

Skye Cloud Managed Service Terms & Conditions

(these “Terms and Conditions”)



1. DEFINITIONS

In this Agreement:

1.1 the following terms shall have the following meanings unless the context otherwise requires:
this “Agreement” these Terms and Conditions together with the relevant (if any) Commercial Details Document (including any other document attached to or incorporated by reference into the Commercial Details Document, including any Service Scope Document);

“Breach of Duty” has the meaning given to it in Clause 10.10.1;

“Business Day” any day other than (i) a Saturday, (ii) a Sunday or (iii) a day when the clearing banks are not physically open for business in the City of London;

“Business Hours” the hours between 8am and 6pm (local time in London) on Business Days;

“Commencement Date” the date on which this Agreement commences, being the date on which the last of the Parties signs the Commercial Details Document;

“Commercial Details Document” the document agreed in writing between the parties which describes Skye Cloud’s customer, the services being provided by Skye Cloud to the customer, the estimated timeframes, the fees and such other commercial terms as are agreed by the parties within that document, and which document may include or incorporate further documents by reference including a Service Scope Document (which further documents shall be deemed to form part of the Commercial Details Document);

“Confidential Information” any information in any form or medium obtained by or on behalf of one Party from or on behalf of the other pursuant to this Agreement which is expressly marked as confidential or which a reasonable person would reasonably consider to be confidential whether disclosed or obtained before, on or after the date of this Agreement together with any reproductions of such information or any part of this information;

“Customer” the customer which agrees with Skye Cloud to receive the Services, as identified in the Commercial Details Document;

“Customer Represen-tatives” the Customer’s users, representatives, employees, agents, contractors, suppliers or customers;

“Customer IT Representatives” the Customer Representatives who have an appropriate level of IT skill and understanding in relation to the technical issues relating to use of the Customer Systems and Services, and who shall be designated by the Customer as its representatives from time to time to communicate with Skye Cloud to discuss any technical issues relating to the Customer’s receipt of the Services;

“Customer Requirements Document” the document created by Skye Cloud, which describes the requirements relating to the Customer in relation to the Managed Services to be provided to the Customer, and which document may describe the equipment, hardware, software, communications and environment required to be provided by Skye Cloud or the Customer respectively;

“Customer Systems” the equipment, hardware and software used by the Customer in relation to its business, whether hosted by the Customer, by Skye Cloud as part of the Services or by a third party;

“Data” any data used in the Customer’s business relating to its use of the Services, including any data supplied or inputted or supplied to Skye Cloud by the Customer or by a Customer Representative as part of the Managed Services;

“Fee” a fee payable by the Customer to Skye Cloud for the provision by Skye Cloud of the Services as may be stipulated in the Commercial Details Document or as updated by Skye Cloud in accordance with this Agreement, and which fee may include the following:

- (a) fees for the Phase 1 Services (“Phase 1 Fees”);
- (b) fees for the Phase 2 Services (“Phase 2 Fees”);
- (c) fees for the Managed Services, which may be (i) minimum monthly usage fees in respect of the amount of Data, bandwidth, user or other usage metric within the relevant Month (“Minimum Monthly Fees”) or (ii) any additional usage fees over and above the Minimum Monthly Fees to the extent that the relevant usage metric has been exceeded in a relevant Month (“Additional Monthly Fees”); and
- (d) any other fees which may be payable by the Customer for additional Services provided by Skye Cloud to the Customer that are not otherwise covered by any other fees, including Data migration on termination of this Agreement or ad hoc audit or consultation Services provided by Skye Cloud to the Customer (“Other Fees”);

“Good Industry Practice” such level of service as it would be reasonable to expect from a similar service provider to Skye Cloud;

“Intellectual Property Rights” all intellectual and industrial property rights of any nature anywhere in the world, including copyright, database rights, patents, design rights, registered designs, trade mark rights, service mark rights, domain name rights and topography rights, whether or not registered or capable of protection by registration and the right to apply for any of them;

“Liability” has the meaning given to it in Clause 10.10.1;

“Managed Services” any services provided or to be provided by Skye Cloud to the Customer (as described in the relevant Commercial Details Document) under which Skye Cloud provides access to certain stipulated equipment, hardware or software or provides other stipulated operational functionality to the Customer as part of those services;

“Managed Services Start Date” the date on which the Customer first uses the Managed Services in a live environment;

“Month” a period of one month commencing on the Managed Services Start Date or on the corresponding date in a subsequent calendar month;

“Network” the network or data centre in which the Skye Cloud System is located;

“Network Provider” the third party that operates or provides a Network to Skye Cloud for the location of the Skye Cloud System;

“Phase 1 Services” any services provided or to be provided by Skye Cloud to the Customer (as may be described in the relevant Commercial Details Document) in preparation for Phase 2 Services, involving: auditing Customer Systems, considering the Customer’s situation and related consultancy services, and designing the Customer Requirements Document;

“Phase 2 Services” any services provided or to be provided by Skye Cloud to the Customer involving implementing Skye Cloud’s obligations as stipulated in the Customer Requirements Document, configuring the Customer Systems being hosted by Skye Cloud, testing those configured Customer Systems, and receiving Data being migrated by the Customer to Skye Cloud in advance of the Managed Services Start Date;

“Party” either Skye Cloud or the Customer;

“Rates” Skye Cloud’s time and materials rates for providing services, being initially at either the rates set out in the Commercial Details Document or (if not set out there) at Skye Cloud’s standard time and materials rates from time to time; as uplifted in accordance with this Agreement, and also subject to any premium in accordance with Skye Cloud’s standard percentage premium rates for performing any of the Services outside of Business Hours;

“Service Scope Document” Skye Cloud’s document describing the functionality of the relevant Managed Services being provided by Skye Cloud to the Customer, as Skye Cloud may update or amend in its reasonable discretion (whether with or without notice) from time to time;

“Services” any services provided or to be provided by Skye Cloud to the Customer in relation to this Agreement (including access and use of Managed Services, Phase 1 Services or any Phase 2 Services);

“Skye Cloud” Skye Cloud Limited, a company registered in England under number 07924180 and having its registered office at 66b High Street, Great Baddow, Chelmsford, Essex, CM2 7HH;

“Skye Cloud System” any equipment, hardware or software owned or used by Skye Cloud underlying the Managed Services on or with which the Managed Services runs;

“Term” the term of this Agreement referred to in Clause 12.1;

“Third Party Software” has the meaning given to it in Clause 4.12;

“VAT” any tax introduced pursuant to a direction of the Council of the European Community relating to turnover taxes including value added tax as provided for in the Value Added Tax Act 1994 and supplemental legislation (whether delegated or otherwise), any tax of a similar nature which may be substituted for or levied in addition to it and any sales tax;

“Year” a period of 12 months commencing on the Managed Services Start Date, or each subsequent period of 12 months commencing on an anniversary of the Managed Services Start Date;

1.2 references to “Clauses” are to clauses of these Terms and Conditions;

1.3 the headings to Clauses are inserted for convenience only and shall not affect the interpretation or construction of this Agreement;

1.4 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm or partnership;

1.5 references to “written” or in “writing” (except in respect of sending a notice in accordance with Clause 15) includes in electronic form;

1.6 references to “includes” or “including” or like words or expressions shall mean without limitation; and

1.7 references to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

2. Agreement

2.1 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by the Customer. These Terms and Conditions apply to all Services.

2.2 Save as expressly provided herein, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties hereto preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated herein except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each Party acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.

2.3 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter hereof and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.

2.4 Skye Cloud may in its absolute discretion from time to time provide the Managed Services either on its own servers or use third party suppliers to do so in whole or in part. The Customer acknowledges that Skye Cloud may from time to time without prior notice and without the need for prior agreement provide reasonable additional obligations or requirements on the Customer or reasonably restrict rights of the Customer or introduce changes to these Terms and Conditions, due to the requirements of third party suppliers including such hosts or Network Providers. Skye Cloud shall inform to the Customer of this in writing. Where reasonably practicable, Skye Cloud will endeavour to give the Customer reasonable warning.

2.5 Subject to Clause 2.4, no change to the specific terms of this Agreement shall be binding unless it is agreed in writing by each of the Parties.

2.6 If the Customer provides Skye Cloud with a purchase order, this shall be purely for the Customer's administrative purposes only and shall not form part of this Agreement.

2.7 This Agreement shall be legally formed and the Parties shall be legally bound when both Parties have agreed in writing to the relevant Commercial Details Document.

2.8 In the event of any conflict between the provisions within any of the documents within this Agreement, then:

2.8.1 these Terms and Conditions shall prevail over all others (except to the extent that the Parties expressly agree in writing that a particular provision within these Terms and Conditions shall be over-ridden or changed); and

2.8.2 the Commercial Details Document shall prevail over all others except for these Terms and Conditions (except to the extent that the Parties expressly agree in writing that a particular provision within the Commercial Details Document shall be over-ridden or changed).

2.9 Each Commercial Details Document is a separate agreement; there may be more than one agreement in place if there is more than one Commercial Details Document.

3. Services

3.1 Skye Cloud warrants that:

3.1.1 it shall use its reasonable skill and care in providing any Services in accordance with Good Industry Practice;

3.1.2 its employees, agents and subcontractors have the necessary skill to provide any Services;

3.1.3 any Services will be provided in a professional, competent and workmanlike manner;

3.1.4 it has all necessary rights, permissions and consents to enter into this Agreement;

3.1.5 it shall use its reasonable endeavours to ensure that while it and its employees, agents and subcontractors are on the Customer's or the Customer Representatives' premises, they will conform to the Customer's and Customer Representatives' normal codes of staff and security practice as are advised to them in advance by the Customer or the Customer Representative; and

3.1.6 the Managed Services shall contain the latest functionality and features as set out in the Service Scope Document or as otherwise set out in the Commercial Details Document and Skye Cloud shall use its reasonable endeavours to provide the Managed Services in accordance with Clause 4.

3.2 Skye Cloud shall use its reasonable endeavours to perform its obligations within any timescales set out in this Agreement, but Skye Cloud shall not have any Liability for any delays or failure to accurately perform its obligations:

3.2.1 if it has used those endeavours; or

3.2.2 if caused by any failure or delay on the part of the Customer or a Customer Representative or by any breach by the Customer of this Agreement.

3.3 The Customer shall obtain and pay for:

3.3.1 any appropriate Phase 1 Services before obtaining Phase 2 Services, allowing for any anticipated timeframes described in the Commercial Details Document; and

3.3.2 any appropriate Phase 2 Services before obtaining the Managed Services, allowing for any anticipated timeframes described in the Customer Requirements Document or Commercial Details Document.

3.4 If the Customer obtains any software, hardware or equipment from Skye Cloud to try on its own servers on a "proof of concept" test basis without charge prior to committing to going forward with obtaining Services (including the Managed Services) from Skye Cloud, Skye Cloud provides such software, hardware and equipment on an "as is" basis without any warranty, condition or other terms, and such use shall be solely at the Customer's own risk. The Customer is therefore responsible for taking and assuming all care with using anything supplied by Skye Cloud on such a basis in accordance with Clause 5.1.17.

3.5 Except where expressly provided for within this Agreement, Skye Cloud excludes all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Services or any software, hardware or equipment.

4. Service Levels For The Managed Services

4.1 Skye Cloud may provide different levels of access to the Skye Cloud System to different levels of Customer Representatives.

4.2 Skye Cloud shall use its reasonable endeavours to keep uptime of the Skye Cloud System during Business Hours to 99.999% over each Month and minimise downtime, but it may be necessary to suspend or restrict the Managed Services at any time for any reason including for any urgent or planned maintenance or introduction of new functionality or features. Skye Cloud does not warrant that the Services will be uninterrupted or error-free or that they will be available at any particular speed. In addition, if a third party supplier of hosting services or a Network Provider to Skye Cloud suspends provision of access to its servers or Network at any time for any reason, the provision of the Managed Services by Skye Cloud may be suspended; and Skye Cloud's percentage uptime objective described in this Clause 4.2 does not cover any timeframes during which the Network is not working to the desired standard (although Skye Cloud shall use its reasonable endeavours to seek to resolve those issues with the Network Provider as early as reasonably practicable).

4.3 Following receipt of a report from a Customer IT Representative with sufficient detail of any issue involving Skye Cloud's ability to provide the Managed Services or access to the Skye Cloud System, Skye Cloud shall use its reasonable endeavours to respond as soon as responsible and within 30 minutes during Business Hours. Skye Cloud shall then instigate work on correcting the issue and it shall prioritise corrective work according to apportioning resources based on its analysis of the seriousness of the effects of issues to the Customer and Skye Cloud's other customers. Skye Cloud shall work on dealing with support issues during Business Hours and it shall use all reasonable endeavours to work on the most serious issues urgently in order to minimise downtime and the effects of it to its customers. The Customer acknowledges that timeframes for correction may vary according to the amount of data, bandwidth, whether there is a wide area network other than on Skye Cloud Systems, and whether Skye Cloud needs to involve third parties (such as the Network Provider or a third party that supplied or licensed any of the Skye Cloud System to Skye Cloud). The Customer further acknowledges that Skye Cloud shall not be responsible for any issues other than the Skye Cloud System itself (such other issues including the Customer's own procured software, hardware, equipment or communications in accessing the Skye Cloud System or any Third Party Software).

4.4 Skye Cloud shall use its reasonable endeavours to correct any errors or omissions in the Services as soon as practicable during Business Hours after receiving full and clear information of them. Skye Cloud shall provide a telephone and email support Service during Business Hours for dealing with faults and also for answering queries from the Customer IT Representatives. Skye Cloud shall use its reasonable endeavours to respond to a support request within any service level times made available to its customers generally from time to time, but although Skye Cloud shall use its reasonable endeavours to have faults corrected it cannot guarantee any particular result or outcome nor within any particular time. Any timeframes placed on Skye Cloud shall also have regard to whether Skye Cloud needs to obtain any support in turn from any third party subcontractor which assists Skye Cloud with provision of the Services (including any Network Provider).

4.5 The Customer acknowledges that Skye Cloud provides the Managed Services on the basis of shared servers, infrastructure and storage disks. The Customer is not entitled to have dedicated servers, infrastructure or storage disks unless the Parties expressly agree in writing (and the Customer agrees to pay for additional Fees for such dedicated provision).

4.6 When Skye Cloud provides the Services, it is dependent on the Data provided by or on behalf of the Customer or Customer Representatives. To the extent permitted by law, Skye Cloud does not warrant and it excludes all Liability in respect of the accuracy, completeness, currency, fitness for purpose or legality of any Data supplied to Skye Cloud or the Skye Cloud System by the Customer or the Customer Representatives.

4.7 Skye Cloud does not have any responsibility or Liability for any Data lost or corrupted during the transfer between leaving the Customer or the Customer Representative's own systems and arrival at the Skye Cloud System. Skye Cloud also does not have any responsibility or Liability for the transfer or transmission of Data to the Skye Cloud System being done accurately, reliably in a timely manner or at all.

4.8 Skye Cloud shall use its reasonable endeavours in accordance with Good Industry Practice to keep the Data secure from use, access or corruption by unauthorised third parties (including using a firewall, anti-virus software, a managed intrusion detection system and manual inspections of any activities that Skye Cloud considers to be suspicious), but the Customer acknowledges that Skye Cloud cannot guarantee 100% security.

4.9 Skye Cloud shall institute and operate in accordance with Good Industry Practice back-ups at least once every Business Day with the aim of ensuring that Data integrity can be maintained as at the timing of the last back-up in the event of loss, damage, theft, corruption, deletion or misuse of Data. The Customer is responsible for taking any further back-ups if it wants to ensure that it has sufficient additional back-ups with the frequency that it requires for its particular requirements. In the event of loss, damage, theft, corruption, deletion or misuse of Data, the Customer's sole and exclusive remedy is for Skye Cloud to use its reasonable endeavours to obtain and restore the Data from the latest back-up taken in accordance with the processes described in this Clause 4.9.

4.10 As part of the Managed Services, Skye Cloud shall institute and operate disaster recovery procedures in accordance with Good Industry Practice.

4.11 Skye Cloud shall provide the Customer with reports in accordance with Skye Cloud's standard practices from time to time.

4.12 Unless the Commercial Details Document expressly provides to the contrary, the Managed Services does not include the hosted service by Skye Cloud of any software licensed (or that needs to be licensed) by the Customer directly from a third party software licensor (the **"Third Party Software"**). However, if and to the extent that any Third Party Software is to be hosted for the Customer by Skye Cloud on the Skye Cloud System, the Customer acknowledges that the Customer shall be fully responsible and liable for obtaining from the Third Party Software licensor the Third Party Software and all licensed rights for the Customer, Customer Representatives, Skye Cloud and its suppliers to be able to use and access such Third Party Software in the ways envisaged as part of the Managed Services. To the extent that the Customer does elect to use any Third Party Software in relation to the Managed Services, the Customer acknowledges that the Customer shall be fully responsible and liable for obtaining all support and maintenance from the Third Party Software licensor, and any provision by Skye Cloud of the Third Party Software as part of the Managed Services is without warranty and on an "as is" and "as available" basis.

4.13 Skye Cloud is not responsible for any services, software, hardware, equipment, communications, customisations, changes or tailoring except to the extent expressly stipulated in this Agreement or otherwise agreed in writing by Skye Cloud that Skye Cloud will provide them.

5. Customer's Obligations

5.1 The Customer shall (and where applicable shall procure that the Customer Representatives shall) do all of the following:

Use of Managed Services

5.1.1 except where expressly provided for within this agreement, maintain its own sufficient access to the Skye Cloud System through its telecoms or Internet service providers such that Skye Cloud can provide the Managed Services (including accessing any Data being made available by the Customer) and the Customer can access and use the Managed Services. Skye Cloud is not responsible for any connections from the Customer or Customer Representatives' own systems through to the Skye Cloud System;

5.1.2 be responsible for ensuring that, and hereby warrants and undertakes to Skye Cloud that, the Data and the use and sending and receipt of it by the Customer and the Customer Representatives and Skye Cloud, and the use and processing of Data by Skye Cloud to perform the Services in accordance with this Agreement or by the Customer and the Customer Representatives, and the manner of the Customer's and the Customer Representatives' use of the Services and Skye Cloud System, the Network and Managed Services:

- (a) conforms in all respects with all applicable laws, rules, regulations, bye-laws, codes of practice, licences, permits, authorisations and registrations;
- (b) does not infringe the privacy rights or Intellectual Property Rights of any third party;
- (c) is not in breach of confidence;
- (d) is not in contempt of court;
- (e) is not defamatory, malicious, abusive, grossly offensive, obscene, indecent, pornographic, discriminatory, harassing, threatening or menacing;
- (f) does not impose an unreasonable or disproportionate large load on Skye Cloud's infrastructure or Skye Cloud System or on any third party system;
- (g) does not access or interfere with another customer's data or that customer's use of Skye Cloud's or the Network Provider's systems;
- (h) does not attempt to circumvent Skye Cloud's, the Network Provider's or their suppliers' security or network including accessing data not intended for the Customer or Customer Representatives, log into a server or account which the Customer or the Customer Representatives are not expressly authorised to access, or probe the security of other networks (such as running a port scan);
- (i) does not involve the sending of unsolicited messages;
- (j) does not involve "chain letters" or "pyramid schemes";
- (k) does not contain any material detrimental to Skye Cloud, including any viruses, trojan horses, trap doors, back doors, easter eggs, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information;
- (l) does not interfere or attempt to interfere with the proper working of the Skye Cloud's systems or the Network; and

(m) does not do anything that in any way may be contrary to Skye Cloud's interests;

5.1.3 check the accuracy, truth, completeness and fitness for purpose of any Data within the Skye Cloud System before the Customer or Customer Representatives use it for any purpose;

5.1.4 report any faults or suspected faults with the Managed Services to Skye Cloud immediately upon discovery, and provide such personnel, information, detail and co-operation as Skye Cloud reasonably requires in order for Skye Cloud to diagnose, prioritise and rectify the issue. The Customer shall report issues to Skye Cloud only through the Customer IT Representatives;

5.1.5 use its own log-in details for the Managed Services and not impersonate another person or adopt a false identity. Anyone logging in under the Customer's or the Customer Representatives' details (including password) will be deemed to be authorised to represent the Customer, and the Customer shall ensure that all Customer Representatives or people claiming to represent the Customer are so authorised;

5.1.6 choose a password that cannot be readily guessed. If the Customer or a Customer Representative believes that a third party may know its password other than with its permission, the Customer must inform Skye Cloud immediately and Skye Cloud will suspend use of the Skye Cloud System under that password and the Customer or the Customer Representative will need another password (but in any event the Customer shall be responsible for any use under the other password until the password is changed). The Customer agrees that it and the Customer Representatives will change their passwords as frequently as they need or Skye Cloud reasonably requires;

5.1.7 keep, and procure that the Customer Representatives keep, their passwords strictly confidential and secure and the Customer shall immediately inform Skye Cloud in writing if any unauthorised third party becomes aware of any of those passwords or if the Customer or Customer Representatives become aware of any unauthorised use of their passwords or there is any breach of security known to or suspected by them. The Customer acknowledges that any person to whom it or the Customer Representatives disclose their passwords are authorised to act as their agent for the purposes of using the Services. The Customer is entirely responsible if it or the Customer Representatives do not maintain the confidentiality of their passwords;

5.1.8 use the Skye Cloud System only for the purpose and in the ways designed or intended for them to be used;

5.1.9 if the Services are accessed or used outside of the United Kingdom, ensure that what the Customer and the Customer Representatives are doing in that country is legal and ensure compliance with all applicable laws, regulations, byelaws, codes of practice, licences, registrations, permits and authorisations. Use of the Services outside of the United Kingdom is entirely at the Customer's risk and Skye Cloud make no warranty or representation that the Services are suitable for use there;

The Customer's receipt of other Services

5.1.10 provide proper, adequate, safe, comfortable and suitable environmental and operating conditions if Skye Cloud provides any Services at the Customer's or Customer Representatives' premises;

5.1.11 provide access at all reasonable times on the Customer's or the Customer Representatives' premises to adequate space, accommodation, equipment, hardware, software, telecommunications, systems and any facilities to enable Skye Cloud to perform its obligations and exercise its rights under this Agreement;

5.1.12 inform Skye Cloud in writing within a reasonable time before the commencement of any Services of any regulations relevant to Skye Cloud's representatives when working at any premises under the control of the Customer or the Customer Representatives;

5.1.13 be present at any of its premises at the agreed times to enable Skye Cloud to perform its obligations;

5.1.14 be responsible for anything done in relation to any live Data by Skye Cloud following the instructions of the Customer;

Generally

5.1.15 promptly comply with the reasonable requests and recommendations of Skye Cloud from time to time in connection with this Agreement and in relation to the Customer obtaining any relevant software, hardware, equipment or communications (including updates, upgrades and refreshes);

5.1.16 promptly investigate all alleged breaches of the provisions of this Agreement by any Customer Representatives and take all necessary actions to promptly remedy any such breaches;

5.1.17 take and assume all care with using any software, hardware or equipment supplied by Skye Cloud for the Customer to use on its own servers on a "proof of concept" test basis prior to committing to going forward with obtaining Services (including the Managed Services) from Skye Cloud;

5.1.18 promptly provide Data in such format as is reasonably required by Skye Cloud;

5.1.19 promptly provide all information as the Customer ought reasonably know that Skye Cloud would require in order for Skye Cloud to be able to provide the Services to the best of its ability, including any information that Skye Cloud would wish to know in order to be able to provide the Customer Requirements Document and Services that meet the Customer's requirements and needs;

5.1.20 co-operate with Skye Cloud, and in a timely manner;

5.1.21 notwithstanding any Services provided by Skye Cloud or any recommendations or suggestions by Skye Cloud, be fully responsible for ensuring that the Services are sufficient and suitable for its purposes and meet its individual requirements; and

5.1.22 during the Term and for a period of one year afterwards, not solicit or induce any officer, employee or agent of Skye Cloud who was involved with the provision of Services to the Customer to terminate their employment or engagement with Skye Cloud without the prior written consent of Skye Cloud. For the avoidance of doubt, any general recruitment advertisement placed by or on behalf of the Customer shall not be deemed to be solicitation for the purposes of this Clause 5.1.22, however direct engagement with any officer, employee or agent in relation to such role (internal or otherwise) may result in Skye Cloud pursuing costs equivalent to, but not limited to their losses and/or recruitment fees and up to 100% of the individuals annual salary. Skye Cloud shall not have any Liability for delay, breach, mis-performance or non-performance of this Agreement if caused by the Customer's or Customer Representative's engagement or employment of any person engaged or employed by Skye Cloud.

6. Intellectual Property Rights

6.1 The Customer acknowledges that, as between Skye Cloud and the Customer, Skye Cloud and its licensors own all Intellectual Property Rights in the Services, Skye Cloud System and any reports or documents provided by Skye Cloud in relation to this Agreement, whether or not anything is created, supplied, provided, devised, designed, configured or bespoke at the specific request of the Customer or a Customer Representative or for the specific use of the Customer or a Customer Representative. The Customer and the Customer Representatives shall not have any rights over or to use the Services or the Skye Cloud System or such reports or documents other than to use them for the Term in the manner envisaged by this Agreement.

6.2 Skye Cloud acknowledges that, as between Skye Cloud and the Customer, the Customer and its licensors own all Intellectual Property Rights in the Data. The Customer shall be responsible:

6.2.1 for having all rights in the Data;

6.2.2 for ensuring that all the Customer Representatives have all rights to use and process the Data; and

6.2.3 for enabling Skye Cloud to have the right to use and process the Data; so that Skye Cloud can lawfully perform its obligations under this Agreement.

6.3 The Customer hereby grants to Skye Cloud a royalty-free, worldwide, non-exclusive, assignable, sublicensable licence to use the Data for the purposes of performing this Agreement. Subject to anything else to the contrary in this Agreement, Skye Cloud shall not use the Data for any other purpose without the Customer's express prior written consent.

6.4 Except to the extent expressly provided in this Agreement, the Customer shall only use the Skye Cloud System and Services for its own usual business purposes and shall not, without Skye Cloud's prior written consent, allow any third party to use or access the Skye Cloud System or Services or supply the Skye Cloud System or Services to any third party; and then only as contemplated by this Agreement.

6.5 If either Party becomes aware of any improper or wrongful use of the Intellectual Property Rights owned or used by the other, that Party shall forthwith inform the other of such use.

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7. Confidentiality

7.1 Each Party shall keep and procure to be kept secret and confidential the Confidential Information of the other Party and shall not use nor disclose the same save:

7.1.1 for the purposes of the proper performance of this Agreement; or

7.1.2 as otherwise permitted by this Agreement; or

7.1.3 with the prior written consent of the other Party.

7.2 Where one Party discloses Confidential Information of the other Party to its representative, employee, consultant, subcontractor, supplier, customer, agent, professional adviser or insurer, it shall do so subject to obligations equivalent to those set out in this Clause 7. Each Party shall use its reasonable endeavours to ensure that any such representative, employee, consultant, subcontractor, supplier, customer, agent, professional adviser or insurer complies with such obligations.

7.3 The obligations of confidentiality in this Clause 7 shall not extend to any matter which either Party can show:

7.3.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or

7.3.2 was in its written records prior to receipt; or

7.3.3 was independently developed by it; or

7.3.4 was independently disclosed to it by a third party entitled to disclose the same.

7.4 If either Party is required to disclose the Confidential Information of the other Party under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction, then the Party so required may disclose the Confidential Information to the extent required but shall, prior to any disclosure where practicable, give the other Party as much notice thereof as practicable and notify and consult with the other Party and, at the other Party's request and cost, fully co-operate with and assist that other Party in opposing any such disclosure.

7.5 Neither Party shall make any announcement of any kind in respect of the subject matter of this Agreement except with the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) or as is required by law.

7.6 Subject to Clause 7.5, Skye Cloud may identify the Customer as its customer and the type of Services provided by Skye Cloud to the Customer, provided that in doing so Skye Cloud shall not (without the Customer's prior written consent) reveal any Confidential Information of the Customer.

7.7 The obligations of this Clause 7 shall continue after termination of this Agreement for whatever reason.

8. Data Protection

8.1 In this Clause 8, “Requirements” means the requirements of:

8.1.1 the General Data Protection Regulation (GDPR) and the General Data Protection Act 2018;

8.1.2 any applicable directives of the European Parliament or the Council of the European Union in relation thereto;

8.1.3 and any regulations, orders or codes of practice (in original or amended form) implementing or made under them from time to time; and

8.1.4 any applicable laws, regulations, orders or codes of practice anywhere in the world that relate to data protection.

8.2 Each Party undertakes to the other that it will duly observe its obligations under the Requirements that arise in connection with the Data.

8.3 Skye Cloud shall:

8.3.1 in accordance with the General Data Protection Regulation (GDPR) and the Data Protection Act 2018, act as “data processor” only on instructions from the Customer as “data controller” in relation to the processing of “personal data” (as all of those terms are defined under that Act) carried out on behalf of the Customer and take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, any such personal data;

8.3.2 permit access to the Customer to Skye Cloud’s premises and records at all reasonable times and on reasonable notice to enable the Customer to ensure compliance by Skye Cloud with this Clause 8.3. The access right is subject to the Customer first agreeing to Skye Cloud’s reasonable requirements as to confidentiality and to the Customer using its reasonable endeavours to ensure that while it and the Customer Representatives are on Skye Cloud’s or the Network Provider’s or their suppliers’ premises they will conform to the normal codes of staff and security practice as are applicable at the premises. The Customer acknowledges that if it seeks access under this sub-Clause 8.3.2, it shall only access the Data in any way such that it cannot and does not see any other data hosted or managed by Skye Cloud, as Skye Cloud needs to maintain the confidentiality of the data hosted or managed by it; and

8.3.3 as soon as practicable inform the Customer of any notice or communication concerning the Requirements received from any person (including any data subject or caller) or any regulatory authority (including the UK’s Information Commissioner) connected with the provision of the Services and co-operate fully (at the Customer’s cost) with the Customer in relation to all relevant matters concerning the Requirements in connection with the Services.

8.4 The Customer acknowledges that Skye Cloud may supply data in respect of which Skye Cloud is acting as data processor for the Customer, to its third party suppliers to whom it sub-contracts the provision of any or all of the Services (including hosting services or the Network Provider).

9. Indemnity

9.1 The Customer shall fully and promptly indemnify and keep indemnified Skye Cloud against all liabilities, losses, damages, injuries, costs, expenses, fines, demands, claims and proceedings suffered or incurred by Skye Cloud arising (directly or indirectly) out of:

9.1.1 any claims or legal proceedings arising from the Customer's or the Customer Representatives' use of the Managed Services or Skye Cloud System or use of the Managed Services or Skye Cloud System through the Customer's or Customer Representatives' password, which are brought or threatened against Skye Cloud by any person; or

9.1.2 any breach of this Agreement by the Customer;
except to the extent that this has resulted from Skye Cloud's breach of this Agreement.

10. Limitation of Liability

10.1 This Clause 10 prevails over all other Clauses and sets forth the entire Liability of each Party, and the sole and exclusive remedies of the other, in respect of:

10.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or of any goods or services in connection with this Agreement; or

10.1.2 otherwise in relation to this Agreement or entering into this Agreement.

10.2 Neither Party excludes or limits its Liability for:

10.2.1 its fraud; or

10.2.2 death or personal injury caused by its Breach of Duty; or

10.2.3 any breach of the obligations implied by Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982; or

10.2.4 any other Liability which cannot be excluded or limited by applicable law.

10.3 Subject to Clause 10.2, neither Party accepts and hereby excludes any Liability for Breach of Duty other than any Liability arising pursuant to the terms of this Agreement.

10.4 Subject to Clause 10.2, neither Party shall have Liability in respect of any:

10.4.1 indirect or consequential losses, damages, costs or expenses;

10.4.2 loss of actual or anticipated profits;

10.4.3 loss of contracts;

10.4.4 loss of use of money;

10.4.5 loss of anticipated savings;

10.4.6 loss of revenue;

10.4.7 loss of goodwill;

10.4.8 loss of reputation;

10.4.9 loss of business;

10.4.10 ex gratia payments;

10.4.11 loss of operation time;

10.4.12 loss of opportunity; or

10.4.13 loss of, damage to or corruption of, data (except to the extent that that Party specifically has a responsibility to prevent loss of, damage to or corruption of, data under this Agreement); whether or not such losses were reasonably foreseeable or the Party in default or its agents had been advised of the possibility of the other incurring such losses. For the avoidance of doubt, Clauses 10.4.2 to 10.4.13 apply whether such losses are direct, indirect, consequential or otherwise.

10.5 Subject to Clause 10.2, the total aggregate Liability of each Party shall be limited to the greater of: (a) £250,000; or (b) 110% of the total sums paid and total other sums payable, in aggregate, by the Customer to Skye Cloud under this Agreement, within the 12 months preceding the date on which the claim first arose.

10.6 The limitation of Liability under Clause 10.5 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.

10.7 The Customer shall not limit its Liability for failure to pay the Fees or expenses.

10.8 The Customer acknowledges and accepts that Skye Cloud only provides Services to it on the express condition that Skye Cloud will not be responsible for nor shall it have any Liability directly or indirectly for inaccuracies or errors in or omissions from any Data provided by the Customer or the Customer Representatives.

10.9 The Customer acknowledges and accepts that Skye Cloud only provides Services to it on the express condition that Skye Cloud will not be responsible for nor shall it have any Liability directly or indirectly for any acts or omissions of Skye Cloud's other customers or those other customers' representatives that may (directly or indirectly) have any impact on any Services provided, required to be provided, not provided or delayed in being provided, by Skye Cloud to the Customer.

10.10 In this Clause 10:

10.10.1 "Breach of Duty" means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty); and

10.10.2 “Liability” means liability in or for breach of contract, Breach of Duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including, without limitation, liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and for the purposes of this definition, all references to “this Agreement” shall be deemed to include any collateral contract).

11. Fees and Expenses

11.1 In consideration for obtaining and using the Services under this Agreement, the Customer shall pay to Skye Cloud the Fees and any applicable expenses.

11.2 Unless otherwise expressly stated within the Commercial Details Document, all Phase 1 Fees, Phase 2 Fees and Other Fees shall be chargeable on a time basis at the Rates for the time actually spent by Skye Cloud (and not for the time estimated to be provided). Unless otherwise stipulated in writing between the Parties, a “man day” shall be seven and a half hours. Time spent includes travel to and from Skye Cloud’s place of business or home to any other site. Skye Cloud shall maintain, and if reasonably requested by the Customer make available to the Customer, records of time spent in providing the Services and of expenses incurred.

11.3 All Minimum Monthly Fees and Additional charges for new users/laptops (£15 per Month) shall be chargeable on the basis set out in the Commercial Details Document. If the Fees are based on amounts or increments used in the Month (for example, number of users or amount of Data), the highest use observed by Skye Cloud in the Month shall be the determinant figure for the Month.

11.4 Subject to Clause 3.3, the Customer shall pay for:

11.4.1 the estimated Fees under Clause 11.2 in advance of receipt of the relevant Services;

11.4.2 the Minimum Monthly Fees in full in advance of the relevant Month to which the Managed Services for those Minimum Monthly Fees relates;

11.4.3 any additional Phase 1 Fees, Phase 2 Fees or Other Fees incurred for the Services beyond or outside of the estimate referred to in Clause 11.4.1 in arrears within 10 Business Days following the Customer’s receipt of Skye Cloud’s invoice for those Services; and

11.4.4 any Additional Monthly Fees in full in arrears by the end of the Month following the relevant Month to which the Additional Monthly Fees relates.

11.5 If the estimated Fees described in Clause 11.4.1 exceed the actual Fees that should be charged for the Services actually incurred, then Skye Cloud shall (at its option) either:

11.5.1 permit the Customer to off-set (under this Agreement or any other agreement between the Parties) any extra Fees (representing estimated Services against actual Services provided) against future Fees; or

11.5.2 refund to the Customer any extra Fees (representing estimated Services against actual Services provided).

11.6 Skye Cloud may charge the Customer for its reasonable expenses in accordance with Skye Cloud's normal expenses policies and procedures incurred in the course of performing the Services (other than the Managed Services) under this Agreement, including for the reasonable accommodation, travel (including air travel, own car use and car rental), telephone, food, subsistence, out-of-pocket and other expenses incurred in the course of performing this Agreement outside of the relevant person's normal place of work.

11.7 Skye Cloud may issue invoices to the Customer for the Fees in advance for the Fees described in Clauses 11.4.1 or 11.4.2 and in arrears for the Fees described in Clauses 11.4.3 or 11.4.4, and the Customer shall be obliged to pay for the relevant sums at the times set out in Clause 11.4.

11.8 Skye Cloud may issue invoices to the Customer for the expenses incurred by it or its subcontractors in the course of performing this Agreement as and when the expenses arise or if earlier when Skye Cloud knows the value of its anticipated expenses.

11.9 Unless otherwise agreed in writing between the Parties, the Customer shall pay Skye Cloud for the expenses within ten Business Days of the date of Skye Cloud's invoice for the expenses.

11.10 Where Services are provided on a time basis, Succeed does not guarantee that any work intended to be completed within a particular period of time or within a particular maximum figure will be completed during that timeframe or within that budget.

11.11 Unless otherwise agreed in writing between the Parties to another pricing basis, Skye Cloud may increase any of the Fees or Rates for Services not yet provided under this Agreement by no less than four months' notice to take effect at the start of a new Year, provided that no increase:

11.11.1 shall be implemented in the same calendar year as the implementation of any preceding increase; or

11.11.2 shall be at more than 5% or (if higher) the previous annual all-items percentage increase figure in the retail prices index (or, if that index ceases to exist, its closest replacement index) announced by the UK government before Skye Cloud's increase.

11.12 All sums due to Skye Cloud are exclusive of VAT and other duties or taxes (if applicable) which the Customer shall pay to Skye Cloud in addition at the same time as payment of the Fees and expenses.

11.13 The Customer shall pay Skye Cloud by any payment method reasonably stipulated by Skye Cloud. No payment shall be considered paid until it is received by Skye Cloud in cleared funds in full.

11.14 Payment shall be in the currency in force in England from time to time or in such other currency as is stipulated for the Fees or expenses.

11.15 Subject to Clause 11.5, payment of all sums due to Skye Cloud under this Agreement shall be made by the Customer in full without any set-off, deduction or

11.15 Subject to Clause 11.5, payment of all sums due to Skye Cloud under this Agreement shall be made by the Customer in full without any set-off, deduction or withholding whatsoever.

11.16 If the laws of any part of the territory where the Customer is based requires the Customer to withhold tax on any payment which the Customer is obliged to make to Skye Cloud under this Agreement, the Customer shall:

11.16.1 obtain a proper receipt and discharge for the tax so deducted and forward it without delay to Skye Cloud;

11.16.2 do all such other things and take such other steps as may be reasonably required to enable Skye Cloud to obtain any tax credit which may be available to it; and

11.16.3 in the event that any taxes deducted cannot be reclaimed, make up to Skye Cloud any shortfalls in payment attributable to such tax deductions.

11.17 If the Customer is late in paying any part of any monies due to Skye Cloud under this Agreement or any other agreement between Skye Cloud and the Customer, Skye Cloud may (without prejudice to any other right or remedy available to it whether under this Agreement or any other agreement between the Parties or by any statute, regulation or bye-law), subject to giving the Customer no less than five Business Days' notice to correct the issue, do any or all of the following:

11.17.1 charge interest on the amount due but unpaid at the annual rate of interest set under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly; and

11.17.2 suspend the performance of this Agreement and any other agreement between Skye Cloud and the Customer until payment in full has been made; and

11.17.3 suspend any right of the Customer to use the Skye Cloud System or access the Managed Services.

12. Term and Termination

12.1 This Agreement shall commence on the date on which this 12.1 This Agreement shall commence on the date on which this Agreement is formed under Clause 2.7 and, subject to either Party continuing to have a right to earlier termination pursuant to its termination rights under this Agreement, shall continue in force until the later of:

12.1.1 the Customer has paid for all the Fees and expenses in full; and

12.1.2 Skye Cloud has finished providing the Services as are required by this Agreement, and where a duration or "Term" is specified in the Commercial Details Document, this Agreement shall continue until the expiry of that period, and the Customer shall have no right to terminate for convenience during that committed period. If after the specified duration or "Term" in the Commercial Details Document, expires, if the Customer has not provided Skye Cloud with no less than three (3) months' prior written notice to terminate (such notice to expire at the end of the initial contract period stated

in the Commercial Details Document), this Agreement shall automatically renew for successive periods of twelve (12) months. Any subsequent renewal periods shall be subject to the same notice requirement, with notice to expire at the end of the then-current renewal period. All terms and conditions of this Agreement shall continue to apply during any renewal period unless otherwise agreed in writing by both Parties. If Clause 12.1 above does not apply, insofar that a duration or "Term" has not been specified in the Commercial Details Document, the Services shall continue in force until terminated by either Party giving to the other no less than 1 months' notice, such notice to take effect on or after the expiry of the first Month.

12.3 Either Party may terminate this Agreement immediately by notice in writing to the other Party if:

12.3.1 the other Party is in material breach of any of its obligations under this Agreement or any other agreement between the Parties which is incapable of remedy; or

12.3.2 the other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under this Agreement or any other agreement between the Parties after having been required in writing to remedy such breach within a period of no less than 30 days; or

12.3.3 the other Party is in persistent breach of any of its obligations under this Agreement or any other agreement between the Parties; or

12.3.4 the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.

12.4 For the purposes of Clause 12.3:

12.4.1 a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to time;

12.4.2 a breach of Clauses 5.1.2, 5.1.5 or 7 shall always be deemed to be a material breach of this Agreement.

12.5 Skye Cloud may terminate this Agreement if the Customer is at least 10 Business Days' late in paying any undisputed sums due under this Agreement or any other agreement between the Parties and Skye Cloud has given to the Customer at least five Business Days' notice requiring the Customer to pay in full within such period failing which Skye Cloud may exercise its right to terminate under this Clause 12.5.

12.6 Termination of this Agreement shall be without prejudice to any accrued rights or remedies of either Party.

12.7 Termination of this Agreement will not affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

12.8 Upon termination of this Agreement for any reason:

12.8.1 Skye Cloud shall cease to perform this Agreement;

12.8.2 all outstanding Fees and expenses for Services provided shall become immediately payable, whether invoiced or not; except in the circumstances where the Customer terminates this Agreement under Clause 12.2, in which event Skye Cloud shall refund to the Customer the Fees paid in respect of Services not received as at the date of termination (where applicable on a pro rata basis for each full Business Day remaining in the relevant Month for which the Customer has paid in advance);

12.8.3 the Customer's right to use the Skye Cloud System shall cease; and

12.8.4 the owner of Confidential Information may at its option require the other Party to delete promptly all Confidential Information belonging to the Party requiring the action from any computer disks, tapes or other material in its possession or under its control or promptly deliver up or destroy materials and tangible items in its possession or under its control which contain any such Confidential Information. This includes the copy and delivery of all data from Skye to the customer, on suitable media, such as USB hard (subject to the Customer paying Skye Cloud's reasonable costs and expenses and Other Fees for its time at its then current Rates for doing so, it being acknowledged that the amount of the Other Fees may vary according to the specific situation including the amount and format of the Data to be delivered). The owner of Confidential Information may require the other Party to provide a written declaration, signed by an officer or other authorised individual stating that there has been full compliance with this Clause 12.8.4.

13. Force Majeure

13.1 Save for obligations in respect of payment of the Fees, neither Party shall have any Liability for any breach, hindrance or delay in performance of its obligations under this Agreement which is caused by circumstances beyond its reasonable control including any act of God, actions or omissions of third parties (including suppliers, couriers, hackers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detainments of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions, loss at sea, earthquake, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage

of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation (**"Event of Force Majeure"**), regardless of whether the circumstances in question could have been foreseen.

13.2 Each Party agrees to inform the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

13.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.

13.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.

13.5 If performance of any obligations are delayed under this Clause 13, each Party shall nevertheless accept performance as and when the other shall be able to perform.

13.6 If the Event of Force Majeure continues without a break for more than three months, either Party may terminate this Agreement immediately by notice to the other, in which event neither Party shall be liable to the other Party by reason of such termination.

13.7 If Skye Cloud has contracted to provide identical or similar services to more than one customer and is prevented from fully meeting its obligations to the Customer by reason of an Event of Force Majeure, Skye Cloud may decide at its absolute discretion which contracts it will perform and to what extent.

14. Suspension

14.1 Notwithstanding a Party's right to terminate this Agreement under Clause 12.2, that Party may elect to suspend its performance of its obligations (including access to the Managed Services and the Skye Cloud System) under this Agreement without notice if the other Party is in breach of one of the Clauses listed in Clause 12.4.2 or Skye Cloud has the right to terminate this Agreement under Clause 12.5, until the material breach is cured.

15. Notices

15.1 Any notice required or authorised to be given under this Agreement shall be in writing and may be served by personal delivery or by overnight courier or by facsimile addressed to the relevant Party at its address stated in this Agreement or at such other address or facsimile number as is notified by the relevant Party to the other for this purpose from time to time or at the address or facsimile number of the relevant Party last known to the other.

15.2 Any notice so given by post shall be deemed to have been served two Business Days after the same shall have been posted by overnight courier and any notice so given by facsimile shall be deemed to have been served upon receipt of an answerback signal from the receiving machine, and in proving such service it shall be sufficient to prove that the letter or facsimile was properly addressed or numbered and, as the case may be, despatched or an answerback signal received.

16. Assignment

16.1 Subject to any assignee (in the case of an assignment) confirming in writing to be bound by the provisions of this Agreement, Skye Cloud may assign, transfer, novate or subcontract its rights, liabilities or obligations under this Agreement either in whole or in part to any other person, firm or company. Skye Cloud shall promptly give notice to the Customer of any such assignment.

16.2 The Customer shall not (or purport to) assign, sub-license, transfer, novate, charge or otherwise encumber, create any trust over or deal in any manner with this Agreement or any of its rights, liabilities or obligations under this Agreement without the prior written consent of Skye Cloud (such consent not to be unreasonably withheld or delayed).

17. Changes

17.1 Except as expressly provided otherwise in this Agreement, no change to this Agreement shall be binding unless it is agreed in writing signed by each of Skye Cloud and the Customer and expressed to be for the purpose of such amendment.

17.2 If the Customer would like to make any change to this Agreement, one of the Customer's authorised representatives may request that Skye Cloud makes a proposal for bringing about the change.

17.3 If Skye Cloud would like to make any change to this Agreement, Skye Cloud may recommend a proposal for the change.

17.4 To the extent the change is feasible, Skye Cloud shall state within a reasonable time what would be the effects of the change including without limitation on Fees, expenses, timetable and any impact on the rest of the Services and this Agreement and any other agreement between the Parties

17.5 Neither Party shall unreasonably withhold or delay agreement to a change reasonably requested by the other Party. Both Parties shall use their respective reasonable endeavours to agree to the change and in a timely manner.

17.6 To the extent the change affects any timescales, the timescales shall be automatically extended accordingly.

17.7 The final agreed change shall be signed by both Parties.

17.8 Other than for any changes which this Agreement stipulates can be otherwise made, no change shall come into effect until the final agreed change signed by both Parties.

17.9 Where Skye Cloud in its reasonable opinion considers that investigating the effect of implementing a change involves substantial work, Skye Cloud may charge the Customer for its Fees and expenses incurred in respect of such investigating, whether or not the change is subsequently implemented. If the Customer does not provide its consent, then Skye Cloud may decide not to proceed further with considering the proposed change.

18. Dispute Resolution

18.1 The Parties will attempt in good faith promptly to resolve any dispute or claim arising out of or in relation to this Agreement in accordance with the following procedure:

18.2 The Parties shall use their best endeavours to negotiate in good faith and settle amicably any dispute or claim that may arise out of or relate to this Agreement (or its construction, validity or termination) (a **"Dispute"**). For this purpose, a Dispute shall include a failure to agree any matter which in accordance with any provision of this Agreement is to be agreed between the Parties (except where such provision expressly provides to the contrary). If a Dispute cannot be settled through negotiations by appropriate representatives of each of the Parties having authority to settle the matter, either Party may give to the other Party a notice (a **"Dispute Notice"**). Within five Business Days of the Dispute Notice being given, the Parties shall each refer the Dispute to their senior representatives nominated by the managing director of each Party, who shall meet in order to attempt to resolve the Dispute.

18.3 If the Dispute is not settled by agreement in writing between the Parties within 10 Business Days of the Dispute Notice, either of the Parties may refer the Dispute to mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. The mediation shall be conducted by a single mediator appointed by mutual agreement, or (failing mutual agreement within seven days of a notice from either Party to the other calling upon the other so to agree) by the Centre for Dispute Resolution. Both Parties agree to co-operate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge his duties, and to bear equally between them the fees and expenses of the mediator.

18.4 The mediation shall be conducted in London in English. The mediation shall be conducted without prejudice to the rights of any of the Parties in future proceedings.

18.5 If the matter has not been resolved by a mediation procedure within 60 days following referral of the Parties to the CEDR procedure or if the Dispute cannot be resolved using the processes and procedures set out above, then it shall be resolved by reference to the courts in accordance with Clause 19.5 (governing law and jurisdiction).

18.6 If the Dispute is substantially of a technical nature or financial, such dispute may be referred, with the written agreement of the Parties, to an expert, who shall be deemed to act as expert and not as arbitrator. The expert shall be selected by mutual agreement or, failing such agreement, within 10 Business Days of a request by one Party to the other, shall be chosen by the President for the time being of the British Computer Society (or his nominee) or if Skye Cloud reasonably determines that such matter relates primarily to financial matters, Skye Cloud may elect that such expert may be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales (or his nominee). Decisions of the expert shall be final and binding and, except in the case of manifest error, not subject to appeal. The fees of the expert shall be borne by the Parties in such proportion as may be determined by the expert.

18.7 If either Party does not agree with any Dispute being referred for mediation or determination in accordance with this Clause 18, then the Dispute shall be determined by the courts under Clause 19.5. For the avoidance of doubt, either Party may apply to the Court or initiate proceedings without recourse to the process in this Clause 18.

19. General

19.1 Unless a Party expressly states in writing that it is waiving a particular power, right or remedy in a particular stated instance, no failure or delay or omission by either Party in exercising any power, right or remedy under this Agreement or at law shall operate as a waiver of such power, right or remedy; and no waiver in any particular instance shall extend to or affect any other or subsequent event or impair any powers, rights or remedies in respect of it or in any way modify or diminish that Party's other powers, rights or remedies under this Agreement or at law.

19.2 If any Clause or other provision in this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other Clause or provision or part of any Clause or provision, all of which shall remain in full force and effect.

19.3 Nothing in this Agreement shall create or be deemed to create a partnership, an agency or a relationship of employer and employee between the Parties.

19.4 A person who is not a Party to this Agreement has no rights under any law to enforce any term of this Agreement.

19.5 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. Each Party irrevocably agrees that the English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). All dealings, correspondence and contacts between the Parties shall be made or conducted in the English language.

Version: 04. November 2025