

# Terms & Conditions for GCLOUD Services from Cloudsoft

## DEFINITIONS

In the context of this Professional Service Offer. The following terms shall have the meanings given to them below:.

**“Acceptance”** means acceptance of a Deliverable in accordance with the Acceptance Criteria and **“Accepted”** shall be construed accordingly;

**“Acceptance Criteria”** means the mutually agreed criteria as set out in a Statement of Work to determine the successful completion and acceptance of any Deliverable;

**“Acceptance Testing Process”** means the process describing the tests that the Deliverables shall be put through during acceptance testing as detailed in the Statement of Work;

**“Business Day”** means any day other than a Saturday, Sunday or any day which is a public holiday;

**“Change Request Notice”** means a notice for a variation to the Statement of Work pursuant to Clause 19, substantially in the form set out in the Statement of Work;

**“Confidential Information”** means all information of a confidential or trade secret nature relating to either Party and/or their respective Group Companies and/or its or their respective clients and suppliers and staff disclosed by either Party or either Party’s Group Companies to the other Party (whether in writing, verbally or by any means and whether directly or indirectly), whether before or after the date of this Agreement. The contents of this Agreement shall be deemed to be Confidential Information as shall Cloudsoft’s Materials;

**“Cloudsoft’s Materials”** means (i) the generic programs, solutions and development tools of Cloudsoft and its personnel from time to time (whether or not created during the provision of the Services) and (ii) all other materials owned or licensed by Cloudsoft and used by Cloudsoft or its personnel to perform the Services and develop the Deliverables and which were not created or prepared pursuant to this Agreement or within the scope of the Services provided under this Agreement;

**“Data Protection Legislation”** means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;

**“Deliverables”** means the work product to be supplied by Cloudsoft to the Client on the terms of this Agreement, as more particularly described in the Statement of Work but notwithstanding any other provision to the contrary of this Agreement, excluding Cloudsoft’s Materials and any Open Source Contributions;

**“Fees”** means the fees set out in each Statement of Work;

**"Force Majeure Event"** means any event beyond the reasonable control of a Party including, without limitation, strikes, lock-outs and/or labour disputes (except those involving the workforce of the Parties), acts of God, war, riot, civil commotion, malicious damage, overriding emergency procedures, fire, flood or storm but not the failure of a Party’s agents or contractors;

**“Good Industry Practice”** means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced provider of services similar to those provided by Cloudsoft pursuant to this Agreement under the same or similar circumstances;

**“Group Company”** means in relation to any company, any body corporate which is from time to time a holding company of that company, a subsidiary of that company or a subsidiary of a holding company of that company (“holding company” and “subsidiary” having the meanings attributed to them by s.1159 of the UK Companies Act 2006) and shall include any company in which a Group Company has a shareholding of 50% or more;

**“Intellectual Property”** means all intellectual property, including patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names and domain names, rights to goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**“Open Source Contributions”** means any software, including source code and/or object code, documentation, or modifications to the foregoing, which has been explicitly marked to indicate that it is a contribution any open source project;

**“Party”** means a party to this Agreement;

**“Term”** means the term of this Agreement

**“Testing Date”** the date on which the Client will carry out the Acceptance Tests as detailed in the Statement of Work or as otherwise agreed between the Parties.

In this Agreement unless the context otherwise requires:

- Words importing any gender include every gender;
- Words importing the singular number include the plural number and vice versa;
- Words importing persons include firms, companies and corporations and vice versa;
- Words reference to "include" or "including" are to be construed without limitation;
- A reference to a Party includes that Party's permitted assigns, transferees and successors in title;
- Any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- Any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done; and
- Any Party who agrees to do something will be deemed to fulfil that obligation if that Party procures that it is done.

## SERVICES

The Client appoints Cloudsoft to provide the Services and Deliverables relating to Projects during the Term. Cloudsoft agrees to provide the Services and Deliverables on the terms and conditions of this Agreement.

## DURATION

This Agreement shall commence on the date this Agreement is executed and continue until project completion unless terminated beforehand in accordance with this Agreement.

## ASSIGNMENT

This Agreement is personal to the Parties and shall not be assigned, novated or otherwise transferred without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed). The Client may assign, novate or otherwise transfer any or all of its rights and obligations under this Agreement to a Group Company.

## CONTRACTOR OBLIGATIONS

Cloudsoft shall ensure that its employees, agents and subcontractors shall act in a competent and professional manner and in accordance with Good Industry Practice and shall ensure that Cloudsoft and all employees, agents and subcontractors providing the Services have all the necessary and recommended qualifications, accreditations, training and registrations to provide the Services.

Cloudsoft shall fully comply with all reasonable policies of the Client relevant to the Services as notified to Cloudsoft by the Client from time to time, and with all reasonable instructions of the Client.

Cloudsoft shall (subject to an appropriate confidentiality undertaking being secured from any relevant third party) comply with any reasonable request by the Client to co-operate with any other independent contractors appointed by the Client in connection with the subject matter of this Agreement.

## ACCOUNT GOVERNANCE

Each Party will designate a key contact (the “Nominated Person”) who shall be responsible for the coordination of all matters relating to the Agreement. There shall be regular review meetings at either the Client or Cloudsoft’s premises or as conference call (as agreed between the Parties from time-to-time) which the Nominated Persons and any relevant stakeholders from the Parties shall attend. These meetings shall provide a forum to discuss the progress of the Services and Projects and any issues arising therefrom.

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## FEES

The Fees payable for the Services shall be calculated in accordance with the rates set out in the Statement of Work.

- Daily fee rates are calculated on the basis of an seven-hour day worked weekdays (excluding weekends and public holidays);
- Cloudsoft shall ensure that its staff involved in the provision of the Services complete time sheets recording time spent on the Project, and Cloudsoft shall use such time sheets to calculate the Fees covered by each monthly invoice referred to in Clause 7.2.6;
- Where the Statement of Work sets out a minimum amount of billable time in a given period or where a quantum of time is allocated by Cloudsoft by agreement with the Client such time will be chargeable in lieu of actual time or recorded time sheets;
- Where the Statement of Work sets out a maximum amount of billable time Cloudsoft is entitled not to work on the Project beyond the maximum time and the Client is entitled not to pay for time beyond this maximum, unless otherwise agreed by both parties. Where it is agreed for Cloudsoft to work on the Project for additional time, unless it is otherwise indicated, such work will be charged at the same rate and under the same terms as set out in the Statement of Work; and
- Cloudsoft shall invoice the Client according to the invoicing profile set out in the Statement of Work
- Cloudsoft’s fees are detailed in The Statement of Work..

The Client shall pay the Fees to Cloudsoft within 30 days of receipt of a valid invoice from Cloudsoft. Sales Tax (if applicable) shall be paid in addition.

In no circumstances shall the Client be liable to pay to Cloudsoft any fees, costs or expenses whatsoever in addition to the Fees unless specified in the Statement of Work or otherwise agreed by both Parties in writing.

Either Party may charge interest from day to day at 4% per annum above the base rate of the Bank of England from time to time or such other rate as may replace it on any sums not paid to them by their due date. The Parties agree that this remedy provides the payee Party with a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 and that the Parties waive and exclude the statutory right to interest otherwise granted under such Act.

New fees will be applied only to new Statement of Works, which are subject to agreement by the parties.

## GENERAL

No delay by either Party in enforcing any of the provisions of this Agreement shall be deemed a waiver of that Party’s right to enforce that provision.

In the event that any Clause (or part Clause) of this Agreement being in breach or unenforceable under any applicable English rule of law or legislation it shall be of no effect but all other provisions of this Agreement shall remain in full force and effect and shall be severable from such offending Clause or part Clause and the Parties shall consult each other in order to replace the breaching or unenforceable provision and shall agree on a new provision, which approximates the aim and purport of the breaching or unenforceable provision as closely as possible.

Save that the Client or any Group Company may enforce the terms of this Agreement in accordance with its terms and in accordance with the Contracts (Rights of Third Parties) Act 1999, no term of this Agreement shall be enforceable under that Act by a third party.

This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Agreement. Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding of any person (whether Party to this Agreement or not) other than as expressly set out in this Agreement as a warranty. Nothing in this Clause, however, shall operate to limit or exclude any liability for negligence or fraud.

This Agreement may only be varied in writing signed by an authorised representative of each Party.

Each Party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation and execution of this Agreement.

This Agreement is made only in the English language. If there is any conflict in meaning between the English language version of this Agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

This Agreement shall be governed by and construed in accordance with English law and the Parties hereby submit to the non-exclusive jurisdiction of the English courts.

This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same instrument. Faxed or scanned signatures shall be sufficient to bind the Parties to this Agreement or Statement of Work.

## SUBCONTRACTORS

Cloudsoft shall not, without the prior written consent of the Client, sub-contract the whole or any part of the Services. In the event that the Client gives its consent to Cloudsoft to sub-contract any of its obligations under this Agreement, Cloudsoft shall retain primary liability for the acts and omissions of its subcontractors as if they were its own.

## CONFIDENTIALITY

Both during and after the Term (howsoever terminated), each Party shall keep confidential all Confidential Information and shall not disclose the same in any form or any information contained therein to any third party without the other Party's prior written consent.

The provisions of this Clause shall not apply to any Confidential Information to the extent that such information:

- Is in the public domain or becomes publicly known otherwise than by breach of this Agreement. 1.1 which the receiving Party can show by its written records was in its possession prior to receiving it from the disclosing Party (or from a third party on its or their behalf) and which it had not previously obtained from the disclosing Party (or from a third party on its or their behalf) under an obligation of confidence.
- is acquired by the receiving Party from someone other than the disclosing Party who was entitled to disclose the Confidential Information to the receiving Party without imposing an obligation of confidence; or
- is required to be disclosed by law, by any court of competent jurisdiction or by any other regulatory body. In such cases, the receiving Party shall as soon as reasonably practicable and to the extent permitted by law notify the disclosing Party of such required disclosure in writing.

## DATA PROTECTION

The Parties hereby agree that they shall both comply with all applicable data protection requirements set out in the Data Protection Legislation. This Clause shall not relieve either Party of any obligations set out in the Data Protection Legislation and does not remove or replace any of those obligation. For the purposes of the Data Protection Legislation and for this Clause, the Client is the "Data Controller" with Cloudsoft being Data Processor

The type(s) of personal data, the scope, nature and purpose of the processing, and the duration of the processing are set out in the Statement of Work.

## INTELLECTUAL PROPERTY

Nothing in this Agreement shall affect the ownership of Intellectual Property rights existing prior to this Agreement or generated outside the scope of the Services ("Background Intellectual Property") and no right, title or interest in a Party's Intellectual Property rights (including without limitation Cloudsoft's Materials in the case of Cloudsoft) shall pass to the other Party except as specifically provided for in this Agreement.

To the extent that Cloudsoft is required to develop artefacts including scripts, blueprints, and other material as part of a Project ("Foreground Intellectual Property"):

13.1. Where these are addressed at Client-specific software and systems, including where Cloudsoft are engaged via a Statement of Work, to develop software (Intellectual Property) for the Client, they shall be owned by the Client, unless other provisions are made.

13.2. Where these are addressed using Cloudsoft-owned configuration and artefacts (e.g., Terraform modules or CloudFormation templates), these will remain the property of Cloudsoft and all rights will be retained by Cloudsoft. To ensure the Client is not locked in to working with Cloudsoft products and services, Cloudsoft grants the Client a non-exclusive, irrevocable, perpetual licence to use, develop, modify and maintain these scripts, blueprints and other materials.

13.3. Where these are addressed at appropriately licensed open source or open core components this code will be Cloudsoft-owned and either contributed to the relevant open source project, contributed to the Apache Software Foundation, or offered to the Client as part of a managed services or software subscription, unless other provisions are made.

13.4. In order to enable Cloudsoft to support Cloudsoft-developed, Client-owned material on an ongoing basis, the Client hereby grants Cloudsoft a non-exclusive, irrevocable, perpetual, royalty free licence to use, develop, modify and maintain any such material for the Client and further, subject to the Client's approval, to bundle any such material as part of a subscription for delivery to the Client and parties approved by the Client. The Client's approval will not be unreasonably withheld or delayed provided all Client Confidential Information is deleted or modified at the Client's request. For the avoidance of doubt, no rights are transferred to Cloudsoft either to own, to distribute Client-owned material to other parties, or to use it for purposes other than the Client's interest.

13.5. Work will be committed to a private source code repository shared between the Client and Cloudsoft, and will be treated as confidential information, unless other provisions are made and excepting where it has been agreed that the material is being contributed to an open source project.

In its work with the customer Cloudsoft may have access to Personal Data in two key ways:

- Conducting Business between the Client and Cloudsoft including: exchanging emails, sending letters, sending invoices, recording deals, etc. For this purpose Cloudsoft are a data processor.
- Accessing the Client's cloud infrastructure in which they may have personal data regarding their employees and customers. Cloudsoft has no requirement for access to personal data for processing purposes in the course of the services that shall be delivered under this MSA. However the practical steps that can be undertaken to prevent any unintended access to personal data are detailed for clarity.

In order for Cloudsoft to conduct business we hold the following types of Identification about clients for the purposes of exchanging emails, customer requested information such as Statements of Work and Proposals, Meeting minutes and agendas sending letters, sending invoices, recording deals:

- Title
- Name
- Job Title
- Business Email address
- Business Telephone information

This data is protected by a number of practical controls including:

- Systems protection via Cloudsoft Identity and Access Management controls (E.g. Least Privileged Access, MFA, Strong Password Management, Logging and Auditing);
- Employee Mandates and Guidance (E.g. Contractual Confidentiality clauses; Employees Policies);
- Employee Security Training and coaching.

Cloudsoft is not providing infrastructure to the customer and may only access the Client's cloud infrastructure following the Client's Identity and Access Management tool. There is no requirement for the activities undertaken by Cloudsoft to include any access to personal information held within these systems. However there are a number of practical tools that protect any data in these systems:

- Cloudsoft shall be subject to the Identity and Access Management policies of the Client when accessing systems, which shall be proportionate to, and restricted to, the requirements of the work detailed in Statements of Work.
- Regardless of these technical controls Cloudsoft employees are subject to Employee Mandates and Guidance (E.g. Contractual Confidentiality clauses; Employees Policies);
- Cloudsoft employees are provided with security training and coaching.

## NOTICE

Any notice given under this Agreement shall be in writing and sent or delivered to the address of the recipient Party as given in this Agreement (or as from time to time otherwise notified in writing) (i) by e-mail, in which case it shall be deemed received at the time it is sent and a successful reception by the receiptient Party; (ii) by hand (including by courier), in which case it shall be deemed received when delivered; (iii) by ordinary first class post (where the recipient is in the same jurisdiction as the sender), in which case it shall be deemed received two Business Days after posting; or (iv) by airmail (where the recipient is in the same jurisdiction as the sender), in which case it shall be deemed received seven Business Days after posting.

## FORCE MAJEURE

If either Party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event then:

- That Party's obligations under this Agreement shall be suspended for so long as and to the extent that the Force Majeure Event continues provided that, as soon as reasonably possible after the Force Majeure Event starts, the affected Party shall have notified the other Party of the occurrence of the Force Majeure Event; and
- the affected Party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Agreement.

The Parties agree that the Client shall not be required to make any payment for any period in which Cloudsoft delays or fails to perform its obligations under this Agreement due to a Force Majeure Event.

If the Force Majeure Event continues for more than 30 days after the start of the Force Majeure Event the unaffected Party may terminate this Agreement immediately upon notice in writing to the other Party.

## PUBLICITY

Neither Cloudsoft, nor any of its employees, agents or authorised sub-contractors shall, without the prior written consent of the Client, advertise or otherwise make publicly known that Cloudsoft is performing the Services for the Client

## WARRANTIES

Cloudsoft warrants and represents that:

- It has legal power, authority and right to enter into this Agreement and to perform its obligations under this Agreement;
- it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- It will provide the Services in accordance with Good Industry Practice.;

That the Deliverables on Acceptance, and for any warranty period set out in the Statement of Work, will perform in accordance with the Statement of Work and shall be free from defects; and the Deliverables and the media on which the Deliverables are delivered are free from viruses and other malicious code.

The provisions of these warranties shall survive any performance, acceptance or payment pursuant to this Agreement and shall extend to any substituted or remedial services provided by Cloudsoft.

## LIABILITIES

In no event will the aggregate liability of either Party or its representatives for any damages or claims arising out of or relating to this Agreement, whether in contract, tort, or otherwise, exceed the lower of 125% of the amount of Fees paid or payable by the Client under this Agreement in the 12 month period preceding the claim (in the event that the claim arises in the first 12 months of this Agreement then a reasonable estimate of the Fees to be paid or payable over the first 12 months will be used when determining the limit of liability).

Neither Party shall be liable to the other Party for any special, incidental, indirect, punitive or consequential damages, whether or not foreseeable, arising out of or in connection with the Agreement whether arising in contract, tort, or otherwise. Except nothing in this Agreement excludes the liability of either Party for death or personal injury caused by the other Party's negligence or for fraud or fraudulent misrepresentation, or any other liability that cannot lawfully be excluded.

## STATUS & TAX LIABILITIES

None of the provisions of this Agreement shall be deemed to constitute a partnership or an employment relationship or an agency between the Parties and neither of them shall have any authority to bind the other in any way.

The Parties declare that it is their intention that Cloudsoft shall have the status of an independent contractor and neither Cloudsoft nor its employees, agents or subcontractors shall be entitled to any pension, bonus or other fringe benefits from the Client. It is agreed that Cloudsoft shall be responsible for all income tax or equivalent liabilities and National Insurance or similar contributions in respect of the Fees. Cloudsoft agrees to indemnify and keep indemnified the Client against all demands for any income tax or the equivalent, National Insurance Contributions or the equivalent, penalties and interest made against it in respect of the Services and against the costs of dealing with such demands.

## DISPUTE RESOLUTION

Before initiating a formal procedure for the settlement of disputes, the Parties shall first attempt to reach an informal solution to the dispute by doing their best to attempt to solve all disputes at the lowest possible hierarchical level through the account governance process set out above and any other ordinary channels and procedures as agreed between the Parties from time to time.

Should the Parties fail to reach an agreement within a reasonable timeframe, then the aggrieved Party may give notice to the Nominated Person of the other Party stating the nature of the dispute. The Nominated Persons and any other relevant stakeholders from each Party shall meet in person or communicate by telephone within 10 Business Days of the date of the Notice in order to resolve the dispute in good faith.

If the Parties, acting reasonably and in good faith, are still unable to resolve any such dispute within 10 Business Days of the meeting described in Clause 21.2, then the dispute shall be escalated as appropriate to directors or other senior representatives of the Parties for resolution.

## TERMINATION

Without prejudice to any other rights or remedies either Party may have against the other, either Party (“terminating party”) may by notice in writing to the other Party (“defaulting party”) immediately terminate this Agreement if the defaulting party shall:

be in breach of any of the terms of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the defaulting party within 14 days of receipt by the defaulting party of a notice from the terminating party specifying the breach and requiring its remedy or, having remedied, subsequently commits a similar breach in the next 90 days; or be unable to pay its debts as they fall due or make any voluntary arrangement with its creditors, become subject to an administration order, have an administrative receiver or receivers appointed in respect of the whole or any part of its assets, go into liquidation (voluntary or otherwise save for any voluntary liquidation entered into solely for the purposes of a bona fide reconstruction or amalgamation) or be made the subject of a bankruptcy order or ceases or threatens to cease carrying on its business.

The Client may terminate this Agreement on notice in writing to Cloudsoft if Cloudsoft undergoes a change in control which results in Cloudsoft being controlled by a direct competitor of the Client (where ‘control’ means the power of a person to secure that its affairs are conducted in accordance with the wishes of that person either (i) by means of the holding of shares or the possession of voting power in or in relation to Cloudsoft; or (ii) by virtue of any powers conferred by the articles of association or other document regulating Cloudsoft).

The Client may terminate this Agreement at any time for its convenience by giving Cloudsoft not less than 90 days’ written notice, in which case the Client agrees to pay Cloudsoft all Fees due to Cloudsoft and any additional irrecoverable costs incurred by Cloudsoft, up to the date of termination. Cloudsoft may terminate this Agreement at any time for its convenience by giving the Client not less than 90 days’ written notice, in which case Cloudsoft agrees to refund to the Client all Fees paid by the Client which represent payment for Services not delivered to the Client by Cloudsoft as at the date of termination.

Termination of this Agreement (the Statement of Work plus these Terms and Conditions) shall not affect the continuance of any other Agreements then in force between the Parties.

## EFFECT OF TERMINATION

All Confidential Information, personal data and any other information, document, materials or other items concerning the business of the Client in the possession or control of Cloudsoft shall be delivered up to the Client as soon as practicable after the completion of the Services or the earlier termination of this Agreement.

All Confidential Information, personal data and any other information, document, materials or other items concerning the business of Cloudsoft in the possession or control of the Client shall be delivered up to Cloudsoft as soon as practicable after the completion of the Services or the earlier termination of this Agreement

On termination of this Agreement by the Client, Cloudsoft shall immediately after all outstanding sums have been paid to Cloudsoft in full deliver to the Client all specifications, programs (including source codes) and other documentation which constitute Deliverables and existing at the date of such termination, whether or not then complete, in respect of which the Client has paid Cloudsoft.

All provisions of this Agreement which are intended to have effect or to bind either Party following any expiry or termination of this Agreement or its transfer or assignment in whole or in part, including Confidentiality, shall survive expiry or termination of this Agreement to the extent permissible by law.

## CLOUDSOFT CORPORATION LTD

### POSTAL ADDRESS:

**4TH FLOOR, 7 CASTLE STREET, EDINBURGH,  
UNITED KINGDOM, EH2 3AH**

### REGISTERED ADDRESS:

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QUEENSFERRY ROAD, EDINBURGH, UNITED  
KINGDOM, EH4 2HS**

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### ACCOUNTS PAYABLE: ANEL DU PREEZ

### ACCOUNTS PAYABLE EMAIL:

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