

## END USER LICENSE AGREEMENT

This End User License Agreement (“EULA” or "Agreement") is a binding agreement between the end user (the "Client" or “User”) of the software application and website (as defined herein) and MY CLOUD LTD ("MyCloud").

These terms govern the Client’s use of our Services as defined herein, and Software (including the Hosted Software) that we include as part of our Services, including any application, content files, scripts, instruction sets, and any related documentation.

By using the Services or Software, the User agree to these terms.

If the Client and/or User have entered into any other agreement with MyCloud concerning any specific software and/or services, then the terms of that other agreement controls where it conflicts with this EULA.

This Software is licensed, and not sold to the Client.

By downloading/installing or using the Software, the Client and/or User

- (a) Acknowledges that they have read and understood this Agreement;
- (b) Represent that they are 18 years of age or older; and
- (c) Accept this Agreement and agree that they are legally bound by its terms.

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## **1. DEFINITIONS AND INTERPRETATION**

**“Acceptance Certificate”** means the certificate to be issued by the Client to MyCloud upon successful completion of the UAT which upon issuance indicates the successful completion of the Software implementation

**“Agreement”** means this End User License Agreement between MyCloud and the Client and/or any other User

**“Client”** The party, between MyCloud and whom there exists an SLA governing the provision of defined Services and in virtue of which the present Agreement is entered. “Client” includes any other user authorised by the Client to use the Software (“User”)

**“Data”** is constituted of all End User Data, Client Information and any other Confidential Information which have been fed, are being fed and which shall be fed into the Software during the performance of the Agreement

**“Device”** Any hardware that can be used by the Client and/or User to access and use the Software

**“Defects”** Deviations from the features defined by MyCloud, as set out in the User Acceptance Testing document, and which the Software shall possess depending on the current version thereof, or that should be available for use in accordance with its intended purpose and documentation

**“Designed Purposes”** The aims and objectives of the Software as defined in the Proposal Document and the SLA

<b>“Proposal Document”</b>	<b>Proposal in which the specifications of the Software and Services to be provided by MyCloud to the Client are defined</b>
<b>“Ratings”</b>	<b>Reviews of the services, provided by the Client, which are related directly to the use of the Software, to its customers and/or any other person, by the said customers and/or any other person unaffiliated with MyCloud</b>
<b>“SLA”</b>	<b>Service Level Agreement signed by MyCloud and the Client, which sets out the definitions, terms and conditions of the services provided by MyCloud to the Client</b>
<b>“Services”</b>	<b>Provision of a Web-based Incident Management and Reporting System to cater for the needs of the Client as mentioned in the SLA</b>
<b>“Software”</b>	<b>the Web-Based Incident Management and Reporting System (the “System”), as well as all other programs, routines and functions, whether hosted and/or locally installed, which coordinate the function of the System as per the Service Level Agreement</b>
<b>“UAT”</b>	<b>User Acceptance Testing which sets out the execution of agreed upon feature tests which, if successfully completed, will lead to the Client issuing an Acceptance Certificate certifying the conformity of the Software to the agreed criteria set out in the Proposal Document and the SLA</b>
<b>“Unauthorized User”</b>	<b>Any person who does not possess the required official authorization, and/or instructions from the Client to access and/or use the Software as defined;</b>

**“Updates” Punctual and/or periodic amendments of information and/or changes and/or corrections made at the discretion of MyCloud to the Software in view of improving the Services**

## **2. LICENSE GRANT**

2.1 Subject to the Client’s compliance with the terms of this Agreement, MyCloud grants them a personal, limited, terminable, non-transferable license to:

- (a) download, install, and use the Software for their use on their Device strictly in accordance with the terms and conditions set out in the SLA and the present Agreement; and
- (b) access and use on such Device the Services made available in or otherwise accessible through the Software, strictly in accordance with this Agreement.

## **3. LICENSE FEE**

3.1 As consideration for the license to use the Software and Services granted to the Client herein, the Client shall pay to MyCloud the total amount specified in the SLA.

3.2 The abovementioned license and payment shall be subject to the terms and conditions of the SLA.

## **4. LICENSE RESTRICTIONS**

4.1 The Client and/or any other User shall not:

- (a) copy the Software;
- (b) modify, translate, adapt or otherwise create derivative works or improvements, of the Software;
- (c) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software, the Hosted Software or any part thereof;
- (d) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Software;

- (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, publicly perform or display, transfer or otherwise make available the Software or any features or functionality of the Software, to any third party for any reason;;
  - (f) remove, disable, circumvent or otherwise create or implement any workaround to any copy protection, rights management or security features in or protecting the Software; or
  - (g) upload or introduce any virus or malware to the Hosted Software.
- 4.2 The Client is responsible for keeping their account login credentials (user name and password) confidential and not sharing them with Unauthorized Users.
- 4.3 In the event the Client discloses their login credentials to any person, they shall bear the responsibility for any use, disclosure, additions, deletions and modifications of their End User Data.

## 5. USER ACCEPTANCE TESTING

5.1 The UAT includes the following tasks:

1. The Client shall nominate a 'Project Coordinator', or any other person holding a relevant position within the company of the Client, who shall verify the deliverables and solution and provide acceptance sign-off to MyCloud;
2. MyCloud's representative will work with the abovementioned representative person of the Client to prepare the test plan and execute the UAT;
3. MyCloud shall deliver and provide access and use of the Software on the Client's Device, as per the agreed scope of deliverables;
4. The Client and/or their representative shall carry out the feature tests as per the Proposal Document and the SLA and shall formally award either (i) Acceptance or (ii) Non-Acceptance, to MyCloud.

5.2 The Software shall be tested according to the steps set out in paragraph 6.1 and any one of the following status is marked against each relevant feature:

✓ Tick for 'Passed';

X Cross for 'Failed';

**"Skipped"** if the test for any feature has been skipped.

5.3 Appropriate reasons shall be mentioned in case of "Failed" and/or "Skipped" feature test by the Client. On completion of testing of all the respective features

by the Client, MyCloud shall submit the feature test results to the Client, based on which they shall formally award:

- (a) Acceptance of such Software in writing ('Acceptance'); or
- (b) Non-Acceptance of such Software in writing ('Non-Acceptance') from any non-conformance of the Software with the conditions set out in the Proposal Document and SLA.

- 5.4 The Client may submit to MyCloud any other observation and suggestion made during the UAT and/or any change and/or modification and/or enhancement that might be required or recommended. MyCloud will review same and shall revert back to the Client with their comments within 2 weeks from the date of acceptance. These points shall however not be part of the UAT.

#### *Acceptance Certificate*

- 5.5 After the successful completion of the UAT, the Client shall sign an Acceptance Certificate indicating its formal acceptance of the Software implementation. Upon signing of the Acceptance Certificate, both parties will consider the project implementation successfully completed.

## **6. RESERVATION OF RIGHTS**

- 6.1 The Client acknowledges and agrees that the Software is provided under license, and not sold, to them.
- 6.2 The Client do not acquire any ownership of the Software under this Agreement or any other rights thereto other than to use the Software in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement.
- 6.3 MyCloud and its licensors and service providers reserve and shall retain each of their entire right, title and interest in and to the Software. All rights not specifically granted in this Agreement are reserved by MyCloud.
- 6.4 MyCloud shall own all rights in any functionality, features, modification or customization of the Software.

## **7. COLLECTION AND USE OF CLIENT INFORMATION**

- 7.1 The Client acknowledges that when they download, install or use the Software, MyCloud may use automatic means (including, for example, cookies and web beacons) to collect information about their Device and about their use of the Software.
- 7.2 The Client may be required to provide certain information about themselves as a condition to downloading, installing, or using the Software or certain of its features or functionality. All information and Data MyCloud collects through or

in connection with this Software and the Client's use thereof is subject to the Service Level Agreement and particularly, to the conditions set out in the Confidential Information and Data Protection clauses.

- 7.3 MyCloud warrants that Data fed to and recorded in the Software shall be stored for a maximum period of 5 (FIVE) years.
- 7.4 MyCloud also warrants that the contents of the Data stored in the Software, shall be only as accurate and consistent as the accuracy and consistency of the Data fed to and inputted into the Software.
- 7.5 Any Data amended, modified, deleted and/or overwritten is final and cannot be recovered.
- 7.6 MyCloud declines all liability arising from any dispute and/or claim and/or contention that may arise due to the authorized and/or unauthorized and/or unlawful and/or and/or misuse and/or malicious use of the Data stored in the Software and/or related to their contents, accuracy and use by the Client and/or its representatives and/or its affiliates and/or its agents and/or its employees as well as any person and/or user of the Software.
- 7.7 By downloading, installing, using, and providing information to or through this Software, the Client consents to all use and actions taken by MyCloud with respect to the Client's information pursuant to the Privacy Policy.
- 7.8 MyCloud may, from time to time, access the Data stored in the Software for troubleshooting purposes.

## 8. QUALITY ASSURANCE

### ***Maintenance Services***

- 8.1 MyCloud seeks to guarantee to the Client the good and full enjoyment of the Services and as such, offers to the Client maintenance services ("**Maintenance**"), the conditions of which are set out in the present section 6, and which are part of the Services, during the whole period this Agreement shall exist between the Parties.
- 8.2 Maintenance shall include:
  - (a) Software support (Corrective Maintenance) which consists in the remedy of Defects;
  - (b) Monitoring (ongoing maintenance) of the versions of the Software.

- 8.3 Maintenance shall not apply to any other service requested by the Client and will be paid for, separately as appropriate. Maintenance notably excludes the following:
- (a) Any service related to the remedy of defects caused by the Client's incorrect usage of the Software or change made to the Software by the Client without MyCloud's permission;
  - (b) Any service which do not relate directly to the Software;
  - (c) The recreation of Data files that have been accidentally destroyed;
  - (d) Any service required on account of failure to comply with the specifications, procedures, safety and precautionary measures contained in the Software documentation;
  - (e) Training, installation services, advice and assistance;
  - (f) Any service provided on the Client's premises.
- 8.4 In order to implement the Maintenance services, the Client must promptly provide MyCloud with information, by email with an electronic acknowledgement of receipt that will enable it to recognise the defect.
- 8.5 No Maintenance shall be provided if the Client interferes with and/or modifies the Software itself or assigns a third-party to work on the Software after the Defect has come to light.
- 8.6 MyCloud may request reimbursement for its own expenses in the event MyCloud performed work based on receiving notice of an unjustified Defect.
- 8.7 MyCloud undertakes to provide Maintenance with the due diligence required, in accordance with customary practices.

### ***Updates***

- 8.8 MyCloud may, from time to time, and at its sole discretion, develop and provide Updates, which may include upgrades, bug fixes, patches and other error corrections and/or new features.
- 8.9 The Client shall ensure that their IT-Equipment, particularly their system software, meets the state of technology required to operate the Software when Updates are provided in accordance with the present Section 6.
- 8.10 Updates may also modify or delete in their entirety certain features and functionality. The Client agrees that MyCloud has no obligation to provide any



Updates or to continue to provide or enable any particular features or functionality.

- 8.11 The use of an Update as part of Maintenance shall be governed by the Terms and Conditions set out in the '*Maintenance*' Section above. The Client further agrees that all Updates will be deemed part of the Software and be subject to all terms and conditions of this Agreement.

## **9. TERMINATION**

- 9.1 MyCloud may immediately terminate this Agreement with or without any notice if the Client violates any of the terms and conditions of this Agreement and/or the SLA.
- 9.2 The parties may terminate this Agreement at any time for whatever reasons by each party giving to the other party 3 months' notice.
- 9.2 Upon termination:
- (a) All rights granted to the Client under this Agreement will also terminate;
  - (b) The Client must cease all use of the Software and delete all copies of the Software from their Device; and
  - (c) The Client's access to MyCloud's Hosted Software, their account and End User Data will be terminated, and shall be made available to the Client.

## **10. MYCLOUD'S LIABILITY**

- 10.1 MyCloud shall, under no circumstances, be liable for any indirect and/or unforeseeable damage or loss arising from this Agreement.
- 10.2 The parties agree that an indirect loss shall include (but not be limited to) any financial or commercial loss, loss of profit, production loss, loss of data, orders and/or customers, harm to image and/or reputation, as well as any action brought against the Client by a third-party.
- 10.3 MyCloud shall not be responsible for defects that external technical equipment might cause to the performance of the licensed software.
- 10.4 The Client shall be solely responsible for the collection and processing of personal data directly or indirectly concerning it. Furthermore, the Client shall be solely responsible for protecting the integrity of its data.

- 10.5 MyCloud shall not be held liable by any person or entity regarding any damage or loss attributable to third-parties other than MyCloud, allegedly caused by the use and/or inability to use and/or improper use of the Software, either directly or indirectly, including (but not limited to) business interruptions, monetary loss or loss of anticipated income as a result of the use of the Software.
- 10.6 Under no circumstances shall MyCloud be held liable by the Client and/or any other person or entity regarding any damage or loss allegedly caused by harm to image and/or reputation, monetary loss or loss of anticipated income or loss of opportunity as a result of prejudice borne due to Ratings reviewing the quality of the services provided by the Client.
- 10.7 Under no circumstances shall MyCloud be liable for damages greater than the fee paid by the Client for the Software, regardless of whether the Client has informed MyCloud of the possibility of such damages.
- 10.8 The Client declares and guarantees that any information provided to MyCloud in order to use the Software is true, correct and current. Similarly, the Client declares that they are legally entitled to execute the present contract, and to carry out the corresponding actions that may be required.

## **11. MISCELLANEOUS**

- 11.1 MyCloud may modify these terms or any additional terms that apply to a Service or Software to, for example, reflect changes to the law or changes to our Services and/or Software. By continuing to use or access the Services and/or Software after the revisions and/or modifications come into effect, the Client agrees to be bound by the revised terms.
- 11.2 Any provision in this Agreement that is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction will be ineffective only to the extent of such invalidity, illegality, or unenforceability without affecting in any way the remaining provisions hereof; provided, however, that the parties will attempt in good faith to reform this Agreement in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent.
- 11.3 At any time and from time to time after the date of this Agreement any party shall execute and deliver or cause to be executed and delivered to any other party such other instruments and take such other action, all as the other party may reasonably request, in order to carry out the intent and purpose of this Contract.
- 11.4 Notice to MyCloud

The Client may send notices to MyCloud at the following address:

4th Floor, Ebene Heights, 34 Cybercity, Ebene, 72201, Mauritius 11.5 This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Republic of Mauritius. Any dispute that may arise in connection with the interpretation, performance or termination of this Agreement shall be referred to the Mauritian Courts.