Cloud9

Supply of Services Agreement

Date:

INSPIRATIONAL CLARITY

Cloud9
28-30 Robert Street
Brighton
BN1 4AH

01273 921510

cloud9insight.com

Between

1. **Cloud9 Insight Ltd – a company incorporated in England and Wales with company registration number 07431687 with its registered address at 2, Printer's Yard, 90a The Broadway, London, SW19 1RD and whose principal place of business is at 28-30 Robert Street, Brighton, BN1 4AH, United Kingdom ("Cloud9") and:**
2. **Registered Client Company Name – a company incorporated in {Country of registration – usually England and Wales} with company registration number {Client registered company number} and registered office at {Client company registered office address} and whose principal place of business is at {Client company principal address} ("the Client")**

Background

a) The Client has identified a need for expert help and assistance in the performance and completion of a specific Project (defined below) and wishes to engage the services of Cloud9.
b) Cloud9 has the required level of expertise and is in the business of providing the Services.
c) The Client wishes to obtain and Cloud9 has agreed to provide the Services on the terms of this Agreement.

Terms

1. DEFINITIONS

1.1. In this Agreement the following terms have the following meanings:

Associates

Those persons engaged by or on behalf of Cloud9 to provide the Services to the Client in connection with the Project on a consultancy basis or otherwise

Billing Rates

Cloud9's applicable charges for the Services set out in Schedule 2 as amended from time to time and notified to the Client.

Business Day

A day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Document

Includes, in addition to any document in writing, any diagram, design, plan, picture or other image, tape, disk or other device or record embodying Information in any form.

Information

All and any information and materials owned and disclosed by the Client to Cloud9 or its Associates or which Cloud9 or its Associates obtains while visiting the Client's premises without limitation.

Intellectual Property Rights

Patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get up, goodwill and the right to sue for passing off, 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 similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Product

Any computer program that is produced as a result of the execution of the Services.

Project

The work to be carried out by Cloud9 for the Client as set out in the Statement of Work.

Services

The services to be provided by Cloud9 or its Associates under this agreement as set out in

the Statement of Work including any and all Documents, goods, services or advice provided by Cloud9 or its Associates in connection with the Project.

Specified Sum

The amount to be paid by the Client to Cloud9 as detailed in the Statement of Work.

Start Date

The date for the commencement or provision of the Services.

Statement of Work

The statement of work entered into between the Client and Cloud9 setting out the Services that the Client has requested from and to be provided by Cloud9.

Working Hours

9:00am to 5:30pm London time on a Business Day. Please note that Cloud9 is closed for business from 24th December and will remain closed until 2nd January.

1.2. The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement.

1.3. Clause, Schedule and paragraph headings are included for ease of reference and shall not affect the interpretation of this agreement.

1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5. Unless the context requires otherwise, words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to all other genders.

1.6. This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.7. A reference to a statute or statutory provision shall include all subordinate legislation and is a reference to it as amended or re-enacted from time to time.

1.8. An obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. STATEMENT OF WORK

2.1. Cloud9 shall provide the Services (as set out in the Statement of Work) to the Client subject to the terms of this agreement.

2.2. The Statement of Work shall be agreed by the parties in the following manner: a) The Client shall provide Cloud9 with a request for a Statement of Work setting out the requirements and specifications of the services which it requires, including a description of what work is to be done and such other information as Cloud9 may request to allow it to prepare the Statement of Work for approval; b) Cloud9 shall, as soon as reasonably practicable, provide the Client with a draft Statement of Work for approval and the parties shall discuss and agree the Statement of Work; and c) Once agreed, the Statement of Work shall be signed by both parties and form part of this agreement.

2.3. Once the Statement of Work has been agreed and signed in accordance with clause 2.2. c), no amendment shall be made except in accordance with the terms of this agreement.

2.4. The Statement of Work does not form a separate contract and shall be part of this agreement and subject to its terms.

3. CHANGES TO SERVICES

Because of the nature of the work to be undertaken by Cloud9, both parties accept that it may be necessary to agree to alter or adapt the Statement of Work and the Services to be

provided. If the Client wishes to change the scope or execution of the Services, the provisions of this clause 3 shall apply.

3.1. If the Client wishes to make a change to the Services, the Client shall submit details of the requested change to Cloud9 in writing to accounts@cloud9insight.com

3.2. Cloud9 shall be entitled to review the requested change and shall provide the Client with written details of the impact the proposed change will have on: a) the Services; b) the Specified Sum; c) the time for completion of the Project and the likely time required to implement the proposed change; and d) any of the terms of this agreement and the Statement of Work.

3.3. Cloud9 may at any time and without giving the Client prior notification make any changes to the Services that are necessary to comply with any applicable safety or other statutory requirements, or make any changes to the Statement of Work which does not materially affect the nature or quality of the Services.

3.4. Unless both parties agree to any changes or additions to the Statement of Work or the Services and provide written confirmation to that effect, there shall be no change to the Services or any other terms of this agreement and any relevant Statement or Work.

3.5. Cloud9 reserves the right to revise the Specified Sum to take into account any changes to the Services or additional works requested by the Client in accordance with clause 3.2 and shall be entitled to charge for the time it spends on dealing with any such requests on a time and materials basis. Cloud9 will inform the Client of any changes in the Specified Sum in writing in advance and these changes will not be valid until accepted in writing by the Client.

3.6. Except in the case of emergency, all changes shall be agreed in advance. Where a change is requested as a result of an emergency, the Client and Cloud9 agree that the changes shall take effect immediately and Cloud9 shall be entitled to confirm the changes made and any revision to the Specified Sum at a later date.

4. DURATION AND TERMINATION

4.1. This agreement shall commence on the Start Date and shall remain in force until the earlier of the Services being completed as defined in the Statement of Works or the time paid for by the Client has been used in full, at which time the obligations of each of the parties shall automatically come to an end.

4.2. Either party may terminate this agreement by giving one month's written notice to the other. A refund will be made for any effort paid for, but not used or scheduled, including Project Management following a termination.

4.3. Without affecting any other right or remedy available to it, either party may terminate this agreement at any time after the Start Date with immediate effect by giving written notice to the other party if: a) either party is in fundamental

breach of this agreement and fails to remedy such breach (if capable of remedy) within five working days after being required in writing to do so; or b) either party goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed; or c) either party suspends or ceases, or threatens to suspend or cease, carrying on all or any part of its business.

4.4. If this agreement is terminated by the Client before the completion of the Services, Cloud9 shall be entitled to payment by the Client for work completed on a quantum meruit basis.

4.5. Termination or expiry of this agreement pursuant to this clause 4 shall result in the automatic termination of all Statements of Work in place at the time of termination.

4.6. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

5. USE OF ASSOCIATES

5.1. Cloud9 is permitted to use Associates to provide some or all of the Services to the Client.

5.2. Cloud9 shall be responsible for the work of any Associate whose work shall be undertaken to the same standard as stated in this agreement and the Statement of Work.

5.3. Where an Associate provides any opinions or recommendations to the Client in the course of the Associate providing the Services on behalf of Cloud9, and the Client chooses to rely upon such opinions or recommendations, the Client acknowledges that they do so at their own risk. Cloud9 does not endorse nor represent the reliability, accuracy or quality of any information, opinions or recommendations of any Associate outside the scope of the Services and Cloud9 shall have no liability for such opinions or recommendations and any loss or damage of any nature suffered by the Client as a result of using or availing of the same.

6. CLIENT'S OBLIGATIONS

6.1. The Client shall co-operate with Cloud9 or any Associate appointed by Cloud9 in all matters relating to the Services and shall, at its own expense, a) provide Cloud9 with, in a timely manner, all Documents and data or other information necessary for the completion of the Services, to enable Cloud9 to provide the

Services in accordance with the Statement of Work agreed in writing between the parties; and b) retain duplicate copies of all documents or other material and data or other information provided to Cloud9 and shall insure against its accidental loss or damage. Cloud9 shall have no liability for any such loss or damage, howsoever caused.

6.2. The Client shall be responsible for the content of all Documents or other materials and shall ensure the accuracy of all data or other information provided to Cloud9 in the course of this Agreement.

6.3. The Client shall ensure that Cloud9 is accorded sufficient access to any of the Client's premises, information, data or personnel and use of any equipment, including remote access to its computer systems, as is reasonably necessary for the completion of the Specified Services. Where Cloud9 requires access to any third party premises, information, data or personnel the Client will make all reasonable efforts to arrange this for Cloud9.

6.4. At any time after the date of this Agreement and for a period of 12 months after completion of the Services, the Client hereby undertakes not to directly or indirectly attempt to solicit, entice away, use the services of or employ (whether as an employee, consultant or otherwise), any person who is, or has been, engaged as an employee or Associate of Cloud9 in the provision of the Services. The restrictions contained in this Clause shall not apply to the extent that the parties agree otherwise in writing.

6.5. In the event that the Client breaches the provisions of clause 6.4 then it shall forthwith pay Cloud9 by way of liquidated damages (and as a genuine pre-estimate of Cloud9's losses) an amount equal to: a) In the case of an employee, the maximum salary of such employee at the time that the employee left the employment of Cloud9; or b) In the case of an Associate, an amount equal to 220x Cloud9's then current list (i.e. undiscounted) daily fee rate for such Associate.

6.6. For the avoidance of doubt both parties agree that Cloud9 is not supplying consultancy services as an Employment Business as defined in the Employment Agencies Act 1973 and that accordingly the Conduct of Employment Agencies and Employment Business Regulations 2003 shall not apply.

7. CLOUD9'S OBLIGATIONS

7.1. Cloud9 will take all reasonable steps to ensure that the Services are provided using reasonable care and skill and, as far as reasonably possible completed in accordance with the Statement of Work in all material respects.

7.2. Cloud9 shall take all reasonable steps to meet any timetable or other targets for progress or delivery of the whole or any agreed part of the Services or for the completion of the Project agreed between the parties but such timetables and

targets shall be estimates only and time for performance by Cloud9 shall not be of the essence of this agreement.

7.3. Cloud9 may appoint an Associate in respect of the Services who shall have authority under this agreement contractually to bind Cloud9 on all matters relating to the Services. Cloud9 shall use all reasonable endeavours to ensure that the same Associate acts on behalf of Cloud9 throughout the term of the Project but may replace that Associate from time to time where reasonably necessary or appropriate in the interests of Cloud9's business.

7.4. Cloud9 shall comply with any additional responsibilities as set out in the relevant Statement of Work.

8. CHARGES & PAYMENT

8.1. In consideration of the provision of the Services by Cloud9, the Client shall pay the Specified Sum.

8.2. All Services are provided on a time and materials basis and are subject to an initial estimate being agreed between the parties in advance of the Services being provided by Cloud9 on the following basis:

a) The charges payable shall be calculated in accordance with Cloud9's standard daily fee rates, as amended from time to time in accordance with clause 8.4;

b) Cloud9's standard daily fee rates are calculated per person on the basis of a seven (7) hour day, worked during Working Hours;

c) Cloud9 shall be entitled to charge additional fees equal to an hourly rate calculated pro-rata accordingly to the applicable daily rate for each part day worked or for any time worked outside the Working Hours by any employee or Associate of Cloud9; and

d) All charges quoted shall be exclusive of VAT, which Cloud9 shall add to its invoices at the appropriate rate.

8.3. Cloud9 shall invoice the Client for the time, expenses and materials (together with VAT where appropriate) in advance of the Services being provided under each Statement of Work issued. Additional Statements of Work shall be subject to further charges and invoices.

8.4. Any daily rate contained in Schedule 2 and stated in any Statement of Work excludes the cost of hotels, subsistence, travelling and other ancillary expenses reasonably incurred by the employees or Associates of Cloud9 in connection with the Services, the cost of any materials and the costs of any services reasonably and properly provided by third parties where required by Cloud9 and such expenses, materials and third party services shall be invoiced by Cloud9 to the Client in addition to the Specified Sum.

8.5. The parties agree that Cloud9 may review and increase its standard daily fee rates provided that such charges cannot be increased more than once in any 12 month period.

8.6. The Client shall pay each invoice submitted by Cloud9 in full and in cleared funds in advance of the Services being provided unless otherwise agreed in writing between the parties and set out in the Statement of Work.

8.7. Without prejudice to any other right or remedy it may have, if the Client fails to pay any invoice full in advance of the Start Date, Cloud9 reserves the right to delay providing the Services until full payment is received and to charge interest on the overdue invoice at the rate of 4% per annum above the Bank of England's base rate from time to time on a daily basis.

9. WARRANTIES

Where, in connection with the provision of the Services, Cloud9 supplies any goods supplied by a third party, Cloud9 does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to Cloud9.

10. LIMITATION OF LIABILITY

10.1. If Cloud9 is prevented from or delayed in providing the Services to the Client as a result of any act or omission of the Client (including, but not limited to, any delays arising from any information or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form) its agents, subcontractors, consultants or employees, Cloud9 shall not be liable for any costs, charges or losses sustained or incurred by the Client which arise directly or indirectly from such prevention or delay.

10.2. The Client shall be liable to pay to Cloud9 on demand, all reasonable costs, charges or losses sustained or incurred by Cloud9 (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement.

10.3. Cloud9 shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from the Client making use of the Product for any purpose not clearly disclosed to Cloud9 or from the Client allowing a third party to make use of the Services or Product.

10.4. Nothing in this agreement shall limit or exclude Cloud9's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 or any other liability which cannot be limited or excluded by applicable law.

10.5. Subject to the preceding sub-clause, Cloud9 shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise arising under or in connection with this agreement for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, loss or use or corruption of software, data or information, and any indirect or consequential loss.

10.6. Subject to clause 10.4 or as expressly agreed in writing between the parties, the entire liability of Cloud9 under or in connection with this agreement shall be limited to fifty thousand pounds sterling (£50,000) or the maximum amount invoiced and paid by the Customer under this agreement, whichever is the lower.

10.7. The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

10.8. Cloud9 accept no responsibility liability for any software purchased. The client is 100% responsible to ensure that software purchased fully meets the client's needs. Any bugs or gaps in capability will be entirely the client's responsibility.

11. INTELLECTUAL PROPERTY

11.1. Unless agreed otherwise in writing between the Client and Cloud9:

a) Upon payment being received in full by Cloud9 from the Client, Cloud9 shall assign to the Client the Intellectual Property created by Cloud9 in providing the Services as part of the Project or provision of the Product (excluding frameworks and associated documentation, industry business and data models, and document templates provided by Cloud9 for which Cloud9 shall grant the Client an irrevocable perpetual royalty-free worldwide licence to use for the Client's own business purposes); and

b) Cloud9 shall not be prevented or restricted from using in the course of its business any technical knowledge, skill or expertise of a generic nature acquired by it in the performance of this agreement and in particular Cloud9 shall not be required to transfer to the Client any Intellectual Property rights that are already in existence and are the property of Cloud9 as at the date of this agreement or which may in the future be created by Cloud9 for the use of Cloud9 in the conduct of its business generally.

11.2. Each party warrants to the other that no Documents or other material and data or other information and devices or processes provided for use in the provision of the Services infringe any third party intellectual property rights.

11.3. If a claim for the infringement of third party Intellectual Property Rights is made or threatened against Cloud9 in relation to Documents or other material, data and other information or devices and processes provided to Cloud9 by the Client for use in the provision of the Services or which the Client specified should be used by Cloud9 in the provision of the Services, the Client shall indemnify Cloud9 against any and all costs, expenses, damages or other losses suffered or payments made by Cloud9 in connection with the claim and any associated judgment or settlement whether or not such infringement was reasonably foreseeable.

12. CONFIDENTIALITY

12.1. Cloud9 acknowledges that: a) the Information is of commercial value and may be of interest and value to the competitors of the Client and accordingly considerable loss to the Client could be caused by a failure to keep the Information confidential; and b) certain of the Information may be patentable or capable of being the subject of a registered design or capable of obtaining similar protection anywhere in the world and premature disclosure of it may prejudice the ability of the Client to obtain such protection.

12.2. Where required, Cloud9 provides an agreed form of Reciprocal Confidentiality Agreement which can be found on Cloud9's website using the link NDA Link. If the Client wishes to enter into a formal confidentiality agreement, it is the Client's responsibility to sign and return a completed form of this agreement to Cloud9 which will act as a binding document on both parties. No other confidentiality agreement shall be accepted or entered into by Cloud9.

12.3. Where the Client does not enter into a formal confidentiality agreement as set out in clause 12.2 above, in consideration of the Client agreeing to disclose the Information to Cloud9, Cloud9 undertakes to: a) use such Information only for the provision of the Services as part of the Project;

c) keep secret and confidential all Information that it may acquire in any manner;

d) permit access to all Information only to such of its employees and contracted Associates, as need such Information to provide the Services provided that the Cloud9 informs each of them of the confidential nature of the Information and procures compliance with Cloud9's obligations under this agreement;

e) make copies of or record the Information only to the extent strictly necessary for the Project. Any such copies and records shall be the property of the Client; and

f) disclose the results of the Project to the Client on terms that they may freely use or disclose them.

12.4. Cloud9 shall not publish or otherwise disclose the results of the Project to any third party without the Client's prior written consent.

12.5. This obligation of confidentiality will remain in force beyond the cessation or other termination of this agreement.

12.6. This clause shall not apply to any Information, Documents, or any other materials and data which are already in the public domain at the time when they are provided to Cloud9 and shall cease to apply where Cloud9 is required by law to make a disclosure or if at any time the information becomes public knowledge through no fault of Cloud9.

13. DISPUTE RESOLUTION

13.1. If any dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it, the parties will follow the procedure set out in this clause

a) Either party shall provide the other with written notice of the dispute setting out its nature and full particulars and shall attempt in good faith to negotiate a settlement.

b) If the matter is not resolved by negotiation within 30 days, the parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. (See www.cedr.co.uk). Unless otherwise agreed, the mediator shall be appointed by CEDR Solve. To initiate mediation, a party must serve notice in writing on the other party requesting mediation and a copy of the notice should be sent to CEDR Solve.

13.2. No party may commence any court proceedings in relation to any dispute until 42 days after the service of the notice requesting mediation provided that the right to issue proceedings is not prejudiced by a delay.

13.3. If the parties fail to agree terms of settlement within 42 days of the start of the first meeting held under such mediation procedure, or fails to participate in the mediation, the dispute may be referred to resolution by the courts of England and Wales by either party.

14. GENERAL

14.1. The parties to this agreement are independent businesses and nothing in this agreement is intended to or shall be deemed to be taken as creating a relationship of agent to principal, employer to employee, partnership or joint venture between Cloud9 and the Client. Neither party shall be entitled to enter into agreements or other arrangements on behalf of the other.

14.2. This agreement, together with the Statement of Work, represent the entire agreement between the parties and supersede any previous representations or agreements between the parties whether recorded in writing or otherwise.

14.3. No change, alteration or modification to this agreement shall be valid unless it is inwriting and signed by duly authorised representatives of both parties.

14.4. Cloud9 will assume unless notified in writing before the end of the project, that no R&D claim will be made for any project related work invoiced to Cloud9 Insight.

14.5. A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach of default. A failure by one party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right of remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right of remedy.

14.6. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable for whatever reason, it shall be deemed to be modified to the minimum extent necessary to make it valid, legal and enforceable but, if such modification is not possible, the relevant provision or part-provision shall be deemed deleted and the remaining provisions shall continue in full force.

14.7. The rights and obligations of the Client under this agreement are personal to the Client and the Client undertakes that it shall not, without the prior written consent of Cloud9, assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.

14.8. Cloud9 reserves the right to sub-contract any of the work required to fulfil its obligations under this agreement.

14.9. Except as otherwise permitted by this agreement, no one other than a party to this agreement shall have any right to enforce any of its terms.

14.10. Any notice, excluding service of legal proceedings, given to a party under or in connection with this agreement shall be in writing and shall be:

a) Delivered by hand or pre-paid first class post or other next day delivery service to the address stated at the beginning of this agreement as its principal place of business and sent by email to the address specified by one party to the other. In the case of Cloud9, all notices should be sent to accounts@cloud9insight.co.uk;

b) Deemed received when delivered by hand at the time it is left at the proper address, when sent by pre-paid first class post or other next day delivery at 9.00am on the second Business Day after posting and when sent by email at 9.00am on the next Business Day after transmission.

14.11. Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance under this agreement (other than in relation to payment) resulting from any acts of God, acts or regulations of any governmental or supra- national authority.

14.12. This agreement 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.

This agreement has been entered into on the date stated at the beginning of it.

Declaration

For Cloud9 Insight	For Client
Signed: 	Signed:
Name (Print): Carlene Jackson	Name (Print):
Position: CEO	Position:

Schedule 1

Statement of Work

Reference will be made to the proposal or agreed statement of work here. These documents will contain the details of the services to be provided, commercials and payment terms.

Schedule 2

Charges & Payment

The terms set out in clause 8 shall apply to each Statement of Work issued by Cloud9 to the Client. The daily rate for Cloud9 is £1,400 (excl VAT).

Overtime/additional hours worked over the daily rate on a pro-rata basis: £200 (excl VAT).

Payment terms: invoices to be paid in advance of Services being provided unless agreed otherwise.

INSPIRATIONAL CLARITY

Cloud9
28-30 Robert Street
Brighton
BN1 4AH

01273 921510

cloud9insight