

Cloud 21 Limited

Standard Terms and Conditions for the Supply of Services

Version: **1.2**

1 Interpretation

In these terms and conditions:

- 1.1 **"Business Day"** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.2 **"Charges"** mean the agreed charges for the Specified Services, as set out in the Specification Sheet.
- 1.3 **"Client"** means the legal entity named on the Specification Sheet for whom Cloud 21 has agreed to provide the Specified Service in accordance with these terms and conditions.
- 1.4 **"Client Responsibilities"** the Client's duties in relation to the Specified Service, as set out in the Specification Sheet.
- 1.5 **"Cloud 21"** means Cloud 21 Limited, a company registered in England and Wales with company number 06907257 and whose principle place of business is Suite 1, 40 Churchill Square, Kings Hill, West Malling, Kent, England, ME19 4YU.
- 1.6 **"Contract"** means the contract for the provision of the Specified Service between Cloud21 and the Client.
- 1.7 **"Input Materials"** means any information, data, materials, or dependencies that Cloud 21 requires to be provided by the Client in order for Cloud 21 to supply the Specified Services, including the Client Responsibilities.
- 1.8 **"Intellectual Property Rights"** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.
- 1.9 **"Output Materials"** means any documents, materials, data, software programs, codes, information and deliverables, in whatever form, provided by Cloud 21 as a product of the Specified Service.
- 1.10 **"Personnel Service"** means any Specified Service where the Charges agreed are to be charged on the basis of a daily or an hourly rate.
- 1.11 **"Specification Sheet"** means the sheet to which these terms and conditions are attached.
- 1.12 **"Specified Service"** means the service to be provided by Cloud 21 for the Client set out in the Specification Sheet.
- 1.2 Headings in these terms and conditions are for convenience only and shall not affect their interpretation.
- 1.3 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time.
- 1.4 A reference to **"writing"** or **"written"** includes email.

- 1.5 Any words following the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Supply of the Specified Service

- 2.1 Cloud 21 agrees to supply the Specified Services to the Client subject to these terms and conditions. Any changes or additions to the Specified Service or these terms and conditions must be agreed in writing by Cloud 21 and the Client.
- 2.2 The Client shall, at its own expense, provide the Input Material within sufficient time for Cloud 21 to be able to provide the Specified Service. The Client shall keep duplicate copies of all Input Material and Cloud 21 shall have no liability for loss or damage to Input Material however caused.
- 2.3 Cloud 21 may at any time and without notice make changes to the Specified Services that are necessary to comply with any applicable safety or statutory requirements or which do not materially affect the nature and quality of the Specified Service.

3 Charges and Payment

- 3.1 The Client shall pay the Charges.
- 3.2 and any additional sums which are agreed between Cloud 21 and the Client for the provision of the Specified Services or which, in Cloud 21's reasonable discretion, are required as a result of the Client's instructions or lack of instructions, the inadequacy of any Input Material or any other cause attributable to the Client.
- 3.3 Unless the parties have agreed otherwise in writing, Cloud 21 shall invoice the Client:
- 3.3.1 for Specified Service Charges, monthly in arrears for each Specified Service (or part thereof) completed in that month; and
- 3.3.2 for Personnel Service Charges, following the end of the month such services were delivered.
- 3.4 The Charges are exclusive of travelling, subsistence and other legitimate expenses and any Value Added Tax (or equivalent), for which the Client shall be additionally liable at the applicable rate.
- 3.5 The Charges and any additional sums payable shall be paid by the Client without set off or deduction within 30 days of the date of Cloud 21's invoice.
- 3.6 If payment is not made on the due date, Cloud 21 shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after judgement) at the rate of 4% above the base rate from time to time of Lloyds TSB Bank from the due date until the outstanding amount is paid in full.
- 3.7 Where the Specified Service is a Personnel Service, Cloud 21 may vary the Charges from time to time on three months' written notice to the Client. The price increase shall take effect automatically on expiration of the notice period.

4 Rights in Input Material and Output Material

- 4.1 The property and any Intellectual Property Rights in:
- 4.1.1 any Input Material shall belong to the Client; and
- 4.1.2 any Output Material shall, unless otherwise agreed in writing between Cloud 21 and the Client, belong to Cloud 21, subject only to the right of the Client to use the Output Material for the purposes of utilising the Specified Service.

4.2 The Client:

- 4.2.1 warrants that the receipt and use of the Input Materials in the performance of the Contract by Cloud 21, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 4.2.2 shall indemnify Cloud 21 in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Cloud 21 arising out of or in connection with any claim brought against Cloud 21, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of the Contract of the Input Materials.

4.3 Cloud 21:

- 4.3.1 warrants that the receipt of the Output Materials, and their use by the Client for the purpose of receiving the Specified Services, shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 4.3.2 shall indemnify the Client in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Client arising out of or in connection with any claim brought against the Client, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt of the Output Materials or their use for the purpose of receiving the Specified Services.

5 Warranties

5.1 Cloud 21 warrants that the Specified Service:

- 5.1.1 will be provided using reasonable care and skill using suitably trained and experienced personnel;
- 5.1.2 in accordance with all applicable laws; and
- 5.1.3 shall, as far as reasonably practical, be performed in accordance with the Specification Sheet at the intervals and times referred to in the Specification Sheet. If no time for performance is specified then the Client shall perform the Client Responsibilities without undue delay.

5.2 The Client warrants that it will perform the Client Responsibilities:

- 5.2.1 using reasonable care and skill using suitably trained and experienced personnel;
- 5.2.2 in accordance with all applicable laws; and
- 5.2.3 in accordance with any times for performance set out in the Specification Sheet or otherwise agreed in writing between the parties from time to time. If no time for performance is specified then the Client shall perform the Client Responsibilities without undue delay.

5.3 Cloud 21 shall have no liability to the Client for any loss, damages, costs, expenses, or other claims arising from:

5.3.1 any Input Material that is incomplete, inaccurate, incorrect, corrupted, defective or in the wrong form; or

5.3.2 the Client's late performance, or non-performance, of the Client Responsibilities.

6 Liability

6.1 References to liability in this clause 6 include every kind of liability arising under or in connection with the Contract, including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

6.2 Nothing in these terms and conditions limits any liability which cannot legally be limited, including but not limited to liability for:

6.2.1 death or personal injury caused by negligence;

6.2.2 fraud or fraudulent misrepresentation; and

6.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

6.3 Subject to clause 6.2, Cloud 21's liability for the following types of losses is excluded:

6.3.1 loss of profits;

6.3.2 loss of sales or business;

6.3.3 loss of agreements or contracts;

6.3.4 loss of anticipated savings;

6.3.5 loss of use or corruption of software, data or information;

6.3.6 loss of or damage to goodwill; and

6.3.7 indirect or consequential loss.

6.4 Subject to clause 6.2 and clause 6.3, Cloud 21's total liability to the Client under the Contract shall be capped at 100% of the Charges incurred during the previous 12-month rolling period.

6.5 Cloud 21 shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly.

7 Confidentiality

7.1 Each party undertakes that it shall not at any time during the provision of the Specified Services, and for a period of four years after completion of the Specified Services (or, if earlier, termination of the Contract), disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 7.3.

7.2 The parties agree that for the purposes of clause 7.1:

7.2.1 Cloud 21 shall treat as confidential all Input Materials and Output Materials which are marked as confidential by the Client; and

7.2.2 The Client shall treat as confidential all Output Materials which are marked as confidential by Cloud 21.

7.3 Each party may disclose the other party's confidential information:

- 7.3.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 7; and
 - 7.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 7.4 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

8 Termination

- 8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 8.1.1 the other party fails to pay an amount due under this agreement on the due date for payment and remains in default not less than 28 days after being notified in writing to make such payment;
 - 8.1.2 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
 - 8.1.3 the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause;
 - 8.1.4 the other party suspends or ceases, or threatens to suspend or cease, carrying on business.
- 8.2 Cloud 21 may additionally terminate the Contract with immediate effect by giving written notice to the Client if:
 - 8.2.1 the Client's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or
 - 8.2.2 there is a change of control of the other party within the meaning of section 1124 of the Corporation Tax Act 2010 which has not been approved in writing by Cloud 21 (such approval not to be unreasonably withheld).
- 8.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

9 Notices

- 9.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - 9.1.1 delivered by hand, by pre-paid first-class post or other next working day domestic delivery service or by tracked international courier at its registered office (if a company) or its principal place of business (in any other case); or

- 9.1.2 sent by email to: (a) the Client to the address specified in the Specification Sheet; and (b) Cloud 21 to the address specified in the Specification Sheet.
- 9.2 Any notice shall be deemed to have been received:
 - 9.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 9.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
 - 9.2.3 if sent by tracked international courier, at the time delivery is recorded by the courier services; or
 - 9.2.4 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when Business Hours resume. In this clause, **"Business Hours"** means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 9.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

10 General

- 7.1 The Contract is personal to the Client and the Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 7.2 Cloud 21 may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under the Contract, provided that Cloud 21 gives prior written notice of such dealing to the Client.
- 7.3 These terms and conditions (together with the terms if any set out in the Specification Sheet) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions, express or implied by statute or otherwise are excluded to the fullest extent permitted by law. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions or the Specification Sheet. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms and conditions or the Specification Sheet.
- 7.4 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of Contract by the other shall be considered a waiver of any subsequent breach of the same or any other provision.
- 7.5 If any provision of these terms and conditions is held by any competent court to be invalid or unenforceable, in whole or part, the validity of the other provisions and the remainder of the provision in question shall not be affected.
- 7.6 With regard to the Contracts (Rights of Third Parties) Act 1999, none of the terms and conditions of the Contract confer or are intended to confer any rights or remedies on any person, corporation, or other body who or which is not named as a party to it.
- 7.7 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

- 7.8 English law shall apply to the Contract and the parties submit to the jurisdiction of the English courts.

Cloud 21

Specification Sheet

Client	[<i>Insert client details here</i>] Whose principle place of business is at: [<i>Insert client address here</i>] [<i>Insert client email address here</i>]
Specified Service	[<i>Insert description of service or reference to proposal / specification etc here</i>]
Charges	[<i>Insert costs here</i>]
Client Responsibilities	[<i>Insert client responsibilities here</i>]