MODIFICATION OF THE CONTRACTS

Roberto YANGUAS GÓMEZ


I. DEFINITION OF THE PROBLEM

This discussion paper focuses on the analysis of one of the most common clauses that can be found in the online environment nowadays and which allows the provider to modify the terms of the agreement at their own discretion. Despite the fact that the current EU legislation leaves little room for this kind of contractual terms, especially when they are included within the general terms and conditions of a website, the truth is that an overwhelming majority of cloud computing providers use them in their imprints. By looking at the numbers we can gain a wider perspective. Each of the 21 terms of use, which have been selected to illustrate the present paper, 1 incorporate a unilateral modification clause, normally in favour of the provider. This trend also appears in other studies. 2

According to Terminos y Condiciones, 3 a website which focuses on monitoring the changes in the terms and conditions of a great number of providers worldwide, 4 this ubiquity is also present on a global scale and, in practice, the providers frequently make actual use of the clause. During 2013, among the services monitored by the above-mentioned website, 5 538 of them were unilaterally modified through the year, activity that was led by Facebook (22 changes), Amazon Web Services (11 changes), Foursquare (10 changes) and Twitter (9 changes). 6

This increasingly used legal technique serves to protect the legitimate interests of the

---

1 See for more detail the Annex at the end of this discussion paper.
2 See BRADSHAW, S., MILLARD, C. and WALDEN, I., Contracts for Clouds: Comparison and Analysis of the Terms and Conditions of Cloud Computing Services, Queen Mary University of London, School of Law, Legal studies research paper No 63/210. In this analysis, 23 out of 31surveyed cloud providers reserved the right to modify the terms.
3 http://www.terminosycondiciones.es
4 It started with about 1600 providers in February 2013 and reached a database of approximately 4000 providers by December of the same year.
5 Ibidem.
6 The complete list, including non cloud computing providers can be found at: https://www.google.com/fusiontables/DataSource?docid=12veFsT4aDkpoC6VuPCLmi9cvoomPkiXHvxs7M#rows:ids=1. Date consulted: 10.02.2014.
providers, as recognized by the ECJ. However, it presents some specific problems and raises questions when it comes to maximizing the welfare from consumers and SMEs while striking a balance with business interests. As some courts have stated, the use of this kind of provision, depending on how is worded, can put the provider in a situation where it has no legal obligations, rendering the contract illusory when the power to change the agreement is "so great as to lead to the conclusion that it had not promised anything at all".

In section II, this paper will analyse the current EU legal framework in order to set up a context for the work to be made by the Expert Group. In section III, the paper will try to shed light on some of the difficult interpretative issues arising from the current applicable rules. In section IV, references to specific problems and challenges within the field of cloud computing will be made and finally, in section V, an indicative set of questions for further debate will be drafted.

II. CURRENT LEGAL CONTEXT

a) Unfair Terms Directive

From the perspective of EU Law, the very concept of "unilateral alteration of terms" is something that, initially, does not sit well with the general principles of contractual law. However, we will see here that this kind of provision, although admittedly limited, may be well legally tenable in the context of standard terms.

In this respect, the first provisions that must be examined are the ones contained in the Directive 93/13/EC on unfair terms, whose Annex paragraph 1(j) establishes an indicative and non-exhaustive list of terms which may be regarded as unfair enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract.

A provision that must be completed – Annex, paragraph 2(b) – in the following way

without hindrance to terms under which a seller or supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

This should be precisely the starting point of our analysis regarding standard terms on cloud computing, as the above-mentioned provisions – unaltered by the Directive 2011/83/EU on consumer rights – which currently apply in the large majority of cases.

---

7 RWE Vertrieb v Verbraucherzentrale (C-92/11, Judgement of the Court, First Chamber, 21.3.2013): "With respect to a standard term (…) which allows the supply undertaking to vary unilaterally the charge for the gas supply (…) the legislature recognised, in the context of contracts of indeterminate length such as contracts for the supply of gas, the existence of a legitimate interest of the supply undertaking in being able to alter the charge for its service."

This being the case, there are some questions that require an answer: e.g., what constitutes a “valid reason” to unilaterally alter the terms? What if the cloud computing provider (CCP) does not specify those reasons pre-contractually but throughout the life of the contract? What shall be the specific notification period which may be deemed as reasonable?

b) Consistency with the Community Acquis: CESL and DCFR

In order to answer the previous questions and better understand the existing challenges within the cloud computing framework, we will refer to the help of the ECJ and some national courts’ interpretation in section III. But, for now, let us see if the mentioned provisions are consistent with the Community acquis or just an isolated set of rules. In order to do so, there are two legal texts that need to be considered: the Proposal for a Regulation on a Common European Sales Law (CESL) and the Draft Common Frame of Reference.

i) Proposal for a Regulation on a Common European Sales Law (CESL)

Despite the optional nature of this instrument, the CESL constitutes an advanced piece of proposed legislation regarding cross-border transactions. For this reason, it seems necessary to explore its provisions on “unfair contract terms” to check whether they continue on the path mapped out by the Unfair Terms Directive or not.

In this regard, Annex I, art. 85 establishes that a contract term is presumed to be unfair if its object or effect is to:

“enable a trader to alter contract terms unilaterally without a valid reason which is specified in the contract; this does not affect contract terms under which a trader reserves the right to alter unilaterally the terms of a contract of indeterminate duration, provided that the trader is required to inform the consumer with reasonable notice, and the consumer is free to terminate the contract at no cost to the consumer.”

As we can see, the CESL adopts the Unfair Terms Directive provisions almost verbatim, with just some minor variations. For instance, it improves the wording of the Directive by referring to the concept of “termination” (“terminate” the contract instead of “dissolve” it), which fits better with the existing community legislation; and from the material point of view, it makes clear that the consumer is not only free to put an end to the contractual relationship, but also that this decision will not lead to any associated cost.

ii) Draft Common Frame of Reference (DCFR)

Although it is well known that the DCFR does not constitute legislation in force, it is also

9 See section V of this discussion paper.
12 The main differences have been underlined.
true that the DCFR model rules are based on extensive comparative research on EU Private Law, which may serve our purpose well as a point of reference.

This said, the DCFR establishes in its art. II – 9:410 paragraph 1(i) that a term in B2C contracts is presumed to be unfair if it:

"enables a business to alter the terms of the contract unilaterally without a valid reason which is specified in the contract; this does not affect terms (...) under which a business reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that the business is required to inform the consumer with reasonable notice, and that the consumer is free to terminate the contractual relationship."

Again, we can see that the structure used here is almost identical to the one under the Unfair Terms Directive. In this case, however, no reference is made to the absence of associated costs regarding termination, mainly due to the fact that the DFCR (2009) was established prior to the CESL (2011). This lack of reference is reflected in the on-going current considerations regarding the matter.

c) Differences between B2C and B2B contracts

Although the previous sets of rules are primarily consumer protection oriented, it is necessary here to define how they apply to medium and small businesses, as they conform a part equally important in this discussion paper. In this regard, a distinction should be made between the Directive 93/13/EEC on the one hand, and the DCFR and CESL, on the other hand.

The Unfair Terms Directive was conceived to apply to B2C relations, including the provisions contained in its Annex concerning unilateral alteration of terms. Despite of this fact, at a national level, some EU Member States (Denmark, Finland, Sweden...) decided also to enforce these provisions in relation to B2B transactions,13 increasing the level of protection for SMEs this way.

As time went on, several EC-instruments started to include provisions related to the unfairness of B2B contracts,14 a dynamic also reflected in the DCFR and the CESL. In this sense, the DCFR states in its art. II. – 9:405 (meaning of 'unfair' in contracts between businesses) that

"A term in a contract between business is unfair for the purposes of this Section only if it is a term forming part of standard terms supplied by one party and of such a nature that its use grossly deviates from good commercial practice, contrary to good faith and fair dealing."

In a similar way, the CESL also extends the protection against unfairness to B2B contracts by means of providing in its art. 86 that

"In a contract between traders, a contract terms is unfair for the purpose of this

---

14 E.g., art. 3(3) of the Late Payment Directive; art. 19(7) of the Financial Instruments Markets Directive; or art. 3 of the Cross Border Credit Transfer Directive.
Therefore, the arising question is: does the unilateral modification of terms “grossly deviates from good commercial practice”? Are they “contrary to good faith and fair dealing”? One could argue in this point that, as opposed to another terms, which introduce to technical issues that may be unknown for the SME,\(^{15}\) the kind of term here analyzed is certainly common in commercial practice, although the debate is open. A possible task for the Expert Group may be to decide if there are reasons for different standards to apply depending on whether the user of a cloud computing service is a consumer or an SME.

**d) Issues of interpretation**

In light of the above, it seems undeniable that there is a certain consistency among the different sets of rules. Nevertheless, at this point, some difficult questions of interpretation arise from them regarding the requirements for the term to be fair, including the following:

- i) Shall the standard term always specify a “valid reason” or should it only apply to contracts of determinate duration?
- ii) What is a “valid reason”?
- iii) What does a “reasonable” notice period look like?

In the next section we will see how the ECJ and other public bodies have approached the interpretation of some of these issues.

**III. COURT DECISIONS AND GUIDELINES**

**a) Shall always the standard term specify a “valid reason”?**

Given the division between paragraphs 1(j) and 2(b), the first question that arises following the reading of the Unfair Terms Directive is if, in case of contracts of indeterminate duration, the provider should also specify a “valid reason” for the modification of contractual terms.

The answer to this question can be found in the ECJ judgement *RWE Vertrieb v Verbraucherzentrale*,\(^{16}\) as one out of the two questions in the preliminary ruling was precisely whether

>a standard contractual term by which the supply undertaking reserves the right unilaterally to vary the gas supply price, but which does not indicate the grounds, conditions or scope of such a variation, complies with the requirements laid down by those provisions, if it is ensured that consumers will be informed of the price variation in good time and will then have the right to

\(^{15}\)The SME will not necessarily possess expertise on the cloud computing field, particularly in those cases in which it relies on CCPs in order to provide another completely different set of services to its users.

\(^{16}\)C-92/11, Judgement of the Court (First Chamber) of 21 March 2013.
terminate the contract if they do not wish to accept the variations."

Regarding the assessment of a term in a contract of gas supply (i.e., indeterminate duration) which allows the provider to unilaterally alter the charges for the service, the answer of the Court to this question is quite clear: it is of fundamental importance whether the contract sets out in transparent fashion the reason and method of the variation "so that the consumer can foresee, on the basis of clear, intelligible criteria, the alterations that may be made to those charges".

In this point, the ECJ follows the opinion of the general advocate, who had already stated that:

"the reason and method for varying that price [shall be] also set out (...) This premise applies without exception, that is to say also for contracts of indeterminate duration within the meaning of the second sentence of point 2(b)."

As the Court indirectly indicates, knowing the reasons for the modification of the contractual terms is something closely related to the pre-contractual information duties of the provider, in the sense that stating those reasons contributes to level information asymmetries.

b) What constitutes a “valid reason”?

Now that we have determined that according to the current legal framework a “valid reason” is always required, what should be entered into this category? Is there such a thing as a catalogue of “valid reasons”? Are there specific reasons that only concern cloud computing providers? The truth is there is no easy answer to these questions. As has been shown previously, the courts normally declare the terms unfair due to the absence of criteria triggering the modification. However, it remains unclear what the decision would have been if reasons had been given.

It is in this point where instruments such as the Unfair contract terms guidance by the UK Office of Fair Trading (OFT) are highly valuable as a reference. In this regard, the Guidance points out that

"if a term could be used to force the consumer to accept increased costs or penalties, new requirements, or reduced benefits, it is likely to be considered unfair."

Conversely, it should be considered whether a unilateral modification that grants the consumer any kind of benefit, bonus or premium, or that relaxes the requirements on

---

17 See point 49 of the judgment.
18 Something linked to the requirements of the terms to be drafted “in plain, intelligible language”, as provided in art. 5 of the Unfair Terms Directive. See also section IV of this discussion paper regarding the formal aspect concerning the notice period.
19 Opinion of Advocate General Trstenjak, delivered on 13 September 2012.
20 See synthesis to the Expert Group meeting on 29 January 2014.
the consumer’s side,\textsuperscript{23} should be considered legitimate or not. Furthermore it should be considered whether in certain situations, if any, the CCPs are entitled to name reasons against consumers’ interest, for instance “to reflect changes in the law” or “to meet regulatory requirements”\textsuperscript{24} and what these reasons would be.\textsuperscript{25} The \textit{Guidance} also suggests that this kind of unilateral disposition should have a narrow effect, which is consistent with the principle of legal certainty existing in most Member States. The Expert Group may want to consider working under the same premise.

Finally, among the selected cloud computing agreements here analyzed,\textsuperscript{26} no difference in wording has been found as compared to other kind of digital services agreements concerning the clauses on unilateral modification of terms. That could mean either that the cloud computing providers (or the CCPs’ lawyers) do not consider that exclusive reasons apply in this field, or simply that the terms of use are construed in an standard way, which does not take into account the specificities of the industry. In either case, further field research may be required.

c) What constitutes a “reasonable” notice period?

One of the main issues concerning the current framework is the continued use of abstract definitions. Although sometimes this policy has some advantages, e.g., providing flexibility to the parties, it may also lead to conflict. In the case of the period of notice, by stating that is shall be “reasonable” and leaving the final decision to the provider, it is possible, under certain circumstances, to distort the balance between parties’ rights and obligations and undermine the legitimate interest of the weakest party.

The question for the Expert Group is to decide whether setting up a concrete notice period, i.e., a specific number of days, would contribute to improve the current situation and, in case of an affirmative answer, what this period should be.\textsuperscript{27} While establishing a specific notice period may increase legal certainty, it also means that doing so without modifying the general framework may lead to confusion and a certain balkanization if different notice periods are established for different types of digital services.

As to the right of termination relating to contracts of indeterminate duration, such a right was traditionally granted to the parties upon the prohibition of concluding perpetual service contracts. This right was also coupled with a notification period such as the one being analysed here. The underlying idea was that the professional whose services were dismissed had time to develop new sources of income. Over time, and

\begin{itemize}
  \item \textsuperscript{23} In the words of the guidance: reasons “which are likely to rise standards of consumer protection”.
  \item \textsuperscript{24} Ibidem.
  \item \textsuperscript{25} Examples of this kind of provision can be found here (see also Annex): \textit{Windows Azure}: “Modified terms that relate to changes or additions to the Product or that are required by law will be effective immediately”; \textit{Evernote}: “in some situations, such as where a change is required to satisfy applicable legal requirements, an update to these Terms may need to be effective immediately”; \textit{Google}: “We may modify these terms or any additional terms that apply to a Service to, for example, reflect changes to the law or changes to our Services”.
  \item \textsuperscript{26} See Annex.
  \item \textsuperscript{27} In today’s practice, according to the examples analysed for this discussion paper, when a notice period is established – something that rarely happens, as the provider normally states that the modifications have immediate effect, \textit{vid.} Annex – it goes from seven (7) up to thirty (30) days of notification in advance before the new terms are considered binding.
\end{itemize}
especially regarding the provision of digital services such as cloud computing, the party who really suffers the loss currently is not so much the provider, but rather the user who relies on the service. This loss is exacerbated when the CCP reserves the right to terminate the agreement immediately without notice. It is in this spirit that the ECJ stated that the right of termination given to the consumer “is not purely formal but can actually be exercised”. This would not be the case if the consumer has not been informed suitably in good time of the forthcoming change, thus “depriving him of the possibility of changing supplier”. As a result, the time taken to switch providers might also be a key element for the Expert Group to assess whether a notice period is “reasonable” or not in case more concretion is decided.

IV. FORM OF NOTICE AND ACCEPTANCE BY THE END-USER AS SPECIFIC CHALLENGES ON CLOUD COMPUTING CONTRACTS

Without prejudice to defining and analysing other specific challenges that may arise during the debate there are two major issues concerning cloud computing contracts when concluded online and which are not covered by the current regime. Firstly, the lack of transparency related to this phenomenon and secondly, the way the provider establishes in the contract how and when the consumer is accepting the changes.

Many providers change the terms under the assumption that consumers will regularly monitor the online agreements for change, entailing increased “information overload” on the consumers’ side. Moreover, these common practices are closely related to a more general issue, which is the way online contractual terms are presented to the end-user. In this regard, in the same way that the consumer sometimes does not know that he is actually concluding an online agreement, especially in the case of browse-wrap agreements, procedural unconscionability may exist when the provider does not highlight properly that an alteration is about to happen, because this way it will be depriving the consumer from the opportunity to terminate the contract or take any other available action. A similar situation may also arise when the provider establishes in the terms that the mere use of the service, regardless of how the notice is served, implies a tacit acceptance by the user to the amended terms.

Although the above quoted practices represent a common scenario, on many occasions the provider does notify the user. Among those CCPs that do notify the changes, the means used and way it is done differs completely from one provider to another. Some cloud computing providers simply update the website page containing the terms of use, others send an e-mail, while a minority of them employ some kind of alternative

---

28 Example: Klout: “We reserve the right, at our sole discretion, to change or modify portions of these Terms of Service at any time without further notice”.
29 RWE Vertrieb v Verbraucherzentrale, point 54 of the judgement.
30 For instance: Amazon Web Services: “It is your responsibility to check the AWS Site regularly for modifications to this Agreement”; Foursquare: “It is your responsibility to check these Terms of Use periodically for changes”.
31 Amazon Web Services: “by continuing to use the Service Offerings after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms”; Apple iCloud: “Your continued use of the Service will be deemed acceptance of such modifications and additional terms and conditions”; Windows Azure: “by continuing to use the Services you will be bound by the modified terms.”
32 Disqus: “When we change these Terms, we will update the ‘last modified’ date at the bottom of
and original method. In this respect, a possible task for the Expert Group could be to identify what are the most suitable means to inform the consumer about the alteration of terms and the formal aspects related to it. For instance, in the case that a term is simply changed on a website, how should this fact be highlighted? Also, in the case that no notice ever takes place, possible consequences for this lack of action should also be contemplated.

V. POSSIBLE QUESTIONS FOR THE DISCUSSION

The possible questions for a further debate regarding unilateral modification of terms include:

a) Reasons for the modification

– Following section III (a) and (b) of this paper, should the standard terms always specify a “valid reason” to unilaterally alter them or there are some situations when it shall not be necessary? (i.e., when the alteration is due to comply with new legal requirements.)
– In case of affirmative answer to the previous question, how should a valid reason be outlined in the cloud computing environment? Can you think in specific examples of valid reasons for cloud computing contracts?

b) Notification of changes

– Following section III (c) of this paper, should a notification be required prior the modification of the terms?
– In case of affirmative answer to the previous question, which are the most suitable means to do it? Are there any means that should remain prohibited?
– Would setting up a concrete notice period improve the existing situation? In that case, what should the minimum reasonable notice period be?
– Are there any specific formalities concerning the notice that the CCP should comply with, besides those already stated in the current legislation?

c) Acceptance of the new terms

– Following section IV of this paper, is tacit acceptance by means of continuing using the service advised?
– Shall the provider establish a channel to make express consent possible?

d) Actions upon the modification

– Following section IV of this paper, what actions should remain available to the consumer or SME if the provider complies with the legal requirements to alter

---

33 Dropbox: If a revision, (…) is material we will notify you (for example via email to the email address associated with your account.
34 Facebook: You can also visit our Facebook Site Governance Page and "like" the Page to get updates about changes to this Statement; Twitter: If the revision, in our sole discretion, is material we will notify you via an @Twitter update.
the terms? (e.g., termination, economic compensation, etc.)
– In the case that termination is an option, should the consumer or SME bear the economic cost of such a termination?
– What should the legal consequences be if the provider does not comply with the requirements to modify the terms?

e) Miscellaneous points to consider

– Following section II (c) of this paper, would some of the previous questions be answered differently if the user is an SME?
– Would some of the previous questions be answered differently if the service were provided for free?
– Would some of your answers to the previous questions change depending on the kind of service rendered? (SaaS, PaaS, IaaS...).
VI. ANNEX: EXAMPLES OF TERMS OF USE

**Amazon Web Services** ([http://aws.amazon.com/agreement/](http://aws.amazon.com/agreement/)): "We may modify this Agreement (including any Policies) at any time by posting a revised version on the AWS Site or by otherwise notifying you in accordance with Section 13.7. The modified terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Service Offerings after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the AWS Site regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the beginning of this Agreement."

**Apple iCloud** ([http://www.apple.com/legal/internet-services/icloud/en/terms.html](http://www.apple.com/legal/internet-services/icloud/en/terms.html)): "Apple reserves the right at any time to modify this Agreement and to impose new or additional terms or conditions on your use of the Service. If you do not agree with them, you must stop using the Service and contact iCloud Support to retrieve your Content. Your continued use of the Service will be deemed acceptance of such modifications and additional terms and conditions."

**Azure** ([http://www.windowsazure.com/en-us/support/legal/subscription-agreement/](http://www.windowsazure.com/en-us/support/legal/subscription-agreement/)): "We may modify this agreement at any time by posting a revised version on the legal information section of the Portal or by notifying you in accordance with subsection 9(a). Modified terms that relate to changes or additions to the Product or that are required by law will be effective immediately, and by continuing to use the Services you will be bound by the modified terms. All other modified terms will be effective upon renewal (including automatic renewal) of an existing Subscription or order for a new Subscription."

**Basecamp** ([https://basecamp.com/terms](https://basecamp.com/terms)): "Basecamp, LLC ("Company") reserves the right to update and change these Terms of Service without notice."

**Blizzard’s Diablo III** ([http://us.blizzard.com/en-us/company/legal/d3_eula.html](http://us.blizzard.com/en-us/company/legal/d3_eula.html)): "Blizzard may replace this Agreement with new versions (each a "New EULA") over time as the Game and the law evolve. This Agreement will terminate immediately upon the introduction of a New EULA, and you will be given an opportunity to review and accept the New EULA. If you accept the New EULA, and if the Account registered to you remains in good standing, you will be able to continue playing the Game subject to the terms of the New EULA. If you decline to accept the New EULA, or if you cannot comply with the terms of the New EULA for any reason, you will no longer be permitted to play the Game. New EULAs will not be applied retroactively."

**Disqus** ([http://help.disqus.com/customer/portal/articles/466260-terms-of-service](http://help.disqus.com/customer/portal/articles/466260-terms-of-service)): "Disqus may, in its sole discretion, modify or update these Terms from time to time. When we change these Terms, we will update the 'last modified' date at the bottom of this page. Your continued use of the Service after any such change constitutes your acceptance of the new Terms of Service. If you do not agree to these Terms or to our Privacy Policy, please do not access or use the Service. We recommend that you review this page periodically."

**Dropbox** ([https://www.dropbox.com/m/tos](https://www.dropbox.com/m/tos)): "We may revise these Terms from time to time and the most current version will always be posted on our website. If a revision, in our sole discretion, is material we will notify you (for example via email to the email address associated with your account). Other changes may be posted to our blog or"
terms page, so please check those pages regularly. By continuing to access or use the Services after revisions become effective, you agree to be bound by the revised Terms. If you do not agree to the new terms, please stop using the Services.”

Elastichosts cloud (http://www.elastichosts.com/cloud-hosting/terms-of-service/):
“The current version of the Terms of Service will be the version available on our website at http://www.elastichosts.com/. However, we reserve the right to alter the Terms of Service at any time. In the event that we alter the Terms of Service, you will have the rights set out under the Suspension and Termination section below (...) In the event that we wish to alter the Terms of Service or increase our prices, we will notify you by email 30 calendar days before any alteration takes effect. Upon receipt of such notice, you will have the option either to terminate your account and receive a refund for the unused portion of your payments or to continue subject to the altered Terms of Service or increased prices. If you do not notify of us of your wish to terminate your account within 30 calendar days of receipt of such notice, then you will be deemed to have accepted the altered Terms of Service or increased prices.”

Evernote (http://evernote.com/legal/tos.php): “Will These Terms Of Service Ever Change? Changes in these Terms are almost certain to happen, due to changes in our Service and the laws that apply to us and you. If we make a change, we’ll do our best to provide you with advance notice, although in some situations, such as where a change is required to satisfy applicable legal requirements, an update to these Terms may need to be effective immediately. We’ll announce changes here at our site, and we also may elect to notify you of changes by sending an email to the address you have provided to us. We will also try to explain the reasons for the change. If we do update these Terms, you are free to decide whether to accept the terms or to stop using our Service (see “How is My Account Closed” below); your continued use of the Service after the effectiveness of that update will be deemed to represent your agreement with, and consent to be bound by, the new Terms.”

Facebook (https://www.facebook.com/terms.php): “Amendments: 1. Unless we make a change for legal or administrative reasons, or to correct an inaccurate statement, we will provide you with seven (7) days notice (for example, by posting the change on the Facebook Site Governance Page) and an opportunity to comment on changes to this Statement. You can also visit our Facebook Site Governance Page and "like" the Page to get updates about changes to this Statement; 2. If we make changes to policies referenced in or incorporated by this Statement, we may provide notice on the Site Governance Page; 3. Your continued use of Facebook following changes to our terms constitutes your acceptance of our amended terms.”

Foursquare (https://foursquare.com/legal/terms): “Foursquare reserves the right, at its sole discretion, to modify or replace any of these Terms of Use (...) at any time by posting a notice on the Site or by sending you notice through the Service or via email. It is your responsibility to check these Terms of Use periodically for changes. Your continued use of the Service following the posting of any changes to these Terms of Use constitutes acceptance of those changes.”

Go Grid (http://www.gogrid.com/legal/terms-service): “GoGrid may amend this Agreement, including any document incorporated by reference, from time to time by posting an amended version at its website and sending Customer written notice thereof, including without limitation notice by e-mail. Such amendment will be deemed accepted and become effective 30 days after such written notice unless Customer first gives GoGrid written notice that it objects to the amendment. In such case, this Agreement will
continue under its original provisions until, and the amendment will become effective upon the first to occur of: (a) the start of the next Term beginning 45 or more days after written notice of the amendment (unless the Term does not renew pursuant to Section 7.1 above); or (b) the effective date of the next Order submitted by Customer after notice of the amendment and accepted by GoGrid. Customer's continued use of the Service following the effective date of an amendment will confirm Customer's consent thereto. This Agreement may not be amended in any other way except through a written agreement executed by each party. Notwithstanding the foregoing, a revision to the AUP, Privacy Policy, or SLA will be effective immediately, without right of rejection, if it does not materially reduce Customer's rights or increase its responsibilities.

**Google** ([http://www.google.com/intl/en/policies/terms/](http://www.google.com/intl/en/policies/terms/)): “We may modify these terms or any additional terms that apply to a Service to, for example, reflect changes to the law or changes to our Services. You should look at the terms regularly. We’ll post notice of modifications to these terms on this page. We’ll post notice of modified additional terms in the applicable Service. Changes will not apply retroactively and will become effective no sooner than fourteen days after they are posted. However, changes addressing new functions for a Service or changes made for legal reasons will be effective immediately. If you do not agree to the modified terms for a Service, you should discontinue your use of that Service.”

**Klout** ([http://klout.com/corp/terms](http://klout.com/corp/terms)): “We reserve the right, at our sole discretion, to change or modify portions of these Terms of Service at any time without further notice. You should periodically visit this page to review the current Terms of Service so you are aware of any revision to which you are bound. If we do this, we will post the changes to these Terms of Service on this page and will indicate at the top of this page the date these terms were last revised. Your continued use of the Services after any such changes constitutes your acceptance of the new Terms of Service. If you do not agree to abide by these or any future Terms of Service, do not use or access (or continue to use or access) the Services. It is your responsibility to regularly check the Site to determine if there have been changes to these Terms of Service and to review such changes.”

**LinkedIn** ([https://www.linkedin.com/legal/user-agreement?trk=hb_ft_userag](https://www.linkedin.com/legal/user-agreement?trk=hb_ft_userag)): “We reserve the right to modify, supplement, or replace the terms of this Agreement, effective prospectively upon posting at www.linkedin.com or notifying you otherwise. For example, we may present a banner on the Services when we have amended this Agreement or the Privacy Policy so that you may access and review the changes prior to your continued use of the site. If you do not want to agree to changes to this Agreement, you can terminate this Agreement at any time per Section 7 (Termination).”

**Panda ActiveScan 2.0** ([http://www.pandasecurity.com/activescan/conditions/](http://www.pandasecurity.com/activescan/conditions/)): “PANDA reserves the right to modify the present Conditions of Use without prior notice.”

**Prezi** ([http://prezi.com/terms-of-use/](http://prezi.com/terms-of-use/)): “Prezi may change or amend these terms. If we make material changes, we will notify you, either through the user interface, in an email notification, or through other reasonable means. Your use of the Service after the date such change(s) become effective will constitute consent to the changed terms. If you do not agree to the changes, you must immediately stop using the Service. Otherwise the new terms will apply to you.”

**Rackspace cloud** ([http://www.rackspace.com/information/legal/cloud/tos](http://www.rackspace.com/information/legal/cloud/tos)): “These Cloud Terms of Service may have been incorporated in your Order by reference to a
page on the Rackspace website. Although we may from time to time revise the Cloud Terms of Service posted on that page, those revisions will not be effective as to an Order that we accepted prior to the date we posted the revision, and your Order will continue to be governed by the Cloud Terms of Service posted on the effective date of the Order. However, any amended Cloud Terms of Service will become effective the earlier of either your acceptance of the amended Cloud Terms of Service, your continued use of the Services after notice of the amended Terms of Service, or thirty days after the date Rackspace posts such amended Terms of Service on the Rackspace website. In addition, if over time you sign multiple Orders for a single account, then the Cloud Terms of Service incorporated in the latest Order posted on the effective date of the latest Order will govern the entire account. Rackspace may accept or reject any Order you submit in its sole discretion. Rackspace’s provisioning of the Services.”

Spotify (https://www.spotify.com/legal/end-user-agreement/): “Occasionally we may, in our discretion, make changes to the Spotify Service and Agreements. When we make changes to the Agreements that we consider material, we’ll notify you through the Service. By continuing to use the Service after those changes are made, you are expressing and acknowledging your acceptance of the change.”

Twitter (https://twitter.com/tos): “We may revise these Terms from time to time, the most current version will always be at twitter.com/tos. If the revision, in our sole discretion, is material we will notify you via an @Twitter update or e-mail to the email associated with your account. By continuing to access or use the Services after those revisions become effective, you agree to be bound by the revised Terms.”

Zoho (http://www.zoho.com/terms.html): “We may modify the Terms upon notice to you at any time. You will be provided notice of any such modification by electronic mail or by publishing the changes on the website http://zoho.com/terms.html. You may terminate your use of the Services if the Terms are modified in a manner that substantially affects your rights in connection with use of the Services. Your continued use of the Service after notice of any change to the Terms will be deemed to be your agreement to the amended Terms.”