

## **Lifetime Hosting Package Terms and Conditions**

**YOU HEREBY REPRESENT AND WARRANT THAT YOU HAVE READ, UNDERSTOOD AND ACCEPTED THIS TERMS OF SERVICE, THE ACCEPTABLE USE POLICY AND THE PRIVACY POLICY.**

These Terms of Service ("Agreement") govern the provision by LiveCode Ltd ("LiveCode Ltd") of the products and services LiveCode Ltd describes on its website and through representatives associated with LiveCode Hosting (the "Service").

This Agreement applies to each user that subscribes to the Service ("Customers"), all users of Service, all users that access or utilize the LiveCode Hosting website whether or not such users are Customers of the Service, including the customers of our Customers, ("Users"). These Terms should be read in conjunction with our Acceptable User Policy and Privacy Policy, both of which are hereby incorporated into this Agreement.

**LiveCode Ltd HEREBY RESERVES THE RIGHT TO AMEND, ALTER, REPLACE, SUSPEND OR MODIFY FROM TIME TO TIME AT ITS SOLE DISCRETION ALL OR ANY PORTION OF THE ACCEPTABLE USE POLICY OR THE PRIVACY POLICY.** Posting a new copy of these agreements on LiveCode Ltd's website constitutes Customer acceptance of the revised policy.

1. **Provision of service.** LiveCode Ltd agrees to provide the Service in accordance with the terms in this Agreement beginning on the later of the date that the Customer places an order for the Service or the date payment is received by LiveCode Ltd. Customer acknowledges that the Internet is not owned nor controlled by any one entity and that LiveCode Ltd cannot guarantee that any User will be able to access LiveCode Ltd's Service at any given time. LiveCode Ltd represents that it shall make every good faith effort to ensure that its services are available as widely as possible and with as little interruption as possible.
2. **Lifetime basis.** Unless terminated as provided for under the terms of this Agreement, LiveCode Ltd agrees to provide the Customer with the Service on a "lifetime" basis. Lifetime shall be defined as for as long as LiveCode Ltd continues to provide any hosting package as a commercial service or in any event a minimum of 10 years from date of Customer sign up. Lifetime hosting packages are per named Customer and are absolutely not transferable to any other entity, for any reason, in any way or under any circumstances whatsoever.

3. **Feature set.** LiveCode Ltd will make every effort to preserve the current feature set for the life of this Lifetime Service. However, features may change at LiveCode Ltd's sole discretion in order to move to later supported versions of components, address security issues, or for any reason (or no reason at all) LiveCode Ltd deems appropriate.
4. **Download of software and copyright.** Title, ownership, rights, and intellectual property rights in and to the LiveCode Server components of the Service and all related documentation shall remain with LiveCode Ltd. Such software and components are protected by the copyright laws of the United Kingdom and international copyright treaties. For the purposes of this license "intellectual property rights" means any and all patents, copyright, registered or unregistered design rights, trademarks, trade names, know-how, database rights or other intellectual property rights. Customer will not attempt to break into, download, copy or otherwise replicate any of the LiveCode Server components of the Service on their local machine or own servers (beyond the unmodified use of any desktop software provided by LiveCode Ltd) until such time as LiveCode Ltd makes such components generally available and then under such terms as specified by LiveCode Ltd at that time. Customer is expressly forbidden from attempting to download the LiveCode Server engine and associated components. Violation of this clause is cause for termination of the Customer's Service without refund at the sole discretion of LiveCode Ltd, as well as for legal action to prevent Customer's use or redistribution of the LiveCode Server technology or components, all costs of such legal action to be paid by the Customer in full.
5. **Communication.** LiveCode Ltd has the right to email you periodically with certain information about the service, your account, marketing materials, and surveys. You may not opt out of receipt of account related communication.
6. **Data collection.** LiveCode Ltd may collect performance metrics,

statistics and utilize other novel and sophisticated methods of assessing the performance of the Service. Such data collection will be used for the sole purpose of improving the provision of the Service to all Customers and for no other purpose. LiveCode Ltd will not share such personal information with any 3<sup>rd</sup> party.

**8. Only one Service.** Only one LiveCode Hosting Lifetime Service may be purchased per Customer. Customer may not under any circumstances purchase additional Lifetime accounts for any reason. Purchase of such additional Service is grounds for termination of the Service and no refund will be given.

**9. Not for resale.** Customer may not resell the Service to any 3<sup>rd</sup> party under any circumstances. Customer may however host websites of its clients using the Service provided that such hosting is a component of a service being offered by Customer to its customers and that such hosting component is not the primary service being offered by Customer to its customers. For example (but not limited to), providing web design services and programming to a customer and then hosting the resultant site using the Service will generally be permitted, whereas offering web hosting packages for sale would generally not be permitted. Customer may contact LiveCode Ltd if they wish to determine if their intended use is permitted, otherwise LiveCode Ltd may determine if Customer's use contravenes this policy at its sole discretion.

**10. Additional services.** LiveCode Ltd will make available additional Services from time to time at its sole discretion. Such Services may be purchased by paying a monthly fee. Where such Service is purchased by Customer such fee will be paid on time on a monthly basis. LiveCode Ltd may at its sole discretion suspend or terminate this Agreement should any fee remain outstanding 14 days after a reminder notice has been issued.

**11. Bandwidth and Disk Usage.** Customer agrees that bandwidth and disk usage shall not exceed the number of gigabytes per month for the Service as described by LiveCode Ltd (the "Agreed Usage"). LiveCode Ltd will monitor Customer's bandwidth and disk usage. LiveCode Ltd will have the right to take corrective action if Customer's bandwidth or disk usage exceeds the Agreed Usage. Such corrective action may include the assessment of additional charges, disconnection or termination for cause of the Service at the sole and absolute discretion of LiveCode Ltd. If LiveCode Ltd takes any corrective action Customer shall not be entitled to a refund of any fees paid in advance of such action. The Customer agrees that the Service is primarily for the purpose of hosting a website, email and associated functions. Data uploaded must be primarily for this purpose. The Service is not intended for use as a data backup or

archiving service. LiveCode Ltd reserves the right to negotiate additional fees and or discontinue the use of the Service for backups or archiving at its sole discretion. Bandwidth usage is monitored on a calendar month basis. All incoming and outgoing traffic is counted, including traffic for email or CGI debugging, and applied towards the Agreed Usage. LiveCode Ltd may at its sole discretion, collect a deposit, in the amount of \$0.49 per GB transfer or \$0.59 per GB disk space from Customer, or to the extent that Customer has a credit card on file with LiveCode Ltd, apply such charge against Customer's credit card. Data transfer in excess of the Agreed usage shall be automatically billed to Customer. Unused Agreed Usage cannot be carried over to future months.

**12. Resource use.** Servers are shared with other customers. Customer will make every effort to avoid running CPU intensive CGI scripts, e.g. scripts that have bugs, or do not to close properly after being run. Should such a process occur Customer will make every effort to resolve the error as soon as possible. A number of services are prohibited by the Acceptable Use Policy and must not be run. If Customer processes are adversely affecting server performance disproportionately LiveCode Ltd reserves the right to negotiate additional charges with the Customer and/or discontinue the offending processes at its sole discretion. Should Customer continue to adversely affect performance of its shared service and LiveCode Ltd are unable to resolve this matter with Customer, LiveCode Ltd may suspend or terminate Customer's account at its sole discretion.

**13. Termination under this agreement.** LiveCode Ltd will not refund any money to Customer in relation to any portion of the Service, including any portion of the "lifetime" fee if it has to terminate for reasons given in any of the causes listed under this Agreement. Customer may terminate this agreement within the first 14 days and receive a full refund provided their account was not terminated by LiveCode Ltd for a violation under this Agreement.

**14. Lawful purpose.** Customer may not use the Service for any unlawful purpose. Transmission of any material in violation of any international law anywhere in the USA or EU is grounds for LiveCode Ltd to terminate the Service without refund. Any violation of the Acceptable Use Policy is grounds for termination of the Service by LiveCode Ltd without refund.

**15. Indemnification.** Customer agrees that it shall defend, indemnify, save and hold LiveCode Ltd harmless from any and all demands, claims, liabilities, losses, costs, including legal fees asserted against LiveCode Ltd, its employees, agents, customers, officers and subcontractors that may arise or result from any Service performed or provided or agreed to

be performed or produced or sold by Customer, its agents, employees or assigns. Customer agrees to defend, indemnify and hold harmless LiveCode Ltd against any and all Liabilities arising out of any injury to person or property caused by any products sold or otherwise distributed in connection with the Service, any material supplied by the Customer infringing or allegedly infringing on the proprietary rights of a third party, copyright infringement or the provision of any defective product which Customer sold or provided using the Service.

#### 16. DISCLAIMER OF WARRANTY

A) THE SERVICE IS PROVIDED AS IS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LiveCode Ltd FURTHER DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. UNDER NO CIRCUMSTANCES, SHALL LIVECODE LTD BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE SERVICE; OR THAT RESULTS FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT LIMITED TO ACTS OF GOD, COMMUNICATION FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO LIVECODE LTD'S RECORDS, PROGRAMS OR THE SERVICES.

B) THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OR NON PERFORMANCE OR INTERRUPTION TO USE OF THE SERVICE REMAINS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LIVECODE LTD BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE PRODUCT, EVEN IF LIVECODE LTD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;

C) NOTWITHSTANDING THE ABOVE THE TOTAL LIABILITY WHICH LIVCODE LTD OWES TO YOU IN RESPECT OF BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE SHALL, OTHER THAN IN CIRCUMSTANCES IN WHICH SUCH ACTS RESULT IN DEATH OR PERSONAL INJURY IN WHICH CASE LIABILITY SHALL BE UNLIMITED, BE LIMITED TO THE SUM OF £350 IN RESPECT OF

ANY ONE CLAIM OR AGGREGATE OF CLAIMS ARISING IN ANY TWELVE MONTH PERIOD;

17. **Notices.** All notices under this Agreement shall be sufficiently given if in writing and delivered personally or sent by fax, email, overnight courier, or registered mail to the address of the Customer listed in LiveCode Ltd's records or to LiveCode Ltd at its address as published on its website. Such notices shall be deemed to have been given on the date delivered. Customer is responsible for ensuring that LiveCode Ltd has up to date contact details at all time and can receive incoming email from LiveCode Ltd. Any notice properly delivered to contact details held on file will be deemed to be given.
18. **Waiver.** The failure of either party at any time to require performance by the other party of any provisions of this agreement shall in no way affect their right to require performance at any time thereafter, nor shall the waiver of either party of the breach of any provision of this agreement be taken or held to be a waiver of any succeeding breach of such provision or as waiver of the provision itself.
19. **Modification.** No modification or waiver of this agreement shall bind either party unless it is in writing and is signed and accepted by an authorized representative of each party.
20. **Relationship.** The relationship of parties is that of independent contractors.
21. **Headings.** The article headings in this agreement are for reference only and shall have no meaning in interpreting this agreement.
22. **Severability.** Should any portion of this agreement be found to be unenforceable this portion of the agreement will be modified to the minimum extent necessary to comply with applicable law and the remainder of the agreement will remain in full effect.
23. **Governing Law.** This agreement and any dispute arising from its performance or non performance shall be governed by the laws of Scotland, United Kingdom. Customer hereby irrevocably submits to the exclusive jurisdiction of the courts of Scotland, UK. Customer hereby irrevocably waives and agrees not to assert by way of motion, as a defense or otherwise in any way, in any such suit action or claim, that it is not personally subject to the jurisdiction of the Scottish Courts, that the suit, claim, action or proceeding is brought in an inconvenient forum, that the venue is improper or that this agreement may not be enforced in such venue. A judgment obtained in any such action, suit or proceeding shall be conclusive and may be enforced in other jurisdictions in any manner as provided by applicable law.

**24. Entire agreement.** This License constitutes the entire agreement between LiveCode Ltd and Customer with respect to the subject matter hereof and with the exception of any fraudulent or negligent misrepresentations supersedes all prior oral or written understandings, communications or agreements not specifically incorporated herein. The only exception to this is any explicit terms you may have agreed to before signing up to the Service on our web site, or any other supplementary terms made clear by us prior to your agreeing to this agreement. Any such terms will form part of this agreement.