



## **CLOUDFLOORDNS TERMS AND CONDITIONS OF SERVICE INCORPORATED BY REFERENCE IN ORDER FORM**

**Dated as of May 25, 2018**

These CloudfloorDNS Terms and Conditions of Service ("Terms") form a binding agreement between MicroTech USA LLC, a wholly owned subsidiary of Everbridge, Inc. ("MicroTech") and you ("You", "Your" or "Client"), as identified on the CloudfloorDNS Order Form or other applicable ordering documents ("Order Form"), including through the CloudfloorDNS website (the "Site"), for use of CloudfloorDNS and related services ("Services"). If You are entering into this agreement on behalf of a company or other legal entity, You represent that You have the authority to bind legally the entity to this agreement, in which case "You" shall mean such entity.

1. **Introduction.** These Terms govern the terms and conditions of access and use of the Services MicroTech provides You. These Terms take effect when the Client clicks an "I Accept" button, check box or executes a CloudfloorDNS Order Form presented with these terms or, if earlier, when the Client uses any of the Services.

This agreement incorporates by reference all other policies referenced herein, including, but not limited to the Order Form, Acceptable Use Policy, CloudfloorDNS website Terms of Use, and Privacy Notice as applicable (the "Additional Policies"). These Terms together with the Additional Policies shall constitute the entire agreement between the Client and MicroTech related to the Services to be provided hereunder (the "Agreement").

MicroTech reserves the right to modify this Agreement at any time in its sole discretion. If MicroTech amends these Terms, it will post a notice on the CloudfloorDNS website (the "Site") on or before the effective date of such amendment. Your use of the Services after the effective date shall constitute your acceptance of the amended Agreement.

2. **Scope of Services; Restrictions.** MicroTech grants the Client a non-exclusive, non-transferable right to access and use the Services solely in accordance with these Terms. Services are for the internal business use of the Client and may not be copied, reproduced, retransmitted or distributed to any third party, including on a service bureau basis. Client shall use the Services in accordance with MicroTech's Acceptable Use Policy

Client shall not:

- a. Make the Services or any portion thereof available for use, access, display, searching or retrieval by, or on behalf of, any party other than Client;
- b. Make the Services available in any "public" or "free" area of the Internet; or
- c. Use the Services in a manner that violates any applicable laws.

3. **Fees, Payment Terms, and Taxes.** Client shall pay MicroTech the CloudfloorDNS fee associated with the selected custom features and usage package of Services ("Service Fee") in the amounts set forth on the respective pricing, detail and/or order pages on the Order Form and/or Site. MicroTech shall charge applicable Service Fees to Client's credit card or debit card or receive payment by wire transfer or check. All prices are exclusive of all taxes, duties, VAT, withholdings and other governmental assessments. Unless otherwise set forth in the Order Form, MicroTech shall invoice Client annually in advance; and Client shall pay to MicroTech the full invoice amount within thirty (30) days of the date of invoice. If You fail to pay amounts due for Services when such amounts are due, late charges of the lesser of one and one-half percent (1.5%) per month or the maximum allowable under applicable law shall also be payable by You to MicroTech. In the event the Client disputes any Services Fees, You must notify MicroTech in writing of the reasons for, and the amount of, such dispute, within thirty (30) days of the date of the invoice.

In the event Client uses the Services in excess of the amounts set forth in the Order Form, MicroTech will contact Client about increasing its annual CloudfloorDNS service package.

MicroTech reserves the right to monitor Client's Service usage parameters to ensure Client is within allotted limits of the service package, which include but are not limited to the number of domains, number of DNS queries, number of resource records, number of hostnames using advanced features (GeoDNS, failover, load balancing), and duration of stored DNS log and statistics (the "Service Usage").

Refunds cannot be made for domain names, even if You accidentally ordered the wrong name, because all domains are registered in real-time and cannot be deleted once registered. If MicroTech commences legal proceedings to collect any Service Fees and prevails, the Client shall pay MicroTech's reasonable attorney fees, court costs, and other collection expenses.

4. **Intellectual Property.** Client acknowledges and agrees that all ownership and proprietary rights to the Services and the technology underlying the Services (including without limitation, software, algorithms, processes and other underlying technology) and the contents thereof and all related intellectual property are and shall remain the property exclusively of MicroTech or its licensors, as applicable.

Client shall not, nor seek to, acquire, any such intellectual property rights in or to the Services or associated technology. Client shall not remove or alter any copyright notices appearing therein. Provided that Client has paid all amounts due to MicroTech, Client shall have the right to use any Services ordered and delivered to Client by MicroTech hereunder solely in accordance with this Agreement.

MicroTech employs logos, videos, audio clips, images, drawings, designs, icons, etc. (the "Content"), in addition to trademarks, service marks, and other intellectual property, controlled or licensed by MicroTech. Usage and reproduction in any format for public or commercial consumption of this Content is not permitted unless explicitly stated otherwise in writing by MicroTech. This Content is the exclusive product of MicroTech.

5. **Confidentiality.** Each party agrees to the following:
- a. That it will not disclose to any third party or use any confidential or proprietary information disclosed to it by the other party (collectively, "Confidential Information") except as expressly permitted in this Agreement; and that it will take all commercially reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control, which shall in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance and no less than reasonable care. Confidential Information may be disclosed if required by operation of law or by order of a court of competent jurisdiction, provided that the party required to disclose the information notifies the other party immediately and only discloses the minimum information necessary to comply with such order or rule of law.
  - b. "Confidential Information" does not include information that:
    - i. Is in or enters the public domain without breach of this Agreement;
    - ii. The receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; or
    - iii. The receiving party develops independently as evidenced by written documentation.

6. **Term and Termination.**
- a. **Term.** As set forth in the Order Form, the term of this Agreement shall commence on the Start Date and continue until the End Date. Thereafter, and unless otherwise specified in the Order Form, this Agreement shall automatically renew for twelve (12) month terms unless either party notifies the other in writing of its intention not to renew no later than thirty (30) days before the expiration of the then-current term. In addition, if MicroTech elects to allow Client to use the Services after the initial Term of this Agreement, MicroTech shall invoice Client according to the terms and conditions of this Agreement at a price for Services equal to the

original contract value plus a maximum of 12% price increase for the next 12 month term, in addition to any cost increases associated with additional services or increased DNS queries.

b. **Termination or Suspension of Services.** Either party may terminate this Agreement upon the other party's material breach of the Agreement, provided that (i) the non-breaching party sends written notice to the breaching party describing the breach in reasonable detail; (ii) the breaching party does not cure the breach within thirty (30) days following its receipt of such notice (the "Notice Period"); and (iii) following the expiration of the Notice Period, the non-breaching party sends a second written notice indicating its election to terminate this Agreement.

c. MicroTech may suspend access to Services and/or terminate this Agreement without such Notice Period and effective immediately if:

- i. Client fails to pay MicroTech amounts due within thirty (30) days after their due date and MicroTech has provided notice of such failure to Client, and Client has not paid within ten (10) business days;
- ii. MicroTech determines, in its sole discretion, that use of the Services would have a materially detrimental impact on, or would jeopardize, the operation of the Services or MicroTech network or the computer(s) of others; or
- iii. If Client fails to abide by the requirements set forth in Section 2.0 (Scope of Services; Restrictions).

In the event of a termination or decision not to renew this Agreement due to a Client breach, as provided for herein, Client's access to the Services will end, no refund will be given, and MicroTech will not be responsible in any fashion for Client's access to any alternative services.

In the event of a termination or decision not to renew this Agreement due to a breach by MicroTech, as provided for herein, the Client will receive a prorated refund based on the remaining length of term. This shall be Client's sole and exclusive remedy under the Agreement.

## 7. **Warranty**

a. MicroTech warrants solely to Client that the Services purchased pursuant to this Agreement will function or otherwise comply substantially in accordance with their specifications as published by MicroTech. In delivering the Services specified in the Order Form, MicroTech shall abide by all laws, rules and regulations applicable to its performance under this Agreement. The Services warranties will expire upon end of the applicable Service. THE ABOVE WARRANTIES ARE MICROTECH'S SOLE AND EXCLUSIVE WARRANTIES AND NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY.

b. Client represents and warrants that:

- i. Neither Client nor any third-party shall resell, copy, transfer, reverse engineer, disassemble, decompile or create derivative works of any Services or related technology;
- ii. Client shall abide by all laws, rules and regulations applicable to its performance under this Agreement;
- iii. Client shall be responsible for all content or materials originating or transmitting from its Web site(s); and
- iv. Client shall comply with any instructions and/or specifications provided to Client by MicroTech for the relevant Services.

8. **Limitation of Liability.** MICROTECH SHALL NOT BE LIABLE TO THE CLIENT FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF SALES, CUSTOMERS, PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES RESULTING FROM:

- a. THE USE OR THE INABILITY TO USE THE SERVICES;
- b. THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; OR

c. **UNAUTHORIZED ACCESS TO OR ALTERATION OF THE PROGRAMS AND/OR YOUR CONTENT.**

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN DAMAGES. ACCORDINGLY, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS. IN SUCH CASE, TO THE EXTENT ALLOWED BY LAW, MICROTECH'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE CONSIDERATION PAID TO MICROTECH BY THE CLIENT FOR THE SERVICES GIVING RISE TO THE CLAIM OVER THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD.

9. **Disclaimer.** MICROTECH AND ITS LICENSORS ARE NOT RESPONSIBLE FOR TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF YOUR INFORMATION CARRIED OVER INTER EXCHANGE CARRIERS', LOCAL EXCHANGE CARRIERS', OR OTHER PROVIDERS' FACILITIES. CLIENT AGREES THAT IT WILL NOT IN ANY WAY HOLD MICROTECH RESPONSIBLE FOR ANY SELECTION OR RETENTION OF, OR THE ACTS OR OMISSIONS OF, THIRD PARTIES IN CONNECTION WITH THE SERVICE (INCLUDING THOSE WITH WHOM MICROTECH MAY CONTRACT TO PROVIDE SERVICES).

10. **Account Misuse.** In no event will MicroTech be liable for any unauthorized use or misuse of a Client account number or password. Client is responsible for protecting the information provided by MicroTech.

11. **Indemnification.** Client agrees to indemnify, defend and hold harmless MicroTech Limited and its respective officers, agents, partners and employees, from any loss, liability, claim, or demand, including, but not limited to, reasonable attorneys' fees, made by any third party due to or arising out of:

- a. Client's or its end-users' use of the Site or any of the Services;
- b. Client's breach of this Agreement; or
- c. Client's violation of any rights of any third party through any materials made available through the Services.

12. **General Provisions**

a. **Force Majeure.** MicroTech will not be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, war, acts of terrorism, riot, failure of electrical, Internet, co-location or telecommunications service, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises.

b. **Governing Law.** This Agreement and any disputes arising out of or in connection with it (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of Massachusetts and subject to the exclusive jurisdiction of the state and federal courts of Massachusetts.

c. **Notice.** Any notice under this Agreement must be in writing and delivered by personal delivery, overnight courier, or certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, two (2) days after deposit with overnight courier or five (5) days after deposit in the mail. Notices will be sent to a party at its address indicated in the Order Form or such other address and designee as that party may specify in writing pursuant to this Section 12.c.

d. **No Agency.** The parties are independent contractors and will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture.

e. **Waiver.** No failure or delay by any party in exercising any right, power, or remedy under this Agreement, except as specifically provided herein, shall operate as any waiver of any such right, power, or remedy.

- f. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- g. **Accurate Information.** Client agrees to (1) provide complete, accurate, and current information in the Order Form and (2) to update this information through the Term as needed to keep it complete, accurate, and current.
- h. **GDPR Provisions.** The provisions of Exhibit A apply to Clients that have provided personal data of residents of the European Union to MicroTech.
- i. **Entire Agreement.** This Agreement, and the attached or documents specifically referred to herein, constitute the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding any prior agreements and communications (both written and oral) regarding such subject matter.
- j. **Survival.** Sections 4, 8, 9, 11, and 12 shall survive expiration or termination of this Agreement.

**Exhibit A**  
**GDPR Requirements**

*The following terms are incorporated by reference into the Agreement as applicable to the extent that any personal data provided by Client to MicroTech constitutes personal data of European Union residents that is subject to the requirements of the GDPR (the "EU Data").*

1. **Data Processing.** For the purposes of this Agreement, Client is the data controller and MicroTech is the data processor as such terms are defined in the General Data Protection Regulation 2016/679 (the "GDPR"). MicroTech shall follow Client's reasonable instructions in relation to the processing of EU Data, and Client shall be responsible for any claim, loss, expense, or damage that arises or is incurred by MicroTech as a result of MicroTech following such instructions.
2. **Confidentiality of Processing.** MicroTech shall ensure that any person that it authorizes to process the EU Data (including MicroTech's staff, agents and subcontractors) (an "Authorized Person") shall be subject to a strict duty of confidentiality (whether a contractual duty or a statutory duty), and shall not permit any person to process the EU Data who is not under such a duty of confidentiality. MicroTech shall ensure that all Authorized Persons process the EU Data only as necessary for the purposes permitted under the Agreement.
3. **Security.** MicroTech shall implement appropriate technical and organizational measures to protect the EU Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorized disclosure of, or access to the Data (a "Security Incident"). Such measures shall have regard to the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons. Such measures shall include, as appropriate:
  - (a) the pseudonymization and encryption of personal data;
  - (b) the ability to ensure the ongoing confidentiality, integrity, availability, and resilience of processing systems and services;
  - (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
  - (d) a process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing.
4. **Subprocessing.** MicroTech shall not subcontract any processing of the Data to a third party subprocessor without the prior written consent of Client, except as set forth in this Section 3. Client consents to MicroTech engaging third party subprocessors that are either (i) recognized domain name registries or (ii) subprocessors as to which MicroTech has provided at least thirty (30) days' prior notice to Customer and has imposed data protection terms that protect the EU Data to the same standard provided for by these terms. MicroTech remains fully liable for any breach of these terms that is caused by an act, error or omission of its subprocessor. If Client refuses to consent to MicroTech's appointment of a third party subprocessor on reasonable grounds relating to the protection of the EU Data, then either MicroTech will not appoint the subprocessor or Client may elect to suspend or terminate the Agreement without penalty.
5. **Cooperation and Data Subjects' Rights.** MicroTech shall provide all reasonable and timely assistance to Client (at Client's expense) to enable Client to respond to: (i) any request from a data subject to exercise any of its rights under the GDPR (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the EU Data. If any such request, correspondence, inquiry or complaint is made directly to MicroTech, MicroTech shall promptly inform Client providing full details of the same.
6. **Data Protection Impact Assessment.** If MicroTech believes or becomes aware that its processing of the EU Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall promptly inform Client and (at Client's expense) provide Client with all such reasonable and timely assistance as Client may require in order to conduct a data protection impact assessment and, if necessary, consult with its relevant data protection authority.

7. **Security incidents.** Upon becoming aware of a Security Incident, MicroTech shall inform Client without undue delay and shall provide all such timely information and cooperation as Client may reasonably require in order for Client to fulfil its data breach reporting obligations under (and in accordance with the timescales required by) the GDPR. MicroTech shall further take all such measures and actions as are necessary to remedy or mitigate the effects of the Security Incident for which MicroTech is responsible and shall keep Client of all developments in connection with the Security Incident.
8. **Audit.** To the extent expressly required in writing by a competent data protection authority or following a Security Incident involving EU Data, MicroTech shall permit Client (or its appointed third party auditors) to audit MicroTech's compliance with these terms, and shall make available to Client such information, systems, and staff as may be reasonably necessary for Client (or its third party auditors) to conduct such audit. MicroTech acknowledges that Client (or its third party auditors) may enter its premises for the purposes of conducting such audit, provided that Client gives MicroTech reasonable prior notice of its intention to audit, agrees with MicroTech on a written statement of work for the scope of the audit, conducts its audit during normal business hours, and takes all reasonable measures to prevent unnecessary disruption to MicroTech's operations.
9. **Disclosure to Authorities.** MicroTech acknowledges that Client may disclose these terms to European data protection authorities or any other EU judicial or regulatory body upon their request and that any such disclosure shall not be deemed a breach of confidentiality.