



Conditions of Service

The Customer's attention is particularly drawn to the provisions of Clause 5.2 (which makes it clear that the Customer is responsible for backing up any data, unless the Contract provides for back-up services); Clause 5.4 (which makes it clear that customer data hosted by Cloud Heroes for the Customer may be deleted following termination of the Contract); and Clause 14 (limitation of liability).

In the event that the customer is purchasing hardware, please consult Cloud Heroes' hardware conditions of sale.

1 Basis of Contract

- 1.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 1.2 The Order shall only be deemed to be accepted when Cloud Heroes issues written acceptance of the Order, at which point, and on which date the Contract shall come into existence. That date shall be the Commencement Date, unless a different Commencement Date is specified in the Quotation.
- 1.3 Any samples, drawings, descriptive matter or advertising issued by Cloud Heroes, and any descriptions or illustrations contained in the Cloud Heroes' catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 1.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.5 Any Quotation given by Cloud Heroes shall not constitute an offer and is only valid for a period of 28 Business Days from its date of issue.
- 1.6 Cloud Heroes reserve the right to amend the Charges upon notification to the Customer at any time. Such revised Charges shall be binding on the Customer in relation to all existing (subject to Clause 4.2 below) and future Contracts, products and/or services. Such revised Charges shall be deemed to constitute a part of the Contract between the Customer and Cloud Heroes in place of the previous Charges.
- 1.7 The Customer and Cloud Heroes may agree by email during the Contract to add or vary elements of the Services. A change to the Contract to add or vary elements of the Services will be effective on the earlier of (i) the agreement via email by either party to a change to the Contract proposed by the other; and (ii) the Customer's acceptance of the Services as amended by such addition or variation.
- 1.8 The Services are designed for business customers in the United Kingdom only. The Customer has confirmed to Cloud Heroes that it is not purchasing any Services as a consumer.
- 1.9 Different terms are applicable to Contracts for hardware sales. Those terms are available on request from Cloud Heroes.



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2 Supply of Services

- 2.1 Cloud Heroes shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 2.2 Cloud Heroes will use reasonable endeavours to ensure that the Services are provided to the Customer on a constant, uninterrupted basis throughout the duration of the Contract.
- 2.3 Cloud Heroes will use reasonable endeavours to any performance dates specified in Quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 2.4 Cloud Heroes reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Cloud Heroes shall notify the Customer in any such event.
- 2.5 Cloud Heroes may from time to time recommend third party software or other products and services for the Customer's consideration. Cloud Heroes makes no representation or warranty whatsoever regarding such products and services. The Customer's use of any products and services not provided by Cloud Heroes is governed by the terms of the Customer's agreement with the provider of those products and services and is at the Customer's sole risk. Cloud Heroes is not responsible in any way for the third party product's performance, features nor failures.
- 2.6 Title in the Loaned Equipment shall not at any time transfer to the Customer. On termination of the Services (for any reason) the Customer shall return the Loaned Equipment to Cloud Heroes immediately, and Cloud Heroes reserves the right to recover such equipment and, for that purpose, the Customer grants to Cloud Heroes (and / or Cloud Heroes' subcontractor) a licence to enter upon the premises where the equipment is stored. The Customer undertakes to keep the Loaned Equipment wholly identifiable and distinguishable from other goods.
- 2.7 Except for the express warranties in these Conditions, Cloud Heroes makes no other warranties, express or implied, relating to the Services.
- 2.8 The Services are provided to the Customer for the Customer's own internal business purposes only. The Customer shall not re-sell the Services to any third party for money or money's worth or otherwise provide use of the Services to anyone else.

3 Customer's Obligations

- 3.1 The Customer shall:
 - a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - b) co-operate with Cloud Heroes in all matters relating to the Services;



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- c) provide Cloud Heroes, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Cloud Heroes;
- d) use all reasonable endeavours to carry out Cloud Heroes' reasonable instructions;
- e) provide Cloud Heroes with such information and materials as Cloud Heroes may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- f) prepare the Customer's premises for the supply of the Services;
- g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- h) comply with all applicable laws, including health and safety laws;
- i) provide Cloud Heroes with all office, information technology, and telecommunications facilities (including full remote access), at the Customer's cost, that Cloud Heroes may require to enable Cloud Heroes to perform Cloud Heroes' obligations under the Contract;
- j) keep all materials, equipment, documents and other property of Cloud Heroes ("Cloud Heroes Materials") at the Customer's premises in safe custody at its own risk, maintain them in good condition until returned to Cloud Heroes, and not dispose of or use Cloud Heroes Materials other than in accordance with Cloud Heroes' written instructions or authorisation;
- k) unless otherwise specified in the Specification or the Quotation, be responsible for correctly configuring the software firewall of the Hosted Property;
- l) comply with any additional obligations as set out in the Specification; and
- m) comply with the Acceptable Use Policy.

3.2 The Customer shall not use the Services for any unlawful or otherwise inappropriate purposes. This includes, but is not limited to:

- a) storage or distribution of computer viruses, malware, spyware or any other form of code designed to cause harm or nuisance to hardware or software or to obtain data without consent;
- b) storage or distribution of copyright-infringing material including, but not limited to, software, videos, music and written works without the requisite clearances, consents or licences for such storage or distribution; and
- c) storage or distribution of obscene or illegal material including that which is pornographic, abusive, threatening, malicious, harassing, fraudulent, defamatory or that which encourages criminal activities.

3.3 The Customer may not use the Hosted Property to link to any other websites or systems hosting any material described above.

3.4 The Customer shall be responsible for all activity relating to the Hosted Property. The Customer undertakes to ensure that any and all e-commerce conducted through the Hosted Property complies with all relevant laws in force at the relevant time including, but not limited to, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the EU E-Commerce Directive 2000.



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- 3.5** If Cloud Heroes' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- a) without limiting or affecting any other right or remedy available to it, Cloud Heroes shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Cloud Heroes' performance of any of its obligations;
 - b) Cloud Heroes shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Cloud Heroes' failure or delay to perform any of its obligations as set out in this Clause 3.5; and
 - c) Customer shall reimburse Cloud Heroes on written demand for any costs or losses sustained or incurred by Cloud Heroes arising directly or indirectly from the Customer Default.

4 Charges and Payment

- 4.1** The Charges for the Professional Services shall be calculated on a time and materials basis:
- a) the Charges shall be calculated in accordance with Cloud Heroes' daily fee rates, as set out in the Quotation;
 - b) Cloud Heroes' daily fee rates for each individual are calculated on the basis of an eight-hour day from 9.00 am to 5.30 pm worked on Business Days;
 - c) any estimate or indication by Cloud Heroes of the number of man days or hours required to complete a specific task shall be deemed to be a non-binding estimate only;
 - d) Cloud Heroes shall be entitled to charge an Overtime Rate, on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in Clause 4.1(b). For these purpose, the Overtime Rate is the overtime rate agreed between the parties or (in the absence of any such agreement) the overtime rate (expressed as an additional per cent of the applicable daily fee rate) generally applied by Cloud Heroes at that time; and
 - e) Cloud Heroes shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Cloud Heroes engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Cloud Heroes for the performance of the Services, and for the cost of any materials.
- 4.2** Cloud Heroes reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.



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- 4.3** For all Services other than the Professional Services, the Customer shall, unless otherwise agreed in writing between the parties, pay the Charges for the Services by Direct Debit, which will be collected as specified in the Customer's Direct Debit instruction form. For Professional Services, Cloud Heroes shall invoice the Customer monthly in arrears.
- 4.4** The Customer shall pay each invoice submitted by Cloud Heroes:
- a) within 30 days of the date of the invoice; and
 - b) in full and in cleared funds to a bank account nominated in writing by Cloud Heroes, and time for payment shall be of the essence of the Contract.
- 4.5** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Cloud Heroes to the Customer, the Customer shall, on receipt of a valid VAT invoice from Cloud Heroes, pay to Cloud Heroes such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 4.6** If the Customer fails to make a payment due to Cloud Heroes under the Contract by the due date, then, without limiting Cloud Heroes' remedies under Clause 15, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 4.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 4.7** All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5 Customer Data

- 5.1** Cloud Heroes will not be responsible for the accuracy and functionality of the Customer Data.
- 5.2** 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.
- 5.3** The Customer will maintain adequate insurance cover in respect of any loss or damage to data stored on Servers or back-up facilities.
- 5.4** In the event that either party terminates the agreement for any reason, the Customer will be provided access to their Customer 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 Customer Data, either in terms of resource and/or materials, Cloud Heroes reserves the right



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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.

- 5.5** Where any of the Services involves installing software on, or modifying or adapting, any device owned or controlled by any of the Customer's staff, the Customer shall be responsible for ensuring that Cloud Heroes have the requisite consent to do so and shall indemnify Cloud Heroes and keep Cloud Heroes fully indemnified and hold Cloud Heroes harmless in respect of any claims from any such person in respect of any acts or omissions Cloud Heroes undertake with regard to their device.
- 5.6** To the extent that Cloud Heroes offers any Services component which offers the ability to record communications, the Customer is encouraged to obtain independent legal advice before using this facility to ensure that it meets the Customer's legal requirements (for example, under any applicable financial services regulations) and that all appropriate laws governing call recording in the United Kingdom are being adhered to.

6 Intellectual Property Rights

- 6.1** All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Cloud Heroes.
- 6.2** The Customer grants Cloud Heroes a fully paid-up, non-exclusive, royalty-free, fully sub-licensable licence to copy and modify any materials provided by the Customer to Cloud Heroes for the term of the Contract for the purpose of providing the Services to the Customer.
- 6.3** Where Cloud Heroes provides the Customer with the use of Microsoft software, the Cloud Heroes "Terms and Conditions Regarding Use of Microsoft Software" annexed to these terms forms part of this agreement.
- 6.4** The Third-Party Software shall not be deemed to be incorporated within the Services for the purposes of this licence and use of the Third-Party Software shall be subject to the Third-Party Additional Terms.
- 6.5** The Customer shall indemnify and hold Cloud Heroes harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any Third-Party Additional Terms howsoever arising.
- 6.6** Cloud Heroes may treat the Customer's breach of any Third-Party Additional Terms as a breach of this Agreement.
- 6.7** The Customer agrees that Cloud Heroes may publicly disclose that Cloud Heroes is providing Services to the Customer and may use its name and logo to identify the Customer as Cloud Heroes' customer in promotional materials, including press releases. Cloud Heroes will not without the Customer's consent use such name or logo in a manner that suggests an endorsement or affiliation.



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7 Hosting Indemnity

- 7.1** The Customer shall defend, indemnify and hold harmless Cloud Heroes against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services.

8 Staff and Personnel

- 8.1** Cloud Heroes will ensure that Cloud Heroes' staff employed in the provision of Services possess appropriate skills and experience. Cloud Heroes reserves the right to replace any staff assigned to the provision of the Services.
- 8.2** Where any part of the Services is to be provided at the Customer's premises, the Customer shall ensure that Cloud Heroes' staff and contractors have a safe place to work, and the Customer shall notify Cloud Heroes of any health and safety rules which apply to the Customer's premises. Cloud Heroes will use Cloud Heroes' reasonable endeavours to ensure that Cloud Heroes' staff and contractors comply with such rules when working on the Customer's premises.
- 8.3** The Customer shall not, without Cloud Heroes' proper consent, during the course of the agreement approach directly or indirectly with a view to employing, engaging or sub-contracting on any basis whatsoever any employee who has been involved in the provision of the Services to the Customer. This will not include responses to any bona fide job advertisement which is not directly or indirectly a result of any solicitation or inducement by the Customer. The Customer shall not, without Cloud Heroes' prior written consent, initiate recruitment of any of Cloud Heroes' field engineers during the life of, or for a period of 6 months from expiry or termination of, the Services. If the Customer breaches this Clause 8.3, the Customer shall pay Cloud Heroes a sum equal to six (6) months current gross salary of the relevant person in recognition of the value of that person to Cloud Heroes. The parties agree that this sum is a genuine pre-estimate of the loss likely to be suffered by Cloud Heroes in these circumstances.
- 8.4** The Customer shall indemnify Cloud Heroes in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by Cloud Heroes including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- a) the termination by the Customer of the employment of any of the Customer's employees;
 - b) anything done or omitted to be done in respect of any of the Customer's employees which is deemed to have been done by Cloud Heroes by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) or any substitute or replacement for them ("Employment Regulations"); and
 - c) any claim made at any time by any employee of the Customer who claims to have become an employee of or have rights against Cloud Heroes by virtue of the Employment Regulations.



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- 8.5** Cloud Heroes will provide support services only to the Customer's administrative or technical contacts listed on the Customer's account. Cloud Heroes will not provide support directly to end users unless specifically agreed in writing.
- 8.6** Cloud Heroes will not tolerate abusive or harassing behaviour directed at Cloud Heroes' staff. The Customer acknowledges that any such behaviour will entitle Cloud Heroes to cease the communication during which the behaviour arose, or (if a staff member is at the Customer's premises) remove the staff member from the Customer's premises, which may result in a failure or delay in providing the Services, or actioning or resolving the relevant matter or issue.

9 Support

- 9.1** To the extent specified in the Quotation, Cloud Heroes agrees to provide the following support services:
- a) Cloud Heroes will provide support services in respect of errors or defects in the Hosted Property which cause the Hosted Property to not comply in all material respects with the Specification;
 - b) Cloud Heroes will provide the support services specified in the Specification in respect of such errors or defects. Upon registration by the Customer or a third party acting on behalf of the Customer, Cloud Heroes will also provide the Customer with access to its support website. Cloud Heroes will also use online tools to make investigations and share information remotely.
- 9.2** Cloud Heroes shall provide support services as set out in the Specification. Cloud Heroes shall have no obligation to provide such support services if the fault is not reported through Cloud Heroes' telephone support line or via Cloud Heroes' support website or where faults arise from:
- a) misuse, incorrect use of or damage to the Hosted Property; or
 - b) failure to maintain the necessary environmental conditions for use of the Hosted Property; or
 - c) use of the Hosted Property in combination with any equipment or software not provided by Cloud Heroes, or any fault in any such equipment or software; or
 - d) relocation or installation of the Hosted Property by any person other than Cloud Heroes or a person acting under Cloud Heroes' instructions; or
 - e) the Customer's failure to follow Cloud Heroes' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hosted Property or (if there are none) good trade practice; or
 - f) the Customer altering or repairing the relevant hardware without the written consent of Cloud Heroes; or
 - g) any breach of the Customer's obligations under the Contract.
- 9.3** The circumstances in Clause 9.2 above are "Relief Events" for the purposes of any Service Level Agreement applicable to the Contract.



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10 Change Control

- 10.1** Except as otherwise specified in these Conditions, if either party wishes to change the scope of the Services, the Hosted Property, or any related hardware (as the case may be), or the scope of the support provided under this Agreement, it shall submit details of the requested change to the other in writing.
- 10.2** If either party requests a change, Cloud Heroes shall, within a reasonable time, provide a written estimate to the Customer of:
- the likely time required to implement the change;
 - any variations to Cloud Heroes' Charges arising from the change;
 - the likely effect of the change on the Services; and
 - any other impact of the change on the terms of the Contract.
- 10.3** If Cloud Heroes requests a change to the scope of the Services, the Hosted Property, or the Hardware (as the case may be) or the scope of the support provided under this Agreement, the Customer shall not unreasonably withhold or delay consent to it.
- 10.4** If the Customer wishes Cloud Heroes to proceed with the change, Cloud Heroes has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its Charges and any other relevant terms of the Contract to take account of the change.

11 Service Suspension

- 11.1** By giving reasonable notice to the Customer, or if this is not practicable, such notice as is reasonably practicable in the circumstances, Cloud Heroes may suspend the Services (or any part of the Services) and / or any other service (or services) that Cloud Heroes is providing to the Customer:
- to perform required maintenance on or upgrades to Cloud Heroes' systems;
 - If Cloud Heroes has a reasonable belief that an interruption is necessary to prevent fraud or any other illegal activity taking place;
 - for operational reasons in accordance with the service levels as stated in the Specification;
 - if Cloud Heroes is obliged to comply with the order, instruction, or request of a court, government, agency, emergency service organisation, or other competent administrative or regulatory authority, requiring suspension to the Services; or
 - if the Customer's use of the Services may damage or disrupt the proper functioning of the infrastructure and / or equipment used to provide services to Cloud Heroes' other customers; or
 - due to problems with any of Cloud Heroes' data centre communications network or infrastructure, or the suspension or terminating of Cloud Heroes' access to the data centre's communications network or infrastructure; or



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g) if Cloud Heroes has reasonable grounds to believe that the Customer is in breach of the Customer's obligations (including the Customer's obligation to pay Charges), and the Customer either fails to remedy that breach or fails to demonstrate to Cloud Heroes' reasonable satisfaction that no breach took place within five (5) Working Days of written notice of the suspected breach.

- 11.2** Suspension of the Services under 11.1 above shall be excluded from Cloud Heroes' service level obligations under the Contract, and such suspension of the Services shall continue for as long as any of the circumstances above continue.
- 11.3** If service is suspended under these Conditions or any other Terms & Conditions of Cloud Heroes, the service will not be reinitiated whilst there are any unpaid fees due to Cloud Heroes for any service provided by Cloud Heroes whether or not such services relate to the suspended service.
- 11.4** Cloud Heroes reserves the right to charge a reinstallation fee for any services suspended under the Contract or any other contract between the parties and such fee may include a Security Deposit of an amount commensurate to the risk to Cloud Heroes of supplying services to the Customer, such fee to be at the sole discretion of Cloud Heroes.
- 11.5** If Cloud Heroes, in its reasonable opinion, believes that the Hosted Property may at any time be the cause of, or a contributing factor to, or affected by any problem with Cloud Heroes servers, systems or digital properties, or third party clients' digital properties, Cloud Heroes may temporarily disconnect the Hosted Property to investigate and rectify any problem which may arise.
- 11.6** The Customer agrees to reimburse Cloud Heroes in respect of any costs or losses arising out of any event giving rise to a suspension under this Clause 11.

12 Domain Names

- 12.1** The Customer acknowledges that in the event that the Customer requests Cloud Heroes to register domain names on behalf of the Customer, Cloud Heroes does not warrant that the domain name is available or may be validly registered.
- 12.2** The registration and use of domain names is subject to the terms and conditions of the relevant naming authority – details can be obtained via the Cloud Heroes website.
- 12.3** Cloud Heroes shall not be obliged to provide any services of the Customer's domain name or domain name server ("DNS") pending settlement in full of any outstanding Charges under any Contract.
- 12.4** Any Internet related service provided by Cloud Heroes whether or not such service includes the use of an Internet domain name, email addresses, web site programming code or data, broadband or any other contracted service, will not be transferred away from Cloud Heroes whilst any fees relating to any service provided by Cloud Heroes are owed to Cloud Heroes.



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- 12.5** 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.

13 Data Protection and Data Processing

- 13.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 13.2** The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and Cloud Heroes is the Data Processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 13.3** Without prejudice to the generality of Clause 13.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to Cloud Heroes for the duration and purposes of the Contract.
- 13.4** Without prejudice to the generality of Clause 13.1, Cloud Heroes shall, in relation to any Personal Data processed in connection with the performance by Cloud Heroes of its obligations under the Contract:
- a) process that Personal Data only on the written instructions of the Customer unless Cloud Heroes is required by Data Protection Legislation;
 - b) implement and maintain the Security Measures;
 - c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - d) extent to the extent necessary to comply with applicable legal, regulatory or law enforcement requirements, inform the Customer without unreasonable delay after it becomes aware of any loss, theft, misuse, unauthorised access, disclosure, or acquisition, destruction or other compromise of Personal Data that has occurred in its systems which affects Personal Data
 - e) inform the Customer of: (i) any formal requests from data subjects exercising their rights of access, correction or erasure of their Personal Data, their right to restrict or to object to the Processing as well as their right to data portability, and not to respond to such requests, unless instructed by the Customer in writing to do so; and (ii) any requests made by public authorities requiring Customer to disclose the Personal Data processed in the context of the Services or to participate in an investigation involving such Personal Data;
 - f) not transfer any Personal Data outside of the European Economic Area unless appropriate safeguards under Data Protection legislation have been applied. The Parties agree that Cloud



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Heroes may transfer Personal Data processed under the Contract outside the European Economic Area (“EEA”) or Switzerland as necessary to provide the Services;

- g) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- h) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- i) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Data Protection Legislation to store the Personal Data;
- j) contribute to audits or inspections by making available to the Customer upon request information security audit reports received by Cloud Heroes, which the Customer must treat confidentially under the confidentiality provisions of the Contract or under a non-disclosure agreement concluded between the Parties. Cloud Heroes will respond to a written security questionnaire submitted to it by the Customer provided that the Customer will not exercise this right more than once per year; and
- k) maintain complete and accurate records and information to demonstrate its compliance with this Clause 13.

13.5 The Customer consents to Cloud Heroes appointing Microsoft as a third-party processor (“Sub-processors”) of Personal Data under the Contract, and provides a general authorisation to Cloud Heroes to appoint further Sub-processors. Cloud Heroes confirms that it has entered or (as the case may be) will enter with any Sub-processor into a written agreement substantially on that the Sub-processor’s standard terms of business or incorporating terms which are substantially similar to those set out in this Clause 13. Cloud Heroes will inform the Customer of any addition, replacement or other changes of Sub-processors and provide the Customer with the opportunity to reasonably object to such changes on legitimate grounds. The Customer acknowledges that these Sub-processors are essential to provide the Services and that objecting to the use of a Sub-processor may prevent Cloud Heroes from offering the Services to the Customer.

13.6 Either party may, at any time on not less than thirty (30) days' notice, revise this Clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

14 Limitation of Liability

THE CUSTOMER’S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

14.1 Nothing in the Contract shall limit or exclude Cloud Heroes’ liability for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- b) fraud or fraudulent misrepresentation; or



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- c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

14.2 Subject to Clause 14.1, Cloud Heroes shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- a) loss of profits;
- b) loss of sales or business;
- c) loss of agreements or contracts;
- d) loss of anticipated savings;
- e) any loss arising out of the use of Microsoft software or any Third Party Software;
- f) loss of use or corruption of software, data or information;
- g) loss of damage to goodwill; and
- h) any indirect or consequential loss.

14.3 Subject to Clause 14.1, Cloud Heroes' total maximum aggregate liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100.0% of the total Charges paid under the Contract in the twelve (12) months preceding the event giving rise to liability.

14.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.5 This Clause 13.1 shall survive termination of the Contract.

15 Termination

15.1 Either party may terminate the Contract for convenience at any time by giving the other party three (3) month's written notice (or such other period of notice of termination for convenience as may be specified in the Quotation).

15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within seven (7) days of that party being notified in writing to do so;
- b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;



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- c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.3 Without affecting any other right or remedy available to it, Cloud Heroes may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment; or there is a change of Control of the Customer.

15.4 Without affecting any other right or remedy available to it, Cloud Heroes may suspend the supply of Services under the Contract or any other contract between the Customer and Cloud Heroes if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in Clause 15.2(b) to Clause 15.2(d) or Cloud Heroes reasonably believes that the Customer is about to become subject to any of them.

16 Consequences of Termination

16.1 On termination of the Contract:

- a) the Customer shall immediately pay to Cloud Heroes all of Cloud Heroes' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Cloud Heroes shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- b) the Customer shall return all of Cloud Heroes' materials which have not been fully paid for. If the Customer fails to do so, then Cloud Heroes may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

16.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

16.4 Where the Services are transferred away from Cloud Heroes, Cloud Heroes reserves the right to charge such fees as to cover charges levied by Cloud Heroes' suppliers and/or for Cloud Heroes' administration time. Any such fees will be notified to the Customer in advance and such charges may not have been identified within the Quotation. All such payments must be received by Cloud Heroes prior to migration of services taking place.



Conditions of Service

17 General

17.1 Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control ("Force Majeure Event"). Without limitation any failure of the Internet or any communications facilities on which Cloud Heroes or its data centre partners rely to provide the Services shall be a Force Majeure Event.

17.2 Assignment and other dealings.

- a) Cloud Heroes may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Cloud Heroes.

17.3 Confidentiality.

- a) Each party undertakes that it shall not at any time during the Contract, and for a period of three (3) years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 17.3(b).
- b) Each party may disclose the other party's confidential information:
 - i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 17.3; and
 - ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

17.4 Entire agreement.

- a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- b) Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- c) Nothing in this Clause shall limit or exclude any liability for fraud.



Conditions of Service

- 17.5 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.6 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.7 Third party rights.**
- a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
 - b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 17.8 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 17.9 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 17.10 Changes to these Conditions.** Cloud Heroes reserves the right to change these Conditions and any and all other terms and conditions and/or policies which may affect the Customer in order to comply with changes in any of the following: Cloud Heroes' business, the law, the practices of any data centre or Microsoft or any Third Party Software Provider. The Customer will be informed of any changes made under this Clause and shall be deemed to be bound by them on receipt of the notice.

18 Interpretation

The following definitions and rules of interpretation apply in these Conditions.

18.1 Definitions:

Acceptable Use Policy: the Cloud Heroes Acceptable Use Policy in effect from time to time as set out at <https://www.cloudheroes.com/terms-and-conditions>.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.



Conditions of Service

Charges: the charges payable by the Customer for the supply of the Services in accordance with Clause 4 (Charges and payment).

Cloud Heroes: JPC InfoNet Limited Trading as Cloud Heroes Ltd, of Suite 2 Bryer Ash Business Park, Trowbridge, Wiltshire, BA14 8AW.

Cloud Heroes Materials: has the meaning set out in Clause 3.1(j).

Commencement Date: has the meaning set out in Clause 1.2.

Conditions: these terms and conditions as amended from time to time in accordance with Clause 17.10.

Contract: the contract between Cloud Heroes and the Customer for the supply of Services in accordance with these Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Customer: the person or firm who purchases Services from Cloud Heroes.

Customer Data: any content, information, software programs or other material of the Customer in respect of which the Services are provided, including any contents of a Customer website or other property of the Customer which is hosted by Cloud Heroes.

Customer Default: has the meaning set out in Clause 3.5.

Data Controller: has the meaning set out in Data Protection Legislation.

Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998. "GDPR" means General Data Protection Regulation ((EU) 2016/679).

Data Subject: an individual who is the subject of Personal Data.

Hosted Property: any Customer website, application or other digital property of the Customer in respect of which the Services are provided.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Loaned Equipment: any server, computer hardware or other articles which are made available to the Customer as part of the Services.



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Order: the Customer's order for Services as set out in the Customer's written acceptance of Cloud Heroes' Quotation.

Personal Data: has the meaning set out in Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which Cloud Heroes is providing Services under the Contract.

Processing and process: have the meaning set out in Data Protection Legislation.

Professional Services: consultancy, technical or engineering services provided by Cloud Heroes on an ad hoc basis as agreed between the parties in a Specification from time to time.

Quotation: a quotation provided by Cloud Heroes specifying the length of the Contract, the charges applicable and certain provisions regarding the Services.

Security Measures: the data security practices and processes referred to at <https://www.cloudheroes.com/cyber-security-policy/> (or any replacement for it) from time to time.

Services: the hosting and related services supplied by Cloud Heroes to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by Cloud Heroes to the Customer.

Third Party Software: means the software owned and controlled by third parties, identified in the Specification and/or the Quotation.

Third-Party Additional Terms: the additional terms and conditions relating to Third-Party Software identified in the Specification and/or the Quotation.

18.2 Interpretation:

18.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

18.4 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

18.5 A reference to writing or written includes emails.

18.6 In the event of any conflict between the Quotation or Specification and these Conditions, the Quotation or Specification shall prevail.

18.7 In the event of any conflict between the Quotation and the Specification, the Specification shall prevail.