

**Release date: September 14, 2018**

TOS

By accessing and using our access panel or provisioned containers (“Container” , “Virtual Machine”, “VM”, “Zone”, “Cloud Services”), you agree to the terms and conditions provided in this Terms of Service including all applicable Addendums for specific service offerings (“TOS”) and the policies and guidelines provided herein. This TOS constitutes an agreement between Initworks b.v.. (“Initworks”, “we”, “us”, or “our”) and you, as an individual, or the entity you represent. You represent that you are legally able to enter into agreements, that you are of legal age to do so, and if you are accepting this TOS on behalf of an entity, such as your company, you have all rights and authority to legally bind such entity. You further represent that you are not a person barred from receiving the Cloud Services under the laws of the Netherlands (including export controls) or other applicable jurisdiction (including the country in which you are resident or from which you use the Cloud Services) and your use of the Cloud Services will comply with the “Export Compliance and Excluded Data” section as provided below. You further affirm that you are over the age of 18, as the Cloud Services are not intended for children under the age of 18. Initworks b.v. reserves the right to modify the TOS from time to time without prior notice.

### **1. Cloud Services**

Cloud Services means the Initworks services and products provided by Initworks to you under this TOS. Cloud Services do not include Third Party Software and Services, which is defined below.

### **2. You must maintain the confidentiality of your Initworks account information**

You are responsible for maintaining the confidentiality of your account username and password, and you acknowledge and agree that you, and not Initworks, are responsible for all activities that occur under your account. You agree to immediately notify Initworks of any unauthorized use of your Initworks account, username or password.

### **3. You are responsible for your use of the Cloud Services**

**A. General.** You, and not Initworks, are responsible for: (a) all information, data, text, software, music, sound, photographs, graphics, video, messages, files, attachments, or other materials, including images of your instances (“Customer Data”) that is created, transmitted, stored, or displayed by, from, or within your account including content of your end user; (b) the technical operation of the Customer Data including maintaining compatibility with Initworks’s APIs for the Cloud Service; (c) the conduct of all users of your account and for any consequences of such conduct; (d) the monitoring of any Customer Data you provide to Initworks in connection with your use of the Cloud Services; (e) the procurement of, and compliance with, any third party software licenses for software that you run within the Cloud Service. While Initworks reserves the right to monitor your Customer Data, we are under no obligation to do so.

**B. DMCA and GDPR.** You are responsible for properly handling and processing notices sent to you (or any of your affiliates) by any person claiming that Customer Data violates such person’s rights, including notices pursuant to the Digital Millennium Copyright Act and or General Data Protection Regulation.

**C. Security.** You are responsible for using reasonable security precautions to maintain appropriate security and protection of all of your Customer Data. To prevent unauthorized access, you should, for example, consider encryption technology.

**D. Customer Data Preservation.** You are responsible for the preservation of all of your Customer Data. You, and not Initworks, are responsible for backing-up Customer Data and any other content that you use with the Cloud Services. Best practices include routine archiving of Customer Data. Initworks is not obligated to retain any Customer Data after the termination of your access to the Cloud Services for any reason. Initworks may transfer Customer Data within a country region (for example, within the United States or within Germany) for data redundancy or other purposes. Initworks will not transfer Customer Data outside the major geographic region you specify (for example, from the United States to UK or from Belgium to the United States).

**E. Your End User's Use.** You are responsible for your end users' use of the Cloud Services and ensuring that such use is in compliance with the terms and conditions of the TOS and with applicable law. If you discover that an end user is in violation of this TOS or any applicable law, you will terminate such end user's access to the Cloud Services immediately.

#### **4. Your use of the Cloud Services must be lawful and is subject to certain restrictions**

You shall use the Cloud Services only for purposes that are legal, proper and in accordance with the TOS and the Acceptable Use Policy ("AUP"), which can be found in this TOS. Furthermore, you agree that you will not engage in any activity that interferes with or disrupts the Cloud Services, servers or networks connected to the Cloud Services.

You shall not: (i) access and/or use the Cloud Services if you are a direct competitor of Initworks, for purposes of monitoring availability, performance or functionality, or for any other benchmarking or competitive purposes, including in order to design, create or build a service or product that is competitive with the Cloud Services, or which uses ideas, features or functions that are similar to the Cloud Services; (ii) sell, resell, rent, lease, offer any time sharing arrangement, service bureau or any service based upon the Cloud Services on a stand-alone basis (for the avoidance of doubt, this subsection shall not be deemed to preclude you from offering services that use and rely upon the Cloud Services where your other products or services add substantial value as compared to the Cloud Services alone); (iii) interfere with or disrupt the integrity or performance of the Cloud Services; (iv) attempt to gain unauthorized access to the Cloud Services or any associated systems or networks; or (v) modify or make derivative works based upon the Cloud Services or any part thereof, or directly or indirectly disassemble, decompile, or otherwise reverse engineer the Cloud Services or any portion thereof.

#### **5. Third Party Software and Services**

In connection with your use of the Cloud Services, solely as a convenience for you and solely at your election, Initworks may make available to you the use of certain third party software and/or services ("Third Party Software and Services"). Initworks is not liable or responsible for claims, damages, losses or any other complaints arising out of or related to your use of such Third Party Software and Services. Your use of any Third Party Software and Services are subject to the terms and conditions directly between you and the applicable third party vendor and at your own risk. You hereby acknowledge that no purchase or license of any Third Party Software and Services is required to use the Cloud Services.

## 5.1 Licensing terms for Microsoft products

Provided that the customer has selected a Microsoft software product (e.g. Windows Server, SQL Server etc.) for installation on his environment, he must comply with the current provisions of the "Microsoft Service Provider Use Rights" (SPUR) and the "End User License Terms" (EULT) which apply within the context of the Microsoft "Service Provider License Agreement" to Initworks b.v. (hereinafter referred to as provider) if the customer is able to influence the use of the software or could infringe the provisions through use of the software. These provisions may be viewed at the following addresses at any time:

<https://www.microsoft.com/en-us/licensing/product-licensing/products.aspx>

The customer thus agrees to comply with the corresponding provisions and is responsible for observing them correctly. These provisions may result in only having restricted or even not having the possibility to use otherwise purchased licenses of the customer with the servers of the provider. The provider will supply a license for all customer orders of Microsoft software products considering the Microsoft Service Provider License Agreement. This license allows the monthly use of the Microsoft software product on the server and limits its utilization permission with regard to some aspects. **The customer particularly must not use Microsoft products which require additional or other licenses according to SPUR or EULT. The customer is obligated to comply with all these provisions on his own and is liable for violations against this usage policy to the provider and Microsoft.**

## 6. If you use the Cloud Services improperly, Initworks may suspend or terminate your access to the Cloud Services

We reserve the right to suspend or terminate your access to the Cloud Services if we determine (in our sole discretion) that you are in violation of the TOS, the AUP, or any applicable laws.

For example, we may suspend or terminate your access to the Cloud Services if your use of the Cloud Services: (i) poses a security risk to the Cloud Services or any third party, (ii) may be damaging to, or degrading of, Initworks's network integrity, (iii) may subject us, our affiliates, or any third party to legal liability, or (iv) may be fraudulent.

## 7. Fees, Billing and Free Trials

For the use of the Cloud Services, you shall pay us the applicable fees and charges in EURO by payment methods that we authorize. If you are paying with a credit card, you hereby authorize Initworks to charge your credit card for any and all charges you may incur in connection with your use of the Cloud Services. An invoice is issued for those charges at the beginning of each calendar month. Initworks reserves the right to bill you more frequently for fees and charges for use of the Cloud Services if Initworks suspects that your account is at risk of non-payment or is fraudulent. For Initworks's Container Service, you shall be charged in arrears for all billable instances during the previous calendar month. A container instance is billable from the time it is provisioned, whether by you or by Initworks, until the time it is deleted. Unless and until you delete your compute instance, you shall continue to incur usage fees even if such compute instance is inactive.

If you elect to purchase Initworks Support Services, Support Services fees will be charged monthly in arrears for the complete month, regardless of the date of order (e.g. if you order Support Services on

the 15th of the month the effective date will be the first of that same month.) The minimum term for a purchased Support Service is one (1) month. Support Services can be cancelled upon written notification to Initworks, however, such written notice must be provided to Initworks prior to the first day of the month you wish to cancel. No refunds will be given for partial months.

All payments must be made without setoffs, counterclaims, deductions or withholdings. All invoices must be paid in one payment. Initworks shall not be responsible for any additional bank fees, interest charges, finance charges, over draft charges, or other fees resulting from charges billed by Initworks. If you choose to pay by credit card, currency exchange settlements shall be based on agreements between you and the provider of your credit card. Late payments hereunder will be subject to a monthly charge of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower.

IF YOU BELIEVE THAT YOUR CHARGES ARE INCORRECT, YOU MUST CONTACT INITWORKS IN WRITING WITHIN 30 DAYS FROM THE DATE OF THE APPLICABLE INVOICE ("DISPUTE PERIOD") TO CONTEST SUCH CHARGES TO BE ELIGIBLE TO RECEIVE AN ADJUSTMENT OR CREDIT. TO THE FULLEST EXTENT PERMITTED BY LAW, YOU HEREBY WAIVE ALL CLAIMS RELATING TO ANY AND ALL CHARGES NOT DISPUTED BY YOU DURING THE DISPUTE PERIOD (THIS DOES NOT AFFECT YOUR CREDIT CARD ISSUER RIGHTS).

Initworks may assess taxes on the amounts payable by you to Initworks, including, without limitation, any tax, levy, or similar governmental charge assessed by any jurisdiction, whether based on gross revenue, the provision of services, the performance of these TOS, the delivery, possession or use of the Cloud Services or any other products or services offered by Initworks pursuant to these TOS, or otherwise, including without limitation all sales, use, excise, import or export, value added, governmental permit fees, license fees, and customs (collectively, "Taxes"). For the avoidance of doubt, you shall have no liability for any taxes assessed on Initworks's income by the EU or any state thereof. Notwithstanding the foregoing, If Initworks does not assess Taxes on amounts payable by you to Initworks under these TOS and Taxes are assessed by any jurisdiction, Customer shall pay all such Taxes.

Initworks reserves the right to change its fees and charges for the Cloud Services at any time. Any such changes will be effective when such changes are posted on the cloud containers website, unless we indicate otherwise. Similarly, we may introduce pricing and charges for new products, features or services at any time by posting on the cloud containers website.

For Free Trials, each Customer is eligible to participate in one free trial. If we discover that a Customer has multiple free trial accounts, we reserved the right to terminate all but one free trial account of our choice in our sole discretion.

## **8. NO REFUNDS**

All charges are non-refundable unless expressly stated otherwise, or otherwise provided by applicable law.

## **9. If you are delinquent on your payment, Initworks may suspend or terminate your access to the Cloud Services**

We reserve the right to suspend or terminate your access to and use of the Cloud Services if you are delinquent on your account.

## **10. Your cancellation of Cloud Services**

You may terminate your use of the Cloud Services at any time by following the procedures below: As soon as you delete an instance or service, you will lose all Customer Data on that instance or service. As a reminder, you are responsible for backing up all Customer Data you use with the Cloud Services. Termination of the Cloud Services by you will not alter your obligations to pay all charges due to Initworks.

For Container Service, you may cancel your service at any time by deleting your billable instances through the Initworks Cloud Portal (currently at: [www.cloudcontainers.net](http://www.cloudcontainers.net)). Stopping an instance does not stop the incurring of your usage fees. You must delete the compute instance to stop incurring usage fees. The final charges for your compute instances will be included on the invoice issued at the beginning of the next calendar month.

## **11. Support Services**

Initworks Support Services offerings are described on Initworks's website. Basic support is included with your Initworks Cloud Service, which provides for support assistance if you are experiencing problems with your Cloud Service (e.g. machine not provisioning, not responding, etc.) Additional levels of Support Service may be purchased from Initworks.

If you purchase Initworks Support Services you must do so for the entire set of machines under your account. Customers who have multiple accounts can select the appropriate Support Service tier for individual accounts, but cannot mix and match Support Service tiers within an account.

Support Services are delivered under the terms and conditions of this TOS and the Initworks Support Services Policy.

## **12. Service Level Agreement ("SLA")**

Your use of the Cloud Services is subject to the terms and conditions of our SLA which is incorporated in this document.

## **13. Modifications to and Discontinuation of Cloud Services:**

**A. Cloud Services.** We may modify or discontinue the Cloud Services including adding, removing or changing features or functionality of the Cloud Services from time to time. We will make information available regarding any material change to or discontinuation of the Cloud Services.

**B. New Applications.** We may make new applications, tools, features or functionality available from time to time through the Cloud Services, the use of which may be contingent upon your agreement to additional terms.

**C. APIs.** We may modify or discontinue any APIs to the Cloud Services from time to time.

**D. TOS, SLA, AUP and Policies.** We reserve the right to modify the terms and conditions of our TOS, SLA and Policies (including, but not limited to, our Security and Privacy Policy and Acceptable Use Policy) from time to time. We will make information available regarding any material changes.

#### **14. Intellectual Property Rights**

The Cloud Services, including all Intellectual Property Rights therein and thereto, and any modification thereof, are and shall remain the exclusive property of Initworks and its licensors. You shall not take any action that jeopardizes Initworks's or its licensors' proprietary rights or acquires any right in the Cloud Services or Initworks's Confidential Information, except the limited rights expressly granted in this TOS. "Intellectual Property Rights" means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (i) rights associated with works of authorship throughout the universe, including, but not limited to, all exclusive exploitation rights, copyrights, neighboring rights, moral rights and mask-works, (ii) trademark, trade dress, and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property and proprietary rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license or otherwise, and (vi) all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force throughout the universe.

You hereby grant to Initworks a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Cloud Services any suggestions, enhancement requests, recommendations or other feedback related to the Cloud Service TOS provided by you to Initworks.

#### **15. Indemnification**

You agree to hold harmless and indemnify Initworks, and its subsidiaries, affiliates, officers, agents, and employees, advertisers or partners, from and against any third party claim arising from or in any way related to Customer Data, your use of the Cloud Services, or violation of these TOS, AUP or any other actions connected with your use of the Cloud Services, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, settlements, litigation costs and reasonable attorneys' fees, of every kind and nature. In such a case, Initworks will provide you with written notice of such claim, suit or action and reasonable assistance at your cost.

#### **16. DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE CLOUD SERVICES IS AT YOUR SOLE RISK. CLOUD SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ANY USE OF THE CLOUD SERVICES IS DONE AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM USING THE CLOUD SERVICES. INITWORKS MAKES NO, AND HEREBY EXPRESSLY DISCLAIMS (TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW) ALL WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTE, AS TO THE CLOUD SERVICES OR ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY EXCLUDED. INITWORKS DOES NOT WARRANT THAT THE OPERATION OF THE CLOUD SERVICES WILL BE COMPLETELY SECURE, ERROR FREE OR UNINTERRUPTED, OR THAT ALL ERRORS WILL BE CORRECTED.

YOU ASSUME ALL RISK OF DELAYS OR INTERRUPTIONS IN ACCESS TO OR USE OF THE CLOUD SERVICES RESULTING FROM USE OF THE INTERNET AND/OR TELECOMMUNICATIONS TO ACCESS THE CLOUD SERVICES, AND INITWORKS SHALL HAVE NO LIABILITY FOR ANY SUCH DELAYS OR INTERRUPTION.

## **17. LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES SHALL INITWORKS OR ITS AFFILIATES BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, OR FOR COST OF PROCURMENT OF SUBSTITUTE SERVICES, ARISING OUT OF OR IN ANY WAY RELATED TO THIS TOS OR THE CLOUD SERVICES. SUCH LIMITATION ON DAMAGES INCLUDES, BUT IS NOT LIMITED TO, LOST GOODWILL, LOST PROFITS, LOSS OF DATA OR SOFTWARE OR WORK STOPPAGE, REGARDLESS OF THE LEGAL THEORY ON WHICH THE CLAIM IS BROUGHT, EVEN IF INITWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED IN THIS TOS. INITWORKS'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS TOS OR THE CLOUD SERVICES, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT YOU PAID TO INITWORKS DIRECTLY ATTRIBUTABLE TO THE INITWORKS CLOUD SERVICE PROVIDED UNDER THIS TOS DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY UNDER THIS TOS. INITWORKS SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY CUSTOMER DATA OR THIRD PARTY SOFTWARE. THE FOREGOING LIMITATION OF LIABILITY IS INDEPENDENT OF, AND SHALL NOT BE DEEMED TO MODIFY INITWORKS'S OBLIGATION UNDER ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS TOS.

## **18. Export Compliance and Excluded Data**

You acknowledge and agree that the Cloud Services are subject to applicable export control and trade sanctions laws, regulations, legislative and regulatory requirements, rules and licenses (collectively "export laws"), including without limit those of the Netherlands. You agree to comply with these export laws and agree that you alone are responsible for ensuring compliance with export laws. In particular, but without limitation to the foregoing, you will not, and will obtain assurances that none of your affiliates, employees, contractors, agents or users will not, use, sell, resell, export, re-export, import dispose of, disclose or otherwise deal with the TOS, directly or indirectly, to any country, destination or person without first obtaining any required export license or other governmental, legislative or regulatory approval, and completing such formalities as may be required by the export laws. You further shall not do anything that would cause Initworks to be in breach of the export laws.

For clarity, you are solely responsible for compliance relating to the manner in which you choose to use the Cloud Services, including your transfer, processing and provisioning of your Customer Data or any other data, content or software to your end users and any control laws of the country in which the Cloud Services are rendered or received by you. Customer Data, software or any of your solution that you provide in connection with the Cloud Services will not (i) be classified or listed on the U.S. Munitions list; (ii) contain defense articles or defense services; or (iii) contain ITAR-related data (items (i) — (iii) collectively, the "Excluded Data").

## **19. Notices**

**19.1. Notices to You.** Notices by Initworks may be given to you under this TOS in any of the following manners: a) by sending notices to your email address registered with your Initworks account; b) by overnight courier, personal delivery, or registered or certified mail; or c) posting such notices on the Initworks website. Notices will be effective upon posting or when sent, as applicable.

**19.2. Notices to Us.** Notices by you to Initworks must be given in either of the following manners: a) by overnight courier, personal delivery, or registered or certified mail to: [administratie@initworks.com](mailto:administratie@initworks.com), Notices are effective 3 business days after being sent.

## **20. Entire Agreement**

This TOS, AUP, SLA and including any policies or amendments that may be presented to you from time to time constitute the entire agreement between you and Initworks and shall govern your use of the Cloud Services, including any prior (written or verbal) offers and statements.

## **21. Governing Law**

The Terms of Service and the relationship between you and Initworks, solely relating to the delivery and use of the Cloud Services, shall be governed by the laws of the Netherlands without regard to its conflict of law provisions. You and Initworks agree to submit to the personal and exclusive jurisdiction of the courts located within the Netherlands.

## **22. Nature of Relationship**

The Terms of Service do not create or imply any partnership, agency or joint venture between you and Initworks.

## **23. Feedback, Comments and Questions**

We are always looking for ways to improve our services. If you have feedback, comments and/or questions regarding the Cloud Services, please feel free to contact us at:

Initworks b.v.

Lloydstraat 5

3024 EA ROTTERDAM

THE NETHERLANDS



# Acceptable use

## Compliance with Law

Customer shall not post, transmit, re-transmit or store material on or through any of Company's Services or Products which, in the sole judgment of Initworks (i) is in violation of any law or regulation, (ii) threatening, obscene, indecent, defamatory or that otherwise could adversely affect any individual, group or entity (collectively, "Persons") or (iii) violates the rights of any person, including rights protected by copyright, trade secret, patent or other intellectual property or similar laws or regulations including, but not limited to, the installation or distribution of "pirated" or other software products that are not appropriately licensed for use by Customer. Customer shall be responsible for determining what laws or regulations are applicable to its use of the Services and Products.

## Customer Security Obligation

Each Customer must use reasonable care in keeping software they run on the platform up-to-date and patched with the latest security updates. Failure to use reasonable care to protect your account may result in a security compromise by outside sources. A compromised server creating network interference will result in immediate Customer notification and will be disconnected from the network immediately so as to not directly affect other Customers. No service credits will be issued for outages resulting from disconnection due to breached server security. The Customer is solely responsible for any breaches of security under Customer control affecting servers. If a Customer intentionally creates a security breach, the cost to resolve any damage to Customer's server or other servers will be charged directly to the Customer. The labor used to resolve such damage is categorized as Emergency Security Breach Recovery and is currently charged at 300 EUR per hour.

## System and Network Security

Violations of system or network security are strictly prohibited, and may result in criminal and civil liability. Initworks investigates all incidents involving such violations and will cooperate with law enforcement if criminal violation is suspected.

Examples of system or network security violations include, without limitation, the following:

1. Introduction of malicious programs into the network or server (example: viruses, worms, Trojan Horses and other executables intended to inflict harm).
2. Effecting security breaches or disruptions of Internet communication and/or connectivity. Security breaches include, but are not limited to, accessing data of which the Customer is not an intended recipient or logging into a server or account that the Customer is not expressly authorized to access. For purposes of this section, "disruption" includes, but is not limited to port scans, flood pings, email-bombing, packet spoofing, IP spoofing and forged routing information.
3. Executing any form of network activity that will intercept data not intended for the Customer's server.
4. Circumventing user authentication or security of any host, network or account.

5. Interfering with or denying service to any user other than the Customer's host (example: denial of service attack or distributed denial of service attack).
6. Using any program script/command, or sending messages of any kind, designed to interfere with or to disable, a user's terminal session, via any means, locally or via the Internet.
7. Failing to comply with the Company's procedure relating to the activities of Customers on the Company's premises. Violators of the policy are responsible, without limitations, for the cost of labor to correct all damage done to the operation of the network and business operations supported by the network. Such labor is categorized as Emergency Security Breach Recovery and is currently charged at 300 EURO per hour required. Network interference by any Customers that may cause or is currently causing network interference with another Customer will be disconnected immediately. No service credits will be issued to Customers disconnected for network violations.
8. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.
9. Sending Unsolicited Bulk Email ("UBE", "spam"). The sending of any form of Unsolicited Bulk Email through Initworks.'s servers is prohibited. Likewise, the sending of UBE from another service provider advertizing a web site, email address or utilizing any resource hosted on Initworks's servers is prohibited. Initworks accounts or services may not be used to solicit customers from, or collect replies to, messages sent from another Internet Service Provider where those messages violate either this Policy or that of the other provider.
10. Running Unconfirmed Mailing Lists. Subscribing email addresses to any mailing list without the express and verifiable permission of the email address owner is prohibited. All mailing lists run by Initworks customers must be Closed-loop ("Confirmed Opt-in"). The subscription confirmation message received from each address owner must be kept on file for the duration of the existence of the mailing list. Purchasing lists of email addresses from 3rd parties for mailing to from any Initworks-hosted domain, or referencing any Initworks account, is prohibited.
11. Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP or the AUP of any other Internet Service Provider, which includes, but is not limited to, the facilitation of the means to send Unsolicited Bulk Email, initiation of pingging, flooding, mail-bombing, denial of service attacks.
12. Operating an account on behalf of, or in connection with, or reselling any service to, persons or firms listed in the Spamhaus Register of Known Spam Operations (ROKSO) database at [www.spamhaus.org](http://www.spamhaus.org).
13. Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., "cracking").
14. Obtaining or attempting to obtain service by any means or device with intent to avoid payment.
15. Accessing or attempting to access your account or other Initworks services after you (or Company) has cancelled Customer's account.
16. Unauthorized access, alteration, destruction, or any attempt thereof, of any information of any Initworks customers or end-users by any means or device, including the use of 'sudo' or other privileged operating system commands.
17. Knowingly engage in any activities designed to harass, or that will cause a denial-of-service (e.g., synchronized number sequence attacks) to any other user whether on the Initworks network or on another provider's network.

18. Using Initworks's Services to interfere with the use of the Initworks network by other customers or authorized users.

## SLA

This Service Level Agreement (SLA) applies to you ("customer") if you have ordered Containers and/or Instances from Initworks (the "Services") and your account is current (i.e., not past due) with Initworks. As used herein, the term "Availability" means the percentage of a particular month (based on 24-hour days for the number of days in the subject month) that customer's hosted system is available for access, as measured by Initworks.

### 2. Service Level

**Goal:** Initworks's goal is to achieve 100% Availability for all customers.

**Remedy:** Subject to Sections 3 and 4 below, if the Availability of customer's Services is less than 100%, Initworks will credit the customer 5% of the monthly fee for each 60 minutes of downtime (up to 100% of customer's monthly fee for the affected server).

### 3. Exceptions

Customer shall not receive any credits under this SLA in connection with any failure or deficiency of Availability caused by or associated with:

- circumstances beyond Initworks's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, ecommerce software, payment gateways, chat, statistics or free scripts) or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of this SLA;
- failure of access circuits to the Initworks Network, unless such failure is caused solely by Initworks;
- scheduled maintenance and emergency maintenance and upgrades;
- DNS issues outside the direct control of Initworks;
- issues with FTP, POP, IMAP, or SMTP customer access;
- false SLA breaches reported as a result of outages or errors of any Initworks measurement system; customer's acts or omissions (or acts or omissions of others engaged or authorized by customer), including, without limitation, custom scripting or coding (e.g., CGI, Perl, HTML, ASP, Ruby, PHP, Python etc), any negligence, willful misconduct, or use of the Services in breach of Initworks's Terms and Conditions and Acceptable Use Policy;
- e-mail or webmail delivery and transmission;
- DNS (Domain Name Server) Propagation;
- outages elsewhere on the Internet that hinder access to your account

Initworks is not responsible for browser or DNS caching that may make your site appear inaccessible when others can still access it. Initworks will guarantee only those areas considered under the control of Initworks: Initworks server links to the Internet, Initworks's routers, and Initworks's servers.

### 4. Credit Request and Payment Procedures

To receive a credit, the customer must make a request by sending an e-mail message to [administratie@initworks.com](mailto:administratie@initworks.com). The e-mail message MUST include the account name of the customer's account in the "Subject" line. Each request in connection with this SLA must include the customer's account number (per Initworks's invoice) and the dates and times of the unavailability of customer's Web site and must be received by Initworks within ten (10) business days after the customer's Web Site was not available. If the unavailability is confirmed by Initworks, credits will be applied within two billing cycles after Initworks's receipt of the customer's credit request. Credits are not refundable and can be used only towards future billing charges.

Notwithstanding anything to the contrary herein, the total amount credited to customer in a particular month under this SLA shall not exceed the total hosting fee paid by customer for such month for the affected Services. Credits are exclusive of any applicable taxes charged to customer or collected by Initworks and are customer's sole and exclusive remedy with respect to any failure or deficiency in the availability of the Services.

**Note:** Credits are not refundable and can be used only towards future billing charges.

# TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

## END USER LICENSE TERMS

This section governs the use of Microsoft software, which may include associated software, media, printed materials, and “online” or electronic documentation (individually and collectively, “Products”) provided by Initworks b.v. (hereinafter referred to as “Provider”). Provider does not own the Products and the use thereof is subject to certain rights and limitations of which Provider must inform you. Your right to use the Products is subject to the terms of your agreement with Provider, and to your understanding of, compliance with, and consent to the following terms and conditions, which Provider does not have authority to vary, alter, or amend.

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