



Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

Terms and Conditions for CloudStack Infrastructure Support

Contents

1.0 Definitions2

2.0 CloudStack Infrastructure Support Services3

3.0 Getting Started4

4.0 Requesting Support5

5.0 Supported versions.....6

6.0 Availability of Support6

7.0 Product Patching6

8.0 Instant Guru7

9.0 Changes to the Customer’s System7

10.0 Exclusions and details.....8

11.0 Charging10

12.0 Unpaid Invoices10

13.0 Complaints10

14.0 Term of Agreement and Termination11

15.0 Data Protection11

16.0 Intellectual Property Rights12

17.0 Warranty12

18.0 Limitation of Liability13

19.0 Confidentiality13

20.0 Solicitation.....13

21.0 Force Majeure13

22.0 Changes to the Price of CloudStack Infrastructure Support Services.....14

23.0 Changes to these Terms and Conditions.14

24.0 Entire Agreement14

25.0 Notice15

26.0 Governing Law.....15

Annex A.....16

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Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

1.0 Definitions

- 1.1 ShapeBlue: means Shape Blue Ltd. whose principal place of business is Amadeus House, Floral Street, London, WC2E 9DP.
- 1.2 ShapeBlue Local Offices: means ShapeBlue SA (Pty) Ltd., Shape Blue Brasil Consultoria Ltda., or any other business operated under licence granted by ShapeBlue.
- 1.3 The Customer: means the organisation that enters into the Agreement for the delivery of CloudStack Infrastructure Support. This will be the organisation to whom services will be delivered and/or Support Invoices will be addressed to.
- 1.4 CloudStack means the open source Cloud software developed by The Apache Software Foundation and provided for use by the Apache 2 license.
- 1.5 Agreement: means a contract or order form for the provision of CloudStack Infrastructure Support services signed by both parties (ShapeBlue and the Customer). The Agreement declares that the Customer accepts the CloudStack Infrastructure Support Terms and Conditions.
- 1.6 Authorised Caller(s): means representatives of the Customer, of whom we hold records in our support systems, that are able to log CloudStack Infrastructure Support Incidents. There is no restriction on changes to, or the number of, Authorised Callers.
- 1.7 Change: means a modification that materially alters the System as defined in the Agreement.
- 1.8 Technician(s): means any technical staff that ShapeBlue assign to provide Support to the Customer.
- 1.9 Customer Site(s): means the Site(s) at which the Customer operates the System defined in the Agreement.
- 1.10 Compute Host means a compute server that is under the control of CloudStack. The CloudStack server itself is not considered a Compute Host
- 1.11 Cloud Environment means Compute Hosts controlled by CloudStack management servers. Any Compute Hosts controlled by different CloudStack management servers is a separate Cloud Environment
- 1.12 Technical Relationship Manager: means a named individual Technician who will coordinate support for the Customer.
- 1.13 Software Patch: means the development or changes to the CloudStack software that may be required to address issues.
- 1.14 Product Patching means a service provided by ShapeBlue where Software Patches may be created for The Customer
- 1.15 Incident: means the request for Support and all the actions associated with it.
- 1.16 On Site Support: means the provision of Support services by ShapeBlue at the Customer Site(s).
- 1.17 Principal Contact: means the person nominated by the Customer to act as its main representative. The Principal Contact is named in the Agreement and will receive official notices and important information and formal notices regarding CloudStack Infrastructure Support from ShapeBlue.

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

- 1.18 Remote Support: means the provision of Support services by ShapeBlue at a site that is remote from the Customer's Site(s). Primarily this will be from ShapeBlue's offices
 - 1.19 Instant Guru: means a service that allows Customers to ask quick questions in relation to their cloud infrastructure. Instant Guru is delivered via email or web chat technology.
 - 1.20 Service Level Agreement means the target times for ShapeBlue to respond to Incidents, create a plan to resolve Incidents and to resolve Incidents. The Service Level Agreement is included in The Agreement
 - 1.21 Support: means CloudStack Infrastructure Support services designed to assist with the maintenance of the Customer's System. There will be times when Changes as opposed to Support are required to maintain the accepted operational status of the System. Such Changes may be deemed as being chargeable.
 - 1.22 Support Invoice: means the invoice raised by ShapeBlue for the provision of Support as set out in section 11 below.
 - 1.23 Customer Portal: means a web-based facility provided by ShapeBlue to allow customers to interact with various elements of our service.
 - 1.24 System: means the network, software, or any other item being maintained under the Agreement as defined in the System Definition in the Agreement.
 - 1.25 Pre-Production System: means an isolated environment mirroring as closely as possible the production System
 - 1.26 Support Matrix: means a document specifying maintained versions of CloudStack and defining when Proactive Maintenance and Reactive Support will be provided. This document is published at shapeblue.com
 - 1.27 Reactive Support: means Support provided as a reaction to the customer informing ShapeBlue of an incident
 - 1.28 Proactive Maintenance: means to actively maintain a branch of CloudStack specified in the Support Matrix. Specifically, this involves backporting blocker and critical priority defect fixes in the scope (ie. not in a new feature) of the branch functionality; fixing all blocker and critical priority defects identified on the branch. This maintenance will not be applied directly to customer's production systems
 - 1.29 Product Patching: means a service provided by ShapeBlue where CloudStack software patches may be created for the customer
 - 1.30 Unmaintained Version: means any version of CloudStack not specified on the Support Matrix
 - 1.31 Maintained Version: means any version of CloudStack specified on the Support Matrix
- 2.0 CloudStack Infrastructure Support Services**
- 2.1 CloudStack Infrastructure Support provides 2nd – 4th line support of your CloudStack environment as defined in the "What we support" section of The Agreement
 - 2.2 CloudStack Infrastructure Support is provided by ShapeBlue, and ShapeBlue Local Offices
 - 2.3 It is expected that The Customer will undertake 1st line support as described in The Agreement

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

2.4 It is expected that The Customer will make available people and resources as defined in The Agreement

2.5 Specific services NOT covered by the Agreement:

- 2.5.1 Recovery of data
- 2.5.2 Reconfiguration of networking devices
- 2.5.3 Reconfiguration of storage
- 2.5.4 Any onsite visits or onsite support
- 2.5.5 Enhancements to The System
- 2.5.6 Any form of training or organised education
- 2.5.7 Extensions or Changes to the system.

2.6 ShapeBlue will need remote access to The System in order to conduct Support. The remote access required is defined in The Agreement

3.0 Getting Started

3.1 Prior to the commencement of the CloudStack Infrastructure Support Agreement it is the responsibility of the Customer to advise us of any known issues or system deficiencies.

3.2 Any such known issues or deficiencies can be corrected or improved by ShapeBlue for a fixed price prior to or post commencement of the CloudStack Infrastructure Support Agreement.

3.3 The Customer is under no obligation to commission ShapeBlue to resolve any known issues or deficiencies.

3.4 If the Customer does not wish to adopt recommendations for improving aspects of the System or resolve deficiencies highlighted, or if there are omissions in the information provided by the Customer, ShapeBlue retain the right to charge additional fees or impose reasonable limits on the Support provided for certain aspects of the System.

3.5 The Customer is responsible for giving ShapeBlue the authority to deal with 3rd party suppliers on behalf of the Customer. When such authority has not been provided, the Support that can be offered by ShapeBlue may be limited.

3.6 If no vendor support is available for 3rd party suppliers, our ability to resolve issues with their solutions will be limited

3.7 ShapeBlue will require Root / Administrator-level access to The System at all times as defined in The Agreement.

3.8 ShapeBlue cannot be held responsible for being unable to provide Remote Support due to a lack of remote access to the System, when the lack of remote access results from a problem with connectivity that is beyond ShapeBlue's control.

3.9 ShapeBlue will respond to Incidents in accordance with the Service Level Agreement that is specified in the Agreement.

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

3.9.1 The Service Level Agreement provided for CloudStack Infrastructure Support is provided as an annex to these Terms & Conditions and can be downloaded here [<http://www.shapeblue.com/terms-and-conditions/>]. For the avoidance of doubt, terms specified in this annex supersede those specified in an agreement.

- 3.10 ShapeBlue retain the right to decide the appropriate course of action for each Incident and will follow the necessary troubleshooting steps in order to diagnose and then rectify the Incident.
- 3.11 Depending upon the nature of the Incident, ShapeBlue may have to impose a workaround to rectify the Incident as opposed to a fix.
- 3.12 A workaround may be temporary prior to a permanent solution being instigated or permanent if the Customer decides not to proceed with a permanent fix.
- 3.13 A workaround may be of a technical nature or may involve changing a manual business process performed by the Customer.
- 3.14 ShapeBlue will always aim to return the affected area of the System to an acceptable operational state, however depending on the nature of the problem this may not be possible without Changes to the System being made.

4.0 Requesting Support

- 4.1 All requests for Support from the Customer must be made by Authorised Callers via telephone, emails, or via the Customer Portal.
- 4.2 Customers can view the current list of Authorised Callers or amend the list of Authorised Callers at any time using our Customer Portal.
- 4.3 The Customer agrees that anybody they add as an Authorised Caller has the necessary authority to liaise with ShapeBlue Technicians and to permit any changes that may be required on their system.
- 4.4 The Customer agrees that anybody not listed as an Authorised Caller does not have any authority to liaise with ShapeBlue Technicians or to permit any changes that may be required on their system. Requests for support from anybody not listed as an Authorised Caller can be refused.
- 4.5 If a Customer specifically wishes to exclude a person at their organisation from being able to raise Incidents, they must inform ShapeBlue in writing or by email. ShapeBlue will consequently remove that person from our database.
- 4.6 Incidents will be prioritised by ShapeBlue according to their impact on the Customers organisation and the severity of the problem. A description of the definition of our Incident priority levels is included in the Agreement
- 4.7 Target times for response, creation of resolution plans and resolution will vary according to prioritisation as defined in the Service Level Agreement.
- 4.8 ShapeBlue retain the right to perform Incident Support at any point within the target times specified by the Service Level Agreement.

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

- 4.9 Remote Support will be delivered when possible. Technicians will gain remote access to the System to investigate faults and implement the necessary fix. When the Customer seeks Support in the form of advice/instruction it will be provided via telephone or email.
- 4.10 The Customer accepts that they will be legally liable for maintaining, acquiring and proving that appropriate licensing agreements for all software in use on their IT system exists.

5.0 Supported versions

- 5.1 We will provide Reactive Support to any version of CloudStack our customers choose to install. However, we will only provide Proactive Maintenance and our Product Patching service to those versions specified in our Support Matrix, and for the time periods specified in our Support Matrix
- 5.1.1 Any version of CloudStack not specified in our Support Matrix is deemed to be an Unmaintained Version
- 5.2 If an existing customer decides to install an Unmaintained Version of CloudStack they do so understanding that we will not provide our Product Patching service or Proactive Maintenance for this version, but will provide Reactive Support only
- 5.3 A new customer with an Unmaintained Version of CloudStack will receive Product Patching for Priority 1 issues ONLY (where Priority 1 is as defined in our support proposal), but must commit to upgrading to a Maintained Version within 3 months of a support agreement starting
- 5.3.1 If, after 3 months of a support agreement starting, the customer is still using an Unmaintained Version then we will cease to provide our Product Patching service for any issue, and will provide Reactive Support only

6.0 Availability of Support

- 6.1 ShapeBlue provide support 24 hours per day, 365 days per year. Support is delivered from a number of global locations
- 6.2 ShapeBlue do not commit to individual Technicians being available for any longer than 8 hrs.
- 6.3 ShapeBlue do not commit to specific Technicians being available.
- 6.4 ShapeBlue do not commit to a Technical Relationship Manager being available on request.
- 6.5 Our Support service is provided in English language only.

7.0 Product Patching

- 7.1 In the event of a Critical (priority 1) incident that cannot be resolved any other way, our Software Engineering team will investigate the creation of a software patch for CloudStack
- 7.2 If we agree to create a software patch for CloudStack, the Service Level Agreement for 'time to resolution' specified in the Agreement will not apply to the original support ticket.
- 7.3 Product Patching will not be provided for any software except Apache CloudStack.
- 7.4 If a Software Patch is created, it will be installed on The System under the supervision of The Customers representative. Alternatively, the Customer can install the patch themselves.

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

- 7.5 Any Software Patch should be installed and tested on a Pre-Production System prior to installation on The System
- 7.6 The customer accepts that any Software Patch installed on the System WITHOUT prior installation and testing on a Pre-Production System may have unforeseen effects on The System
- 7.7 The customer accepts that any Software Patch will be considered a change to Apache CloudStack under their own Apache 2 license
- 7.8 Any Software Patch will be provided “as is” and will explicitly carry no warranty
- 7.9 The Customer accepts that the Intellectual property of any Software Patch will remain with ShapeBlue on a temporary basis
- 7.10 The Customer accepts that ShapeBlue may choose to contribute any Software Patches to The CloudStack project.
- 7.11 The Customer accepts that ShapeBlue will make all other users of the Product Patching service aware when ShapeBlue create a Software Patch, and will make this Software Patch available to them
- 7.12 When ShapeBlue make other users of the Product Patching service aware that a Software Patch is available installation of said patch is not provided as part of this service. It is considered a Change to their System
- 7.13 Requests from Customers for Changes to their System not deemed as being implicit within the ongoing Support duties required under the scope of this Agreement will be chargeable as separate pieces of work.
- 7.14 For separate pieces of work in the form of “consultancy” or “project work”, a fixed price will be provided whenever possible along with supporting quotes and proposals. The Customer will be required to confirm commencement of such work via sign off of a booking form and/or provision of a valid purchase order.

8.0 Instant Guru

- 8.1 Instant Guru is a service that allows Customers to ask quick technical or design questions about environment or CloudStack technology
- 8.2 Instant Guru is manned constantly, but has no formal SLA as it is de-prioritised against standard support
- 8.3 Instant Guru does not have any guaranteed response time
- 8.4 Instant Guru should not be used in the event of system outages or to raise support incidents

9.0 Changes to the Customer’s System

- 9.1 ShapeBlue retain the right to revise the fees charged for ongoing Support under the Agreement following the implementation of Changes.
- 9.2 A Change may be in the form of urgent repair work deemed as being within the scope of the Support contract in order to maintain the accepted operational status of the System. Alternatively, a Change may be an enhancement for security, stability, scalability or functionality reasons that will not be covered within the scope of the CloudStack Infrastructure Support Agreement unless undertaken at the discretion of ShapeBlue as a proactive measure.

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

- 9.3 Requests from Customers for Changes to their System not deemed as being implicit within the ongoing Support duties required under the scope of this Agreement will be chargeable as separate pieces of work.
- 9.4 For separate pieces of work in the form of “consultancy” or “project work”, a fixed price will be provided whenever possible along with supporting quotes and proposals. The Customer will be required to confirm commencement of such work via sign off of a booking form and/or provision of a valid purchase order.
- 9.5 ShapeBlue will always endeavour to seek the Customer’s approval for chargeable Changes in advance, however, ShapeBlue retain the right to perform chargeable Changes that fall outside of the Agreement without prior sign off if deemed absolutely necessary for the continued operation of the Customer’s System.
- 9.6 Any Changes performed by ShapeBlue to the System will be Supported under the Agreement, once any bedding down or warranty periods have expired (Bedding down periods and Warranties apply to fixed price project work only and are covered by separate Terms and Conditions). These Changes will be added to the System Definition and ongoing charges under the Agreement adjusted accordingly.
- 9.7 The Customer retains overall responsibility for their System. Any Changes made to the System by the Customer or a 3rd party instructed by the Customer, may be approved in principle prior to being implemented. However, such changes will only be covered by the Agreement once approved by ShapeBlue upon completion of the implementation.
- 9.8 For such Changes to be approved upon completion, ShapeBlue must receive appropriate details from the Customer in a timely fashion in order to assess the impact they will have on the System and if they may cause the need for additional Support.
- 9.9 If Support is required for an unapproved System Change or another System, ShapeBlue will retain the right to refuse Support or impose additional charges as necessary.
- 9.10 If the Change results in additional Compute Hosts being added to the System then the customer must purchase support for those additional hosts

10.0 Exclusions and details

- 10.1 ShapeBlue retain the right to exclude 3rd party software from the scope of the Agreement.
- 10.2 When 3rd party software is included within the scope of the Agreement, Support will only be provided to users that have a reasonable level of competency and once the user has used help files and other resources available from the vendor.
- 10.3 ShapeBlue do not commit to having experts available for all 3rd party software and therefore cannot guarantee being able to resolve all Incidents relating to 3rd party software logged and will not provide training under the terms of the Agreement.
- 10.4 When 3rd party information or services are provided ShapeBlue can make no guarantees about quality or suitability.
- 10.5 ShapeBlue cannot guarantee that any 3rd party software including but not limited to Anti-Virus, security and firewall software, whether or not recommended by ShapeBlue will keep computer(s) free of errors, viruses, worms, trojans, email spam, spy ware, hacking or any other unauthorised access.

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

- 10.6 In certain circumstances when an issue exists with an element of the Customer's System, ShapeBlue may recommend a solution that will require a capital cost outlay by the Customer. Such costs will not be covered by the Agreement.
- 10.7 If the Customer chooses not to adopt the solution recommended by ShapeBlue and the issues continue, ShapeBlue retain the right to refuse or limit CloudStack Infrastructure Support in respect of the item / issue in question.
- 10.8 Alternatively, a higher charge for continued Support for the item / issue may be introduced to reflect the additional effort that would not have been required if the recommendation were adopted.
- 10.9 ShapeBlue retain the right to not install, configure or Support any software for which the Customer cannot provide / produce a valid license for.
- 10.10 Other services not included as standard within the scope of the Agreement include:
 - 10.10.1 Procurement of new or replacement hardware or software of any nature.
 - 10.10.2 Installation, physical removal or relocation of hardware and / or software.
 - 10.10.3 System Monitoring of any form
 - 10.10.4 Provision of Hardware warranty for repairs or replacement of equipment including but not limited to networked printers, photo copiers, fax and scanning machines (The Customer is responsible for keeping records of all 3rd party warranties and licences).
 - 10.10.5 Provision of Anti-Virus Software (ShapeBlue can make recommendations but the Customer will remain responsible for purchasing the appropriate license).
 - 10.10.6 Technical or end user training on the Customer's System or 3rd party applications.
 - 10.10.7 Internet connections email and web hosting services and remote file storage services.
 - 10.10.8 Insurance of any form.
 - 10.10.9 The creation of financial budgets and other management reports.
 - 10.10.10 Research on behalf of the Customer.
 - 10.10.11 Website or domain migration and management.
- 10.11 Support and assistance for issues that do not relate to the System defined in the System Definition in the Agreement will not be supported for the fixed price specified in the Agreement.
- 10.12 If ShapeBlue are requested to perform work not relating to the System defined in the Agreement, ShapeBlue retain the right to either:
 - 10.12.1 Charge for such work under the applicable Terms and Conditions (e.g. Terms and Conditions for the Supply of Consultancy services).
 - 10.12.2 Amend the System Definition (resulting in potentially higher ongoing charges).



London - Mountain View - Rio de Janeiro

Cape Town – Bangalore



Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

10.13 When other Terms and Conditions will apply to work being performed by ShapeBlue, prior permission from the Customer will be sought in advance and when possible a “booking form” will be signed as acceptance confirmation.

10.14 The fees for ShapeBlue’s CloudStack Infrastructure Support will be stated in The Agreement.

10.15 For work performed on behalf of UK registered organisations all amounts invoiced will be subject to VAT payable at the then prevailing rate.

11.0 Charging

11.1 A fixed monthly fee will be specified in the Agreement which will include all services delivered under this agreement

11.2 The fixed price charge is based on the number of Compute Hosts in the Customers Cloud Environment with a minimum number of Compute Hosts

11.3 In the event of the Customer adding more Compute Hosts to their environment, they must purchase support for those additional hosts.

11.4 When purchasing additional Compute Hosts during the period of The Agreement, the annual price for those Compute Hosts will be adjusted on a pro-rata basis and added to invoices.

11.5 NO SUPPORT WILL BE PROVIDED FOR A CUSTOMER WHO IS FOUND TO HAVE MORE COMPUTE HOSTS THAT THEY HAVE PURCHASED SUPPORT FOR.

11.6 The number of Compute Hosts in the System will be checked during each Incident.

11.7 A Customer must ensure that they purchase support for additional hosts BEFORE installing those hosts in their CloudStack cloud environment.

11.8 The Customer will be invoiced for ShapeBlue’s CloudStack Infrastructure Support in advance either on a monthly, quarterly or annual basis.

12.0 Unpaid Invoices

12.1 If Support Invoices remain unpaid, ShapeBlue retain the right to limit the level of Support on an ongoing basis. A Technician, upon instruction from ShapeBlue, may not be able to conclude the Support required for particular Incidents

12.2 If any payment remains outstanding in respect of Support Invoices, ShapeBlue retain the right to recover on a full indemnity basis any costs incurred collecting overdue payments including interest at a rate of 4% above the Bank of England base rate.

13.0 Complaints

13.1 In the event that the Customer is dissatisfied with the quality or performance of a Technician, the Customer shall inform ShapeBlue immediately, stating the basis for dissatisfaction. If, in the view of ShapeBlue, the situation merits it, ShapeBlue will withdraw the Technician immediately and will use all reasonable endeavours to provide a replacement.

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

13.2 In the event of a complaint by the Customer in respect of work performed by a Technician, in terms of time taken or methodology and techniques used, the Customer shall notify ShapeBlue immediately and no later than 5 working days after the completion of the Support. Failure to notify ShapeBlue of such an issue within this time will absolve ShapeBlue from any liability in this respect. Any other complaint by the Customer in respect of any other aspect of the work shall be notified as soon as the fault in question is found.

14.0 Term of Agreement and Termination

14.1 The Agreement is for the minimum contract period as defined on the order form. The Customer may cancel the Agreement within the first term of this minimum contract period. In such circumstances, The Customer agrees to pay, in full, the remaining charges and fees that would be due under the original Agreement for the minimum contract period

14.2 After the minimum contract period as defined on the order form, The Agreement will be renewed on an annual basis.

14.3 After the minimum contract period as defined on the order form, the Customer may cancel the Agreement with 90 days' notice.

14.4 ShapeBlue can Terminate the Agreement with 90 days' notice in writing. ShapeBlue will refund pro-rata any remaining fees paid under the Agreement.

14.5 ShapeBlue can Terminate the Agreement or any aspect of it at any time if the Customer becomes the subject of a receivership winding up administration or bankruptcy order (or a petition is presented in respect of any of these). Or, if it otherwise appears to ShapeBlue that the Customer is insolvent and unable to pay its debts as they fall due.

14.6 ShapeBlue shall also be entitled to terminate this Agreement in the event that the Customer commits a material breach of this Agreement and fails to remedy the breach within 30 days of receipt of written notice from ShapeBlue.

14.7 Any termination shall be without prejudice to ShapeBlue's other rights or to the Customer's liability for amounts payable under this agreement.

14.8 In the event of termination of the Agreement, ShapeBlue retain the right to uninstall any 3rd party software from the Customer's System that ShapeBlue own the licence for or that ShapeBlue have installed on behalf of a 3rd party who own the software licence.

15.0 Data Protection

15.1 ShapeBlue aims to keep the Customer's data as private as possible. The Customer acknowledges that in certain situations ShapeBlue's staff may be in a position to see the contents of files on the Customer's System. ShapeBlue will apply every safeguard to ensure that their staff do not violate the privacy of the Customer's data in any way.

15.2 ShapeBlue undertake to comply with the provisions of the General Data Protection Regulations (GDPR) (Regulation (EU) 2016/679) and any related legislation insofar as the same relates to the provisions and obligations of this Agreement.

15.3 ShapeBlue have taken reasonable steps to ensure the reliability of any of their staff who have access to personal data processed in connection with the Agreement;

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

- 15.4 ShapeBlue undertake to act only on the Customer's instructions in relation to the processing of any personal data in connection with the Agreement and further undertake to allow the Customer access to any relevant premises on reasonable notice to inspect its procedures described above.
- 15.5 The obligations set out in this clause shall remain in force notwithstanding termination of this Agreement.
- 15.6 The Customer understands that they can use encryption and personal security programs to increase the security and privacy of their files. The Customer agrees that if any of its files are particularly private then such precautions will be used. The Customer agrees that if they are required under any professional or statutory regulations to keep their data confidential or secure then they will encrypt them so that ShapeBlue's Support staff cannot have access to them when working on the Customer's equipment.
- 15.7 The Customer understands that ShapeBlue are not authorised by any financial regulators such as the UK Financial Services Authority or the US Securities and Exchange Commission.
- 15.8 ShapeBlue gather and hold personal data about the Customer's employees, including names, physical and email addresses, and telephone numbers. ShapeBlue do not hold Customer credit card information.
- 15.9 ShapeBlue will only use Customer's personal data for contact purposes. This data will not be passed to a third party unless when necessary to provide our services.

16.0 Intellectual Property Rights

- 16.1 The System shall remain the property of the Customer and legal ownership shall remain vested in the Customer along with any future Changes made to the System under the Agreement.
- 16.2 Any System documentation created under the Agreement is the property of the Customer. This will be provided to the Customer upon request as long as the Customer's Account is not in negative balance and/or being disputed.
- 16.3 The knowledge and expertise that ShapeBlue utilise or gain in order to perform Support as required/requested by the Customer will inherently remain vested in ShapeBlue and the Technician(s) in question.
- 16.4 Intellectual property rights in respect of Software Patches developed by ShapeBlue shall remain the intellectual Property of ShapeBlue until they are donated to the Apache Software Foundation

17.0 Warranty

- 17.1 ShapeBlue warrant that Support will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.
- 17.2 ShapeBlue warrant that it will have and maintain the necessary technical skills and knowledge to Support the System defined in the Agreement.
- 17.3 ShapeBlue do not warrant that the operation of the System will be uninterrupted or error free over any specified period of time.
- 17.4 ShapeBlue warrant that any Software Patches developed will be performed in a professional and workmanlike manner. ShapeBlue PROVIDE NO FURTHER WARRANTIES ON ANY SOFTWARE PATCHES DEVELOPED

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

17.5 ShapeBlue do not warrant the performance of third party Hardware and Software. Advice and Support from 3rd party manufacturers will be sought where necessary and when available. ShapeBlue have partnership agreements with key suppliers and manufacturers to enable such Support to be obtained but cannot warrant the quality or accuracy of advice and Support received from 3rd parties.

18.0 Limitation of Liability

18.1 The liability of ShapeBlue for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the aggregate price paid for the services under the CloudStack Infrastructure Support Agreement up to the date in question.

18.2 In no event shall ShapeBlue, its partners or suppliers be liable for costs of substitute goods or services, nor will they be liable for loss of profits, loss of data or any indirect, special, incidental, consequential or punitive damages however caused, whether due to a breach of contract, negligence or otherwise unless such liability is determined by a Court of competent jurisdiction, without further recourse to appeal, that it was caused by gross negligence, wilful misconduct or fraudulent acts by ShapeBlue.

19.0 Confidentiality

19.1 Each party undertakes to the other to treat all information (in any form) exchanged in relation to the Agreement as strictly confidential for the period of the contract and beyond.

19.2 The Customer accepts that ShapeBlue work closely with the Open Source CloudStack community and may, from time to time, discuss specific questions in public mailing lists or forums. In the event of this, ShapeBlue will ensure that any information is anonymised and cannot be related by a 3rd party to the Customer.

20.0 Solicitation

20.1 The Customer will make no approach or offer relating to employment to a Technician or any other employee of ShapeBlue introduced by ShapeBlue.

20.2 Upon termination of the Agreement or upon completion / termination of any other bookings / agreements under which ShapeBlue may deliver services to the Customer, the Customer agrees not to engage any Technician or employee introduced by ShapeBlue in any form without the written consent of ShapeBlue for a period of six months from the conclusion of the most recent booking / agreement.

20.3 ShapeBlue retain the right to charge the Customer if a Technician or employee is engaged in employment by the Customer or by any 3rd party introduced by the Customer. It is agreed the Customer shall pay an introductory fee to ShapeBlue the equivalent of 40% of the annual remuneration package offered by the Customer or 3rd party (including benefits and commission) of the Technician or employee in question.

21.0 Force Majeure

21.1 Neither party shall be liable for any breach of its obligations resulting from causes beyond its reasonable control including but not limited to fires, terrorist activity, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority (an 'Event of Force Majeure').

21.2 Each of the parties agrees to give notice to the other upon becoming aware of an Event of Force Majeure. Such notice must contain details of the circumstances giving rise to the Event of Force Majeure.

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

21.3 If a default due to an Event of Force Majeure shall continue for more than Twelve [12] weeks then the party not in default shall be entitled to terminate the Agreement. Neither party shall have any liability to the other in respect of the termination of the Agreement as a result of an event of Force Majeure.

22.0 Changes to the Price of CloudStack Infrastructure Support Services

22.1 ShapeBlue retains the right to review the price of any element of the service from time to time. ShapeBlue undertake to inform the Customer of any such alterations with 30 days written and email notification to the Principal Contact, except where a price change is due to a Change to the System (as per Section 9) where no notice will be given.

22.2 If the Customer objects to a change in price, they have the right to terminate the entire Agreement or the Option package in question upon the provision of 30 days notification in writing as per section 14 above except where a change in price is due to a Change in the System (in such cases, the Customer has no right to terminate the contract for this reason).

23.0 Changes to these Terms and Conditions.

23.1 ShapeBlue retains the right to review these Terms and Conditions from time to time. With the exception of changes and additions to Annexes as stated in section 9 above, ShapeBlue undertake to inform the Customer of any such alterations with 90 days notification via email to the Principal Contact.

23.2 The new altered Terms and Conditions will be posted on the website www.ShapeBlue.com along with the existing Terms and Conditions for the 90 day notice period.

23.3 Following the 90 day notice period provided, the alterations will come in to effect and the new Terms and Conditions will become applicable. For the avoidance of doubt the current applicable Terms and Conditions for CloudStack Infrastructure Support will always be displayed on www.ShapeBlue.com.

23.4 The Customer is responsible for being aware of the applicable Terms and Conditions for CloudStack Infrastructure Support as displayed on www.ShapeBlue.com.

23.5 If the Customer feels unable to adhere to the altered Terms and Conditions, they have the right to terminate the Agreement upon the provision of 90 days notification in writing as per section 14 above

24.0 Entire Agreement

24.1 The CloudStack Infrastructure Support Agreement supersedes all prior Agreements made between ShapeBlue and the Customer for the provision of Support services and constitutes the entire Agreement between the parties relating CloudStack Infrastructure Support.

24.2 The CloudStack Infrastructure Support Agreement does not supersede ShapeBlue's full Terms and Conditions or Agreement of any other business activities that the parties are or have been engaged in or may be engaged in the future.

24.3 No addition to or modification of any provision of these Terms and Conditions shall be binding upon the parties, except as set out herein, unless made in writing and signed by a duly authorised representative of each of the parties.

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
Author	Giles Sirett

24.4 If any term, clause or condition of these Terms and Conditions is in violation of any applicable law, statute or regulation, the term, clause or condition in question shall be deemed as being deleted without effect to the remainder of these Terms and Conditions.

24.5 These Terms and Conditions shall remain in full force as if the deleted term, clause or condition had not been included. ShapeBlue and the Customer will negotiate, in good faith, alternative terms, clauses or conditions to those deleted that are mutually acceptable to both parties.

24.6 Headings are included for convenience only and shall not affect the interpretation of these Terms and Conditions or the CloudStack Infrastructure Support Agreement.

25.0 Notice

25.1 Any notice given under the Agreement by the Customer to ShapeBlue shall be provided in writing by post as set out below:

25.1.1 Postal address: ShapeBlue Ltd., 53 Chandos Place, London, WC2N 4HS

25.2 Any notice given under the Agreement by ShapeBlue to the Customer shall be provided to the Customer as set out herein and in accordance with the contact details for the Customer stated in the Agreement. The Customer may change its contact details from time to time if required, by the provision of notice to ShapeBlue.

26.0 Governing Law

26.1 The Agreement shall be governed by and construed in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.

London - Mountain View - Rio de Janeiro

Cape Town – Bangalore





Document title	Terms and Conditions for CloudStack Infrastructure Support
Date	16/05/2019
	1.3
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Annex A

1. For the avoidance of doubt, terms specified in this annex supersede those specified in an agreement.
2. Target times for response, creation of resolution plans and resolution will vary according to prioritisation as defined in the Service Level Agreement:

Priority	Response Time	Time to Resolution Plan	Target resolution*
Critical	Within 1 hour	Within 3 hours	Within 24 hours
Medium	Within 1 working day	Within 2 working days	Within 3 working days
Low	Within 1 working day	Within 3 working days	Within 5 working days

3. The SLA will depend on the severity of the problem, and we will validate the priority of the incident with you.
 - a. **Critical (P1) Severity:** An emergency issue. This issue causes failure of mission-critical services or resources with no short-term workaround and therefore you are unable to carry out functions essential to internal or customer operations, projects cannot be completed, end-users cannot carry out any normal, day to day operations.
 - b. **Medium (P2) Severity:** Your live, production system is available and running. A problem is causing minor or limited impact to services or resources. You remain able to carry out functions essential to internal or customer operations, projects can be completed, end-users can carry out normal, day to day operations.
 - c. **Low (P3) Severity:** No major impact on internal or customer operations, end-users, services or resources.



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