



# Master Services Agreement

General terms for the supply of goods and services

January 2020

## cloudDNA Ltd

Unit L, Bourne End Business Park, Cores End Rd,  
Bourne End, Buckinghamshire, SL8 5AS, England  
Registered in England No 8280734 © cloudDNA 2020



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# TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

## 1. INTERPRETATION

In these Terms and Conditions:

"**Seller**" means cloudDNA Limited;

"**Contract**" means a contract for the supply of Goods and/or Services between the Seller and the Customer on these Terms and Conditions;

"**Customer**" means a business person, firm or company whose order for Goods or Services is accepted by the Seller.

"**Goods**" means the goods including (but not limited to) Hardware and Software, that the Seller has agreed to supply to the Customer in accordance with these Terms and Conditions as specified in the Contract.

"**Hardware**" means any Goods which comprise personal computer products, peripherals or other items of computer hardware;

"**Software**" means any goods which contain in whole or in part a computer program or programs or instructions.

"**Services**" means any delivery, installation and/or configuration services in relation to the Goods as specified in the Contract;

Clause headings are for ease of reference and do not form part of nor shall they affect the interpretation of these Terms and Conditions or any contract which incorporates them. Where the context so admits or requires words denoting the singular include the plural and vice versa and words denoting any gender include all genders. References to each party include its permitted assigns and successors by operation of law.

## 2. INTRODUCTION

2.1 The Customer warrants that in placing any order it is only doing so as a business purchaser of Goods and/or Services, and is not a consumer (being an individual acquiring Goods and/or Services for its non-business consumption).

2.2 Except as varied by the specific terms of any quotation by the Seller these Terms and Conditions comprise the terms and conditions under which the Seller is willing to supply Goods and/or Services to a Customer. Unless otherwise agreed in writing by the Seller all Contracts are entered into on the basis of these Terms and Conditions to the exclusion of any other terms and conditions set out or referred to in any document or other communication used by a Customer prior to or in concluding a Contract.

2.3 Where the Seller has issued a proposal to the Customer the Contract shall be concluded by both the Customer and the Seller signing and dating the proposal. In all other cases the Contract shall not be deemed concluded until the Seller has accepted the Customer's order. The Customer is responsible for ensuring the accuracy of any order it submits and for ensuring that any proposal issued by the Seller meets the Customer's needs.

## 3. QUALITY STATUS OF SUPPLIERS TO THE SELLER

3.1 All Goods are obtained from suppliers who have been approved by the Seller's internal continuous quality assessment programme.

3.2 Any Customer requiring further information regarding the quality status of the Goods or suppliers to the Seller should contact either the Seller's Product Buyer or the Quality Manager.

## 4. PRICES

4.1 The price of the Goods and the Services shall be the Seller's quoted price.

4.2 All quotations provided by the Seller shall lapse thirty (30) days after issue but may be withdrawn at any time before acceptance, unless the quotation is based on a manufacturer's Special Pricing Agreement, in which case the quotation will lapse in accordance with that agreement.

4.3 All the Seller's prices are net of Value Added Tax which shall be specified on the Seller's invoice for the Customer's account.

4.4 The Seller reserves the right, by giving notice to the Customer at any time before delivery or performance, as the case may be, to increase the price of the Goods and/or of the Services to reflect any increases in the cost to the Seller which is due to any factor beyond the control of the Seller, whereupon the Customer may cancel its order for the Goods or Services in question.

## 5. PAYMENT

5.1 Subject to condition 5.4 where Goods are supplied or Services performed on credit terms the Seller shall invoice the Customer on or at any time after delivery or collection of the Goods or performance of the Services, and unless the Seller otherwise agrees in writing, all prices and any other charges for Goods or Services must be paid by the Customer in full within thirty (30) days of the invoice date.

5.2 Where credit terms have not been agreed by the Seller, the Customer shall make payment by cleared cheque, bank transfer or credit card to the Seller for Goods or Services before delivery or collection or performance as the case may be.

5.3 Time for payment shall be of the essence.

5.4 All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.

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5.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Customer.

5.6 If the Customer fails to pay the Seller any sum due pursuant to the Contract the Seller shall be entitled to claim interest from the due date for payment until payment is received in full together with compensation in respect of each outstanding invoice in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended.

5.7 The Seller reserves the right to cancel the Contract or suspend any further deliveries of Goods to, or performance of the Services for, the Customer until the Seller Customer has received in cleared funds all due payments.

## 6. EXPENSES

Any expenses or ad-hoc costs necessarily incurred by the Seller as a result of a request by the Customer for the Seller to visit the Customer will be met by the Customer who will reimburse the Seller in full within 30 days of receipt of an invoice provided that such expenses are reasonable.

## 7. DELIVERY

7.1 The Seller shall use reasonable endeavours to deliver the Goods by the date agreed (if any) and shall not be liable for any cost or damage caused by late or non-delivery. Any delay in delivery of Goods or performance of Services shall not give the Customer the right to reject the Goods or treat the Contract as repudiated.

7.2 Unless otherwise expressly agreed, delivery of Goods shall be made at the Customer's expense, according to the Seller's normal scale of charges, to the Customer's principal place of business or any other addresses the Customer may notify to the Seller. The Customer shall be liable for any applicable duties, taxes and charges relating to the Goods and/or Services. The Customer shall inspect Goods immediately upon delivery and inform the Seller of any damaged, faulty or incorrect Goods or of any short deliveries in accordance with Clause 15.

7.3 The Seller reserves the right to deliver Goods in instalments, and these Terms and Conditions shall apply to each such delivery.

## 8. TITLE AND RISK

8.1 The Goods are at the risk of the Customer from the time of delivery.

8.2 Ownership of the Goods shall not pass to the Customer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:

8.2.1 the Goods; and all other sums which are or which become due to the Seller from the Customer on any account (including those sums which have not yet fallen due for payment).

8.2.2 any sale shall be effected in the ordinary course of the Customer's business at full market value; and

8.2.3 any such sale shall be a sale of the Seller's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

8.2.4 the Customer, under the agreement for sale, retains title in the Goods until it (the Customer) has been paid in full by the third party to whom it is agreeing to sell on the same;

8.2.5 the Customer has complied with all its obligations (including its payment obligations) under all its contracts with the Seller.

8.3 the Customer's right to possession of the Goods shall terminate immediately if:

8.3.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

8.3.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

8.3.3 the Customer encumbers or in any way charges any of the Goods.

8.4 At any time the Seller shall be entitled to recover the Goods ownership in which remains with the Seller and for that purpose the Customer hereby grants to the Seller, its agents and employees an irrevocable licence to enter any premises where the Goods or any of them are stored or located in order to repossess the same, and (in the event that any Goods have been incorporated or affixed to other products) to dismantle such other products or detach the Goods from those products and repossess them.

8.5 On termination of the Contract, howsoever caused, the Seller's (but not the Customer's) rights contained in this condition shall remain in effect.

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## 9. SERVICES

9.1 The Seller shall perform any Services in accordance with these Terms and Conditions.

9.2 The Seller reserves the right to use persons other than its employees to perform the Services. The Seller accepts full responsibility for the work done by such persons in accordance with these Terms and Conditions.

9.3 The Seller shall have no obligation to perform any work or undertake any activity which does not comprise part of the Services. If the Customer requests and the Seller agrees to perform any such extra work, such work will be charged at the Seller's then prevailing rates.

9.4 The Customer shall provide the Seller with all assistance, co-operation and information required by the Seller in performing and completing the Services, including without limitation, where Services are carried out at the Customer's premises, suitable access and facilities.

9.5 Where the Services specified in the Contract include installation services, the Customer shall provide a suitable environment for the installation and operation of the Goods as specified in any installation instructions issued by the manufacturer of the Goods.

9.6 Seller warrants to procure all identified hardware support items within thirty (30) days of the agreement "Start Date". During this thirty (30) day period, Seller shall provide all support services on a "Reasonable Endeavours" basis only for the required hardware support items.

## 10. WARRANTY

10.1 The Seller warrants that it shall perform the Services with reasonable care and skill using persons of appropriate expertise.

10.2 In so far as Goods comprise or contain Software, Hardware, equipment or components which were not manufactured or produced by the Seller, the Customer shall be entitled to only such warranty or other benefit as the Seller has received from the manufacturer and is able to transfer to the Customer. The Customer is responsible for completing and returning any registration or similar card or email, to the relevant manufacturer. The Seller is not responsible for any acts or omissions of the manufacturer. Where Goods are exported, the warranty arrangements shall be as provided by the manufacturer in the country of installation and warranty arrangements are not the Seller's responsibility. Where, however, no such warranty arrangements exist, the Seller will, at its sole discretion, accept the return of defective Products for repair or replacement in accordance with the terms of the manufacturer's warranty provided that (unless otherwise agreed in writing) the Customer shall be responsible for all costs (including transportation costs) involved.

10.3 The Seller warrants that the normal use by the Customer of the Goods and Services provided by the Seller under this Agreement will not breach any third party intellectual property rights.

## 11. EXCUSED NON-PERFORMANCE

The Seller shall not be liable for any loss or damage suffered or incurred by the Customer arising from the Seller's delay or failure to fulfil or otherwise discharge any of its obligations under the Contract where such delay or failure is caused by any non-performance of its obligations by the Customer, industrial dispute, sudden or substantial depletion of the Seller's staff, reason of force majeure or any other cause or circumstance beyond the Seller's reasonable control. The Customer undertakes to the Seller that it will immediately indemnify the Seller against all proceedings, costs, fees, expenses, payments, liabilities, losses and damages arising out of the breach or negligent performance by the Customer of any of its obligations.

## 12. THIRD PARTY RIGHTS

The Seller shall have no obligation or liability to the Customer in respect of any infringement or alleged infringement of any intellectual property rights belonging to a third party arising from the Customer's possession or use of or dealing in the Goods or the Services.

## 13. CANCELLATION

13.1 Once received, orders may not be cancelled once accepted by the Seller.

13.2 The Seller reserves the right to enforce the following charges as per 13.3 below on any cancellation of consultancy Services. This can include cancellation of all or part of the total order and can be due to changes in scope or information not listed, or pre-requisites not completed in the Scope of Works document.

13.3 Less than two working days in advance of, or after confirmed start date: 100% of total order value. Two to three days in advance: 75% of total order value. Four to five days in advance: 50% of total order value.

## 14. RETURN OF GOODS

14.1 The Seller will accept the return of Goods supplied to the Customer where the Seller's prior authorisation has been obtained. In no circumstances will returns be accepted without the Seller's prior authorisation. To obtain the Seller's authorisation, the Customer should call the Account Manager or Account Support Team on the number that shall be advised.

14.2 Subject to Clause 14.1, the Seller will accept the return of damaged, faulty or incorrectly supplied Goods only upon the

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following terms:

14.2.1 Damaged Goods: If Goods are received visibly damaged, the Customer must sign the carrier's delivery documentation accordingly and notify the Seller within 2 working days of delivery. The Customer must retain all packaging in case this is required by the Seller in processing the Customer's claim.

14.2.2 Shortages: If the Customer has not received the number of boxes specified on the carrier's delivery documentation, the Customer must sign this documentation accordingly and then notify the Seller within 2 working days of delivery.

14.2.3 Incorrect Goods: If the Goods received are not those detailed on the Seller's Delivery Advice, the Customer must inform the Seller within 2 working days of delivery.

14.2.4 Faulty Goods (DOA): If faulty Goods are received, the Customer must inform the Seller within 7 working days of delivery. If the Customer fails to so notify the Seller, any manufacturer's warranty will apply in place of any obligation of the Seller. The manufacturer's warranty might provide for on-site services to be provided, or for the Goods to be returned to the manufacturer for repair. Where goods have been returned to the Seller as DOA and no fault is found upon subsequent testing, the Seller will make a handling charge of £45.00 to cover the costs of shipping and administration, plus a restocking fee if the goods are not returned in pristine condition and in their original packaging (see 14.6 below).

14.3 It is the Customer's responsibility to check all packages upon delivery. Faulty, damaged or incorrectly supplied Goods as per 15.2 above will be credited at full invoice price provided the Seller has collected the Goods complete with all accessories in the original packaging and in pristine condition (see 15.6 below).

14.4 Other than in the case of Seller or supplier error, Software where the manufacturer's seal has been broken and exported Goods, are non-returnable. Specific Goods are non-returnable.

14.5 Where a Customer wishes to return Goods which have been delivered according to specification, complete and in full working order (i.e. not damaged, faulty or incorrectly supplied) this must be with the Seller's prior authorisation. Following such authorisation, a minimum charge of £25.00 will be made to cover the cost of collection and handling. The original delivery, installation or configuration charges are non-refundable, and a charge for de-configuration will be made where appropriate. The Seller reserves the right to refuse return of these Goods if notified later than 10 working days after delivery.

14.6 A re-stocking charge (up to the full price of the Goods returned) will be made for any Goods that are not returned in a pristine condition. Pristine means unused, complete with all cables, manuals and accessories and in the original packaging, without any writing at all on the boxes.

14.7 Goods will be supplied on a trial basis only with the prior written agreement of the Seller.

14.8 Risk in any Goods that the Customer is returning to the Seller shall remain with the Customer until the Goods are delivered to the Seller's premises (or, if sooner, the Seller's carrier) and the Customer's account is credited.

## 15. INTELLECTUAL PROPERTY

15.1 Nothing in these Terms and Conditions shall confer on the Customer any licence, right, title or interest in or to any intellectual property comprised in the Goods or the Services, which shall at all times remain the property of the Seller or its suppliers.

15.2 The Customer shall enter into a licence agreement with the manufacturer of the Software, either by breaking any seal on any Software package, by clicking an acceptance button when loading the Software or by using the Software. In the event of conflict between these Terms and Conditions and the licence agreement, the latter shall prevail.

## 16. NON SOLICITATION

16.1 Neither Party shall (except with the prior written consent of the other Party) during the term of this Agreement, and for a period of twenty four months thereafter, solicit the services of any employee of the other party with whom they have had direct dealings in the course of this Agreement.

16.2 Should prior written consent be granted by the Seller under clause 16.1, the Customer must give three months' notice to the Seller of the employee's start date and the Customer will immediately compensate the Seller with a payment equal to 50% of the maximum total value of the annual salary offered to and accepted by the employee.

## 17. CONFIDENTIALITY

17.1 Each party agrees that where the other party has provided information of a confidential or proprietary nature relating to their business the other party it will:

17.1.1 treat it as confidential;

17.1.2 not disclose it to any third party without the prior written consent of the other party; and

17.1.3 use it solely for the purposes of the commercial relationship between the parties.

17.2 Each of the parties acknowledges that the requirements of clause 17.1 shall not apply to any part of the information supplied by the other party which:

17.2.1 is or becomes common knowledge without breach of this undertaking by the first party;

17.2.2 can be shown to have been in the first party's lawful possession prior to receipt from the other party or to have been developed by or for the first party at any time independently of any disclosure by the other party; or

17.2.3 is required to be disclosed by law.

17.3 All documents incorporating any of the information described in clause 17.1 which are received from the other party shall remain the property of the other party (or other owner of them) and the first party shall exercise reasonable care to keep them safe from access by unauthorised persons, and shall return them to the other party on demand.

17.4 The obligations in clause 17 shall survive termination of this Agreement.

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## 18. TERMINATION

18.1 Either party shall be entitled to terminate this Agreement forthwith by written notice to the other if the other party: 18.1.1 commits any material breach of this Agreement that is not capable of remedy;  
18.1.2 commits any material breach of this Agreement that is capable of remedy and fails to remedy it within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;  
18.1.3 is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary (other than for the purposes of an amalgamation or reconstruction), or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any analogous event occurs in any relevant jurisdiction.  
18.2 The Seller shall be entitled to terminate this Agreement forthwith by written notice to the Customer if it reasonably apprehends that any of the events mentioned in clause 18.1.3 are about to occur in relation to the Customer.  
18.3 Either party shall be entitled to terminate this Agreement by giving 3 months' notice in writing to the other party.

## 19. VARIATION

This Agreement shall be capable of being varied only by a written instrument signed by a duly authorised officer or other representative of each of the Parties.

## 20. DISPUTES

If any dispute arises out of this agreement the parties will attempt in good faith to negotiate a settlement. If the matter is not resolved by negotiation, the parties will refer it to mediation in accordance with the centre for effective dispute resolution ("CEDR") model mediation procedure. (see [www.cedr.co.uk](http://www.cedr.co.uk)). Unless the parties agree on the choice of mediator within 7 days of one party nominating a proposed mediator in writing to the other, the mediator shall be appointed by CEDR at the request of either party. If the parties fail to agree terms of settlement within 42 days of the start of the first meeting held under such procedure, either party may refer the dispute to litigation. Nothing in this clause shall prevent or delay either party from seeking injunctive relief in any court in respect of any infringement of intellectual property or from issuing proceedings to recover any undisputed debt or from joining the other party to any proceedings issued against the first party by a third party.

## 21. NOTICES

All notices and other communications required or permitted to be served or given shall be in writing and sent by post, courier, fax or e-mail to the intended recipient's address as specified in any order or proposal or such other address as either party may notify to the other from time to time. Notices shall be deemed to have been served immediately if they were sent by fax or e-mail (provided proof of transmission can be produced); and on the second business day after posting if served by first class post; and by delivery of the notice through the letter box of the party to be served and shall be treated as served on the first business day after delivery.

## 22. GENERAL

22.1 The relationship of the parties is that of independent contractors dealing at arm's length.  
22.2 The failure of the Seller or the Customer to enforce the terms of these Terms and Conditions does not constitute a waiver of it and shall in no way affect the right later to enforce the term.  
22.3 The invalidity or un-enforceability of any provision of these Terms and Conditions shall not adversely affect the validity or enforceability of the remaining provisions.  
22.4 No amendment, variation or addition to these Terms and Conditions shall be binding unless agreed to in writing by an authorised representative of the Seller.  
22.5 The Customer shall not assign the Contract or any part thereof to any other person without the Seller's prior written consent.  
22.6 No third party shall have any rights under a Contract.

## 23. LAW AND JURISDICTION

The construction, validity and performance of the Contract shall be governed by the laws of England and any dispute shall be referred to the exclusive jurisdiction of the English courts.

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