

Cloud contract for PC SOFT applications

Contract start date: 14 November 2012 09:20

1 Definitions

- 1.1. « Client » designates the entity that accepted the terms of this contract, and uses the Cloud service. The client is a professional entity.
- 1.2. « The company » or « We » designates PCSCloud, an SARL with a capital of 10,800 Euros, whose headquarters are located at 3 rue de Puech Villa, 34090 Montpellier, FRANCE, and which markets the Cloud service.
- 1.3. « Cloud Service » means the services made available for remote resources, storage, hosting and/or access to programs and data, as well as the tools and procedures enabling the use and configuration of these services.
- 1.4. « End user » means the entity using a resource made available online by the client.
- 1.5. « Resource made available online » or « Content » designates data or applications that the client makes available via the Cloud service.

2 Service

- 2.1. The Cloud service is a professional service restricted to Companies, Administrations, Public sector, Associations, independent developers, etc.
- 2.2. The guaranteed service level is 99%.
- 2.3. Price
 - 2.3.1. The price for the cloud service is the one published on the www.pcsccloud.net site for the relevant period.
 - 2.3.2. This price can be changed without notice.
- 2.4. The company can modify, suspend, or reduce one of the offers and/or modify or delete some features in the service offers. The company will notify the client of any important changes or of the stopping of the service offers. The client will be able to cancel the contract if he refuses the changes.
- 2.5. The cloud service offers several service plans. Depending on the chosen plan, the service will be offered as a shared service or a private service. The client is responsible for choosing the service plan matching his needs.
- 2.6. Contract length
 - 2.6.1. The contract applies until one of the parties ends it.
- 2.7. Termination
 - 2.7.1. The client can terminate the contract at any time, with a 5 business day advanced notice.
 - 2.7.2. If the termination is initiated by PCSCloud with no fault from the client, there will be a one month notice.
- 2.8. Temporary suspension
 - 2.8.1. The company can suspend access to the cloud for any client that breaches one or more clauses in this contract, without prejudice of other possible actions.
 - 2.8.2. The client is responsible for the incurred costs and the billable costs during the suspension period.
- 2.9. Hosting location of the applications and data
 - 2.9.1. The physical machines hosting the data center used by the cloud service are located in Metropolitan France. The data center is owned and managed by a service provider selected by the company.

3 Software use conditions

- 3.1. Operating system
 - 3.1.1. The operating system used by the data center's machines is Microsoft Windows. It is bound by Microsoft conditions. The client accepts Microsoft's conditions without reserve.
- 3.2. Other software
 - 3.2.1. All software are subject to a user license that the client is assumed to accept. The client must abide by the clauses of the user license of each software.
- 3.3. The company cannot be held accountable for potential problems with these software. It is the client's responsibility to take the appropriate measures to guard against any problem that may arise.
- 3.4. The client acts as a provider for the applications he makes available on the data center, and therefore is required to abide with the obligations behooved on him.
- 3.5. The client is responsible for attacks targeted specifically against the applications he makes available from the data center.

4 Responsibility

- 4.1. Limitations
 - 4.1.1. The responsibility of each party to the present contract is limited to direct damages in the limit of the sum paid by the client in the previous twelve (12) months for the cloud service pertaining to this responsibility. This limitation applies regardless of the basis for the invoked responsibility.
- 4.2. Force majeure
 - 4.2.1. No party can be held accountable for failing its obligations in the case of events independent of the will of the party (such as fire, explosion, power outage, earthquake, flooding, storm, strike, embargo, social conflicts, civil or military authority actions, war, terrorist act, cyber-terrorist act, fortuitous acts or oversight of Internet service providers, actions or oversights from public services (including adoption of laws, regulations or other public acts that have an impact on the availability of online services).
 - 4.2.2. The company is not responsible for the unpredictable failure of its sub-contractors.
- 4.3. CNIL declaration
 - 4.3.1. The client will perform the necessary declarations with the CNIL.

5 Invoicing

- 5.1. Billing is done as soon as the amount of services reaches a preset level, and no later than the end of each month. Invoices are due upon receipt.
- 5.2. Payment method
 - 5.2.1. Invoice payment is done via a credit card whose type is accepted by the company.
 - 5.2.2. The client must provide the information regarding the credit card that will be used for automatic payment of the billed amount.
 - 5.2.3. The amount for each invoice is due immediately, and is collected via automatic payment using the credit card whose information was provided by the client.
 - 5.2.4. The impossibility by the company to collect the amount corresponding to the invoice due by the client for a reason pertaining to the client or one of its providers (his bank for example) can result, if the company chooses so, in the temporary or permanent suspension of all services.
- 5.3. Current and future taxes
 - 5.3.1. The cloud service's prices are given without taxes. The invoices are established by adding the taxes and rights corresponding to the law for the relevant period. The client agrees to pay these taxes and rights.

6 Client duties

- 6.1. Password storage
 - 6.1.1. The client is responsible for his passwords, if relevant, and for all activities linked to his cloud service accounts, including the ones by related third-parties. The client must not divulge his account information and passwords. The client must immediately notify the company in case of a fraudulent use of his accounts or breach of security linked to the cloud service.
- 6.2. Access
 - 6.2.1. The client is solely responsible for the consequences of actions performed during access to the cloud service, be it via the use of management or configuration tools for the cloud service or via other means.
 - 6.2.2. The client is responsible for the proper configuration and use of the service offers and for taking the proper measures for maintaining appropriate security, protection and backup of its content, which may include the use of encryption technologies to protect his content.
- 6.3. The client is responsible for his content
 - 6.3.1. The client is solely responsible for the creation, operation and maintenance of his content.
 - 6.3.2. The client is solely responsible for the use of the content he offers.
- 6.4. Respect of the laws
 - 6.4.1. The clients commits to respecting intellectual property laws.
 - 6.4.2. The client commits to taking adequate measures so his end users cannot contravene the current laws when using the content he placed online.
 - 6.4.3. The client must not use, or encourage, promote, facilitate or imply to others to use the cloud service for any illegal activity, detrimental or offensive, or to send, store, display, distribute or make available any content that is illegal, harmful or offensive.
- 6.5. No security violations
 - 6.5.1. The client commits to not attempting to breach the security of the cloud service and its tools, such as: non-authorized access, probe attempt, scan or test a system's vulnerability or violate security measures or authentication measures used by a system, data or traffic control on a system without authorization, falsified transmissions or messages, interfere with the proper operation of any system, including any deliberate attempt to overload or harm the system.
 - 6.5.2. The client commits to taking the necessary measures to prevent his applications from being used to breach the security of the cloud service and its tools.
 - 6.5.3. The company reserves the right to investigate any violation of this policy and/or the improper use of the cloud service, and to delete, disable access, or modify any content or resource that violate the present policy.
 - 6.5.4. The company can flag any activity that the company suspects of violating the law or rules to legal authority, regulators or other relevant third-parties.
- 6.6. End User Responsibilities
 - 6.6.1. The client is responsible for the actions of his end users.
- 6.7. No alteration or forbidden use
 - 6.7.1. The client commits to using the cloud service within the constraints of the laws, and to not alter the intent for its use.
- 6.8. No reselling of the service (except for planned exception)
 - 6.8.1. The client cannot resell the cloud service, or part of the cloud service.

7 Complaints

- 7.1. Process to follow in case of an incident
 - 7.1.1. In case of an incident, the client will need to immediately contact the technical support department of the company.
 - 7.1.2. In case of an incident, the client will need to closely collaborate with the company.
- 7.2. Compensation if the service level is not reached
 - 7.2.1. If the guaranteed service level were to not be respected for a length of a calendar month (from the first day of the month to the last day of the month), the client would be entitled to claim compensation. This compensation corresponds to double the amount the client would have paid in the verified period of time for the unavailability. This amount is calculated by taking the mean over the last twelve months billed to the client.
 - 7.2.2. The client will need to provide proof of unavailability by any irrefutable mean.
 - 7.2.3. The length of the unavailability is calculated by slices of 5 minutes, the first slice from 0 to 5 minute not being taken into account. The client is reminded that some actions may not return results within the anticipated time because of ill-suited programming from the client or his contractors.
 - 7.2.4. A failed access must be immediately re-tested in the following seconds and must also fail for the access to be considered as having failed.
 - 7.2.5. We also like to remind the client that some administrative actions may have a deferred result (up to several hours), which is normal, and that it does not constitute an incident. This latency time is usually specified in the administrative tool's interface.
- 7.3. Jurisdiction definition
 - 7.3.1. Any litigation regarding this contract will be solely under the jurisdiction of the competent tribunal in the city of Montpellier, France, which will apply French Laws.

8 Miscellaneous

- 8.1. The present clauses can be modified at any time by the company. If the modifications are not accepted by the client, he may break the contract within 30 days after the modifications have been made.
- 8.2. Any illegal clause is simply eliminated.
 - 8.2.1. If a clause in this contract were to be inapplicable for any reason, it would be considered void, but the other clauses would still stand. The nullity of a clause does not entail the nullity of the contract.
 - 8.2.2. The order of the clauses in this contract is indicative, each clause is independent.
- 8.3. Confidentiality
 - 8.3.1. Each party commits to keeping confidential the existence of the link between themselves and the modality of this contract.
 - 8.3.2. The client commits to keeping confidential the implementation and interfaces of the access tools and management tools of the cloud services, and to restrict this access to people directly involved in his company, as well as to the contractors he may hire.
- 8.4. Internet sales waiver
 - 8.4.1. The client waives his rights to make purchases void and canceled in the name of the present contract in accordance to the laws governing mail order and e-commerce.
- 8.5. Electronic communication
 - 8.5.1. Communication between the client and the company is done electronically.
 - 8.5.2. Information can be sent via e-mail or via the cloud service management interface.
 - 8.5.3. E-mail notification is deemed to be provided at the date and time of transmission.
- 8.6. Any order placed on the www.pcscloud.net site implies the acceptance without reserve of this contract.

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