

FluidStack – Agreement with Host

PARTIES

This agreement is a legal contract between you ('**Host**') and FluidStack Limited of 71-75 Shelton Street, Covent Garden, London, United Kingdom, WC2H 9JQ ('**FluidStack**').

BACKGROUND

Host is the owner and/or operator of underutilised graphics processing units ('**GPU**') and other computer infrastructure, which Host wishes to monetise.

FluidStack owns and operates a software platform ('**Platform**') which enables users ('**Users**') to utilise the Host's GPUs and other computing infrastructure for certain 'jobs' or for a set period of time.

Users are able to make use of such GPUs and other computing infrastructure for a fee via FluidStack's 'docker-based' application programming interface ('**API**') and/or by virtual desktop access ('**VDA**'), accessible from the Platform.

This Agreement sets out, amongst other things, the basis on which Host grants FluidStack the right to allow Users of the Platform to utilise Host's underutilised GPUs and other computing infrastructure.

This Agreement are to be read in conjunction with:

- FluidStack's Standard Pricing Terms (as defined below); and
- The Data Protection Addendum (as defined below).

(together, the '**Agreement**').

The Host can review this Agreement at any time on this page. FluidStack reserves the right to change this Agreement at any time by posting updates to this page. If FluidStack make substantial changes, or if FluidStack are required to do so by law, it will notify the Hosts of such change in advance to the email address associated with the Host's account, but it is the Host's responsibility to check this page from time to time to make sure the Host is aware of any changes to this Agreement.

The Host can contact FluidStack at any time by emailing sales@fluidstack.io.

OPERATIVE PROVISIONS

1. Definitions

1.1. In this Agreement :

'API'	has the meaning given to it in the Background;
'Business Day'	means a day other than a Saturday, Sunday or bank or public holiday in England;
'Cloud Infrastructure'	means the GPU and other computer infrastructure provided by the Host;

'Confidential Information'	means any and all confidential information (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party;
'Data Protection Addendum'	has the meaning given to it at clause 2.8;
'Data Protection Legislation'	means the Data Protection Act 2018, the GDPR, the Privacy and Electronic Communications Directive 2002/58/EC (as amended), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and all applicable laws and regulations relating to processing of personal data, including where applicable the guidance and codes issued by the Information Commissioner or other appropriate supervisory authority;
GPU	has the meaning given to it in the Background'
'Host Data'	means all data, software and information (including Confidential Information) which, by the Host's actions, are hosted on any part of the Cloud Infrastructure by the Host.
'Intellectual Property Rights'	means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case: <ul style="list-style-type: none"> (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; and (e) wherever existing;
'Malware'	means any code or device intended to interfere with or having the effect of interfering adversely with, the operation of any hardware or software, including any bugs, worms, logic bombs, trojan horses or any other such programs;
'Operational Change'	means in connection with the operation any Cloud Infrastructure: <ul style="list-style-type: none"> (a) the application of any software fix or patch, update, upgrade and/or service pack generally released by the relevant software owner or licensor; and/or (b) the application of any software fix or patch, update, upgrade and/or service pack necessary for the secure, lawful or otherwise proper functioning of the Cloud Infrastructure (or any part).

'Platform'	has the meaning given to it in the Background;
'User'	has the meaning given to it in the Background;
'User Confidential Information'	means any and all confidential information (whether in oral, written or electronic form) including technical or other information obtained by the Host in its supply of the Cloud Infrastructure to the User relating to the User's business, finance or technology, know-how, User Data, Intellectual Property Rights, assets, strategy, products and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with the User;
'User Data'	means all data, software, information (including Confidential Information) which, by the User's actions, are hosted on the Cloud Infrastructure; and
'VDA'	has the meaning given to it in the Background.

2. Provision of the Platform and the Cloud Infrastructure

- 2.1. Host hereby grants FluidStack a non-exclusive, irrevocable and transferable licence to:
 - (a) make the Cloud Infrastructure available to User's on Platform via the API and/or VDA; and
 - (b) enable the Users to access and use the Cloud Infrastructure in accordance with the User Terms of Service, and as at the date of this Agreement the latest version is available at the FluidStack website.
- 2.2. The licence granted to the Host in clause 2.1 above is only irrevocable until such as time the specific job for which the User requires the Cloud Infrastructure is completed or until the period of time for which the Cloud Infrastructure is paid for by the User runs out.
- 2.3. To the extent that the Host is licensing the Cloud Infrastructure from a third party, the Host acknowledges and agrees that the Host is solely responsible for ensuring that it complies with those third party licence terms and FluidStack shall not be responsible, nor accepts any liability, for any breach of those third party licence terms.
- 2.4. The Host shall provide the Cloud Infrastructure in accordance with any laws applicable in the United Kingdom and wherever the Cloud Infrastructure is geographically located.
- 2.5. The Host shall provide complete and accurate information about the Cloud Infrastructure, including information about the capacity levels, data and security controls, technical specification, and other information that is pertinent for the User's use of the Cloud Infrastructure.
- 2.6. The Host shall not interfere with, infringe or manipulate the User's use of the Cloud Infrastructure or the User's Data.
- 2.7. The Host shall indemnify FluidStack from and against any losses, damages, liability, costs (including legal fees) and expenses which FluidStack may incur or suffer as a result of or arising from any breach of its obligations under clauses 2.5 to 2.6.
- 2.8. To the extent that the Cloud Services are used to process Personal Data (which has the meaning given to it in the Data Protection Legislation), User appoints Host as a 'data processor' and contracts with Host on the terms and conditions set out in the data protection addendum ('**Data Protection Addendum**'), the latest version is available at the FluidStack website. FluidStack is not a party to the Data Protection Addendum.

3. Host Data

- 3.1. The Host acknowledges and agrees that FluidStack and the User shall have no access to any Host Data on the Cloud Infrastructure and FluidStack shall not be responsible, nor accepts any liability, for any loss of or damage to data that arises out of FluidStack's and/or the Users use of the Cloud Infrastructure.

4. Changes to the Platform or the Cloud Infrastructure

- 4.1. FluidStack may by notice in writing make any changes to the Platform which are necessary to comply with any law applicable anywhere in the United Kingdom or with any published policies, guidelines or codes of practice not having the force of law but which represent good practice.
- 4.2. The Host may at any time and without prior notice to FluidStack implement any Operational Change provided that neither the work of implementing the Operational Change nor the consequences of the Operational Change will have a directly adverse effect on the User's Data or otherwise the User's access to, receipt of or use of the Cloud Infrastructure.
- 4.3. The Host shall indemnify FluidStack from and against any losses, damages, liability, costs (including legal fees) and expenses which FluidStack may incur or suffer as a result of or arising from any breach of its obligations under clause 4.2.

5. Misuse of the Cloud Infrastructure

- 5.1. FluidStack shall not be responsible for any acts of unauthorised access to the Cloud Infrastructure which is outside of its control.
- 5.2. FluidStack cannot guarantee that the Users will not:
 - (a) misuse the Cloud Infrastructure in any respect, including any kind of use that is in violation of FluidStack's acceptable use policy which governs the technical and other conditions for the User's access to, receipt of and use of the Platform, the Cloud Infrastructure, the API and VDA (as amended from time to time), and as at the date of this Agreement the latest version is available at the FluidStack website; or
 - (b) use the Cloud Infrastructure or allow any unauthorised third party, to create, store, access, transfer to any third party or otherwise distribute any code or device intended to interfere with or having the effect of interfering adversely with, the operation of any hardware or software, including any bugs, worms, logic bombs, Trojan horses or any other such programs; and

FluidStack shall not be responsible, nor accepts any liability, for any such misuse by the Users of the Cloud Infrastructure.

- 5.3. The Host shall not provide the Cloud Infrastructure in order to create, store, access, or transfer to the Users or any third party or otherwise distribute any Malware whatsoever.
- 5.4. In the event of any breach (or alleged breach) of clause 5.2, FluidStack may without prior notice, withdraw or suspend the Cloud Infrastructure from the Platform or to any part of them that allows access to or use of any material which is causing (or is alleged to cause) a breach of clause 5.2.
- 5.5. It is the Host's responsibility to understand if software within the Cloud Infrastructure includes programs (including third party programs) that might access User Data. FluidStack has no ability to prevent any such access nor for the consequences of such access (including the deletion or disclosure of User Data, whether or not intended or authorised).
- 5.6. The Host shall indemnify FluidStack against all claims, losses, costs or expenses incurred by FluidStack in consequence of any non-compliance by the Host with the provisions in this clause 5 or with the Policies.

6. Fees

- 6.1. FluidStack shall pay the Host the fees for the provision of the Cloud Infrastructure set forth in FluidStack's standard pricing terms for any service or activity (as amended from time to time), and as at the date of this Agreement , the latest version is available at the FluidStack website ('**Standard Pricing Terms**').
- 6.2. FluidStack shall pay the fees on or around the last Business Day of each month to the bank account nominated in writing by the Host. This date is subject to change each month and FluidStack shall notify the Hosts in advance of any late payment to the email address associated with the Host's account.
- 6.3. The fees payable for the Cloud Infrastructure are subject to change at any point of time in accordance with FluidStack's Standard Pricing Terms.

7. Warranties

- 7.1. Each of the parties warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement.
- 7.2. The Host warrants to FluidStack that:
 - (a) it has the right, power and authority to grant FluidStack the rights set out in this Agreement and provide the Cloud Infrastructure;
 - (b) it will provide complete and accurate information about the Cloud Infrastructure, including information about the capacity levels, data and security controls of the Cloud Infrastructure;
 - (c) it will not interfere with or manipulate the User's use of the Cloud Infrastructure or the User Data;
 - (d) the access to, receipt of and use of the Cloud Infrastructure will not infringe the Intellectual Property Rights of any third party; and
 - (e) the User's use of the Cloud Infrastructure will be uninterrupted or error-free and that it will meet the claimed technical and security specifications .
- 7.3. Other than as set out in this Agreement all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

8. Systems monitoring

FluidStack may monitor, collect, store and use information on the use and performance of the Cloud Infrastructure and the Platform to detect threats or errors to the Platform and/or FluidStack's operations and for the purposes of the further development and improvement of FluidStack's services, provided that such activities at all times comply the Privacy Policy, the latest version is available at the FluidStack website.

9. Intellectual Property Rights

- 9.1. FluidStack or its licensors shall retain ownership of all Intellectual Property Rights in the Platform and in any materials created by FluidStack (or anyone acting on its behalf) in the course of providing the Platform, whether those materials are provided to the Host or not.
- 9.2. The Host shall retain ownership of all Intellectual Property Rights in the Host Data.
- 9.3. The User shall retain all ownership of Intellectual Property Rights in the User Data.

- 9.4. The Host shall indemnify, keep indemnified and hold harmless Fluidstack and/or the User from and against any losses, claims, damages, liability, costs (including legal and other professional fees) and expenses incurred by it or by the User as a result of or in connection with any action, demand or claim that the transmission, receipt, copying, installation, use, possession or other utilisation of the Host Data in accordance with this Agreement infringes the Intellectual Property Rights of any third party.

10. Confidentiality

- 10.1. Each party agrees that it may use the other party's Confidential Information only in the exercise of its rights and performance of its obligations under this Agreement and that it shall not disclose the other party's Confidential Information including all knowhow, trade secrets, financial, commercial, technical, tactical or strategic information of any kind except in accordance with this clause 10.
- 10.2. Each party may disclose the other party's Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know the other party's Confidential Information in order to exercise the disclosing party's rights or perform its obligations under this Agreement provided that the disclosing party shall ensure that each of its employees, officers, advisers, agents or representatives to whom Confidential Information is disclosed is aware of its confidential nature and complies with this clause 10 as if it were a party.
- 10.3. The Host acknowledges and agrees that by providing the Cloud Infrastructure the Host may have access to the User's Confidential Information and that the Host shall not disclose, in any circumstance, the User's Confidential Information including all know-how, trade secrets, financial, commercial, technical, tactical or strategic information of any kind.
- 10.4. Each party may disclose any Confidential Information required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.
- 10.5. The Host shall indemnify FluidStack from and against any losses, damages, liability, costs (including legal fees) and expenses which FluidStack may incur or suffer as a result of or arising from any breach of its obligations under this clause 10.

11. Liabilities

- 11.1. Notwithstanding any provision in this Agreement, neither party excludes or limits any liability for:
- (a) personal injury or death to the extent that results from the negligence of a party or any person for whom it is responsible at law;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any other liability to the extent the same cannot be excluded or limited by law.
- 11.2. Subject to clause 11.1, FluidStack shall not be liable to the Host in respect of:
- (a) any loss of profit, business, contracts, opportunity, goodwill, revenues, anticipated savings or similar loss, or any loss of use, destruction or corruption of software or data (including Host Data), or any claims or losses by third parties (and in each case, whether these losses are direct, indirect, special or consequential); and/or
 - (b) any indirect, special or consequential loss or damage (whether for loss of profit or otherwise),

of whatever nature and whether based on contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with this Agreement or any activities related to this Agreement.

11.3. Subject to clauses 11.1 and 11.2, the FluidStack's maximum liability to the Host for all and any claims of whatever nature and whether based on contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with this Agreement or any activities related to this Agreement shall be to a sum equal to the fees paid or payable by FluidStack to the Host for the last job completed or to be completed using the Cloud Infrastructure.

11.4. The Host takes full responsibility and shall accept all liability in respect of the provision of the Cloud Infrastructure.

12. Termination

12.1. FluidStack may terminate this Agreement immediately and deactivate your account if you commit a material or persistent breach of this Agreement, the Platform is discontinued, or where the provision of the Cloud Infrastructure and the Platform become unlawful. FluidStack will use reasonable endeavours to provide the Host with notice in advance; however, the Host acknowledges that this may not be possible in all circumstances.

12.2. Upon termination:

(a) all rights granted to the Host and by the Host under this Agreement shall immediately terminate (including, for the avoidance of doubt, any rights granted to Users to access the Cloud Infrastructure); and

(b) the Host must cease all activities authorised by this Agreement.

13. Other Important Terms

13.1. The Host may not assign, transfer, sub-license or deal in any other manner with any or all of its rights or obligations under this Agreement, without FluidStack's prior written consent. FluidStack reserves the right to transfer, assign, sub-contract or deal in any other manner with any or all of its rights or obligations under this Agreement, without notifying the Host or receiving the Host's consent.

13.2. Except in relation to the indemnities specified at clause 9.4 and 10.5, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

13.3. This Agreement, and all documents referred to in them, constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.4. No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

13.5. This Agreement and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

13.6. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).