

Cloud Services Specific Terms

Introduction

The terms and conditions in this document apply to the provision of Cloud Services (“**Cloud Services Specific Terms**”).

Interpretation & Definitions

1. The terms defined below shall have the meanings applied to them wherever they occur in the relevant Cloud Services Schedule under a SOW and under these Cloud Services Specific Terms, including any sections, references, schedules and annexes:
 - **Cloud Infrastructure** means the hardware, software and communications platform hosted, owned and/or procured by Codestone from which Codestone provides resources to the Client to deliver the Cloud Services;
 - **Cloud Services** means Computing Power, Data Storage and Bandwidth to be delivered to the Client as listed in a SOW and in accordance with these terms;
 - **Cloud Services Start Date** means the start date specified in a Cloud Services Schedule under a SOW;
 - **Cloud Services Minimum Period** means the minimum period specified in a Cloud Services Schedule under a SOW;
 - **Cloud Services Renewal Period** means the renewal period specified in a Cloud Services Schedule under a SOW;
 - **Cloud Services Invoicing Period** means the invoicing period specified in a Cloud Services Schedule under a SOW;
 - **Cloud Services Supplier** means the supplier specified in in a Cloud Services Schedule under a SOW
 - **Emergency Maintenance** means work to be performed on the Cloud Infrastructure, which is not anticipated or planned 7 days in advance of that work being performed, and that is, in Codestone’s reasonable opinion, sufficiently urgent such that it cannot be treated as Scheduled Maintenance;
 - **Event of Default** means any breach by the Cloud Services Supplier of its contractual obligations under this Agreement (excluding breaches arising from wilful default or recklessness), any misrepresentation made by the provider in connection with this Agreement (excluding fraudulent misrepresentation), any tortious act or omission (including negligence) in connection with the provider’s performance under this Agreement (excluding fraudulent or dishonest acts or omissions), and/or any other act or omission giving rise to liability under or in connection with this Agreement;
 - **Go Live** means the first date of live productive use of the Cloud Services as specified in a Cloud Services Schedule under a SOW;
 - **Hardware** means any physical computer, device or appliance;
 - **Maximum Service Credit Per Quarter** means the maximum amount of Service Credit a Client may claim in any quarter as specified in a Cloud Services Schedule under a SOW;
 - **Relief Event** means: a) any breach by the Client of its obligations under the Agreement; (b) an act or omission of a third party which impacts the ability of Codestone to perform its obligations under the Agreement; (c) an event of Force Majeure; or (d) any error or malfunction in the Client’s business systems or any other software, Hardware or system for which Codestone is not responsible; or (e) any failure by the Client, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, Hardware or Client solution for which Codestone is not responsible; or (f) any telecommunications network

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defect, delay or failure or failure of the Client's Hardware or other Client solution(s), which, in any case, has an adverse effect on Codestone's ability to perform its obligations under the Agreement;

- **Permitted User** means any individual who is authorised by the Client under the terms of the applicable SOW, to access and use the Cloud Services on the Client's behalf, provided that such access and use is solely in accordance with the terms of these Specific Terms, the EULAs and any applicable Vendor Cloud Services Terms;
- **Scheduled Maintenance** means work to be performed by Codestone on the Cloud Infrastructure which is pre-planned and is not to exceed one (1) hour in any one (1) month period, unless by prior agreement with the Client;
- **Service Credit** means an abatement of the Price to which the Client is entitled where the provision of a relevant part of the Cloud Services falls below the Service Levels as set out in a Cloud Services Schedule under a SOW;
- **Service Credit Area Quarterly Fee** means the quarterly fee from which Service Credits are calculated as specified in a Cloud Services Schedule under a SOW;
- **Service Level** means the minimum standards to which certain Cloud Services must be delivered as set out in a Cloud Services Schedule under a SOW;
- **Systems means** the equipment, software, documents (hard copy or electronic), compilations of data and/or other materials;
- **Target Availability** means the target availability of Cloud Services as defined in clause 3.1;
- **Utilisation Based Cloud Services** means Cloud Services where the cost is not known in advance and that are invoiced periodically based on the Client's variable consumption levels or other factors;
- **Utilisation Based Cloud Services Terms** means terms and conditions related to the provision of Utilisation Based Cloud Services that are either available at <https://www.codestone.com/vendor-product-terms/>, or may be signed by the Client directly with the Utilisation Based Cloud Services provider;
- **Vendor** means a third party vendor other than the Parties to this Agreement;
- **Vendor Cloud Services** means the third party Cloud Services Supplier as set out in a Cloud Services Schedule under a SOW;
- **Vendor Cloud Services Terms** means any Vendor Cloud Services terms and conditions (including any software licence, terms and conditions specific to the Vendor Cloud Services which have been flowed-down to the Client and/or other EULA agreement) relating to the Client's use of the Vendor Cloud Services.

Cloud Services Terms and Conditions

1. Cloud Services Term:

1.1 Cloud Services:

- 1.1.1 will commence from the Cloud Services Start Date and continue for the Cloud Services Minimum Period; and
- 1.1.2 at the end of the Cloud Services Minimum Period the Cloud Services shall automatically continue for a period of the Cloud Services Renewal Period, unless notice of termination of the Cloud Services is given by at least 90 days' written notice in advance of the end of the Cloud Services Minimum Period or the end of any subsequent Cloud Services Renewal Period.

2. Scope:

- 2.1 Cloud Services (excluding Utilisation Based Cloud Services) will be delivered in accordance with the Cloud Services Operations Policy.

- 2.2 The Cloud Services Operations Policy may be reviewed and amended from time to time at

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Codestone's sole discretion. Changes to the Cloud Services Operations Policy will be notified to Client by email link to a secure web location no less than 30 days before such changes take effect.

- 2.3 Unless an agreement for Utilisation Based Cloud Services is signed by the Client directly with the Utilisation Based Cloud Services provider, the applicable terms and conditions available at <https://www.codestone.com/vendor-product-terms/> valid at the relevant Cloud Services Start Date are incorporated by reference into the Agreement and apply to the provision of any Utilisation Based Cloud Services under a SOW.
- 2.4 The Client shall use all Utilisation Based Cloud Services in accordance with the applicable Utilisation Based Cloud Services Terms.
3. Service Levels: for Cloud Services provided by Codestone (rather than a Third Party Provider):
 - 3.1 Service Levels in respect of Cloud Services provided by Codestone (rather than a Third Party Provider) are set out in the relevant SOW.
 - 3.2 Codestone shall use reasonable endeavours to deliver the Cloud Services within the Cloud Service Levels.
 - 3.3 The performance of the Cloud Services shall be measured against the Cloud Service Levels.
 - 3.4 Codestone shall not be liable for any failure to meet any Service Levels if and to the extent that such failure has resulted directly from a Relief Event.
4. Service Credits: for Cloud Services provided by Codestone (rather than a Third-Party provider):
 - 4.1 Where Codestone fails to meet any Service Levels for which a Service Credit is attributable, the Client shall be entitled to claim a Service Credit against the Cloud Services Price within the period of 90 days from the date of the Service Level failure.
 - 4.2 A Client is entitled to claim Service Credits if, in any one quarter, the availability of Cloud Services falls below the Target Availability. For each whole 0.1% that the availability of Cloud Services falls below the Target Availability, a Service Credit of 1% of the Service Credit Area Quarterly Fee can be claimed up to a maximum of the Maximum Service Credit Per Quarter as set out in the relevant SOW.
 - 4.3 Codestone shall credit and off-set against the Client's next invoice any valid and agreed Service Credits due within 60 days from the Client's Service Credit claim. The Client's maximum entitlement to Services Credits per quarter is set out in the SOW or the Cloud Services Schedule, as appropriate.
 - 4.4 Failure by Codestone to meet the Service Levels shall not constitute a breach of the Agreement, and the Client's sole and exclusive remedy for such failure shall be the entitlement to Service Credits.
5. Suspension of the Service:
 - 5.1 Codestone will use reasonable endeavours to notify the Client in advance of any suspension of access to the Cloud Services. However, if notification is not possible, Codestone reserves the right to suspend the Client's access to the Cloud Services without notice in the following circumstances:
 - 5.1.1 An event of Force Majeure;
 - 5.1.2 Where it is required to do so in order to comply with any Applicable Law, court order or request of a government body;
 - 5.1.3 During Scheduled Maintenance or Emergency Maintenance;
 - 5.1.4 in accordance with the terms of the Master Terms.
 - 5.2 In all circumstances, Codestone shall resume the provision of the Cloud Services as soon as reasonably practical after the relevant circumstances giving rise to the suspension have been resolved or the outstanding amount paid by the Client (as applicable).

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- 5.3 Codestone will not be liable for any failure to provide the Cloud Services in accordance with a SOW where non-performance arises out of or in connection with the suspension of the Cloud Services for the reasons in clause 5.1 above.
- 5.4 If suspension of the Cloud Services arises out of, or in connection with, an act or omission of the Client, then the Client will pay to Codestone within 14 days of written notice, all costs incurred by Codestone in resuming the Cloud Services.
6. Vendor Cloud Services:
- 6.1 It is a condition of the Agreement that the Client shall enter into and/or accept and adhere to such Vendor Cloud Services Terms, which are incorporated by reference into the Agreement and which apply to the provision of all Vendor Cloud Services under a SOW, as so prescribed by the relevant Vendors of each Vendor Product identified within the Agreement and/or in the applicable SOW. Codestone may treat the Client's breach of any Vendor Cloud Services Terms as a material breach of the Agreement.
- 6.2 All current versions of Vendor Cloud Services Terms for the Vendor Cloud Services from time to time, are either available at <https://www.codestone.com/vendor-product-terms/> or may be signed or accepted by the Client directly with the Vendor.
- 6.3 It is the Client's responsibility to ensure that it reviews and retains a copy of the relevant Vendor Cloud Services Terms from time to time, for its own records. In the event the Client does not accept the terms of such Vendor Cloud Services Terms (whether directly contracted with Codestone or the relevant third party), Codestone reserves the right to suspend the provision of the Deliverables until such time as the Client enters into or accepts such Vendor Cloud Services Terms. For the avoidance of doubt, the Price will continue to be payable by the Client despite any suspension of the Deliverables in accordance with this clause.
- 6.4 The Client acknowledges that Codestone is not the manufacturer of the Vendor Cloud Services and has to rely on the Vendor to perform any returns, warranty obligations, Updates, patches or fixes. To the extent permitted by law, Codestone shall not be liable for any delay or failure in the provision or performance of any Cloud Services agreed to be supplied under this SOW or any Event of Default caused by the acts or omissions or failure by the Cloud Services Supplier in providing the Cloud Services to the Client. All liability for the Cloud Services is contained in the relevant Vendor Cloud Services Terms.
- 6.5 Codestone expressly excludes:
- 6.5.1 any warranty to the Client that the Vendor Cloud Services supplied or licensed under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in the marketing, sales or other associated documentation; and
- 6.5.2 any and all liability in relation to the use of such Vendor Cloud Services where the Client enters into the Vendor Cloud Services Terms directly with the Vendor.
- 6.6 The Client shall be fully responsible and liable for all acts and omissions of its Permitted Users in connection with any breach of the Vendor Cloud Services Terms by a Permitted User. The Client shall ensure that all Permitted Users comply with the Vendor Cloud Services Terms and shall take all reasonable steps to prevent unauthorised access to or use of the Vendor Cloud Services.
- 6.7 The Client acknowledges and agrees that it shall remain liable for any and all payments owed to Codestone throughout the Agreement and until the end of the respective term or subscription for such Vendor Cloud Services (Vendor Cloud Services Fees) notwithstanding termination of the Agreement or applicable SOW.
- 6.8 The Client shall indemnify Codestone against all liabilities, costs, expenses, damages and losses suffered or incurred by Codestone in connection with any claim made against Codestone for actual or alleged breach of such Vendor Cloud Services Terms by the Client and/or its Permitted Users or any other act or omission of a Permitted User in connection with the use of the Vendor Cloud Services.

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- 6.9 Any Service Level Arrangements set out in the Cloud Services schedule under a SOW do not relate to any Vendor Cloud Services Terms. The Client acknowledges that the only arrangements and warranties in relation to the Vendor Cloud Services, or the supply thereof, are those contained in the Vendor Cloud Services Terms which must be enforced directly by the Client against the relevant Vendor. To the extent that any of such arrangements or warranties are given directly to Codestone, Codestone will pass on the benefit of such warranties to the Client to the extent that they are transferable.
- 6.10 The Client acknowledges that it is responsible for ensuring that the Client's Hardware, Systems, and/or operating software for such is compatible with the Vendor Cloud Services and Codestone gives no warranty in relation thereto unless agreed otherwise in writing between the Parties in the SOW.

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