

CLOUDSOURCE TERMS AND CONDITIONS OF SERVICE

1. DEFINITIONS

1.1. In these Terms, unless the context otherwise requires, the following words and phrases will have the following meaning:

Business Day:	a day (other than a Saturday, Sunday or public holiday).
Charges:	the charges for line rentals, maintenance and support contracts, equipment hire and all other Services and/or Equipment provided by CloudSource, as stated on the Order Form.
CloudSource:	CST INT Limited (Company number 9021788) whose trading address is 1 St Marys Place, Bury, Lancashire, BL9 0DZ.
Contract:	the contract between the CloudSource and the Customer for the supply of the Services and/or the Equipment, incorporating the Order Form, these Terms and all other documents referred to in those documents.
Customer:	the person or firm who purchases the Services from CloudSource.
Equipment:	any desk telephones, mobile telephones, servers, routers, modems and any other equipment provided to the Customer by CloudSource as part of the Services.
Intellectual Property Rights:	all copyrights, trademarks, patents, design rights, database rights, service marks, software code or configurations, know-how or any other intellectual property right, whether registered or unregistered, anywhere in the world.
Minimum Period:	36 months, or the length of any lease that the Customer orders, if longer.
Order Form:	the order form attached to, and incorporating, these Terms specifying the Services and the Charges.
Price List:	the prices (excluding VAT) detailed in the CloudSource tariff schedule (available on the website), as may be replaced from time to time.
Services:	the services to be provided to the Customer by CloudSource, as more particularly detailed in the Order Form.
Terms:	these terms and conditions, as they may be amended from time to time.

2. THE CONTRACT

- 2.1. If the Customer requires CloudSource to provide Services and/or Equipment, it will negotiate with CloudSource and agree and submit an Order Form to CloudSource.
- 2.2. The Contract is formed when CloudSource notifies the Customer that it accepts the Order Form, or takes any action to otherwise indicate that it will provide the Services and/or the Equipment or has accepted the Order Form. CloudSource's acceptance of an Order Form is conditional on these Terms applying to the Services. For the avoidance of doubt, no terms of any kind of the Customer will be incorporated into the Contract and any such terms will be void against the Contract.
- 2.3. Any request for Services and/or Equipment is provisional until the Order Form is accepted by CloudSource in accordance with clause 2.2.
- 2.4. The terms of the Order Form prevail over these Terms, should there be any conflict between them.
- 2.5. The Contract contains the entire agreement between the Customer and CloudSource relating to its subject matter and supersedes any prior agreements, representations or understandings between them unless expressly incorporated by reference into the Contract.

3. SUPPLY OBLIGATIONS

- 3.1. Subject to the Customer paying the Charges, CloudSource will supply the Services and/or the Equipment to the Customer.
- 3.2. CloudSource will use reasonable endeavours to meet any performance dates specified in the Order Form, but any such dates will be estimates only and time will not be of the essence.
- 3.3. CloudSource has the right (at the Customer's cost) to make any changes to the Services and/or the Equipment which are necessary to comply with any applicable law or safety requirement. CloudSource will give such advance notice of such a requirement to the Customer as is reasonably practicable.
- 3.4. The Customer will:
 - (a) comply with the instructions and recommendations of CloudSource in relation to the Services and the Equipment;

- (b) ensure that the terms of the Order Form are complete and accurate;
 - (c) provide CloudSource with such information, materials and resources as CloudSource may require in order to supply the Services and/or the Equipment, and ensure that such information is complete and accurate;
 - (d) provide CloudSource, and such of its employees, agents, consultants and subcontractors as CloudSource directs, with such access to the Customer's premises as may be required by CloudSource from time to time to provide the Services and/or the Equipment;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required for CloudSource to provide the Services and/or the Equipment;
 - (f) co-operate with CloudSource in all other respects relating to the provision of the Services and/or the Equipment; and
 - (g) ensure that the Customer's premises are safely connected to mains electricity and is capable of connection to the internet and that any equipment or connections that the Equipment or the Services will use is in good condition and is suitable for use by CloudSource to provide the Services.
- 3.5. CloudSource is not liable for any failure to provide the Services, or for any defect in the Equipment, where such failure or defect is as a result of the Customer's failure to comply with clause 3.4.
- 3.6. If the Customer currently receives services, or has equipment, similar to the Services or the Equipment, from an alternative supplier, the Customer is responsible for any contractual agreements the Customer has with such alternative suppliers and any liabilities the Customer may incur for terminating such agreements.

4. CHARGES AND PAYMENT

- 4.1. The Charges are paid for as follows:
- (a) a payment on acceptance of the Order Form in respect of the installation of the Equipment and/or the first two full months of Services; and
 - (b) thereafter, monthly payments by direct debit taken within 5 Business Days following CloudSource's monthly invoice.
- 4.2. In addition to the Charges, the monthly invoices issued pursuant to, and payable in accordance with, clause 4.1(b) will include:
- (a) any ad hoc costs incurred by CloudSource in the provision of the Services that have not yet been charged to the Customer (such ad hoc costs will be calculated by reference to the Price List in force at the time the cost was incurred);
 - (b) any reasonable expenses incurred by CloudSource or its employees, agents, consultants and subcontractors in connection with the provision of the Services that have not yet been charged to the Customer including (without limitation) travelling expenses, hotel costs, subsistence and other expenses; and
 - (c) VAT (if applicable) at the applicable rate, and any other taxes or duties levied on the Services and/or their provision by CloudSource during the invoice period.
- 4.3. If the Customer considers there to be an error on an invoice, it must challenge such invoice within 2 Business Days of receiving it by contacting CloudSource's customer service team by telephone. The Customer is deemed to accept the accuracy of an invoice at the expiry of this 2 Business Day period. The invoice will be amended only if CloudSource agrees that there is an error, otherwise payment will be debited in full on the usual payment date.
- 4.4. All payments due under the Contract will be made by direct debit. If a direct debit fails for any reason, CloudSource will notify the Customer who must:
- (a) settle the amount due within 5 Business Days of the notification; and
 - (b) at the discretion of CloudSource, pay an administration fee of £75.
- 4.5. If the Customer fails to pay any amount when due, CloudSource reserves the right to:
- (a) charge interest on any overdue amount at the higher of:
 - (i) 4% above the Bank of England's base rate from time to time; or
 - (ii) the statutory rate of interest for commercial debts;
 - (b) suspend the Services until all outstanding amounts are paid in full;
 - (c) re-possess any Equipment until all outstanding amounts are paid in full; or
 - (d) terminate the Contract in accordance with clause 7.4(a).
- 4.6. CloudSource reserves the right to increase the Charges:
- (a) once in any 12 month period in response to increases in the Retail Price Index; and
 - (b) once in any 12 month period in response to increases in the prices charged to CloudSource by its suppliers,
- and CloudSource will give at least 30 days' notice of such increases. If the Customer objects to any increase, it may serve notice to terminate the Contract, but any termination will incur the cancellation charges specified in clause 7.3.

5. THE SERVICES AND EQUIPMENT

5.1. The Customer will not:

- (a) resell, or attempt to resell, any Service or Equipment (or any part of them) to any third party;
- (b) use any Service or Equipment in any way that:
 - (i) does not comply with the instructions, policies and recommendations of CloudSource;
 - (ii) breaches any relevant legislation, licence or consent;
 - (iii) is abusive, defamatory, obscene, malicious or menacing; or
 - (iv) breaches any Intellectual Property Right of any person;
- (c) modify, decompile, reverse engineer or in any other way alter or tamper with any Equipment or Service; or
- (d) use any Service or Equipment to send or upload any computer virus, Trojan, worm or other malware,

and CloudSource reserves the right to suspend the Services in response to an actual, threatened or perceived breach of this clause 5.1. For the avoidance of doubt, suspension of the Services does not relieve the Customer of its obligation to pay the Charges in accordance with clause 4.

5.2. All Equipment provided to the Customer is on a rental basis only and is owned at all times by either CloudSource or its supplier. The Customer will:

- (a) keep all Equipment in good condition until returned to CloudSource;
- (b) use only CloudSource to maintain or repair the Equipment;
- (c) be responsible for any damage or other loss caused to the Equipment (fair wear and tear excepted); and
- (d) not sell, assign, mortgage, charge, sub-let or pledge any Equipment (or any part of it).

5.3. The Customer is strongly advised to insure the Equipment against loss or damage. If the Customer does so, and loss or damage to the Equipment is caused by an insured risk, the insurance monies received by the Customer in respect of the loss or damage will belong to CloudSource and the Customer will hold such monies as bare trustee for CloudSource. CloudSource will apply such monies towards the replacement or repair of the Equipment.

5.4. Use of some of the Services or Equipment may be subject to the Intellectual Property Rights of CloudSource or a third party. If so, the Customer's use of such Service or Equipment will be strictly on such basis as CloudSource notifies to the Customer, and the Customer will not:

- (a) use the Intellectual Property Right for anything other the Customer's usual business;
- (b) acquire any right in any Intellectual Property Right that it uses that it does not already own; or
- (c) grant or assign any third party's Intellectual Property Right to any other person.

Nothing in this clause 5.4 will affect the ownership of Intellectual Property Rights that existed prior to the Contract or that are generated outside of the Services.

5.5. The Customer's use of third party software or websites may be subject to additional terms and conditions. If so, such terms and conditions will be deemed incorporated into the Contract and the Customer will comply with their provisions.

5.6. The Customer should never attempt to rectify a fault in the Equipment or Services itself. If there is a fault in any Equipment or Service, the Customer should provide full details of the fault to CloudSource. The Customer will be responsible for all damage caused by, and all costs of repair of, any attempt by a Customer to rectify a fault.

5.7. On receiving details of a fault, CloudSource:

- (a) will attempt to diagnose and correct the fault remotely as soon as reasonably possible, such remote assistance to be provided free-of-charge only if the Services include a support contract; or
- (b) if the fault cannot be corrected remotely, will dispatch an employee, agent, consultant or subcontractor to the Customer's premises to diagnose and correct the fault on-site, the costs of which will be calculated by reference to the then-current Price List (whether or not the Services include a support contract) and added to the Customer's next monthly invoice in accordance with clause 4.2, provided that the fault is not due to the act or omission of CloudSource.

5.8. The Customer acknowledges that:

- (a) CloudSource is not responsible for :
 - (i) any unauthorised use of, or fraud committed using, the Services or Equipment (provided that CloudSource has taken standard anti-fraud measures) and the Customer is advised to take appropriate protective measures against, and to insure itself against, such risks;
 - (ii) the content of any third party website accessed via the Services and/or the Equipment;
 - (iii) the availability and speed of any internet access (provided that there is no fault in the Equipment or defect in the provision of the Services caused by CloudSource such that access to the internet is not possible);

- (iv) the content and performance of any third party software used by the Customer; or
 - (v) any damage to, or failure of, the Equipment and/or the Services due to the actions of the Customer (whether or not in breach of the Contract);
- (b) it has contracted with CloudSource having conducted its own review of the market and the services and offers of CloudSource's competitors and that CloudSource has not warranted or represented that that the Services, or any Equipment, that it provides will be:
- (i) fit for any particular purpose, even if the Customer's requirements have been made known to CloudSource in advance of the Contract;
 - (ii) uninterrupted or error-free; or
 - (iii) compatible and/or interoperable with any particular third party software or system,
- and the Customer places no reliance on, and will have no remedy in respect of, any representation (whether innocent or negligent) made, but not expressly embodied in, the Contract;
- (c) it is entirely responsible for evaluating any goods or services offered by third parties via the internet and that CloudSource will not, by reason of it providing access to the internet, be a party to, or in any way be held responsible for, any transaction between the Customer and third parties; and
- (d) CloudSource may disable the Customer's access to the Services from time to time in order to carry out upgrades or maintenance to the Services, provided that such upgrade or maintenance is not carried out between the hours of 07:00 and 19:00 on any Business Day unless in an emergency and that as much advance notice of the disabling of the Services as is reasonably possible to give is given to the Customer. For the avoidance of doubt, no refund of the Charges will be given on account of the disabling of the Services in accordance with this sub-clause 5.8(d).

5.9. CloudSource owes a duty to its customers to preserve its network integrity and avoid any network degradation. If, in CloudSource's discretion, the Customer's use of the Service has adversely affected, or may adversely affect, such network integrity, or may cause network degradation, CloudSource may, having given reasonable written warning notice to the Customer:

- (a) manage the Customer's transmission speed and/or the type of traffic the Customer is passing;
- (b) restrict the Customer's download and upload speeds;
- (c) levy a charge of £2 per gigabyte (to the nearest whole gigabyte) above CloudSource's standard bandwidth threshold of 100 gigabytes per month, provided that if the Order Form states a different bandwidth threshold, that threshold will prevail over the standard threshold stated in this sub-clause 5.9(c);
- (d) suspend the Services; or
- (e) terminate the Contract.

5.10. The Customer will indemnify, and keep indemnified, CloudSource against all liability, claims, losses, damages, costs and expenses (including legal fees) suffered or incurred by CloudSource that arise out of, or in connection with, any breach by the Customer of its obligations in this clause 5.

6. MOVING PREMISES

- 6.1. If the Customer is moving premises and intends to retain any Equipment or Service, CloudSource must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the such Equipment and Services. CloudSource reserves the right to terminate the Contract if it determines, in its discretion, that such a move will affect the Contract so that it is no longer commercially viable for CloudSource to perform. Any early termination of the Contract pursuant to this clause 6.1 will be subject to the cancellation charge specified by clause 7.3.
- 6.2. If the Customer moves premises and does not intend to retain the Equipment and Services, the Contract will be terminated and the Customer will pay the cancellation charge specified by clause 7.3.
- 6.3. If the moving of premises involves the visit of an engineer, the Customer will be responsible for the costs incurred by CloudSource, which will be calculated by reference to the Price List.

7. TERM AND TERMINATION

- 7.1. The Contract will last initially for the Minimum Period and will then automatically renew for continuous periods of 18 months (each a **Subsequent Period**) until terminated in accordance with this clause 7.
- 7.2. Either CloudSource or the Customer may terminate the Contract at the expiry of the Minimum Period, or of each Subsequent Period, on at least 3 month's written notice to the other.
- 7.3. The Customer may not terminate the Contract before the expiry of the Minimum Period, or of a Subsequent Period. Any attempt to do so will incur a cancellation charge which may include (without limitation):
- (a) all outstanding Charges invoiced and remaining to be paid;

- (b) a sum in respect of all the Charges that would have been due over the remainder of the Minimum Period or the Subsequent Period but for the cancellation of the Contract;
- (c) an administration fee of £100 per service, line rental, channel or trunk (as applicable) cancelled;
- (d) the costs incurred by CloudSource in disconnecting the Customer, terminating any third party contracts and repossessing any Equipment; and
- (e) any other costs incurred by CloudSource in effecting the early termination.

7.4. Without limiting its other rights or remedies, either CloudSource or the Customer may terminate the Contract with immediate effect on written notice to the other if:

- (a) the other party materially breaches the Contract, provided that, if such breach is capable of remedy, it remains unremedied for at least 10 Business Days after the party seeking to terminate has served notice on the other party requiring such remedy; or
- (b) the other party:
 - (i) is the subject of a proposal for a voluntary arrangement;
 - (ii) is the subject of an administration order;
 - (iii) has an administrative or other receiver appointed over the whole or any part of its assets;
 - (iv) passes a resolution for its winding up, is the subject of a petition presented for its winding up, or is the subject of a winding up or dissolution other than the voluntary winding up of a solvent company for the purposes of amalgamation or reconstruction;
 - (v) enters into any kind of composition scheme, arrangement compromise or arrangement for the benefit of its creditors;
 - (vi) ceases, or threatens to cease, trading; or
 - (vii) undergoes any action that is similar to the above in any other jurisdiction.

7.5. CloudSource may serve written notice to terminate the Contract if the Customer's financial position deteriorates to such an extent that, in CloudSource's opinion, the Customer's ability to fulfil its material obligations under the Contract is threatened.

8. CONSEQUENCES OF TERMINATION

8.1. On termination of the Contract for any reason:

- (a) the Customer will immediately pay to CloudSource any outstanding unpaid invoices, including any interest thereon;
- (b) CloudSource will invoice the Customer for any Charges or other costs incurred but for which no invoice has yet been issued, such invoice to be payable immediately upon receipt;
- (c) CloudSource will disconnect all Services and Equipment and will repossess all Equipment from the Customer's premises (for the avoidance of doubt, the Customer will remain solely responsible for the safe keeping of any Equipment until the same are repossessed by CloudSource);
- (d) the accrued rights, remedies, obligations and liabilities of the parties as at termination will be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (e) clauses which expressly or by implication survive termination will continue in full force and effect.

9. LIABILITY

9.1. Without prejudice to clause 9.4, CloudSource's liability to the Customer with respect to any single incident arising out of, or related to, the Contract, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, is limited to the Charges paid by the Customer over the 6 months immediately preceding the date of the incident.

9.2. Without prejudice to clause 9.4, in no event will CloudSource be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any direct, indirect or consequential loss of:

- (a) profits or revenues;
- (b) data or information systems (provided that CloudSource has taken information and data security measures that are at least equivalent to recognised good practice within its industry);
- (c) contracts or business opportunities;
- (d) anticipated savings; or
- (e) goodwill or reputation,

whether or not CloudSource was advised of the possibility of such loss.

9.3. CloudSource will not be liable for any failure to perform, or defect in, the Services that is due to an event beyond its reasonable control, provided that it promptly notifies the Customer of the event and uses its commercially reasonable endeavours to minimise the effects of such an event and to re-start the Services as soon as reasonably possible.

- 9.4. Nothing in these Terms will limit or exclude CloudSource's liability for:
- (a) death or personal injury caused by its proven negligence, or the proven negligence of its employees, agents, consultants or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other loss which cannot be excluded by law.

10. CONFIDENTIALITY

- 10.1. For the purposes of this clause 10, "**Confidential Information**" will mean all information which is by its nature confidential, whether in tangible or intangible form, and whether or not specified to be confidential, including all know-how, trade secrets, or materials, conceptions, inventions, developments, improvements, designs, techniques, technical and other data, market information, including sales, costs, prices, current or prospective customers and suppliers, forecasts, marketing and any commercial and financial, technical and business strategic plans already disclosed or to be disclosed to a party by the other, but excluding:
- (a) information which, at the time of receipt, is in the public domain;
 - (b) information that becomes generally known to the public after disclosure through no act or omission of any party;
 - (c) information which was already known by the Receiving Party (defined below) prior to disclosure through no breach of duty of confidentiality; or
 - (d) information for which permission to disclose has been given.
- 10.2. If either party (**Disclosing Party**) makes Confidential Information available to the other party (**Receiving Party**), the Receiving Party will maintain the confidentiality of such information, and will not disclose it to any third party.
- 10.3. If required to make a disclosure by law, regulation or order of a court of competent jurisdiction, the Receiving Party will immediately notify the Disclosing Party in writing of any request or requirement for disclosure and of all relevant surrounding circumstances. If the Receiving Party is unable so to notify the Disclosing Party before such disclosure is required, it will notify the Disclosing Party immediately after the disclosure has been made. The Receiving Party will use all reasonable endeavours to resist any requirement for disclosure (and to assist the Disclosing Party in resisting the requirement for disclosure) and to maintain the confidentiality of the Confidential Information.

11. DATA PROTECTION

- 11.1. The Customer acknowledges that CloudSource has no control over any of the Customer's data and does not monitor the content of such data.
- 11.2. The Customer warrants that:
- (a) it has obtained all consents, permissions, licences and other authorisations for the processing of its data by CloudSource in the performance of its obligations in the Contract;
 - (b) its data does not:
 - (i) breach any applicable law; or
 - (ii) infringe any third party Intellectual Property Rights; and
 - (c) it has in place appropriate safeguards, policies and procedures to protect against data loss or corruption, or the unauthorised access to data, that is at least equivalent to recognised good practice within its industry,
- and it will indemnify CloudSource from and against any and all claims, losses, costs, damages and expenses which it suffers or incurs as a result of a breach of the above warranties.
- 11.3. To the extent that any of the Customer's data constitutes "personal data" or "sensitive personal data" for the purposes of the Data Protection Act 1998, the Customer acknowledges and agrees that it is the data controller for the purposes of that Act. CloudSource will process such data in accordance with the provisions of the Act and only to the extent necessary for the satisfactory provision of the Services to the Customer. Should the Customer receive any subject access requests under that Act, CloudSource will cooperate with the Customer to provide the information requested, at the Customer's sole cost.

12. GENERAL TERMS

- 12.1. The Customer may not assign, delegate, sub-contract, charge, mortgage or otherwise transfer any right or obligation contained in this Contract in whole or in part without CloudSource's prior written consent, which will not be unreasonably withheld or delayed.
- 12.2. These Terms may only be amended in writing signed by duly authorised representatives of both the Customer and CloudSource.
- 12.3. Unless otherwise agreed in writing, no delay, act or omission by CloudSource in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 12.4. CloudSource and the Customer are independent businesses and not partners, principal and agent, or employer and employee, or in any relationship of trust, or in any other relationship other than the contractual relationship set out in the Contract.

- 12.5. Notices under the Contract will be in writing and sent to the registered office address of the Customer or CloudSource (as applicable). They may be given, and will be deemed received:
- (a) by first class post: two Business Days after posting;
 - (b) by hand: on delivery; and
 - (c) by facsimile or email: on receipt, provided it is sent to a number/address that has been previously notified to the sending party between the hours of 0800 and 1800 on a Business Day and is clearly marked as containing a notice under the Contract.
- 12.6. If any provision of the Contract is prohibited by law, or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and will not in any way affect any other circumstances of, or the validity or enforcement of, the Contract.
- 12.7. No term of the Contract is intended to confer a benefit on a third party who is not a party to it.
- 12.8. The Contract, and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) will be governed by, and construed in accordance with, the laws of England and Wales, and both CloudSource and the Customer agree that the courts of that jurisdiction will have exclusive jurisdiction to settle any such dispute or claim.