

FluidStack – Terms of Service

These terms of service ("**Terms of Service**"), together with the Order, Non-Circumvention Policy, Acceptable Use Policy, Service Level Agreement, Privacy Notice, and Data Protection Addendum (together the '**Agreement**'), set out the legal terms on which FluidStack Limited (company number 10985545) of 71-75 Shelton Street, Covent Garden, London, WC2H 9JQ, United Kingdom ('**FluidStack**') contracts with the individual or entity named on the Order ('**Customer**').

1. Interpretation

The definitions and rules of interpretation at clause 16 apply in the Agreement.

2. FluidStack Services

2.1 The Customer may request FluidStack Services at any point by entering into an Order. Orders shall only be legally binding if and to the extent accepted by FluidStack. Each Order entered into by the Customer and FluidStack shall form part of the Agreement, and not a separate contract.

2.2 Subject to the provisions of the Agreement, FluidStack shall, in accordance with the relevant Order (including the timeframes and specifications specified therein):

- (a) perform the Set-up Services;
- (b) facilitate access to, and use of, the Cloud Services;
- (c) provide Support Services in accordance with the Service Level Agreement; and
- (d) perform Additional Services.

2.3 In accordance with clause 2.2, FluidStack hereby grants to Customer a non-exclusive, non-transferable, limited licence to use the FluidStack Platform to access the Cloud Services solely for Customer's internal business purposes.

2.4 FluidStack may provide the FluidStack Services (or any part of them) through any of its Affiliates.

2.5 For the performance of the FluidStack Services, time shall not be of the essence.

3. Payment

3.1 Customer shall pay FluidStack the fees set out in the Order. Where the Order comprises FluidStack Services which are charged:

- (a) on a per-minute basis (e.g. 'instant server' deployment), Customer must deposit sufficient funds with FluidStack in advance. Access to such FluidStack Services will cease if Customer's account has insufficient funds.
- (b) on a subscription basis (e.g. 'dedicated server' orders), Customer authorises FluidStack to charge to Customer's credit card (or other payment mechanism selected by it and approved by FluidStack), or invoice Customer for, all amounts due and owing for any Order, including taxes and any other fee or charge associated with Customer's use of the FluidStack Services.

3.2 Unless stated to the contrary, the fees are exclusive of applicable taxes or other charges imposed by law from time-to-time, and Customer shall in addition pay such applicable taxes and other charges at the rate and in the manner prescribed by law from time-to-time.

3.3 FluidStack may change prices at any time, including changing from a free service to a paid service and charging for FluidStack Services that were previously offered free of charge;

provided,

however, that FluidStack will provide Customer with prior notice and an opportunity to close Customer's account if FluidStack changes the price of a Cloud Service or FluidStack Service to which Customer is subscribed and will not charge Customer for a previously free FluidStack Service unless Customer has been notified of the applicable fees and agreed to pay such fees. Any price changes or changes to Customer's subscription plan(s) will apply no earlier than at least thirty (30) days following notice to Customer.

3.4 Customer agrees that in the event FluidStack is unable to collect the fees owed to FluidStack, FluidStack may:

(a) without prior notice suspend Customer's access to or use of the FluidStack Services and Cloud Services. FluidStack shall be entitled to maintain the suspension until FluidStack is in receipt of the fees owed to FluidStack; and/or

(b) take any other steps it deems necessary to collect such fees from Customer and that Customer will indemnify FluidStack for all costs and expenses incurred by FluidStack in connection with such collection activity, including collection fees, court costs and legal fees. Customer further agrees that FluidStack may collect interest at 10% per year on any amounts not paid when due.

3.5 Customer is solely responsible for the accuracy and completeness of the payment method information provided to FluidStack when placing an Order.

3.6 FluidStack shall accept no liability for delays in supply of Cloud Services or loss suffered by Customer as a result of incorrect payment method information provided by Customer or delays in processing by the Customer's payment method provider or processor.

4. Renewals

4.1 Unless stated otherwise in an Order, or Customer cancels its subscription before renewal, subscriptions for FluidStack Services will renew automatically. Customer authorises FluidStack to charge the fees for the next renewal term to Customer's previous payment method. FluidStack reserves the right in its sole discretion to prevent automatic renewal of any FluidStack Services.

4.2 Customer may cancel its auto-renewing Order at any time by going to Customer's 'Account' page and following the instructions for cancellation or by emailing sales@fluidstack.io. If Customer cancels:

(a) the FluidStack Services will continue until the end of the current subscription term; and

(b) Customer will not receive a refund for any FluidStack Services already paid for.

5. Customer obligations

5.1 Customer shall:

(a) provide FluidStack with all information and assistance reasonably required by FluidStack to provide the FluidStack Services;

(b) comply with the Acceptable Use Policy and Non-Circumvention Policy (each of which may be amended at any time);

(c) be responsible for any acts of unauthorised access to the FluidStack Services where such access is gained by unauthorised use of a Customer's FluidStack account, regardless of whether the activities are undertaken by Customer, its employees, any third party (including Customer's contractors or agents), Customer's end users, licensees, or customers;

- (d) inform FluidStack immediately on becoming aware of any unauthorised access to the FluidStack Services via Customer's FluidStack account and shall aid in any investigation or legal action that is taken by authorities and/or FluidStack to investigate and resolve the security incident or breach to the extent caused by the Customer's account and/or use of the FluidStack Services;
 - (e) shall comply with any law applicable to it in its access to, receipt of or use of the FluidStack Services;
 - (f) take full responsibility and accept all liability under all applicable laws in respect of the use it makes of the Cloud Services and the results it achieves from them, including complying with all applicable AI regulations.
- 5.2 If Customer fails at any time to comply with clause 5.1 in any respect, FluidStack may without prior notice suspend Customer's access to or use of the FluidStack Services and Cloud Services either completely or to the extent FluidStack in its sole discretion deems necessary to ensure a safe and secure manner of providing services to its customers in general. FluidStack shall be entitled to maintain the suspension until Customer is able to remedy its non-compliance with clause 5.1 and to demonstrate its future ability to comply with clause 5.1 to FluidStack's reasonable satisfaction.
- 5.3 Where Customer is a natural person, Customer confirms they:
- (a) Are 18 years of age or older; and
 - (b) have the necessary and sufficient legal consent, permission and capacity to use the FluidStack Services in applicable jurisdiction(s), as determined by Customer.
- 5.4 Where a natural person is creating an account and using FluidStack Services on behalf of a Customer that is a company, organisation, or other entity, in those cases, the natural person agrees that they have the authority to bind that company, organisation or other entity to the Agreement and they agree to be legally bound by the Agreement on behalf of such entity.
- 5.5 Customer is responsible for notifying its employees, agents, and others related to Customer's usage of the provisions of the Agreement, including where the terms of the Agreement are binding on them.
- 5.6 Customer represents and warrants that it is not:
- (a) located in any country that is subject to the Office of Foreign Assets Control's trade and economic sanctions, currently Cuba, Iran, North Korea, Syria, and the Crimea region of the Ukraine; or
 - (b) an individual or entity included on any U.S. lists of prohibited parties including the Treasury Department's List of Specially Designated Nationals List ("SDN List") and Sectoral Sanctions List ("SSI List").
- 5.7 Additionally, Customer agrees not to – directly or indirectly – sell, export, re-export, transfer, divert, or otherwise dispose of any service received from FluidStack in contradiction with these laws and regulations.
- 5.8 Customer must utilise proper security protocols, including, but not limited to, setting strong passwords and access control mechanisms, safeguarding access to all logins and passwords, and verifying the trustworthiness of persons who are entrusted with account access information.
- 5.9 Customer is solely responsible and liable for all activities that are affiliated or associated with its

use of the FluidStack Services, including without limitation:

- (a) any data processed by Customer arising from or related to the FluidStack Services; and/or
 - (b) any data displayed, disclosed, generated, and/or published arising from or related to Customer's use of the FluidStack Services.
- 5.10 Customer shall ensure that the Cloud Services are properly configured for its purposes and shall take reasonable steps for securing and protecting Customer Data. Customer shall ensure that its configuration of the Cloud Services contain appropriate and industry standard physical, administrative, and technical safeguards (including the use of firewalls, encryption and other tools) to protect against breach, disclosure or unauthorised access of Customer Data that is processed by Customer in connection with the FluidStack Services, including without limitation any safeguards required by applicable data security and/or data privacy laws. Customer shall be responsible and liable for the activities of any individual or entity who gains access to Customer Data or the FluidStack Services as a result of its failure to comply with the obligations of this clause.
- 5.11 Customer shall be responsible for ensuring that all third-party tools, content and otherwise components added by Customer to the Cloud Services ('**Customer Content**') shall conform with the terms of the Agreement. It is Customer's sole responsibility to ensure that Customer Content used by Customer is fit for Customer's purposes. Customer acknowledges and agrees that FluidStack is not responsible for any Customer Content processed by Customer, and that the use of Customer Content by Customer is at its sole and absolute risk. FluidStack may, at its sole discretion, prohibit the use of any Customer Content at any time. Customer acknowledges and agrees that with respect to third party content, FluidStack is not party to any transactions between Customer and the applicable third-party provider, and that in the event of a dispute between Customer and an applicable third-party provider, Customer irrevocably releases FluidStack from any and all direct, indirect, incidental, special, punitive, exemplary, regulatory, or consequential damages arising from or relates to such third-party content.
- 5.12 Customer shall indemnify FluidStack against all claims, losses, costs or incurred by FluidStack in consequence of any non-compliance by Customer with the provisions in this clause 5.

6. Warranties

- 6.1 Each of the parties represents and warrants to the other that it has full power and authority to enter into and perform its obligations under the Agreement.
- 6.2 FluidStack warrants to Customer that:
- (a) it will provide the FluidStack Services using reasonable care and skill; and
 - (b) the access to, receipt of and use of the FluidStack Services will not infringe the intellectual property rights of any third party.
- 6.3 Other than as set out in the Agreement all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

7. Data protection

- 7.1 FluidStack processes the personal data of individual users of the FluidStack Platform in order to, amongst other things, establish and verify accounts, facilitate access to the FluidStack Services, and provide Support Services.

- 7.2 All personal data shall be processed by FluidStack in accordance with the Privacy Notice.
- 7.3 Customer acknowledges that FluidStack has no control over, or access to any Customer Data hosted on the Cloud Services. Customer Data hosted on the Cloud Services shall be processed in accordance with the Data Protection Addendum.

8. Intellectual property rights

- 8.1 FluidStack or its licensors shall retain ownership of all intellectual property rights in the FluidStack Services and in any works and materials created by FluidStack (or anyone acting on its behalf) in the course of providing the FluidStack Services.
- 8.2 Customer shall retain ownership of all intellectual property rights in Customer Data.
- 8.3 FluidStack may use any feedback and suggestions for improvement relating to the FluidStack Services provided by Customer without charge or limitation.
- 8.4 Customer agrees that FluidStack may refer to Customer being a customer of FluidStack for marketing purposes, including by displaying Customer's company (or trading) name, logo and/or any other non-confidential company information ('**Customer Details**') on FluidStack's website or in any other promotional material that FluidStack may create from time to time, including but not limited to adverts and case studies ('**Promotional Purposes**'). Customer grants to FluidStack a perpetual non-exclusive licence to use Customer Details for Promotional Purposes.
- 8.5 Customer shall indemnify, keep indemnified and hold harmless FluidStack and/or Third-Party Provider from and against any losses, claims, damages, liability, costs (including legal and other professional fees) and expenses incurred by FluidStack or by Third-Party Provider as a result of or in connection with any action, demand or claim that the transmission, receipt, copying, installation, use, possession or other utilisation of Customer Data or Customer Details infringes the intellectual property rights of any third party.

9. Confidentiality

- 9.1 Each party agrees that it may use the other party's Confidential Information only in the exercise of its rights and performance of its obligations under the Agreement and that it shall not disclose the other party's Confidential Information including all knowhow, trade secrets, financial, commercial, technical, tactical or strategic information of any kind except in accordance with this clause 9.
- 9.2 Each party may disclose the other party's Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know the other party's Confidential Information in order to exercise the disclosing party's rights or perform its obligations under the Agreement provided that the disclosing party shall ensure that each of its employees, officers, advisers, agents or representatives to whom Confidential Information is disclosed is aware of its confidential nature and complies with this clause 9 as if it were a party.
- 9.3 Each party may disclose any Confidential Information relating to the other party required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.
- 9.4 Customer shall indemnify FluidStack against any losses, damages, liability, costs (including legal fees) and expenses which FluidStack may incur or suffer as a result of or arising from any breach of Customer's obligations under this clause 9.

10. Exclusions

- 10.1 FluidStack does not itself own the Cloud Services or the underlying computing infrastructure and, to the fullest extent permitted by law, does not accept (subject to the provisions of the Service Level Agreement) any responsibility or liability for the Cloud Services. FluidStack shall also not be

responsible or liable for any of the following matters (which are the sole responsibility of Customer):

- (a) the inputting and maintenance of Customer Data and, except as otherwise expressly agreed by the parties, its security;
- (b) the accuracy, quality, integrity and legality of Customer Data and that its use (including use in connection with the Cloud Services) complies with all applicable laws and does not infringe Third-Party Provider's or any third party's intellectual property rights;
- (c) delays, failures or loss of or damage to data arising from the transfer of data over the internet or other communications networks or facilities, including power cuts, power surges, or other interruptions in power supply, or malfunction of equipment;
- (d) uses of the Cloud Service in a manner which infringe a third party's legal rights or breaches any applicable law;
- (e) back-ups of Customer Data or any other data; and
- (f) extracting, transferring or recovering any data (including any Customer Data) or providing any assistance with any such activities.

10.2 Customer accepts full responsibility for ensuring the Cloud Services selected by the Customer in the Order will meet the Customer's requirements.

10.3 FluidStack cannot guarantee that the FluidStack Services or the Cloud Services will meet Customer's specific requirements or that the Cloud Services are or will be interoperable with or capable of working in conjunction with any other software or hardware, for which Customer takes full responsibility.

10.4 Customer shall be solely responsible for compliance with all laws applicable in its access to, receipt of and use made of the FluidStack Services and the Cloud Services.

10.5 FluidStack:

- (a) does not promise that the FluidStack Services shall be uninterrupted or error free;
- (b) does not, unless otherwise agreed, promise that the FluidStack Services are compatible with third party software or equipment; and
- (c) shall not be liable, nor be required to fix, any problem, defect or error caused by any equipment or third party software used in connection with the FluidStack Services.

10.6 To the maximum extent permitted by applicable law, Customer accepts that the FluidStack Services and Cloud Services are (subject to the provisions of the Service Level Agreement) provided on an 'as is' basis, without warranty of any kind, either express or implied.

10.7 FluidStack shall use reasonable endeavours to notify Customer in advance of scheduled maintenance but Customer acknowledges that:

- (a) FluidStack may itself receive little or no notice of such maintenance; and
- (b) it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance.

11. Liabilities

11.1 Notwithstanding any provision in the Agreement, neither party excludes or limits any liability for:

- (a) personal injury or death to the extent that results from the negligence of a party or any person for whom it is responsible at law;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability to the extent the same cannot be excluded or limited by law.

11.2 Subject to clause 11.1, FluidStack shall not be liable to Customer in respect of:

- (a) the matters described in clause 10; or
- (b) any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), of whatever nature and whether based on contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with the Agreement or any activities related to the Agreement.

11.3 Subject to clauses 11.1 and 11.2, FluidStack's maximum aggregate liability to Customer for all and any claims of whatever nature and whether based on contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with the Agreement or any activities related to the Agreement shall be limited to a sum equal to the fees paid by Customer to FluidStack under or in connection with the Agreement.

12. Termination

12.1 FluidStack may terminate the Agreement immediately and deactivate Customer's account if Customer commits a material or persistent breach of the Agreement, or where the provision of the FluidStack Services become unlawful. FluidStack will use reasonable endeavours to provide Customer with notice in advance; however, Customer acknowledges that this may not be possible in all circumstances.

12.2 Customer may terminate the Agreement immediately if FluidStack commits a material breach.

12.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if a receiver or similar officer is appointed for the other party or its property; the other party makes a general assignment for the benefit of its creditors; the other party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law; the other party becomes insolvent or is liquidating, dissolving or ceasing business operations (or any equivalent or similar action is taken in another jurisdiction).

12.4 Upon termination:

- (a) all rights granted to Customer under the Agreement shall immediately terminate (including, for the avoidance of doubt, any rights granted to Customers to access the Cloud Services); and
- (b) Customer must cease all activities authorised by the Agreement.

13. Other Important Terms

14. **Customer can review the Agreement at any time on FluidStack's website. FluidStack reserves the right to change the Agreement at any time by posting updates to its website. If FluidStack makes any changes, or if it is required to do so by law, FluidStack will notify Customer of such change in advance to the email address associated with Customer's account, provided Customer has been active in the month prior to FluidStack making such change, and such changes shall take effect seven (7) days after notification. If Customer does**

not agree with the changes, it may terminate the Agreement by providing FluidStack with notice within such seven (7) day period, otherwise Customer will be deemed to have accepted the changes.

15. Customer can contact FluidStack at any time by emailing sales@fluidstack.io.

15.1 Customer may not assign, transfer, sub-license or deal in any other manner with any or all of their rights or obligations under the Agreement, without FluidStack's prior written consent. FluidStack reserve the right to transfer, assign, sub-contract or deal in any other manner with any or all of FluidStack's rights or obligations under the Agreement, without notifying Customer or receiving their consent.

15.2 Except in relation to any indemnity given in favour of the Third-Party Provider, the Agreement does not give rise to any rights for a third party to enforce any term of the Agreement.

15.3 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under the Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under the Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

15.4 The Agreement and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

15.5 The parties irrevocably agree that this Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall:

- (a) where Customer is based in the UK, be subject to the exclusive jurisdiction of the courts of England and Wales; and
- (b) where Customer is based outside of the UK, be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.

1. Definitions

'Acceptable Use Policy'	means the latest version of the acceptable use policy available on FluidStack's website;
'Additional Services'	means the additional services (including additional features or functionality) and deliverables specified in a relevant Order (if any).
'Affiliate'	means, in respect of any entity, any entity that directly or indirectly controls, is controlled by or is under common control with that entity within the meaning set out in section 1124 of the Corporation Tax Act 2010;
'Cloud Services'	means the use of computing infrastructure owned by the Third-Party Provider and as are more particularly specified in the Order;

'Confidential Information'	means any and all confidential information (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property rights, assets, strategy, products and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party;
'Customer Data'	means all data, software, information (including Confidential Information) which, by Customer's actions, are hosted or processed on the Cloud Services;
'Data Protection Addendum'	means the latest version of the data protection addendum, that is applicable to the particular Cloud Services, details of which are available on the FluidStack Platform;
'FluidStack Platform'	means the software-as-a-service platform known as 'FluidStack';
'FluidStack Services'	means the Set-up Services, Cloud Services, Support Services, and Additional Services;
'Force Majeure'	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under any agreement between Customer and FluidStack (provided that an inability to pay is not Force Majeure), including any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet;
'Non-Circumvention Policy'	means the latest version of the non-circumvention policy available on FluidStack's website;

'Order'	means the electronic or physical order submitted by Customer for the FluidStack Services;
'Privacy Notice'	means the latest version of the privacy notice available on FluidStack's website;
'Service Level Agreement'	means the service level agreement agreed between FluidStack and Customer in respect of particular Cloud Services;
'Set-up Services'	means the set-up services and deliverables specified in a relevant Order;
'Support Services'	means the support services more fully described on FluidStack's website; and
'Third-Party Provider'	means the third-party provider of the Cloud Services.

15.6 In the event of any conflict in respect of the provisions of the Agreement, the following order of priority shall prevail (in descending order of priority): (i) the Order; (ii) the Data Protection Addendum; (iii) the Acceptable Use Policy; and (iv) these Terms of Service.

- 15.7 Any obligation of FluidStack under the Agreement to comply or ensure compliance with any law shall be limited to compliance only with laws where FluidStack is established.
- 15.8 If a Customer Affiliate enters into an Order:
- (a) all references to the "Customer" in this Agreement or in the Order shall refer to the Customer Affiliate;
 - (b) the Customer Affiliate shall be deemed to have entered into a separate agreement with FluidStack under the same terms as this Agreement, which shall apply *mutatis mutandis*; and
 - (c) the contract between FluidStack and the Customer Affiliate shall be enforceable by FluidStack and the Customer Affiliate only, and FluidStack will have no liability towards the Customer in respect of such Order.