
CloudFlow Terms of Use – Version 2 – 08/06/2020

CloudFlow is an online business management system provided by TechCare Limited. By accepting these terms of use, you (referred to in this Agreement as the “**Customer**”) agree to be bound by them in relation to all use of the CloudFlow system.

1. Definitions

The following definitions apply in this document:

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in England.

CloudFlow means the CloudFlow business management system made available to the Customer and its Users on and subject to the terms of this Agreement.

Confidential Information means all information (whether or not it is described as confidential) in any form or medium concerning any past, present or future business, operations or affairs of either party, including, without limitation customer data, all technical or non-technical data, formulae, patterns, programs, devices, methods, techniques, plans, drawings, models and processes, source and object code, software and computer records; all business and marketing plans and projections, details of agreements and arrangements with third parties, and User and supplier information and lists; all financial information, pricing schedules and structures, product margins, remuneration details and investment outlays; all information concerning any employee, customer, contractor, supplier or agent of the relevant party; the party's policies and procedures, **but** excludes information that the other party can establish is known by or is in the other party's possession or control other than through a breach of this document and is not subject to any obligation of confidence; or is in the public domain other than by a breach of this document or any obligations of confidence.; or is independently developed by or on behalf of the receiving party without reference to or use of the disclosing party's Confidential Information.

Customer Data means any information that the Customer or any of its Users uploads to CloudFlow, including Customer Personal Data.

Customer Personal Data means any Personal Data that the Customer or any of its Users uploads to CloudFlow.

Data Protection Legislation means Regulation (EU) 2016/679 of the European Parliament and of the Council, (the General Data Protection Regulation); any other existing or future law, directive or regulation (anywhere in the world) relating to the Processing of Personal Data or privacy, to which TechCare is subject.

Data Controller, Data Processor, Data Subject, Processing and Personal Data have the meanings given to those expressions or any equivalent or corresponding expressions in the Data Protection Legislation.

Force Majeure means an event or cause beyond the reasonable control of the party claiming force majeure. It includes each of the following, to the extent it is beyond the reasonable control of that party: act of God, lightning, storm, flood, fire, earthquake or explosion cyclone, tidal wave, landslide, adverse weather conditions; act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or pandemic; the effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority; and embargo, inability to obtain necessary materials, equipment or facilities, or power or water shortage.

Intellectual Property means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trade marks, brand names, business names, domain names and other forms of intellectual property;

Intellectual Property Rights means, for the duration of the rights in any part of the world, industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.

Standard Contractual Clauses means the standard contractual clauses for the transfer of personal data from the EU to third countries (controller-to-processor transfers) contained in the Annex to the Commission Decision of 5 February 2010 (Decision 2010/87/EU) amending Decision 2002/16/EC as regards the introduction of an alternative set of standard contractual clauses for the transfer of personal data to third countries.

User means any individual authorised by the Customer to use a CloudFlow account purchased by the Customer.

2. The CloudFlow system

- 2.1. The Customer agrees and accepts that CloudFlow is hosted by TechCare and its infrastructure providers, and shall only be installed, accessed and maintained by TechCare, and is not available locally from the Customer's systems. The Customer also acknowledges that CloudFlow is managed and supported exclusively by TechCare and that no 'back-end' access to CloudFlow is available to the Customer or its Users unless expressly agreed in writing.
- 2.2. As a hosted and managed service, TechCare reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter CloudFlow at its sole discretion. TechCare shall not amend CloudFlow in a manner that would intentionally cause the Customer to lose access to Customer Data or fundamentally decrease the utility of CloudFlow to the Customer, other than in accordance with the terms of this Agreement.

3. Payment of fees

- 3.1. The Customer shall pay the fees notified to it by TechCare for use of CloudFlow.
- 3.2. All invoices for the use of CloudFlow must be paid within 14 days of receipt. If full payment is not received by such date, TechCare may suspend access for all Users until such payment is received.
- 3.3. All prices are exclusive of applicable local, state, federal and international sales, value added, withholding and other taxes and duties of any kind unless otherwise stated.
- 3.4. The Customer shall pay all invoices for the use of CloudFlow in full, and shall have no right of set off for any liability it may claim to be owed to it by TechCare at any time.
- 3.5. TechCare may make CloudFlow available to you for a limited trial period at no charge. All the terms and conditions of this Agreement apply to your use of CloudFlow during any such trial period. If you choose to use CloudFlow at cost following the end of the trial period, the terms and conditions of this Agreement will automatically continue to apply to your use of CloudFlow.

4. Licence and use of CloudFlow

- 4.1. Subject to compliance with the terms and conditions of this Agreement, the Customer and its Users are granted a limited, non-exclusive and revocable license to access and use CloudFlow for the duration of this Agreement.
- 4.2. The Customer shall only permit access to CloudFlow to the number of Users for which it has purchased valid licences. Account access details must not be shared, and must only be used by one named individual.
- 4.3. The Customer is solely responsible for the security of usernames and passwords issued to it for access to CloudFlow.
- 4.4. TechCare may revoke or suspend access to CloudFlow at any time if the Customer or any User is in breach of this Agreement and has failed to comply with TechCare's reasonable request to remedy such breach within a reasonable time period.

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- 4.5. The Customer shall ensure that each of its Users is aware of and complies with the terms of this Agreement, and the Customer shall remain liable to TechCare for any breach of this Agreement by its Users, and any losses or damages that TechCare may suffer as a result of any such breach.
 - 4.6. The Customer agrees that it shall only use CloudFlow for legal purposes and shall not use it to engage in any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by TechCare in its sole discretion.
 - 4.7. TechCare provides user support for CloudFlow via a dedicated support email support@techcare.co.uk
 - 4.8. TechCare shall endeavour to respond to all support requests within 1 Business Day.
 - 4.9. TechCare reserves the right to require the payment of reasonable fees for non-standard support requests prior to the provision of such support.

5. Customer Data

- 5.1. TechCare obtains no right, title or interest in Customer Data including any Intellectual Property found within it. The Customer grants TechCare a licence to use the Customer Data solely for the purposes of providing CloudFlow in accordance with this Agreement.
- 5.2. TechCare accepts no liability for the content of Customer Data.
- 5.3. The Customer and its Users are responsible for the accuracy, quality and legality of Customer Data and the User's acquisition of it, and the Users that create, access and/or use Customer Data. The Customer shall ensure that it has an appropriate legal basis (including consents where required by law) for uploading and Personal Data to CloudFlow. The Customer hereby indemnifies TechCare in relation to any claims, losses, damages and costs that TechCare may suffer as a result of any claim that TechCare's possession or use of the Customer Data to provide CloudFlow in accordance with this Agreement infringes any applicable Data Protection Legislation or the Intellectual Property Rights of any third party.
- 5.4. Notwithstanding section 4.1, TechCare shall be entitled to permanently delete Customer Data where any outstanding payments due to TechCare by Customer remain unpaid in accordance with the terms of this Agreement.
- 5.5. TechCare shall not access, use, modify or otherwise deal with Customer Data except where required by compulsion of law, or upon the Customer or any User's authority (such as to provide technical support for CloudFlow), or as part of internal testing and troubleshooting.

6. Compliance with data privacy laws

- 6.1. TechCare and the Customer will comply with all applicable requirements of the Data Protection Legislation.
- 6.2. To the extent that TechCare acts as a Data Processor of Customer Personal Data in the course of making CloudFlow available to the Customer, TechCare shall:
 - 6.2.1. Process the Customer Personal Data only in accordance with the written instructions of Customer from time to time unless required to do so by law and subject to notifying the Customer (save whereby law TechCare is prohibited from so notifying the Customer);
 - 6.2.2. take reasonable steps to ensure the reliability of its employees, staff, officers and agents who may have access to, or be involved in, the Processing of the Customer Personal Data and that such employees, staff, officers and agents only process the Customer Personal Data in accordance with this Agreement;
 - 6.2.3. ensure that TechCare personnel who have access to and/or Process the Customer Personal Data are obliged to keep it confidential or are under an appropriate statutory obligation of confidentiality;
 - 6.2.4. ensure that it has in place appropriate technical and organizational measures to protect against unauthorized or unlawful Processing of Customer Personal Data and against loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from unauthorized or unlawful Processing or accidental loss, destruction or damage and the nature of the Customer Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures;

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- 6.2.5. notify Customer promptly of any Customer Personal Data breaches so that Customer can notify the supervisory authorities, as appropriate; TechCare shall take all such measures and actions as are necessary to remedy or mitigate the effects of the breach and shall keep the Customer informed of all developments in connection with the breach;
 - 6.2.6. conduct data protection impact assessments as appropriate;
 - 6.2.7. support Customer's interaction with supervisory authorities or regulators where the data protection risk assessment indicates that there is a high risk to the Processing;
 - 6.2.8. at the written direction of Customer, delete or return Customer Personal Data and copies thereof to Customer on termination or expiry of this Agreement unless TechCare is required to store the Customer Personal Data by law or if such Customer Personal Data is retained only in backups which are inaccessible in normal use;
 - 6.2.9. maintain complete and accurate records and information to demonstrate its compliance with these data protection obligations and shall allow at reasonable times and from time to time to audit and review TechCare's compliance with these data protection obligations and the Data Protection Legislation;
 - 6.2.10. inform Customer immediately if (in TechCare's opinion) an instruction for the Processing of Customer Personal Data given by the Customer infringes Data Protection Legislation;
 - 6.2.11. only transfer or process Customer Personal Data outside the European Economic Area on the basis of the Standard Contractual Clauses, which the Customer hereby accepts as being a valid and appropriate basis for such transfers and processing;
 - 6.2.12. not subcontract any processing of the Customer Personal Data to a third party subprocessor unless that third party is subject to contractual obligations no less onerous than those provided in this Agreement in relation to the processing of the Customer Personal Data.
- 6.3. TechCare shall be entitled to make any reasonable amendment to this section 5 necessary to bring TechCare's obligations in respect of the Processing of Personal Data into line with the Data Protection Legislation; or allow the Customer to comply with the Data Protection Legislation and the requirements and recommendations of any appropriate data protection supervisory authority or regulator.

7. Security

- 7.1. TechCare takes the security of CloudFlow and the privacy of its Customers and Users very seriously. TechCare shall use industry-standard systems and processes to protect the security of Customer Data.
- 7.2. The Customer agrees that its Users shall not do anything to prejudice the security or privacy of TechCare's systems (and the systems of TechCare's infrastructure providers) or the information on them.
- 7.3. TechCare may limit the amount of data that the Customer stores in CloudFlow, and shall advise the Customer of any such limits from time to time. Customer Data that is stored in CloudFlow shall be stored according to accepted industry standards.

8. Intellectual Property

- 8.1. The Customer shall not copy, alter, or use the CloudFlow name without the prior written consent of TechCare.
- 8.2. CloudFlow may use software and other proprietary systems and Intellectual Property owned by TechCare or which TechCare has appropriate authority to use, and the Customer agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally.
- 8.3. The Customer warrants that it shall not infringe on any third-party rights through the use of CloudFlow.
- 8.4. The Customer agrees and accepts that CloudFlow is the Intellectual Property of TechCare and the Customer further warrants that by using CloudFlow the Customer and its Users will not:
 - 8.4.1. copy CloudFlow or the services that it provides for their own commercial purposes; and
 - 8.4.2. directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in CloudFlow or any documentation associated with it.

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- 8.5. All content (with the exception of Customer Data) remains the Intellectual Property of TechCare, including (without limitation) any source code, ideas, enhancements, feature requests, suggestions or other information provided by the Customer or any other party with respect to CloudFlow.
 - 8.6. TechCare hereby indemnifies the Customer in relation to any claims, losses, damages and costs that the Customer may suffer as a result of any claim that the Customer's use of CloudFlow in accordance with this Agreement and any instructions provided by TechCare to the Customer infringes the Intellectual Property Rights of any third party. This indemnity shall not apply to any use of CloudFlow by the Customer or any User otherwise than in accordance with TechCare's reasonable instructions.
 - 8.7. The Customer shall own the Intellectual Property Rights in any document generated using CloudFlow, except in relation to the layout of any document which remains the property of TechCare.

9. Confidentiality

- 9.1. TechCare agrees to keep all Customer Data in the strictest confidence, and to the extent Customer Data is accessed and/or received by CloudFlow it shall be deemed as Confidential Information for the purposes of this Agreement.
- 9.2. Each party acknowledges and agrees that:
 - 9.2.1. the Confidential Information is secret, confidential and valuable to the disclosing party (Discloser);
 - 9.2.2. it owes an obligation of confidence to the Discloser concerning the Confidential Information;
 - 9.2.3. it must not disclose the Confidential Information to a third party except as permitted in this Agreement;
 - 9.2.4. all Intellectual Property rights remain vested in the Discloser but disclosure of Confidential Information does not in any way transfer or assign any rights or interests in the Intellectual Property to the receiving party; and
 - 9.2.5. any breach or threatened breach by the receiving party of an obligation under this Agreement may cause the Discloser immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently the Discloser has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the receiving party (and its agents, assigns, employees, officers and directors, personally) or to compel specific performance of this clause.
- 9.3. A party must notify the Discloser in writing, giving full details known to it immediately, when it becomes aware of:
 - 9.3.1. any actual, suspected, likely or threatened breach by it of any obligations it has in relation to the Confidential Information.
 - 9.3.2. any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information; or
 - 9.3.3. any actual, suspected, likely or threatened theft, loss, damage, or unauthorized access, use or disclosure of or to any Confidential Information.
- 9.4. The receiving party must promptly take all steps that the Discloser may reasonably require and must co-operate with any investigation, litigation or other action of the Discloser or of a related body corporate if there is:
 - 9.4.1. any actual, suspected, likely or threatened breach of a term of this Agreement; or
 - 9.4.2. any theft, loss, damage or unauthorized access, use or disclosure of or to any Confidential Information that is or was in its possession or control.

10. Warranties

- 10.1. TechCare warrants that CloudFlow will conform to all representations and descriptions of functionality and service made available to the Customer and that CloudFlow will operate to a 99.5% uptime availability level, excluding downtime for scheduled and emergency maintenance, which shall be notified in advance to Customer wherever possible, and scheduled to minimize disruption to Customer's operations.

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- 10.2. TechCare warrants that it will use industry standard measures to maintain the security of CloudFlow as described in this Agreement, and that it will fix defects in the software in a prompt manner.
 - 10.3. Except as otherwise provided in this Agreement, the Customer acknowledges and agrees that CloudFlow (including all content, function, and services) is provided "as is," without additional warranty of any kind, either express or implied, including any additional warranty for information, data, data processing services or uninterrupted access, any warranties concerning the availability, accuracy, completeness, usefulness, or content of information, and any warranties of title, non-infringement, merchantability or fitness for a particular purpose.
 - 10.4. TechCare does not warrant that CloudFlow (or the function, content or services made available within it) will be timely, secure, uninterrupted or error free. TechCare makes no warranty that CloudFlow will meet the Customer's expectations or requirements. No advice, results or information, or data whether oral or written, obtained through CloudFlow shall create any warranty not expressly made herein. If a Customer is dissatisfied with CloudFlow, the sole remedy is to discontinue using CloudFlow.
 - 10.5. The Customer acknowledges that CloudFlow is hosted on third party infrastructure, and TechCare shall not be liable to Customer for any costs, losses, damages, downtime, or other liability arising from the use of or reliance upon such third party infrastructure.
 - 10.6. TechCare does not endorse, warrant or guarantee any products or services offered or provided by or on behalf of third parties on or through CloudFlow. TechCare is not a party to, and does not monitor, any transaction between Customers and third parties.
 - 10.7. Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.

11. Liability & Indemnity

- 11.1. THE CUSTOMER AGREES THAT IT USES CLOUDFLOW AT ITS OWN RISK.
- 11.2. THE CUSTOMER ACKNOWLEDGES THAT TECHCARE IS NOT RESPONSIBLE FOR THE CONDUCT OR ACTIVITIES OF ANY USER AND THAT TECHCARE IS NOT LIABLE FOR SUCH UNDER ANY CIRCUMSTANCES.
- 11.3. THE CUSTOMER AGREES TO INDEMNIFY TECHCARE FOR ANY LOSS, DAMAGE, COST OR EXPENSE THAT TECHCARE MAY SUFFER OR INCUR AS A RESULT OF OR IN CONNECTION WITH THE USE BY CUSTOMER OR ITS USERS OF CLOUDFLOW OR CONDUCT IN CONNECTION WITH CLOUDFLOW, INCLUDING ANY BREACH BY THE CUSTOMER OR ANY OF ITS USERS OF THIS AGREEMENT.
- 11.4. EXCEPT UNDER ANY INDEMNITY, TECHCARE'S MAXIMUM LIABILITY TO THE CUSTOMER OR ANY USER IN RELATION TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID IN THE TWELVE MONTHS PRECEDING THE DATE OF THE LIABILITY ARISING.
- 11.5. IN NO CIRCUMSTANCES WILL TECHCARE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, LOSS OR CORRUPTION OF DATA, LOSS OF PROFITS, GOODWILL, BARGAIN OR OPPORTUNITY, LOSS OF ANTICIPATED SAVINGS OR ANY OTHER SIMILAR OR ANALOGOUS LOSS RESULTING FROM THE CUSTOMER OR ANY USER'S ACCESS TO, OR USE OF, OR INABILITY TO USE CLOUDFLOW, WHETHER BASED ON WARRANTY, CONTRACT, TORT, NEGLIGENCE, IN EQUITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT TECHCARE KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGE, TO BUSINESS INTERRUPTION OF ANY TYPE, WHETHER IN TORT, CONTRACT OR OTHERWISE.

12. Termination

- 12.1. TechCare may terminate this Agreement on no less than 14 days' written notice to the Customer. TechCare shall only provide a pro-rata refund to a Customer if TechCare terminates this Agreement without cause; or the Agreement is terminated as the result of a breach by TechCare.
- 12.2. Where a party is in material breach of this Agreement, and has failed to remedy such breach within 28 days of notification by the other party, the other party may terminate this Agreement by giving written notice of termination, which shall become effective 5 Business Days after the date of the notice.

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- 12.3. Either party may terminate this Agreement immediately by notice, if either party:
- 12.3.1. stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
 - 12.3.2. is insolvent under company law;
 - 12.3.3. has an administrator appointed in respect of it;
 - 12.3.4. has an order made or a resolution passed for its winding up or dissolution or it enters into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
 - 12.3.5. has any security enforced over, or a distress, execution or other similar process levied or served against, the whole or a substantial part of its assets or undertaking; or
 - 12.3.6. is subject to any event which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.
- 12.4. Expiry or termination of this Agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this Agreement up to the date of expiry or termination.
- 12.5. Rights and obligations under this Agreement shall survive termination of this Agreement where reasonably required to give commercial effect to such rights and obligations.

13. Force Majeure

- 13.1. If a party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of Force Majeure, it will promptly notify the other party accordingly. The notice must:
- 13.1.1. specify the obligations and the extent to which it cannot perform those obligations;
 - 13.1.2. fully describe the event of Force Majeure;
 - 13.1.3. estimate the time during which the Force Majeure will continue; and
 - 13.1.4. specify the measures proposed to be adopted to remedy or abate the Force Majeure.
- 13.2. Following a notice of Force Majeure in accordance with section 12.1 and while the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure will be suspended, other than obligations to pay money that is due and payable.
- 13.3. The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.
- 13.4. The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must take all action reasonably practicable to mitigate any loss suffered by the other party as a result of the party's failure to carry out its obligations under this Agreement.
- 13.5. The term of this Agreement will not be extended by the period of Force Majeure.

14. Governing Law & Jurisdiction

- 14.1. This Agreement shall be governed by and construed and enforced in accordance with the laws of England and Wales.
- 14.2. Each Party expressly agrees that exclusive jurisdiction for resolving any claim or dispute between the Customer and TechCare relating in any way to use of CloudFlow shall be with the courts of England and Wales.

15. Other provisions

- 15.1. The Customer may not assign or otherwise license or transfer any of its rights and obligations under this Agreement.
- 15.2. Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
- 15.3. The relationship of the parties to this Agreement does not form a joint venture or partnership.

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- 15.4. The Customer agrees that TechCare may reference the Customer's use of CloudFlow in its promotional materials.
- 15.5. No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- 15.6. Any clause of this Agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.
- 15.7. Any part of this Agreement may be amended by TechCare at any time, and any aspect of the CloudFlow service may be updated or discontinued at any time, provided that the core functionality of the software will not be varied in a way that materially affects the Customer's use of CloudFlow. Any changes to this Agreement or to the CloudFlow service which will significantly affect the rights and obligations of the Customer will be notified to the Customer in advance of such changes taking effect.