customer of such suspension.

12. Equipment and Access

The Customer must provide, at its own cost, all telecommunications services, computers and other equipment or services necessary to enable it to have access to Hosting Services. The Customer must comply with all applicable legal requirements, rules and regulations that apply to the communications means by which the Customer obtains access to Hosting Services.



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13. Personnel and Sub-Contractors

Cloud Heroes may in its absolute discretion sub-contract the performance of any of its obligations under this Agreement.

14. Warranties

14.1 Each party warrants that:

- (a) it has authority to enter and to perform its obligations under this Agreement; and
- (b) it has the ability to perform its obligations under this Agreement.

14.2 Cloud Heroes warrants that Hosting Services will in all respects comply with the description in the Application Form.

14.3 The Customer warrants that:

- (a) the use by Cloud Heroes of any works or Materials submitted by the Customer to Cloud Heroes under this Agreement will not infringe the rights of any person or contravene any law;
- (b) at the time of entering into this Agreement it is not relying on any representation made by Cloud Heroes which has not been expressly set out in this Agreement;
- (c) it will take all reasonable steps to ensure that any software used in connection with Hosting services and any material or data provided to Cloud Heroes will be free from any Computer Virus and will not damage or corrupt any other data or system;
- (d) That it is solely responsible for communicating with persons who maintain or access its Web Sites and that it will not divert any complaints or concerns from such persons to Cloud Heroes.
- (e) Where the Customer allows its own customers to maintain web sites within the web space provided as part of the Hosting Service, the Customer remains fully bound by this contract and is responsible for the activities and actions of such persons.

14.4 Cloud Heroes shall not be liable for defects resulting from improper use of Hosting Services by the Customer or by another third party.



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15. Indemnity

- 15.1** The Customer indemnifies and undertakes to keep indemnified Cloud Heroes, its officers, servants and agents against any costs or expenses (including the cost of any settlement) arising out of any claim, action, proceeding or demand that may be brought, made or prosecuted against Cloud Heroes by any person arising out of or as a consequence of an unlawful or negligent act or omission of the Customer, its officers, servants or agents in any way connected with this Agreement whether arising from any failure by the Customer to comply with the terms of this Agreement or otherwise.
- 15.2** The indemnity extends to and includes all costs, damages and expenses reasonably incurred by Cloud Heroes in defending any such action, proceeding, claim or demands.

16. Termination

- 16.1** Cloud Heroes may terminate this Agreement by notice in writing to the Customer in the event that:
- (a) The Customer fails to pay any amount to Cloud Heroes due under this Agreement and does not make that payment within Thirty (30) days after receiving notice requiring the Customer to do so;
 - (b) The Customer fails to perform any of the obligations on its part to be observed or performed pursuant to the Acceptable Use Policy, or
 - (c) The Customer fails to perform any of the obligations on its part to be observed or performed pursuant to this Agreement, or
 - (d) Any of the warranties or representations made by the Customer contained in this Agreement are false or inaccurate in any material way.
- 16.2** Either party shall be entitled to terminate this Agreement forthwith by notice in writing to the other if the other party shall:
- (a) commit any material breach of any of its obligations under this Agreement
 - (b) pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect;
 - (c) make any voluntary arrangement with its creditors or become subject to an administration order;
 - (d) have a receiver or administrative receiver appointed;
 - (e) cease or threaten to cease to carry on business.



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17. Confidential Information

- 17.1** Each party may use the Confidential Information of a disclosing party only for the purposes of this Agreement and must keep confidential all Confidential Information of each disclosing party except to the extent (if any) the recipient of any Confidential Information is required by law to disclose the Confidential Information.
- 17.2** Either party may disclose Confidential Information of the other party to those of its employees and agents who have a need to know the Confidential Information for the purposes of this Agreement but only if the employee or agent executes a confidentiality undertaking in a form approved by the other party.
- 17.3** All documents and other materials containing Confidential Information of either party will be returned to that party immediately upon completion of Hosting Services
- 17.4** The parties' obligations to keep information confidential will survive the termination of this Agreement.
- 17.5** The obligations of confidentiality under this Agreement do not extend to information that:
- (a) was rightfully in the possession of the receiving party before any negotiations leading to this Agreement;
 - (b) is, or after the day this Agreement is signed, becomes public knowledge (otherwise than as a result of a breach of this Agreement); or
 - (c) is required by law to be disclosed.

18. Force Majeure

- 18.1** "**Force Majeure**" means anything outside the reasonable control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage, transportation embargo, failure or delay in transportation, including without limitation where Cloud Heroes ceases to be entitled to access the Internet or ceases to have access to the Internet for whatever reason, any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency.
- 18.2** If a party is wholly or partially precluded from complying with its obligations under this Agreement by Force Majeure, then that party's obligation to perform in accordance with this Agreement will be suspended for the duration of the Force Majeure.



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18.3 As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under this Agreement.

19. Notification, Variation of Agreement

19.1 Any notices given by Cloud Heroes to the Customer may be given by e-mail, facsimile, letter or via the Cloud Heroes website. Cloud Heroes may vary the terms of this agreement by giving one's months' notice. Continued use of service implies acceptance of the new terms.

19.2 The Customer shall be responsible for ensuring that Cloud Heroes has been provided with up to date information to allow Cloud Heroes to serve notices in terms of Clause 19.1

20. Jurisdiction

The parties agree that this Agreement shall be subject to the Law of England and to the exclusive jurisdiction of the English Courts



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Appendix A - Acceptable Use Policy (AUP)

It is a requirement of the Cloud Heroes Terms and Conditions that all users of its network or services accept and adhere to the company's Acceptable Use Policy for Internet service(s). Cloud Heroes may change this policy to include changes in the law or in the acceptable practice of Internet use and reserves the right to make such changes without notice and whenever required. All users are responsible for ensuring that they have read and understand the current policy.

Compliance with this Acceptable Use Policy is a contractual requirement. If you fail to observe the terms of this policy your account or service may be liable to termination or suspension. In the event that an account is suspended, Cloud Heroes may be prepared, at its sole discretion, to restore the account on receipt of a written statement that the user will not commit any further abuse of the service.

Cloud Heroes' relationship with its customers, its partners and other network providers depends on responsible conduct from all users. The Company will not hesitate to protect itself and other customers and networks should any form of abuse be found to be occurring.

Use of networks and the Internet in general

- You must not use the service for the transmission of illegal material. The user agrees to refrain from sending or receiving any materials which may be deemed to be offensive, abusive, indecent, hard-core or paedophile pornography, defamatory, obscene, menacing or otherwise as prohibited by current and future statutes in force. The user agrees to refrain from sending or receiving any material which may be in breach of copyright (including Intellectual Property Rights), confidence, privacy or other rights.
If you are in any doubt as to the legality of what you are doing, or propose to do, you should either take independent legal advice or cease that usage.
- You should be aware that the storage, distribution of or transmission of illegal materials may lead to investigation and possible prosecution by the UK authorities.
- You must not gain or attempt to gain unauthorised access to any computer systems for any purpose. In addition to being a breach of this AUP, such action may lead to criminal prosecution under the Computer Misuse Act.
- You must not send data to the Internet using forged addresses or data which is deliberately designed to adversely affect remote machines (including but not limited to denial of service, ping storm, trojans, worms and viruses).
- You must ensure that local PCs and network connected servers are not configured to allow open relay and must not participate in the sending of unsolicited commercial or bulk email (commonly referred to as 'spam' or 'UCE') including hosting or allowing the hosting of sites or information that are advertised ('spamadvertised') by UCE from a third party network or supplier.
- You are prohibited from running 'port scanning' or other software intended to probe, scan, test the vulnerability of or access remote systems or networks except in circumstances where the remote user has given express permission for this to be done.



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- You may not divulge your network passwords to third parties and should take all reasonable steps to ensure that such information remains confidential.

Email

Sending and receiving email involves the same responsibilities and approach as would be used when sending or receiving any other form of communication - written or printed mail, fax, telephone call etc. Most users fully understand what would be considered appropriate and acceptable when communicating with others and apply these considerations to their use of email. There are occasions when some users send mail or engage in online communication that others consider unacceptable - generally regarded as abuse by the online community.

If you find it difficult to determine what might be considered 'abuse' with online communication you should realise that, in general terms, anything that might be unacceptable, and possibly illegal, in other forms of communication will be equally unacceptable and possibly illegal online.

- You should not send emails that might cause annoyance, inconvenience or anxiety to a recipient.
- You should not send any emails likely to cause distress or any material which is offensive, indecent, obscene, menacing or in any way unlawful
- You must not use Cloud Heroes mail services or network to send email to any user who does not wish to receive it.
- You must not use Cloud Heroes mail services or network to send unsolicited commercial email, in bulk (commonly known as 'spam') or individually.
- You must not use Cloud Heroes mail services or network with intent to deprive others of service (e.g. 'mail bomb')
- You must not use false mail headers or alter the headers of mail messages in such a way as to conceal the identity of the sender.
- You must not use any email address that you are not authorised to use.
- You must ensure that any email servers connected to the Cloud Heroes network and operated by you are not configured to allow 'open relay'.

Customers who abuse the Cloud Heroes email service will be notified that their behaviour is unacceptable and may have their accounts suspended, terminated or blocked.

The Company reserves the right to restrict or block Internet traffic to or from a Customer server, without prior notification, in the event of a failure to abide by the published terms of the Acceptable Use Policy. This may include, but not exclusively, the transmission of unsolicited email or the presence of an open mail relay.

If a customer account or service is suspended or blocked due to abuse, then service may be restored at Cloud Heroes' sole discretion and generally will only be restored on receipt of a written assurance of future compliance with this Policy and on payment of an administrative charge for restoration of service.



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Web usage

Web usage includes the use of web space provided with customer accounts, web hosting on Cloud Heroes servers and the use of web services and space on customer co-located servers.

Cloud Heroes cannot and does not proactively monitor content on any web space maintained by customers (whether customer space, web hosted or co-located services) and cannot and does not guarantee that such sites are free of illegal content or other materials that may be considered unacceptable.

- You undertake sole responsibility for the content of web pages owned and or operated by you - whether on customer pages, web hosted space or co-located servers - within the Cloud Heroes domain or other domains hosted within the Cloud Heroes network.
- You undertake sole responsibility to ensure that all materials on any web site owned or operated by you contains material that you have created or have permission to use.
- You undertake sole responsibility for any dispute involving Copyright or Intellectual Property Rights associated with your site or service.
- You must not use your website or web service to promote or distribute any material or content that is illegal (under any current or future legislation). You should be aware that the Internet is a global communications network and what may be legal in the UK may be illegal elsewhere and leave you liable to prosecution in another country.
- You must not host or allow the hosting of sites or information advertised ('spamvertised') by UCE, including UCE from third party network(s) or supplier(s).

Cloud Heroes may undertake investigation of content services if potential abuse is brought to its attention and reserves the right to remove any web page on our servers at any time and for any reason.

Abuse of Cloud Heroes services - action by Cloud Heroes

Please address all complaints about abuse of Cloud Heroes services to abuse@cloudheroes.com.

Cloud Heroes reserves the right to investigate suspected or potential abuse of its Acceptable Use Policy. If we become aware of possible abuse, either through our own investigations or through referral by another user or by a third party, we may begin an investigation that may include gathering information from all potential parties and materials on our servers. Cloud Heroes reserves the right to suspend accounts or access during such investigations and/or to remove materials from servers (on a temporary or permanent basis). All actions will be determined on an individual basis and will not be taken to form any precedent.

Cloud Heroes customers who engage in abuse of the network and/or the Internet will be notified that their behaviour is unacceptable and may have their accounts suspended or terminated. If a customer account or service is suspended or blocked due to abuse, then service may be restored at Cloud Heroes' sole discretion and generally will only be restored on receipt of a written assurance of future compliance with this Policy and on payment of an administrative charge for restoration of service.



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All Cloud Heroes users acknowledge that the Company may be required by current or future legislation to access, store, copy or otherwise Customer data stored within or transmitted by our service. By accepting this Acceptable Use Policy you expressly agree that we may access and use your personal data or other account information in connection with any such investigation and may disclose such data to any third party who has a legitimate interest in the data, investigation or outcome.

Cloud Heroes reserves the right to terminate service, with immediate effect and without further obligation or liability to Customers, as required by any law enforcement authority or by the Courts of the United Kingdom.

Abusive Behaviour

Cloud Heroes does not tolerate abusive behaviour from anyone and reserves the right to terminate, without further notice or refund, the services of any customer or user who demonstrates abusive, intolerant, violent, verbally abusive or threatening behaviour towards Cloud Heroes, its staff, contractors, customers or other users.

Regulation of Investigatory Powers Act 2000, Terrorism Act 2006

Cloud Heroes undertakes to take action required under the provisions of the Regulation of Investigatory Powers Act 2000, Terrorism Act 2006 and or other relevant legislation and will fully cooperate with the appropriate UK authorities.



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Appendix B - Service Level Agreement (SLA)

Cloud Heroes guarantees that the network shall have 99.99% Availability. If the availability falls below 99.99% in any month, Cloud Heroes will credit the customer with one day's free Service for each accumulated hour when the Network is not available, subject to the maximum of the standard monthly service charge for that Service.

The maximum overall service credit payable due to Downtime in any calendar month will be 100% of the month's Service Fee.

For the purposes of this provision, Downtime excludes:

- Periods of essential maintenance.
- Any period during which any service or Web Site is unavailable as a direct consequence of any breach of the Agreement by the Customer, the negligence of the Customer or its employees, servants or agents.
- Any defect in any of the Web Sites (other than any defect caused by an act or omission of Cloud Heroes).
- Any incompatibility between platform software and content and any defect in any software provided by the Customer to Cloud Heroes under the Agreement.

Any period of Downtime is deemed to commence from the time it is reported by the Customer to Cloud Heroes until the incident is resolved by Cloud Heroes.

Claims for refund of the Service Fee or part thereof must be made in writing within seven (7) days of the end of a calendar month in respect of Downtime occurring in the previous calendar month.



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Appendix C - Terms and Conditions Regarding use of Microsoft Software

This document concerns your use of Microsoft software, which includes computer software provided to you by Cloud Heroes as described below, and may include associated media, printed materials, and "online" or electronic documentation (individually and collectively "SOFTWARE PRODUCTS"). Cloud Heroes does not own the SOFTWARE PRODUCTS and the use thereof is subject to certain rights and limitations of which Cloud Heroes needs to inform you. Your right to use the SOFTWARE PRODUCTS is subject to your agreement with Cloud Heroes, and to your understanding of, compliance with and consent to the following terms and conditions, which Cloud Heroes does not have authority to vary, alter or amend.

1. Definitions

"Customer Software" means software that allows a Device to access or utilise the services or functionality provided by the Server Software.

"Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," or other electronic device.

"Server Software" means software that provides services or functionality on a computer acting as a server.

"Redistribution Software" means the software described in Paragraph 4 ("Use of Redistribution Software") below.

2. Ownership of Software products

The SOFTWARE PRODUCTS are licensed to Cloud Heroes from an affiliate of the Microsoft Corporation ("Microsoft"). All title and intellectual property rights in and to the SOFTWARE PRODUCTS (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the SOFTWARE PRODUCTS) are owned by Microsoft or its suppliers. The SOFTWARE PRODUCTS are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the SOFTWARE PRODUCTS does not transfer any ownership of the SOFTWARE PRODUCTS or any intellectual property rights to you.

3. Use of CUSTOMER SOFTWARE

You may use the Customer Software installed on your Devices by Cloud Heroes only in accordance with the instructions, and only in connection with the services, provided to you by Cloud Heroes.



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4. Use of REDISTRIBUTION SOFTWARE

In connection with the services provided to you by Cloud Heroes, you may have access to certain "sample," "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO Cloud Heroes, WHICH TERMS MUST BE PROVIDED TO YOU BY Cloud Heroes. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Cloud Heroes.

5. Copies

You may not make any copies of the SOFTWARE PRODUCTS; provided, however, that you may (a) make one (1) copy of Customer Software on your Device as expressly authorized by Cloud Heroes; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Customer Software and/or Redistribution Software upon termination or cancellation of your agreement with Cloud Heroes, upon notice from Cloud Heroes or upon transfer of your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the SOFTWARE PRODUCTS.

6. Limitations on Reverse Engineering, Decompilation and Disassembly

You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCTS, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.

7. No Rental

You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the SOFTWARE PRODUCTS to any third party, and you may not permit any third party to have access to and/or use the functionality of the SOFTWARE PRODUCTS.

8. Termination

Without prejudice to any other rights, Cloud Heroes may terminate your rights to use the SOFTWARE PRODUCTS if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the SOFTWARE PRODUCTS, and destroy all copies of the SOFTWARE PRODUCTS and all of its component parts.

9. No Warranties, Liabilities or Remedies by Microsoft

ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY Cloud Heroes AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.



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10. Product Support

Any product support for the SOFTWARE PRODUCTS is provided to you by Cloud Heroes and is not provided by Microsoft or its affiliates or subsidiaries.

11. Not Fault Tolerant

THE SOFTWARE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

12. Liability For Breach

In addition to any liability you may have to Cloud Heroes, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.