



## TERMS OF USE

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**Mycloud Hospitality Software Private Limited**, hereafter referred to as **MHSPL**, is an IT enabled company providing services & solution for the Hospitality & Travel Industry. **mycloud** is the name of Software Platform offering Hotel management solution owned by **MHSPL**”.

By Subscribing to the service, you agree to the following terms and conditions (the “Agreement”) governing your use of MHSPL’s Online Service, including Offline components, if any (collectively, the “Service”). If you are entering into this agreement on behalf of a company, then you represent that you have the authority to make purchase decisions for the company and all references to you shall refer to your company.

**mycloud** is a Web/Cloud based platform offering Hotel Management system designed especially for small to mid-size hospitality businesses. These terms of use are intended to explain our obligations as a service provider and your obligations as a customer. Please read them carefully.

These Terms are binding on any use of the Software and apply to you from the time that MHSPL provides you with access to the Software.

We believe the mycloud Application will evolve over time based on user feedback. These Terms are not intended to answer every question or address every issue raised by the use of the mycloud Software. MHSPL reserves the right to change these terms at any time, effective upon the posting of modified terms and MHSPL will make every effort to communicate these changes to you via email or notification via the website. It is likely the terms of use will change over time. It is your obligation to ensure that you have read, understood, and agree to the most recent terms available on the Website.

### 1. Definitions

#### **"Subscription /Access Fee"**

Means the monthly fee (excluding any taxes and duties) payable by you in accordance with the fee schedule set out on the Website (which MHSPL may change from time to time on notice to you).

#### **"Renewal"**

Unless the Subscription expressly states otherwise, a Customer’s Subscription will automatically renew at the expiration of the Term. Expiring Terms of less than one year will renew for one month. Expiring Terms of one year or longer will renew for one year.

#### **"Refunds"**

Except for any applicable initial trial period, all charges are non-refundable unless expressly stated otherwise, or otherwise provided by law.

### **"Fee Changes"**

MHSPL may modify its fees and charges or introduce new charges at any time, upon at least thirty (30) days prior written notice to Customers. All pricing terms are confidential, and Customers agree not to disclose them to any third party.

### **"Late Payments"**

MHSPL may assess a late charge on overdue accounts of 1% of the unpaid amount each month up to the maximum that is permitted by law. Customers are responsible for all reasonable costs incurred by MHSPL to collect any past due amounts including reasonable attorneys' fees and other costs. MHSPL may suspend or cancel the Services if a Customer does not pay in full and on time.

### **"Confidential Information"**

Includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Software but does not include information which is, or becomes, publicly available other than through unauthorized disclosure by the other party.

### **"Data"**

Means any data inputted by you into the Software.

### **"Intellectual Property Right"**

Means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

### **"Software"**

Means the software available (as may be changed or updated from time to time by MHSPL) via the Website.

### **"Website"**

Means the Internet site at the domain [www.mycloudbospitality.com](http://www.mycloudbospitality.com) or any other site operated by MHSPL.

### **"mycloud"**

mycloud is the name of software platform offering Hotel management solution owned by MHSPL.

### **"you"**

Means you and includes your employees, operators, consultants, representatives and agents.

## **2. Use of Software**

MHSPL grants you the right to access and use the Software via the Website with the user roles according to your subscription type. This right is non-exclusive and non-transferable and limited by these Terms.

## **3. Your Obligations**

These Software usage rights are non-exclusive and non-transferable and limited by below Terms.

### **Payment obligations:**

An invoice for the subscription Fee will be issued to the Billing Contact each month starting 1 month from the date you added your first Hotel Property within MHSPL. All invoices will include the Access Fee for the preceding period of use. MHSPL will continue invoicing you monthly until this Agreement is terminated in accordance with clause 8.

All MHSPL invoices will be generated electronically and reach by email, payable within 7 days of the invoice date. You are responsible for payment of all taxes and duties in addition to the Access Fee as and when applicable in your country by-laws. Please ensure you include [mycloudbospitality.com](http://mycloudbospitality.com) domain into safe list so that billing emails do not hit spam filter.

**General obligations:**

You must only use the Software and Website for your own lawful internal business purposes, in accordance with these Terms and any notice sent by MHSPL or condition posted on the Website.

**Access conditions:**

You will ensure that all usernames and passwords required to access the Software are kept secure and confidential. You will immediately notify MHSPL of any unauthorized use of your passwords or any other breach of security and MHSPL will reset your password or you can also do the same from the Administration Control Panel.

As a condition of these Terms, when accessing and using the Software, you must:

1. not attempt to undermine the security or integrity of MHSPL 's computing systems or networks, where the Software is hosted by a third party, that third party's computing systems and networks;
2. not use, or misuse, the Software in any way which may impair the functionality of the Software or Website, or impair the ability of any other user to use the Software or Website;
3. not attempt to gain unauthorized access to any materials other than those to which you have been given express permission to access or to the computer system on which the Software is hosted;
4. not transmit, or input into the Software, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which you do not have the right to use); and
5. not modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer the Software or the Website except as is strictly necessary to use either of them for normal operation.

**Communication Conditions:**

As a condition of these Terms, if you use any communication tools available through the Website (such as any forum, chat room or message centre), you agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Software including (but not limited to): offers of goods or services for sale, files that may damage any other person's computing devices or software, content that may be offensive to any of our other users, or material in violation of any law (including material that is protected by copyright or trade secrets which you do not have the right to use).

When you make any communication on the Website, you represent that you own the content of the communication. MHSPL is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Software. As with any other web-based forum, you must exercise caution when using the communication tools available on the Website. However, MHSPL does reserve the right to remove any communication at any time in its sole discretion.

**Indemnity.**

You indemnify MHSPL against all claims, costs, damage and loss arising from your breach of any of these terms or any obligation you may have to MHSPL, including (but not limited to) any costs relating to the recovery of any Access Fees that have not been paid by you.

## 4. Confidentiality and Privacy

**Confidentiality:**

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

1. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.
2. Each party's obligations under this clause will survive termination of these Terms.
3. The provisions of clauses 4.1 and 4.2 shall not apply to any information which:
  - is or becomes public knowledge other than by a breach of this clause;
  - is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
  - is independently developed without access to the Confidential Information

**Privacy:**

MHSPL maintains a privacy policy that sets out the parties' obligations in respect of data. You should read that policy at [www.mycloudhospitality.com/privacy/](http://www.mycloudhospitality.com/privacy/) since you will be taken to have accepted it when you accept these Terms.

## 5. Intellectual Property

**General:**

Title to, and all Intellectual Property Rights in the Software, the Website, videos and any documentation relating to the Software remain the property of MHSPL (or its licensors).

**Data Ownership and Protection**

**Ownership of Customer Data.** You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use such your Data. Except as provided herein, MHSPL acquires no right, title or interest from you under this Agreement in or to any of your Data.

**Protection of Customer Data.** MHSPL shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of your Data. MHSPL shall not (a) modify your Data, (b) disclose your Data except as compelled by law or as expressly permitted in writing by you, or (c) access your Data except to provide the Services and prevent or address service or technical problems, or at your request in connection with customer support matters.

**Preservation of Customer Data.** MHSPL performs regular backups of Customer Data for the purpose of recovery in the event of a failure in MHSPL's data centers. MHSPL shall not be liable for the deletion, correction, destruction, damage, loss or failure to store your Data unless such deletion, correction, destruction, damage, loss or failure is attributable to the negligence of MHSPL or its agents or employees.

**Deletion of Customer Data upon Termination.** Within twenty-five (25) days after termination of this Agreement, MHSPL will upon request provide to you a file of your Data provided there are no dues. You agree that after such period of twenty-five (25) days MHSPL shall have no obligation to retain your Data.

**Compliance with laws.** MHSPL and its hosting subcontractor shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with hosting and data protection.

## 6. Warranties and Acknowledgements

**Acknowledgement:**

You acknowledge that:

1. You are authorized to use the Software and the Website and to access the information that you access using the Software and the Website (whether that information is your own or that of anyone else).
2. If you are using the Software and accessing the Website on behalf of or for the benefit of an organization (whether a body corporate or not) then MHSPL will assume that you have the right to do so and that organization will be liable for your actions or omissions (including any breach of these Terms).
3. The provision of, access to, and use of, the Software is on an "as is, where is" basis and at your own risk.
4. MHSPL does not warrant that the use of the Software will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Software, including public telephone services, computer networks and the Internet, can be

unpredictable and may from time to time interfere with or prevent access to the Software. MHSPL is not in any way responsible for any such interference or prevention of your access or use of the Software.

5. It is your sole responsibility to determine that the Software meets the needs of your business.

**No Warranties:**

MHSPL gives no warranty about the Software. Without limiting the foregoing, MHSPL does not warrant that the Software will meet your requirements or that it will be suitable for your purposes. You are requested to try out the solution offered on free trial and satisfy your queries and operational demands. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

**Consumer Guarantees:**

You warrant and represent that you are acquiring the right to access and use the Software and agreeing to these Terms for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Software, the website or these Terms.

## 7. Limitation of Liability

To the maximum extent permitted by law, MHSPL excludes all liability and responsibility to you (or any other person) in contract, (including negligence), or otherwise, for any loss (including loss of Data, profits and savings) or damage resulting, directly or indirectly, from the use of, or reliance on, the Software.

If you suffer loss or damage as a result of MHSPL's negligence or failure to comply with these Terms, and make a claim against MHSPL arising from MHSPL's negligence or failure will be limited in respect of any one incident, or series of connected incidents to the access fees paid by you in the previous 12 months.

If you are not satisfied with the Software, your sole and exclusive remedy is to terminate these Terms in accordance with Clause 8.

## 8. Termination

**Thirty-day Trial Policy:** When you sign up for the Service you have 30 days in which you can evaluate MHSPL with no obligation to continue. Should you choose to continue using mycloud, you will be billed from the day you added your organization. If you choose not to continue with the service, MHSPL has no obligation of providing you with the backup of your data and reserves the right to delete your account from the mycloud system.

**Prepaid Subscriptions:** There will be no refund for any remaining prepaid period for a prepaid subscription Fee, unless that subscription is cancelled within the 30-day trial period.

**No-fault Termination:** These Terms will continue for the period covered by the subscription Fee paid. These Terms will automatically continue for the same period unless either party terminates these Terms by giving notice to the other party at least 30 days before the end of the relevant payment period.

**Breach:** If you:

1. breach any of these Terms and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
2. breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3 or any payment more than 30 days overdue); or
3. the paying subscriber goes into liquidation or has a receiver or manager appointed of any of its assets or becomes insolvent, or makes any arrangement with its creditors, or becomes subject to any similar insolvency event in any jurisdiction,

MHSPL may take any or all of the following actions, at its entire discretion:

1. Terminate these Terms and your use of the Software and the Website;
2. Suspend for any definite or indefinite period of time, your use of the Software and the Website;

3. Take either of the actions in sub-clause 1 and 2 of this clause 8(3) in respect of any other persons in your organization or who have access to your information or that of your organization.

**Accrued Rights:** Termination of these Terms is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement you will:

1. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
2. immediately cease to use the Software and the Website.

## 9. Help Desk

**Technical Problems:** In the case of technical problems you must make all reasonable efforts to investigate and diagnose problems before contacting MHSPL. If you still need technical help, please check the support provided online by MHSPL or failing that email us at [info@mycloudspark.com](mailto:info@mycloudspark.com)

**Service Availability:** Whilst MHSPL intends that the Software should be available 24 hours a day, seven days a week, it is possible that on occasion it may be unavailable to permit maintenance or other development activity to take place.

If for any reason MHSPL have to interrupt the Software for longer periods than MHSPL would normally expect, we will use reasonable endeavors to publish in advance details of such activity on the Website.

## 10. General

**Entire Agreement:** These Terms, together with the MHSPL Privacy Policy and the terms of any other notices or instructions given to you under these terms, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between you and MHSPL relating to the Software and the other matters dealt with in these Terms.

**Waiver:** If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

**Delays:** Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

**No Assignment:** You may not assign or transfer any rights to any other person without MHSPL's prior written consent.

**Governing law and jurisdiction:** The laws of the Republic of India, shall govern this agreement. Any disputes arising out of this agreement shall be subject to the jurisdiction of the courts located in or near New Delhi, INDIA.

**Severability:** If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

**Notices:** Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to MHSPL must be sent to [info@mycloudspark.com](mailto:info@mycloudspark.com) or to any other email address notified by email to you by MHSPL. Notices to you will be sent to the email address which you provided when setting up your access to the Software.

**Rights of Third Parties:** A person who is not a party to these Terms has no right to benefit under or to enforce any term of these terms.

## **11. Shipping Policy**

The shipping policy does not apply to our business as we are Software as a Service (SaaS) Provider and do not ship any physical item.