

CLOUD INDUSTRY FORUM CODE OF PRACTICE

Terms and Conditions

Note: This document **contains Cloud Industry Forum's general Terms** and Conditions. These conditions must be accepted as part of the on-line registration process. A copy of these Terms and Conditions is also included in the Assessment Pack as AP10 for convenience only, but this copy is the definitive version in the event of any discrepancies.

Parties

1. Cloud Industry Forum, a private company limited by guarantee registered in England and Wales under company number 07363083 and whose registered office is at 50 Station Road, Amersham, Bucks, HP7 0BD ("**CIF**")

and

2. The intended beneficiary to the Code of Practice ("**Participant**")

Recitals

- A. CIF was formed to help bring greater transparency and trust to doing business in the cloud and the Code of Practice for Cloud Service Providers (the '**Code**') is a key component of achieving this.
- B. The Participant intends to benefit from conformance to the Code.
- C. The parties in so doing intend to be bound by these general terms and conditions (these "**Terms and Conditions**") which complement the documents in both the Information and the Assessment Packs which the parties agree are fundamental to the relationship between CIF and the Participant.

The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

Operative Provisions

On the **Participant's** payment to CIF of the Self Certification Fee and registration with CIF, and in consideration of such fee, the parties agree as follows:

1. Definitions

In these Terms and Conditions the following words have the meanings set out below:

Assessment and Information Packs – the information pack and the assessment pack (respectively) which relate to the Code and the associated Self-Certification scheme (and any updates or amendments to such packs) which are provided or made available by CIF to the Participant from time to time.

Certification Mark – the logo(s) in the Logo Pack which are trade mark(s) which on Certification the Participant is entitled to display.

CIF Authorized Administration Support – means an organization of good repute

formally appointed by CIF to provide the necessary administration capability to support the operation of the Code.

Confidential Information – has the meaning given in Clause 10.

Documentation File – the **Participant's** file which contains the supporting documentation for all claims made in the Self Certification Application.

Guidelines for Certification Mark use (or “**Logo Pack**”) – brand/logo guidelines relating to the manner of use and the presentation of the Certification Mark (and any updates to those guidelines) which are notified by CIF to the Participant from time to time.

License – has the meaning given in Clause 4.

Purpose – developing, administering and enforcing the Code and the associated Self-Certification scheme and activities reasonably connected thereto (including but not limited to the review and handling of the Self Certification Application and any renewal of that application, assessing compliance with the Code (by audit or otherwise) and investigating any related complaints).

Self Certification Application – the application submitted by the Participant to CIF self-certifying the **Participant's** compliance with the Code, such application including (but not limited to) declaration forms, the assessment form and the digital signature for the Documentation File.

Self Certification Fee – the registration fee to be paid by the Participant to CIF, as set out in the Costs document in the version of the Information Pack prevailing at the time of registration.

2. Compliance with the Code

Following the **Participant's** registration with CIF, the Participant shall work actively towards achieving compliance with the Code.

Once the Participant has submitted its Self-Certification Application, CIF/CIF Authorized Administration Support will check the application for completeness and confirm the accompanying professional references. CIF/ CIF Authorized Administration Support will then notify the Participant as to whether the application has been accepted or rejected (and, if rejected, the reasons for the rejection).

Following **CIF's** written acceptance of the Self Certification Application, the Participant shall maintain compliance with the Code throughout the duration of the License.

If the Participant does not submit the Self Certification Application within 6 months of the date of registration, CIF/CIF Authorized Administration Support will not be obliged to review or process that application and if in such circumstances the Participant wishes to continue with the Self-Certification process then it will need to re register with CIF and pay another Self-Certification Fee. That process will then be governed

by the version of these Terms and Conditions prevailing at the time of re-registration, and therefore the Participant is urged to check those terms as they may have been updated or amended in the meantime.

3. Period covered by these Terms and Conditions

These Terms and Conditions govern the relationship between the parties as from the date of the **Participant's** registration with CIF until:

- i. the date of termination or expiry of the License; or,
- ii. if the Self-Certification Application is not submitted within 6 months of registration or if any rejected Self Certification is not re submitted within 3 months, after being rejected (with a maximum of two resubmissions within this period), whichever is the earlier. The License shall be deemed to expire after one calendar year from **CIF's** written acceptance of the Self-Certification Application.

4. Grant of License

On **CIF's** written acceptance of the Self-Certification Application, CIF grants to the Participant for one calendar year from the date of such acceptance the non-exclusive, royalty free right to use the Certification Mark (the "**License**") subject to and in accordance with these Terms and Conditions.

- i. The License is specific to the Participant who shall have no right to grant sub-licenses, assign, charge, transfer, sub contract, delegate or otherwise deal in any of its rights or obligations granted thereby.
- ii. The Participant shall use the Certification Mark strictly in accordance with these Terms and Conditions including with the Guidelines for Certification Mark use and any revisions of such brand guidelines supplied from time to time by CIF. If the Participant uses the Certification Mark on its website, then the Participant will ensure that, when website users click on the Certification Mark there is a hyperlink which ultimately takes those website users to **CIF's** website (located at www.cloudindustryforum.org, or at such other domain which CIF may notify to the Participant from time to time).
- iii. The Participant undertakes not to use the Certification Mark in any way which might prejudice its distinctiveness or validity or the goodwill of CIF therein, or which would be detrimental to the good name or the reputation or image of CIF.
- iv. The Participant agrees to use the Certification Mark without alteration or modification whatsoever and not to use the Certification Mark for any purpose not authorized herein and/or in accordance with the Guidelines for Certification Mark use and any revisions of such brand guidelines supplied from time to time by CIF.
- v. The Participant shall not combine the Certification Mark with, or incorporate it into, any other trade mark and shall ensure that any other trade mark which is used by the Participant is displayed in such a way that it appears as a separate trade mark in its own right, distinct from the Certification Mark.
- vi. The Participant shall not use, apply for or obtain registration of, any trade mark, corporate name, business name, domain name, logo or style which features or incorporates the Certification Mark (or anything

confusing or similar to the Certification Mark) at any time (whether during or after termination of the License).

- vii. The Participant shall not be entitled to contract with search engine providers in respect of “**keywords**” or “**AdWords**” (or similar) which feature or incorporate the words “**Cloud Industry Forum**”, “**CIF**” or “**CIF Certified**” (or anything confusingly similar to any of these words) at any time (whether during or after termination of the License).
- viii. The Participant shall not describe itself or act as agent or representative of CIF and shall not make any representations to customers or to give any warranties on behalf of CIF.
- ix. The Participant shall not have any rights in respect of the Certification Mark, its intellectual property or of any goodwill associated therewith. Any goodwill derived from the **Participant’s** use of the Certification Mark shall vest in CIF absolutely. The Participant agrees to execute such documents and do such other things as CIF may reasonably request (whether during or after termination of the License) in order to confirm the vesting of those rights in CIF.
- x. Without limiting the general nature of Clause 4ix, the Participant shall have no right to bring proceedings against any third party in respect of any actual, threatened or suspected infringement of the Certification Mark.

5. Termination of License

CIF shall be entitled to terminate the License at any time with immediate effect on giving written notice to the Participant if:

- i. The Participant fails to pay the Self-Certification Fee or any other fee in accordance with the invoiced terms;
- ii. the Participant is in material breach of any provision of the License and, in the case of remediable material breaches only, if such breach has not been remedied within fifteen (15) days after receipt by the Participant of a notice from CIF specifying the material breach and requiring its remedy; or
- iii. the Participant is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if it has a receiver, administrator or administrative receiver appointed over it or over any part of its undertaking or assets, or if it passes a resolution for winding-up or if a court of competent jurisdiction makes an order to that effect, or if it becomes subject to an administration order or if it enters into any voluntary agreement with its creditors, or if anything analogous to these events occurs in relation to the Participant, or if it ceases or threatens to cease to carry on business; or
- iv. the Participant challenges the validity of or **CIF’s** ownership of any rights or registrations in or in relation to the Certification Mark; or
- v. CIF determines (by way of an audit of the Participant or otherwise) that Participant does not comply or no longer complies with the Code.

If, on receipt of a notice to terminate the License pursuant to Clause 5(v), the **Participant disagrees with CIF’s determination as to whether or not the Participant complies with the Code**, then the Participant shall notify the Compliance Committee of CIF of that fact within 7 days of receiving the notice of termination, giving reasons for such disagreement. The parties shall endeavor to resolve any such disagreement in good faith but, if it is not resolved within fifteen (15) **days of CIF receiving the Participant’s notice of**

disagreement, then the matter shall (at the request of either party) be referred to the Governance Board for determination. CIF reserves the right to charge a reasonable fee to administer such determination.

6. Consequences of Termination or Expiry of License

On termination or expiry of the License (for any reason) all rights granted to the Participant in respect of the Certification Mark shall immediately terminate, subject to the remaining provisions of this Clause 6.

Within fourteen (14) days following the date of termination or expiry of the License, the Participant shall delete or remove the Certification Mark from, or (if such deletion or removal is not reasonably practicable) destroy, all materials on or into which the Certification Mark is used or incorporated which are owned by, or in the possession or control of, the Participant.

If, upon expiry of the License, the Participant wishes to renew its Self-Certification against the Code, then the terms on which the Participant may continue to use the Certification Mark shall be governed by the licensing terms which are set out in the version of these Terms and Conditions prevailing at the time of renewal.

Termination or expiry of the License shall not affect any rights or liabilities accrued under these Terms and Conditions prior to such termination or expiry, nor shall it affect the coming into or continuing in force of any provisions of these Terms and Conditions that are expressly or by implication intended to survive termination.

7. Liability

- i. Nothing in these Terms and Conditions excludes or limits either **party's** liability for: (a) death or personal injury caused by that **party's** negligence; (b) fraud; (c) any liability the exclusion or limiting of which is forbidden by law.
- ii. Subject to Clause 7(i), CIF accepts no liability for any losses, costs, claims, damages and expenses suffered or incurred by the Participant howsoever arising except to the extent those losses are solely and directly caused by the **Participant's** compliance with the Code.
- iii. Subject to Clause 7(i), in no circumstances shall CIF be liable to the Participant for any loss of profits, loss of savings, loss of use, loss of business, loss of opportunity, loss or spoiling of data, lost or wasted management time or time of other employees, or for any indirect, special or consequential loss, whether arising from negligence, breach of contract or in any other way (and whether or not reasonably foreseeable and even if CIF had been advised of the possibility of the Participant incurring that loss or that type of loss).
- iv. Subject to Clause 7(i), except as expressly set out in these Terms and Conditions, all warranties, conditions and other terms, express or implied (by statute or otherwise) are, to the fullest extent permitted by law, excluded from these Terms and Conditions.
- v. Subject to Clause 7(i), the total liability of CIF under these Terms and Conditions whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (other than in fraud) or otherwise, shall not exceed the sum of £5,000.

- vi. Whilst every care will be taken in handling any materials submitted by the Participant, CIF cannot accept responsibility for any loss of or damage to such materials.
- vii. The Participant agrees that its engagement with CIF is solely between it and CIF operating as a company limited by guarantee and no other member, consultant or employee assumes personal liability for the conduct of CIF and thus shall have no liability in that respect.

8. Indemnity

If, arising out of the engagement between CIF and the Participant a third party makes a claim of any nature against CIF or CIF is joined in proceedings, the Participant agrees to indemnify and keep fully and effectively indemnified CIF from and against any and all losses, costs, claims, damages and expenses (including reasonable legal costs and expenses) ("**Losses**") which CIF may suffer or incur in connection with any such claim or proceedings.

The obligation for the Participant to indemnify CIF pursuant to this Clause 8 shall not apply if and to the extent that any Losses are directly attributable to any fraudulent or any negligent act or omission of CIF.

9. Data Protection

CIF is registered under the Data Protection Act 1998. CIF is committed to complying with UK data protection legislation and it will process personal data in a fair and lawful manner for the Purpose. Processing personal data may include disclosure (to enforcement authorities) under law.

10. Right of Audit and Confidentiality

The parties both agree that CIF/CIF Authorized Administration Support and/or agents of CIF may audit the Documentation File and any additional documentation and practices in order to determine compliance with the Code and thus the **Participant's** entitlement to the benefit of the License of the Certification Mark. Any audit invoked by CIF must be reasonably supported by the Participant including providing full access within a maximum of two weeks from notification of an audit.

For the avoidance of doubt, this clause 10 herein being part of these Terms and Conditions constitutes the entire agreement with respect to audit and nondisclosure. Both parties agreed no separate undertaking or agreement shall be needed or provided in the event of an audit being invoked.

For the purposes of these Terms and Conditions, "**Confidential Information**" means any information (in whatever form or media) which the Participant discloses or otherwise makes available to CIF during the course of the business relationship between the parties which relates to the Participant and/or its affairs (including without limitation; any and all business, operational, financial, commercial, technical or other information or data whatsoever (such as, but not limited to, trade secrets and know-how)) which in each case is either designated confidential or by its very nature and/or circumstances of disclosure is clearly confidential.

“Confidential Information” expressly does not include: (a) information as to whether the Participant is authorized to use the Certification Mark and whether that authorization has expired, or has been suspended or withdrawn (and in the case of suspension or withdrawal, the reasons therefore); or (b) any information which the Code requires to be made publicly available in the interests of transparency (as more particularly described in the Information and Assessment Packs).

Therefore, in consideration of the **Participant’s** agreement to reveal Confidential Information to CIF/CIF Authorized Administration Support, CIF hereby agrees and undertakes:

- i. at all times to treat and keep confidential all Confidential Information received from the **Participant’s** officers, employees, contractors, agents, representatives or advisors, CIF Authorized Administration Support, or obtained by observation during visits to any of the **Participant’s** premises, or those of the **Participant’s** agents, representatives, partners or advisors, whether received orally or in writing or by any other means;
- ii. not to use any Confidential Information for any purposes other than in a bona fide manner for the Purpose without the prior written consent of the Participant;
- iii. except as specifically authorized by the Participant in writing, not to disclose any Confidential Information to a third party (other than to officers, employees, contractors, CIF Authorized Administration Support or agents of CIF with a need to know the same and then only to the extent necessary for the Purpose and on the condition that they are made aware of the confidential nature of such information before it is disclosed and are bound by confidentiality undertakings in respect of that Confidential Information which are no less onerous than those set out in these Terms and Conditions).

The obligations set out in Clauses 10(i) to (iii) above shall not extend to information if and to the extent that it:

- iv. is or comes into the public domain otherwise than by breach of these undertakings or any of them;
- v. lawfully comes into **CIF’s** possession prior to its disclosure by the Participant or which is acquired lawfully and in good faith from an independent third party other than as a result of breach of confidence; or
- vi. is or was independently developed by CIF without the benefit of the Confidential Information.

CIF may disclose Confidential Information if and to the extent required in order to comply with a statutory obligation, an order of a court of competent jurisdiction or the requirement of a competent regulatory body, provided that CIF promptly informs the Participant of such requirement prior to any disclosure and takes all reasonable steps to minimize the extent of the disclosure and to preserve the confidential nature of such information so disclosed.

CIF agrees to keep safe and to take all reasonable precautions to safeguard all Confidential Information received and on demand to surrender it to the Participant together with any copies or extracts thereof (in whatever form) or at the **Participant’s** option to take reasonable steps to destroy the

same or any part of it and to certify destruction of the same upon request by the Participant, save that CIF shall be entitled to keep a single copy of the Confidential Information for the purposes of determining its legal obligations only.

The confidentiality obligations set out in this Clause 10 shall continue to apply indefinitely without limit in time.

11. Entire Agreement

This Terms and Conditions together with the documents in the Information and Assessment Packs shall constitute the entire agreement between CIF and the Participant in connection with benefitting from the Code of Practice and the License of the Certification Mark and in the event that there is a conflict between the Information and Assessment Packs, these Terms and Conditions shall prevail.

12. Severance

If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected.

13. Governing Law and Jurisdiction

The parties agree that these Terms and Conditions shall be governed by English law.

14. Rights of Third Parties

The parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third parties) Act 1999 shall not apply to this Agreement.