

Facsimile: +44 (0) 870 123 6474
Email: sales@firstcloud.co.uk
Web: <http://firstcloud.co.uk>

Firstcloud is a trading name for
Proactive Selection Ltd.
Registered office: 2nd Floor, Old Inn House, 2 Carshalton
Road, Sutton, Surrey, SM1 4RA;
Registered in England, No. 3701422
VAT registration Number: GB733429338

February 2011

Firstcloud.co.uk

Terms & Conditions

By ordering or continuing to use or renewing any of our services, you agree to be bound by these terms and conditions. Please read through these terms and conditions carefully and print a copy for future reference.

1. Privacy policy and newsletter

1.1 You acknowledge and agree to be bound by the terms of our privacy policy

1.2 By placing an order for the services, you consent to us sending to you newsletters as and when deemed appropriate by us. This newsletter is our primary method of communicating with you and will inform you of changes to our website, notify you of planned outages and updates, and keep you informed about our services generally.

2. Information about us

2.1 Firstcloud.co.uk is a businesses owned and operated by Proactive Selection Limited ("we", "us" and "our"). We are registered in England and Wales under company number 3701422 and our registered office address is at 2 Carshalton Road, Sutton, Surrey, SM1 4RA; Registered in England. Our VAT number is 733429338.

3. Your status

3.1 By placing an order with us, you warrant that:

3.1.1 you are legally capable of entering into binding contracts; and

3.1.2 you are at least 18 years old.

3.2 If you are acting on behalf of a company or other business, you further warrant that you personally have the authority to bind that company or business on whose behalf you are placing an order.

4. The order process

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4.1 You can only place an order for the services once we have registered you as a client. Information that you provide must be complete and accurate. You agree that we may block access to your account and the services we supply if we reasonably believe that the information you have supplied is inaccurate. You must keep your user name and password secret at all times and not allow anyone else to use it. You must contact us immediately if you believe your user name and password has become known to someone else.

4.2 Before you place an order you will be informed of the constituent elements of your order including details of the services which will be provided and the price payable. You will then have an opportunity to identify and correct any errors in your order.

4.3 You will only be allowed to place an order once you have agreed to pay the agreed amount.

4.4 As part of the process of placing an order for the services we will give you details of the services you have ordered. We will send the details to you in an email, together with an invoice, to the email address you have provided.

4.5 You can request copies of the invoices we have sent you and details of what you have purchased from us by email, at any time up to and including any renewal date relative to the services you have purchased.

5. How the contract is formed between you and us

5.1 You will receive an e-mail from us accepting your order and, if appropriate, letting you know that the Hosting Service you have purchased has been activated ("Acceptance Confirmation"). Your order constitutes an offer to us to buy our services and all orders are subject to acceptance by us. The contract between us ("Contract") will only be formed when we send you the Acceptance Confirmation. We may also decline your order for the services for any reason, in which case we will inform you accordingly.

5.2 The Contract will relate only to those services we have confirmed in the Acceptance Confirmation. We will not be obliged to supply any other services which may have been part of your order until such services have been confirmed in a separate Acceptance Confirmation.

6. Our status

6.1 We may provide links on our site to the websites of other companies, whether affiliated with us or not. We cannot give any undertaking that products or services you purchase from companies to whose website we have provided a link on our website will be of satisfactory quality, and any such warranties are **DISCLAIMED** by us absolutely. This **DISCLAIMER** does not affect your statutory rights against the third party seller.

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7. Consumer rights

7.1 If you are buying as a consumer (i.e., not within the course of your business), ordinarily, the Consumer Protection (Distance Selling) Regulations 2000 allow you to cancel the Contract at any time within seven (7) working days, beginning on the day after you received the Acceptance Confirmation. However, by placing your order for the services, you agree to us starting supply of those services before the end of the seven working day cancellation period referred to here. As such, you will not have the right to cancel the Contract under the Consumer Protection (Distance Selling) Regulations 2000.

7.2 This provision does not otherwise affect your statutory rights.

8. Our limited money back guarantee

8.1 Once the Contract has been formed you may, subject to clause 8.2, only cancel the Contract in relation to the Hosting Service you have purchased (unless your Hosting Service includes the use of a dedicated hosting server in which case you may not cancel the Contract). In such cases, you may cancel at any time within thirty (30) days, beginning on the day after you received the Acceptance Confirmation. If you do so, you will receive a full refund of the price paid for the Hosting Service you have cancelled. No other refund will be made. Limited to one per customer.

8.2 To cancel the Contract under clause 8.1, you must inform us in writing before the end of the thirty (30) day period mentioned in clause 8.1. As part of our cancellation process, we will respond to you. You must re-confirm your cancellation or we will continue to supply the Hosting Service and your cancellation under clause 8.1 will be ineffective.

8.3 You will not have any right under clause 8.1 to cancel the Contract for the supply of any other services other than that noted in clause 8.1. Therefore, the services which may not be cancelled include (but are not limited to):

8.3.1 Hosting services where you request a dedicated hosting server;

8.3.2 Domain Registration and Renewal services; and

8.3.3 Use of SSL certificates and other 'add on' products.

9. Price and payment

9.1 The price of any services will be as quoted excluding VAT. The amount of VAT payable will be communicated to you at the time of making your purchase.

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9.2 The total cost of your order of the services will be set out clearly before you complete your order for the services.

9.3 Prices are liable to change at any time. We will notify you of a change in our prices at least thirty (30) days before the price increase comes into force. Any such price increase will not be effective until the Minimum Term (as defined in clause 20.3) expires. If you do not agree to such price changes, please cancel your services in accordance with clause 20.3.1. If you do not cancel you will be deemed to have accepted the new prices, and they will become payable.

9.4 We provide a large number of services and it is always possible that, despite our best efforts, some of the services listed may be incorrectly priced. Where a Service's correct price is less than our stated price, we will charge the lower amount when accepting your order. If a Service's correct price is higher than the price stated, we will normally, at our discretion, either contact you for instructions before accepting your order, or reject your order and notify you of such rejection.

9.5 We are under no obligation to provide the services to you at the incorrect (lower) price, even after we have sent you an Acceptance Confirmation, if the pricing error is obvious and unmistakable and could have reasonably been recognised by you as an error.

9.6 You may pay by BACS, CHAPS or PayPal. We do not accept cash or cheques unless by prior arrangement where a fee of £75 per transaction will become payable for such methods of payment. If we subsequently reject your order, we will refund the payment you have made.

9.7 Please note that when purchasing a Service, you are obliged to pay for that Service for the whole of the Minimum Term (as defined in clause 20.3) that applies to it (unless you have cancelled the Service under clause 8.1).

9.8 Time for payment shall be of the essence. No payment shall be deemed to have been received until we have received cleared funds. If your payment is not made we may, at our discretion, suspend or terminate any services we provide to you from time to time.

10. Quality

10.1 We warrant that (subject to the other provisions of these terms and conditions) any services purchased from us will be provided with reasonable care and skill.

10.2 We will not be liable for a breach of the warranty in clause 10.1 unless:

10.2.1 you give written notice of the breach to us by email; and

10.2.2 we are given a reasonable opportunity after receiving the notice of examining our provision

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of the services to you.

10.3 We will not be liable for a breach of the warranty in clause 10.1 if:

10.3.1 the problem arises because you failed to follow our oral or written instructions as to the use of the services (if there are any); or

10.3.2 you alter the services without our written consent; or

10.3.3 the problem arises because of misuse.

10.4 Subject to clause 10.2 and clause 10.3, if we are in breach of the warranty in clause 10.1 we will, at our expense, use all reasonable commercial efforts to remedy the breach promptly or refund the price of the services at the pro rata Contract price. This constitutes your sole and exclusive remedy for any breach of the warranty set out in clause 10.1. Notwithstanding the foregoing, we do not warrant that your use of the services will be uninterrupted or error-free.

10.5 We reserve the right to modify the services without notice to you provided such modification does not adversely affect your access to, or use of, the services or detract from the overall performance of the services. Any change which may have such adverse effect on you or may detract from the overall performance of the services will be notified to you at least sixty (60) days prior to the change taking effect.

10.6 You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf which is not confirmed in writing by us. Nothing in this clause will exclude or limit our liability to you for fraudulent misrepresentation.

11. Access to the Hosting Service

11.1 You are responsible for making all arrangements necessary for you to have access to our Hosting services. You are also responsible for ensuring that all persons who access our services through your Internet connection are aware of these terms and conditions (and in particular our acceptable use policy and that they comply with them.

12. Hosting Service- Service levels

12.1 We will use our reasonable endeavours to make our servers available to you as part of the Hosting Service you purchase for ninety-nine point nine-nine (99.99) per cent of each calendar month. We do not warrant access to our servers will be uninterrupted or error free but we shall use reasonable endeavours to keep downtime to a minimum. We shall make all commercially reasonable efforts to provide you with advanced notification of all scheduled and emergency

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outages.

12.2 Service credits are not given for any form of downtime or service unavailability.

13 IP addresses

13.1 You will have no right, title or interest in any internet protocol address ("IP address") allocated to you, and any IP address allocated to you is allocated as part of the Hosting Service you purchased and is not portable or otherwise transferable by you in any manner whatsoever.

13.2 If an IP address is re-numbered or re-allocated by us, we shall use our reasonable endeavours to avoid any disruption to you.

13.3 You agree that you shall have no right, title or interest to any IP address upon expiry or termination of the services, and that the acquisition by you of a new IP address following expiry or termination of the services shall be solely your responsibility.

14. Back-up of your material and our servers

14.1 It is your responsibility to maintain appropriate and up-to-date back-up copies of any data, information or other material you upload (or permit to be uploaded) onto our servers ("Material") as part of your use of the Hosting services. In the event of loss of or damage to your Material, you will not be given access to the server back-up we maintain pursuant to our archiving procedure.

14.2 We will follow our archiving procedures for the data stored on our servers. In the event of any loss or damage to our servers, your sole and exclusive remedy will be for us to use reasonable commercial efforts to restore the data on our servers (including your Material) from the latest back-up we maintained in accordance with our archiving procedure. We will not be responsible for any loss, destruction, alteration or disclosure of your Material caused by you or any third party.

15. Hosting Service usage limitations

15.1 All our Hosting Service packages come with an unlimited web space allowance provided that: **15.1.1** your Material is linked into web pages;

15.1.2 you do not use the Hosting Service as a backup of, or repository for, your Material;

15.1.3 you maintain good housekeeping to maintain your Material; and

15.1.4 you comply with our acceptable use policy

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15.2 The Hosting Service package you order includes the per calendar month bandwidth allowance applicable to that hosting package as this is set out on this website at the time of your order. The Hosting Service you have ordered will be automatically suspended if this monthly bandwidth allowance is exceeded. If this happens, you have to upgrade your Hosting Service package to one which includes a higher monthly bandwidth allowance, or wait for the Hosting Service to resume at the start of the following calendar month. You can monitor your monthly bandwidth usage in the eXtend control panel <http://www.extendcp.co.uk>

15.3 Unless the Hosting Service package you order includes a dedicated server, you will only be allowed to use a maximum of five (5) per cent of our server's processing capacity when using the Hosting Service package you order. At our absolute discretion, we may allow your usage to exceed this limitation, and we will speak to you about your hosting requirements if your usage has, or may have, a detrimental effect on our other customers.

15.4 The Hosting Service package you order includes the number of mailboxes applicable to that hosting package as this is set out on our website at the time of your order. However, any mailboxes that have not been accessed for one hundred (100) clear days will be automatically deleted from our system.

15.5 When using the services, you must comply with our terms of website use and our acceptable use and these are incorporated into the Contract by reference. Any conflict between our terms of website use and these terms and conditions, will be resolved in favour of these terms and conditions.

15.6 We shall be entitled to terminate the Contract, or suspend or terminate the provision of any individual services, if you are in breach of our terms of website use or our acceptable use policy sales@firstcloud.co.uk

16. Support

16.1 If a problem has arisen with regard to the services or your registered account, you can contact us in the first instance by email at support@firstcloud.co.uk and you may also use our text-support service (+447951803615) twenty-four (24) hours a day, seven (7) days a week. ALWAYS EMAIL SUPPORT.

16.2 Our support team will help resolve any problems you have with the services you are receiving. We will not provide programming support to you, but, as part of our Hosting services, our servers are compatible with many programming languages.

17. Domain names

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17.1 Where the Contract includes our Domain Registration and Renewal Service:

17.1.1 we will endeavour to procure the registration of the domain name you request;

17.1.2 we will not be liable in the event that the relevant domain name registry refuses to register the domain name you request, or subsequently suspends or revokes any registration for that domain name;

17.1.3 we shall not act as your agent or on your behalf in any dealings with domain name registry;

17.1.4 the registration of the domain name you request and its ongoing use is subject to the relevant domain name registry's terms and conditions of use which you should obtain and consider;

17.1.5 you are responsible for ensuring that you are aware of the terms referred to in clause 17.1.4 so that you can comply with them; **17.1.6** the domain name you request will only have been successfully registered when you appear as the registrant on the appropriate "whois" database of the top level domain name registrar;

17.1.7 we shall have the absolute discretion to require you to select a replacement domain name to the one you have requested to be registered, and may suspend or terminate our performance of the Domain Registration and Renewal Service, if, in our opinion, there are reasonable grounds for us to believe that your current choice of name is, may or is likely to be in bad faith, breach of the provisions of these terms and conditions or any legal or regulatory requirement; and

17.1.8 you confirm and warrant that you are the owner of any trade mark in any domain name (or have the authority of the owner of any trade mark to use such name) that you have requested be registered.

17.2 You confirm and warrant that you are the legal owner of any domain name (or have the authority of the legal owner to use such domain name) supplied by you, or otherwise authorised by you, for use as a domain name in connection with any website in relation to which the Hosting Service supplied to you is used.

17.3 Once the domain name has been successfully registered, it will need to be renewed periodically to ensure you retain your registration of it. We will send you renewal notices thirty (30) days and seven (7) days before the renewal date of your registered domain name. These notices will be sent to the email address then registered against your account. You hereby authorise us to automatically renew the domain name for you unless you have cancelled the Domain Registration and Renewal Service in accordance with clause 20.1.1. The price for the

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renewal will be as set out in the renewals notice email you will receive and you must make payment immediately upon receipt thereof.

18. Intellectual property rights

18.1 You, or your licensor, retain all intellectual property rights in your Material, and you grant to us a worldwide, non-exclusive, royalty free licence to use, store and maintain your Material on our servers and publish your Material on the Internet for the purpose of providing the Hosting Service to you. You warrant that your Material does not infringe the intellectual property rights of any third party and you have the authority to grant the licence in this clause 18.1 to us. We may make such copies as may be necessary to perform our obligations, including making back-up copies of your Material.

18.2 You will defend, indemnify and hold us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the services or of any claim or action that your Material infringes, or allegedly infringes, the intellectual property rights of a third party.

18.3 If you download software we own from our website, we grant you a non-exclusive, non-transferable royalty free licence to use that software for the purpose set out on our website in relation to that software. Such licence will automatically terminate when we stop providing the Hosting services to you.

18.4 Any third party software that you download from our website shall be licensed to you on the standard software licence terms of the owner of the intellectual property rights in that third party software as those licence terms are notified to you at the time you download such software.

18.5 We retain all intellectual property rights in the Hosting services (other than in your Material) and our software referred to in clause 18.3. Accordingly, you must not decompile, disassemble or reverse engineer the Hosting services or our software.

18.6 We will defend you against any claim that the Hosting services (but not materials stored or maintained on our servers by third parties) infringe any United Kingdom intellectual property rights of a third party (other than infringements referred to in clause 18.2), and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:

18.6.1 you give prompt notice of any such claim;

18.6.2 you make no admissions or settlements without our prior written consent;

18.6.3 you provide reasonable co-operation to us in the defence and settlement of such claim, at

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your expense; and

18.6.4 we are given sole authority to defend or settle the claim.

18.7 In the defence or settlement of the claim, we may obtain for you the right to continue using the Hosting services, replace or modify the Hosting services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract with you without liability to you (in which case we will refund to you the price you have paid on a pro-rata basis). We will have no liability to defend or indemnify you if the alleged infringement is based on:

18.7.1 a modification of the Hosting services by anyone other than us;

18.7.2 your use of the Hosting services in a manner contrary to our instructions or our acceptable use policy; or

18.7.3 your use of the Hosting services after notice of the alleged or actual infringement from us or any appropriate authority.

18.8 The foregoing states your sole and exclusive rights and remedies, and our entire obligations and liability, for the infringement of any third party's intellectual property rights by the Hosting services.

19. Our liability

19.1 We do not monitor and will not have any liability for your Material or any other communication you transmit, or allow to be transmitted, by virtue of the Hosting services.

19.2 Due to the public nature of the Internet, we shall not be liable for the protection of the privacy of electronic mail or any other information transferred through the Internet or via any network provider and no guarantee or representation is given that the Hosting services will be free from hackers or unauthorised users. You shall be liable for the content of any emails transmitted by virtue of the Hosting services, for any material you upload to, or allow to be uploaded to, our servers and for ensuring compliance at all times with all relevant legislation (including, but not limited to the Data Protection Act 1998 and all other privacy laws, regulations and guidance notes made or issued thereunder).

19.3 All conditions, terms, representations and warranties that are not expressly set out in these terms and conditions (or the documents referred to in them) are hereby expressly excluded.

19.4 We do not exclude or limit in any way our liability:

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19.4.1 for death or personal injury caused by our negligence;

19.4.2 under section 2(3) of the Consumer Protection Act 1987;

19.4.3 for fraud or fraudulent misrepresentation; or

19.4.4 for any matter for which it would be illegal for us to exclude, or attempt to exclude, our liability.

19.5 We will not be responsible for the following types of losses (in each case whether direct, indirect or consequential) and whether they are caused by our negligence or otherwise:

19.5.1 loss of income or revenue;

19.5.2 loss of business;

19.5.3 loss of profits or contracts;

19.5.4 loss of anticipated savings;

19.5.5 loss of goodwill;

19.5.6 loss of software or data;

19.5.7 wasted expenditure (such as pay per click advertising costs); or

19.5.8 wasted management or office time.

19.6 Subject to clause 19.4 and clause 19.5, our maximum aggregate liability under or in connection with the performance or contemplated performance of the Contract, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed one hundred and ten (110) per cent of the price you have paid to us for the services during the twelve (12) months preceding the event giving rise to the liability in question. Accordingly, you are advised to acquire business interruption insurance, or other appropriate insurance, to protect you and your business in the event of interruption of the services (in particular the Hosting Service).

19.7 Where you buy any product or service from a third party seller through following a link on our website to such third party's website, the seller's individual liability will be set out in the seller's terms and conditions. You should consult such terms and conditions.

20. Duration of the services and cancellation

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20.1 That part of the Contract relating to our Domain Registration and Renewal Service will commence on the date we send you our Acceptance Confirmation. It will continue until:

20.1.1 we have registered the domain name you have requested (the "Domain Name") and you subsequently ask us not to renew the registration of your Domain Name; or

20.1.2 we terminate the supply of our Domain Registration and Renewal Service by notice to you because:

20.1.2.1 the Domain Name is no longer available for registration;

20.1.2.2 clause 17.1.7 applies;

20.1.2.3 you are in breach of clause 17.1.8; or

20.1.2.4 of some other reason preventing the registration of the Domain Name.

20.2 If we terminate the Domain Registration and Renewal Service under clauses 20.1.2.1, 20.1.2.2 or 20.1.2.4, we will refund the price you have paid for the Domain Registration and Renewal Service to the credit card, debit card or other account you used to make the payment.

20.3 That part of the Contract relating to services other than our Domain Registration and Renewal Service will also commence on the date we send you our Acceptance Confirmation. Unless such services are terminated as provided in this clause 20.3, they shall continue for the minimum period of time that applies to the Service you have purchased (as these are set out on our website and subsequently confirmed in the Acceptance Confirmation) ("Minimum Term"). After expiry of the Minimum Term, they will continue on a month to month basis until terminated:

20.3.1 by you giving to us at least seventy-two (72) hours advance written notice. As part of our cancellation process, we will respond to you and you must re-confirm your cancellation request. You must re-confirm your cancellation request via our support ticket system or we will continue to supply the relevant services and your cancellation will be ineffective. You will not receive any refund of the price you have paid for the services you have cancelled; or

20.3.2 by us giving to you at least thirty (30) days advanced notice in writing sent to the then current email address registered against your account.

20.4 The monthly price for services we supply under Contracts that continue on a month to month basis under clause 20.3 shall be charged monthly in advance.

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20.5 Without prejudice to any other right to terminate or suspend the services we may have under these terms and conditions, our website terms of use or our acceptable use policy, we may terminate the Contract at any time by giving you thirty (30) days advance notice by emailing you at the email address registered against your account. If we cancel the services, we will refund to you the price you have paid for the services on a pro-rata basis for the unexpired Minimum Term.

20.6 Notwithstanding anything to the contrary in these terms and conditions, if you are in breach of an obligation of these terms and conditions we may terminate the Contract by seven (7) days notice to you and/or, at our absolute discretion, terminate or suspend without notice any individual services we provide to you from time to time.

20.7 Expiry or termination of the Contract shall be without prejudice to any rights and liability of either of us arising in any way under that Contract as at the date of expiry or termination.

21. Deletion of your data

21.1 If you cancel your services, any data we hold or host in relation to the services you have cancelled will be immediately and permanently deleted from our system. Accordingly, you are strongly advised to make appropriate copies of such data before you cancel your services.

21.2 If you have purchased a Hosting Service aimed at resellers, your package will allow multiple accounts to be set up for your customers. If you disable any of these accounts and they remain disabled for fifty (50) clear days, we will immediately and permanently delete those disabled accounts (and all the data hosted in relation to them) from our system.

22. Additional terms

22.1 Additional terms and conditions may apply for our offers. If so, you will be advised of them at the relevant point.

23. Written communications

23.1 Applicable laws require that some of the information or communications we send to you should be in writing. When using our website, you accept that communication with us will be mainly electronic. We will contact you by e-mail or provide you with information by posting notices on our website. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights.

24. Notices

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24.1 All notices given by you to us must be given by email. We may give notice to you at either the then current e-mail or postal address registered against your account with us.

25. Third party rights and transfer of rights and obligations

25.1 Neither you nor we intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

25.2 The Contract is binding on you and us and on our respective successors and assigns.

25.3 You may not transfer, assign, charge or otherwise dispose of the Contract, or any of your rights or obligations arising under it, without our prior written consent.

25.4 We may transfer, assign, charge, sub-contract or otherwise dispose of the Contract, or any of our rights or obligations arising under it, at any time during the term of the Contract.

26. Events outside our control

26.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by events outside our reasonable control ("Force Majeure Event").

26.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:

26.2.1 misuse, alteration or interference by you or any third party of our servers or systems (including virus and hacker attacks);

26.2.2 strikes, lock-outs or other industrial action;

26.2.3 civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;

26.2.4 fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;

26.2.5 impossibility of the use of public or private telecommunications networks; and

26.2.6 the acts, decrees, legislation, regulations or restrictions of any government.

26.3 Our performance under the Contract will be deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the

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duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Contract may be performed despite the Force Majeure Event.

27. Waiver

27.1 If we fail, at any time during the Contract, to insist upon strict performance of any of your obligations under the Contract or any of these terms and conditions, or if we fail to exercise any of the rights or remedies to which we are entitled under the Contract, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

27.2 A waiver by us of any default shall not constitute a waiver of any subsequent default.

27.3 No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing in accordance with clause 24.

28. Severability

28.1 If any of these terms and conditions or any provisions of the Contract are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

29. Entire agreement

29.1 These terms and conditions and any document expressly referred to in them represent the entire agreement between us both in relation to the subject matter of any Contract and supersede any prior agreement, understanding or arrangement between us, whether oral or in writing.

29.2 We each acknowledge that, in entering into the Contract, neither of us has relied on any representation, undertaking or promise given by the other or be implied from anything said or written in negotiations between us prior to such Contract except as expressly stated in these terms and conditions.

29.3 Neither of us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date of any Contract (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in these terms and conditions.

30. Our right to vary these terms and conditions

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30.1 We have the right to revise and amend these terms and conditions from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities.

30.2 You will be subject to the policies and terms and conditions in force at the time that you order services from us, unless any change to those policies or these terms and conditions is required to be made by law or governmental authority (in which case it will apply to orders previously placed by you), or if we notify you of the change to those policies or these terms and conditions before we send you the Acceptance Confirmation (in which case we have the right to assume that you have accepted the change to the terms and conditions, unless you notify us to the contrary within seven (7) working days of receipt by you of the Acceptance Confirmation).

30.3 No variation of these terms and conditions shall be valid unless it is in writing and signed on our behalf.

31. Law and jurisdiction

31.1 Contracts for the purchase of services through our site will be governed by English law. Any dispute arising from, or related to, such the Contract shall be subject to the exclusive jurisdiction of the courts of England and Wales. English is the language offered for the conclusion of the contract between us both.

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Acceptable Use Policy

This acceptable use policy sets out the terms between you and us under which you may use the hosting services we provide ("Hosting services"). Your use of the Hosting services means that you accept, and agree to abide by, all the policies in this acceptable use policy, which supplement our terms and conditions of sale

You must not allow a third party to access or use the Hosting services. If you have purchased one of our reseller hosting packages, you can allow a third party (a "Third Party") to access or use the Hosting services. If you do so, they will also be regulated by this acceptable use policy. As such, you will monitor the use of the Hosting services by a Third Party and you will procure that they abide by this acceptable use policy. A breach of this acceptable use policy by a Third Party will be deemed to be a breach of this acceptable use policy by you.

The Hosting services are provided by Profitengineers and Firstcloud (trading names for Proactive Selection Limited) ("we", "us" and "our"). We are registered in England and Wales under company number 3701422 and our registered office address is at 2 Carshalton Road, Sutton, Surrey, SM1 4RA; Registered in England. Our VAT number is 733429338.

1. Resource usage

1.1 The Hosting services comprise the provision of web space on our servers to enable you to upload pages and files for the purpose of publishing websites.

1.2 The Hosting services allow you 'unlimited' server space for normal routine "non-file-distribution" web usage. For websites that allow downloading of video, audio or other files we reserve the right to impose a bandwidth limit of twenty-five (25) gigabytes (26,843,545,600 bytes) per calendar month. Non-file-distribution usage will remain unaffected by any limit imposed on downloading of video, audio or other files.

2. Prohibited uses

2.1 You may use the Hosting services only for lawful purposes. You may not use the Hosting services:

2.1.1 in any way that breaches any applicable local, national or international law or regulation;

2.1.2 in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;

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2.1.3 for the purpose of harming or attempting to harm minors in any way;

2.1.4 to send, knowingly receive, upload, download, use or re-use any material which does not comply with our content standards (see section 5);

2.1.5 to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (also known as SPAM); or

2.1.6 to knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.

2.2 In your use of the Hosting services (other than where you are using your own dedicated server), you may not:

2.2.1 use more than 5 % of our server's processing capacity. There are numerous activities that could cause such problems, including (but not limited to) CGI scripts and intensive FTP, PHP or HTTP operations;

2.2.2 run stand-alone, unattended server-side processes or any daemons; including (but not limited to) IRCd;

2.2.3 run any type of web spider or indexer; including (but not limited to) GoogleCash and AdSpy;

2.2.4 run any software that interfaces with an Internet Relay Chat network;

2.2.5 run any bit torrent application, tracker, or client. You may link to legal torrent files off-site, but may not host or store them on our servers;

2.2.6 participate in any file-sharing/peer-to-peer activities;

2.2.7 run any gaming servers; or

2.2.8 run cron entries or other scheduled tasks other than by configuring them through our control panel <http://www.extendcp.co.uk>

2.2.9 give away web space under a domain (including Resellers giving away free websites)

2.2.10 operate a proxy website or service.

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2.2.11 As a remote file host for other websites.

2.3 You must not use the Hosting services as an offsite backup facility. Therefore, all files uploaded to our servers as part of your usage of the Hosting services must be visible and accessible to the outside world (web-visible) unless they are needed to operate the website of which they form part; We reserve the right to delete files or directories that are not web-visible without giving notice to you.

2.4 All pages of website stored on our servers as part of the Hosting services will be available to search engines unless you take action to prevent this. If you wish to optimise your web pages for search engines you agree to use coding and techniques which comply fully with the guidelines issued by Google, MSN, Yahoo and other large search engines.

3. Reselling

3.1 You agree:

3.1.1 not to re-sell or offer for the use of third parties any part of our Hosting services, unless you have purchased the Hosting services designated for resellers;

3.1.2 not to access without authority, interfere with, damage or disrupt:

3.1.2.1 any part of the Hosting services;

3.1.2.2 any equipment or network used to provide the Hosting services;

3.1.2.3 any software used in the provision of the Hosting services; or

3.1.2.4 any equipment or network or software owned or used by any third party.

4. Interactive services

4.1 Where you use, or allow the use of, the Hosting services to host a website on which interactive services (for example, chat rooms or bulletin boards) are provided ("interactive services"), you must ensure the use of best practice to operate those interactive services.

4.2 Notwithstanding the use of best practice in operating the interactive services, you must assess any possible risks for users (and in particular, for children) from third parties when they use any interactive service you allowed to be hosted using the Hosting services and use appropriate moderation in the light of those risks. However, we are under no obligation to oversee or monitor

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your use of the Hosting services in relation to any interactive services you provide or allow to be provided.

5. Content standards

5.1 These content standards apply to any and all material that you allow to be hosted through the Hosting services ("Material"), and to any interactive services associated with it.

5.2 You must comply with the spirit of the following standards as well as the letter. The standards apply to each part of any Material as well as to its whole.

5.3 Material must:

5.3.1 be accurate (where they state facts);

5.3.2 be genuinely held (where they state opinions); and

5.3.3 comply with applicable law in the UK and in any country from which they are posted.

5.4 Material must not:

5.4.1 contain any material which is defamatory of any person;

5.4.2 contain any material which is obscene, offensive, hateful or inflammatory;

5.4.3 contain any material that is pornographic;

5.4.4 promote violence;

5.4.5 promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;

5.4.6 infringe any copyright, database right or trade mark of any other person;

5.4.7 be likely to deceive any person;

5.4.8 be made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence;

5.4.9 promote any illegal activity;

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5.4.10 be threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety;

5.4.11 be likely to harass, upset, embarrass, alarm or annoy any other person;

5.4.12 be used to impersonate any person, or to misrepresent your identity or affiliation with any person;

5.4.13 give the impression that they emanate from us, if this is not the case; or

5.4.14 advocate, promote or assist any unlawful act such as (by way of example only) copyright infringement or computer misuse.

6. Suspension and termination

6.1 We will determine, in our discretion, whether there has been a breach of this acceptable use policy through your use of the Hosting services. When a breach of this policy has occurred, we may take such action as we deem appropriate.

6.2 Failure to comply with this acceptable use policy constitutes a material breach of the our terms and conditions of sale upon which you are permitted to use the Hosting services, and may result in our taking all or any of the following actions:

6.2.1 immediate, temporary or permanent withdrawal of your right to use the Hosting services;

6.2.2 immediate, temporary or permanent removal of any Material (as defined in paragraph 5.1) uploaded to our servers;

6.2.3 issue of a warning to you;

6.2.4 issue of legal proceedings against you for reimbursement of all costs on an indemnity basis (including, but not limited to, reasonable administrative and legal costs) resulting from the breach;

6.2.5 further legal action against you; or

6.2.6 disclosure of such information to law enforcement authorities as we reasonably feel is necessary.

6.3 We exclude liability for actions taken in response to breaches of this acceptable use policy. The responses described in this policy are not limited, and we may take any other action we reasonably deem appropriate.



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7. Changes to the acceptable use policy

7.1 We may revise this acceptable use policy at any time by amending this page. You are expected to check this page from time to time to take notice of any changes we make, as they are legally binding on you.