

Terms of Service

Welcome to Nouvola! Nouvola is a performance testing and performance analytics service that helps you scale rapidly and successfully and ensure you deliver the expected performance to your users. The service provided includes our websites, APIs, email notifications, applications, buttons, and widgets, (collectively, the “**Services**”). The Services and this web site (the “**Site**”) are provided by CloudyDays Inc., an Oregon corporation, doing business as Nouvola. DiveCloud™ is the name of one of our products and services.

These Terms of Use (these “**Terms**”) govern your access to and use of the Site and the Services provided by Nouvola. PLEASE READ THESE TERMS CAREFULLY BEFORE USING THE SITE OR THE SERVICES. BY ACCESSING THE SITE, CREATING AN ACCOUNT AND/OR USING THE SERVICES, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS DESCRIBED HEREIN. IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, THEN YOU MAY NOT USE THE SITE OR THE SERVICES. NOUVOLA’S ACCEPTANCE OF YOUR USE OF THE SITE AND/OR THE SERVICES IS EXPRESSLY CONDITIONED UPON YOUR ASSENT TO ALL OF THE TERMS AND CONDITIONS DESCRIBED HEREIN.

Without limiting the foregoing, when you use certain features of the Services, such as features incorporating web stress testing and user metrics, your use of such features will also be subject to the guidelines, term, agreements and conditions applicable to such features (the “**Policies**”). All such Policies are incorporated into these Terms by reference, and if these Terms are inconsistent with any Policy, the terms of such Policy will control.

In these Terms, the use of the words “Nouvola,” “DiveCloud,” “we,” and “us” refer to Cloudy Days Inc. an Oregon corporation, doing business as Nouvola. The words “user,” “you,” and “your” refer to entities that access and/or use the Site or the Services.

These Terms do not alter in any way the terms or conditions of any other agreement you may have with us. If you are using the Site and/or the Services on behalf of any entity, you represent and warrant that you are authorized to accept these Terms on such entity’s behalf.

We reserve the right to change or modify these Terms or any policy or guideline of the Site and the Services we offer at any time. We will notify registered users of changes by posting updates to <http://www.nouvola.com/terms>. Your use of the Site and the Services will be subject to the most current version of these Terms posted on the Site at the time of your use. We recommend that you check the Site from time to time to inform yourself of any changes in these Terms or any of our other policies, and you are solely responsible for reviewing and becoming familiar with any modifications to these Terms.

1. Eligibility and Registration Data

You must be 18 years of age or older to use the Services. To use certain features of the Services, you must register for an account. By registering for an account, you represent and warrant that any information that you submit is true and accurate, that you are 18 years of age or older and are fully able and competent to enter into, and abide by these Terms. You further agree to (i) provide accurate, current and complete information about you as may be prompted by any signup, login and/or registration forms within our registration process (“**Registration Data**”); (ii) maintain the security of your password and identification; (iii) maintain and promptly update the Registration Data, and any other information you provide to us, to keep it accurate, current and complete; (iv) accept all risks of unauthorized access to the Registration Data and any other information you provide to us; and (v) notify us immediately of any unauthorized use of your account or any other breach of security by emailing us at info@nouvola.com Use of the Services is void where prohibited.

2. Free Trial

Nouvola may offer free trials for selected features of the Services. Once your free trial period ends, your ability to access some or all of the Services will terminate. Nouvola reserves the right to determine if you are eligible for a free trial and to discontinue any free trial without notice for any or no reason.

3. Fees and Payment; No Refunds

Nouvola may now or in the future charge a fee for certain service offerings, either on a one-time or subscription basis. When you purchase a service that has a fee, you have an opportunity to review and accept the fees that you will be charged, which Nouvola may change from time to time. Changes to the fee schedule are effective upon posting the changes on the Site. Nouvola may choose to temporarily change the fees for services for promotional events or new services, and such changes are effective when such temporary promotional events or new services are posted on the Site. When you purchase any service that has a fee, you authorize Nouvola or its third party payment processors to charge the credit card identified by you for the full amount of the applicable fees and all applicable taxes, and you represent and warrant that you are authorized to use such credit card for the purpose of purchasing such service. If Nouvola does not receive payment from your credit card provider, you agree to pay all amounts due upon demand, and acknowledge that Nouvola may suspend your access to the Services in the event such amounts are not timely paid. All sales are final, and Nouvola will not issue any refunds, including refunds for prepaid monthly fees. Unless otherwise stated, all fees are quoted in U.S. Dollars.

4. Trademarks and Materials

Nouvola's designs, text, graphics, pictures, information, data, software (and the selection and arrangement thereof) logos, code, and designs (collectively, the "**Site Materials**") are all property of Nouvola and are protected by intellectual property law. Use of these items is subject to these Terms and is only permitted within normal use of the Site and/or the Services. Your use of the Site and/or the Services grants you no right or license to reproduce or otherwise use any Nouvola or third-party trademarks.

5. Use Restrictions; Limited License

You may access and use the Site and/or the Services only in compliance with these Terms and all applicable local, state, national, and international law, rules, and regulations.

You are granted a limited, non-sublicensable license to access our Site and use the Services, and electronically view, copy, (except where prohibited without a license) and print to hard copy portions of the Site Materials (except Third Party Content) for your personal, informational, internal and non-commercial use only. You shall not:

- (i) resell or make any commercial use of the Site, the Services or the Site Materials (or any portion thereof), unless expressly authorized in writing by Nouvola;
- (ii) distribute, publicly perform or publicly display any Site Materials (or any portion thereof); modify or otherwise make any derivative uses of the Site, the Services or the Site Materials (or any portion thereof);
- (iii) access, tamper with, or use non-public areas of the Services, Nouvola's computer systems, or the technical delivery systems of Nouvola's providers;
- (iv) probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures;

- (v) access or search or attempt to access or search the Services by any means (automated or otherwise) other than through our currently available, published interfaces that are provided by Nouvola (and only pursuant to those terms and conditions), unless you have been specifically allowed to do so in a separate agreement with Nouvola;
- (vi) interfere with, or disrupt, (or attempt to do so), the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, mail-bombing the Services, or by scripting the creation of Content in such a manner as to interfere with or create an undue burden on the Services;
- (vii) violate the restrictions in any robot exclusion headers on the Site or the Services or bypass or circumvent other measures used to prevent or limit access to the Site or the Services; take any action that imposes, or may impose, in our sole discretion, an unreasonable or disproportionately large load on our infrastructure;
- (viii) use the Site, the Services or the Site Materials other than for their intended purpose and as expressly permitted by these Terms.

Furthermore, you shall use the Site, the Services and the Site Materials only to derive information about performance, scalability and reliability of websites and applications you own, or are formally responsible for as an employee or a designated contractor or provider. Using the Site or the Services to test websites or applications you do not have ownership of is strictly prohibited. Nouvola reserves the right to check whether the Services are used to test applications and websites you have ownership of. Nouvola will immediately terminate a user's account if this condition is violated.

Any use of the Site, the Services or the Site Materials other than as specifically authorized in these Terms, without our prior written permission, is strictly prohibited and will terminate the license granted in these Terms. Such unauthorized use may also violate applicable laws including, but not limited to, copyright and trademark laws and applicable communications regulations and statutes. We reserve the right to revoke your authorization to access or use the Site and the Services if we believe in good faith that you have violated these Terms or any laws whatsoever. Unless explicitly stated herein, nothing in these Terms will be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. The license granted by these Terms is revocable at any time.

6. User Content

The Site may now or in the future allow users to select, input, upload and share information and data in connection with the Services and allows you or other users to post, link, store or otherwise make available a wide variety of information, text and/or other materials to the user or others in connection with the use of the Services or otherwise (collectively, "**User Content**"). You are solely responsible for your use of any User Content and use such User Content at your own risk. By posting any User Content, you represent and warrant that you own and control all of the rights to the User Content that you post, or that you otherwise have the lawful right to distribute and reproduce such User Content and to grant Nouvola the license for the User Content described below and that your use and posting of such User Content does not violate these Terms, will not violate any rights of or cause injury to any person or entity, and will not otherwise create any harm or liability of any type for us or for any third party. By selecting and/or posting any User Content, you agree not to post, upload to, transmit, distribute, store, create or otherwise publish through the Site or the Services any of the following:

- User Content that is unlawful, libelous, defamatory, obscene, pornographic, harassing, threatening, invasive of privacy or publicity rights, deceptive, fraudulent or otherwise objectionable (as determined in our sole discretion);

- User Content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party or violate any local, state, national or international law;
- User Content that may infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party;
- User Content that impersonates any person or entity or otherwise misrepresents your affiliation with a person or entity; or that provides private information of any third party including addresses, phone numbers, email addresses, Social Security numbers and similar information;
- User Content that, in our sole discretion, is objectionable or which restricts or inhibits any other person from using and/or benefiting from our Services, including, without limitation, User Content that contains or installs any viruses, worms, malware, Trojan horses or other harmful or destructive content;
- User Content that is spam, is machine- or randomly-generated, contains unethical or unwanted commercial content, furthers unlawful acts (such as phishing) or misleads recipients as to the source of the material (such as spoofing);
- User Content that in any way refers to or depicts persons under 18 years of age;
- User content that attempts to disrupt the Site or Services.

We take no responsibility and assume no liability for any User Content posted, stored or uploaded by you or any third party, or for any loss or damage thereto, nor are we liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity you may encounter.

As a provider of interactive services, we are not liable for any statements, representations, User Content or Advertiser and Corporate Partner Content (as defined below) provided by users in any form whatsoever on any area of the Site or through the Services. Although we have no obligation to screen, edit or monitor any of the User Content or Advertiser and Corporate Partner Content posted anywhere on the Site or through the Services, we reserve the right, and have absolute discretion, to remove, screen or edit any User Content and Advertiser and Corporate Partner Content posted or stored on the Site or through the Services at any time and for any reason without notice. You are solely responsible for creating backup copies of and replacing any User Content you post or store on the Site or through the Services, at your sole cost and expense.

We do not own the User Content you post on or otherwise select or submit to the Site, but in posting and/or otherwise submitting User Content to the Site and/or using the Services, you grant us an irrevocable, worldwide, transferable, nonexclusive, royalty-free and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such User Content and any information, data or other material generated through the use of the Services on or in any and all media (now known or hereafter developed). You also hereby grant each user of the Site and/or the Services a non-exclusive license to access your User Content and any information, data or other material generated through the use of the Site and/or the Services, and to use, reproduce, distribute, prepare derivative works of, display and perform such User Content and information, data or other material generated through the use of the Site, the Services and under these Terms.

7. Third Party Links

The Site may contain links to sites not under the control of Nouvola. Nouvola does not assume, and expressly disclaims any and all, responsibility for the content of any page not on the Site. Links to third-party web sites on the Site are provided solely as a convenience to you. Nouvola has not reviewed these third-party web sites, and does not control and is not responsible for any such sites or content displayed thereon. If you decide to access any of the third-party sites linked to the Site, you do so entirely at your own risk, and the inclusion of any third-party link on the Site does not imply any endorsement or guarantee whatsoever by Nouvola of such third-party site. Once you link to a third-party site, you are subject to the terms of use and privacy policy of such site.

8. Modifications to the Services

The Services that Nouvola provides are always evolving and the form and nature of the Services that Nouvola provides may change from time to time without prior notice to you. In addition, Nouvola may stop (permanently or temporarily) providing the Site and/or the Services (or any features within the Site and/or the Services) to you or to users generally and may not be able to provide you with prior notice. We also retain the right to create limits on your use and storage of User Content at our sole discretion at any time without prior notice to you.

9. Term and Termination

Your account will remain in effect until the earlier of your cancellation or our termination of your account in accordance with these Terms. To cancel your account, please email us at info@novola.com. Notwithstanding anything to the contrary herein, we have the right, without notice and in our sole discretion, to terminate your license to use the Site and/or the Services, and to block or prevent your future access to and use of the Site and/or the Services.

10. Advertisements and Promotions

We may now or in the future allow advertisers and corporate partners to post content on the Site and within our Services and provide links to sites and content of third parties (collectively the “**Advertiser and Corporate Partner Content**”) as a service to those interested in this information. These advertisements may be targeted to users based on information provided while registering for an account, through use of the Site or the Services, through queries made through the Services or based other information. We do not control, endorse or adopt any Advertiser and Corporate Partner Content and we make no representation or warranties of any kind regarding the Advertiser and Corporate Partner Content. The types and extent of advertising by Nouvola on the Site or in connection with the Services are subject to change. Nouvola may use data and information received or generated through your use of the Services to identify other potential users of the Services, demonstrate the capabilities of the Services and/or pursue additional marketing and promotional activities.

11. Feedback

You acknowledge and agree that any feedback, including but not limited to suggestions, comments, ideas or other information, provided by you in the form of email or other submissions (collectively, “**Feedback**”) to us is non-confidential and you hereby grant Nouvola, its affiliates, subsidiaries, successors and assigns an irrevocable, worldwide, transferable, nonexclusive, royalty-free and fully sublicensable right to use such Feedback for any purpose without any compensation or attribution to you.

12. Indemnification

You agree, at your sole expense, to defend, indemnify and hold us, our independent contractors, service providers and consultants, and their respective directors, employees and agents, harmless from and against any and all actual or threatened suits, actions, legal proceedings, judgments, and any other legal

claims, damage awards, or other compulsory payment or performance of any kind arising out of, resulting from, attributable to or in any way incidental to: (i) your use of the Site, the Services and/or the Site Materials; (ii) your conduct; (iii) your violation of these Terms; (iv) your violation of the rights of any third party; and (v) any User Content posted by you.

13. Disclaimer of Warranties

THE SITE, THE SERVICES, THE SITE MATERIALS AND ALL USER CONTENT, OTHER SUBMISSIONS AND OTHER MATERIALS, INFORMATION, PRODUCTS AND SERVICES INCLUDED IN OR MADE AVAILABLE IN CONNECTION WITH THE SITE, THE SERVICES AND THE SITE MATERIALS ARE PROVIDED "AS IS," WITH NO WARRANTIES WHATSOEVER. NOUVOLA AND OUR LICENSORS EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. NOUVOLA AND OUR LICENSORS DISCLAIM ANY WARRANTIES REGARDING THE ACCURACY, SECURITY, RELIABILITY, TIMELINESS, AVAILABILITY, COMPATIBILITY AND PERFORMANCE OF THE SITE, THE SERVICES, THE SITE MATERIALS AND THE USER CONTENT. NOUVOLA AND OUR LICENSORS DISCLAIM ANY WARRANTIES FOR SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE SITE OR IN CONNECTION WITH THE SERVICES OR RECEIVED THROUGH ANY LINKS DISPLAYED ON THE SITE OR THROUGH THE SERVICES OR ANY USER CONTENT, AS WELL AS FOR ANY INFORMATION OR ADVICE RECEIVED THROUGH ANY LINKS DISPLAYED ON THE SITE OR THROUGH THE SERVICES OR ANY USER CONTENT.

YOU AGREE THAT YOUR USE OF THE SITE, THE SERVICES, THE SITE MATERIALS AND ALL USER CONTENT SHALL BE AT YOUR SOLE RISK.

YOU UNDERSTAND AND AGREE THAT YOU DOWNLOAD OR OTHERWISE OBTAIN MATERIAL OR DATA THROUGH THE USE OF THE SITE AND/OR THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY USER CONTENT, AT YOUR OWN DISCRETION AND RISK. NOUVOLA DOES NOT WARRANT THAT THE SITE, THE SERVICES, THE SITE MATERIALS OR ANY USER CONTENT WILL BE ERROR-FREE, THAT ACCESS THERETO WILL BE UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT DATA WILL NOT BE LOST OR THAT THE SITE OR THE SERVER THAT MAKES SUCH CONTENT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. IN SUCH EVENT, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. NOUVOLA DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE SITE, THE SERVICES, THE SITE MATERIALS OR ANY USER CONTENT. YOU HEREBY IRREVOCABLY WAIVE ANY CLAIM AGAINST NOUVOLA, ITS AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS WITH RESPECT TO THE SITE, THE SERVICES, THE SITE MATERIALS AND THE USER CONTENT AND ANY CONTENT YOU PROVIDE TO THIRD PARTIES (INCLUDING CREDIT CARD AND OTHER PERSONAL INFORMATION).

14. Limitation of Liability

NOUVOLA, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS ASSUME NO LIABILITY OR RESPONSIBILITY FOR, AND IN NO EVENT, INCLUDING NEGLIGENCE, SHALL NOUVOLA, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS, BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM, ANY:

- PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SITE, THE SERVICES, THE SITE MATERIALS OR ANY USER CONTENT;
- UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN;
- INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SITE;
- BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE SITE, OR SITES LINKED TO BY THIS SITE, BY ANY THIRD PARTY; AND/OR
- ERRORS OR OMISSIONS IN ANY CONTENT MADE AVAILABLE BY NOUVOLA OR ITS USERS, OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED OR OTHERWISE MADE AVAILABLE VIA THE SITE, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT NOUVOLA IS OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. IN NO EVENT SHALL NOUVOLA'S AGGREGATE LIABILITY EXCEED \$100.00. THIS ALLOCATION OF RISK UNDER THESE TERMS IS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS SHALL BE SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS SET FORTH IN THESE TERMS. THE LIMITATIONS IN THIS SECTION SHALL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

Some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, so the above limitation may not apply to you.

15. Copyright Infringement and Complaints

We reserve the right to remove Content alleged to be infringing copyright without prior notice, at our sole discretion, and without liability to you. In appropriate circumstances, Nouvola will also terminate a user's account if the user is determined to be a repeat infringer. Our designated copyright agent for notice of alleged copyright infringement appearing on the Services is:

*CloudyDays, Inc.
Attn: Copyright Agent
805 SW Broadway, Suite 2440
Portland, OR 97205
Email: info@nouvola.com*

16. Privacy Policy

Please refer to our Privacy Policy, which also applies to your access and use of the Site and the Services, and describes our practices and policies related to the collection, use and storage of information about users of the Site and/or the Services.

17. Consent to Electronic Communications

By accessing the Site and/or using the Services, you consent to receiving electronic communications from us. Such communications may include notices about your account and information concerning or relating to the Services. You agree that any electronic notices, agreements, disclosures or other communications will satisfy any legal communication requirements, including any requirements that such communications be in writing.

18. Applicable Law and Venue

These Terms and your use of the Site and/or the Services will be governed by and construed in accordance with the laws of the State of Oregon, applicable to agreements made and to be entirely performed within the State of Oregon, without resort to its conflict of law provisions. You agree that any action at law or in equity arising out of or relating to these Terms or your use of the Site and/or the Services will be filed only in the state and federal courts located in Oregon and you hereby irrevocably and unconditionally consent and submit to the exclusive jurisdiction of such courts over any suit, action or proceeding arising out of these Terms and/or your use of the Site and/or the Services.

19. Entire Agreement

These Terms, including all Policies, constitute the entire agreement between Nouvola and you concerning the Site and the Services. These Terms supersede any and all prior agreements or communications between Nouvola and you concerning the subject matter of these Terms.

Questions & Contact Information

Questions, comments and any other correspondence regarding our site may be directed to us at the email address info@novola.com

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