Legal

General Terms and Conditions

Last updated 13-03-2021

These General Terms & Conditions apply to all offers, quotations and subsequent agreements between HostingClub of Eindhoven, the Netherlands, Chamber of Commerce 65742265 ("HostingClub") and its counterpart ("Customer").

The application of any purchasing terms of Customer are expressly rejected. Any terms & conditions that deviate from these general terms & conditions are valid only if expressly confirmed in writing by HostingClub.

Article 1. Formation of the agreement

1.1

HostingClub offers various hosting, colocation and cloud-related services. At the initial registration, the customer selects the desired configuration and options through the web interface provided by HostingClub.

1.2

Upon receipt of the selected configuration from Customer, HostingClub will review and approve or reject an order. The subscription will be deemed accepted by HostingClub when HostingClub delivers a confirmation of the subscription. Customer will be notified by email. HostingClub reserves the right to refuse to provide You with any Service for any reason but we often shall substantiate a rejection. All additional Services shall be considered "Services" hereunder. All Services provided are subject to availability and to all of the terms and conditions of this Agreement.

1.3

Pricing and other options presented on the website of HostingClub are non-binding and subject to change at any time. Only the approved request from HostingClub determines the content and pricing of the configuration and options selected by Customer.

1.4

HostingClub reserves the right to interrupt access to the Services to perform regular and emergency maintenance as needed. HostingClub has the right to correct errors in the selected configuration, including prices, provided HostingClub informs Customer as soon as is possible about the error.

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Article 2. Provision of services

2.1

Upon approval, HostingClub will deploy a server as specified in the order. HostingClub will enable access to the service using an administrative account set up by HostingClub. Customer can create additional accounts through the configuration interface of the services.

2.2

Customer agrees to use only strong passwords and implement all security measures appropriate under the circumstances (e.g. the use of ssh instead of telnet) to safeguard access to the administrative and other accounts on the services.

2.3

HostingClub provides unmanaged services. HostingClub may assume that all activities that occur using the administrative account or an additional account are under supervision and risk of Customer. If Customer suspects an unauthorized third party has gained access to a password, Customer shall change its password as soon as possible and/or contact HostingClub as soon as possible so appropriate action can be taken.

2.4

Customer undertakes to do everything in its power that is reasonably necessary for HostingClub to provide the services. Customer shall in particular ensure that HostingClub has access to all information, which HostingClub indicates is necessary for the provision of services.

Article 3. Availability of the services

3.1

HostingClub uses commercially reasonable efforts to ensure continued availability of the Services, but cannot guarantee that the Services will be available for the benefit of Customer at all times. The Initial Term shall begin upon confirmation of Your order or commencement of the Services to You and receipt of lawful funds. The term's length is chosen by You and shall be indicated when You order Our Services. This Agreement may not be terminated by You during the Initial Term (and any renewals thereof) except in the event of a breach by HostingClub. After the Initial Term, this Agreement shall automatically renew for successive terms, equal in length to the Initial Term, unless terminated or canceled by either party as provided herein.

3.2

In case of any interruption or limited availability of the Services, HostingClub shall make reasonable efforts to remedy interruptions of the Services as soon as possible. Customer shall provide all necessary support to HostingClub to remedy such interruptions. If the interruptions are attributable to third parties, such as a telecommunication provider, HostingClub's only obligation is to urge that third party to ensure efficient remedy of that interruption.

3.3

HostingClub offers technical support by email and telephone and does so on a 24/7 basis. Contact information and a way-of-working for support will be provided separately. HostingClub is entitled to invoice Customer at its customary hourly rate for any actions carried out as support requests for issues, which are attributable to Customer.

3.4

HostingClub is entitled to suspend or restrict use of the Services temporarily without prior notice as necessary to perform reasonably required maintenance to or upgrading of its systems, without Customer being entitled to any form of compensation. HostingClub strives to do so only when usage is low and will endeavor to announce maintenance or upgrade windows in advance. HostingClub may terminate this Agreement effective immediately if, based on HostingClub sole judgment, it

determines that You or any of Your end-users: (a) have breached the Acceptable Use Policy, and incorporated herein, (b) have infringed or violated any intellectual property right or privacy or publicity right of a third party, (c) have not complied with any applicable law, statute or regulation, or (d) have uploaded, published or disseminated any images, text, graphics, code or video which HostingClub considers illegal or high risk, in its discretion. Mining, transcoding and other similar CPU overloading processes and applications are not allowed in a public cloud. Nothing contained in this Agreement is intended to, or shall, impose any duty or obligation upon HostingClub to monitor or review Your Content or the content of Your end-users at any time. You remain solely responsible for Your Content, and any liability generated therefrom.

3.5

All licensed software provided by HostingClub in the context of the agreement is leased and not sold. HostingClub and its licensors retain all right, title and interest in the software and any updates thereto. Customer only holds a limited, personal, revocable, non-exclusive, non-transferable, non-sublicenseable license to use the software for its business for the term of the agreement. Software license fees are non-refundable once the software has been activated. HostingClub shall not be liable to You or to any third party for termination of the Services permitted under this agreement. Upon termination of this Agreement, HostingClub reserves the right to maintain copies of Your data files and records for archival purposes, but does not undertake any obligation to do so. HostingClub reserves the right to impose an early termination charge for all Services terminated prior to the last day of the billing cycle. If either party cancels or terminates this Agreement for any reason, You shall be solely responsible for making all necessary arrangements for securing a replacement host and moving all electronic data, graphics, images, video or text to the new service provider. Upon termination of this Agreement, provisions that by their nature would be expected to survive termination shall survive and remain in full force and effect in accordance with their terms.

3.6

HostingClub is not obligated to make backups of Customer data stored through its services (including software installed on the services, configuration changes made by Customer or data stored in databases associated with the services) except when specifically agreed otherwise in writing beforehand

3.7

When creation of backups was expressly agreed, HostingClub's sole obligation regarding such backups is to make a best effort to collect and back up the agreed-upon data and to make such available for recovery in case of emergency situations. The recovery of individual files or data items from a backup is only possible in exception cases and against payment of the customary hourly rate of HostingClub.

Article 4. Acceptable use policy

4.1

Customer shall not use the Services or allow others to do the same in any manner that violates any applicable civil or criminal law, and / or then-current Terms of Use published by HostingClub or that negatively affects the performance of the services. Providing false or inaccurate contact information of any kind may result in the Termination conserning account(s).

4.2

HostingClub may suspend or terminate the services if HostingClub, at its sole discretion, deems the content hosted or use of the services is likely to be in violation of the above terms. HostingClub does not need to consult or inform Customer in such a case. HostingClub is not liable for any damages Customer may suffer as a result of its actions under this clause. Any violation of the security to the Site and/or Services is prohibited and may result in criminal and civil liability. Unauthorized Access of the servers used to provide the Site, Services, and/or Materials (the "Servers") is strictly prohibited and is a violation of this Agreement and the AUP. Customer agrees not to engage in such activity or to attempt to breach the Servers for the purpose of altering or manipulating the hardware and software, compromising the Servers, or for any other unauthorized use commonly known as "hacking." In addition, Customers are prohibited from the following:

 - Any form of unauthorized access to or use of data, systems or networks, including the Site and/or Services;

 - Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network;

 - Unauthorized interference with service to any user, host or network;

 - Introducing a malicious program into the network or server (e.g. viruses and worms), including the Site and/or Services;

 - Circumventing user authentication or security of any host, network or account;

 - Using an account with another provider to promote customers site with Us in an abusive manner. Utilizing Our Services for the purpose of compromising the security or tampering with system resources or accounts on computers at Our site or any other site.

In the event a customer is involved in any violation of system security, We reserve the right to release all concerning information to system administrators at other sites in order to assist in resolving security incidents, and We shall also cooperate with any law enforcement agency

investigating a criminal violation of system or network security. Additionally, any violation of these security provisions may, at Our sole discretion, be grounds for Termination for Cause of Your account.

4.3

In case a real or suspected violation of the above terms is raised by a third party which claims harm from the violation, HostingClub will act as per the terms of its then-current Notice and Takedown procedure. In addition, HostingClub will comply with all proper governmental or court orders regarding the provision of any information in accordance with the law. Customers are responsible for all activity transpiring under their account. We therefore highly recommend that You secure file, directory, and script permissions to the most restrictive settings possible. You agree that You have the technical ability to properly operate a web site and that You are responsible for any actions performed under Your account, including but not limited to, damage caused to Your site, HostingClub Hosting's site and/or equipment, and any other site.

4.4

In case Customer's use of the services or associated resources substantially exceeds reasonable use (e.g. extremely high data traffic or resource usage), HostingClub may suspend the offending service until the matter has been discussed with Customer and an appropriate solution (such as a hard limit on the resource usage or an upgrade to a higher offering) has been found. Customer agrees to comply with HostingClub's Anti-Spam Policy and which is hereby incorporated by reference as an indispensable part of this Agreement. Use of HostingClub's services for any illegal spam activities is strictly prohibited. HostingClub reserves the right to modify the Anti-Spam Policy at any time by posting the modified policy on its web Site. You agree to monitor HostingClub's home page for any changes to the Anti-Spam Policy. Your continued use of the Services after the effective date of any changes to the Anti-Spam Policy constitutes Your manifestation of intent to be bound by such changes. HostingClub offers bulk mail options as mailing list in our Hosting Plan.

Article 5. Domain names

5.1

In case part of Customer's request is to register or transfer any domain names under control of HostingClub, HostingClub will work with Customer to effect such registration or transfer, but only in the role as an intermediary or agent of Customer.

5.2

Registration and use of domain names is subject to the rules set by the applicable domain name registry. HostingClub accepts no responsibility or liability in this regard, as HostingClub is not a party to any agreement between the registry and Customer.

5.3

A registration or transfer of a domain name is successful only if Customer has obtained confirmation from the registry (e.g. through WHOIS). An invoice from HostingClub does not constitute a proof of registration or transfer. In case any authorization keys or codes are necessary to effect a transfer, Customer shall supply such keys or codes to HostingClub.

5.4

HostingClub accepts no liability for the loss or inability to use a domain name except when such loss or inability is the direct result of intentional misconduct or gross negligence on the part of HostingClub.

5.5

HostingClub has the right to suspend or cancel a domain name in case of termination of the agreement based on a violation of the agreement by Customer.

5.6

In case of service termination by either party, any fees associated with the domain name(s) are non-refundable.

Article 6. Pricing and invoicing

6.1

All prices are in Euros exclusive of value-added tax (VAT) and other government-imposed levies or costs. Customer is responsible for any costs associated with making payment, including wire transfer fees and currency conversion costs.

6.2

HostingClub shall invoice Customer in accordance with the selected payment term for the services provided. Provision of services is done on the basis of advance payments. For additional services, fees are charged prior to completion of the service, unless agreed otherwise.

6.3

Where invoices are based on processor, storage and/or transmission capacity used by Customer, HostingClub's accounting system shall constitute full evidence towards Customer, unless Customer submits concluding evidence to the contrary.

6.4

Customer shall pay all invoices in full within fourteen (14) days of the invoice date.

6.5

Upon Customer's failure to pay within the term, HostingClub will disable the services and/or associated functionality (e.g. the administrative interface) until all invoices have been paid in full including 10% late fee.

6.6

If Customer disputes all or part of an invoice, Customer must provide a complaint with supporting evidence to HostingClub in writing within seven days after receiving the invoice. In such an event, Customer is entitled to suspend payment of the disputed part of the invoice but not of any other part.

6.7

If HostingClub deems the complaint is justified, HostingClub will issue an adjusted or replacement invoice. If HostingClub deems the complaint unjustified, Customer will pay the disputed balance immediately. Customer will also pay legal interest calculated on a monthly basis from the moment the original term of payment expired, and any costs, fees and expenses incurred in connection with the collection of the debt.

6.8

HostingClub may limit access to the Services or otherwise suspend its obligations under the agreement if HostingClub may reasonably make an assumption that Customer has failed to comply with its payment obligations.

6.9

HostingClub is entitled to adjust the prices twice every calendar year by giving a one-month notice.

Article 7. Limitation of liability

7.1

HostingClub shall be liable to Customer only for direct damages arising out of its intentional misconduct towards Customer or materially negligent performance of any of its obligations under the agreement.

7.2

HostingClub shall never be liable for any consequential, special, punitive and/or incidental damages, including loss of profits, arising out of or in connection with the agreement, even if advised of the possibility of such damages.

7.3

Any liability of HostingClub for an event shall not exceed the amount actually paid by Customer to HostingClub in the three months preceding the date the event occurred.

7.4

No liability shall exist for damages that have not been reported to HostingClub in writing within two weeks of their occurrence, or for damages where Customer failed to take appropriate measures to limit such damages.

7.5

Customer shall indemnify, defend and hold harmless HostingClub against any and all losses, claims, damages, liabilities, actions, costs or expenses, including reasonable attorneys' fees incurred by it in connection with any claim from third parties.

Article 8. Force majeure

8.1

Apart from the obligation to make timely payments pursuant to the agreement, neither of the parties shall be liable for any failure to fulfill any of its obligations under the agreement if that failure is due to force majeure.

8.2

Force majeure is deemed to include, without limitation, acts or omissions of governments, acts or omissions of military authorities, strikes, lock-outs or other industrial disturbances, wars, blockades, insurrections, riots, epidemics, landslides, earthquakes, fires, storms, lightning, floods, acts of God, civil disturbances, (distributed) denial of service attacks, limited functioning of the relevant Internet infrastructure outside the control of either party, terrorist attacks, late delivery by third party suppliers and any other acts or omissions not within the control of the affected party.

8.3

The party affected by the event of force majeure shall without delay inform the other party of the extent of the delay expected as a result of the event in writing.

Article 9. Term and termination

9.1

The agreement is formed upon HostingClub's approval of the request and remains in force for successive terms of one month each, until Customer terminates the agreement by means of a written notice or a cancelation request submitted via the Client Area.

9.2

At any time HostingClub may demand Customer to provide proof of its identity. Failure to cooperate with this process is reason for immediate termination of the agreement.

9.3

In case a Customer blamefully fails to comply with the material obligations under the agreement, HostingClub will terminate the agreement, but only after the party that failed to comply has not remedied the failure within a reasonable period of time after service suspension due to non-payment.

9.4

Upon termination HostingClub will send Customer a final invoice for any amounts due but not yet invoiced. Any invoices sent before the date of termination will remain due and in full effect and will become immediately payable on termination.

9.5

Those terms and conditions of these Terms and Conditions and the agreement, which are, by their nature, meant to survive the term of the agreement, shall so survive.

Article 10. Changes to the agreement

10.1

The agreement, including these Terms and Conditions may only be modified by a written document executed by the parties.

10.2

HostingClub has the right to adapt or add to these Terms and Conditions at any time. Such adapted or additional terms shall enter into force 10 days after communication thereof to Customer.

10.3

If Customer does not wish to accept an adapted or additional term, Customer must raise its objection to HostingClub within these 10 days after being notified about these terms. HostingClub then may, at its discretion, withdraw the adaptation or addition. If HostingClub does not do so, Customer has the right to terminate the agreement within these 10 days. Failure to terminate constitutes acceptance of such terms.

Article 11. Applicable law and disputes

11.1

The law of the Netherlands governs the agreement and these General Terms and Conditions. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

11.2

Any disputes arising between HostingClub and Customer in connection with the agreement will be settled by the competent courts in the Netherlands, in the principal place of business of HostingClub.

11.3

In the event that any part of the agreement or these General Terms and Conditions become or are declared to be invalid by any court of competent jurisdiction, such invalidity shall not affect the rest of this agreement. The parties shall in such a case determine one or more replacement provisions that most closely approximate the clause concerned and which is legal under applicable law.

11.4

The failure of either party at any time to require performance by the other party of any provision of the agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of the agreement be taken or held to be a waiver of any further breach of the same provision.

11.5

Neither party may bring an action, regardless of form, arising out of or related to the agreement more than one year after the cause of action has arisen or the date of discovery of such cause, whichever is later. However, in no event can an action be brought more than one year after the date of termination of the agreement.

Article 12. Miscellaneous terms

12.1

The parties enter into the agreement as independent contractors. No employment or agent/principal relationship is created by the agreement between HostingClub and Customer or any of their respective employees or agents.

12.2

The agreement shall not be assigned or otherwise transferred by a party without the prior written consent of the other party, which shall not be unreasonably withheld. Any such assignment without such consent will be null and void. However, no consent is necessary for an assignment or transfer of the agreement to any affiliate of the transferring party or any company that succeeds to substantially all of that party's business. Furthermore, HostingClub is permitted to assign and transfer the agreement to any third party. The agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.

12.3

Customer shall keep HostingClub informed of any changes in his name, address or other contact details that may be relevant to HostingClub.

12.4

Any requirement for a "written" statement can be fulfilled by using an email, provided the identity of the sender and the integrity of such email can be determined with sufficient certainty.

12.5

The section headings in these General Terms and Conditions are for convenience only and shall not be used in construing or interpreting said terms.

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